1974 - 2024

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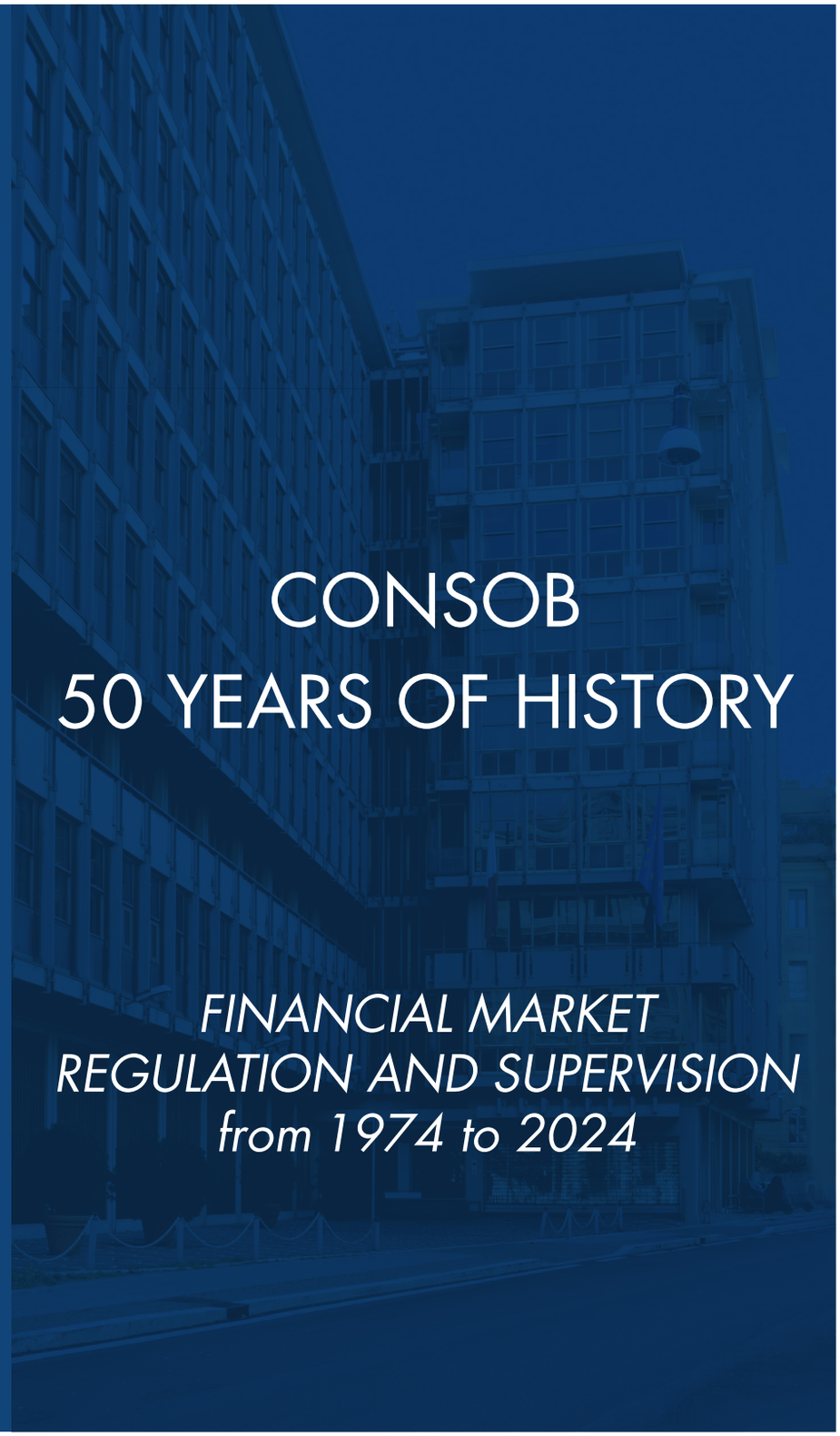
CONSOB

COMMISSIONE NAZIONALE
PER LE SOCIETÀ E LA BORSA



CONSOB
50 YEARS OF HISTORY

FINANCIAL MARKET
REGULATION AND SUPERVISION
from 1974 to 2024

The celebration of the 50th anniversary of CONSOB's birth took place under the direction of a Committee composed of Acting Chairman Paolo Savona, Past Presidents Lamberto Cardia, Giuseppe Vegas and Mario Nava, and Commissioners Chiara Mosca, Carlo Comporti, Gabriella Alemanno and Federico Cornelli.

The scientific direction of the volume was carried out by Guido Ferrarini, Professor Emeritus of the University of Genoa, with the collaboration of Davide Trasciatti, lawyer and researcher affiliated with CEDIF (Centre for Law and Finance) of the University of Genoa.

This book is the result of a choral work in which all CONSOB Operational Units participated, coordinated by the Secretary General Maria Antonietta Scopelliti who, after leaving office, continued to follow its implementation with a spirit of dedication. The English version of this book was coordinated by Professor Filippo Annunziata, Bocconi University, and Ca' Foscari University Venice, with the support of Thomaz Braga de Arruda and CONSOB Research Department.*

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POLIGRAFICO E ZECCA DELLO STATO ITALIANO

The images of the interior of CONSOB's Milan headquarters are taken from the volume IL RESTAURO DI PALAZZO CARMAGNOLA A MILANO, edited by Marco Albini, Silvana Editore, 2008.
The image of the exterior of CONSOB's Rome headquarters is by V. Tenore.

*All the Italian quotations included in the body of the text have been translated.

CONSOB 50 YEARS OF HISTORY

FINANCIAL MARKET REGULATION AND SUPERVISION
FROM 1974 TO 2024

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The headquarters of the CONSOB in Rome

Chapter 1

Introduction

*by Guido Ferrarini**

The purpose of this chapter is to provide a concise review of the first 50 years of activity of the Commissione Nazionale per le Società e la Borsa (hereinafter, "CONSOB", the "Commission" or the "Authority"), focusing initially on its general aspects and then delving into its essential features. Subsequent chapters will instead offer an analysis of each of the five decades of the Commission's operations in greater detail. This distinction aims to highlight the defining characteristics of each period and to situate the Commission within its evolving regulatory and market context. The examination of these five decades follows a structured framework, dividing the observed phenomena into three sections: the legislative and regulatory evolution; CONSOB's organisation and activity during each period; and the performance and development of the capital markets. The approach underscores the natural interconnections among these areas, revealing how they have been influencing one another over time through continuous cause-and-effect dynamics. From this 50-year perspective, a picture of remarkable dynamism emerges-one that continues to manifest in different yet equally significant ways today.

1. Central themes and evolutionary lines

1.1 Investor protection and market development

At the time of CONSOB's establishment, the Italian capital markets was small relative to the needs of the national economy, as will be discussed in Chapter 2. The theory of law and finance attributes this underdevelopment to poor investor protection[1], a characteristic of the Italian system and other civil law systems, which, according to this theory, are less conducive than common law systems to creating the conditions for the development of capital markets. This perspective is compelling and has gained significant traction in academic circles, as well as influencing financial sector legal reforms in several countries, including Italy, during

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[1] On this theory, see La Porta, F. Lopez-de-Silanes et al (1998); *id* (1999).

the final decade of the 20th century[2]. However, this thesis may be overly ambitious in asserting not only a clear correlation between law and financial development, but also a causal relationship. It suggests that investor protection – in the terms that have long defined American securities regulation – is essential for capital markets to emerge and develop.

In this regard, others have argued that the chain of cause and effect often goes in the opposite direction, meaning that legal developments tend in part to follow rather than precede economic changes[3]. The legal and financial history of the United States shows that capital markets emerged before investor protection legislation, rather than following it. In fact, a constituency of shareholders dispersed among the public was first formed, then demanded government protection through company law and financial market law, thereby becoming a driving force for legislative reforms. Similarly, in Italy, as we shall see, capital markets law, although originating only in the 1970s with the establishment of the CONSOB, was further developed in the following decades when capital markets began to grow again, also as a result of the liberalisation of international stock capital flows and the integration of European economies.

Economic policy seems to offer a convincing explanation for financial development, which is not necessarily at odds with the explanation of law and finance[4]. Indeed, from such a perspective, a negative relationship clearly emerges in Italy between the development of the capital markets and state ownership of many large companies in the second half of the last century. A study by A. Aganin and P. Volpin notes that the stagnation of the capital markets lasted until 1980 and only in 1985 the number of listed Italian companies exceeded the number recorded in 1930: «*while the capital markets stagnated, the role of the government grew. From 1950 to 1980, between 15 and 20 per cent of the listed companies were controlled by the* state»[5]. The situation subsequently changed: the number of listed companies increased, albeit remaining relatively low, while the share of state-owned companies decreased. This was the result of privatisations carried out mainly in the 1990s, when the government was intensively engaged in promoting the capital markets[6].

The political theory of corporate governance also sheds light on some key aspects of our economic development. According to Mark Roe, «*the strongest social democracies pressed companies to favour employees over invested capital, but shareholders resisted them and the best way to resist was often to create or maintain concentrated and often* private *ownership*»[7]. Although Italy in the

[2] See Ferrarini (2018).
[3] Coffee (2001), p. 7.
[4] Pagano and Volpin (2001), p. 2.
[5] See A. Aganin and Volpin (2003), p.2; see also Barca (1997); Siciliano (2001).
[6] *Ibid.* See also Freni (2021).
[7] See Roe (2003), pages 162 et seq.

second half of the last century only partly reflected the model of social democracy, stakeholder pressures were strong and could negatively impact the interests of shareholders in large companies, especially those with diffuse ownership. This explains not only the small number of Italian companies with diffuse ownership, but also the limited growth of our capital markets. It was only in the 1990s that anti-market ideologies softened, and the economy was liberalised enough to implement measures aimed at promoting the development of capital markets, public listings, and the diffusion of share ownership[8].

As we will see throughout this book, and partly in the current chapter, no theory can, on its own, fully explain the correlation between legislative reforms, technological progress and market development in the half-century since CONSOB was established. In fact, the company reform of 1974 was indeed important, as it introduced a supervisory system in Italy to protect investors, allowing for a greater development of the capital markets. Nonetheless, also the reorganisation of the stock exchange and the introduction of the telematic trading system made a decisive contribution to the development of a modern market, as did the privatisations of large state enterprises and of the stock exchange itself, which took place in the 1990s. The creation of an Italian financial market law, however, required more than twenty years of reforms, often driven by European legislation, culminating in the Consolidated Law on Finance of 1998 (*Testo Unico della Finanza*), which was intended both to bring order to the subject and to facilitate privatisations within a context of rules and supervision of private finance. The different market crises and financial scandals that have occurred until recently have prompted further reforms, which, in turn, have led to a strengthening of the supervisory structures and thus of CONSOB as an institution, increasingly integrated into the broader context of the EU's regulatory framework.

In the remainder of this section, we will highlight some key features of this development. First, we will see how CONSOB came into being as a result of a 1974 law, the origins of which can be traced back to the 1950s. We will then see how the Italian capital markets was profoundly reorganised in the 1980s, largely due to the initiative of CONSOB, which at that time still possessed organisational and market management powers. We shall further analyse how the legislative reforms of the capital markets developed in the twenty years following CONSOB's establishment, culminating in their systematic composition in the Consolidated Law on Finance. We shall also shed light on how the crises that followed the adoption of this fundamental text for our financial markets called for further reforms, including those related to company law, which the Consolidated Law on Finance had already conceptually prepared. We will close this first section of the chapter with a summary of the parallel and growing role of European law in regulating both domestic and international capital markets, in which Italy has been actively involved for years.

[8] Cf. Ferrarini (2005).

LEGGI E DECRETI

IL PRESIDENTE DELLA REPUBBLICA

Art. 1.

Art. 2.

Art. 3.

1.2 The origins of CONSOB

The Commissione Nazionale per le Società e la Borsa was established by Decree-Law No. 95 of 8 April 1974[9], later converted into Law No. 216 of 7 June 1974[10], and represented «*a totally new body for our legal system, but one that had already been extensively tested in other countries, where institutions with similar* tasks *had been successfully operating for some time*»[11]. For example, the Securities and Exchange Commission (hereinafter, the "SEC") in the United States of America, with its then forty-year-long activity, was set up in 1934 to correct the serious dysfunctions in capital markets[12] dramatically highlighted by the world financial crisis of 1929. The SEC had also contributed significantly to the unprecedented development to the United States capital markets[13]. With the crisis in the financial sector[14] and the increasing volume of savings, the

[9] The text of Decree-Law No. 95 of 8 April 1974 – Dispositions Relating to the Securities Market and the Tax Treatment of Equity Securities (G.U., General Series, 9 April 1974, No. 94), is also published in *Riv. soc.*, 1974, pages 342-349.

[10] Landi (1975), pages 1 et seq., and footnote 1 therein, where the author cites Camera dei deputati, VI legislatura, atto n. 2903-A: Relazione della VI Commissione permanente (Finanze e Tesoro) sul disegno di legge per la conversione in legge del d.l. 8 aprile 1974, n. 95 (relatore Giuseppe La Loggia), II, 1.

[11] See *La Malfa's project for stock exchange reform, in Riv. soc.*, 1974, pages 371-372.

[12] These dysfunctions were effectively reported in the 1934 Report on the functioning of *Wall Street*, commissioned by the *Committee on Banking & Currency* of the US Congress, recently reprinted in Italy, promoted by the Isonzo Club: Us Senate Committee on Banking & Currency, (1934).

[13] The SEC, even at the time, represented a model of a federal agency (regulatory agency) with broad administrative and regulatory powers, independent of the government. That model, to a certain extent, also spread to continental Europe: in France, with the *autorités administratives indépendantes*, which included the *Commision des opèrations de bourse* (C.O.B.), established by order of 28 September 1967; in Belgium, with the *Commission bancaire* established by Law on 10 June 1964. Both institutions came into being at a time in history when there was a greater need for corporate financing on the capital markets. On the process that led to the creation of these authorities, see Lamfalussy (1972), pages 51 et seq.

[14] See in this sense the Parliamentary Acts, *Report of the VI Permanent Commission (Finance and Treasury) on the bill for the conversion into law of Law Decree 8 April 1974, No. 95*, where it is stated that, with the institution of the Commissione Nazionale per le Società e la Borsa, the aim was to «*restore savers' confidence in share investments*» and to «*propose a solution to some of the most felt needs of the securities market*» with the aim of «*reactivating the flow of investments in productive sectors particularly tried by the current economic situation*» and «*ensuring adequate market information and exercising effective supervision over listed companies, in order to guarantee the best functioning of the company's organisational structure with the aim of protecting the public saver*» and, lastly, to «*standardise Italian legislation on controls on companies and stock exchange activities with that of the most economically advanced countries*». On the crisis and the problems of the stock market, cf. the proceedings of the round table of a conference held in Milan, on 4 and 5 April 1975, at the State University, on *Current Problems of the Stock Exchange*, in *Giur. comm.*, No. 5, 1975, I, pages 630 et seq., and No. 6, 1975, I, pages 825 et seq.

introduction of rules and controls on the transparency and correctness of conduct in the financial market became imperative. The aim was to implement Article 47, paragraph 2, of the Constitution concerning the protection of savings, with specific reference to «*direct and indirect equity investment in the country's major production complexes*».

The beginning of reforms in this field can be traced back to 1955, when, alongside the magazine *Il Mondo*, directed by Mario Pannunzio, a so-called club of "Friends of the World" was formed. In March of that year, it held its first conference, entitled "The Fight Against Monopolies". As Giuseppe Acerbi reminds us, at that conference, «*the publicist orientation of Leopoldo Piccardi and Ernesto Rossi prevailed, advocating for the nationalisation of "monopolistic" industries, starting with the electricity industry. Conversely, Tullio Ascarelli supported a privatist line of reform in corporate governance, focusing on key points such as the downsizing of share cross-holdings, a drastic limitation of proxies in the shareholders' meeting – excluding their hoarding by banks to improperly support directors – and the reform of the option right with the introduction of compulsory overpricing when its exclusion was justified by the company's interests. Furthermore, he proposed the introduction of an antitrust law with a special commission following the US example*»[15]. The public-oriented line of thought prevailed during the nationalisation of the electricity industry in 1962, but Ascarelli's private-oriented line ultimately proved successful in the long run[16]. As early as 1959-1961, a commission chaired by Francesco Santoro-Passarelli formulated a proposal for the reform of company law. This proposal included, among other things, the introduction of savings shares and the supervision of companies with shares listed on the stock exchange, entrusted to the Banca d'Italia, which represented «*a not insignificant step in the tormented path of reform*»[17].

Among the programmatic points of the first centre-left government, formed in 1963 and chaired by Aldo Moro, was the reform of the joint-stock company. To this end, a commission was set up under the chairmanship of Alfredo De Gregorio, which prepared a draft comprising no fewer than 130 articles and accompanied

[15] Acerbi (2016), pages 38 et seq. On the evolution of the various legislative proposals, including subsequent ones: Marchetti (2011), pages 55 et seq.; Cavazzuti (2015).

[16] See it set out in Ascarelli (1956), pages 3 et seq.

[17] Acerbi (2016). In terms of supervision, the Santoro-Passarelli Project intended to leverage existing administrative structures, proposing a unitary vision of public supervision in the area of savings protection, centred on Banca d'Italia: «*A public body should be created for the implementation of supervision, reporting to Banca d'Italia, namely to the Governor. This body should constitute a special section of the savings supervisory body, parallel to the one that already exists. That is to say, the savings supervisory body should consist of two sections: one for the supervision of credit companies, the other for the supervision of companies*», cf. *Report of the First Ministerial Commission for the Reform of the Joint Stock Company,* in *Riv. soc.*, 1964, p. 439.

by a majority report and two minority reports[18]. The project envisaged governmental supervision of listed companies by Banca d'Italia, along the lines set by the Interministerial Committee for Credit and Savings (CICR), with powers to, among other things, appoint the chairmen of the boards of statutory auditors, request information and carry out inspections, establish the technical forms of financial statements and consolidated financial statements, request the convening of shareholders' meetings to decide on liability actions, and challenge shareholders' resolutions. The De Gregorio Project was the subject of an international conference in Venice, promoted by the Rivista delle società, in which the most established specialists in the field discussed the modernisation of the shareholder regime and financial markets[19]. The project was then revised by an Interministerial Committee, but not regarding the supervisory powers of Banca d'Italia, despite some political reservations[20].

Subsequently, however, the whole subject of corporate reform lost momentum and remained dormant until the summer of 1971, when an event occurred that renewed attention to the need for reform: «*the public take-over bid of the Società Italiana per le Strade Ferrate Meridionali, known as Bastogi, the salon buono of Italian finance that was at the centre of shareholding cross-fertilisation entangling the controls of important listed companies. The offer was launched by the stormy financier Michele Sindona, no stranger to stock market manoeuvres, who would shortly afterwards become the protagonist of a serious collapse*»[21]. The dramatic impact of the Bastogi affair on public opinion was significant and gave new impetus to the spirit of reform. Shortly thereafter, a first bill was introduced in Parliament through a parliamentary initiative, albeit limited to the regulation of public offerings[22]. Subsequently, in 1972, a further parliamentary proposal, this

[18] *Ibid*, p. 40, as well as Marchetti (2011), p. 57.

[19] AA. VV. (1968), where p. 1577 reproduces *the Draft Bill concerning the reform of the regulation of commercial companies* (de Gregorio Project); see Padoa-Schioppa and Marchetti (1997), pages 139 et seq.

[20] The revised draft law is also published in *Riv. soc.*, 1966, pages 93 et seq. In particular, the allocation of the supervisory competences to Banca d'Italia was not a unanimously supported solution. In the revision of the draft, the Ministry of the Budget attempted to create consensus for the establishment of an ad hoc supervisory body appointed by the government, rather than conceived as a direct emanation of Banca d'Italia. The relative debate is given in the Accompanying Report to the new text of the draft bill on the reform of the regulation of commercial companies, in *Riv. soc.* 1967, pages 350 et seq.

[21] Acerbi (2016), p. 42, who goes on to recall: «*Two camps were formed, for and against; Sindona's bid failed due to the hostility of Governor Carli, who rightly mistrusted it, but it highlighted the backwardness of the Italian financial system and the anomalies in corporate controls*».

[22] The project, promoted by a group of Deputies and Senators belonging to the Christian Democratic Party, was presented on 3 December 1971 to the Chamber of Deputies, and is reproduced in *Riv. soc.*, 1971, pages 1176 et seq. This project, limited exclusively to the regulation of takeover bids, proposed the introduction of a permanent committee for the supervision of takeover bids, constituted at Banca d'Italia by government appointees (see Article 1).

time concerning the regulation of joint stock companies, was submitted to the Chamber of Deputies[23]. The Andreotti Government set up a Commission chaired by Cassation Councillor Dino Marchetti, which formulated an essential text for corporate reform, envisioning an autonomous supervisory Commission responsible for the oversight of joint-stock companies[24]. Under the next Government, Minister of the Treasury La Malfa presented a new draft in 1973, which included the establishment of a supervisor for listed companies – with the powers that would shortly thereafter be granted to CONSOB – and other urgent reforms[25]. La Malfa resigned in 1974, but the impulse of his project did not wane, thanks to the stimuli of Guido Carli[26]. Meanwhile, the economy had entered a financial crisis caused by the suspension of the convertibility of the dollar into gold, its depreciation in 1971, and the oil crisis following the Yom Kippur War in 1973. This crisis made it clear that it was necessary to mobilise private savings – after adopting appropriate protection measures – to finance industrial groups[27]. Consequently, a Decree-Law was adopted to set up the CONSOB (Decree-Law No. 95 of 8 April 1974).

The debate on CONSOB became particularly intense in the Senate, during the sitting of 4 June 1974, regarding the conversion of Decree-Law No. 95 of 8 April 1974, with the common objective of entrusting the administrative apparatus with the protection of the completeness and accuracy of company information[28]. At that time, attention was also paid to the position of minority shareholders, by granting them «*special*» corporate rights, intended to encourage «*family savings*» towards the capital markets[29], in exchange for a limitation on their participation in corporate

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[23] Bill No. 257 of 14 June 1972 is reproduced, together with a commentary by P. Marchetti, in *Riv. soc.*, 1972, pages 172 et seq.

[24] See *Riv. soc.*, 1973, pages 270 et seq. With regard to the nature of the supervisory body, it had been ruled out «*the task of acting as a longa manus of the public planning bodies and therefore as an instrument of public interference in the autonomy of management of listed companies. In fact, it appeared evident that the legal discipline of the particular associative device that is the joint-stock company could not be modelled on an alleged responsibility towards the national programme*», in Relazione allo schema di disegno di legge contenente norme modificative della disciplina delle società per azioni, in *Riv. soc.*, 1973, p. 291.

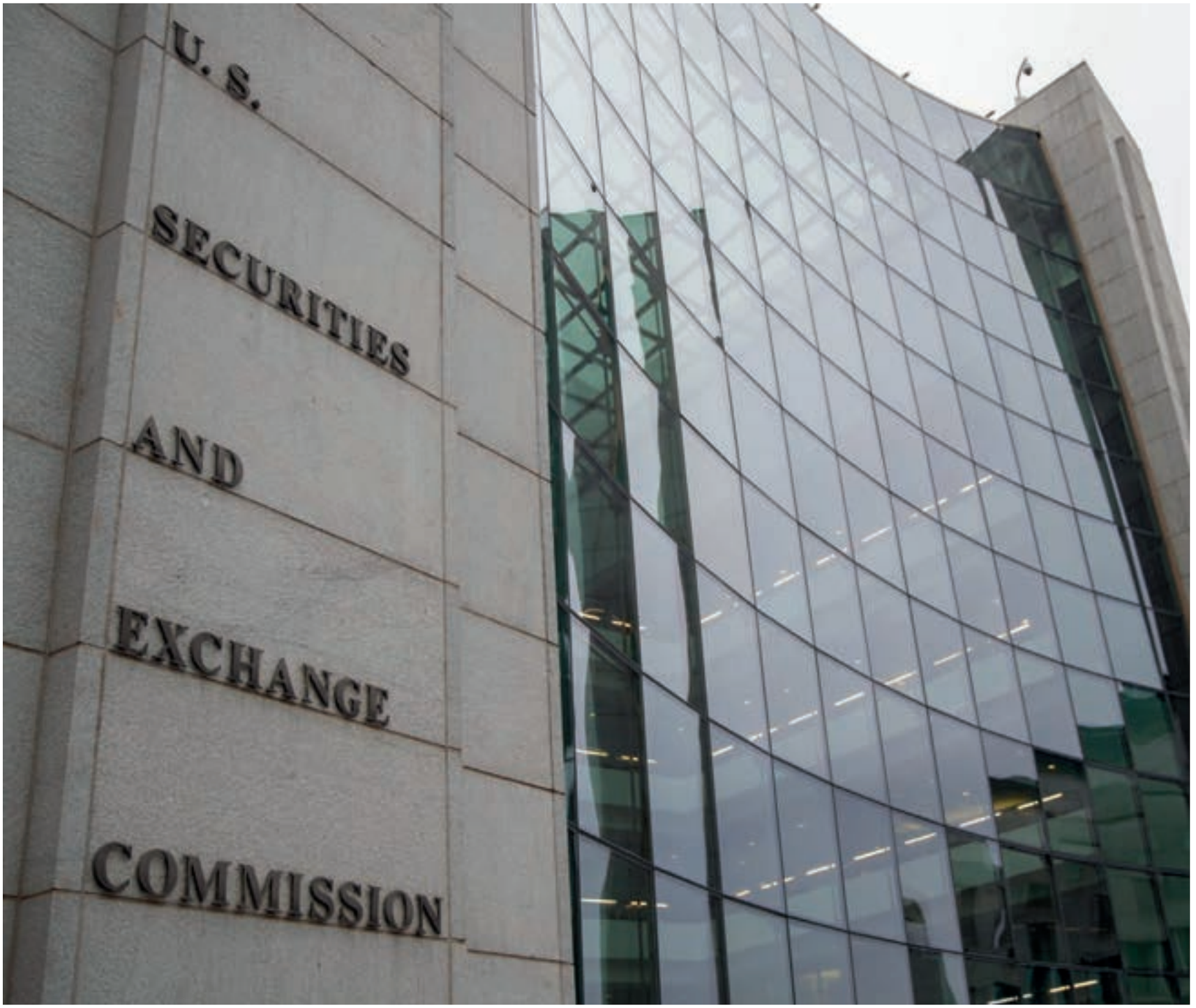
[25] See *Riv. soc.*, 1974, pages 370 et seq.

[26] The aims of which were clearly evident in his work, cf. Carli (1977).

[27] Acerbi (2016), p. 42.

[28] On the subject, see Visentini (1968), pages 19 et seq.

[29] Senate *of the Italian Republic, Debate on the bill in the Senate during the sitting of 4 June 1974 on the conversion with amendments of the Decree-Law of 8 April 1974 No. 95 on provisions relating to the securities market and the tax treatment of shares, 292 Sitting, Minutes, 5 June 1974. The rapporteur Hon. De Ponti observed that «the problem of our securities market is to encourage the inflow of family savings into the stock market and if, moreover, and not only in Italy, experience shows that small shareholders do not have time, they don't want to, sometimes they don't even have the necessary information to attend meetings, why, one wonders, pretend that all shares have the same content? The truth is that small savers see their share investment more as a*



The headquarters of the US SEC

affairs. Law No. 216 of 7 June 1974 ultimately introduced important changes to company law (the so-called mini-reform of shareholding law[30]), introducing savings shares and convertible bonds[31].

1.3 The reorganisation of the stock exchange and the telematics system

Specific attention will be devoted to CONSOB's first years of activity in the next chapter and in the following one, which addresses the so-called Italian big bang. For now, it is worth noting, among the relevant aspects of the Authority's development, the important contribution made by CONSOB – based on the market management powers vested in it at the time – to the technical reorganisation of the Italian markets. In particular, this included the publication in 1987 of a document entitled "Project Lines for a Stock Market Reform", drawn up after consultation with various categories of intermediaries[32]. The title was clearly an understatement, as the document contained a proposal for an integrated reform of the capital markets, which would be implemented in the following years with positive results[33]. In the preamble to this document, the reasons for reform were set out in terms worth mentioning, as they demonstrate a clear awareness of the problems facing Italian markets and a precise vision of the methods needed to tackle them:

«*The functioning of the Italian capital markets, which is still regulated by legislation dating back to the period 1913-1932, has gradually revealed more and more difficulties and shortcomings over time. The importance of this issue is testified to by the numerous in-depth investigations and study initiatives promoted in our country over the last decade, both in parliament and in government (…). The process of integrating the international financial markets, on the other hand, is of increasing interest to our country, also due to the growing attention paid by the Community legislature to the objective of removing the barriers that exist in the legal systems of the individual member states to the realisation of a free and effective movement of capital. Therefore, the need arises for an intervention to adjust*

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form of savings than a desire to participate; we might as well, therefore, make a clear distinction between the two types by diversifying them into command shares and savings shares. On the other hand, large companies need large capital and the collection of this cannot take place today, especially in Italy, except in the context of family savings; indeed, experience is bitterly demonstrating to us how dangerous it is to nurture investment only through debt; how much it costs in the rigidity of individual budgets and in general disaffection to the problems of the public economy not to encourage the anchoring of private savings also to venture capital».

[30] See Ferri (1974), pages 189 et seq. See also Ferri (1976).

[31] Cavazzuti (2000), p. 11. On savings shares see Spada (1974), pages 585 et seq.

[32] See it published in *Riv. soc.*, 1987, pages 1614 et seq. For a broader reflection by one of the authors of the paper, see Zadra (1988), pages 213 et seq.

[33] See Ferrarini (1998), p. 26.


SENATO DELLA REPUBBLICA

COSTITUZIONE
DELLA
REPUBBLICA ITALIANA

the structures of the Italian capital markets, not only to implement the indications provided by Parliament, but also to avoid the penalisations that, in the event of delays, would hit our economy in this perspective of greater and more effective international competitiveness. On the other hand, the restructuring interventions recently carried out in the English securities market and those announced by the French authorities point in the same direction. (...) In particular, specific attention needs to be paid above all to the use of the new telematic technologies used in these countries in order to increase the efficiency of the securities markets. The use of these new tools, in fact, allowing both an increase in the level of competitiveness among securities operators and the management of a volume of negotiations according to timeframes and methods that were unheard of just a few years ago, has contributed to raising the "quality" of the prices expressed on these markets and reducing brokerage *costs*»[34].

The document also analyses the main steps for a wider capital markets reform, which were then effectively implemented during the decade in question (see Chapter 3, Section 4.2)[35]. In particular, the following objectives were set:

a) Improving the organisational structures of the market through the creation of a "stock exchange information system" to assist trading from the order placement phase to the trading phase;
b) Introducing a continuous auction for stock exchange trading; and
c) Securing legislative approval of a "concentration" rule for all dealings in listed securities, with certain exceptions, such as transfers of control packages and blocks of securities.

1.4 Legislative reforms and the Consolidated Law on Finance

As further discussed in Chapter 4, the Consolidated Law on Finance (Legislative Decree No. 58/1998) represents the crowning achievement of turn-of-the-century legislative reforms. It arose from the need to coordinate the rules implementing the 1993 Investment Services Directive 93/22/EEC (hereinafter, the "ISD") with other provisions on financial markets and investor protection. The ISD represented an attempt to modernise financial market law while promoting minimum harmonisation of this field of legislation at the European level. It reflected the UK experience with the liberalisation of financial markets (the so-called "big bang") and was – from the UK point of view – designed to facilitate the expansion of the City's financial services throughout Europe. The Directive, however, left room for action by the Member States, such as allowing them to maintain the concentration of stock exchange transactions. Italy made use of this provision when it implemented the Directive in 1996, to protect its stock exchange markets – which had been

[34] See *Riv. soc.*, 1987, p. 1616.
[35] *Ibid,* pages 1618 et seq.

TITOLO IV

RAPPORTI POLITICI

Art. 48.

Art. 49.

Art. 50.

Art. 51.

Art. 52.

Art. 53.

Art. 54.

XIV.

XV.

XVI.

XVII.

La Costituzione, munita del sigillo dello Stato, sarà inserta nella raccolta ufficiale delle leggi e dei decreti della Repubblica.

La Costituzione dovrà essere fedelmente osservata come Legge fondamentale della Repubblica da tutti i cittadini e dagli organi dello Stato.

Data a Roma, addì 27 dicembre 1947.

reorganised during those years with the transition to the telematic trading system – and also to counter competition from the City of London, even in the trading of financial instruments issued by our listed companies[36].

Several company law provisions concerning listed companies were also included in the Consolidated Law on Finance from the outset, based on the belief that the modernisation of capital markets law should include corporate governance. These provisions were not EU-derived, although they were influenced by international experience. They focused on the board of auditors, the Italian equivalent of the audit committee, which was already regulated by British and American best practices. The delegation of powers for the Consolidated Law on Finance, however, did not contemplate a reform of boards of directors. This reform would occur later, first with the Stock Exchange's Self-Regulatory Code of 1999 and, subsequently, with the company law reform of 2003.

Takeover bids were also addressed by the Consolidated Law on Finance, covering both corporate and market aspects. Takeover bids, in fact, lie somewhere between corporate law and capital markets law. Moreover, while the EU Takeover Directive was already under discussion and appeared close to adoption, its approval would occur only six years later. The Consolidated Law on Finance drew inspiration from the proposed Directive, including the provision of a mandatory takeover bid, which the proposal had envisioned following the English model of the City Code. This approach was highly appreciated by international investors as an instrument to protect minority shareholders[37].

The Consolidated Law on Finance reflected the intention to contribute to the development of Italy's capital markets, rebalancing its weight relative to the banking system and increasing its competitiveness in the European and international context. It presented itself, therefore, as an instrument of economic policy, aimed primarily at decreasing the dependence of Italian companies on the banking system, thus rebalancing the relationship between the banking system and the capital markets in favour of the latter. This issue had already been addressed on several occasions prior to the Consolidated Law on Finance, given the stagnating nature of Italy's capital markets, at least since the 1930s, and the need to revitalise it to contribute to a better distribution of risks and sources of financing for companies.

The reforms implemented since Law 216 of 1974, which established CONSOB, were, in fact, still inadequate to enable the effective development of Italy's capital markets. Moreover, in the 1990s, there was a renewed need for such a market to support the

[36] See the contributions by M. Pagano, S. Schaefer, A. Röell and M. Onado in the book edited by Ferrarini (1998), pages 177 et seq. which describe the competitive framework of the financial markets in Europe at the turn of those years.

[37] See the well-known theorisation of Bebchuk (1994), pages 957 et seq., according to which the mandatory takeover bid discourages inefficient transfers of control, i.e. those transfers that transfer substantial private benefits of control to the acquirer, while hindering certain efficient transfers, which should instead be favoured.

Giovanni Leone, President of the Italian Republic

privatisation policies being implemented by the government, which required the support of efficient capital markets where the securities of privatised companies could first be placed and then traded. A similar need arose with regard to Italy's public debt, the size of which was already considerable at the time and required careful management by the government with the support of adequate primary and secondary market structures.

In addition to these internal objectives, the economic policy design underlying the Consolidated Law on Finance also incorporated those of the EU reforms, which are examined in Section 1.6.

1.5 Financial scandals at the turn of the century and company law reforms

The rules on corporate governance introduced by the Consolidated Law on Finance were soon put to the test by two sets of events: the financial crisis at the turn of the century and the related scandals. At the start of the 21st century, corporate scandals occurred on both sides of the Atlantic, sharing common features and exposing recurring flaws in corporate governance and financial market regulation. In the United States, Enron, although rooted in the traditional energy sector, became the paradigm of new economy companies (such as WorldCom, Computer Associates, HealthSouth, Global Crossing, and others) that first experienced a conspicuously upward trajectory in terms of reputation and stock market shares, but then collapsed spectacularly following the discovery of financial frauds. Enron and the other companies mentioned above manipulated their financial data with the complicity of auditors and analysts, concealing their true financial situation and misleading investors about the value of their shares. These acts of fraud and price manipulation contributed to a speculative bubble, which then burst, triggering the first financial crisis of this century (2000-2001).

In Europe, similar scandals occurred both in the new economy sector – affecting companies such as Lernout & Hauspie and Vivendi Universal – and in traditional sectors, with Parmalat and Royal Dutch Ahold. In these cases, too, accounting manipulations led to incorrect valuations of the issuing companies, whose crises resulted in stock collapses or even bankruptcies. The issues that emerged from these scandals, in terms of corporate governance, related especially to: (a) the role of, and the legal regime applicable to, boards of directors – particularly audit committees and independent directors – as well as managers in charge of accounting functions; (b) the role and regulation of gatekeepers – especially auditors, who had often neglected their certifying functions in favour of providing the audited companies with more lucrative consulting services; and (c) the incentive mechanisms of executives, particularly various forms of variable remuneration and – in new economy companies – stock options, which often created perverse incentives to inflate accounts to boost the value of securities.

The early years of this century were also marked by initiatives for wide-ranging reform of company law, aimed at addressing both modernisation needs – often understood as greater flexibility of company rules and more room for private autonomy – and the need for greater protection of shareholders and investors, especially in the wake of the early-century scandals. The Group of High-Level Company Law Experts, set up by the European Commission (hereinafter, the "European Commission" or "EC") and chaired by Jaap Winter, produced its 2002 *Report on A Modern Regulatory Framework for Company Law in Europe*. This report addressed some of the fundamental issues of company law (corporate governance, capital, groups, mobility of companies, etc.), suggesting a flexible approach that allowed adequate space for private autonomy. The Winter Report was followed, in 2003, by a European Commission Action Plan on Company Law, which was subsequently implemented in the following years through both European legislation and recommendations[38].

In Italy, the company law reform dates back to 2003. It addressed the need to modernise domestic legislation and, to some extent, to make the rules more flexible to enhance the competitiveness of the system, both internally and within Europe. The relationship between the reform of company law and the Consolidated Law on Finance was reciprocal: some provisions of the latter acquired general validity, becoming part of the civil code and applicable to unlisted joint-stock companies, while others were introduced into the law or amended to reflect the new features of the company reform.

Corporate governance was also a central theme in both the Action Plan and domestic legislation, which introduced, among other things, two new corporate governance models – the monistic and dualistic systems – as alternatives to the traditional one. Law No. 262/2005 on the protection of savings also significantly impacted the Consolidated Law on Finance. This law represented Italy's response to the corporate scandals of the early 21st century. It was partly inspired by the Sarbanes-Oxley Act of 2002, which had addressed the American scandals, and to a large extent reflected the European Commission's Action Plan, while adopting, in certain matters, distinctly national solutions[39].

1.6 Influence and role of European law

As early as 1966, the Segré Report on the development of a European capital market provided recommendations on the integration of capital markets and ways to enhance their contribution to the financing of investments, aiming to identify the main regulatory and fiscal obstacles to the balanced development of such a market[40]. The report focused particularly on the need to develop a European corporate disclosure regime and harmonised listing requirements. These recommendations were implemented more than ten years later with the adoption of Directive 79/279/EEC (later replaced by Directive 2001/34/EC) on the admission to listing on the stock exchange and, subsequently, Directive 80/390/EEC on the information (listing particulars) to be published for such admission. This directive has since been superseded by Regulation (EU) 2017/1129 on prospectuses.

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[38] See extensively on this topic the contributions collected in the volume edited by Ferrarini (2004).

[39] In a critical position, see Ferrarini and Giudici (2006), p. 573.

[40] This Report is available at http://aei.pitt.edu/31823/.

Ugo La Malfa, Minister of the Italian Treasury

There was then a period of reflection, which ended with the publication by the EC, in 1985, of a White Paper on the completion of the internal market[41]. This paper noted that the elimination of physical barriers had boosted intra-European trade, especially through the removal of formalities and the resulting delays at borders. However, it emphasised that eliminating technical barriers, such as regulatory and supervisory obstacles, would give the internal market its full economic and industrial dimension, enabling companies to achieve economies of scale and become more competitive. The European Commission's primary goal was to move away from the rule of unanimity in Council decisions on all aspects of financial regulation, advancing instead towards minimum coordination of rules within a framework of mutual recognition and equivalence of regimes. The approximation of national laws and regulations would henceforth be based on the concepts of minimum harmonisation, home state control, and mutual recognition.

In the years following 1985, EU financial markets grew in size and improved in efficiency, driven by the removal of barriers and other factors, such as increased competition brought about by global deregulation, the development of new technologies, and the introduction of the single currency. Notably, the integration of EU financial markets progressed more rapidly in wholesale markets than in retail markets, the latter remaining segmented within national borders (see Chapter 4, Section 4.3). Although many barriers had been removed, those that remained became more evident with the imminent introduction of the euro. In response, in 1999, the European Commission published a Financial Services Action Plan (hereinafter, the "FSAP"), which aimed to achieve a single European market. The FSAP consisted of a set of measures designed to fill gaps and remove remaining barriers by 2005, thereby providing a regulatory framework to support the integration of capital markets.

The Plan had, among others, the following objectives: (a) to enable issuers to collect capital on a pan-European basis on competitive terms (hence the adoption of the Prospectus Directive 2003/71, later superseded by the Prospectus Regulation); (b) to enable investment service providers to offer such services on a cross-border basis without facing unnecessary national barriers (hence the adoption in 2004 of MiFID I[42], replacing the 1993 ISD[43]); (c) to establish a unified legal framework to protect the integrity of markets in financial instruments (the Market Abuse Directive 2003/6 was adopted to replace the 1989 Insider Dealing Directive); and (d) to establish an adequate and well-integrated prudential framework for investment fund managers (the two UCITS

[41] See European Commission (1985).
[42] *Markets in financial instruments Directive* (Directive 2004/39/EC).
[43] *Investment Services Directive* (Directive 93/22/EEC).

Directives[44] 2001/78/EC and 2001/108/EC were adopted to amend the previous ones by liberalising the types of assets in which funds could invest).

However, the European system of capital markets regulation also required action on the rule-making structure to accelerate progress towards a single market for financial services. To this end, the Ecofin Council set up a Committee of independent experts, chaired by Alexandre Lamfalussy and including the then-President of CONSOB, Luigi Spaventa. The Committee was tasked with «*focusing its discussion on the practical arrangements for the implementation of EU rules concerning the areas identified by the Action Plan and (...)* to *propose various ways to adjust the practice of regulation and cooperation between regulators in response to* current *developments*»[45]. The final text of the Lamfalussy Report was approved by the European Council in Stockholm in March 2001.

The Committee's recommendations focused on the proposal of a four-level European regulatory structure: (i) Level I, comprising overarching principles adopted at the proposal of the Commission through co-decision by the Council and the European Parliament; (ii) Level II, comprising rules adopted by the EC to implement Level I Directives and Regulations, with the assistance of two committees: the Securities Committee (with regulatory and advisory powers) and the Committee of European Securities Regulators (hereinafter, the "CESR"), which had advisory tasks; (iii) Level III, consisting of common interpretations and guidelines resulting from cooperation between national regulators within CESR; and (iv) Level IV, focusing on strengthening the enforcement of European rules.

This proposal was accepted by the European Commission and led to the launch of the so-called Lamfalussy architecture for financial regulation, later extended to the banking and insurance sectors. With this architecture, the process of legislating at the EU level was accelerated and became more technical, supported by the advice of CESR (in which CONSOB also participated).

The great financial crisis of 2008 revealed further weaknesses, particularly in the EU's financial sector supervisory structure, which remained fragmented within national borders despite considerable progress in financial market integration and the growing importance of cross-border institutions. The convergence achieved by the Level III Committees of the Lamfalussy architecture proved insufficient in addressing the challenges exposed by the financial crisis. As a result, a new high-level group was appointed by the Commission, chaired by Jacques de Larosière, with the task of formulating proposals to strengthen supervisory mechanisms across all financial sectors, aiming to create a more efficient, integrated, and sustainable financial supervision system.

The de Larosière Report recommended, in particular, the establishment of a system of macro-prudential supervision. On the micro-prudential level, it proposed creating a European System of Financial Supervisors (hereinafter, "ESFS"), envisioned

[44] *Undertakings for the Collective Investment in Transferable Securities.*
[45] See Lamfalussy Committee (2001), p. 99.

