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SEDE DELLA REDAZIONE

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A comparative approach to mutual guarantee institutions in Italy and the United Kingdom

Sommario°: 1. The guarantees schemes for SMEs in Europe. – 2. Identification of *Confidi* and legal framework. – 2.1. The history of *Confidi(s).* – 2.2. The reform of 2010 and the actual legal framework. – 3. The supervised *Confidi*(s) registered in the list in accordance to the article 106 of the Italian Consolidated Banking Law. – 4. The smaller *confidi*(s). – 5. *Confidi* Banks. – 6. The British model of Mutual Guarantees Institutions. – 6.1. The Small Firms Loan Guarantee Scheme (SFLG). – 6.2. Mutual Guarantee Societies (MGS). – 6.3. British Business Bank. – 7. Conclusions.

1. *The guarantees schemes for SMEs in Europe*

Mutual guarantee institutions play an important role in the financial inclusion for small and medium enterprises. Very often, SMEs that have economically sound investment projects, but do not dispose of sufficient collateral, cannot get access to credit finance, or only insufficient funding.

A guarantee provided by a mutual guarantee institutions on behalf of the SME to the bank replaces this missing collateral and enables the bank to grant the loan. In essence, the guarantee is a financial commitment by the mutual guarantee institution to repay up to a certain percentage of the loan to the financial institution in case the SME customer should not be able to honour his payments.

Given the importance of SMEs in the European economy and their difficulties in accessing loan finance, guarantee organizations have been set up in nearly all EU Member States as well as third States. To reinforce their positions in the market and share with them their best practices, several mutual guarantee institutions founded the European Association of Guarantee Institutions (AECM).

AECM has 47 member organizations operating in 28 EU countries, Bosnia and Herzegovina, Serbia, Russia and Turkey. Its members are mutual, private sector guarantee schemes as well as public institutions,

° Prof. Corrado Chessa has written the paragraphs no. 2.2, 3, 4, 6 and 6.1. Dr. Federico Onnis Cugia has written the paragraphs 1, 2.1, 5, 6.2 and 6.3. The paragraph 7 shows the common opinions of the Authors.

which are either guarantee funds or Development banks with a guarantee division. They all have in common the mission of providing loan guarantees for SMEs who have an economically sound project but cannot provide sufficient bankable collateral.

AECM serves as platform for exchange of best practices on a variety of operational issues. For this purpose, AECM has set up working groups and organises annual seminars, operational training sessions as well as specific *ad-hoc* events on selected issues.

AECM undertakes surveys on the guarantee sector, provides relevant technical information, statistics, newsletters as well as other publications to promote the guarantee instrument. It takes part as a sector representative in events both in Europe as well as beyond.

As has been highlighted[1], examination of current practices across the Member States suggests that there are opportunities for increasing their use, building on the diversity of the schemes that currently exist to address particular needs.

2. *Identification of* Confidi *and legal framework*

2.1. *The history of* Confidi(s)

Consortia, limited liability consortia and cooperative companies of collective guarantees for loans, which are commonly grouped under the name "*confidi*", are Italian private entities established to provide collective guarantees for loans granted to their members (generally small or medium-sized enterprises) by banks or by other financial institutions[2]. Cooperation among entrepreneurs was born from chronic

[1] EUROPEAN COMMISSION, *Guarantees and mutual guarantees. Best Report*, 2006, 41.

[2] For a definition of *confidi* and the illustration of the topic see R. CAFFERATA, *I consorzi di garanzia collettiva dei fidi: diffusione, limiti e potenzialità di una forma di associazionismo tra piccole e medie imprese,* in *Economia e politica industriale*, 1978, 37 ff.; A. BASSI, *I consorzi fidi nella legge di riconversione industriale*, in G. Minervini (eds.), *La crisi dell'impresa industriale*, Naples, 1980, 281 ff.; D. VITTORIA, *I problemi giuridici dei consorzi fidi*, Naples, 1981; G. TUCCI, *Dalle garanzie codicistiche alle garanzie finanziarie collettive: l'esperienza dei consorzi fidi tra imprese minori*, in *Riv. dir. comm.,* 1981, 1 ff.; M. BIONE-V. CALANDRA BONAURA (eds.), *Consorzi-fidi e cooperative di garanzia*, Milan, 1982; G. CABRAS, *Le garanzie collettive per i finanziamenti alle imprese*, Milan, 1986; R. RUOZI-L. ANDERLONI-M. PREDA, *Rapporto sui consorzi e sulle cooperative di garanzia*

difficulties in gaining access to credit of small and medium-sized enterprises. This cooperation aims to overcome inequality of treatment in requiring bank guarantees.

The associative reality, inspired to principles of mutuality and entrepreneurship[3], takes today a central role in accessing credit of medium business.

In the reality, *confidi*(s) do not carry out a bank activity strictly speaking (even if today this statement is denied by the existence of the so called *confidi* banks as will be seen further) as they do not deal with supplying credit and collecting savings, but they focus their actions on providing guarantees which are necessary to companies in order to obtain loans.

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collettiva fidi, Roma, 1986; G.D. MOSCO, *I consorzi fidi e l'intermediazione finanziaria: nuovi interventi legislativi ed esperienze europee*, in *Giur. Comm.,* 1993, 540 ff.; G.D. MOSCO, *Attuale disciplina e prospettive di evoluzione dei consorzi e delle cooperative di garanzia*, in *Giur. Comm.*, 1994, I, 842 ff.; G.D. MOSCO, *Confidi, p.m.i. e regole comunitarie sugli aiuti di Stato*, in *Contr. Impr. Eur.,* 2001, 591 ff.; A. URBANI, Sub *Art. 155*, in F. Capriglione (eds.), *Commentario al Testo Unico delle leggi in materia bancaria e creditizia*[2], Padua, 2001, 1184 ff.; M.L. PAVONE, *Nuove esigenze di aggregazione dei consorzi di garanzia collettiva fidi*, in M. Passalacqua, *Interessi pubblici e integrazione di imprese*, Pisa, 2004, 142 ff.; G. BOCCUZZI, *I confidi nel sistema finanziario italiano*, in S. Amorosino *et* al., *Scritti in onore di Francesco Capiriglione*, Padua, 2010, 301 ff.; M.R. LA TORRE, *Intermediari finanziari e soggetti operanti nel settore finanziario*, Padua, 2010, 340 ff.; F. GIORGIANNI-C.M. TARDIVO, *Manuale di diritto bancario e degli operatori finanziari*[3]*,* Milan, 2012, 191 ff.; G. FALCONE, *Confidi*, in *Dig. priv.*, *sez. comm.*, VI update, Milan, 2012, 144; L. SCIPIONE, Sub *Art. 112*, in C. Costa (eds.), *Commento al Testo unico delle leggi in materia bancaria e creditizia,* Turin, 2013, 1186 ff.; E. OLIVIERI, *L'ambulatorietà della garanzia del confidi nelle cessioni di rapporti giuridici e nelle cessioni di crediti: spunti interpretativi e riflessioni*, in *Resp. civ. prev.,* 2015, 1368 ff.; A. PROPERSI-G. ROSSI, *I consorzi*, Milan, 2016, 393 ff.; C. CHESSA-F. ONNIS CUGIA, *Il sistema di vigilanza e controllo sull'universo confidi*, in this *Rivista,* 2018, I, 85 ff.; G.B. BARILLÀ, *I consorzi fidi tra diritto dell'impresa e regole di vigilanza*, in *Giur. comm.,* 2018, 83 ff.; D. SICLARI, *Regolazione e supervisione dei confidi,* Turin, 2018.

