

## Micro-Credit by Non-Banks under Italian Bank Law<sup>364</sup>

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### *I. The Organisation of the Social Sector in Italy*

As social finance is not integrated into commercial lending policy in Italy, we must look to the specially-designed third sector. This sector is dominated by the legal form of the co-operative, which represents a much larger sector of the social economy than in other countries as a result of extensive legal regulation and state support.

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364 The author has to thank Prof. Anderloni from Buconi University in Milano and Prof. Borzaga from the University of Trento for their help and comments. The study was made during a stay at Trento University in summer 2000 as a guest lecturer.

### 1. *The co-operative movement*

The third (social and not-for-profit) sector in Italy is composed out of "unlicensed associations", voluntary organisations, social co-operatives, non-government organisations and the licensed organisations and foundations. In this sector the co-operative movement of Northern Italy plays an important role. Italian law does not have specific tax exemptions for not-for-profit organisations, but used to link state support to the legal form of a co-operative. The new tax law<sup>365</sup> states that non-commercial activity is where the primary activity follows those ends define by law either through its own constitution or its main activity." This perpetuates the traditional importance the co-operative movement has placed on self-help, including finance, particularly for craftsmen and farmers. Art. 45 of the Italian Constitution acknowledges "*the social function of co-operation for mutual benefit, without private speculative ends. The law shall provide support and encouragement appropriate provisions and shall secure its character and purposes through proper controls.*"<sup>366</sup> The law distinguishes between co-operatives according to the sector in which they operate: production and labour co-operatives, agricultural co-operatives and mixed co-operatives.<sup>367</sup> Traditionally, small farmers and artisans who tried to further public goals or got public incentives organised themselves as co-operatives. The idea of mutuality, which was partly borrowed in the North and Central Italian region the traditional "red regions" like Emilia, Toscana and Marche from the German models of *Raiffeisen*, gained momentum under Italian corporativism, which was a response to the shortcomings of markets in a country that was historically weak in its own capital and working opportunities which led to a considerable amount of emigration up to the 1960s.

Unlike other countries where co-operatives concentrated on furthering the goals of their members through entrepreneurship, the link between not-for-profit services and the legal form of a co-operative led to its adoption by non-governmental organisations (NGOs) providing social services.

Besides the forms of self-help and solidarity among producers, consumers and workers the law no. 381 of 1991 created social (category A) co-operatives, as distinct from other (category B) co-operatives, and introduced significant tax subsidies for the former. "*Social co-operatives*" again are classified into those who manage the sanitarian and educational system of the communities and those who engage in agriculture, craftsmanship or other services in order to integrate citizens who are discriminated against for "*physical, psychological, family, cultural, professional and economic*

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365 Art. 87 del T.U.I.R. introduced by Law no. 460/97

366 "La Repubblica riconosce la funzione sociale della cooperazione [c.c. 2511] a carattere di mutualità e senza fini di speculazione privata (1). La legge ne promuove e favorisce l'incremento con i mezzi più idonei e ne assicura, con gli opportuni controlli, il carattere e le finalità. La legge provvede alla tutela e allo sviluppo dell'artigianato."

367 See art.1 Leggi March 12, 1904 and Regio Decreto February 1911, no. 278 in Provincia Autonoma di Trento, Assessorato alla Cooperazione Ufficio Registro delle Cooperative per la Provincia di Trento (Ed.) Normativa Statale e Regionale in Materia di Vigilanza sulle Cooperative, 1st edition Trento September 1999 p.31 ff; as the law on co-operatives falls mainly into the competence of regional government, see also Decree of the President of the Regional Government form March 2, 1994, n/3/L in Provincia Autonoma di Trento p. 232

reasons" and who require social assistance.<sup>368</sup> Therefore, these are altruistic rather than mutual organisations.

Social co-operatives play an important role in new fiscal policies designed to reduce the debt burden and taxes. The privatisation of significant parts of social services, which had formerly been provided by agencies, left a large area for the not-for-profits which do community work.<sup>369</sup> In 1998, the legal form of a "small co-operative" was introduced, having between 3 and 8 members instead of the minimum of 9 prescribed in the Civil Code.

Whilst in 1971 only 0.4% of businesses were co-operatives, in 1998 they represented 2% of all businesses, accounting for 4.1% of private sector employment and having created an average of 22,260 jobs per year for the last 24 years.<sup>370</sup> However, it should be noted that these figures do not reflect the expansion of the mutual movement, but its transformation into a semi-public social services system. By way of contrast, in countries such as Germany, welfare organisations are organised as associations and are subsidised directly by the state.<sup>371</sup>

Much of the money provided for social co-operatives stems from the privatisation of the formerly publicly-owned savings banks (*cassa di risparmio*). When Italian law forced the provinces and cities to sell their stocks to the public, it obliged them to create foundations which took over the whole of their capital. 50% of their profits were reinvested in the savings banks and 50% had to be spent for socially, culturally and environmentally beneficial purposes. This law responded to the fact that formerly these savings banks had dedicated an important part of their surplus for social and public ends which was now terminated through its privatisation. In 1998, a law forced these foundations to sell their savings banks to the public. Although these sales did not raise the true market value of the savings banks because they were sold directly to other banks rather than in a truly public form<sup>372</sup>, the foundations subsequently became very wealthy and liquid supporters of the social economy in Italy. For example, the Milan Cariplo Foundation has an endowment of about 9 trillion lire. These foundations can only give subsidies and are not allowed to distribute their money in the form of credit.

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368 Art. 3(3) of the Decree referred to in footnote 2

369 See Putnam, R. *Making Democracy Work*. Civic Traditions in Modern Italy. Princeton: Princeton University Press 1993

370 See ADIE (Association pour le Droit à l'Initiative Economique), Report on Microenterprise in Italy, Paris November 1999 p. 3

371 The German principle of subsidiarity gives welfare organisations the right to do social work and get up to a 100% refund from the welfare agencies.

372 In an interview, the Professor in Co-operative Economics, Borzaga, of the University of Trento, estimated that the market value of the Mailand Savings Bank (CARIPLO) would have been close to 300 trillion lire, but it was sold for about 3 trillion lire to a private investor. This statement has been challenged by comments of Professor Anderloni who stated that the price was paid by exchange of shares and the scale of 15 billion Euro is too high. The private investor Banco Ambrosiano Veneto and Cariplo created the Banco Intesa Group which is now the biggest Italian bank. Prof. Anderloni assumes the aimed synergies were achieved and that the Cariplo Foundation today holds a significant share in it.