Guido Carli, Governor of the Banca d'Italia, with Mario Draghi

Emilio Colombo, Minister of the Italian Treasury

as an integrated network of supervisory bodies operating within an enhanced version of the Level III Committees (the so-called "European Supervisory Authorities" or "ESAs"). Under this system, formally adopted by the EU in November 2010, the European Securities Markets Authority (hereinafter, "ESMA") was established (see Chapter 5, Section 2.2). The home Member State supervisor would remain the first point of contact for the supervised firm, while the European Authority would coordinate the application of common high-level supervisory standards, ensure close cooperation with other supervisors, and protect the interests of host Member State supervisors.

Some of the problems highlighted by the financial crisis were due to the fact that small and medium-sized enterprises (hereinafter, "SMEs") in the EU typically had limited access to finance, relying predominantly on bank loans, and that the European Commission's goal of creating a fully integrated European capital markets was far from reality. In response, the EC published an Action Plan for a Capital markets Union (hereinafter, "CMU") in 2015. The plan aimed to facilitate connections between providers and applicants for financing – whether in the form of equity or debt – across the EU, particularly across borders. This was to be achieved through intermediation by banks, access to the capital markets, or alternative channels such as crowdfunding[46]. This approach aimed to increase non-bank financing, thereby reducing SMEs' dependence on banks and enhancing the European economy's capacity to withstand economic shocks (infra, Chapter 6, Section 2.1).

2. The Commission's fiftieth anniversary: an overview

2.1 The first steps

The start of CONSOB's operations dates back to July 1975, when the first commissioners were appointed[47]. CONSOB was established with limited powers compared to those it holds today, primarily because it was initially classified as a central administrative body of the Ministry of the Treasury[48], included within its organisation[49]. The Ministry of the Treasury had historically been entrusted with supervising stock exchanges since Royal Decree No. 815 of 30 June 1932.

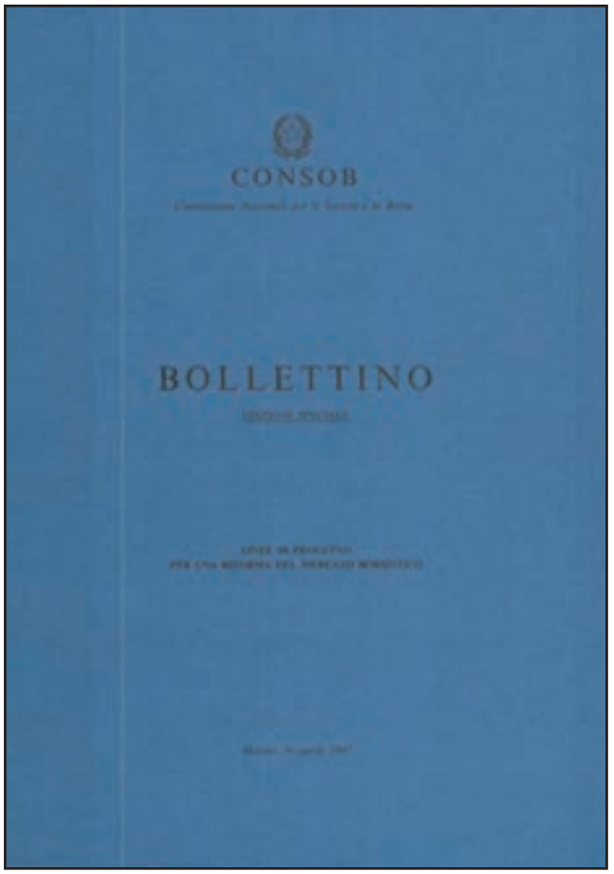
[46] See European Commission (2015), p. 3; as well as *id* (2016), p. 2.
[47] See CONSOB, *Relazione sull'attività svolta nell'anno 1975*, Rome 1976.
[48] Cassese (1994), pages 412 et seq.
[49] A situation of dependence well evidenced by the submission of certain resolutions concerning the stock exchange to the Ministry of the Treasury for execution, as established by Article 15 of Presidential Decree No. 138/1975. This dependence constituted the weak point of the legislation under consideration: Massera (1988), pages 449 et seq., in part p. 471.

The open outcry stock exchange

However, pursuant to Article 3(1)(h), sub. 1, of Law No. 216/1974, all competences relating to the operation of the stock exchanges, which had previously been assigned to the Ministry of the Treasury, were transferred to CONSOB. Nonetheless, the Ministry retained political responsibility for the operations of the newly established institution[50].

[50] Minervini (1989), p. 18.

Although CONSOB maintained an organic relationship with the Ministry, it was granted, from the outset, autonomous management of its own operating expenses (Article 1(5)) and significant organisational autonomy. Furthermore, pursuant to Article 1(6), CONSOB was empowered to act as an "external" body, as it was endowed with functional autonomy[51], i.e. to issue acts and measures effective in the legal sphere of the recipients without intervention by the Minister (Article 3(1), letters a), b), c), g), h)). One can see in this statement a "first" version of CONSOB. Although primarily endowed with "authorising" powers in company matters, it had already been granted other powers that would serve as a prelude to its independence. CONSOB was thus beginning to take shape in its original configuration as a body capable of assuming all the powers of the Ministry of the Treasury relating to the operation of the capital markets[52], a sectoral authority designed to lead Italian finance towards a regulated and transparent market model.



Project outlines for a stock market reform, CONSOB, 30 April 1987

2.2 The Italian big bang

The second decade of the Authority's life (1984-1994) marked a period of profound transformation. Significant regulatory innovations, inspired by the experiences of other jurisdictions and by interventions at the EU level, led to a comprehensive reform of the Italian financial marketplace. This reform resulted in a complete renewal of the system, introducing new rules governing intermediaries, the market itself, and the supervisory architecture. With a steady progression, the regulatory and market structures that would shape subsequent developments began to take form.

The regulatory activity of the period played a fundamental role in this transition. The adoption of Law No. 281/1985, which addressed long-standing issues within supervisory structures – particularly regarding the legal nature of CONSOB and its position in the domestic institutional system – profoundly restructured the Commission. This reform granted CONSOB full legal personality and completed the establishment of its staff roles, including the adoption of their respective economic treatments. Additionally, CONSOB's operating rules were aligned with its revised organisational structure. This new framework and organisational paradigm were decisive in enabling CONSOB to play a leading role in the market development process throughout the decade.

[51] Ferri (1974), p. 14.
[52] See Predieri (1987), p. 201.

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GAZZETTA UFFICIALE

DELLA REPUBBLICA ITALIANA

PARTE PRIMA Roma - Giovedì, 26 marzo 1998

N. 52/L

DECRETO LEGISLATIVO 24 febbraio 1998, n. 58.

Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52.

The 1998 Consolidated Law on Finance (TUF)

The subsequent reforms of the early 1990s in capital markets marked a dynamic phase of regulatory innovation, which was pivotal in enhancing market efficiency, transparency, and investor protection. These reforms introduced new market players and restructured the supervisory framework, consolidating the system under the principle of supervision by purpose. This led to a division of responsibilities between CONSOB and Banca d'Italia, with the Ministry of the Treasury assuming a collateral role. The resulting regulatory changes, as implemented by CONSOB, had a profound impact on the overall structure of the Italian financial sector.

CONSOB itself was significantly transformed by the reform, which expanded its supervisory powers and functions and consolidated its institutional architecture. Its relationships with other authorities were rebalanced, ensuring greater parity. Leveraging its enhanced organisational set-up and institutional weight, CONSOB actively participated in legislative processes during the decade. These efforts were instrumental in redefining market structures and the activities of intermediaries, promoting greater efficiency, and aligning the Italian financial market with international standards. CONSOB also took steps to operationalise this model through intense regulatory activity and strengthened its coordination efforts with international and supranational bodies.

In terms of the Italian market, the new regulatory environment gradually superseded the public-sector-oriented market structures established by the 1913 stock exchange law, paving the way for modern models. The regulation of securities brokerage firms, which were granted exclusive rights for specific activities, transformed the framework for intermediaries outlined in the 1913 Act. Brokers and commission agents were replaced by investment firms (*Società di Intermediazione Mobiliare* – SIM) under the SIM Law (Law No. 1 of 2 January 1991). This law also led to the creation of a telematic infrastructure connecting various stock exchanges, resulting in the establishment of a single national market that adhered to the principle of exchange concentration.

With this renewal, the financial system required modern post-trading infrastructures. Within the revised regulatory framework, the decade saw the creation of public infrastructures such as Cassa di Compensazione e Garanzia and Monte Titoli. These developments, which are discussed in greater detail in Chapter 3 (Section 4.2), were significantly driven by CONSOB's institutional activities. The Commission's efforts culminated in the adoption of general measures that defined the parameters for developing new domestic trading, collateral, and settlement infrastructures, thereby effectively initiating the rationalisation of Italy's financial centre.

2.3 The age of reforms

The socio-economic context of the third decade (1994-2004) was distinguished by two trends, which make a clear framing of the period particularly challenging. In the early years, the exceptional positive market trend from the previous decade continued, driven by privatisations – including those affecting stock exchanges – and the listing of new companies, especially in the telecommunications and new technology sectors. The domestic financial centre reached an all-time high at the dawn of the year 2000. The impact of European Union integration intensified, becoming tangible with the entry into force of the single currency on 1 January 1999.

The long season of regulatory innovation also continued along two parallel lines: liberalisation and investor protection with market transparency. These developments affected various areas of market and company law, including delegation. In a non-universal economic context, changes in intermediation and market structures were disruptive, largely driven by the innovations introduced by Legislative Decree No. 415 of 23 July 1996 (Eurosim Decree), which transformed the financial landscape and privatised the stock exchange sector. New integration dynamics, the emergence of domestic competition, the consolidation of existing trading venues, and the application of more efficient technologies also contributed to the transformation of the sector.

A major milestone came in 1998 with the adoption of the Consolidated Law on Finance. This law was built on a model of market capitalism, where finance was still seen as serving industry to support its development. Adopted during a period of uninterrupted economic growth and financial development – following the financial liberalisation processes of the 1970s and 1980s – it represented an effort to adapt Italy's legal

The headquarters of the CONSOB in Milan

system to the evolving conditions of finance. The law reflected relative optimism about the positive effects of financial development on economic growth. At the time, the signs of the financial capitalism that would lead, especially in other countries, to the great financial crisis within a decade had not yet clearly emerged. Nor were the excesses in derivatives, managerial remuneration, or risk-taking by intermediaries – issues that would culminate in the great crisis of 2007-2008 – yet fully perceived.

In essence, the Consolidated Law on Finance embodied the liberal-democratic ideology prevailing in the Western world at the time. This ideology was well represented by then-Minister Ciampi and the Director General of the Treasury Mario Draghi, who believed that the freedom of operators and markets, within a framework of regulation and public supervision, provided the conditions for orderly growth. In the Italian context, financial markets were expected to contribute to the efficient financing of the country's significant public debt and assist in the privatisation policy. Regulation was intended to structure and oversee markets to enable their development in a European and international context, while ensuring adequate investor protection.

Mario Draghi's role as chair of the inter-institutional commission that, in 1997, drafted the Consolidated Law on Finance at the Ministry of the Treasury (with the support of a committee of jurists and economists) underscores the innovative and interdisciplinary nature of the project, as well as its strong European and international scope. The regulatory solutions of the time reflected the emerging intra-European competition resulting from liberalisation. However, this positive trend was abruptly halted by a sharp contraction in indicators and the onset of a negative scenario, which, in hindsight, can be seen as an early signal of the crisis that would impact the following decade[53]. Moreover, these were the years marked by significant domestic market scandals, which were part of a global trend of resounding market failures, each followed by necessary reforms. In the European context, there was also a shift in pace in the harmonisation process, driven by the work of the Lamfalussy Committee, the European Commission's FSAP, and the Winter Group on corporate matters, which inspired the adoption of a set of second-generation directives. With the disappearance of trade concentration rules and the introduction of the free provision of services, the need to promote greater coordination among supervisory authorities in the European area became increasingly evident. During this period, the prototypes of the Union's financial supervision system also began to take shape.

CONSOB's evolution continued during this time, accompanied by important new developments. Its organisational structure was rebalanced between Rome and Milan, with the new headquarters in Palazzo Carmagnola becoming fully operational. The Authority's competences were revitalised by changes in domestic legislation, and CONSOB engaged in intense regulatory activity to the gaps left by deregulation. The privatisation of the stock exchange and the rise of competition from alternative trading venues introduced a new market supervision paradigm, definitively moving past the public-based model of the SIM Law. Coordination efforts also intensified, particularly at the international and European levels.

2.4 The age of crisis and European supervision

Crisis dominated the fourth decade (2004-2014), alongside the Europeanisation of supervisory structures that led to the creation of ESMA in 2010. The bankruptcy of Lehman Brothers highlighted the interconnectedness of the global economy and foreshadowed the sovereign debt crisis in Europe. This crisis, spreading from the financial sector to the real economy, gradually affected several European countries, including Italy. The debate on its causes and possible solutions, conducted primarily at the international level, challenged every area of existing law and the policy choices made up to that point[54]. In Europe, institutions adopted reforms to the Union's economic and market governance rules aimed at ensuring stability and preventing future crises. At the beginning of the decade, important reforms were introduced in response to domestic market scandals and to transpose European legislation adopted in the wake of the Commission's FSAP. Following the 2007-2008 crisis, the focus of regulation shifted to European institutions, laying the foundations for the progressive Europeanisation of supervision. The response to the financial crisis incorporated the lines of action proposed by

[53] During the decade, the Italian market experienced major shocks, including the impact of the September 11 attacks and the crisis in Argentina.
[54] See the contribution of Davies (2012).

the Financial Stability Board (FSB) and the International Organisation of Securities Commissions (IOSCO).

The financial crisis, in fact, triggered a wide-ranging reform process at both the international (G20/FSB) and European levels (de Larosière Report). These reforms addressed financial intermediaries, cash and derivatives markets, corporate governance, and supervisory authorities. Key areas included the new prudential regulation of financial institutions (capital adequacy, liquidity, employee remuneration, risk management, etc.), crisis and resolution procedures, macro-prudential supervision, and the establishment of the European Supervisory Authorities (EBA, ESMA, EIOPA). Their impact in Italy was substantial across all these areas.

CONSOB's evolution during this decade was significant. Following the 2005 reforms, it was empowered to intervene more effectively in combating illicit market activities. This enabled it to play a crucial role in high-profile cases, such as the Antonveneta and Unipol/Bnl takeovers, as well as the Fiat affair. During the crisis, CONSOB acted to mitigate volatility and ensure orderly market trading by intensifying share price monitoring and imposing temporary bans on short selling. Through its participation in European and supranational forums, the Commission contributed to shaping the new supervisory structures and standards that would guide the market.

As we shall discuss in Chapter 5, the financial crisis had a severe impact on the domestic market, causing the loss of half its capitalisation, which regressed to pre-2000 levels. Subsequently, a slowdown in the growth of the main market index became evident, but this was partially offset by a growing number of listings on markets dedicated to small and medium-sized enterprises. In line with European trends, the consolidation of market infrastructures in Italy continued, taking on a transnational dimension with the 2007 merger between Borsa Italiana and the London Stock Exchange.

2.5 The age of fintech, sustainability and European financial integration

The current decade, still too recent to enable a comprehensive historical perspective, is likely to be remembered for several disruptive phenomena that have undermined Europe's political and financial arrangements. First and foremost, the exit of the United Kingdom from the European Union (Brexit) profoundly disrupted the Union's political and economic balance, narrowing its scope and ousting its long-standing financial centre, the City of London, before the UK officially became a "third country" in 2020. Shortly after Brexit, the Covid-19 pandemic, followed by the return of war in Europe and crises in the Middle East and the Red Sea, brought not only immense tragedies but also new paradigms of volatility to financial markets. Despite inevitable difficulties, the European financial economy withstood the shocks of these extraordinary events, aided by accommodative monetary policies and a new common fiscal policy designed to support economic recovery across the EU.

Meanwhile, a new wave of technological innovation (the so-called Fintech) began reshaping the financial system, challenging existing frameworks in multiple respects. Simultaneously, sustainability issues – grouped under the acronym ESG (Environmental, Social, and Governance) – have gained increasing recognition and been partially implemented within the financial sector.

In line with the previous decade, the focus of regulatory initiatives in this period has been predominantly at the European level, evolving along the lines of the CMU. Promoting the competitiveness of European markets through simplifications and rationalisations of regulatory structures has been a priority objective of the European legislative agenda, which now also encompasses the challenges of technological and environmental transition. These priorities are reflected domestically, where Law No. 21 of 5 March 2024 was enacted to stimulate the development and competitiveness of Italian markets by facilitating companies' access to regulated markets.

The Commission's supervisory activities remained focused on ensuring the orderly conduct of markets through maximum transparency in transactions, even in the face of the extraordinary and disruptive events of the period. Regulatory innovation during this time has expanded CONSOB's aims, placing them within a broader framework that includes support for innovation, growth, and sustainable development. Leveraging new technologies, supervisory models based on data and artificial intelligence methods have begun to take shape.

During this period, the main stock exchange list continued to decline in prominence, despite an increase in the number of companies with financial instruments admitted to trading, primarily driven by SMEs. In a market made more competitive by MiFID II, Brexit has contributed to further consolidation among European market operators, culminating in the transition of Borsa Italiana from the London Stock Exchange to the Euronext Group. This new ownership structure, with a federal matrix, places renewed emphasis on domestic post-trading infrastructures (see Chapter 6). The rise of financial innovation and sustainability has also expanded the financial system into new activities and participants, raising questions about the adequacy of existing institutional structures in the absence of a unified policy to govern these phenomena.

Gastone Miconi, Guido Rossi and Vincenzo Milazzo,
CONSOB Chairmen in the decade 1974-1984

THE FIRST STEPS (1974-1984)

«Preoccupazione della Commissione è stata quella di iniziare la sua attività … con un piccolo nucleo di personale, particolarmente scelto, proveniente dal Ministero dal Tesoro: 7 funzionari organizzati in gruppo di lavoro permanente»

Hearing of Chairman Miconi in the Senate
10 December 1975

«The Commission's concern was to begin its work … with a small, specially selected group of staff members from the Treasury: 7 officers organised in a permanent working group»

1. FOREWORD

The first decade of CONSOB's history saw three successive Presidents: Gastone Miconi (1975-1980), Guido Rossi (1981-1982) and Vincenzo Milazzo (1983-1984).

Decree-Law No. 95/1974, converted into Law No. 216/1974, assigned CONSOB with the task of supervising capital markets, transferring to it the competencies relating to the operation of stock exchanges, which until then had been attributed to the Ministry of the Treasury[55]. The criterion for identifying CONSOB's sphere of supervision was initially sectoral (or sectional), referring to companies and entities whose financial instruments were usually traded on one or more official stock exchanges. CONSOB was entrusted with the supervision of direct operations on the stock exchange market, with the power to intervene through organisational, authoritative, and control measures that had previously been the responsibility of chambers of commerce and local stock exchange authorities. The operation of stockbrokers, who were authorised to exclusively negotiate financial instruments admitted to listing, was also peculiar characteristic of the sectional organisation of the stock exchange. However, these initial legislative and regulatory provisions were not limited to listed companies alone but extended more generally to the capital markets. This broader scope reflected, among other things, CONSOB's authority to «*ex officio admit to listing on one or more stock exchanges securities habitually and widely traded issued by companies or entities that meet the prescribed requirements*» (Article 3, lett. d, sub-article 1, Law No. 216/1974), as well as its power to exclude securities from listing if admission was deemed «*contrary to the public interest*» (Article 8, Presidential Decree No. 135 of 31 March 1975)[56].

[55] Indeed, the transfer of competences, initially provided for in Article 2(h) of the d.l. 95/1974, was much broader, referring generically to the securities market. When converted into Law 216/1974, Article 3 circumscribed the transfer of competences to those relating to the operation of the stock exchange.

[56] On CONSOB interventions in respect of stock exchanges, see Article 3, *sub. 1*, of Law

«… è tuttavia evidente che questo nucleo iniziale non è sufficiente a garantire, da solo, l'operatività dalla CONSOB …»

Hearing of Chairman Miconi in the Senate
10 December 1975

«… it is, however, evident that this initial group is not sufficient to guarantee, by itself, the operation by CONSOB …»

2. The framework

2.1 Auditing and the restricted market

In addition to its supervisory function over stock exchanges, the 1974 Law also assigned CONSOB tasks related to the auditing and certification of accounts. The regulation of auditing companies was similarly characterised as sectoral, as their operation was conditional upon registration in a special register maintained by CONSOB, as provided for in Article 2 of Law No. 216/1974. Exercising the delegated powers referred to in this provision, the government, through Presidential Decree No. 135 of 31 March 1975, regulated the compulsory auditing and certification of the accounts of listed companies. It also assigned CONSOB supervisory authority over auditing companies, the contracts they undertake, and their activities[57]. Similarly to what had happened in the Belgian and French legal systems[58], the Italian legislature deemed that the function of supervising the accounting records and the veracity of the financial statements could be better exercised by the auditing companies, which would then become the "eyes" of CONSOB[59] enabling a decentralisation of functions aimed at more effectively pursuing the public interest of protecting savers. CONSOB played a pivotal role in ensuring accounting transparency. It was granted authoritative powers of intervention, such as the registration or cancellation of auditing companies, after verifying their independence and technical suitability. It also held policy-making powers, including the preparation of guiding principles and criteria for the accounting control of listed companies. Additionally, CONSOB was empowered to challenge shareholders' meeting resolutions approving the financial statements of listed companies if flaws were identified in the content or valuations of the financial statements. Auditing companies, in turn, were required to inform CONSOB if they intended not to certify the financial statements.

The original core of CONSOB's structural and functional regime also included the regulation of another sectoral system: the restricted market. This market, a satellite

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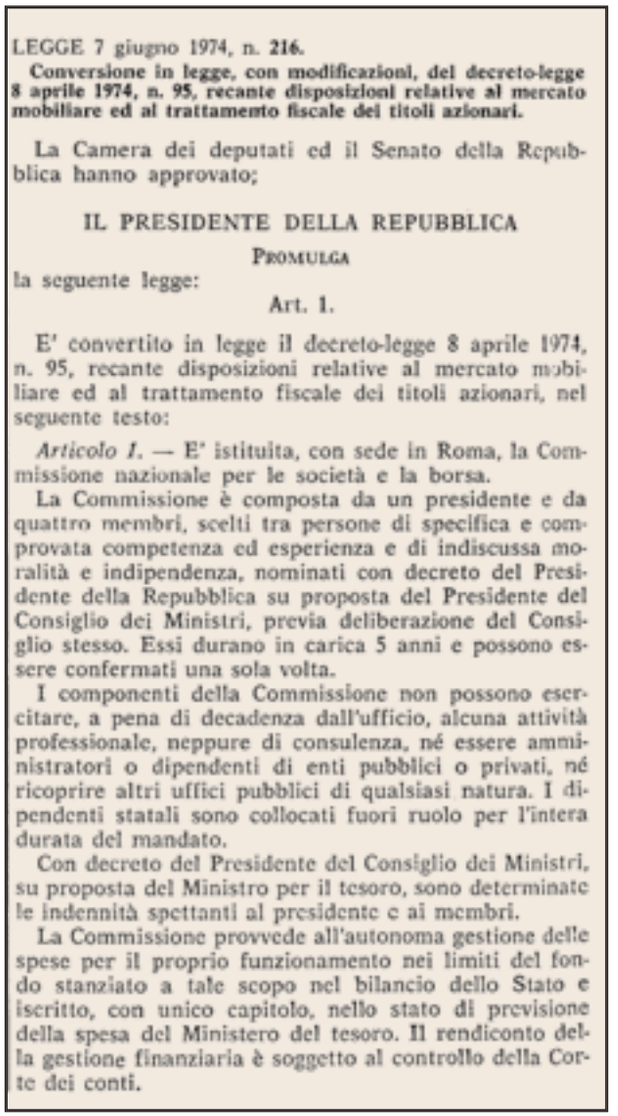
No 216/1974, which provides for powers of an organisational, authorising and controlling nature. As regards the first category, reference is usually made to the organisational and operation of stock exchanges. With reference to authorising powers, those concerning the admission of securities to listing and the issuance of stockbrokers' representatives with cards for access to the bullring precincts are indicated.
Finally, the powers of control were characterised by the verification of conduct and the general course of negotiations. See, generally, Piga e Segni (1990), pages 1130 et seq.; Ricci (1996), pages 181 et seq.; Carbonetti (1993), pages 1 et seq.; Borrello, Cassese et al. (2021), pages 245 et seq. On CONSOB's competences in the field of stock exchange supervision see Rossi (1982), pages 163 et seq., and Fortunato (1980), pages 1093 et seq.

[57] On the definition of the regulation of audit firms as a sectional regulation, see Predieri, (1987), p. 208.

[58] In this sense Buonomo (1977), pages 79-80.

[59] Rossi (1982), p. 3.



LEGGE 7 giugno 1974, n. 216.

Conversione in legge, con modificazioni, del decreto-legge 8 aprile 1974, n. 95, recante disposizioni relative al mercato mobiliare ed al trattamento fiscale dei titoli azionari.

La Camera dei deputati ed il Senato della Repubblica hanno approvato;

IL PRESIDENTE DELLA REPUBBLICA

PROMULGA

la seguente legge:

Art. 1.

E' convertito in legge il decreto-legge 8 aprile 1974, n. 95, recante disposizioni relative al mercato mobiliare ed al trattamento fiscale dei titoli azionari, nel seguente testo:

Articolo 1. — E' istituita, con sede in Roma, la Commissione nazionale per le società e la borsa.

La Commissione è composta da un presidente e da quattro membri, scelti tra persone di specifica e comprovata competenza ed esperienza e di indiscussa moralità e indipendenza, nominati con decreto del Presidente della Repubblica su proposta del Presidente del Consiglio dei Ministri, previa deliberazione del Consiglio stesso. Essi durano in carica 5 anni e possono essere confermati una sola volta.

I componenti della Commissione non possono esercitare, a pena di decadenza dall'ufficio, alcuna attività professionale, neppure di consulenza, né essere amministratori o dipendenti di enti pubblici o privati, né ricoprire altri uffici pubblici di qualsiasi natura. I dipendenti statali sono collocati fuori ruolo per l'intera durata del mandato.

Con decreto del Presidente del Consiglio dei Ministri, su proposta del Ministro per il tesoro, sono determinate le indennità spettanti al presidente e ai membri.

La Commissione provvede all'autonoma gestione delle spese per il proprio funzionamento nei limiti del fondo stanziato a tale scopo nel bilancio dello Stato e iscritto, con unico capitolo, nello stato di previsione della spesa del Ministero del tesoro. Il rendiconto della gestione finanziaria è soggetto al controllo della Corte dei conti.

of the stock exchange, was characterised by the presence of a formal listing procedure[60]. The restricted market was conceived as a complementary market to the official one, introduced by Law No. 49 of 23 February 1977 to address the flight from official stock exchanges. It was designed to serve as a preparatory stage for subsequent listing on an official stock exchange, facilitating the acclimatisation of financial instruments. Additionally, it provided a mechanism for the downgrading of financial instruments that no longer met the requirements for stock exchange listing[61]. On the restricted market, securities of companies with lower share capital and turnover than those required for stock exchange listing were traded, featuring smaller financial flows and simpler trading mechanisms[62].

2.2 The establishment of mutual funds

The decade under review was characterised, among other things, by companies' efforts to explore new financing channels. These channels aimed at facilitating the direct collection of savings on the market – including through the issuance of "atypical" securities – or indirectly, through non-banking financial intermediaries, such as foreign investment funds. This situation underscored the inadequacy of the existing regulatory framework to support the development of Italian financial market (see also Box below). In this context, Carlo Azeglio Ciampi remarked that «*the spread of asset management and mutual investment funds confirms the existence of an important demand for new products, as well as the interest of Italian savers in shares, when access to the stock market is not fiscally discriminated against and can take place, as in other countries, with an appropriate risk distribution*»[63] .

A subsequent expansion of CONSOB's functions took place with Law No. 77 of 23 March 1983[64]. This law introduced and regulated a significant new financial instrument in Italy, the mutual investment fund, within its first ten articles. It also established Banca d'Italia's oversight of financial flows and an elaborate framework

[60] On the definition of the regulation of the restricted market as a "sectional order", see PREDIERI (1987), p. 208.

[61] Cf. PIVATO (1972), p. 479. CONSOB described the new market as a "nursery" for the main list, complementary to it, as well as a possible channel of financing for regional economies, for those companies of a prevalently local character and with a territorially circumscribed shareholder base, see CONSOB, *Relazione sull'attività svolta nell'anno 1977,* Rome 1978, pages 41 et seq.

[62] On the restricted market, see: COLTRO CAMPI (1977), pages 481 et seq.; BUONOMO (1985), pages 365 et seq. and COSTI (2013), pages 23 et seq.

[63] ASSOGESTION (2016), p. 78.

[64] The Law under the name of Establishment and Regulation of Mutual Investment Funds is published in the Official Gazette of 28 March 1983, No. 85. See in this regard, FERRARINI (1993), p. 25.

for the solicitation of public savings, entrusted to CONSOB's control[65]. This marked an exceptional leap, both cultural and practical: shifting the focus from shareholder protection to investor protection, and from the contractual phase to the pre-contractual phase[66].

The regulation of mutual funds introduced a special category of financial intermediaries, which collect resources from the public of savers and channel them to other economic operators. The establishment of mutual funds represented an initial legislative effort to expand private investment opportunities beyond the sectional stock exchange system, while simultaneously introducing provisions to protect investors. These provisions included the requirement for authorisation, issued by the Ministry of the Treasury, contingent upon meeting specific capital requirements (a paid-up share capital of no less than two billion lire) and organisational requirements (such as the preparation of fund regulations specifying matters such as governance, operational bodies, criteria for selecting securities, and investment allocation)[67].

2.3 The regulation of "public solicitation of investments"

Law No. *77* of 23 March 1983 also regulated the issuance of transferable securities to be placed indirectly through public offerings, as well as public offers to purchase or sell securities and the solicitation of public savings. It is worth noting that an initial reference to the solicitation of public savings had already been introduced by Law No. 216/1974. Article 18 of that law specified that «*those who intend to proceed with the purchase or sale of shares or convertible bonds by means of an offer to the public must give prior notice to the Commissione Nazionale per le Società e la Borsa, indicating terms and conditions of the transaction. Within twenty days from the date of receipt of such notification, the Commission may establish the manner in which the offer must be made public as well as the data and information it must contain*».

Article 12 of Law No. *77*/1983 amended Article 18 of Law No. 216/1974, expanding the regime's scope beyond purchases and sales to include offers for the subscription of shares, convertible bonds, and any transferable securities. The breadth of the new framework was evident in its foundational concepts of transferable securities and solicitation of public savings[68]. Transferable securities were defined in Article 18-*bis* of Law No. 216/1974, introduced by Article 12 of Law No. *77*/1983, as «*any document or certificate which, directly or indirectly, represents rights in companies, associations, undertakings, or bodies of any kind, including Italian or foreign investment funds; any document or certificate representing a negotiable or non-negotiable claim or interest; any document or certificate representing rights relating to tangible property or real estate; as well as any document or certificate capable of conferring rights to acquire any of the aforesaid transferable securities, including securities issued by trusteeship entities referred to in Article 45 TU of the laws on the exercise of private insurance, approved by Presidential Decree of 13 February 1959, No. 449*». With this broad definition, CONSOB's oversight was extended to all securities – both typical and atypical – thereby safeguarding even small savers who did not invest on official stock exchanges or exclusively in shares and bonds.

Equally inclusive was the definition of "public solicitation of investments", introduced in Article 18-*ter* of Law No. 216/1974. Article 12 of Law No. *77*/1983 defined solicitation of public savings as «*any form of door-to-door placement, by means of circulars and mass media in general, as well as any advertisement aimed at offering information or advice to the investors, concerning securities that have not yet been issued or for which the issuer or the offeror has not already prepared a prospectus, except for those listed on stock exchanges*».

This intentionally broad definition encompassed any transaction targeting public savings, including those disseminated via advertising media, reflecting the legislator's intent to position CONSOB at the forefront of protecting all forms of securities savings.

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[65] Libonati (1985), p. 440. The author observed that issues of securities to be placed by means of public offerings also had to be communicated to Banca d'Italia; but the latter's intervention was «*for the sole purpose of controlling financial flows*» and did not go beyond the moment of issue.
[66] Minervini (1989), pages 18 and 26.
[67] Pivato (1983), pages 240 et seq.
[68] Ferrarini (1993), pages 27 et seq.

Law No. 77 introduced a requirement for offerors to publish a prospectus detailing the company's organisation, economic and financial situation, and business development. It also extended several safeguards previously applicable to listed companies, such as the disclosure requirements of Articles 3 and 4 of Law No. 216/1974 and the auditing and certification requirements for financial statements set forth in Presidential Decree No. 135 of 31 March 1975. These provisions expanded the regulatory and supervisory scope beyond the stock market and listed companies to include all entities soliciting public savings. This was implemented through a tailored regulatory framework designed to protect investors, who were now provided with virtually complete information about both the issuer and the offered product.

The first prospectus filed with CONSOB

The open outcry stock exchange

Atypical instruments between financial innovation and avoidance

During the decade under review, atypical instruments emerged as a significant innovation, born of legal and financial engineering. These instruments offered abundant opportunities for debate among scholars, practitioners, judges, and legislators. The term "atypical" encompassed a variety of heterogeneous trading schemes that were issued and placed among savers for approximately ten years, creating a "grey market" of capital.

The first notable instrument was the "participation certificate", based on the codified model of an association in participation. It granted rights through a contract of association in a single business, in exchange for a capital contribution from the associate. Initially prominent in the real estate investment sector, the participation certificate soon proved versatile, extending to other industries, including leasing. A further evolution was the "certificate of assets", which introduced a trust company to hold investments in trust and issue certificates to end investors. This arrangement isolated issuers from end investors, ensuring anonymity.

The marketing of these products was equally innovative, bypassing traditional banking channels and adopting methods akin to consumer goods distribution, such as promotional campaigns and door-to-door sales. The rapid expansion of this market caught the attention of authorities and legislators, highlighting the regulatory vacuum that enabled its growth. However, the demand for these investments also reflected a substantial appetite among savers for alternative financial opportunities.

A lively doctrinal debate ensued, marked by contrasting political perspectives. The majority doctrine classified these instruments as credit securities, citing the principle of freedom of issuance. Others opposed this view, arguing that atypical mass securities were subject to a principle of typicality inferred from the specific rules governing bond and share issuances. The political nature of this debate was evident during legislative discussions, which saw two opposing camps. One side advocated a dirigiste approach, requiring all mass securities issuances, including atypical ones, to receive authorisation from the Ministry of the Treasury after consultation with the CICR. The other side favoured investor self-determination within a transparent regulatory framework.

The latter view prevailed during a 1982 Senate Finance and Treasury Commission investigation into real estate investment funds and certificates. Senator Berlanda, who later became the Chairman of CONSOB, supported a contractual regulatory framework that ensured mechanisms for the full evaluation of investment proposals. He proposed authorising individual or series issuances within predetermined limits and ensuring absolute transparency. Responsibility for accurate information, he argued, should rest with issuers, while CONSOB should enforce compliance with transparency rules.

The adoption of Law No. 77 of 23 March 1983 incorporated the grey market for atypical titles into capital markets regulation by expanding the concept of transferable securities. Within a short period, this market dissolved as its offerings were either formalised within the new regulatory framework or ceased due to the insolvency of key players. Some of these insolvencies, such as the "Cultrera" case of 1983, garnered significant legal and media attention. This case involved public subscriptions to shares in Hotel Villaggio Santa Teresa s.r.l. (HVST), which was later declared insolvent. It sparked a thirty-year legal battle by numerous subscribers, focusing on the alleged civil liability of CONSOB officials for failing to supervise the prospectus.

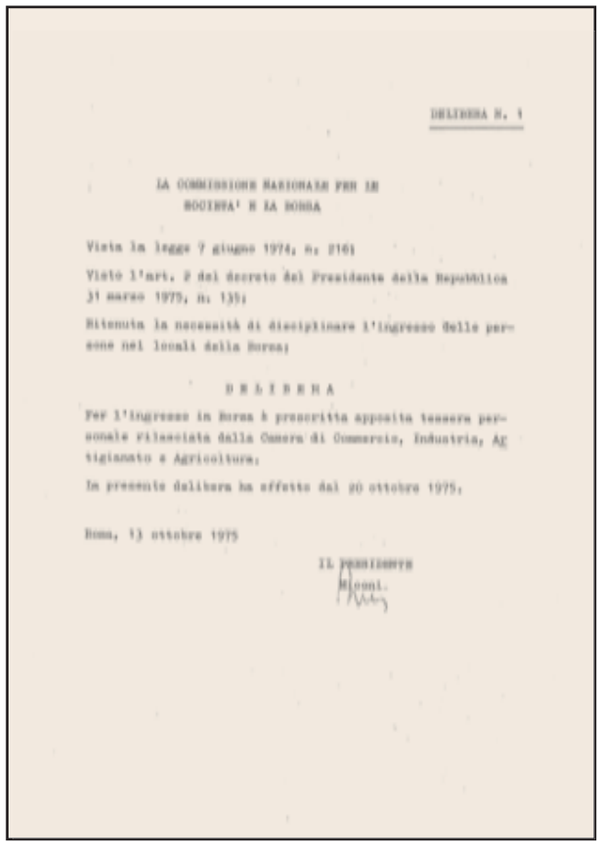
3. The evolution of the Authority

3.1 Corporate transparency and listing

The law establishing CONSOB also included provisions aimed at protecting public savings. Notably, Article 3, sub-article 1(b) and (c) of Law No. 216/1974 granted CONSOB the power to require the disclosure of data and information by companies with shares listed on the stock exchange and by entities whose exclusive or primary purpose was conducting commercial activities with securities listed on the stock exchange. The prevailing interpretation of this provision extended its scope not only to companies with listed shares but also to those with listed securities other than shares (although, during the law's conversion, the reference to listed securities remained only for entities).

CONSOB's oversight also covered companies and entities listed in the register established by Articles 154 and 155 of Presidential Decree No. 645 of 29 January 1958, and those with total paid-up capital and reserves exceeding 10 billion lire, as shown in their balance sheets. These companies were primarily engaged in acquiring shareholdings in other companies or in the purchase, sale, possession, management, or placement of public and private securities. This oversight was conferred by the reference in Article 19 of Law No. 216/1974 to Articles 3 and 4 of the same law.

In this way, the legislator expanded CONSOB's scope of intervention, addressing the need to supervise all companies that could significantly impact public savings due to the size of their financial resources[69]. CONSOB's supervisory powers were extensive, as they encompassed data and information required for public disclosure beyond what was included in financial statements and reports. This broad mandate covered all financial statements (including interim statements) and any official reports from the board of directors, the board of statutory auditors, and the auditors, as outlined in Article 3, sub-article 1(b) and (c) of Law No. 216/1974. In addition to these powers, CONSOB was authorized to request the periodic submission of data and information, as well as deeds and documents beyond those mandated by Article 4. It could also carry out inspections at the premises of the entities under its supervision and seek information and clarifications from directors, statutory auditors, auditors, and general managers to verify the accuracy and completeness of the communicated or published data[70]. Corporate



DELIBERA N. 1

LA COMMISSIONE NAZIONALE PER LE
SOCIETA' E LA BORSA

Vista la legge 7 giugno 1974, n. 216;

Visto l'art. 2 del decreto del Presidente della Repubblica
31 marzo 1975, n. 135;

Ritenuta la necessità di disciplinare l'ingresso delle per-
sone nei locali della Borsa;

D E L I B E R A

Per l'ingresso in Borsa è prescritta apposita tessera per-
sonale rilasciata dalla Camera di Commercio, Industria, Ar
tigianato e Agricoltura.

La presente delibera ha effetto dal 20 ottobre 1975.

Roma, 13 ottobre 1975

IL PRESIDENTE
Milani.

The first CONSOB resolution

[69] Buonomo (1977), p. 38.

[70] For listed joint-stock companies and entities whose exclusive or main purpose is to engage in commercial activities, whose securities are listed on the stock exchange, Article 4 stipulated the obligation to notify CONSOB, by registered letter: «*1) at least 20 days before the date set for the shareholders' meeting that is to discuss it, of the financial statements with the reports of the directors and the board of auditors and the annexes referred to in Article 2424(4) of the Civil Code; 2) at least forty-five days prior to the date set for the meeting that is to discuss them, the proposals involving amendments to the memorandum of association, the issue of bonds and*

information was subject to two restrictions introduced during the conversion of the Decree-Law into law: (i) the obligation to hear the directors in advance and (ii) the prohibition on publishing news or data whose disclosure could harm the company or entity. Despite these legislative limitations, doctrinal interpretations suggested that CONSOB retained a margin of discretion in assessing the potential negative impact of publishing relevant information. The Authority was entrusted with the task of balancing corporate interests with the protection of savers. The enforcement of these powers was supported by criminal sanctions against directors, statutory auditors, auditors, and general managers of companies or entities who failed to comply with CONSOB's requests, disregarded its requirements, or otherwise obstructed its functions. However, these sanctions were subject to critical scrutiny by legal scholars. From a technical-legislative perspective, the choice of imposing fines was seen as inadequate to safeguard the significant interests at stake. Substantively, the perceived weakness of the sanctions raised concerns about their potential impact on the effectiveness of public oversight[71]. Subsequently, Law No. 689 of 24 November 1981 introduced the penalty of arrest, addressing issues that had been exacerbated by the decriminalisation measures introduced by Law No. 706 of 24 December 1975. However, doubts persisted regarding the adequacy of this measure to effectively safeguard the interests it was intended to protect[72].

From a functional perspective, CONSOB, while part of the State's administrative apparatus, was not subjected to the same rules as other administrative bodies under its founding law, with the exception of matters related to internal staff organisation. As a result, it was argued that CONSOB's dependence on government bodies was limited solely to achieving its overall purpose and did not extend to oversight of individual acts or omissions[73]. In its mission to protect public savings, CONSOB was granted functional autonomy from the outset, free from heteronomous elements of approval. This meant that its regulations did not require governmental approval or control.

Of particular significance were the provisions granting CONSOB regulatory powers of an organisational nature for the stock exchanges, in particular to: (i) «*establish, by the month of November of each year, the stock exchange calendar for the following year, applicable to all the stock exchanges, in which the closing days, the days set aside for the fulfilment of obligations relating to each settlement period and the trading hours will be established*»; and (ii) «*determine in general or for individual stock exchanges the types of contracts admitted, the quotation systems, the methods for ascertaining prices and the formation of the price list, the brokerage fees, the minimum amounts negotiable on the stock exchange for each listed security*».

Added to this explicit provision were the powers granted by Article 8 of Presidential Decree No. 138/1975, which authorised CONSOB to determine the requirements and procedures for admission to listing, and by Law No. 47/1977, which entrusted CONSOB with determining the organisation and operation of the restricted market, as well as the conditions and procedures for admission to that market[74]. In addition to the management role assigned to CONSOB, Law No. 216/1974 introduced the instrument of ex officio admission to listing into the legal framework, which was first utilized in 1980[75].

The use of this prerogative by the Authority was central to the well-known Banco Ambrosiano bankruptcy affair, which prompted significant reflections on the adequacy of the supervisory structures of the time, particularly in a stock market context where banking institutions played a key role in listings. The Commission led by Roberto Calvi had securities listed on the Milan restricted market and

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mergers with other companies, together with an explanatory report by the directors; 3) within thirty days from the date on which the shareholders' meeting passed resolutions on the matters indicated in numbers 1) and 2), the minutes of the shareholders' meeting, the resolutions adopted, the approved financial statements; 4) within four months from the end of the first six months of the financial year, the half-yearly report and any resolutions to distribute interim dividends».

[71] See Romano (1975), pages 34 et seq.

[72] Cera (1986), pages 196-197.

[73] In this sense, see Caianiello (1974), pages 195 et seq.

[74] It defines the references initially contained in the 'essential predecessor' legislation of the regulatory power, later attributed by the Law of 4 June 1985, No. 281, Cardi (1998), pages 265 et seq., esp. p. 269.