[3] R. COSTI, *Consorzi-fidi e cooperative di garanzia*, in M. Bione-V. Calandra Bonaura (eds.), *op. cit.*, 43, who does not doubt that the exercise of mutual guarantees is business activity, aimed at the production of services (*scilicet* the guarantees given to credit institutions) and, in particular, of commercial enterprise. In the same way F. TESAURO, *Sul trattamento fiscale dei redditi dei consorzi-fidi*, in M. Bione-V. Calandra Bonaura (eds.), *op. cit.*, 97 ff.

They can be consortia with external activities, cooperative companies, joint-stock consortium companies, limited liability consortium companies or cooperative companies, which provide collective guarantees of loans.

They aim to using resources coming from consortium or associated companies in whole or in part for health insurance and entrepreneurial provision of guarantees aiming to foster short and medium term loan especially, by banks and by other entities working in the financial sector (See article 13, par. 1, law no. 326 of 24 November 2003, hereafter also *confidi* law).

The phenomenon first manifested itself in two types of organisms, both forms of artisan credit cooperation: the artisan consortia and the collectible artisan cooperative societies.

The origin of these institutes dates back to the law 25 July 1956, no. 860, on the regulation of craft enterprises, which in article 3, par. 2, provided for facilitations for the consortia between the craft enterprises established for the provision of guarantees in credit operations to the associated companies.

Although the law referred to the consortia, the guise of the cooperative society was soon preferred. In fact, with the Industry and Commerce Ministerial Decree of 12 February 1959, the standard statute was approved for the collecting artisan cooperative companies set up by the Central Crafts Committee (*Comitato centrale dell'artigianato)*, taking as a model the article of association of the first artisan guarantee cooperative established in Rome in 1957[4].

The social purpose of the artisan guarantee cooperatives foreseen by the article 2 of the ministerial article of association was based on the principles of non-profit mutuality and aimed to promote the improvement and modernization of artisan productions, providing

[4] See P. VERRUCOLI, *Lo statuto-tipo delle cooperative artigiane di garanzia di credito*, in *Riv. soc.,* 1959, 592 ff., who emphasizes how the shareholders limit their advantage to the facilitation of obtaining the credit they need, from the point of view of the ease of finding the relative guarantee as a saving in the expense of the same; A. GIANNINI, *Cooperative artigiane di garanzia del credito*, in *Banca, borsa, tit. cred.*, 1960, p. 566 ff.; R. COSTI, *Consorzi-fidi e cooperative di garanzia*, cit., 40 ff.; G. VOLPE PUTZOLU, *Commento all'art. 19 l. 12 agosto 1977, n. 675*, in *Nuove leggi civ. comm.,* 1978, 742 ff.

guarantees to facilitate the granting to its shareholders of short-term bank loans by a affiliated credit institution[5].

But this was not binding in order to be able to provide the collective guarantee, even if it constituted the indispensable condition for being able to benefit from the advantages provided by the legislator. The cooperative did not directly grant the credit, but assisted its members in the related requests that it then transmitted to the bank providing, exclusively in favor of the members, a guarantee consisting of its assets, represented by the share capital (formed by the shares, the amount of 10,000 Italian lire each), from reserves, private contributions, a fund formed by the provisions provided by public bodies and part of the profits (*rectius*, management surpluses)[6]. The maximum amount that could be financed was, as a rule, equal to ten times the amount of the cooperative's social assets.

The latter was deposited with the bank, which could thus be satisfied directly on those sums in the case of default of the borrowing company[7].

Despite the appreciable structure of the guarantee, we must register its poor application due to the inadequacy of the contribution of the members to achieve the social purpose[8].

After the many and disorganical legislative interventions in the matter that had occurred until the early '90s, both national and regional, having a purely facilitative purpose, the most important regulatory intervention on *confidi*(s) issues came with the article 13 of the Law Decree of 30 September 2003, no. 269, converted with modifications in the law 24 November 2003, no. 326, named *Rules on the exercise of the mutual guarantee for loans*[9].

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[5] Criticisms of the terminology adopted have been expressed by A. GIANNINI, *op. cit.*, 567, who points out that despite the purpose of the cooperative is to guarantee funding, the expression used makes the credit function appear as merely instrumental of the purpose, identified in the improvement and modernization of production.

[6] They could not be distributed to the shareholders and were instead allocated half to the reserve fund and half to the public contribution fund: G. VOLPE PUTZOLU, *op. cit.*, 743.

[7] G. CABRAS, *Le garanzie collettive per i finanziamenti alle imprese*, Milan, 1986, 9.

[8] G. VOLPE PUTZOLU, *op. cit.,* 743.

[9] The reform has aroused a renewed interest on the subject by scholars. See M.L PAVONE, *op. cit*., 153 ff.; M. LUCHINI, *La nuova disciplina dei consorzi fidi: aspetti civilistici*, in *Soc.*, 2005, 1109 ff.

2.2. *The reform of 2010 and the actual legal framework*

The last, important, intervention of the legislator on the matter was with the Legislative Decree 14 August 2010, no. 141 and with subsequent amendments and additions made by Legislative Decree 14 December 2010, no. 218, which have brought profound innovations to the subject of subjects operating in the financial sector[10].

With this reform, which abrogated article 155 Italian Consolidated Banking Law (in Italian, t.u.b.), profound changes have been made to the regulation of *confidi*(s), which today finds its status in articles 106 and 112 ICBL and in the *confidi*(s) law.

The new regulatory scenario overcomes the distinction between the *confidi*(s) in the specific section of the list pursuant to article 106 ICBL and those registered in the special list provided for by article 107 ICBL, presenting a clear distinction between major *confidi*(s) (registered in the general list pursuant to article 106 ICBL) and minor *confidi*(s) (which find their discipline in articles 112 and 112-*bis* ICBL).

In the current context, the major swaps are characterized by a complex activity and can carry out the activity of financial intermediaries as well as that of the collective guarantee of exposures.

On the other hand, the smaller *confidi*(s), with a more modest volume of financial activity, also include second-grade *confidi*(s). Unlike the previous regulations, where the registration in the special section of the list pursuant to article 106 ICBL had only the reconnaissance purpose, today even the *confidi*(s) with a more limited operation are subject to the supervision of the Authority that manages the list referred to in article 112 ICBL envisaged by article 112-*bis* ICBL and equipped with appropriate powers of verification and intervention.

No news, however, has been arranged for *confidi*(s) banks, which are still the third type of *confidi*(s) regulated in the *confidi* law and by the ICBL for the part relating to the subject of cooperative credit banks where applicable.

