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Own Shares: Historical Evolution of the Post in Italy and Influence on Accounting Issues of Business Analysis

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ABSTRACT: The own shares represent an item of financial reporting increasingly present in enterprises' balance sheets. This item represents shares that the company previously issued and, for various reasons, decided to repurchase on the market. The legislative process and practice regarding the recognition of this item in the balance sheet of enterprises have undergone multiple changes over time. In this, we will highlight these doctrinal and legislative developments that have occurred in Italy.

1 – SUMMARY OF THE HISTORICAL EVOLUTION OF THE LEGISLATION: ALBERTINE PASSAGE OF 1842 TO LEGISLATIVE DECREE NO. 139 OF AUGUST 18, 2015

1.1 Own shares in the Albertine Code and the Commerce Code of 1882

In the Albertine Code of 1842, derived from the Napoleonic Code de Commerce, we find the first reference to a part of the balance sheet, namely the so-called "inventory." This document in the code above was the subject not of specific and rigid rules, but only of a generic provision, according to which "the merchant is obliged to make each year an inventory of his movable and immovable objects, debts and credits of whatever nature and origin, and to copy it from year to year and sign it over a book intended for this purpose" (Art. 18 Albertine Code of 1942).

Only in the 1865 code can explicit provisions regarding corporate financial reporting be traced. Article 147 prohibited directors from voting at the meeting to approve the financial statements. Article 121 stated that "if the limited partner (of s.a.s., Ed.) (has been) paid interest on the capital promised in the company deed or shares of profits, he is not obliged to repay them when the annual financial reportings made in good faith show sufficient benefits to their payment."

An analysis of the 1865 Code shows that, at that time, there needed to be more minimal legislation governing financial statements. This document was the subject only of references, more or less explicit, to other articles of law, a circumstance that demonstrates the absence of any discipline, not even briefly sketched, of financial reporting itself.

Colombo, citing the most obvious limitations of this abnormal absence of regulatory discipline regarding financial reporting for the year, points out, in particular:

(a) the lack of imposition on corporations of a provision similar to that in force for limited partnerships;

(b) the absence of a clear and determined establishment of an annual deadline for convening the shareholders' meeting, the purpose of which was the approval of the financial statements;

(c) and finally, the content of the provisions which, while prohibiting the payment of dividends to shareholders "except for profits earned" and while sanctioning the liability of directors about the "actual existence of dividends paid," were marked by a total absence of express reference to the annually approved financial reporting.

This demonstrates understandability and without the need for further proof, how the concept of financial reporting in 1865 was not yet clear in the mind of the legislature.

Legal evolution, historical progress, the changing concept of the role of the shareholder, inevitable social transformation, and the development of economic-business studies led to the enactment of the Commercial Code of 1882, which, despite its regulatory narrowness on the subject of financial statements, is remembered as a landmark in reporting to third parties outside companies. For the first time, in fact, the legislature perceived the need to regulate, albeit in a concise, terse and partial manner, certain aspects of financial reporting for the year. It is for this reason that the phrase "from nothing to little" was used in the title of this section."

Before 1882, there was essentially no actual legislation concerning financial statements. With the enactment of the Commercial Code of 1882, the situation underwent a slight improvement in that, albeit briefly and generically, the legislature imposed certain fundamental principles, the observance of which became mandatory for those about to prepare financial statements. As will be seen in the following pages, the rules assigned to regulate the preparation of the profit and loss account and balance sheet needed a depth that could guarantee the preparation of financial reporting that could be qualified as a proper management and communication tool. The generality, conciseness and, above all, the vagueness of the postulates and principles underlying its drafting meant that, on a pragmatic level, financial reporting was often a document needing an actual informative function on companies' financial, income and asset situation.

As mentioned above, therefore, it goes from nothing to little.

It is noteworthy, however, that the transition from the 1865 legislation to the one enacted in 1882 shows an albeit slight trend toward improving the balance sheet's informative capacity, which indicates progress in nuce.

Article 22 of the Commercial Code stipulated that “The merchant shall make in each year an inventory of his movable and immovable property and his debts and credits of whatever nature and origin. The inventory shall be closed with the financial reporting and profit and loss account and transcribed and signed by the merchant, from year to year, over a book designated for that purpose.”

Articles 23 - 27 regulated the stamping, endorsement and keeping of books of account. However, these articles contained no reference to the structure and discipline of financial reporting for the year.

The most relevant article on financial reporting for the financial year was, without a shadow of a doubt, Article 176, through which the following obligations were imposed: “The directors shall submit to the auditors, at least one month before the day fixed for the general meeting that is to discuss it, the previous financial reporting with supporting documents, indicating therein distinctly:

1) the equity existing;

2) the sum of disbursements made and overdue disbursements.

The financial reporting must demonstrate with evidence and truth the profits earned during the year and the losses suffered.”

The third paragraph of Article 176 and Article 177 contained rules applicable to insurance and financial companies.

Article 178 required the “auditors, in a report containing the findings of the examination of the financial reporting and the keeping of the administration,” to submit their observations and proposals around the approval of the financial reporting and other necessary arrangements.

Article 179 stipulated, "The financial reporting was to remain deposited in copy, together with the auditors' report, in the company's offices during the 15 days preceding the general meeting and until it was approved. The one and the other could be examined by anyone who proves their status as a shareholder."

Article 180 required the financial reporting to be filed with the registry of the Commercial Court within 10 days of its approval.

Of particular interest is Article 181, which stipulates that no dividends could be paid to shareholders except for profits earned and resulting from the approved financial reporting. This provision also prohibited companies from mentioning interest to be distributed on capital represented by shares in their articles of incorporation, bylaws or other documents. It could, at most, be agreed upon to pay interest, to be taken from the capital, in those industrial companies for which a space of time was necessary in order to establish the corporate purpose, but not more than three years and in an amount not exceeding five per cent. In this case, the amount of interest was to be calculated among the expenses of the first establishment. It apportioned with those to be borne by the financial reporting, which would have actual dividends. The provision also stipulated that members were not obliged to return the dividends paid to them.

Finally, Article 182 governed the mandatory allocation to the legal reserve of a portion of the profit made by the company.

From the brief survey of the rules directly or indirectly related to the problem of financial reporting, it becomes clear that the 1882 legislature, while addressing this problem to a more structured extent than previously, certainly did not set out to regulate the formal and substantive aspects of the balance sheet and profit and loss account analytically.

It is worth noting that Article 176, which required financial reporting to truthfully demonstrate the profits and losses, did not include any provisions for formal structures or substantive criteria of valuation. This omission hindered the document's ability to meet the legislator's objective.

In this regard, however, there is one provision that, analyzed in the light of the experience of the past decades, during which accounting standards have increasingly become points of reference for the financial statement preparer, may leave the reader astonished: in fact, Article 89 stipulated that the articles of incorporation or bylaws of corporations or limited partnerships had to indicate, among other information, the rules by which financial reports were to be formed and the profits calculated and distributed. Each company, therefore, could identify the methods of financial reporting that most closely matched its idea of “evidence and truth,” implementing in this sense a complete blank reference to the “good rules of accounting”, which, moreover, given the silence of the legislature on this issue, could be "subjectively" interpreted by each company, without this in any way suggesting an incorrect way of preparing financial reporting itself. This view is, moreover, also underscored by the report attached to the draft law of the Commercial Code, in which it was stated that "the draft merely gives a general and safe guide and puts it to the estimation of the special circumstances of time and place and the relations of each company to decide in what way individual social values should be appreciated." It seems clear that the rationale underlying this legislation was permeated by the view that financial reporting was, in reality, an "internal" document of the company, over which no one had the right to intervene in a mandatory and regulatory manner. As pointed out by Bocchini, the justification for such a position can be identified in the "liberalist ideology that made any external scrutiny of management performance inadmissible [...] and (in the circumstance) that the joint stock company phenomenon was, in 1882, a relatively new phenomenon [...] ."

Regardless of the historical and political motivations of the time, there is no doubt, however, that in the period after 1882, the drafting of financial reporting was left totally and absolutely in the hands of the directors, who, on a pragmatic level, could at best rely on what was illustrated by economic scholars. There is no need to dwell on the fact that, in the absence of organic legislation concerning financial statements, the documents prepared by companies were concise and, above all, compiled in an extremely summary manner. What is certain is that such prospectuses were considered internal documents of the companies and, as a result, any semblance of the concept of "financial reporting as an instrument of information directed externally" was absent.

This situation was also influenced by a jurisprudence that, interpreting judicial control as an inadmissible intrusion into company management, considered valid resolutions of financial reports declared false in the judgment itself, arguing that financial reporting had to be considered an internal act of the company and, as such, removed from any external control (including in such "unenforceable controls" even those carried out by the judiciary) .

Regardless of any consideration of the informative capacity of financial reporting prepared under the 1865 and 1882 regulations, it should be pointed out that, in both codes, the patrimonialist view of the document clearly and decisively prevails.

The balance sheet, derived indirectly from the 1842 Code de Commerce inventory, became, albeit without specific legislation, a document preeminent over the income statement. This led to the spread, at the level of both business practice and, in part, doctrine, of the belief that financial reporting "was" actually the balance sheet. In such a view, it is evident that the income statement (or, instead, the profit and loss account) played only a partisan role, almost entirely lacking in actual relevance. The profit and loss account thus, even in the 1882 code, seems to hold only a position as a mere appendix of significantly less significance than the document that, according to this theory, constituted the "true balance sheet" (i.e., the balance sheet).

This situation changed radically, especially in the early 1900s, when legal and corporate studies concerning financial reporting flourished and developed considerably. However, this was not followed by a change in legislation. The 1882 code, at least in part concerning financial reporting, was not revised and amended until 1942 when the Civil Code was enacted.

Given the above situation, it is easy to understand how the "own shares" item was not named in the regulations as a specially identified item on the balance sheet. Therefore, those who prepared the balance sheet could treat the item as they wished and as the financial reporting culture of the time suggested. The item analyzed here could thus be recognized as a specific item, an element of an aggregate item (e.g., equity investments and securities), or even in other unidentified aggregates. The absence of an authentic culture of financial reporting as an information tool meant that each company treated the "own shares" item as the balance sheet preparer saw fit. There does not appear to be any ruling targeting this item whose entry was, therefore, left entirely in the hands of the director or those who, on his behalf, drew up the balance sheet.

Legal doctrine, however, pointed out that own shares should appear on the assets side of the balance sheet (not specifying, however, under which account heading) only against establishing a particular item in shareholders' equity, signalling the use of profits for that purpose. This interpretation anticipated the rule that would later require the establishment of a non-free reserve called the reserve for the purchase of own shares in the portfolio.

The doctrine, especially in the current reflected in De Dominicis' opinion, proposed alternative interpretative versions. Indeed, De Dominicis asserted how they "do not represent any wealth ... While it is true that by placing them on the market, the company can procure a certain amount of money, it is also true that this money does not increase the wealth of the owners of the enterprise.".

In addition to the regulations mentioned above, there were principles imposed in the 1882 Commercial Code to which directors, in managing their shares, were obligated to abide. We refer first of all to Article 144, which stated, "The directors may not purchase the shares of the company on its behalf, unless the purchase is authorized by the general meeting, and provided that it is done with sums taken from the profits duly ascertained and the shares are fully paid up. In no case may they grant any advances on the shares themselves."

The normative scope of this article can be understood if we analyze the historical development that led to the enactment of the 1882 Commercial Code. Regarding own shares, it can be recalled how this legislation was the result of the mixture of two reform projects: the Vignani-Finali project and the Mancini project .

In particular, in the Vignani Finali project it was stated how it was essential to "avoid the purchase of corporate shares, except in cases where it is executed as sums drawn with ascertained benefits." For this reason, an additional limitation to the above was introduced in the project itself, which required that the shareholders' meeting approve the purchase.

In addition to the above, Mancini considered introducing a further requirement concerning the characteristics that the own shares acquired by the company had to possess. Indeed, the draft stipulated that: "the shares to be purchased must be fully paid up; otherwise, the purchase would indirectly produce an undue decrease in the capital previously established for the social enterprise." In the Mancini draft, the draft's drafter also pointed out that "in certain cases, the purchase of corporate shares might be necessary and appropriate," but for this very reason, the draft's drafter provided for the prohibition of advances on one's own shares and set precise conditions so that the purchase of such securities could be made.

A reading of Article 144 shows that three mandatory conditions are imposed to carry out the transaction of purchasing own shares:

1)the purchase had to be authorized by the general meeting,

2)the purchase could only be made with sums taken from duly established profits;

3)and finally, the shares had to be fully paid up.

1)Regarding the first limitation, it should be noted that the doctrine agrees that the above prohibitions and limitations were not imposed on the corporation itself but rather on its directors to limit their powers.

Directors of corporations, under Art. 122 Co. Commerce, II c, are subject to the liability of the execution of the mandate and that arising from the obligations imposed on them by law. III c. of Art. One hundred twenty-two stated that they may do no other business than that expressly mentioned in the deed of incorporation; in case of transgression, they are liable to third parties and the corporation.

As can be seen, the directors had limited powers unlike the shareholders' meeting. Instead, this body was allowed to deliberate and intervene in all acts of management. During the force of the 1992 Commercial Code, therefore, the importance of the shareholders' meeting and the subordination of the directors to the will of the shareholders, even in matters within their competence, was recognized .

De Gregorio pointed out that since the general meeting had the power to decide on the use of profits, it could only be given to the general meeting to decide whether or not to purchase own shares with the income produced in the previous year or years. According to the author cited above, this requirement did not seem waivable even by a specific provision in the articles of association, as it met a particular need widely perceived at the time: to limit the directors' freedom of manoeuvre as much as possible.

The Commercial Code did not establish the operational rules of the transaction. Still, the doctrine agreed, in essence, as Lizza points out, that the decision of the general meeting should indicate, in the purchase resolution, the following elements:

(a)the number of shares to be purchased;

b)the maximum amount that can be used for the purchase;

c)the purchase procedures that can be used; the determination of minimum and maximum unit purchase prices;

d)the time allowed for the directors to carry out the resolution.

All these, however, were only the result of a practice that was not legally regulated and therefore, however widespread, there could be instances of decision making that differed from the above.

2) As highlighted above, the second limitation concerns the circumstance that the own shares had to be acquired with duly ascertained net profits. About this income, we wondered whether these profits should be considered those realized in the year of purchase of the own shares or if we could also refer to earnings from previous years already allocated to increase reserves. We agree with Lizza when he states that separating the wealth produced in the year of purchase of the shares from that realized in previous years was a meaningless operation since "the temporal currents of income have a common, substantial meaning only in terms of self-financing, so referring to past profits or recent ones implies, nevertheless, an ideal reference to that incremental mass of wealth acquired by favourable economic results, wealth certainly not identifiable in the monetary stocks in the company's endowment. Therefore, we believe the question should be answered in the affirmative for both aspects involved."

According to De Gregorio, the rule above unequivocally imposed the impossibility of using, for the purchase of own shares, share capital or reserves related to such capital such as the legal reserve.

Extraordinary free reserves could then be used. In De Gregorio's view, the portions of the company's assets are classifiable as optional reserves, and the surplus of assets over liabilities resulting from an asset revaluation could also be usable.

3) The third condition concerns that the shares subject to purchase must be fully paid up obligatorily. According to Marghieri, this imposition avoided undue reductions in equity. Lo Cigno, similarly to Marghieri's assertion, considered this principle a requirement to protect the shareholders' claim against the company for the remaining tenths, which, in the absence of such a limitation, would fail, leaving the shareholders without asset protection.

According to De Gregorio, on the other hand, the release of shares guaranteed equal treatment among members but appeared unnecessary for the protection of creditors.

In addition to what was highlighted in the preceding pages, it should be pointed out that most of the time, the doctrine considered Article 144 c. co. only sometimes applicable. That is, they believed that, in particular circumstances, what is established in the above article, the rules should not be applied. In particular, for example, De Gregorio is considered not subject to the prohibitions of Art. 144 c.co._the purchase following donation and following adjudication by compulsory sale; the temporary purchase aimed at a sale to lower the price of securities on the market or aimed at a capital reduction, in compliance with the procedure for the latter provided by the Legislature (by Art. 158 and 101 c.co.); in general, all acts "in which the purchase of one own shares is the effect of acts or relations that are not now addressed ... of which it constitutes a consequence that could not be avoided without a greater sacrifice of the company's assets".

As for the rights attached to the own shares, most scholars at the time believed that these rights should be suspended for as long as the company held its own shares. This principle was later translated into a mandatory rule by subsequent legislation. Therefore, the doctrine of the time merely anticipated what would become an imposed norm in the Civil Code a few years later. According to this interpretation, the voting rights of own shares did not by right become part of the votes helpful in achieving the majorities required by the articles of incorporation or by law.

In conclusion, Article 144 prohibited granting any advances based on the company's own shares.

According to Messineo, this rule that prohibited advances on shares was to be considered devoid of any logical and legal basis since such an imposition resulted in the same reduction of guarantees to third parties external to the company generated by the purchase of the shares themselves: but while for the latter the Legislature had taken care to reduce the danger by imposing three stringent conditions, no type of advance was allowed on shares even if fully paid up, subject to authorization by the shareholders' meeting and within the limits of ascertained profits.

Articles 247 c.co and 863 c.p. provided for a series of sanctions toward individuals, specifically directors and auditors, who failed to apply the impositions in Article 144 c.co. provided. Article 247 c.co established that: "The following shall be punished by a fine of up to five thousand lire, without prejudice to the greater punishments imposed in the Criminal Code:... directors and managers who have... purchased shares of the company contrary to the provision of Article 144 or granted advances over shares of the company..." While Art. 863 of the Criminal Code provided that: "In the event of the bankruptcy of a limited partnership limited by shares or a joint stock company, the directors and managers thereof shall be punished by the first part of Art. 861 if through their own fault the bankruptcy occurred or the provisions of Art. ... 144 were not fulfilled. "On the subject of purchases made without compliance with the impositions of Article 144, there were authors who considered the purchase nevertheless valid and scholars who, on the contrary, considered it voidable.