[75] After the launching of the restricted market, ex officio admission and delisting were used by CONSOB to guarantee a 'clean listing' and to manage in an orderly manner entries, exits and transfers between different markets, see CONSOB, *Relazione sull'attività svolta nell'anno 1977,* Rome 1978, pages 34 et seq. In 1980, CONSOB ordered the automatic admission on the main list of the company Italmobiliare, CONSOB, Relazione sull'attività svolta nell'anno 1980, Rome 1981, p. 14.

was subject to supervision by CONSOB, as well as by Banca d'Italia in relation to banking matters[76]. Based on the consideration of the widespread and habitual trading of securities on the restricted market, CONSOB, after consulting Banca d'Italia, resolved on 4 May 1982 to admit them ex officio to the main list[77]. The transparency obligations subsequently imposed on Banco Ambrosiano swiftly exposed the precarious state of the bank's balance sheet. The bank was placed under receivership on 19 June at the request of the board of directors and simultaneously suspended from trading. On 8 August, Banco Ambrosiano was placed under administrative compulsory liquidation, and its listing was revoked[78]. The affair sparked extensive controversy, particularly regarding the dynamics of coordination between CONSOB and Banca d'Italia. Although formally in place, this coordination was found to be lacking in substance. As the then Minister of the Treasury, Andreatta, remarked, «*the findings that have emerged suggest, however, specific measures to strengthen the preventive action of the aforementioned bodies, as well as greater coordination of their respective powers*»[79].

The basis of this general regulatory power over stock exchanges could be identified both in the legislative norms granting this authority and in the regulatory function inherent to the economic exchange process within the sectional regulation of stock exchanges[80]. More challenging was the systematic framing of the delegation of regulatory power provided for by Article 18 of Law No. 216/1974, which entrusted CONSOB with the authority to define the content of the disclosure obligations of companies appealing to public savings. The basis for this delegation, beyond the legislative provision, could also be found in the protection of public savings – an interest expressly assigned to CONSOB as an independent administrative authority[81].

3.2 Organisational management: a complex start

The newly established Commission began its operations within an institutional framework that was not yet fully defined and was organisationally complex, owing to the lack of a distinction between the moment of establishment and the commencement of operations. The practical necessity of implementing the tasks envisaged by the legislature left little room for preparatory activities, resulting in CONSOB starting its work with a clearly insufficient number of staff. In 1975, the Commission's staff numbered only 26, all based at the sole headquarters in Rome, except for six inspectors seconded from the Treasury and assigned to supervise the ten stock exchanges[82]. At its inception, the organisational model primarily relied on the secondment of staff from other administrations, reflecting CONSOB's affiliation with the State's administrative apparatus. It was not until 1981 that Law No. 175/1981 formally established the role of CONSOB staff, though the approval of their corresponding economic and legal framework only occurred in the following decade. During this period, the Commission's staff gradually increased to more substantial levels, albeit remaining relatively small compared to the scope of its tasks[83]. By the end of 1986, CONSOB's staff numbered 117, comprising 84 permanent employees and 33 on fixed-term contracts.

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[76] In 1980, a little less than 50% of the turnover of the Milan restricted market was concentrated on just four securities, the three largest cooperative banks and Banco Ambrosiano, CONSOB, *Relazione sull'attività svolta nell'anno 1980,* Rome 1981, pages 24 et seq.

[77] For a detailed account of the events, see Minister Andreatta's report, in Atti parlamentari della Camera dei Deputati, *Ancora sulla vicenda del Banco Ambrosiano*, Seduta dell'8 ottobre 1982, pages 377 et seq. (available at www.camera.it).

[78] CONSOB, *Relazione sull'attività svolta nell'anno 1982*, Rome 1983, p. 25.

[79] This is the summary reading offered by Minister of the Treasury Andreatta in his letter accompanying the *Report on the Activities of 1981,* Rome 1982, p. 14, (available at https://storia.camera.it).

[80] Politi (1991), p. 4.

[81] Rordorf (2000), pages 145 et seq.; Maimeri (2003), pages 907 et seq.

[82] For a description of the difficulties involved in getting the Institute up and running, see CONSOB, *Relazione sull'attività svolta nell'anno 1975,* Rome 1976, pages 32 et seq.

[83] See CONSOB staff development data, included in Appendix 2.

«Nella seconda metà degli anni '70
la CONSOB
si è trovata carica di responsabilità
molto importanti e assai varie, circondata
di un'atmosfera che potremmo definire
di curiosa diffidenza e frenata
da un'organizzazione ancora carente»

Speech by Chairman Piga
London 1990

«In the second half of the 1970s, CONSOB found itself charged with highly important and variegated responsibilities, surrounded of an atmosphere that could be described as curiously distrustful and restrained by an organisation still under development»

As part of the ministerial apparatus, CONSOB's activities were initially tied to the Treasury's budget[84]. The gradual establishment of the organisation throughout the decade was mirrored in the Commission's operating expenses, which steadily increased in line with the expansion of its structure[85].

4. The evolution of the market

4.1 The financial centre of the 1970s

During the discussions surrounding CONSOB's founding projects, the socio-economic landscape was shaped by a severe recession. At the start of the decade, uncertainties loomed over the future of Western economies, driven by two critical factors: the international monetary crisis of 1971, triggered by the declaration of the dollar's inconvertibility, and the 1973 oil crisis[86], which led to a sharp decline in share prices, not only in the Italian market but also across other industrialised countries[87]. The outlook for the stock market appeared bleak, leaving little room for a short-term recovery. This came at a time when, conversely, contributions to risk capital urgently needed to be increased due to the fragile state of corporate finances and the substantial financing demands imposed by the economy and the recession[88]. Specifically, the financial wealth of households and non-financial enterprises was at an all-time low (see Appendix 1). As Guido Carli, then Governor of Banca d'Italia, observed, a noteworthy relationship was emerging between major shareholding companies and the capital markets. In Italian companies, the ratio of risk capital to loan capital was significantly skewed compared to levels observed in other developed economies. In other words, there was a substantial corporate demand for financial resources, which, unable to find sufficient support in the capital markets, relied heavily on the banking system or directly on the capital markets[89]. In this context, the introduction of new regulations for stock exchanges and the establishment of a supervisory body aimed to broaden savers' options and cater to those with an interest in a company's fortunes, thereby fostering conditions for a more informed public judgement[90].

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[84] See evidence included in CONSOB, *Relazione sull'attività svolta nell'anno 1977*, Rome 1978, p. 21.
[85] See CONSOB, *Relazione sull'attività svolta nell'anno 1985*, Rome 1986, p. 158.
[86] La Malfa (1981), pages 9 et seq.
[87] On this point see Banca d'Italia, *Ordinary General Meeting of Participants*, 31 May 1975, Rome 1974, pages 302 et seq. *(accessible at bancaditalia.it)*.
[88] Cavazzuti (2000), p. 19.
[89] See the speech to the Chamber of Deputies in 1975 by Guido Carli, then Governor of the Banca d'Italia in the minutes of the sitting No. 259, cf. *Speech to the Finance Commission of the Chamber of Deputies during the fact-finding investigation into the functioning of the stock exchanges in Italy*, sitting of February 1975, n. 259.
[90] Cavazzuti (2015), p. 425.

CONSOB was established during a time of financial crisis, when the stock exchange was viewed with scepticism by public opinion. This negative perception was further reinforced by events of the time, which undermined the market's reputation and public confidence in its functioning[91]. The Italian financial centre represented a marginal component of the national economy. The 1970s marked a period of undeniable decline for the stock exchange, exacerbated by the impact of monetary devaluation[92]. As of 31 December 1975, 154 companies were listed on the Milan stock exchange, with a total capitalisation of €3,835 million, representing a capitalisation-to-GDP ratio of 5.2%. By 1977, this ratio had reached an all-time low of 2.5%. Market performance during this period was mixed. However, by the end of the decade, conditions slowly began to emerge that would lead to the extraordinary growth of the following decade. By 1984, 192 companies were listed on the Milan stock exchange, 37 of which were on the restricted market, with a total capitalisation of €28,965 million, equivalent to 7.6% of GDP at the time.

4.2 The public stock exchange model

In the first decade of the Commission's activity, market structures remained firmly rooted in the public-oriented stock exchange model established by Law No. 272 of 20 March 1913[93]. This model was defined by several distinctive features, including the public nature of market access, localism, the involvement of multiple bodies with responsibilities for market operations, and the practice of open outcry trading[94]. At the time, the market accounted for only a minority of transactions, many of which were conducted off-market between private parties. This raised valid questions about whether the prices on the official price list were truly representative[95]. With regard to local stock exchanges, governance was shared among various local bodies with differing competences and responsibilities, alongside the role played by CONSOB. While the model allowed for self-regulation through the delegation of functions by the Supervisory Authority, the involvement of multiple entities and the resulting lack of uniformity in the exercise of delegated activities posed a significant obstacle to progress in this direction[96].

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[91] Siciliano (2011), p. 26. See, in the same edition, also the reconstruction by Coltorti (2011).
[92] See the market capitalisation figures in Appendix 1.
[93] For an overview of the historical context that led to the adoption of the Law No. 272/1913, Baia-Curioni (1995), pages 219 et seq.
[94] See Siciliano (2011), pages 55 et seq.
[95] According to the Commission's estimates, the securities traded on the stock exchange in 1975 were actually around 20% of the total, CONSOB, *Relazione sull'attività svolta nell'anno 1975,* Rome 1976, pages 29 et seq.
[96] CONSOB was in fact forced to take over the competencies regarding the admission of

«I primi passi sono quindi risultati … timidi ed incerti, ed i poteri a protezione del risparmio del pubblico inadeguati in un periodo in cui la fantasia degli operatori finanziari era molto spregiudicata»

Speech by Chairman Piga
London 1990

«The first steps were therefore ... timid and uncertain, and the powers to protect the public's savings inadequate at a time when the imagination of financial operators was very unscrupulous»

Access to the trading floors was restricted to stockbrokers, who were public officials registered in a special register and permitted to conduct business solely on behalf of clients[97]. Banks, while excluded from direct access, were nonetheless integral to the financial ecosystem, providing liquidity to brokers and the market during the settlement phases[98]. In the absence of centralised infrastructures, settlement activities were primarily conducted by stockbrokers on a monthly basis. However, from 1981 onwards, CONSOB intervened to temporarily mandate cash-only trading and to regulate the practice of forward settlement, which was commonly used for leveraged speculative positions[99].

Within a framework inclined towards continuity, the legislative innovations of 1977 facilitated the establishment of the restricted market at various local financial centres, following a model with characteristics distinct from those of the stock exchanges[100]. Its establishment also aimed to formalise and regulate the so-called "little markets", unofficial gatherings periodically held at certain stock exchanges for the trading of unlisted securities[101].

Meetings of the restricted market were held on the premises of various stock exchanges but at different times from those of the official market. In designing the model for this new market, CONSOB implemented a more agile and versatile regulatory framework, incorporating innovative elements to enhance trading information and transparency[102]. A particularly innovative element in governance was the establishment of *ad hoc* committees tasked with organising and overseeing the functioning of the restricted market. These committees were characterised by a streamlined composition and chaired by a Commissioner of the stock exchange, ensuring greater decisiveness and timeliness of action –

commission agents to the stock exchange, which had previously been delegated to the Chambers of Commerce. CONSOB, *Relazione sull'attività svolta nell'anno 1980,* Rome 1981, pages 19 et seq.

97 To understand the size of the time brokerage industry, see Appendix 2.

98 In particular, through the widespread use of repurchase agreements as financing for stock exchange transactions, including leveraged transactions. CONSOB, with its resolution No. 274 of 5 October 1977, required stock brokers and other parties that carried out off-exchange brokerage or financing activities in relation to listed securities to communicate data relative to carry-over and advance transactions on shares of any kind admitted to listing on stock exchanges, with whomever they were set up.

99 CONSOB, *Relazione sull'attività svolta nell'anno 1981*, Rome 1982, pages 23 et seq.

100 CONSOB, *Relazione sull'attività svolta nell'anno 1977,* Rome 1978, pages 41 et seq.

101 *Ibid,* as well as cf. Costi (2013), pages 23 et seq.

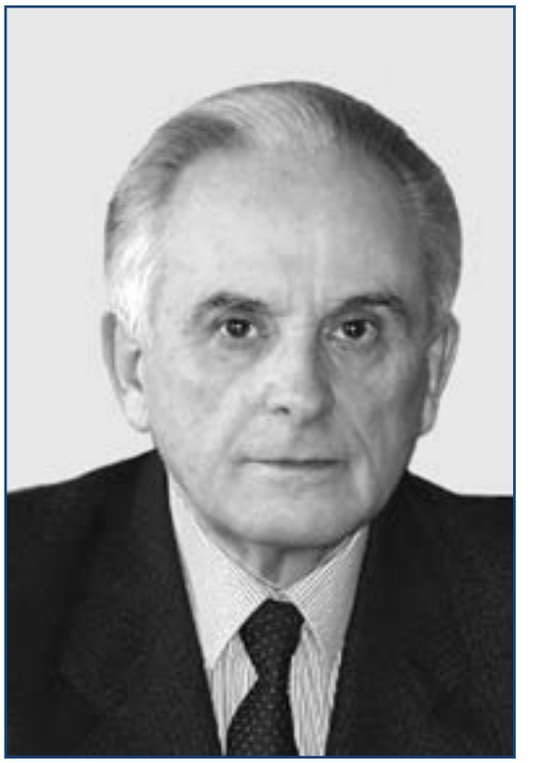
102 CONSOB described the new market as a "nursery" for the main list, complementary to it, as well as a possible financing channel for regional economies, for those companies with a predominantly local character and a territorially circumscribed shareholder base, *ibid*.

qualities essential for the dynamism of the new market[103]. In the following years, the market model expanded to other local offices[104]. However, CONSOB's efforts to promote and develop the new market, including through the use of moral suasion, encountered resistance due to "a reduced propensity for listing or, in any case, dilatory attitudes" on the part of potential issuers[105].

[103] These committees were composed of representatives of the categories concerned (two stockbrokers, one representative of the credit institutions and one of the Chamber of Commerce) and chaired by a Stock Exchange Commissioner. In this way, the intention was also to detach the restricted market structurally from the official market, ensuring at the same time, through the diversification of the knowledge and experience of the members, the maximum representativeness and competence of the Committee, *ibid*.

[104] To the five markets already operating (Genoa, Turin, Milan and Rome since May 1978 and Florence, since July 1979) the restricted market of Naples was also added in 1980: CONSOB, *Relazione sull'attività svolta nell'anno 1980, Rome 1981, pages 21 et seq.*

[105] Emblematic is the case reported in the year 1980, concerning a company, urged by the Commission to seek listing, which resolved «*to do everything possible to avoid admission to trading of the company shares*», *ibid*, p. 22.



Franco Piga, Bruno Pazzi and Enzo Berlanda, CONSOB Chairmen in the decade 1984-1994

THE ITALIAN BIG BANG (1984-1994)

«… la legge n. 281 del 1985 ha dato un contributo risolutivo … Senza dubbio la legge riconosce, in modo che non si saprebbe immaginare più chiaro, autonomia piena all'Istituzione; riconosce cioè il potere dell'Istituzione di darsi anzitutto il proprio ordinamento e di collocarsi al vertice della funzione di controllo esterno dell'ordinamento delle società e della borsa…»

CONSOB Report for the year 1985

«… Law 281 of 1585 made a decisive contribution … Undoubtedly the law recognises, in a way that one could not imagine clearer, full autonomy for the Institution; that is, it recognises the power of the Institution to set forth its own regulatory system and to place itself at the top of the external supervisory function of the regime on companies and stock exchanges …»

1. FOREWORD

The second decade of the Commission's history saw a succession of three presidents: Franco Piga (1984-1990), Bruno Pazzi (1990-1992) and Enzo Berlanda (1992-1997).

As discussed in Chapter 1, the mid-1980s witnessed the so-called "Big Bang" in the United Kingdom – a sweeping reform of the London Stock Exchange initiated by Margaret Thatcher's government. This reform removed public restrictions regulating market access, effectively liberalising it[106]. This reform was the outcome of an agreement reached in 1983 between the Thatcher government and the London Stock Exchange, designed to address concerns raised by the domestic antitrust authority regarding restrictive practices affecting brokers admitted to trading. These practices included fixed minimum commissions and the "single capacity" rule, which required a separation between brokers acting as agents for clients and those operating on their own account. The reform abolished the independence requirement for brokers from larger financial groups and allowed foreign brokers to access the stock exchange. Coming into force on 27 October 1986, it later served as a model for similar reforms in various European states.

In Italy, Law No. 1 of 2 January 1991 (the SIM Law) transformed the landscape of securities brokerage activities, progressively replacing the existing public-oriented brokerage models with specialised private-sector entities. This shift affirmed the SIM model as a multifunctional securities intermediary, moving away from the public management approach to stock exchange trading[107]. Conversely, this law did not allow banking entities to engage in direct trading on stock exchanges, restricting their operations to unlisted securities and government bonds[108]. However, this did not prevent credit institutions from acquiring stakes in SIMs, thereby securing indirect

[106] See the account by KYNASTON (2022), pages 616 et seq.
[107] See also Appendix 2.
[108] For an overview of the activities that could be carried out by banks authorised under the SIM Law, see CONSOB, *Relazione sull'attività svolta nell'anno 1991*, Rome 1991, pages 160 et seq.

access to the market[109]. Moreover, although banks played a marginal role in stock exchange trading, they held a central position in trading government securities on a dedicated market (the "MTS" market).

2. The regulatory framework

2.1 CONSOB's new institutional set-up following Law No. 281/1985.

The regulatory activity of the decade marked a period of significant transformation in the regulation of financial markets. It represented a decisive shift for the market's architecture, which definitively moved away from the Stock Exchange Law of 1913, as well as for the supervisory framework of the securities market. This framework was consolidated around the "double track" model involving both Banca d'Italia and CONSOB, a structure that continues to characterise the domestic control system. Within this process, CONSOB's role was clearly defined. While not the principal actor, it contributed substantially through its strong impetus to the legislative process, whose outcomes had reciprocal effects on the Commission itself.

A key milestone in this evolution was Law No. 281 of 4 June 1985, which marked a turning point in the development of supervisory structures for the protection of savings, leading to the emergence of an independent Supervisory Authority. The exercise of activities under Law No. 216/1974, particularly in light of the subsequent expansion of CONSOB's competences, had highlighted the need for organisational strengthening to ensure the effective discharge of its responsibilities. Law No. 281/1985 amended the founding law, significantly innovating the Commission's organisational structure and affirming its autonomy and independence, which was explicitly recognised through the acquisition of full legal personality[110]. In addition to reshaping the formal framework, Law No. 281/1985 addressed several practical constraints that had hindered CONSOB's effective operation. Furthermore, it enhanced transparency obligations in the area of major shareholdings, which had already been introduced by Law No. 216/1974[111].

«Il quadro normativo è un tassello che è andato al suo posto, ma esso è risultato molto più corposo della materia a cui si deve applicare. In altre parole, la legislazione è cresciuta, ma non altrettanto è cresciuto il mercato»

Speech by Chairman Berlanda
Milan 1993

«The regulatory framework is a piece that has fallen into place, yet it has proven to be far more comprehensive than the area it is meant to regulate. In other words, legislation has grown, but the market has not grown as much»

[109] The participation of banking entities in the capital was not ruled out by the law, which indeed exempted credit institutions from the restriction of participation in the capital of SIMs, cf.

[110] In other words, prior to the amendments of Law No. 281/1985, the acts and measures of the Commission, although taken autonomously, were necessarily imputed to the legal subjectivity of the State.

[111] See Article 5 of Law No. 281/1985.

Supplemento ordinario alla «Gazzetta Ufficiale» n. 142 del 18 giugno 1985

GAZZETTA UFFICIALE

DELLA REPUBBLICA ITALIANA

PARTE PRIMA — Roma - Martedì, 18 giugno 1985

N. 84

LEGGE 4 giugno 1985, n. 281.

Disposizioni sull'ordinamento della Commissione nazionale per le società e la borsa; norme per l'identificazione dei soci delle società con azioni quotate in borsa e delle società per azioni esercenti il credito; norme di attuazione delle direttive CEE 79/279, 80/390 e 82/121 in materia di mercato dei valori mobiliari e disposizioni per la tutela del risparmio.

2.2 The new regulation of securities markets

Legislative activity in the early 1990s initiated a transformation of capital markets structures, liberalising market access and related infrastructure in Italy. This period significantly advanced the development of a comprehensive domestic financial market regulatory framework, addressing several existing gaps. Consequently, the powers and functions of the Commission, as well as the scope of its activities, were progressively expanded. The legislative reforms also prompted extensive regulatory activity by CONSOB, which in some areas was conducted in collaboration with Banca d'Italia, to implement the new regulatory framework.

Following prolonged parliamentary debates, Law No. 1 of 2 January 1991, regulating securities brokerage activities and the organisation of capital markets, was enacted[112]. The law aimed to adapt to the Italian context the reform and modernisation initiatives in securities markets that had been undertaken in most European legal systems since the 1980s. As early as the mid-1980s, the Commission had developed and promoted specific guidelines for the development of the national stock market. These guidelines were intended to serve as a foundation for an organic reform of the financial marketplace, addressing its core issues, namely the price formation process and overall transactional efficiency (see Chapter 1, Section 3)[113]. The issue of market modernisation was also a significant concern at the EU level and was referenced in the first proposal for a Council directive on investment services[114]. The SIM Law had two key provisions. Firstly, it established a unified regulatory framework for investment services and securities brokerage firms, explicitly reserving activities related to dealings on stock exchanges and the over-the-counter market to these intermediaries[115].

In particular, it introduced a set of principles and rules of conduct for intermediaries, along with capital requirements, to govern the conduct of

[112] The Law represents the synthesis of a long process of study and reflection, which finds its roots in the early 1980s. See for an evolutionary overview of the SIM Law, Ferrarini 1998, pages 26 et seq.

[113] See in particular CONSOB (1985); *id* (1987), referred to in ch. 1.

[114] The proposal for a directive of 9 January 1989 also provided an initial definition of the terms of access of investment firms to the stock exchanges of member states. It established reciprocity principles for third country firms. The home country authorities remained responsible for financial supervision. The directive aimed to promote the liberalisation of investment services by 1993, see *Proposal for a Council Directive on Services in the field of investment in transferable securities* COM (1988) 778 final, (89/C43/10).

[115] The reservation of business was, however, subject to certain exceptions provided for stockbrokers, as well as, on a transitional basis, for commission agents. Banking entities were left, pursuant to Article 16(1), the trading activity relating to unlisted securities and government securities, see Cera (1993), pages 27 et seq.; Annunziata (1993), pages 254 et seq.

brokerage activities[116]. From the perspective of supervisory structures, the law was designed based on the dual-track model, with Banca d'Italia responsible for stability controls and CONSOB overseeing transparency and fairness. The Ministry of the Treasury also played a role in several areas, particularly in relation to sanctions[117]. Wide-ranging regulatory powers were delegated to CONSOB.

Furthermore, the SIM Law laid the legal foundations for modernising the Italian financial marketplace, a process that will be discussed later. It introduced a cohesive regulatory framework for the governance of regulated markets and equipped CONSOB with the necessary tools to ensure its effective implementation, particularly in relation to the use of telematics and the concentration of trading. The law also addressed market governance by establishing the Stock Exchange Council, which consolidated the powers previously held by the "minor stock exchange bodies" and the Chambers of Commerce[118]. Under the regulatory framework, the Commission retained a set of managerial powers related to market operations, such as those concerning the admission to listing, the suspension of securities, and stock exchange listings, in addition to its supervisory and regulatory functions. The SIM Law also introduced comprehensive regulations for post-trading services, specifically in the areas of clearing, guarantee services, and centralised management. In these areas, it granted CONSOB extensive regulatory powers for implementation, to be exercised in collaboration with Banca d'Italia.

Moreover, the 1990s saw significant innovations in corporate information, transparency, and the protection of market efficiency, reflecting a broader trend towards European harmonisation[119]. In particular, Law No. 157 of 17 May

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[116] Previously, with the adoption of the Stock Exchange Commissioners Regulations of 1986, CONSOB already anticipated in part the techniques introduced with the SIM Law, see CONSOB, *Relazione sull'attività svolta nell'anno 1991,* Rome 1991, p. 11; see also Annunziata (1993), p. 271.

[117] See the reconstruction of the supervisory model offered by Cera, (1993) pages 113 et seq.; Cavallo (2006), pages 13 et seq. and Borrello, Cassese Et Al. (2021).

[118] The introduction of the Stock Exchange Council resulted in the transfer of the powers already vested in the pre-existing bodies, thus superseding the previous set-up outlined by the Presidential Decree of 31 March 1975, No. 138. This innovation represented a point of development in the role of intermediaries in market governance and the basis for the attribution of a self-regulatory function, even though the ownership of market supervision, management and organisation remained with CONSOB. Although vested with limited powers, essentially relating to the logistical and functional aspects of stock exchanges, the Commission was nevertheless empowered to delegate to this body a wide range of competences relating to the organisation and operation of stock exchanges, as well as the admission of securities to listing, CONSOB, *Relazione sull'attività svolta nell'anno 1992,* Rome 1992, pages 20 et seq.

[119] For a framing of the early comments on the European drive towards financial market harmonisation, see Ferrarini (1983), pages 105 et seq.

1991 introduced the offence of insider trading in Italy, significantly expanding the obligations of listed issuers to disclose information and communicate with the public, while delegating extensive regulatory and supervisory powers to CONSOB[120]. The law transposed into domestic legislation the provisions of Council Directive 89/592/EEC of 13 November 1989, which coordinated regulations on transactions conducted by individuals in possession of inside information.

Similarly, Law No. 149 of 18 February 1992[121] supplemented and amended the provisions on the solicitation of public savings contained in the original Law No. 216/1974. Although often criticised for reflecting a sub-optimal legislative technique that was not fully aligned with the regulatory developments of the period, this law enriched the legal framework by introducing specific regulations governing public offers for the sale, subscription, purchase, and exchange of securities, based on principles of transparency and control by the Commission. This law also granted CONSOB extensive powers as the guarantor of market transparency, including regulatory powers that were subsequently exercised.

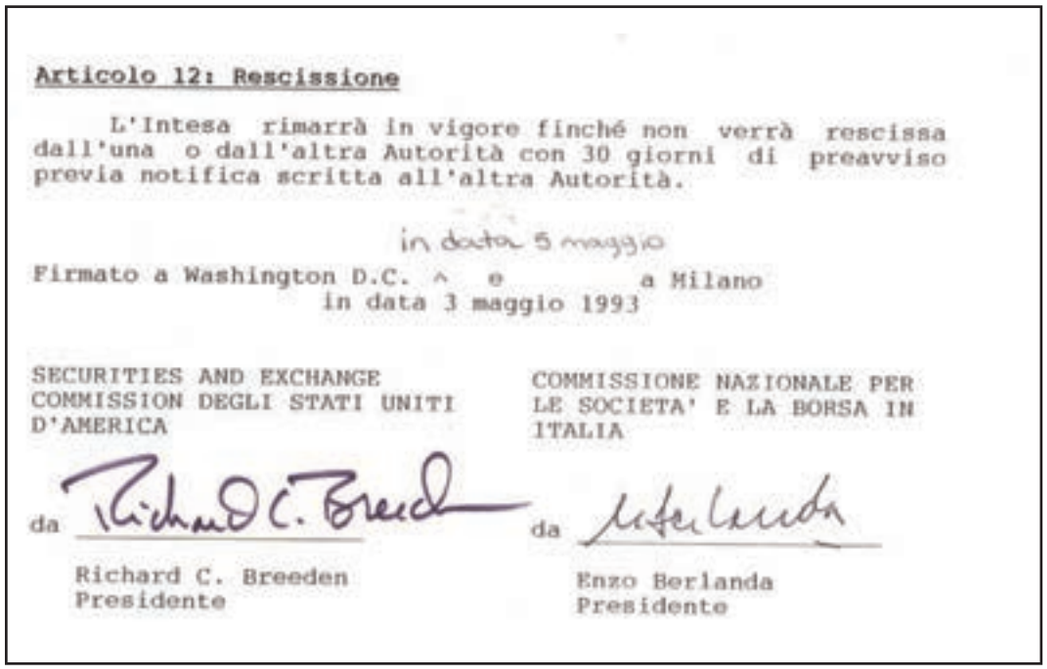
Finally, during the early 1990s, driven by European harmonisation, there was a gradual expansion of the scope of institutional investors, following the model established by Law No. 77 of 23 March 1983, which had introduced open-end mutual funds[122]. This process advanced with Law No. 344 of 14 August 1993 on closed-end mutual investment funds and Legislative Decree No. 84 of 25 January 1992, which, implementing the delegation contained in the 1990 Community Law and transposing Council Directive 85/611/EEC of 20 December 1985, introduced the regulation of SICAVs into the legal framework[123]. Legislative Decree No. 124 of 21 April 1993 completed this framework by introducing regulations for pension funds and supplementary pensions. The supervisory structures established by these legislative measures followed the dualistic model already adopted under Law No. 77 of 1983 and carried forward by Law No. 1 of 1991. This approach featured a division of competences by purpose between CONSOB and Banca d'Italia, in line with the dual-track framework.

[120] See Bartalena (1993), pages 230 et seq., in particular p. 248. The author points out that Article 17 of Law 216 of 1974 had already introduced specific information and transparency safeguards for various parties in relation to information on listed issuers.
[121] Ferrarini (1993), p. 45. On this topic see also Stella Richter (2011), pages 5 et seq.
[122] See Costi (2013), pages 31 et seq.
[123] Insights in Lener (1993), pages 139 et seq.

3. The evolution of the Authority

3.1 The new institutional set-up of the Commission

During the decade under review, significant innovations were introduced to the institutional and organisational framework of the Commission, which expanded its powers and its supervisory and control functions. As previously noted, following a complex process, CONSOB acquired full and effective legal personality under public law through Law No. 281 of 1985, becoming the first independent authority in the system just over a decade after its establishment. In the Italian institutional landscape, CONSOB's new formal framework, along with the additional powers granted by the legislation of the 1990s, strengthened its institutional standing and



Articolo 12: Rescissione

L'Intesa rimarrà in vigore finché non verrà rescissa dall'una o dall'altra Autorità con 30 giorni di preavviso previa notifica scritta all'altra Autorità.

in data 5 maggio

Firmato a Washington D.C. ^ e a Milano
in data 3 maggio 1993

SECURITIES AND EXCHANGE COMMISSION DEGLI STATI UNITI D'AMERICA

da Richard C. Breeden

Richard C. Breeden
Presidente

COMMISSIONE NAZIONALE PER LE SOCIETA' E LA BORSA IN ITALIA

da Enzo Berlanda

Enzo Berlanda
Presidente

The 1993 Memorandum of Understanding between CONSOB and SEC

its position within the supervisory framework. This was particularly evident in its relationship with Banca d'Italia, towards which CONSOB was placed in a para-ordinate position within a framework of formal coordination.

The Commission's institutional activities extended beyond the scope outlined by Law No. 216 of 1974 into new areas, resulting in intense regulatory activity and a marked increase in supervisory responsibilities, as reflected in the Reports of the period. Notably, new laws on insider trading and takeover bids broadened CONSOB's responsibilities regarding the protection of savings, oversight of the dissemination and quality of information, and the proper handling of price-sensitive

information. In 1991, in implementation of this legislation, the Regulation on Insider Trading was adopted[124]. During this period, the Commission developed its supervisory expertise in addressing insider trading, including the creation of specialised enforcement models to combat the phenomenon. In this context, supervisory activities played a crucial role in ensuring the effectiveness of the system's response[125]. In 1992, the Commission's regulatory activities concerning the solicitation of public savings were further developed and finalised with the issuance of measures implementing legislative provisions on public offerings of securities and related advertising initiatives[126]. This led to a significant increase in the number of prospectuses filed (see Appendix 2).

A similar pattern emerged in the areas covered by the SIM Law, where CONSOB played a leading role through extensive regulatory activity. In the six months following the entry into force of the new legislation, the Authority issued various regulations containing the implementing provisions of Title I of the law, concerning the regulation of stockbroking activities[127]. Subsequently, regulatory activity focused on the provisions of Title II, concerning markets, driving the modernisation of domestic trading venues and related infrastructures, which will be discussed later. Meanwhile, in continuity with previous legislation, the SIM Law retained management responsibilities in market matters entirely within the public sphere – specifically with CONSOB. These responsibilities, including the admission of securities to listing (even *ex officio*) and the supervision of trading, were only later transferred to private entities. As a result, CONSOB

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[124] See CONSOB Resolution No. 5553 of 14 November 1991, in Official Gazette No. 289 of 10 December 1991.

[125] At the dawn of the entry into force of the discipline in Italy, the Commission conducted 26 inspections in 1992, against various intermediaries, with the aim of ascertaining the principals of the underlying transactions involving the purchase and sale of specific listed securities, carried out over a certain period of time, as well as the relevant characteristics of such transactions. This inspection activity was followed by reports to the judicial authorities, see CONSOB, *Relazione sull'attività svolta nell'anno 1991,* Rome 1992, pages 226 et seq.

[126] See in particular the accounts for the year 1992, in CONSOB, *Relazione sull'attività svolta nell'anno 1992,* Rome 1993, pages 185 et seq.

[127] Firstly, with resolution No. 5386/1991, the Regulation was adopted to execute certain provisions of Law No. 1/1991, concerning SIMs and other securities intermediaries, containing, among other things, the provisions relative to the registration in the relative registers of SIMs and fiduciary companies; the discipline of the criteria for drawing up and the methods of publication of the customer information document; the regulation of the activity of SIMs authorised to solicit public savings outside of their registered offices. In July, CONSOB, in agreement with Banca d'Italia, adopted with resolution No. 5387/1991, the Regulations governing the exercise of securities brokerage activities, and with resolution No. 5388/1991, the Regulations concerning the Register and the activity of financial services promoters. To these regulations, were added those issued by Banca d'Italia in agreement with CONSOB, see CONSOB, *Relazione sull'attività svolta nell'anno 1991,* Rome 1992, pages 145 et seq.

regulated the admission of issuers' securities to listing throughout the decade[128]. Furthermore, Article 20(4) and (5) of the SIM Law granted CONSOB regulatory authority over the establishment of new markets, including local markets, for the trading of securities not listed on the stock exchange or admitted to trading on restricted markets, as well as over the related regulatory framework[129].

During the decade under review, the Commission's market activities expanded into the post-trading services sector with the establishment of the Cassa di Compensazione e Garanzia and several amendments to the operating regulations of Monte Titoli, which will be discussed later.

Recognising that effective domestic market supervision could not be achieved in the context of market internationalisation without cooperation and the exchange of information between supervisory authorities, CONSOB actively promoted collaboration with other authorities and public stakeholders, extending beyond national and European borders. Although the internationalisation of markets was still in its early stages, the Commission's strong commitment to international and cross-border cooperation became evident during this period. Notably, in 1986, CONSOB formally joined the International Organisation of Securities Commissions (IOSCO)[130], where it participated in both the Executive Committee and the Technical Committee. The Authority also joined the various OECD Committees. From the outset, CONSOB's contribution to the Organisation's activities was particularly significant, spanning various areas of reference and involving differing levels of participation and leadership[131]. In 1989, CONSOB

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[128] It was in fact with Resolution No. 1622 of 19 December 1984 that the listing regulations were approved, subsequently amended in 1989 and 1991, see Ferrarini (1993).

[129] Prior to the entry into force of the SIM Law, Article 1 of the Law of 20 March 1913 No. 272, in conjunction with Article 1 of its implementing regulation (Royal Decree No. 1068 of 4 August 1913), made the establishment of new public stock exchanges subject to a decree of the President of the Italian Republic, at the proposal of the Minister of the Treasury. This was not, however, an obstacle to the establishment of the MTS market, referred to *below*.

[130] See CONSOB, *Relazione sull'attività svolta nell'anno 1986*, Rome 1987, p. 132. The CONSOB adhered, however, to the resolution taken by IOSCO, committing itself, on a reciprocal basis, to the exchange of information within the limits permitted by the respective national laws. However, the internal regulatory limits were very narrow: the Commission was, in fact, only allowed to transmit information, covered by official secrecy, to the Authorities of the EEC countries in relation to specific matters (see Article 20 of Law No. 281/1985). These limitations were, however, partially overcome by the subsequent Insider Trading Law: Article 9, established CONSOB's faculty, under conditions of reciprocity, to cooperate and exchange information with the competent Authorities of States not belonging to the European Community, thereby overcoming the official secrecy obligation provided for in general by Law 216/74.

[131] In 1987, CONSOB took part in the work of the Financial Markets Committee (CMF), which was in charge, among other things, of examining the reform projects of the stock

signed an agreement with the US Securities and Exchange Commission (SEC) to facilitate the exchange of information between the two supervisory authorities[132].

Finally, CONSOB's commitment extended beyond its core functions into complementary areas. A robust programme of public outreach and research activities was initiated and gradually developed. In 1990, the Legal and Economic Studies Division published *CONSOB Quaderno di Finanza No. 1*, the first in a long series that, at the time of writing, has reached No. 89[133].

3.2 Organisational and financial management

The recognition of legal personality, achieved through Law No. 281 of 1985, was not yet accompanied by the recognition of financial autonomy, based on self-financing methods akin to the US SEC model, as an alternative to state contributions. This raised questions about the effectiveness of CONSOB's operations within a funding model that, in practice, remained dependent on government decisions[134]. Additionally, there were already a few isolated exceptions to this model, which both demonstrated an awareness of the issue's importance and foreshadowed the self-financing models that would only be implemented in the following decade[135].

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exchange markets of the Member States under discussion at the time. There, the lines for the reform of the Italian stock market drawn up in April 1987 were presented to the Committee. The Authority also contributed to the work of the Committee on Investment and Multinational Enterprises (CIME) on the exchange of information and cooperation between supervisory authorities: see CONSOB, *Relazione sull'attività svolta nell'anno 1987,* Rome 1988, pages 142 et seq.

[132] See CONSOB, *Relazione sull'attività svolta nell'anno 1989,* Rome 1990, p. 243. The agreement was not fully implemented until after the insider trading Law was passed: see CONSOB, *Relazione sull'attività svolta nell'anno 1992,* Rome 1993, pages 34 et seq.

[133] CONSOB's Quaderni di Finanza «*aim to promote the dissemination of information and economic reflection on issues relating to securities markets and their regulation*». The series was inaugurated with a study on *Insider trading and disclosure obligations on financial markets,* by S. Barsella.

[134] In the case of state financing, these flows could be conditioned by the overall situation of public finances, with repercussions on the possibility of autonomously planning long-term financing plans. The appropriateness of a self-financing solution emerges among the general issues of the decade as a point of attention. See CONSOB, *Relazione sull'attività svolta nell'anno 1991,* Rome 1992, pages 25 et seq.

[135] Law No. 1 of 1991 had already introduced a self-financing system for financial advisers, thus anticipating later solutions, see Article 5 of the SIM Law. In the fiscal year of 1994, the contribution from self-financing contributed a total of 8.9 billion lire, see CONSOB, *Relazione sull'attività svolta nell'anno 1994,* Rome 1995, Table VI.8.

The complexity of the new responsibilities assigned to the Authority, which had to be exercised in an increasingly sophisticated market subject to international competitive pressures, inevitably raised concerns about the adequacy of its structures and organisational arrangements. Strengthening these organisational structures thus became a necessary and priority step to ensure the effective performance of the additional functions acquired through the reforms of the 1990s[136]. As previously mentioned, Law No. 281 of 1985 addressed certain practical limitations and facilitated the completion of the process of grading the Commission's staff, ultimately enabling the gradual phasing out of the secondment model[137]. By the end of 1986, CONSOB's staff numbered 117, comprising 84 permanent employees and 33 on fixed-term contracts[138]. By comparison, as of 31 December 1994, CONSOB's staff numbered 341, including 230 permanent employees and 111 on fixed-term contracts. Explicit recognition was also granted to the secondary office in Milan, which had been operational since 1981 and subsequently became home to important operational units with responsibilities for stock exchange inspection and supervision. Law No. 281 of 1985 had a significant impact on the organisation and functioning of the Commission, including notable changes to its organisational structure. These included the establishment of new offices and the introduction of new roles, such as the Director General[139]. The organisational development of the Commission continued throughout the decade[140]. Distinctive features included

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[136] The need to complete the organisational reinforcement made possible by Law No. 281/1985 emerges from the reports of the period as one of the priority objectives of the Commission's activity, cf. CONSOB, *Relazione sull'attività svolta nell'anno 1985*, Rome 1986, p. 23.

[137] In particular, although Law No. 175 of 30 April 1981 had established the role of CONSOB staff, the regulation of legal and economic treatment was approved only after the adoption of Law No. 281/1985, which simplified the procedure for approving the personnel regulation, allowing the President of the Council of Ministers to issue an implementing decree within 20 days of CONSOB's approval of the text. The regulation was made enforceable in 1985, and the staffing of the company was carried out, *ibid*. p. 157.

[138] See, for more granularity, the data in Appendix 2.

[139] See Article 2, Law No. 281/1985.

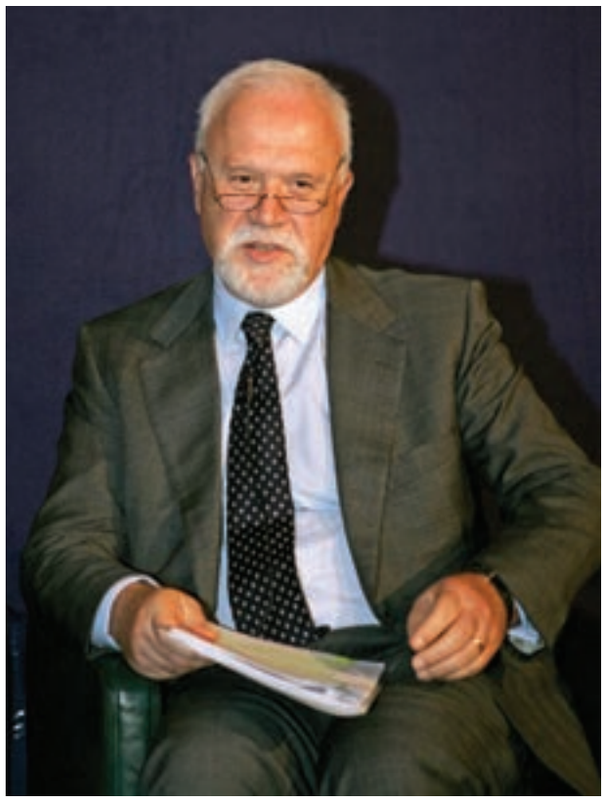
[140] CONSOB's organisational development over the decade was significant and is evidenced by the numerous amendments made to its organisational regulations. In June 1994, the Commission approved an outline reorganisation project consisting of reducing the number of organisational levels from 3 (areas, services, offices) to 2 (divisions and offices). The draft also provided for the creation of the post of General Reform Officer, with the task of supervising the operational activities necessary for the implementation of the new organisational structure and some special projects of a "horizontal" nature. A second fundamental step in the redesign of the modus operandi was the revision of CONSOB's Regulation of Organisation and Operation, approved by Resolution No 8674 of 17 November 1994, CONSOB, *Relazione sull'attività svolta nell'anno 1995*, Rome 1996, pages 150 et seq.

increased focus on internal organisation, the mechanisation of procedures, and the adoption of technological and IT solutions to streamline and enhance the performance of institutional functions[141].

4. The evolution of the market

4.1 The evolution of the list towards a national stock exchange system

The evolution of stock exchange list during this period was undoubtedly remarkable, marking, alongside the early 20th century, a phase of significant revitalisation for the financial centre. This was evident both in the number of listings and in the absolute capitalisation of the stock exchange (see Appendix 1). The financial sector's contribution, measured against gross domestic product (GDP) for the relevant period, more than doubled. Historical indicators vividly illustrate the exceptional nature of this phenomenon. In 1984, 192 companies were listed on the Milan stock exchange, with a total capitalisation of €28,965 million, equivalent to 7.6% of domestic GDP. By contrast, in 1994, the number of listed companies had risen to 260, with a total capitalisation of €155,811 million, equivalent to 17.7% of domestic GDP[142]. The historical origins of this phenomenon, beginning in the 1990s, can be attributed to the privatisation policies implemented during this period, which fundamentally transformed the structure of the stock exchange[143]. Notably, the capitalisation share of long-established companies was drastically reduced, while new entrants – companies listed after 1990 – came to dominate the market[144]. The privatisations served as a test of maturity for the Italian financial marketplace, which underwent profound changes at all levels. This included the abandonment of the public-oriented stock exchange model established by the 1913 law and a gradual shift towards contemporary structures and models[145].



