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EQUITY CROWDFUNDING IN ITALY: CLASSES OF SHARES AND TRANSFER PROCEDURES FROM THE "INTERMEDIARY REGISTRATION" TOWARDS THE DEVELOPMENT OF A SECONDARY MARKET

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Abstract

Crowdfunding could be defined as a financing procedure of social projects and young enterprises based on contributions coming from a multitude of investors (the *crowd*) potentially spread worldwide.

After a brief introductory section dealing with a general description of the crowdfunding phenomenon, it will be analysed more in detail the Italian regulatory framework: in particular, the exemptions from the common law and the transfer procedures of the shares issued through the equity crowdfunding platforms. Among the exemptions, in addition to the possibility of issuing participating units on specific online platforms, it is important mentioning the operations on own shares and the creation of classes of shares with different rights attached; moreover, the latter could also be devoid of voting rights. Those provisions, which represent a significant innovation for companies established as s.r.l., open interesting scenarios in terms of corporate governance: in this case, several studies have investigated about what shall be the most preferable choice regarding the voting rights delivery. Furthermore, it is important assessing also who shall be the most suitable subject in charge of exercising those rights.

In analysing the classes of shares with voting rights attached and the transfer procedures in force according to the Italian regulatory framework, it will be established as a point of reference the British crowdfunding platform *Seedrs*; apart from appreciating the differences with the Italian provisions, the comparison is important in order to understand what are the possible improvements that the Italian Legislator could put in place in the next years.

Lastly, concerning the future perspectives in terms of shares' transfer procedures, it will be assessed also the possibility to realize them through the *Blockchain* technology.

I. The crowdfunding phenomenon

1. An alternative source of capital

During the last decades, it emerged an innovative fundraising methodology, known as crowdfunding, which is based on the developments achieved in the Internet field. The neologism directly comes from the underlying principle of the methodology: indeed, it was interpreted in the literature as "*the efforts by entrepreneurial individuals and groups – cultural, social, and for-profit – to fund their ventures by drawing on relatively small contributions from a relatively large number of individuals [the crowd] using the internet, without standard financial intermediaries"*[1]. It implies that the crowdfunding phenomenon is not exclusively addressed to the business field: instead, it encompasses a wide range of initiatives, from artistic or humanitarian projects to high-growth entrepreneurial companies that seek capital on alternative financing channels. It was also defined as the "*practice of funding a project or a venture by raising many small amounts of money from a large number of people, typically via the Internet*"[2].

The following sections will analyse more in detail the impact of the Crowdfunding phenomenon on the business field: it represents "*a valuable alternative source of funding for entrepreneurs seeking external financing*"[3] if compared to classic Venture Capitalists, Business Angels and bank financing. Indeed, it was observed that new ventures experienced significant difficulties (because of their intrinsic riskiness) in finding new capital from those sources during the first phases of their life, especially from the banking sector[4]. However, other authors sustained that crowdfunding could offer additional investment opportunities able to attract Venture Capitalists and Business Angels interested in diversifying their portfolio[5].

[1] MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 2.
[2] RIVON. Don't let them fool ya: examining the SEC rules on Crowdfunding and their effect on small business growth, The Digital Journal of Rutgers School of Law (October 12, 2016), p. 32.
[3] BELLEFLAMME, LAMBERT, SCHWIENBACHER. Crowdfunding: Tapping the Right Crowd, Journal of Business Venturing, 29(5), 2014, p. 2.
[4] LEE, SAMEEN, COWLING. Access to finance for innovative SMEs since the financial crisis. Research Policy 44 (2), 2015, p. 370.
[5] WANG, MAHMOOD, SISMEIRO, VULKAN. The evolution of equity crowdfunding: Insights from co-investments of angels and the crowd, Research Policy, Elsevier, Vol. 48(8), 2019, p. 1.

In any case, crowdfunding represents an interesting raising-capital alternative aimed at supporting the growth of new entrepreneurial ideas, which would be directly financed by the public (the *crowd*) and not by the traditional financial institutions[6]. Indeed, individuals could directly choose the companies or the projects in which investing through the Internet-based platforms. Moreover, it was observed that in such a context those individuals become *"more closely involved in these firms, as active consumers, investors, or both"* [7].

One of the most innovative element of this fundraising procedure is that it is not required an active intermediary: as consequence, there will be a significant reduction in the intermediation costs that have to be sustained by the investors otherwise[8]. However, although the *core business* and the type of activity performed significantly differ from the traditional financial institutions, an intermediary still exists in the crowdfunding market, the platform itself: indeed, those entities "*link fundraisers to funders with the aim of funding a particular campaign by typically many funders"*[9]. Therefore, crowdfunding platforms simply facilitate the connection between the *crowd* and the fundraisers, without investing money on behalf of the former. Those entities were "*heralded as a democratizing force in early stage finance*", even if the increasingly presence of Business Angels and Venture Capitalists alongside with the *crowd* could challenge this interpretation[10].

When a project or an enterprise asks for additional capital through a crowdfunding platform, it is usually been determined a certain collection target. If during the fundraising process the threshold is achieved, the crowdfunding campaign will be successfully closed. Only in some circumstances, the process will continue even after the achievement of the target ("*overfunding*"). However, if the threshold is not reached, the campaign will have a negative outcome: in this case, all the money eventually raised from the funders will be given back to them. The scheme was called "*threshold pledge system":* it has the purpose of both defining a realistic money amount necessary to finance the project or the enterprise and safeguarding the potential funders[11].

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[6] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 4.
[7] BELLEFLAMME, LAMBERT, SCHWIENBACHER. Crowdfunding: Tapping the Right Crowd, Journal of Business Venturing, 29(5), 2014, p. 4.
[8] RIVON. Don't let them fool ya: examining the SEC rules on Crowdfunding and their effect on small business growth, The Digital Journal of Rutgers School of Law (October 12, 2016), p. 32.
[9] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 4.
[10] WANG, MAHMOOD, SISMEIRO, VULKAN. The evolution of equity crowdfunding: Insights from co-investments of angels and the crowd, Research Policy, Elsevier, Vol. 48(8), 2019, p. 1.
[11] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, p. 3.

Another element that shall be appraised is crowdfunding as marketing tool for young start-ups[12]. Indeed, the fundraising campaign could arouse interest towards either the projects or the products/services that are going to be developed by the venture during the beginning phase of its growth path. In this case, crowdfunding could represent an interesting opportunity of advertising, since the start-up could divulge information not disclosable otherwise[13]. However, those eventual benefits are counterbalanced by potential costs: if the results of the crowdfunding campaign were not in line to what planned and forecasted, it would follow a serious damage from a reputational point of view[14].

2. Types of crowdfunding

Other authors define crowdfunding as an "*open call, essentially through the Internet, for the provision of financial resources either in form of donation or in exchange for some form of reward and/or voting rights in order to support initiatives for specific purposes*"[15]. The principle behind the raising-capital procedure remains the same: it represents a model based on small contributions from small investors aimed at supporting the development of both projects and firms in which they believe. However, depending on what funders get in exchange for their investments on the platform, it is possible distinguishing among different categories of crowdfunding[16]. Indeed, the mentioned raising-capital procedure was interpreted in the literature as an *umbrella* under which positioning different kinds of fundraising methodologies arranged in order to achieve a certain objective or a particular purpose[17]. Among the types, *donation-based*, *reward-based*, *lending*, and *equity* crowdfunding are the most common categories[18].

[12] SAYEDI, BAGHAIE. Crowdfunding as a Marketing Tool, 2017, pp. 189 and ff.
[13] WANG, MAHMOOD, SISMEIRO, VULKAN. The evolution of equity crowdfunding: Insights from co-investments of angels and the crowd, Research Policy, Elsevier, Vol. 48(8), 2019, pp. 1-2.
[14] BROWN, BOON, PITT. Seeking funding in order to sell: Crowdfunding as a marketing tool, Business Horizons, vol. 60, issue 2, 2017, p. 193.
[15] BELLEFLAMME, LAMBERT, SCHWIENBACHER. Crowdfunding: Tapping the Right Crowd, Journal of Business Venturing, 29(5), 2014, p. 8.
[16] PASCHEN. Choose wisely: Crowdfunding through the stages of the startup life cycle, Business Horizons, vol. 60, issue 2, 2017, pp. 2 and ff.; POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 101-105.
[17] AHLERS, CUMMING, GUENTHER, SCHWEIZER. Signaling in Equity Crowdfunding, Entrepreneurship Theory and Practice, 2015, p. 1.
[18] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, pp. 4 and ff.; MEYSKENS, BIRD. Crowdfunding and Value Creation, Entrepreneurship Research Journal, De Gruyter, vol. 5(2), 2015, p. 158; POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 101-105.

Donation-based crowdfunding is generally associated to either artistic or social projects: here, funders acquire the nature of "*philanthropists*", since they do not expect any tangible or monetary return after the contribution made[19]. Moreover, it was observed that fundraising campaigns put in place by non-profit organizations for philanthropic goals have more odds to achieve the collection target compared to those arranged for profit purposes[20].

Concerning the reward-based type, funders generally obtain a tangible compensation in exchange for their capital injection[21]. It represents a category of crowdfunding particularly interesting in the business field, due to a high degree of versatility. Indeed, according to this raising-capital procedure, start-ups offer to potential funders prototypes of the products (or of the services) that the former are going to place on the market in the near future. In this case, the role of the funders is not only financing the firm, but also providing fundamental feedbacks about those products and services[22]. It means that small investors could significantly contribute to the development phase of those goods, providing suggestions directly to the founders: therefore, they have the role of *prosumers*[23]. Moreover, entrepreneurs could decide to grant to crowdfunders also finished products (or services) in presale or in limited edition. This choice produces advantages to both parties[24]: indeed, the latter could obtain finished products (or services) at an earlier date, at a better price or with special features; on the other hand, the start-up could mitigate the development risk of new products (and services), understanding after the assessment of the fundraising campaign if an adequate demand exists or not. If the response was positive, the entrepreneurial idea would be validated by the market; if insufficient interest arose from the offering, the venture could "*fail quickly*", without investing additional effort and capital[25]. Therefore, it represents a type of crowdfunding that cannot be assessed in monetary terms; indeed, funders get in exchange for the contributions made not a typical economic return but a tangible reward[26].

[19] MEYSKENS, BIRD. Crowdfunding and Value Creation, Entrepreneurship Research Journal, De Gruyter, vol. 5(2), 2015, p. 163; MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 3.
[20] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 10.
[21] MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 3.
[22] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 13.
[23] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, p. 6.
[24] MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 3.
[25] MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 3.
[26] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 7.

As anticipated before, the remaining two raising-capital models are known as lending-based and equity-based crowdfunding. Although they are characterized by significant differences, it is important underlying that in both cases the remuneration depends on the performance of the project or of the venture financed through the platform[27].

Regarding the lending-based model, it represents a comparable procedure with respect to that performed by traditional financial institutions, which rarely provide loans to young enterprises[28]. Differently from traditional loans, lending-based crowdfunding bypasses the banking intermediation logic: indeed, in the first case investment choices are totally left to potential crowdfunders. Furthermore, platforms usually do not realize any preliminary screening of the projects that are going to raise new capital through the portals[29]. According to this fundraising category, investors directly lend their money with the expectation of gaining a certain economic return, measured in terms of interest rate (usually fixed) computed on the investment realized[30]. Nevertheless, according to other authors, lenders may be more interested in the "*social good promoted by the venture [rather] than any return generated by the loan"*[31].

Lastly, the equity-based crowdfunding, whose regulatory framework in Italy will be analysed in the following chapters. According to this fundraising procedure, crowdfunders will get shares of the issuer company (becoming as consequence official members) in exchange for the contributions made[32]. Therefore, the objective of the funders is earning a certain economic return which could come from two different sources: i) shares of profits realized by the venture and distributed to the members after the assembly decision; ii) return on the initial investment, equal to the difference between the purchase price and the selling price of the shares acquired on the platform[33]. The latter could be gained selling the shares through private transactions or after takeovers or IPOs. As a consequence, here investors have more "*incentives to make the company grow"*[34].

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[27] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 2.
[28] LEE, SAMEEN, COWLING. Access to finance for innovative SMEs since the financial crisis. Research Policy 44 (2), 2015, p. 370.
[29] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 5.
[30] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 5.
[31] MOLLICK. The Dynamics of Crowdfunding: An Exploratory Study, Journal of Business Venturing, Volume 29, Issue 1, January 2014, p. 3.
[32] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, p. 4.
[33] FUTKO. Equity vs. Debt Crowdfunding – Crowdfund Insider, Accessed November 9, 2014. Available at: http://www.crowdfundinsider.com/2014/09/50628-equity-vs-debt-crowdfunding/.
[34] SCHWIENBACHER, LARRALDE. Crowdfunding of Small Entrepreneurial Ventures, Handbook of Entrepreneurial Finance, Oxford University Press, 2010, p. 18.

3. The crowdfunding process

The crowdfunding process could be summarised according to Figure 1[35]. The first two phases, the development of the campaign and the choice of the platform, are strongly related each other. Regarding the former, the venture has to quantify the monetary needs, assessing all the costs that shall be sustained during the development phase. Subsequently, the start-up has to choose the platform that is going to host the fundraising process: the choice is relevant, since it implies what crowdfunding type will be adopted by the venture and, as a consequence, the type of reward that will be delivered to the funders in exchange for the investments made on the platform.

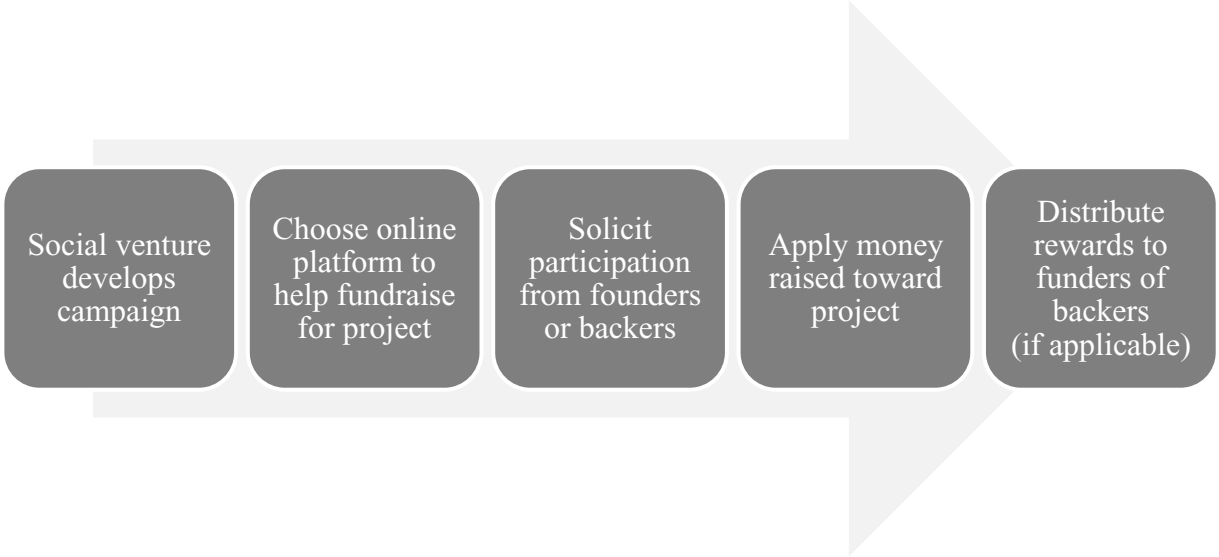

Figure 1: The crowdfunding process. MEYSKENS, BIRD (2015), p. 157.

Furthermore, it was suggested by other authors that the choice of the fundraising platform depends on the stage of the life cycle in which the venture stands[36]. In particular, alongside with the growth path of the start-up, the most suitable crowdfunding platforms (in ascending order) are: i) donation-based; ii) reward-based; iii) lending-based; iv) equity-based. Therefore, it seems more advisable raising capital through crowdfunding platforms associated with the possibility to get a "pure" economic return from the investment only when the start-up has already overcome the early-stage phase of development.

[35] MEYSKENS, BIRD. Crowdfunding and Value Creation, Entrepreneurship Research Journal, De Gruyter, vol. 5(2), 2015, p. 157.
[36] PASCHEN. Choose wisely: Crowdfunding through the stages of the startup life cycle, Business Horizons, vol. 60, issue 2, 2017, pp. 2. and ff.

Lastly, other scholars argued that the optimal choice of the platform relies on the combination between *social value* and *economic value* of the initiative that is going to be funded online (Figure 2)[37].

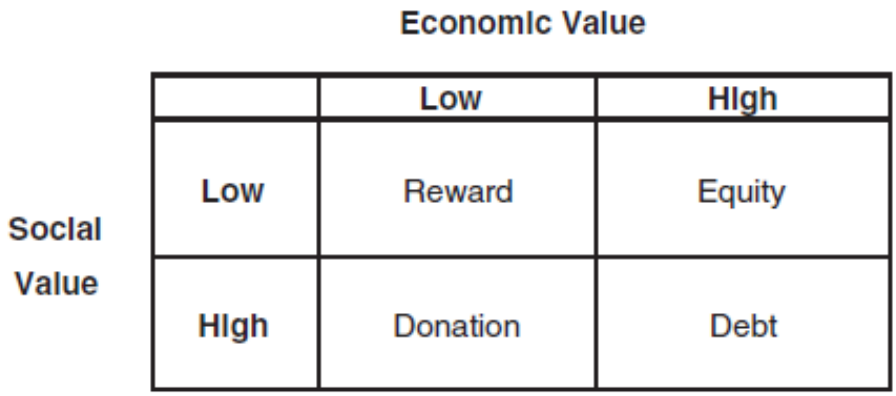

Figure 2: Choice of the platform. MEYSKENS, BIRD (2015), p. 163.

The third phase consists in soliciting potential funders to invest their money: here crowdfunding platforms represent an important mean through which fundraisers could share media and provide updates about the ongoing projects[38]. Moreover, the communication choices adopted by the ventures on the platform are quite important, since they significantly influence the chances of success of the fundraising campaigns themselves. Indeed, it was observed that disclosures of financial *roadmaps* (plans about the future activities that will be performed by the venture, also in terms of further financing rounds) and of the main risk factors related to the firm are associated with better odds of successfully completion of the offering[39]. Among the other factors that positively influence the conclusion of a campaign is important mentioning the experience of the Board of Directors, the number of the existing members, the quality of the information disclosed, the frequency of the updates about the project and about the firm activities.

[37] MEYSKENS, BIRD. Crowdfunding and Value Creation, Entrepreneurship Research Journal, De Gruyter, vol. 5(2), 2015, p. 163. *Social value* is assessed as the capacity of the venture to carry out initiatives that have a positive impact either on the environment or on the society in general. On the other hand, the *economic value* is related to the ability of the start-up to perform activities aimed at directly offering goods or services on the market or at supporting other enterprises in their value creation process.

[38] WANG, MAHMOOD, SISMEIRO, VULKAN. The evolution of equity crowdfunding: Insights from co-investments of angels and the crowd, Research Policy, Elsevier, Vol. 48(8), 2019, pp. 1-2.

[39] AHLERS, CUMMING, GUENTHER, SCHWEIZER. Signaling in Equity Crowdfunding, Entrepreneurship Theory and Practice, 2015, p. 29.

However, regardless of the quality of the information about the venture provided on lending and equity crowdfunding platforms, it was observed that small investors often do not have adequate competences and skills in order to properly assess those investment opportunities[40]. As a consequence, there could arise issues in terms of information asymmetry.

Lastly, the fourth and the fifth phases, which follow the closure of the fundraising campaign. Concerning the former, the money collected through the platform will be (presumably) invested by the ventures in their development projects. Moreover, issues in terms of information asymmetry could arise also during this phase, since investors could not properly control the way in which fundraisers use the money collected after the conclusion of the campaign[41]. Some authors proposed as possible solutions against the information asymmetry either preliminary screening activities performed by the platform itself or the disclosure of additional and complementary information[42]. Regarding the fifth phase, it consists in the distribution to the funders of the promised *rewards* by the start-up. As a consequence, this last phase is not applicable to the donation-based crowdfunding model. Regarding the remaining three models already illustrated, the *rewards* are distributed to the backers only if the fundraising campaign is successfully concluded.

