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Amortised Cost in Statutory Financial Statements. Results of an Empirical Investigation and Analysis of the Legal Consequences of the Disapplication of this Valuation Criterion

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Abstract

Legislative Decree 139/2015 also extended to financial statements prepared following statutory regulations the valuation of receivables and payables using the amortised cost method, already provided for by IFRS accounting standards. The adoption of this criterion requires the preparer of the financial statements to follow a more sophisticated and complex procedure that requires the application of discounting techniques and the verification of the conditions underlying the receivable/debt (e.g. interest rate, commissions) compared to market conditions for similar transactions. The statutory regulations allow for the valuation of receivables at their estimated realizable value and payables at their extinguishing value if the non-application of amortized cost does not have "significant" effects on the company's economic and equity situation.

Considering the developments outlined above, the purpose of this contribution is to verify the application of amortised cost in the Italian context. In particular, starting from a sample of financial statements, it has been analysed whether and to what extent the amortised cost criterion has been applied in the years following that of first-time adoption, based on the results of similar research conducted by Sòstero and Agostini in 2018 (regarding the 2016 financial statements). The objective of the research is to test whether, concerning the first-time adoption financial statements: 1) the application of the amortised cost criterion has been extended; 2) the size of the company represents a significant variable in the adoption, or not, of this criterion; 3) the use of the relevance postulate,

which allows the inapplication of amortised cost, is adopted correctly 4) what consequences could derive, in terms of invalidity of the financial statements, from the incorrect application of amortised cost.

Keywords (inglese): amortised cost, financial instruments, materiality, transaction costs, financial statements analisys, fair value, invalidation of financial reports.

1. Amortised Cost: Introductory Considerations and Research Objectives

Following the reform introduced by Legislative Decree 139 of 18 August 2015, implementing Directive 2013/34/EU on accounting, the recognition and subsequent measurement of receivables, payables and investment securities must be conducted using the amortised cost criterion.

The application of amortised cost is mandatory for companies that prepare financial statements in the ordinary form as provided for in Article 2426 of the Italian Civil Code first paragraph in point 1) for investment securities (where applicable) and in point 8) for receivables and payables, for which it is also required to take into account the time factor.

The use of this criterion is instead optional for companies that draw up abridged financial statements - as provided for by Article 2435 bis, paragraph 8, of the Italian Civil Code and for micro-enterprises, Article 2435 ter, paragraph 2, of the Italian Civil Code - in compliance with the objectives of simplifying the administrative burden on companies, in particular smaller ones, so that they are not burdened by excessive financial reporting requirements, as established by the EU Directive.

However, it should be noted that, unlike other valuation criteria (fair value, net worth, restatement) expressly mentioned by the Directive, the amortised cost was introduced in Italy voluntarily, i.e. as a spontaneous and autonomous initiative of the national legislator, to achieve the modernisation of the institutes relating to the accounting treatment of receivables and payables by bringing them closer to the IAS/IFRS requirements for larger companies (Baldissera A., 2018).

Amortised cost was introduced into the Italian legal system for the first time by the international accounting standards issued by the IASB for the preparation of the financial statements of companies listed on the regulated markets of European Union Member States by EC Regulation No. 1606/2002 and by Legislative Decree No. 38/2005. The adoption of amortised cost in the preparation of the financial statements of unlisted companies represents a further step forward in the process of harmonisation of accounting regulations started in the 1970s by the IV and VII directives on accounting.

Amortised cost is a methodology that provides for the progressive alignment of the initial value of the asset/liability (agreed price adjusted by transaction costs or revenues and/or other initial differences) to its redemption value at maturity through the "amortisation" of the difference between these two amounts (Venuti and De Mauro, 2016).

In contrast to the previous valuation criteria referring to corporate debts, we are witnessing the "financialisation" of transaction costs, since the costs that - in the absence of the amortised cost criterion - were incurred and recorded under deferred charges and then charged to the profit and loss account in subsequent years as amortisation throughout the loan or bond, now, according to the amortised cost criterion, must be "transformed" into financial charges (Landuzzi F., 2018) and charged on an accrual basis on the actual cost of financing.

The 'financialisation' of the transaction costs related to the origination of financial debt (receivable) constitutes an undoubted advancement in the disclosure capacity of the financial statements compared to that guaranteed in the period before the reform. The previous valuation method established that transaction costs related to obtaining loans had to be recognised as deferred costs and then charged pro-rata to the profit and loss account, together with the amortisation of intangible assets, with a clear distortion with respect to their purely financial origin (Baldissera A., 2018).

It is worth remembering that amortised cost may not be applied in ordinary financial statements only if the effects produced by the application of the criterion are irrelevant for giving a understandability , true and fair view of the company's situation. The new postulate of relevance provided by art. 2423, fourth paragraph of the Italian Civil Code, according to which "it is not necessary to comply with the obligations on recognition, measurement, presentation and disclosure when their observance has irrelevant effects for giving a true and fair view" becomes, therefore, the "vector through which to mark, at the time of initial assessment, the use of the criterion of amortised cost and/or discounting, rather than the nominal value" (Agostini et al., 2018). Within the OIC(Italian national accounting standards), immaterial information is presumed if the receivables/payables/securities have a maturity of fewer than twelve months and if the transaction costs, fees and any other difference between the initial value and maturity value are of little significance (Zacco G., 2016)[1].

Due to the evolution mentioned above of the institutions relating to the accounting treatment of receivables and payables by approximating the provisions of the IFRS, Article 2426, paragraph 2, refers directly to the accounting standards adopted by the European Union for the definition of some of the most relevant terms regarding the application of the criterion, including the meaning of amortised cost and fair value.[2].

This is embodied in the set of definitions presented in the revised accounting standards OIC 15, OIC 19 and OIC 20 issued in December 2016, which state that "The amortised cost of a financial asset or financial liability is the amount at which the financial asset or financial liability was measured at initial recognition fewer principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between the initial amount and the maturity amount and minus any reduction (either directly or through the use of an allowance account) for impairment or unrecoverable.

Amortised cost uses the effective interest method to spread all income/expenses related to the financial instrument over the different financial years until the receivable is collected or the payable is settled. In this way, the costs/revenues relating to the transaction are recognised over the relevant life as an adjustment to the interest rate. Consequently, the economic effects identified in the income statement (income or expense) are derived from the practical underlying interest of the transaction. In this way, the financial statements show, year after year, the profitability realised through the transaction and not the nominal profitability indicated in the contract (Venuti and De Mauro, 2016).

The 'effective interest rate' is defined by national accounting standards as 'the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability'."[3]

Differently from what is provided for by the IFRS accounting standards - which establish a single method of calculation of the amortised cost of a financial instrument - the OIC accounting standards have provided for a double way of calculation to emphasise what is stated in Article 2426 Italian civil code, paragraph 1, no. 8 of the Italian Civil Code, namely the need to "take into account the time factor" in the accounting of receivables and payables at amortised cost. It is highlighted in the "reasons behind the decisions taken" that within the accounting standards OIC 15 and OIC 19 the initial recognition at fair value in terms of amortised cost was omitted as fair value is regulated by Legislative Decree 139/2015 exclusively for derivative financial instruments. Moreover, the same

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[1] The immaterial information of the effects of amortised cost is addressed in paragraphs 33 and 35 of OIC (Italian Accounting Standards Board) 15, paragraphs 42 and 45 of OIC 19, and paragraph 39 of OIC 20..

2 Article 2426 italian civil code explicitly states that 'For the purposes of this Section, for the definition of "financial instrument", "financial asset" and "financial liability", "derivative financial instrument", "amortised cost", "fair value", "monetary asset" and "monetary liability", "related party" and "generally accepted valuation model and technique", reference shall be made to the international accounting standards adopted by the European Union'.

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[3] See OIC 15 para. 18, OIC 19 par. 19 e OIC 20 para. 17.

OICs state that the difference would be more formal than substantial, as, since there is no active market for the exchange of receivables and payables, the accounting is substantially driven by the transaction price.

OIC 15 and 19 present two distinct types of cases for initial valuation at amortised cost, which are classified as:

- Amortised cost in the absence of discounting;
- Amortised cost in the presence of discounting.

The first case is when the interest rate deducible from the contractual conditions is not significantly different from the market interest rate, in which case the value of the credit/debit will be represented by the nominal value net of the transaction costs that will be charged to the income statement over the useful life of the financial instrument. In this case, discounting is used in the calculation of the effective interest rate but is not used in the discounting of cash flows to calculate the value to be recognised in the balance sheet.

The second case, on the other hand, is applied in the presence of a contractual rate that is significantly different from the market rate and, as we have seen, responds to the legislator's request to "take account of the time factor" in the valuation of the debt. In this case, the discounting process must be applied using the market interest rate, and the initial recognition value of the debt will be equal to the present value of future cash flows plus any transaction costs.[4]

Moreover, amortized cost introduces greater complexity within companies, not only from an accounting point of view but also from an organizational point of view; in fact, the number of company procedures and off-balance sheet statements required to monitor the correct development of the balance of receivables and payables, which must be valued individually increases.