## 2. *Co-operative Movement and Banking*

The division between community institutions designed to serve their communities and mutual institutions designed primarily to serve the goals of their members can equally be found in the banking sector in the form of the Popular Banks and Co-operative Banks.

While commercial banks in Italy focus more on consumer and industrial lending activities, micro-credit has become the domain of the co-operative movement, whilst the sale of the former community-owned savings banks to the private sector has integrated their specific mechanisms which are hostile to micro-lending.

The co-operative movement in Northern and Central Italy, which was influenced by the German and Austrian *Raiffeisen* movement, has traditionally been very active in financing small entrepreneurs especially farmers and artisans. Only a few of these co-operatives have formed their own “banks” Like the Banca UNIPOL, ranked 161 by their deposits and who created out of Banec – Banca dell’Economia Cooperativa)

### 2.1. *The Banca Popolare*

The bigger banca popolare (popular banks) are usually owned by their staff but are also listed in the stock exchange. Just like the German Raiffeisenkassen and Volksbanken, and the French crédit mutuel and Crédit Agricole, their roots lie in the historical idea of production co-operatives. In Italy they still have important links to the labour movement. Their size and behaviour is comparable to commercial banks, as is their openness to all clients who may offer profitable business. Their original goal of furthering the individual interests of their members in a collective form has brought them closer to the more integrated form of a shareholding company.

There is presently a total of 531 co-operative banks in Italy with 2,800 outlets, which collected about €50 billion in 1999.<sup>373</sup>

The **Banco Popolare di Milano**<sup>374</sup>, for example, presently has 110,000 members. It is a full-blown bank with international connections, but according to its website remains dedicated to social issues and offers a range of services especially designed for immigrants: the “*Extrà Risparmio*”, a simple, easy-access savings account, the “*Extrà conto*”, a form of basic bank account, and different credit programmes such as the “*Extrà Credito*”, which provides small amounts of credit repayable in monthly instalments for visits to the borrower’s country of origin, professional education or house repair. The “*Extrà Scuola*” is an interest-free credit scheme designed to finance school books for the children of immigrants. The first multi-ethnic outlets came from Banca Carige in Genova.

The “*Extrà Imprese*” (Business) credit scheme provides micro-credit for commercial purposes or for business start-ups<sup>375</sup>, whilst “*Extrà Associazioni*” is a current account designed to facilitate financial transfers for organisations which help immigrants.

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373 The Journal “24ore” May 18th, 2000

374 See its Website.

375 Un finanziamento, da rimborsare mensilmente, che può essere richiesto da chi intende avviare una attività commerciale in proprio o vuole sviluppare un’azienda già operante.

## 2.2. Co-operative Banks

The old *banche di credito cooperativo*, già *cassa rurale* and *cassa artigiana*, which have merged and been transformed into banks following the new banking legislation, reflect the idea of community development financial institutions as exist in the USA, traditional credit unions excepted. In the new legislation they lost some former privileges like liquidity reserves and less supervision as well as fiscal benefits. They share their structure with social co-operatives and play an important role in the provision of micro-credit in some Italian regions like Trento, Alto Adige and Puglia. Historically, they helped farmers and artisans using capital from sources other than their borrowers. Today, with the increase in the living standards of their clients, they have enough savings capital. However, their problems lie in insufficient investment opportunities which stem from increased banking competition, the higher cost of refinancing from their savers and the narrow regional boundaries for their products. On the other hand, they seem to remain the providers of micro-credit with by far the lowest distribution and transaction costs. Knowing their community well, they do not need to invest much capital in credit scoring and monitoring the businesses they serve. Their local presence also guarantees informal communication and trust, which goes further to minimise risk.

The "*cassa rurale*", the small agricultural banks with mostly no more than 1 or 2 outlets established in local communities, are still the major providers of micro-credit in Italy. Whilst in Southern Italy they only have a significant number of outlets in Sicily, they can be found in many smaller cities and villages Northern Italy. They operate according to a "*regional principle*"<sup>376</sup> in that they restrict their activities to the city or village in which they are chartered. Although their clients are true co-op members, they have special institutions to uphold the link to the local community. About 2.5 million Italians are members of this type of bank. These banks have a supervisory board with a president who is from the local community and is in charge of social implementation and the bank's dedication to the community. Their administrative staff is headed by a general manager who looks after financial affairs and is the technical head of the bank. In practice, where there are conflicts about commercial matters, the judgement of the supervisory board will prevail. About 25% of their deposits are lend to customers.

For example the **Banca di Credito Co-operativo di Calcio e di Covo** operates in 9 small villages and towns with a special local focus. It was formed in 1993 by the merger of two rural co-operatives, the *cassa rurale ed Artigiana di Calcio* and the *Cassa Rurale ed Artigiana di Covo*. **Banca di Credito Co-operativo di Caravaggio**, another small bank in the Bergamo region, promotes its businesses with the slogan: "*from your community ... for you*".

The **MAGs** ("Mutua Auto Gestione"), which are numbered according to the region in which they operate<sup>377</sup>, were an interesting form of non-bank co-operative which

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376 Just like the German savings banks, see Reifner, U./Siebert, D./Evers, J. Community Reinvestment - Eine amerikanische Besonderheit für den deutschen Sparkassenmarkt? Nomos: Baden-Baden 1998 p. 77 ff; for a short overlook in English Evers, J./Reifner, U. (1999) (Eds) The social Responsibility of Credit Institutions Nomos . p. 62 ff; Reifner U., Evers J. (1998), Credit and New entrepreneurs, Nomos Verlagsgesellschaft, Baden-Baden

377 E.g. MAG 2 in Milan, MAG 4 in Piemonte

collected money and provided small amounts of credit to business start-ups. They extended credit in forms that reflected the mutuality of their origins, but incorporated altruistic urban development. The new banking legislation put up significant barriers to this form of non-bank so that the MAGs have joined together to form a new bank specially designed to continue their activities: the Banca Etica.

**Banca Etica** (Ethical Bank) is a popular bank designed to help the co-operative movement in the third sector. It gives its savers the right to choose between different purposes for which their money can be used: voluntary work, environmental organisations, third world support, fair trade or arts and culture. Among its members are co-operative and social organisations, co-operative banks, church groups and environmental organisations such as Greenpeace..

