Department of Business and Management

Master's Degree Thesis in Corporate Finance

Chair of Cases in Business Law

Financially Distressed Companies and Banks' Behaviour Between Legitimate Debt Collection and Abuse of Law

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Table of Contents

INTRODUCTION **1**

CHAPTER 1: Banking and Development – Historical, Corporate, and Legal Perspectives **2**

1.1 Key Milestones in Banking Development 2

1.2 Bank as a Catalyst Corporate Expansion and Economic Development 9

1.2.1 Banks Fuelling Economic Growth through Enterprise Lending 9

1.2.2 The Mechanism of Economic Growth: How Bank Lending Drives Economic Flows 13

1.2.3 Perspectives from Academics and Practitioners on the Matter: Developed Countries Evidence 14

1.3 Legal Guidelines for Bank-Corporate Interactions in Italy 17

1.3.1 Principles Governing the Issuance of Credit by Banks 18

1.3.2 Legal Framework for Termination of Banking Credit Agreements 23

CHAPTER 2: Banking Conduct and Abuse – A Legal Exploration **29**

2.1 The Notion of "Abuse of Law" 30

2.2 Configuration of Abusive Credit Provision Practices by Banks 33

2.2.1 Legal Compliance in Creditworthiness Assessment Criteria 34

2.2.2 Abusive Lending Practices: An Exploration of Rulings 35

2.2.3 Navigating Legal Ambiguities of Illicit Credit Provision 38

2.3 The Contentious Dynamics of Abusive Interruption of Credit: An In-Depth Investigation 40

2.3.1 Banks' Reluctance to Adjust Existing Credit Lines 42

2.3.2 Banks' Refusal to Overdraft Allowances 43

2.3.3 The Collection or Reduction of the Conferred Financing by Banks 47

CHAPTER 3: Navigating the Ethical Quagmire: A Case Study on Controversial Bank Practices **55**

3.1 Unfolding the Dynamics of the Litigation: The Alpha Case 55

3.2 Company Alpha: A Focus 57

3.2.1 Unveiling the Project 59

3.3 Alpha's Economic and Financial Profile 63

3.3.1 Alpha's Historical and Projected Financial Statements 64

3.3.2 Alpha's Cash Budget 69

3.3.3 Alpha's Rating 72
3.4 Understanding the Alpha Case: An Interpretation within the Italian Legal Framework 73

CONCLUSION 77

BIBLIOGRAPHY AND SITOGRAPHY 79

INTRODUCTION

Cooperation between banks and companies is recognized as performing a function that is crucial for the expansion, and stability as well, of economic systems. Complex dynamics of reciprocity is what the link between these parties is characterized of, may potentially having an impact on the social structure, employment, and economic progress of a country. So, the idea this paper sets to analyse is the role that banks, and other credit institutions in general, perform for an economy. This will be done especially given the important role they play in the financing of businesses. An emphasis will be given to the laws that govern their interactions with businesses.

Special focus will be given to the granting of credit, both within the European context, with reference to the Basel Accords, and within the Italian legal framework. The agreements made in Basel act in the capacity of an important regulatory foundation setting minimum capital requirements for banks, thus aiming to ensure a more robust, and more resilient as well, banking system. Special emphasis will also be placed on the topic of credit revocation to businesses, which, in the delicate balance between banks and companies, represents one of the most complex and sensitive dynamics. Article 1845 of the Civil Code serves as the main Italian legislative reference in this regard.

The analysis will go beyond by highlighting any, potential, shortcomings that characterize the current legal system. Despite regulations being structured to ensure a balance between the parties, situations of tension and conflict may arise. Along this path, a case study shedding light on the dynamics that can arise in the bank-business relationship, with a focus to the granting and revoking financing, will be presented. This in-depth assessment will allow for a practical, and concrete as well, understanding of how theory translates into, operational, reality.

The goal this paper sets to realize, in final ground, is to provide a somewhat comprehensive review of the Italian regulatory framework controlling this, much-mentioned, sensitive connection. Also, the investigation sets to cover the role that banks play in the broad economy through the funding of enterprises. In an era marked by globalization and economic interconnectedness, it is imperative understanding, and successfully controlling, such mechanisms in order to reach prosperity and sustainability of the economic system.

CHAPTER 1: Banking and Development – Historical, Corporate, and Legal Perspectives

The modern financial services we enjoy today have deep historical roots that can be traced back to the vibrant trade and cultural developments of ancient civilizations. Historically, places such as Lydia, Hellenic regions, the Middle Kingdom, Rome, and the Phoenician shores have subtly influenced the basic financial methods that would, over time, evolve into our current banking establishments. Lending, deposit-taking, and money transfers were just a few of the financial operations that were within the purview of these historic banking procedures. These ancient civilizations provided the groundwork for the fundamental function that credit lines or bank loans—hereafter referred to interchangeably as they both include bank lending activities—play in sustaining businesses and advancing the national economy. Exploring the roots of banking systems offers understanding on the growth of financial frameworks and the sustained role of borrowing in driving financial development and empowering enterprises [1].

1.1 Key Milestones in Banking Development

The origins of numerous contemporary banking services reach back to ancient societies which saw remarkable progress in commerce and culture Notable ancient societies, like those of the Hellenes, the Middle Kingdom, and Romulus's city, played foundational roles in shaping modern banking practices we rely on today. Going back as far as 2000 BC, monks at the Ur temple in Babylonia harnessed their riches to provide loans. Concurrently, in Mesopotamia, royal palaces and sacred places became trusted spots for storing prized items. They began receiving deposits, frequently grain-based, paving the way for financial practices that continue to resonate today. The Code of Hammurabi (1792-1750 BC) documented regulations that governed these practices, showcasing the well-advanced banking systems of both Babylonian and Assyrian societies [2].

[1] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.2, (last visited 11/08/2023).
[2] *Ibid.*

Ancient Greeks are frequently credited with the invention of coins, dating back to circa 635 BC. Herodotus, a historian, however, gives the Lydians, a prehistoric monarchy whose core territory was Sardes, credit for this innovative development. As Herodotus described, the Lydians were a pioneering civilisation in monetary innovation, as they were the first to introduce and use gold and silver as money. Also, they were known to take part in retail trade, thus marking a significant development in economic history [3].

In the Classical era the banking system of Ancient Greece was structured around three main foundational pillars, which were constituted by temples, private businesses, and public municipal banks. In this scenario, the temples were considered important playing an important role in this system because of their perceived security. Serving as credit institutions, they both accepted deposits and provided loans. The sacred status gave them with a common sense of trustworthiness and credibility, thus making them reliable venues for those in need of financial service [4].

In the 5th century BC, the banking landscape in Ancient Greece evolved with the emergence of specialized private bankers, each with distinct financial roles. The Kollubistai were centred on currency exchange, while the Danneistai engaged in offering small-scale mortgages, and the Trapezitai took on the responsibility of accepting deposits. This progressively marked task distribution led to a more efficient and adept method in banking operations, which was reflecting an advanced understanding of financial specialization [5].

In specific cities such as Miletus, the complexity of financial activities undertaken by the authorities began to escalate, leading to the creation of municipal banks that delivered professional financial services. These institutions played a very critical role in the oversight of the city's intricated financial relations since they enabled the efficient

[3] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.2, (last visited 11/08/2023).
[4] *Ibid.*
[5] *Ibid.*

execution of intricate trade operations and, further, reflected a growing capacity for managing economic affairs in urban centres [6].

Thus, the Ancient Greeks not only introduced coins as a form of currency but also developed a multifaceted banking system comprising temples, private enterprises, and municipal banks. These institutions played a very important role in facilitating economic transactions, this through providing credit, and safeguarding deposits in the ancient Greek world [7].

In Ancient Greece, the occupation of a banker was generally looked down upon. However, attitudes towards banking shifted during the Hellenistic Period, leading to the establishment of two significant banking centers. The first center emerged in Alexandria, Egypt, where a bank operated under the administration of the Ptolemaic dynasty. What this bank did, was to ease currency exchange, provided loans, and discounted bills. In Rhodes, another significant banking centre emerged, deeply intertwined with the prominent ship-owning industry of the area. This prosperous sector not only influenced the banking landscape but also led to the growth of a burgeoning insurance business [8].

During the 3rd century BC, the financial scene was greatly influenced by Roman bankers, referred to as Trapezitai in Greek, and subsequently known as Argentari. These individuals, the Argentari, held a primary position within the economic framework, and they marked a distinct shift in the progression of banking at that time. The vital centre, the Forum, which revealed to be an essential hub for commercial pursuits, also stood as an indicator for the financial soundness and solvency of single individuals. It was in this bustling marketplace that transactions were conducted and financial reputations were established. The Argentari, entrusted with the responsibility of managing monetary affairs, meticulously maintained two ledgers as part of their banking practices. The first ledger served as a chronological record, documenting each transaction in a systematic manner. This provided an account for transparent financial activities, so to ensure

[6] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.2, (last visited 11/08/2023).
[7] *Ibid.*
[8] *Ibid.*

accountability and, also, to facilitate trust between parties involved in transactions. On the other hand, the second ledger served as thorough repository, scrupulously recording the debit and credit accounts of customers. These ledgers, which were meticulously kept by the Argentari, formed the foundation of accounting practices, thus enabling the systematic recording and tracking of financial transactions. The care and accuracy with which these ledgers were kept served as the foundation for the creation of complex accounting techniques that still influence financial management today [9].

The development of banking in Italy was significantly influenced by the substantial increase in commerce that the country saw throughout the 13th century. Initially, foreign currency exchange was the main service that bankers offered. However, their service offerings didn't take long to expand to include services such as loan provision. The growth in the banking sector was also notable, with Florence alone boasting a staggering 80 banks by 1250 [10].

Established by city magistrates in 1401, the Bank of Barcelona in Spain stands as one of the early examples of a financial institution providing the fundamental banking services that form the basis of our modern banking system. This important bank offered various services, which were ranging from the granting of loans, passing to deposits acceptance, and arriving to intermediary services for exchange transactions of foreign currency [11].

People of Jewish, Italian, and German ancestry dominated the banking industry during the Middle Ages. The services these financiers provided spanned lending, currency exchange, and acceptance of deposits as well. These services were prevalent in affluent Italian urban areas and Hanseatic trading centres. Over time, similar developments were observed in Dutch and English cities as well. Several notable deposit banks were established during this period. These included the Casa di San Giorgio in Genoa (1586), the Banco di Riatto in Venice (1587), the Banco di Sant'Ambrogio in Milan (1593), the Bank of Amsterdam (1609), the Bank of Hamburg (1619), and the Bank of Rotterdam

[9] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], pp.2-3, (last visited 11/08/2023).
[10] *Id.,* p.3
[11] *Ibid.*

(1653). Often managed by adept goldsmith-artisans, these institutions carried out financial transactions at a table referred to as 'banco' in Italian. This term, in conjunction with the French word 'Banque' ,gave birth to the contemporary word 'bank', tracing a direct linguistic lineage from these early practices to the financial systems of today [12].