Still from an extra-accounting point of view, it should also be noted that receivables and payables valued at amortized cost appear in the balance sheet exposed to an ideal value, which is not representative of either the actual debt or the outlay that will follow its extinction (Baldissera A., 2018). This condition would bring with it distorting effects in the composition of the relevant quantities generally attributable to the calculation of the net financial position (such as financial receivables and payables, shareholders' loans, etc.). Furthermore, a correct application of amortized cost could give evidence in the balance sheet of an amount of payables to banks different from that monitored at-risk centre level (expressed instead at nominal value). These amounts are fundamental elements for the analysis of the balance sheet and the calculation of the corresponding ratios; not only this, it should be considered how many covenants at the base of financing contracts may depend on these same amounts and the relative calculation methods. The effects of the accounting reform have therefore produced impacts, in some cases also quite significant, on these aspects (Portalupi A., 2016)

Several international studies have shown the importance of measuring the effects of applying amortized cost in financial statements, as the accounting items measured using this criterion often represent a significant portion of total assets and liabilities. In this direction is the research conducted by Gebhardt on a sample of non-financial companies listed in the STOXX 600 Europe Index, the amortized cost is applied on average to 19.9% of total assets and 35.77% of liabilities (Gebhardt G., 2012).

The amortized cost, like many of the other innovations introduced by Legislative Decree 139/2015, and its application in our country have been analyzed by Sostero and Agostini (Sostero and Agostini, 2018) in recent empirical research work. The research examined the extent to which the accounting practices of a sample of companies changed during the first application of Legislative Decree 139/2015 (Cordazzo and Bianchi, 2018).

Within the part dedicated to the application of amortized cost, the study sample was structured by analyzing the behaviour of 150 companies divided into three categories: large companies, medium-

[4] i See in this regard the examples provided by Turris and Cordero di Montezemolo, Principi Contabili Nazionali 2016: Il costo ammortizzato per i crediti e i debiti, Rivista dei Dottori Commercialisti, no.1/2017, p. 39 et seq..

sized companies, and companies that prepare financial statements in an abbreviated form according to Article 2435 bis of the Italian Civil Code.[5].

The sample, structured in this way, proposed to investigate various aspects concerning the methods of adoption of amortised cost. The primary objective was undoubtedly that of verifying how often this criterion had been adopted in the financial statements of the first application; secondly, the aim was to demonstrate how the financial statement preparers had interpreted the various options granted by the legislator regarding the application of the criterion.

The first option investigated in the research was relative to the adoption of the amortised cost by companies that draw up their financial statements in an abbreviated form, exempt from the obligation to apply this criterion. The objective, in this case, was to assess "the level of accounting virtuosity" of smaller companies for which the application of amortised cost was (and is) a mere option.

The second option taken into consideration was the one concerning the retrospective application of the criterion;, the legislator, in Legislative Decree 139/2015, had provided for the obligation to apply the amortized cost exclusively to receivables and payables that arose after the effective date of the new provisions, leaving companies free to proceed with the recalculation of receivables/payables recorded in the financial statements before the effective date of the decree, according to the new criterion (retrospective application). The retrospective adoption, in addition to being indicated within the notes to the financial statements, would have generated an accounting divergence between the value recorded according to the pre-reform criteria in the final balance sheet of the financial year preceding the first application (December 31, 2015) and the value calculated at the beginning of the financial year of the first application of the amortized cost (in standard cases January 1, 2016). In this case, according to the OIC, this difference should be allocated to retained earnings (losses) in equity, net of the tax effect (Sòstero and Agostini, 2018). A summary of the primary evidence emerging from this research is provided in the third paragraph.

Starting precisely from the results deriving from the application of amortized cost at the time of the first adoption of this criterion, this contribution aims first of all to update the study carried out by Sòstero and Agostini. By resuming the methodology used in that research, the results that emerged in the 2016 financial statements will be flanked by the evidence relating to the subsequently closed financial statements for the 2017 and 2018 financial years.

For companies that prepare their financial statements in the ordinary form, the analysis has been conducted using the same sample as previously used to ensure full comparability of the results with those relating to the 2016 financial statements.[6]On the other hand, companies that drew up abridged financial statements were excluded in their entirety, both on account of the results of the analysis of the financial statements for a first-time application [7] and because of the narrowing of the

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[5] Le categorie di imprese medio e grandi sono state identificate facendo riferimento ai parametri dettati dalla direttiva 2013/34/UE secondo quanto disposto all'interno dell'art. 3.

[6] From the original sample of 100 companies that prepare financial statements in the ordinary form, 13 companies were removed for the following reasons:
- Unavailability of financial statements within the AIDA database: 6 companies
- Changeover to the preparation of financial statements by IFRS: 4 companies
- Having been subject to extraordinary transactions: 3 companies

[7] The first question of analysis concerned the adhesion - by companies that drew up their financial statements in an abbreviated form - to the option that allowed them to continue to value receivables at their presumed realisation value and payables at their nominal value, since, in fact, the application of the amortised cost is obligatory only for companies that draw up their financial statements in an ordinary form. The authors reported that "the analysis showed that all the 50 companies in the sample which drew up their financial statements in an abbreviated form took advantage of this option and, therefore, considered it preferable not to apply the amortised cost method for the valuation of receivables and payables".

The reasons underlying the decision of smaller companies not to apply the amortised cost method are to be found in the way receivables and payables are presented in the abridged financial statements; both receivables and payables are grouped under a single item in the assets and liabilities sections of the balance sheet, respectively, compromising the informative capacity of the financial statements as the various items that make up these balances are not individually identifiable. The

observable sample due to various events, such as being put into liquidation, switching to ordinary financial statements and participating in extraordinary transactions.

The importance of updating this work, in the manner described above, derives from the fact that the application of the amortized cost criterion does not seem to be widely used in practice, especially in smaller companies. The observation of how and to what extent the criterion of amortized cost has been applied in the two years following that of the first adoption is functional to answering the following research questions:

1) Has the adoption of the amortized cost criterion in the valuation of receivables and payables in the financial statements expanded since the date of the first adoption? As highlighted by Sòstero and Agostini (Sòstero and Agostini, 2018), the expectations are to see more widespread adoption of this criterion precisely because of the prospective application envisaged by the regulations and the OIC accounting standards.
2) Is firm size a significant variable in the adoption of this criterion? Also, in this case, starting from the results deriving from the cited work (Sòstero and Agostini, 2018), it would be logical to expect a greater diffusion of this criterion in larger companies and more contained in smaller companies.
3) Is the use of the relevance postulate that allows the non application of the amortized cost adopted reasonably, and is it adequately motivated? The correct application of this statutory rule in the preparation of the financial statements must be interpreted in both formal and substantive terms. From a legal point of view, there is an obligation to explain the application methods used to waive both the statutory regulations and OIC 11. From a substantial point of view, it would be necessary to verify whether the non-application of amortized cost is actually to be considered relevant (i.e. "material") in terms of its repercussions on the values of the income statement and balance sheet.
4) What consequences could arise, in terms of invalidity of the financial statements, from an incorrect application of this valuation criterion? Materiality constitutes one of the fundamental principles of financial statements. It is a logical corollary of the postulate of clarity and true and fair representation which, as is known, is a general clause in the preparation of financial statements (Sòstero and Santesso, 2018), (Colombo Portale, 1994). Therefore, it is necessary to understand what repercussions could arise in terms of "financial statement invalidity" should it be ascertained that there is an incorrect application of the postulate of relevance underlying the failure to apply amortized cost in a financial tatement

2. The Application of the Materiality Postulate in the Measurement of Receivables and Payables at Amortized Cost

The use of amortised cost is essentially linked to the application of the relevance assumption, governed by art. 2423, paragraph 4 of the Italian Civil Code. The obligation to use this valuation criterion (and the consequent discounting of cash flows) is subject to the need to take account of the "time factor" in the initial valuation of receivables/payables with a maturity of more than 12 months. The effects of this "time factor", in a nutshell, are to be found in the verification that the transaction costs, that is, the commissions paid between the parties, any issue premiums/discharges and any other difference between the initial value of the receivable/payable item (determined at amortised cost) and the related final value are deemed significant. (Turris and Cordero di Montezemolo, 2017). The weight, therefore, of the insignificance of the effects due to the application of amortised cost passes through an accurate

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use of a more complex valuation criterion, such as amortised cost, would not be able to generate qualitative increases in the financial information, considering how receivables and payables are presented in the abbreviated financial statements, thus encouraging prepares to use the pre-reform criteria. (Sostero and Agostini, 2018)

declination of the concept of materiality as an elementary logical unit of the notion of the significance of an information" (Agostini et al., 2018).

Also, the concept of materiality, like that of amortised cost, makes its formal appearance within the Italian legal system during the work of transposition of Directive 2013/34/EU by means of Legislative Decree 139/2015 art. 6, paragraph 2 point b). Within the Civil Code, a specific definition of the postulate of the relevance of information was not introduced by the legislator, and it is, therefore, necessary to derive this information from the purpose taken up later.