Following the 2010 reform, the discipline was recently completed by an implementing part. The Economy and Finance Ministerial Decree

[10] See A. ANTONUCCI, *L'intermediazione finanziaria non bancaria nel d. lgs. 141/2010. Profili di sistema,* in *Riv. trim. dir. econ.,* 2011, 40 ff.

2 April 2015, n. 53 has identified and specified the distinctive criteria between major and minor *confidi*(s), especially in terms of the volume of financial assets, as well as the definition of related and instrumental services that can be exercised together with collective credit guarantee.

The Circular of Bank of Italy of 3 April 2015, no. 288, in dictating the new supervisory provisions for financial intermediaries, to the Title VII, Chapter 1, introduced a more detailed rules regarding the supervisory, informative and prudential supervision applicable to *confidi*(s), sanctions, the requirements of corporate officers and of participants in capital and those relating to administrative and accounting organization.

Finally, with Economy and Finance Ministerial Decree of 23 December 2015, no. 228 the regulation on the structure, powers and operating procedures of the Authority for the keeping of the list of minor *confidi*(s) has been issued pursuant to article 112-*bis* ICBL, as well as the identification of the requisites of integrity and professionalism of the members of the management and control bodies of the Authority.

Among the other recent legislative interventions we also point out the provisions of the Legislative Decree 6 December 2011, no. 201, dictating measures for micro, small and medium-sized enterprises, which provides, notwithstanding the provisions of the *Confidi* law, that large non-financial companies and public and private entities may participate in the share capital of the *confidi*(s) and the *confidi* banks. But the small and medium sized companies must have at least half plus one of the votes that can be exercised at the general meeting and the appointment of the members of the bodies exercising strategic management and supervision functions must be reserved for the general meeting.

Article 8, par. 12-*bis*, Law Decree 13 May 2011, no. 70, converted with modifications in Law 12 July 2011, no. 106 and the article 10 of the Law Decree 13 January 2012, no. 1, converted with modifications in Law 24 March 2012, no. 27, have provided for the extension to the professionals of the possibility to participate in the patrimony of the *confidi*(s).

Article 36, par. 1 and 2, Law Decree 18 October 2012, no. 179, on the other hand, established that the *confidi*(s) under direct supervision by the Bank of Italy may impute, with the resolution of the ordinary

shareholders' meeting, to the share capital or the consortium fund, a special reserve or set aside for hedging risks, risk funds and other funds or reserves or loans for the granting of guarantees constituted by public contributions[11].

3. *The supervised* Confidi(s) *registered in the list in accordance to the article 106 of the Italian Consolidated Banking Law*

With reference to *confidi*(s) registered in the dedicated section of the list established by the article 106 ICBL, above all it is necessary to coordinate what is specifically required by *confidi*(s) protocol with requirements for company type included by the article 107 ICBL for entering this list.

In fact, it is expected that Bank of Italy authorizes financial brokers in performing their activity where the joint stock company form, the limited joint-stock partnership one, the limited liability and cooperative one are used.

However, the article 112, par. 3, ICBL states that «Notwithstanding the article 106 *confidi*(s) can take the form of limited liability consortium for enrolment in the register». Well, if we ignore typing mistake relative to regulation for which this decree waives (the article 107 and not the article 106), it seems necessary to understand how this company type is established among limited companies indicated by the article 107 ICBL for enrolment to the register.

Of course there is no problem for *confidi*(s) established in form of mutual company, according to one of Authors[12], the subject in question indicates «not only the limited liability consortium or the consortium company with legal status but rather the cooperative consortium». On the basis of this way of reasoning and in relation to the performed

[11] Pursuant to these provisions, the resources are attributed to the assets, also for supervisory purposes, of the related *confidi*(s), without any restrictions of destination if they are destined to increase the assets. Any corresponding shares or quotas constitute shares or quotas of the *confidi*(s) and do not attribute any capital or administrative rights, nor are they included in the share capital or the consortium fund for the purpose of calculating the quotas required for the establishment and for the resolutions of the shareholders' meeting.

[12] E. CUSA, *Le società consortili con personalità giuridica: fattispecie e frammenti di disciplina,* in P. Benazzo-M.Cera-S.Patriarca (eds.), *Il diritto delle società oggi. Innovazioni e persistenze,* Turin, 2011, 125.

activity, exclusively or prevalently, by *confidi*, with which an essentially consortium aim is pursued, it has been decided to make a distinction between a consortium joint-stock company (in other words joint stock consortium companies, limited consortium companies and consortium companies limited by shares) and limited liability consortium companies by meaning with them joint-stock consortium cooperatives and limited consortium cooperatives.

As regards authorization for the exercise of activities, according to the article 112, par. 3, ICBL we need to refer to secondary regulation issued by the Italian Ministry of Economy and Finance and by Bank of Italy.

With its own Decree no. 53 of 2 April 2015, the Italian Ministry of Economy and Finance listed objective criteria connected to volume of financial activities in the article 4, on the base of which *confidi*(s) which are required to ask for authorization to Bank of Italy in order to be inserted in the register are identified. According to this arrangement, *confidi*(s) with a volume of business equal to or greater than 150 millions of euro are required to ask for authorization. Further to the issuance of this decree, Bank of Italy established elements to be taken in consideration in order to calculate volume of financial assets. Title VII, Chapter 1, Section II of Supervisory Arrangements for financial institutions, updated with circular no. 288 of 2 April 2015, thoroughly lists composition of the aforementioned book[13].

Moreover, *confidi*(s) that at the date of entry into force of Ministerial Decree no. 53/2015 were registered in the list included in the article 107 ICBL applicable on the date of 4 September 2010, and with a volume of financial business equivalent to or higher than 75 millions of euro, could in any case ask to be inserted in the register within three months by coming into force of ministerial decree, even when threshold of volume of business which is now expected for the last source is not reached.

[13] The volume of financial assets refers to the aggregate consisting of: *a*) cash and availability; *b*) loans to credit institutions; *c*) receivables from financial institutions; *d*) loans to customers; *e*) implicit credits in financial leasing operations; *f*) bonds and other fixed income securities; *g*) shares, quotas and other variable-income securities; *h*) accrued income; *i*) guarantees issued; *j*) other asset items and off-balance sheet transactions.

Confidi(s) which are inserted into the register according to the article 106 ICBL prevalently carry out the activity of collective guarantee for loans[14]. Moreover, they can carry out the following activities (included in the article 112, par. 5, ICBL) mainly as regards consortium or associated companies: providing guarantees in favor of the Government's financial administration, carrying out tax refund for consortium or associated companies, managing of state-subsidises loans according to the article 47, par. 2, ICBL, concluding of contracts with banks receiving public funds of guarantee according to the article 47, par. 3, ICBL, and managing relations with consortium or associated companies in order to facilitate use.

Pursuant to the article 112, par. 6, ICBL, Bank of Italy has established for *confidi*(s) that are inserted in the register according to the article 106 ICBL the chance, for residual value, to allow other types of financing within a limit equivalent to the 20% of the assets' overall under any form ([15]) according to par. 1 of the same article. Within this overall limit, credit guarantee consortia can also guarantee the issuance of debit instruments by small and medium-sized associated enterprises.