Serving the function of streamlining payment methods, the introduction of banknotes marked an important shift in financial transactions. Operating as bills of exchange, these banknotes symbolized the value of money stored in credit institutions, and stood as a testament for the entitlement of the holder to reclaim the equivalent value in precious metals. Therefore, they played an important role in crediting bank accounts of individuals. In major commercial hubs like Florence, Barcelona, Geneva, Bruges, London, and the Champagne region of France, the use of bills of exchange became commonplace. This financial tool facilitated expansive trade with far-off territories without the necessity to transport substantial amounts of precious metals and coined currency crafted from silver, gold, or other metals. The unbroken movement of funds between specific merchants' accounts led to the creation of the giro system, a term derived from the Italian word 'giro', which means a circle or circuit. The easy transfer of money, which was made possible by means of this network, further facilitated business operations and aided in the growth of trade [13].

For a span of over three centuries, the banking industry remained under the dominion of influential politicians and affluent families, among which the Medici dynasty of Florence and the Fugger family of Germany stood prominently. The Rothschild family, however, was finally recognized as the epitome of banking dominance in Europe and perhaps the whole globe throughout the nineteenth century. The progenitor of this powerful dynasty, Rothschild (1743–1812), was key in establishing their dominance in the financial area. Rothschild, as the patriarch of the family, laid the foundation for their immense influence, which swiftly expanded across various financial centres throughout Europe [14].

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[12] L. Kurylowicz, “Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century”, in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.3, (last visited 11/08/2023).
[13] *Ibid.*
[14] *Ibid.*

Towards the close of the seventeenth century, a financial instrument known as depositary receipts gained significant traction. These receipts were issued by banks in exchange for deposited funds. Merchants, recognizing their convenience and widespread acceptance, embraced depositary receipts as a viable method of payment for goods. This popularity mainly stemmed from the simplicity of trading these receipts for physical coins at a later stage. Consequently, depositary receipts became a favoured choice, especially among merchants who often travelled with significant sums of money [15].

At first, the depositary notes were symbolic of the exact quantity of gold that had been deposited. However, a noteworthy observation emerged over time: the amount of gold withdrawn from the deposits consistently fell short of the originally lodged quantity. This circumstance compelled English bankers to engage in lending a portion of the gold held by their depositaries to other individuals, thereby generating interest-based profits. Notably, borrowers often opted for depositary receipts in lieu of gold coins. Consequently, the combined worth of these circulating receipts exceeded the value of stored gold, signalling the onset of a banking approach based on fractional reserves. In this method, banks hold onto only a fraction of customer deposits and distribute the rest as loans. By issuing loans in the form of depositary receipts, the goldsmiths and bankers were able to expand the money supply beyond the actual amount of gold held in their reserves. Therefore, greater economic and trade activities were allowed thanks to this approach, because contributed to the expansion of the availability of money within the economy [16].

With the passage of time, countries started conferring sole authority to singular institutions for the release of both paper money and metal currency, paving the way for the birth of the central banking system. This practice allowed for the formation of centralized institutions responsible for controlling and overseeing the issuance of currency within each respective country [17].

[15] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.4, (last visited 11/08/2023).
[16] *Ibid.*
[17] *Ibid.*

A very important figure in the formation of the Bank of France was Napoleon. The institution was founded in 1800 and by the mid-nineteenth century this was set to become the nation's primary financial figure. Concurrently, in Germany, several banks began operating as joint-stock companies, marking a significant development in the banking sector of the region [18].

The roles and responsibilities of various types of banks changed as the 20th century got underway, creating a distinct split within the banking industry. These were including commercial and central banks, investment, mortgage, and agricultural banks, as well as community-oriented institutions like credit unions and savings banks. The increasingly diversified demands of the financial system at the time were reflected in the fact that each category of bank had its own unique specialty and area of expertise [19].

During the 1920s and 1930s, the gold exchange standard was found to be lacking in its ability to manage international monetary transactions. The global economic recession led to a disregard for maintaining the gold parity of national currencies, which consequently prompt many European nations to adopt managed currency systems based on paper money. Following the "Bretton Woods" conference, which was held in the United States subsequent World War II, a new international monetary system was then created. As a result of this important forum, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) were founded. Simultaneously, commercial banks with international capital began to emerge, whereas existing banks expanded their presence overseas. This development was primarily driven by factors such as economic recovery, increased international trade, and geopolitical changes which followed World War II [20].

Subsequent years, the progress of technology essentially changed the way financial institutions run their businesses. Credit institutions began to profit from advancements in the fields of telecommunications and information technology, by introducing techniques

[18] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.4, (last visited 11/08/2023).
[19] *Ibid.*
[20] *Id.,* pp.4-5

of data transmission which allowed them to improve the efficiency of financial operations on a domestic and worldwide scale. Moreover, these advancements facilitated the establishment of e-money, which further changed how transactions were conducted [21].

1.2 Bank as a Catalyst Corporate Expansion and Economic Development

As we move ahead, it is very important to recognize that the essence of banking, particularly bank lending activities supporting the real economy, remains notably consistent. The foundations for the contemporary economic mechanism were built by the big changes brought about by the advent of the fractional-reserve banking system in the seventeenth century. The banking industry's remodelling had profound effects. In fact, this method allowed banks to extend credit much beyond their deposited cash reserves. This technique clearly boosted entrepreneurial initiatives, directed funds to promising investments and triggered broader economic interactions as well. Accordingly, through its power of channelling funds, the banking system proved to be fundamental for growing industries and generating employment. This has moved societies ahead, thus placing banks at the heart of company financing. They thus evolved into engines of economic expansion and promoters of wealth [22].

1.2.1 Banks Fuelling Economic Growth through Enterprise Lending

To comprehend the link between the development of the financial sector, corporate expansion, and economic growth it is essential to understand the critical position the banking sector occupies within the overall economy [23]. In general, banks nowadays have various roles and functions, but their main business revolves around gathering funds, known as deposits, from individuals or entities with surplus money. They, as lenders,

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[21] L. Kurylowicz, "Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century", in SSRN, available at [Short History of Banking and Prospects for Its Development in Poland at the Beginning of the 21st Century by Lukasz Kurylowicz :: SSRN], p.5, (last visited 11/08/2023).

[22] European Central Bank Banking Supervision, "Striking a balance: bank lending in times of crisis", available at [https://www.bankingsupervision.europa.eu/press/publications/newsletter/2020/html/ssm.nl200812.en.html], (last visited 12/08/2023).

[23] I. Drigă & D. Codruţa, "The Financial Sector and The Role of Banks in Economic Development", available at [https://www.upet.ro/simpro/2014/proceedings/09%20-%20ECONOMICS%20AND%20PUBLIC%20ADMINISTRATION/9.2.pdf], p.1, (last visited 12/08/2023).

operate as a key intermediary, gathering resources and distributing them to persons in need of finance, known as borrowers. They act as a middle-entity for depositors providing funds to the bank, and borrowers, who get loans from the bank. In this context, the term "interest" refers to the cost that banks spend for holding deposits and the money that banks get on loans they make as well [24].

In a typical scenario, while some depositors require immediate access to their funds, the majority do not [25]. Given depositors' common behaviour, credit institutions are able to exploit short-term deposits to fund longer-term loans [26]. This is known as "maturity transformation", namely the process through which short-term liabilities (deposits) are effectively transformed into long-term assets (loans). Banks can secure a profit margin by paying depositors less interest than they collect from borrowers. This difference, or spread, between the cost of deposits and the income from loans forms the foundation of banks' income structure in most countries. The ability of banks to effectively manage this spread significantly influences their profitability and financial stability [27].

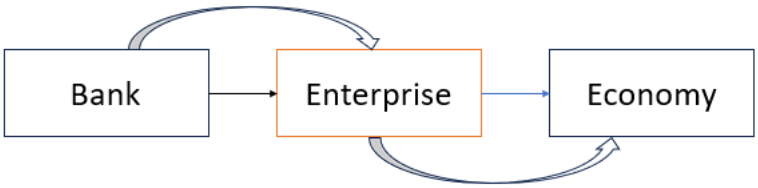
An economy's growth and development are greatly influenced by the stability and degree of development of the banking sector. This is particularly significant considering that a substantial portion of economic financing for both households and companies relies heavily on credit activities [28].

The power of banks as drivers of an economy is strengthened by their financing activities of enterprises: the latter serve as the primary source of economic growth, in turn generating employment and promoting innovation and development. This explained, it becomes even more evident when considering that banks are the primary source of

[24] J. Gobat, "Banks: At the Heart of The Matter", in International Monetary Fund, available at [https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Banks], (last visited 25/08/2023).
[25] *Ibid.*
[26] I. Drechsler et al., " Banking on Deposits: Maturity Transformation without Interest Rate Risk", in National Bureau of Economic Research (NBER), available at [https://www.nber.org/system/files/working_papers/w24582/w24582.pdf], (last visited 14/08/2023).
[27] J. Gobat, *op.cit.*
[28] D. Armeanu et al., "The Credit Impact on Economic Growth", in EBSCO, available at [Theoretical_&_Applied_Economics_2015_Spring.pdf (ectap.ro)], p.6, (last visited 14/08/2023).

funding for companies. According to the latest EIB Investment Survey (EIBIS), bank loans make up the largest proportion (56%) of external finance for companies across various sectors, including both large corporations and SMEs. This data is congruent with what was discovered the year before. Furthermore, when considering other forms of bank lending, the total bank financing constitutes nearly 70% of the overall external financing for companies [29]. Hence, the true potential of banks for driving economic transformation lies within the realm of business activity. This concept is illustrated in a simplified schematic depicted below (Graph 1).