The OIC 11 of 2018, taking up what is reported in Directive 34/2013/EU art. 2, point 16), considers a piece of information as relevant when its omission or misstatement could reasonably influence the decisions made by the primary recipients of financial statement information based on the company's financial statements. The materiality of the individual elements that make up the items in the financial statements is judged in the context of the company's financial, economic and asset situation. As a result, the concept of materiality is pervasive in the financial statement formation process (Riccomagno and Semprini, 2017).

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Also, the concept of materiality, like that of amortised cost, makes its formal appearance within the Italian legal system during the work of transposition of Directive 2013/34/EU through Legislative Decree 139/2015 art. 6, paragraph 2 point b). Within the Civil Code, a specific definition of the postulate of the relevance of information was not introduced by the legislator, and it is, therefore, necessary to derive this information from the purpose taken up later.

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This principle was already present at the international level in the IASB's "Framework" in its various revisions, although only with IFRS Practice Statement No. 2: Making Materiality Judgements does the IASB Board provide operational guidance that can help prepares in making a judgment about the materiality of information.

Also at the national level, before the implementation of Directive 34/2013/EU, it was possible to find references to the subject of materiality both within the Civil Code - think of the articles that were repealed following the introduction of the fourth paragraph of art. 2423 Italian civil code because they were considered redundant - and within OIC 11 in its 2005 version.

However, the area in which the issue of materiality is most pervasive is undoubtedly that of the Statutory Audit; within this discipline, materiality is measured in terms of "materiality" to which correspond quantitative thresholds that are determined by the Auditor when planning his activities. These thresholds are designed to reduce the probability that the set of uncorrected and/or undetected errors is "immaterial" with regard to the size of the financial statements, so that the decisions taken by the users of the financial statements cannot be influenced.

In the identification of a quantitative threshold, before a qualitative one, the IFRS accounting standards have also moved with the update in 2018 of the Conceptual Framework where the concepts of materiality and relevance have been linked by reporting the definition of "materiality" as a sub-heading of "relevance". The concept of materiality, according to international accounting standards, therefore seems to also depend on the size of the case or error, contextualized in light of the particular circumstances in which it occurs. For this reason, one agrees with the position that materiality is not so much a qualitative characteristic that information must possess to be considered useful, but rather a sort of threshold, or cut-off point (Sottoriva and Cerri, 2019).

This position coincides with the one accepted in Practice Statement n.2: Making Materiality Judgements at par. 53 where it was stated that, although there is no specific hierarchy in the evaluation of the relevance of a specific item, the evaluation from a quantitative point of view is simpler and more effective than a qualitative approach; given the fact that a purely quantitative analysis would be partial and misleading, the qualitative approach to the evaluation of relevance is considered useful only after an initial analytical approach[8].

Transposing the above to the application of materiality in the amortized cost valuation, this would require a first analysis in which the accounting item is valued according to both pre-and post-reform criteria, which would then be followed by a second assessment aimed at determining how (and especially to what extent) the different criteria change the financial statement amounts deemed of greatest interest by the primary users of financial reporting (Agostini et al., 2018).

Therefore, we think that the lack of identification, by the OIC, of a quantitative threshold that identifies when the application of a given valuation criterion is relevant produces clear margins of discretion for financial statement preparers, discretion that finds its highest expression precisely in the items that should be measured at amortized cost. All this, obviously, to the detriment of the effective comparability of the financial statements, which could be affected by the different methods of representing receivables and payables in the financial statements.

3. The Main Findings Emerging from a Reading of the Financial Statements for the First Application of Amortised Cost

As already mentioned above, the application of amortized cost in the financial statements referring to the first year of application has been analyzed by Sòstero and Agostini in the article "Amortized cost" and will be summarized in this paragraph.[9]

The application of the criterion within the financial statements prepared in the ordinary form, due to the provisions of Legislative Decree 139/2015 and the new OIC accounting standards, is subject to a preliminary analysis regarding the relevance of the effects produced by the application of the criterion.

Relevance, as provided for by art. 2423 c. 4 of the Italian Civil Code, acts in the application of the amortised cost as a "vector through which to scan, at the time of the initial valuation, the recourse to the criterion of amortised cost and/or actualization, rather than to nominal value. In other words, the application of the effective interest rate would make sense where useful information is provided to the reader of the financial statements." (Agostini et al., 2018)

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[8]To better understand the relationship between the quantitative and qualitative profile of an accounting item, see "Casò M., Oic 11: importanti chiarimenti in materia di rappresentazione sostanziale, di continuità aziendale e di rilevanza, Rivista dei Dottori Commercialisti, n. 2/2018, pag. 201 e ss.". In the article, a case in point is presented where the advance accounting of a quantitatively insignificant part of revenues (0.20% of total revenues) was qualitatively relevant as it allowed the achievement of specific corporate objectives that gave access to various bonuses based on a multi-year incentive plan to part of the company's top management

[9] Si veda: Agostini M., Sòstero U. Il costo ammortizzato, Il nuovo bilancio dopo l'applicazione del D.lgs. 139/2015, Franco Angeli, pp. 111-128

According to the authors, what has been said would be ascribable to the primary purpose of the amortised cost criterion, i.e. to attribute on an accrual basis to the various financial years the economic effects of any differences between the initial value and the value at maturity of the receivable/debt; what has been said in the case of "short-term" receivables or payables or when there is no significant difference between the initial value and the value at maturity, the application of the amortised cost is exhausted in "any write-downs to be made to take into account the lower realisable value". (Agostini and Sostero, 2018)

The concept of materiality played a significant role in the application of amortised cost. It was, therefore, a focal point in the analysis of financial statements about the investigation carried out when the criterion was first applied.

Turning now to the presentation of the results that emerged from the survey carried out, a clarification must also be made regarding the sample of companies taken into consideration for the analysis of the 2017 and 2018 financial statements.

The first question investigated in the study of the financial statements of first application concerned the degree of adoption of the amortised cost regarding the companies considered to be smaller, that is, those that prepared their financial statements according to the dictates of art. 2435 bis of the Italian Civil Code.

Of the fifty companies that drew up abridged financial statements in the sample initially analysed, none had opted for the application of amortised cost and, for this reason, within the survey carried out on the financial statements for the years 2017 and 2018; it was decided to exclude the category of smaller companies from the analysis, focusing attention on companies that draw up financial statements in the ordinary form.

The choice by smaller companies not to apply the amortised cost was attributed by the authors primarily to a greater level of complexity in the application of the criterion together with the way the various accounting items are presented in the balance sheet. The authors concluded that "in the face of such concise information, it is entirely understandable that none of the companies in the sample that prepared the financial statements in an abbreviated form deemed it appropriate to "invest" in the adoption of a more refined but more complex method for the valuation of receivables and payables".

Turning now to the analysis carried out on the part of the sample that drew up the financial statements in the ordinary form, the first question investigated related to the disclosure provided in the notes to the financial statements the number of companies that had mentioned the amortised cost in their prospectus was investigated; in this regard, 95 companies out of 100 had said it, only five medium-sized companies had not done so as they did not apply the evaluation criterion in question to any item in their financial statements.

The next question concerned the number of companies that had applied the amortized cost criterion and those that had not used it had resorted to the postulate of the relevance of effects.

Table 1: Presence and application of amortized cost basis - fiscal year 2016

	The criterion is applied to receivables and payables	**The irrelevance of the standard for receivables and/or payables is declared**	**The standard is not used (without saying its irrelevance)**	**Total**
Medium Companies	**3** 6%	**42** 84%	**5** 10%	**50** 100%
Large Companies	**7** 14%	**43** 86%	**0** 0%	**50** 100%
Total	**10** 10%	**85** 85%	**5** 5%	**100** 100%

As can be seen from the figures just presented, the full application of the criterion of amortised cost was found only in a limited number of companies, equal in total to 10% of the sample.

The scope of the investigation subsequently shifted to the analysis of the irrelevance of the effects produced by the amortised cost:

- the irrelevance was only mentioned in the notes to the financial statements (it was, therefore, impossible to determine whether the irrelevance had been applied);
- irrelevance had been declared for some specific items (partial application of amortised cost);
- irrelevance had been declared for all the items affected by the amortised cost (amortised cost not applied and consequent recourse to the criterion of the presumed realisable value for receivables and nominal value for payables).

Table 2: Types of insignificance stated about the effects of applying the amortized cost method - the fiscal year 2016

	Irrelevance only mentioned	Irrelevance applied to some items	Irrelevance applied to all items	Total
Medium Companies	**1** 2%	**19** 38%	**22** 44%	**42** 80%
Large Companies	**5** 10%	**31** 62%	**7** 14%	**43** 86%
Total	**6** 6%	**50** 50%	**29** 29%	**85** 85%

The declaration of irrelevance pronounced by the majority of the companies concerned only a few specific items within the balance sheets of the companies analysed; this peculiarity, in the opinion of the authors, was due to a combination of factors determined mainly by:

a) the possibility of not applying the amortised cost criterion to "short-term" receivables and payables and to those items that did not present a significant difference between initial and final value;
b) the existence of the option to apply the criterion prospectively;
c) the physiology of medium/long-term receivables and payables.