4. First interventions of the Legislators

The subsequent chapters will focus on the equity-based crowdfunding. The regulation of this kind of fundraising procedure was introduced for the first time by the U.S. *Jumpstart Our Business Act* ("JOBS Act"), which was emanated by the President Obama in 2012[43]. It represents a set of rules that revolutionized the way in which young ventures could raise capital: indeed, they acquired the possibility to having access "*to a big, new pool of potential investors – namely the American people*"[44]. The section of the JOBS Act which regulates the equity-crowdfunding phenomenon is the Title III, named as *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act* ("CROWDFUND Act").

[40] AHLERS, CUMMING, GUENTHER, SCHWEIZER. Signaling in Equity Crowdfunding, Entrepreneurship Theory and Practice, 2015, p. 1.
[41] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, p. 24.
[42] BELLEFLAMME, OMRANI, PEITZ. The Economics of Crowdfunding Platforms, 2015, pp. 24 and ff.
[43] MEYSKENS, BIRD. Crowdfunding and Value Creation, Entrepreneurship Research Journal, De Gruyter, vol. 5(2), 2015, p. 160.
[44] http://www.whitehouse.gov/the-press-office/2012/04/05/remarks-president-jobs-act-bill-signing in CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 2.

The regulatory framework becomes effective in 2016, when SEC and Financial Industry Regulation allows online platforms to officially registering as such[45]. For the first time entrepreneurs and start-up could issue equity shares on specific crowdfunding platforms[46]. Lastly, the new regulatory framework does not overlap the rules related to the public offerings on regulated markets[47].

Alongside with those innovative rules, it is important underlying the prompt intervention of the Italian Legislator: *Decreto Legge* 179/2012 (which will be analysed more in detail in the following chapter) and the consequent introduction of Articles 50-*quinquies* and 100-*ter* of the TUF are the first European example of Regulation entirely devoted to the Crowdfunding phenomenon[48]. The former Article of the TUF regulates the activity performed by the portals' managers; the latter concerns the raising-capital offerings that are arranged through the crowdfunding platforms. In other words, the framework represents a set of rules which regulates the most important aspects of the life cycle of a young venture[49]. After 2012, the rules were modified in order to enlarge the potential beneficiaries of the regulatory framework to a higher percentage of the overall Italian entrepreneurial system. Moreover, those provisions were integrated by the CONSOB Regulation n. 18592 of 2013.

Although both of them aimed at regulating the same phenomenon, important differences between the U.S. and the Italian regulatory frameworks have to be mentioned[50]. The former is characterized by a more general nature, since there are no limitations related to the type of society of the beneficiaries. Indeed, in U.S. the equity crowdfunding is prohibited only to financial institutions and companies already quoted on regulated markets. In other words, the Italian regulatory framework does not allow all the *emerging growth companies* to take benefit from the innovative raising-capital procedure[51]. Nevertheless, more strict requirements are established by the JOBS Act in terms of capital amount that could be raised through the platform and overall number of funders allowed[52].

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[45] RIVON. Don't let them fool ya: examining the SEC rules on Crowdfunding and their effect on small business growth, The Digital Journal of Rutgers School of Law (October 12, 2016), p. 29.
[46] STEMLER. The JOBS Act and crowdfunding: Harnessing the power—and money—of the masses, Business Horizons, 56(3), 2013, p. 271.
[47] ALVISI. Equity crowdfunding: uno sguardo comparatistico, Rivista di diritto bancario, n. 3, 2014, p. 9.
[48] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 2; POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 105.
[49] BENAZZO. La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 101.
[50] ALVISI. Equity crowdfunding: uno sguardo comparatistico, Rivista di diritto bancario, n. 3, 2014, p. 9.
[51] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 702.
[52] Title III of JOBS Act states that fundraisers could collect through equity crowdfunding platforms a maximum of $1 million in a one year time period and from a maximum amount of 2000 investors. Each of them could invest through those platforms

The regulatory framework introduced by the Italian Legislator concerns only the equity-based crowdfunding: regarding the other types, there are not specific regulatory interventions of such importance and relevance. However, it is important underlying that, concerning lending-based crowdfunding, in 2016 there were introduced rules that regulate the collection of money from subjects different from the traditional financial institutions. In particular, *Delibera* n. 586 emanated by the Bank of Italy named this kind of crowdfunding as "*social lending*". It represents an "*instrument through which a plurality of fundraisers could require reimbursable money from a plurality of potential funder*s" [53].

a maximum of $2000 per year or 5% of their income if lower than $100.000 or less than 10% of their income if higher than $100.000.

[53] *Delibera* n. 585, Bank of Italy, 2016, p. 15. Available at: https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/disposizioni/raccolta-risparmio-soggetti-diversi/disposizioni.pdf

1. Introduction

1.1 Overview

Section IX of "*Decreto Legge 179/2012*" (known as *Decreto Crescita bis* and converted with modifications by *Legge* n. 221/2012), *Measures for the development of innovative start-up enterprises*, represents a new set of provisions recently introduced by the Italian Legislator; it creates a favourable ecosystem for the growth of those enterprises that perform activities of development, production, and commercialization of products and services characterized by a high level of technological innovation[54]. The provisions introduced have the purpose of promoting the development of a new entrepreneurial culture in Italy, creating an economic system more favourable towards the innovation[55]. In a country severely hit by the financial crisis, innovative enterprises were thus considered as an important element able to positively stimulate the overall economy.

Initially, provisions included in Section IX were addressed only to *innovative start-ups* ("*start-up innovative*"), a temporary and extraordinary organizational model regulated by Article 25 of *D.L.* 179/2012. An *innovative start-up* can be established as a limited liability company (s.r.l. and s.p.a. in the Italian Corporate Law), cooperative society or *Societas Europaea*. The only type of society excluded from the provisions included in Section IX is the partnership (s.n.c. and s.a.s. in the Italian Corporate Law), which remains out of the recent interventions of the Legislator[56]. The rules introduced in 2012 concerns the introduction of a series of exemptions from the common law that facilitate the initial development and the raising-capital process of the enterprises compliant with the special status.

[54] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 111.
[55] Accompanying report to D.L. 179/2012.
[56] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 553.

Moreover, new entities were introduced and regulated for the first time: *incubators* of *innovative start-ups* (which shall be established as limited liability companies, cooperative societies or *Societas Europaea)* and *portal managers*, which play a key role in the raising-capital process of *innovative start-ups* through the equity-crowdfunding platforms.

The success of the *innovative start-up* model led the Legislator to extend part of the exemptions included in Section IX also to "*innovative SMEs*" ("*PMI innovative*"). Indeed, it was emanated *Decreto Legge* 3/2015 (converted by *Legge* n. 33/2015), which allows those firms to benefit from most of the provisions initially addressed only to *innovative start-ups*. It appears evident that the purpose of the Legislator was to open the beneficiaries of the favourable framework and to incentive even more new investments into innovative technologies. To acquire the status of SME, the firm shall be compliant with the provisions included into the EC Recommendation 2003/361, according to which the company shall not have more than 250 employees and at least one of the following thresholds has to be satisfied: i) total revenues lower than €50 Million; ii) total assets lower than €43 Million. Moreover, the enterprise could have as object whatever economic activity and shall not be part of groups of firms whose economic power overtakes that of a SME.

After 4 years, the Legislator emanated *Decreto Legge* 50/2017 (converted by *Legge* n. 96/2017), which extends the favourable framework to every SME, regardless of the innovative feature of the activity performed. In particular, Article 57 (Subsection 1) of the mentioned *Decreto* states that the words "*start-up(s) innovative(e)*" will be substituted by the acronym "*PMI*" in Article 26 (Subsections 2, 5 and 6) of *D.L.* 179/2012. As observed by a scholar, *D.L.* 50/2017 marks the transition "*from a special right for innovative enterprises towards a special right also for conservative enterprises*"[57]. In other words, the favourable framework defined in Section IX losses its connection with the innovative feature of the activity performed by the enterprise and remains linked simply to the dimensional characteristics of the firm. Overall, the framework created by the Legislator over the last 8 years highlights the willingness not only to facilitate the constitutions of new firms; but also the aim of supporting also the economic activity of the existing ones, allowing them to benefit from the provisions originally reserved only to start-ups and innovative enterprises.

[57] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1447.

1.2 Statistics

According to Article 32 (Subsection 7) of *D.L.* 179/2012, the Ministry of the Economic Development shall arrange a relation concerning the effectiveness of the incentive policies included in Section IX. In particular, the Ministry shall illustrate the impact of those policies on both economic growth and employment level; then, it will be expressed an assessment concerning the overall benefit of the provisions for the entire economic system and taking into consideration also the costs that have to be sustained to implement them. The last available relation was published in 2017 (data of 30th June 2017) and it shows interesting information related to the enterprises that could benefit from the favourable framework arranged by the Legislator.

In particular, according to the Relation, *innovative start-ups* were equal to 7.398, with a 24,5% increase compared to 2016 Data and 93,7% of them was established as s.r.l.; the remaining enterprises were established as s.p.a. or as cooperative societies. Furthermore, *innovative SMEs* were equal to 565: 452 established as s.r.l. and 105 as s.p.a.. As suggested by a scholar, the higher percentage of the latter could be explained by the fact that it regards enterprises already established as s.p.a. before 2015 which acquire the status of *innovative SME* only after *D.L.* 3/2015[58].

More recent data concerning the beneficiaries of the favourable framework could be obtained by analysing the dataset provided by the website http://pminnovative.registroimprese.it, which discloses a regularly updated list of Italian *innovative start-ups* and *SMEs*. Data of October 2020 shows that in Italy there are 11.972 *innovative start-ups* and 1.716 *innovative SMEs* (of which, respectively, 11.755 and 1.409 established as s.r.l.). Lastly, since SMEs represent most of Italian companies established as s.r.l., it becomes evident the interest of the Legislator towards this last type of society; indeed, the new provisions provide them interesting development opportunities[59].

[58] CERRATO. La parabola di start-up e PMI dalla s.r.l. alla S.p.A., in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 44-45.

[59] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 110; SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 280.

1.3 Influence on the s.r.l. type

Despite the innovative nature of Section IX, the new provisions do not introduce an additional type of society; instead, they define an evolution of the s.r.l. type itself[60]. Until 2015, the interventions by the Legislator were initially considered of "marginal impact" with regards to the type of society. Indeed, the special exemptions recognized to start-ups and SMEs were strongly linked to the innovative feature of the activities performed, creating a narrow group of potential beneficiaries. Thus, given the strict requirements and the limited field of application of the provisions, innovative enterprises established as s.r.l. could be considered as coherent with this type of society. Moreover, the provisions introduced by the Legislator could be interpreted as a temporary framework for *innovative start-ups:* temporary because those enterprises would be subjected to the ordinary rules after a certain time period. However, after the extension of those provisions to every SME, regardless of the innovative feature of the activity performed (*D.L.* 50/2017 and *D. Lgs.* 129/2017), the vision of "marginal impact" of the Legislator interventions on the s.r.l. type became no more sustainable.

Indeed, according to some authors, those interventions led to a radical change in the s.r.l. type, which breaks up into two sub-categories: SMEs established as s.r.l. (compliant with the EC Recommendation) and ordinary s.r.l. companies[61]. Regarding the latter, significant differences with the s.p.a. type remain, while, concerning the former, discrepancies tend to shrink. Moreover, concerning s.r.l. SMEs, uncertainty arises about the possibility to apply in analogy some s.p.a. rules, given the approaching between the two types of society (the topic will be analysed in the following paragraphs)[62]. Also, other authors states that the intervention of the Legislator does not lead to the creation of a new type of s.r.l. society[63]: this last interpretation was sustained by other scholars, which state that the open s.r.l. SME has to be considered as a "*small-medium limited liability company with stocks*"[64].

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[60] MALTONI, SPADA. L'impresa start up innovativa costituita in società a responsabilità limitata, Rivista del Notariato, Fasc. 5, 2013, p. 1120.

[61] DESANA. PMI innovative, PMI e società a responsabilità limitata: una rivoluzione copernicana?, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 70; CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, p. 819. NOTARI. Analisi de iure condendo delle 'varianti organizzative' delle s.r.l. (start up innovative, PMI innovative e PMI): problemi aperti e prospettive evolutive, Osservatorio del diritto civile e commerciale, Fasc. 2, 2019, p. 246. In particular, the latter distinguishes among s.r.l. *innovative start-ups*, s.r.l. *innovative SMEs*, s.r.l. SMEs and ordinary s.r.l. companies according to three dimensions: time, activity performed and dimension.

[62] CORSO. S.r.l.-PMI aperte al mercato: scelte statutarie e diritti dei soci investitori, Banca Borsa e Titoli di Credito, Vol. 72, Fasc. 6, 2019, p. 885.

[63] MALTONI, SPADA. L'impresa start up innovativa costituita in società a responsabilità limitata, Rivista del Notariato, Fasc. 5, 2013, p. 1120.

[64] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle società, Fasc. 5/6, 2018, p. 1451.

As observed by the doctrine, after the introduction and the extension of *Decreto Crescita bis,* "s.r.l." would become a type of society *"competitively advantaged"* if compared to the s.p.a. type[65]. In other words, those provisions tend to create a competitive unbalance towards the s.r.l. type, which seems to become the preferred organizational model for new companies, even though s.p.a. type should be theoretically more suitable to attract new investments.

The competitive advantage of the s.r.l. type has become significant since enterprises which benefit from the favourable framework could integrate features typical of the s.p.a. type to elements which characterize the ordinary s.r.l. type. For example, SMEs established as s.r.l. could maintain a corporate structure which gives relevance to some members (such as the founders) with respect to the others. In other words, it is lawful shaping it also asymmetrically compared to the capital injected by the members; moreover, differently from companies established as s.p.a., they do not need to elect an internal supervisory body, which represents a minimal safeguarding measure imposed on the firms that raise capital on the market.

2 Access to the favourable framework

2.1 Requirements

The possibility to benefit from the favourable framework, which consists of several exemptions from the common law, is subordinated to the satisfaction and to the maintenance of several requirements by the companies. *Innovative start-ups* can benefit from the framework defined in Section IX only if two conditions are jointly satisfied: the compliance with the requirements stated in Article 25, Subsection 2, and the inclusion into the Special Section of the Business Registrar, as established by Article 25, Subsection 8[66].

The requirements included in Article 25 (Subsection 2) of *D.L.* 179/2012 are related to the economic nature of the company, to the corporate institutional structure and to the remuneration policy of the investment.

[65] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 123.
[66] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 555-556.

Some of them could be easily verified: in particular, the society i) shall not have shares quoted on a regulated market[67]; ii) shall be constituted from no more than 48 months (limit then extended to 60 months); iii) shall not be constituted after mergers or spin-offs; iv) shall have its headquarter in Italy.

However, Article 25 (Subsection 2) establishes also other requirements more difficult to verify, because related to the future economic activity of the company: in this sense, the value of the total annual production lower than €5 million (from the second year of activity of the *innovative start-up*) and the prohibition of profit distribution in the subsequent 5 years of activity. Another requirement characterized by a significant level of uncertainty is related to the corporate purpose of the venture, that shall consist exclusively or mainly in the development, production and commercialization of innovative products or services with a high technological value. Doubts arise because the Legislator does not explain clearly in which circumstances a product or a service could be associated with the "*high technological value*" feature[68]. Indeed, it was observed that statements included in Section IX are not linked to any legal definition[69]. Lastly, it is important mentioning that, after *D.L.* 83/2014, the status of *innovative start-up* was extended also to those companies that have as corporate purpose "*the promotion of the national touristic offering*"[70].

Furthermore, the *innovative start-up* must be compliant with at least one of these three requirements:

i. Research and Development expenses shall be higher than the 15% of the maximum between production cost and total production value, as resulting from the balance sheet or, if not available, from an auto-certification provided by the legal representative of the firm. Considering that the *innovative start-up* will maintain its status for a limited duration (maximum 5 years), it is not clear whether, in order to get access to the exemptions for the entire period, that percentage shall be fulfilled in every year in which

[67] Indeed, as stated by DE LUCA (Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 1), equity-based crowdfunding represents a raising capital procedure that does not imply the creation of a trading platform able to facilitate the subsequent divestment of the shares purchased by the investors.
[68] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 113.
[69] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 557.
[70] Article 11-*bis*, D.L. 83/2014.

the firm wants to take advantage of the favourable framework or it is sufficient the compliance only in the first year[71];

ii. at least 1/3 of the total workforce shall be constituted by employees with verified academic education or with research experience in public or private research institutions of at least three years. The Legislator does not require any linkage between the education level of the employees and the activities realized by them inside the enterprise[72], giving more relevance to the education level rather than to the real skills acquired by the employees during prior and eventual work experience;

iii. the enterprise shall be owner or licensee of at least one industrial property right that shall be directly linked to the corporate purpose or to the activity performed by the company[73].

Section IX stated also that the majority of the shares (and of the voting rights) must be detained by natural persons, but the requirement was abolished in 2013. The suppression of this requirement allows to define clearer boundaries for the application of the rules, and it seems to signal the willingness of the Legislator to enlarge the number of companies that could get access to the favourable framework. Moreover, it was observed that Section IX does not establish as requirement any minimum level of initial capitalization that has to be fulfilled by the potential beneficiaries[74].

As mentioned before, the provisions were extended to *innovative SMEs* after the emanation of *D.L.* 3/2015. First of all, those enterprises shall be compliant with the thresholds established by the EC Recommendation 2003/361. In this case, the dimensional requirements in terms of total revenues are less strict with respect to what required for *innovative start-ups*, whose value of the annual production shall not exceed 5€ Million. Moreover, as reported by Article 4 of *D.L.* 3/2015, the firm, that could be established either as a limited liabilities company or as a cooperative society, shall be located in Italy, shall not have shares quoted on regulated markets and its financial statements shall be certified by a statutory auditor.

[71] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 559.
[72] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 559.
[73] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 560.
[74] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 108.

Regarding the compliance with the "*innovative*" feature, *innovative SME*s have to satisfy two of the following requirements: i) research and development expenses at least equal to 3% of the maximum between total production cost and total production value; ii) at least 1/5 of the total workforce shall be constituted by PhDs or PhDs students; iii) the enterprise shall be owner or licensee of at least one industrial property right.

Furthermore, *D.L.* 3/2015 does not require for *innovative SMEs* a corporate purpose in line to what *innovative start-ups* have to comply with, removing a significant source of uncertainty related to its formulation. The extension has a significant impact also on the beneficiaries of the previous intervention, the *innovative start-ups*: indeed, those companies, which, according to *D.L.* 179/2012, could benefit from the exemptions included in Section IX only within 60 months from the foundation, could continue to be part of the favourable framework also after this time period, shifting their status to *innovative SMEs*. Obviously, the status transition could be performed only if all the pertaining requirements are correctly fulfilled. In other words, the status of *innovative SME* embeds all the Italian small and medium enterprises which operate in the field of technological innovation, regardless of the foundation date and of the corporate purpose.

After the emanation of *D.L.* 50/2017, the regulatory framework was extended to every SME established as s.r.l., regardless of the innovative feature of the activity performed. Concerning those enterprises, the only relevant requirements remain those included in EC Recommendation 2003/361. After those modifications, CONSOB has adjusted the Regulation n.18592 through *Delibera* n. 20204 of 29th November 2017.