“The process of establishing Banca Etica started in 1995 with a network of 12,000 associates, 1200 of whom are not for profit organisations, 110 municipalities and four regions. Together, these have a base of 5 million individual associate members. On the 30th May 1998, the initial co-operative became transformed into a bank. Operations start in the first of January 1999, with a certificate of deposit as well as bonds. There is a convention with the Italian Post office to take Banca Etica products, with 14,000 outlets and agreement with four other banks with 3,000 outlets. There is a goal of opening 15 actual Banca Etica offices. Banca Etica also aims for stock market authorisation. In terms of products, Banca Etica may offer telephone and internet based current accounts after the 2<sup>nd</sup> and 3<sup>rd</sup> year of operations. Initial capital of 13 billion lire, (6 million ECU in equity), has been raised, the minimum level to set up a bank in Italy. The aim is for 25 million in social capital.”<sup>378</sup>

It favours lending to businesses that are co-operatives or which engage in other forms of collective activity.<sup>379</sup> While currently small in size, the large number of member organisations may help to achieve the goal of a nation-wide network which includes finance programmes for business start-ups. Its major problem is finding suitable investment opportunities which correspond to their investors’ ethical preferences. In the future, they may be forced to liberalise their activities in order to be able to lend significant amounts of money. In 1999, Banca Etica extended about 20 million of credit and collected about 30 million of deposits. Half of the credit was lent to co-operatives. The amount of credit given to individual entrepreneurs and small co-operatives was very small.<sup>380</sup> Credit for business start-ups is not yet a separate category in its social report.

### 3. Risk capital participation

Another form of access to capital is provided by co-operatives such as the FINEC (finanziaria dell’Economia cooperativa or the Compagnia Finanziaria Industriale (CFI - Industrial Finance Company), which buy into the share capital of co-operatives. There

378 From the [www.INAISE.org](http://www.INAISE.org) web-site

379 Banca Etica privilegerà l'erogazione del credito a favore di organizzazioni appartenenti al terzo settore, formalmente costituite in forma di cooperativa, associazione, ente, circolo (potranno essere anche società di capitali purché a loro volta controllate da enti non profit). (<http://www.citinv.it/bancaetica>)

380 A total of 75,000, see Report Sociale 1999 p. 7

is a special law in Italy to promote such participation, the "Marcora Law", which is named after the member of parliament who brought it to the vote. CFI is particularly involved in co-operatives which help to start new business for employees without work or whose workplace is in peril:

"The CFI was set up in 1986 as a result of a specific Italian Law, the Marcora Law(\*). The company consists of about 300 co-operatives coming from the three main Italian Co-operative Associations (AGCI, CISL, League) and with the agreement of the trade union organisations (CGIL, CISL, UIL).

The Board of Directors consists of 12 persons. Within this, an executive committee has been set up consisting of the Chairman and three Vice Chairmen.

In the course of the first four years of activity CFI decided to participate in 90 co-operatives, 61 of which have already become operative. Most of the initiatives are in the manufacturing industry and, more specifically, in the metal, mechanical, wood, furniture and clothing industries. CFI's participation is proportional to (up to a maximum of three times) the capital subscribed and paid up by the workers. The latter should subscribe a minimum of 2,750 ECU. For three years, members of the co-operatives receiving CFI participation may not have recourse to certain social policy institutions (such as special unemployment funds). The activities of CFI are structured into three sectors: examination, inspection (monitoring of the progress of participated co-operatives) and administration. The resources for carrying out participation operations are of public origin."<sup>381</sup>

The Marcora law of February 28, 1985<sup>382</sup> was passed at the initiative of the co-operative and trade union movements. It was designed to be a political instrument to combat unemployment in Italy. With the big national bank, Banca Nazionale del Lavoro, a fund has been created with government subsidies which gives "lost credit" to central institutions of the co-operative movement which seek shares in co-operatives which help the unemployed get back to work. There are some doubts about its practical effects which are also underlined by the figures below.

#### *Investment Funds for Co-operatives*

in million €	1992	1993	1994
Investment funds (mostly Marcora)	14.5	38.0	48.5
Number of co-operatives financed	32	92	115

An other attempt of social finance is made by COSIS S.p.A. a social investment company (CIS) which is a non-for-profit share holding company founded in 1985 by the Rome Savings Bank and a number of social actors in order to further occupational goals and to assist technically and financially for small enterprises. COSIS operates a development financial institution for medium and long term financing through capital participations in those social enterprises which are able to autofinance themselves. It

381 From INAISE.ORG

382 Legge 27 febbraio 1985 n° 49

also provides their clients with management and financial skills. COSIS manages also EU-programmes like OASIS which is designed to develop South Italy especially by helping to implement social co-operatives of the type B which further occupation.

#### 4. *Interest Subsidies*

A form of more specific financial help for small and medium-sized enterprises is given through the **I.B.S. - Società di sviluppo per le piccole e medie imprese** (Company for the development of small and medium-sized enterprises). The help is designed only for co-operatives with less than 250 employees. The investment cannot be more than €250,000 and should improve production. The help is given in the form of interest subsidies so that the interest-rate is half the prime rate and the credit covers up to 70% (100% in southern Italy) of the investment.

The law on financing innovations and environmental technologies for small enterprises in the metal industry gives direct credit to small and medium-sized enterprises at affordable rates of 6% p.a. (4.5% for special regions) for a time period of 7 years up to €1.5 million.

#### 5. *Mutual Guarantee Societies*

Italy has developed an important structure of indirect bank finance for small enterprises through non-banks. These are the “co-operative (or consortium) di garanzia”, in which mostly small and medium-sized enterprises form a mutual company (a co-operative or consortium) which provides a guarantee for bank credit for each of its members up to a defined limit of no more than €40,000 each.<sup>383</sup> These guarantees serve as a means of access to ordinary bank credit which may not otherwise be available.

These mutuals, which are mostly organised as consortia<sup>384</sup>, have become more important in recent years because “under the present economic profile, recession has made it more difficult for small and medium-sized enterprises to access credit. In this sector, interest rates have increased and there is a special relation between the amount of credit available and the size of guarantee such enterprises can offer.”<sup>385</sup>

They exercise a mutual collective guarantee and are thus distinct from typical co-operatives of workers and consumers which seek directly to improve the profitability of the activity of its members.

The guarantee mutuals are organised according to industrial sectors. In 1994 139 mutuals existed in the industrial sector, 107 in trade. These 246 registered mutuals guaranteed about €3.75 million in December 1993.