Once we include a limit in granting financings under any type of form, we get a little bit confused considering that we must also consider in this list «issuance of bank guarantees, guarantees, opening of letters of credit, acceptance, endorsement, commitment in granting credits, as well as any other form of issuing guarantees and commitments of

[14] The prevalence of this activity is complied with if the latest approved financial statements show that the amount of the revenues deriving from the collective guarantee of credit facilities and related and instrumental activities constitutes more than half of total revenues and the nominal amount of guarantees collective exposures constitute more than half of the total assets, meaning the sum of the total assets of the balance sheet and the volume of guarantees issued gross of adjustments, based on the latest financial statements approved in accordance with the regulatory provisions.

[15] Pursuant to article 1 of Ministerial Decree no. 53/2015 for financing granting activities in any form is intended for the granting of loans, including the issuance of substitutive guarantees of credit and of signing commitments. This activity includes, inter alia, all types of financing provided in the form of: *a*) financial leasing; *b*) purchase of credits for consideration; *c*) consumer loans, as defined by article 121 ICBL; *d*) mortgage loans; *e*) pledge loans; *f*) issuance of guarantees, endorsement, opening of documentary credit, acceptance, turn, commitment to grant credit, as well as any other form of issuing guarantees and signing commitments.

signature» according to the article 1, par 1, lett. *f*), Ministerial Decree no. 53/2015.

The activity of collective guarantee for loans limits, so as it is defined by par. 1 of *Confidi* law, can be explained, so as it is arranged by par. 3 of the same law, in providing personal and real guarantees, in concluding contracts aiming to realize transfer of risk as well as in guarantee of unavailable deposits which are established among financiers of consortium or associated companies (the so called risk provisions).

Therefore, it is about to understand if the activity carried by traditional c*onfidi*(s) can or cannot be classified as allowance of unsecured loans, as such qualification of the activity of collective guarantee ends up creating a circuit breaker inside protocol, because the entity's exclusive or prevailing activity should find a huge limit.

We can leave out a deeper analysis on nature of guarantees granted by credit guarantee consortia, but we must observe that the latest doctrine dealing with this profile has studied problem with a lack of precision[16].

The Scholar does not consider this limit, but he starts from the consideration that activity of *confidi*(s)' collective guarantees' provision is based on the form of unsecured loans and comes to wonder if its activity is to issue guarantees in favour of banks, in other words the activity is of loan exercising under the form of unsecured loans granted to small and medium-sized enterprises , with the result that collective guarantee is changing in a hybrid instrument which preserves credit and is the real credit at the same time, which draws from public funds directly or indirectly[17].

Considering the existence of a limit in granting finances under any form, we must so wonder if this limit is exclusively applied for other types of financings (top of it all financial leasing) being its grant the exclusive or prevailing institutional activity of *confidi*(s) and not even for the unsecured credit of *confidi*(s), or we must consider that the prevailing activity of credit guarantee consortia is not represented by

[16] E. OLIVIERI, *L'ambulatorietà della garanzia dei confidi nelle cessioni di rapporti giuridici e nelle cessioni di crediti: spunti interpretativi e riflessioni*, in *Resp. civ. prev.,* 2015, 1393 ff.

[17] E. OLIVIERI, *op. cit*., 1395.

granting unsecured credits[18] by adhering to the developed guideline[19] – so a residual activity which is bound to limits issued by Bank of Italy – but by the monetary risk provision, a deposit conventionally bound in favour of beneficiary banks.

Besides the so far listed activities, registered *confidi*(s), according to the article 106 ICBL, can carry out related and specious activities in respect of provisions of activities established by actual arrangements.

The article 5 of Ministerial Decree no. 53/2015 makes a distinction between specious activities and related ones. Related activities represent optional activities which allow development of the exercised activity and have purposes consistent with it. Among these, we can include again provision of consultancy service in matter of business finance exclusively towards its own members, provided that it is strictly aimed at granting an own or third parties' collective guarantee and the conclusion of agreements with banks, financial institutions and other subjects working in the financial sector aiming at promoting access to credit of associated companies[20].

Activities of information, consultancy and assistance can be exercised in favour of consortium or associated companies, in other words the not associated ones for the procurement and the best use of financial sources as well as the provision of services aiming at improving the same companies' financial management.

The activity towards not associated companies must work in terms of developing the prevailing activity of granting collective guarantees of loans or the activity residually carried out according to the article 106, par. 1, ICBL.

On the contrary, instrumental services regard those activities having a supporting character for that change. Among them, we remember above all equity participations exclusively in other *confidi*(s) or *confidi* banks, in other words in other financial institutions granting guarantees

[18] If personal guarantees are given to banks, G.D. MOSCO, *I consorzi fidi e l'intermediazione finanziaria: nuovi interventi legislativi ed esperienze europee,* cit., 551, notes that these, with rare exceptions, are provided directly by the consortium companies or by external support bodies.

[19] G.D. MOSCO, *I consorzi fidi e l'intermediazione finanziaria: nuovi interventi legislativi ed esperienze europee,* cit., 550 ff.

[20] Pursuant to article 12, par. 1, lett. *c*), Legislative Decree no. 141/2010.

to their members on the base of specific agreements as well as in companies established for the provision of instrumental services.

Another supporting service consists of the purchase of real estate exclusively suitable for the exercise of the main activity. Real estate covering a supporting character for the exercise of the financial activity are so considered.

As an example, we consider as instrumental real estate destined, in whole or in part, to the exercise of institutional activities, to be rent out for employees, as well as real estate purchased to collect credits, which are kept for the time being necessary to make assignments and any other real estate purchased to pursue scope of activity of the purchasing company or of other members of the group.

Not suitable real estate, which are probably already kept before registration in the list, can be rent out, in other words must be disposed as soon as possible.

Chance for *confidi*(s) to lease out own real estate coming from situations previous to registration remains unaffected.

According to the article 4, par. 3, Ministerial Decree no. 53/2015, withdrawal of the authorization to fail dimensional requirements, according to what is exposed by Bank of Italy pursuant to the article 107, par. 3, ICBL, involves office registration in the list of minor *confidi*(s) according to the article 112 ICBL.

The revocation is also expected for credit consortia authorized in according to paragraph 2 (those with a volume of financial activity exceeding €75 million which, at the date of entry into force of Ministerial Decree 53/2015, were registered in the list referred to in article 107 ICBL) if they have not reached the threshold of €150 million within five years from enrolment on the register.

4. *The smaller* confidi*(s)*

The *confidi*(s) entered on the list held by the body referred to in article 112-*bis* ICBL (regulated by Ministerial Decree no. 228/2015) represent a residual category, since, according to the article 112, par. 2, ICBL, do not include those registered in the bulletin-board of the financial institutions nor, it must be considered the *confidi* banks.

It includes those bodies set up in the form of consortia with external activities, consortia including cooperatives, limited share consortia

companies, consortia limited partnerships by shares or limited share consortia companies, with a volume of financial assets of less than €150 million.

These include also the second degree *confidi*(s), i.e. those *confidi*(s) constituted by the *confidi*(s) and possibly by member companies or members of the latter or by other companies in the form of consortia with external activities, consortia cooperative companies, limited share consortia companies, limited liability consortia companies or cooperatives ([21]).