2.2 Special Section of the Business Registrar

Article 25 (Subsection 8) of *D.L.* 179/2012 states that *innovative start-ups* (and also *incubators*) could benefit from the favourable framework if included into the Special Section of the Business Registrar, kept by the Chambers of Commerce. The enterprise shall arrange an admission demand in electronic format which includes: i) date and place of foundation; ii) name and address of the notary; iii) address of the headquarter; iv) corporate purpose; v) a brief description of the activity performed; vi) list of the members; vii) list of eventual investee companies; viii) information related to the academic path and to the previous professional

experience of the members, excluding sensitive information; ix) information related to relationships with incubators or qualified investors; x) most recent financial statements; xi) list of registered patents.

Also, the inclusion into the Special Section requires the submission of an auto-certification (arranged by the legal representative of the firm itself) attesting the compliance of the company with the established requirements. Doubts related to the provision have emerged since some scholars observed that legal representatives need not to satisfy any condition in terms of professionalism and independence[75].

Even *innovative SMEs* have to be included into a dedicated section of the Business Registrar and, as for *innovative start-ups*, they have to submit an auto-certification attesting the compliance with the legal requirements. Among the requirements, *innovative SMEs* shall not be already part of the Special Section of the Business Registrar related to the *innovative start-ups.* Further to this point, an important element that deserves to be analysed is the transition from *innovative start-up* towards *innovative SME*. *Innovative start-ups* which become unable to satisfy at least one of the requirements established by *D.L.* 179/2012 (for example, when 5 years from the foundation pass, when the total production value exceeds €5 Million or when the enterprises decide to distribute profits) could shift their status to *innovative SME* without any interruption if the pertaining requirements are satisfied. In particular, the enterprise shall request the cancellation from the start-up section and, contextually, shall request the inscription in the Special Section of the Business Registrar related to the *innovative SMEs*. In other words, it is allowed the maintenance of the benefits legally compatible with the new status.

2.3 Temporary nature of the favourable framework

Initially, the favourable framework established by the Legislator had the purpose of creating a system able to support small firms only during their initial phase of development, without maintaining permanently its effectiveness over the life of such enterprises[76].

[75] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 561.
[76] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 562.

Indeed, a company would have lost the status of *innovative start-up* not only when it had failed to be compliant with at least one of the requirements established by Article 25, but also after 48 months (subsequently extended to 60) from the foundation date. Those circumstances were not self-sufficient, because should be followed by the cancellation from the Special Section of the Business Registrar within sixty days by their occurrence[77]. Thus, the exemptions from the common law included in Section IX seemed to be counterbalanced by the temporary nature of the framework.

Nevertheless, even if the enterprise had lost its status of *innovative start-up*, some clauses included in the corporate bylaws according to Article 26 (in particular, Subsections 2, 3 and 7) would have maintained their effectiveness on the shares already subscribed also after the cancellation from the Special Section of the Business Registrar[78]. Indeed, it is true that the status will be lost by the company in any case after five years from the foundation; however, the provisions concerning the corporate law could not have a temporary nature, maintaining their effectiveness on the participating shares already issued[79]. In other words, after that the initial development phase is completed, there will remain a company excluded from the Special Section and subject to the traditional rules that will keep in its capital structure or inside its corporate bylaws significant and relevant "traces" of the favourable framework. The exemptions from which the enterprises could benefit will be analysed more in detail in the following chapters.

Furthermore, the two subsequent interventions of the Legislator (*D.L.* 3/2015 and *D.L.* 50/2017) seem leading towards a progressive dissolution of the temporary nature feature. Indeed, differently from *innovative start-ups*, the exemptions are recognized to *innovative SMEs* without any constraint in terms of duration: in particular, the time limit of 5 years within which the enterprises could benefit from the favourable framework was expressively abolished for *innovative SMEs* after the emanation of *D.L.* 3/2015. In other words, it was removed by the Legislator the most important feature concerning the temporary nature of the framework.

Then, after *D.L.* 50/2017, the exemptions originally prescribed only for *innovative start-ups* were extended to every SME, regardless of the nature of the activity performed. Moreover, as for *innovative SMEs*, those provisions define a favourable framework that is not subject to any

[77] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 113.
[78] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 113.
[79] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 562.

temporal limit, in contrast with what established by the Legislator in *D.L.* 179/2012; indeed, according to latter the exemptions from the common law addressed to *innovative start-ups* had a temporary nature.

2.4 Loss of the status

As anticipated before, a firm could lose the status of *innovative start-up* or *SME* when the requirements previously mentioned cease to be satisfied. Moreover, an enterprise loses the status of *SME* when it fails to satisfy the dimensional thresholds included in the EC Recommendation 2003/361. In both cases, the loss of the status implies the inability to continue to benefit from the new regulatory framework introduced by the Legislator.

It was discussed if the loss of the status of SME would lead to either a transformation of the society into s.p.a. or to legal invalidity of the type, due to the possible presence in the corporate bylaws of incoherent clauses with the s.r.l. type[80]. However, the former solution was considered as unfeasible, because it does not exist any legal provision that imposes a transformation of the type of society after the occurrence of certain events. Regarding the latter, it would mean that the presence inside the corporate bylaws of such clauses shall be considered as a cause of invalidity according to the Article 2332 of the Civil Code. It would derive that, in this last case, members have to modify the corporate bylaws in order to avoid the dissolution of the firm. However, it was observed that this interpretation would be considered as not in line with the purpose of the Legislator, which is to incentive the creation and the development of medium and small enterprises and not to create obstacles over their life[81]. Indeed, the duty of modifying the corporate bylaws after the overtaking of the SME dimensional thresholds would lead to a slowing down of the enterprise development. Therefore, if the loss of the status does not lead to the consequences illustrated before, it would derive that, after overtaking the dimensional thresholds, the enterprise will maintain in its corporate bylaws clauses that are not in compliance with respect to what established by the common law for the "ordinary" s.r.l. type.

[80] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, pp. 1448-1449.
[81] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1449.

As a consequence, on one side there will be companies established as "ordinary s.r.l." and entirely compliant with the Civil Code; on the other, there will be firms, originally established as "s.r.l. SMEs" that, after overtaking the dimensional thresholds, will be subject to the provisions included in the Civil Code and, at the same time, will maintain in their corporate bylaws "*traces"* of the special exemptions included in the *Decreto Crescita bis*. Those exemptions will be subject to further analysis in the following paragraph.

3 Exemptions from the common law

As stated by Article 26 of *D.L.* 179/2012, the acquisition of the status "*innovative start-up*" allows those enterprises to benefit of exemptions from the corporate law rules established by the Civil Code for limited liabilities companies (s.p.a. and s.r.l.)[82]. Actually, the only provision of the Article devoted to both types of society concerns the lightening of the rules related to the shareholders' equity (Article 26, Subsection 1): indeed, it is established a translation of the time limit within which proceeds with the capital reduction for losses higher than one third of the total capital[83]. In particular, the deadline is translated to the second subsequent year, in exemption from what established by Article 2446 and by Article 2482-*bis* of the Civil Code. Moreover, the provisions establish a further deadline within which taking the decisions pursuant to Articles 2447 and 2482-*ter* of the Civil Code: in this case, the deadline is shifted to the end of the subsequent year. Allowing the enterprise to continue its activity despite the operating losses, the exemption favours the interests of the members compared to those of the creditors, differently from what established by the common law[84]. Furthermore, the different way of managing the conflict of interest between members and creditors could be appreciated also from Article 31 of *D.L.* 179/2012. According to it, *innovative start-ups* (established either as s.r.l. or as s.p.a.) are excluded from bankruptcy procedures. The exemption could be justified by the limited duration of the *innovative start-up* status, equal to five years from the foundation of the company. The provision clearly supports those innovative enterprises only during their first phase of development; indeed, after the emanation of both *D.L.* 3/2015 and *D.L.* 50/2017, those exemptions were not extended neither to *innovative SMEs* nor to *SMEs*.

[82] Those exemptions will be analysed in detail in the following paragraphs.
[83] The possibility, originally addressed only to *innovative start-ups*, was extended to *Innovative SMEs* after D.L. 3/2015.
[84] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 7.

Regarding the remaining part of Article 26, the Legislator seems to have assessed the s.p.a. type as inadequate for the development of the innovative enterprises. Hence, the subsequent provisions define a framework applicable mostly to the s.r.l. type, which was considered by the Legislator as the most suitable type of society for the management of innovative enterprises at high technological value.

After *D.L.* 3/2015 and *D.L.* 50/2017 those exemptions were extended first to *innovative SMEs* and then to every SME. Actually, the syntagm "innovative start-up" was substituted by the word "SME" in Subsections 2, 5 and 6 of the Article 26. Thus, the *ratio* of the recent rules was supporting all the SMEs with the purpose of reviving the entire Italian economy, severely damaged by the recent economic crisis. Those companies assume a strategic importance in the economic system since they employ about 82% of Italian workers and constitute the 92% of the total Italian firms[85].

3.1 Public offering

3.1.1 Derogation from the Civil Code (Art. 2468) and TUF integrations

Several elements included in *Decreto Crescita bis* mark a strong deviation from the traditional rules for limited liabilities companies. In particular, the possibility, initially granted to *innovative start-ups* (and extended first to *innovative SMEs* and then to every SME) established as s.r.l., to offer to the public their own membership shares *also* through online *raising capital portals*; the latter are managed by special entities, called *portals managers*, that shall be included in a specific registrar kept by the CONSOB. The provision is clearly contradictory with respect to what established by Article 2468 (Subsection 1) of the Civil Code; indeed, the Article states that membership shares cannot be represented by stocks and cannot be offered to the public. It derives that the capital raised by the company need not have a qualified (and restricted) destination and circulation, as for the traditional s.r.l. type[86].

[85]https://www.infodata.ilsole24ore.com/2019/07/10/40229/#:~:text=Le%20piccole%20e%20medie%20imprese,zero%20nell'ultimo%20anno).
[86] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 120.

The provision, which is enabled by the recent developments in the digital communication systems, represents a significant innovation for two reasons: it is the first European regulatory framework addressed to the crowdfunding phenomenon[87] and it makes open to the public a type of society with an inherently close nature (s.r.l.). Indeed, the Internet allows users to invest money in the entrepreneurial ideas in which they believe through the crowdfunding platforms.

The new regulation, which was initially addressed only to *innovative start-ups* established as s.r.l, enlarges significantly the raising-capital opportunities for those firms, almost overlapping the features of the s.p.a. type. As introduced before, those provisions were characterized by a temporal limit: since companies could maintain the status of *innovative start-up* for maximum 48 months after the foundation (subsequently extended to 60 months), it means that the possibility to raise capital through crowdfunding platforms expires after a limited period of time. After the deadline, the *innovative start-up* would have lost in any case its status and would be subject to the traditional s.r.l. rules in terms of capital raising. In 2015 the possibility to raise funds through crowdfunding platforms was extended also to *innovative SMEs*. It represents a relevant regulatory innovation because it removes for them the temporary nature of the special provisions. Moreover, after 5 years from the foundation, *innovative start-ups* could change their status to *innovative SME* (if compliant with the legal requirements) and could continue to benefit from the possibility to raise capital through crowdfunding platforms.

The provisions related to the public offering were integrated by Art. 100-*ter* of the TUF (introduced with *Decreto Crescita bis*), according to which the capital raised through crowdfunding platforms shall be lower than €5 million[88]. The purpose is maintaining as simple as possible the crowdfunding raising-capital procedures, because exceeding the threshold will lead the enterprise to the duty of arranging an additional prospect, according to what established by Art. 93-*bis* and ff. of the TUF. The threshold was increased to €8 Million in 2018 in order to adequate the national regulatory framework to the UE Regulation 1129/2017.

[87] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 2; POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 105.

[88] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, pp. 703-704.

Moreover, the word "*also*" stated in the provision ("...offer to the public their own membership shares *also* through online raising-capital portals…") implies that the enterprise can raise capital also through "*traditional channels*"[89]: those channels include banks and other authorized financial intermediaries[90]. In this case, it is important understanding what shall be the regulatory framework applicable when raising-capital offerings are arranged outside the crowdfunding platforms.

In particular, several authors discussed about the qualification of s.r.l. shares as "*securities*" in compliance with the definition provided by the TUF, Article 1, Subsection 1-*bis*[91]. Among the scholars, it was suggested that the s.r.l. share acquires the feature of "*security*" when a public offering to potentially unknown funders ("*ad incertas persona*") occurs[92]. As a consequence, the raising-capital procedure could be realized either according to Article 93-*bis* (and subsequent) or to Article 100-*ter* of the TUF. In the first case, it will be required also an information sheet approved by the CONSOB, unless the offering is compliant with one of the exemption hypothesis established by Article 100 of the TUF[93]. Lastly, it was observed that the company could raise capital jointly both raising-capital portals and those *traditional channels*. In this case, only if the €5 Million threshold (subsequently extended to €8 Million) was overtaken, Article 93-*bis* and subsequent TUF would be applied[94].

Qualifying s.r.l. shares as "*securities*" could have relevant implications in terms of issuance: indeed, they could be quoted on channels such as the Italian Alternative Investment Market ("AIM") or "Market for the SMEs development" ("*Mercato per la crescita delle PMI*"). The thesis was confirmed also by other scholars, according to which the current definitions of "*financial instrument*" and "*security*" established by Article 1 of the TUF could allow the inclusion of the s.r.l. shares inside the latter[95]: as a consequence those shares could be

[89] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 707; GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 571-573.
[90] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 710.
[91] BENAZZO. La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p.119; SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 283-284; DENTAMARO. Apertura della s.r.l. PMI tra divieto di rappresentazione delle quote ex art. 2468, comma 1, c.c. e tutela dell'investitore, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 170-176.
[92] CUSA. Le quote di s.r.l. possono essere valori mobiliari, Rivista delle Società, Vol.64, Fasc. 4, 2019, p. 689.
[93] CUSA. Le quote di s.r.l. possono essere valori mobiliari, Rivista delle Società, Vol.64, Fasc. 4, 2019, p. 689; GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 709.
[94] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, pp. 710-711.
[95] CIAN. Dalla S.r.l. a base personalistica alle quote "finanziarie" e alla destinazione ai mercati: tante S.r.l.?, Studium Iuris, Vol. 24, Fasc. 12, 2019, p. 457.

theoretically quoted on this kind of regulated market. However, it was observed that any s.r.l. company was admitted to the AIM Market so far[96].

On the other hand, other authors, although asserting that s.r.l. shares could be compliant with the notion of "*financial product*", reject the inclusion inside the category of "*securities*"[97]: as a consequence, they shall be included inside the notion of "*other forms of financial investment*". Therefore, it is not clear if the word "*also*" adopted by the Legislator in Article 26 (Subsection 5) of *D.L.* 179/2012 effectively allows s.r.l. companies to raise capital from such regulated markets.

3.1.2 The process

The admission of shares offerings on crowdfunding platforms is subordinated to a check performed by the portal managers, according to what established by Articles 24 and 25 of the CONSOB Regulation n.18592 of 2013. They shall verify the existence in the corporates' bylaws of tag-along rights or withdrawal's rights exercisable by non-qualified investors in case the control investors would decide to transfer their membership shares (and the control of the entity) to third, non-qualified, parties. The need of attributing to crowdfunding investors these rights derives from the relevant and prominent role played by the founders: indeed, it is important reminding that the framework was initially addressed only to *innovative start-ups*, which are young enterprises with an economic profile not clearly defined yet. In such a context, the figure of the founder and its entrepreneurial idea could conditionate crowdfunding investment decisions much more compared to what can be done by the balance sheet or by the corporate bylaws. After the extension of the favourable framework also to potential mature companies, such as *innovative SMEs* and SMEs, the inclusion of tag-along rights or withdrawal's rights inside the corporate bylaws remain compulsory since they represent significant safeguarding measures for the investors.

[96] CUSA. Le quote di s.r.l. possono essere valori mobiliari, Rivista delle Società, Vol.64, Fasc. 4, 2019, p. 677 (*notes*).
[97] DENTAMARO. Apertura della s.r.l. PMI tra divieto di rappresentazione delle quote ex art. 2468, comma 1, c.c. e tutela dell'investitore, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 170-176.

Regarding the conditions of the tag-along rights, the common orientation is attributing to minority investors the same selling conditions of the control investors: it assures to who invest through crowdfunding platforms to get the same economic return of the founders[98].

Withdrawals' rights, as tag-along rights, have the purpose of avoiding that crowdfunding investors would suffer passively an eventual transfer of control. In this case, the challenge is determining the value at which the right could be exercised. Indeed, choosing as strike price the initial investment value is not a coherent choice, while the market value is difficult to assess. It derives that the enterprise shall indicate in the corporate bylaws criteria to determine the strike price, conditioning it on values from assets or liabilities of the balance sheet, as an example. The problem is the possible unfair determination of the exit value: indeed, it was observed that the Legislator does not provide appropriate guidelines related to the concrete content of such clauses included in the corporate bylaws[99]. It derives that crowdfunders could come up with clauses that, even if should have a safeguarding purpose, actually could damage them because of possible unfair conditions. Lastly, the website of the enterprise shall disclose every shareholder's agreement already stipulated, as required by Article 24, Subsection 1, of the CONSOB Regulation n. 18592 of 2013[100].

Furthermore, portals managers have to verify if at least 5% of the financial instruments issued was acquired by qualified investors, banking foundations or start-up incubators[101]. After the modification of the CONSOB Regulation, the minimum percentage that has to be detained by those investors was lowered to 3%[102]. The duty of including a specific percentage of institutional investors inside the corporate structure aims at safeguarding the position of small crowdfunders. The lower percentage could be applied only if financial statements related to the previous two years have been certified by statutory auditors; otherwise, the threshold would remain equal to 5%. The purpose of the provision is indirectly safeguarding private crowdfunders, since the role of the qualified investors is to assure the reliability of the offering through a relevant investment.

[98] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 14.
[99] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 14.
[100] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 129; CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 18.
[101] CONSOB Regulation n. 18592/2013, Article 24, Subsection 2.
[102] *Delibera* CONSOB n. 20204 of 29.11.2017.

Moreover, there exist also other measures which directly protect investors: for example, they can withdraw from purchase orders without additional expenses after a communication to the crowdfunding platform which shall be sent within seven days from the acquisition of the shares. The right just illustrated can be defined as a "*regret right*" (*diritto di pentimento*), which was interpreted by the doctrine as a way of counterbalancing the facility with which online orders could be performed on crowdfunding platforms[103]. Indeed, the purpose of the right is offering to crowdfunders an additional safeguarding measure which consists in a *rapid exit way* in a context that could encourage a reckless decision-making process.

Another direct protection measure addressed to private investors consists in a "*revocation right*" (Article 25 of CONSOB Regulation) that could be exercised when, between the day of the share purchase and the moment in which the public offering is concluded, new facts or inaccuracies able to influence the investors' decisions and related to the information disclosed on the crowdfunding platform emerge[104]. The right could be exercised within seven days after that the new and updated information is known to the investors. After both *regret rights* and *revocation rights* are exercised, the entire money amount invested will return back to the funders.

Lastly, the crowdfunding platform has to disclose to potential investors all the relevant information concerning the investment opportunities in a clear and synthetic way, allowing them to take conscious investment decisions[105]. This information shall regard, for example, the risks of losses and illiquidity of the crowdfunding investments and the identity of the members who detain the control. The latter is a key information in order to make exercisable the mentioned tag-along and withdrawal's rights.

3.1.3 S.r.l as public company and applicability of the s.p.a. regulatory framework

In the past, the distinction between s.r.l. and s.p.a. types of society dealt with the contraposition between closed company (the former) and public company (the latter). However, after the intervention of the Legislator in 2017, every Small and Medium Enterprise established as s.r.l.

[103] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 12.
[104] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, pp. 12-13.
[105] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 11.

could potentially be considered as "public company". This conclusion could be achieved by reading what reported in Article 26 (Subsection 5) of *D.L.* 179/2012, according to which, as explained before, the s.r.l. SME can issue its membership shares on equity crowdfunding platforms.