The combination of the factors under a) and b) determined the application of the amortised cost "only to medium/long-term receivables and payables arising in the same financial year (2016), but not to those arising in previous financial years", whereas the factor under c) would be attributable to the non-pervasive application of the criterion within the financial statements of first-time application as "by their nature, medium- and long-term receivables and payables arise less frequently than others and it is possible that in a given year no new ones arise" (Sòstero and Agostini, 2018).

The amortised cost was ,therefore, applied within 60% of the financial statements for the year of the first application of the criterion. Still, only 10% of the companies had decided to apply it to all receivables and payables.

Tabella 1: Motivi di irrilevanza degli effetti derivanti dall'applicazione del metodo del costo ammortizzato – esercizio 2016

	Short-term receivables and payables	Difference between initial and final value not significant	Both reasons	Reason not specified
Medium Companies	**4** 8%	**0** 0%	**29** 58%	**9** 18%
Large Companies	**4** 8%	**0** 0%	**30** 60%	**9** 18%
Total	**8** 8%	**0** 0%	**59** 59%	**18** 18%

The last series of data now presented concerns the reasons underlying the irrelevance of the effects, as illustrated in the various explanatory notes.

As can be seen, the majority of the sample attributed the recourse to the postulate of relevance to the simultaneous presence of "short-term" payables and receivables and of payables and receivables whose differential between initial value and value at maturity was judged to be not relevant; the two cases just mentioned are those provided for within the accounting standards OIC 15 and 19.

Finally, a small part of the sample made use of the case regarding exclusively "short-term" payables and receivables; for these companies, two different interpretations can be hypothesized:

1. the exclusion of short-term payables and receivables was sufficient to allow the non-application of amortized cost;
2. the company has chosen to partially apply the amortized cost by using the criterion exclusively to payables and receivables with a maturity of over 12 months.

The last figure discussed is that relating to companies which did not provide reasons for not applying amortized cost; without going into excessive detail, the research showed that the number of companies which provided partial and incomplete information on the subject of amortized cost represented a significant portion of the sample analyzed (18%).

Starting from these results, the authors of the research concluded that, in their opinion, the use of amortized cost would be incremental over the years. In other words, with the passing of the years, they hypothesized a progressive diffusion and a more significant application of amortized cost deriving from increasing familiarity with this new valuation criterion. According to the authors, "it could be expected, therefore, that the examination of financial statements after the year of first adoption [...] will reveal a greater adoption of the amortized cost criterion because there will be an increasing "accumulation" of medium-long term receivables/payables which will have to be compulsorily valued with this criterion in ordinary financial statements". (Sòstero and Agostini, 2018)

In light of the conclusions that emerged from the research work relating to the financial statements of the first adoption of amortized cost, in the following paragraph the results describing to the financial statements of the years 2017 and 2018 will be presented to verify the evolution of the methods of application of amortized cost, extending the time horizon over three years.

4. Amortised Cost in Financial Statements after First-Time Application: The Results of Research on a Sample of Companies

The purpose of this paragraph is to continue the research carried out by Sòstero and Agostini to assess the diffusion and application of amortised cost in the financial statements after the first application, for the years 2017 and 2018.

For reasons of comparability, the data concerning the 2016 financial statements - presented in the previous paragraph - have been readjusted to the number of financial statements available for the analysis of the years 2017 and 2018.[10].

The sample taken as reference concerns the same companies used in Sòstero Agostini's work (Sòstero, Agostini 2018), limiting ourselves to those still existing at the time of data collection to assess whether there have been any changes in the application of this valuation criterion by the same preparers of the financial statements.

The purpose of the proposed analysis is to verify whether in the financial years following the first application of the amortised cost criterion there is a greater diffusion of this criterion - compared to the first application financial statements - due to the emergence of new medium-long term

[10] The total number of financial statements available for the 2017 and 2018 analysis amounts to 87, a total of 13 companies were removed from the original sample for the following reasons:
- Non-availability of financial statements within the AIDA database - 6 companies;
- Transition to the preparation of financial statements following IFRS - 4 companies;
- Having been subject to extraordinary transactions - 3 companies..

receivables and payables.[11], or whether, on the contrary, companies have continued to recognise receivables at their estimated realisable value and payables at their nominal value.

Attention will be focused in particular on the companies that in 2016 declared not to apply the amortised cost due to the irrelevance of the effects produced within the financial statements and on those that did not provide reasons in the notes to the financial statements (also regarding the non-application).

The first figure presented concerns the use of amortised cost in the notes to the financial statements. Compared to 2016, this figure shows a slight increase from 94.3% in 2016 to 95.4% in 2018 (96.6% in 2017). Only a minority of medium-sized and large companies (around 4%) do not mention the criterion in the notes to the financial statements. Consequently, for these companies, it is not known whether the amortised cost has been adopted without being mentioned in the notes to the financial statements or whether the lack of mention implies a non-application of the same in the valuation of receivables and payables in the financial statements.

This first result, moreover, is impressive if crossed with the series of data reported in the table "Table 4" concerning the actual application of the amortised cost in the financial statements. The data collected from the sample of financial statements analysed allow us to state that while the criterion was more "descriptive" in the notes to the financial statements in 2017 and 2018, there was, in fact, a general reduction in the number of companies that decided to adopt it.

Table 4: Presence and application of the amortised cost method - comparison between 2016, 2017 and 2018

	The criterion is applied to receivables and payables			**It is declared that the criterion is irrelevant for receivables and/or payables**			**The criterion is not applied (without declaring its immaterial information)**		
	2016	**2017**	**2018**	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**
Medium Companies	**1** 2,2%	**1** 2,2%	**1** 2,2%	**39** 86,7%	**40** 88,9%	**39** 86,7%	**5** 11,1%	**4** 8,9%	**5** 11,1%
Large Companies	**4** 9,5%	**2** 4,8%	**2** 4,8%	**38** 90,5%	**40** 95,2%	**40** 95,2%	**0** 0%	**0** 0%	**0** 0%
Total	**5** 5,7%	**3** 3,4%	**3** 3,4%	**77** 88,5%	**80** 92%	**79** 90,8%	**5** 5,7%	**4** 4,6%	**5** 5,7%

The main result that emerges from a reading of the data is that over the three years the number of companies that extensively applied amortised cost to all receivables and payables fell significantly from 5.7% - an already modest initial result - to 3.4% of the sample. The most surprising aspect is that this reduction is entirely ascribable to the larger companies, where it goes from 9.5% adoption of amortised cost at the first application stage to 4.8% in the following two years. On the other hand, there was a modest increase in the number of companies that referred to the criterion in the notes to the accounts, although not applying it because of the declared irrelevance of the effects on the valuation of the items (from 88.5% to 90.8%).

Within the category of "medium-sized companies", the behaviour of a company that:

- in 2016, had decided not to apply amortised cost by resorting to the pre-reform criteria, also under the possibility of the prospective application allowed by Legislative Decree 139/2015;
- in 2017, it opts for the application of amortised cost;
- in 2018, it decides to return to using the "traditional" estimated realisable value for receivables and nominal value for payables.

[11] Questa era la tesi sostenuta nel lavoro di Sòstero e Agostini (2018) a seguito delle evidenze empiriche della loro ricerca, illustrati sinteticamente nel paragrafo precedente. La possibilità di adottare tale criterio su base prospettica, infatti, ha indotto molte imprese a non applicare il costo ammortizzato nei bilanci di prima applicazione (ossia i bilanci 2016).

Table 5 provides details on how companies use immaterial information in their financial statements. The numbers below refer, therefore, to the companies falling in the second column of the previous table (77, 80 and 79 companies respectively in the three years under observation).

Table 5: Types of irrelevance declared about the effects of applying the amortised cost method - comparison between 2016, 2017 and 2018

	immaterial information only mentioned			**immaterial information applied to some items**			**immaterial information applied to all items**			**Total**		
	2016	**2017**	**2018**	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**
Medium Companies	**1** 2,2%	**0** 0%	**0** 0%	**18** 40%	**11** 24,4%	**12** 26,7%	**20** 44,4%	**29** 64,4%	**27** 60%	**39** 86,7%	**40** 88,9%	**39** 86,7%
Large Companies	**4** 9,5%	**4** 9,5%	**4** 9,5%	**28** 66,7%	**22** 52,4%	**22** 52,4%%	**6** 14,3%	**14** 33,3%	**14** 33,3%	**38** 90,5%	**40** 95,2%	**40** 95,2%
Total	**5** 5,7%	**4** 4,6%	**4** 4,6%	**46** 52,9%	**33** 37,9%	**34** 39,1%	**26** 29,9%	**43** 49,4%	**41** 47,1%	**77** 88,5%	**80** 92,0%	**79** 90,8%

The analysis of the accounting items for which the insignificance of effects is invoked paints a completely different picture from that shown in the first set of data. If we take into consideration the results reported in "Table 5", at an aggregate level a sort of "immobility" emerges. Only very few companies seem to have changed their behaviour compared to the first year of application. It is, however, within the perimeter delineated by the relevance postulate that one can appreciate the change that has taken place over the three years.