1.2 The own shares of the Civil Code of 1942.

With the enactment of the Civil Code in 1942, the situation regarding financial reporting definitely improved even though numerous loopholes remained for decades. In particular, the code imposed Article 2423, which read:

Art. 2423 Civil Code. Preparation of financial statementsThe directors must prepare the financial reporting for the year with the profit and loss account.

The financial reporting and the profit and loss account must show the balance sheet of the company and the profits made or losses suffered with understandability and accuracy.

A directors' report must accompany the financial directors'on the company'company'sance.

A reading of the various civil law articles interconnected with financial reporting shows that the legislature refers to this document with uncertain and variable terminology;, in some articles (e.g., 2321, 2432, 2433), this term is unequivocally used to refer to the balance sheet and the income statement, while in others the expression "balance sheet" is differentiated from the profit and loss account, so that the latter articles (e.g., 2217, 2423, 2429/bis, 2425/bis) identify financial reporting with the balance sheet alone. The legislature's such imprecise terminology has as its consequence the impossibility of deducing from the code a well-defined legal notion of financial reporting

. Such a situation, however, is different from the 1942 codified legislation. Even in the preceding decades, substantial terminological inhomogeneity about the concept of financial statements can be found at the legal/legislative level. Just by way of example, it may be recalled that, in contrast to Articles 25 of the 1877 Consolidated Act No. 4021 and Articles 11, 12, 13, 16, 18 and 20 of Law No. 1231/1936 cited in the preceding pages, where the term financial reporting indicates the composite document balance sheet + profit and loss account, there is Article 14 of Law 1231/36 in which financial reporting is understood as synonymous with the balance sheet. This terminological confusion did not end even with the enactment of the Vanoni Law of 1951, since, in the face of civil regulations it was clear that the intention was to consider financial reporting as the composite of the balance sheet and the profit and loss account, the tax legislature continued on several occasions to consider the terms “balance sheet” and “balance sheet” synonymous (e.g., Art. 6 Law 25/1951, Art. 28 T.U. 645/1958 and Articles 3 and 5 Presidential Decree 600/1973).

Despite terminological uncertainties, which even led simple companies to talk about financial statements instead of financial reporting, at the doctrinal level, both corporate and legal, the phrase “financial statements” came to be increasingly understood as “the whole of the balance sheet and the profit and loss account,” beginning to spread a principle that currently seems taken for granted and established.

Regarding the “content of the balance sheet” problem, in the Civil Code of 1942, an intervention was provided to regulate the balance sheet, omitting any provision concerning the profit and loss account. While thus requiring the preparation of the profit and loss account, under Article 2423 of the Civil Code, nothing was established regarding the content of this document. This lack caused heavy consequences at the level of reporting intended for third parties outside the companies. In this regard, it is worth recalling that in '42 (as is also the case today), for the individual entrepreneur, financial reporting - without prejudice to the obligation to prepare it - was considered a helpful document exclusively to the economic entity with the consequent failure to impose any form of disclosure of this prospectus. A similar situation is found about partnerships, for which there were (and still are today) provided - as for individual entrepreneurs - particular rules regarding the preparation of financial statements, but no specific obligations were (and are) indicated regarding the external communication of the financial reporting itself. For joint-stock companies, on the other hand, as for all corporations, the disclosure of financial reporting data is imposed by legislation to guarantee the now unanimously recognized "right to information" of shareholders and third parties outside the companies.

As pointed out in the previous pages, in 1942, the legislator opted for a structural regulation of the balance sheet only, omitting any reference to the content of the income statement.

Regarding the items that were obligatorily required to appear in the preparation of the balance sheet, Article 2424 c.c. stipulated the following:

Art. 2424 c.c. Contents of the balance sheet

Subject to the provisions of special laws for companies engaged in particular activities, financial reporting must show separately in their aggregate amount:

In the assets:

1) Receivables from members for payments still due
2) The buildings
3) Plant and machinery
4) Industrial patent rights and rights to use intellectual works
5) Concessions, trademarks and goodwill
6) Furniture
7) The stocks of raw materials and goods
8) Existing cash and valuables on hand
9) Fixed-income securities
10) Equity investments, indicating separately the own shares acquired under Article 2357
11) Accounts receivable from customers
12) Loans and advances to banks
13) Receivables from associated companies
14) The other receivables

IN liabilities and equity:

1) The share capital at its par value, distinguishing the amount of ordinary shares from that of other classes of shares
2) The legal reserve
3) The statutory and optional reserves
4) The reserves for depreciation, renewal and hedging against the risk of depreciation of assets
5) The accounts set aside for retirement or retirement benefits of employees
6) Accounts payable with collateral
7) Accounts payable to suppliers

8) The debts owed to banks and other lenders
9) The debts owed to associated companies
10) Bonds issued and not yet extinguished
11) The company's other debts
In assets and liabilities:
1) The deposits of directors and employees
2) The other memorandum items and memorandum accounts.
Guarantee bonds must be entered in financial reporting even when corresponding recourse claims exist.
Matching fees are prohibited.
As can be understood from reading the article, the regulations did not impose a mandatory structure but merely listed the items that, by legal obligation, had to appear in the balance sheet (note in this regard that, in the title of the article, reference is made to the content of the financial reporting and not to the content of a part of the latter, i.e., the balance sheet). In this regard, Migliaccio points out that “the balance sheet schedule, in particular, presented two lists, one for assets, the other for liabilities. They were, however, neither organized nor complete. The listing, moreover, was not exhaustive and, therefore, did not correspond to the number of items to be entered. Therefore, The best doctrine held that the rule did not require compliance with the order of the derogable list whenever there was an alternative consistent with the purposes inferable from financial reporting to the benefit of understandability.”
From the list given in Art. 2424c.c, the obligation appears to indicate the company's shares among the equity investments for the first time. No legal provision imposed a specific title to the account, which was generally referred to today as “own shares.” In this situation, unlike under the force of the 1882 Commercial Code, each director had to treat the item objectively as set forth in Article 2424 of the Civil Code by specifically highlighting it within the aggregate of their own shares.
About own shares, the 1942 legislature laid down rules in Art. 2357 that were reminiscent of those contained in Art. 144 of the Civil Code of 1882. Article 2357, however, laid down more precise and broader provisions and, in particular, stated that ‘The company may not purchase own shares, if the shareholders’ meeting does not authorise the purchase, is not made with sums taken from regularly ascertained net profits and the shares are not fully paid up. The directors may not dispose of the shares purchased, and the voting rights attached to them are suspended as long as they remain in the ownership of the company. The limitations outlined in the first paragraph of this article do not apply when the purchase of own shares takes place under a resolution of the shareholders‘ meeting ordering a reduction of the share capital, to be implemented using redemption and cancellation of the shares.
Art. 2358 of the Civil Code also required that ‘the company may not make advances on its own shares or loans to third parties to acquire them’, similar to the provisions of Art. 144 (2) of the Civil Code.
Despite the similarity of Art. Differences can be noted in 2357 of the Civil Code and 144 of the Co. c..
First, the prohibition of purchasing own shares is directed not at the directors but at the company. The directors are prevented from disposing of the purchased shares for which voting rights are suspended as long as they remain in the company's assets. This circumstance was also pointed out by doctrine during the existence of the 1882 Commercial Code.
The purpose of Art. 2357 of the Civil Code was also to prevent the company from reducing claims protection through a veiled return of capital money to the shareholders. This is why, as in art 144 c. Co., purchasing own shares with regularly ascertained net profits was required. All reserves 'which were not subject to legal constraints', which were left to the directors' discretion, were to be included in the shareholders' equity. In favour of the purchase of own shares' offset' by a reduction in share capital, De Dominicis argued that own shares could be acquired with a transfer of fully paid-up equity.
The doctrine of the time also pointed out that the impositions of Article 2357 of the Civil Code were intended to prevent directors from using such an operation to constitute a shareholders' meeting majority in their favour or to influence the market price of the securities (by introducing the requirement of shareholders' meeting approval); or finally that there be 'transgressions of the principle of equal treatment of shareholders' (thus requiring that the shares be fully paid up).
In the 1942 Code, as well as in the 1882 Commercial Code, no reference is made to rights attached to shares, except the right to vote which, as we have already illustrated in the preceding pages, was considered to be suspended until the company's possession of the own shares. This silence was variously interpreted. According to Messineo, the explicitly imposed regulation on voting rights cannot be applied, as an exceptional rule, 'to those prohibitions ... which, however, are not expressly contemplated', including the option right. According to this view, the dividends interrelated with the own shares should have constituted an equity reserve.
According to Frè, on the other hand, the dividend attached to the own shares should not have been attributed automatically to the company. Still, the shareholders should have opted between distributing free shares to the shareholders or the constitution of a special reserve.

1.3 Own shares in EEC Directive No. 91 of 1977, in the enabling act of 8 August 1985 and in the Presidential Decree of 10 February 1986 (conversion into a Presidential Decree of the enabling act of 8 August 1985).

Own shares were also the subject, among other provisions concerning other company-related legal issues, of the Second EEC Directive No. 91 of 1977. This directive of 13 December 1976 was 'intended to coordinate safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, to make such safeguards equivalent'.

EEC Directive No. 91/77 provided for several articles concerning own shares. These articles were later converted into articles of the Civil Code, albeit by Presidential Decree No. 30 of 10 February 1986.

In particular, the articles of the directive were transformed into the following articles of the code:

Direttive CEE 91/77

Art. 18 :

The company may not subscribe to own shares

Any person who has subscribed in their own name but on behalf of the company for the latter's shares shall be deemed an own-account subscriber.

The persons or companies and firms referred to in Article 3 (i) or, in the event of an increase in the subscribed capital, the administrative or management body members shall be required to release the shares subscribed for in contravention of this Article.

However, the law of a Member State may provide that any person concerned may release himself from this obligation by proving that no fault can be attributed to him personally.

Article 19:

'Where the laws of a Member State permit a company to acquire own shares, either directly or through a person acting in his name but on behalf of that company, they shall make such acquisition subject to at least the following conditions

(a) authorisation to acquire shall be granted by the general meeting, which shall determine the terms and conditions, in particular the maximum number of shares to be acquired, the duration for which the authorisation is granted and which may not exceed 18 months, and in the case of acquisition for consideration the minimum and maximum consideration. The members of the administrative or management body shall be obliged to ensure that, at the time of each authorised acquisition, the conditions set out in paragraphs b), c), d)

b) the nominal value or, in the absence of a nominal value, the accountable par of the acquired shares, including shares previously acquired by the company and held in its portfolio, as well as shares acquired by a person acting in his name but on the company's behalf, may not exceed 10% of the subscribed capital

(c)the acquisitions may not have the effect of reducing the assets below the amount mentioned in Article 15(1)(a);

(d)the transaction may relate only to fully paid-up shares

Art. 20 :

'Member States may apply Article 19:

(a) To shares acquired in execution of a decision to reduce capital or in the cases referred to in Article 39;

(b) to shares acquired by way of universal transfer of assets

(c) to fully paid-up shares acquired free of charge or acquired from banks and other financial institutions by way of purchase commission

d) To shares acquired by a legal obligation resulting from a court decision to protect minority shareholders, in particular in the event of a merger, change of the company's object or type, transfer of the registered office abroad or the introduction of restrictions on the transfer of shares;

e) To shares acquired by a shareholder due to the failure to release them;

f) To shares acquired to indemnify minority shareholders of affiliated companies;

g) To fully paid-up shares acquired at a forced sale executed to satisfy a claim of the company against the owner of such shares;

(h) Fully paid-up shares issued by an investment company with fixed capital within the meaning of the second subparagraph of Article 15 (4) and acquired by it or by an associated company at the investor's request. Point (a) of the third subparagraph of Article 15(4) is applicable. Such acquisitions may not affect that the net assets fall below the amount of the subscribed capital plus the reserves the law does not permit to be distributed.

However, shares acquired in the cases referred to in paragraph 1(b) to (g) must be transferred within a maximum period of three years from their acquisition unless the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10% of the subscribed capital.

If the shares are not transferred within the period laid down in paragraph 2, they shall be cancelled. The laws of a Member State may make such cancellation subject to a reduction in the subscribed capital by a corresponding amount. This reduction must be compulsory if the acquisition of shares to be cancelled would result in the net assets becoming less than the amount referred to in Article 15(1)(a)."

Article 21:

'Shares acquired in violation of Articles 19 and 20 shall be transferred within one year of their acquisition. If they have not been transferred within this period, Article 20(3) shall apply.

Art. 22:

'Where the registration of a Member State permits a company to acquire own shares either directly or through a person acting in his name but on behalf of that company, it shall at all times make holding such shares subject to at least the following conditions. (a) among the rights with which the shares are provided, the voting rights of the own shares shall in all cases be suspended; (b) if such shares are entered on the assets side of the balance sheet, an unavailable reserve of the same amount shall be entered on the liabilities side. Where the laws of a Member State permit a company to acquire its own shares either directly or through a person acting in his name but on behalf of such companies, they shall require the annual report to state at least: (a) the reasons for the acquisitions made during the financial year; (b) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and transferred during the financial year, and the proportion of the subscribed capital corresponding to those shares

(c) in the case of acquisition or transfer for consideration, the consideration for the shares;

(d) the number and nominal value, or in the absence of a nominal value, the book value of all the shares acquired and held in the portfolio, as well as the proportion of the subscribed capital corresponding to such shares'.

Art. 23:

'A company may not advance funds, grant loans or provide guarantees for the acquisition of its shares by a third party.'

Art. 24:

'The acceptance by a company of its shares as security, either directly or through a person acting in his own name but on behalf of that company, shall be treated in the same way as the acquisitions referred to in Article 19, Article 20(1) and Articles 22 and 23. Member States may not apply paragraph 1 to current operations of banks and other financial institutions.'

Presidential Decree No. 30 of 10 February 1986, highlighting the code's articles as amended by that Presidential Decree.

Article 2357 of the Italian Civil Code:

'The company may not acquire its own shares except within the limits of the distributable profits and available reserves resulting from the last duly approved financial reporting. Only fully paid-up shares may be purchased. The purchase must be authorised by the shareholders' meeting, which establishes the procedures, indicating, in particular, the maximum number of shares to be purchased, the duration, not exceeding eighteen months, for which the authorisation is granted, the minimum consideration and the maximum consideration. In no event may the nominal value of the shares purchased under the preceding paragraphs exceed one-tenth of the share capital. Shares purchased in violation of the preceding paragraphs must be disposed of as determined by the shareholders' meeting within one year of their purchase. Failing this, they must be cancelled without delay, and the share capital must be reduced accordingly. Suppose the shareholders' meeting fails to do so. In that case, the directors and auditors must request that the Court order the reduction by the procedure set forth in the second paragraph of Article 2446. The provisions of this Article shall also apply to purchases made through trust companies or intermediaries.

Art. 2357 bis c.c.:

'The limitations contained in the preceding Article do not apply when the purchase of own shares occurs.

1)In execution of a resolution of the shareholders' meeting to reduce the capital, to be implemented using redemption and cancellation of shares;

2)Free of charge, provided that the shares are fully paid up;

3)As a result of universal succession or merger;

4)Upon enforcement to satisfy a company claim, provided the shares are fully paid.

Suppose the nominal value of the own shares exceeds the limit of one-tenth of the capital due to purchases made by numbers 2), 3), and 4) of the first paragraph of this Article. In that case, the penultimate section of the preceding Article shall apply for the excess, but the time limit within which the alienation must take place shall be three years.'

Art. 2357 ter c.c.

"The directors may not dispose of the shares acquired by the two preceding articles except with the prior authorisation of the shareholders' meeting, which shall determine the manner thereof. As long as the shares remain in the company's ownership, the right to profits and pre-emption shall be attributed proportionally to the other shares. Voting rights are suspended, but the own shares are counted in the capital to calculate the shares required for the formation and resolutions of the shareholders' meeting. A non-distributable reserve equal to the amount of the own shares shown on the assets side of the financial reporting must be established and maintained until the shares are transferred or cancelled.

Art. 2357 quater:

Article 2357c states: 'Under no circumstances may the company subscribe for own shares. Shares subscribed in violation of the prohibition established in the preceding paragraph shall be deemed subscribed. They must be released by the promoters and founding shareholders or, in the event of an increase in share capital, by the directors. This provision shall not apply to those who prove they are not at fault. Any person who has subscribed in his name, but on behalf of the company, for shares of the latter shall be deemed a subscriber for his account. The promoters, founding members, and, in the event of an increase in share capital, the directors shall be jointly and severally liable for the release of the shares unless they prove that they are not at fault.'

Art. 2358 c.c.:

'The company may not grant loans or provide guarantees for the purchase or subscription of own shares.

The company may not accept own shares as security even through a trust company or a third party.

The provisions of the two preceding paragraphs do not apply to transactions effected to favour the purchase of shares by employees of the company or those of parent or subsidiary companies. In these cases, however, the sums employed and the guarantees given must be within the limits of the duly ascertained distributable profits and available reserves resulting from the last duly approved financial reporting."

As can be seen by comparing the articles of the Second EEC Directive with those of Presidential Decree No. 30 of 10 February 1986, only some things that were provided for in the Directive have been transformed into Italian law. However, the change imposed by the entry into force of Presidential Decree 30/1986 was radical. Compared to the previous situation, numerous changes can be identified in the regulations concerning companies' posting of their own shares and their management.

Before addressing the text's central theme, i.e., the impact on the financial reporting structure of the new legislation, we deem it appropriate to briefly summarise the changes introduced by Presidential Decree 30/86 and what, on the contrary, has been reiterated with respect to the legislation previously in force.