GRAPH 1 (personal elaboration)

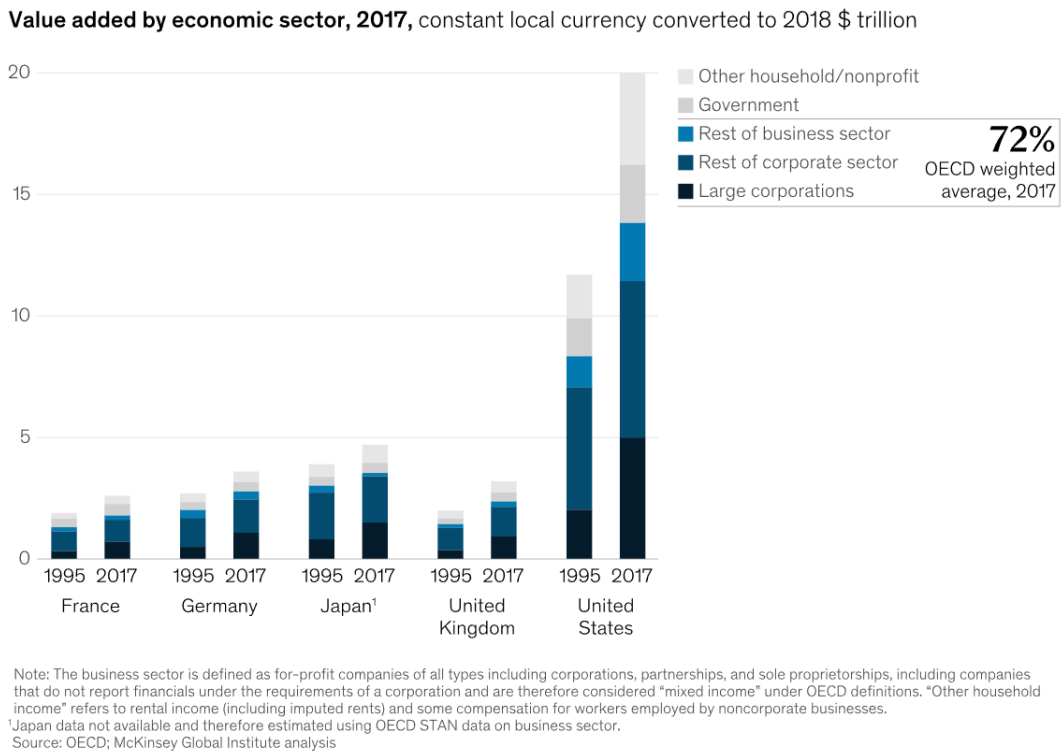


Research conducted by McKinsey on the contributory role of businesses to the economy punctuates the deciding role of enterprises. Among OECD economies, it has been revealed that business activity, encompassing value added from businesses of all sizes and forms, including corporations, partnerships, and sole proprietorships, accounts for 72 percent of GDP (Graph 2) [30]. This shows the significant potential influence that integrated bank lending practices and corporate activity might have on the whole economic environment.

[29] European Banking Federation (EBF), "Financing the Europe of Tomorrow", available at [https://www.ebf.eu/wp-content/uploads/2018/09/Financing-the-Europe-of-tomorrow-a-vision-for-policymakers-banks-and-markets-in-a-changing-world-September-2018.pdf], p.10, (last visited 14/08/2023).

[30] J. Manyika et al., "A New Look at How Corporations Impact the Economy and Households", in McKinsey & Company, available at [https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/a-new-look-at-how-corporations-impact-the-economy-and-households], (last visited 15/08/2023).

GRAPH 2 (McKinsey & Company) [31]



This given, the stability and growth of the banking industry are crucial because they have a direct influence on loan availability and accessibility, which is a key factor in driving economic activity and development [32].

The significance of the banking sector in ensuring growth and stability was reaffirmed during the onset of the global financial and economic crisis in 2007. Subsequently, increased emphasis was placed on regulating the operations of the banking sector to prevent future financial crises, as evident in the implementation of Basel III (A comprehensive international regulatory structure for enhancing the resilience of banks

[31] J. Manyika et al., "A New Look at How Corporations Impact the Economy and Households", in McKinsey & Company, available at [https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/a-new-look-at-how-corporations-impact-the-economy-and-households], (last visited 15/08/2023).
[32] D. Armeanu et al., *op.cit. p.14*

and the stability of banking systems [33]) guidelines. To improve the resilience and risk management capabilities of banks, with the aim of mitigating likelihood of destabilizing events in the financial system, these measures were implemented. The banking sector's regulatory environment has received increasing attention as a result of the crisis as to protect against future disruptions and preserve overall economic stability [34].

In addition, Joseph Schumpeter, an economist of the 20th century and a former Austrian Minister of Finance, agrees with the fact that banks have a considerable impact on economic activity, thus rejecting the idea that they are passive middlemen. According to this perspective, banks' functions have broadened significantly, including resource allocation duties beyond intermediary roles. Their function which entails, among others, directing resources towards promising ventures and fuelling economic expansion further solidifies their importance in shaping the overall economic landscape [35].

1.2.2 The Mechanism of Economic Growth: How Bank Lending Drives Economic Flows

The tangible impact of banking activities, in particular money lending, on the overall economic landscape is not difficult to comprehend. Bank credit provides funding for investment, working capital, and essential aspects of consumption [36].

Credit expansion allows enterprises to secure loans to fuel their investments, whereas consumers gain the ability to spend more. This surge in investment and consumption, in turn, generates employment opportunities and drives both income and profit growth. Also, a significant influence on asset prices is exerted by the increase in credit extension, thus making assets to appreciate in value. The escalation in asset prices presents owners with the opportunity to borrow larger sums, leveraging their increased wealth. The cyclical

[33] Basel Committee, " Basel III: A Global Regulatory Framework for more resilient banks and Banking Systems", in Bank for International Settlements, available at [https://www.bis.org/publ/bcbs189.pdf], (last visited 15/08/2023).
[34] L. Thaçi, "Bank Loans Types and Economic Growth – Literature Review", in European Journal of Economics and Business Studies, available at [https://revistia.com/files/articles/ejes_v8_i2s_22/Thaci.pdf], p.1, (last visited 15/08/2023).
[35] *Id.*, p.3
[36] A. Abiad et al., "Creditless Recoveries", available at [https://www.elibrary.imf.org/view/journals/001/2011/058/article-A001-en.xml], p.3, (last visited 15/08/2023).

pattern of amplified lending paves the way for linked results: an uptick in spending, more monetary ventures, the genesis of employment, enhanced tax revenues for states, and, in the end, flourishing. Subsequently, this paves the pathway for more credit avenues, sustaining the mirage of escalating well-being and promoting an overarching feeling of contentment as long as individuals adhere to the rhythms of this self-driven loop. The dynamic relationship between lending surges and economic amplification underpins advancement and prosperity. Through provisioning enterprises (as well as persons) the monetary means essential for purchasing and capital allocations, financial institutions serve as catalysts for economic development. Within this web of ties, the non-stop credit dance kickstarts a ripple of plus points touching various economic corners, paving a pathway for community uplift and gratification [37].

1.2.3 Perspectives from Academics and Practitioners on the Matter: Developed Countries Evidence

Both Academics and practitioners have been closely scrutinizing the financial sector and its function in the process of economic growth during the past decades. Repeatedly, academic delves into monetary frameworks have birthed insights, highlighting the cornerstone placement of financial institutions in economic peaks and troughs. Numerous researchers, including notable names like Barro, Diamond, Levine, Dybvig, Pagano, Zervos, have contributed to this field with their work in the early and late 1990s. Latest insights by minds including Armenta, Gregori, Allen, and Carletti have deepened our grasp [38].

[37] I.M. Banu, "The Impact of Credit on Economic Growth in the Global Crisis Context", in ScienceDirect, available at [The Impact of Credit on Economic Growth in the Global Crisis Context (sciencedirectassets.com)], pp.3-4, (last visited 15/08/2023).
[38] I. Drigă & D. Codruţa, *op.cit., p.1*

Collectively, these inquiries converge on the notion: economic uplift hinges on financial maturation. Zooming in, they pinpoint that a seasoned fiscal arena, merged with amplified reach to banking avenues, is linked to intensified economic trajectories [39]. Taking as examples evidences from Diamond and Dybvig, it becomes clear that monetary middlemen play a part in spreading out risk, a cornerstone act for keeping assets liquid and boosting economic expansion. However, the hinted tie between financial progression and burgeoning economies stays under the microscope, despite certain indicators in its favour [40].

On one hand, some posit that the development of the financial sector is very important for fostering economic growth. In fact, these scholars hold the belief that a financial, well-functioning, system, thus characterized by effective intermediation, has the potential to stimulate economic activity as well as facilitating investment and entrepreneurship. Conversely, demand-following theories present an opposing viewpoint, contending that financial development primarily reacts to economic growth. From this standpoint, as the economy undergoes expansion and the demand for financial services surges, the financial sector naturally evolves to cater to these escalating requirements [41].

Although the latter encounters challenges when confronted with studies on "creditless recoveries", both theories hold validity. Notably, a study conducted by Abdul Abiad, Giovanni Dell'Ariccia, and Bin Li sheds light on the relationship between the absence of bank lending and the economic recovery of recessed economies. According to this study, creditless recoveries, which occur without any growth in borrowing, are sometimes referred to as miraculous and named after mythical creatures. The research indicates that such recovery instances constitute roughly a fifth of total rebounds. However, substantial variations exist in the distribution of creditless recoveries among different country groups. Specifically, low-income countries and emerging markets exhibit a higher prevalence of

[39] G.M. Caporale et al., "Local Banking and Local Economic Growth in Italy: Some panel Evidence", in Econstor, available at [https://www.econstor.eu/bitstream/10419/103353/1/797392955.pdf], pp.1-2, (last visited 15/08/2023).
[40] I. Drigă & D. Codruţa, *op.cit.,* p.1
[41] *Ibid.*

creditless recoveries compared to advanced economies, where they account for merely around 10% of all recoveries [42].

Despite the extensive body of literature lacking definitive and unequivocal answers concerning the correlation between banking activities, bank loans, and economic growth (The relationship between crediting and economic growth is intricate and goes beyond the scope of what can be captured through a conventional econometric analysis. It is important to recognize that various external factors come into play, depending on the specific characteristics of the economic environment and the degree of development of the economy [43]), a recent comprehensive study conducted by academics from the University of Pardubice (Czech Republic) has confirmed the crucial role played by banks and lending activities in fostering the overall health of the economy. With the objective of delving into this complex relationship, the research closely examined ties between short-term and long-term credit provision and economic growth, utilizing GDP as a KPI, in the European backdrop. Drawing a comparative analysis, the investigation focused on the Czech Republic as a developed country (similar to other developed countries in key socioeconomic indicators such as GDP per capita, literacy rate, life expectancy, political stability, and access to electricity [44]) [45].

The bank lending activities influence exerted on the performance of an economy was unveiled by the evidence of the research. The quintessential weight of lending steering both the rising and falling arcs of the economy was largely proved by empirical evidence, also affirming the validity of the operation of the multiplier effect within the economic

[42] A. Abiad et al., *op.cit.,* p.7
[43] D. Armeanu et al., *op.cit. p.14*
[44] "Developed Countries 2023", in World Population Review, available at [https://worldpopulationreview.com/country-rankings/developed-countries], (last visited 15/08/2023).
[45] J. Cernohorsky et al., "The Importance of Bank Lending for the Development of the Economy", in ResearchGate, available at [https://www.researchgate.net/profile/Venelin-Terziev/publication/356504529_INDICATORS_FOR_MEASURING_THE_LEVEL_OF_SATISFACTION_AND_DISMISSAL_OF_CADETS_OF_THE_MILITARY_EDUCATION_IN_BULGARIA/links/619e567b4fe4ea1cea994570/INDICATORS-FOR-MEASURING-THE-LEVEL-OF-SATISFACTION-AND-DISMISSAL-OF-CADETS-OF-THE-MILITARY-EDUCATION-IN-BULGARIA.pdf#page=45], pp.46-55, (last visited 15/08/2023).

system, building upon the underlying assumption that loans granted by banks are predominantly channelled into financing investments—a catalyst for sustainable growth [46].

