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The Italian Regulatory Framework for Equity-based Crowdfunding: What Lessons (if Any) for other Regulators?

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Extended Abstract

Abstract

Goals – This extended abstract (which builds on another piece of research by the Authors, The Italian Regulatory Framework for Equity-based Crowdfunding: An Overview and a Number of Critiques, in 2015 forthcoming in *European Company Law*, Wolters Kluwer International Publisher) provides the reader with a preliminary overview of the very essential contents of the final version of a paper aimed at "mapping" the main shortcoming that possibly affect the Italian regulatory framework for equity-based crowdfunding, thereby contributing to the discussion about how to regulate financial forms crowdfunding.

Methodology – Though necessarily theoretical in nature, this paper adopts a functional approach, in that it assesses the ability of the considered regulatory framework by discussing the potential ability of a given variety of regulatory solutions to either promote or stifle the development of a financial crowdfunding market. Building on such assessment, it elaborates a number of recommendations for those regulators who are considering of either bringing in ad hoc regulatory measures or adapting current laws and regulations in order to stimulate the emergence or development of such phenomenon.

Conclusions – The Italian regulatory framework seems to present a significant number of weaknesses which may generate severely dysfunctional outcomes. In other regards, however, the Italian Regulator has made regulatory choices that seem to be appropriate.

Discussion – The main question for discussion is: what lessons did we learn from the Italian regulatory framework for equity-based crowdfunding that may be of some importance to other regulators planning, or considering, to regulate equity-based (or, more broadly speaking, financial) crowdfunding?

1. *Background Information*

While the advent of the Internet had significantly contributed to make the Globe "flat", the Web 2.0, by allowing greater room for interaction on the net, has created new and effective avenues for communication, collaboration and circulation of ideas, thus paving the way for the emergence of that mutual trust between internet users and, thence, of that "participatory culture" which notably features the virtual word in which we all routinely spend a variable fraction of our daily digital lives.

One main consequence to this is that individuals, institutions, non-profit organizations, or even firms, are nowadays able to take advantage of an online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals – *ie*, to invite internet users to carry out specific tasks with a view to pursuing a common goal.

This is exactly what is referred to as "crowdsourcing", a term which is currently utilized in order to point at the practice of breaking a project into tiny component tasks and farming those tasks out to the general public by posting the requests on a website: a poster-child of the new features of the world-wide web, crowdsourcing ostensibly builds upon the simple idea of labour division, for a large, complex job is split up into "microtasks" which will be then carried out by a large number of individuals.

The "crowd", however, may not only be invited to contribute intellectual energy or be assigned creative tasks, but also be solicited to contribute financial resources in order to support the implementation of a given project: an immediate cognate to, and an evolved form of, "crowdsourcing" is in fact "crowdfunding".

Currently, such term is commonly utilized to point at a new capital-raising process that starts with an open call through the Internet aimed at soliciting the crowd to contribute financial resources in order to support a specific initiative.

Like crowdsourcing, crowdfunding manifestly leverages on the power of the crowd, too. Due to network effects and informational cascades, the crowd as a whole succeeds, in fact, at doing what each single contributor would hardly be able or willing to do – *ie*, at overall providing those significant amounts of financial resources required to implement a project.

Although crowdfunding unquestionably rests on the long-standing foundational logics of collective cooperation that facilitates spreading the costs of a project among a large number of participants, it is the effectiveness of the Internet as a mass-communication device that renders such new form of capital-raising qualitatively different from any other yesteryear one: the combination of some typical features of the Internet (impressive speed, wide reach, and lowered entry barriers) does in fact results in a dramatic drop in both search and monitoring costs that greatly help funding-suppliers and funding-users to approach each other in an effective and nearly immediate fashion and regardless of geographic constraints.

The market dynamics triggered by the financial market turmoil that unfolded in 2008 also played a major role in determining the emergence of crowdfunding – for it impacted on both capital-supply and capital-demand. On the one hand, the global financial crisis exacerbated the then scarce availability of funding from more traditional sources: finance-seekers did not find any other better solution than to leverage on virtual communities as "financiers of last resort". On the other hand, although dipping slightly in 2011, entrepreneurship and business startups are at the highest level since the mid-1990s, reportedly because the Great Recession did push large groups of individuals into business to obviate to unemployment rates, thus ultimately resulting in an increase in the number of in-need-for-funding firms.