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383 Or 20% of the own capital see Art. 2(2) Law no. 240 from May 21st, 1981; Art. 2(2) Law no. 89 of February 21st, 1989; Art. 18(1) law no. 317 of 1991

384 Art. 2602 CC: “Con il contratto di consorzio più imprenditori istituiscono un’organizzazione comune per la disciplina o per lo svolgimento di determinate fasi delle rispettive imprese” (“With the consortial contract the entrepreneurs develop a common organization for their business and its development for certain phases of its lifetime”) If these consortii do business with third persons they have to be registered in the register of enterprises (Art. 2612 CC)

385 Mosco, D.G. Attuale disciplina e prospettive di evoluzione dei consorzi e delle cooperative di garanzia, *Giurisprudenza Commerciale* 1994 Vol. 21, I p. 842ff (842)



The guarantees are not normally personal, but operate through the intermediary of a bank account into which the members of the guarantee scheme pay their contributions. This account, which is close to a mini “guarantee fund”, is used to meet debts in the case of default, usually up to 50%. However, the fund can normally be used to guarantee an amount of between 10 and 20 times the sum of its assets.<sup>386</sup> Banks prefer this form to personal guarantees because the procedures are less lengthy. Thus the members of the mutual are only liable for the amount of money they have contributed to the fund.

This form of a guarantee is regulated by Art. 1851 of the civil code which gives banks the right to withhold assets in so far as they are vinculated as a guarantee to a debt.<sup>387</sup>

About 600 mutuals have been created in the craftsmen sector and tenth of them in agriculture.<sup>388</sup> There is no comparable activity in any other country of Europe.

Casse Peota:

Especially in the Province of Venice in North Italy the so called Casse Peota have a long history of mutual assistance. They collected money from their members in order to assist them in difficult situations and to support public ends. In the fifties of the last century the average savings amount per week was no more than half a Euro. They had nearly no administration and did not use any sophisticated banking devices. During the last decade the Casse Peota have increased their contributions and have created concern during the recent new banking legislation. The newly introduced norms and banking supervision are seen as menacing the existence of these institutions.<sup>389</sup>

## II. *Bank Regulation on Micro- Credit concerning Non-Banks*

Italy does not seem to have a general bank monopoly for money-lending as it is the case in Germany. The 1943 Italian Civil Code made mention of non-banks as credit institutions. In Art. 2517 it. Civil Code “*mutuals that exercise credit business:*” are regulated by the general rules on mutuals (Art. 2511 ff. CC) as well as by special rules. It was common for the extensive Italian mutual movement to provide their members with credit. It is assumed that this is still the case in some mutuals, although most of the credit may be absorbed by the financial mutuals who have become the Popular Banks and Co-operative Banks of Italy.

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386 Mosco op. cit. p. 850

387 Se, a garanzia di uno o più crediti, sono vincolati depositi di danaro, merci o titoli che non siano stati individuati (1) o per i quali sia stata conferita alla banca la facoltà di disporre (2), la banca deve restituire solo la somma o la parte delle merci o dei titoli che eccedono l'ammontare dei crediti garantiti (3). L'eccedenza è determinata in relazione al valore delle merci o dei titoli al tempo della scadenza dei crediti [1846, 1848] (4)

388 For the numbers see Mosco op.cit. p. 848

389 See Casse Peota in surplace – Micro istituti di credito in lotta per la sopravvivenza („Micro credit institutions fight for their lives“), in Il Sole-24 ORE Nordest from June 5, 2000 p.18

## 1. "Bank Activity" in Italian Bank Law

### 1.1. Admission

The Italian banking law has recently been totally redrafted in response to the respective EU law. The Umbrella Bank Law "*Testo Unico Bancaria*" (TUB) of September 1 1993, as amended by Law No. 342 of the Law of August 4 1999, defined a "banking activity" thus: "**accepting deposits from the public and giving credit**", followed by the statement that banking activities may only be carried out by banks.<sup>390</sup>

Art. 10(2) and 10(3) TUB: "La raccolta di risparmio tra il pubblico e l'esercizio del credito costituiscono l'attività bancaria. L'esercizio dell'attività bancaria è riservato alle banche."

In Art. 11, accepting deposits is defined as **collecting funds with the obligation to pay them back** in order to exclude participation in the capital of companies.

Art. 11(1): "Ai fini del presente decreto legislativo è raccolta del risparmio l'acquisizione di fondi con obbligo di rimborso, sia sotto forma di depositi sia sotto altra forma."

Banking needs the authorisation of the Bank of Italy, or, in the case of banks from other member states of the EU, its inscription on a list held by the Bank of Italy in order to be allowed to do business on its territory (Art. 13). The authorisation depends on whether the requirements of Art. 14 are met (these include being a share holding company or mutual with limited responsibility; having a minimum capital of €6 million, directors with adequate skill and integrity, major shareholders and internal controls).

The ambiguity about credit taking of the first EU Banking Directive is repeated in the wording of the Italian law. The use of the word "credit" in line with the general use of the word "Istituto di Credito", "Kreditinstitut", "Credit Institution" with the result that only credit based on deposit-taking is the monopoly of banks. However, Article 11 TUB makes it clear that it is not the provision of credit, but the acceptance of deposits that results in the application of the restrictions of the banking law.

Art. 11(2) TUB states that "it is forbidden for any entity other than a bank to accept deposits from the public"<sup>391</sup> without any mention of credit.

The provision of credit alone is not therefore defined as a banking activity.

### 1.2. Mutual Banks

This is also true for the **mutual banks** although in Chapter V (Art. 28-37) of the Bank Law on mutual banks it is stated in Art. 35 that "mutual banks", here denominated as "credit banks", "exercise credit predominately to members only" while Art. 28 holds that only "banche popolari" ("People's Banks") and "credito co-operativo" (mutual credit) are allowed to exercise banking activities in the form of a banking co-op. This reference to the general definition of banking activity makes it clear that mutual banks equally banks only when they accept deposits. The recourse to credit in Art. 35 restricts only its credit business to members with regard to the form of its organisation and the special tax and other privileges linked to it in Italian law.

390 See Santorio, V. *Eccercizio di Fatto di Attività Bancarie e Finanziarie*, in:m. Rispoli Farina (Ed.) *La Nuova Legge Bancaria*, Jovene Editore 1995 p. 323, 327ff

391 La raccolta del risparmio tra il pubblico è vietata ai soggetti diversi delle banche.

This result is supported by sanctions for contravention of the law. Art. 130 TUB punishes “accepting of deposits from the public” while Art. 131 imposes even higher fines if “accepting deposits from the public” is combined with credit extension. Credit extension in itself incurs no sanctions.