They, in accordance with paragraph 4 of the *confidi* law, exercise exclusively the collective guarantee activity of credit facilities and related services; and instrumental in favor of *confidi*(s) and member companies and businesses consortium members or members of the member of *confidi*(s). Their function is substantiated in one a very important role in the development of first-degree *confidi*(s)[22].

The minor *confidi*(s) solely exercise the activity of performance of collective guarantees of loans and instrumental and related activities as well as defined by the article 5 of Ministerial Decree no. 53/2015.

These last services, however, must be made exclusively in favor of the members or consortium members. Such a limit does not allow to the minor *confidi*(s) to expand its business and increase and diversify sources of income, containing the growth prospects of the same and, indeed, risking to determine their exit from the market if they do not adopt strategic aggregative choices[23].

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[21] A particular role has been attributed to this type of *confidi* by R. COSTI, *Le istituzioni finanziarie degli anni ottanta*, Bologna, 1984, 184, who saw in them the main instrument for a regionalization of mutual guarantee institutions, as an instrument capable of mediating between the entrepreneurial needs and the planning choices of the regions.

[22] R. COSTI, *Consorzi-fidi e cooperative di garanzia*, cit., 97, makes a distinction between second-level guarantee cooperatives and second-level *confidi*(s). If only the former can represent a form of reinsurance for first-degree cooperatives, guaranteeing them against insolvencies, both bodies can ensure more profitable uses of the economic resources received from members and public bodies, thus performing an effective function of technical and political-economic coordination of the *confidi*(s). Secondly, second-level *confidi*(s) would operate as a sort of compensation room, in which the *confidi*(s) with an excess of resources can transfer the latter to the trust with an excess of requests.

[23] A. CONSO-D. VARANI, *La nuova disciplina degli Intermediari finanziari e i Confidi*, in *www.dirittobancario.it, 2015*, 18 ff., allowed for the introduction of

These, on the other hand, are promoted and encouraged by the same *confidi* law which, in par. 20 and 20-*bis*, stimulates the establishment of large institutions dimensions and the association between *confidi*(s)[24], allowing them to be possibility of setting up inter-consortia guarantee funds for the provision of counter-guarantees and co-guarantees to *confidi*(s).

5. Confidi *Banks*

In the face of experiences already known in other European legal systems, such as, for example, the German one with the *Bürgschaftsbanken* and the French one with the *Sociétés de cautionnement mutuel*[25], the legislator of 2003 introduced a new type of *confidi*, exercising banking activity[26].

According to par. 29 of the *confidi* law, «The exercise of the activity banking in the form of a limited liability cooperative company is permitted, according to article 28 of the ICBL, also to banks which, based on their articles of association, mainly exercise their activities of collective guarantee of loans to members».

To this type of banks, whose name must contain, jointly, the terms "*confidi*" or "collective guarantee of credit", in added to the indication

operational innovations for smaller *confidi* by the secondary legislation governing the Body referred to in article 112-*bis* ICBL. Indeed, there is no new information on by the Ministerial Decree no. 228/2015. The subject of the transformation of the smaller *confidi*(s) into supervised *confidi*(s) or *confidi* banks is subject to specific regulatory provisions (paragraphs 38 to 43 of the *Confidi* law) and has been investigated by several scholars: v. D. BOGGIALI, *Scissione di confidi e trasformazione di enti diversi dai confidi in confidi*, in *Studi e materiali. Quaderni semestrali del Consiglio Nazionale del Notariato*. 2007, 230 ff.; G. TUCCI, *La riforma dei consorzi fidi e il nuovo diritto comunitario in tema di requisiti patrimoniali e di adeguatezza patrimoniale (capital requirements) e di adeguatezza patrimoniale degli enti creditizi (capital adequacy)*, in *Riv. dir. priv.,* 2007, 389 ff.

[24] In particular, the *confidi*(s) gathering at least 15.000 enterprises and guaranteeing loans totaling no less than € 500 million. The *confidi*(s) that, instead, unite cooperatives and their consortia must involve a total of at least 5.000 enterprises and guarantee loans totaling no less than € 300 million.

[25] G.D. MOSCO, *op. cit*., 556 ff.

[26] See G. TUCCI, *op. cit*., 387 ff.; R. COSTI, *L'ordinamento bancario*[5]*,* Bologna, 2012, 445 ff.; G. BOCCUZZI, *op. cit*., 312 ff.; M.R. LA TORRE, *op. cit.*, 347 f.; F. GIORGIANNI-C.M. TARDIVO, *op. cit.*,191 ff.

«cooperative company» (pursuant to article 2515 Italian Civil Code), as well as the expression "cooperative credit" as required by article 33, par. 2, ICBL, will apply, within the limits of their compatibility, numerous ICBL standards, in particular those referred to in articles from 5 to 11, from 19 to 28 and from 33 to 37 ICBL.

In the absence of a specific recall, the compatibility with the *confidi*(s) of the provision pursuant to article 150-*bis* ICBL, Is doubtful for which identifies which rules of the Italian Civil Code in the field of cooperative societies do not apply to cooperative banks (nothing foreseeing for *confidi* banks on this regard)[27].

They must be considered not applicable to the *confidi* banks the provisions of *confidi* law in the matter of exclusive object and pure mutuality of the *confidi*(s) (par. 2 and 4), being explicitly established by par. 29 the character of the mutual cooperatives (par. 7), on the minimum amount of the social capital and of the equity and on the amounts of the shares (par. from 12 to 17), the prohibition of distributing management surpluses in any form (par. 18), which will be discussed in more detail below.

As far as the administrative and control bodies are concerned, the compatibility between the provisions of the *confidi* law in paragraph 10 of about possibility for public and private bodies and larger companies that cannot be part of the *confidi*(s) to have their own representatives participate to the elected bodies of the *confidi* (provided that the majority of the members are appointed components of each organ remain reserved to the assembly), with what instead foreseen by the article 33, par. 3, ICBL, for which the appointment of these bodies belong exclusively to the competent corporate bodies. In this regard, it must be shared the orientation according to which the special discipline of *confidi*(s) is prevalent[28].

Since the article 10 ICBL is applicable, the activity of this type of banks is therefore constituted by the collection of savings between the public, the loan activity and the provision of collective guarantees of

[27] In the absence of a specific rule, R. COSTI, *L'ordinamento bancario*, cit., 446 notes the uncertainty that *confidi* banks must necessarily take the corporate form of the cooperative, if they can issue financial instruments or, again, on the applicability of the rules governing the merger and the transformation of cooperative credit banks.

[28] G. PETRELLI, *I confidi costituiti in forma di società cooperativa*, in *Studi e materiali. Quaderni semestrali del Consiglio Nazionale del Notariato,* 2006, 1693.

loans in favour of the members. The latter must constitute the main activity of the *confidi* banks.

Despite the regulation of the Bank of Italy of 28 February 2008 (par. 8), claims that the exercise predominantly of the provision of collective guarantees in favour of the shareholders absorbs the provision of article 35, par. 1, ICBL, according to which cooperative credit banks exercise credit predominantly in favor of the shareholders, the two activities are not necessarily excluded. Indeed, being both cooperative companies with prevalent mutuality, the *confidi* bank will not only have to exercise predominantly the guarantee activity collective agreement in favor of the shareholders, but will also be required to exercise the credit in via prevalent to the latter.