In itself, the term “crowdfunding” merely points at a channel of financing, which can be used in many different ways: is just in fact an “umbrella term” deployed – generically, and seldom confusedly – in everyday parlance in order to indistinctively refer to any capital formation process that takes place via an open call on the Internet.

Yet, the realm of crowdfunding encompasses a very great variety of different phenomena. And although each of them, at least to some extent and in some respects, has to be regarded as unique, there is nevertheless some room for drawing some very basic distinctions.

The “great divide” – which, although relatively new, is being increasingly deployed in both the industry and the academia – is between “non-financial” and “financial” crowdfunding.

“Non-financial” crowdfunding comes in the form of *donation-based crowdfunding*, where backers, driven by philanthropist reasons, choose to support a project expecting no return at all; and *reward-based crowdfunding*, where funds are provided in exchange for non-financial consideration, such as gadget or manufactured products.

“Financial” crowdfunding, by contrast, comes in the form of either *debt-based crowdfunding*, where contributors lend money with a view to being paid back in the future the principal and the relevant interests; or *equity-based crowdfunding*, where the crowd exchanges contributions against shares issued by the corporate vehicle deployed to implement the advertised entrepreneurial project.

2. *The Appeal of Crowdfunding*

Crowdfunding has recently been gained great momentum. Registration of Internet-domain names containing the word “crowdfunding” did reportedly spike from 900 to 8,800 in 2012; and one major crowdfunding platform has recently hit the 1 billion ceiling in contributed amounts.

At a more macro-level it is worth noting that, in 2012, global crowdfunding market experienced an 81% increase relative to the previous year – with the overall volume of contributions rocketing up to $2.66 billion in 2012 (from $1.47 billion in 2011), and to further $5.1 billion in 2013. Such important upward trends are confirmed also where attention is paid to data relating to a longer four-year period: the 2009-2013 period has seen the global market size increasing by an astonishing 50% per year.

The World Bank has recently predicted that, by 2025, the crowdfunding market will swallow up to US$96 billion a year. By that time, China will expectedly be leading the global club. As of today, however, the very bulk of online capital raising still occurs through North America- and Europe-based platforms.

As to Europe in particular, in 2012 about €735 million were raised on the whole continental crowdfunding market – with London reportedly claiming the crown as «the world's crowdfunding capital», even though crowdfunding activity was found to be rather widespread across the whole continent.

As the crowdfunding industry grows at exponential rates, it has attracted the attention not only of some major global investors (lead by the prospects of large profits, colossal corporations such as Google, Philips Vodafone have recently invested in emerging, promising players of this industry), but also of national and regional policy-makers.

For instance, while ruling out at this very moment the convenience of any regulatory intervention and favouring a facilitative approach that builds upon a roughly proposed series of "soft measures", the European Commission has recently acknowledged that crowdfunding has to be seriously regarded as «an important source of finance to some half a million European projects each year that otherwise may not obtain the necessary funds to be realised», thus showing great interest in understanding how to best promote the development of this nascent segment of the financial industry and encouraging Member States to adapt their domestic laws and regulations to allow online capital raising.

One main reason for this is that crowdfunding may in fact prove effective not only at supporting a heterogeneous variety of initiatives, but also, and far more importantly, at fostering the development of innovative entrepreneurship.

"Innovative startups" are those newly formed firms which exploit knowledge spillovers generated by incumbent, larger firms to generate the Schumpeterian "disruptive creation" that lies at the core of economic development.

At the very outset, however, innovative firms are little more than an idea: their development does solely rest on the ability of the entrepreneur ability to obtain funding in order to turn a project into the next Facebook or Whatsapp.

Yet, a well-known variety of factors inhibit young firms access to adequate external financial resources. As a consequence, once the funds possibly provided by "family members, friends and fools" have been entirely deployed, most startups are unable to cross the "death valley" and anonymously fading away – with significant societal wealth losses.