Giuseppe Zadra, Head of the CONSOB Markets Department from 1985 to 1992

[141] During the decade, several major enhancements were made to the Electronic Centre, both in the software and hardware areas. Operational procedures instrumental to the fulfilment of CONSOB's institutional tasks were implemented, including the processing of data relating to the performance of securities, the management of shareholdings and communications, and the management of information relating to the auditing and certification of financial statements, see CONSOB, *Relazione sull'attività svolta nell'anno 1992,* Rome 1993, pages 245 et seq.

[142] See the data included in Appendix 2, with references to the relevant sources.

[143] See on this subject Freni (2021).

[144] The adoption of Law No. 218 of 30 July 1990, also known as the 'Amato Law', initiated the privatisation of public banks with the transformation of public-law institutions and savings banks into S.p.A., with the Foundations of Banking Origin as the main shareholder.

[145] For more granularity on the evolution of the number of authorised SIMs and stockbrokers, see Appendix 2.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In this context, the Commission played a pivotal role in guiding and driving the market's transition, largely through its regulatory activity, as discussed earlier, encompassing both intermediaries and stock exchanges.

4.2 The launch of the electronic stock exchange system

From an infrastructural perspective, at the beginning of the period, the Italian financial marketplace still adhered to the model outlined in the Stock Exchange Act of 1913. Trading in listed securities occurred on the stock exchanges, while unlisted securities were traded on the restricted market. Governance structures were complex and inefficient, with responsibilities divided among various local bodies. This fragmentation hindered the price formation process and transparency, as there was no integrated order book. Supervision and enforcement were similarly challenging within this disjointed framework. During the same period, however, telematics began to play an increasingly significant role in the organisation of securities markets, marking the initial steps towards modernisation[146].

The SIM Law established the foundations for overcoming these outdated structures. In terms of governance, it provided for the creation of a new body, the Stock Exchange Council, appointed by decree of the Ministry of the Treasury and comprising representatives of the SIMs and banks authorised to conduct trading activities. The Council was envisioned as a self-financing and self-managing entity run by intermediaries. It centralised all organisational, technical, and advisory responsibilities previously distributed among various bodies and was entrusted with managing the securities market as a whole, while CONSOB retained responsibility for supervision, management, and organisation.

In terms of infrastructure, the innovations were even more significant, including the development of a telematic trading system and the implementation of trading concentration, in line with the reform principles outlined by CONSOB in the early 1980s[147]. In November 1991, the telematic trading system for Italian stock exchanges was launched for a subset of securities, with its scope subsequently extended[148]. The adoption of telematics aimed to establish market functionality by ensuring the availability of reliable information and, through new operational structures, meeting the demand for speed and certainty in trading. In the Italian context, however, a challenge arose in reconciling the development and management of these new technologies with a regulatory framework that assigned responsibility for setting up stock exchange infrastructures to public bodies by law.

The solution adopted was distinctive. Following agreements reached in 1989, authorised operator categories (stockbrokers, credit companies and institutions, and stock exchange commission agents) established the *Società Generale Telematica di Borsa* (GTB Company), with equal stakes in its capital. The GTB's corporate purpose was to provide the telematic services necessary for stock exchange operations.

By administrative deed, this company assumed from the chamber of commerce's consortium for the coordination of stock exchanges the responsibility for implementing and managing the telematic trading system. This was done in accordance with the technical specifications outlined in the deed and the guidelines set forth in the draft regulatory provisions provisionally approved by the Commission. Leveraging the option of using external entities under concession to realise the project, the GTB Company relied on the technical expertise of CED Borsa. This company, which had been providing services to the stock exchange ecosystem for years, developed the infrastructure required to establish the telematic trading system[149].

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[146] Technological innovation was a key factor in the development of markets and their infrastructure: see in this respect, Di Noia and Filippa (2021).

[147] See Chapter 1.

[148] The launch of the telematic market came shortly after CONSOB's adoption, with resolution No. 5564 of 23 November 1991, of the Regulations for the operation of the telematic system of Italian stock exchanges. Shortly before, with resolution No. 5552 of 14 November, CONSOB had issued another important regulation, concerning the trading of securities outside regulated markets and the related block rules and reporting obligations.

[149] Compared to the original 1985 draft – see CONSOB (1985) –, in the final design of the system it was decided to borrow the operating criteria of the platform Canadian of the Toronto Stock Exchange, based on a system of exclusive continuous telematic auctions activated automatically when the conditions for the opening of trading occur, superseding open trading, see CONSOB, *Relazione sull'attività svolta nell'anno 1991,* Rome 1992, pages 112 et seq.

Moreover, the introduction of the exchange concentration rule, which had long been advocated by the Commission, provided further impetus to the modernisation of the Italian financial centre and the enhancement of the price formation process[150]. The concentration of exchanges, implemented by CONSOB following the launch of the telematic continuous trading system, marked the natural evolution of the local stock exchange model and the transition to contemporary markets, namely the *Mercato Telematico Azionario* (MTA) and the *Mercato Telematico delle Obbligazioni* (MOT). This was followed in 1994 by the establishment of the Italian Derivatives Market (IDEM), designed for trading futures instruments and, later, options[151]. That same year saw the definitive end of the era of open outcry and floor trading.

A few years earlier, the *Mercato Telematico dei Titoli di Stato* (MTS) had been launched on a parallel track, with its development proceeding autonomously and characterised by distinct features. The MTS initiative began in the late 1980s, emerging within a broader context of changes in public debt management policy[152]. At that time, the establishment of a structure to support public debt management was considered, in the form of a secondary market reserved for professional investors, designed to ensure an efficient pricing process. Consequently, in 1988, the market was launched under the terms of a convention approved by the Minister of the Treasury and accompanied by the establishment of a special management Committee. Initially, trading was supported by a provisional information system, which was replaced in 1992 by a dedicated telematic system developed by Società Interbancaria per l'Automazione S.p.A. (SIA). SIA, a subsidiary of Banca d'Italia at the time, was already a key provider of technological infrastructure for the domestic banking sector.

Given the significance of the public debt market for monetary policy and financial stability, its supervision followed a distinct model, primarily overseen by the Ministry of the Treasury and Banca d'Italia. Following the MTS, 1992 also saw the establishment of the Market for uniform forward contracts for Government securities (MIF)[153]. The MIF utilised the same infrastructure as the MTS for trading, aiming to compete directly with the London International Financial Futures and Options Exchange (LIFFE) in the United Kingdom in the field of derivatives on Italian government bonds[154].

While the developments in trading infrastructures were remarkable, equally significant progress was made in other market infrastructures, particularly in post-trading, driven largely by the impetus of the SIM Law. Notably, Law No. 289 of 19 June 1986 defined the framework for the centralised securities management service, establishing a monopoly in favour of Monte Titoli S.p.A. for the centralised custody and administration of securities[155]. The law institutionalised the centralisation of securities custody, facilitating

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[150] Cf. CONSOB, *Relazione sull'attività svolta nell'anno 1992*, Rome 1993, pages 143 et seq.

[151] On 8 November 1994, trading began on the first futures contract on the share index, called FÌb30, see CONSOB, *Relazione sull'attività svolta nell'anno 1994*, Rome 1995, pages 120 et seq.

[152] MTS was established at the instigation of the Ministry of the Treasury. In 1986, a Commission was set up by Minister of the Treasury Giovanni Goria to study financial wealth, public debt and monetary policy, in which Luigi Spaventa participated. This work was followed by the adoption of the Presidential Decree of 29 December 1987, No. 556, which exempted from the application of Law No. 272 of 20 March 1913, the trading of securities issued or guaranteed by the State, carried out in organised forms and with the recording and publication of the relative prices by financial operators, in the cases and according to the modalities established by decree of the Ministry of the Treasury (see Article 1). Subsequently, the Minister of the Treasury, Giuliano Amato, set up a scientific-consultative Committee on the management of the public debt, the so-called Spaventa Committee from the name of its Chairman, which drew up the terms of the diffuse market, later transposed in the Ministry of the Treasury's Decree of 8 February 1988, published in the Official Gazette No. 62 of 15 March 1988.

[153] The MIF was established by Decree of the Ministry of the Treasury of 18 December 1992, published in Official Gazette No. 44 of 22 February 1992, and began operating the following September. The start of the market was promising and the volume of trading carried out already in the first months was comparable to that recorded at the LIFFE in London on similar contracts, see Banca d'Italia, *Ordinary General Meeting of Participants 1992,* Rome 1992, p. 165.

[154] *Ibid,* p. 236.

[155] The law placed strict limitations on the holding of capital and the circulation of the relevant shares, see Article 12 Law No. 289/1986.

the transfer of title through registration[156]. A key feature of the centralised management model was the entry of securities into the system as regular deposits while preserving their paper form, allowing the entitled party to withdraw them from the centralised management structure[157]. Initially based on a voluntary membership system for operators, the system was later made compulsory to facilitate the transition from monthly settlement to daily (T+3) settlement[158]. Monte Titoli's by-laws and service regulations were submitted to CONSOB for approval, in agreement with Banca d'Italia[159].

Subsequently, the SIM Law established the framework for clearing infrastructures and central counterparties, tasking CONSOB and Banca d'Italia with implementing the new structure of the Italian financial markets. The introduction of electronic trading, combined with trader anonymity, necessitated the creation of a clearing and guarantee fund to secure market transactions. In 1992, CONSOB and Banca d'Italia founded Cassa di Compensazione e Garanzia S.p.A., which initially provided guarantees for futures traded on the MIF market and later extended its coverage to instruments traded on the domestic derivatives and spot markets[160].

Initially established as a mutualistic entity, ownership of the CCP was distributed among its members[161]. Membership terms were partially optional: participation in the CCP was mandatory for operators in the futures market, whereas it remained optional for other market actors. This distinction arose because, in the futures market, the CCP fulfilled the typical role of a clearing house from the outset, interposing itself in every transaction and guaranteeing the fulfilment of the parties' obligations. In other markets, however, it managed a fund financed by intermediaries' contributions to ensure successful settlements, without adopting the interposition model[162].

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[156] The exclusive object of Monte Titoli S.p.A. was limited to the '*performance of services aimed at rationalising the custody and trading of securities, in particular through the management of the centralised administration system on the basis of the fungibility criterion of the securities themselves. This activity is carried out in accordance with the provisions of this law'*, see *ibid,* Article 1.

[157] *Ibid,* Article 8.

[158] Cf. CONSOB Resolution No. 5498 of 2 October 1991, by virtue of which Monte Titoli's intervention at the clearing houses was made compulsory as of 1992 for the monthly settlement of contracts in regulated markets, a circumstance that considerably simplified its operational profiles, reducing the phenomenon of settlement failures. See CONSOB, *Relazione sull'attività svolta nell'anno 1992,* Rome 1993, pages 145 et seq.

[159] See, Article 10 Law No. 289/1986.

[160] See in particular the provisions issued in agreement between CONSOB and the Banca d'Italia, concerning the adoption of the provisions concerning the establishment, organisation and functioning of the Cassa di Compensazione e Garanzia, published in the Official Gazette No. 73 of 27 March 1992.

[161] See Article 22 (3) SIM Law.

[162] In 1993, the cash settlement guarantee fund was set up by CONSOB, in agreement with Banca d'Italia pursuant to Article 22 of the SIM Law, financed by members' contributions based on a fixed-rate system, see CONSOB, *Relazione sull'attività svolta nell'anno 1992*, Rome 1993, pages 150 et seq.

Tommaso Padoa-Schioppa, Luigi Spaventa and Lamberto Cardia, CONSOB Chairmen in the decade 1994-2004

THE AGE OF REFORMS (1994-2004)

«La CONSOB ritiene urgente la costituzione di un apposito organo di proposta e di coordinamento per lo sviluppo della Piazza finanziaria italiana. In tale organo dovrebbero essere rappresentati il Governo, la CONSOB, le Autorità cittadine, la Società di borsa, le associazioni di categoria, altre istituzioni interessate»

Address to the Market by Chairman Padoa-Schioppa
Milan 1998

«CONSOB considers it urgent the set-up of a specialised body for proposal and coordination aimed at developing the Italian financial hub. This body should include representatives from the Government, CONSOB, local authorities, the stock exchange company, trade associations, and other relevant institutions»

1. FOREWORD

The third decade of the Commission's operation saw three successive Chairmen: Tommaso Padoa-Schioppa (1997-1998), Luigi Spaventa (1998-2003) and Lamberto Cardia (2003-2010).

The legislative reforms of this period oscillated between two conceptual poles: the liberalisation of activities, on the one hand, and investor protection and market integrity, on the other. These approaches alternated, often influenced by contingent considerations, with the overarching aim of creating an effective regulatory framework to ensure the orderly development of markets within the European and international context[163]. The first innovations of the period emerged in 1996 with the transposition of the 1993 Investment Services Directive (ISD). This directive aimed to modernise financial market law and achieve minimum harmonisation of such legislation at the EU level. It was fully aligned with the liberalisation experience (big bang) previously undertaken in the City of London, with the clear intent of replicating its successes across the European sphere[164].

Two years later, the Consolidated Law on Finance was enacted through Legislative Decree 58/1998. The drafting of the law was undertaken by an inter-institutional commission established at the Ministry of the Treasury, supported by a committee of jurists and economists, highlighting the reform's innovative and collaborative nature, as well as the high level of professionalism of those involved. The Minister of the Treasury and the Chairman of the inter-institutional commission were Carlo Azeglio Ciampi and Mario Draghi, respectively. In this atmosphere of collective effort, as reflected in the Reports of the time, CONSOB made a significant contribution to the discussions, particularly regarding the rules that would govern the behaviour of the market, issuers, and intermediaries[165].

[163] FERRARINI (2018).
[164] CONSOB's contribution to the process is recalled by the words of Chairman Padoa-Schioppa in the introductory speech to the Report on the activity carried out in 1997, CONSOB, *Relazione sull'attività svolta nell'anno 1997*, Rome 1998, pages 41 et seq.
[165] This was the summary balance of the new legislation, according to Chairman Padoa-Schioppa: «*overall, the regulatory framework is lightened, aligned with that of the most advanced financial*

Mario Draghi, Director General of the Italian Treasury in 1998

2. The framework

2.1 From the Eurosim Decree to the Consolidated Law on Finance

Legislative Decree No. 415 of 23 July 1996 (the *Eurosim Decree*) transposed the provisions of the ISD into Italian law, amending areas already reformed by the SIM Law. Although the decree was in force for a relatively short period, its impact was significant. It revisited the regulation of securities brokerage activities, removing the remaining restrictions on banks and implementing the principle of free provision of services within the EU, based on the home state supervision model. The decree also marked the definitive abandonment of the public management of markets, introducing the new paradigm of organising and managing regulated financial markets as a business activity. This activity was reserved for joint-stock companies, not necessarily operating for profit. Additionally, the Eurosim Decree superseded the SIM Law's concentration rule and addressed the emerging phenomenon of alternative trading systems, introducing the enduring distinction between "regulated markets" and "unregulated markets".

The contribution of the Consolidated Law on Finance to this period of reform was substantial. On one hand, it represented a regulatory consolidation exercise aimed at reorganising, coordinating, and refining the previously fragmented body of rules governing intermediaries, markets, issuers' disclosure, and supervisory activities, which had been introduced in a disorganised manner over the preceding decade. On the other hand, through its delegated powers, the Consolidated Law introduced new regulatory considerations, anticipating European legislation in areas such as company law, particularly with respect to corporate governance and takeover bids. In terms of drafting style, the Consolidated Law on Finance adopted a principle-based approach to first-level regulation, favouring second-level regulation by supervisory authorities. This approach also left significant room for private autonomy and the development of self-regulatory codes[166].

The scope of the reform introduced by the Consolidated Law on Finance was, however, confined to listed companies, despite widespread calls for the extension of savings and minority shareholder protection instruments to companies that, while not listed, raised capital from a broader public[167]. In this regard, the subsequent bill

systems, made flexible by extensive delegation. Looking at the Consolidated Law on Finance from the point of view of the primary need to develop our market, there is no doubt that it makes significant progress. And the largely positive judgement remains despite some limitations, which cannot be overlooked», *Ibid*, p. 42. These include the fact that the Consolidated Law on Finance exempted bank bonds and insurance policies with a financial content from the prospectus requirement, and consequently from CONSOB supervision. This exemption was then superseded in the following decade.

[166] As of March 2000, the Borsa Italiana regulation required listed companies to compare their governance model with the self-regulatory code. On the role of self-regulation in the dynamics of corporate governance evolution in Italy, see Alvaro, Ciccaglioni et al. (2013).

[167] This, on the other hand, was Chairman Spaventa's summary judgement in his introductory address to the report on his activities in 1998: «*The overall picture of company law, however, is not yet*

prepared by the Mirone Commission aimed to extend certain reform aspects of the Consolidated Law on Finance beyond the scope of listed companies[168].

Similarly, the 2003 company law reform sought to modernise and make corporate rules more flexible to enhance domestic competitiveness. The relationship between the 1998 reform and the 2003 reform was twofold: certain solutions introduced by the Consolidated Law on Finance were extended beyond financial market law to become general company law principles, while the corporate reform also influenced the regulation of listed companies.

The market scandals at the end of this period, notably the Cirio and Parmalat cases, attracted significant attention and provided fresh impetus for regulatory action at the start of the following decade. The system's response to these misconducts had a profound impact on the original structure of the Consolidated Law on Finance and extended to the institutional framework of the independent authorities.

2.2 The turning point in the European harmonisation process

Equally significant were the regulatory innovations at the European level, driven by the institutional transformations of the preceding decade, including the establishment of the European Union, the creation of the single market, and the introduction of the single currency.

The new millennium marked a period of substantial progress in European financial market law, highlighted by two emblematic developments. The first was the 1999 judgment of the Court of Justice in the *Centros* case[169], which proved

«Il mercato finanziario italiano è ancora lontano dalla condizione nella quale la perdita della reputazione ha una funzione deterrente piena»

Address to the Market by Chairman Padoa-Schioppa
Milan 1998

«The Italian financial market is still far from a state where the loss of reputation serves as a complete deterrent»

well balanced: modern and clear in some parts, old and outdated in others, which are not necessarily the least important. Some of the requirements for the protection of savings and minority shareholders that the rules of the Consolidated Law are inspired by also exist for companies that, while not resorting to listing, seek risk or credit capital from an indistinct public of financiers. On the other hand, in the case of listed companies themselves, the limits of the legislative delegation did not allow for all the provisions that a complete adaptation to international standards would have required: suffice it to say that neither the structure, nor the functioning, nor the powers of the administrative body were touched by the new legislation», CONSOB, *Relazione sull'attività svolta nell'anno 1998*, Rome 1999, p. 32.

[168] The Mirone Commission was established by a Decree of 24 July 1998 with a deadline until 31 March 1999. The product was the draft bill delegating to the government the adoption of one or more legislative decrees containing the organic reform of the regulation of stock companies and cooperatives, the criminal regulation of commercial companies, as well as new rules pertaining to jurisdiction. The reform, consistent with EU regulations and in accordance with the principles and guiding criteria set forth in the law, was also aimed at the necessary coordination with other provisions in force, including those concerning company crises.

[169] In the *Centros* case (Case No. C-212/97, Judgment of the Court 9 March 1999. *Centros Ltd v Erhvervs - og Selskabsstyrelsen*), the then European Court of Justice decided that a Member State may not refuse to register the seat of a company formed in accordance with the law of another Member State where it has its registered office, but in which it does not conduct its business,

«L'esigenza di rafforzare il mercato finanziario italiano, …, è resa più pressante da una duplice circostanza: il prossimo passaggio dalla Lira all'Euro, che apre prospettive di stabilità e di sviluppo ma accresce il rischio della delocalizzazione; il momento della borsa, che può essere occasione di un suo sviluppo ma che contiene il rischio di un'euforia effimera»

Address to the Market by Chairman Padoa-Schioppa
Milan 1998

«The need to strengthen the Italian financial market, …, is made more pressing by two key factors: the imminent transition from the Lira to the Euro, which opens up prospects for stability and development but increases the risk of relocation; the current state of the stock exchange, which may be an opportunity for its development but carries the risk of transient euphoria»

The Parmalat affair

The Parmalat affair stands as one of the most significant corporate crises in the Italian financial market in recent decades. Illegal conduct, including the falsification and concealment of information and the use of complex group structures – many of which were located in offshore jurisdictions – delayed the revelation of the industrial group's financial difficulties.

From December 2002, warning signals from share price performance and inconsistencies in the company's financial management prompted CONSOB to intensify its supervisory activities. These efforts aimed to uncover the company's true financial situation and assess the accuracy of the information provided in its accounting documents.

Due to CONSOB's persistent inquiries, it was revealed on 18 December 2003 that EUR 3.95 billion in declared liquidity did not exist. Trading in Parmalat's shares was suspended on 22 December 2003, by which time the stock had lost almost all its value. Shortly thereafter, CONSOB, pursuant to Article 157 of the Consolidated Law on Finance, challenged the company's 2002 financial statements and notified the judicial authorities of false corporate communications. Specific measures were also taken against the auditing firms involved. The company was placed under extraordinary administration, and its main assets and liabilities were transferred to the "new" Parmalat. Shares and warrants in the new entity were allocated to unsecured creditors and subsequently admitted to trading on the MTA, following CONSOB's approval of the prospectus in May 2005.

The judicial proceedings surrounding the case were also groundbreaking. The Supreme Court's Judgement No. 28932/2011 was particularly noteworthy for three key points: (1) explicit recognition of CONSOB's role in uncovering the default and its intensive supervisory action; (2) the establishment of significant legal principles regarding the offences in question; and (3) confirmation of the criminal liability of non-executive directors.

During the same period, numerous investors initiated civil actions against CONSOB, alleging failure or negligence in its supervisory duties over intermediaries involved in distributing Parmalat's bonds. However, all claims for damages were dismissed, as the courts found no breach by CONSOB of its supervisory obligations under the applicable legislation.

The President of the Italian Republic Carlo Azeglio Ciampi with CONSOB Chairman Enzo Berlanda

to be a turning point. It ushered in a second phase in the evolution of European company law, characterized by increasing regulatory competition. This competition manifested both as regulatory arbitrage by companies, which were free to choose the Member State in which to establish their registered office, and as defensive regulatory strategies by states seeking to retain or attract businesses.

A second pivotal development was the Financial Services Action Plan (FSAP), adopted by the European Commission in 1999 in conjunction with the Lamfalussy Committee's report (see Chapter 1, Section 1.6). The FSAP aimed to harmonise national provisions governing financial markets, continuing the trajectory set by

where the seat in question is intended to enable that company to conduct all its business in the State in which it is incorporated, thus avoiding the application of the rules governing the formation of companies, which in that State are more restrictive as regards the payment of a minimum share capital. The Court also ruled that the fact that a national of a Member State wishing to form a company chooses to form it in the Member State whose company law rules are less restrictive for him and to establish branches in other Member States cannot constitute per se an abuse of the right of establishment.

The headquarters of the CONSOB in Milan

the Commission's 1985 White Paper[170]. The FSAP sought to establish a single market for financial services while strengthening investor protection and prudential supervision rules. Its proposed measures also advocated for the adoption of a more agile legislative mechanism to address emerging regulatory challenges[171]. The objective was to eliminate the residual fragmentation of the capital markets, thereby reducing the cost of raising funds and enabling consumers and providers of financial services to fully capitalise on the opportunities offered by the single financial market, while ensuring a high level of consumer protection. Additional proposals included fostering greater coordination among supervisory authorities and developing an integrated EU-wide infrastructure for both retail and wholesale financial transactions[172].

[170] See European Commission (1985); European Commission (1999) and Lamfalussy Committee (2001), analysed in the first chapter. See, extensively on the subject, Moloney (2023).

[171] The innovative legislative procedure, or *Lamfalussy* method, was based on a multi-level articulation. Level I concerned the enactment of broad but sufficiently precise framework directives or regulations, issued at the end of the legislative process between the Commission, the European Parliament and the Council. Level I acts were supposed to contain only basic principles, to be detailed within Levels II and III of the system.

[172] In addition, in order to harmonise and strengthen the soundness and uniformity of the legal

«Il meccanismo del passaporto europeo, basato sul sistema del riconoscimento reciproco dell'autorizzazione e della vigilanza prudenziale (..), non basta di per sé a raggiungere l'obiettivo della creazione di un mercato interno completamente integrato. Occorrerebbe infatti una maggiore uniformità, non solo nella regolamentazione, ma anche nell'applicazione delle norme e nelle possibilità di sanzione»

Address to the Market by Chairman Spaventa
Milan 1999

«The European passport mechanism, based on the system of mutual recognition authorisation and prudential supervision (...), is by itself insufficient to achieve the goal of creating a fully integrated internal market. Greater uniformity is required, not only in regulation, but also in enforcement and the possibility of sanctions»

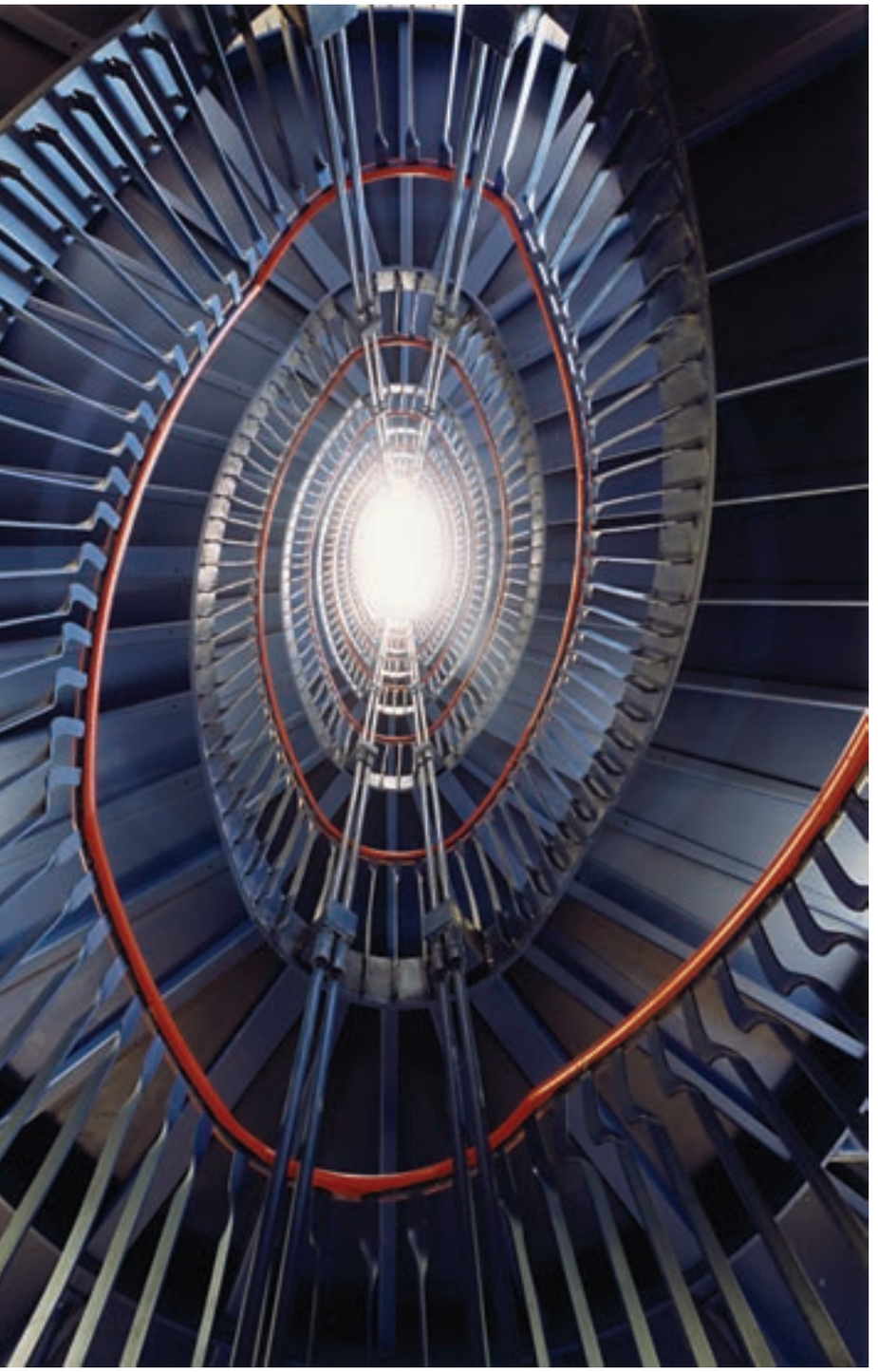
The implementation of the Action Plan led to the creation of a new body of rules for the period, inspired by the work of the Winter Group. The Group, chaired by the Dutch Jaap Winter and including former CONSOB Chairman Guido Rossi as a member, was established by the European Commission to provide independent advice on pan-European rules for takeover bids and to identify development paths for modernising company law within the European Union. The approach adopted was open to soft law and recommended a move away from primary legislation.

The resulting regulatory framework was extensive and included, among others, the International Accounting Standards Regulation (EC No. 1606/2002); Directives on Market Abuse (2003/6/EC MAD), Prospectus (2003/71/EC), Corporate Transparency (2004/109/EC), and Takeover Bids (2004/25/EC); Markets in Financial Instruments (MiFID) (2004/39/EC); and the UCITS IV Directive (2009/65/EC). These regulations came into effect in the following years, leading to national reforms for their transposition.

Within the framework of this action plan, considerable effort was focused on the architecture of financial market regulation, aiming to make market regulation more efficient and effective, ensure harmonisation, and improve coordination among authorities, in line with the Lamfalussy method. A multilevel regulatory system was thus designed, which outlined the first structures for European supervision, including the establishment of Level III Committees with competences in financial, banking, and insurance markets (CESR, CEBS, and CEIOPS). These committees also facilitated cooperation and coordination among supervisory authorities[173]. From its inception, CESR operated as a standard setter and as a forum for coordination between EU supervisors.

framework applicable to the settlement of market transactions, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems was approved.

[173] In their short existence, the Level III committees contributed to convergence, although they were limited in their actions by the absence of adequate instruments, including the absence of legal personality. The limitations of these committees were reconsidered when the subsequent ESAs were established. For an in-depth assessment, see: Ferran (2012), pages 115 et seq, Moloney (2023).



The headquarters of the CONSOB in Milan

3. The evolution of the Authority

3.1 An authority close to the market

Between 1994 and 2004, the Commission's institutional activity brought about significant innovations. It played a leading role in major legislative reforms, both in the preparatory work and through subsequent regulatory activity. The Commission also continued its international coordination efforts and contributed to European coordination, particularly in light of the increasing openness of markets, with its participation in the CESR.

In April 1998, the Annual meeting with the financial market was held for the first time in Milan, at Palazzo Marino, for the traditional presentation of CONSOB's Annual Report, accompanied by an "Annual speech to the financial market" by its Chairman. This practice continued annually, though the venue moved to Palazzo Mezzanotte, the seat of the stock exchange. The choice of Milan was not incidental; it was an explicit acknowledgment of the city's importance as a national financial centre and the home of market institutions: «like any authority governing the economy, CONSOB has, in fact, a dual reference: the institutions of the executive and legislative branches, and the institutions of the market»[174]. Consistently, CONSOB's structure was developed in a dual dimension, with offices in both Rome and Milan. During the decade, work began on the renovation of Palazzo Carmagnola in Via Broletto No. 7 (located in the heart of Milan, less than 500 metres from Palazzo Mezzanotte). This building eventually became the headquarters for the operational offices established in Milan, including the Insider Trading Office and the entire Intermediaries Division[175].

3.2 The Consolidated Law on Finance and CONSOB

The regulatory innovations of the period had a significant impact on the institutional profile of the Commission. In the words of Chairman Spaventa, with the adoption of the Consolidated Law on Finance, CONSOB's

[174] These are the words of Chairman Padoa-Schioppa, see CONSOB, *Relazione sull'attività svolta nell'anno 1997*, Rome 1998, p. 27. The importance assumed by Milan in the national finance scene was already evident at the time.

[175] Thus, important functions of CONSOB were moved to Milan: the new insider trading office, the entire Intermediaries Division, and the operational garrisons of the Issuers' Division (for controls on listing prospectuses and extraordinary transactions) and the Markets Division (for control functions on continuous information). This led to a significant growth in the quantitative and qualitative presence in Milan, even though the stock exchange was experiencing the prospect of a complete delocalisation of trading. See also the data in Appendix 2.

role as a guarantor of investors was legislatively enshrined, under a variety of interconnected responsibilities: the regulation and control of the financial market, investor protection, supervision of listed companies' operations, and ensuring the accuracy of their financial statements[176].

The Consolidated Law on Finance did not introduce any significant innovations to the framework of the supervisory structures, which continued to operate under the dual-track model between Banca d'Italia and CONSOB. However, the overall framework was not without its grey areas, which were beyond the effective control of CONSOB[177]. The enforcement measures established by the Consolidated Law on Finance were immediately criticised, as they provided the Authority with tools that were not always adequate in a context of structural weakness[178]. A key issue was identified in the shared nature of CONSOB's sanctioning powers: the Consolidated Law on Finance adopted a conservative approach, whereby the exercise of sanctioning power by the Commission remained contingent upon the involvement of the Ministry of the Treasury, with the power to propose and apply sanctions being allocated between the two bodies[179]. In addition to raising doubts regarding formal independence, the dual approach proved ineffective, creating various enforcement difficulties in practice[180]. CONSOB's powers in the repression of market offences were also limited, particularly due to the lack of an effective system of cooperation with the Judicial Authority[181].

On the other hand, the impact of the reforms on CONSOB's institutional competences, particularly in its relationship with the market, was highly significant. The recognition of the private nature of managing and organising regulated markets led to the definitive abandonment by CONSOB of the managerial competences granted to it by Law No. 216 of 7 June 1974, which were still present in the structure of the subsequent SIM Law. These competences were subsequently unified under the

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[176] See CONSOB (2000), p. 5.

[177] Even then, the lack of transparency inherent in the circulation of bank bonds and insurance products, which were not identified as financial instruments and were entirely outside the scope of CONSOB supervision, was emphasised. An interesting quantification of the cases excluded from CONSOB supervision at the time is presented by Cavazzuti (2000), in the appendix.

[178] As the facts will show, despite the presence of developed legislation, Italy at the time was characterised by a low level of public and private enforcement, in line with continental Europe as a whole.

[179] The Banca d'Italia was subject to the same limitation for matters within its jurisdiction. However, CONSOB's sanctioning power was, from the outset, individual in respect of financial promoters, pursuant to Article 196 Consolidated Law on Finance.

[180] The functional separation resulted in an unclear allocation of the responsibilities of the sanctioning process, and consequently, a lengthening of the timeframe. See the report of the Hearing of Chairman L. Spaventa at the I Commission of the Chamber of Deputies on 18 November 1999, see CONSOB (2000), p. 18.

[181] A reconstruction of the limitations of the system can be found in the aforementioned hearing, *ibid*.

The President of the Italian Republic Carlo Azeglio Ciampi with CONSOB Chairman Luigi Spaventa

management company. In the new framework, the management company assumed responsibility for organising and managing the market, supervising compliance with regulations, ensuring the proper functioning of the market, and overseeing the admission, exclusion, and suspension of financial instruments and operators from trading.

On the other hand, in addition to having overall responsibility for the supervision of regulated markets, to ensure their transparency, orderly conduct of trading, and protection of investors, CONSOB was entrusted with the supervision of management companies and the regulation of the markets they operated. This responsibility also included the initial authorisation of the activity and the approval of amendments to the market regulations[182].

Managers were granted powers concerning the admission of financial instruments to the markets and the prior verification of listing requirements. The admission requirements were set and enforced by Borsa Italiana S.p.A., and the *ex officio* admission that had existed in the public system was abolished. CONSOB retained control over the public offering prospectus. In Italy, the introduction of the new private structure also brought into focus the debate about the tension between the pursuit of profit by the market company, responsible to its shareholders, and the fulfilment of the regulatory obligations associated with managing a stock exchange, which stemmed from the public interest[183]. An example of this was the public function of regulating and controlling companies at the time of listing[184].

The institutional reforms extended CONSOB's supervision to the so-called unregulated markets, thereby also encompassing the emerging phenomenon of alternative trading systems. Furthermore, as a result of the privatisation process, the market for uniform futures contracts for government securities (MIF) came under CONSOB's supervision, shifting it from the jurisdiction of the Ministry and Banca d'Italia, whose competence remained unchanged for wholesale markets for government securities[185]. An important practical test of the new institutional set-up came with the attacks of 11 September 2001, when the domestic markets remained open[186]. With regard to the supervision of market infrastructures, the Consolidated Law on Finance divided the competences between CONSOB and Banca d'Italia. The Authority's supervision of intermediaries was finally extended to non-resident enterprises active in the territory, without however embracing banks, which were subject, with regard to the provision of investment services and the related supervision, to Banca d'Italia, after consulting CONSOB.

«Con l'approvazione del Testo unico si è chiusa una stagione del diritto dei mercati mobiliari, avviata all'inizio degli anni novanta con le leggi sulle Sim, sull'insider trading e sulle Opa»

Address to the Market by Chairman Spaventa
Milan 1999

«With the approval of the Consolidated Law on Finance, a chapter in capital market law, which began in the early 1990s with the laws on Sim, insider trading and public takeovers, has come to an end»

[182] See Articles 63 and 73 Consolidated Law on Finance.
[183] See Di Noia and Filippa (2021), pages 25 et seq.; as well as Di Noia (1999).
[184] A case in point where the conflict is evident consists in the hypothesis of the (self)listing of the company on the market it manages, *ibid.*
[185] See Article 57(6) Eurosim Decree.
[186] With the exception of the evening trading after hours, the trading in which was suspended from 11 to 14 September, see CONSOB, *Relazione sull'attività svolta nell'anno 2001*, Rome 2002, p. 108.

«Il nesso causale tra sviluppo dei mercati ed evoluzione del quadro normativo non è univoco. Un legislatore lungimirante può disegnare assetti normativi che anticipano l'evoluzione dei mercati. Il mercato può sollecitare l'adozione di regole che riducano i costi delle transazioni. In Italia, le ricordate modifiche legislative, pur se hanno favorito lo sviluppo della borsa, hanno ridotto solo in parte il divario con le altre principali piazze europee»

Address to the Market by Chairman Spaventa
Milan 1999

«The causal link between the development of markets and the evolution of the regulatory framework is not straightforward. A far-sighted legislator can design regulatory structures that anticipate market developments. The market itself can prompt the adoption of rules that reduce transaction costs. In Italy, the aforementioned legislative changes, while favouring the development of the stock exchange, have only partially narrowed the gap with other major European financial centres»

The domestic regulatory developments of the decade had a profound impact on the evolution of the Commission's institutional profile. Further impetus came from the European harmonisation process and the initiatives aimed at promoting coordination between authorities on a global scale. CONSOB's institutional activity increasingly extended into these fora, and even at these early stages, it played a major role in the process that led to the establishment of the modern supervisory architecture. It contributed to the creation of FESCO in 1997[187]. Following the establishment of the CESR, CONSOB actively participated in the activities of various working groups, making significant contributions to the process of implementing the Community legislation of the period on markets[188]. The Commission's efforts in IOSCO also continued, where CONSOB obtained further important recognition[189], including in connection with the preparation of the first *Multilateral Memorandum of Understanding* (*MMOU*) adopted by IOSCO[190].

3.3 Supervisory activity

The enactement of the Consolidated Law on Finance led to extensive regulatory activity, often carried out in collaboration with Banca d'Italia, which was concentrated in the year following its adoption, marking a moment of significant prominence in the institutional activity of the Authority. The delegation of powers under the Consolidated Law on Finance was accompanied by the reallocation of responsibility for the development of secondary legislation, which subsequently covered a wide range of institutions and subjects. The development of the legislation took place within a transparent framework, with consultation involving market participants. On this occasion, the various regulatory blocks adopted were grouped into a conceptual framework that remains relevant today, with three distinct regulatory bodies overseeing intermediaries, markets, and issuers[191].

[187] Established on a voluntary basis, the *Forum of European Securities Commissions* (FESCO) was a forerunner of the *Committee of European Securities Regulators* (CESR). Chairman of FESCO was Tommaso Padoa-Schioppa, CONSOB, *Relazione sull'attività svolta nell'anno 1997*, Rome 1998, p. 12.

[188] The reports of the period are full of detailed accounts of the year-to-year business discussed in the coordinating bodies, as well as of the awards obtained. Among others, in 2004, CONSOB chaired the CESR Standing Group on Collective Asset Management, CONSOB, *Relazione sull'attività svolta nell'anno 2004*, Rome 2005, p. 205.

[189] In 1997, CONSOB also chaired the European Regional Committee of IOSCO, see above, n. 212.

[190] CONSOB, *Relazione sull'attività svolta nell'anno 2002*, Rome 2003, p. 181. The *MoU*, adopted in the aftermath of the events of 11 September 2001, was aimed at introducing a stricter framework for cooperation through the exchange of information. On this point, see Van Cauwenberge (2012), p. 392.

[191] These are, in particular, the following regulations: Regulation No. 11522 of 1 July 1998 concerning the regulation of intermediaries, Regulation No. 11768 of 23 December 1998

As technological innovation progressed, CONSOB was also confronted with the widespread use of the internet and, more generally, with the adoption of new modes of telecommunication. For the organisations of the time, and for the Commission as well, these developments provided new and more immediate channels of communication with the wider public[192]. Although it represented an opportunity, the use of the internet in markets was also associated with fraudulent and abusive activities, to which CONSOB dedicated extensive countermeasures[193].

3.4 Organisational management and self-financing

Reports from the period help trace the evolution of the organisational structure, which underwent significant developments. In terms of actual staffing levels, despite the various developments in regulation and the market, the Commission's staff remained, in absolute terms, relatively stable. As of 31 December 1994, the total number of staff employed by CONSOB was 341, of which 230 were tenured and 111 were employed on fixed-term contracts. By 31 December 2004, CONSOB's staff had increased to 402, distributed across the various careers[194]. The context of general growth was not, therefore, reflected in the Commission's workforce, which saw limited growth over a ten-year period, falling short of the statutory staffing levels due to structural factors.

On the one hand, evidence from the period shows a shift towards the voluntary exit of highly qualified personnel to the private sector, in a process of migration from regulators to regulated entities, supported by the increased competitiveness of the private sector. In the words of Chairman Spaventa: «*Some of our best officials are being acquired on the market at bargain prices, precisely because of the experience they have gained at CONSOB*»[195]. The margins provided by law for the flexibility of the salary incentive system were severely limited, preventing an adequate incentive for staff. In the case of a "young" authority like CONSOB, this was characterised by a significantly lower average age of staff compared to other contexts. Like other independent authorities, the reference economic treatment

concerning markets, and Regulation No. 11971 of 14 May 1999 concerning the regulation of issuers.

[192] The Internet revolutionised the dynamics of information circulation. The creation of the Commission's institutional website, with the progressive centralisation of information, data and documents, led to a drastic drop in information requests handled "manually", CONSOB, *Relazione sull'attività svolta nell'anno 2003,* Rome 2004, p. 201.

[193] CONSOB's initiatives in this area, relating to the fight against abusive practices, as well as to financial education, are numerous, see for example in CONSOB, *Relazione sull'attività svolta nell'anno 2000*, Rome 2001, pages 13 et seq., as well as in CONSOB, *Relazione sull'attività svolta nell'anno 2003,* Rome 2004, p. 235.

[194] See, for more granularity, the data in Appendix 2.

[195] See CONSOB (2000), p. 8.