### 1.3. *The Consumer Credit exemption*

There is an important exemption from the banking regime. Art. 121 ff TUB regulates **consumer credit** in accordance with the respective EU Directive, reproducing the wording of the Directive in Art. 121(1) in describing the “consumer” as “*a physical person who intends to use the credit for non-professional or non-entrepreneurial ends*” and “credit extension” as a “*professional or entrepreneurial activity in the form of financing, dilution or other using other financial instruments for the same purpose.*”

Art. 121(2) then “reserves the extension of consumer credit to a) banks, b) financial intermediaries and c) such entities which are allowed to sell goods and services on the territory of the Republic on the basis of delayed payment of the requested prize.”

Consumer credit in the form of delayed payment extended by entities that sell goods and services which usually include the right to delay payment does not fall under the jurisdiction of the banking law. Therefore, the providers of such credit are free from any restrictions concerning safety and soundness as well as access to the credit market. However, this exception does not exclude these non-banks from the obligation to observe the rules in the chapter on consumer credit (Art. 121-126 TUB). Art. 121(3) applies this chapter to all consumer credit activity, regardless of whether, or by whom, it has been authorised.

Italian consumer credit legislation does not cover lending to business start-ups, unlike the position in countries such as Germany. Micro-credit provided by non-banks designed for business rather than personal use is not covered by this monopoly and is not therefore subject to the rules of the *Testo Unico Bancaria*.

However, there could be dangers inherent in the wording of the law because of the impossibility of distinguishing between personal and business purposes in the context of micro-lending. A borrower may borrow money to buy his personal electricity bill because he or she has used the rest of their income for paying business debts. Such self-employed persons do not normally make a proper distinction between their domestic and business spending. However, the wording of the law does not permit credit applications where the personal purpose is obvious. In order to avoid being caught providing illegitimate consumer credit, non-banks must therefore turn down such requests and must inform the client that only credit for business purposes can escape Art. 121 TUB.

However, if the borrower chooses to indicate that a loan will be used for business purposes, it is not important if the borrower subsequently changes his or her and uses the loan for domestic purposes. The law only requires that a private “*purpose*” is not intended at the time when the credit is provided and does not require the lender to monitor the actual use of the credit. It may therefore be sufficient to make all applicants sign a declaration that credit will be used for business purposes only, as is the practice of some American micro-lenders. If the lender knows, or should know, that this is not

true, particularly when such behaviour is designed to circumvent the rules on credit supervision, then it will contravene the bank law.

#### 1.4. Result

Non-banks which extend credit for commercial purposes without accepting deposits are not therefore covered by the bank monopoly.

#### 2. Credit Extension: an activity of "Financial Intermediaries"?

The new EU banking law has enlarged the scope of bank supervision to non-banks whose activities are related to the provision of financial services. Consequently, the Italian banking law has been extended to cover "financial intermediaries". Art. 10(3) states: "Besides the banking activity, banks exercise all other financial activities according to the special regulations." In Chapter V articles 106-114 regulate such non-banking activity in the financial sector by non-banks. Art. 106 sets out the regulated activities, which include public share offers, **the provision of finance in any form** ("concessione di finanziamenti sotto qualsiasi forma") and payment services to financial intermediaries. Those who exercise such activities are "financial intermediaries" and have to register with the Treasury.

Financial intermediaries must be organised either in the form of a share holding company, a limited company, a "società in accomandita per azioni"<sup>392</sup>, or a co-operative (co-op). They must have a minimum capital 5 times greater than the capital prescribed for share holding companies, which is currently €500,000. Members (art. 106 c) and directors have professional skill and integrity. There may be other requirements issued by the Treasury in relation to the ratio between own capital and outstanding credit (art. 107) and they must deliver regular reports on their activity.

If non-banks extend micro-credit, it would seem that this should clearly count as a "concessione di finanziamenti". This is also the opinion in Italian banking law<sup>393</sup>. However, there is no discussion about it because the doctrine is primarily concerned with the question of the conditions under which de facto banking is considered to take place in the form of "accepting deposits from the public".<sup>394</sup>

392 A private company which issues shares

393 Santorio, V. *Esercizio di Fatto di Attività Bancarie e Finanziarie*, in: m. Rispoli Farina (Ed.) *La Nuova Legge Bancaria*, Jovene Editore 1995 p. 323, 331 "Comunque, nel Titolo V del T.U., dedicato agli intermediari finanziari, si ritrova il cerchio costituito da soggetti che svolgono l'esercizio del credito senza la raccolta ..." ("in this title we find those who extend credit without accepting deposits.")

394 Colavolpe, A. *Raccolta di risparmio da parte di soggetti non bancari: limiti e criteri*, *Le Società*, n.3 1996 p. 256; Anello, P., Rizzini Bisinelli, S. *Disciplina della raccolta del risparmio: nuove disposizioni dal C.I.C.R. (Bank Supervision Committee)* *Le Società* n.5 194, 605; a leading case was *Corte Cass. Dec. 8 ottobre 1993, Samo e altri*, in *Cass.- pen.* 1994, 1341; see also *Trib. Urbino 3 ottobre 1991, decr. E App. Ancona January 7, 1992, decr.* With note from Cotterli, S. *Prestiti da soci e raccolta del risparmio tra il pubblico in Giurisprudenza Commerciale 1993*, II p. 660 (Credit from co-op members and accepting deposits from the public); for its relation to the EU Directive, see Belli, F. *Direttive CEE e riforma del credito*, Milano, 1993 p. 112 ff; Desidero, L. *Le norme di recepimento della Direttiva comunitaria n. 780/77 in materia creditizia*, in *Banca d'Italia, Quaderni di ricerca giuridica*, n.6 maggio 1986 1986; Patroni Griffi, A. *Accesso all'attività bancaria*, in *Banca, borsa, tit. cred.* 1990, I. pp. 457 ff; for further references relating to the discussion, see the bibliography annexed to Santoro, V. op. cit. p.333ff

There are some doubts as to whether pure credit extension should be considered as an activity of financial intermediaries. Art. 10 distinguishes between credit and deposit-taking on one hand (art. 10(2)) and all other financial activities (art. 10(3)) on the other. It can be assumed that credit is either in the first or second category. As it is obviously part of the first category, it should not be seen as part of those activities to which Art 106 TUB refers.

On the other hand, the provisions on sanctions only distinguish between two activities: deposit-taking and the combination of deposit-taking and credit extension. This could indicate that pure credit extension is a third category which is not covered by article 10(2) and should therefore be counted as part of the other financial activities mentioned in article 10(3).