Leaving aside the four companies for which it is not possible to determine whether or not there was a full or partial application (reported in the column "Irrelevance only mentioned"), the most significant results can be deduced in the next two columns, where the application of irrelevance is analysed. While in 2016 the majority of companies (52.9%) had recourse to the principle of materiality only for certain specific credit/debit items - compared with 29.9% who had recourse to irrelevance for all balance sheet items (in order not to use amortised cost) - as of the following year, a clear reversal of this distribution can be seen. In 2017, the number of companies that continue to use amortised cost partially - by claiming immaterial information only for specific balance sheet items - fell to 37.9%. In contrast, companies opting for a total misapplication of amortised cost rose to 49.9%.

The distribution emerges very differently if we look at these figures separately for medium-sized and large companies. The recourse to the non-application of amortised cost for all balance sheet items was a choice adopted by almost two out of three companies among medium-sized companies (64.4%), compared with only one in three (33.3%) in the large category. However, for both groupings, the number of companies that opted not to apply amortised cost grew considerably between 2016 and 2017: +20% for medium-sized companies and +19% for large companies.

The 2018 figures confirm the distribution of the previous year with a reduction of two in the number of companies declaring the total irrelevance of the effects produced by amortised cost.[12].

In summary, from the data collected, a general tendency emerges for companies to move towards a complete non-application of amortised cost in the preparation of their financial statements. This result does not seem to depend on the size of the company, as it is found among both medium-sized and large companies, although slightly less for the latter. The results lead to confirm that about one in two companies, in their 2017 and 2018 financial statements, explicitly refers to the principle of materiality to justify the non-application of amortised cost (to be precise, 49.4% in 2017 and 47.1% in 2018).

The last part of the research focused on the underlying reasons for the immaterial information of the effects in relation to the application of amortised cost. The results that emerged from reading the financial statements of the sample in the years 2017 and 2018 did not vary significantly compared to

[12] One of them is that a company returns to partially apply amortised cost in 2018 by valuing debt securities according to amortised cost precisely as it did in 2016. In 2017, the same company declared the total irrelevance of the effects produced as there were no securities on the balance sheet.

2016, with the majority of companies recalling both reasons (short-term receivables/payables; the difference between initial and final value of the receivable/payable) provided for by accounting standards OIC 15 and OIC 19. Detailed results are shown in "Table 6".

Table 6: Types of immaterialiy declared about the effects of applying the amortised cost method - comparison between 2016, 2017 and 2018

	Short-term receivables and payables			Difference between initial and final value not significant			Both reasons			Reason not specified		
	2016	**2017**	**2018**	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**
Medium Companies	**4** 8,9%	**7** 15,6%	**7** 15,6%	**0** 0%	**0** 0%	**0** 0%	**28** 62,2%	**25** 55,6%	**25** 55,6%	**7** 15,6%	**8** 17,8%	**7** 15,6%
Large Companies	**4** 9,5%	**5** 11,9%	**5** 11,9%	**0** 0%	**0** 0%	**0** 0%	**26** 61,9%	**25** 59,5%	**25** 59,5%	**7** 16,7%	**6** 14,3%	**6** 14,3%
Total	**8** 9,2%	**12** 13,8%	**12** 13,8%	**0** 0%	**0** 0%	**0** 0%	**54** 62,1%	**50** 57,5%	**50** 57,5%	**14** 16,1%	**14** 16,1%	**13** 14,9%

In detail, none of the companies explicitly mention the difference between the initial and final value as the only reason for adopting immaterial information. This result was to be expected considering that all companies have short-term receivables and payables and it would be entirely unreasonable to use the amortised cost for the latter and not to apply it (at the same time) to long-term receivables/payables with insignificant differences between their initial and final values. For this reason, those who justify irrelevance cite only the presence of short-term items or both.

However, it should be noted that some of the companies that state that they do not apply amortised cost only to "short-term receivables and payables" also present in their balance sheet medium- and long-term receivables and payables that are not measured at amortised cost. This aspect, read together with the generality with which many of the notes to the financial statements in the sample are compiled, may help to provide a possible interpretation of the significant change in the distribution of the percentages over the three years. In many of the financial statements the disclosures in the notes to the financial statements were partial and incomplete or based on predefined formats, often related (most likely) to the particular accounting software used to prepare the financial statements. We are therefore of the opinion that the change in the distribution of the percentages within the different categories is not so much due to a change in the behaviour of the preparer of the financial statements as, for many financial statements, to a lack of attention to the preparation of the notes to the financial statements.

The decrease in the number of companies using the amortised cost in the valuation of their accounting items - which emerges from the analysis of the data - is, in our opinion, to be found on the one hand in the contradiction of the instrument concerning the typical logic of the statutory financial statements, and on the other hand in the methods of application of the postulate of relevance introduced to the OIC accounting standards.

About the first aspect, it should be noted that the adoption of the amortised cost was a free decision of the national legislator since Directive 2013/34/EU did not provide for the extension of this criterion to non-IFRS compliant companies.

The introduction of the financial logic underlying the amortised cost differs and is incongruent with the purposes of financial statement reporting typical of "European-continental" systems inspired by prudential drafting principles and preservation of assets in favour of company creditors. For unlisted companies, the application of amortised cost is almost exclusively applied to financial debts in the balance sheet. Suppose it is true that the application of amortised cost, on the one hand, leads to a reduction in the company's profit, which will have to discount the higher interest expense implicit in the debt, on the other hand. In that case, it is true that for the entire duration of the loan, the value of

the debt shown in the balance sheet will tend to be lower than the final (nominal) value, leading to a systematic underestimation of the company's level of indebtedness.[13].

Concerning the application of the relevance postulate, the non-application of the amortised cost has been implemented by resorting to the postulate governed by Article 2423, paragraph 4 of the Italian Civil Code, according to which it is not necessary to comply with the obligations for recognition, measurement, presentation and disclosure when their observance would have irrelevant effects for giving a true and fair view.

The broad discretion allowed by the OIC accounting standards in applying this postulate, together with the absence of any quantitative limit that helps to define the threshold of "materiality", allows management to make wide use of it to reduce or avoid the use of amortised cost.

Given that the current approach to accounting standards always considers the effects produced by "short-term" receivables and payables as immaterial, about the valuation of "medium- and long-term" receivables and payables, it is necessary to bear in mind that the main form of remuneration of these transactions is represented by the contractual interest rate, while the transaction costs are unlikely to reach considerable amounts concerning the total size of the transaction; therefore, unless the contractual interest rate is not significantly different from the market rate, it is necessary to take into account the fact that the main form of remuneration of these transactions is represented by the contractual interest rate. In contrast, the transaction costs rarely reach considerable amounts for the total size of the transaction[14], it is quite probable that the use of amortised cost will lead to a credit/debit value that differs little from the application of the pre-reform criteria [15].

The paradox is that for these companies, the transaction costs related to financing transactions - from which most long-term receivables and payables arise - are often insignificant compared to the amount of the transaction. The paradox is that for these companies, the transaction costs related to financing transactions - from which most long-term receivables and payables arise - are often insignificant compared to the amount of the transaction, making the application of the materiality principle justified.

5. The Non-Application of the Postulates of Truthfulness, Fairness and Clarity Imposed by Article 2423: Legal Consequences for the Financial Statements

The financial statements consist of four interrelated documents (balance sheet, profit and loss account, cash flow statement and supplementary report); therefore, the irregularity of even one of the documents mentioned above inevitably leads to the irregularity of the entire financial statements, the approval of which can be challenged.

In the context of shareholders' meeting resolutions having as their object, directly or indirectly, the financial statements, the resolutions' nullity represents invalidity of an "exceptional" nature. In contrast, they identify the "exceptional" invalidity of the financial statements. whereaWhereasty is a general sanction. In this regulatory context, the nullity of shareholders' meeting resolutions can be invoked only in the cases expressly provided for by law, while the annulment becomes a sanction applicable in all cases in which the radical nullity of the resolutions cannot be invoked.

The Court of Court of Cassation (the last instance of legitimacy in Italy) also states that "it is widely held that in matters of invalidity of shareholders' meeting resolutions there is an inversion of the common principles of commercial law. Indeed, according to the common principles, an action for annulment constitutes a general action, based on the fact that the contract or act is contrary to mandatory rules. In contrast, an action for annulment is unique and can be brought only in cases

[13] The above can be easily understood by analysing Baldissera's statement, according to which "a first point to consider concerns the restatement of the amount of the debt which, being calculated net of transaction costs, is shown in the financial statements at an ideal value, i.e. a value that is not representative of either the actual undue payment or the disbursement that will follow its extinction". (Baldissera A. 2018).

[14] In the event of a significant difference from current market rates, it would be mandatory to discount the credit or debit.

[15]The most common type of shareholder loan is non-interest-bearing and subordinated.

expressly established by law. In company law, on the other hand, the rule that nullity, by way of derogation from the common law rule laid down in Article 1418, constitutes a general principle of company law is in force, while the provision for nullity is special and allowed only in the cases governed by Article 2479 of the Italian Civil Code”[16].

To conclude this brief introduction, it should be noted that the set of provisions concerning the invalidity of shareholders' meeting resolutions identified by Articles 2373, 2377, 2378, 2379, and 2479 ter Italian Code Civil govern the nullity and voidability of resolutions other than those concerning the approval of the annual financial statements.