The Bank of Italy may authorize, for specified periods, individual *confidi* banks to a prevalent operation in favor of different subjects by members, only if there are reasons of stability.

The minimum initial capital required for the establishment of a *confidi* bank is equal to €2 million and must be represented solely by fully paid up share capital and by fully available reserves such as, for example, legal reserve or reserve for share premium (paragraph 11 of Bank of Italy regulations of 28 February 2008).

Since these are cooperative credit banks, according to article 28, par. 2, ICBL, the checks on the cooperatives companies allocated to the governmental authority of the Italian Civil Code do not apply. The recent reform of cooperative credit banks, intervened with the Law Decree 14 February 2016, no. 18, converted into law on 8 April 2016, no. 49 offers interesting points of analysis about the limits in the applicability of the discipline among to credit consortia banks.

First of all, as the action of Bank of Italy regulations of 28 February 2008 did clarify on the compatibility of the article 34 ICBL to the *confidi* banks, in the light of the recent reform the number of members cannot be less than 500 (previously 200) and each member cannot hold shares for a value total nominal value of more than €100.000.

The *confidi* banks will nevertheless be able to continue to predict in their own article of association limitations or reserves in favor of particular categories of subjects among whom they intend to acquire their members. In any case the banks must adopt company policies that favor enlargement of the social structure, taking this into account first of all in the extra charge determination that the member must pay in

addition to the amount of the action, according to the provisions of article 2528, par. 2, Italian Civil Code.

The most interesting news, which is likely to hit operations heavily of this type of trust, is that contained in the new paragraph 1-*bis* of the article 33 ICBL, under which adhesion to a cooperative banking group is a condition for the issue of the authorization for the exercise banking activity in the form of a cooperative credit bank. In our opinion, *confidi* banks do not avoid this burden, also considered the ratio behind this reform, aimed at strengthening the stability of the system as a whole and of the assets of the banks of cooperative credit, among which we must include the *confidi* banks.

In the conversion of the Law Decree has not been adequately taken in consideration the hypothesis of the regional cooperative group, wished by a doctrine that recognized in this figure specifically suitable for safeguarding the peculiarities that distinguish cooperative credit banks (and, we add, even more so the *confidi* banks), avoiding it's distortion caused by their possible translation in a context oversized[29].

In fact, cooperative credit banks are considered by the doctrine the only and last example of specialized bodies[30], whose social function is the support and promotion of the local economy[31], to fulfil one function that moves service management from referability to certain data of the cooperative essence to the link with the territory.

Even for banks, the local character is a characterizing element[32], so much that the Bank of Italy regulations of 28 February 2008 containing «Provisions of supervision of *confidi* banks», as well as providing for them to adopt references in their own name to identify the bank in the specific market areas in which the same work, provides that in the

[29] M. PELLEGRINI, *La funzione delle BCC in un mercato in trasformazione. Ipotesi di riforma e specificità operativa*, in *Rivista trim. dir. econ.,* 2015, 70, 79; M. LAMANDINI, *Nuove riflessioni sul gruppo cooperativo bancario regionale*, in *Giur. comm.,* 2015, 56 ff.

[30] V. TROIANO, *Tipologie soggettive bancarie e organizzazione di gruppo*, in F. Capriglione (eds.), *L'ordinamento finanziario italiano*, Padua, 2010, 560; *contra* see V. SANTORO, Sub *art. 35*, in M. Porzio, F. Belli (eds.), *Testo Unico Bancario. Commentario*, Milan, 2010, 345.

[31] About this topic see G. PRESTI, *Dalle casse rurali e artigiane alle banche di credito cooperativo*, in *Banca, borsa, tit. cred.,* 1994, 191.

[32] In the past, hoping for the regionalization of mutual guarantee institutions, see R. COSTI, *Le istituzioni finanziarie degli anni ottanta*, Bologna, 1984, 181.

bank's social statute must indicate the area of territorial competence[33] within which the members are acquired, the risks are assumed in the customers and the branches are opened or transferred. At the outside of this area, banks cannot install also automatic ATMs (Automated teller machines), while there is no provision territorial limit for POS (Points of sale).

The conditions under which the bank can open locations outside its territorial area[34], especially a following merger operations[35] are punctually described .

The close link between *confidi* banks and the territory to which they belong to, is recognized likewise with regard to the shareholders, similar to the discipline established for the cooperative credit banks by article 34, par. 2, ICBL.

In fact, they can become members and customers of *confidi* banks the residents, established or operating on a continuity basis (i.e. when the territorial area constitutes a centre of interests for the aspiring partner, as he or she works there or have any form of link, such as the ownership of real rights on real estate located in the territorial area of the bank) in territorial area of the banks themselves. For the legal entities we take into account the location of the registered office, the management of establishments or other operational units. In compliance with these requirements, the collective guarantee banks can acquire resident or registered members in foreign, community and non-EU countries, falling within their area of territorial jurisdiction.

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[33] The territorial area includes the province in which the bank has its registered office and the provinces bordering it.

[34] Separate branches may be provided, characterized by the fact that they are located in provinces not included in the territorial area. These provinces must be named by name in the article of association. In this case the territorial area of the bank extends to the province in which the branch is located. For the opening of separate branches it is necessary that the bank has established in the new province a network of relationships with customers resident or operating there and has collected at least 200 accessions from new members. Moreover, it must be in line with the regulations regarding capital requirements, it must have an organizational situation and a system of adequate internal controls, in relation to the risks connected to the different characteristics of the new settlement area.

[35] The Bank of Italy may authorize a *confidi* bank to extend its territorial area to the provinces falling within the territorial area of *confidi* banks participating in merger transactions.

The article of association of the *confidi* bank must provide that the exposures not intended for members will be taken with respect to persons who however they are residents or operating in the territorial area.

Optionally, it can also be expected that a quota not exceeding 5% of the total is taken outside this area.

6. *The British model of Mutual Guarantees Institutions*

In the United Kingdom the entrepreneurial management and the shortages of the cooperation system has delayed the spread of the cooperation between companies to grant credit guarantees. This difference among European countries has been reduced with the incentive of creating cooperation between companies to rationalize the productive process and the organizational models. In Great Britain the guarantee system started in the beginning of 80's with Loan Guarantee Scheme (SFLG). As we will see, in January 2009, SFLG was replaced by the Enterprise Finance Guarantee (EFG).

Then in the beginning of 90's was created National Association of Mutual Guarantee Societies (NAMGS) after the development of Mutual Guarantees Societies (MGS).

6.1 *The Small Firms Loan Guarantee Scheme (SFLG)*

Governments in more than one hundred countries across the developed and developing world operate loan guarantee schemes (often called partial credit guarantee schemes, PCGs)[36].

Finally, the public policy-maker faces choices about what "types" of firms it wishes to support if it implements a loan guarantee scheme.

