4

Collective Portfolio Management

Valerio Lemma

4.1 Introduction

The interest for a legal analysis of collective portfolio management arises from both the quantity of money which flows in its circuits, and the flexibility of its (European and Italian) regulatory framework.

On an economic base, it is important to highlight that, by managing almost €6 trillion in assets, undertakings for collective investment in transferable securities (UCITS) account for around 75 per cent of all collective investments by small investors in Europe.¹

With regards to legal aspects, the regulatory system provides an advanced system and several criteria for the organization of the management companies (SGR) and for the activity of the investment funds. This is the result of the integration between a clear legislative framework and the wide freedom of self-regulation left to the managers. This is the goal reached by the Legislative Decree no. 44 of 2014, which has clarified some of the most-debated problems.

On these bases, we can analyse the collective portfolio management legal framework having regard not only to the Italian consolidated law on finance (Legislative Decree no. 58 of 1998), but also to the specific rules governing each investment fund. These “fund’s rules”, as we will see, have been set by the asset management company, approved by the supervising authority, and signed by the participants (i.e. the investors who had subscribed the quotes of a fund).

This paper analyses this framework to understand if it aims to protect the savings by also reaching the goal of adding value to financial industry through the activity of a professional manager (the SGR).
4.2 Historical evolution

4.2.1 Development of the regulatory framework

The Italian social and economic evolution shows, since the sixties, the need for a new view in savings’ investment. There was the need to go beyond the bank’s monopoly in its management. After more than a decade of vain attempts, the adoption of law no. 77 of 1983 set the rules for managing an open investment fund (i.e. *fondo mobiliare aperto*). The Italian legislation entrusted the management of these funds to a limited company with this only special corporate purpose (società per azioni ad oggetto sociale esclusivo).

In this context, the freedom of the individuals is the foundation of the Italian investment model. It allows the free choice of both the management company and the investment policy by any single investor. This is why it is known as “conscious investment”.

In particular, the above-mentioned Italian law no. 77 of 1983 applies well-known international models. These models have been developed by Anglo-Saxon capitalism experience. The same is for the European regulation made by Directive no. 85/611/EC on the “coordination of laws, regulations and administrative provisions relating to UCITS”.

Afterwards, in the following years, the Italian legislator supported the development of the collective portfolio management industry fixing the paradigms of (i) the specialization of the manager and (ii) the choice of reserving this activity (with laws no. 344 of 1993 and no. 86 of 1994, the first on closed investment funds, fondi mobiliari chiusi, and the second on real estate funds, fondi immobiliari). There was also a link between the management company (società di gestione) and the typology of managed funds.

In the nineties, the Directive 95/26/EC had strengthened the prudential supervision on the financial markets, going one step further in the regulation of this industry. In fact, there had been the adoption of the Italian consolidated law on finance (Legislative Decree 58 of 1998), where there is a chapter on collective portfolio management. In this text, there is the regulatory framework of a new entity, the *Società di gestione del risparmio* (SGR), described as the only company qualified for providing this special service.

Subjects, activity and management tools are the pillars of the new legislative framework. In particular, the Legislative Decree no. 58 of 1998 confirms that the collective portfolio management shall be reserved only