The invalidity of the latter type of shareholders' meeting resolution is exclusively regulated by Article 2434 bis, which essentially identifies a "special" provision concerning the "special" system of invalidity of resolutions.

In general terms, also bearing in mind what has been said in the preceding pages, it can be considered that, in all companies (S.p.A, S.a.p.A, cooperative companies and limited liability companies), an annulment can be invoked in the event of a violation of interest of a single subject (generally shareholder) or of a group of subjects (generally shareholders).

"The rules on voidability have a residual scope since they apply to all those defects not sanctioned by nullity. It also clearly expresses the legislator's intention to ensure the stability of organisational acts...". (Olivieri Presta Villa 2006).

In most cases, therefore, the annulment of the resolution approving the financial statements is connected to procedural defects in the decision-making process (e.g. failure to postpone the meeting requested by the minority to obtain new information on the matters to be discussed in the resolution; failure to comply with the prior obligations, concerning the date of the meeting, incumbent on directors and auditors; participation in the discussion of persons not entitled to attend; invalidity of votes; insufficient prior information concerning the content of the meeting; the inaccuracy of the minutes; irregularity in convening the meeting; the resolution passed in the presence of the so-called "abuse of power"; invalidity of the votes; inadequate information on the content of the meeting; failure to comply with the provisions of the Articles of Association; insufficient information on the content of the meeting; inadequate information on the content of the meeting. So-called "abuse of power"; the presence of a conflict of interest; capital reduction according to Article 2466 of the Italian Civil Code without observing the procedures provided for by law; non-compliant application of the regulations on option rights, etc.).

The fourth paragraph of Article 2377 provides that an appeal must be lodged within ninety days from the resolution date.

The nullity of shareholders' meeting resolutions not approving the financial statements is governed: for S.p.A., by Articles 2379 and 2379 bis and for S.r.l. by Article 2479 ter of the Civil Code.

The Court of Court of Cassation, in one of the first judgments on the subject, highlighted how the radical nullity of shareholders' meeting resolutions does not derive from the violation of any binding rule or statutory provision but only from the conflict of the resolutions themselves with rules dictated to protect a general interest, which transcends that of the shareholder or aimed at preventing a deviation from the practical economic purpose of the company contract. [17].

It is, therefore, the unanimous opinion that "the sanction of nullity of shareholders' meeting resolutions imposed by Article 2379 of the Italian Civil Code for the sole hypothesis of impossibility or illegality of the object occurs when there is a contract with rules dictated to protect a general interest that transcends the part of the individual shareholder, aimed at preventing deviation from the purpose of the meeting. for the sole hypothesis of impossibility or unlawfulness of the object occurs when there

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[16] Cassazione 22/7/7/1994, n. 6824

[17]

Court of Cassation 3/2/1965, no. 175. The same principle has been highlighted in the past by Cassation 7/4/1975 no. 1932; Cassation 13/3/1975, no. 938; Cassation 18/4/1975, no. 1499; Cassation 6/11/1999, no. 12347. Today the jurisprudence, both of legitimacy and merit, agrees on this principle.

is a contract with rules dictated to protect a general interest that transcends the part of the individual shareholder, aimed at preventing a deviation from the essential economic-practical purpose of the company relationship, while a hypothesis of simple annulment is recognisable when the object is in contrast with rules, albeit mandatory, inspired exclusively by the protection of the interests of individual shareholders or groups of shareholders "[18].

As will be noted below, the nonbinding approval resolution must be challenged within the peremptory term to approve the next financial statements (Article 2434 bis of the Civil Code).

Considering the subject matter of this work, our attention will be focused only on

the shareholders' meeting resolutions approving the financial statements marked by content flaws, i.e. characterised by the non-application of the postulates of truthfulness, correctness and clarity imposed by art. 2423 of the Italian Civil Code or by the subsequent regulations governing the schemes (art. 2423 ter of the Italian Civil Code, art. 2424 of the Italian Civil Code, art. 2424 of the Italian Civil Code, art. 2424 of the Italian Civil Code, art. 2423 of the Italian Civil Code, art. 2423 of the Italian Civil Code, art. 2423 of the Italian Civil Code, art. 2423 of the Italian Civil Code, art. 2424 of the Italian Civil Code), Article 2424 of the Italian Civil Code, 2424 bis of the Italian Civil Code, 2425 of the Italian Civil Code, 2525 bis of the Italian Civil Code), contents and valuation criteria of the financial statements (Article 2426 of the Italian Civil Code); that is, on the potential causes that lead to the radical invalidity of the financial statements.

Before dealing with the legal consequences arising from the non-applicatio

or inexact application of the rule that requires medium and large-sized companies to measure payables and receivables at amortised cost, it is necessary to emphasise how, in the civil law context, the analysis of compliance/non-compliance with the above postulates is totally and independent of any consideration regarding the subjective and motivational aspect of the conduct of the financial statement preparer.

The balance sheet, the income statement, the notes to the financial statements

and the cash flow statement as a whole are therefore untrue, incorrect and non understandability when it is found that the postulates concerning the substance of the valuations and clarity imposed by Article 2423 of the Italian Civil Code have not been applied. An in-depth examination of the reasons that led to the use of principles that do not comply with statutory provisions is not relevant in this context.

Therefore, at civil law level, there is no difference if the person preparing the financial statements acts in "good faith" or, on the contrary, aims to deceive third parties fraudulently.

The offence of false corporate communications (Seminara 2018) occurs only if a series of subjective elements can be identified, aimed, essentially, at deceiving third parties - explicitly indicated by Articles 2621 et seq. Criminal law matters will not be discussed here, as the focus of the work is on the civil law consequences of an unlawful financial statement, arising from the non-application of the rules on the amortised cost measurement of receivables and payables.

Before addressing this issue, it is appropriate to summarise the legal effects of non understandability, untrue or incorrect financial statements.

The financial statements are currently interpreted as the information tool par excellence, often representing the only means of economic and financial communication for companies. For this reason, this composite document must be drafted in such a way that third party recipients of the document can - in a clear and intelligible way - understand the "real" income, financial and asset situation of the company to which the financial statements refer (Quagli 2018; Giunta 2017; Palma 2017).

The spread of such an opinion - now unanimously accepted by doctrine and jurisprudence - has inevitably created the basis for a radical evolution, compared to what has been stated in the past decades regarding the consequences arising from the failure to comply with the postulates of clarity and truthfulness/correctness imposed by Article 2423 of the Italian Civil Code.

[18] Supreme Court 4 May, 1994, no. 4323.

The legal relevance of the three postulates set out in Article 2423 of the Italian Civil Code has, in fact, undergone radical changes over time. From the judgments and opinions of scholars in the early 1900s (Messineo, 1954) who considered judicial control of financial statements to be an inadmissible "intrusion" into the administrative-managerial field of the company, with the result that some judges thought false financial statements to be legitimate, we moved, towards the 1930s, to the opinion that financial statements that had been deliberately altered were invalid. This was the first step towards making it possible to review financial statements which, until a few years earlier, had been considered practically unobjectionable. From that moment onwards, case law showed a slow but progressive evolution. From the sentences of the 1960's which began to consider the provisions of Article 2423 of the Civil Code as mandatory, severing the connection which had existed up to that moment between illegitimacy and criminal false accounting (Bocchini 1995), the hypothesis of false accounting was recognised even when the assets of the company were valued below the limit of "reasonableness" (Bocchini 1972; Colombo 1972).

This evolution soon led, in the first place, to consider the rules of the code concerning the balance sheet as imperative. This circumstance was denied in the past, and, at the same time, to consider understandability as an obligatory postulate from the non-application of which derived the radical nullity of the financial report. [19] [20].

At the end of the 1970s, however, the Court of Court of Cassation described this issue as "a change of course from the previous strict stance"[21], which led to a considerable regression in the field of balance sheet information (Pansieri 1981; Jager 1978; Sasso 1984). Here, reference is made to the reversal of the case law concerning the challenge of balance sheets that were exclusively lacking in the principle of understandability.

In 1977, for the first time, the Court of Court of Cassation[22] stated that the lack of clarity of the financial statements could lead to the nullity of the resolution approving the financial statements only when it was such as to make it objectively impossible to check compliance with the principle of truth (Jaeger, 1978; Jaeger 1979).

In this way, the postulate of clarity became instrumental and subordinate to that of truth. The consequence that the violation of the rules governing the intelligibility of the financial statements was no longer considered an "autonomous" cause of nullity (Cian 2017).

Starting from the 1990s, this unacceptable jurisprudential position was abandoned by all judges, both merit and legitimacy.

From judgments affirming the subordination of clarity to truthfulness, we moved on to judicial pronouncements denying that the precept of clarity's relevance should be considered subordinate to compliance with a superordinate principle of the truthfulness of the financial statements.[23].

According to this approach, which is now unanimously shared by doctrine and jurisprudence, the postulates of " understandability" and "truthfulness" are mutually independent. [24] [25].

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[19] Trib Milano 23/12/1968.