As Carbonetti points out, the new Article 2357 of the Italian Civil Code, compared to the previous legislation, 'confirms the three constraints [the need for authorisation by the shareholders' meeting, the prohibition on the purchase of shares that are not fully paid up and the obligation to purchase them with sums taken from regularly ascertained profits, ed. All four are conditions for the legitimacy of the purchase. Still, their non-observance does not lead to the invalidity of the transaction, but rather to a duty of active conduct capable of restoring the situation of legality"

About the shareholders' meeting authorisation, we agree with Carbonetti when he points out that there are three reasons for the shareholders' meeting's prior authorisation of the purchase of their own shares. 'The first consists in the fact that the purchase of own shares entails....the creation of a restriction on a portion, equal to the price paid, of distributable profits and available reserves. However, this is a matter for the shareholders' meeting, which is responsible for deciding on the distribution of profits and the formation and use of reserves. ..... The second reason relates to the peculiar characteristic of the purchase of own shares, which is indeed an act of management but inevitably affects the composition of the share ownership, modifying it. The provision of the shareholders' meeting resolution ensures that this consequence is subject to debate and evaluation in the most appropriate forum, which allows all interested parties to participate. The third reason ... consists in the specific suitability of the resolution as an instrument of information for shareholders.

Article 2357 of the Civil Code further provided that the purchase had to be authorised by the shareholders' meeting, which set the terms and conditions, indicating, in particular, the maximum number of shares to be purchased, the duration, not exceeding eighteen months, for which the authorisation is granted, the minimum consideration and the maximum consideration. In no event may the nominal value of the shares purchased under the preceding paragraphs exceed one-tenth of the share capital. As a matter of accounting and management logic, the share capital to be referred to can only be subscribed by the shareholders. If one were to consider unsubscribed capital, one would be comparing two entities that are not homogeneous in accounting terms, a situation that is not conceivable in the situation envisaged by the new 1986 legislation.

Article 2357 bis identifies exceptions applicable to situations in which the limitations of Article 2357 of the Civil Code were not to be applied. Since there are no particular problems of interpretation, it is not deemed appropriate to repeat the contents of the article mentioned above.

Article 2357 explicitly explains what doctrine has been pointing out since the beginning of the 1900s without a specific reference standard. That article provides that the directors may only dispose of the shares acquired under the two preceding articles with the prior authorisation of the shareholders' meeting, which must establish the relevant terms. As long as the shares remain in the company's ownership, the right to profits and the pre-emptive right are attributed proportionally to the other shares. Voting rights are suspended, but the own shares are counted in the capital to calculate the shares required for the formation and resolutions of the shareholders' meeting.' The 1986 legislature explicitly imposed these principles to prevent improper conduct by the company's directors.

Article 2357 quater imposed a new rule that was absent in the previous legislation. The code stipulated that 'Under no circumstances may the company subscribe for its own shares. Shares subscribed in violation of the prohibition established in the preceding paragraph shall be deemed subscribed. They must be released by the promoters and founding shareholders or, in the event of an increase in share capital, by the directors. This provision shall not apply to those who prove they are not at fault. Any person who has subscribed in his own name but on behalf of the company for shares of the latter shall be deemed to be a subscriber for his own account. The promoters, founders, and, in the case of an increase in share capital, the directors shall be jointly and severally liable for the release of the shares unless they prove they are not at fault.

This rule is of indispensable utility today in order to avoid operations on share capital that can be defined as window dressing. Operations that, by carrying out a kind of make-up on the capital, make an inexpert reader see a situation that is very different from the one that exists.

The article mentioned above is one of the principal articles of the new legislation introduced by Presidential Decree 30/1986 in that it prevented the creation of accounting situations that were safe but were really fraudulent. The principle established by Article 2358 of the Civil Code was also present in the previous legislation, although structured in a less analytical manner.

At this point, the position of the accounting item in the balance sheet remains to be analysed.

Since Presidential Decree 30/1986 did not change the balance sheet, the structure of this document remained intact and, consequently, as was the case in the previous legislation, the own shares had to be shown, with a particular accounting entry, as part of the equity investments. Art. 2357 ter u.c. also stipulated that 'an unavailable reserve equal to the amount of the own shares recorded as an asset in the financial reporting must be established and maintained until the shares are transferred or cancelled. This rule required, in essence, that the unavailable reserve be shown due to the purchase of own shares. This requirement must be considered of particular relevance in the context of the accounting analysis of the item we are interested in.

1.4 Own shares in Legislative Decree No 22 of 16 January 1991 .

Own shares were also the subject of a legislative decree (16 January 1991 No. 22) concerning merger reform. Articles 2501-2504i underwent profound changes with this decree compared to the previous legislation. In particular, own shares were the subject of Article 14 of the decree mentioned above. With that article, the legislator decreed:

Art. 14.

" 1. The following is inserted after Article 2504-bis of the Civil Code:

'Art. 2504-ter (Prohibition of allotment of shares or quotas). - The company resulting from the merger may not assign shares or quotas in substitution for those of the merging companies held by the companies themselves, even through trust companies or persons.

The acquiring company may not allot shares or units in

The acquiring company may not allot shares or units in substitution for those of the merging companies held, even through trust companies or intermediaries, by the merging companies themselves or the acquiring company."

Apart from this provision, in Legislative Decree 22/91, there are no other rules concerning the own shares held by companies. Therefore, the regulatory intervention on own shares in Legislative Decree 22/1991 was, in reality, extremely reduced and limited even if important for the institutional set-up of post-merger companies.

1.5 The own shares of Legislative Decree No. 127 of 9 April 1991 (implementing the Fourth EEC Directive)

The intensification of relations - commercial and otherwise - between economic entities belonging to different nations; the development, in the financial and stock markets, of the trading of securities relating to foreign companies, and finally, the need, which in the 1970s was now generalised, that financial reporting (regardless of the underlying motives) could be correctly interpreted by anyone (even if resident in foreign countries) had made 'the need for accounting information to be realised... as uniformly as possible among the various countries increasingly felt. In as uniform a manner as possible between the various countries so that those interested in the knowledge of the companies could clearly understand what the equilibrium conditions of the companies themselves were, even if they operated in different countries':

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The formal and substantial differences in the financial reporting of companies belonging to different countries constitute, in the context of external reporting, a negative factor both because it prevents, or in any case makes it difficult, to compare the financial reporting of companies of different nationalities, and because the existence of such differences can lead to errors of interpretation on the part of the analyst due to unfamiliarity with the financial reporting structures adopted in foreign countries.

The attainment of a formal and substantial unity of financial reporting (which, however, at the same time takes into account the differentiations that characterise both the companies and the economic-financial structures of the various nations involved) was, in the 1970s, therefore, an objective that hopefully had to be achieved quickly.

The need for such a harmonisation led, as is well known, to the creation of numerous associations (e.g. IASC) whose aim is to issue accounting standards and promote their international acceptance.

Even the EEC, especially given the multiplication of intra-community economic relations, has intervened in this issue by formulating a Directive, the IV, containing principles for coordinating national provisions on corporations' financial reporting within the various member states.

Following the transposition of this Directive by all the EEC member states, the structural, terminological and content differences that distinguished the financial reporting drawn up at the time in the various member states were to be eliminated.

The EEC Directive, according to Art. 189 3c of the Treaty of Rome is an indirect act of the supranational regulatory power of the EEC (now EU). Due to its unique legal structure, the Directive, unlike the EU regulation, is not directly effective in the internal sphere of the member states.

In order for this source of legislation to take effect in the national sphere, it is therefore indispensable for the national legislators to prepare another act of adaptation.

Article 55 of the Fourth Council Directive 78/660/EEC established a time limit of two years (starting from notification), which could, at the discretion of the Member States, be extended by a further 18 months.

The Directive in question was introduced into our legislation by Legislative Decree 12/1991, a date far removed from 1978, i.e. from the date on which the Fourth EEC Directive was issued.

In 1986, by the Commission for the Study and Implementation of Community Directives established at the Ministry of Grace and Justice, an outline of a delegated law had been prepared for implementing the Directive in question, even in the absence of a delegated law. This scheme was revised in 1987. The new draft law provided for the implementation of the Fourth EEC Directive and the Seventh EEC Directive concerning consolidated accounts.

However, the enabling act that brought the two Directives into force in Italy was enacted as a gift in 1990 (Law No. 69 of 26 March 1990). This law enabled the enactment of Legislative Decree No. 127 of 9 April 1991, which radically changed the financial reporting for the financial year and regulated, in a structured manner, the issue of consolidated financial reporting.

The IV EEC Directive provided very profound changes in the balance sheet and profit and loss account structures compared to Italy before the European document was issued.

Since the subject of this work is its own shares, we will focus our attention only on the articles that, directly or indirectly, refer to this balance sheet item.

Regarding the balance sheet, Article 8 of the EEC Directive stipulated that 'For the presentation of the balance sheet, Member States shall provide for one or both of the layouts laid down in Articles 9 and 10. If a Member State provides for both, companies may be free to choose between the layouts.

he balance sheet formats (in the profit and loss account, of course, there were no references to own shares) required by the Fourth EEC Directive were as follows:

Art. 9

A. Unpaid subscribed capital

with an indication of the called-up part

(unless national law provides for the capital called up to be shown as a liability. In that case, the part of the capital called up but not yet

capital called up but not yet paid in must be shown under A on the assets side or under D II 5 on the assets side).

B. Start-up and expansion expenses

as defined by national law, provided that national law permits their capitalisation. National law may also provide for the entry of formation expenses as the first item under 'Intangible fixed assets'.

C. Fixed assets

I. Intangible fixed assets

1 . Expenditure on research and development in so far as national law permits its being capitalised.

2. Concessions, patents, licences, trademarks and similar rights and assets, provided they have been :
(a) acquired for valuable consideration and are not to be entered under C I 3,
or
(b) created by the undertaking itself, provided that national law permits their being capitalised.
3 . Goodwill, if acquired for consideration.
(a) acquired for consideration and are not to be entered under C I 3 ,
or
(b) created by the undertaking itself, in so far as national law permits their inclusion in the assets.
4. Payments on account .
II. Tangible Fixed Assets
1 . Land and buildings.
2. Technical installations and machinery.
3. Other plant, industrial and commercial equipment.
4. Payments on account and tangible fixed assets
in progress.
III. Financial fixed assets
1 . Investments in affiliated companies.
2. Receivables from associated companies.
3 . Equity investments.
4. Receivables from companies with which the company has an equity interest.
5 . Securities having the character of fixed assets.
6. Other loans.
7. Own shares or quotas (with an indication of their nominal value or, failing that, their accounting par value), provided that national law permits their inclusion in the balance sheet.
D. current assets
I. Stocks
1 . Raw and auxiliary materials.
2. Work in progress.
3 . Finished goods and merchandise.
4. Payments on account .
II . Receivables
(The amount of receivables with a residual term of more than one year must be indicated separately for each of the items below).
1 . Credits for supplies and services .
2. Receivables from associated undertakings.
3 . Receivables from companies with which the company has an equity interest.
4. Other receivables.
5. Subscribed capital, called up but not paid in (unless national law provides for called-up capital to be shown under asset item A).
6. Accruals and deferrals (unless national law requires accruals and deferrals to be entered under asset item E)..
III . Securities
1 . Investments in affiliated undertakings .
2. Own shares or units (with an indication of their nominal value or, failing that, their accounting par value), provided that national law permits their inclusion in the balance sheet.
3 . Other securities.
IV. Bank deposits, postal current accounts,
cheques and cash balances
E. Accruals and deferrals
(unless national law provides for the recording of accruals under D II 6
F. Loss for the year
Liabilities
A.Equity
I. Subscribed capital

(unless national law provides for the capital called up to be entered under this heading. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).
II. Surcharges
III. Revaluation reserve
IV. Reserves
1 . Legal reserve, if required by national law.
2. Reserve for own shares and own quotas if national law requires them to be set up without prejudice to Article 22(1)(b) of Directive 77/91 /EEC.
3 . Statutory reserves.
4. Other reserves.
V Retained earnings (losses)
B. Provisions for risks and charges
1 . Provisions for pensions and similar obligations
similar obligations.
2. Provisions for taxes.
3 . Other provisions.
C. Payables
(The amount of payables with a residual term of up to one year and the amount of payables with a residual term of more than one year are to be specified separately for each of the following items and for all of them).
1 . Debenture loans, specifying convertible ones
2. Amounts owed to credit institutions.
3. Advances received for orders unless deducted from stock.
4. Payables for purchases and services.
5. Payables represented by debt securities.
6. Payables to affiliated companies.
7. Payables to enterprises with which the company is linked by a participating interest.
8. Other liabilities, including tax liabilities and social security liabilities.
9. Accruals and deferrals (unless national law requires them to be recorded under D of liabilities).
D. Accruals and deferrals
(unless national law provides for their being shown under liability item
point C9 of the liabilities)
E. Profit for the year
Art. 10
A. Unpaid subscribed equity with an indication of the called-up part
(unless national law provides for the capital called up to be shown as a liability. In that case, the part of the capital called up but not yet capital called up, but not yet paid in, must be shown under A on the assets side or under D II 5 on the assets side).
B. Start-up and expansion expenses
as defined by national law, provided that national law permits their capitalisation. National law may also provide for the entry of formation expenses as the first item under 'Intangible fixed assets'.
C. Fixed Assets
I. Intangible fixed assets
1 . Expenditure on research and development in so far as national law permits its being capitalised.
2. Concessions, patents, licences, trade marks and similar rights and assets, provided they have been :
(a) acquired for valuable consideration and are not to be entered under C I 3 ,
or
(b) created by the undertaking itself in so far as national law permits their being shown as assets.
3 . Goodwill, if acquired for consideration.
4. Advances paid .
II. Tangible fixed assets
1 . Land and buildings .
2. Technical installations and machinery.
3. Other plant, industrial and

commercial equipment.
4. Payments on account and tangible fixed assets
in progress.
III. Financial fixed assets
1 . Investments in affiliated companies.
2. Receivables from associated companies.
3 . Equity investments.
4. Receivables from companies with which the company has a share
shareholdings.
5 . Securities in the nature of fixed assets.
6. Other loans.
7. Own shares or quotas (with an indication of their nominal value or, failing that, their accounting par value), provided that national law permits their inclusion in the balance sheet.
D. Current Assets
I. Stocks
1 . Raw and ancillary materials.
2. Work in progress.
3 . Finished goods and merchandise.
4. Payments on account .
II . Receivables
(The amount of receivables with a residual term of more than one year must be indicated separately for each of the items below).
1 . Credits for supplies and services .
2. Receivables from associated undertakings.
3 . Receivables from companies with which the company has an equity interest.
4. Other receivables.
5. Subscribed capital, called up but not paid in (unless national law requires called-up capital to be shown under asset item A).
6. Accruals and deferrals (unless national law provides for them to be shown under asset item E).
III . Transferable securities
1 . Investments in affiliated undertakings.
2. Own shares or units (with an indication of their nominal value or, failing that, their accounting par value), provided that national law permits their inclusion in the balance sheet.
3 . Other securities.
IV. Bank deposits, postal current accounts, cheques and cash balances
E. Accruals and deferrals
(unless national legislation provides for the recording of accruals and deferral
F. Debts with a residual maturity of more than one year
1 . Debenture loans specifying convertible debentures separately.
2. Amounts owed to credit institutions.
3. Advances received for orders provided they are not deducted separately from stocks.
4. Payables for purchases and services.
5 . Payables represented by debt securities.
6. Payables to associated companies.
7. Payables to enterprises with which the company is linked by a participating interest.
8. Other liabilities, including tax liabilities and social security liabilities.
9. Accrued liabilities and deferred income (unless national law requires their recognition under item K).
G. Current assets (including accruals when indicated under E) after deduction of debts with a residual maturity not exceeding one year (including accruals indicated under k).
H. Total amount of assets after deduction of
of debts with a residual maturity not exceeding
than one year
F. Debts with a residual maturity not exceeding one
year

1 . Debenture loans specifying convertible debentures separately.
2. Debts owed to credit institutions.
3 . Advances received for orders unless deducted separately from stock.
4. Payables for purchases and services.
5. Payables represented by debt securities.
6. Payables to affiliated companies.
7. Payables to enterprises with which the company is linked by a participating interest.
8. Other liabilities, including tax liabilities and social security liabilities.
9. Accrued liabilities and deferred income (unless national law requires their recognition under item K).
J. Provisions for liabilities and charges B. Provisions for risks and charges
1 . Provisions for pensions and similar obligations
similar obligations.
2. Provisions for taxes.
3 . Other provisions.
K. Accruals and deferrals(unless national law requires them to be entered under F9 or I9)
L. Equity
I. Subscribed equity
(unless national law provides for the capital called up to be shown under this heading. In that case, the amounts of subscribed capital and paid-up capital are to be stated separately).
II. Additional paid-in capital
III. Revaluation reserve
IV. Reserves
1 . Legal reserve, if national legislation requires it to be set up.
2. Reserve for own shares and own quotas if national law requires them to be constituted without prejudice to Article 22(1)(b) of Directive 77/91 /EEC.
3 . Statutory reserves.
4. Other reserves.
V Retained earnings/losses carried forward
VI. Profit/Loss for the Year

As can be seen, the two articles of the Fourth EEC Directive provided for partially differentiated balance sheet structures. Legislative Decree No. 127/91 implemented choices, with regard to the balance sheet format, that in part recalled Article 9 of the Directive and, in part, were the application of rules provided for in Article 10 of the aforementioned Directive.