«All'indipendenza garantita nel processo di decisione non corrisponde tuttavia, per la CONSOB, …, un pari grado di autonomia nella definizione della propria organizzazione interna, …, essendo fra l'altro i suoi regolamenti sottoposti al visto di esecutività della Presidenza del Consiglio. È, questo, un ostacolo non piccolo all'efficienza e all'agilità di un organismo che deve confrontarsi continuamente con il mercato e le cui incombenze aumentano quotidianamente»

Address to the Market by Chairman Spaventa
Milan 1999

«The independence guaranteed in the decision-making process does not, however, correspond, for CONSOB, …, to an equal degree of autonomy in defining its internal organisation, …, among other constraints, its regulations require the endorsement of enforceability by the Board's Presidency. This is no small obstacle to the efficiency and agility of an organisation that is continually confronted with the market and whose tasks increase daily»

for CONSOB staff was, however, established by reference, taking into account the collective agreement in force for Banca d'Italia[196]. On the other hand, at the time of recruitment, the competition procedures already had extended technical timeframes, in terms of calling and conducting them, which negatively impacted the timely replacement of resigning staff.

During the decade, the Commission's financial management underwent radical changes, with the extension of the market-based self-financing model, which was initially supplemented by direct state contributions. Self-financing was introduced by Article 40 of Law 724/1994. This intervention responded to the long-standing demands of the Commission, which had highlighted the limitations of state financing, and contributed to consolidating its autonomy in management terms, in line with the models of other international experiences. This reform further strengthened the link between the authority and the market. In 1995, the partial financing of CONSOB through the market began, following the issuance of the relevant provisions implementing this principle with Resolutions 9423 and 9424 of 1 September 1995[197]. In practice, however, the model proved to be revisable, as it was cumbersome and ultimately inefficient for the players involved. Therefore, as of the 2002 financial year, as a result of the reformulation of Paragraph 3 of Article 40 of Law No. 724/1994, the contribution regime was redefined through the introduction of a single type of contribution, still in force, called the "supervisory contribution". This was diversified according to the categories of supervised entities required to pay the contributions, with an indication of the amounts of the contributions themselves[198]. On the other hand, starting with Law No. 724/1994, State funding to CONSOB was significantly reduced, with a consequent increase in contributions from supervised entities.

4. The evolution of the market

4.1 The evolution of the price list amidst conflicting trends

In the decade from 1994 to 2004, the exceptionally positive trajectory of market performance, driven by privatisations, continued in line with the previous period, which had revolutionised the stock market. In recent years, the privatisation

[196] *Ibid.*

[197] In the initial model, operator fees were designed in terms of a direct counterpart of the individual service rendered by the Commission to the supervised entity. On this assumption, four types of contributions were envisaged: instruction fees, examination fees, supervisory fees, and trading fees.

[198] Article 45, paragraph 28 of Law No. 388 of 23 December 2000 (2001 Budget Law) superseded the original arrangement, replacing the link between contributions and individual services rendered by the Institute with a new metric relating to the relationship between contributions and the overall supervisory activity performed on each category of subject, see CONSOB, *Relazione sull'attività svolta nell'anno 2000,* Rome 2001, pages 146 et seq.

«Affinché il regolatore possa, come deve, essere amico del mercato, occorre che il mercato, attraverso chi vi partecipa, sia amico di se stesso»

Address to the Market by Chairman Spaventa
Milan 1999

«For the regulator to be, as it should, a friend of the market, it is necessary for the market, through those who participate in it, to be a friend of itself»

The headquarters of the CONSOB in Rome

«La qualità di un mercato finanziario non dipende solo da quella delle norme che lo regolano e delle istituzioni pubbliche che lo vigilano. Dipende anche dalla qualità dei comportamenti dei soggetti che, in esso, raccolgono, gestiscono e intermediano il capitale»

Address to the Market by Chairman Spaventa
Milan 2000

«The quality of a financial market does not only depend on the quality of the rules that regulate it and the public institutions that supervise it. It also hinges on the quality of the behaviour of the actors who collect, manage and intermediate capital within it»

policy, which had begun in 1993, gained full momentum, peaking in 1999 when the total value of privatisations amounted to approximately EUR 23.5 billion, the highest since the start of the process, and more than a third of the total value of transactions during the period[199]. The privatisations revolutionised the composition of the stock exchange list. Firstly, public giants such as ENI, INA, IMI, and ENEL were admitted to the list. Secondly, the State and parastatal bodies liquidated important shareholdings in already listed issuers, including banks, through foundations[200]. The reduction in the share of capital held, directly or indirectly, by the State was drastic. Also significant, albeit of lesser quantitative importance, was the increase in new listings of newly established companies, particularly those active in innovative sectors such as technology and telecommunications, which contributed to transforming the list[201]. In this sense, it should be recalled that, in 1998, Borsa Italiana launched the *Nuovo Mercato*, with CONSOB's authorisation, for the trading of ordinary shares of domestic and foreign issuers with high development potential[202]. In 2003, Borsa Italiana promoted a revitalisation of the restricted market, renamed Mercato Expandi[203].

However, the bursting of the new economy bubble, along with various scandals, led to a significant contraction of investors and a negative market scenario in the subsequent period. The difficulties in the financial markets also resulted in a notable reduction in the number of prospectuses (see Appendix 2). In 1994, there were 260 listed companies, with a list capitalisation of EUR 155,811 million and a list capitalisation/GDP ratio of 17.7%. By 2000, the number of listed companies had increased to 297, with a list capitalisation of EUR 818,384 million and a list capitalisation/GDP ratio of 68.2%, the highest ever recorded in the marketplace[204]. In 2001, the quotations of Italian shares suffered a significant drop, with an average reduction of about 25 per cent for the main indices of the

[199] CONSOB, *Relazione sull'attività svolta nell'anno 2002,* Rome 2003, p. 53.
[200] Siciliano (2001), pages 61 et seq.
[201] For an accurate reconstruction of the development of domestic markets at the dawn of the new millennium, from the perspective of the manager, see Borsa Italiana (2000).
[202] CONSOB authorised with resolution No. 11808 of 27 January 1999, Borsa Italiana S.p.A. to operate the Nuovo Mercato, see CONSOB, *Relazione sull'attività svolta nell'anno 1998,* Rome 1999, p. 113.
[203] The project for the revitalisation of the restricted market undertaken by Borsa Italiana had as its main objective that of flanking the regulated markets managed by it with a market adapted to the financing needs of non-complex and not very articulated organisational structures. The project responded to the need, expressed by Italian and foreign issuers, intermediaries and investors, to allow the listing of companies that, although they did not meet the admission requirements of the other regulated markets managed by Borsa Italiana, held consolidated positions in the reference markets and were characterised by a sequence of positive economic-financial results, CONSOB, *Relazione sull'attività svolta nell'anno 2003,* Rome 2004, p. 145.
[204] See more on market capitalisation data in Appendix 1, with sources.

Mercato Telematico Azionario and about 45 per cent for the Nuovo Mercato[205]. In 2004, there were 278 listed companies, with a list capitalisation of EUR 585,139 million and a list capitalisation/GDP ratio of 41.9%.

4.2 Changes in the financial centre

In such a socio-economic context, the innovations introduced by the Eurosim Decree and the Consolidated Law on Finance brought about significant changes in the market structure and its infrastructure. On the other hand, the technological advancements that progressively took hold led to a reduction in transaction costs during the period, affecting the service models of SIMs and banks. The Eurosim Decree completed the redefinition of the range of intermediaries, reshaping the perimeter of the previous regulations in two distinct directions. First, restrictions on securities intermediation activities by banks were lifted, placing them on an equal footing with SIMs and laying the foundation for a competitive relationship between the two. As a result, banks began to enter the intermediation business directly, competing with SIMs, and the intermediary landscape underwent a process of consolidation[206]. On the other hand, the Eurosim Decree opened the Italian market to foreign intermediaries, particularly EU investment firms and banks, which were now able to access Italian trading infrastructures without needing to establish a presence in the country. The regulatory and market structures were adapted to ensure access for participants not residing in Italy, further integrating the domestic market into the broader European financial landscape[207].

4.3 The privatisation of Borsa Italiana and the consolidation of the national supply chain

The impact of regulation on market structures and related infrastructure was considerable, and most of these developments were also increasingly influenced by competitive pressures from other European financial hubs. The regulatory innovations in Europe, coupled with the early steps towards removing existing barriers, sparked consolidation dynamics at a supranational level. From 1998 onwards, a wave of consolidation projects emerged across Europe, though only a portion of these initiatives ultimately proved successful[208].

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[205] CONSOB, *Relazione sull'attività svolta nell'anno 2001,* Rome 2002, p. 9.

[206] Compared to the figures of the previous decade, as at 31 December 2004, 115 SIMs were registered in the register, of which 8 trust companies were registered in the special section, while there were 33 stockbrokers.

[207] The transposition of the ISD, resulted in the opening of the market to non-residents, including indirect access to post-trading facilities, in line with the recital n. 15.

[208] See Di Noia and Filippa (2021), p. 31.

The transition of the stock exchange and the over-the-counter market to a private stock exchange involved key actors: the Stock Exchange Council, CONSOB, and the Ministry of the Treasury. The Ministry of the Treasury initiated the process in accordance with the terms outlined by the Eurosim Decree, which included a competitive auction to facilitate the transition[209]. The share capital was mainly acquired from local intermediaries, according to the schemes of a mutual stock exchange model[210]. Borsa Italiana was, therefore, authorised by the Commission with Resolution No. 11091 of 12 December 1997 to exercise the activity of market management.

The privatisation also affected the wholesale secondary market for government securities (MTS) and the market for derivatives on government securities (MIF)[211]. By Decree of 18 April 1997, the Ministry of the Treasury established MTS S.p.A. and MIF S.p.A., again through competitive auction procedures. In an innovative move compared to the past, MIF S.p.A. was authorised to manage the regulated market for futures and options contracts based on government bonds and interest rates by CONSOB, in agreement with Banca d'Italia. However, the company was later merged with Borsa Italiana S.p.A., which obtained authorisation to manage MIF, although its activities ceased shortly afterwards[212]. In the case of MTS, over 90 per cent of the shares were acquired by domestic banks, and MTS was authorised by the Ministry of the Treasury, after consulting with Banca d'Italia[213].

In a context of competitive pressure resulting from the market integration projects under discussion at the European level, privatisation brought out the urgency of a reorganisation of the trading and post-trading services chain in Italy[214]. In the words of Chairman Padoa-Schioppa: «*privatisation is necessary but not sufficient for the survival of our market. The challenge is very difficult because the competitive confrontation is very fierce*»[215]. In the dynamics of the time, it was clear that the domestic industry had good resources to compete and play a role in the European consolidation process. To this end, however, there was an urgent need to reorganise a "national supply chain" including negotiation, pre-liquidation and centralised management structures. A process of consolidation of the domestic post-trading supply chain followed. In 2001, Borsa Italiana acquired the majority of the share capital of Cassa di Compensazione e Garanzia and, subsequently, of Monte Titoli[216]. From a single market management company, Borsa Italiana established itself as a diversified group, active in the entire chain of trading and post-trading services, structured according to a silo model. In the context of the domestic consolidation process, Borsa Italiana's shareholding in the market managed by it also became part of the hypothesis[217].

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[209] See CONSOB, *Relazione sull'attività svolta nell'anno 1997, Rome 1998, Tav. III.3*. The competitive auction for the sale of the shares of Borsa Italiana S.p.A. took place in September of the same year. The outcome of the auction resulted in the award of the entire share capital to 59 successful bidders out of a total of 98 who had submitted bids, for a total amount of 2,999 lots, equal to 150% of the bid. The average allotment price was ITL 26,335 per share, for total proceeds to the Treasury of about ITL 53 billion. The banks acquired about 63% of the entire share capital, while the percentage of capital held rose to 78.7% if the Sims controlled by them were taken into account. Non-residents were instead present in the capital of Borsa Italiana with a marginal percentage.

[210] Article 56(5) of the Eurosim Decree reserved the majority of the management company's capital to the intermediary category.

[211] See Article 57 of the Eurosim Decree.

[212] During the course of 2002, the Market for Uniform Forward Contracts on Government Securities (MIF) did not register any exchanges, and given the absence of open positions, Borsa Italiana proceeded in October to revoke the listing of futures and option contracts on government securities and on interest rates traded there. The definitive closure of the market was decided shortly afterwards, see CONSOB, *Relazione sull'attività svolta nell'anno 2002,* Rome 2003, p. 67.

[213] See Banca d'Italia, *Ordinary General Meeting of Participants 1997,* Rome 1997, p. 265.

[214] CONSOB, *Relazione sull'attività svolta nell'anno 1997,* Rome 1998, pages 36 et seq.

[215] *Ibid,* p. 38. See also on this subject the speech by the Chairman Spaventa at the IV Commission of the Chamber of Deputies on 31 May 2000, CONSOB (2000), p. 25.

[216] See Borsa Italiana (2001a).

[217] See Borsa Italiana (2001b).

The prospects of supranational integration at the time still clashed with existing national barriers, especially in terms of post-trade obligations[218]. On the other hand, within the contemporary European framework of extreme dynamism, it was already clear that the consolidation process between national stock markets was inevitable[219].

In the aftermath of privatisation, Borsa Italiana and MTS remained separate, but were progressively united in terms of instructions. In fact, Monte Titoli extended its centralised management services to government securities as of 2001, replacing Banca d'Italia. Shortly before, Legislative Decree No. 213 of 24 June 1998 had introduced into the Consolidated Law on Finance (Article 83-*bis*) the principle of compulsory dematerialisation for securities governed by Italian law admitted to trading or traded on an Italian or other EU trading venue with the consent of the issuer. Cassa di Compensazione e Garanzia extended, starting in 2002, initially on a voluntary basis, its central counterparty services to the markets operated by MTS[220]. On the other hand, in 1999, SIA, the technology provider of MTS, merged with Cedborsa, changing its name to "Società Interbancaria per l'Automazione – Cedborsa S.p.A." and providing services to both Borsa Italiana and MTS markets[221].

Another important phenomenon during the period, in line with a European trend, was the emergence of competition between markets at national level. New telecommunication and computing technologies also made access possible for new players, whose activities were captured in a dedicated regulatory framework. At the national level, in the course of 1999, the regulation of organised trading systems (Sistemi di Scambi Organizzati – SSOs) issued by the Commission, which was later included in the Consolidated Law on Finance, was fully implemented. In 2000, the UniCredit Group's TLX system was launched for the trading of shares listed on other Italian and foreign regulated markets, covered warrants and bonds. Originally registered as an SSO, a few years later it was authorised by CONSOB as a regulated market, managed by TLX S.p.A.[222].

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[218] A clear description of the existing limitations and barriers to cross-border integration in Europe can be found in the work of the Giovannini group, in particular Giovannini Group (2001; 2003). Compared to domestic transactions, transactions in the European economy involving several Member States were much more complex, hindered by numerous significant barriers and, according to the group's findings, much more expensive than domestic transactions. The conclusions identified inefficiencies in clearing and settlement as a strong limitation to the integration of financial markets in Europe and their removal as a necessary condition for the development of integrated and efficient financial infrastructures in Europe.

[219] Several projects also interested Borsa Italiana, such as the eight exchanges european alliance, led by LSE and Deutsche Boerse, see Di Noia and Filippa (2021), p. 25.

[220] See, respectively, Decree No. 143 of 17 April 2000 of the Ministry of Economy and Finance and CONSOB, *Relazione sull'attività svolta nell'anno 2002*, Rome 2003, p. 129.

[221] As part of the privatisation process, the Banca d'Italia finalised the divestment of its participation in SIA in early 2000, almost a year after the merger with Ced-Borsa, see Banca d'Italia, *Ordinary General Meeting of Participants 2000,* Rome 2000, *5**.

[222] The market model was essentially based on two principles: the tendentially mutualistic nature of the initiative and the coincidence between shareholders and *market makers, CONSOB, Relazione sull'attività svolta nell'anno 2003,* Rome 2004, p. 147.

Lamberto Cardia and Giuseppe Vegas, CONSOB Chairmen in the decade 2004-2014
with the Presidents of the Italian Republic Carlo Azeglio Ciampi and Giorgio Napolitano

THE AGE OF CRISIS AND OF EUROPEAN SUPERVISION (2004-2014)

«Le iniziative di vigilanza nei confronti di intermediari, esponenti aziendali e società di revisione non hanno precedenti nella storia della CONSOB, per numero di soggetti coinvolti e per importo di sanzioni comminate»

Address to the Market by Chairman Cardia
Milan 2005

«Supervisory initiatives targeting intermediaries, corporate officers and auditing firms are unprecedented in the history of CONSOB, both in terms of the number of persons involved and the amount of the sanctions imposed»

1. FOREWORD

In the fourth decade, at the end of Lamberto Cardia's term of office (2010), Giuseppe Vegas was appointed Chairman (2011-2017).

The domestic financial scandals (mainly Cirio and Parmalat), which occurred towards the end of the previous decade, led to a legal response, consubstantiated by means of Law No. 262 of 2005 (the "Savings Law"). While the crises had evidenced the gaps in the information provided to the market, as well as the lack of effectiveness of both internal and external control mechanisms, the reform introduced solutions aimed at improving the level of public and private enforcement, which also affected institutional aspects of the supervisory authorities[223]. In the words of Chairman Cardia, «*more than two years after the Parmalat scandal, the approval of the savings reform represented an important signal, long overdue, of the will to intervene in depth on the problems that had emerged*»[224].

A few years later, the financial crisis of 2008 was the main driver of the reforms that marked the period. The collapse of Lehman Brothers, which followed the bursting of the sub-prime mortgage bubble that hit the US economy, deeply shook investor confidence, unleashing high tensions and considerable uncertainty in the markets, the latter fuelled by the opacity of information regarding the financial solidity of the major investment banks. The sudden increase in counterparty risk led to a significant contraction of liquidity in the market, which also affected the real economy. The crisis revealed obvious flaws in market dynamics, as well as inadequate economic governance structures in Europe. Its systemic magnitude shed light on the global nature of the financial sector and the ineffectiveness of

[223] In the case of Parmalat, for example, the falsification of company information concealed the real situation of the company for years. In the case of Cirio, the financial problems gradually emerged, but there was a lack of sufficient and timely information on the risks of bonds to savers, CONSOB, *Relazione sull'attività svolta nell'anno 2003*, Rome 2004, pages 28 et seq.
[224] CONSOB, *Relazione sull'attività svolta nell'anno 2005*, Rome 2006, p. 8.

«Economia reale e mercato dei capitali rappresentano i due assi di uno stesso «binario di eccellenza»

Address to the Market by Chairman Cardia
Milan 2005

«Real economy and capital market represent the two axes of the same "track of excellence"»

fragmented approaches enacted by individual jurisdictions[225]. Subsequent reforms challenged the entire set of regulatory frameworks and deregulation choices that had inspired the policy of the previous decade, and were the expression of a broad consensus reached at the international level of the G20. In the production of new standards, international bodies such as the FSB and IOSCO played a leading role[226].

2 The framework

2.1 The Savings Law and MiFID regulation

Regarding corporate governance, the Savings Law was inspired in part by the US Sarbanes-Oxley Act, but also introduced some asymmetrical solutions with respect to international corporate governance trends, which were moreover not always consistent with each other. The reform intervened on the election of directors of listed companies, making list voting compulsory for the election of at least one representative from the minority list. In addition, the presence in the board of directors of at least one independent director was imposed, with requirements in line with those of the board of statutory auditors. Concerning audit functions, the law introduced the obligation to appoint a corporate officer responsible for the preparation of corporate accounting documents and introduced, within the scope of the auditors' regime, limits on the simultaneous performance of other activities on behalf of the audited company[227]. It also strengthened soft law initiatives with the introduction of the *comply or explain* rules. The innovations introduced thus entailed significant amendments and additions to the Consolidated Law on Finance.

The implementation of the FSAP led to the transposition of several Directives in Italy. The MAD Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation was implemented by Law No. 62/2005. As will be discussed below, the transposition of the MAD had important repercussions on the Commission's institutional design, which, innovating with respect to the original structure of the Consolidated Law on Finance, was endowed with more incisive means of control. Subsequently, in 2007, the MiFID Directive was transposed in Italy, aimed at harmonising investor protection rules, the integrity of intermediaries' behaviour, and the efficiency of European markets, causing substantial changes within the regulatory perimeter of the Consolidated

[225] See Ferrarini (2018); see, generally, Cassese (2021), pages 397 et seq.
[226] Among the various products of this rich international strand, in 2012 the *Committee on Payment and Settlement Systems* (CPSS) and the *International Organisation of Securities Commissions* (IOSCO) collaborated to develop the "Principles for Financial Market Infrastructures" (PFMI), see CPMI-IOSCO (2012). These principles were the basis for subsequent financial market infrastructure reforms, including in Europe.
[227] Ferrarini (2018), p. 45.

The President of the Italian Republic Giorgio Napolitano with CONSOB Chairman Lamberto Cardia

Law on Finance. The MiFID, which replaced the ISD, led to the overcoming of the obligation of the concentration rule on trading, introducing a new competitive structure between regulated markets and new types of trading venues (multilateral trading facilities and systematic internalisers) not operated by management companies. The European passport was also introduced for markets, together with the discipline of open access between markets and infrastructures[228].

[228] In particular, Articles 35 and 46 MiFID required Member States not to prevent investment firms and market operators from entering into appropriate arrangements with a central counterparty, clearing house and settlement system of another Member State to arrange the clearing or settlement of some or all trades concluded by

«L'indipendenza delle Autorità costituisce il presupposto necessario per la tutela degli interessi di rilievo costituzionale ad esse affidati. È perciò da considerare l'opportunità che il loro ruolo trovi esplicito riconoscimento nella Costituzione ...»

Address to the Market by Chairman Cardia
Milan 2005

«The independence of the authorities constitutes the necessary precondition for the protection of the constitutional interests entrusted to them. It is thus advisable to consider explicit recognition of their role in the Constitution ...»

2.2 Europe's response to the financial crisis

The financial crisis exposed the inadequacy of existing rules and the weaknesses in the supervisory structures established across Europe. As a result, the regulatory response focused on addressing both of these issues. In the EU, this response materialised in the form of 31 recommendations, outlined by the High-Level Group on Financial Supervision in Europe, which was set up in February 2009 and chaired by Jacques de Larosière. These recommendations addressed not only the content of the regulations but also the supervisory structures themselves, aiming to overhaul them with a stronger European influence[229]. This marked the beginning of an irreversible shift towards the Europeanisation of both the legislative framework and that of supervisory architectures.

The post-crisis regulatory landscape in Europe was characterised by a sectoral and incremental approach, resulting in a significant expansion of the areas regulated by European law. Broadly speaking, the European reforms, implemented in line with the recommendations of supranational committees, repositioned financial markets and their infrastructures at the core of the financial system, institutionalising their role in ensuring efficiency, transparency, and market stability.

Additionally, in contrast to previous regulatory approaches, the new framework became increasingly granular, with more detailed regulations being introduced. This trend towards re-regulation was particularly evident in the creation of second-level technical regulations (Regulatory Technical Standards – RTS and Implementing Technical Standards – ITS). Alongside these developments, the legislative landscape was complemented by various soft law instruments, which further closed the gaps

market participants under their systems, subject to the refusal of the Supervisory Authority, for justified reasons. In exercising control, in order to avoid duplication, the competent authority was also obliged to take into account the control or supervisory activities already exercised over the clearing system by the respective national supervisor.

[229] Faced with the new crises of the globalised economy, the report identified two alternatives: «*In essence, we have two alternatives: the first "chacun pour soi" beggar-thy neighbour solutions; or the second – enhanced, pragmatic, sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains, and this is what we favour*». The report then proposed the adoption of a new regulatory programme aimed at reducing financial risks, improving the management of economic shocks, enhancing systemic buffers, mitigating pro-cyclical amplifiers, increasing transparency, and providing the right incentives for financial markets. Furthermore, it suggested strengthening macro- and micro-prudential supervision, coordinating it more effectively among all financial actors in the EU, and setting equivalent standards to preserve competition in the internal market. The report emphasised the importance of developing efficient procedures for financial crisis management in order to strengthen trust between supervisory authorities and ensure the protection of investors, depositors and citizens in the European Union. It emphasised that the second option would bring economic benefits and was recommended as the preferred one, with the urgency to implement these measures without delay, see Gruppo de Larosière (2009).

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GAZZETTA UFFICIALE

DELLA REPUBBLICA ITALIANA

PARTE PRIMA Roma - Mercoledì, 28 dicembre 2005

AVVISO AGLI ABBONATI

Dal 6 ottobre vengono resi noti nelle ultime pagine della Gazzetta Ufficiale i canoni di abbonamento per l'anno 2006. Contemporaneamente sono state spedite le offerte di rinnovo agli abbonati, complete di bollettini postali premarcati (di colore rosso) per la conferma dell'abbonamento stesso. Si pregano i signori abbonati di far uso di tali bollettini e di utilizzare invece quelli prestampati di colore nero solo per segnalare eventuali variazioni.

Si rammenta che la campagna di abbonamento avrà termine il 25 gennaio 2006 e che la sospensione degli invii agli abbonati, che entro tale data non avranno corrisposto i relativi canoni, avrà effetto dal 26 febbraio 2006.

Si pregano comunque gli abbonati che non intendano effettuare il rinnovo per il 2006 di darne comunicazione via fax al Settore Gestione Gazzetta Ufficiale (n. 06-8508-2520) ovvero al proprio fornitore.

N. 208/L

LEGGE 28 dicembre 2005, n. 262.

Disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari.

left by the formal laws, ensuring a more comprehensive regulatory environment[230]. In essence, the consolidation of the concept of a single rulebook, coupled with the increasing use of Regulations as legal instruments, severely affected the national legislator's room for discretion in transposing the rules into the national sphere.

The results of this process ultimately led to the current legal set-up applicable to financial markets. Almost immediately, European reforms were adopted on credit rating agencies[231], banks[232], clearing and settlement services, and "over-the-counter" (OTC) derivatives[233]. In 2012, moreover, Regulation (EU) No. 236/2012 on short selling was introduced to promote further harmonisation, establishing uniform rules on reporting obligations and restrictions on short selling of financial instruments, as well as the trading of credit default swaps related to sovereign issuers within the EU. This regulation replaced the various regimes that had been in place across Member States[234]. European regulation continued at a fast pace throughout the decade, extending into new areas, but also reforming existing rules, which had shown shortcomings in terms of investor protection and trading transparency. In 2014, after over three years of discussion within the competent European fora, an extensive reform of the MiFID regime was adopted, through the introduction of Directive 2014/65/EU (MiFID II), accompanied by a new directly applicable Regulation, the so-called Markets in Financial Instruments Regulation (EU) No. 600/2014 (MiFIR)[235].

A further outcome of the European reform process was the introduction of a new Union supervisory architecture, aimed at overcoming the fragmented nature of the pre-crisis system. This was first made concrete with the establishment of the European System of Financial Supervision (ESFS), encompassing competences at micro- and macro-prudential levels.

The governance of the various ESAs was uniformly structured, assigning a significant role to national authorities. Specifically, the ESAs were equipped with a Board of Supervisors, composed also of representatives from the national competent authorities – who are the only members with voting rights. Additionally, there was a Management Board, consisting of a President and six members elected from among the national authorities, chosen by their vote[236].

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230 These are guidelines, Q&As, opinions, recommendations and other instruments that, although formally non-binding, contribute to regulating the behaviour of the various addressees, including the supervisory authorities themselves, see Moloney (2023).

231 In 2009, Regulation (EC) No. 1060/2009 on credit rating agencies was adopted.

232 In particular, Directive 2013/36/EU (CRD) on the prudential regulation of banks, as well as the related Regulation (EU) No. 575/2013 (CRR) on capital requirements, and Regulation (EU) No. 1024/2013, which established the Single Supervisory Banking Mechanism (SSM).

233 In 2012, the European Market Infrastructure Regulation (EMIR) Regulation (EU) No. 648/2012 was adopted.

234 The entry into force of the regulation led to an amendment to Article 4-ter(6) of the Consolidated Law on Finance, see below.

235 See Busch and Ferrarini (2017).

236 Di Noia and Furlò (2012), p. 177.

«La formazione di una diffusa cultura finanziaria deve diventare una priorità, che coinvolga le responsabilità delle Istituzioni, delle Autorità di vigilanza e degli operatori del mercato …»

Address to the Market by Chairman Cardia
Milan 2007

«Developing a widespread financial culture must become a priority, involving the responsibilities of institutions, supervisory authorities and market operators»

With regard to the relationship between European and national supervisory authorities, the new model, emerging from a complex political compromise, introduced an innovative blend of centralisation and subsidiarity. The interaction between the ESAs and national competent authorities was structured using an original "Hub and Spoke" model. Here, national authorities maintained supervisory competence over regulated entities under their respective domestic regimes, but centralisation at the EU level necessitated a coordinated relationship between national and European authorities. Consequently, the ESAs were endowed with extensive regulatory powers and coordination capabilities concerning matters governed by European law[237].

The ESFS was established in 2010, building on the foundations laid by the pre-existing European supervisory committees (CESR, CEBS, EIOPS). Consequently, this had substantial implications for national authorities, which began to perform their duties with an increasingly European perspective. In the realm of market and infrastructure supervision, the role of ESMA[238] became particularly significant over time. Initially vested with a mandate primarily focused on fostering coordination through soft law tools, ESMA evolved to play a central role in the governance of EU financial markets. It progressively expanded its regulatory powers and acquired specific direct supervisory responsibilities, following a model of incremental development tied to the sectoral regulatory approach[239].

In addition, with a view of ensuring an effective supervision of financial operators with cross-border relevance, EU law further promoted co-operation and coordination between supervisory authorities through the introduction of special supervisory colleges. The collegial model was adopted by European legislation based on the guidelines set forth in various standards developed by the FSB and IOSCO committees[240], which in fact conceived the colleges as a means to ensure an effective and coordinated supervision of the entity operating on a cross-border basis. This involved the integration of the authorities responsible for the supervision of the operator domestically (so-called "home Member State"), the authorities of the Member States in which it operates ("host

[237] The Hub and Spoke notion is used by E. Wymeersch (2012), p. 236.
[238] For an in-depth analysis of the reasons for the emergence of this central position and the implications of ESMA's gradual increase in relevance, Moloney (2018).
[239] This was the solution adopted for rating *agencies,* trade repositories and central counterparties (CCPs), in the latter case, with competence shared with national authorities with respect to European CCPs and integral with respect to third-country CCPs.
[240] This is the model provided for in the EMIR regulation on central counterparties. In the system, the main responsibilities of the college include the coordinated assessment and monitoring of the supervised institution and the promotion of effective cooperation between the competent authorities, also in crisis situations, see CPMI-IOSCO (2012).

Member States"), and also including the European supervisors, in a dedicated forum. Specifically, the main areas of activity of the Colleges of Supervisors concern risk assessment, crisis planning and cooperation in prudential supervision.

The birth of ESMA

The financial crisis of 2007-2008 made the shortcomings of the supervisory system evident, prompting the European Commission to set up a group of experts, under the leadership of Jacques de Larosière, to formulate proposals for a renewed European drive towards "a new regulatory agenda", "stronger and more coordinated supervision" and "efficient crisis management procedures".

During the crisis, it became clear that supervisory powers were not uniform across Member States and that, for activities conducted on a cross-border basis, there was a lack of effective instruments for cooperation between national authorities.

The Expert Group Report, published in 2009, therefore suggested the creation of a new European system of supervision and crisis management, within which to envisage a strengthened role for the European Central Bank (ECB) and the emergence of a new European body to deal with systemic risks.

In addition, the Report considered the legal structure of the three existing committees, Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and Committee of European Securities Regulators (CESR), which performed purely advisory tasks *vis-à-vis* the European Commission, to be inadequate and proposed the establishment of three new European Authorities as well as colleges of supervisors for the major cross-border players.

On this basis, the new European System of Financial Supervision (ESFS) was born and became operational in 2011. Within the ESFS, the three new Authorities, assigned to the banking, insurance and financial sectors, were given more incisive tasks than the pre-existing Committees. These include: legally binding mediation between national authorities; adoption of binding supervisory standards and technical decisions; coordination of colleges of authorities; authorisation and supervision of EU-wide entities (rating agencies and post-trading infrastructures); and ensuring more coordinated macroprudential supervision.

For the financial sector and ESMA, in particular, the Authorities of all EU countries (27 after Brexit) participate of its governance structure, as well as non-voting observers representing the countries of the European Economic Area (Iceland, Liechtenstein, Norway), the European Commission, the other newly established European Supervisory Authorities (European Banking Authority – EBA, European Insurance and Occupational Pensions Authority – EIOPA) and the European Systemic Risk Board – ESRB.

CONSOB, formerly a member of the CESR committee, has been involved and played a major role in the governance and activities of ESMA from the outset, with the aim of creating the single rulebook and converging the supervisory action of national authorities.

ESMA's work has become more incisive year after year, as evidenced by the new 2023-2028 strategy, which provides for the conduct of peer reviews and common supervisory actions, the joint discussion of concrete supervisory cases, the identification of supervisory inconsistencies, the exercise of the mediation prerogative (even binding) in the case of divergent interpretation/application of the rules and the activation of the *ad hoc* procedure for infringement cases.

CONSOB also participates in the ESRB as a non-voting member.

«Il quadro regolamentare si è rivelato del tutto inadeguato alla prevenzione e alla gestione di crisi sistemiche. Si è determinata una crescita indiscriminata di una finanza sempre più distante dalle esigenze concrete di sostegno dell'economia produttiva»

Address to the Market by Chairman Cardia
Milan 2010

«The regulatory framework has proven entirely inadequate for the prevention and management of systemic crises. There has been an indiscriminate growth of a financial sector that is increasingly detached from the tangible needs of supporting the productive economy»

3. The evolution of the Authority

3.1 CONSOB's new institutional profile following the 2005 reforms

The set of reforms of 2005 had significant impact over CONSOB's organisation, strongly innovating the choices originally made by the legislator of the Consolidated Law on Finance. With the implementation of the 2003 Market Abuse Directive, which took place in Italy through Law No. 62/2005, CONSOB was finally given the power to directly sanction the entities subject to its supervision, with the Ministry of the Treasury being excluded from the process. CONSOB was also provided with incisive powers of investigation and control, filling an obvious gap. The exercise of the new sanctioning powers was preceded by a structural reorganisation aimed at implementing a separation between investigative and decision-making functions, with the establishment of the Office of Administrative Sanctions[241]. The creation of this office constituted a first example of separation of investigative functions from sanctioning decisions, ensuring a neutral assessment of supervisory findings. The amounts collected by CONSOB in the exercise of the new sanctioning power continued, however, to be paid into the State budget.

Subsequently, the Savings Law introduced a set of provisions aimed at uniformly regulating the activities of the independent authorities in the system. In particular, various procedural obligations were included for the adoption of regulatory and general acts, inspired by the principles of *better regulation*. With respect to individual proceedings, the law specified the application of the principles of Law No. 241/1990 on administrative proceedings, insofar as they were compatible. In addition, it redefined the framework on coordination and cooperation between Authorities (Banca d'Italia, CONSOB, ISVAP, COVIP, Autorità garante della concorrenza e del mercato), defining principles and tools through which to achieve these two important purposes, as well as enabling cooperation with the Guardia di Finanza. The law also introduced rules on conciliation and arbitration procedures, referring to relationships between intermediaries and investors, based on a voluntary adhesion model. Further amendments were introduced by Legislative Decree No. 303 of 2005 ("Pinza Decree"), which amended the Authority's liability regime, setting forth that the members of its bodies, as well as its employees, are liable for damages caused by acts or conducts committed with malice or gross negligence[242]. Lastly, with regard to transparency, the 2005 law extended the scope of the regulation on investment services also to banking and insurance

[241] The regulation on sanctions was adopted by CONSOB resolution of 21 June 2005 No. 15086 on organisational and procedural provisions concerning the application of administrative sanctions and the establishment of the Administrative Sanctions Office.

[242] In making this choice, the legislator struck a balance between the principle of independence and the principle of liability. For a wide-ranging view on the various declinations of the subject of the liability of supervisory authorities in Europe, see the volume edited by Busch (2022).

products, which are not included in the definition of a financial instrument, leading to an extension of CONSOB's remit to also cover the underwriting and placement of such products[243].

3.2 CONSOB and the participation in the ESFS

Institutionally, the 2008 reforms had a significant impact on the Commission's mandate. If, on the one hand, the reforms extended the scope of CONSOB's competence, on the other hand, the introduction of the ESFS brought about a change in the dynamics of supervision and coordination between authorities in the Union, now underpinned by a more EU-prominent model. Through its participation in ESMA and IOSCO, CONSOB played a leading role in the dynamics of global and European supervision throughout the period.

After the crisis, CONSOB, along with the other European institutions, was called in the ESFS, created to ensure cooperation and coordination among national supervisory authorities and to overcome fragmentation. As the testimonies of the period confirm, the Commission, in line with the principle of supranational cooperation, made a notable contribution to the functioning, firstly, of CESR and, subsequently, of ESMA and to the performance of their activities with the assiduous participation in the meetings of the Chairman himself. In the above-mentioned set-up, the Commission also became a member of the ESRB, but as a non-voting member. With regard to market regulation, CONSOB actively participated in the negotiation phases and working groups set up within ESMA, often chairing standing committees devoted to specific sub-sectors or subjects, as well as participating, with its own officials, in technical work conducted at all levels and representing national positions at supranational level. Without purporting to present a comprehensive overview, in 2013 alone CONSOB chaired the Post Trading Standing Committee (PTSC), the work of the Task Force on Central Securities Depositories and the working group on the implementation of Regulation (EU) 596/2014 (MAR)[244]. In the impact assessment and cost-benefit analysis procedures, CONSOB contributed its knowledge and experience to ensure a comprehensive assessment of the effects of regulatory proposals, identifying advantages and disadvantages in terms of supervision and quantifying the resources required to implement the projects. In addition, CONSOB's technical expertise was placed at the disposal of government bodies, in the ascending and descending phases of Italy's participation in the European regulatory process[245].

«In un futuro ormai prossimo le funzioni della regolamentazione tenderanno sempre più ad allocarsi nella sede europea dell'Esma…. La tutela del risparmio passa anche attraverso l'impegno a svolgere un ruolo determinante di indirizzo nelle nuove sedi decisionali»

Address to the Market by Chairman Cardia
Milan 2010

«In the near future, regulatory functions will increasingly be allocated to the European headquarters of ESMA…. The protection of savings also requires a commitment to playing a pivotal guiding role in the new decision-making fora»

[243] The amendment provided for the application of Articles 21 and 23 of the Consolidated Law on Finance containing general conduct of business criteria and on the subject of contracts to the area constituted by the distribution by banks of their own financial products and the distribution of financial products issued by insurance companies, see Appendix 2.

[244] CONSOB also participated in the *Market Integrity Standing Committee* (MISC) and the Secondary Markets Standing Committee (SMSC). CONSOB, *Relazione sull'attività svolta nell'anno 2013,* Rome 2014, pages 306 et seq.

[245] In the dynamics of Italy's participation in the European regulatory process, CONSOB

«In Italia la risorsa del risparmio resta, anche malgrado le recenti vicissitudini, abbondante. La borsa ha potenzialità inespresse come motore di sviluppo dell'economia»

Address to the Market by Chairman Cardia
Milan 2010

«In Italy, the resource of savings remains plentiful, despite recent challenges. The stock market possesses untapped potential as an engine for economic development»

In the supranational sphere, CONSOB actively participated in the efforts to stabilise markets, contributing, within the international *fora*, to the process of defining the new post-crisis regulatory framework. In addition to being a member of the IOSCO executive committee, whose meetings were assiduously attended by the Chairman himself, it participated in the work of the organisation's various standing committees and working groups, as well as in the various task forces set up since 2008 to deal with the financial market crisis and coordinate general regulatory development lines, in support of the objectives indicated by the G20. Furthermore, in 2009, CONSOB assumed, jointly with the UK regulator, the chairmanship of the *Task Force on Unregulated Entities* set up by the IOSCO technical committee, which produced an initial catalogue of principles and recommendations for the supervision and regulation of the hedge fund industry[246].

The crisis was also a crucial moment in the history of IOSCO, giving new impetus to the coordination process and cooperation between member supervisory authorities (see Box below). CONSOB also became a member of the FSB, among the few directly participating securities regulators, also in account of Italy's membership of the G20 and G7 countries. It was here that the international standards that would inform the regulatory response to the 2007-2008 crisis were developed.

3.3 Market supervision in the light of some famous cases

In the area of enforcement, CONSOB was equipped with new and more incisive tools for the repression of market abuse, which were immediately put to the test in the context of the notorious BPL/ Antonveneta and Unipol/Bnl bank takeover attempts, as well as in the share derivatives affair involving the Fiat group. The new instruments and rules on coordination, introduced with the 2005 reform, enabled the Commission to make available to the judiciary information that later proved to be fundamental for the criminal prosecution of such conducts. The timely coordination between the CONSOB and the investigating authority, indeed, enabled the effective suppression of unlawful conducts.

provides government representatives with technical support during the rule-making phase at European level. In the downstream phase, it contributes to the implementation of European legislation, offering technical assistance and participating in the preparation of implementing legislation and internal adaptations to EU regulations. For an analysis of the ways in which the CONSOB participates in the European regulatory and supervisory process, see GASPARRI (2017), p. 25.

[246] The task force eventually produced the OICV-IOSCO report, *Final Report Hedge Funds Oversight*, 2010.

The turning point in international cooperation – The IOSCO multilateral agreement

The International Organization of Securities Commissions (IOSCO) is the international organisation that brings together financial market regulators and contributes to the setting of standards for global securities markets, with particular reference to infrastructure, investors and intermediaries. At end of 2023, IOSCO had 131 ordinary members (including CONSOB), 34 associate members and 73 affiliate members.

IOSCO was set up as a result of the uncertainties caused by the end of the Bretton Woods agreements in the early 1970s, which led to radical changes in the world of international finance and, consequently, regulation. In fact, from that moment on, a phase of deregulation ensued, witnessing the increase of internationalisation and interdependence of financial markets, thereby leading to the need for closer cooperation between the various regulators, also driven by technology.

The origins of IOSCO are based on the meetings of the International American Conference of Securities Commission (IASC), which began its activities in September 1974, later expanding to countries on other continents and assuming its current name since the Quito meeting in 1983. The clearest trace of its origins can be found in the organisation's official languages (English, French, Portuguese and Spanish). CONSOB's entry into IOSCO dates back to March 1987. In 1999 the IOSCO General Secretariat, until then in Montreal, was moved to Madrid.

Crucial for the evolution of IOSCO, as for European organisations, was the financial crisis of 2007-2008, which accelerated the process of global harmonisation and standardisation and led to momentous changes in the organisation's governance.

In particular, in 2010, all ordinary and associate members were asked to join the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU). The IOSCO agreement is a success story, with 129 signatories and more than 45,000 requests for exchange of information during the period 2003-2022. CONSOB, which had already signed a cooperation agreement with the US SEC in 1993, was among the first signatories to the multilateral agreement on 15 September 2003.

CONSOB has served and continues to serve as a member of the Board (formerly the Executive Committee) and holds the chairmanship of three committees: Finance and Audit Committee, Committee 2 on Regulation of Secondary Markets and Committee 8 on Retail Investors.

CONSOB played a key role in the matter of the takeover of Banca Antonveneta, succeeding, through its investigation activities, in guaranteeing the transparency and enforcing the regulatory compliance of the conduct of the parties involved in the affair. Following a complex investigation, CONSOB declared the existence of a hidden shareholders' agreement between BPL and other parties, involving the concerted acquisition of shares. Subsequently, the Commission suspended and then declared void both the mandatory public tender offer and the subsequent public tender offer promoted by BPL[247], in light of the serious violations of the regulations on public offers found (see box *below*).

In the attempted takeover of BNL by Unipol, CONSOB's investigations, also conducted in cooperation with foreign authorities, led to the classification of the agreements signed between Unipol and Deutsche Bank[248] as a hidden shareholders' agreement. In this case, CONSOB had the opportunity to express an opinion on the relevance of the sale of assets held by the target company in the course of

[247] See CONSOB *Relazione sull'attività svolta nell'anno 2005,* Rome 2006, pages 200 et seq.

[248] The Commission also held that Article 42(2) of the Regulation on Issuers (the so-called *best price rule)* was applicable to the purchases of BNL securities made by Deutsche Bank following the promotion of the mandatory takeover bid by Unipol, CONSOB, *ibid*.