Regarding Italy, research by Mattesini and Cosci in 1997 showed that the volume of loans extended by local financial intermediaries positively influences regional economic growth. Parallelly, Dalla Pellegrina's research from 2005 discerned a favourable link between economic progression and the presence of diverse financial intermediaries, like Commercial Banks, Popular Banks, and Cooperative Banks. Further, an investigation conducted in 2014 which examined the influence of regional banking on Italy's community-level economic surge emphasized the key role of banking activity in fostering local economic evolution. These findings align with existing empirical literature on the connection between finance and economic growth [47].

1.3 Legal Guidelines for Bank-Corporate Interactions in Italy

The financial resources required for investments, expansions, innovation, and job creation are made available to businesses by banks when they lend to them. As was previously said in the previous paragraph, bank funding is essential for supporting corporate expansion, fostering economic progress, and assisting in the production of wealth and prosperity.

Acknowledging the crucial part bank credits assume in corporate operations and the broader economic landscape brings focus to a succession of essential concerns. These encompass not just the need for regulations governing banking capital requirements for risk management and banking sector financial stability purposes, but also the need to

[46] J. Cernohorsky et al., "The Importance of Bank Lending for the Development of the Economy", in ResearchGate, available at [https://www.researchgate.net/profile/Venelin-Terziev/publication/356504529_INDICATORS_FOR_MEASURING_THE_LEVEL_OF_SATISFACTION_AND_DISMISSAL_OF_CADETS_OF_THE_MILITARY_EDUCATION_IN_BULGARIA/links/619e567b4fe4ea1cea994570/INDICATORS-FOR-MEASURING-THE-LEVEL-OF-SATISFACTION-AND-DISMISSAL-OF-CADETS-OF-THE-MILITARY-EDUCATION-IN-BULGARIA.pdf#page=45], pp.46-55, (last visited 15/08/2023).

[47] G.M. Caporale et al., *op.cit.*, p.2

delineate boundaries, rules, and practices that oversee the interaction between the creditor (the bank) and the debtor (the company), with the aim to preserve both parties' interests.

Probing into the rules overseeing these financial engagements, laden with intricacies, is vital to grasp their formation and how they are controlled. These rules stand as fundamental in the overarching objective of fostering the stability of the financial system and, by extension, economic advancement. In this line, studies on the relationship between the legal system and economic growth were done by La Porta et al. (1998) and Levine (1999, 2002). Their study revealed that countries with rigorous banking regulations, safeguarded creditor privileges, transparent accounting practices, consistently imposed penalties, and robust financial intermediation typically exhibit brighter economic potential [48].

Apart from anchoring financial balance, norms governing credit connections are vital in maintaining moral standards within bank determinations. Norms rooted in ethical integrity, and social responsibility are deciding in guiding banks toward just and unbiased decisions, avoiding decisions that could expose companies to excessive risk or involve unfair practices. A trusted environment, stemming from the proper adherence to these standards, may promote constructive and healthy collaboration and responsible financial management.

In this section, the attention turns to the banking standards that oversee company credit provisions, and the legal rules dictating debt retrieval in Italy. Intuitively, these lay the groundwork for the regulatory framework governing ties between credit entities and corporate establishments.

1.3.1 Principles Governing the Issuance of Credit by Banks

The law which governed the Italian banking sector, the 1936 Banking Law, did not properly assess the organizational structure of banks, thus leaving the scope for where the concept of "responsibilities" to fall relatively ambiguous. However, by means of Article 53, the 1993 Testo Unico Bancario (TUB) introduced important reforms by empowering the Bank of Italy to regulate the administrative and accounting organization, internal controls, and risk management in various aspects, following the decisions made by the

[48] G.M. Caporale et al., *op.cit.*, p.2

"Comitato Interministeriale per il Credito ed il Risparmio" (C.I.C.R.). Clearly, this amendment brought significant innovation to the existing law [49].

Supervisory rules, today, provide various ways to mitigate the risks related to credit deterioration and assess creditworthiness of an entity as well. These may incentivize institutions of credit adopting a more attentive approach in the customer acquisition and information assets management areas. It is crucial to note that regulatory measures are not meant to meddle with the operational choices made by banks or to probe into the dynamics of client interactions. Otherwise, the goals of the new banking legislation would be undermined and banking institutions' autonomy would be hindered [50].

The ultimate objectives of supervisory activities are clearly defined in the law, specifically in Article 5 of the TUB. These objectives encompass "ensuring the sound and prudent management of supervised entities, promoting overall stability, efficiency, and competitiveness within the financial system, and ensuring compliance with credit regulations" (TUB). As a consequence, the regulations have the primarily objective to impose condition to entrepreneurial freedom in order to safeguard the pursuit of stability and efficiency in banks. However, these rules do not allow authority to interfere in management decisions or individual banking transactions with customers. Regarding such transactions, the role of the Bank of Italy is limited to verifying compliance with transparency requirements and providing guidelines for creditworthiness assessments. In order to ensure compliance with these provisions, the Bank of Italy may gather information and conduct inspections, but it does not possess the power to intervene in decisions related to establishing individual relationships or choosing specific types of

[49] F. Baiguera, "Concessione abusiva di Credito: Le Riflessioni di un Aziendalista", in Ristrutturazioni Aziendali, available at [https://ristrutturazioniaziendali.ilcaso.it/Focus/343__Concessione-abusiva-di-credito-le-riflessioni-di-un-aziendalista], pp.1-31, (last visited 15/08/2023).

[50] O. Capolino, "Responsabilità delle Banche nell'Insolvenza dell'Impresa: Revoca degli Affidamenti e Ricorso Abusivo al Credito", available at [https://www.researchgate.net/profile/Olina-Capolino/publication/366635461_Responsabilita_delle_banche_nell'insolvenza_dell'impresa_revoca_degli_affidamenti_e_ricorso_abusivo_al_credito/links/63ac2750097c7832ca7200ef/Responsabilita-delle-banche-nellinsolvenza-dellimpresa-revoca-degli-affidamenti-e-ricorso-abusivo-al-credito.pdf], pp. 1-31, last visited 25/08/2023).

contracts on a case-by-case basis (as stated in Article 4 of Legislative Decree No. 385 of 1993) [51].

The concept of sound and prudent management (i.e., "sana e prudente gestione") holds significant importance in the new banking law, encompassing not only the requirements of conducting business with fairness and avoiding improper practices in managing banking institutions but also emphasizes the importance of adhering to efficiency standards and controlling excessive risks. Within the realm of banking, behaviours geared towards risk mitigation, inherent in any economic activity, become crucial and assume a sense of obligation and specific regulatory significance within the framework of supervisory discipline [52].

In accordance with this principle, articles 120-undicies and 124-bis of the TUB establishes a requirement for banks to conduct a preliminary creditworthiness assessment (i.e., "valutazione del merito creditizio") not only for individual consumers but also for businesses when granting, renewing, and maintaining credit [53]. The article explicitly states:

"Before the conclusion of the credit agreement, the lender shall conduct a thorough assessment of the consumer's creditworthiness, taking into account relevant factors to verify the consumer's prospects of fulfilling the obligations set out in the credit agreement. The assessment of creditworthiness shall be carried out on the basis of the necessary,

[51] O. Capolino, "Responsabilità delle Banche nell'Insolvenza dell'Impresa: Revoca degli Affidamenti e Ricorso Abusivo al Credito", available at [https://www.researchgate.net/profile/Olina-Capolino/publication/366635461_Responsabilita_delle_banche_nell'insolvenza_dell'impresa_revoca_degli_affidamenti_e_ricorso_abusivo_al_credito/links/63ac2750097c7832ca7200ef/Responsabilita-delle-banche-nellinsolvenza-dellimpresa-revoca-degli-affidamenti-e-ricorso-abusivo-al-credito.pdf], pp. 1-31, last visited 25/08/2023).

[52] *Ibid.*

[53] "La Concessione Abusiva del Credito", in DirittoConsenso, available at [https://www.dirittoconsenso.it/2022/12/01/la-concessione-abusiva-del-credito/], (last visited 25/08/2023).

sufficient and proportionate information on the consumer's economic and financial situation and appropriately verified [...]" [54].

Consistently, in order to achieve the stability of the financial system, it is important to adopt a cautious approach by means of a careful analysis, and taking steps with the general aim of lowering the likelihood of being involved in the crisis of entrusted firms [55].

The prudent regulation of bank capital in Europe we rely on today has been created from the International Basel Accords, which include Basel I, Basel II, and Basel III. These accords seek to advance financial stability, as well as to enhance bank risk management. Also, they aim for a more standardize international regulatory and supervisory standards. They came about in response to previous financial upheavals and the necessity to avert systemic distress and fragility in the banking framework. The presence of financial institutions in the allocation of economic resources through financing the real sector necessitates a certain level of stability in the credit system to facilitate orderly economic development [56].

The Basel Accords make it necessary for credit institutions to hold sufficient capital to withstand crisis situations in proportion to the volume and riskiness of their loans. This requirement was introduced through the concept of "capital adequacy". Capital thus becomes the primary safeguard against the risks that the banking system faces on a daily basis. Bankers, thanks to adequate capitalization, are able to exercise their entrepreneurial aspirations with the necessary degree of freedom while also preserving the stability of the bank, businesses, and the entire economic system [57].

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[54] "Testo Unico Bancario", in Banca D'Italia, available at [https://www.bancaditalia.it/compiti/vigilanza/intermediari/Testo-Unico-Bancario.pdf], p. 264, (last visited 15/08/2023).
[55] O. Capolino, *op.cit.*
[56] M. Petrarca, "Nuove Strategie per l'Accesso al Credito delle PMI", in Università Ca' Foscari Venezia, available at [http://dspace.unive.it/bitstream/handle/10579/15711/865760-1224884.pdf?sequence=2], pp.5-26, (last visited 15/08/2023).
[57] *Ibid.*

In Italy, the implementation of Basel II was adopted through Decree No. 297 dated December 27, 2006 [58], which in turn transposed the European Directives 2006/48/EC and 2006/49/EC of June 14, 2006 [59]. The Bank of Italy provided specific guidelines to banks for the application of regulatory provisions through Circular No. 263/06. These directives and circulars provide a detailed methodology for calculating the rating, which serves as the basis for determining the solvency coefficient of enterprises to which the credit is to be granted [60]. The solvency coefficient sets the minimum amount of capital that banks must hold in relation to risk-weighted assets, set at ≥ 8% [61]. The analysis' primary goal, as defined by the circular of Bank of Italy, is to measure a bank's "allocative capacity", which refers to the bank's aptitude in identifying creditworthy customers and financially viable initiatives [62]. Furthermore, indications are provided for the calculation of operational risk and market risk, risk factors introduced by Basel II [63].