New Article 2424 of the Italian Civil Code introduced by Legislative Decree 127/91:
Art. 5. Legislative Decree 127/91
1. Article 2424 of the Civil Code is replaced by the following:
Art. 2424 (Contents of the balance sheet). -- The balance sheet shall be prepared in accordance with the following format.
Assets :
A) Receivables from shareholders for payments still due, with separate indication of the part already called up.
B) Fixed assets:
I - Intangible fixed assets :
1) start-up and expansion costs;
2) research, development and advertising costs;
3) industrial patent rights and rights to use intellectual property;
4) concessions, licences, trademarks and similar rights;
5) goodwill;
6) assets under construction and advances;
7) other.
Total.
II - Tangible fixed assets :
1) land and buildings
2) plant and machinery;
3) industrial and commercial equipment;

4) other assets;
5) fixed assets under construction and advances.
Total.
III - Financial fixed assets , with separate indication, for each item of receivables, of the amounts due within one year:
1) equity investments in:
(a) subsidiary companies;
b) associated companies;
c) other companies;
2)receivables:
(a) from subsidiary companies
b) from associated companies;
c) from parent companies;
d) from others;
3) other securities;
4) own shares, also with indication of total nominal value.
Total.
Total fixed assets (B);
C) Current assets:
I - Inventories :
1) raw, ancillary and consumable materials;
2) work in progress and semi-finished products;
3) contract work in progress;
4) finished products and goods;
5) payments on account.
Total.
II - Receivables , with separate indication, for each item, of amounts due beyond the next financial year
following year:
1) from customers;
2) from subsidiary companies;
3) due from associated companies;
4) from parent companies;
5) due from others.
Total.
III - Financial assets not constituting fixed assets
1) equity investments of subsidiary companies;
2) equity investments of affiliated companies;
3) other participations;
4) own shares, also with indication of total nominal value;
5) other securities.
Total.
IV - Cash and cash equivalents :
1) bank and postal deposits;
2) cheques;
3) cash and cash equivalents on hand.
Total.
Total current assets (C).
D) Accruals and deferrals, with separate indication of discount on loans.
Liabilities and Equity:
A) Equity:
I - Equity .
II - Share premium reserve .
III - Revaluation reserves .

IV - Legal reserve .
V - Reserve for own shares in portfolio .
VI - Statutory reserves .
VII - Other reserves, separately indicated .
VIII - Profit (loss) carried forward .
IX - Profit (loss) for the year .
Total .
B) Provisions for liabilities and charges :
1) for pensions and similar obligations ;
2) for taxes;
3) others.
Total.
C) Reserve for employee severance indemnities.
D) Payables, with separate indication, for each item, of amounts due beyond the next financial year
following financial year:
1) bonds;
2) convertible bonds;
3) due to banks;
4) due to other lenders;
5) payments on account;
6) accounts payable to suppliers;
If an asset or liability item falls under more than one heading in the scheme, the notes to the financial statements shall
necessary for an understanding of the financial statements, a note shall be made in the notes to the financial statements to the effect that it belongs to
even to items other than the one under which it is entered.
At the foot of the balance sheet, the guarantees given directly or indirectly, distinguishing between sureties, endorsements, other guarantees and collateral, and indicating separately for each type of guarantee the guarantees provided in favour of subsidiaries and affiliated undertakings, as well as in favour of parent companies and undertakings controlled by the latter: the other memorandum accounts must also be shown.
(IV Direttive CEE, articles 9, 13 e 14).
Art. 6.
1. The following is inserted after Article 2424 of the Civil Code
'Article 2424- bis (Provisions relating to individual balance sheet items). -- Assets intended to be used long-term shall be entered under fixed assets. Equity investments in other companies to an extent equal to those established in the third paragraph of Art. 2359 are presumed to be fixed assets. Provisions for liabilities and charges are only intended to cover losses or debts of a definite nature, of certain or probable existence, the amount or date of occurrence of which, however, could not be determined at the close of the financial year.
The amount calculated by Art. 2120 must be indicated in the item' staff leaving indemnities'.
Accrued income and prepaid expenses must be entered under accrued income and prepaid expenses for the financial year, payable in subsequent years, and costs incurred before the end of the financial year but about subsequent years. Accrued expenses and deferred income are to be recorded for costs accruing during the financial year. Still, they are collectable in the following years, and income is received by the end of the financial year but accruing in subsequent years.
Of subsequent years. Only portions of costs and income expected for two or more financial years, the amount of which varies over time, may be entered under these headings.'.
(IV Directive, Articles 15, 17, 18 and 21).
It can be seen from the above that the entry into force of the new Article 2424 of the Italian Civil Code has made numerous changes to what the legislator had previously imposed. In summary terms, the accompanying report to Legislative Decree 127/91 highlights the following changes:
'Art. 4. The article brings together general rules on the structure of the accounting documents constituting the financial statements, taken from Articles 4 and 7 of the directive, and makes exceptions (paragraph 1) to the particular laws regulating the financial reporting schemes of companies that perform specific activities.

The rules resulting from the rule under comment are much stricter than those hitherto in force: the structures envisaged by Articles 2424 and 2425 become true financial statement schedules, the order of the groups of items and of the individual items must be respected, whereas the grouping of items is permitted only in the cases indicated by the second paragraph, and the adjustment of items is permitted (and then also imposed) only in the case indicated by the fourth paragraph.

The 'option' (provided for in Article 4(1) of the directive) to add new items where their content is not included in any of those specified by law has been translated into an 'obligation', not because of a stricter orientation, but because it did not seem logically possible to find a solution other than adding a new item where the asset or income component really cannot be included in any of the legally typical items.

Other than the addition of a new item, where indeed the asset or income component cannot be included, by interpretation, in any of the legally typical items.

The fifth paragraph realises--by Article 4(4) of the Directive--the need for an immediate comparison with the financial reporting figures of the preceding financial year.

Article 5. Of the two balance sheet formats provided for by Articles 9 and 10 of the Fourth Directive, the one adopted--by the explicit provision of the enabling act, Article 1(b)--is in the form of opposing columns.

The structure envisaged by the directive has been slightly adapted, in the sense of greater analyticality, both to take account of the peculiarities of the Italian legal system (as in the case of liability item C, introduced to distinguish the staff leaving indemnity provision - which represents a real debt, albeit of indefinite duration - from the provisions for various pensions), and to preserve some distinctions of items already existing in the current regulations (as in the case of asset items B 1, 3 and 4, C IV, 1, 2 and 3). It was also preferred, for reasons of understandability, to enter bank debts and debts to other financiers (D 3 and 4), tax debts and social security debts (D 11 and 12) under separate items and to introduce some closing items to minimise the need for the individual company to create new items using the third paragraph of Art. 2423 ter (asset items 'other' fixed assets B I 7, 'other assets' B II 4 and 'other participations' C III 3). I

Few item designations require clarification.

In asset item B I 4, alongside concessions, licences and trademarks, the wording 'and similar rights' has been introduced - as provided for in the directive - since in an ever-changing field such as that of rights in intangible assets, the creation of legal relationships other than those known today cannot be excluded.

In asset item B III 1, the term 'enterprises' subsidiaries has been used instead of 'companies' given the possibility of participation in business ventures that do not belong to the corporate form.

With raw materials and consumables, ancillary materials, i.e. those intended to be used to supplement products (e.g. packaging), must be entered (asset, C I 1).

It seemed appropriate to separate work in progress on orders (item C I 3) from work in progress and semi-finished goods (C I 2), both because the term 'semi-finished goods' is ill-suited to large constructions in progress based on contracts and because a different valuation criterion is applied to work in progress on orders than to goods produced for stock.

The discount on loans has been treated as a hypothesis of deferred income, to be entered under D (but with a separate indication), and the loan premium as a hypothesis of deferred income (separate indication under E of liabilities). Under liabilities, while item D II refers to certain tax liabilities, for tax liabilities that are only probable or of undetermined amount, a provision like a provision for liabilities and charges must be entered under item B 2.

Item A IX of the liabilities corresponds to item 26 of the income statement, which will be explained under item 7.

Finally, it was deemed valid, also given the size of the scheme, to require posting a series of totals to facilitate comparison between categories of balance sheet items.

The second paragraph of the new Art. 2424 solves, by Art. 13 of the IV Directive, the problem of recognising balance sheet items that fall under the definition of several items.

The last paragraph lays down rules for memorandum accounts, focusing in particular on guarantee obligations, of which an in-depth analysis is required; it also refers, however, by the final formula 'other memorandum accounts', to other risk accounts and commitment accounts.

Art. 6. The provision implements the provisions of Articles 15(1) and (2), 17, 18, 20 and 21 of the Fourth Directive.

It was not considered necessary to define the content of the heading 'land and buildings' as provided for in Article 16, since it is not disputed in practice or in doctrine; the opportunity of a definition of 'other rights assimilated' to (real) property rights could have been taken to regulate the financial reporting treatment of (immovable or movable) leased assets: but an express delegation would have been necessary since the directive refers to 'assimilated rights as defined by national law'.

The definition in Article 19 of the directive has not been reproduced, as it seemed clearer to use, in Articles 7 (new Article 2425 of the Civil Code) and 10 (new Article 2427 of the Civil Code), the expression 'value adjustments' in the neutral meaning of changes in value upwards or downwards, and the expressions 'write-downs' for downwards adjustments, 'revaluations' for upwards adjustments, and 'depreciation' in the traditional meaning of the term.

Again, for the sake of comprehensibility and simplicity, it was preferred to adopt a different terminology from that of Article 17 of the Directive, continuing to use the word 'participations' in a generic sense (as in the current Articles 2424 and 2425), and then to distinguish the participations constituting fixed assets--defined by the first paragraph of the article under review, with the relative presumption of the second paragraph--from the participations not constituting fixed assets.

Paragraph 3 of Art. 2424a clarifies the limits within which provisions for risks and charges may be entered as liabilities; it follows that, as stipulated in Art. 20(3) of the Fourth Directive, liability items are no longer permitted to adjust asset values. Write-downs of assets against their value in the preceding year will, therefore, only be shown in the profit and loss account (Art. 7, items 10, 19; implicitly, items 3 and 11) and will be disclosed in the notes to the accounts (Art. 10 (1) and (4)); the total amount of depreciation of depreciable assets will be disclosed in the notes to the accounts (Art. 10 (2)) unless it is preferred to reveal the gross value, the depreciation already effected and the net value in separate columns in the assets. The fourth paragraph, which is not provided for in the directive, specifies the meaning of the item 'severance pay', which is characteristic of our legal system. The fifth paragraph implements, with a broad definition but made opportune by widespread uncertainties in practice, Article 21 of the Fourth Directive, delimiting the concepts of accruals and deferrals. '

From the above and analytical reading of the new Article 2424 of the Italian Civil Code, introduced by Legislative Decree 127/91, it can be seen that the structure of the balance sheet has undergone a radical change in the founding principles of this document. There are better places to delve into this issue than this one. In this context, it is relevant to note the changes concerning the item of own shares, already present in the previous Article 2424 of the Italian Civil Code.

There are three changes made to the balance sheet layout regarding own shares:

1) The introduction, in item III financial fixed assets, of item 4) own shares, also indicating the total nominal value.

2) The introduction, in item II, is financial assets not constituting financial fixed assets, of item 4) own shares, with an indication of the total nominal value.

3) The introduction in Equity of item V Reserve owns shares in the portfolio.

An analysis of the three amendments made to the balance sheet by Legislative Decree 127/91 shows that own shares remain in the assets of the balance sheet, similarly to equity investments, with the difference, compared to previous legislation, that Article 2424 of the Civil Code requires a differentiation between fixed and current own shares. The entire amount of the own shares must be equal to the value of the own shares in portfolio reserve, which identifies a reserve that is unavailable as long as the own shares remain in the company's assets.

We will discuss these items in more detail in the next chapter, where we will analyse the situation as of 31/12/2015, while in the following chapter we will address the legislation amended on 1/1/2016 with Decree 34/2015.

1.6 Own shares in Law No. 149 of 18 February 1992, EU Directive 92/101/EEC of 23 November 1992 and Legislative Decree No. 315 of 2 May 1994.

In 1992, some changes were made to the rules on own shares. Article 12 of Law No. 149 of 18/2/1992 stipulated that:

Art 12.

1. Purchases of own shares, made under Article 2357 and Article 2357bis, first paragraph, No. 1) of the Civil Code, by companies whose shares are quoted on the stock exchange, must be made on the stock exchange at the closing call.

2. The provision referred to in Paragraph 1 shall also apply to acquisitions of listed shares made under Article 2359bis of the Civil Code by a subsidiary.

3. The penalties provided for in Article 2630(1) of the Civil Code shall apply to breaches of the provisions referred to in paragraphs 1 and 2.

4. The provisions of paragraphs 1 and 2 do not apply to the purchase of own shares or shares of the parent company held by employees of the issuing company and assigned to them under Article 2349 of the Civil Code or subscribed by them under the last paragraph of Article 2441 of the same Code.

5. The following words shall be added to Article 4, paragraph 1, no. 2) of the Decree-Law above no. 95 of 1974, converted, with amendments, by the Law mentioned above, no. 216 of 1974, and subsequent amendments and additions: 'as well as, within the same term, proposals for authorisation to purchase or dispose of own shares'.

The above was imposed by Article 12 of Law 149/92 and reiterated by Article 132 of Legislative Decree No. 58 of 24 February 1998. The primary purpose of the latter legislation was to complete the legislation with a rule guaranteeing equal treatment of shareholders. Article 132 of Legislative Decree No.58 of 24 February 1998 reads:

1) 'Purchases of own shares, effected under Articles 2357 and 2357-bis, paragraph 1, no. 1, of the Civil Code, by companies with listed shares must be effected using a public purchase or exchange offer or on the market, by procedures agreed upon with the market management company to ensure equal treatment of shareholders.
2) Paragraph 1 shall also apply to acquisitions of listed shares made under Article 2359-bis of the Civil Code by a subsidiary.
3) Paragraphs 1 and 2 do not apply to purchases of own shares or those of the parent company held by employees of the issuing company, its subsidiaries or the parent company and assigned or subscribed to under Articles 2349 and 2441(8) of the Civil Code.
To supplement the above regulations, a new EEC Directive was issued in 1992, Directive No. 92/101/EEC, which supplemented the previous EEC Directive 77/91/EEC. EEC Directive No. 92/101/EEC was applied in Italy following the issuance of Legislative Decree No. 315 of 2 May 1994, which introduced Articles 2357 ter, 2357 quarter and 2357 quinces into the code, which partially amended the previous legislation.
The two new articles provided as follows:
Article 2359-ter required:
'Shares or quotas acquired in violation of Article 2359-bis must be disposed of in a manner to be determined by the shareholders' meeting within one year of their acquisition. Failing this, the parent company must proceed without delay to their cancellation and the corresponding capital reduction, with reimbursement by the criteria indicated in Articles 2437-ter and 247-quarter. Suppose the shareholders' meeting fails to do so. In that case, the directors and auditors must request that the court order the reduction by the procedure outlined in Article 2446, second paragraph.'
Article 2357c provided:
'The limitations of Article 2359-bis do not apply when the purchase is made under numbers 2, 3 and 4 of the first paragraph of Article 2357-bis.
However, the shares or quotas thus acquired, which exceed the limit established by the third paragraph of Article 2359-bis, must be disposed of, by procedures to be determined by the shareholders' meeting, within three years of acquisition. The second paragraph of Article 2359-ter shall apply.
If the limit indicated in the third paragraph of Article 2359-bis is exceeded as a result of circumstances that have arisen, the parent company, within three years of the circumstance that caused the limit to be exceeded, must cancel the shares or quotas in proportion to those held by each company, with a consequent reduction in share capital and repayment to the subsidiaries in accordance with the criteria indicated in Articles 2437-ter and 2437-quater. If the shareholders' meeting fails to do so, the directors and auditors must request that the reduction be ordered by the court in accordance with the procedure set forth in Article 2446, second paragraph.'
Article 2359-quinquies states:
'The subsidiary company may not subscribe to shares or quotas of the parent company. Shares or quotas subscribed in violation of the preceding paragraph are deemed subscribed and must be released by the directors, who do not prove that they are not at fault. Any person who has subscribed in his own name, but on behalf of the subsidiary, for shares or quotas of the parent company shall to all intents and purposes be considered a subscriber for his own account. The directors of the subsidiary company who do not prove that they are not at fault shall be jointly and severally liable for the release of the shares or units.'

As can be understood by reading the above articles, the regulations introduced by Legislative Decree No. 58 of 24 February 1998 and by Legislative Decree No. 315 of 2 May 1994 affected, to a considerable extent, the availability and limits of own shares but did not affect the accounting of this item in the context of financial reporting. Therefore, all of the rules concerning the accounting treatment of this item remained intact and unchanged.

1.7 Le own shares n1.7 Own shares in Legislative Decree No. 6 of 17.01.2003 (Corporate Reform)
Also, the Corporate Reform 2003, regulated by Legislative Decree No. 6 of 17/1/2003, did not address the issue of accounting for own shares but intervened in the general regulations governing the limits and use of such securities.
In particular, the reform substantially modified Article 2357 ter by establishing certain principles that differed from what was established in the previous legislation:
1) Firstly, it was established that each shareholder's resolution could be used for several share purchase or disposal transactions and not for only one of these transactions. However, the new legislation confirmed the limits previously imposed, which coincided with the 18 months for which the power had been granted and that the duration was exhausted in the 18 months from when the power was granted;
2) Secondly, the possibility of retaining the pre-emptive right at the head of the own shares had been provided for, in contrast to what had previously been provided for (in the previous legislation, there was an obligation that both the right to profits and the pre-emptive right be assigned to all the other shares in proportion

3) With the reform, a fifth paragraph was also introduced to Article 2357-quater, which provided for the company's obligation to redeem the shares to the shareholder if it was unable to sell them to other shareholders, using available reserves. The derogation was allowed to favour a shareholder who had an urgent need to sell the shares he owned.

In summary, therefore, the 2003 reform introduced these articles:

Article 2357 ter:

'The directors may not dispose of the shares acquired by the two preceding articles except with the authorisation of the shareholders' meeting, which must establish the relative terms. To this end, successive purchase and disposal transactions may be envisaged within the limits established by the first and second paragraphs of Article 2357.

As long as the shares remain in the ownership of the company, the right to profits and the right of pre-emption are attributed proportionally to the other shares; the shareholders' meeting may, however, authorise the total or partial exercise of the right of pre-emption under the conditions laid down in the first and second paragraphs of Article 2357. Voting rights are suspended, but the own shares are counted in the capital to calculate the shares required for the formation and resolutions of the shareholders' meeting.

A non-distributable reserve equal to the amount of the own shares shown on the assets side of the financial reporting must be established and maintained until the shares have been transferred or cancelled.'

The fifth paragraph of Article 2357 quater, added with the 2003 reform, read as follows:

'In the event of non-placement pursuant to the provisions of the preceding paragraphs, the shares of the former shall be redeemed by purchase by the company using available reserves also in derogation of the provisions of the third paragraph of Article 2357'.