Policy makers around the world have for long been attempting to obviate to such allocative inefficiencies of the market for early stage financing, by engaging in strenuous attempts to build institutional ecosystems that may proactively facilitate fast-developing and high-growth startups' access to funding - and market finance especially.

Such efforts notwithstanding, the chronical finance shortage that endangers the existence of such firms has never been effectively remedied.

By enabling a number of firms that – especially in Europe, where the market for early-stage financing is not as vital as in the US – would otherwise keep on struggling at obtaining funding from other sources to access external finance, crowdfunding may really contribute to mitigate the seriousness of such problem.

3. *The Italian Regulatory Framework for Equity-based Crowdfunding*

Pushed by the European Commission's and Council's recommendations to modernize the domestic institutional ecosystem, the Italian Government in the autumn of 2012 passed a legislative measure declaredly aimed, among other things, at turning Italy into the next "Startup country" – or, more realistically, at reigniting the inventiveness that has seemingly gone lost in recent times.

Domestic firms suffer in fact from competitive disadvantages in terms of regulation and access to finance, as well as, even though to a lesser extent, in terms of educational and research resources, with the quality of research and its links with industry being marginally worse than in some peer countries. Such deficiencies, combined with the limited amount of investment in a qualified workforce and in R&D do result, despite the relatively high level of incentives provided by the public sector, in a significant innovation gap.

The Second Growth Decree did ambitiously aim at causing a seismic shift in this regard, by creating both the institutional prerequisite to a more liquid market for early-stage venture funding, and a more modern, business-friendly legal system generally.

To this end, it did bring in – among other things – the very basic nucleus of the regulatory framework for equity-based crowdfunding, while instructing Consob to adopt the relevant implementing measures.

In the following, the contents of such regulatory framework are outlined by describing the regime applicable to (a) the issuer, (b) the equity-based crowdfunding portal and its manager, (c) the offering, and (d) the finalization of the investment transaction, respectively.

(a) *The Issuer*

Currently, only "innovative start-ups" – which, more broadly speaking, benefit from a relaxation of general corporate, insolvency, and labour law regimes – may exceptionally seek risk capital via equity-based crowdfunding portals up to a total amount not exceeding €5.000.000,00.

In order to qualify as "I-Startup", a business has to meet several requirements.

First, it has to be organized as (i) a joint-stock corporation, (ii) a limited liability corporation, (iii) a co-operative corporation, or (iv) a *Societas Europaea* with fiscal residence in Italy.

Additionally, (a) it has to be established since, and be operating for, no longer than a forty eight-month period; (b) it has to be headquartered in Italy; (c) it has to have – according to the latest approved balance-sheet – a total yearly output not greater than €5 million as to its second year of activity; (d) it has not to have distributed, nor planned to distribute, any dividend; (e) it has to be engaged solely in the business of developing, producing and marketing of innovative, hi-tech products or services; (f) it has not to be established as the result of a merger, a business split-up, a sale of another business or a transfer of the business.

Finally, it has finally to meet one of the following requirements: (i) R&D expenses have to be equal to, or greater than, 15% of the highest between the firm's total annual costs and the corresponding outputs total production value; (ii) 1/3 of the total number of employees or consultants have either to hold a PhD or be attending a PhD program, or to hold a master degree (including three-year research programs certified at an Italian or foreign public or private institution), or two third of the total number of its employees or consultants have to to hold a long-cycle degree ("*laurea magistrale*"); or (iii) it has to be licensed a design or invention patent, or to own rights concerning a duly registered primary computer program.

(b) *The Equity-based Crowdfunding Portal and Its Manager*

Equity-based crowdfunding portals are defined as online platforms facilitating start-up innovative to collect equity capital.

In principle, the operation of such portals may be said likely to result in the provision of some sorts of investment services – namely, reception and transmission of orders in financial instruments on behalf of clients or, depending on the circumstance, on placement of financial instruments.

Accordingly, prior to the enactment of the newly introduced regulatory framework for equity-based crowdfunding, only investment service providers were allowed to run equity-based crowdfunding portals. Conversely, following the enactment of the Second Growth Decree, both traditional investment services providers and "professional managers" – *ie,* the entity which professionally practises the portal management service for the collection of capital for innovative start-ups – are therefore allowed to operate equity-based crowdfunding portals.

