



Italian implementation of the New Transparency Directive

4 March 2016

On 3 March 2016 the [Legislative Decree no. 25 of 15 February 2016](#) implementing the Directive 2013/50/EU (the "**New Transparency Directive**") which amended, *inter alia*, the Transparency Directive (Directive 2004/109/EU on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market) was published on the Official Gazette. The decree will enter into force on 18 March 2016.

The Legislative Decree amends different provisions of the Italian Consolidated Law on Finance (Legislative Decree no. 58 of 24 February 1998) with the purpose to simply and reduce the disclosure requirements for the listed companies.

The main amendments to the Italian Consolidated Law on Finance are summarized below.

1) Amendment to the definition of "Small and Medium Enterprises" (SMEs)

The definition of "Small and Medium Enterprises" (SMEs) has been amended by the introduction of the value of the turnover before listing as a parameter in order to take into account the features of the recently incorporated companies (the previous definition, making reference to the last financial statements and to the market capitalization, did not allow the recently incorporated companies to be qualified as SMEs): Further, CONSOB is obliged to publish on its website the list of the issuers that may be qualified as SMEs and shall issue implementing provisions including the disclosure requirements applicable to SMEs.

2) Increase of the threshold (from 2% to 3% of the issuer's share capital) triggering the obligation to notify significant shareholdings

The threshold triggering the obligation to notify significant shareholdings to the relevant issuer and to CONSOB has been increased from 2% to 3% of the issuer's share capital (the threshold remains 5% for SMEs). As indicated in the illustrative report to the Legislative Decree published by the Italian Government, the rationale behind this amendment is that an increase of the threshold may entail positive effects on the investment in the Italian market by institutional investors who, generally, in compliance with their investment policies, tend to place themselves under the level required by the regime on shareholdings' transparency in order to not suffer the costs connected to the notification requirement.

3) Removal of the obligation to publish quarterly financial statements

In compliance with the provisions contained in the New Transparency Directive, the obligation for listed issuers to publish an interim management statement within 45 days from the end of the first and third quarters of the financial year has been removed and, at the same time, CONSOB has been granted with the power to request the publication of financial information on a more frequent basis than the annual and half-yearly financial reports where certain conditions (as indicated by the New Transparency Directive) are met. In particular, CONSOB, in order to proceed with the request, shall publish an analysis assessing that (i) the additional periodic financial information does not constitute a disproportionate financial burden, in particular for the small and medium-sized issuers concerned, (ii) the content of the additional periodic financial information required is proportionate to the factors that contribute to investment decisions by the investors, (iii) the requested additional periodic financial information do not encourage too much attention to the short-term result and performance and do not negatively influence the access to the regulated markets by the small and medium-sized issuers.

As indicated in the illustrative report to the Legislative Decree published by the Italian Government, the rationale behind these conditions, as indicated by the New Transparency Directive, is that the requirement to publish quarterly financial information may lead to an excessive focus on the issuers' short-term results and performance and may constitute a burden for small and medium-sized issuers without a benefit for the market and the investment choices of the investors.

In any case, pursuant to the new law provision, CONSOB may request information whose contents are in line with the information previously required by law for the interim management statement.

4) Amendments to the sanctions' regime

In order to align the Italian regime to that provided by the New Transparency Directive, the sanctions' regime for the violation of disclosure obligations has been amended in order to include more stringent measures. Such measures are applicable to the issuers as well as to the company representatives and to the companies' staff contributing to the violations and may be calculated also with reference to the annual turnover.

The Legislative Decree introduces also other amendments to the Italian Consolidated Law on Finance such as: (i) the introduction of a distinction between the phase of the admission to listing and the phase of the admission to trading (in such latter phase technical valuations on the instruments are prevailing); (ii) a new article indicating the modalities for the communication of the home Member State (this provision could be relevant since issuers with multiple home Member States who fail to choose and disclose a single home Member State may be subject to disclosure obligations with multiple competent authorities), (iii) the amendment of the term for the publication of the annual financial report (4 months instead of 120 days) and the extension to 3 months of the term for the publication of the half-yearly financial report; (iv) a new article on the disclosure of the payments to governments to be made by companies operating in the extractive and forestry sectors.

Your Contacts

Claudia Parzani

Partner, Milan

claudia.parzani@linklaters.com

If you need any clarification please contact:

Doranna Carrozzo

Professional Support Lawyer, Milan

doranna.carrozzo@linklaters.com

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