The implementation of Basel III in Italy followed Directive 2013/36/EU and Regulation (EU) No. 575/2013 [64]. These measures, including the Common Equity Tier 1 (CET1) Ratio, introduced stricter capital requirements, thus further strengthening the regulatory structure. According to this criterion, banks must maintain a minimum level of high-quality capital relative to assets, risk-adjusted. Basel III addressed the issue of banks facing liquidity problems and introduced measures to prevent systemic risk as well [65].

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[58] Decreto Legge 297 dated December 27, 2006, in Gazzetta Ufficiale, available at [https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=1&art.flagTipoArticolo=1&art.codiceRedazionale=11A00030&art.idArticolo=1&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=2011-01-08&art.progressivo=0], (last visited 15/08/2023).

[59] "Implementation on Basel Standards in the European Union", in National Bank of Serbia, available at https://www.nbs.rs/en/finansijske-institucije/banke/bazelski-stendardi/implementacija-EU/], (last visited 15/08/2023).

[60] F. Baiguera, *op.cit.* pp.1-31

[61] M. Petrarca, *op.cit.*, pp.5-26

[62] F. Baiguera, *op.cit.* pp.1-31

[63] M. Petrarca, op.cit., pp.5-26

[64] "Internal Ratings-Based (IRB) Approach", in Risk.net, available at [https://www.risk.net/definition/internal-ratings-based-irb-approach#:~:text=Under%20foundation%20IRB%2C%20banks%20model,%2Ddefault%20(EAD)%20levels], (last visited 15/08/2023).

[65] M. Petrarca, *op.cit.*, pp.5-26

Last to consider, it's important to appraise another relevant aspect of banking risk assessment procedures in Italy: The Central Risk Office, known in Italy as the "Centrale dei Rischi" (CR). The CR is a database that is managed by the Bank of Italy which role is to gather information about the financial situation of individuals and businesses towards the banking system. This database is populated with details provided by engaged intermediaries such banks and financial firms. When a customer is believed to be facing material repayment difficulties, the intermediaries may report them as a non-performing debtor. This practice should be supported by a thorough understanding of the customer's financial status rather than by a few isolated occurrences such sporadic late payments. In this context, the CR allows intermediaries to collect information about non-customers who have applied for a loan, or are about to apply for one. In this way, thanks to gathered data, intermediaries get ability to assess creditworthiness of their potential customers, by means of a broader understanding of their ability to repay the loan [66].

Put briefly, the purpose of the CR Register is to ease the path for deserving clients seeking credit, while fostering clarity and steadiness in the sector, through enhanced assessment methods of financial trustworthiness [67].

1.3.2 Legal Framework for Termination of Banking Credit Agreements

The revocation of a bank credit line is an important and relevant subject affecting various aspects, including the bond between banks and their clients, and broader economic dynamics as well. It pertains to the termination of a contract, or revocation of credit, bearing weighty outcomes for both enterprises and the financial sector. Given its link to the banking sector, crucial to the economic fabric primarily through its provision of essential funding and lending to enterprises, this issue is particularly relevant.

Article 1842 of the Civil Code states that the opening of a credit line entails the formation of a contractual agreement. This agreement involves the bank committing to provide a specified or indefinite amount of money to the other party for a designated duration. This contractual arrangement, commonly referred to as a credit line or facility, is a consensual

[66] "Centrale dei Rischi", in Banca d'Italia, available at [https://www.bancaditalia.it/statistiche/raccolta-dati/centrale-rischi/index.html?dotcache=refresh], (last visited 15/2023).
[67] *Ibid.*

and obligatory agreement that can be formalized in a free form. Given also that it performs a similar role to a mortgage (outlined in article 1813 of the Civil Code) there have been debates on how to classify it. The difference between the two definitions is blurred: while in a mortgage the borrower immediately owns the money, in a credit line this ownership is not recognized until the borrower actually uses the money for something else. Also, a credit line agreement is often challenging and the compensation may take the form of interest that accrues depending on a percentage of the amount or a predetermined commission decided upon at the time of signing [68].

The opening of a credit line is a comprehensive contract that must fulfil specific essential requirements mandated by law. As per Article 1325 of the Civil Code [69], these contract requirements encompass the following:

1) The agreement between the parties involved: The contract is concluded when the party making the proposal becomes aware of the acceptance by the other party. The acceptance must be sent to the proposer within the predetermined timeframe, or within a time range that is typically necessary given the transaction's specifics or usual commercial practices. However, the proposer can consider a late acceptance as valid, provided that prompt notice is given to the other party [70].
2) The cause: It represents the economic and social purpose of the contract. It is important to distinguish consideration from the personal motives that usually drive one or both parties to enter into a particular contract [71].

[68] Articolo 1842 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-iii/capo-xvii/sezione-iii/art1842.html?q=1842+cc&area=codici], (last visited 15/08/2023).
[69] Articolo 1325 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-ii/art1325.html?q=1325+cc&area=codici], (last visited 15/08/2023).
[70] Articolo 1326 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-ii/sezione-i/art1326.html], (last visited 15/08/2023).
[71] F. Belcore, "Gli Elementi Essenziali del Contratto", in ForensicNews, available at [https://www.forensicnews.it/gli-elementi-essenziali-del-contratto/#:~:text=I%20requisiti%20del%20contratto%2C%20cos%C3%AC,legge%20sotto%20pena%20di%20nullit%C3%A0], (last visited 15/08/2023).

3) The object: In addition to being possible, legal, determinate, and determinable, it represents the real right or credit against which the interests and effects of the contract are concentrated [72].
4) The form: It represents the manner in which the parties' intent is manifested. Generally, the parties can choose the form they prefer to conclude the contract, as long as the form is not required by law as an essential requirement for the validity of the contract [73]. The TUB (ex Art.117) regulating the issue related to the conclusion of the credit opening agreement stipulates that the latter must be "drawn up in writing" and "in case of non-compliance with the prescribed form the contract is void" [74].

The finalization of a contract is recognized as an occurrence capable of producing obligations, as specified by Article 1173 of the Civil Code. As a result of this, mutual responsibilities are set for both parties involved. These responsibilities, as precisely outlined in Articles 1175 and 1375, include the duty to act in good faith, ensure mutual protection, and provide information as well [75]. As a further remark, as stipulated by Article 1375 of the Civil Code, the contract must be executed according to the principle of good faith. Good faith represents a criterion for evaluating the parties' behaviour in contract performance. The parties need to respond to a series of reciprocal duties that include obligations to inform the counterparty about relevant matters, to behave solidly (as provided by Article 2 of the Constitution), and to behave along with a sense of protection towards the counterparty. More specifically, this involves avoiding harm to the assets or person of the other party [76]. Furthermore, within the framework of the contract, both the

[72] F. Belcore, "Gli Elementi Essenziali del Contratto", in ForensicNews, available at [https://www.forensicnews.it/gli-elementi-essenziali-del-contratto/#:~:text=I%20requisiti%20del%20contratto%2C%20cos%C3%AC,legge%20sotto%20pena%20di%20nullit%C3%A0], (last visited 15/08/2023).
[73] *Ibid.*
[74] "Testo Unico Bancario", *op.cit.*, p.248
[75] P. Gobio Casali et al., "Concessione Abusiva di Credito e Responsabilità della Banca dopo il Codice della Crisi", in Diritto della Crisi, available at [https://dirittodellacrisi.it/articolo/concessione-abusiva-di-credito-e-responsabilita-della-banca-dopo-il-codice-della-crisi], pp.1-30, (last visited 25/08/2023).
[76] Articolo 1375 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-v/sezione-i/art1375.html?q=1375+cc&area=codici], (last visited 15/08/2023).

debtor and the creditor are obligated to adhere to the principle of fairness, as laid down by Article 1175 of the Civil Code [77].

These principles (which will be further explored later on regarding abusive termination of contracts) underscore the importance of ethical and fair conduct between the parties during contract execution. For the establishment of an environment of trust and mutual collaboration between the parties involved, good faith and fairness stand as important parameters for the proper fulfilment of contractual obligations.

Aiming at establishing a solid legal framework, the contract, in sum, provides security and predictability for the parties involved. Serving as a legal, powerful, tool that allows individuals to govern their own relationships and interests autonomously, it defines the rights and obligations of the parties, ensuring greater certainty and protection within their transactions and agreements [78].

In the regulatory landscape of banking agreements, particularly those pertaining to credit facility contracts and current account banking transactions, there exist specific provisions that oversee the process of termination [79].

Article 1845 of the Civil Code serves as the guiding regulation for termination procedures within banking's credit facility contracts. This article, when addressing contract termination, differentiates between open-ended contracts and fixed-term contracts [80]. Specifically, for a fixed-term credit facility contract, Article 1845 stipulates that, barring any different agreements, the bank is prohibited from terminating the contract before the stipulated term concludes, except in cases of "just cause". The act of termination immediately halts the usage of the credit. However, the bank is obligated to

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[77] Articolo 1175 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-i/capo-i/art1175.html?q=1175+cc&area=codici] (last visited 15/08/2023).
[78] F. Belcore, *op.cit.*
[79] A. Fodra, "La Buona Fede nel Recesso della Banca nei Contratti di Apertura di Credito", in Questione Giustizia, available at [https://www.questionegiustizia.it/rivista/articolo/la-buona-fede-nel-recesso-della-banca-nei-contratti-di-apertura-di-credito_473.php], (last visited 15/08/2023).
[80] F. Di Ciommo, "Il Recesso dal Contratto di Apertura di Credito e l'Abuso del Diritto", in Carabba Law Firm, available at [Il recesso dal contratto di apertura di credito e l'abuso del diritto | Carabba & Partners (caplex.it)], (last visited 15/08/2023).

provide a grace period of at least fifteen days for the repayment of the utilized funds and any related fees [81].

The Civil Code, specifically Article 1844, identifies an instance of a legitimate reason for termination: if the provided guarantee falls short, the bank reserves the right to demand additional collateral or a new guarantor. Should the borrower fail to meet this demand, the bank holds the authority to either downsize the credit in proportion to the reduced value of the guarantee, or to dissolve the contract altogether. Other grounds for legitimate termination can stem from the borrower's conduct, such as delivering false information or violating contractual obligations, or due to shifts in their financial situation, as illustrated in Article 1461 of the Civil Code [82].