The Italian Regulator has in fact taken advantage of the optional exemption provided for under the continental regulatory framework for investment services, pursuant to which domestic regulators may choose not to subject to the general regulatory framework for investment services «any persons for which they are the home Member State» as long as three requirements are met: (*a*) such entities are not allowed to hold funds or securities of clients, and which for that reason are not allowed at any time to place themselves in debit with their clients; (*b*) such entities are not allowed to provide no investment service other than the reception and transmission of orders in transferable securities and units in collective investment undertakings and the provision of investment advice in relation to such financial instruments; (*c*) the activities of such entities are regulated domestically.

Accordingly, although subjected to an *ad hoc* authorization regime, "professional portal managers" – unlike banks and financial intermediaries – are forbidden from both apprehending funds contributed by crowdfunders and concluding transactions in shares of I-Startups.

Such outright prohibitions result, however, in the application of a (supposedly) lighter regulatory treatment for professional portal managers, which are exempted from both the general regime concerning the provision of investment services and the regime for distance marketing of investment services and financial instruments.

While in general governed by an over-arching principle to «work with diligence, fairness and transparency, avoiding any conflicts of interest which could arise in the management of the portal», all portal managers are also commanded provide a wide-range of information to investors; to map, and mitigate, operational risks; to preserve the confidentiality of any information disclosed by crowdfunders; to keep any document concerning the business they run for at least five years; and to brief Consob about some major corporate or business events.

The issuer and the portal may also agree on the exclusivity of the appointment. The law allows a launch via more than one portal, but it charges each manager with the burden to inform investors of this competition.

A variety of sanctions is provided for where non-compliance was to be detected.

(c) *The Online Offering*

The applicable regime – which remains unchanged regardless of whether the equity-based crowdfunding portal via which an offering is carried out is run by either professional portal managers, or traditional investment service providers – pursues protective goals, chiefly.

To this end, it first of all mandates the disclosure of a number of critical information: perspective contributors have in fact to be provided with information as to the risks specifically concerning investments in I-Startups and the applicable regime, as well as the terms of the offer.

All such information – through either traditional or multimedia techniques – have to be duly updated, and to be presented to the crowd in a synthetic fashion and plain language, as well as in clear, fair and not misleading way.

While portal managers have neither to check, nor may be ever held liable for, the truthfulness of such information, they are strictly forbidden from disseminating news that are inconsistent with the disclosed information, as well as from providing perspective contributors with any sort of advice, that may result in the market being altered.

A variety of further protective measures is also in place.

First, in order to ensure (if not practically compel) crowdfunders to gain full awareness as to the riskiness of investments in I-Startups, equity-based crowdfunding portal managers have to structure their websites in such a way as to ensure that information will be accessible only to those perspective contributors who have (*i*) read the educational materials, (*ii*) answered a questionnaire concerning the fundamental implications of investing in I-Startups equity-based financial instruments, and (*iii*) stated outspokenly that they are able to wholly bear the loss of the capital they plan to contribute.

Furthermore, crowdfunders are also granted both a cancellation right and cooling-off periods – with a view to enabling crowd members to react to changes in the information that are being circulated about the issuer before the fundraising settles, and to reconsider the convenience of their investment choice unwarrantedly, respectively.

Finally, with a view to declaredly enhance the trustworthiness of offerings, crowdfunders protection has also been made a function of the intervention of some relatively more sophisticated investors. In fact, in order for the offering to be settled, professional investors, banking foundations or I-Startups incubators have to underwrite at least a 5% stake of the financial instruments offered online. If such "stewards" do not step in, the capital raising process shall not settle and therefore any contributed amount shall have to be refunded to crowdfunders.

Although in principle aimed at protecting crowdfunders *qua* capital-suppliers, the Equity-based Crowdfunding Regulation protects crowdfunders *qua* shareholders, too – even though occasionally. In fact, given the non-existence of a market for I-Startups shares, and thence the illiquidity of such investments, the Italian Regulator stipulates that, with regard to the scenario where a change of control occurs, the constitutional documents of I-Startups have to grant crowdfunders the right to either be tagged-along in the sale or withdraw. Additionally, I-Startups offering shares through equity-based crowdfunding portals are required of providing in their constitutional documents for clauses aimed at ensuring that shareholders agreements are disclosed to crowdfunders. Lacking such safeguards, portal managers are not allowed to publish on their portals the offering.