As can be seen, even in this reform, the accounting for own shares and the reserve of own shares in portfolio did not undergo any changes compared to the previous legislation.

1.8 Own shares in Directive 2006/68/EEC of 6 September 2006, implemented by Legislative Decree No. 142 of 04 August 2008.

EEC Directive 68 of 6 September 2006 addressed the issue of companies with particular reference to contributions and own shares. This directive amended EEC Directive 77/91/EEC on several pointsEEC Directive 68 of 6 September 2006 addressed the issue of companies with particular reference to contributions and own shares. This directive amended EEC Directive 77/91/EEC on several points.

Of particular interest, concerning our focus of analysis, are the following articles:

Article 1 No. 4 of Directive 2006/68/EEC requires: 'Article 19(1) shall be replaced by the following: Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Community Directive 2003/6/EEC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), a Member State may authorise a company to acquire own shares, either directly or through a person acting in his name but on behalf of that company. To the extent that such acquisitions are authorised, Member States make them subject to the following conditions:

Of particular interest, concerning our focus of analysis, are the following articles:

Article 1 No. 4 of Directive 2006/68/EEC requires: 'In Article 19, paragraph 1 shall be replaced by the following: Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Community Directive 2003/6/EEC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), a Member State may authorise a company to acquire own shares, either directly or through a person acting in his name but on behalf of that company. To the extent that such acquisitions are authorised, Member States shall make them subject to the following conditions:

(a) Authorisation shall be granted by the shareholders' meeting, which shall determine the terms and conditions thereof, in particular the maximum number of shares to be acquired, the period for which authorisation is granted, the maximum duration of which

shall be determined by national law but which, in any event, may not exceed five years, and, in the case of acquisition for consideration, the minimum consideration and the maximum consideration. The members of the administrative or management body shall ensure that, for each authorised acquisition, the conditions under (b) and (c) are met;

LThe acquisitions, including shares previously acquired by the company and held in its portfolio, as well as shares acquired by a person acting in his own name but on behalf of the company, may not have the effect of reducing the net assets below the amount referred to in Article 15 (1) (a) and (b) (i.e. the net assets may not be reduced below the amount of the subscribed capital and reserves which may not be distributed n.o.s.);

(b) The transaction may only relate to fully paid-up shares.

Further, Article 1 n. 6 of Directive 2006/68/EEC states: 'Article 23(1) shall be replaced by the following: Where a Member State permits a company to, directly or indirectly, advance funds, grant loans or provide security for the acquisition of its shares by a third party, it shall make such transactions subject to the conditions set out in the second, third, fourth and fifth subparagraphs. The transactions shall take place under the responsibility of the administrative or management body under fair market conditions, in particular regarding interest paid and security provided to the company for the loans or advances of funds referred to in the first subparagraph. The creditworthiness of the third party or, in the case of multilateral transactions, of each counterparty shall be duly assessed. The administrative or management body shall submit the transaction to the general meeting for prior approval, which shall act according to the rules on quorum and the majority laid down in Article 40.The administrative or management body shall submit to the shareholders' meeting a written report explaining the reasons for the transaction, the risks involved for the company's liquidity and solvency and the price at which the third party will acquire the shares. The report shall be forwarded to the register for subsequent publication under Article 3 of Directive 68/151/EEC. The total amount of financial assistance provided to third parties shall at no time result in the reduction of the net assets of the company below the amount referred to in Article 15(1)(a) and (b), taking into account also any reduction of the net assets resulting from the purchase, by the company or on its behalf, of own shares by Article 19(1). The company shall include an unavailable reserve equal to the total amount of financial assistance in the liabilities of the financial reporting. Where a third party, receiving financial aid from the company, acquires from the company's own shares as referred to in Article 19 (1) or subscribes for shares issued as part of an increase in subscribed capital, such acquisition or subscription shall be made at a fair price.'

CEE Directive 68/2006 was implemented, as already mentioned, by Legislative Decree No. 142 of 4 August 2008: Implementation of Directive 2006/68/EC amending Directive 77/91/EEC in respect of the formation of public limited liability companies and the maintenance and alteration of their capital.

With this D. 142/2008, some articles of the code were amended and new rules were introduced. In particular:

- In Article 2329, number 2), the words: ‘and 2343’ are replaced by the following: ‘, 2343 and 2343-ter’.
- The following are inserted after Article 2343-bis:

‘Article 2343-ter

Contribution of assets in kind or receivables without an appraisal report

Article 2343-quater

Exceptional or significant events affecting the valuation

-Article 2440 shall be amended as follows

- a) in the first paragraph the words: ‘and 2343’ are replaced by the following: ‘2343, 2343-ter, and 2343-quarter;
- b) the following second paragraph is inserted after the first paragraph: ‘The declaration referred to in Article 2343-quarter shall be attached to the certificate referred to in Article 2444.

-After Article 2440, the following Article is inserted: ‘Article 2440-bis

Increase in delegated capital paid in by contributions in kind and receivables without an appraisal report

Articles 2357 and 2358 of the Italian Civil Code have been amended about own shares. In particular, Legislative Decree 142/2008 provided as follows:

-The third paragraph of Article 2357 is replaced by the following: ‘The nominal value of the shares acquired under the first and second paragraphs by companies resorting to the risk capital market may not exceed one-tenth of the share capital, taking into account for this purpose also the shares held by subsidiaries.”

- Article 2358 shall be replaced by the following:

'Article 2358

Other transactions involving its shares

The company may not, directly or indirectly, grant loans or provide guarantees for the purchase or subscription of its shares except under the conditions outlined in this article.

Such transactions shall be authorised in advance by the extraordinary shareholders' meeting.

The company's directors shall prepare a report illustrating, from a legal and economic perspective, the transaction, describing its conditions, highlighting the business reasons and objectives that justify it, the specific interest the transaction presents to the company, the risks it entails for the company's liquidity and solvency, and indicating the price at which the third party will acquire the shares. In the report, the directors also certify that the transaction is taking place at market conditions, particularly regarding the guarantees provided and the interest rate charged for the repayment of the loan, and that the counterparty's creditworthiness has been duly assessed. The report shall be filed at the company's registered office thirty days before the meeting. The minutes of the meeting, accompanied by the directors' report, shall be filed within thirty days for registration in the commercial register.”

By way of derogation from Article 2357-ter, when the sums or guarantees provided under this Article are used to purchase shares held by the company in accordance with Articles 2357 and 2357-bis, the extraordinary shareholders' meeting shall authorise the directors to dispose of such shares using the resolution referred to in the second paragraph. The purchase price of the shares is determined in accordance with the criteria set out in the second paragraph of Article 2437-ter. In the case of shares traded on a regulated market, the purchase price shall be at least equal to the weighted average price at which the shares were traded during the six months preceding the publication of the notice of call of the shareholders' meeting.

If the company arranges loans or provides guarantees for the purchase or subscription of own shares to individual directors of the company or of the parent company or to the parent company itself or third parties acting in their own name and on behalf of the aforesaid persons, the report referred to in the third paragraph shall also certify that the transaction is in the best interest of the company.

L'importo complessivo delle somme impiegate e delle garanzie fornite ai sensi del presente articolo non può eccedere il limite degli utili distribuibili e delle riserve disponibili risultanti dall'ultimo financial reporting regolarmente approvato, tenuto conto anche dell'eventuale acquisto di proprie azioni ai sensi dell'articolo 2357. Una riserva indisponibile pari all'importo complessivo delle somme impiegate e delle garanzie fornite è iscritta al passivo del bilancio.

La società non può, neppure per tramite di società fiduciaria, o per interposta persona, accettare own shares in garanzia. Salvo quanto previsto dal comma sesto, le disposizioni del presente articolo non si applicano alle operazioni effettuate per favorire l'acquisto di azioni da parte di dipendenti della società o di quelli di società controllanti o controllate.

Resta salvo quanto previsto dagli articoli 2391-bis e 2501-bis.».

Reading the above, it is clear that the only substantial change concerns the limit on the ownership of own shares, which under the new Article 2347 of the Civil Code may not exceed one-fifth of the share capital only for companies that have recourse to the risk market. For other companies, any limit has been eliminated except that the first paragraph of Article 2357 prohibits the purchase of own shares for an amount exceeding the total amount of distributable profits and available reserves resulting from the last approved financial reporting.

With the reform of Legislative Decree 142/2008, the obligation to show an unavailable reserve defined as a Reserve for the purchase of own shares in the portfolio is confirmed.

As can be seen, regarding the accounting of own shares in financial reporting, Legislative Decree 142/2008 did not make any substantial changes to the previous regulations

1.9 Le own shares in the UE Directive 2013/34/UE and the D. Lgs. N.139 18/8/ 2015

EU Directive No. 34 of 2013 introduced significant novelties in accounting for own shares in financial reporting and concerning the management of these securities. In order to avoid unnecessary repetition of articles and regulatory principles, we will report below only the contents of Legislative Decree 13) of 18 August 2015, which introduced, in our country, the legal principles established by Directive 2013/34/EU.

Focusing our attention on the focus of the analysis of this text, i.e. the accounting of own shares in the financial statements, the changes made by Legislative Decree 13/2015, compared to what was established before the reform, can be summarised as follows:

1) article 6 paragraph 1 of Legislative Decree 139/2015: amendment of article 2357-ter,

2) Article 6 paragraph 1 of Legislative Decree 139/2015: amendment of Article 2424

3) Article 6 paragraph 1 of Legislative Decree 139/2015: amendment of Article 2424-bis.

Following these amendments, the aforementioned articles have been modified as follows:

In seguito a queste modifiche, gli articoli citati sono stati così modificati:

Art. 2357-ter.

Disciplina delle proprie azioni.

Following these amendments, the articles above were amended as follows:

Art. 2357-ter.

Discipline over own shares.

The directors may not dispose of the shares acquired by the two preceding articles except with the authorisation of the shareholders' meeting, which must establish the related procedures. To this end, subsequent purchase and disposal transactions may be envisaged within the limits established by the first and second subsections of Article 2357.

As long as the shares remain in the company's ownership, the right to profits and the right of pre-emption are attributed proportionally to the other shares. Voting rights are suspended, but the own shares are counted to calculate the majorities and quotas required for the constitution and passing resolutions at the shareholders' meeting. In companies that use the venture capital market, the calculation of own shares is governed by Article 2368 (3).

As long as the shares remain in the company's ownership, the right to profits and pre-emptive rights are allocated proportionally to the other shares. Voting rights are suspended, but the own shares are counted to calculate the majorities and quotas required for the constitution and passing resolutions at the shareholders' meeting. In companies that make use of the venture capital market, the computation of own shares is governed by Article 2368 (3).

The purchase of own shares leads to a reduction of equity by the same amount, through the entry of a specific item, with a negative sign, under equity in the financial reporting.

Art. 2424.

The balance sheet must be prepared in accordance with the following schedule.

Assets:

A) Receivables from shareholders for payments still due, with separate indication of the portion already called up.

B) Fixed assets, with separate indication of leased assets:

I) Intangible fixed assets:

1) start-up and expansion costs;

2) development costs;

3) industrial patent rights and rights to use intellectual property;

4) concessions, licences, trademarks and similar rights;

5) goodwill;

6) assets under construction and advances;

7) other.

Total.

II) Tangible fixed assets:

1) land and buildings;

2) plant and machinery;

3) industrial and commercial equipment;

4) other assets;

5) fixed assets under construction and advances.

Total.

III) Financial fixed assets, with separate indication, for each item of receivables, of the amounts due within one year:

1) equity investments in:

(a) subsidiary companies;

(b) associated undertakings;

(c) parent undertakings;

(d) undertakings controlled by parent companies;

(d-bis) other companies;

2) receivables:

(a) from subsidiary undertakings

(b) from associated companies;

(c) from parent companies;

d) from companies subject to the control of parent companies; d-bis) from others;

(d-bis) due from others;

3) other securities;

4) derivative financial instruments receivable;

Total.

Total fixed assets (B)

C) Current Assets:

I) Inventories:

1) raw, ancillary and consumable materials;

2) work in progress and semi-finished products;

3) contract work in progress;

4) finished products and goods;

5) payments on account.

Total.

II) Accounts Receivable, with separate indication, for each item, of amounts due after one year:

1) from customers;

2) from subsidiary companies;
3) from associated companies;
4) from parent companies;
5) from companies subject to the control of parent companies;
5-bis) tax receivables;
(5-ter) deferred tax assets;
5-quater) due from others; (6)
Total.
III) Financial assets not constituting fixed assets
1) equity investments in subsidiaries
2) equity investments in affiliated companies;
3) equity investments in parent companies;
3-bis) equity investments in companies controlled by parent companies;
4) other equity investments;
5) derivative financial instruments receivable;
6) other securities.
Total.
IV) Cash and cash equivalents
1) bank and postal deposits;
2) cheques;
3) cash on hand.
Total.
Total current assets (C).
(D) Accruals and deferrals.
Total.
IV) Liquid assets:
1) bank and postal deposits;
2) cheques;
3) cash
Total.
Total current assets (C).
D) accruals and deferrals
Liabilities and Equity:
A) Equity:
A) Equity:
I - Capital.
II - Share premium reserve
III - Revaluation reserves.
IV - Legal reserve.
V - Statutory reserves.
VI - Other reserves, shown separately.
VII - Reserve for expected cash flow hedging transactions.
VIII - Retained earnings (losses).
IX - Profit (loss) for the year.
X - Negative reserve for own shares in portfolio.
Total.
B) Provisions for liabilities and charges
1) for pensions and similar obligations;
2) for taxes, including deferred taxes;
3) derivative financial instruments payable;
4) others.
C) Reserve for employee severance indemnities.

D) Payables, with separate indication, for each item, of amounts due beyond one year:
1) bonds;
2) convertible bonds;
3) due to shareholders for loans;
4) due to banks;
5) amounts due to other lenders;
6) payments on account;
7) accounts payable to suppliers;
8) payables represented by credit instruments;
9) payables due to subsidiaries;
10) payables to associated companies;
11) payables to parent companies;
11-bis) payables to companies subject to the control of parent companies;
12) tax payables;
13) payables to pension and social security institutions;
14) other payables.
Total.
E) Accrued liabilities and deferred
If an asset or liability item falls under more than one heading of the balance sheet, the notes to the financial statements shall, where necessary for an understanding of the financial statements, also disclose that it falls under other headings than the one under which it is recorded.
This is without prejudice to the provisions of Article 2447-septies with reference to the assets and legal relationships included in the assets intended for a specific business transaction pursuant to letter a) of the first paragraph of Article 2447-bis.
Provisions for individual balance sheet items.
Assets that are to be used on a long-term basis are to be capitalised as fixed assets.
Participations in other enterprises, to an extent equal to those stipulated in the third paragraph of Article 2359, are presumed to be fixed assets.
Provisions for liabilities and charges are only intended to cover losses or debts of a definite nature, of certain or probable existence, the amount or date of occurrence of which, however, could not be determined at the close of the financial year.
The amount calculated by Article 2120 must be indicated under the heading: ‘staff leaving indemnities’.
Assets subject to forward sale and purchase agreements must be recognised in the seller's balance sheet.
Under accrued income and prepaid expenses, revenue for the year falling due in subsequent years and costs incurred before the end of the year but accruing in subsequent years must be recognised. Accrued expenses and deferred income are to be recorded for costs accruing during the financial year but collectible in following years, and income received by the end of the financial year but accruing in subsequent years. Only portions of costs and income expected to two or more financial years, the amount of which varies over time, may be recognised under these items.
Own shares are recognised in financial reporting as a direct reduction of equity under the third paragraph of Article 2357-ter.
From reading the preceding articles, in summary, terms as the reader is referred to the following two chapters for an analysis of the post-reform (and pre-reform) situation, it is clear that the main changes brought about by the 2015 reform can be summarised as follows:
1) the accounting items ‘own shares’ on the asset side are no longer relevant. These items disappear from the corporate balance sheet
2) the amount of own shares is transformed, as we will see later in what accounting method, into a negative equity item called Negative reserve own shares in the portfolio. This item must be entered in equity with a negative sign.
About the changes made to the accounting issue of own shares, we do not deem it necessary to make any further remarks since, in the following two chapters, we will go into the specific issues of this item in the period before and after the 2015 reform in terms of accounting entries, accounts, double entry of the purchase of own shares, double entry of the creation of the reserve and the valuation of the securities subject to our analysis.