Address to the Market by CONSOB Chairman in the presence of the President of the Italian Republic Carlo Azeglio Ciampi

a takeover bid, pursuant to the passivity rule set forth in Article 104 of the Consolidated Law on Finance[249]. At the end of a prolonged investigation, carried out in coordination with the judiciary and the Guardia di Finanza, the Commission was able to ascertain the breach of disclosure obligations in respect of shareholders' agreements and impose the relevant sanctions[250].

The Antoveneta case – a covert raid

The affair concerns the dispute for control of Banca Antonveneta between the Dutch bank ABN Amro Bank (ABN), already a majority shareholder with a 12.67% stake and linked by a shareholders' agreement to other shareholders, and Banca Popolare di Lodi (BPL).

In particular, on 30 March 2005, ABN announced the launch of a takeover bid on the entire capital of Antonveneta, which was followed, about a month later, by the launch of a competing public exchange offer (OPS) by BPL for a higher price (26 euros per share against ABN's 25). BPL managed to participate in the important Antonveneta shareholders' meeting of 30 April 2005 with a 29.93% stake.

CONSOB, also as a result of an inspection at BPL and documentation from the Public Prosecutor's Office (which carried out the first exchange of information in application of Article 187-*decies*, paragraph 3, Consolidated Law on Finance), demonstrated that BPL's "hidden" project had begun several months before the announcement of the OPS. The share of almost 30% was in fact reached, among other things, thanks to loans granted to a member of Antonveneta's shareholders' agreement, with the option of repayment through Antonveneta shares, and to dozens of its own customers. For the latter, the conspicuous loans, granted at very favourable rates and guarantee schemes, were in fact destined to the purchase of Antonveneta shares then resold to BPL. The bank of Lodi was also found to have purchased shares on the market thanks to matched orders and transactions on the block market.

According to CONSOB, therefore, the announcements made to the market in March and April 2005 by BPL, which denied the existence of agreements or pacts for acquisitions of Antonveneta shares, contained false information because they concealed the "takeover" in progress. The Milan Public Prosecutor's Office was then notified of the hypothesis of market manipulation by BPL (then market rigging, sanctioned by Article 2637 of the Italian Civil Code) as well as obstruction of the functions of the supervisory authorities.

The complex judicial case, which ended with the conviction of most of the numerous defendants, saw CONSOB acting as civil plaintiff. Judgment No. 12989/13 of the Court of Cassation has become an important precedent, due to the many issues, including procedural issues, examined by the Judges of legitimacy on the subject of market abuse and obstruction of supervision, starting with that of territorial jurisdiction, confirmed in the Court of Milan in relation to the crime of market manipulation.

In the affair involving the Fiat Group, CONSOB shed light on the effects of the equity swap transaction entered into with Merrill Lynch International and on the related financial disclosure activities carried out by IFIL and the parent company Giovanni Agnelli & C, in order to ascertain the existence of takeover bid obligations, as well as hypotheses of violations of the regulations on market abuse and disclosure obligations[251]. The context was that of the so-called "convertendo loan" granted to Fiat in 2002 by a group of leading national and international banks, which included a condition for debt conversion into shares if not repaid by 2005. This conversion would dilute the parent company's ownership below the 30% threshold. An undisclosed equity swap contract with Merrill Lynch aimed to

[249] In response to a question posed by Bnl itself concerning the ongoing sale of certain assets held through its Argentine subsidiary Bnl Inversiones Argentinas Sa, CONSOB commented on the possible relevance of the transaction under Article 104 of the Consolidated Law on Finance, which required the target company to refrain from acts or transactions that might conflict with the objectives of the offer. According to Bnl, the resolution concerning the sale of the Argentine shareholdings did not constitute a relevant act within the meaning of Article 104 of the Consolidated Law on Finance. The bank argued that the sale was part of a broader programme of divestment of non-strategic assets deliberated and initiated prior to the launch of the takeover bid by Unipol, *ibid.*

[250] CONSOB, *Relazione sull'attività svolta nell'anno 2006,* Rome 2007, p. 13.

[251] With regard to the first aspect, the Commission ascertained the non-existence of takeover obligations on the part of Ifil, even for the previous purchases, made in execution of the equity swap contract in the absence of concert. CONSOB's activities did, however, lead to the discovery of breaches of disclosure obligations and market abuse offences, which were followed by various sanctions, *ibid.*

maintain the Agnelli family's shareholding above 30% – the level triggering a mandatory takeover offer. In September 2005, a capital increase addressed the debt conversion, and the Agnelli family's stake was restored above 30%.

The investigation revealed that press releases from the parent company and its representatives falsely portrayed the group's ownership dynamics, misleading investors. The case concluded with CONSOB imposing its first sanction under the 2005 regulations, which was upheld by the Court of Cassation in 2009, though the penalty was slightly reduced. The affair also gained notoriety due to its subsequent legal developments, including a 2014 European Court of Human Rights ruling in the "Grande Stevens" case, which addressed the principles of *ne bis in idem* concerning dual administrative and criminal proceedings and the right to a fair trial[252].

Subsequently, during the crisis, CONSOB intensified its market supervision activities to mitigate systemic risks and protect investors from high volatility, actively participated in international efforts to stabilise stock exchanges and took measures to strengthen the resilience of the system. In the context of increased volatility and turbulence, to reduce bearish pressure on share prices and stabilise the market, the Commission resorted to temporary bans on short selling of selected Italian shares, which were considered a possible factor in amplifying negative market pressures. This public intervention was part of broader efforts at both national and European level to tackle the financial crisis and maintain investor confidence[253].

Moreover, within this framework, CONSOB achieved important results in improving the efficiency and quality of market information. Following a widespread and growing recognition of the importance of related party transactions in the dynamics of investor protection and the proper functioning of the market, there was a need to introduce a new dedicated regulatory regime for companies active in the venture capital markets. This awareness also stemmed from the corporate scandals that had occurred in recent years at a global level, in which related party transactions played a significant, if not decisive, role in both the expropriation of minority shareholders and the concealment of the real economic-financial situation of companies. In this sense, in order to further raise the level of transparency of listed companies, in 2011 CONSOB adopted Regulation No. 17221/2010 on related party transactions[254].

3.4 Administrative management in a complex conjuncture

The Commission's financial management was conducted against a backdrop of significant economic challenges in Italy, particularly marked by a drastic reduction in public spending capacity and a focus on spending reviews. The decrease in State contributions[255] led the Commission to intensify its efforts in expenditure containment to minimise additional financial burdens on private entities. As part of these efforts, various cost-cutting measures and operational efficiencies were implemented. In 2012, a Board of Auditors was established within CONSOB, tasked with verifying the soundness of the Commission's financial management from both administrative

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[252] The Court examined, in particular, the compliance of CONSOB's sanction regulations with the rules of due process under Article 6 of the European Convention on Human Rights (ECHR). Although it noted some aspects of the complaint, it did not find a violation of the Convention, as the sanctioning measures were subject to judicial review. Instead, the ECHR held that *ne bis in idem was applicable to administrative sanctions, given the substantially criminal nature of such measures*. See, also in relation to organisational implications, CONSOB, *Relazione sull'attività svolta nell'anno 2014,* Rome 2015, pages 37 et seq.

[253] The first bans on short selling were adopted by CONSOB in the latter part of 2008, CONSOB, *Relazione sull'attività svolta nell'anno 2008,* Rome 2009, *p. 221*. Subsequently, further measures were adopted in 2011, CONSOB, *Relazione sull'attività svolta nell'anno 2011,* Rome 2012, pages 14 et seq. The entry into force of Regulation (EU) 236/2012 in November of the following year introduced a uniform regulatory framework in Europe. On 12 April 2013, the Memorandum of Understanding between MEF, Banca d'Italia and CONSOB was adopted to regulate the methods of cooperation and mutual exchange of information between national authorities for the purposes of applying the Regulation.

[254] In the first two years of the Regulation's application, about 160 disclosure documents were published relating to major transactions with related parties, CONSOB, *Relazione sull'attività svolta nell'anno 2012,* Rome 2013, p. 221. For a reconstruction of the national implementation of the Regulation, with attention to the relative margins of flexibility in implementation, see Bianchi, Ciavarella, et al. (2014).

[255] See for comparison, the evidence on financial management relating to the year 2005, in CONSOB, *Relazione sull'attività svolta nell'anno 2005,* Rome 2006, p. 283; as well as the subsequent evidence relating to the end of the decade, CONSOB, *Relazione sull'attività svolta nell'anno 2014,* Rome 2015, p. 213.

and accounting perspectives[256]. In the same year, a study commission was set up to organically revise CONSOB's Administration and Accounting Regulations, which were formally adopted the following year[257]. The cost containment measure brought important results, which were also recognised by the positive judgements of the Court of Auditors, as highlighted by Chairman Vegas: «*despite the intensification of supervisory activity, CONSOB […] has managed to conduct, in parallel, a careful review and rationalisation of expenditure, which has led to a significant reduction in the contributions requested from supervised entities. Over the past two years, management costs have been reduced by 12 per cent and the contribution charges borne by the market by 16 per cent*»[258].

The Regulation of Takeover Bids – Competitive Takeover Bids and the RCS Case

Of all the takeover bids examined by CONSOB, the competing bids were of particular importance, that, in addition to being characterised by competition between bidders – which sometimes led to an increase in the relevant consideration to the benefit of the market – were also an opportunity to test the legislation in practice.

In particular, the period was characterised by the recurrence of several competing bids for shares in real estate funds and shares in listed companies, aimed at acquiring control of the target companies.

Notable among them is the dispute aimed at acquiring control of RCS MediaGroup S.p.A. (RCS), whose shares were subject to:

I) a voluntary public exchange offer promoted by Cairo Communication S.p.A. (Cairo), with initial consideration consisting of newly issued Cairo shares;

II) a concurrent total voluntary tender offer promoted by certain RCS shareholders through a newly incorporated company, International Media Holding S.p.A. (IMH), with consideration exclusively in cash.

The main questions of interpretation concerned, *inter alia*:

1. the legitimacy of making the last raise – the so-called "blind raise" – by providing for a part of the increase in cash over the initial consideration in shares as well as of making "out-of-bid" cash purchases;
2. the notion of "predominance" of one offer over another and the related possibility, at the end of the acceptance period, to "migrate" from one offer to another.

These issues were the subject of numerous complaints to CONSOB for alleged violation of the provisions on takeover bids with reference, in particular, to the offer promoted by Cairo, requesting its precautionary suspension; a request rejected by CONSOB due to the lack of the relevant prerequisites.

The Administrative Court – called to rule on the statement in which CONSOB had declared that it did not consider to be present at the time (while reserving, at the same time, any further assessment on the point) the prerequisites for the precautionary suspension, pursuant to Article 102, paragraph 6, lett. a), of the Consolidated Law on Finance, of the public tender offer launched by Cairo – first, during the precautionary phase, it denied the issuance of the interim measure requested by IMH and its shareholders and, subsequently, at the outcome of the phase on the merits, it definitively rejected the appeals, confirming the correctness of the decision taken by the Authority, both from a procedural point of view and with regard to the deemed non-existence of the breaches alleged by the exponents.

The dispute in question ended with Cairo acquiring control of RCS and the declaration of ineffectiveness of the offer made by IMH, as the offer was conditional on reaching a number of acceptances to allow IMH to express a sufficient number of votes to determine the outcome of the resolutions of the ordinary shareholders' meeting of RCS, a condition that did not occur and was not waived by the offeror. The issue of competing bids was then the subject of several revisions at the regulatory level, aimed at overcoming certain critical issues that emerged in the RCS affair and others, including in relation to the case of purchases on the market in the context of an exchange offer.

[256] The governance was composed of three members appointed, after consulting the most representative trade associations of taxpayers, from among persons of proven and high administrative and accounting experience, acquired in the performance of control activities vis-à-vis public administrations or, as members of the Auditors' Register and vis-à-vis financial bodies, see CONSOB, *Relazione sull'attività svolta nell'anno 2011*, Rome 2012, p. 60.
[257] The new Regulation for Administration and Accounting was approved by Resolution No. 18540 of 24 April 2013.
[258] See CONSOB, *Annual meeting with the financial market 2013,* Milan 2013, pages 7 et seq.

From an operational standpoint, digital innovation provided new opportunities for enhancing efficiency within the Commission's internal processes. In pursuit of cost reduction, significant efforts were made during the decade towards the dematerialisation of document flows and the digitalisation of paper records. These efforts also encompassed the innovation and simplification of administrative processes and activities, including streamlining systems for acquiring information flows from supervised entities. In 2011, the organisational structure of the Commission was revised to align with the legislative innovations introduced, which included increasing staff numbers and introducing the role of the Secretary General to support the top institutional management[259]. In addition, 2007 marked the establishment of the Body for the Keeping of the Register of Financial Advisors[260]. In 2009, the Conciliation and Arbitration Chamber was established at CONSOB, in accordance with Legislative Decree No. 179 of 8 October 2007[261].

Annual Reports from the period illustrate the evolution of the organisational structure of CONSOB, which underwent substantial reforms. Despite the significant innovations introduced in the Commission's institutional setup, the increase in staff levels appears modest. On 31 December 2004, CONSOB employed a total of 402 staff members. By 31 December 2014, this number had risen to 607[262].

4. The evolution of the market

4.1 Stock exchange and capitalisation, negative trends

The financial crisis in Europe stemmed from the global financial turmoil of 2007-2008, followed by a sovereign debt crisis that initially impacted peripheral euro area countries and later extended to Italy. Excluding the relatively stable period from 2004 to 2007, the overall scenario for the decade was markedly negative. Italy saw a significant reduction in its total market capitalisation, returning to levels not seen since before 1998. The financial wealth of households and non-financial companies also declined (refer to Appendix 1). After the end of the privatisation phase, growth on the main list stagnated, despite an increase in the total number of listed companies, which was partly attributed to small and medium-sized enterprises (SMEs) listed on specialised platforms[263].

«Nel nostro Paese il mercato azionario ha da sempre rivestito un ruolo modesto, che nell'ultimo decennio ha conosciuto un'ulteriore contrazione, solo in parte spiegata da andamenti congiunturali sfavorevoli. … Potenziare il ruolo del mercato azionario è dunque una priorità»

Address to the Market by Chairman Vegas
Milan 2011

«In our country, the stock market has always played a modest role, which in the last decade has experienced a further contraction, only partly explained by unfavourable economic conditions. ... Enhancing the role of the stock market is therefore a priority»

[259] The new Rules of Organisation and Functioning of the Commission were adopted by Resolution No. 17682 of 1 March 2011, which was implemented by Decree of the President of the Council of Ministers of 9 March 2011.
[260] The body started its operations on 1 January 2009 in implementation of CONSOB Resolution No. 16737 of 18 December 2008.
[261] CONSOB, *Relazione sull'attività svolta nell'anno 2009*, Rome 2010, p. 339. The conciliation chamber was then replaced in the following decade by the Arbitro per le Controversie Finanziarie (ACF).
[262] See, for more granularity, the data in Appendix 2.
[263] See on this topic, which will be elaborated in the following chapter, Picco, Ponziani et al. (2019).

Address to the Market by CONSOB Chairman in the presence of the President of the Italian Republic Giorgio Napolitano

In 2005, Borsa Italiana had 282 companies listed with a market capitalisation of EUR 688,021 million and a capitalisation-to-GDP ratio of 46%. The decline in capitalisation was stark between 2007, when it stood at EUR 751,630 million (46.6% of GDP), and 2008, when it plummeted to EUR 383,296 million, equating to just 23.4% of GDP. By 2014, the number of listed companies had increased to 306, although the total market capitalisation had only marginally recovered to EUR 482,438 million, representing 29.6% of GDP[264].

4.2 The MiFID Directive and the Borsa Italiana-LSEG merger

The transposition of MiFID in Italy profoundly influenced the *business* models of Italian banks and SIMs[265]. In light of the new rules on transparency, the separation of brokerage and advisory activities, and the management of conflicts of interest, the new legislation inevitably pushed many institutions to review and adapt their business models in accordance with the new requirements, with a significant impact on the structure of the financial services offered and the management of customer relationships.

The previous decade had witnessed, in full continuity with the European trends of the period, the progressive consolidation of the chain of national trading and post-trading services, with the acquisition by Borsa Italiana of the Cassa Compensazione e Garanzia and Monte Titoli. This trend was followed by the acquisition in 2006, upon a favourable antitrust assessment, by Borsa Italiana, in a *joint venture* with the Euronext group, of a controlling stake in MTS, whose markets were, however, already tied to Borsa Italiana[266]. MTS, exporting its market model beyond national borders with the launch of EuroMTS, had, in the meantime, become the European reference market for fixed-rate securities in the euro area. The European nature of the market was reflected in its post-trading arrangements, which were also developed on a cross-border basis according to innovative models. In 2004, the interoperability link between Cassa Compensazione & Garanzia S.p.A. and Clearnet (later LCH.Clearnet)[267] was authorised by Banca d'Italia and CONSOB. Euronext's share was then fully taken over by Borsa Italiana the following year[268].

«La CONSOB
non può sostituirsi al coraggio
degli investitori
e degli imprenditori ...»

Address to the Market by Chairman Vegas
Milan 2011

«CONSOB cannot replace the courage of investors and entrepreneurs ...»

[264] See market capitalisation data in Appendix 1, with sources.
[265] See, for more granularity on the evolution of supervised intermediaries over the decade, the data in Appendix 2.
[266] The acquisition was positively scrutinised by the Competition Authority, see AGCM Decision No. 14972 of 14 December 2005 (C7390).
[267] See the press release of Cassa Compensazione & Garanzia of 17 August 2004, *CC&G launches new central counterparty service for Italian Government Bonds traded on the MTS,* 2004 (available at: http://www.borsaitaliana.it).
[268] See Banca d'Italia, *Ordinary General Meeting of Participants 2007,* Rome 2007, p. 231.

«Solo un mercato che veda al suo interno un maggior equilibrio fra banca e finanza può assolvere appieno il ruolo di motore di sviluppo di un sistema economico avanzato»

Address to the Market by Chairman Vegas
Milan 2015

«Only a market that achieves a greater balance between banking and finance can fully fulfil its role as the driving force of an advanced economic system»

Subsequently, in June 2007, a merger agreement was concluded between the London Stock Exchange (LSE) and Borsa Italiana, which resulted in the establishment of a European player, active in the management of markets and trading infrastructures, with a leading position in terms of liquidity and capitalisation of listed companies at the time, as well as a modern and integrated post-trading structure[269]. The merger between the two exchanges was finalised in October 2007. The project saw the incorporation of a holding company (Lse Group Plc), participated by the previous shareholders of Borsa Italiana and the various LSE shareholders, listed on the London market and owner of the two market management companies[270]. In order to facilitate the merger, with CONSOB's authorisation, amendments to Borsa Italiana's bylaws were approved in order to remove the mutual and operational limitations still present[271]. The merger was followed, on 14 December 2007, by the stipulation by CONSOB and the UK's Financial Services Authority (FSA) of a memorandum of understanding for supervisory cooperation, aimed at fostering a progressive convergence of regulatory standards and enforcement practices[272].

From an institutional point of view, the two stock exchanges remained legally distinct and subject to their respective regulatory frameworks. One of the first effects of the integration was the unification of the group's trading systems through the adoption of the LSE's trading platform by Borsa Italiana[273]. In the following

[269] The words of LSE *board* Chairman Chris Gibson-Smith: «*Our merger with Borsa Italiana, completed on 1 October 2007, brought together two highly efficient and complementary businesses [...] in particular through the ownership of Europe's most efficient providers of clearing and settlement services – Cassa di Compensazione e Garanzia (CC&G) and Monte Titoli*», LSE (2008), p. 15.

[270] The shareholding structure was therefore made up of the Italian banks previously shareholders of Borsa Italiana for 28%, the Dubai Stock Exchange for 20.2%, the Qatar Investment Authority for 14.4%, Kinetic Horizon for 8.9%, Credit Suisse for 5%, Abn Ambro for 4.4% and Nasdaq for 2.5%; the remaining part of the capital was spread on the market, CONSOB, *Relazione sull'attività svolta nell'anno 2007,* Rome 2008, p. 50.

[271] In particular, changes were made to the provisions on the transfer of shares, representation in the shareholders' meeting, appointment of directors, incompatibility, term of consultation committee and appointment of the auditing firm, *ibid,* p. 211.

[272] CONSOB, *Relazione sull'attività svolta nell'anno 2007,* Rome 2008, p. 32. Shortly afterwards, the Cassa di Compensazione e Garanzia was authorised by the UK Financial Services Authority (FSA) to provide central counterparty services in the UK markets as a *recognised overseas clearing house,* CONSOB, *Relazione sull'attività svolta nell'anno 2009,* Rome 2010, p. 256.

[273] The *TradElect* platform was introduced on the Italian markets in 2008, cf. CONSOB, *Relazione sull'attività svolta nell'anno 2008,* Rome 2009, p. 109. In 2012, it was later replaced by the *Millenium* platform, see LSE (2012), p. 15. In addition, the IDEM market and its segments were migrated on the trading platform to the new *Sola Trading System,* which had already been adopted by other markets of the LSE group, CONSOB, *Relazione sull'attività svolta nell'anno 2010,* Rome 2011, pages 115 et seq.

years, all trading platforms in use for the cash and derivatives markets of Borsa Italiana were replaced with platforms in use at the markets of the LSE group.

CONSOB was involved in these developments, approving the necessary amendments to the Regulation of Markets Organised and Managed by Borsa Italiana, and supervising the integration process. Moreover, the new ownership structures generated new reflections on the best allocation of the listing function on the official market, between the private and public sphere. In the context of organisational change in the Italian financial marketplace, the opportunity was considered to recover the public function of *listing*, separating it in a complementary relationship from admission to trading, which was the responsibility of the market management company[274]. In the words of Chairman Cardia, «*It is CONSOB's responsibility to ensure that changes do not negatively affect the quality and competitiveness of our market. […] In this context, the division of responsibilities between the supervisory authority and the management company could be re-evaluated. Currently, CONSOB is involved in the approval of the prospectus, but unlike in the United Kingdom, it does not participate in the decision on admission to listing*»[275].

In 2007, Borsa Italiana launched the Mercato Alternativo dei Capitali, a new organised trading system targeted at professional investors. This initiative marked a strategic shift in focus towards smaller companies, offering simplified access requirements for the admission of equity instruments of small and medium-sized enterprises. This adjustment was in line with changes brought about by the amendments of MiFID[276]. In 2009, in the wake of the success of London's Alternative Investment Market (AIM), AIM Italia[277] was established as a regulated market. In 2012, with the aim of rationalising the listing offer dedicated to SMEs, it was then merged with the MAC to form the new market "AIM Italia – Mercato alternativo del capitale", which was authorised by CONSOB as an MTF[278].

[274] In the UK, the *listing authority* function was performed by the *Financial Conduct Authority,* acting as *Listing Authority.*
[275] CONSOB, *Relazione sull'attività svolta nell'anno 2007,* Rome 2008, p. 8.
[276] *Ibid,* p. 212.
[277] At the same time, the Expandi market was merged with the main list, CONSOB, *Relazione sull'attività svolta nell'anno 2009,* Rome 2010, p. 169.
[278] CONSOB, *Relazione sull'attività svolta nell'anno 2012,* Rome 2013, p. 190


London
Stock Exchange Group

Giuseppe Vegas, Mario Nava and Paolo Savona, CONSOB Chairmen in the decade 2014-2024

The age of fintech, sustainability and European financial integration (2014-2024)

«L'azione svolta negli ultimi anni da CONSOB ha accompagnato il nostro sistema finanziario nella transizione da un modello "relazionale" verso un modello di mercato, contraddistinto da una maggiore apertura degli assetti di controllo, da una più ampia presenza di investitori esteri e da una più attiva partecipazione degli investitori istituzionali alla vita societaria»

Address to the Market by Chairman Vegas
Milan 2016

«CONSOB's action in recent years has accompanied our financial system in the transition from a "relational" model to a market-based model, characterised by a greater openness of supervisory structures, a larger presence of foreign investors and a more active participation of institutional investors in corporate governance»

1. Foreword

During the last decade under review, in 2018 the chairmanship of CONSOB changed from Giuseppe Vegas to Mario Nava, who remained in office for six months. In March 2019, Paolo Savona was then appointed Chairman of the Commission.

The focus of this decade's regulatory efforts remained primarily at the European level, concentrating around advancing the Capital Markets Union (CMU), initiated by the European Commission in 2015. This initiative aimed to fully actualise the free movement of capital across Europe and reduce the European economy's reliance on bank financing[279]. In its Green Paper, the EC defined 30 actions (to be realised by 2019) framed in six complementary strands: the financing of innovation, start-ups and unlisted companies; the reduction of barriers for raising capital on public markets; the development of structures for long-term, infrastructure-based and sustainable investments; the promotion of retail and institutional investments; the exploitation of banking capacity to support the economy at large; and the facilitation of cross-border investments. The CMU represents a unitary framework of legislative policies, developed and enriched over the years with the objective of stimulating the Union's economic growth by efficiently channelling savings to businesses in a sound and integrated financial ecosystem. It came into being shortly after the establishment of the European Banking Union, from which it differs, *inter alia*, due to the initial lesser coincidence with the euro area and the single currency and the absence of a Single Supervisor, i.e. a central supervisory authority.

[279] «*The free flow of capital was one of the fundamental principles on which the EU was built. Despite the progress that has been made over the past 50 years, Europe's capital markets are still relatively underdeveloped and fragmented*»: European Commission (2015), p. 3.

«La sfida che oggi in tutto il mondo i regolatori dei mercati finanziari hanno davanti a sé si chiama FinTech, ovvero digitalizzazione e disintermediazione dell'industria finanziaria»

Address to the Market by Chairman Vegas
Milan 2017

«The challenge facing financial market regulators worldwide today is called FinTech, i.e. digitisation and disintermediation of the financial industry»

The CMU constitutes one of the main instruments of European economic policy and is an expression of considerations that are at times contingent and highly dependent on institutional and market changes in the Union. In its development, distinct phases can be identified[280]. Initially, the focus was primarily on overcoming the fragmentation of national markets and restrictions on cross-border activities, alongside enhancing investor protection. However, issues such as the harmonisation of national substantive rights and the strengthening of European market supervision were less emphasized. The initiatives encompassed various areas, including some newly integrated into EU law, with significant measures targeting investment services, market infrastructure, and investment funds. To ensure fair competition among economic operators and to address the issue of gold plating, the use of Regulations was favoured, leading to a substantial increase in secondary regulation under the jurisdiction of the European Commission.

Following the United Kingdom's departure from the EU on 31 January 2020, the CMU underwent adjustments to cater to a Single Market consisting of 27 states, showcasing a shift towards Eurocentric dynamics, particularly evident in the clearing of over-the-counter (OTC) derivatives[281]. In the new polycentric financial set-up of the Union, the issue of developing the competitiveness of the European financial system *vis-à-vis* other international centres (in particular, the United Kingdom) has come to the fore. The initiatives of the CMU today also concern private financing channels that are alternative to traditional markets, such as, for example, crowdfunding. Furthermore, the lines of development include the strengthening of European supervisory structures, which is deemed necessary for the effective and uniform application of EU law[282]. The opportunity for a strengthening of the ESAs emerged in order to ensure the further coordination of supervisory practices and to prevent race-to-the-bottom phenomena within their scope[283]. At this stage, the development of ESMA continues on a distinct path, marked by the acquisition of additional direct supervisory competences and a strengthened role in interactions with non-EU jurisdictions, particularly in supervising non-EU Central Counterparties (CCPs)[284].

Missing the original timeframe for completion, the EC re-launched the CMU in the context of the 2020 pandemic, integrating it within the broader post-crisis

[280] For an analysis of the contingent political reasons behind the CMU and the close relationship with Brexit: RINGE (2019); see, for a chronological analysis, GORTSOS (2022).
[281] EUROPEAN COMMISSION (2017A).
[282] EUROPEAN COMMISSION (2017B).
[283] In 2019, the Council and the European Parliament agreed on the reform of the ESAs with Regulation (EU) 2019/2175, which introduced innovations regarding the governance, instruments and financing dynamics of the ESAs.
[284] In the context of clearing, this development was brought about by the adoption of Regulation (EU) 2019/2099, amending the EMIR regulation. See also, MOLONEY (2018).

recovery plan[285]. Inevitably, the CMU benefited from the unexpected agreement for an expansive European fiscal policy in response to the crisis, with the adoption of the Next Generation EU Recovery Plan, based on the issuance of common debt securities[286]. The legislative initiatives related to this phase are diverse and their development is still in progress. The objectives pursued by the legislature mainly revolve around facilitating access to market and alternative financing by SMEs and private savers, also in terms of simplification and rationalisation of existing information burdens. Recently, the European Commission presented a plan to promote the market participation of retail investors (the so-called "Retail Investment Strategy")[287]. Regarding the latter, interesting developments are expected from the EC's recent proposal to innovate investor protection rules.

2. The framework

2.1 The CMU of Fintech and Sustainability

The CMU has progressively integrated EU policies on digital transformation and green transition into its strategic development plan. These priorities position the European framework at the forefront globally in these sectors. The EU has implemented an action plan on finance aimed at steering the private sector towards meeting the demands of an eco-sustainable and inclusive economy, which benefits both European society and the planet. This aligns with the objectives of the Paris Agreement on climate change and the UN 2030 Agenda for Sustainable Development[288]. Specifically, the Action Plan aims to redirect capital flows towards sustainable investments to accompany the green transition of companies, manage financial risks arising from climate change, and promote transparency and a long-

«In Italia … rimane marginale il peso della capitalizzazione delle piccole e medie imprese (PMI) quotate rispetto a quella complessiva di mercato. Questa è una delle sfide che l'Europa intera ha raccolto con il progetto della Capital Markets Union»

Address to the Market by Chairman Nava
Milan 2018

«In Italy … the market capitalisation of listed small and medium-sized enterprises (SMEs) remains marginal in relation to the total market capitalisation. This is one of the challenges that the whole of Europe has taken up with the Capital Markets Union»

[285] «*The Commission adopted the first action plan for the Capital markets Union in 2015. Since then, the Union has made significant progress in implementing its building blocks. However, deepening the Capital markets Union is a complex piece of work that cannot be completed through a single measure. Consequently, the only path to progress is to make steady progress in all areas where obstacles to the free movement of capital still persist. There is still a lot of work to be done and it is time to raise the level of ambition*»: see European Commission (2020a), p. 1.

[286] In 2020, the European Commission proposed the Capital markets Recovery Package, with a series of targeted amendments to sectoral legislation (including MiFID II, Prospectus Regulation, Regulation (EU) 2017/2402 on securitisation and Regulation (EU) No. 575/2013 on capital requirements for credit institutions), aimed at promoting post-pandemic recovery.

[287] The legislative package, published on 23 May 2023 includes a proposal for an omnibus directive amending the rules on the protection of retail investors, as well as amending Regulation (EU) No. 1286/2014 (PRIIPs).

[288] See in particular the original Action Plan for Financing Sustainable Growth, adopted in March 2018. See European Commission (2018).

Piazza Affari, Milan

term view of business activities. To implement this programme, the EU has introduced a new framework of non-financial transparency obligations for intermediaries regarding ESG factors, together with a legislative taxonomy and further measures to encourage sustainable finance[289]. Other important innovations are expected on this front in the years to come.

The CMU also encompasses policies for the digital transformation of the financial economy[290]. The European legislative approach to innovation oscillates between two mutually complementary perspectives: on the one hand, the promotion of the orderly development of digital innovation in the financial sector; on the other, the promotion of "digital resilience" in order to mitigate the risks associated with this transition, ensuring financial stability, preserving market integrity and protecting consumers. Noteworthy, in particular, are the regulatory measures in the area of crypto-assets. Regulation (EU) 2023/1114 (Markets in Crypto-Assets – MICA), borrowing from the approach already taken in traditional areas of EU financial law, subjects a portion of the innovative market to a uniform regulatory framework applicable to new issuers and their service providers, without, however, addressing the substantive aspects of the phenomenon[291]. The EBA was granted direct supervisory powers over a number of significant players. The "tailor-made" regime introduced for infrastructures adopting "Distributed Ledger Technology", through Regulation (EU) 2022/858 (DLT Pilot Regime)[292], is along the same lines. This Regulation follows a "sandbox" approach, i.e. it provides a dedicated regulatory framework for the testing of new DLT technologies, allowing a flexible approach to the application of the traditional requirements of the trading and post-trading framework[293]. In addition, the European legislature passed Regulation (EU) 2020/1503 in 2020, which introduced a unified regulatory framework on crowdfunding[294]. With regard to the risks of the digital transition, the same legislature adopted a detailed

[289] See, European Commission (2021). In implementation of the plan, the European legislator adopted Regulation (EU) 2019/2088 on new disclosure requirements regarding sustainability for certain types of financial intermediaries. In 2019, there was the adoption of Regulation (EU) 2019/2089, which regulates the subject of ESG indices (Benchmark Regulation). Finally, in 2022, Directive (EU) 2022/2464 was adopted on corporate sustainability reporting, in connection with the disclosure requirements set forth in Regulation (EU) 2020/852, known as the Taxonomy Regulation.

[290] European Commission (2020b).

[291] See, Annunziata (2023), pages 511 et seq.; Zetzsche, Annunziata, et al. (2020).

[292] The DLT Pilot Regulation establishes three new specialised market infrastructures to facilitate trading and settlement via DLT: DLT Multilateral Trading Facilities; DLT Securities Settlement Systems; and DLT Trading and Settlement Systems. See Annunziata, Chisari et al (2023).

[293] On the sandbox approach, see Buckley et al. (2023), pages 164 et seq.

[294] Crowdfunding is a form of alternative finance for start-ups and small and medium-sized enterprises (SMEs). It is used for modest investments through digital platforms that allow individuals and companies to directly connect with a large network of supporters.

digital operational resilience regime for the EU financial sector, characterised by a horizontal approach for different types of entities, with the adoption of the Digital Operational Resilience Act (DORA), i.e. Regulation (EU) 2022/2554, which will enter into force as of January 2025.

2.2 In search of competitiveness: the "Capital Bill"

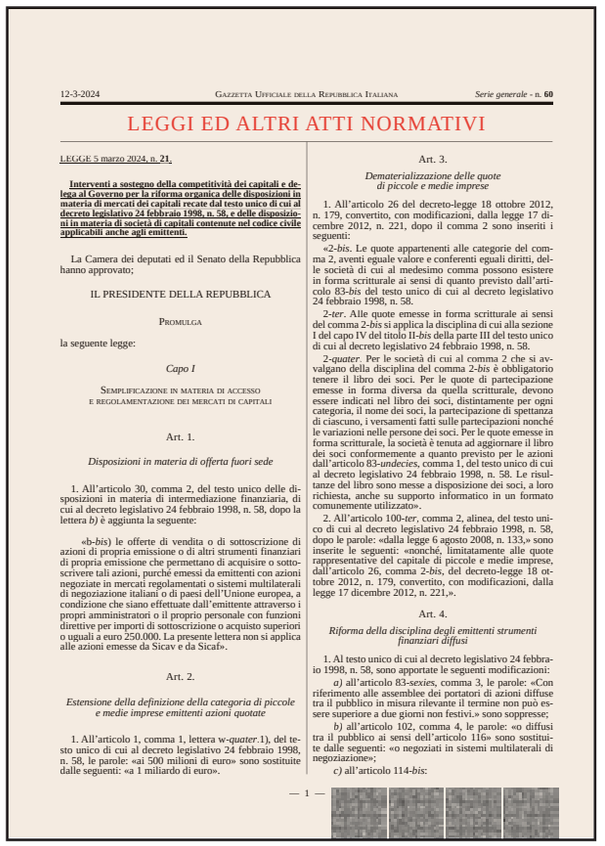
At the national level, the legislative guidelines established at the EU level are followed and transposed into national law. Key themes from the development of the CMU are reflected in domestic initiatives, particularly recent ones aimed at adapting the legal framework to ongoing changes. For example, to facilitate the experiments allowed by the European pilot regime, the tokenization of financial instruments – namely, the issuance and circulation of digital financial instruments – has been regulated[295]. The "Capital Bill", which became Law No. 21 of 5 March 2024, was also passed in February 2024, a far-reaching initiative with which the domestic legislator intends to adopt the simplification and rationalisation objectives pursued by the EU in terms of the development and competitiveness of domestic markets, and to facilitate companies' access to regulated markets[296].

The "Capital Bill" represents the outcome of a process involving systemic and collaborative governance, marked by a choral working method[297]. It aims for comprehensive reform across three main areas: simplifying the rules and associated burdens of the capital markets; stimulating market participation by both professional and retail investors, with an emphasis on promoting financial education; and refining the regulation of national supervisory authorities. This revisits themes from previous reforms, particularly regarding civil liability and fair advertising.

[295] See Decree-Law No. 25 of 17 March 2023, converted into Law on 10 May 2023, No. 52, which introduces the digital form, i.e. allows certain financial instruments to exist solely as entries in a digital register.

[296] The measure under consideration (originally, draft Law A.S. No. 674) stems from the analysis of the MEF's Green Paper "The Competitiveness of Italian Financial Markets in Support of Growth", which in turn is linked to the OECD's study of the domestic capital markets - see OECD (2020), financed and originated by an initiative of the European Commission's DG REFORM.

[297] In the technical memorandum filed by the Ministry of Economy and Finance, the bill was defined as «*an intervention that acts on the legal and administrative system in its entirety, with measures that operate and insist on different levels, from the set of rules in its various articulations (primary secondary self-regulatory rules) to the enforcement of administrative and judicial practices*», cf. Parliamentary Acts, *Memoir of the Ministry of Economy and Finance on the Bill A.S. 674 "Interventions in support of capital competition"*, speech in the Senate Finance and Treasury Committee, sitting No. 51 of 21 June 2023, p. 9.



12-3-2024 GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA *Serie generale* - n. **60**

LEGGI ED ALTRI ATTI NORMATIVI

LEGGE 5 marzo 2024, n. **21**.

Interventi a sostegno della competitività dei capitali e delega al Governo per la riforma organica delle disposizioni in materia di mercati dei capitali recate dal testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58, e delle disposizioni in materia di società di capitali contenute nel codice civile applicabili anche agli emittenti.

La Camera dei deputati ed il Senato della Repubblica hanno approvato;

IL PRESIDENTE DELLA REPUBBLICA

PROMULGA

la seguente legge:

Capo I

SEMPLIFICAZIONE IN MATERIA DI ACCESSO E REGOLAMENTAZIONE DEI MERCATI DI CAPITALI

Art. 1.

Disposizioni in materia di offerta fuori sede

1. All'articolo 30, comma 2, del testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, dopo la lettera *b)* è aggiunta la seguente:

«*b-bis*) le offerte di vendita o di sottoscrizione di azioni di propria emissione o di altri strumenti finanziari di propria emissione che permettano di acquisire o sottoscrivere tali azioni, purché emessi da emittenti con azioni negoziate in mercati regolamentati o sistemi multilaterali di negoziazione italiani o di paesi dell'Unione europea, a condizione che siano effettuate dall'emittente attraverso i propri amministratori o il proprio personale con funzioni direttive per importi di sottoscrizione o acquisto superiori o uguali a euro 250.000. La presente lettera non si applica alle azioni emesse da Sicav e da Sicaf».

Art. 2.

Estensione della definizione della categoria di piccole e medie imprese emittenti azioni quotate

1. All'articolo 1, comma 1, lettera w-*quater*.1), del testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58, le parole: «ai 500 milioni di euro» sono sostituite dalle seguenti: «a 1 miliardo di euro».

Art. 3.

Dematerializzazione delle quote di piccole e medie imprese

1. All'articolo 26 del decreto-legge 18 ottobre 2012, n. 179, convertito, con modificazioni, dalla legge 17 dicembre 2012, n. 221, dopo il comma 2 sono inseriti i seguenti:

«2-*bis*. Le quote appartenenti alle categorie del comma 2, aventi eguale valore e conferenti eguali diritti, delle società di cui al medesimo comma possono esistere in forma scritturale ai sensi di quanto previsto dall'articolo 83-*bis* del testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58.

2-*ter*. Alle quote emesse in forma scritturale ai sensi del comma 2-*bis* si applica la disciplina di cui alla sezione I del capo IV del titolo II-*bis* della parte III del testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58.

2-*quater*. Per le società di cui al comma 2 che si avvalgano della disciplina del comma 2-*bis* è obbligatorio tenere il libro dei soci. Per le quote di partecipazione emesse in forma diversa da quella scritturale, devono essere indicati nel libro dei soci, distintamente per ogni categoria, il nome dei soci, la partecipazione di spettanza di ciascuno, i versamenti fatti sulle partecipazioni nonché le variazioni nelle persone dei soci. Per le quote emesse in forma scritturale, la società è tenuta ad aggiornare il libro dei soci conformemente a quanto previsto per le azioni dall'articolo 83-*undecies*, comma 1, del testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58. Le risultanze del libro sono messe a disposizione dei soci, a loro richiesta, anche su supporto informatico in un formato comunemente utilizzato».

2. All'articolo 100-*ter*, comma 2, alinea, del testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58, dopo le parole: «dalla legge 6 agosto 2008, n. 133,» sono inserite le seguenti: «nonché, limitatamente alle quote rappresentative del capitale di piccole e medie imprese, dall'articolo 26, comma 2-*bis*, del decreto-legge 18 ottobre 2012, n. 179, convertito, con modificazioni, dalla legge 17 dicembre 2012, n. 221,».

Art. 4.

Riforma della disciplina degli emittenti strumenti finanziari diffusi

1. Al testo unico di cui al decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni:

a) all'articolo 83-*sexies*, comma 3, le parole: «Con riferimento alle assemblee dei portatori di azioni diffuse tra il pubblico in misura rilevante il termine non può essere superiore a due giorni non festivi.» sono soppresse;

b) all'articolo 102, comma 4, le parole: «o diffusi tra il pubblico ai sensi dell'articolo 116» sono sostituite dalle seguenti: «o negoziati in sistemi multilaterali di negoziazione»;

c) all'articolo 114-*bis*:

— 1 —

The measures introduced by the national legislator aim to enhance competitiveness and are inspired, in some cases, by the dynamics of regulatory competition in the European context[298]. In other instances, the amendments aim to address so-called "gold plating", reducing costs and competitive barriers for companies, and ensuring alignment with European standards[299]. The scope for developing the proposed regime is extensive, given the broad delegation it includes, which covers an organic reform of the capital markets provisions in the Consolidated Law on Finance and the regulations for joint-stock companies in the Civil Code[300]. During the implementation of this reform, CONSOB plays a crucial role in defining and executing the regulatory delegations within its remit, following the reform's guiding principles.

The guidelines of the "Capital Bill" was unveiled at a conference at Bocconi University in April 2023, featuring the participation and contributions from the last four CONSOB Presidents: Cardia, Vegas, Nava, and Savona.

3. The evolution of the Authority

3.1 New opportunities, crises and institutional developments

This decade introduced significant dynamism into the evolution of CONSOB's institutional profile, driven by both the positive and negative events of the period and the inevitable legislative developments that expanded its powers and introduced new instruments for fulfilling its mandate.

As in the previous decade, CONSOB played its role in the opportunities and crises that marked the period. Among the opportunities were those resulting from the creation of ESMA and the strengthening of IOSCO. Among the crises, certainly the most potentially disruptive was Brexit. As President Nava recalled in the aftermath of the referendum, «*Brexit and the post-Brexit period will have to be managed from a common European perspective. It will be necessary to manage the transitional phase, which will inevitably be complex and full of inconsistencies, and the possible risks of regulatory and supervisory arbitrage*

298 See, for example, Article 13 of this Law, which further promotes the instrument of multiple voting. At the European level, the introduction of multiple voting is present, limited to SMEs, in the European Commission's Listing Act, i.e. the *Proposal for a Directive on the harmonisation of structures with multiple voting shares in companies seeking admission to trading in their shares on an SME growth market* (COM/2022/761 final). The domestic legislator also intervened on the subject of multiple voting (cf. Article 14).

299 This is the case with the regulation of widespread issuers, which is no longer consistent with the system defined in the European Union, see *ibid*, Article 4.