On the other hand, in the context of an open-ended credit facility contract, Article 1845 establishes that either party may choose to terminate the contract, provided they give notice within the period determined by the contract, standard practices, or failing those, a minimum of fifteen days [83] (As stipulated by Article 125-quarter of the TUB, a minimum notice period of two months is required) [84]. Therefore, in this case, each contracting party expressly has the right to withdraw at any moment, termed "ad nutum", with the sole requirement of providing notice to the other party (Article 1845, 3rd clause), without the need to specify a “just cause” [85]. Similarly, in this situation, the termination has two consequences: the immediate halt of credit utilization, and the obligation to repay the funds already utilized. The suspension of performance takes effect as soon as the party receiving the termination notice becomes aware of the revocation, as per Article 1334 of the Civil Code [86].

The aforementioned legal provisions are founded on the crucial need to safeguard the interests of all parties involved in a contract, granting them the ability to exercise their termination rights, when permitted. This privilege allows them to assess, during the life of the contract, if it remains in line with their best interests. Simultaneously, the goal is to

[81] O. Capolino, *op.cit.*
[82] *Ibid.*
[83] *Ibid.*
[84] Testo Unico Bancario, *op.cit.*, p.279
[85] F. Di Ciommo, *op.cit.*
[86] O. Capolino, *op.cit.*

protect the specific needs of the borrower who may strongly rely on the bank's extended credit [87]. Indeed, it is well understood that when a bank discontinues the supply of credit, it can have numerous negative direct impacts on the borrower. This can be especially challenging if the credit facility agreement was initially established to support business operations, as its termination can obstruct regular business activities [88]. Furthermore, the cascading effect on potential other banking and commercial relationships must be considered: Swift changes of information exerting influence on the entire commercial landscape of the business could be prompt by the termination by a banking institution [89].

Referring to as a crucial component of the Italian regulatory framework, in conclusion, Article 1845 of the Civil Code governs the revocation of commitments within the credit opening contract. This article offers explicit guidelines and provisions outlining the procedures involved in withdrawing from such agreements. Nevertheless, it is paramount acknowledging the inherent abstractness of legal norms, and the potential for varying interpretations. Legal principles, though designed to provide clarity and guidance, can sometimes be subject to different perspectives and understandings. Consistently, it is essential for everyone concerned, be it legal experts or individuals impacted by these provisions, to scrutinize them carefully, thus guaranteeing a thorough understanding of their intended meaning and implications. By doing so, a more precise and informed understanding, and appropriate behaviours with respect to the regulations governing the revocation of commitments in credit opening contracts can be achieved [90].

[87] A. Fodra, *op.cit.*
[88] *Ibid.*
[89] *Ibid.*
[90] C. Pandolfini, "La Revoca delle Aperture di Credito", available at [http://www.agenzia50.it/index.php/disclaimer/24-carlo-pandolfini-articoli/il-titolare-di-filiale/il-presidio-del-rischio-di-credito/284-la-revoca-delle-aperture-di-credito], (last visited 15/08/2023).

CHAPTER 2: Banking Conduct and Abuse – A Legal Exploration

Initially, the existence of power dynamics in credit relationships may appear contradictory, as these relationships are governed by specific guidelines concerning creditworthiness analysis and contractual ties between debtors and creditors. However, upon closer examination, it becomes evident that this dynamic is not an unexpected anomaly, but rather an inherent aspect of these interactions [91].

The power dynamics between creditors, typically banks, and debtors, often companies, have undergone significant transformations throughout history. While contractual law is built on the foundation of private autonomy and individual authority to establish one's legal position within a given framework, the assumption of equal bargaining power and the ability to freely negotiate and agree upon contract terms is often unrealistic. Power imbalances frequently exist, resulting in the exploitation of contractual terms by the stronger party, typically the creditor [92].

As previously mentioned, banks act as intermediaries, accumulating funds from depositors and lending them to those in need. Through this process, they are able to match savers with extra money to borrowers who need cash, thus playing a vital role for the economy's effective functioning. However, this crucial position within the financial system poses them in a dominant position of power over their debtor counterparts. Additionally, banks can obtain funds not only from depositors but also through direct borrowing from money and capital markets or engaging in other financial transactions. This, which we could referred as financial flexibility, further strengthens their position as powerful entities in the lending market [93].

Conversely, companies, especially small and medium-sized enterprises (SMEs), often find themselves in a weaker position within this power dynamic. Their strong reliance on banks funding for financing their activities, and combined with the lack of feasible

[91] C.G. Paulus, "The Eternal Struggle for Supremacy between Creditor and Debtor", in Juridical International, available at [https://juridicainternational.eu/public/pdf/ji_2022_31_59.pdf], p.1, (last visited 25/08/2023).
[92] *Id.*, pp.5-9
[93] J. Gobat, *op.cit.*

alternative funding sources, leaves them vulnerable during the contract negotiations [94]. Moreover, changes in monetary policy, which can be influenced by banks, can impact their financial stability and ability to repay loans, further shifting the power balance in favour of creditors [95].

This power imbalance between banks and companies can create a situation where banks may exploit contract terms and engage in unfair practices. These practices may involve not only the abusive granting of credit, which can stem from negligent creditworthiness analysis or a systematic tendency to engage in risky practices without proper assessment of consequences, but it also may include the adoption of illicit debt collection practices. These conducts might possibly have serious negative effects on the company, including financial ruin and, in the worst situations, its demise. Indeed, even though there are laws and regulations in place to shield debtors from banks' abusive practices (and the reverse) it must be recognized that uncertainty in legal interpretation and coverage gaps still persist. Existing safeguards may become less effective as a result of these gaps, thus leaving debtors vulnerable.

2.1 The Notion of "Abuse of Law"

Abuse of law, in both the Italian and European legal systems, stands as a contentious development. It triggers a vigorous debate among scholars and legal practitioners in relation to how it can be defined and shaped [96].

The concept of "abuse of law", in contemporary legal systems, has become a recognizable corrective measure, having long been part of legal discourse and thinking. Some jurisdictions, such as Switzerland, Germany, and Spain, have explicitly codified or even constitutionalized this principle. Conversely, in countries such Italy and France, it exists in a form that is ambiguous, thus remaining a controversial creation within legal theory and doctrine. Regardless of its form, the function of this legal concept is to introduce an

[94] M.T. Ducai, "The Bank Loans Importance, Information Asymmetry and the Impact of Financial and Economic Crisis on Corporate Financing", available at [https://feaa.ucv.ro/RTE/018-04.pdf], pp.1-3, (last visited 25/08/2023).
[95] J. Gobat, *op.cit.*
[96] R.T. Bonanzinga, "Abuso del Diritto e Rimedi Esperibili", available at [https://www.edizioniesi.it/comparazionedirittocivile/data/uploads/colonna%20sinistra/1.%20teoria%20generale/bonanzinga_abuso2010.pdf], pp.1-40, (last visited 25/08/2023).

"extra ordinem" adjustment within the strict framework of the law, providing judges and legal theorists with a versatile tool. Through a delegation that the legislative body attributes to the interpreter, or that the interpreter may self-attribute in certain cases, it serves as a flexible corrective mechanism within purely legal boundaries [97].

The term "abuse of law" seems paradoxical upon initial examination. While the exercise of a right provided by the law usually denotes a freedom or authority granted to an individual through legal means, the addition of "abuse" to the term implies that the act of exercising this right might itself lead to legal liability. As also reflected by the Latin legal principle "qui iure suo utitur neminem laedit", the incongruity stems from the idea that the utilization of a right should not logically result in an infringement or wrongdoing [98].

During the development of the Italian Civil Code of 1942, abuse of law was generally considered a concept grounded in ethical and moral principles rather than a legal notion. This prevalent belief led to the understanding that while a person who engaged in abuse of law might be deemed worthy of criticism on moral grounds, they were not subjected to legal sanctions or penalties. Concerns over the potential undermining of legal certainty through a broad clause regarding abuse of law guided a pivotal decision in the crafting of the Italian Civil Code of 1942. Rather than embracing Article 7 from the preliminary draft, a provision that would have forbidden the exercise of a right in opposition to the law's stated purpose, the Italian legislators took a more nuanced approach. They preferred introducing specific provisions with which to discipline abuse to certain categories of rights. This decision underscored a preference to safeguarding against potential ambiguities [99].

In this context, extensive research has been conducted in Italy to define the concept of abuse of law and to establish the criteria for its application:

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[97] G. Pino, "L'Abuso del Diritto tra Teoria e Dogmatica (Precauzioni per l'Uso)", available at [https://www.giorgiopino.net/uploads/1/3/1/5/131521883/pino_abuso_del_diritto.pdf], pp. 1-44, (last visited 25/08/2023).
[98] R.T. Bonanzinga, *op.cit.*, pp.1-40
[99] *Ibid.*

1) A common perspective posits that the concept of abuse of law acts as a valuable mechanism to guarantee the appropriate and normal exercise of individual rights. Its existence can be ascertained by referring to the general principles and societal values within the legal system. From this angle, a portion of the legal community has shed more light on the notion. It contends such abuse transpiring when an "objectively abnormal use of the right" occurs, pointing to situations where the use of a right contradicts the core tenets of the legal order or is misaligned with current societal expectations [100].
2) For others, abuse is perceived to be placing itself between prescriptive rules and real-world circumstances. Specifically, it takes place when an individual exercises the powers and authorities conferred upon them for an objective that deviates from the intended purpose for which those powers were bestowed [101].
3) Recently, a ruling by the Italian Court of Cassation (Cass., September 18, 2009, no. 20106) provided a clearer interpretation of the abuse of law. It stated that it represents a violation of the principle of good faith (a principle that is incorporated within our legal system). In particular, an individual commits an abuse when they, possessing a specific right, wield it in indeterminate or various ways that may be subject to legal or extra-legal criticism. If this exercise of the right, although within the bounds of law, leads to an unjustified advantage for the rights holder at the expense of another, it constitutes improper conduct breaching good faith [102]. This approach would clashes with the principles of solidarity and the social role the exercise of rights permeates [103].

In numerous jurisdictions, especially where no specific legal provision exists against the abuse of law, including Italy, this concept has sparked both lively discussions and support. On one side of the debate there are those who reject the idea of subjecting the exercise of individual rights, as recognized by law, to a standard considered to some extent vague and elusive that it could lead to fluctuating judicial decisions on a case-by-case basis. These decisions are viewed as inherently opaque, given that they may ultimately be

[100] R.T. Bonanzinga, *op.cit.*, pp.1-40
[101] *Ibid.*
[102] *Ibid.*
[103] G. Pino, *op.cit.*, pp.1-44

founded on subjective judgments that are not possible to definitively reconcile. Conversely, some have welcomed the idea, seeing it as an opportunity for legal experts to breathe ethical life into the otherwise rigid and unemotional text of statutory law [104].