Even other elements confirm the interpretation: i) the formulation of Article 93-*bis* of the TUF, which includes in the definition of "public offerings" also those concerning "categories of values that could be negotiated on capital markets, such as corporate shares and equivalent instruments"; ii) the extension of the notion "transferable security" ("*valore mobiliare*") to "categories of values that could be negotiated on capital markets, such as corporate shares and equivalent instruments"; iii) the introduction of a new transfer procedure system, called "intermediary registration" ("*regime alternativo di intestazione della quota*"), which will be analysed more in detail in the following chapter.

Since the SME established as s.r.l. has to be considered as a potential public company, it is important analysing the influence that the s.p.a. regulatory framework could exercise on it. A first important point is the difference between SMEs established as s.r.l. potentially and effectively open. According to some authors, the recall of the s.p.a. rules (that could concern only the latter) shall consist into a different interpretation of the current s.r.l. provisions: in particular, there were suggested exclusions or limitations about the provisions that "*characterized the s.r.l. as a closed type of society*" [106]. As a consequence, rules related to a different type of company would not be directly applicable by analogy on the s.r.l. type without a specific intervention of the Legislator.

However, it was argued that s.p.a. rules could be applied by analogy in some circumstances: in this case, the possible reference to this framework (that could concern only the s.r.l. SMEs effectively open[107]) would occur extending by analogy the provisions originally addressed to the s.p.a. type. According to a scholar, the focus shall be on those provisions that have the purpose of assuring the efficiency and the transparency of the enterprise on the capital markets[108]. As a consequence, only those rules could be applied in analogy also by effectively open s.r.l. SMEs.

[106] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 120-121.
[107] Namely, the companies that have already issued their shares to the public or that have already taken benefits from the exemptions included in Article 26 of the *Decreto*.
[108] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1465.

For example, since their shares are quoted (or are going to be quoted) on capital markets, it derives, according to this interpretation, that those enterprises cannot compose the balance sheet in abbreviate form (Article 2345-*bis* of the Civil Code)[109]; other authors, however, sustained the opposite thesis, according to which the prohibition shall not be applied on those firms[110].

Another important point is related to the statutory audit of the firm's balance sheet. This process is compulsory for every company established as s.p.a., while it becomes mandatory for s.r.l. companies only when the limits established by Article 2477 (Subsection 3) of the Civil Code are overtaken. Since the duty has the purpose of assuring the fairness of the accounting documents produced by the company, it derives that the financial statements of every SME effectively open shall be certified by statutory auditors, applying in analogy the relative s.p.a. rules[111]. However, it is important underlying that the audited financial statements are included among the requirements that have to be satisfied by a firm in order to acquire the status of *innovative SME*[112]: in other words, the Legislator explicitly requires the certification for those companies. As a consequence, claiming that every SME must own certified financial statements even if the Legislator does not require them explicitly could not be considered as a coherent choice; even if the purpose of the requirement would be increasing the transparency of the information disclosed on the equity crowdfunding market.

Concerning the appointment of a supervisory body in s.r.l. SMEs, the framework included in Section IX does not provide any specific rule. Nevertheless, Article 2477 of the Civil Code establishes rules addressed to the "ordinary" s.r.l. type. Regarding the application in analogy of the s.p.a. framework, it is true that the body has the aim of safeguarding the interests of third parties; however, it cannot be considered as an element that improves the efficiency and the transparency of the company on the capital markets. It means that, according to this interpretation, s.p.a. provisions that regulate its functioning shall not be applied by analogy. Therefore, the designation would become mandatory only if the dimensional requirements included in Article 2477 (Subsection 3) of the Civil Code were overtaken.

[109] Article 2345-*bis* of the Civil Code states that the companies established as s.r.l. have the possibility to compose the financial statements in abbreviate form if specific dimensional requirements are correctly fulfilled.
[110] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 117.
[111] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1466.
[112] Article 4, Subsection 1, b) of D.L. 3/2015.

Nevertheless, it remains the option of the company to introduce the body autonomously and optionally in the corporate bylaws (Article 2477, Subsection 1). However, Article 2475 of the Civil Code (reference to Article 2381) states that the adequacy of the organizational, administrative and accounting structures shall be carefully assessed by the management. Thus, if its presence was considered as necessary in this sense (regardless of the limits established by Article 2477 of the Civil Code), the supervisory body shall be introduced in the corporate bylaws.

3.2 Operations on own shares

Article 26, Subsection 6, of Section IX leads to the disapplication of Article 2474 of the Civil Code, which denies s.r.l. companies to perform operations on own shares. As a consequence, it is allowed the implementation of incentive plans consisting of shares assignation to employees, associates, managers and other workers (such as "*prestatori d'opera e di servizi*"). It is important underlying that the exemption, initially addressed only to *innovative start-ups*, was extended to every SME after *D.L.* 50/2017. Moreover, the operations shall be realized within the limits of the distributable profits and the available reserves resulting from the last approved balance sheet[113]. In other words, the limits that assure the integrity of the share capital shall be applied by analogy from the s.p.a. regulatory framework[114].

Furthermore, it was observed that the new provisions represent a stronger opening towards those kind of operations, if compared with the s.p.a rules[115]: indeed, the latter permit only loans or warranties aimed at shares purchases or subscriptions performed by employees of the enterprise. The operations could be arranged in order to attract human resources with high competences in industries at high technological value, providing them a kind of remuneration conditioned on the results achieved by the enterprises in a certain time period[116].

[113] MALTONI, SPADA. L'impresa start up innovativa costituita in società a responsabilità limitata, Rivista del Notariato, Fasc. 5, 2013, p. 1129.
[114] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie, I.N. 13, "Limiti all'acquisto di proprie partecipazioni".
[115] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 7.
[116] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 570.

Even if there are some differences, it could be plausible applying by analogy some s.p.a. provisions since the relevant characteristics of the operations are similar in both types of society[117]. In particular, the operation on own shares shall be recorded in the balance sheet as a negative reserve, as established by Article 2357-*ter*, Subsection 4, of the Civil Code[118]. Furthermore, other provisions that could be applied by analogy concern the necessary authorization of the shareholders' meeting and the suspension of pre-emption, voting and profit rights with regards to the shares repurchased[119]. In any case, those shares will be taken into consideration in order to compute the required *quorum* related to the shareholders' meetings.

[117] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 570; BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, pp. 124-125.
[118] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie, I.N. 13, "Limiti all'acquisto di proprie partecipazioni".
[119] Massima del Consiglio Notarile di Milano n. 179, "Acquisto di quote proprie da parte di s.r.l. PMI".

III. Classes of shares

1. Towards the s.p.a. type

Membership shares of companies established as s.r.l. are regulated by Article 2468 of the Civil Code. As stated by the provision, members shall hold social rights in proportion with the participating share detained, which in turn is computed according to the initial capital injection. However, it remains still possible attributing special rights to selected members: those rights could be related to the management of the company or to the profit distribution, as established by Subsection 3[120]. When transfers of such membership shares occur, it was observed that those special rights cannot be shifted to the new acquirer[121]. Lastly, unless otherwise established by the corporate bylaws, those rights could be modified only if there is the unanimous approval of the members.

Article 26 (Subsection 2) of *D.L.* 179/2012 introduced new rules into the regulatory framework of the s.r.l. type: indeed, it allows *innovative star-ups* to issue classes of shares, attaching them different rights and freely determining their content. In other words, those provisions represent a derogation from what stated by Article 2468 of the Civil Code, according to which membership shares cannot be represented by stocks and cannot be object of public offering on capital markets. The rule, originally addressed only to *innovative start-ups*, was extended in 2017 to every SME, regardless of the nature of the activity performed.

Another important element that has to be underlined is that the lawfulness of different classes of shares could create obstacles to the possibility of attributing particular rights directly to the members, according to what established by Article 2468, Subsection 3, of the Civil Code. However, it was observed that a member could detain both ordinary membership units and shares belonging to a certain class[122]. The topic will be analysed more in detail in the following paragraph.

[120] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc.2, 2003, p. 325.
[121] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc.2, 2003, p. 333.
[122] Massima del Consiglio Notarile di Milano n. 171, "Nozione di categorie di quote di s.r.l. PMI".

As observed by the Notarial Council of Milan[123], shares included into the same class could:

i. have the same "measure", that shall be indicated in the corporate bylaws along with their total number,
ii. or have divisible measure, like the membership shares issued according the ordinary regulatory framework pertaining the s.r.l. type.

The former are denominated "*standardized shares*" and are characterized by the equality of the measure and of the rights attached to them. The shares included into the second category are called "*non-standardized*" and are characterized simply by the equality of the different rights attributed to their owners. Moreover, regarding this last category, measure and total number do not need to be indicated in the corporate bylaws, since both depend on the circulation among the different members. Both types of classes are considered as lawful.

As observed by a scholar, the possibility of SMEs established as s.r.l. to issue classes of shares in derogation from Article 2468 (Subsections 2 and 3) of the Civil Code implies that membership shares themselves tend to acquire features typical of the shares issued by a s.p.a., in terms of objectivization and standardization[124]. This possibility seems contrasting what declared in the Corporate Law's Reform of 2003, according to which "*not having the possibility to issue classes of shares is coherent with the characteristics of the s.r.l. type, because it would imply their objectivization and the breakage of the link with the members who detain them*"[125]. Furthermore, the provisions included in Article 26 of *D.L.* 179/2012 could be also interpreted as a derogation from Article 2468 (Subsection 1) of the Civil Code, according to which membership shares cannot be represented by stocks. According to this interpretation, companies which could benefit from the favourable framework could pass from special rights attributed to the members towards special rights directly attached to the shares; it follows an objectivization and a standardization of the shares issued belonging to a certain class[126]. Indeed, inside the same class, all the shares shall be characterized by the same rights attached and, as a consequence, by the same value.

[123] Massima del Consiglio Notarile di Milano n. 171, "Nozione di categorie di quote di s.r.l. PMI".
[124] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 563-564.
[125] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, pp. 8-9; GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 564.
[126] BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 116.

The thesis was also confirmed by a scholar, according to which, however, the shares' standardization and objectivization does not come from the notion of class, but from their intrinsic direction towards the market[127]. Also, such standardization was assessed as representative of the aim of the Legislator of easing the SME raising-capital process through new financing channels[128].

The new provisions remove one of the most important existing differences between s.p.a. and s.r.l. and, at the same time, is coherent with the fundraising process through equity crowdfunding platforms[129]. Indeed, the share categorization allows the enterprise to adapt the offering to the needs and to the preferences of the crowdfunders, defining in advance the roles that they are going to assume and facilitating the fundraising process[130]. In other words, the issuance by the companies of different classes of shares, allows investors to choose among several options, which differ in terms of rights that could be acquired and price that has to be sustained.

However, it was noticed that the approaching between s.r.l. and s.p.a. is only partial because, regarding *innovative start-ups* (also those which raise capital through equity crowdfunding platforms), the categorization of the shares does not necessarily imply the standardization of all of them, as for the s.p.a. type[131]. In this regard, it was observed that, despite the approaching between the two types of society could suggest a standardization of every membership share, there are no limitations about the possibility of the enterprise of "categorizing" only part of the shares issued[132]. Indeed, shares categorization can concern only those shares that are issued to "investor members" on the crowdfunding platforms, which could detain shares that are independent from their identity.

[127] CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, p. 831.
[128] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 282.
[129] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 564.
[130] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 564-565.
[131] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 567.
[132] MALTONI, SPADA. L'impresa start up innovativa costituita in società a responsabilità limitata, Rivista del Notariato, Fasc. 5, 2013, p. 122; CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, pp. 831-832.

Furthermore, the possibility of the s.r.l. company to issue different classes of shares could not be compliant with the principle of central relevance of all the members: however, it was observed that an "entrepreneurial member" ("*socio imprenditore*") shall be present in any case in this type of company[133]. Lastly, as mentioned before, despite the approaching towards the s.p.a. type, the provisions included in Section IX does not provide any explicit indication about the possibility to apply in analogy the related regulatory framework (for example, what happens when shareholders' meeting decisions have an impact on a certain class of shares?).

1.1 Compatibility between membership shares with special rights and classes of shares with different rights attached

As mentioned before, the possibility of s.r.l. SMEs to issue classes of shares with different rights attached (Article 26, Subsection 2, of *D.L.* 179/2012) joins the provisions related to the attribution of special rights to selected members established by Article 2468 of the Civil Code. However, those two sets of provisions are characterized by relevant differences which could bring out compatibility issues between them.

In particular, regarding the former, there is a diversification of the features related to the share objective content, which leads to the creation of several classes of shares that could be subject to public offerings through crowdfunding platforms[134]. On the other hand, attributing special rights to selected members differentiates only their position (and not the shares detained) with respect to the other ones[135]. Moreover, as observed by the Notarial Council of Milan, it is lawful identifying a plurality of members attributing them the same special rights[136]; however, in this case there will not emerge a class, but simply a plurality of special rights attributed to members specifically indicated in the corporate bylaws. Lastly, the transfer of membership shares will not lead to the shift of the rights from the seller to the new member; nevertheless, it could be allowed the transferability of the rights jointly with the share transfer, if indicated in the corporate bylaws.

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[133] SPERANZIN. Piccole-medie imprese tra autonomia statutaria e ibridazione dei tipi (con particolare riferimento alle partecipazioni prive del diritto di voto), Rivista delle società, Vol. 63, Fascicolo 2/3, 2018, p. 347.
[134] CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, pp. 8-10.
[135] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc.2, 2003, p. 326.
[136] Massima del Consiglio Notarile di Milano n. 171, "Nozione di categorie di quote di s.r.l. PMI".

However, uncertainty arises about their co-existence inside the company that could benefit from the favourable framework. As stated by the Notarial Council of Milan, the registered capital could be simultaneously composed by both "individual" membership shares and classes of shares[137]. Thus, directly attributing special rights to selected members and attaching particular rights to shares belonging to a certain class are not mutually exclusive, since it does not exist any rule that prohibits this possibility. Therefore, in a crowdfunding scenario there could exist also membership shares with special rights according to Article 2468 of the Civil Code and detained, for example, by "entrepreneurial members".

Lastly, it is important underlying that the categorization and the standardization of the membership shares issued shall not be considered as necessary or compulsory in order to offer them to the public[138]; indeed, it is possible issuing on crowdfunding platforms membership shares equal to those detained by the founders. The possibility to create different classes of shares has the purpose of shaping the offering in order to get the best results in terms of capital raising. Moreover, it allows crowdfunders interested only in the economic return of the investment (and not in the management of the company) to get shares compliant and more suitable with this purpose[139].

2. Issuance of shares' classes

As established by Article 2468 (Subsection 3) of the Civil Code, the attribution of special rights to selected members requires the unanimous consent, since personalistic distinctions will emerge among them. On the other hand, issuances of different classes of shares, which could be realized assuring the principle of equal treatment among the members, can be interpreted as changes of the corporates' bylaws: those changes simply require the consent of the majorities established by the common law or by the corporates' bylaws themselves[140].

[137] Massima del Consiglio Notarile di Milano n. 171, "Nozione di categorie di quote di s.r.l. PMI".
[138] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 716.
[139] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 564-565.
[140] Massima del Consiglio Notarile di Milano n. 172, "Modalità e condizioni di emissione di categorie di quote di S.r.l. PMI".

In particular, Notarial Council of Milan suggested that only if a violation of the "*equal treatment principle*" occurs, it would be necessary the unanimous consent, applying thus Article 2468, Subsection 3, of the Civil Code. In other words, only if the issuance of new classes of shares is realized through an offering equally addressed to every member, it could be justified the application of the majority rules[141]. Moreover, those rules could be applied also when the issuance of certain classes of shares have an impact on the position of the other members; however, in this case it would be required also the approval of the members[142] damaged by the issuance. Nevertheless, as sustained by other scholars, the issuance of "*categorized shares*" required the unanimous consent of the members, since it determines the opening on the market of a company with an inherently close nature[143].

3. Rights attributable to classes of shares

After having described in Paragraph 1 the underlying principles, in this section there will be analysed the different types of rights that could be attached to the classes of shares issued. Article 26 (Subsection 2) of *D.L.* 179/2012 states that it is lawful creating "*classes of shares with different rights attached within the limits imposed by the law*". A first definition of those rights is given by Article 2468 (Subsection 3) of the Civil Code, according to which the special rights that could be attributed to selected members include both economic and administrative ones.

Concerning the former, it is important pointing out that the text of the Article defines them as "*special rights related to … profit distribution*". In addition, Subsection 2 of the same Article states that the rights could be attributed not necessarily in proportion to the participating share detained by the members. As a consequence, it could be inferred that it is lawful having classes of shares which attribute to the owners a higher profit share[144].

[141] Massima del Consiglio Notarile di Milano n. 172, "Modalità e condizioni di emissione di categorie di quote di S.r.l. PMI".
[142] which could detain either special rights according to Art. 2468, Subsection 3, or different classes of shares.
[143] SPERANZIN. Piccole-medie imprese tra autonomia statutaria e ibridazione dei tipi (con particolare riferimento alle partecipazioni prive del diritto di voto), Rivista delle società, Vol. 63, Fascicolo 2/3, 2018, pp. 353-354.
[144] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc.2, 2003, p. 331.

Moreover, Notarial Council of Milan states that even the clauses that put a maximum limit in terms of profit distribution are lawful: such limits could be expressed either in absolute terms, or in relative terms (conditioned on certain parameters, such as the share capital) or in relation to the temporal dimension (for example, it is lawful that those rights could be assigned only starting from a certain date)[145].

However, as observed by a scholar, adopting a wider notion of "*economic rights*" could enlarge the possibilities given to the *freedom of contract*[146]*:* in particular, it could be recognized to the members not only the right of receiving a fix amount from the profits realized by the company (thus, restricting the amount distributable to the other members), but also, for example, withdrawals' rights *ad nutum* or the right of differential participation to the corporate losses within the limits of the *Patto Leonino*. However, it was suggested that among those special rights cannot be included rights related to the reserve distribution[147]. Furthermore, other authors perform a comparison between s.p.a. and s.r.l. shares with stronger economic rights attached: in particular, it was suggested that the latter could be considered as more attractive because of their higher (and typical) exclusivity[148]. Lastly, it is important underlying that those "*economic rights*" are not explicitly mentioned by the Legislator in the text of the Article 26 of *D.L.* 179/2012. Nevertheless, they could be included within the more general admissibility of issuing "*classes of shares with different rights attached*".

Notwithstanding the importance of the shares with special economic rights attached, in the following paragraphs there will be analysed more in detail only the administrative rights: in particular, it was suggested that different types could be attributed to the members[149]. Among them, it is important mentioning the rights of: i) directly managing the company; ii) designating an administrator; iii) veto on particular corporate decisions. Furthermore, Subsection 2 of Article 2468 of the Civil Code states that the rights could be attributed not necessarily in proportion to the participating share detained by the members: as a consequence, it could be considered as lawful the attribution of *non-proportional* voting rights.

[145] Massima del Consiglio Notarile di Milano n. 189, "Clausole che pongono un «tetto massimo» al diritto agli utili (artt. 2247, 2265, 2350 e 2433 c.c.)".
[146] ROSSI. Appunti in tema di particolari diritti dei soci di s.r.l., Rivista di diritto civile, Vol. 58, Fasc. 5, 2012, pp. 475-476.
[147] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc.2, 2003, p. 331.
[148] GROSSO. Le categorie di quote nelle società a responsabilità limitata alla luce dell'esperienza delle categorie di azioni, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 196.
[149] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc. 2, 2003, p. 330.

The *freedom of contract* of a s.r.l. company allows the attribution to selected members of different kind of rights compared to those illustrated in Article 2468, Subsection 3, of the Civil Code[150]. The thesis according to which the companies that could benefit from the new regulatory framework could issue classes of shares with different rights attached was sustained by several scholars[151]: they state that the shares belonging to a certain class have an homogeneous and standardized content, linked to the shares themselves and not to the members. This interpretation was challenged by other authors, since the investment solicitation through the crowdfunding procedure does not necessarily require the standardization of the shares issued[152].