The Bank of Italy in its application of the law seems to focus solely on deposit-taking.<sup>395</sup> Moreover, other special regulations only apply to deposit-taking institutions.<sup>396</sup> In addition, the special rules on consumer credit would be superfluous if the provision of credit was itself considered part of the activities of financial intermediaries under of Art. 106 TUB. Art. 121(2)(b) TUB reserves the extension of consumer credit to banks and financial intermediaries which suggests that Art. 106 TUB is not enough to create this effect, which again suggests that pure lending is not covered by Art. 106 TUB.

The same rules apply to non-bank providers of credit in the form of finance leases ("*prestito su pegno*"). Art. 155(3) expressly declares that finance leasing companies are financial intermediaries under art. 107. Both forms of credit need special and increased protection as outlined by the extensive regulation on consumer credit of which the "*prestito su pegno*" is one of the oldest forms.

If pure (micro-)lending is considered an unregulated form of financial services, the effect would be appropriate to its associated low risk for the money market. Credit is a self-regulating process as it follows the caveat vendor rule because the lender always carries the risk. Moreover, there are problems of equal treatment because only money lending is regulated, whilst credit through delayed payment, such as instalments or hire purchase, is not covered by banking law.<sup>397</sup>

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395 The regulations of the Bank of Italy refer only to institutions which accept deposits (and offer credit). Thus the date of expiration for their adaptation to the new legislation was referred annually from end of 1998 to finally March, 2000. See Bollettino di Vigilanza della Banca d'Italia No 12 Dicembre 1997 p. 3; No 12 Dicembre 1998 p. 47; No. 12 Dicembre 1999 p. 7 concerning Art. 10, 11 TUB. The bulletin particularly addresses financial cooperatives ("*soggette cooperative formaziarie e altri soggetti non costituiti in forma societaria - denominati o meno 'casse peote'*" (bollettino No 12 1999 p.7) The order expressly enumerates deposit-taking entities other than banks, referring to the order of the CICR from March 3, 1994 and the 120th adaptation of the Supervisory Instruction of the Bank of Italy published June 28, 1995 in the G.U. Serie generale, n. 156 from July 6, 1995

396 With its decree of February 24, 1998 no.58, the President of the Republic has given further details in the Umbrella Decree concerning those financial intermediaries which distribute all kinds of mutual funds and investment funds. Decreto Legislativo 24 febbraio 1998 n.58 - Testop unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52

397 Factoring is instead seen as an activity which needs at least the quality of a financial intermediary, see Art. 1 No. 1 letter c Law of February 21, 1991 n.52 Disciplina della cessione dei crediti di impresa

As for pure micro-lending, the law seems to cover such activities under the rules for “*financial intermediaries*” which impose a particular legal structure (a co-operative) and require minimum standards which are less stringent, but similar in quality to those that apply to banks. But one could imagine a more liberal interpretation of the law.

In the absence of barriers of the law on financial intermediaries, micro-lending by non-banks would therefore only be safe if in the form of credit by deferred payment.

### *III. Micro-Lending and Deposit-Taking*

#### *1. The Link between Micro-Lending and Deposit-Taking in Development Finance*

Micro-credit for small enterprises in Italy is almost exclusively linked to the acceptance of deposits. Collective savings have provided a foundation since the birth of the co-operative movement. Deposit-taking is an economic and educational backbone of the system. This is why the freedom to provide pure credit free from the hindrance of Italian banking legislation does not help micro-lenders to overcome the obstacles of banking law for micro-lenders that try to fill the loophole in micro-finance left by the retreat of bigger Italian banks from providing small amounts of credit.<sup>398</sup>

Most micro-lenders and providers of social credit base their success on low cost funds provided by the public or from potential clients. The creation of Banca Etica by nearly all of the leading social organisations has underlined the fact that active support for social finance is primarily based on the financial input of members of mutuals and other members of the public who save their money with the institution that extends the credit. Banca Etica, like Oekobank in Germany and Netwerk Flander in Belgium, gives investors the right to participate in deciding where their money is invested and to lower the cost of credit by choosing not to receive part of the interest gained.

Furthermore, an important part of the educational aspect of micro-lending is the way that people with bad credit records and little financial experience can be guided into the world of credit through the first steps of making small and regular savings. The Grameen Bank in Bangladesh and Fundusz Micro in Poland have largely based their success on such savings schemes. The recent campaign in the US for the extension of Individual Development Accounts (IDAA), which are designed to teach poor people how to pay regularly in order to earn a new credit history, links micro-lending to deposit-taking.

We must therefore investigate the legal conditions for those entities that combine finance with deposit-taking.

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398 See Mosco, D.G. op. cit. p. 842: “Sotto il profilo economico, la recessione ha accentuato le difficoltà di accesso al credito da parte delle piccole e medie imprese, soprattutto con riguardo all’accreciuti rilievo dei tassi reali di interesse ed all’ancor più rigido rapporto tra quantità del credito ed ammontare delle garanzie.”

## 2. *Legal Conditions for "Mini-Banks"*

### 2.1. *Micro-Lenders as De Facto Banks*

Before the new umbrella law on banking emerged<sup>399</sup>, Italian banking law made the distinction between banks that are allowed to accept deposits from the public and co-operatives which may centralise their members' money as risk capital.<sup>400</sup> Many de facto savings institutions, particularly those in the form of co-operatives, have argued that they do not accept deposits from the public when they use their members' money. The conditions under which money provided by the members of a mutual should count as deposits taken from the public have been widely discussed within the concept of "*de facto banking*" ("*banca di fatto*")<sup>401</sup>.

The new banking law does not clarify the meaning of "public". At. 11(1) TUB defines deposit-taking" but this legal definition of deposit-taking has no effect on the purely economic view of the law:

"Accepting deposits in the sense of this law means all taking of funds in the form of deposits or any other form with an obligation to repay them."

Therefore banking activity is thus only distinguished from risk capital of such companies or mutuals with limited responsibility like share holding companies, limited companies and registered mutuals whose capital is protected from withdrawal by shareholders during the lifetime of the company by company law.

This excludes the practice of co-operative banks all over the world whereby membership can easily be achieved through a small investment which has to be made at the time of first doing business with a bank and will be reimbursed with the termination of the business with the bank. Such "entrance fees" are therefore economically unstable money which can be reimbursed and therefore qualifies as deposit-taking within the meaning of the Italian banking law.

It would also fall under the "open door" approach used by the Italian courts to distinguish membership and participation in capital from deposit-taking under the old law. This again gives an economic interpretation to the word "public" without regard to the form of the legal relationship between investor and company.