2 -VALUATION AND ACCOUNTING ISSUES OF OWN SHARES IN THE PERIOD BEFORE D. LEGISLATIVE DECREE 139/2015 (31/12/2015)

2.1 The ‘own shares’ in financial reporting: accounting representation in Art. 2424 of the Italian Civil Code

2.2 The 'own shares reserve': nature of the reserve and impact on equity
2.3 The purchase of own shares: accounting entries
2.4 Own shares and the reserve for the purchase of own shares in the management reclassification included in the integrated information system and in financial flows
2.5 Valuation of own shares
2.6 Own shares in International Accounting Standards

2.1 The 'own shares' in financial reporting: accounting representation in Art. 2424 of the Italian Civil Code
Until 31/12/2015 and, therefore, before the reform introduced by Legislative Decree 139/2015 came into force, own shares identified asset items that, depending on their characteristics, had to be included in either fixed assets or current assets.
Art. 24 24 of the Civil Code provided for this accounting structure:
Art. 2424 (Content of the balance sheet). -- The balance sheet must be prepared in accordance with the following scheme.
Assets :
A) Receivables from shareholders for payments still due, with separate indication of the part already called up.
B) Fixed assets:
I - Intangible fixed assets:
1) start-up and expansion costs;
2) research, development and advertising costs;
3) industrial patent rights and rights to use intellectual property;
4) concessions, licences, trademarks and similar rights;
5) goodwill;
6) assets under construction and advances;
7) other.
Total.
II - Receivables, with separate indication, for each item, of the amounts due beyond the next financial year
following year:
1) from customers;
2) from subsidiary companies;
3) from associated companies;
4) from parent companies;
5) due from others.
Total.
III - Financial assets not constituting fixed assets
1) equity investments of subsidiary companies;
2) equity investments of affiliated companies;
3) other participations;
4) own shares, also with indication of total nominal value;
5) other securities.
Total.
IV - Cash and cash equivalents
1) bank and postal deposits;
2) cheques;
3) cash on hand.
Total.
Total current assets (C).
D) Accruals and deferrals, with separate indication of discount on loans.
C) Current Assets:
I - Inventories:
1) raw, ancillary and consumable materials;
2) work in progress and semi-finished products;
3) contract work in progress;
4) finished products and goods;

5) payments on account.
Total.
II - Receivables, with separate indication, for each item, of amounts due beyond the next financial year
following year:
1) from customers;
2) due from subsidiaries;
3) due from associated companies;
4) from parent companies;
5) due from others.
Total.
III - Financial assets not constituting fixed assets
1) equity investments of subsidiary companies;
2) equity investments of affiliated companies;
3) other participations;
4) own shares, also with indication of total nominal value;
5) other securities.
Total.
IV - Cash and cash equivalents
1) bank and postal deposits;
2) cheques;
3) cash on hand.
Total.
Total current assets (C).
D) Accruals and deferrals, with separate indication of discount on loans.
Liabilities and Equity:
A) Equity:
A) Equity:
I - Capital.
II - Share premium reserve
III - Revaluation reserves
IV - Legal reserve
V - Reserve for own shares in portfolio
VI - Statutory reserves
VII - Other reserves, separately indicated
VIII - Retained earnings (losses) carried forward
IX - Profit (loss) for the year
Total.
B) Provisions for liabilities and charges
1) for pensions and similar obligations;
2) for taxes;
3) others.
Total.
C) Reserve for employee severance indemnities.
D) Payables, with separate indication, for each item, of amounts due beyond the next financial year
following financial year:
1) bonds;
2) convertible bonds;
3) due to banks;
4) due to other lenders;
5) payments on account;
6) accounts payable to suppliers;
7) debts represented by credit instruments;

8) payables to subsidiary companies;
9) payables to associated companies;
10) payables to parent companies;
11) tax payables;
12) payables to pension and social security institutions;
13) other payables.
Total.
E) Accrued expenses and deferred income, with separate indication of the premium on loans.
If an asset or liability item falls under more than one heading of the balance sheet, the notes to the financial statements must, to the extent necessary for an understanding of the financial statements, disclose that it also falls under different headings from the one under which it is entered.
At the foot of the balance sheet, guarantees given directly or indirectly, distinguishing between sureties, endorsements, other guarantees and collateral, and indicating separately for each type of guarantee the guarantees given in favour of subsidiaries and affiliated undertakings, as well as in favour of parent companies and undertakings controlled by the latter: other memorandum accounts must also be disclosed."
T
.
"Art. 2424- bis
'Art. 2424- bis (Provisions relating to individual balance sheet items).
- Assets that are to be used on a long-term basis must be capitalised as fixed assets.
Shareholdings in other companies in an amount not less than those stipulated in the third paragraph of Art. 2359 are presumed to be fixed assets.
Provisions for liabilities and charges are only intended to cover losses or debts of a definite nature, of certain or probable existence, the amount or date of occurrence of which, however, could not be determined at the close of the financial year.
The amount calculated by Art. 2120 must be indicated under the item 'staff leaving indemnities'..
Assets subject to forward sale and purchase agreements must be recognised in the seller's balance sheet.
Under accrued income and prepaid expenses, income for the year falling due in subsequent years and costs incurred before the end of the year but accruing in subsequent years must be recognised. Accrued expenses and deferred income are to be recorded for costs accruing during the financial year but collectible in subsequent years, and income received by the end of the financial year but accruing in subsequent years. Only portions of costs and income common to two or more financial years, the amount of which varies over time, may be entered under these headings.'.
Paragraph 3 of Article 2428 of the Italian Civil Code (management report) also states that 'the report must in any event show:
1)...
2)...
3) the number and nominal value of both the company's own shares and the shares or quotas of parent companies held by the company, also through trust companies or intermediaries, with an indication of the corresponding portion of capital
4) the number and nominal value of both own shares and shares or quotas of parent companies acquired or disposed of by the company, during the financial year, including through trust companies or intermediaries, with an indication of the corresponding portion of capital, the consideration and the reasons for the purchases and disposals
5)...
6)...
6)bis...
To complete this summary of the legislation, it should be recalled that Article 2357 of the Civil Code (purchase of own shares) sets the limit for purchasing own shares at the amount of distributable profits and available reserves resulting from the last approved financial reporting. It also stipulated that own shares could only be bought if fully paid.
The purchase of own shares could be at most one-fifth of the share capital, considering shares held by subsidiaries.
Shares acquired in violation of the preceding paragraphs had to be disposed of in a manner to be determined by the shareholders' meeting within one year after their acquisition. They must be cancelled without delay and for the share capital to be reduced accordingly. If the shareholders' meeting fails to do so, the directors and auditors must request that the court order the reduction by the procedure outlined in Art. 2446(2).
After this brief excursus, our attention turns to the accounting recognition of our own shares in the financial statements.

As can be understood by reading Art. 2424 of the Italian Civil Code, own shares, prior to the 2016 reform, were active components of the company's assets. Depending on whether or not these shares were intended to be sold or cancelled within 12 months, they had to be recognised as financial fixed assets or current assets.

Regardless of their liquidity characteristics, however, their own shares, prior to the reform, always had to be recognised in the balance sheet's assets.

It should be noted that, about both own shares and other types of participations/securities, the transfer from fixed assets to current assets or vice versa must be explained in great detail, especially regarding its reasons, in the notes to the accounts. The transfer of these items can have consequences on the stock market performance of the shares since, for example, a transfer from fixed assets to current assets preludes a sale, perhaps a large one, of shares that, on the market, could have consequences on the valuation of the share. This is why the reasons for moving from one type of asset to another must be explained analytically in the notes to the financial statements. The writer also recommends illustrating this accounting transaction in detail in the report of the company's auditors and statutory auditors.

In the OIC Standard No. 21 Investments and Own Shares, in force before 1/1/2016, it was stated:

'Change of use

55. Equity investments may be subject, during the period in which the entity holds them, to a different economic use from that initially assigned to them by the management body. Accordingly, an investment previously recognised in prior financial reporting as a long-term investment may subsequently, as a result of an exceptional circumstance, be allocated to a long-term investment and thus be reclassified as a long-term investment or, conversely, an investment previously classified as a long-term investment may subsequently be reclassified as a long-term investment.

56. The transfer, for accounting purposes, from an equity investment classified as a long-term financial asset to a long-term financial asset may arise for various reasons, including, for example, a change in business strategy following the renewal of the governing body or a change in ownership of the business. In any case, the transfer cannot be justified by financial reporting policies aimed at targets related to the result for the year or market trends.

57. The allocation of equity investments in the two categories (fixed assets, current assets) and any transfer from one category to the other are justified and based on decision-making processes already completed at the balance sheet date and consistent with the company's objectives and strategies.

58. The transfer of equity investments is recognised based on the value resulting from the application - at the time of the transfer itself - of the valuation criteria of the portfolio of origin. Therefore, (a) the transfer of long-term equity investments to current assets must be recognised at cost and adjusted for impairment losses. The value thus determined, since the investment is held for trading, is then compared with the realisable value that can be inferred from market performance; b) the transfer of equity investments not held as fixed assets to financial assets is to be recognised at the lower of cost and the realisable value that can be inferred from market performance.

59. The different valuation and classification criteria adopted due to a change in the intended use of the investment are disclosed in the notes to the financial statements."

2.2 The 'reserve for own shares in portfolio': nature of the reserve and impact on equity

The regulations before Legislative Decree 139/15 established, in addition to what is set out in the previous paragraph, that equity should include a reserve that was unavailable and called the 'reserve for own shares in portfolio'.

This reserve identified a normal equity reserve that, however, had the characteristic of being unavailable as long as the own shares remained in the company's possession. This reserve had to be of an amount equal to the value of the total own shares recorded under fixed assets + current assets.

The reserve became free at the time of the sale and cancellation of the own shares, i.e., when these securities were removed from the company's assets.

Like all equity reserves, of course, its amount went to increase the value of the company's net wealth. Therefore, the reserve for own shares in the portfolio was to be added to the other profit and equity reserves.

2.3 Own shares and own shares purchase reserve in management reclassification entered into the integrated information system and financial flows

If, instead of analyzing the statutory balance sheet, we focus our attention on the reclassification of the balance sheet that can be used for financial statement analysis, the situation changes profoundly. On such items, in the pre-2016 reform period, doctrine was divided. In the past, the placement of own shares was the subject of doctrinal diatribe. Some scholars believed it should be included in short-term or long-term assets depending on the liquidation period of the own shares. On the other hand, other authors more correctly asserted that this position could not be shared since the shares in question, precisely because of the circumstance of representing part of the acquiring company's capital, represent, in essence, "a surreptitious decrease in capital." The writer has always adhered to the latter doctrinal current because, on the one hand, it has always seemed more in keeping with the reality of the accounting transaction and, on the other hand, it "imported", in the reclassification context, the principle dictated by both U.S. GAAP and IAS/IFRS. Indeed, in SIC Interpretive Standard No. 16 Share capital - repurchase of equity instruments (own shares), the IASC has, for many years now, stated that "own shares should be shown on the balance sheet as a decrease in equity. The acquisition of own shares should be shown in the balance sheet as a movement in equity."

To ensure the document's understandability, SIC No. 16 also stipulates that the amounts of equity reductions due to own shares held must be separately disclosed in the balance sheet statement. When transposing EU Directive 34/13, the legislature also considered own shares as an item that must be deducted from equity. Therefore, the amendment made to the code by Legislative Decree 139/15 is fully supportable as it reflects the most evolved business economic doctrine and international accounting standards.

If one agrees with the above thesis, even before the reform dictated by L.D. .139/15, in the reclassification of the reaggregated balance sheet for purposes of internal analysis within an integrated information system, own shares were to be recognized as a deduction from equity as noted in the following reclassification:

On the other hand, with regard to the reserve for own shares in the portfolio, there has never been any comparison in the doctrine as each scholar correctly believed that, as an equity reserve, this unavailable reserve should be added to the other present reserves of the company's equity.

RECLASSIFICATION SCHEME BALANCE SHEET/BUDGET BALANCE SHEET IMPLEMENTED AS PART OF AN INTEGRATED INFORMATION SYSTEM.

ASSETS	**31/12/N**	**LIABILITIES AND EQUITY**	**31/12/N**
SHORT-TERM ASSETS		**SHORT-TERM LIABILITIES**	
1. Immediate liquidity		**1. Short-term financial liabilities**	
2. Deferred liquidity * Trade receivables * Financial liquidity * Tax-deferred income * Non-characteristic deferred income		**2. Short-term tax liabilities**	
3. Availability (inventories)		**3. Short-term non-financial liabilies**	
4. **Short-term assets non-characeristic**			
5. **Advances to trade suppliers**			
long-term assets		**LONG-TERM LIABILITIES**	
1. Long-term tangible assets		**1. Long-term financia liabilities**	

2. Long-term intangible assets **3. Long-term credit assets** **** Trade accounts receivable*** **** Financial assets*** **** Tax assets*** **** Non-typical accounts receivable***		**2. Long-term tax liabilities** **3. Long-term non financial liabilities**	
		EQUITY	
4. Long-term assets non characteristic		reserve for own shares in the portfolio Own shares	
Stand-alone items		**Stand-alone items**	
NET ASSETS		**BALANCE TOTAL**	

When the above concerns the reclassification of the item's own shares in the balance sheet entered into the integrated information system.

The item in question, however, must also be carefully analyzed as the company is about to determine cash flows since it is necessary to assess whether or not the item under our analysis causes cash movements.

To understandability is appropriate to break down the transaction into two parts constituting the complex accounting entry of the purchase of own shares:

1) purchase in the market or from shareholders of their own shares

2) Establishing unavailable reserve shares in the portfolio.

2.4 The valuation of own shares

The Civil Code did not address, before the reform, nor does it address now, the issue of valuation of own shares in a portfolio. The primary reference for those who have to prepare financial reporting according to the civil code dictate is the National Accounting Standards OIC, which 2016 underwent a radical change in the face of the reform introduced by Legislative Decree 139/15.

Since this part of the text analyzes the pre-reform situation, it is necessary to refer to the OIC standards that existed before the enactment of Legislative Decree 139/15.

Nel principio n. 21 OIC "Partecipazioni e own shares" in vigore prima della riforma del 2016 si affermava:

"OWN SHARES

Principle No. 21 OIC "Investments and Own Shares" in effect before the 2016 reform stated:

"OWN SHARES.

63. Own shares are recognized in financial reporting at acquisition cost. The equity method is not applicable, as this is provided for in the statutory rules for subsidiaries and affiliates. After purchase, ownership shares may be cancelled, realized, or held for one or more years.

64. In the event that the own shares in the portfolio are cancelled, a comparison of the value at which they are entered on the assets side of the balance sheet with the nominal value of the shares themselves (i.e., the corresponding part of the share capital) may give rise to three different situations: the financial reporting value of the own shares is equal to, greater than, or less than the nominal value. In the first case (value of own shares = par value of cancelled shares), the cancellation operation generates, as an effect, the elimination of the value recorded in the assets and, for a corresponding amount, the reduction of the share capital; the own shares reserve in the portfolio becomes free and fully available. In the second case (value of own shares more significant

than the nominal value of cancelled shares), the difference must be covered by reducing, by a corresponding amount, the reserve of own shares in the portfolio, which becomes available for the remaining part. In the third case (the value of own shares is less than the par value of cancelled shares), the difference generates, in addition to the free availability of the own shares reserve, an additional reserve that is also available.

65. In the case of the realization of own shares, the difference between the value at which these are recorded in financial reporting and the sale price generates a component (positive or negative) of income; this is recorded in the income statement under item C) "Financial income and expenses". When the realization occurs, the reserve for own shares in the portfolio becomes available.

66. For year-end valuation of own shares, a distinction must be made between whether they belong to the financial fixed assets category or current assets, i.e., whether they were purchased to be held in the portfolio or revised in the short term. In the former case, the price at which the own shares were purchased is reduced only if there is a permanent impairment. The amount of the operated write-down is entered in the income statement under item D, "Value adjustments of financial assets," in correspondence, and the reserve's shares in the portfolio are made available for the same amount. In the second case, the own shares, if the conditions are met, are recorded in financial reporting instead of at cost, at the lower value expressed by the realizable value inferable from market performance. The amount of the operated write-down is recorded in the income statement under item D, "Value adjustments of financial assets," in correspondence, and the reserve's own shares in the portfolio are made available for the same amount.

67. If the reasons for the operated write-down cease to exist, it is necessary to restore the value, i.e., the revaluation of the own shares in the portfolio up to the maximum amount of the cost. The reinstatement of value is recorded in the income statement under item D, "Value adjustments of financial assets," and, at the same time, the reserve own shares in the portfolio must be replenished in a corresponding amount."

2.5 Own shares in International Accounting Standards

AS/IFRS do not analyze the issue of own shares in depth. First, it should be remembered that IFR 19 stipulated (and still stipulates) that:

79

An entity shall disclose the following, either in the statement of financial position or the statement of changes in equity, or in the notes:

(a) for each class of share capital:
(i) the number of shares authorised;
(ii) the number of shares issued and fully paid, and issued but not fully paid;
(iii) par value per share, or that the shares have no par value;
(iv) a reconciliation of the number of shares outstanding at the beginning and at the end of the period;
(v) the rights, preferences and restrictions attaching to that class including restrictions on the distribution of dividends and the repayment of capital;
(vi) shares in the entity held by the entity or by its subsidiaries or associates; and
(vii) shares reserved for issue under options and contracts for the sale of shares, including terms and amounts; and
(b) a description of the nature and purpose of each reserve within equity.

From the above it can be understood how IFRS19 also allowed the recognition of own shares only in the footnotes. In this case, IAS does not point out any special note specifics. This means that any financial reporting preparer could illustrate the ownership of own shares in the notes according to the illustrative methodology that he or she thought was most clear and intelligible.

IAS 32, however, proposes a second way of recognizing own shares in the financial statements. Indeed, in § 34 of standard No. 32 it stated:

"34

The amount of treasury shares held is disclosed separately either in the statement of financial position or in the notes, in accordance with IAS 1: An entity provides disclosure in accordance with IAS 24 Related Party Disclosures [Refer:IAS 24 paragraphs 18–24] if the entity reacquires its own equity instruments from related parties".

Nel § 33, IAS 32 further speficified that :

"33

If an entity reacquires its own equity instruments, those in

struments ('treasury shares') shall be deducted from equity. No gain or loss shall be recognised in profit or loss on the purchase, sale, issue or cancellation of an entity's own equity instruments. Such treasury shares may be acquired and held by the entity or by other members of the consolidated group. Consideration paid or received shall be recognised directly in equity.

Own Shares: Historical Evolution of the Post in Italy and Influence on Accounting Issues of Business Analysis

As can be understood from the above, own shares, according to international IAS/IFRS standards, precisely as in Italy under civil names, cannot give rise to costs and revenues. Unlike Italian regulations, international standards highlighted the possibility of recording own shares either in the notes to financial reporting or as a deduction from equity. Circumstance, the latter, for many years adopted by the most advanced doctrine in the managerial reclassification of the balance sheet.

3 -EVALUATION ISSUES AND ACCOUNTING REPRESENTATION OF OWN SHARES IN THE POST LEGISLATIVE DECREE 139/2015 PERIOD

3.1 Le "own shares" in Italian financial reporting.

The reform of financial reporting introduced by Legislative Decree 139/15 made various changes to the regulations in force until 31/12/15. Since the subject of this text is own shares, we will focus our attention on the regulations that have undergone changes regarding this accounting item.

Article 2424 of the Italian Civil Code was amended as follows:

Art. 2424.

Contents of the balance sheet.

The balance sheet must be prepared in accordance with the following schedule.

Assets:

A) Receivables from shareholders for payments still due, with separate indication of the portion already called up.