The prohibition against abuse of law, which now finds an express legislative recognition in Article 54 of the European Charter of Fundamental Rights, also known as the Charter of Nice, may contribute to an intensified interest from scholars in the coming years [105]. The specific wording of this provision seems focused on the need to balance or judiciously assess the various rights defined within the Charter, adding complexity and nuance to legal interpretations [106]. This statement may hold particular credibility given that the so-called Charter of Nice gained increased importance after the "Treaty of Lisbon" came into effect in 2009. It now carries with it the same legal weight as other treaties, as Article 6 of the Treaty on European Union provides, making it binding for both European institutions and member states [107].

2.2 Configuration of Abusive Credit Provision Practices by Banks

The concept of abusive granting of credit is a legal construct evolved through jurisprudence, as it isn't directly defined by legislation. It draws upon general banking principles, particularly the principle of sound and prudent credit management [108], which requires a comprehensive assessment of a client's creditworthiness based on adequate information [109]. Therefore, one of the sources that contributed to the recognition of abusive granting of credit as a legal concept is Article 124 bis of the TUB (Testo Unico Bancario, Legislative Decree 385/1993) [110], of which main purpose, at least as it is

[104] G. Pino, *op.cit.*, pp.1-44
[105] *Ibid.*
[106] Carta dei Diritti Fondamentali dell'Unione Europea, available at [https://www.europarl.europa.eu/charter/pdf/text_it.pdf], p. 22, (last visited 25/08/2023).
[107] R.T. Bonanzinga, *op.cit.*, pp.1-40
[108] "La Concessione Abusiva del Credito", *op.cit.*
[109] C. Bergamini, Comment on Cass. Civ., 30/06/2021 n. 18610 e 14/09/2021, n. 24725, available at [https://www.iusinitinere.it/cass-civ-30-06-2021-n-18610-e-14-09-2021-n-24725-sulla-concessione-abusiva-del-credito-e-sulla-legittimazione-attiva-del-curatore-a-esperire-lazione-di-risarcimento-anche-per-il-dann-41584], (last visited 25/08/2023).
[110] "La Concessione Abusiva del Credito", *op.cit.*

perceived, was initially aimed at ensuring the robustness of the banking system, rather than directly safeguarding other parties [111].

The idea of abusive lending pertains to financial institutions, recognizing the basic assumption that banks, due to the nature of their operations, have a unique advantage in appraising the creditworthiness of potential borrowers [112]. While accepting that loan issuance is an integral and lawful activity of the banking industry (as per Article 10 of Legislative Decree No. 385/1993) [113], the concept of abusive lending, as interpreted by legal doctrine and precedents, involves (i) the distribution of funds or (ii) the prolongation of credit facilities to enterprises when their financial and economic conditions, as well as their repayment capacity, are uncertain [114].

The fundamental logic behind this legal construct is to protect the correct operation of credit issuance. It seeks to deter banks from financing businesses that could, consequently, suffer an escalation in debt exposure and a decrease in assets to a level that could instigate bankruptcy or excessive debt proceedings, thereby damaging both the debtor's equity and the claims of third parties [115]. Furthermore, when banking institutions extend credit, it can generate a false impression of the recipient company's financial stability, potentially saddling stakeholders with the concealed risk of an imminent crisis (often termed the spillover effect) [116].

2.2.1 Legal Compliance in Creditworthiness Assessment Criteria

To adhere to the creditworthiness evaluation criteria laid out in Article 124-bis TUB, it is generally accepted that professional lenders must take into account the complete financial condition of the borrower. A Communication issued by the Bank of Italy on January 12, 2022, (commonly referred to as the "Communication") has recently underscored the significance of this factor. The Communication puts forth a variety of guidelines to

[111] P. Gobio Casali et al., *op.cit.*, pp.1-30
[112] E. Andreani, "Verifica del Merito Creditizio ed Abusiva Concessione di Credito", in Ristrutturazioni Aziendali, available at [https://ristrutturazioniaziendali.ilcaso.it/Articolo/311__Verifica-del-merito-creditizio-ed-abusiva-concessione-di-credito], (last visited 25/08/2023).
[113] P. Gobio Casali et al., *op.cit.*, pp.1-30
[114] "La Concessione Abusiva del Credito", *op.cit.*
[115] *Ibid.*
[116] E. Andreani, *op.cit.*

supervise different elements and risks, including operational, legal and reputational, compensation and incentive structures, liquidity, market dynamics, and digitization. Within these guidelines, the Communication advises that in creditworthiness evaluations, lenders should consider not just the borrower's financial health, but also their overall debt-to-equity status to avoid the risks associated with excessive indebtedness. The Communication's emphasis on preventing over-indebtedness aligns with an interpretative direction that acknowledges the importance of these obligations within the consumer-lender relationship as well [117].

As a logical outcome of the aforementioned viewpoint, consumers should possess the capacity to initiate personal legal action when they've endured harmful effects due to the lending institution's reckless conduct [118]. Accordingly, the obligations of banks towards clients and third parties are not only derived from the general mandate of diligently performing professional services under Article 1176 of the Civil Code but also from industry-specific laws and international accords (i.e., Basel accords). From the combined reading of these provisions, it is inferred that banks have a specific obligation to uphold the principles of sound and prudent management, which includes the necessity to evaluate the client's creditworthiness based on sufficient information [119]. The civil responsibility of banks towards customers and third parties is regulated by laws that task the interpreter with assessing the injustice of the damage or negligence. Depending on the situation, this liability might be pre-contractual (per Article 1337 of the Civil Code), contractual (per Article 1218 of the Civil Code), or non-contractual (per Article 2043 of the Civil Code) [120].

2.2.2 Abusive Lending Practices: An Exploration of Rulings

The concept of abusive granting of debt originated from a significant decision made by the Court of Appeal on January 13, 1993 (No. 343) [121]. Since then, subsequent legal

[117] F. Salerno, "La Valutazione del Merito Creditizio nelle Operazioni di Cessione del Quinto", in DB non solo diritto bancario, available at [La valutazione del merito creditizio nelle operazioni di "cessione del quinto" - DB (dirittobancario.it)], (last visited 25/08/2023).
[118] *Ibid.*
[119] C. Bergamini, *op.cit.*
[120] P. Gobio Casali et al., *op.cit.*, pp.1-30
[121] "La Concessione Abusiva del Credito", *op.cit.*

judgments have provided criteria for identifying when a credit concession is deemed abusive. Specifically, if a bank or credit institution continues to maintain existing overdrafts or grants new credit to a customer with an unstable and precarious financial situation [122], it can give rise to a situation where the bank may be held liable under non-contractual obligations as per Article 2043 of the Civil Code, in relation to the harm experienced by creditors resulting from the breach of the universal principle of "neminem laedere" within the scope of the concept known as "culpa in omittendo" [123]. The article provides that:

"*Any intentional or negligent act, which causes unjust damage to others, obliges the one who committed the act to compensate for the damage*" [124].

Legal professionals have faced a persistent dilemma in determining that banks were liable to the debtor. The challenge arises due to the fact that borrowers are those who first decide to apply for loans. Accordingly, the focus of jurisprudential protection has historically been limited to third-party creditors who are adversely impacted by the borrower's failure to repay the borrowed funds [125].

A recent judgment (Cass., 1st sec. civ., 30/06/2021, no. 18610) transcends the former legal approach and provides a broader interpretation of the matter. It asserts that when credit is extended to a financially troubled business with no realistic chances of recovery, and this is done negligently or with malicious intent (malice is when the bank deliberately opts to postpone the commencement of bankruptcy proceedings, with the hope of fully recovering its credits in breach of the principle of equal treatment among creditors, or to protect previous debt repayments from reversal actions [126]), it constitutes an inappropriate action by the lender towards the debtor. The lender, having failed in their duty of prudent

[122] E. Andreani, *op.cit.*
[123] G. Morini, "Responsabilità della Banca", in Wolters Kluwer, available at [https://www.altalex.com/documents/news/2015/09/09/responsabilita-della-banca-le-fonti-normative], (last visited 25/08/2023).
[124] Articolo 2043 of the Civil Code, in Brocardi.it, available at [https://www.brocardi.it/codice-civile/libro-quarto/titolo-ix/art2043.html?q=2043+cc&area=codici], (last visited 25/08/2023).
[125] E. Andreani, *op.cit.*
[126] P. Gobio Casali et al., *op.cit.*, pp.1-30

management, is bound to compensate for the damage caused by the intensification of the business's decline resulting from the continuation of its operations [127].

Pertaining to the responsibility towards the corporation, the Court differentiates between (a) the issuance of a fresh loan and (b) the continuation of a current loan. In the initial situation, the obligation emanates at a pre-contractual phase, based on Civil Code Article 1337, due to the bank's intentional or negligent non-compliance with creditworthiness evaluation guidelines. In the latter situation, the Court recognizes a contractual liability under Civil Code Article 1218. In both circumstances, the liability is considered as a responsibility resulting from failure to fulfil a pre-existing duty [128].

The Supreme Court elaborates further by stating that a bank's actions don't amount to abusive credit issuance if it undertakes a reasonable risk, with the intent of aiding the company's recovery and extending credit to a business that, based on a prior assessment, has the potential to weather the crisis or at least maintain profitability in the market. This assessment should be grounded on documents, data, and information gathered, from which a credible conclusion is drawn about the borrower's intent and capacity to utilize the credit for the declared objectives [129]. In such a context, when assessing the abusive character of the provided financing, the crucial point is no longer whether the funded company is in a crisis or insolvency, potentially causing a delay in filing for bankruptcy (more precisely, judicial liquidation). What really counts is the lack of credible prospects, evaluated based on reasonability and a prior assessment, to emerge from that crisis or, more broadly, to repay the debt. Essentially, the distinction between a "meritorious" and an "abusive" financing often hinges on the reasonability and viability of a business plan [130]. Hence, if the business plan is well-organized, grounded on a robust analysis, and holds promising prospects for success, the funding for the company will be considered meritorious. Conversely, if the business plan is irrational, impractical, or involves considerable financial risks, the financing might be deemed abusive. As such, the

[127] E. Andreani, *op.cit.*
[128] C. Bergamini, *op.cit.*
[129] E. Andreani, *op.cit.*
[130] *Ibid.*

reasonableness and viability of the business plan become pivotal in identifying the nature of the financing, whether it's legitimate or abusive.