The attribution of special rights represents a central point of Article 26 of *D.L.* 179/2012. In particular, although the issuance of classes of shares with different voting rights attached is explicitly legitimated (Subsection 3), the previous Subsection states that the shares' content could be freely determined, within the limits imposed by the law (Subsection 2). Indeed, as observed by the Notarial Council of Milan, the rights mentioned have simply an illustrative purpose, as for the administrative and economic rights cited in Article 2468, Subsection 3, of the Civil Code[153]. As previously outlined, the *freedom of contract* in the determination of the rights that could be attached to the classes of shares is delimited by some limits imposed by the law. Among those limits, it is important mentioning what established by Article 2265 of the Civil Code ("*divieto del Patto Leonino*") and the duty of recognizing to the members rights according to what established by Article 2473 of the Civil Code[154]. Moreover, the content of the rights attached to the classes of shares issued shall be in any case reconcilable with the special rights eventually attributed according to Article 2468, Subsection 3, of the Civil Code[155]. Within those limitations, the Legislator confers large autonomy to the company in determining exactly what rights are going to be attached to the various classes of shares[156].

[150] NOTARI. Diritti particolari dei soci e categorie speciali di partecipazioni, Analisi giuridica dell'economia, Fasc. 2, 2003, pp. 330-331

[151] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 565-567; BENAZZO, La s.r.l. start-up innovativa, Le Nuove Leggi Civili Commentate, Vol. 37, Fasc. 1, 2014, p. 117; MALTONI, SPADA. L'impresa start up innovativa costituita in società a responsabilità limitata, Rivista del Notariato, Fasc. 5, 2013, p. 1123; CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, pp. 8-10.

[152] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, p. 717.

[153] Massima del Consiglio Notarile di Milano n. 173, "Contenuto dei diritti diversi delle categorie di quote di s.r.l. PMI".

[154] Massima del Consiglio Notarile di Milano n. 173, "Contenuto dei diritti diversi delle categorie di quote di s.r.l. PMI".

[155] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie I.N. 2, "I diversi diritti attribuibili alle categorie di quote nelle s.r.l.-PMI".

[156] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 566.

After a brief step back related to the "*freedom of contract*" conferred to s.r.l. companies, there will be analysed more in detail the administrative rights. First of all, the company has the possibility to issue classes of shares which attribute to the owners stronger administrative rights, such as multiple voting rights and stronger inspection powers. Article 26 of *D.L.* 179/2012 does not explicitly establish this possibility: again, it has to be included within the general freedom of issuing classes of shares with different rights. Indeed, it was suggested by a scholar that the expansion of the rights attached to a certain class could be considered as lawful[157]. Nevertheless, it is important underlying that those kinds of shares are not appropriate in terms of equity crowdfunding offerings, especially when the stronger rights concern the management of the company; indeed, this type of raising-capital procedure is based on contributions from a high number of members potentially located worldwide. Even though the share of capital issued through crowdfunding platforms is on average equal to 10,4%[158], the attribution of stronger administrative rights to unknown members could create unbalances in terms of corporate governance. Moreover, also different forms of risks could arise, such as those related to the sharing of sensitive information. However, shares with multiple voting rights attached could be coherent with the interests of subjects more interested in the management of the company, such as Venture Capitalists, business incubators and Business Angels[159]. As mentioned before, it was observed an increasingly presence of those institutional investors alongside with the *crowd*[160]. However, concerning the Italian equity crowdfunding market, the practice is not widespread: indeed, it emerged that, among the 708 legal persons that invested in the 269 campaigns completed from 2019 to the beginning of 2020, only 8 and 5 are respectively Venture Capitalists and Business Angels[161].

In an equity crowdfunding scenario, it could be more reasonable issuing classes of shares with limited rights attached if compared to the ordinary ones[162]. Among them, it is important mentioning the issuance of classes of shares characterized by the limitation or the absence of the right of underwriting a capital increase in a subsequent financing round.

[157] CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, p. 835.
[158] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 20.
[159] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 568.
[160] WANG, MAHMOOD, SISMEIRO, VULKAN. The evolution of equity crowdfunding: Insights from co-investments of angels and the crowd, Research Policy, Elsevier, Vol. 48(8), 2019, p. 1.
[161] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 37.
[162] CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, p. 834.

This right is normally attributed to s.r.l. members according to what established by Article 2481-*bis* of the Civil Code. A further clarification shall be made with regards to the s.r.l. SMEs that already issued different classes of shares: when those companies arrange a capital increase, they could freely decide the category (or the categories) of the shares that will be issued. However, as observed by the Notarial Council of Milan, every member will have the mentioned pre-emption right on the new shares issued proportionally with their current participating shares and regardless of the classes already owned[163]. The *ratio* of the provision is safeguarding the participating shares of the members, reducing the dilution of their position when a capital increase occurs. Nevertheless, this kind of right was assessed as disposable by the Notarial Council of Milan, since not indissolubly linked to the s.r.l. type. The principle according to which how such clauses could be introduced in the corporate bylaws was discussed in the doctrine[164]: in particular, whether it is sufficient only the majority required for the corporate bylaws modifications or if it is necessary also the consensus of every member legitimated to underwrite a capital increase. Lastly, this right shall be offered in any case to the members if the capital increase follows a reduction of capital below the minimum threshold established by Article 2482-*ter* of the Civil Code[165].

Moreover, it is lawful issuing classes of shares with no or limited inspection and information rights attached, differently from what established by Article 2476 (Subsection 2) of the Civil Code[166]. In any case, the possibility to consult the shareholder's register and, if existing, the Corporate Record ("*Libro delle decisioni dei soci*") cannot be excluded to the members[167]. The issuance of those classes is extremely coherent with the nature of the equity crowdfunding offerings. Indeed, attributing those rights to every member (potentially unknown) could get them access to private and sensitive information related to the company: this scenario could represent a potential danger about the growth of the young enterprise[168].

[163] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie I.N. 5, "Diritto di prelazione negli aumenti di capitale di s.r.l.-PMI in presenza di categorie di quote".
[164] ALLECA, Aumento a pagamento e tutela del socio nella s.r.l., Rivista di Diritto Societario, Fasc. 4, 2017, pp. 983 and ff.
[165] Massima del Consiglio Notarile di Milano n. 175, "Categorie di quote con diritto di opzione limitato o escluso nelle S.r.l. PMI".
[166] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 576.
[167] Massima del Consiglio Notarile di Milano n. 176, "Categorie di quote con limitazione dei diritti di controllo nelle S.r.l. PMI".
[168] CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, pp. 834-835.

It is true that the ordinary member does not have high competences related to the industry in which the firm operates; however, it is possible that among the crowdfunders are included members that have "sensitive information gathering" as exclusive purpose. This is the reason why the inclusion of those classes of shares could limit (but not eliminate) this kind of risk. Even if the *ratio* is coherent, the issuance of shares without information and inspection rights attached could not be positively seen by new potential members; and, as a consequence, it could negatively impact the reputation of the company. However, as observed by the Notarial Council of Milan, information and inspection rights could be limited or even excluded from some classes of shares only if a supervisory body is in charge for the controlling function[169]. Therefore, the possibility to exclude some members from those rights shall be counterbalanced by the presence of a body that becomes compulsory only when the s.r.l. dimensional requirements are overtaken.

Lastly, the text of the Article 26 (Subsection 3) of *D.L.* 179/2012 states that it is lawful issuing classes of shares without or with limited voting rights attached: this is the only type of right explicitly mentioned in Section IX. Moreover, it is important underlying that the topic related to the issuance by s.r.l. companies of shares without voting rights was already a point of discussion even before the intervention of the Legislator in 2012. In particular, the prevailing doctrine expresses a contrary opinion; however, other authors asserted the legitimacy of shares without or with limited voting rights attributed to the members[170].

3.1 Classes of shares and voting rights

The previous paragraph has illustrated the types of administrative rights that could be attributed to different classes of shares: among them, it is important focusing on those shares characterized by no voting rights attached (or limited on particular topics). The legitimacy of those shares has interesting consequences in an equity crowdfunding context: indeed, it makes those instruments more suitable with the needs and the preferences of some investors.

[169] Massima del Consiglio Notarile di Milano n. 176, "Categorie di quote con limitazione dei diritti di controllo nelle S.r.l. PMI".
[170] SPERANZIN. Partecipazioni senza diritto di voto nella s.r.l., in La struttura finanziaria ed i bilanci delle società di capitali, Studi in onore di G.E. Colombo, Torino, 2011, pp. 213 and ff.

In particular, those that have not the aim of actively participating to the social activities; in other words, those that aim at "simply" realizing an economic return from this kind of investment[171]. As mentioned before, the provisions related to this topic are included in Article 26 (Subsection 3) of *D.L.* 179/2012, which therefore introduces new elements regarding the governance of the s.r.l. companies compliant with the status of *innovative start-up* (provisions then extended to *innovative SMEs* and SMEs). In particular, the Legislator states that those enterprises have the possibility to issue classes of shares without or with different voting rights attached compared to those detained by common members[172]. In other words, it is possible assigning them voting rights not proportional with respect to the share of capital detained, limited to pre-defined topics, or subordinated to the occurrence of specific conditions: actually, the list has a mere illustrative purpose. Moreover, the new provision represents a derogation from the principle of proportionality established by Article 2479 (Subsection 5) of the Civil Code[173]. Therefore, it is lawful having inside the corporate structure members with lower or no interest concerning the management of the firm[174]. Regarding s.r.l. SMEs, the Legislator has not formally allowed them to issue classes of shares without voting rights attached, as explicitly stated for *innovative start-ups* established as s.r.l.; as observed by the Notarial Council of Milan, the extension to those companies could be inferred by considering the recall, in Subsection 3, of the firms mentioned in Subsection 2 of Article 26 of *D.L.* 179/2012. In any case, this possibility seems to be granted also to SMEs established as s.r.l., since included within the more general admissibility of classes of shares with different rights attached[175].

Traditionally, it was common opinion that companies established as s.r.l. would not have the possibility of issuing membership shares without voting rights attributed to the members: among the motivations, the principle of unavoidability of the voting rights (Article 2479, Subsection 5, of the Civil Code). The derecognition of the voting rights, or their limitation on certain topics, makes the participating share closer to an investment instrument rather than to a mean used to actively participate to the corporate activities. For sure, members without voting rights will not be able to take part to the shareholders' meetings. However, it is not clear if those members kept the possibility of challenging assembly decisions.

[171] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 568.
[172] Massima del Consiglio Notarile di Milano n. 174, "Categorie di quote a voto ridotto o maggiorato nelle s.r.l. PMI".
[173] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 568.
[174] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, pp. 564-565.
[175] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, pp. 114-115.

In companies established as s.p.a., the absence of voting rights inhibits the investors in challenging assembly decisions not compliant with the common law or with the corporate bylaws (Article 2377 of the Civil Code). However, regarding those companies, this right is in any case recognized to the supervisory body.

Concerning s.r.l. SMEs, uncertainty arises about the possibility that members which hold membership shares without voting rights have about challenging those kind of decisions, as established by Article 2479-*ter* of the Civil Code. Denying this right would lead to a lack of protection for those funders not compensated by the compulsory presence of a supervisory body. In this case, it is important distinguishing between the rights of participating to the decision (which includes, as an example, intervention, information, control, proposition and challenge rights) and the voting rights *stricto sensu*, which could be interpreted as the rights of taking part to the formation of the assembly decisions. Only the latter could be excluded from a certain class of shares, while the former have to be considered as non-disposable[176]. It means that, according to this interpretation, the member still maintains the possibility to challenge the corporate decisions, even if no voting rights are attached to the shares detained.

However, the eventual recognition of those rights to every member could jeopardize the correct functioning of the different corporate bodies, especially when companies decide to raise capital through equity crowdfunding platforms[177]. Moreover, in this context members could be potentially scattered all over the world and the exercise of those rights could become difficult from a practical point of view. A solution in this sense could be incentivizing corporate structures in which those rights are legally attributed to a single entity, such as the platform itself, and not to the *crowd.* The scheme, which will be analysed in the following sections, is called "*Nominee Structure*" and it is already implemented with high success by a British platform called Seedrs.

The exemption confirms the dichotomy between rights attributed to the single member and rights attached directly to the membership share. Thus, it is important taking as reference the provisions addressed to the s.p.a. type. Article 2351 of the Civil Code states that s.p.a. shares could be subjected only to a "*disempowerment*" of the voting rights attached.

[176] SPERANZIN. Piccole-medie imprese tra autonomia statutaria e ibridazione dei tipi (con particolare riferimento alle partecipazioni prive del diritto di voto), Rivista delle società, Vol. 63, Fascicolo 2/3, 2018, pp. 351-352.
[177] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 115.

In particular, it was lawful only the creation of shares without voting rights, or with voting rights limited to defined topics or subordinated to certain conditions. The numbers of these shares shall not exceed the 50% of the total equity. However, in 2014 it was introduced also the possibility to create shares with multiple voting rights attached: in this case, each share could attribute to the owner at maximum 3 votes.

Section IX does not prescribe any limitation in percentage terms to the shares without or with multiple voting rights which could be issued by an enterprise that can benefit from the favourable framework. Therefore, those provisions (included in Article 2351 Subsections 2 and 4 of the Civil Code) could have been applied by analogy also by the open s.r.l. SMEs. However, the Notarial Council of Milan stated that those percentages could be only freely determinable by the corporate bylaws[178]. Indeed, it is true that Subsection 2 recalls what established for s.p.a. companies in the Civil Code; however, the Legislator decided to not include in Section IX the last part of the Article, related to the maximum amount of those shares that could be issued. It derives, according to this interpretation, that the limits established by the Civil Code shall not be applied in analogy by s.r.l. companies. Moreover, also other authors expressed the same opinion[179]. Furthermore, concerning the shares that attribute to the owners multiple voting rights, it follows that no limits in terms of maximum votes shall be applied (thus, differently from what established by Article 2351, Subsection 4, of the Civil Code and by Art 127-*quinquies* of the TUF)[180].

Lastly, the member could own two different classes of shares which both attribute voting rights. In this case, if there are no contrasts with the principles of good faith and correctness, the member has the possibility to exercise voting rights in a non-converging way. Moreover, this possibility is allowed only if aimed at reserving the withdrawal rights in relation to the classes of shares that are negatively influenced by a certain decision.[181]

[178] This interpretation was confirmed by the "Comitato interregionale dei Consigli Notarili delle Tre Venezie". I.N. 3.
[179] GUIZZARDI. L'impresa startup innovativa costituita in forma di s.r.l., Giurisprudenza Commerciale, Vol. 43, Fasc. 4, 2016, p. 569; CAPELLI. L'equity based crowdfunding e i diritti del socio. V Convegno Annuale dell'associazione italiana dei professori universitari di diritto commerciale "Orizzonti del diritto commerciale", 2014, p. 24; CIAN. S.r.l. PMI, s.r.l., S.p.A.: schemi argomentativi per una ricostruzione del sistema, Rivista delle Società, Vol. 63, Fasc. 4, 2018, p. 855.
[180] Massima del Consiglio Notarile di Milano n. 174, "Categorie di quote a voto ridotto o maggiorato nelle s.r.l. PMI".
[181] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie, I.N. 9, "Limiti all'ammissibilità del voto divergente nel caso di socio titolare di quote di diverse categorie".

4. Modification of share rights and special meetings

A further element that shall be mentioned concerns the legal procedures that have to be followed in order to modify the rights attached to certain classes of shares. When the decisions assumed during the general meetings have an impact on the classes of shares detained by some crowdfunders, it is not clear whether it is sufficient the majority approval or if it is necessary the unanimous consent of the members. Regarding the companies established as s.r.l. that issue different classes of shares, the Legislator does not provide any specific indication about the necessity to call a "special category meeting" when the relative rights are going to be damaged or simply modified. The regulatory framework of s.p.a. companies could be applied by analogy: Article 2376 of the Civil Code, according to which those decisions have to be approved by a "special meeting" which includes all the members of the class damaged, shall be applied also on SMEs established as s.r.l, since the protection of the investors which are part of a certain class cannot be assured only by withdrawal's rights. The legitimacy of such mechanism was confirmed also by other Notarial Councils[182]. Thus, in this case, the general shareholders' meeting decision also requires the consensus of the majority of the members which belong to the class of shares damaged or modified (according to the modes established by the common law and by the corporate bylaws itself). Moreover, dissenting members shall detain in any case withdrawals' rights.

The interpretation was confirmed by the Notarial Council of Milan[183]: moreover, it was noticed that the corporate bylaws could require not only the approval by the majority of the members but also their unanimous consent. However, it is not clear if s.p.a. rules shall be applied by analogy even if the corporate bylaws does not establish anything about them. In this last case, it was observed that general shareholders' meeting decisions could directly modify the content of classes of shares if and only if there is also the unanimous consent of the members affected by the decisions[184].

[182] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie, I.N. 11, "Assemblee speciali in presenza di quote di categoria".
[183] Massima del Consiglio Notarile di Milano n. 177, "Assemblee speciali dei titolari di categorie di quote di s.r.l. PMI".
[184] Without separately convoke them.

Lastly, other authors denied the possibility to apply s.p.a. rules in analogy[185]. In this case, it derives that there shall be applied Article 2468, Subsection 4, of the Civil Code, according to which the rights attributed to the members could be modified only with their unanimous consent, unless the corporate bylaws provides different instructions. In any case, it remains possible that special category meetings would be called according to what established by the corporate bylaws when the special rights are going to be modified by the general meeting decisions.

5. Attribution and exercise of the voting rights

As mentioned before, classes of shares without voting rights attached have an interesting application when they are offered to the *crowd* through fundraising campaigns. However, the eventual legitimacy of those shares could create uncertainties since they are referred to a type of society traditionally characterized by a strong relevance of the members on the corporate dynamics. After having asserted their legitimacy, this Paragraph analyses in a more concrete way how and in which circumstances voting rights are attached to the shares that investors are going to purchase on equity crowdfunding platforms. Concerning shares and voting rights, a common practice followed by the companies that raise capital through crowdfunding platforms is the issuance of two different classes of shares, generally called A and B: typically, the former include voting rights, differently from the latter. As observed by the doctrine, the issuance of shares with voting rights attached is less frequent in companies which operate in industries characterized by an active M&A market or that are managed by "*experienced founders*" (namely, those with previous work experience in the start-up field)[186]. Moreover, it emerged that the issuance of those shares derives also from an imitative behaviour with respect to the choices previously adopted by other enterprises.

[185] POLICARO. Dalle s.r.l. emittenti sui portali online di equity crowdfunding alle s.r.l. aperte. «senza deviazione dalla norma, il progresso non è possibile», in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 115.
[186] CUMMING, MEOLI, VISMARA. Investors' choices between cash and voting rights: Evidence from dual-class equity crowdfunding, Research Policy, Elsevier, vol. 48(8), 2019, p. 10.

Regarding the attribution of such classes of shares (A and B[187]) to crowdfunders, it usually depends on the capital that new members are going to invest in the enterprises through the platform. Indeed, firms themselves usually define a certain investment threshold related to the raising-capital offering: in particular, when the crowdfunders are going to invest an overall amount higher than the threshold, they will get shares belonging to the A class; on the contrary, when the amount invested is lower, they will get only shares belonging to the lower grade class. Concerning the amount of the threshold chosen by an enterprise, it emerged that it is strongly correlated with what previously chosen by other companies which operate in a similar industry and that decided to raise capital through crowdfunding platforms.

Lastly, enterprises that define a relatively higher threshold are subject to a higher separation between ownership and control; in turn, the higher separation negatively influences the odds of success of the overall crowdfunding campaign and the possibility to successfully proceed with further financing rounds[188].

5.1 Voting rights delivery methods

After having illustrated in which circumstances shares with voting rights attached are issued to new members, it is important classifying the former according to different types, depending on how the crowdfunding platform is organized. In particular, some scholars differentiate among individual, pooled and syndicated voting rights[189].