B) Fixed assets, with separate indication of leased assets:

I) Intangible fixed assets:

(1) start-up and expansion costs;

2) development costs; (1)

3) industrial patent rights and rights to use intellectual property;

(4) concessions, licences, trademarks and similar rights;

(5) goodwill;

(6) assets under construction and advances;

(7) other.

Total.

II) Tangible fixed assets:

1) land and buildings;

2) plant and machinery;

3) industrial and commercial equipment;

4) other assets;

5) fixed assets under construction and advances.

Total.

III) Financial fixed assets, with separate indication, for each item of receivables, of the amounts due within one year:

1) equity investments in:

(a) subsidiary companies;

(b) associated undertakings;

(c) parent undertakings;

(d) undertakings controlled by parent companies; (2)

(d-bis) other undertakings; (3)

(2) receivables:

(a) from subsidiary undertakings

(b) from affiliated companies;

(c) from parent companies;

(d) from companies controlled by parent companies; (d-bis) from others;

(d-bis) due from others; (4)

3) other securities;

4) derivative financial instruments receivable; (5)

Total.

Total fixed assets (B)

Total.

C) Current Assets:
I) Inventories:
1) raw, ancillary and consumable materials;
2) work in progress and semi-finished products;
3) contract work in progress;
4) finished products and goods;
5) payments on account.
Total.
II) Accounts Receivable, with separate indication, for each item, of amounts due after one year:
1) from customers;
2) from subsidiary companies;
3) from associated companies;
4) from parent companies;
5) from companies subject to the control of parent companies;
5-bis) tax receivables;
(5-ter) deferred tax assets;
5-quater) due from others; (6)
Total.
III) Financial assets not constituting fixed assets
1) equity investments in subsidiaries
2) equity investments in affiliated companies;
3) equity investments in parent companies;
3-bis) equity investments in companies controlled by parent companies; (7)
(4) other equity investments;
(5) derivative financial instruments assets; (8)
6) other securities.
Total.
IV) Cash and cash equivalents:
(1) bank and postal deposits;
(2) cheques;
3) cash on hand.
Total.
Total current assets (C).
(D) Accruals and deferrals. (9)
Liabilities and Equity:
A) Equity:
I - Capital.
II - Share premium reserve
III - Revaluation reserves.
IV - Legal reserve.
V - Statutory reserves.
VI - Other reserves, shown separately.
VII - Reserve for expected cash flow hedging transactions.
VIII - Retained earnings (losses).
IX - Profit (loss) for the year.
X - Negative reserve for own shares in portfolio.
Total. (10)
B) Provisions for risks and charges
1) for pensions and similar obligations;
2) for taxes, including deferred taxes;
3) derivative financial instruments payable;
4) others. (11)

C) Staff severance indemnities.
(D) Payables, with separate indication, for each item, of amounts due after one year:
(1) bonds;
(2) convertible bonds;
3) due to shareholders for loans;
4) due to banks;
5) amounts due to other lenders;
6) payments on account;
7) accounts payable to suppliers;
8) payables represented by credit instruments;
9) payables due to subsidiaries;
10) payables to affiliated companies;
11) payables to parent companies;
11-bis) payables to companies subject to the control of parent companies; (12)
(12) tax payables;
(13) payables to social security institutions;
(14) other payables.
Total.
E) Accrued liabilities and deferred income (13)

Suppose an asset or liability item falls under more than one heading in the schedule. In that case, the notes to the financial statements shall, to the extent necessary for an understanding of the financial statements, disclose that it also falls under other headings than the one under which it is entered.

(.....) (14)

This is without prejudice to the provisions of Article 2447-species concerning the assets and legal relationships included in the assets intended for a specific business, within the meaning of the letter a) of the first paragraph of Article 2447-bis.

Article 2424-bis.

Provisions relating to individual balance sheet items.

Assets that are to be used on a long-term basis shall be capitalised as fixed assets.

Shareholdings in other companies, to an extent not less than those laid down in the third paragraph of Article 2359, are presumed to be fixed assets.

Provisions for liabilities and charges are only intended to cover losses or debts of a definite nature, of certain or probable existence, the amount or date of occurrence of which, however, could not be determined at the close of the financial year.

The amount calculated by Article 2120 must be stated under the heading: 'staff leaving indemnities'.

Assets subject to forward sale and purchase agreements must be stated in the seller's balance sheet.

The amount calculated by Article 2120 must be stated in the item: 'termination benefits'.

Assets subject to forward sale and purchase agreements must be stated in the seller's balance sheet.

Accrued income and prepaid expenses are to be reported under accrued income and prepaid fees for the financial year, payable in subsequent financial years, and costs incurred before the end of the financial year but payable in subsequent years. Accrued expenses and deferred income are to be recorded for costs accruing during the financial year. Still, they are collectable in the following years, and income is received by the end of the financial year but accruing in subsequent years. Only portions of costs and income expected for two or more financial years, the amount of which varies over time, may be recognised under these items.

Own shares are recognised in financial reporting as a direct reduction of equity under the third paragraph of Article 2357-ter.

From a reading of the amended Articles 2424 and 2424 bis of the Civil Code, it can be understood how the reform interpreted own shares, not as equity investments on a par with any other share capital, as was the case before the reform, but rather as a substantial reduction of share capital.

The legislature, taking its cue from the OIC /IFRS 1 and 32 standards and bearing in mind the observations made by the doctrine in recent years regarding the correct reclassification of the “own shares” item in the balance sheet reclassified for internal and/or management and external analysis purposes, has imposed the abrogation of own shares as an accounting item of the balance sheet assets and, at the same time, as we shall see in the following pages, has indicated the deduction of the amount of these shares from equity.

At present, therefore, in the balance sheet, there is no “own shares” item in the balance sheet assets, neither current nor fixed assets, but rather a negative value is identified equally to the value of the own shares purchased by the company and still held by it within equity. This negative will be the subject of a future section.

3.2 The “negative reserve own shares in portfolio”: nature of the reserve and impact on equity. The purchase of own shares and their valuation in financial reporting and the accounting entries related to the values shown in financial reporting for the period after 1/1/16.

Legal and business economics doctrine has always maintained that reserves can be divided into profit and capital reserves. The former derives from allocations of profits, either compulsory by law or resulting from voluntary acts of the shareholders' meeting. At the same time, the latter is related to unrelated increases in assets directly to the retention of income shares with the company. Against this juxtaposition, the antithesis between own reserves, profit and/or capital reserves, and the so-called improper or false reserves, formed by provisions for adjustments and provisions for future risks and charges, is also found. In fact, this subdivision is dated in that modern-day doctrine hardly defines "reserve" as those funds that adjust asset values (e.g., allowance for depreciation and allowance for doubtful accounts) or represent provisions implemented to meet future charges or potential risks (e.g., tax provision, product warranty provision, provision for pending lawsuits, etc.).

Finally, some contrast explicit reserves with hidden ones, which, if created voluntarily, generally identify illegitimate posts.

The analysis and investigation of the various reserves have been a subject of interest, especially in the past. However, following the financial reporting reform that went into effect on 1/1/2016 under Legislative Decree 139/2015, the issue has become topical again, not so much about the various classifications of reserves but concerning the legal obligation imposed by Article 2424 of the Civil Code. In fact, should a company own shares purchased on the market, Legislative Decree 139/15 obliges the recognition of a negative reserve as a deduction to equity.

Our goal is not to study the various types of reserves that a company can show in financial reporting or create fictitiously but to understand whether a negative reserve within equity has an accounting and business-economic justification.

One element on which the doctrine unanimously agrees is that reserves “have the function of helping to protect corporate wealth, in terms of capital and terms of income, from management risk [...]. This protection relates to the validity of the valuations attributed to all other financial reporting items [...]. The validity of reserves [...] (as an instrument to protect against adverse management performance, Ed.) thus depends on the set of financial reporting values themselves.”

Since in the following pages, this element of discussion will be a focal object of interest, to understand what we intend to illustrate, it is worth noting that equity is an abstract element that, by definition, cannot be identified with specific assets. “The reserve, like the share capital, is, ceterin paribus, a nomen juris, an abstract quantity, an ideal value in direct function not only of the various balance sheet values but also of the value of the economic complex operating over time and (of?) variation in derivation of the various economic phenomena of management [...] .”La dottrina è quindi concorde sul fatto che le “riserve sono valori astratti che […] non trovano riscontro o copertura in specifiche attività e tanto meno in attività liquide […]. Esse sono coperte, indistintamente, da tutti i valori attivi […]. Come parti ideali di capitale netto […] non fanno riscontro particolari valori attivi.”

There is no need to elaborate on the basic concept above as it is part of the cultural heritage of any person with knowledge in the balancing field.

Reserves do not represent assets and other assets. Such items "have an economic function of insuring against claims, since it guards against risks and serves to overcome a critical moment in the company's economic life [...]." In addition, reserves can also be used to implement a policy of stabilizing dividends without the latter having to be matched by a reduction in share capital.

From these brief considerations, unanimously accepted by doctrine and practice, it can be understood how the equity reserve identifies an ideal item to which no specific asset value can, by definition, correspond. Revaluation reserves identify physical assets because their value is interconnected with an asset identified by the item's title (e.g., land revaluation reserve, building revaluation reserve, etc.).. However, this does not mean the reserve is a physically identifiable asset. The value of the reserve derives, ab origine, from the increase in value of an asset. However, this does not imply that the reserve corresponds to an identifiable portion of the asset being revalued. Consider, for example, what happens with respect to share capital: even if this capital were fully paid in cash, over time the equity post loses all connection with liquidity and, inevitably, becomes an ideal abstract post that does not and can never represent a specific asset, much less if this is understood as an amount of liquidity.

This premise, although almost obvious, was necessary because the financial reporting reform that came into effect on 1/1/2016, pursuant to Legislative Decree 139/15, provides for the recognition, as part of equity, of a “special negative reserve” that we will discuss in the following pages and whose characteristics may perplex experts in the field.

The subject of our in-depth study will be, in particular, the recognition of these items in the financial reporting for the year with a highlighting of the real accounting meaning of the account that the legislator is obliged to use when performing the management mentioned above operation (negative reserve for own shares in portfolio).

As we will have occasion to point out later, purchasing own shares generates an accounting problem that still needs to be resolved by the Civil Code or even less by accounting principles. Therefore, we will expose what, in our opinion, are the correct accounting solutions to be able to prepare valid and legitimate financial reporting and, at the same time, to be able to count on the presence in the company of accounting records that are irreproachable from both a legal and a business-economic point of view.

Article 2357 of the Civil Code, as was the case before the reform imposed by Legislative Decree 139/15, states that the company can purchase its own shares within the limits of distributable profits and available reserves resulting from the latest approved financial reporting. Only fully paid shares can be bought.

Before the reform that took effect on 1/1/2016, Article 2357b required the recognition of an unavailable reserve equal to the amount of own shares recorded on the assets side of the balance sheet. This reserve had to be maintained as long as the shares were subject to transfer and cancellation.

As we have already highlighted in the previous paragraphs, the Civil Code, in the pre-2016 period, required that own shares should be recognized as part of the balance sheet assets, in fixed assets or current assets depending on the destination of the shares acquired in the market, and at the same time required the recognition of the unavailable reserve for own shares in the company's equity.

The more recent doctrine has consistently pointed out that such a reclassification improperly inflated equity and, consequently, recommended, as part of management reclassifications for internal use, the recognition of own shares as a deduction to equity.

Among other things, Legislative Decree 139/15 also amended the regulations on own shares. In particular, it was provided for the elimination of the obligation to establish an unavailable reserve and, at the same time, it was established that, as a deduction to equity, a particular accounting item identifying the own shares purchased by the issuing company should be recognized. As we will highlight in the following pages, the legislature improperly, in the writer's opinion, called this item a "negative reserve for own shares in the portfolio." In addition, the legislature has prohibited the recognition of shares in the balance sheet assets.

Two questions need to be asked at this point:

1) Can the purchase transaction of own shares be recognized as in the pre-reform period, or should this entry in CO.GE also change?

2) Is the fact that the legislature has provided a negative reserve to represent the own shares in the portfolio acceptable from a legal, business-economic and accounting point of view?

The answer to the above two questions will provide the accounting tools so that the transaction related to the purchase of own shares can be recognized correctly in general accounting and, subsequently, be appropriately represented in the financial statements.

The reader refers to the first question in the following paragraphs, where this issue will be addressed.

Before addressing the two issues set out above, we would like to highlight a substantial element for proper accounting recognition of the transaction that is the subject of our interest.

This is the existence of a profound theoretical distinction between account headings used to recognize management transactions during the year and items through which these transactions find reflection in reclassified financial reporting.

For example, consider purchasing furniture, fixtures and motor vehicles. When such assets are purchased, the account to which the acquisition transaction refers must be chosen in the company's chart of accounts, and in the general ledger, the asset will be recorded with an account whose title refers to the object of the management transaction.

Thus, in the chart of accounts, there will be the following entries:

- Furniture
- Furniture
- Motor vehicles

Each macro-master is likely distinguished by sub-accounts that more precisely identify the object of the acquisition.

After the accounts are closed, a financial report is usually printed where the accounts are present in the original recognition section (debit or credit). Depreciation provisions are recorded in debit and the allowance for doubtful accounts, any loss for the year is instead recorded in debit, and so on. Therefore, the output document of the general ledger reflects the entry in the accounting entry section. As a result of entries implemented by double-entry in CO.GE., what is in debit remains in debit, and what is in credit is recognized as credit.

The operation of item reclassification identifies an action after merely printing CO.GE. Output values that involve subjective intervention by the preparer of the financial statements. The re-aggregation of items requires reasoning rather than merely observation of what has been recorded in CO.GE. Reclassification can be carried out in various ways depending on the user's information needs who intends to take advantage of the re-aggregated values.

The code provides for a functional financial reclassification, the structure of which, governed by Articles 2424, 2424 bis, 2425 and 2425 bis, may be modified under Article 2423 ter, if this promotes the understandability of financial reporting.

Imagining that we reference the schemes provided for in Articles 2424 and 2425 of the Civil Code, we can see how the reclassification involves the recognition of specific accounts that represent a summary of a series of values. An example of such "summary" accounts is the item included in II Tangible fixed assets, called 4) Other assets. Furniture, furnishings and motor vehicles should be recognized under this item, among other assets. This does not mean, of course, that an account entitled "Other Assets" can be used at the time of purchase of the asset since the item indicated with the Arabic number 4, in the sphere of tangible fixed assets, shows only a reclassifying item regarding which the legislator preferred, instead of listing all possible contents, to identify a summary account in which, among others, the values mentioned above must be grouped.

For example, the double-entry entry of the purchase of furniture for 100 + forward VAT should be as follows:

___________________ 20/10/n ______________________

Miscellaneous to furniture suppliers 122

Furniture 100

Credit vat 22

For furniture purchase, forward paymen

___________________ ______________________

After that, the furniture value in balance sheet assets should be included in item II, Tangible fixed assets, 4) Other assets. At most, if the preparer of financial reporting believes that the understandability could be increased by listing the items included in item 4) Other Assets, ex-art. 2423 ter, the component items can be listed without omitting to report the total of the item required by art. 2424 Civil Code.

Similar considerations could be made for many balance sheets and income items. Consider, for example, the income statement items A 5) Other income and revenues and B 14) Miscellaneous operating expenses.

Both of the above items, as well as many other items, contain within them an assortment of accounts that, at the time of the realization or acquisition of the factor, retain, as a matter of course, the title of the good or service sold or purchased. Only at the time of civil law reclassification are these accounts aggregated into a single item so that they can be reclassified according to the schemes governed by Articles 2424 and 2425 of the Civil Code.

These brief, albeit obvious, considerations highlight how the moment of recognition in general accounting is very different and distinct from the reclassification of the item implemented to prepare statutory financial reporting. On the one hand, there is the recognition of CO.GE. Implemented with accounts marked by titles indicative of the value subject to recognition, and on the other hand, there is the reclassification that represents a mere rewriting of what has already been recognized in accounting.

The reclassification structures may be those governed by the code if the financial reporting being regrouped is statutory financial reporting, or different schemes may be adopted if the focus is on structures functional for management purposes that are not burdened by legal requirements.

When addressing the issue of the purchase of own shares, the above should be kept in mind.

In the period before 12/31/2015, no accounting problem arose regarding this transaction. The purchase and the simultaneous creation of an unavailable reserve identified two entries about which any accounting and reclassification issue was absent.

With the reform, however, things have changed, and the position taken by the legislator in Legislative Decree 139/15 has posed an accounting busillis that, according to various scholars and practitioners, has created an assortment of solutions that, at times, are poorly suited to the actual content of the transaction under consideration.

The reform of financial statements, introduced to implement EU Directive 34/2013, stipulates that own shares constitute an item that substantially reduces the "real" value of equity. For this reason, as noted above, following the enactment of Legislative Decree 139/15:

1) it is no longer possible to recognize an asset item evidencing the purchase of own shares;

2) it is also necessary to recognize, in equity, a deduction item from the title "negative reserve for own shares in the portfolio."

This taxation originates in the international standard IAS 32, which states in § 33, "If an entity reacquires its equity instruments, those instruments ('treasury shares') shall be deducted from equity." As is well known, the transposition of EU Directive 34/3013 had, among other objectives, an increasing influence of IAS/IFRS standards on the legislation of member countries. Harmonization among member countries' various legislation is one of the primary purposes of EU accounting directives.

Although the primary goal was harmonising member countries' legislation, EU Directive 34/2013 did not impose the provisions of IAS 32, § 33. Article 19 of EU Directive 34/13 states that each state may freely provide for the reclassification of own shares in the portfolio as long as the information in Article 24(2) of Directive 2012/30/EU is complied with, which states that if the member country grants the possibility of recording own shares in the assets of the balance sheet, it must simultaneously require the establishment of an unavailable reserve within equity in an amount equal to the amount of the shares recorded in the balance sheet.

EU Directive 34/13 therefore, did not mandate the deduction of own shares from equity, but in this regard left absolute freedom to member states.