(d) *The Finalization of the Investment Transaction*

Portal managers have to publish on their websites information as to how transactions in shares of I-Startups that are entered into on their portals will be finalized.

Yet, only investments services providers are allowed to finalize investment transactions in shares of I-Startups. As a consequence, professional portal managers have to choose which investment service providers will be tasked with finalizing transactions in shares of I-Startups entered into on their websites.

Likewise, since professional portal managers are not allowed to apprehend crowdfunders' money, contributed funds have to be pooled into an *ad hoc* restricted bank account that each I-Startup raising capital online will have to open with an investment service provider – which may be or may be not the investment service provider tasked with finalizing the relevant transactions.

It is portal managers' responsibility to adopt any measure aimed at ensuring that investment transactions entered into on their websites are dealt with rapidly, correctly, and effective, are promptly and exactly registered, and are communicated in chronological order to the investment service provider tasked with finalizing them.

At this point the regime bifurcates, however: in fact, depending upon what the amount invested in a single transaction or over a one-year period is, a more or less pronounced protective regime may apply.

In principle, investment transactions in I-Startups shares were subjected to regime that generally applies. This results, among other things and chiefly, in the application of those investor protection safeguards that typically come with it, notably in the form of either suitability or appropriateness requirements.

Yet, as long as an crowdfunders self-certify in writing that she has overall invested online less than €500,00 in a single investment transaction or less than €1.000,00 over a year, the finalization of the relevant transaction in shares of I-Startups would not trigger the application of any further safeguard.

Investment service providers will then report to professional portal managers as to the finalization of such transactions.

(e) *Online Offerings for Professional Investors*

One major trait of the regulatory framework outlined above is that a variety of protections do not apply to professional investors, thereby (also) allowing for light-regulated online offerings through equity-based crowdfunding portals addressed exclusively to professional investors.

In particular, professional investors do not have to be provided with specific risk-warnings; are allowed to make investments without proving they have gained *ad hoc* appropriate "education"; are granted no right to either terminate their investment, or to reconsider their decision to invest; are not granted any tag-along or withdrawal right from the funded firm.

4. *A Disenchanted Look at the Domestic Regulatory Framework*

The domestic press was very enthusiastic at celebrating the global "regulatory primacy" that Italy had supposedly achieved.

More broadly speaking, there was a sense of great satisfaction and pride in institutional ambiences as to what had been done in order to "[re]ignite" the Italian entrepreneurial spirit.

That sort of jubilee, however, has to be more realistically considered, at best, as a triumphalist non-sense. As it often it is the case in Italy, the enactment of such regulatory framework was in fact regarded as a success in itself.

At a closer look, the domestic regulatory framework for equity crowdfunding seems, however, to be to a large extent inadequate and, in a number of respects, even dysfunctional.

It is therefore worth discussing briefly the very macroscopic shortcomings that affect such regulatory framework.

(a) *Procedural Deficiencies*

At the root of the inadequacy of the Italian regulatory framework for equity-based crowdfunding it does lie a gross failure in the law-making process.

An extensive literature has shed significant light over the impact that policy-making may ultimately have on the quality of regulation (both in general and with regard to securities law). Yet, despite the novelty of equity-based crowdfunding no extensive discussion aimed at pinpointing the most significant market failures in the equity-based crowdfunding scenario, and thence at elaborating a holistic regulatory policy, has ever taken place in Italy.

Therefore, the fundamentals of the relevant regulatory framework were laid down almost "out on any limb" – not to mention that, rather meaningfully by means of a "decreto legge" (*ie* a sort of legislative measure to be adopted only where extraordinary and exceptional circumstances call for it), thus being not subjected to any regulatory impact analysis.

A regulatory impact analysis was undertaken at later stage of the law-making process. However, not only it has to be pointed out that, by then, the fundamental regulatory choices had already been laid out, but it has also to be stressed that such regulatory impact assessment was rather formalistic.