Regarding the former, the crowdfunding platform simply plays an intermediary role: indeed it allows the enterprises to raise capital but, when the offering is completed, the platform does not play any concrete role concerning the relationship between entrepreneurs and investors. This kind of scheme, which is the most commonly adopted, exhibits significant practical problems.

[187] Of course, there is no theoretical limit in the number of share classes that could be issued by an enterprise. However, the choice of issuing two classes of shares (A and B) represents the most common practice employed by enterprises that raise capital through crowdfunding platforms.
[188] CUMMING, MEOLI, VISMARA. Investors' choices between cash and voting rights: Evidence from dual-class equity crowdfunding, Research Policy, Elsevier, vol. 48(8), 2019, p. 14.
[189] ROSSI, VISMARA, MEOLI. Voting Rights Delivery in Investment-Based Crowdfunding: A Cross-Platform Analysis, Economia e Politica Industriale: Journal of Industrial and Business Economics, vol. 46, issue 2, No 6, 2019, pp. 4-5.

Let's consider, such as an example, a company which issues classes of shares through those crowdfunding platforms to a multitude of investors: in this case, there will be a corporate structure characterized by a broad member base. In an individual voting rights scheme, each member will have the possibility to autonomously exercise their voting rights, which, therefore, are directly attributed to them. However, given the high number of members, there will inevitably arise coordination issues among them. Moreover, considering that the amount invested by the common crowdfunders is relatively low, they will have less incentives (but also low technical competences) to monitor the corporate dynamics.

Regarding the pooled mode of delivery, the platform often operates as a trustee, managing the voting rights on behalf of the crowdfunders. When such a system is adopted, all the votes of the investors flow into the hands of the intermediary which could better coordinate all the dispersed shareholders. In particular, it emerged that individual and syndicated voting rights[190] delivery methods are more likely to list a lower number of successful raising-capital offerings, if compared to the platforms which are based on pooled voting rights systems. Also from a statistical point of view, the pooled voting rights scheme seems performing better compared to the others.

The two most important British crowdfunding platforms, Crowdcube and Seedrs, are characterized by two different voting rights delivery methods, respectively individual and pooled. Concerning the former, it is exclusively applied a classical individual voting rights delivery scheme. On the other hand, Seedrs gives to crowdfunders the possibility to choose among the two different voting rights delivery methods. Indeed, new members still maintain the possibility to request the direct attribution of the voting rights attached to the shares when they are acquired on the platform. However, differently from Crowdcube, Seedrs proposes a shareholding structure in which the voting rights could be exercised by the platform itself (as legal owner of the shares) that operates on behalf of the *substantial owners* (the crowdfunders). The structure was named "*Nominee Structure*" since relationships of trust tend to emerge among the two parties. Some scholars have analysed the performance of the enterprises that raise capital through those crowdfunding platforms, distinguishing between the two different voting rights delivery methods[191]. In other words, the study allows to understand the impact of the choices in terms of shareholding structure on firm performances.

[190] It refers to platforms which require a high minimum investment amount or co-investments among several accredited investors.
[191] WALTHOFF-BORM, VANACKER, COLLEWAERT. Equity Crowdfunding, Shareholder Structures, and Firm Performance, Corporate Governance: An International Review, Vol. 26, Issue 5, 2018, p. 315.

It emerged that the *Nominee Structure* seems to be associated with better *financial performances*; indeed, in the long-run the losses suffered by companies characterized by this kind of structure are lower compared to those associated with a direct shareholding structure. However, the latter is correlated with better *innovative performances*, which are measured taking into consideration parameters such as the number of patent applications per year. It does not convince the motivation according to which the higher number is explained by a greater sense of belonging among the shareholders, since in an enterprise with a broad shareholding base they would have practical and technical difficulties in proposing new innovative ideas[192]. The higher *innovative performance* could be explained by more prolific activities performed by the founders in a structure in which they could maintain a more relevant decisional power, in terms of voting rights detained. In such a structure, it is plausible that new projects could be subject to less careful control by the members, which have neither the incentives nor the competences to perform an adequate due diligence activity: as a consequence, the rate of submission of new patents could increase. Therefore, with regards to the voting rights delivery methods, the model that seems assuring the best performance is the *Nominee Structure*, adopted by the crowdfunding platform Seedrs.

5.2 Seedrs and its "*Nominee Structure*"

According to the *Nominee Structure*, the *legal owner* of the participating shares issued after an equity crowdfunding campaign will be Seedrs itself, that will detain the shares on behalf of the investors that purchased them on the platform; on the other side, the latter will remain *substantial owners* of the shares. Moreover, the voting rights will be exercised by a specific body established by Seedrs for managing all the "portfolio companies".

The *Nominee Structure* offers several advantages to the investors with respect to the individual voting rights delivery method. First of all, the confluence of the voting rights to a single *legal owner* will reduce the coordination issues that could arise when crowdfunders are scattered over the world. Indeed, the presence of a unique *legal owner* that operates on behalf of the investors assure them, even if indirectly, higher voice during the shareholder's meetings.

[192] WALTHOFF-BORM, VANACKER, COLLEWAERT. Equity Crowdfunding, Shareholder Structures, and Firm Performance, Corporate Governance: An International Review, Vol. 26, Issue 5, 2018, p. 325.

Higher voice that they would not have if they decided to autonomously exercise the voting rights attached to the shares acquired. In other words, the capacity of "*pooled investors*" to conditionate management decisions is higher than that of the average crowdfunder which acts alone[193]. Indeed, when a company is characterized by a broader member base, the single member will have little incentive to carefully monitor the firm activities.

A second important advantage of the *Nominee Structure* is related to the decisions that have to be taken by the members which acquire shares with voting rights attached. During the shareholders' meetings, when important decisions (or decisions that significantly influence their position) are going to be taken, they could not have the right competences to understand what the best choice would be. If they joint the *Nominee Structure*, they would attribute to the platform their voting rights and, as consequence, all the relevant decisions will be taken by a body with higher experience and knowledge about crowdfunding investments. Therefore, a structure that allocates all the voting rights to a single *formal owner* that takes decisions in the interests of the investors assures them higher protection. It means that this kind of structure gives more power to the investors and lower freedom of action to the entrepreneurs with respect to a shareholder's structure characterized by a broader member base: this could explain why *innovative performances* of enterprises that make use of the *Nominee Structure* are lower compared to the firms characterized by direct shareholding structures[194].

Furthermore, the *Nominee Structure* offers interesting advantages also to the entrepreneurs[195]. First of all, they would not need to interact with every investor that purchased the shares on the crowdfunding platform but, on the contrary, only with their representative, Seedrs itself. Indeed, if emerged a situation that requires a quick decision-making process, it would be easier communicating with a single legal owner rather than with the entire member base. Moreover, after overcoming the first stages of development, companies usually arrange further financing rounds to sustain their growth. The presence of a corporate structure characterized by a broad member base could slow down this process, discouraging new potential investors, such as Venture Capitalists and Business Angels. On the contrary, a corporate structure with a lower number of interlocutors allows to take those important decisions in shorter time. In other words, the *Nominee Structure* will make less long and complex the development path of a young company.

[193] ROSSI, VISMARA, MEOLI. Voting Rights Delivery in Investment-Based Crowdfunding: A Cross-Platform Analysis, Economia e Politica Industriale: Journal of Industrial and Business Economics, vol. 46, issue 2, No 6, 2019, p. 11.
[194] WALTHOFF-BORM, VANACKER, COLLEWAERT. Equity Crowdfunding, Shareholder Structures, and Firm Performance, Corporate Governance: An International Review, Vol. 26, Issue 5, 2018, p. 324.
[195] https://www.seedrs.com/learn/blog/nominee-structure-equity-crowdfunding

As mentioned before, Seedrs is a crowdfunding platform which allows to the investors the choice of the preferred voting rights delivery method. If crowdfunders which purchased the shares on the platform decided to adhere to the *Nominee Structure*, they would pay Seedrs for the service provided. The service cost is not a periodic fee; instead, it depends on the total profit achieved by the crowdfunder on that specific investment, which will be determined only at the exit date. Since the crowdfunding investment is highly illiquid, the exit date usually coincides with the IPO of the company or with the takeover date. The profit achieved by the investor at the exit date will be equal to the difference between cost originally sustained and price received from the sale of the shares themselves. The service cost is then determined applying a success fee of 7,5% on the profits achieved. If no profits were gained, no commission would be charged on the crowdfunder.

Lastly, Seedrs offers to their crowdfunders also the possibility to opt for the individual voting rights delivery method. In this last case, the platform will require one-time investment fee equal to the 1,5% of the amount invested (with a cap of 250€). After the payment, no further ongoing or carry fee must be paid by the investor.

IV. Transfer of shares

1. Transfer of s.r.l. membership shares according to the common law

As stated by Article 2469 of the Civil Code, membership shares of an ordinary s.r.l. company are freely transferable to other members, unless differently established by the corporate bylaws. Indeed, the latter could include clauses which impose limits and conditions in the share circulation, such as "*approval clauses*" ("*diritti di gradimento")* and/or "*pre-emption clauses*" ("*clausole di prelazione")*. Moreover, the corporate bylaws could also set up absolute prohibitions about membership shares' transfers: nevertheless, when such limits to the shares' circulation are established, members shall have the possibility to exercise withdrawals' rights, as stated by Article 2473 of the Civil Code. Lastly, the transfer of such membership shares requires an official act arranged by a notary, which becomes effective towards the enterprise when the document is submitted to the Business Registrar.

It could be inferred that an investment in companies established as s.r.l. is characterized by a high degree of illiquidity: indeed, i) it is more difficult finding a potential buyer for such membership shares if compared to the shares quoted on regulated markets; ii) the transfer procedure is complex and expensive. Therefore, if those two elements are jointly taken into consideration, it derives that the investor takes the risk of remaining tied down in the enterprise for several years before having the opportunity to exit with a satisfying return. Regarding the problem ii), it is important pointing out the recent intervention of the Legislator, which introduced provisions aimed at significantly reducing the transfer costs of s.r.l. shares.

If included into the equity crowdfunding context, those elements are sensitive issues, since they could discourage potential crowdfunders to realize those kinds of investments[196].

[196] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 2.

Regarding the transfer procedures, another important aspect that has to be assessed concerns the simultaneous shift to the new owners of the rights attached to the shares sold: according to the common law, special rights are directly attributed to the members in compliance with Article 2468 of the Civil Code. Therefore, the transfer does not imply the automatic shift of those special rights to the new owners; instead, it leads to their cancellation, unless otherwise established by the corporate bylaws[197]. The thesis was confirmed by the Notarial Council of Milan: in addition, it was stated that the possibility of issuing classes of shares could lead to a different conclusion[198]: indeed, in this case the transfer of shares belonging to a certain class implies also the shift of the special rights which characterize it, unless otherwise established by the corporate bylaws.

2. The Legislator intervention, the "*intermediary registration*"

As mentioned before, *D.L.* 3/2015 (converted with modification by *Legge* n.33 of 2015) represents an important intervention by the Legislator because it extends the new regulatory framework also to *innovative SMEs*; however, it has a relevant impact also on the Article 100-*ter* of the TUF, which regulates the share circulation among the investors. In particular, it was introduced Subsection 2-*bis*: it states that it is now lawful offering to investors the possibility to apply for an alternative way of share circulation ("*regime alternativo di intestazione della quota*" o "*intestazione intermediata*") compared to the Civil Code provisions. The new modality of shares' transfer introduced by the Legislator does not erase the regulation already included in the Civil Code: instead, it represents an additional option that could be offered by the company to its investors[199]. The purpose of the provision is simplifying the procedure that members have to follow when shares' transfers occur, reducing the overall cost[200].

[197] Massima del Comitato Interregionale dei Consigli Notarili delle Tre Venezie I.I. 10, "Diritti particolari e alienazione della partecipazione".
[198] Massima del Consiglio Notarile di Milano n. 171, "Nozione di categorie di quote di s.r.l. PMI".
[199] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 543.
[200] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.

It is important underlying that the issuer has not the duty of giving the mentioned possibility to the investors; indeed, it is only an option with respect to what established by the Civil Code, Article 2470. If such possibility is granted, there shall be also an expressed and clear indication on the crowdfunding platform, according to Subsection 2-*ter* of Article 100-*ter* of the TUF[201].

At the same time, granting this possibility does not oblige investors to adhere to the alternative circulation system. If they waived to it, there would be applied, in terms of share circulation, the provisions included in Article 2470 of the Civil Code ("*direct registration*"). On the other hand, when the option is exercised by the investors, the intermediary shall submit to the Business Registrar a certification attesting the ownership of the shares on behalf of third parties ("*intermediary registration*"); furthermore, the certification shall be submitted within 30 days from the end of the raising-capital offering[202]. A specific procedure in terms of shares' transfers (that will be illustrated in the next paragraphs) will be followed by the intermediary from now on.

The choice of adhering to the *intermediary registration* is not irreversible: indeed, the member that exercised the option has the possibility to request in any moment the return to the "*direct registration"* system (TUF, Article 100-*ter*, Subsection 2-*bis*, b), 4). On the other hand, it shall be considered as denied the possibility to apply for the alternative circulation rules with regards to shares already issued and subject to the ordinary *"direct registration"*[203].

Lastly, the abrogation of Subsection 2-*quinquies* of Article 100-*ter* of the TUF after *Decreto Legislativo* 129/2017 implies that the "*intermediary registration"* became a solution that remains a permanent element of the enterprise corporate structure regardless of its dimension[204].

[201] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 544.
[202] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 544.
[203] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.
[204] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1279.

2.1 Transfer procedures

As mentioned before, the most innovative element of the modification of Article 100-*ter* TUF concerns the new additional membership shares transfer mechanism, the "*intermediary registration"*. The new provision, included in Subsection 2-*bis*, simplifies the procedure since removes the requirement of the notarial deed in order to make the transfer effective; indeed, it would be sufficient a simple annotation of the transfer on a special registrar kept by the intermediary (Subsection 2-*bis*, c). Again, the procedure does not require official acts subscribed by notaries: it implies that, according to the *intermediary registration*, investors could get liquidity from crowdfunding investments more quickly and profitably[205]. Moreover, adhering to the alternative circulation system does not compromise their possibility to get fiscal benefits related to investments in innovative start-ups and SMEs[206].

Therefore, when investors are going to purchase the shares on the crowdfunding platforms have the possibility to adhere to the new transfer mechanism (if granted by the issuer). If the option is exercised by several crowdfunders, only one figure will be signed up on the Business Registrar, the intermediary itself[207]. In other words, the *formal owner* of the shares (as disclosed by the Business Registrar) will be the latter, while the former will become *substantial owners* of the shares purchased on the platform. When *substantial owners* decide to transfer their shares to new investors, they have simply to communicate the decision to the intermediary[208], which will take note of the transaction on its special registrar[209]. However, nothing will change on the Business Registrar: the intermediary will maintain its position as if no transactions occur. Therefore, even if *substantial owners* change, the *formal owner* will remain the same, regardless of the transactions occurred among the members. Furthermore, the transaction will not charge any cost or commission neither on the buyer nor on the seller[210].

[205] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 547; CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.
[206]https://www.crowdfundme.it/blog/riepilogo-settimanale/la-prima-campagna-di-equity-crowdfunding-in-italia-con-il-servizio-di-rubricazione-quote-la-settimana-di-crowdfundme-432018/
[207] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1260.
[208] TUF, Art. 100-ter, Subsection 2-bis, b), 3.
[209] TUF, Art. 100-ter, Subsection 2-bis, c).
[210] TUF, Art. 100-ter, Subsection 2-bis, c).

Moreover, it was observed that this transfer mechanism could be applied only with regards to *inter vivos* acts, since the provision is addressed only to subsequent alienations. Consequently, *mortis causa* transfers shall be realized according to the rules established by Article 2470 of the Civil Code[211].

2.2 Two sources of information

Therefore, there will be two sources (and not only one) which provide information related to the enterprises' corporate structure: the special registrar kept by the intermediary and the Business Registrar. The main function of the former is collecting all the transfers occurred among the members which adhered to the *intermediary registration*. However, it was observed that the special registrar has also a secondary purpose: indeed, as mentioned before, only the intermediaries will appear on the Business Registrar as *formal owners* of the shares. Therefore, the presence of a registrar that includes all the *substantial owners'* names reduces the risk that intermediaries could "*self-legitimizing*" against the company in the exercise of the social rights associated with the shares of which they are officially *formal owners*[212].

According to the common law, the information related to the ownership changes of an enterprise shall be included in the Business Registrar[213]. However, if *substantial owners* decided to adhere to the new transfer mechanism, that source would become uninformative about the real corporate structure. In other words, the Business Registrar would have only a marginal role in signaling eventual company shares' transfers[214]: indeed, only the special registrar held by the intermediary will keep track of all the effective dynamics related to the share circulation. The presence of two different sources of information raises the risk that the issuer could not be properly informed about the share transfers occurred among the members. As observed by the doctrine, forcing intermediaries to communicate the information kept in the special registrar to everyone who could get access to the Business Registrar seems not reasonable[215].

[211] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 544.
[212] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1265.
[213] Article 2470 of the Civil Code.
[214] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 544.
[215] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, pp. 1271-1272.

Nevertheless, according to other authors, intermediaries cannot deny the necessary information to identify the *substantial owners* to everyone who could consult the Business Registrar (such as shareholders' creditors) in order to get insights about the corporate structure of the firm[216].

Lastly, Article 2470 of the Civil Code states that membership shares' transfers of an ordinary s.r.l. company become effective towards the enterprise when the requirement of the notarial deed is satisfied. The introduction of the *intermediary registration* overtakes this last requirement: indeed, a transfer becomes effective when the intermediary records the transaction on its special registrar (TUF, Article 100-*ter*, Subsection 2-*bis*, c)[217].

2.3 Exercise of the social rights

Intermediary registration has also relevant implications related to the exercise of the social rights attached to the shares. Indeed, the formal ownership of the intermediary does not determine neither the shift of the rights from the investors towards him nor the possibility of the former to exercise the rights on behalf of the funders. Therefore, the role of the intermediary is strictly regulated by the Law, which states that the former cannot neither invest/divest in securities, nor exercise the social rights associated to the shares[218]. Those rights could be exercised only by the members recorded on the special registrar kept by the intermediary; furthermore, the latter has to provide to the *substantial owners* a certification which demonstrates their ownership and that legitimates them to exercise the rights attached (TUF Article 100-*ter*, comma 2 *bis*, b), 2).

As a consequence, the exercise of the social rights will be attributed to a different subject compared to that recorded on the Business Registrar: the assertion confirms the split between formal and substantial ownership of the shares. Moreover, even if the *substantial owner* did not request the certification, the intermediary would not have in any case the possibility to exercise the social rights attached to the shares[219].

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[216] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 5.
[217] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1273.
[218] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 545.
[219] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 546.

The transfer of the certification cannot be considered as a valid instrument for the share circulation, since the TUF itself underlies that the document cannot be transferred, even on temporary basis, to third parties (TUF, Article 100-*ter*, comma 2 *bis*, b), 2). Therefore, the prohibition seems inhibiting also the possibility of the investors to mandate third parties for the exercise of the social rights. Again, even if investors do not request the certification to the intermediary, the latter will not be legitimated in the exercise of the voting rights associated with the shares: indeed, it seems lacking a provision similar to what established by Article 83-*novies* (Subsection 1, a) of the TUF, which allows the intermediary to exercise the social rights on behalf of the *substantial owners*, if delegated by them[220]. As a consequence, in this last case both administrative rights and economic rights could be jointly managed by the intermediary[221]. Nevertheless, it was observed by a scholar that the member could still request to the intermediary a specific certification, which allows the third party to operate in a single specific situation on behalf of the *substantial owners*[222].

As mentioned before, social rights could be exercised only by *substantial owners* that own the certification provided by the intermediary according to what established by the TUF (Article 100-*ter*, Subsection 2 bis, b), 2): as a consequence, it was observed that the *intermediary registration* cannot be included among the traditional fiduciary registration schemes[223].