In its decision denying a financial co-operative the right to inscribe its new financial status into the co-op register before meeting the requirements of the banking law, the Tribunale di Benevento<sup>402</sup> stated that the "open door" of a co-operative to potential members would make the acceptance of deposits "public" in the sense of the banking law. Only closed co-operatives can therefore escape the "de facto banking" verdict.<sup>403</sup>

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399 See "raccolta del risparmio" in the Law No 481/1992 v.

400 See Footnote 394 above

401 See Nazzicone, L. Profili della "banca di fatto" nell'ordinamento giuridico italiano, in Quaderni giuridici dell'impresa, 1989, n.2. p. 62 ff; Spena, A. La raccolta del risparmio tra il pubblico e la posizione dell'impresa bancaria nell'ordinamento creditizio (a proposito della sentenza n. 2579 del 1988 delle Sezioni Unite della Cassazione), Diritto banca, 1991 I, p. 339 ff

402 Dec. november 21, 1995 Giurisprudenza n.7/1996 p. 812

403 See on this decision Coppotelli, P. Il Commento, Le Società n. 7/1996 p. 813 ff

There is therefore no doubt that micro-lending through the combination of micro- credit with savings plans are “banking activities” under Italian law which raise the legal hurdle that makes the cost of micro-lending so high that it is impossible without significant subsidies.

## 2.2. *Micro-lenders using their own capital*

There remains a window of opportunity for micro-lenders who simply wish to take in cheap refinancing capital as own capital from friendly supporters of their goals. If these subscriptions are not repayable, they do not fall under the de facto banking restrictions because providing credit is not in itself a banking activity if it is restricted to consumer credit.

However, company law restrictions prohibit lending practices which could undermine the efficient value of existing stock capital.

In addition, art. 11(3) TUB gives the Banking Supervisory Committee the right to impose limits and criteria on the legal form and activities of such entities for whom the acceptance of deposits is not legally assumed to be a banking activity.

For example, the Banking Supervisory Committee requires that such entities must be co-operatives and must have more than 50 members. In this case, loans to their members are restricted to 3 or 5 times the approved own capital as stated in the last balance sheet.<sup>404</sup>

Other restrictions stem from the legal form of a co-operative which, for example, induces them to pay 3% to a centralised mutual fund which has to promote and develop the idea of co-operatives.<sup>405</sup> On the other hand, co-operatives have a more favourable fiscal regime which defines them as non-commercial.<sup>406</sup>

## 2.3. *The Exemption for Mutuals (1999)*

### 2.3.1. *The general exemption for Mutual Guarantee Societies*

There is one important general exemption which is available to institutions which provide guarantees and use the legal form of a co-operative.<sup>407</sup>

Providing guarantees is certainly an activity that falls within the realm of financial services and is at least covered by Art. 10(3) TUB. It could be argued that a guarantee is credit in so far as in the case the conditions under which the guarantee evokes the right to get the linked debt paid are met a guarantee replaces the credit. It could therefore be argued that a guarantee is a conditional credit contract. This view has been put forward by the French and the Spanish governments in a case concerning the scope of application of the right to revoke a credit contract under the EU Consumer Credit

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404 Banca d'Italia Bolletino di Vigilanza 12/1997 p.3 “cooperative non finanziarie con piu di cinquante soci debbono contenere l'ammontare complessivo dei prestiti sociali entro il limite del triplo ovvero del quintuplo del patrimonio risultante dall' ultimo bilancio approvato.”

405 Legge January 31, 1992, n. 59

406 See Mosco op. cit. 845

407 Art. 2511 CC: Le imprese che hanno scopo mutualistico (1) possono costituirsi come società cooperative a responsabilità illimitata [2513] o limitata [2514], secondo le disposizioni seguenti. (“Enterprises which have mutual purposes can be founded as co-operative societies with unlimited or limited responsibility.”)



Directive. But the European Court has recently rejected this view and applied a literal interpretation of the wording of the Directive. Guarantees are not therefore credit contracts and are classed amongst the financial activities which are not the monopoly of banks. However, they are certainly covered by Art. 106 ff TUB on financial intermediaries which would restrict their business significantly.

But as mentioned above, art. 155(4) TUB<sup>408</sup> exempts credit guarantee schemes organised as consortia or mutuals from the rules requiring minimum standards for financial intermediaries in Chapter V. They only have to register as financial intermediaries with the Treasury.

But these guarantee mutuals are not only regulated by the vast body of co-operative and consortial civil law and tax law.<sup>409</sup> There is also a special law to which the exemption refers and where such guarantee co-operatives ("*first and second grade*") are defined.<sup>410</sup>

### 2.3.2. *Specific Exemptions for Deposit-Taking Mutuals*

The Reform Act of 1999 has further enlarged the possibilities for accepting deposits, particularly for mutuals. The Reform Law introduced art. 11(4)(c)(ii), which exempts different forms of deposit-taking from the prohibition contained in art. 11(2):

Art. 11(4)(c)(ii) exempts mutuals in so far as they raise funds from the public by issuing financial obligations.

"Il divieto di comma 2 non si applica: ... c-bis) alle società co-operative per la raccolta effettuata mediante emissione di obbligazioni"

This opens the way for refinancing micro-credit through direct deposit-taking if the deposits are accepted in exchange for commercial papers in the form of obligations.

But these co-operatives underlie the general restrictions for financial intermediaries which require a minimum capital of €500,000, personal requirements of professionalism and honesty, and submits these co-operatives to the supervision of the Bank of Italy and the Credit Supervisory Board. (Art. 106 ff., 155 TUB)

### 2.3.3. *General Exemption for Existing Small Micro-lenders*

The amendment to the Italian bank law of August 1999 has added another very general exemption into Art. 155(4) TUB which says:

"I soggetti diversi dalle banche, già operanti dalla data di entrata in vigore della presente disposizione, i quali, senza fine di lucro, raccolgono tradizionalmente in ambito locale somme di modesto ammontare ed erogano piccoli prestiti, possono continuare a svolgere la propria attività, in considerazione del carattere marginale della stessa, nel rispetto delle modalità operative e dei limiti quantitative determinati dal CICR."

408 "essi non sono sottoposti alle disposizioni del Titolo V del presente decreto legislativo e del decreto-legge 3 maggio 1991 n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197" (They are not ruled by the fifth title (financial intermediaries) of the umbrella bank law)

409 Art. 2520 CC: Il capitale della società, anche se questa è a responsabilità limitata, non è determinato in un ammontare prestabilito. (the capital of the society even if it is a limited society is not fixed with a certain amount. Art. 2539 CC: A co-operative does not cease to exist when its capital is used. (La società cooperativa si scioglie per le cause indicate nell'articolo 2448 (1), escluso il n. 4, nonché per la perdita del capitale sociale [2520].)