Consob, in fact, did not engage in any serious form of cost-benefit analysis. Rather, it did merely sketch a list of the advantages and the disadvantages of the main proposed regulatory options, thus failing at delivering an accurate picture of any sort with regard to the impact of possibly adopted regulatory measures on compliance costs and benefits, intra-market competition and firms access to finance.

Where compared with the extensive market failures and cost-benefit analysis carried out by its main "peers", the approach that the Italian Regulator took seems almost naïve.

Accordingly, despite any official proclaim, such approach may hardly be said to be in the whole compliant with "better regulation" standards.

(b) *Conceptual Deficiencies*

The carelessness of the law making process did in turn lead to a significant number of detectable deficiencies.

For instance, it is hardly understandable why the Italian Regulator allowed I-Startups to raise on the Internet only risk capital. As equity is obviously riskier than debt, allowing "financial crowdfunding" – *ie*, both equity- and debt-based crowdfunding – would have been far more logical an option. Such point, however, was not subjected to any serious discussion.

Conversely, an embryonic discussion about what kind of financial instruments I-Startups could offer online has seemingly taken place. Nonetheless, a tenuous read of the regulatory guidelines to which Consob had to adhere when implementing the its regulatory mandate has eventually prevailed, thus resulting in the scope of the regulatory framework for equity-based crowdfunding rotating around a very narrow definition of "financial instrument". Accordingly, despite being allowed to offer "non-shares shares", I-Startups shall offer on line only "mere shares". Although failing at delivering any sort of practical benefit, such solutions certainly ends up preventing I-Startups from seizing the potential advantages that, in terms of contents flexibility, typically features such financial instruments.

Another issue with the current regulatory framework for equity-based crowdfunding is that I-Startups are allowed to raise equity on line regardless of their organizational form – *ie*, I-Startups organized as private companies are also allowed to solicit the public at large to invest. In principle, the choice of removing regulatory barriers preventing private companies from accessing capital markets is laudable. Yet, it may result in the emergence of several and significant corporate governance issues that went grossly under-theorized – if not, more radically, unconsidered. One very importance consequence to this is that the enhanced level of participation of the public is at odds large with the typical private company conceptual paradigm and its operational function. The domestic default regime applicable to private companies is not engineered in such a way as to address the issues typically spawning from the solicitation of the public at large. Shareholders of such I-Startups would by default either be granted potentially excessive prerogatives, thus enabling them to unduly influence the management of the firm; or lack fundamental protections, thus leaving them unshielded against possible managerial misbehaviours. Leaving aside more "intrusive" options, an effective solution to the possible emergence of such potentially disrupting governance issues was to craft a flexible standard contract form – which would have provided at no costs a suitable set of arrangements, without however inhibiting further refinements by means of adaptive private contracting.

It is the crowdfunders protective regime, however, that leaves itself open to an important list of severe criticisms.

One major drawback consists in the lack of any appropriate, though necessarily theoretical, conceptualization of the average "crowdfunder". Notwithstanding that the identification of the beneficiary of a given protective regime is in fact an essential prerequisite to the effectiveness of any set of prescriptions, the Italian Regulator did simplistically assumed that the "crowd" would consist in a pool of unexperienced and unsophisticated investors. Yet, such an assumption is bound to prove at best inaccurate: unlikely to become the mainstream hobby of, equity-based crowdfunding will be likely to consist in small business owners and middle managers in large corporations that would be far from being naive about the realities of what makes a "good" or "bad" business. It is true, however, that widows, orphans, households and retirees will also invest: this may account for the choice to bring a tailored protective regime aimed at meeting the high expectations of in-great-need-for-protection crowdfunders, it but it would also call for a more nuanced and flexible approach allowing more sophisticated investors to opt-out of such protections. As high-net worth individuals have been plausibly considered able to deal with the risks of financial crowdfunding, it comes at great surprise that, under the domestic regulatory framework, they are as protected as the "average Joe". For the purposes of the regulatory framework for equity-based crowdfunding, "professional investors" are in fact solely those investors who, under the categorization outlined in the continental regime for investment services, would qualify as "professional clients". The Italian regulatory framework generates a regime that, to the extent it subjects elective professional investors as simple, unsophisticated "crowdfunders", is clearly over-protective. The practical consequences to such approach are as significant as manifest: elective professional investors have to be provided with specific risk-warnings, are not allowed to make investments without engaging in the completion of a number of "educational" steps, and are granted the right to both either terminate their investment and reconsider their investment decision, as well as either a tag-along or a withdrawal right from the funded firm. Last but not least, and rather paradoxically, even where the offering is addressed only to high-net worth individuals the intervention of a "steward" is nevertheless indispensable.