[20] Il principio che le disposizioni disciplinati il bilancio. sono di ordine pubblico, e che la deliberazione di approvazione di un bilancio non conforme ad esse è nulla, e stato ribadito da numerose sentenze fra *le* quali si possono ricordare Tribunale Milano 3/12/81; Tribunale Milano 5/ 5/83, Tribunale Vicenza, 18/10/84, Tribunale Milano 26/9/83, Tribunale Milano 15/5/1981, Tribunale Milano, 5/2/1981.

[21] Cassazione 9/2/79 n. 4595.

[22] Court of Cassation 28/7/77 no. 5607

[23] Court of Cassation 21/2/2000, no. 27. Also Court of Cassation, 14 March 1992, no. 3132; Court of Cassation 30/3/1995, no. 3774; Court of Cassation 3/9/1996, no. 8048; Court of Cassation 8/10/1997, no. 7398; Court of Cassation 3/91996, no. 8048; Court of Cassation 29/9/2005, no. 19097; 31 Court of Palermo, 14/01/2013, Court of Prato, 25/09/2012, Court of Rome, 17/02/2011.

[24] Cassation 07/04/2016, no. 6752 ; Cassation 23-02-2012, no. 2758 Cassation 24/07/2007, no. 16388 Cassation 02/04/2012, no. 5250

[25] The Court of Cassation in its judgment of 23/2/2012 with a decision no. 2758, reiterated the position taken in 2008 and stated that a shareholder's interest in challenging a resolution approving the financial statements to denounce a lack of

The non-application of even just one of the postulates imposed by Article 2423 unequivocally causes the nullity of any document constituting the financial statements unless, as doctrine and jurisprudence now unanimously asserts, and as noted in the preceding pages, the error is irrelevant[26], in which case, in view of the almost non-existent infringement of the right to information of shareholders and third parties, the balance sheet is nevertheless judged to be legitimate (Muscolo 1978).

6. The Disapplication of the Amortised Cost Imposed by Article 2426 of the Italian Civil Code to Medium and Large-Sized Companies: Potential Nullity of the Financial Statements

From the results of the research presented in the previous pages, it can be seen that, in summary, from 2016 to 2018, only 2% of medium-sized companies and 10%, which has fallen in the last two years to 5% in large companies, applied amortised cost to payables and receivables.

This figure is striking for its smallness which, of course, is accompanied by very high percentages, close to 90% in medium-sized companies and 95% in large companies, of companies claiming the irrelevance of the application of the valuation criterion covered in our study.

The above percentages raise legitimate doubts as to the integrity of the data because, if in 95% of cases the amortised cost valuation were irrelevant compared to the better known (and more widespread) nominal value valuation of payables/receivables, it would not even be understandable why the international standards and - following, the national ones and the civil code - have imposed such a valuation. If the application of amortised cost were indeed "irrelevant" in the valuation of receivables and payables in the sample examined, the inclusion in our legal system of the rule requiring amortised cost would not make any sense. This is because, in almost all companies, the very irrelevance of the results obtained by applying this valuation method (compared to recognition at nominal value) would render the rule itself useless.

To understand the legal consequences on the balance sheet of the assertion of the irrelevance of the application of amortised cost, one must divide the companies into two categories:

1) companies in which, indeed, the amortised cost calculations were conducted, and it could be seen that the difference in the result obtained was irrelevant compared to the more usual valuation at nominal value. In this case, the financial statements of these companies are perfectly legitimate;
2) companies in which the irrelevance of the application of amortised cost has been affirmed without, in the field, calculations being made to assess the relevance or irrelevance of the application of this valuation method. In this case, the financial statements could be at risk of radical nullity and could be challenged, for this reason, by anyone and not only by the shareholders. Obviously, during the hearing, the plaintiff who challenges the financial statements must demonstrate the relevance that the application of the amortised cost would have had in contrast to what was stated in the documentation approved by the shareholders' meeting. It should be noted that the postulates disapplied in the event of the relevance of the amortised cost valuation - in the presence of statements to the contrary referring to its hypothetical irrelevance - involve both the truthfulness and clarity of the financial statements, as well as their correctness. All the postulates would be disapplied because, the non-adoption of the amortised cost - if it is compulsory and does not lead to irrelevant results compared to the valuation at nominal value - would lead to the recognition of incorrect values in the balance sheet, in the income statement and in the cash flow statement (concerning the distribution of

clarity "may be lacking when the lack of understandability of the accounting document is remedied by understandability and unambiguous indications that can endure easily obtained from the notes to the financial statements, the accompanying report or any explanations given at the shareholders' meeting; However, such remedies are unlikely to operate where the defects in the financial statements are such as to affect (not only their clarity but also) their accuracy and truthfulness, and thus affect the result for the year or the numerical representation of the balance sheet.

[26] Court of Cassation 7/3/2006, n. 4874.

flows between the different items that compose it). The inaccuracy of this information would lead to the non-application of the veracity assumption. Also, the book values would not be located where the reader would expect them to be identified (since from the application of the amortised cost, part of the equity value of the debt - expressed at nominal value - would have to be partly recognised in the income statement in the item dedicated to financial income and expenses). Therefore, the assumption of fairness would also be disapplied.

Finally, understandability could be considered as not being observed as the components of an income nature would be recognised within receivables and payables, resulting in the preparation of non understandability financial statements (Campobasso 2017; Auletta Salnitro 2015).

From the above, it is clear that, if a company found itself in the situation described in point no. 2, the resolution approving the irregular financial statements could be radically null and void unless the actual irrelevance referred to by the legislator is proven.

The data showing that as many as 11% of medium-sized companies disapply amortised cost valuation without explaining the notes to the financial statements is also a significant indication of potentially void financial statements. In this case, however, as in the previous hypothesis, two situations must be distinguished:

3) companies that, despite not having any reference to the irrelevance of the application of amortised cost, show - after having made all the calculations related to this valuation method - an irrelevant difference compared to the value recorded in the financial statements. In this case, even though a mandatory rule has been disapplied and the code requires information, the irrelevance of the error saves the financial statements which, for this reason, can be considered equally valid;
4) companies that present nominal values far removed from those they should have included under the amortised cost criterion not mentioned in the financial statements. In this case, the irrelevance cannot be adopted as an excuse for the non-application of the principle imposed by Article 2426 of the Italian Civil Code. If one were to fall into this category of companies, the financial statements would undoubtedly have to be considered null and void. As for the companies of aggregate 2), the postulates disapplied would be both those of truthfulness/correctness and clarity due to the same reasons illustrated above. It should be noted that, in civil law, the reasons for drawing up unlawful financial statements are not relevant. Consequently, in the companies mentioned in this point, the circumstance that there is no reference to the irrelevance of the values (as happens in the companies of aggregate 2)) causes - in the hypothesis of an appeal against the shareholders' resolution approving the financial statements - the obligation to draw up the financial statements from scratch. Therefore, at a legal level, the situation of the companies of aggregate 2) and 4) are substantially the same.

In order to understand the real danger of challenging the shareholders' resolution approving an illegitimate balance sheet because of the "non-" irrelevance of the identifiable differences between the book value of receivables/payables and the data calculated by correctly applying the amortised cost, it is essential to summarise the characteristics of such an action (Avi 2007).

The challenge of invalid resolutions approving illegitimate financial statements is governed, for all forms of capital companies, by Article 2434-bis of the Italian Civil Code, since both Article 2379 and Article 2379-ter refer to Article 2434-bis (Bonocore 2017; Presti 2019)).

In this respect, therefore, there are no differences between the legislation applicable to S.p.A. and that applicable to other corporations (Masturzi 2017).

The two most relevant principles related to void resolutions arising from the approval of irregular financial statements can be summarised as follows:

1) the challenge must be brought before the approval of the next financial statements (Article 2424 bis of the Civil Code);

2) anyone who has a current and concrete interest, whether a shareholder or a third party, has the right of action (Articles 2379 and 2479 ter of the Civil Code). In this regard, it should be noted that the right to corporate disclosure is now unanimously recognised for third parties and shareholders. Therefore, demonstrating a current and concrete interest in the proper disclosure of corporate data is a step facilitated, for all the above categories, by the idea widespread in doctrine and jurisprudence of the existence of a collective right to corporate information intended for the outside world.

About the right to action, it should be remembered that doctrine and case law agrees in considering that shareholders are practically always entitled to correct and truthful information on the financial statements since the financial statements are the only means of communication from which they can obtain information on the performance of the company they own. This recognition implies the acceptance that the shareholders, at the operational level, always have concrete and current interest in challenging unlawful financial statements.

From these brief considerations, it is clear how, for scholars and judges, the interest of a shareholder in bringing an action - in the presence of nullity of the resolution approving the financial statements for content defects, although not inherent in the quality per se of the holder of a fraction of share capital - is connected to an information requirement that distinguishes every owner of shares and/or company quotas (Jager Denozza Toffoletto 2019).

According to this view, the concreteness and topicality of a shareholder's interest in bringing proceedings arise, however, in the presence of a specific prejudice practically inherent in the quality of shareholder and not from a general need for information (Muscolo, 2003).