On the other hand, other authors associate the alternative circulation system to the fiduciary registration, even if confirming that the rights cannot be exercised by third parties[224]. In particular, according to this interpretation, members and intermediary will enter in a relationship of trust, under which the latter will have the *formal ownership* of the shares and will have the duty of performing specific activities on behalf of the investors.

[220] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 546.
[221] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1267.
[222] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 7.
[223] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1264.
[224] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 545.

3. Directa SIM, the most relevant Italian intermediary

As mentioned before, Italian crowdfunding platforms could grant to potential investors a different system of share circulation, the *intermediary registration*. Moreover, the platform shall clearly indicate on its website the procedure that shall be followed by the crowdfunder in order to exercise the option and adhere to it (TUF, Article 100-*ter*, Subsection 2-*ter*). Regarding the procedure, crowdfunding platforms often explicitly indicate the intermediary that will be in charge of the role: one of the most important entity that offers this kind of service is Directa SIM, that over the last 2 years stipulated conventions with most of Italian crowdfunding platforms. In particular, 200Crowd, LifeSeeder, Walliance, Ecomill, WeAreStarting, Crowdfundme and Opstart.

In order to adhere to the *intermediary registration,* those platforms require the opening of an account on Directa SIM, following a procedure explained step by step on the website of the latter. Investors will sustain those costs:

a) a lump sum fee of €15, that will be paid when they are going to open the Directa SIM account. Those expenses shall finance the compliance procedure that the intermediary will follow for the customer identification, according to what required by the anti money-laundering regulation;
b) a €20 fee, that will be paid by investors every time they decide to adhere to the *intermediary registration* with regards to shares purchased on affiliated crowdfunding platforms;
c) a 5€ fee, that will be paid every time investors need the certification required to be legitimated in the exercise of the social rights attached[225].

Therefore, the overall costs of the procedure are significantly lower compared to the notarial expenses that shall be paid according to the common law rules in terms of share circulation. Moreover, considering the relatively low amount invested by the small crowdfunder, it could be inferred that, before the introduction of the *intermediary registration*, the only plausible and remunerative "*exit ways"* were represented by IPOs and Takeovers.

[225] https://www.crowdfundme.it/blog/equity-crowdfunding/regime-alternativo-di-intestazione-delle-quote/

The latter are the most probable *exit* strategies since the issuers have the duty of including withdrawals' and *tag-along* rights in the corporate bylaws[226]. However, investing in those instruments exposes crowdfunders to the risk of waiting several years before successfully and profitably exiting from the investment made. Alternative exit strategies, such as private transactions, were unlikely in such context before the intervention of the Legislator because of the high notarial commissions. Indeed, given the relatively low amount invested by the small crowdfunder, profits potentially gained from the investment could not be sufficient to cover the commissions required to transfer the shares to potential acquirers. Here is the *ratio* of the Legislator intervention: avoiding that the costs that shall be sustained by investors to realize private transactions would discourage equity crowdfunding platforms investments[227]. In order to achieve this purpose, the Legislator decided to introduce a derogation from the Civil Code rules related to the share transfer[228].

Intermediary registration represents a set of provisions that simplifies and makes less expensive the share transfer procedure. The new regulation is coherent with the objective of the Legislator of arranging a set of preferential rules aimed at making simpler and cheaper the establishment and the development of young enterprises. Therefore, the purpose of the *intermediary registration* is promoting frequent shares' transfers among small investors, reducing associated fees and commissions. Lastly, the Legislator was pushed towards the introduction of such provisions also by the Advisory Board of *Assolombarda*: indeed, the firm association proposed to the Legislator itself a share subscription and transfer system directly managed by the intermediaries of the Chamber of Commerce, without any commission or fiscal burden charged on the investors[229].

The first cases of shares managed by Directa SIM according to the *intermediary registration* occurred at the beginning of 2019. However, only at the end of the same year, two investors put in place for the first time a transaction of s.r.l. shares without the drafting of a formal act by a notary[230].

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[226] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 2.
[227] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.
[228] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 2.
[229] ASSOLOMBARDA. Equity crowdfunding in salsa tricolore, 5th July 2014. Available at: https://www.assolombarda.it/media/comunicati-stampa/equity-crowdfunding-in-salsa-tricolore-professione-finanza-luglio-2014.
[230] https://www.directa.it/pub2/it/pres/comunicati/comsta03022020.html

In particular, those minority shares (worth approximately €1000) were issued on the equity crowdfunding platform "WeAreStarting". The funder, which had decided to adhere to the *intermediary registration*, sold those shares to the new member realizing a 40% gross capital gain. No notarial commissions were paid neither by the seller nor by the buyer: in this case, the former paid only an income tax equal to 26%.

4. A step towards the secondary market

As mentioned at the beginning of this chapter, the high degree of illiquidity related to equity crowdfunding investments depends on both the intrinsic difficulty in finding a potential buyer (problem i) and the complexity of the transfer procedures according to the common law (problem ii).

Again, the *intermediary registration* simplifies and reduces the costs related to the transfer procedure of the s.r.l. shares issued on the equity crowdfunding platforms: as a consequence, those rules have an impact on the problem ii). Nevertheless they do not solve the problem i): indeed, even if the transfer procedure becomes simpler and cheaper, investors could still have problems and difficulties in finding potential buyers.

In other words, the *intermediary registration* does not eliminate the illiquidity feature of the equity crowdfunding investments. Indeed, taking into consideration only those provisions, the possibility of exiting from the investments depends only on the ability of crowdfunders to find autonomously and through private negotiations new potential buyers[231]. Performing this kind of operations could be difficult and expensive, especially for small investors. As a consequence, the most feasible exit strategy regards the exercise of either *tag-along* or withdrawals' rights.

Nevertheless, even if the *intermediary registration* taken alone does not solve all the problems related to the illiquidity of the crowdfunding investments, it represents a first important step aimed at reducing it. Indeed, the provisions included in Article 100-*ter* of the TUF represent an element that lays the foundations for the creation of a secondary market where crowdfunders

[231] DE LUCA. Crowdfunding e quote 'dematerializzate' di s.r.l.? prime considerazioni (art. 100 ter, commi 2. Quinquies, Le Nuove Leggi Civili Commentate, Vol. 39, Fasc. 1, 2016, p. 2.

of s.r.l. companies could quickly and efficiently exchange shares among each other[232]: the idea of secondary market for s.r.l. shares is interesting and it could lead to a significant acceleration of the Italian equity crowdfunding market[233]. Therefore, assuming that the aim of the Legislator is encouraging crowdfunding investments, the most natural and complementary element of the *intermediary registration* is represented by the introduction of a secondary market. In such a market, investors could find more easily potential counterparties; on the other hand, the *intermediary registration* simplifies the transfer procedures among them. Indeed, in order to successfully complete the transaction, it will be necessary only a communication to the intermediary, which will record the transaction on its special registrar. As mentioned before, only *substantial owners* will change: the *formal owner* (the intermediary) will remain the same after the occurrence of the transaction.

The development of a secondary market could make crowdfunding securities even more attractive for potential investors[234]. Indeed, apart from the opportunity of diversifying their overall investment portfolio, crowdfunders could acquire the possibility to more easily divest from the securities acquired, rather than waiting for future and uncertain IPOs or Takeovers.

Lastly, more than reducing transfer costs (the Legislator intervened in this sense introducing the *intermediary registration*), the creation of a secondary market could give the possibility to potential buyers to better collect updated and complete information in order to decide whether investing in some crowdfunding securities or not[235].

5. The Italian prototype of secondary market: "*Bacheche elettroniche*"

In order to facilitate shares' transfers among current and potential investors, uncertainties arise about the real possibility of creating specific secondary markets for crowdfunding securities. The introduction of such markets could represent an interesting solution for the problem i) mentioned before, since it will allow investors to easily find potential counterparties.

[232] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, pp. 562-563; CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.
[233] https://www.crowdfundme.it/blog/riepilogo-settimanale/la-prima-campagna-di-equity-crowdfunding-in-italia-con-il-servizio-di-rubricazione-quote-la-settimana-di-crowdfundme-432018/
[234] CIAN. L'intestazione intermediata delle quote di s.r.l. PMI: rapporto societario, regime della circolazione, Le Nuove Leggi Civili Commentate, Vol. 41, Fasc. 5, 2018, p. 1261.
[235] CAPELLI. L'equity based crowdfunding e la c.d. "dematerializzazione" delle quote di s.r.l., Osservatorio del diritto civile e commerciale, Fasc. 2, 2016, p. 565.

As previously stated, the Legislator decided to allow most of Italian SMEs, mainly established as s.r.l., to issue their shares on equity crowdfunding platforms, providing them an alternative source of capital. Regarding the possibility to create a secondary market, Article 100-*ter* of the TUF (Subsection 1-*bis*) states that the shares could be offered *also* through raising-capital platforms: the word "*also*" was interpreted in the scholarship as the possibility that the entities which manage the platform have in arranging on their websites a section devoted to the negotiation of the shares already issued on the platform itself[236]. The conclusion comes from the interpretation according to which the shares issued by s.r.l. companies shall be included inside the notion of "*financial instruments*" and in particular inside the sub-category of "*securities*". This notion shall be attributed also to those s.r.l. shares since they are going to be quoted on a kind of capital market, the equity crowdfunding platform[237]. As a consequence, those "*securities*" could be subject both to public and financial circulation[238].

The interpretation comes from what reported in the TUF, Article 100-*ter*; however, other authors argued that the definition proposed by the Legislator ("*financial instrument*") shall be considered as inaccurate[239]. In particular, both Article 2468 of the Civil Code and Article 26 of *D.L.* 179/2012 adopt the notion "*financial product*". Since this kind of investments have a financial nature, shares issued on crowdfunding platforms are compliant with this definition. The inclusion inside the notion of "*securities*" or "*financial instruments*" was judged more controversial: s.r.l. shares shall not be included nor in the former, since they are not stocks or equivalent instruments, neither in the latter, since their characteristics are not in line with any of the categories illustrated in the TUF itself (Article 1, Subsection 2).

In terms of creation of a secondary market, the Legislator modified the CONSOB Regulation n. 18592 of 2013 introducing the concept of "*Bacheche elettroniche*"[240]. The modification was approved on 10Th October 2019 after a public consultation held between June e July of the same year.

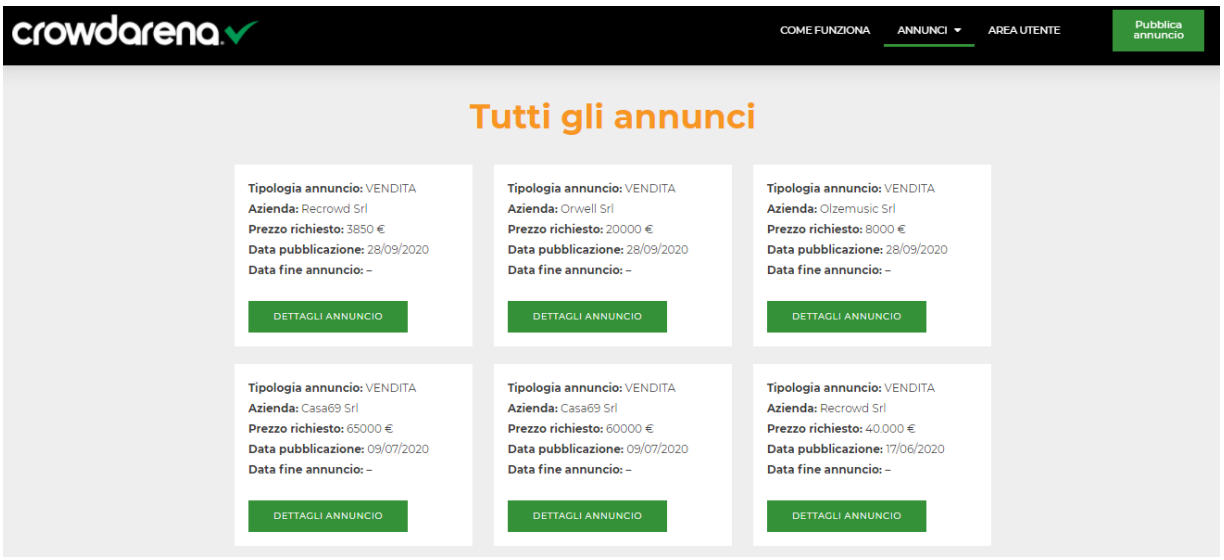
[236] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 283. The author states that the "platform" shall be interpreted not only as a mean through which issuing securities, but also as a place that shall allow the subsequent circulation of the shares issued.
[237] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1454.
[238] BENAZZO. Categorie di quote, diritti di voto e governance della 'nuovissima' s.r.l., Rivista delle Società, Fasc. 5/6, 2018, p. 1454.
[239] GUACCERO. La start-up innovativa in forma di società a responsabilità limitata: raccolta di capitale di rischio ed equity crowdfunding, Banca borsa e titoli di credito, Vol. 67, Fasc. 6, 2014, pp. 714-715.
[240] *Delibera* n. 21110 of 10.10.2019, Modifiche al Regolamento Consob n. 18592 del 26 giugno 2013 sulla raccolta di capitali di rischio tramite portali on-line e successive modifiche e integrazioni (Regolamento Crowdfunding).

In particular, according to the new Regulation, portal managers could arrange in a separate section of the website a "*virtual showcase*" that has the purpose of gathering all the expressions of interests for the shares already issued on the platform itself (TUF, Article 25-*bis*, Subsection 1). It is important underlying that portal managers shall not execute any activity aimed at *directly* facilitating the transaction between the two counterparties (TUF, Article 25-*bis*, Subsection 2)[241].

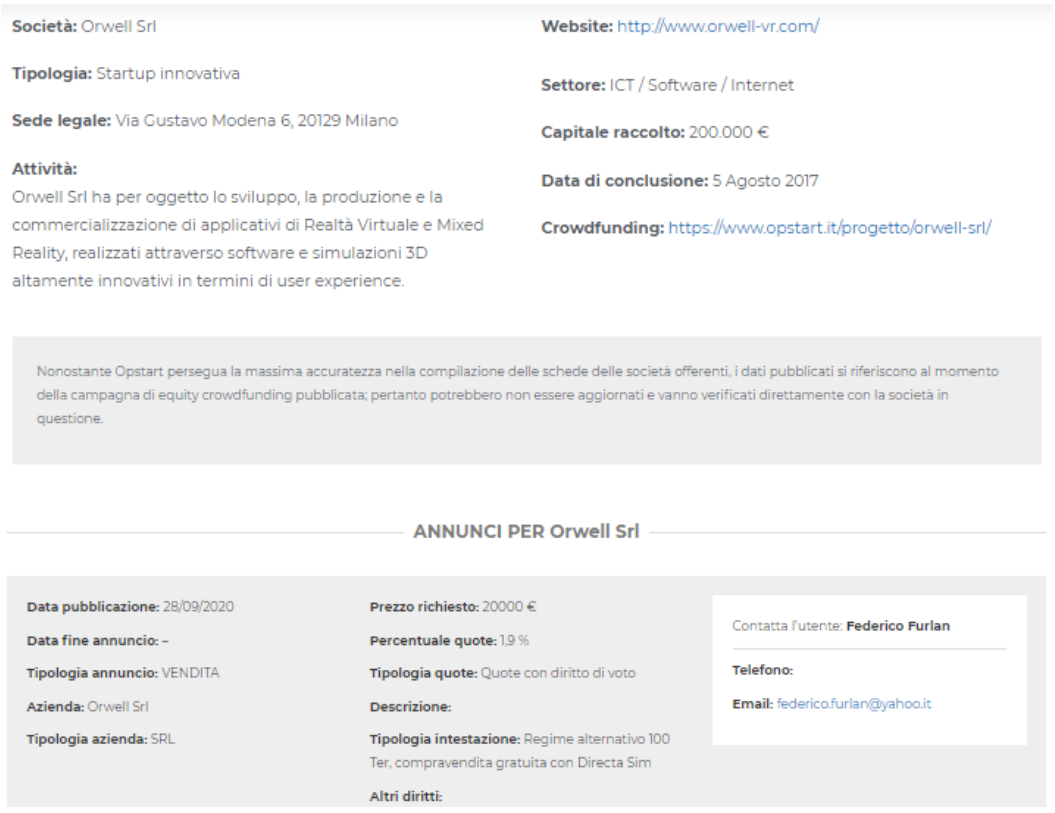
Concerning the structure of the offering, it could be associated to a public "*sale announcement*" with a predetermined and standard content: indeed, potential sellers could indicate in the announcement only information related to the shares (in terms of types of rights attached, for example) and to their contact details, so that potential acquirers could get in touch with them in order to start the private transaction. On the other hand, also "*purchase announcements*" could be placed on the "*Bacheca elettronica*": in this case, potential buyers will indicate on the website the characteristics of the shares that they are willing to purchase. Therefore, the intervention of the Legislator does not allow the realization of an instantaneous transfer, but it *indirectly* facilitates the inception of the private transaction between the two counterparties: again, it does not allow transactions such those performed on regulated stock exchange markets.

The first Italian crowdfunding platform that introduced a "*Bacheca Elettronica*" on its website was Opstart, which named it "*Crowdarena*": it represents, in compliance to the new regulation, a separate section of the crowdfunding platform that encourages private transactions concerning only the shares already issued on that portal. Moreover, sale and purchase offerings posted on it shall not be considered neither as "*public announcements*" from a juridical point of view (as established by the Article 1336 of the Civil Code) nor as "*sale promises*" (regulated by Article 1989 of the Civil Code) nor as "*solicitations to the public savings*"[242].

[241] Subsection added after *Delibera* n. 21110 of 10.10.2019, Modifiche al Regolamento Consob n. 18592 del 26 giugno 2013 sulla raccolta di capitali di rischio tramite portali on-line e successive modifiche e integrazioni (Regolamento Crowdfunding).
[242] https://crowdarena.it/disclaimer/



Layout of "Bacheca Elettronica" – Crowdarena



Structure of an offering – Crowdarena.

5.1 Seedrs Secondary Market and differences with the Italian regulation

Summarising, the recent interventions of the Legislator have the purpose of supporting the growth of the Italian crowdfunding market, reducing the illiquidity risk of those kind of investments. Furthermore, both the *intermediary registration* and the development of a prototype of secondary market seem going towards a different idea of equity crowdfunding platform. The portal that shall be taken as a point of reference is the British Seedrs, which proposes to their crowdfunders similar options compared to those acknowledged by the Italian Legislator. Indeed, as mentioned in the previous chapter, the British platform offers the possibility to adhere to its "*Nominee Structure*" system; moreover, Seedrs has developed in 2017 a kind of secondary market which allows the circulation of the shares that are detained according to the trustee structure developed. Those shares have a unique *formal owner*, Seedrs itself, which is in charge of taking care of all the changes in the substantial ownerships.