Whilst most schemes exclude financial sector firms, those involved in gambling and other sectors perceived to be "morally bad" from a societal perspective, and in the EU agricultural firms, many schemes are also narrowly targeted at specific sub-groups of the population of

[36] T. BECK-L.F. KLAPPER-J.C. MENDOZA, *The Typology of Partial Credit Guarantee Schemes around the World,* in *The World Bank Policy Research Working Paper*, No.4771, Washington D.C., 2008, 1 ff.

firms, or indeed operate on a spatial level, as is also the case in many regions of the European Union.

But there is a common agreement that younger and smaller firms are most likely to be credit rationed in the market, and for the most part loan guarantee schemes throughout the world reflect this view.

The United States were a first mover in providing this type of financial instrument in 1953, followed by Canada and Switzerland in 1961 and the United Kingdom in 1981.

The UK Small Firms Loan Guarantee Scheme (SFLG) was introduced in 1981 to promote the flow of debt finance to smaller firms with viable proposals, but without collateral to secure loans against, and to encourage banks to expand lending to this sector by demonstrating to them that they are missing out on viable lending opportunities. Since its inception, the SFLG has undergone a series of changes and modifications to its operation and operational parameters, the most recent being the adoption of many of the Graham Review recommendations post-December 2005[37].

The Graham Review changes refocused SFLG lending towards younger firms, although this constraint was later removed by the Enterprise Strategy[38].

In January 2009, SFLG was replaced by the Enterprise Finance Guarantee (EFG), which opened the scheme to a wider number of businesses, with the specific objective to facilitate new bank lending in response to the credit crunch.

Since January 2009, SFLG has since been replaced by the Enterprise Finance Guarantee (EFG). EFG is a temporary scheme which is designed to help viable businesses raise the finance they need during the current economic recession. EFG shares many of the design features of SFLG but makes it available to a greater number of businesses. Unlike SFLG, EFG loans can be used to convert an overdraft into a loan[39].

A recent *ex-post* evaluation of European Union Regional Development Funds and Cohesion Policy financial instruments found that 25 guarantee schemes to support lending to SMEs were active in

[37] M. COWLING, *Economic evaluation of the small firms loan guarantee (SFLG) scheme*, BIS Institute for employment studies, No. 10/512, London, 2010, 64.

[38] M. COWLING, *op. cit.*, 58.

[39] M. COWLING, *op. cit.*, 9.

the 9 European regions studied between 2007 and 2013, and more than 120 across the European Union.

SFLG, sometimes called a Partial Credit Guarantee Scheme (PCGS), is a debt policy instrument[40].

It occurs when an SME cannot fully finance its investment projects or day-to-day operations from internal funds (or less commonly equity), so it approaches a private bank (typically the same bank it holds its transactional accounts with) to request a loan or a line of credit.

In addition, toward it the SMEs can obtain debt capital with the support of the British Government who provides a guarantee on a part of credit line. A company who obtain the support of SFLG get the coverage of the Department of Trade and Industry (DTI) because this one commits to guarantee the 70% of the amount and the 85% of the credit given by the bank[41].

The companies have to pay to DTI a reward of 2,5% annually on the funding which has been covered. The total cost of the funding is less than the one which you can get without the sustain of SFLG.

The SFLG covers funding on an amount between 15 and 750.000 Million. The companies, which can be subscribe to this scheme, have to own specific requirements. First of all, just some financial businesses are considered; then, depending on the sector, there are some factors that are taken into consideration to define the access of the credit coverage (first companies with more than 200 employees are excluded).

After that the aim of the funding is relevant to obtain the coverage of the DTI. The received funds can be allocated only for the development of a project or a product, for the start-up of the company, for the expansion of the business or to improve the efficiency production. SFLG can't give support for the share's acquirement, to substitute a contract debt or for funding the passive interests.

The majority of SMEs are successful with their loan applications under normal economic conditions, although a significant minority receive a lower amount than requested. This latter group are quantity (partially) rationed as opposed to absolutely rationed in the market. Within this group of partially and fully rationed firms there are three

[40] M. COWLING, *Loan Guarantee Schemes as a policy instrument for financing entrepreneurial businesses,* Östersund, 2016, 11.

[41] R. ADAMO, *I confidi in Italia evoluzioni e prospettive,* Naples, 2000, 98 s.

important subsets of firms: *i*) those with no track record; *ii*) those with no, or not enough, tangible assets; *iii*) those with no track record and no, or not enough, tangible assets.

These characteristics, track record and collateralizable assets are particularly important in the bank loan decision-making process, all acting to reduce the probability of a loan being offered. Banks prefer to lend only when collateral is available because it reduces the risk of lending under conditions of asymmetric information which is typically associate with younger and smaller firms. As it is likely that there exists within these groups of credit rationed firms some talented entrepreneurs with good investments proposals then not having enough collateral means that their investments go unfunded resulting in lower levels of economic activity and outcomes below the social optimum. And it is this feature of SME credit markets that creates a potential role for loan guarantee schemes[42].

Thus, the fundamental role of a loan guarantee scheme is to act as a third party guarantor for a viable lending proposition on behalf of the firm to the bank.

This aspect is the "guarantee". In one sense the public sector is acting as an insurance broker by insuring the lending bank against a proportion of the default cost should a loan not be fully repaid.

But loan guarantee schemes also typically include other key features which can vary significantly across schemes according to the specific local context and target groups.

The core parameters of a loan guarantee program are: *i*) the level of guarantee (the per cent share of the outstanding debt that is covered by government in the event of default); *ii*) the interest rate premium (the margin that the government receives for guaranteeing the loan); *iii*) the maximum (and in some cases minimum) loan amount available; *iv*) the maximum (and in some cases minimum) loan term available; *v*) the arrangement fee[43].

So, loan guarantee schemes benefit from being simple to create and operationalize and also from being widely understood by all actors in the debt market. This helps avoid the problem of many complex government programs which are only understood and accessed by those

[42] M. COWLING, *Loan Guarantee Schemes*, cit., 11.
[43] M. COWLING, *Loan Guarantee Schemes*, cit., 17.

with the high level of awareness, skills, knowledge and resources to clear all the necessary hurdles and deal with the complexities of application. This is generally why smaller firms do not bid for government contracts and why in many cases scheme deadweight can often be high. Thus, in return for the publicly provided guarantee, which, in the event of loan default, represents a legal call on the guaranteed proportion of the outstanding share of the unpaid capital, many schemes charge an interest rate premium which is additional to that charged by the lending bank and is paid by the borrower firm to the guaranteeing agency. This is similar to paying an insurance premium. In addition, the guaranteeing agency may charge an arrangement fee which is intended to cover its administration costs.

Aside from the more direct parameters, which largely mimic those that a private bank or insurer would impose, loan guarantee schemes have specific decision-rules relating to the maximum size of loan permissible under guarantee.

This upper limit is determined by the unique characteristics of the relevant SMEs debt market and also by the maximum exposure that the public policy maker (or, most commonly, treasury) is willing to tolerate.

The imposition of a minimum, or lower, bound on guaranteed lending reflects several features of SMEs lending.

Firstly, private banks typically have a decision rule not to take collateral on loans under a specified cash amount as asset (collateral) verification, and realization in the event of default, is too costly for relatively trivial loans. Secondly, from the public policy-makers perspective, it is less likely that a trivial investment will generate the additional economic benefits desired.