On this issue, the Supreme Court has pointed out that this interest cannot be identified in a generic and abstract interest connected to the mere implementation of legal rules or mere legality, but must be related to compliance with the principles of understandability, truthfulness and fairness, the application of which is necessary to infer the value of one's shareholding: there is, therefore, a substantial interest that translates into the procedural interest. [27].

This means that a shareholder has an interest in bringing an action and can therefore challenge an invalid balance sheet to have it declared null and void when, for example, the postulate of clarity has not been applied even if this transgression has not resulted in any alteration of the income for the financial year. Even in the absence of any change in net profit or loss, a breach of the clarity requirement could prevent the plaintiff from relying on a document showing the company's true financial and asset situation.[28].

If, on the one hand, it is true that to challenge a void resolution, concrete and current interest in bringing proceedings is required, it is equally true that the position of the holder of shares in the share capital appears to be privileged compared to that of third parties outside the company. While a third party, in order to challenge a resolution of the shareholders' meeting approving the financial statements, may have some difficulty in proving the existence of a concrete and current interest in bringing proceedings, a shareholder is, without a shadow of a doubt, in a much easier position. As a shareholder, the shareholder is always entitled to possession of documents showing the correct income, financial and asset situation.

However, a final consideration must be made about the "difficulty" that a third party who is not a shareholder may encounter in proving the existence of a concrete and current interest in challenging a resolution that has approved financial statements that are untrue and/or non understandability. In the writer's opinion, if it is true that a shareholder is undoubtedly facilitated in proving his interest in bringing an action, it is equally true that, in the presence of a unanimous opinion on the recognition of the right of third parties outside the company to correct, truthful and understandability economic-financial and patrimonial information, also the position of those who do not own shares in the share capital does not seem so problematic (Villata 2006).

[27] Cassazione 24/12/2004 n. 23976. Vedi anche Cassazione 11/12/2000 n. 15592
[28] Tribunale Milano 13/5/ 2002.

The acceptance, both in doctrine and in jurisprudence, of the existence of a real right to information guaranteed to any person outside the company who has an interest - even if only in clear and correct information - in the company that publishes the financial statements, can be interpreted as a circumstance that facilitates the demonstration of an interest in acting if the approved financial statements do not fully satisfy that right which is unanimously recognised by the community.

From these brief considerations, it is clear that the right to bring an action is recognised in the hands of a multiplicity of subjects who, in the presence of the widespread opinion of the existence of a collective right to corporate information, do not have to face any particular difficulty in proving the existence of a current and concrete interest in the activities aimed at challenging the financial statements.

This brief excursus shows how the consequences of the nullity of the resolution approving an irregular balance sheet are serious and damaging for the company, from a management point of view (obligation to draw up a new legitimate balance sheet), an economic point of view (incurring legal and consultancy costs, etc.) and an image point of view. The news of an illegitimate balance sheet, if divulged, may, in fact, be misinterpreted by the community which, in the absence of precise training on the subject, could draw conclusions on the criminal falsity of the balance sheet. The circumstance that, in reality, may have no connection with the civil invalidity connected with the failure to comply with the obligation to use the amortised cost valuation (Signorelli 2018).

At the end of these observations and bearing in mind the results of the research mentioned in the previous pages, a question arises: was it appropriate to include in the Italian legislation the principle of amortised cost which is divorced from our accounting culture and was imposed only to introduce in the legislation a valuation criterion illustrated by international standards? The results of the research would lead to the alternative affirmation that the amortised cost has no relevant effects for about 95% of the companies and, therefore, it did not seem so necessary to introduce a complex valuation principle with no real impact on the balance sheet data, or that this valuation criterion is not applied because it is not recognised as useful by almost all the companies (and by the professionals who work with them in the preparation of the accounting documents). Only 2% of medium-sized companies and 5% of large companies apply it. In the light of these data, in the writer's opinion, the answer to the above question can only be: to posterity the arduous judgment!

6. Conclusions

The present contribution aims to investigate the amortised cost criterion in Italian companies' financial statements.

Three years after the entry into force of Legislative Decree 139/2015, the results that emerged from the empirical analysis conducted on the 2016-2018 financial statements, reported in the previous pages, lead us to the following summary considerations.

About the first research question - which was based on the expectation of a

The first research question - which was based on the expectation of an increase in the number of companies that would use the amortised cost criterion compared to the date of first adoption - the results of the research show the exact opposite trend. The already small number of companies opted for the extended application of amortised cost to all credit and debit items fell from 5.7% to 3.4% of the sample we analysed. What is even more significant is that this contraction is substantially concentrated in the group of large companies that decided not to apply this criterion or to apply it in a targeted manner.

This result leads us to the second research question aimed at understanding whether

This result leads us to the second research question to understand if the company's size could be a significant variable in the adoption of this criterion. The hypothesis to be tested was based on the assumption that it would be logical to expect a greater diffusion of this criterion in larger companies and a more limited one in smaller companies. This result is certainly reflected in the data that emerged

from the sample under review in all three years. However, if we consider the temporal trend, for small companies, this percentage remained substantially unchanged at 2.2%. Large companies fell from 9.5% in 2016 to 4.8% in 2018, revealing a halving of the number of companies that opted for the application of amortised cost. Contrary to what might have been expected - and punctually highlighted in the research by Sòstero and Agostini (Sòstero and Agostini, 2018) - it was precisely among large companies that the use of amortised cost was abandoned, despite starting from an already modest rate of diffusion.In summary, the firm's size from the sample analysed does not appear to be a significant variable to explain the application of amortised cost. Larger companies have undoubtedly adopted this criterion to a greater extent. Still, the trend over the three years analysed shows a clear decrease in the number of companies that have decided to continue using it.

Since it is a compulsory criterion in the Civil Code, the non-adoption of amortised the third research question we asked ourselves was to find out whether there is a need for the amortised cost. The third research question that we asked ourselves at the beginning of this work was related to the methods of application of this postulate, among other things also introduced at civil law level by Legislative Decree 139/2015. From the analysis of the sample of financial statements, we tried to verify whether the reference to materiality was correctly made from a formal and substantive perspective.

From a formal point of view, the obligation to illustrate the application methods through which in the sample, a significant number of financial statements (between 16.1% in 2016 and 2017 and 14.9% in 2018) did not provide any reasoning on the adoption of the principle of materiality applied to amortised cost throughout the three-year period under review. These numbers are compounded by another number of companies ranging from 5.7% in 2016 to 4.6% in 2018. The application of immateriality in the use of amortised cost is only formally mentioned, without any detail. In other words, about one in five companies in the sample publish financial statements that do not allow the reader a clear understanding of how the postulate of materiality applies to the valuation of receivables and payables.

From a substantive point of view, it would be necessary to verify whether the non-application of amortised cost is actually.

From a substantive point of view, it would be necessary to verify whether the non-application of the amortised cost is to be considered relevant (i.e. "material") in terms of repercussions on the values of the income statement and balance sheet. Such a judgment would be technically verifiable only if detailed information were available on the composition of the companies' credits and debits in the sample and on the relative contractual conditions. However, the results of this research reveal a fairly significant fact about the choices made by companies regarding the application of the materiality principle. If in 2016 irrelevance had been adopted only on some specific credit/debit items by 52.9% not to apply the amortised cost criterion - this percentage dropped to 39.1% in 2018.

On the other hand, the number of companies that opted for an extended application of the comprehensive application of the irrelevance of amortised cost to all credit and debit items. This percentage was 29.9% of companies in 2016 compared to 47.1% in 2018. Not only that, the rate of increase appeared paradoxically larger for large companies where irrelevance applied to all items was chosen by 33.3% (compared to 14.3 in 2016). The corresponding percentage of companies that applied irrelevance to all receivables and payables rose from 44.4% to 60% for small companies. As is well known, the non-application of amortised cost (due to irrelevance) inevitably leads to the valuation of receivables and payables at their nominal value (possibly adjusted for receivables by any write-downs in the event of lower realisable value). Across the companies analysed, the partial or total application of irrelevance rose from 82.8% in 2016 to 86.2% in 2018, confirming a trend that seems to confirm companies' "disaffection" of this new valuation criterion.

To conclude, the previous section also addressed the consequences that could arise from an incorrect that could result from an incorrect application of materiality in terms of invalidity of the financial statements, the last question of this research. The non-application of the postulates of truthfulness, fairness and clarity causes, unequivocally, radical nullity of the resolution approving the

financial statements. The fact that a very high percentage of companies disappear a mandatory rule imposed by the Civil Code means that, potentially, all these companies' financial statements are illegitimate and, consequently, can be challenged by anyone with a current interest. This is unless the difference between the value obtained by correctly applying the amortised cost and the balance sheet data is irrelevant and, therefore, escapes the sanction of the nullity of the financial statements - rectius of the resolution approving the financial statements. As can be understood, the situation is abnormal: in the face of a mandatory provision, very high percentages of all categories of companies do not apply this rule with the consequence that, potentially, all these financial statements could be challenged for this reason alone. In the previous paragraph, we asked ourselves whether it was appropriate to include the principle of amortised cost in the Italian legislation, which is alien to our accounting culture and has been imposed only to introduce into the legislation a valuation criterion illustrated by international standards. The answer can only be the one given above: posterity will have to decide.

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