410 Art. 29 and 30 of the Law of October 5, 1991, n.317.

This exemption directly addresses existing de facto micro-lenders operating as “non-banks” on a “not-for-profit” basis on “a small and local scale” collecting “modest amounts of deposits in the traditional way” and extending “small amounts of credit” if their activity is “marginal” and if they “respect the business rules and quantitative limits prescribed by the Credit Supervisory Board”.

These rules have been made to save such micro-lenders as the “casse peote”<sup>411</sup> as well some finance co-operatives<sup>412</sup> like the MAG 2 or 4 in Milano and Piemonte who did not respond to the repeated demands of Banca Italia to transform into other legal forms or to adhere to co-operative banks or cease trading.<sup>413</sup> The latest commentary states: “It seems that finally after a series of interventions to implement the new legislative provisions, the legislator has finally resigned itself in part to regulating a small but persistent sector of the economy with its banking law.”<sup>414</sup>

But the exempted institutions have been put under a new supervisory regime which restricts their activities to mutuals with no more than 200 members with no more than 1,500 Euro assets per member and the credit extension can not be more than half of this but generally limited to 3 million Euro. The rest of the money has to be invested into safe papers like state or bank obligations or in bank accounts. Excluded is all form of assets which could be used in a payment system like current accounts or credit cards. The manager has to pass the honorability test of bankers. The mutuals have to be registered with the National Office of Securities (Ufficio italiana die cambi).<sup>415</sup> All those who are not able to fulfil the preconditions had to stop their activity by September 30, 2000.

This exemption may also provide some opportunities for enlarged micro-lending because the Banca d’Italia has ruled in its latest instructions<sup>416</sup> that a financial co-operative which has smaller co-operatives as members and which uses its seed capital to invest in the financial co-operative does not accept deposits from the public. Such exempted small co-operatives could create financial co-operatives and collect deposits on a small scale which they could then contribute to the larger micro-lender.

#### IV. Conclusion

1. Italian law does not have a bank monopoly for credit in general. Only consumer credit which does not comprise loans to start-ups and self-employed for business purposes is expressly regulated as far as money is lent. The other forms of consumer credit, such as instalment purchase, are not covered by prudential banking regulations. Micro-lending as such is not therefore covered by the bank monopoly which requires the additional “*acceptance of withdrawal deposits from the public.*”

411 See Carraro, Le “Casse Peote” del Veneto e la nuova legge bancaria, Banca, borsa, tit, cred. 2000; Crisculo, Il fallimento della “banca di fatto”: una conferma, *ivi.*, 1999, II, p. 227

412 Bonzanini, L. Art. 35 Commentario in Dolmetta, A.A. Le Nuove Modifiche al Testo Unico Bancario, Quderni di Banca, Borsa e Titoli di Credito N. 20, Giuffrè: Milano 2000, p. 128 ff, 137

413 See footnote 395

414 Bonzanini *op. cit.* p. 139

415 See Decree of the Interministerial Committee on Credit and Savings in Gazzetta ufficiale n.43 del 22nd February 2000

416 Gazzetta Ufficiale del January 9, 1999 Title IX, Chapter 2, Section IV

2. According to the wording of the law, micro-lending for commercial use would require a licence for the business of being a financial intermediary. These rules require a minimum capital of at least €500,000 and set some personal and organisational conditions of safe and sound business that must be fulfilled. It further demands a special legal form of enterprise with limited responsibility, which may be a co-operative. (There is still some doubt about the question whether Art. 105 TUB covers pure business lending as “*other financial activities*”)

3. As micro-lending is mostly connected with accepting deposits from the public, it falls under the general prohibition of deposit-taking mentioned above in connection with credit. Only risk capital is exempt from this prohibition. The bank monopoly for deposit-taking has criminal sanctions. There have been a lot of cases in Italian jurisprudence and extensive discussion of what conditions constitute accepting deposits from the public. The law makes it clear that the use of credit-savings schemes is prohibited in Italy as they are common for micro-lending from non-banks (see the exemptions under 8).

4. Co-operatives which use their own capital for lending purposes are allowed to do so but these activities are restricted by orders of the Credit Supervisory Board which has the right to regulate all deposit-taking if not already regulated as being public. Presently the lending activity is restricted to companies and co-operatives and cannot exceed 3 to 5 times the audited capital of the previous year.

5. The Italian law opens a door to the public refinancing for co-operatives and consortia which accept deposits in the form of obligations. But these co-operatives are then regulated as financial intermediaries and are therefore subject to the restrictions mentioned in 2 as well as the restrictions from the laws which apply specifically to co-operatives and consortia.

6. There are two major exemptions in Italian law:

a) Mutual guarantee societies, which are co-operatives or consortia which collect money from their members and place it into a bank account which serves as a guarantee fund for the bank when it extends credit to the members of the co-operative such schemes are neither subject to the rules of banking supervision nor to the rules of the supervision of financial intermediaries. However, they are barred from all other financial activities. Such guarantee funds guarantee 50% of the claims of the bank against borrowers and can raise up to 20 times the value of the fund in credit for their members.

b) Existing small and rather insignificant micro-lenders like the “Cassa Peote” and small Financial Co-operatives are totally exempted from the law if they collect money and give credit locally in a traditional way and keep within the limits set by the Credit Supervisory Board.

7. The prospects for micro-lending by non-banks in Italy a quite grim, particularly as a result of the numerous requirements imposed on financial intermediaries which are designed to cope with commercially active intermediaries who collect large sums from the public, including door-to-door sales. Its economic development is hindered further by the requirement to use the legal form of a co-operative, which is highly regulated and non-commercial structure with organisational burdens and integrated into a larger co-operative structure.

8. If the Italian legislator extended the exemption for existing micro-lenders to new organisations and withdrew the insignificance criteria from the overall business, leaving it only to the individual amount of credit and savings, it would open the door significantly for micro-lending. The not-for-profit requirement would be sufficient to exclude predatory lenders from using this loophole. However, there should be additional criteria to guarantee the quality of loans by extending the contractual obligations of the Consumer Credit Directive to micro-credit to small enterprises. It is debatable whether the requirement to use the legal form of a co-operative best serves the goals of social lending. It may prove to be the case in Italy that the strong personal involvement required by the legal form of a co-operative will not be adequate in a growing sector of the economy.