

The civil code of 1942 had chosen to regulate LLC (also known in Italy as “s.r.l.”) essentially modifying the already existing regulatory framework of the PLC (also known in Italy as S.p.A.) with minimal differences regarding the convocation and the decision-making procedure of the shareholders' meeting.

In this context, the LLC did not represent an autonomous company type, but it could be defined as a very small PLC built thanks to the regulatory framework mentioned above.

With the company law reform, the legislator has valued the figure of shareholder as a natural person in the belief that the limited liability company was characterized by a limited social structure, with few members directly interested in the management of the company and a corporate structure that could (partially) ignore the typical organization of the public limited company.

The Italian LLC in 2003 was no longer a small PLC: it was a limited company with the peculiarity of a wider statutory autonomy, thanks to which it could oscillate between both a “capitalist” or a “personality” scheme.

The LLC type has been designed with two main aims.

From one hand, to grant a greater space to contractual autonomy and, from the other hand, to reduce the role of mandatory provisions.

The main consequence of the above mentioned aims were the reduction of the mandatory provisions and so an increasing in importance of the shareholder position, a wider relevance of the contractual relationship between the shareholders as well as wider freedom in the choice of the organizational structure of the society.

The choices made by the legislator in 2003 found explanation on the basis of a specific element: the limited liability company was characterized by the exclusion of the stock market for this kind of company,

The 2003 reform had outlined a coherent and rational regulatory system. More in particular, the LLC regulations were characterized by: the extensive statutory autonomy due to the nature of the company; the prohibition to represent holdings in shares and to make them the object of an offer to the public savings. On the contrary, the LLC maintained a significant core of mandatory rules to protect the third-party interests, the creditors as well as the market and the minority shareholders for its vocation as a potentially open company.

The evolution of the regulation assumed a precise distinctiveness for the LLC with respect to PLC: the non-equivalent possibility to obtain financial resources in the capital markets both in the form of debt capital and in the form of venture capital.

These points seem destined to be resized - if not to fall entirely - due to the new regulations that have been affecting the LLC type in the last few years. In particular modification that were made necessary to improve the competitiveness of our LLC in respect of the other

European companies: a competition between various systems - not always virtuous - aimed to attract new investors.

In January 2012, were introduced the “simplified LLC” and subsequently the “marginal capital LLC” in order to allow entrepreneurs to access the limited liability regime even with an initial share capital of one euro.

In October 2012, the legislator allowed, among the other things, the “innovative start up LLC” - a new, minimal and innovative company - to issue categories of holdings with different rights both on the asset and administrative side that can be offered to the public of financial products, including through online risk capital portals.

In 2015, this faculty was extended to the innovative SME-LLC that, despite having numerous points of contact with the innovative start up LLC, it differs from the latter for two fundamental elements: the innovative SME is not a minimal company in terms of size and its qualification it's not time limited as established for the innovative start-up.

In 2017, the legislator extended the application of paragraphs 2, 5 and 6 of art. 26 of the legislative decree n. 179/2012 to the LLC-SME, allowing the generality of small and medium-sized LLC to access to some regulation exemptions and to offer to the public their shares.

If the exemptions from the company law designed for the innovative start up LLC were a limited exception in time and space, the application of the latter to the innovative LLC-SME necessarily implies some reconsideration on the LLC type.

The regulatory evolution that affected LLC after the reform of the company law therefore imposes a more general reconsideration on the typological connotations of the company, apparently called into question by the introduction of these exceptions to the company law, especially when the special rules have been applied to a large number of LLC.

In this research it will be verified whether the crossing of the boundary line between LLC and the PLC - in relation to the use of public savings - forces the interpreter to rethink the placement of these new LLC within the corporate system.

In particular, it is appropriate to understand, on the one hand, whether: *i.* the simplified LLC., the LLC with marginal capital; *ii.* the start-up and innovative SME LLC; *iii.* and the SME LLC. are still referable to the LLC and on the other hand, the kind of relationship established between the exceptional provisions the new LLC and the “common” LLC.

The typological question is not trivial.

The placement of the new LLC type seems to be able to provide a contribution to the following problems: a) of transformation into or from a LLC; b) of the application of the right of withdrawal in case of transformation into or from LLC and; c) in the selection of the derogable provisions from the mandatory ones.

These are not insignificant problems to which we add - in the logical link between this case / discipline - the identification of the legislation applicable to the new LLC

Freeing the latter from the type of “company of origin” also implies consequences - and perhaps above all - in terms of discipline: the LLC described in the civil code is a company in which there are no particular rules of governance, control is entrusted to the single shareholder through the use of penetrating instruments of investigation and there is no rule to protect the financial market and investors.

We must ask ourselves if it's compatible, even from a constitutional point of view, the fact that an LLC, perhaps constituted with a euro of share capital, without any internal control structure, without any intermediation of professional investors and with a super simplified budget can offer its subscriptions directly to the public of savers.

The typological question then raises the additional question if - in the current system of company law - the regulation of the different types of company must be built (above all) because of the possible recourse or not to the financial market.