In fact, in the schedules attached to EU Directive 34/13, the following items were found:

1) D. Current Assets

III. Transferable securities

......

......

2. Own shares or units (with an indication of their nominal value or, in its absence, their accounting parity), provided that national legislation authorizes their inclusion in the balance sheet.

A. Equity

......

......

IV. Reserves

2. Reserve for own shares or quotas, provided that the legislation requires their establishment, subject to Article 24, § 1 (b) of Directive 2012/30/EU.

Our legislator, to facilitate accounting harmonization with IAS/IFRS despite the absence of a specific obligation, opted for the reduction of equity by an amount equal to the value of the own shares acquired. It has therefore rejected the potential option of allowing the recognition as assets of the own shares held by the issuing company with the simultaneous creation of an unavailable reserve, considering it more straightforward to recognize a negative reserve, i.e., an accounting item to reduce total equity.

In this regard, it should be noted that international standard IAS 1 states that “an entity shall disclose the following, either in the statement of financial position or the statement of changes in equity or in the notes:

(a) for each class of share capital:

(i)...

(ii) ...

(iii) ....

(iv) ....

(v) ....

(vi) shares in the entity held by the entity or by its subsidiaries or associates”

International Standards IAS 1 (IAs 1 THAT will be replaced in 2028 with IFRS 18)), therefore, leaves freedom to the financial reporting preparer to include information regarding own shares purchased in the market as part of the balance sheet or in the notes to the financial statements.

Therefore, under IFRS, any company could act differently from any other company.

To avoid differentiation and, at the same time, to promote accounting harmonization, the OIC's Guide No. 1, issued in 2005, concerning the transition to international accounting standards (IAS/IFRS), took an unyielding and precise stance and, eliminating any freedom to the preparer of the financial statements, required that nominal value of own shares, as required by IAS 32, be shown as a reduction of issued capital.

Legislative Decree 139/15 has taken a position that does not allow any discretion on the part of the financial statement preparer: disclosure regarding own shares must necessarily take place not in the notes to the financial statements, but within the balance sheet

What creates some perplexity and, as a result, continues to cause differing accounting behaviour among operatives is the accounting recognition of the purchase of the shares mentioned above. Be that as it may, if the company has its own shares in its portfolio, it must mandatorily recognize, as part of the equity, a deduction item called “negative reserve for own shares in the portfolio” in the absence of any asset item regarding these capital shares.

In this regard, it should be noted that the OIC Guide concerning the transition to international standards and the IAS/IFRS standards themselves, in the examples implemented under these standards, propose the deduction "of the nominal value of own shares" from equity and not the creation of a negative reserve.
Some authors and many operatives make the accounting recognition incorrect because of misunderstanding. The error arises from unintentional confusion between two accounting moments that, instead, should be kept quite distinct. Such accounting "stages" are:a) il momento dell'acquisto delle own shares,

(b) the moment of reclassification of balance sheet items.

We have already had to point out how reclassification identifies a moment after the recognition of the various management operations and, how this operation may require the use of accounts that are not present in the accounts because they are used only in the re-grouping phase (e.g., items A5) Other income, B14) Miscellaneous operating expenses, II Tangible fixed assets 4) Other assets, etc.).
For general accounting to be perfect and unassailable, and for financial reporting reclassified according to civil law standards to be legitimate and therefore unassailable, it is necessary to clarify that:
1) at first, the physical purchase of own shares must be recognized;
2) only at a later stage should the items be reclassified according to the dictates of Articles 2424 and 2425 of the Civil Code.

In the writer's opinion, the accounting entries at the time of the purchase of own shares should, therefore be as follows:

Purchase of own shares for 200 by bank check
___________________ 20/10/n _________________________________
Own shares a BanK c/c 200 200
For purchase of own shares, payment by bank check
___________________ _________________________________

When the financial reporting preparer reclassifies the accounting items so that they reflect the pattern prescribed by the code, the own shares account will no longer appear on the balance sheet but will be included in a mandatory item called "negative reserve for own shares in the portfolio," which, as mandated by the legislature, must be deducted from equity.
The above step is similar to how the furniture, fixtures and vehicle accounts are to be included in statutory financial reporting. The accounts will be included in only one line item, i.e., II Tangible fixed assets, 4) Other assets.
Some scholars and operatives, acting incorrectly in the writer's opinion, propose a different accounting solution. They suggest that at the time of the purchase of their own shares the following accounting operation be carried out:

Purchase own shares for 300 by bank check
___________________ 20/10/n ______________________
Negative reserve for az.
own shares in portfolio to Bank c/c 300 300
For purchase of own shares, payment by bank check
___________________ ______________________

This assumes that the physical purchase of shares is recognized as creating a negative reserve. Regarding the logicality of the presence in financial reporting of a negative reserve, we shall have the occasion to make brief remarks later. But, even considering the theoretical appropriateness of creating a negative reserve of assets, the writer believes that the above recognition needs to be corrected. The purchase of own shares legally represents the transfer of ownership of an asset, which must be present in the company's accounts. The immediate creation of the negative reserve provided for by the current Article 2424 of the Civil Code and the absence of any reference to the presence in the company of an asset that, in this specific hypothesis, is represented by shares of the company preparing the financial statements, highlight the mistaken belief that the moment of recognition in CO.GE and the re-aggregation of values in schemes governed by the Civil Code are temporally coincident phases.
This is not the case, as has been pointed out several times now. And, in the writer's opinion, noting a negative reserve as a post suitable for identifying own shares purchased in the market represents a material and logical/theoretical error.

The negative reserve for own shares in the portfolio must be used only when reclassifying the financial reporting data, and it is not necessarily the case that this item appears in the accounts, just as in COGE no accounts entitled “Other assets (II Tangible fixed assets, 4) Other assets), Sundry operating expenses (item B14) Sundry operating expenses), Other revenues and income (item A5) Other revenues and income) appear.

The recognition in CO.GE. of a negative reserve apt to identify the purchase of own shares only because the legislature has mandated that such an account appear in the reclassified balance sheet under Article 2424 of the Civil Code represents a recognition error resulting in unordered, inaccurate and incorrect accounting.

If a physical check were made of the assets constituting the corporate assets, the own shares held would not appear in any account, nor would the purchase show the physical entry of an asset such as the holdings above.

Recognizing, at the time of the purchase of own shares, a reserve, moreover a negative one, means creating an accounting entry devoid of any economic-business logic, which, on the contrary, should be used only and exclusively when reclassifying balance sheet values. Therefore, in the writer's opinion, such an accounting entry, as illustrated above, is unsupportable because it needs to represent a true picture of the corporate balance sheet. This statement has nothing to do with the true picture financial reporting should give users outside the enterprise in this context of accounting entries in CO.GE. Each account connected with the physical entry of a product/good must correspond to a well-defined object. The purchase of own shares causes the entry into the company of equity shares, which, undoubtedly, are not well represented by an account whose title is “negative reserve for own shares in the portfolio.” It seems clear, therefore, that the latter account is to be used only at the reclassification stage of the balance sheet and not at the time of recognizing the purchase of own shares of the issuing company, an operation, the latter, which must be the subject of a “normal” recognition in CO.GE. of the purchase of an asset entering the company (with consequent use of the “Own shares” account).

At the end of this brief dissertation on the issue of the purchase of own shares, we cannot refrain from expressing some business-economic considerations on the title of the account that the legislature has imposed if a company performs the management mentioned above transaction (i.e., purchase of own shares). In equity, an account with the title “negative reserve for own shares in portfolio” must be placed in the deduction.

Here, we would like to highlight the terminological limitation of the post provided in the current legislation. To proceed clearly, let us take the following situation as an example: imagine that a company is marked by the presence of an extraordinary available reserve equal to 100, that there are no other reserves other than the legal reserve, which in this specific case is assumed to be of meager value, and that a loss of 110 is realized during the year.

If the shareholders decide to cover the loss with the reserve, the solution is threefold:

1) the reserve is zeroed out, and the surplus is carried forward into the next fiscal year;

2) the reserve is zeroed out, and shareholder contributions cover the surplus;

3) the reserve is zeroed out, and the surplus is deducted from the share capital.

As can be seen, we did not assume the creation of a negative reserve for 10, just as we could not assume, for example, the cash in the credit account of the balance sheet.

It has already been pointed out in the previous pages that the equity reserve is an abstract and ideal value, to create a “buffer of protection” to be used in negative periods. The value of a reserve never corresponds to an asset, and it does not seem logical to assume the existence of a negative reserve, that is, a reserve whose value decreases equity.

In the specific case of the purchase of own shares, there is a twofold “anomalous” situation:

1) the reserve corresponds to a physical asset, i.e., it is not an abstract value but is identified by the physical amount of own shares held by the issuing company, which is at least perplexing to those skilled in accounting;

2) second, the reserve does not represent wealth, as is the case with all equity and earnings reserves, but instead identifies a “non-wealth,” i.e., a reduction of the wealth formed by the entire equity. The writer has always supported the doctrinal theory that requires, in reclassification, the deduction of own shares from equity. What puzzles us, therefore, is not this but rather the title given to the value to be deducted from equity, i.e., “negative reserve for own shares in the portfolio.”

In the writer's opinion, the legislature should very simply have:

(a) abolish the unavailable reserve prescribed by the previous legislation, and

(b) simultaneously impose the deduction of own shares from equity, exactly as happens in all the examples also brought concerning the content of IAS/IFRS and the 2005 OIC guidance concerning the transition to IAS/IFRS. The account title should have been "own shares," and this item should have resulted from a standard accounting entry for the purchase of assets. This was not the case, and the legislature preferred, perhaps, to twist the financial statements, to impose terminology that, in my opinion, is not economically and legally correct.

The above points to a partial limitation of understandabilityof the financial statements, particularly the balance sheet. Unfortunately, however, the item in question is marked with a Roman numeral and, therefore, in financial reporting, cannot be changed by those charged with preparing the balance sheet.

All that remains is to apply the standard but at least take care to properly recognize the purchase of the own shares in CO.GE., as has been described in the preceding pages. In this way, one will have financial reporting on whose understandabilityof the entries can certainly be raised legitimate doubts, but at least one will be able to count on a general accounting (at least concerning this specific management operation) free from any doubt as to the formal and substantive correctness of the entries.

We have already pointed out above that the Civil Code does not address the issue of the valuation of own shares but merely addresses the problem of the entry of this item in the balance sheet.

The standard OIC 21 Investments and Own Shares issued in August 2014 imposed a principle that, while creating a break with the principles set out in IAS/IFRS, was part of the Italian cultural baggage. The sale of securities, equity investments, etc., had always been regarded as an income-producing item that, as such, had to pass through the income statement among expenses or revenues.

In fact, § 65 of the OIC 21 standard Investments and own shares of August 2014 stated that " in the case of the realization of own shares, the difference between the value at which these are recorded in financial reporting and the sale price generates a component (positive or negative income): this is recorded in the income statement under item C) Financial income and expenses. Therefore, the above principle had no correspondence in international accounting standards.

From the above it was clear that there was a significant and profound discrepancy between the national OIC standards and the international IAS/IFRS.

The situation changed radically with the issuance of standard OIC 28 Equity in December 2016. In that document, reversing the position of standard OIC 21 Equity and own shares issued in August 2014, it requires that:

§39 in the event that the shareholders' meeting decides to dispose of own shares, any difference between the book value of the AX item "Negative reserve for own shares in portfolio" and the realizable value of the shares disposed of shall be charged as an increase or decrease in another item of equity.

Translated with www.DeepL.com/Translator (free version)As can be seen, the position of the 2016 standard 'OIC 18 Equity stands in stark contrast to what was previously stated in the August 2016 standard 21 Investments and own shares, aligning itself fully with what is said by international accounting standards, in particular § 35 of IAS 32.

On the other hand, there are no differences between the 2014 standard OIC 21 Investments and Own Shares and the 2016 standard OIC 28 Equity regarding the allocation of reserves in case of cancellation of previously acquired own shares. Indeed, in both standards, it is stated that cancellation causes the reversal of the negative AX Reserve for own shares in the portfolio, with a simultaneous reduction of the share capital by an amount equal to the par value of the shares. Any difference between the reserve's book value and the cancelled shares' par value is charged as an increase or decrease in equity. This principle was established by § 64 of OIC 21 equity investments and own shares of August 2014 and § 37 of OIC 28 equity published in December 2016.

It should be noted that the reform that came into effect on 1/1/2016 needs to explain the issue of the valuation of own shares held by the issuing company. In this regard, IAS 32 highlights how this item, falling within the scope of equity, cannot be subject to measurement at fair value, and thus, indirectly, gives rise to the interpretation that own shares should be recognized at acquisition cost without this being subject to change over time.

In contrast, the standard OIC 21 Investments and Own Shares, issued in June 2014, highlighted a different position. In fact, § 66 stated that "for the year-end valuation of own shares, a distinction must be made between whether they belonged to the category of financial fixed assets or to the category of current assets, i.e., whether they were acquired to be held in the portfolio or to be revised within a short period. In the former case, the price at which the own shares were purchased was to be reduced only in the event of a permanent impairment. The amount of the operated write-down was to be entered in the income statement under item D, "Value adjustments of financial assets," and, in correspondence, the reserve own shares in the portfolio was made available in the same amount.

In the second case, if the conditions were present, the own shares were to be recorded in financial reporting instead of at cost, at the lower value expressed by the realizable value inferable from market performance. The amount of the operated write-down was to be entered in the income statement under item D, "Value adjustments of financial assets," and, in correspondence, in the same amount, the reserve own shares in the portfolio were made available."

In § 67, it was also added that "if the reasons for the write-down subsequently ceased to apply, a reversal of the value, i.e. a revaluation of the own shares in portfolio up to a maximum of the cost, was to be made. The reinstatement of value was recorded in the income statement under item D, “Value adjustments of financial assets,” and at the same time, the reserve own shares in the portfolio had to be replenished in a corresponding amount.”

Thus, even regarding the valuation of own shares, there needs to be the harmonization so much desired by the bodies responsible for issuing accounting standards.

The standard OIC 28 Equity issued in December 2016, regarding the valuation of own shares, has changed its position from what was previously stated in 2014. Indeed, in § 36 in standard 28 Equity of 2016, it is said that “own shares are recognized in financial reporting at acquisition cost ......” From this statement, one seems to be able to infer a move closer to what is stated in international accounting standards, particularlyparticularly IAS 32. Thus, in this case, too, indirectly, as with IAS, the statement in the new standard 28 Equity of 2016 gives rise to the interpretation that own shares should be recognized at acquisition cost without this being subject to change over time.

3.3 L negative reserve own shares in portfolio in the management reclassification entered in the integrated information system and financial flows.

Reclassification in the balance sheet of own shares in the post-reform period of 2016 should be done precisely as one did before the reform. The value of the own shares should be deducted from equity. At this point, however, the question must be asked whether the pre-reclassification balance sheet shows the own equity shares or recognizes them in the negative reserve shares in the portfolio. If in the pre-reclassification balance sheet, i.e., the output of the co.ge, there are own shares in assets (as in fact should be the case since accounting recognition, as we have seen in the previous pages, should involve the “own shares” account), reclassification according to the integrated information system requires, as noted above, that this item be deducted from equity.

For consistency with the Civil Code, writing in the balance sheet negative reserve own shares in portfolio may be acceptable.

Since the regulations no longer require the creation of unavailable reserves in an amount equal to the value of own shares, we will list all available and unavailable earnings reserves in the reclassification.

About flows, the starting point may be either a pre-reclassification balance sheet with one's own shares in surplus or that one has already opted to recognize the negative reserve of one's own shares in equity. Although, in the latter case, an initial reclassification step would actually have already been implemented

The determination of flows connected with the purchase of own shares, if they are in the balance sheet output of the CO.GE, and the own shares items, must be implemented as we explained in the previous chapter.

The increase of a negative equity value creates an accounting requirement and an actual cash requirement. This means that against that increase, there was a cash/banking outflow in the amount shown in the analyzed book values. Such reasoning needs to adhere more to accounting logic. For this reason, the writer believes it is appropriate for flow calculations to be made on raw data output from COGE without reclassification.

Regardless of recognising the accounting entry inherent in the own shares, the purchase can only result in an actual cash requirement equal to the value subject to cash/bank disbursement.

4 THE PURCHASE OF OWN SHARES UNDER INTERNATIONAL ACCOUNTING STANDARDS

As we have already pointed out in the previous pages, the IAS and IFRS standards in the parts concerning own shares have stayed the same from 2015 to the present. What we stated in the section on international standards in the previous chapter also applies at this point in history. To avoid unnecessary repetition, we should not delve into the issue again but limit ourselves to recalling the main points of IAS 1 and IAS 32, concerning, in particular, our own shares.

The choice of the legislator to impose the elimination of the “own shares” account in balance sheet assets and the recognition, as a deduction from equity, of the “negative reserve for own shares in the portfolio” has produced a rapprochement with the principles dictated by IAS/IFRS by overcoming the freedom of action indicated in EU Directive 34/15, the objective of which was, among other things, European accounting harmonization.

The transposition of the content of IAS/IFRS ends with the imposition of the deduction of the value of own shares from equity. IAS 32, §§ 35 and 37, stipulates, in fact, the following:

“§ 35 Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognized as income or expense in profit or loss. Distributions to holders of an equity instrument shall be recognized by the entity directly in equity. Transaction costs of an equity transaction shall be accounted for as a deduction from equity.

§ 37 An entity typically incurs various costs in issuing or acquiring its own equity instruments. Those costs might include registration and other regulatory fees, amounts paid to legal, accounting and other professional advisers, printing costs and stamp duties. The transaction costs of an equity transaction are accounted for as a deduction from equity to the extent they are incremental costs directly attributable to the equity transaction that otherwise would have been avoided. The costs of an equity transaction that is abandoned are recognized as an expense”.

It can also be seen from the above that international accounting standards prohibit the recognition of gains or losses arising from the sale of shares in income statements. According to § 35 of IAS 32, these items and the costs associated with purchasing such shares must impact equity directly without having any consequence on the income statement for the year.

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