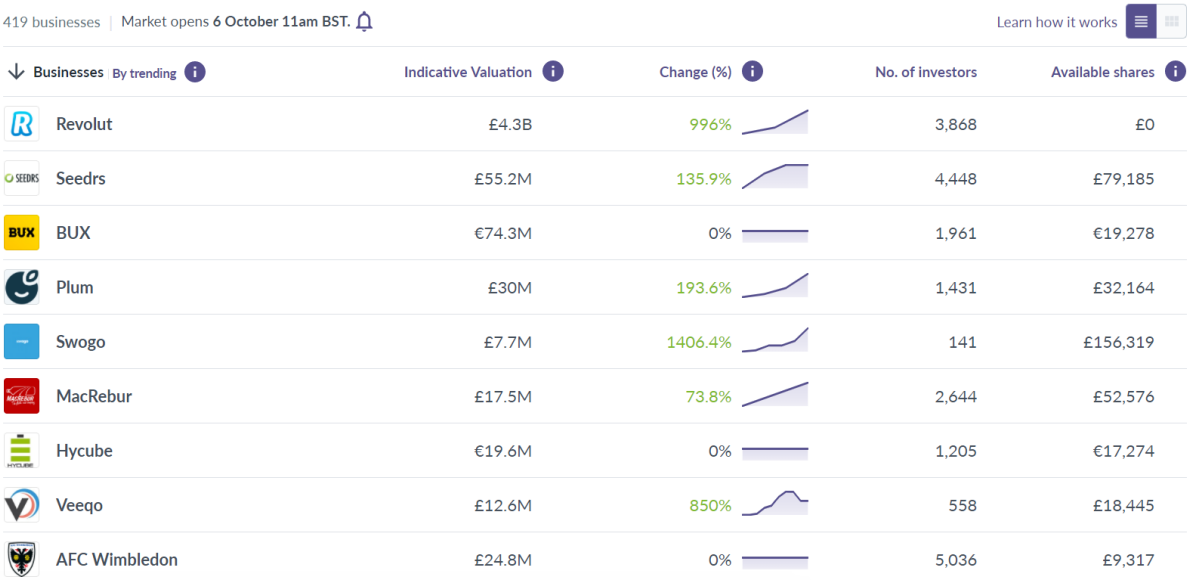
Therefore, several analogies seem to arise when comparing the regulatory approach of the Italian Legislator and the features of one of the most important crowdfunding platform in the world. It is true that both models are characterized by the presence of a single *formal owner* on behalf of the *substantial owners* that purchased the shares on the platform. However, relevant dissimilarities have to be carefully taken into consideration: indeed, according to the Italian "*intermediary registration*", when investors are going to transfer the shares to their counterparties, they have to communicate the decision to the intermediary; the transaction becomes effective towards the enterprise when the latter records on its special registrar the change in the *substantial ownership*. On the contrary, the transfer mechanism applied by Seedrs will require the execution of a formal *Transfer of Beneficial Ownership*[243], after which the price is going to be paid and the new *substantial ownership* will be recorded according to the Seedrs' *Nominee Structure*. Therefore, the procedure recently introduced by the Italian Legislator makes the share transfer quicker and more straightforward.

Another important difference concerns the role played by the intermediaries: the Italian Legislator attributes them only a formal role, which simply consists in recording the transfers occurred among the members that adhered to the "*intermediary registration*".

[243] The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, Part 5, Beneficial Ownership Information, 2017.

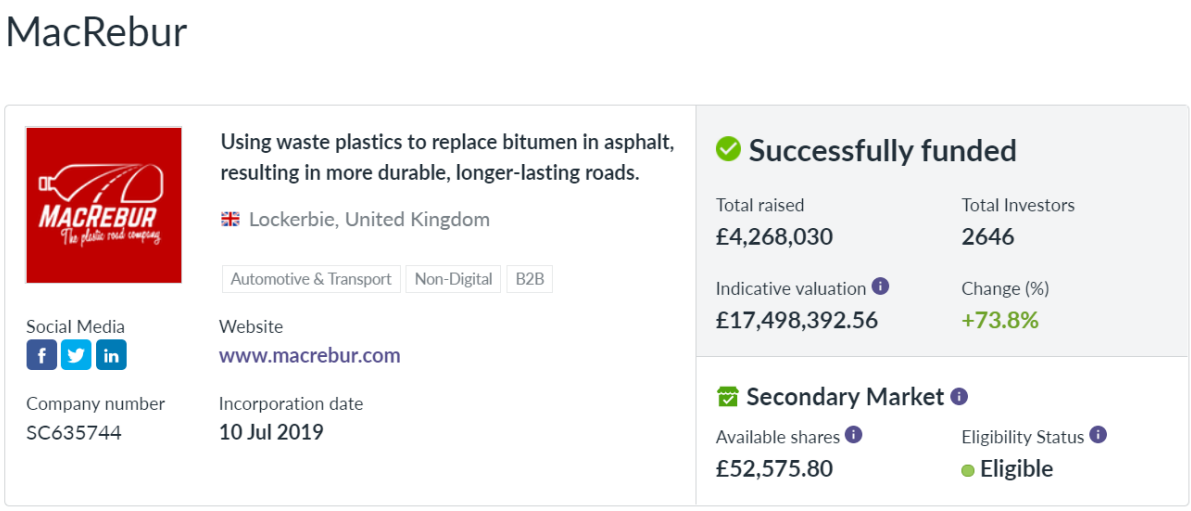
On the contrary, according to the *Nominee Structure*, the intermediary (Seedrs itself) will exercise the social rights eventually attached to the shares on behalf of the investors that purchased them. As observed by some scholars, the development of a corporate structure in which voting rights are exercised by competent and experienced intermediaries is correlated with better financial performances of the enterprises that resort to it[244]. However, differently from the British platform, the Italian intermediary cannot exercise any social right in the interests of the *substantial owners*; indeed, the former shall issue a specific certification in order to legitimate the latter towards the enterprise in the exercise of those rights.

Lastly, some similarities exist with regards to the structure of the secondary market. Concerning Seedrs Secondary Market, "*in no circumstances [the British platform] will execute a trade automatically following a request to buy or to sell*"[245]; therefore, the Market developed by Seedrs does not represent a "*Multilateral Trade Facilities*" as defined by the MIFID Regulation[246]. The Italian "*Bacheca Elettronica*" follows similar principles, since it does not allow instantaneous trades but, on the contrary, it permits potential counterparties to easily get in touch.



Layout of "Secondary Market" – Seedrs

[244] WALTHOFF-BORM, VANACKER, COLLEWAERT. Equity Crowdfunding, Shareholder Structures, and Firm Performance, Corporate Governance: An International Review, Vol. 26, Issue 5, 2018, p. 325.
[245] www.seedrs.com/pages/secondary-market-terms
[246] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0039-20060428&from=EN



Structure of an offering – Seedrs Secondary Market

6. Possible future interventions of the Italian Legislator

The path undertaken by the Italian Legislator seems following the line traced by one of the most developed equity crowdfunding market in the world, the British one. Italy is in strong delay compared to the British equity crowdfunding market. Data are unequivocal: in 2018 UK shows an overall equity crowdfunding volume of £271.3 million[247], while in Italy the capital raised through online platforms was equal to €36.39 million[248]. Another important element is related to the dimension of the secondary market, just designed in Italy and already well-developed in UK. However, retracing the features of the well-known British platform could represent an interesting point; in this case, the purpose of the Italian Legislator would be encouraging the growth of a market still less developed and increasing the investment propensity towards those kind of instruments.

Currently, investments on crowdfunding platforms could be interpreted as a risky but interesting diversification opportunity if compared to "classic" financial investments, such as quoted stocks or bonds. Besides the technical and the juridical characteristics of the instruments (and the expectations in terms of risk and return) there is another important difference between them that has to be assessed.

[247] https://growthinvest.com/wp-content/uploads/2019/07/Beauhurst-Report-Equity-Investment-in-the-UK-2018-7.pdf
[248] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 22.

Among the 269 equity crowdfunding offerings successfully completed in Italy from 2019 to the beginning of 2020, it emerged that natural persons realized 18.021 purchases overall. The number of backers, 10.668, is clearly lower compared to the total purchases performed, since a natural person could have realized more than a single capital subscription. Nevertheless, most of natural persons (77,63%) invested only in a single issuer[249]. Generally, when households take the decision of investing their savings on financial markets, they decide to entrust their money to an experienced advisor, which will invest in certain instruments according to their risk preferences. Therefore, the money will be managed by an intermediary which often requires a fee or a percentage on the profits achieved in exchange for the services offered; lastly, households usually will not have any active role in the investment dynamic.

Equity crowdfunding investments are based on a different logic: here, crowdfunders directly choose the firm in which investing. During the investment process, they will autonomously analyse all the available information about the issuers before investing into them. Then, after comparing different ideas and entrepreneurs among each other, they will purchase the shares of the preferred company on the platform. However, this is only half of the story. Indeed, after that the purchase is completed, crowdfunders need to actively take care of the investment made: as a consequence, they will have to exercise also the social rights, if attached to the shares themselves. The introduction of the "*intermediary registration*" by the Italian Legislator simplified the shares' transfer procedures and aimed at nurturing the development of a platform model characterized by a higher degree of intermediation. The next step could be that of intermediating not only the share circulation, but also the exercise of the social rights (in particular the voting rights), in line to what already granted by the British platform Seedrs. At the moment, the possibility is explicitly excluded by the Italian Legislator.

In Italy, considering the sample of the equity crowdfunding offerings arranged last year, it emerged that 83% of the shares issued had voting rights attached[250]. In particular, 11% consists in ordinary shares, while the remaining percentage concerns shares which attribute or not voting rights to the funders on the basis of the capital amount that they are going to invest. As mentioned before, the issuer arranges a certain investment threshold: if overtaken, investors will get class A shares; if the investment amount is lower, they will get class B shares, usually without voting rights attached.

[249] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 35.
[250] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 21.

The average amount invested by Italian crowdfunders is equal to €3.222[251]; however, more than a half of the sample (54,7%) invested an amount lower than €1.000[252]. Italian statistics do not exist yet but, with regards to the British equity crowdfunding campaigns, studies showed that the average threshold applied by an issuer is £9.000[253]. Assuming that the data are reliable, on average the small Italian crowdfunder will not get shares with voting rights attached after its crowdfunding investment. As a consequence, introducing a rule stating that the voting rights are going to be exercised by an experienced intermediary will have only a marginal impact on the small crowdfunder position.

However, as mentioned before, the application of a high threshold for the voting rights delivery leads to a more significant separation between control and ownership, which in turn negatively influences the probability of success of the crowdfunding offerings and the possibility to easily proceed with further financing rounds[254].

As a consequence, an eventual intervention of the Italian Legislator aimed at increasing the degree of intermediation shall be implemented together with a policy which incentives the application of lower thresholds for the voting rights delivery. The bundle of policies could produce negative consequences from the entrepreneur-side: in particular, lowering the thresholds in a context in which most of voting rights delivered to small investors are pooled into the hands of a single *formal owner* could weaken the position of the founders. Indeed, the percentage of voting rights detained by the latter will decrease, *ceteris paribus.* However, it is important underlying that the average capital share offered on Italian crowdfunding platforms was equal to 11,3% in 2020 (with a median value of 5,1%)[255]. Therefore, even if the increasingly degree of intermediation seems weakening their position, the real impact on the entrepreneur-side could be considered as marginal. The founders will maintain the control of the society, since they will keep the absolute majority after the fundraising process[256].

[251] Data referred only to natural persons.
[252] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 34.
[253] CUMMING, MEOLI, VISMARA. Investors' choices between cash and voting rights: Evidence from dual-class equity crowdfunding, Research Policy, Elsevier, vol. 48(8), 2019, p. 5.
[254] CUMMING, MEOLI, VISMARA. Investors' choices between cash and voting rights: Evidence from dual-class equity crowdfunding, Research Policy, Elsevier, vol. 48(8), 2019, p. 14.
[255] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 21.
[256] OSSERVATORI ENTREPRENEURSHIP & FINANCE. 5° Report italiano sul CrowdInvesting, Politecnico di Milano, School of Management, 2020, p. 20.

Therefore, the eventual promulgation of such provisions will not revolutionize the decision-making process; however, the entrance in the corporate structure of a *formal owner* which operates on behalf of small investors that purchased the shares on the platform could have several positive results. First of all, there will be a reduction in the risk of taking decisions which could unfairly damage the position of small investors. Indeed, the latter will be represented in the assembly by experienced intermediaries, able to understand the corporate dynamics and to intervene in their interest. Furthermore, a clear and transparent communication channel between investors and intermediaries and the building of a relationship of trust between them could incentive even more crowdfunding investments.

7. Blockchain technology and share circulation

With regards to the shares issued by enterprises which raise capital through crowdfunding platforms, the recent interventions of the Italian Legislator seem going towards an increasingly degree of intermediation: the introduction of an alternative system of share circulation represents the most important example of that.

However, it is important assessing also a tendency which goes in the opposite direction compared to that illustrated across the previous chapters. The recent informatic developments of the *Blockchain* technology offer interesting sparks in terms of disintermediation and decentralization. *Blockchain* represents the most important example of Distributed Ledger Technology (DLT): the purpose is managing transactions through the creation of a database built on *peer-to-peer* systems[257]. The logic is significantly different compared to that of the traditional centralized information systems; however, *Blockchain* technology is still able to assure the reliability and the immutability of the data recorded[258].

The main application field of the technology is represented by the financial sector; nevertheless, it was observed an increasingly diffusion also on other industries, such as automotive, energetic and agri-food[259].

[257] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 104.
[258] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 104.
[259] PAROLA, MERATI, GAVOTTI. Blockchain e smart contract: questioni giuridiche aperte, I Contratti, Fasc. 6, 2018, p. 682.

In the business field, the development of *Blockchain* technologies has allowed the born of a new phenomenon, the Initial Coin Offerings (ICOs): they represent raising-capital mechanisms that clearly recall the well-known Initial Public Offerings (IPOs) adopted by the enterprises that are going to be quoted on regulated markets. ICOs could be interpreted as initiatives based on the *Blockchain* technology which share the same underlying logic, even if relevant differences remain. In particular, both consist in a kind of raising-capital process: however, differently from IPOs, investors in ICOs will not get any share of enterprises in exchange for their capital injections; instead, they are going to receive "*tokens*". *Tokens* could be interpreted as instruments which are representative of the investments made and that could attribute to the owners different kind of rights: the latter could be related both to services or goods to be delivered in the future[260] or to rights that could be exercised against the issuer[261]. Uncertainties arise about the possibility of considering *tokens* as potential substitutes of participating shares of s.r.l. companies. If allowed, there could follow several advantages in terms of transfer procedures: in particular, share circulation could take place on a more liquid secondary market compared to the traditional one[262].

Tokens could be classified into three main categories: currency, utility and investment *tokens*. Regarding the financial markets regulation, the latter shall be included within the category of "*financial products*", since they are a financial investment from which the investor expects a certain economic return; furthermore, even if they could be included also within the sub-category of "*financial instruments*" (Attachment 1, Section C TUF), CONSOB explicitly excludes this classification, stating that it shall be created a proper category[263]. Among the investment *tokens*, it is important focusing on the security *tokens*, which attribute to the owners economic and administrative rights against the issuer[264].

Those instruments, which are the most comparable category to the s.r.l. participating shares, are offered to the public through Security Token Offerings (STOs). They could represent a relevant technical breakthrough since the system was assessed as both safer and quicker in terms of circulation compared to the centralized ones[265].

[260] MURINO. Il conferimento di token e di criptovalute nelle S.r.l., Le Società, Vol. 38, Fasc. 1, 2019, p. 35.
[261] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 102.
[262] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020. p. 285.
[263] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020. p. 287.
[264] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 102.
[265] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 109.

As mentioned before, s.r.l. membership shares' circulation shall be performed in compliance to what established by Article 2470 of the Civil Code. Therefore, it is required an official act subscribed by a notary in order to make effective the transaction. The only derogation consists in Article 100-*ter* of the TUF, according to which it could be sufficient an annotation on a special registrar kept by the intermediary if the member adhered to the *intermediary registration*.

Some authors excluded the possibility of utilizing *tokens* as substitutes of s.r.l. shares after assessing both s.r.l. representation and circulation rules[266]. The vision does not change even after considering the high degree of freedom of the intermediaries about the holding of the special registrar mentioned in Article 100-*ter* of the TUF. It was supposed that such freedom could also result into a scenario in which intermediaries attribute to every *substantial owner tokens* representative of the participating shares acquired on the crowdfunding platform. In this scenario, a share transfer becomes effective when the *token* is transferred to the new acquirer. After the transfer of the *token*, according to this interpretation, the transaction would be recorded by the intermediary on its special registrar. However, even if technically possible, this kind of transfer was judged as unlawful[267].

On the contrary, as stated by different scholars, investments *tokens* could be representative of s.r.l. shares since the Italian Legislator permits both s.r.l. shares standardization and their transferability on secondary markets[268]. However, according to the international practice, even if *tokens* could be representative of economic and/or administrative rights, the owners do not become members of the company: indeed, their legal position can be equalized to that of associates in a "*partnership agreement*" ("*contratto di associazione in partecipazione*", as established by Article 2549, Subsection 1, of the Civil Code) [269].

Finally, doubts arise about the possibility that the intermediary (or another subjects, such as the issuer) could underwrite the shares issued on behalf of the purchasers, attributing them *tokens* representative of participating shares.

[266] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 119.
[267] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 121.
[268] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 285.
[269] SANTORO. Tentativi di sviluppo di un mercato secondario delle quote di società a responsabilità limitata, in La società a responsabilità limitata: un modello transtipico alla prova del Codice della Crisi, 2020, p. 286.

The idea is that those *tokens* could legitimate the owners in the exercise of the social rights and could be used to execute transfers. However, also this possibility shall be excluded, since the self-registration of issuers' shares is forbidden, unless otherwise established by the Legislator[270].

[270] DE LUCA. Documentazione crittografica e circolazione della ricchezza assente, Rivista di Diritto Civile, Vol. 66, Fasc.1, 2020, p. 122.

CONCLUSIONS

Crowdfunding was defined by some scholars as an "*open call, essentially through the Internet, for the provision of financial resources either in form of donation or in exchange for some form of reward and/or voting rights in order to support initiatives for specific purposes*". The definition provided highlights the existence of different types of fundraising processes, which differ according to what funders could get in exchange for their investment on online platforms. One of them is the equity-based crowdfunding, introduced in Italy through an organic regulatory framework (first case in Europe) after the emanation of *D.L.* 179/2012. The framework has undergone several significant changes during the last decade, among which: i) the extension of the potential beneficiaries to every SME established as s.r.l.; ii) a new share transfer system, the *intermediary registration*; iii) the arrangement of a prototype of secondary market, called "*Bacheche Elettroniche*". Those interventions have the purpose of stimulating the Italian equity crowdfunding market.

Moreover, it seems that the Italian Legislator is going to promote a crowdfunding platform model similar to that arranged by the British platform Seedrs. In particular, the Italian "*Bachecha Elettronica*" has significant structural analogies with the *Secondary Market* developed by the British platform. In addition, also the *intermediary registration* and the Seedrs's *Nominee Structure* have some similarities, such as the presence of a single *formal owner* on behalf of a multitude of *substantial owners*. However, regarding the latter comparison, there is an important difference: the subject in charge of exercising the voting rights associated with the participating shares. Concerning the Italian regulation, those rights will be exercised by the *substantial owners*, which are legitimated by a specific certification issued by the intermediary; regarding the *Nominee Structure*, voting rights will be exercised by the platform itself on behalf of the *substantial owners*.

Assuming Seedrs as the point of reference of the Italian Legislator, it could be that future interventions would go towards the legitimization of the intermediary in exercising those kind of rights. Such possibility, at the moment explicitly excluded by the Legislator, would be coherent with the purpose of supporting the equity crowdfunding market.

Indeed, pooled voting rights schemes (such as the *Nominee Structure*) seem performing better compared to the other models, since companies that resort to the former exhibit greater financial results in the years following the issuance.

However, there is a further element that has to be assessed: when classes of shares with voting rights attached are going to be issued on equity crowdfunding platforms, it is often established a certain investment threshold. If the amount invested by the funders is higher compared to it, the shares purchased will have voting rights attached (class A shares); otherwise, those shares do not attribute to the owners such administrative rights (class B shares).

Data show that the amount invested by small funders is on average lower compared to the investment threshold: therefore, even if provisions which allow intermediaries to exercise voting rights on their behalf were introduced, the impact would be only marginal. As a consequence, an eventual intervention of the Legislator in this sense shall be followed by a policy aimed at incentivizing the application of lower investment thresholds. In this regards, other academic studies confirm that the application of a high threshold for the voting rights delivery leads to a more significant separation between control and ownership; which in turn negatively influences the probability of success of the crowdfunding offering, the possibility to easily proceed with further financing rounds and, more generally, the long-run prospects of the venture.

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