Second, any regulatory intervention that aims at proving operationally effective has to be desirably built upon a careful and detailed assessment of the risks that a given phenomenon entails. There are ostensible evidences, however, that Italian Regulator did not engage in any laborious attempt to map such risks. In one respect, the domestic regulatory framework addressed risks which do not seem to exist at all. For instance, it is unclear what the rationale for the cooling-off period that crowdfunders are granted is. Cooling-off periods are typically associated with aggressive market practices, or – more broadly speaking – with the risk of "hot and hasty decision making": building on the assumption that such the decision to enter into a contract may be somewhat altered, investors are allowed to reconsider the convenience of their choice. Yet, crowdfunders are not assumed to invest either upon third party solicitations, or without appropriately pondering their decision. To grant crowdfunders a cooling-off period may hardly be said to be an appropriate regulatory choice – rather seeming to be the mere function of some sort of regulatory empire-building. In another respect, the Italian Regulator did correctly detect, but very inconveniently addressed, some other risks – thus bringing in regulatory solutions that will be likely to generate more or less pronounced inefficiencies. For instance, the mandatory co-investment regime is declaredly aimed at neutralizing the risk that the crowd may inject money into unserious or unworthy entrepreneurial endeavours. Such relatively more sophisticated investor will undertake an effective due diligence which will also benefit the crowd. Yet, the actual protective potential of such device may be questioned in several respects – above all because it makes crowdfunders enhanced protection contingent upon the due diligence that such relatively more sophisticated investors are expected to carry out, but in which in practice they will be very unlikely to engage at all, for its costs are likely to be disproportionate relative to the size of investment. While its benefits are at best discussable, such mandatory co-investment regime will be likely to do some harm: in fact, it may result in worthy projects going unfunded just because relatively more sophisticated investors may not endorse the investment preferences of crowdfunders: this, however, may in practice annihilate the institutional logic of crowdfunding, thus restoring the funding problems such newly emerging financing channel is supposed to alleviate. It comes with no surprise, then, that market players have since ever opposed such a regime.

It is also worth mentioning, however, a number of "good" regulatory choices that the Italian Regulator made.

First, I-Startups seeking to raise online do not have to provide audited financial statements when filing the relevant offering-related materials with both the portal and the Consob. This would be a «tremendous burden» on small business which was subject to some major criticisms since the very beginning in the US.

Second, "equity-based crowdfunding portals are not to be held liable for "for misstatements or omissions" on the part of I-Startups.

Third, equity-based crowdfunding portals may engage in "curation" – *ie*, they may refuse publishing offerings relating to I-Startups which do not meet a variety of standards – such as quality of management, valuation of the company, market size, need for additional capital, pending litigation, or other qualitative factors which increase the risk to an investor.

5. *Discussion*

The discussion will be concerned – *inter alia* – with what we learnt as to:

(***i***) the type of securities (debt- and/or equity-based securities; mere shares or "shares-non-shares") that firms would have to ideally be allowed to the public;

(***ii***) the choice of the corporate forms on the part of issuers;

(***iii***) the optimal categorization of the members of the crowd with a view to bring in tailored protective regime;

(***iv***) the appropriateness of a regime that grants crowdfunders cooling-off periods;

(***v***) the desirability of a regime that conditions the settlement of the offer to the intervention of relatively more sophisticated investors;

(***vi***) disclosure of "audited" information;

(***vii***) the optimal regime as to the liability regime of equity-based crowdfunding portal managers for misstatements or omissions with regard to the information published on the portal;

(***vii***) the desirability of a "prohibition of curation" for portal managers.

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