300 Cf. Article 19, *ibid*. The various guiding principles and criteria outlined by the legislator for the purpose of exercising the delegation, codified in the second paragraph, emphasise the comprehensive and organic nature of the legislative initiative.

The BRRD and the bail-in

The establishment of the Banking Union, based on three pillars (banking supervision, crisis resolution and deposit guarantee), is the EU-wide response to the weaknesses of the European financial system revealed by the 2007-2008 crisis.

The uneven public bail-outs in the different EU states at the time had the effect of spilling bank losses into state coffers, extending the crisis from the private sector to sovereign debt, and producing competitive distortions in the Single Market.

This is the context of the 2014/59/EU Directive (BRRD), which provides for uniform and flexible procedures to manage the crisis of systemically important intermediaries, internalising the costs of banking crises.

The tools provided by the new regime can be distinguished, according to their purpose, into crisis prevention, early intervention and resolution tools; among these is the bail-in, which consists of the write-down or conversion of the institution's capital and liabilities according to a loss-absorption mechanism predetermined by the framework, structured in a "cascade" fashion, from shares to unprotected deposits.

The first partial application of the new legislation in Italy occurred in relation to the resolution of Banca Marche, Banca Popolare dell'Etruria e del Lazio, Cassa di Risparmio di Ferrara and CariChieti, which took place a few days after the entry into force of the two decrees transposing the BRRD (Legislative Decree No. 180 and No. 181 of 16 November 2015). The losses were borne by shareholders and subordinated bondholders who had invested in these banks often long before the BRRD came into force.

Ever since that experience, the significant impact on retail investors of the new regulations became evident. In marking the transition from the common practice of the public bail-out of a bank in difficulty to the principle of burden-sharing by the bank's shareholders and holders of liabilities (bail-in), as enshrined in the legislation, the new rules applied retroactively also to securities already in circulation, raising obvious critical issues.

In this context, also in order to avoid crises of confidence in the financial system, special relief funds have been set up at national level to mitigate the losses suffered by small savers.

Through the Arbitro per le Controversie Finanziarie (ACF), CONSOB guaranteed a means of out-of-court protection for investors for whom misconduct by the intermediaries involved in the crises had been ascertained, in relation to the negotiation of financial instruments issued by them. The Arbitrator, against a backdrop of often ambiguous jurisprudence, deemed admissible appeals against the so-called "Good Banks", established following the resolution of the four banks.

The ACF's choice not to discourage the lodging of appeals in this matter was endorsed by the legislature, which, with Decree-Law No. 91 of 25 July 2018, converted with amendments by Law No. 108 of 21 September 2018, provided partial relief of 30% with a limit of EUR 100,000 for investors who had obtained a favourable decision by 30 November 2018.

Initiatives have also been taken at the European level to limit the impact of the new regulation on retail investors. In particular, Directive (EU) 2019/879 (so-called BRRD 2), introduced, among other things, reinforced investor protection safeguards, such as stringent concentration or minimum denomination limits, for the distribution to non-professional investors of securities subject to bail-in.

«Gli investitori, in particolare istituzionali, sono sempre più sensibili alle tematiche non finanziarie e in particolare alle tematiche ESG (enviromental, social and governance), in linea con la visione di un'impresa portatrice di interessi variegati, che vanno oltre quelli dei soci ...»

Address to the Market by Chairman Nava
Milan 2018

«Investors, particularly institutional ones, are increasingly attuned to non-financial issues and specifically ESG (environmental, social and governance) issues, in line with the vision of a company that is the bearer of varied interests, which go beyond just those of the shareholders ...»

arising both from the presence of intermediaries in Europe and in Great Britain and from the modalities of relocation to other European countries of operators and activities currently established in the United Kingdom [...] In the post-Brexit key, we will then have to find ways to interact with the British Authorities»[301]. In the context of Brexit and the subsequent negotiations, CONSOB worked for an orderly management of the dynamics of access between the Italian financial market and that of the United Kingdom, with particular attention to the conditions for the continuity of services by Italian entities in the United Kingdom and vice versa, even in the case of failure to reach an agreement between States (so-called "No Deal")[302]. The Commission issued notices with instructions for British investment firms operating in Italy during the transitional period, highlighting information requirements and launching initiatives to monitor their presence in Italy[303].

During the pandemic, in order to cope with the high volatility in the markets, CONSOB resorted to a temporary ban on short selling transactions and adopted additional temporary measures to manage the pandemic period[304]. With regard to geopolitical uncertainty fuelled by the conflict between Russia and Ukraine, the war in the Middle East, tensions in the Red Sea and the performance of energy markets, it conducted specific monitoring of Italian

[301] From the Chairman's speech at the 2018 annual meeting with the financial market, see CONSOB, *Annual meeting with the financial market 2018*, Milan, 2018, p. 20.
[302] Law No. 41 of 20 May 2019, converting Decree-Law No. 22 of 25 March 2019, No. 22, setting out urgent measures in the event of the United Kingdom's withdrawal from the European Union, established transitory rules to deal with the no-deal Brexit, focusing on financial services and investments between Italian and British operators, regulating the conditions for the continuation of the provision of investment services and activities by both Italian entities operating in the United Kingdom and British entities established in Italy, also with a view to ensuring continuity as regards the management of OTC derivative contracts. For example, in 2019 CONSOB recognised the non-EU market 'ICE Futures Europe – IFEU' and authorised the extension of operations in the UK for various Italian markets, including 'EuroTLX'. In cooperation with Banca d'Italia, post-trading rules were amended to ensure legal certainty in settlement transactions with non-EU countries, following the Settlement Finality Directive. Following the withdrawal agreement reached between the UK and the EU, CONSOB continued its activities in 2020 to ensure the business continuity of Italian and UK trading venues, as well as UK intermediaries providing investment services in Italy. CONSOB, *Relazione sull'attività svolta nell'anno 2020*, Rome, 2021, pages 20 et seq.
[303] *Ibid*, p. 100. In this sense, the effects of Brexit are evident in the numbers of non-EU companies other than banks authorised to operate in Italy under the freedom to provide services, i.e. by establishing a branch. See in particular the quantitative data in Appendix 2.
[304] This measure was implemented in several stages, starting on 12 March 2020, in order to prevent potential speculative manoeuvres. In addition, CONSOB adopted temporary measures for the simplification and management of administrative procedures, cf. CONSOB, *Relazione sull'attività svolta nell'anno 2020*, Rome 2021, p. 97.

Address to the Market by CONSOB Chairman Paolo Savona

trading venues, with particular regard to the volatility management controls in place, as well as the measures taken to mitigate risks related to operational resilience and IT security[305].

In accordance with patterns already described, the regulatory production of the period led to a significant extension of CONSOB's competences, which encompassed a new set of subjects, linked to the world of fintech and sustainability. As of 2013, it acquired competences over the supervision of crowdfunding service providers, exercised jointly with Banca d'Italia. It

[305] CONSOB, *Relazione sull'attività svolta nell'anno 2022*, Rome 2023, p. 17.

was, moreover, the first authority in Europe and among the first in the world to introduce a dedicated regulation of the phenomenon, which had previously lacked a specific regulatory regime in several Member States, and which was only introduced following subsequent European intervention[306]. Under the current regime, CONSOB, having consulted with Banca d'Italia, authorises crowdfunding service providers and is the competent authority to ensure transparency and fairness in the performance of such services in coordination with ESMA. More recently, legislative interventions at European and national level on crypto-assets and sustainable finance have attracted a new galaxy of subjects, expressions of these new sectors, into CONSOB's sphere of competence. In addition, in the context of ESG legislation, CONSOB now exercises supervisory duties on the transparency of non-financial information, as well as the repression of greenwashing phenomena, including through the monitoring of information disseminated in corporate studies and rating judgments and the comparison with the primary information disseminated by issuers, with the aim of increasing trust and protection of investors and in this way increase the propensity towards sustainable investments.

The legislation has also endowed the Commission with important new tools to protect savers, which it has used extensively in specific cases. Through the transposition of the MiFID II/MiFIR reforms, CONSOB was granted with incisive product intervention powers, aimed at protecting retail investors. For example, it has resorted to this instrument to prohibit the circulation to retail customers in or from Italy of "binary" options, as well as to restrict the marketing, distribution and sale to the retail sector of contracts for difference (CFDs)[307]. Regarding abusive practices on the internet, since 2019, the domestic legislator has equipped CONSOB with a novel authority to block websites used for abusive financial practices. This power can be exercised against internet service providers and related entities, enabling CONSOB to

[306] With Decree-Law No. 179/2012 converted into Law No. 22 of 17 December 2012, the Italian legislator pioneered this form of financing, which was initially reserved for start-ups and innovative SMEs. In 2016, equity crowdfunding was extended to all SMEs. CONSOB regulated this phenomenon through the Regulation on the raising of capital through online portals adopted by resolution No. 18592 of 26 June 2013. With the new European regulations, the Commission collaborated in the drafting of rules that later merged into Legislative Decree No. 30 of 10 March 2023, adapting the primary legislation to Regulation (EU) 2020/1503, and consequently adopted with Resolution No. 22720 of 1 June 2023, the new Regulation on crowdfunding service providers to businesses. In 2022, 48 companies operating crowdfunding portals were registered in Italy, *ibid*, p. 131.

[307] See Resolution No. 20975 of 20 June 2019, applying the powers provided for in Article *7-bis* of the Consolidated Law on Finance.

«… la tutela pubblica del risparmio non può significare l'azzeramento del rischio di investimento. La regola n. 1 in finanza è "no risk no return". Se non c'è rischio, non ci può essere rendimento»

Address to the Market by Chairman Nava
Milan 2018

more effectively combat financial fraud online[308]. In the first four years of use of this tool, the number of blacked-out sites exceeded one thousand[309]. Within this framework, the Commission has played a leading role in financial education, to provide the tools and information needed to ensure investor awareness and information, as well as the correct perception of the role of the supervisory authority[310].

Moreover, as of 9 January 2017, CONSOB established the Arbitro per le Controversie Finanziarie (ACF), which replaced the pre-existing Conciliation and Arbitration Chamber. In its first year of operation, it received 1,839 appeals, with a peak between May and July, mainly related to the Veneto banks affair[311].

In 2018, under the chairmanship of Mario Nava, further noteworthy developments included the establishment of the Committee of Market Operators and Investors (COMI) within the Authority, aimed at further strengthening the

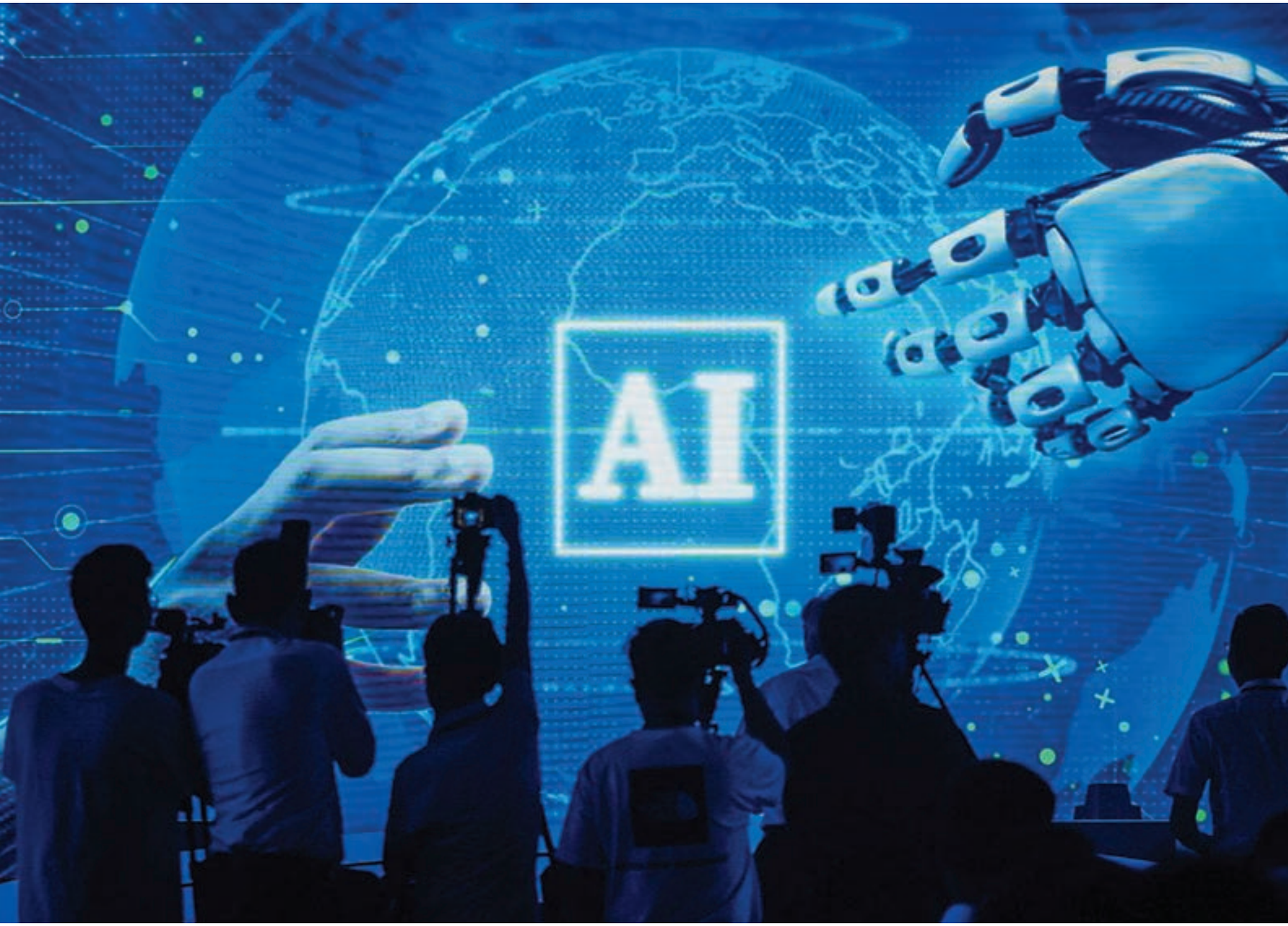
«… public protection of savings cannot mean zeroing out investment risk. Rule No. 1 in finance is "no risk no return". If there is no risk, there can be no return»

[308] The legislature intervened twice to strengthen the law enforcement tools at the Authority's disposal. First, Law No. 58 of 28 June 2019 and then Law No. 8 of 28 February 2020 equipped CONSOB with an innovative coercive blackout power against such entities, cf. *Relazione sull'attività svolta nell'anno 2019,* Rome 2020, p. 51.

[309] See the related Press Release of 22 December 2023, *CONSOB, Financial Abuse: Sites Blocked by CONSOB Reach 1000*, 2023, available at consob.it.

[310] The initiatives were carried out independently as part of CONSOB's training offerings or in coordination with the Committee for the Planning and Coordination of Financial Education Activities (Edufin Committee) and contributed to enriching the initiatives of national and international financial education and awareness campaigns. In detail, over the past year, the Institute has participated in Global Money Week, promoted by the OECD; it has coordinated World Investor Week (WIW), promoted by the IOSCO (Retail Investors) Committee; it has contributed to Financial Education Month (Edufin Month), promoted at the national level by the Edufin Committee, exploiting synergies with WIW and defining a calendar of activities containing around 50 events. CONSOB organised or participated in 32 initiatives and, among them, launched the course "Sustainable finance: watch out for risks! (not all that glitters is gold)", in collaboration with Banca d'Italia, aimed at disseminating basic knowledge on sustainable finance issues, CONSOB, *Relazione sull'attività svolta nell'anno 2022,* Rome 2023 p. 63.

[311] The total value of damages claimed in 2022 amounted to approximately EUR 55.4 million, ranging between a minimum of EUR 1 and the ACF's upper limit of EUR 500,000 (for an average *petitum* value of over EUR 49,000). The total compensation awarded to savers amounted to approximately EUR 19 million, with a claim acceptance rate of 57%. The fulfilment rate remains high (exceeding 98% of cases, as has been the case since the start of operations in 2017, *ibid*, p. 64.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dialogue with stakeholders[312]. Additionally, the full operation of the Organismo di vigilanza e tenuta dell'albo unico dei Consulenti Finanziari (OCF, formerly the Organismo per la tenuta dell'albo dei promotori finanziari) began, with the transfer to it of the relevant supervisory functions previously exercised by the Commission[313].

On the other hand, the legislative policy objectives currently pursued at the European and national level have been incorporated into CONSOB's institutional profile, resulting in a further enrichment of the objectives underlying its mandate. In addition to the protection of investors and savings, it now also embraces support for growth, the development of innovation and the promotion of ESG transformation, with dedicated actions reflected in the strategic priorities pursued by CONSOB, at the domestic, European and international levels[314].

3.2 The Commission in the time of data-driven supervision

As with all market participants, CONSOB's operations are also affected by the digitisation of processes and organisational structures, as well as of supervisory models. The constant supply of large volumes of data by market participants, due to the introduction of extensive reporting requirements in the previous decade, has led to the emergence of a significant wealth of information at the disposal of the supervisory authorities, which is destined to grow further[315]. In this context, the application of new technologies, in particular artificial intelligence and text mining, causes a shift in supervisory approaches towards new models based on data and risk analysis possible as well as necessary.

Over the decade, the Commission implemented various organisational and technical initiatives to improve the efficiency of its information systems, including the establishment in 2017 of the Information Infrastructure Division, with

«La fiducia trova alimento nella crescita reale, che a sua volta la genera se il clima politico e sociale resta favorevole»

Address to the Market by Chairman Savona
Milan 2019

«Trust finds nourishment in real growth, which in turn fosters it, provided the political and social climate remains favourable»

[312] The COMI was established by Resolution No. 20477 of 12 June 2018, in order to facilitate discussion and dialogue with market participants and investors on regulatory issues and other acts of general content or strategic direction, submitted to its attention by CONSOB.

[313] On the basis of an earlier memorandum of understanding between CONSOB and OCF, with Resolution No. 20704 of 15 November 2018, the Authority initiated the transfer of the supervisory functions over financial advisors authorised to offer outside their offices to the body, which was finalised on the following 1 December.

[314] These are reflected in the Commission's Strategic Plan, updated to December 2023, see CONSOB (2023).

[315] CONSOB has almost 50 databases, containing structured data totalling about 20 terabytes, to which large volumes of unstructured data must be added (about 20% of the total information assets). Moreover, estimates indicate a growth in the size of the data over the next three years of more than 4 terabytes per year, CONSOB, *Relazione sull'attività svolta nell'anno 2021* Rome 2022, p. 14.

responsibility for defining a new IT strategy for the Authority[316]. In 2022, CONSOB tested, together with some Italian universities, the first prototypes of AI systems for supervision, applied to support activities related to the supervision of PRIIPs[317], analysis of prospectuses of equity and non-equity instruments[318], as well as for the detection of market abuse[319]. In the forthcoming years, in accordance with the Strategic Plan, activities will continue to implement such innovations, integrating them into CONSOB's administrative and organisational processes.

3.3 Financial and organisational management: open issues

The changes in CONSOB's institutional profile take place within a framework of financial and organisational management that is not entirely different from that seen in the previous decade. However, as for any entity included in the broad financial landscape, a supervisory authority's capacity for innovation depends on its concrete willingness to support, including financially, complex internal reorganisation projects and long-term technological investments, necessary for the increasingly decisive adoption of supervisory models based on data and risk analysis. An examination of the organisational structures of the period helps to trace the development of the Commission's staff, which shows an increase that can be qualified as marginal, considering the new skills acquired during the period.

«Il ripristino della fiducia nel futuro dell'Italia è lo scopo prioritario … che non può essere perseguito dalla sola CONSOB … Le risorse culturali e materiali del Paese sono tali da permetterlo»

Address to the Market by Chairman Savona
Milan 2019

«Restoring confidence in Italy's future is the overriding goal … which cannot be pursued by CONSOB alone … The cultural and material resources of the country are sufficient to permit this»

316 CONSOB, *Relazione sull'attività svolta nell'anno 2017*, Rome 2018, pages 40 et seq.

317 The first trial was applied to support the supervision of documents (KIDs – Key Information Documents) that illustrate the main characteristics of packaged financial products aimed at retail investors, *i.e.* Packaged Retail and Insurance-based Investment Products (PRIIPs). The sheer number of notified documents (over 1.5 million in 2021 and over 5 million in 2022) makes full scrutiny impossible and requires the use of selection criteria based on risk parameters. This experimentation has seen the development, in collaboration with La Sapienza University, of a *proof of concept (PoC)* based on natural language analysis techniques that will be followed by the application of machine learning tools with the aim of obtaining, as a result of the analysis, a recommendation on the priorities of supervisory actions through automatic screening, CONSOB, *Relazione sull'attività svolta nell'anno 2022*, Rome 2023, pages 18 et seq.

318 *Ibid*, p. 41.

319 The second experimentation, carried out in collaboration with the Scuola Normale Superiore in Pisa, concerned the supervision of transactions, in order to identify a possible abuse event from the analysis of market data. As part of the experimentation, two *proofs of concept* were developed, which, by employing unsupervised machine learning-type AI methods, could support preliminary analyses for the identification of instances susceptible to integrating unlawful conduct, *ibid*.

«Si rende … necessario definire e attuare un nuovo assetto istituzionale che prenda in considerazione e sciolga la dipendenza tra le diverse politiche e i comportamenti dei mercati, finalizzandoli alla crescita del reddito e dell'occupazione, che resta la più efficace forma di protezione del risparmio»

Address to the Market by Chairman Savona
Milan 2020

«It becomes … necessary to define and implement a new institutional set-up that takes into account and dissolves the dependency between different policies and market behaviours, directing them towards income growth and employment, which remains the most effective way to protect savings »

The staff on 31 December 2014 was 607 units. Eight years later, on 31 December 2023, it stood at 666 units[320]. However, the picture is set to change. In 2022, the Commission, also with the support of independent experts, started a review of its organisational structure, aimed at defining the new competences, functional to the technological development of the structure and the recruitment of the necessary staff[321]. Before that, in 2020, a new regime was introduced on the legal and economic treatment and career organisation of staff in accordance with that in force for the staff of Banca d'Italia, according to the law establishing CONSOB (Law No. 216 of 1974 as amended by Law No. 281 of 1985).

The evolution of the Commission's financial management is characterised by a progressive growth of its budget[322]. Within a framework of increasing costs, the organisational revision recently undertaken includes new instruments for monitoring operating costs, as well as projects for the efficient use of resources[323]. Looking to the future, a reflection was initiated on the appropriateness of CONSOB's current financing system, which to date is almost entirely dependent on the financing of supervised entities. Over time, there has been a significant increase in the number of competences and activities allocated to the Commission, which do not fall within the meshes of this contribution model, and which cannot be attributed to specific entities: this is the case of activities related to the new institutional aims of promoting fintech innovation, sustainability, and financial education and research. Moreover, the pandemic showed that unpredictable events can interfere with ongoing, current financing channels[324]. Lastly, the movement of financial firms and the delisting dynamics mentioned below, which impact the domestic market, are elements that will necessarily have to be considered in a long-term perspective. For the years to come, the effectiveness of the CONSOB's actions will also depend on the adequacy of its financial resources to cope with the organisational and technological investments that will be necessary to remain aligned with the digitalisation of services.

[320] See, for more granularity on the evolution of the workforce over the decade, the data in Appendix 2.
[321] See CONSOB, *Relazione sull'attività svolta nell'anno 2022*, Rome 2023 p. 13.
[322] See CONSOB, *Relazione sull'attività svolta nell'anno 2014*, Rome 2015, p. 213, in comparison with CONSOB, *Relazione sull'attività svolta nell'anno 2021*, Rome 2022, p. 139.
[323] See CONSOB (2023).
[324] Taking into account the situation of extraordinary necessity created by the international health emergency and the consequent deterioration of the economic framework, CONSOB resolved to suspend the payment of supervisory fees for the year 2020, see Resolution No. 21305 of 18 March 2020.

«A causa della pandemia, il 2020 è stato uno degli anni peggiori vissuti dall'Italia sul piano economico e sociale dalla fine della Seconda Guerra Mondiale»

Address to the Market by Chairman Savona
Milan 2021

«Because of the pandemic, 2020 was one of the worst years Italy has experienced economically and socially since the end of World War II»

4. The evolution of the market

4.1 Between new listings and delisting

As previously indicated, over the past decade the European economy has faced exceptional events. While these events led to extreme market volatility immediately afterwards, they did not result in systemic crises, and their impacts were gradually mitigated, thanks to substantial fiscal and monetary stimuli. However, the emergence of inflation in 2023, described by Chairman Savona as «*a hydra with many heads; if one is cut off and cauterised, the others act*»[325], necessitated a significant shift in focus from liquidity to wages. This change prompted a sudden and profound alteration in monetary policy, which helped curb price rises. As a result, the expansionary paradigms that dominated central bank policy since the 2007-2008 financial crisis were set aside.

Within the framework of the domestic financial markets, the number of companies listed on the main market and admitted to trading on the multilateral trading system *Euronext Growth Milan* (EGM, formerly AIM) increased over the decade, exceeding the (psychologically relevant) threshold of 400. Over the same period, there has been a progressive increase, also partly influenced by expansionary policies, in the overall capitalisation of the domestic market (see in particular Appendix 1). In 2014, there were 306 companies listed and admitted to trading on the Borsa Italiana markets, of which 57 were present on EGMs, with a total list capitalisation of EUR 482,438 million and a list capitalisation/GDP ratio of 29.6%. As of 29 December 2023, there were 429 companies, of which 203 were listed on the EGM, with a list capitalisation of EUR 761,872 million and a list capitalisation/GDP ratio of 39.4%[326].

Despite its growth over the decade, Italy's performance remains lower compared to major European economies. This discrepancy suggests a structural deficiency in channelling investments and savings into the domestic stock market, which creates a significant competitive disadvantage for companies.

While the increase in the absolute number of companies, spurred by admissions on EGMs, is a positive development, it is quantitatively minor and masks a continual decline in the number of companies listed on the main list. Moreover, Italy's experience appears to align with a nearly global trend of diminishing stock exchange listings, likely facilitated by the ample liquidity available to companies, private equity funds, and institutional investors[327].

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[325] From the Speech by the Chairman of CONSOB to the financial market in 2022, see CONSOB, *Annual meeting with the financial market 2022*, Milan 2022, p. 10.

[326] The development is particularly evident when compared to the year 2022, when, as of 31 December, there were 414 listed and traded companies (+15), of which 190 on EGMs (+13), with a list capitalisation of EUR 625,689 million (+136,183) and a list capitalisation/GDP ratio of 33.9% (+5.5%). See capitalisation data in Appendix 1 and sources.

[327] The generous monetary policy conditions that characterised the years following the 2007-

The phenomenon of delisting is viewed as structural and has captured the attention of the legislator. Empirical data from the first six years of the decade (2014-2019) reveal that the net increase in the number of companies listed on the main list, net of delisting cases, was 17. However, this period also saw a reduction in the total capitalisation of the market of approximately EUR 15 billion[328]. Within this

2008 crisis were instrumental in providing companies and investors with abundant liquidity at relatively low rates. These conditions encouraged companies to resort to debt financing as a substitute for raising venture capital through M&A and share buy-back programmes. The development of private markets, as an alternative financing ecosystem to regulated trading venues, reserved for a specific audience of players, further contributed to this trend.

[328] See Picco, Ponziani et al. (2021), pages 39 et seq., in particular pages 45 et seq.; see also Intermonte-Politecnico Milano (2022).

framework, delisting often occurs in the context of takeover dynamics. Additionally, there's a noticeable trend of voluntary delisting among Italian companies, which in recent years have increasingly relocated their registered offices to other EU Member States, particularly the Netherlands[329]. Although the numbers involved are still limited, the migration of companies from Italy surpasses that of other EU Member States. This trend is raising concerns about the attractiveness of the Italian business environment, which are now being addressed by legislative initiatives at the domestic level.

4.2 The MiFID II market

The reforms stemming from the G20 package have repositioned financial markets at the core of regulatory focus, aimed at enhancing efficiency, transparency, and trading stability. The reintroduction of trade concentration rules, redefined by the MiFIR regulation, alongside the clearing obligations mandated by the EMIR regulation, have institutionalised the role of markets and their infrastructures within the EU financial framework. Concurrently, reforms in Europe have intensified competition among EU markets and the dynamics of infrastructure competition through open access policies. Moreover, new technologies, such as algorithmic trading, have dramatically transformed trading dynamics, leading to significant shifts in market structures and the landscape of intermediaries[330]. During the decade, important steps were taken to remove national barriers to cross-border transactions. In 2014, the single securities settlement platform TARGET2-Securities (T2S) was launched[331].

«La tutela del risparmio svolta dalle istituzioni pubbliche, tra cui la CONSOB, segue regole sperimentate e perfezionate nel tempo, che tuttavia richiedono un aggiornamento alla luce delle innovazioni tecnologiche in ambito finanziario ...»

Address to the Market by Chairman Savona
Milan 2021

«The protection of savings undertaken by public institutions, including CONSOB, follows rules that have been tried and tested and perfected over time, but which nevertheless require updating in the light of technological innovations in the financial sphere ...»

[329] See Belcredi, Faverzani et al. (2023). The study highlights how the phenomenon is mainly associated with "forum shopping" needs, i.e. the search for a more favourable regulation for the command groups, often of a family nature, that control the company, a consideration that seems to prevail over others of a fiscal or strategic nature, which could otherwise justify the transfer to a foreign jurisdiction, and formulates the following conclusion: «*Finally, Italy is the European country that exhibits the largest firm outflow, both in general and to the Netherlands, de- spite CEM regulation in other countries being sometimes equally or even more restrictive than the Italian one. The different pattern we identify has important governance implications. Dutch firms and European (other than Italian) firms reincorporating in the Netherlands aim at protecting the board. On the contrary, Italian firms aggressively boost the voting power of the controlling share- holder, which, after completion of the loyalty programme, ends up holding, on average, 40.8% of equity capital and 64% of the voting rights (a 23.2% wedge). Consequently, holding 20.8% (12.5%) of capital allows controllers to hold half (one third) of the voting rights*».

[330] See in more detail in Appendix 2.

[331] TARGET2-Securities (T2S) is a project implemented by the Eurosystem with the aim of creating a single platform for the settlement of euro-denominated securities. On 20 February 2023, the T2S system, together with the TARGET settlement system, were replaced by the new T2 platform.

«… è necessario un riesame dell'architettura istituzionale entro cui moneta e finanza si devono muovere, per realizzare l'obiettivo comune di un uso del risparmio finalizzato alla crescita reale …»

Address to the Market by Chairman Savona
Milan 2022

«… there is a need for a re-examination of the institutional architecture within which money and finance must move, in order to achieve the common goal of directing savings towards real growth …»

4.3 Borsa Italiana joins Euronext Group

Brexit had a disruptive effect on the European financial industry and brought about a change of course in the process of market consolidation. In spite of some political resistance, the City had over the years managed to gain not only a European but also a global dominance in derivatives *trading*, as well as in the clearing of OTC derivatives[332]. The new Eurocentric policies adopted in response to Brexit, aimed at "repatriating" Euro-denominated trading flows, reignited competition among stock exchange groups, particularly within the clearing industry. Brexit marked a significant rupture in the ongoing consolidation of the Union's financial markets, which also impacted the delicate integration balance between Borsa Italiana and the LSE. A few years later, the London-based group divested the entire business of the Borsa Italiana group, following its merger with Refinitiv[333]. In the midst of the pandemic, the sale of Borsa Italiana to the Euronext group was finalised for the sum of EUR 4.3 billion, conditional on the successful outcome of the merger with Refinitiv.

Euronext N.V., which stands for European New Exchange Technology, is a pan-European stock exchange group, which operates several trading venues, including the domestic equity markets of a plurality of jurisdictions[334]. Euronext was created in the early 2000s through the merger of the Amsterdam, Brussels and Paris stock exchanges, and gradually integrated the national markets of Portugal, Ireland and Norway as a result of various mergers and acquisitions. Euronext N.V. has been listed on the Amsterdam market since its establishment.

The mission of Euronext was identified with the integration of national capital markets within a federal model, characterised by a harmonised regulatory framework, a single order book and a single trading platform, i.e. with access to all of the group's markets through a single connection. This particular set-up is also reflected in the coordination model between the supervisory authorities of the various markets of the Euronext Group. They are signatories to a memorandum

[332] As of today, the Euro-denominated OTC derivatives market is still concentrated in the UK. The relocation of derivatives clearing is one of the economic policy objectives that the EU is currently pursuing and is the still unresolved issue as a consequence of Brexit. Most recently, on 7 December 2022, the European Commission proposed a new amendment to the EMIR Regulation, (so-called EMIR 3.0), *Proposal for a Regulation of the Parliament and of the Council amending Regulations (EU) No. 648/2012, (EU) No. 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and to improve the efficiency of the Union's clearing markets* (COM (2022) 697).

[333] The purpose of the divestment was to overcome the antitrust concerns expressed by the European Commission regarding the merger in the fixed income sector related to the merger between LSE and Refinitiv, see, LSE, *press release, Proposed Divestment of the Borsa Italiana Group to Euronext N.V. for €4.325* billion, 9 October 2021 (accessible at: Lseg.com).

[334] In December 2021, the Euronext Group, across all managed trading venues, had almost 2,000 issuers, with a global capitalisation of more than EUR 6 trillion, see Euronext (2022), p. 26.

of understanding that established a "College of Euronext Regulators", a forum of a private nature, aimed at coordinating the supervision and regulation of the business and markets managed by Euronext[335].

In April 2021, Borsa Italiana formally became part of the pan-European group, representing its largest contributor in terms of revenues and strengthening its presence in the post-trading sector, particularly in the clearing[336]. At the same time, CDP Equity entered the capital of Euronext, becoming the largest shareholder together with the French company CDC and joining, together with Intesa Sanpaolo, the pact between the reference shareholders. The managing directors of Borsa Italiana and MTS joined the Extended Managing Board of the Group, while CDP Equity obtained adequate governance controls on the Supervisory Board of Euronext. In this process, CONSOB continues its supervision of the complex integration of Borsa Italiana and Euronext, in order to preserve the decision-making autonomy of the former and to maintain adequate domestic supervisory controls[337]. CONSOB is also a signatory of the Memorandum of Understanding of the Euronext Regulators.

Although recent, the full integration of the Borsa Italiana group is nearing completion. The domestic markets have adopted the new Euronext brand, aligning themselves with the rest of the group. In 2022, the technological heart of the group, the Euronext *data centre*, was relocated to Italy, in Bergamo, and in the same year, Borsa Italiana group's cash equity markets migrated to Euronext group's proprietary trading platform OPTIQ, while the migration of the IDEM derivatives market to the same platform took place at the end of March 2024. The impacts for MTS concerned the acquisition of SIA (technology provider of the MTS infrastructure) and not the migration to the OPTIQ platform[338]. At the same time, the Clearing and Guarantee Fund, renamed Euronext Clearing, was placed at the centre of a European-wide post-trading consolidation project. In 2023, the clearing and guarantee of the cash equity markets of the Euronext group was transferred to Italy.

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[335] *Ibid,* pages 46 et seq. These are the supervisory authorities of the markets in which Euronext operates. The memorandum of understanding provides a framework for coordinating their supervision and regulation of the business and markets operated by Euronext. They have identified certain areas of common interest and have adopted a coordinated approach in the application of their respective national rules, regulations and supervisory practices regarding listing requirements, prospectus disclosure requirements and ongoing obligations of listed companies. Euronext is also committed to complying with the provisions contained therein, insofar as the obligations under the MoU apply to the company or its subsidiaries.

[336] *Euronext represented a specificity in Europe, given a model of horizontal integration between markets, where the management of clearing* services at the managed trading venues was entrusted to several central counterparties outside the group, including LCH.SA, a subsidiary of LSE, in which Euronext held a minority stake. With the acquisition of Borsa Italiana, Euronext sold its stake in LCH.SA to LSE, *Ibid, pages 26 et seq.*

[337] Supervising the process of integrating Borsa Italiana into the Euronext group is one of the key actions identified in CONSOB's 2022-2024 Strategic Plan.

[338] Euronext (2022), p. 139.

The project envisages the migration to Italy of the Euronext derivatives markets, including commodity derivatives traded on the Parisian Marché À Terme International de France (MATIF)[339], in the near future. At the post-trading level, the renewed centrality of Euronext Clearing has placed the country in a leading position in the European clearing industry and opened new directions of development for Italian infrastructures.

The phenomena just described are indeed topical, but their development is complex to predict. Digitalisation is forcing market operators and related infrastructures to rethink and diversify their business models, particularly with regard to data services[340]. On the other hand, the potential of DLT systems, a phenomenon intimately linked to the rise of "cryptofinance", has opened new prospects for the development of markets and related infrastructures towards more decentralised solutions with fewer barriers to accessibility. The phenomenon is now qualified by European legislation, which seems to place the new DLT operators in direct competition with the traditional operators, while the latter are nevertheless rapidly adapting to internalise the new technologies.

On the other hand, digitalisation and the emergence of a more direct connection between the financial world and social media pose challenges to regulators to incorporate new phenomena and behaviours into the regulatory and supervisory framework, with the aim of not hindering innovation and widespread market access, while preserving adequate levels of savings protection.

4.4 The future of decentralised finance

The analysis of the decade would not be complete without an independent, albeit brief, discussion of the crypto-asset phenomenon and its surprising emergence in the global financial landscape. Originating from the ashes of the 2007-2008 crisis, their rapid proliferation has raised concerns about monetary stability, transparency, and investor protection. The explosion of Bitcoin has catalysed an exponential evolution in the sector and the emergence of a new, unregulated financial ecosystem[341]. In terms of capitalisation, the market reached a considerable size, thanks also to sustained liquidity, only to experience a sharp decline in 2022, in the wake of numerous scandals and bankruptcies (the so-called crypto winter). However, this contraction appears to have been temporary, and 2023 witnessed a recovery in the sector and its capitalisation, partly due to the legalisation of Bitcoin trading and the periodic halving mechanism that limits the growth of this virtual instrument. Given these characteristics, the phenomenon has long been on the radar of global regulators, who are striving to devise a common and coordinated approach. The decentralisation inherent in blockchain accounting is particularly concerning for central banks, as its opaque nature challenges the traditional paradigms of financial and monetary stability.

Distributed ledger technology (DLT) lies at the core of significant technological innovations, challenging traditional roles within financial systems including intermediaries, issuers, and the regulatory structures that support them. While Bitcoin aims to position itself as a safe haven asset, central banks are investigating DLT's potential applications for official currencies. Despite these developments, a definitive governance framework for managing these innovations remains unestablished. Europe has taken initial steps towards regulating this space, but its approach does not fully address the complexities of decentralised finance. In Italy, the response has included tokenization and anti-recourse regulations. These measures, while sector-specific, sometimes lack consistency with the standards enforced in other financial domains[342]. On the other hand, in a legislative framework that currently lacks a comprehensive vision, application frictions have

[339] See Euronext press release of 30 November 2023, *Euronext announces the successful expansion of Euronext Clearing as pan-European clearing house for Euronext cash markets,* 2023, available at: euronext.com.

[340] One initiative among many, the recently announced partnership between LSE/Refinitiv and Microsoft, see LSE (2022*), p. 104*.

[341] See for a framing of the phenomenon Annunziata (2023), pages 511 et seq.; for a classification of the phenomenon, see the analysis of Banca d'Italia (2022).

[342] Italian anti-money laundering legislation has legitimised the provision of services related to virtual currencies, also introducing a supervisory framework, however limited to anti-money laundering aspects only: Legislative Decree 231/2007, most recently amended by Legislative Decree. 125/2019 in transposition of Directive (EU) 2018/843 (the Fifth AML Directive), introduced a definition of virtual currency (which includes cryptocurrencies understood both as an investment and as a means of payment) and of a service provider in this segment (VASP – Virtual Asset Service Provider), i.e. a natural or legal person offering services

Gamification and social media in markets: the Gamestop case

At the end of January 2021, the share price of GameStop Corporation, a video game trading company listed on the New York Stock Exchange (NYSE), rose 306% in one week and more than 1,600% in just 10 sessions. Against this trend, the company's fundamentals had not changed. GameStop was already in significant financial difficulties amplified by the aftermath of the pandemic. As a result of these difficulties, several specialised hedge funds had taken bearish positions, through short selling, essentially betting on the stock's decline, assuming that the company would exacerbate its state of crisis. Between February and July 2020, the share price was stable, while the total short positions amounted to 84% of the share capital at the end of July. In August 2020, an activist investor from the US, having acquired a significant stake in the company, obtained a seat on the board of directors and promoted an innovative commercial campaign aimed at gaining a growing market share in e-commerce. The share price, fuelled mainly by comments on social media, began to rise, at first gradually, then in an increasingly intense and surprising manner, until it reached its official maximum price for the period on 27 January 2021, up 8,588%, compared to 31 July 2020. A few days later, there were sharp corrections in the share price (up to -60%), attributable in part to purchasing restrictions imposed by the major trading platforms.

On a global level, the Gamestop case was a turning point, raising questions about investment ethics and the participation of individual investors in the context of the growing influence of social media on *trading* dynamics, prompting regulators to start reflecting on the need for regulation of the relationship between financial markets and social media. As in any speculative bubble, investors who entered and exited at the right time made handsome profits, while those who entered too late or held their positions too long suffered huge losses. The GameStop bubble, however, was unusual because it challenged both of the most common interpretations of financial markets. The first is that financial markets efficiently allocate capital to companies with sound economic fundamentals. The second is that large institutional investors speculate in ways that destabilise markets, making unseemly profits at the expense of small investors. Investors who have bought copious amounts of GameStop stock – often young, mostly amateur traders who coordinated via social message boards – seem to have subscribed to the latter interpretation, fomented by what has been called in the media the first stock flash mob. Conspiring to drive up the share prices of troubled companies, small investors tried to "beat" the institutional investor establishment. And indeed, hedge funds that had taken short positions on GameStop had to swallow huge losses.

Several circumstances contributed to the affair, which was exceptional in terms of the size of the price and volume fluctuations, profits and losses achieved by various categories of investors. In addition to the negative performance of GameStop, social media, the presence of very large net short positions, trading platforms, the gamification of trading, the practice known as payment for order flow (PFOF), and the pandemic played a primary role. The magnitude of some of these factors, as both cause and effect, has been amplified by tools and technologies based on artificial intelligence.

become evident. Case law and CONSOB itself have occasionally found that the rules governing public offerings of financial products, excluding traditional financial instruments, are applicable in specific instances. This approach highlights the need for more clarity and consistency in the regulatory environment[343].

related to virtual currencies on a professional basis. Legislative Decree 90/2017 also provided for the Organismo degli Agenti e dei Mediatori (OAM) to register VASPs who meet the applicable requirements in a special section (established ex novo and active as of 16 May 2022) of the register of currency exchangers.

[343] Cf. Annunziata. (2023), p. 521, and footnote (14-15) therein, where the author cites, by way of example, CONSOB Resolution No. 19968 of 20 April 2017, as well as Judgment No. 44378 of 22 November 2022, of the Second Criminal Section of the Court of Cassation.