In short, the marginal benefit of guaranteeing lending is positive and increasing in investment (lending) scale (up to a point).

Finally, the fact that a private bank refuses a loan request for a relatively small loan is often perceived to be a good proxy for a poor-quality lending proposal.

The maximum, and in some cases minimum, term of loans available under guarantee also represent an interesting parameter on loan guarantee schemes.

The perceived advantage of the public policy-maker over the private bank in this context relate to differences in the way expected future revenues arising from an investment are discounted.

The private bank typically prefers short-term lending as its capital is paid down more quickly and its net exposure per period lower.

But the public policymaker may prefer longer-term lending as the societal gains may continue, or not be fully realized, into the medium-to-long-term.

The pervasiveness of loan guarantee schemes as a primary instrument to promote SMEs lending implicitly assumes that there is a market failure in the provision of debt finance to SMEs, and, that by altering the risk-return payoff for private banks, private banks will increase their willingness to lend to informationally opaque and/or asset poor SMEs with viable funding proposals[44].

The key parameter in terms of changing the banks risk-return function is the coverage ratio, the proportion of the loan advanced by the private bank guaranteed by the government in the event of borrower default[45].

The guarantee level ensures that part of the lending risk is shared by the bank thus increasing their incentives to properly conduct due diligence at the point of loan application and to monitor successful loan applications, both of which act to reduce expected losses arising from loan default.

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[44] P. HONOHAN, *Partial credit guarantees: Principles and practice,* in *Journal of Financial Stability*, 2010, 1 ff.; M. COWLING, *The role of loan guarantee schemes in alleviating credit rationing in the UK,* in *Journal of Financial Stability*, Vol. 6, No. 1, 2010; M. COWLING-J. SIEPEL, *Public intervention in UK small firm credit markets: Value-for-money or waste of scarce resources?,* in *Technovation*, Vol. 33, No. 8/9, 2013, 265 ff.

[45] According to T. BECK-L. KLAPPER-J. MENDOZA, cit., 6, «*The coverage ratio can be an important instrument of risk minimization. Retaining part of the risk with the lender can increase her incentives to properly assess and monitor borrowers and thus reduce loan losses. Too low a coverage ratio, on the other hand, might reduce the value of the guarantee and dampen take-up. However, the impact of the coverage ratio on incentives might vary with the informational advantage. If the guarantor has an informational advantage over the lender, a higher coverage ratio might be sustainable than if the informational advantage lies with the lender*». See also M. COWLING, *Initial Tests on the Sensitivity of the Parameters of the UK Loan Guarantee Scheme*, in *Public Finance*, Vol. 50, No. 3, 1995.

Younger and smaller firms are often the target beneficiary group of loan guarantee schemes. Smaller firms are an important, often dominant, part of the sub-regional, regional and national economic systems that make up economies.

In particular, they play a key role in promoting and stimulating economic dynamism, job creation, and growth through their contribution to innovation, competitiveness and productive "churn". The ability of smaller firms to access finance is crucial in order that these firms can fund the level of investment that maximizes their growth potential. Lack of finance not only reduces the rate of new business formation, but impedes the ability of existing firms to grow up and can endanger their survival. Specifically, external finance is an important part of the market mechanism which facilitates the efficient allocation of resources within economic systems[46].

6.2. *Mutual Guarantee Societies (MGS)*

Instead the Mutual Guarantee Societies (MGS) developed before the National Association of Mutual Guarantee Societies (NAMGS). MGS are formal cooperatives of SMEs which use the power of the group to grant capital in an efficiency way and to get administrative sustains which give them more professionality.

The MGS are cooperative companies in which each member has the right of one veto social power and he can subscribe one share. As the companies become members of MGS they have to deposit a 10-15% of the sum required of the guarantee in a named account of MGS who deposit again the sum in a bank system. Each deposit remunerates an interest tax as 6% or 6.5%[47].

Only when the bank is not able to get the credit directly from that company, MGS will intervene using the paid capital by that company in the MGS fund and them using the other part of the fund.

For this reason, the guarantees obtained by each MGS member are correlated with the deposit done by them.

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[46] DEPARTEMENT OF BUSINESS, INNOVATION AND SKILLS, *SME Access to External Finance*, BIS Economics Paper, No. 16, January, Londra, 2012, 1.

[47] R. ADAMO, *op. cit*., 98 s.

6.3. *British Business Bank*

British Business Bank aims to make finance markets work better for small businesses in the United Kingdom at all stages of their development: starting up, scaling up and staying ahead.

Its mission is to create the opportunity for smaller businesses to invest and grow, creating additional jobs and economic activity.

In addition, British Business Bank's objectives are: *i*) to increase the supply of finance available to smaller businesses where markets don't work well; *ii*) to create a more diverse and vibrant finance market for smaller businesses, with a greater choice of options and providers; *iii*) to build confidence in the market by increasing smaller businesses' understanding of the options available to them; *iv*) to achieve this whilst managing taxpayer resources efficiently and within a robust risk management framework.

The British Business Bank is 100% Government owned, but independently managed. It brings expertise and Government money to the smaller business finance markets. It doesn't lend or invest directly. Instead it works with over 90 partners such as banks, leasing companies, venture capital funds and web-based platforms. Businesses apply for finance through our partners who, because they work with us, can lend and invest more, especially to younger and faster growing companies. In total it works through more than 90 finance partners in the market, and it will unlock up to £10 billion of new finance and 90 brings greater choice and information on finance options to smaller businesses.

Its programs are designed to bring benefits to smaller businesses that are start-ups, high growth, or simply viable but underfunded. It has a commercial arm, British Business Bank Investments Ltd, which makes investments into providers of finance to smaller business in the UK. As the holding company of the group operating under the trading name of British Business Bank, it is a development bank wholly owned by HM Government which is not authorized or regulated by the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA). The British Business Bank operates under its own trading name through a number of subsidiaries. One of these, Capital for Enterprise Fund Managers Limited, is authorized and regulated by the FCA. British Business Bank plc and its subsidiary entities are not banking

institutions and do not operate as such. Its subsidiaries are British Business Bank Investments Ltd and British Business Finance Ltd; v British Business Financial Services Ltd.

British Business Finance Ltd Limited's subsidiary, Capital for Enterprise Limited, manages certain schemes on behalf of British Business Bank plc. Its subsidiary The Start Up Loans Company delivers the Government's Start Up Loans program.

7. *Conclusions*

Guarantee and mutual guarantee schemes have a significant role to play in enabling SMEs across the European Union to access the finance they need to start up and grow.

Guarantees provide important leverage of the capital available for lending and offer better value for money than one-off grants or subsidies. As experience has shown, guarantee schemes have been able to increase their contribution to banks' lending activity even in a downward phase of the economic cycle.

In the actual financial environment, the role of mutual guarantee institutions has been growing. The relevance of guarantee societies for banks is to offer a mitigation of the risks associated with their SME portfolios. Basel II is the starting point to qualify most mutual guarantee institutions as guarantors provided that their guarantee product is in line with the regulatory requirement. This will allow banks to reduce regulatory equity on their loan portfolio.