CONSOB

Delibera n. 22923 del 6 dicembre 2023

ADOZIONE DEL REGOLAMENTO SULL'EMISSIONE E CIRCOLAZIONE IN FORMA DIGITALE DI STRUMENTI FINANZIARI

LA COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA

VISTA la legge 7 giugno 1974, n. 216 e successive modificazioni;

VISTO il decreto legislativo 24 febbraio 1998, n. 58 e successive modifiche, con il quale è stato emanato il Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52 (di seguito, "TUF");

VISTO il decreto-legge 17 marzo 2023, n. 25, convertito, con modificazioni, dalla legge 10 maggio 2023, n. 52 (di seguito, "decreto");

VISTO l'articolo 28, del decreto, e, in particolare, il comma 1, che ha conferito alla Consob il potere di determinare, tramite regolamento, i principi e i criteri relativi alla formazione e alla tenuta dell'elenco di cui all'articolo 19 del decreto;

VISTO altresì l'articolo 28, comma 2, del decreto, che ha attribuito alla Consob il potere di dettare, tramite regolamento, disposizioni di attuazione del decreto riguardanti, tra l'altro, le forme e le modalità di presentazione dell'istanza per l'iscrizione nell'elenco dei responsabili del registro e la procedura per l'iscrizione nel citato elenco, nonché il contenuto minimo delle informazioni relative alle modalità operative del registro per la circolazione, di cui all'articolo 23, comma 3, del decreto;

VISTO il regolamento generale sui procedimenti amministrativi della CONSOB ai sensi dell'articolo 24 della legge 28 dicembre 2005, n. 262, e dell'articolo 2, comma 5, della legge 7 agosto 1990, n. 241 e successive modificazioni, adottato con delibera n. 18388 del 29 novembre 2012;

VISTA la delibera del 5 luglio 2016, n. 19654, e successive modificazioni, con la quale è stato adottato il regolamento concernente i procedimenti per l'adozione di atti di regolazione generale, ai sensi dell'articolo 23 della legge 28 dicembre 2005, n. 262, recante disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari;

CONSIDERATE le osservazioni pervenute in risposta al documento di consultazione sulle proposte di Regolamento sull'emissione e circolazione in forma digitale di strumenti finanziari, come rappresentate nella relazione illustrativa che costituisce parte integrante del presente provvedimento;

D E L I B E R A:

Art. 1

(Approvazione del Regolamento sull'emissione e circolazione in forma digitale di strumenti finanziari)

1. É approvato l'accluso "Regolamento sull'emissione e circolazione in forma digitale di strumenti finanziari".

Art. 2

(Disposizioni finali)

1. La presente delibera è pubblicata nel sito *internet* della Consob e nella Gazzetta Ufficiale della Repubblica Italiana. Essa entra in vigore il giorno successivo alla data della sua pubblicazione nella Gazzetta Ufficiale.

IL PRESIDENTE

Decentralised finance confuses and disrupts the thin division between banking and other financial sectors and, hence, their supervisory architectures. The now ubiquitous emergence of the crypto-asset phenomenon, which insists in an area between banking and financial savings, raises new challenges to the ability of the legal system to govern certain aspects of this phenomenon.

This circumstance, however, does not hinder the development of innovation, which continues to thrive in the grey areas of the law. In this context, private parties tend to choose legal systems (and jurisdictions) that offer certainty in regulating the private aspects of these phenomena. A significant initial catalogue of UNIDROIT principles on this subject has been recently established[344]. Thus, the avenues for development remain open and even more uncertain.

4.5 The role of finance in the transition to a sustainable economy

A further development that has characterised domestic financial markets consists of the emergence of sustainable finance. An expression of a social phenomenon, even more so than a financial one, it focuses on the globally felt need for a rapid transition to economic development models geared towards greater sustainability[345]. In the pursuit of this transition, finance plays a pivotal role, encouraging long-term investments, which also generate positive externalities, and promoting responsible management of financial resources in the light of the associated risks, through the consideration of ESG factors.

From a market perspective, sustainable finance thus represents a complex innovative phenomenon, influencing the strategies of both companies and investors. Sustainability considerations have extensively permeated corporate governance, re-orienting some of the most relevant aspects for the functioning of boards, such as corporate purpose, strategies, risk management, internal control systems and executive remuneration[346]. The assessment of ESG factors has gained centrality in investment choices, becoming integrated into the engagement and stewardship strategies of institutional investors[347]. Even in the retail sector, through advisory services, sustainability considerations now find their place. On the supply side, the trend of sustainable investments is growing, in light of the spread of green bonds and social bonds[348], which now represent a qualified market sector. An important

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[344] On the private law front, recently, the UNIDROIT Governing Council at its 102nd session (10-12 May 2023) approved the UNIDROIT, *Principles on Digital Assets and Private Law, 2023*.

[345] For an overview of the transition from sustainable development to sustainable finance, see Linciano, Ciavarella et al., (2021), pages 12 et seq. See also Annunziata (2023), pages 305 et seq.

[346] *Ibid*, pages 17 et seq.

[347] See Ferrarini and Siri (2023), pages 10 et seq.

[348] In this regard, Borsa Italiana has since 2017 been drawing up a list of bonds ('List of Green and Social Bonds'), traded on the MOT and ExtraMOT markets, including the professional segment.

role is played by providers of sustainability scores and ratings, who process the information provided by companies and make the necessary ESG performance indicators available to investors.

The European Union has intervened with an array of specific regulatory measures to promote the necessary level of transparency, accuracy and standardisation of ESG information. However, the regulatory regime on sustainability is still under construction. In the context of this new phenomenon, CONSOB is an actor of change and operates with the aim of supporting the *green* transition, encouraging the adoption by all stakeholders in the financial sector of an approach oriented towards ESG factors, combatting greenwashing, and promoting the necessary financial research and education, pursuant to the guidelines of the current Strategic Plan[349].

Even in the realm of sustainability, the paths of development are open and rapidly evolving. Yet, the transformation of the financial system is already well underway, not just domestically but on a broader scale.

* * *

[349] CONSOB participates in the Table of Coordination on Sustainable Finance, established in 2022, aimed at facilitating discussion among participating institutions and promoting dialogue with stakeholders on issues related to sustainable finance, as well as fostering study, survey, data collection, education, awareness and communication activities, CONSOB, *Relazione sull'attività svolta nell'anno 2022,* Rome 2023, p. 144.

The history of CONSOB described in this volume ends in March 2024,
but it will continue in light of the major changes underway to support Italy's economic growth, technological innovation and sustainable development.

The President of the Italian Republic Sergio Mattarella with CONSOB Chairman Paolo Savona

Appendix 1 EVOLUTION OF THE MARKET
Appendix 2 CONSOB'S ACTIVITY

FIGURE A1.1 – Listed companies on the Borsa Italiana by trading venues

(end-of-period data)

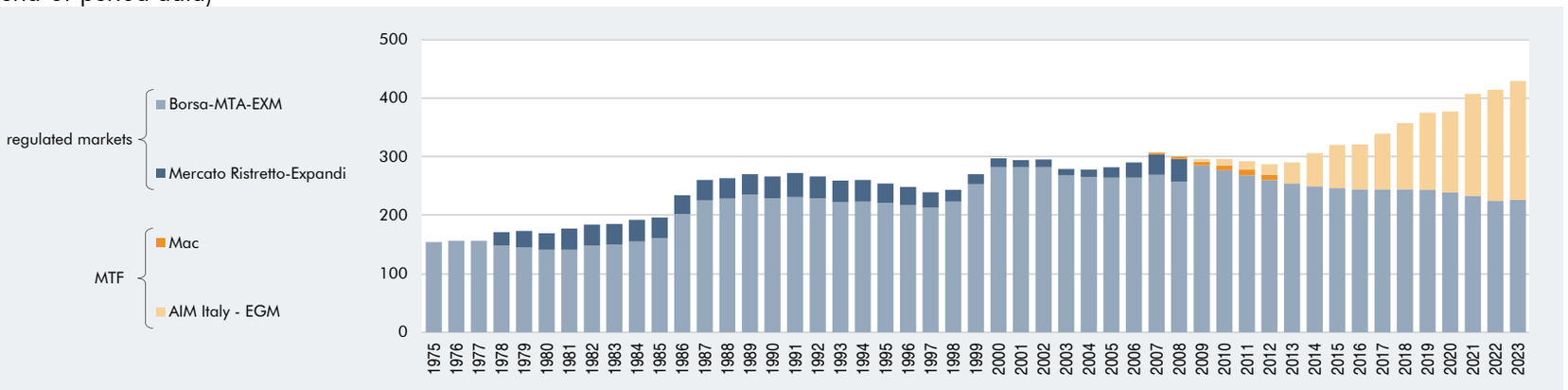
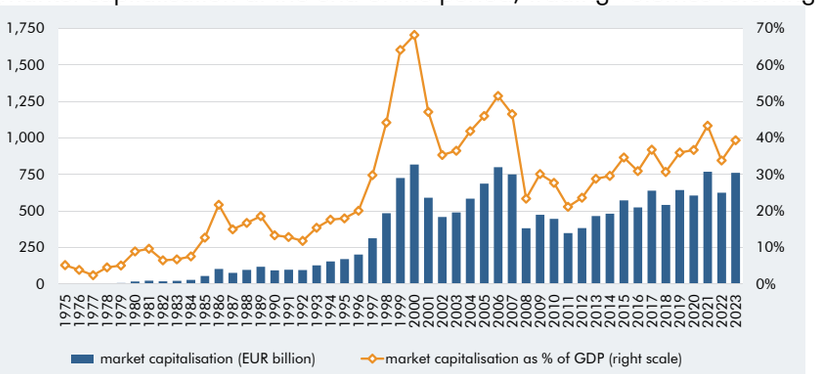


FIGURE A1.2 – Market capitalisation and trading volumes

(market capitalisation at the end of the period; trading volumes referring to the whole year)



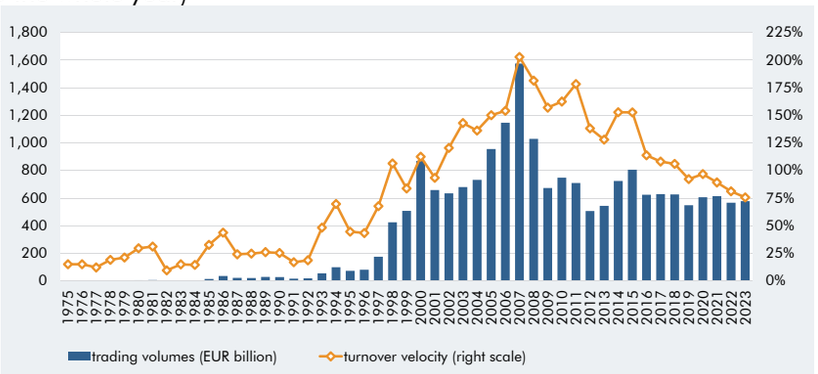
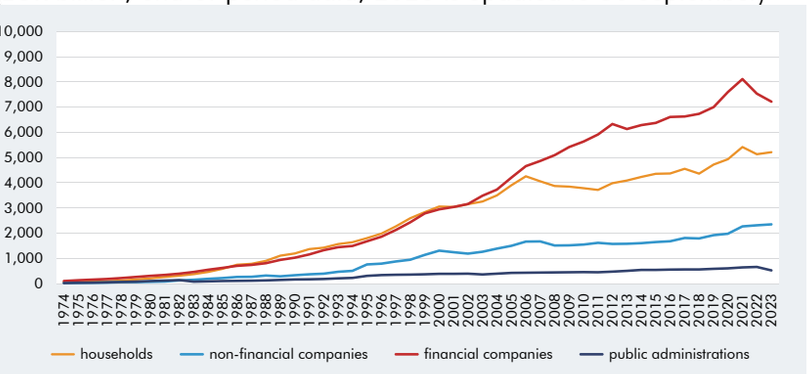


FIGURE A1.3 – Financial assets by institutional sector

(EUR billion; end-of-period data; 2023 is updated to 30 September)



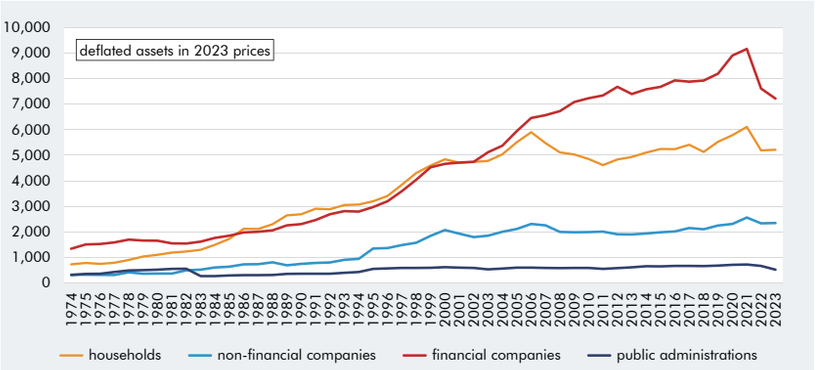
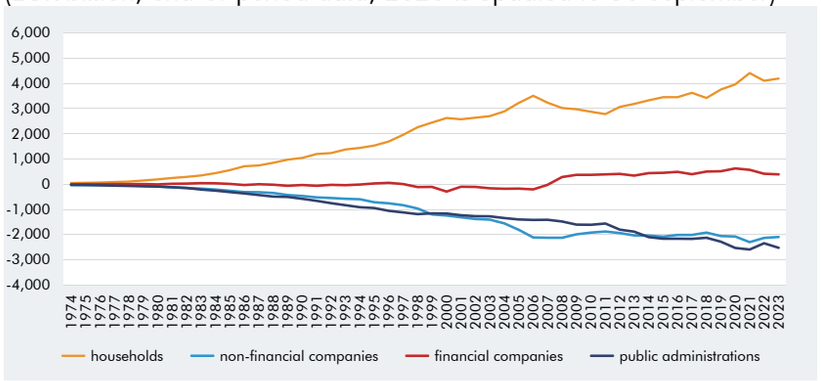


FIGURE A1.4 – Net financial wealth by institutional sector

(EUR billion; end-of-period data; 2023 is updated to 30 September)



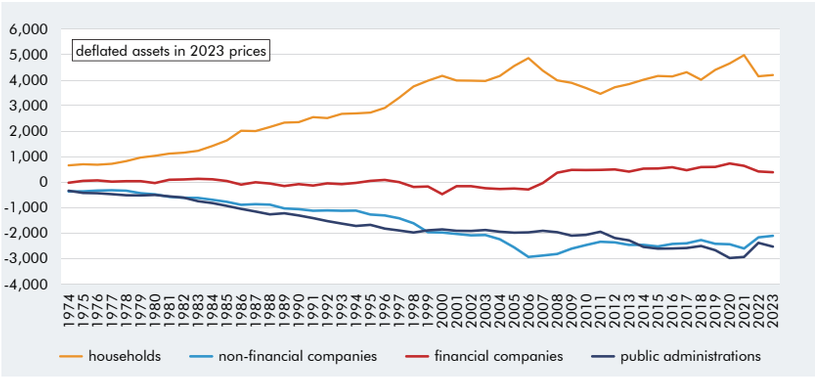
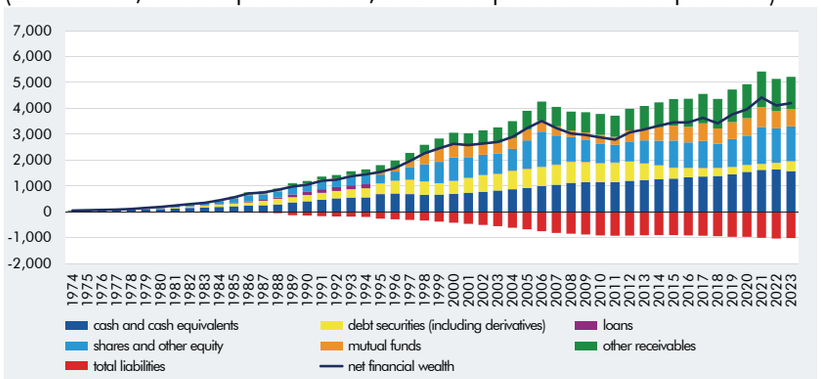


FIGURE A1.5 – Composition of household financial wealth

(EUR billion; end-of-period data; 2023 is updated to 30 September)



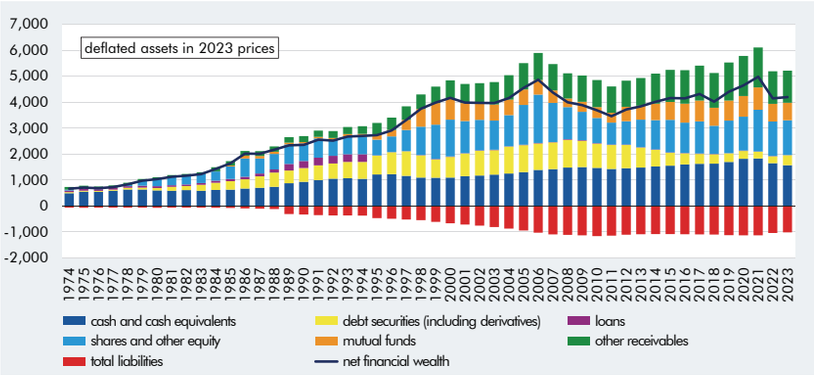
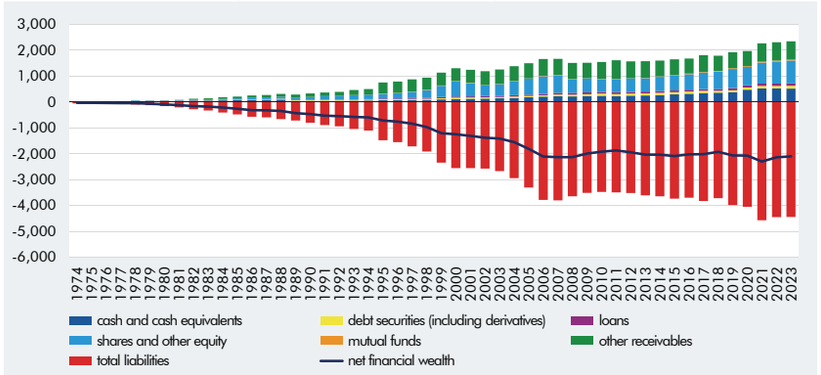


FIGURE A1.6 – Composition of the financial wealth of non-financial companies

(EUR billion; end-of-period data; 2023 is updated to 30 September)



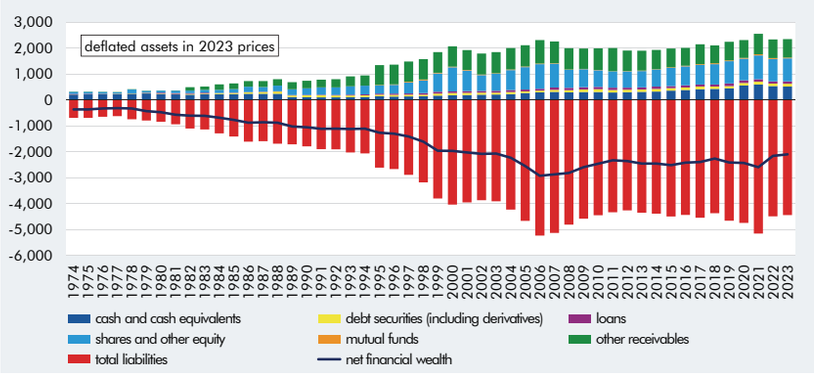


FIGURE A1.7 – Breakdown of household financial assets over decades

(end-of-period data; 2023 is updated to 30 September)

FIGURE A1.8 – Breakdown of financial assets of non-financial companies over decades

(end-of-period data; 2023 is updated to 30 September)

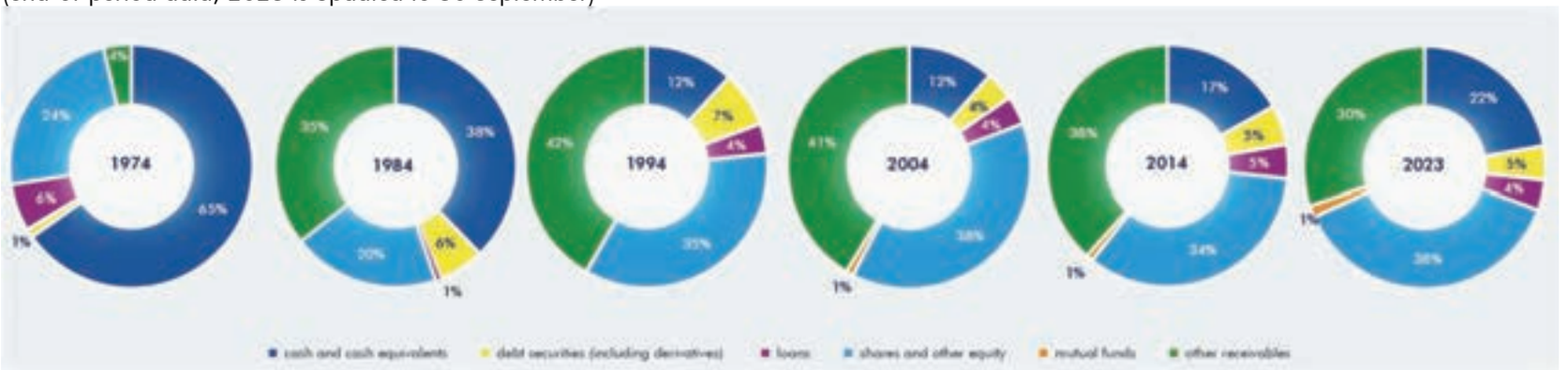
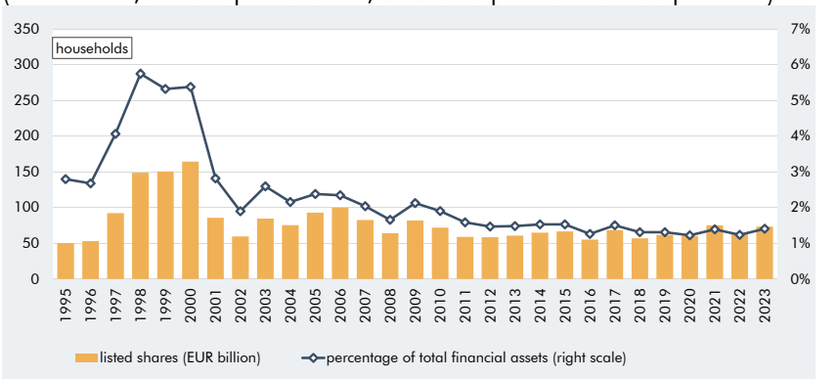


FIGURE A1.9 – Listed shares held by households and non-financial companies

(EUR billion; end-of-period data; 2023 is updated to 30 September)



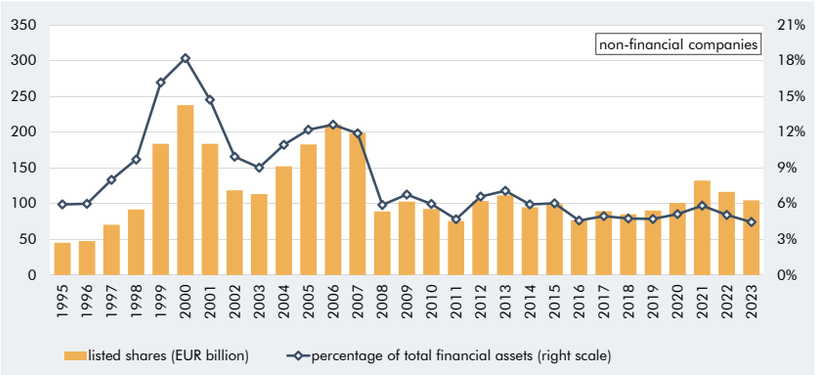
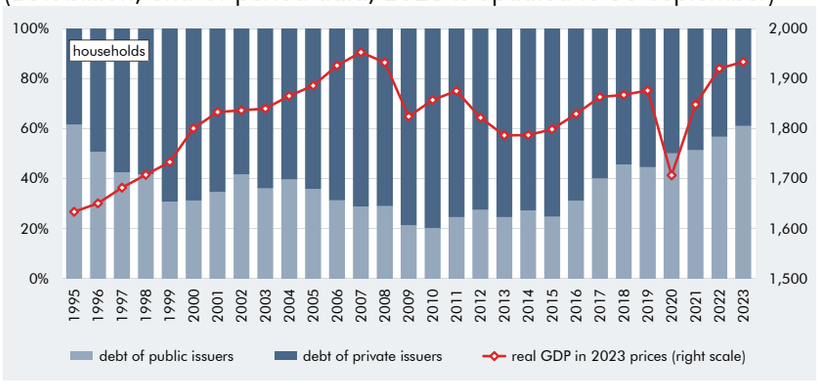
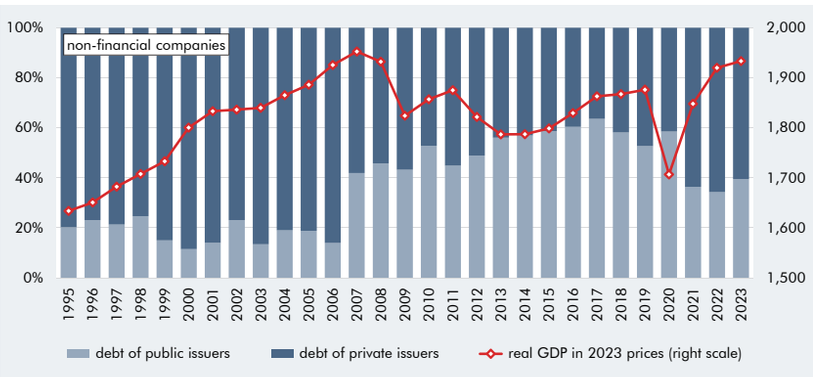


FIGURE A1.10 – Debt securities held by households and non-financial companies and real GDP
(EUR billion; end-of-period data; 2023 is updated to 30 September)





* * * * *

METHODOLOGICAL NOTES

Within financial assets, the item ***cash and cash equivalents*** includes the categories ***notes*** and ***coins and deposits.*** For financial companies, in particular monetary financial institutions, this asset also includes ***monetary gold*** and ***special drawing rights.***

Within financial assets, the item ***debt securities*** is the sum of ***short-term*** and ***medium/long-term*** and ***derivatives.***

Within financial assets, the item ***loans*** corresponds to the sum of ***short*** and ***medium/long-term loans.***

Within financial assets, the item ***other receivables*** includes ***insurance reserves*** and ***trade receivables.***

The institutional sector ***households*** includes ***households*** and ***institutions not-for-profit serving households.***

The institutional sector ***financial companies*** is the sum of the subsectors ***monetary financial institutions, other financial intermediaries, financial auxiliaries, insurance companies*** and ***pension funds.***

The institutional sector ***public administrations*** encompasses the subsectors ***central government***, ***local government*** and ***social security funds.***

The GDP deflator with a base of 100 in the year 2023 was used to deflate the stock market capitalisation time series (FIGURE A1.2).

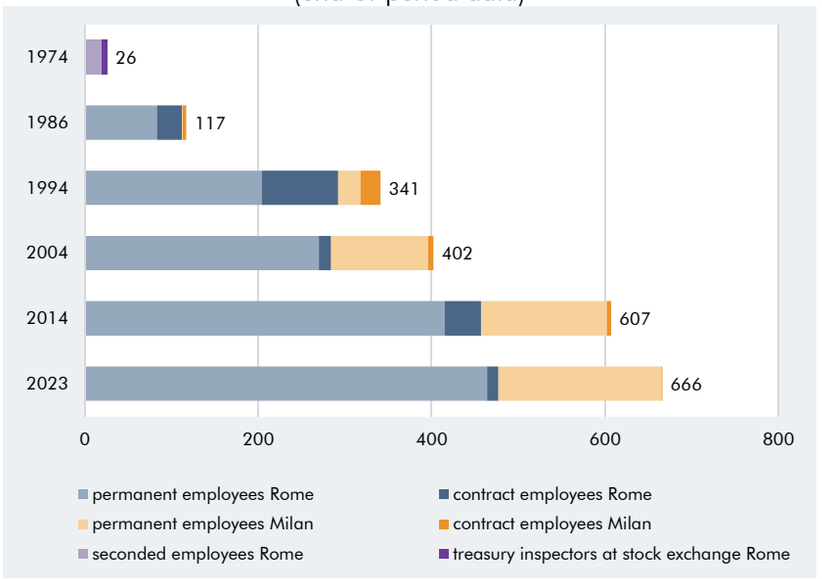
The Consumer Price Index for December of each year was used to deflate the time series of financial assets

Source of data on stocks of financial assets: Online statistical database (BDS) of Banca d'Italia – Financial accounts section.

Other sources: Borsa Italiana, ISTAT.

2.1 – The evolution of the workforce

number of employees in service
(end-of-period data)



regulatory reference	maximum number of employees
d.l. 95/1974	State administration staff, employees of public bodies and no more than 20 contracted experts
d.p.c.m. 23/10/1976	120 (+20 auxiliary)
law 281/1985	200 (150 permanent + 50 contract)
d.l. 233/1986	215 (165 permanent + 50 contract)
law 230/1988	215
d.l. 417/1991	475 (350 permanent + 125 contract)
law 662/1996	450
law 62/2005	600
d.l. 32/2005	615 (+15 contract)
decree MEF 30/4/2008	715
law 122/2016	730 (+15 units)

2.2 – The deposited prospectuses

	equity and non-equity prospectuses	fund prospectuses	*total prospectuses*
1974-1984	122	26	*198*
1985-1994	1,881	2,033	*3,914*
1995-2004	2,246	3,208	*5,454*
2005-2014	7,605	4,098	*11,703*
2015-2024	1,142	3,588	*4,730*

Decade 1974-1984

From 1974 to 1977, there are no prospectuses filed with CONSOB as this is not required by law. From 1978 to 1982, taking into account the regulations in force, the prospectuses relate only to admissions to listing. In particular, since 1977, the year in which a second regulated market (Mercato ristretto) was established alongside the official market (the Stock Exchange), the obligation was introduced to publish a prospectus containing data and news on the company's performance and prospects before trading began on that market. This practice was also followed for admission to the official list (Stock Exchange).

Law No. 77/1983 extended CONSOB's powers. The fulfilment of the obligation to publish the prospectus, after its submission to CONSOB, implies the possibility of its amendment or supplementation where requested by the supervisor. Non-compliance with such requests may result in the prohibition of the proposed transaction .

Decade 1985-1994

There has been a marked reduction in the number of prospectuses since 1990 as a result of the stock market crash following the Gulf crisis and the poor prospects for a short-term recovery in manufacturing activity.

Decade 1995-2004

On 1 July 1998, Legislative Decree No. 58 of 24 February 1998 (the Consolidated Law on Finance) came into force.
In May 1999, the new Issuers' Regulation was approved, containing the provisions on investment solicitation and listing prospectus. In particular, as of 1 July 1999, capital increases relating to listed companies by means of an offer under option to shareholders are also subject to the obligation to publish a prospectus, even in the absence of the CONSOB's authorisation.
Since 2001, there has been a significant reduction in the number of prospectuses, due to the difficult phase in the financial markets, which has affected the placement of securities, penalising above all the listing of new companies. The reduction also affected offers to sell listed securities, which in previous years had been fuelled mainly by transactions connected with the privatisation process.
On 31 December 2003, the Prospectus Directive 2003/71/EC came into force, which entailed the abrogation of the rules of the Consolidated Law on Finance that allowed exemption from the rules on investment solicitation for bonds and other products offered by banks (Art. 100 of the Consolidated Law on Finance). The new directive allows issuers of securities other than equity securities (non-equity securities) to request approval of the prospectus from European authorities other than that of the country where it has its registered office, benefiting from the European passport regime. This has accentuated the relocation of issues of non-equity securities to other European Member State.

Decade 2005-2014

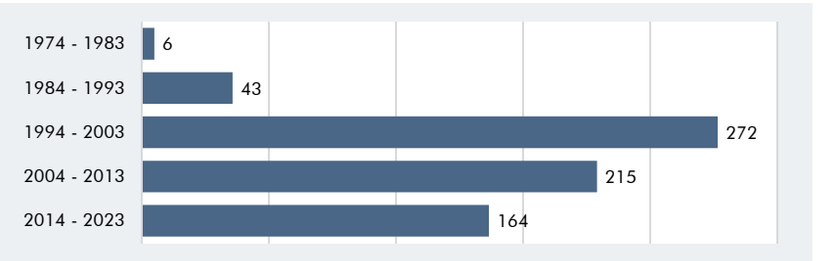
The sharp increase in the number of prospectuses is essentially attributable to the entry into force of the prospectus regime (Prospectus Directive 2003/71/EC and Law No. 262 of 8 December 2005 on measures for the protection of savings and the regulation of financial markets), which subjects bank bonds to the rules on solicitation. In fact, with the transposition of the Prospectus Directive and the savings reform, Article 100(1)(f) of the Consolidated Law on Finance, which exempted financial products, other than shares and share-equivalent securities, issued by credit institutions from the solicitation rules, was repealed.
With reference to listing operations, the tensions related to the subprime mortgage crisis, which emerged in the last months of 2007, accentuated the volatility of the financial markets, leading some companies to temporarily suspend the listing process.

Decade 2015-2024

Regulation (EU) 2017/1129 replaced Directive 2003/71/EC and its implementing measures, introducing provisions of direct application in the Member States.
In 2016, the issuance of bank-issued non-equity financial products substantially halved compared to 2015. Therefore, bank issuers (and investors) turned towards forms of funding (and investment) other than the traditional bond instrument, also due to the low market rates and the fact that these instruments are now eligible for bail-in procedures in the event of a crisis of the issuing credit institution. Similar dynamics characterised the segment of securitised derivative financial instruments (certificates and covered warrants), which recorded a drop of about 50% compared to the previous period.
As of 2019, the decline in prospectuses is essentially attributable to the effects of the reform process of Cooperative Credit Banks (BCCs), initiated by Law No. 49 of 8 April 2016, as amended by Article 11 of Decree-Law 91/2018. The reorganisation process of the BCC sector resulted in the establishment of the two new large cooperative banking groups.
In 2020, there were the effects of the pandemic, which caused some companies to abandon or postpone the listing process and led to a sharp drop in the placement of banking products.
In 2021, experiments will begin on the innovation of supervisory processes on prospectuses through the use of artificial intelligence tools.

2.3 – Takeover bids and/or exchange tender offers

number of offers



Since the establishment of CONSOB and up to December 2023, 700 transactions relating to takeover bids/OPS/OPAS have been examined/approved by CONSOB (including residual offers pursuant to Law No. 149/92 and purchase obligations pursuant to Article 108 of the Consolidated Law on Finance).
Based on the data in the Authority's Annual Reports (available from the year 1975 onwards), the first public offer examined by CONSOB dates back to the year 1977.

2.4 – Challenges to financial statements and proceedings pursuant to Article 154-ter(7) of the Consolidated Law on Finance (TUF)

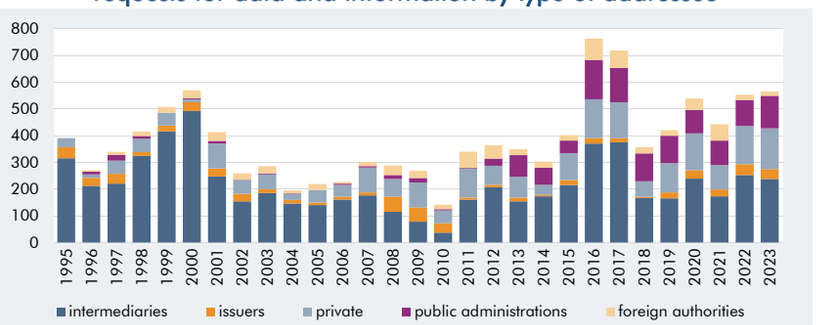
	challenges to financial statements	proceedings 154-ter (*)
1974-1984	0	0
1985-1995	11	0
1995-2004	12	0
2005-2014	18	26
2015-2023	2	13
1974-2023	**43**	**39**

(*) Includes proceedings initiated and not concluded and proceedings concluded by resolution.

Since the establishment of CONSOB and up to December 2023, 43 challenges to financial statements have been made and 39 proceedings have been opened pursuant to Article 154-ter(7) of the Consolidated Law on Finance.
Based on the data in the Institute's Annual Reports (available from 1975 onwards), the first financial statement challenge dates back to 1985. The first proceeding under Article 154-ter, paragraph 7, on the other hand, was opened in 2009 (bearing in mind that this power was attributed to CONSOB by Legislative Decree No. 195 of 6 November 2007, which transposed Directive 2004/109/EC into Italian law, and could be exercised starting with the financial reports relating to financial years, half-years and periods starting from the date after the entry into force of the decree, which occurred on 24 November 2007).

2.5 – Market abuse

requests for data and information by type of addressee

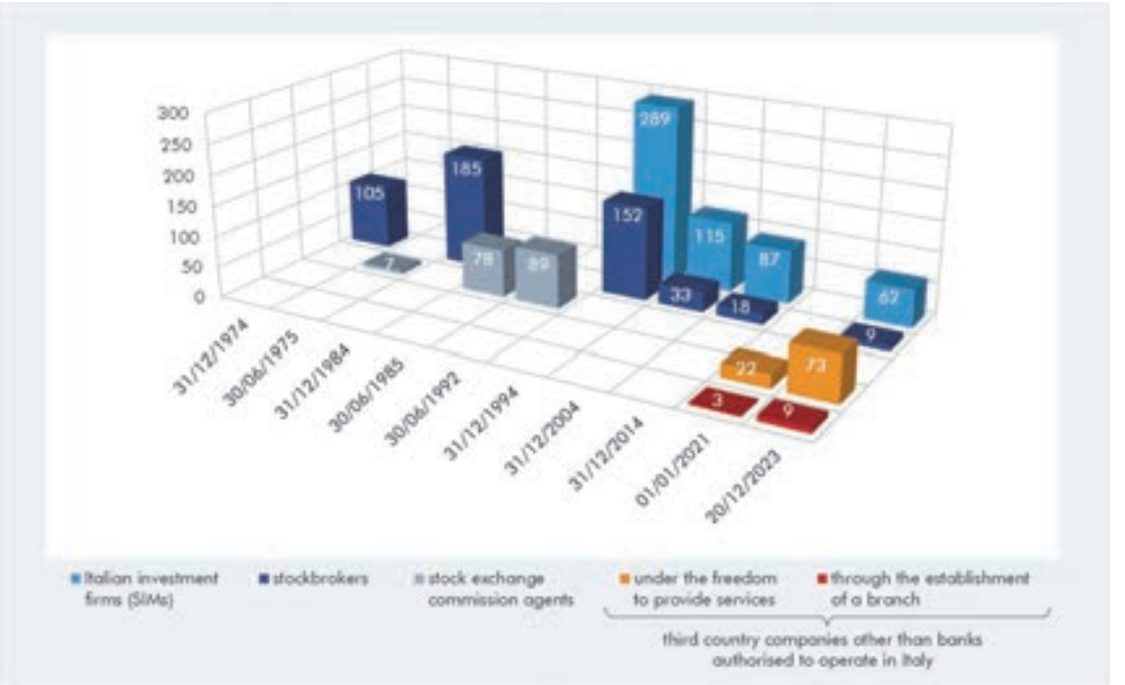


After the introduction of the offence of insider trading in 1991 and the systematic start, also from an organisational point of view, of investigation activities by CONSOB, supervision of market abuse phenomena has taken on particular importance since 1995.

In 1994, the Insider Trading Office was set up in Milan and in 1995, less than four years after the law was passed, CONSOB forwarded almost 400 requests for data and information, mainly addressed to intermediaries, as part of market abuse investigations. Thereafter, there was a first peak of requests in 2000 (almost 600) and a second peak in 2016-2017 (almost 1,500 total requests). Over the past five years, the figure has stabilised at an average of around 500 requests per year. The number of requests to intermediaries has dropped significantly following the implementation of MiFID II, as of 2018, in national law, thanks to which data on the identification of the final principal of transactions are - in many cases, not in all - available to the competent supervisory authorities via the transaction reporting flow. It should also be mentioned that, as part of its investigations, CONSOB carries out inspections and hearings of natural persons.

2.6 – The supervision of non-bank intermediaries

number of intermediaries



From the turn of the century and until Law No. 1 of 2 January 1991 (the so-called SIM Law), only stockbrokers were authorised to trade at the stock exchange's grids, acting exclusively as brokers on behalf of clients. Stockbrokers, on the other hand, were authorised to physically access the so-called anti-records of the grids and from there transmit trading orders to stockbrokers.

Before 1991, the number of stockbrokers and commission agents had grown steadily to over 250 in the late 1980s (more than 180 stockbrokers and almost 80 commission agents).

With the SIM Law, the figure of stockbrokers, who had been authorised to operate until December 1992, disappeared altogether. Even operating stockbrokers, i.e. those enrolled in the so-called 'single role', became progressively fewer and fewer from the early 2000s onwards, to become extinct during 2012. Today, only 9 persons retain the status of a stockbroker registered in the so-called 'special role' and act as partner, director, auditor, manager, employee or collaborator in brokerage firms.

In fact, the SIM Law revolutionised the securities brokerage system, introducing for the first time in our legal system the figure of specialised multi-functional intermediaries (SIMs), authorised to perform all securities brokerage activities, including trading in own account or on behalf of third parties, placement and distribution of securities, individual asset management and order collection.

In the first years following the law, the number of SIMs peaked at almost 300 authorised entities registered in the register kept by CONSOB, but since the second half of the 1990s, the number of SIMs has also steadily declined until it reached 61 at the end of December 2023.

The reduction in the number of SIMs is mainly attributable to the reorganisation and concentration process in the sector, especially through transformations and incorporations into banks or asset management companies (SGR), which took place following the entry into force of Legislative Decree No 415 of 23 July 1996 implementing the so-called 'Eurosim directives'.

On the other hand, the growth in the number of third-country investment firms authorised to operate in Italy by CONSOB, which reached 82 at the end of December 2023, is much more recent and is a direct effect of Brexit. Today, of these firms, 73 are authorised to operate only under the freedom to provide services (i.e. only vis-à-vis eligible counterparties and professional clients as of right) and 9 are authorised to operate through the establishment of a branch (i.e. also vis-à-vis professional clients on request and retail clients).

2.7 – International cooperation agreements signed by CONSOB

1993	United States	Securities Exchange Commission (S.E.C.)
	Argentina	Comisión Nacional De Valores
1994	France	Commission Des Opérations De Bourse (C.O.B.)
	Belgium	Comission Bancaire et Financière (CBF)
	Spain	Comisión Nacional del Mercado de Valores
	Canada	Ontario Securities Commission
1995	United States	Commodity and Futures Trading Commission (C.F.T.C.)
	United Kingdom	HM Treasury and Financial Services Authority
1996	Malta	Malta Financial Service Center - Agreement to Maintain Confidentiality of Exchanged Information
	Brazil	Comissão de Valores Mobiliários
	Portugal	Comissão do Mercado de Valores Mobiliários
1997	Hong Kong	Securities & Futures Commission (SFC)
	Federal Republic of Germany	Bundesaufsichtsamt für den Wertapapierhandel (Bawe)
	Taiwan	Securities and Futures Commission (SFC)
1998	Hungary	Hungarian Banking and Capital Market Supervision
	Australia	Australian Securities and Investments Commission
1999	China	China Securities Regulatory Commission
2000	Poland	Komisja Papierów Wartonsciowych i Gield
	Albania	Albanian Securities Commission
2001	Turkey	Turkish Capital Market Board
	Czech Republic	Czech Securities Commission
2002	Guernsey	Guernsey Financial Services Commission
	Slovenia	Securities Market Agency of Slovenia
	South Africa	Financial Services Board of South Africa
2003	Republic of San Marino	Ispettorato per il Credito e le Valute
	Jersey	Services Commission Jersey Financial
	Slovak Republic	Financial Market Authority
	IOSCO	Multilateral Memorandum of Understanding MMoU
	Malaysia	Malaysian Securities Commission
	Romania	CNVM
	Principality of Monaco	Commission de contrôle de la gestion de portefeuilles et des activités boursières assimilées
2004	Egypt	Egypt Capital Market Authority
	Singapore	Monetary Authority
2005	Republic of Moldova	National Securities Commission of the Republic of Moldova
2007	United Kingdom	Financial Services Authority (FSA)
2010	United Kingdom	Financial Services Authority (FSA) and Banca d'Italia
2013	France	Autorité de Contrôle Prudentiel (ACP) - Banque de France (BDF) - Autorité des marchés financiers (AMF) and Banca d'Italia
	Dubai	Dubai Financial Services Authority (DFSA)
2014	ESMA	Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information
2019	IOSCO	Agreement on the exchange of personal data - IOSCO MMoU
2020	United States	Commodity and Futures Trading Commission (C.F.T.C.)
	United Kingdom	Financial Conduct Authority and Authorities of European Economic Area
	United States	Securities Exchange Commission (S.E.C.)
	Japan	Japan Financial Services Agency (JFSA)
2021	Canada	AMF (Québec)
2022	ECB	Memorandum of Understanding on Cooperation between the ECB and CONSOB
2023	United States	PCAOB (Public Company Accounting Oversight Board) - Audit Agreement


EUROPE
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