In conclusion, there exists a prohibition on granting credit unless it is driven not by the bank's private interest or negligence, but by an interest aligned with sound and prudent management practices [131]. Nonetheless, it's crucial to recognize that the jurisprudence mentioned earlier doesn't always appear to rely on solid legislative foundations: the Court explicitly points to Articles 2043, 1218, and 1337 of the Civil Code as reference points. Yet, these regulations do not seem to offer definitive guidelines. Consequently, it becomes imperative to meticulously examine if the current legal framework is adequately rigid [132].

2.2.3 Navigating Legal Ambiguities of Illicit Credit Provision

A significant concern arises from the absence of a dedicated legislative provision that regulates the improper granting of credit. In contrast, the bank enjoys legal protection when it comes to credit issuance due to Article 137 of the Banking Act (TUB), which addresses the offense of bank deception, and Article 325 of the "Codice della Crisi d'impresa e dell'Insolvenza" (CCII), which defines abusive credit recourse. If this scenario is indeed accurate, the financier is viewed as a victim rather than an accomplice to the crime. However, the financier could still be implicated in simultaneous offenses if the credit is irregularly granted [133]. Nonetheless, it is important to highlight that establishing the necessary conditions and quantifying such offenses can pose considerable difficulties [134].

In advocating for debtors, as stated earlier, the importance of banking regulations, specifically Articles 120-undecies and 124-bis, could hold significance. Moreover, in accordance with Article 5 of the TUB, credit supervisory authorities exercise their oversight powers with the aim of promoting “the sound and prudent management of supervised entities, ensuring overall stability, efficiency, and competitiveness within the

[131] “La Concessione Abusiva del Credito”, *op.cit.*
[132] P. Gobio Casali et al., *op.cit.*, pp.1-30
[133] *Ibid.*
[134] F. Salerno, *op.cit.*

financial system, and ensuring compliance with credit-related regulations". This approach also seeks to mitigate risk in its various forms, as outlined in Article 53 of the TUB [135].

However, the interpretation of the obligations stated in Article 124-bis TUB has been a subject of uncertainty due to the lack of clarity from the legislature [136]. One perspective suggests that the obligation to assess creditworthiness was principally set up to uphold the banking system's stability, not specifically to protect other parties. Even though the financial turmoil of business owners can trigger widespread effects impacting numerous people and eventually endanger the whole economic framework [137]. Conversely, others stress that providing new credit without assessing creditworthiness might result in unfavourable consequences for both the lending party and the individual receiving the loan. For example, businesses may end up in disadvantageous conditions, such as securing loans with onerous conditions simply to clear prior debts with the same lender, or worsening their fiscal position by substituting short-term liabilities with more oppressive and unsustainable long-term commitments [138].

The legal framework governing the protection of entrepreneurs from abusive practices by banks operates within the realm of private law, with reference to the contract laws of the civil code: based on the principles outlined in the TUB, recent rulings by the Supreme Court establish a form of pre-contractual and contractual liability towards the financed company, referring to Articles 1337 and 1218 of the civil code, respectively. Although this approach may initially seem persuasive, upon closer examination, it is not. Indeed, these norms seem to pertain to a context of negotiation, wherein the bank is held accountable only if its conduct is deemed detrimental to the borrower. The Court of Cassation (Cass., 1st sec. civ., 30/06/2021, no. 18610) identifies them as falling under the scope of "social contact," emphasizing that when it comes to credit provision, it is crucial to categorize it as a form of contractual liability arising from a qualified social contact. This entails mutual duties of good faith, protection, and information under Articles 1175

[135] P. Gobio Casali et al., *op.cit.*, pp.1-30
[136] D. Rosselli, "Concessione Abusiva del Credito ed Analisi del Merito Creditizio", in DB non solo diritto bancario, available at [https://www.dirittobancario.it/art/concessione-abusiva-del-credito-ed-analisi-del-merito-creditizio/], (last visited 25/08/2023).
[137] P. Gobio Casali et al., *op.cit.*, pp.1-30
[138] F. Salerno, *op.cit.*

and 1375 of the Civil Code. Nevertheless, both the notion of social contact liability and that of abuse of law exhibit blurry boundaries and lack explicit regulatory support [139].

In addition, there remains an open question regarding liability when it comes to mere negligence. In cases where the behaviour is intentional, including potential fraudulent actions like attempting to consolidate received payments, there should be no hindrance in attributing responsibility to the bank. Nevertheless, the situation becomes more complex when dealing with cases of simple negligence in credit granting, as proving such negligence in a court of law can be challenging [140]. Indeed, it is crucial to underscore that in such circumstances, the damage cannot be assumed as "re ipsa" (i.e., through self-evidence), and a detailed claim must be presented, even prior to providing evidence, to establish the actual damages suffered due to the alleged detrimental conduct of others [141].

It is important, in conclusion, to highlight that, frequently, jurisprudence views the improper granting of credit as a situation that exacerbates existing financial distress. However, there are still deficiencies both in jurisprudence and in the regulatory framework when it comes to scenarios where abusive credit provision, resulting from intentional or negligent actions, leads to financial difficulties for a solvent company. For instance, negligence in assessing the repayment plan could be a contributing factor. This further adds to the ambiguity in a regulatory framework that already allows for vague boundaries and varying interpretations.

2.3 The Contentious Dynamics of Abusive Interruption of Credit: An In-Depth Investigation

The consideration of whether a credit institution is liable for a breach of contract against an entrepreneur unfairly deprived of credit should not solely focus on the strict interpretation of the contractual terms. Rather, it's important to assess also this from a wider viewpoint, namely by considering the principle of good faith and the obligation of

[139] P. Gobio Casali et al., *op.cit.*, pp.1-30
[140] *Ibid.*
[141] Redazione Giuffrè 2022, Tribunale Spoleto sez. I, 10/08/2022, n.561, in DeJure, available at [https://dejure.it/#/ricerca/giurisprudenza_documento_massime?idDatabank=0&idDocMaster=10145356&idUnitaDoc=0&nVigUnitaDoc=1&docIdx=0&semantica=0&isPdf=false&fromSearch=true&isCorrelazioniSearch=false], (last visited 25/08/2023).

maintaining fairness in the contract's execution. In fact, in order to enhance the transparency of contractual relationships in the provision of banking services by financial institutions, legislative measures have been implemented. The process of achieving greater clarity in banking services contracts commenced with Law No. 154 of February 17, 1992 – "Standards for the transparency of banking and financial transactions and service". Subsequently, the TUB (Consolidated Banking Act, Legislative Decree No. 385 of September 1, 1993) further solidified these efforts. According to the TUB's Articles 117 and 118, it is mandated that all banking and financial services contracts and transactions must be documented in writing. Moreover, the legislation stipulates guidelines on defining the contract's content, with special attention given to contractual amendments and the right to modify them. The goal of these regulations is to encourage fairness, clarity, and equitable dealings in the banking sector [142].

These legal changes primarily aim to influence the initial phase of the negotiation process. The impact, however, these provisions might have on the, ongoing, conduct of the relationship may be less significant. Undoubtedly, a more meticulous definition of contractual terms could diminish potential impediments during the contract's subsequent execution.

Indeed, the success in the implementation of a contract strongly relies on the compliance to cardinal underling principles referred as fairness and good faith. These principles ensure harmonious and equitable relationship between the involved parties, standing as crucial in shaping the way contracts are executed. In fact, recognizing a bank's obligation to ensure a stable or, if needed, adjusted financial flow, particularly in the absence of serious and enduring changes in risk forecasts, becomes a critical step in establishing potential liability for unwarranted cessation of credit. Establishing whether a bank bears a responsibility for its actions relies on the existing credit relationship and the expected conventional behaviour during its execution. After evaluating the presence of such responsibility, it can then be determined if, given the circumstances, the recompense for

[142] E. Bertacchini, "Concessione del Credito, Comportamenti Abusivi e Responsabilità della Banca: Osservazioni alla Luce delle Recenti Disposizioni Legislative in Materia Bancaria", in Biblioteca Liuc, available at [https://biblio.liuc.it/liucpap/pdf/8.pdf], pp.1-20, (last visited 25/08/2023).

those affected by the corporation's failure should be recognized under liability for wrongdoing [143].

To sum it up, while clear contractual terms and legislative measures are critical for the seamless execution of contracts, it's the principles of fairness and good faith that stand as the bedrock of just and prosperous business relationships. These principles beyond promoting accountability, they also ensure redress for any infractions that arise during the course of the contractual engagement.

Generally speaking, under the Italian legal system it is widely acknowledged that a bank cannot be held liable for refusing to establish a credit relationship from scratch. Nevertheless, it is crucial to emphasize three particular scenarios that may result in what is termed an "illicit cessation of credit": (i) the unwillingness of banks to update existing credit arrangements, (ii) the denial of further overdraft privileges by banks, (iii) the debt collection practices by banks [144].

2.3.1 Banks' Reluctance to Adjust Existing Credit Lines

When it comes to a bank's refusal to adjust the originally granted financing to meet the new or actual needs of a business, the likelihood of holding the bank liable for contractual breach is quite low. This conclusion, denying an obligation to supplement the financing, can be drawn by referring to Articles 1175 and 1375 of the Civil Code. These regulations, relating to contract execution, don't aim to extend the effects that legally emanate from the existing relationship, but instead provide a benchmark for the court to assess the parties' behaviour that goes beyond the legal mandate. Misinterpreting these general clauses to impose a duty on the credit institution to adjust the funding to a larger amount necessary for achieving the original purpose would not only represent an incorrect application of the rule, leading to an unwarranted expansion of the obligation's subject matter, but also result in acknowledging a rule that does not rectify the same right, but

[143] E. Bertacchini, "Concessione del Credito, Comportamenti Abusivi e Responsabilità della Banca: Osservazioni alla Luce delle Recenti Disposizioni Legislative in Materia Bancaria", in Biblioteca Liuc, available at [https://biblio.liuc.it/liucpap/pdf/8.pdf], pp.1-20, (last visited 25/08/2023).
[144] *Ibid.*

instead deviates from the aforementioned principle that leaves the granting of financing to the bank's discretion [145].

2.3.2 Banks' Refusal to Overdraft Allowances

The refusal to allow further overdrafts, which is the second scenario of discontinuation of credit, tends to be more intricate. Rather than pursuing more credit, as in the initial scenario, the focus here is on preserving current financial liquidity.

In this context, one could be led to believe that the issue of overdrafts is resolved by the enforcement of Law No. 154's Article 3 (dated February 17, 1992), synonymous with Article 117 of the Consolidated Act, which mandates that all contracts must be documented in writing. However, it's far-fetched to think that this complex matter—with its myriad implications that vary per situation and frequent occurrence—can be permanently addressed by merely making a relationship formalization compulsory each time. In fact, it's more realistic to expect, based on day-to-day experience, that the status quo will largely remain unchanged for a certain duration after the introduction of the new regulations [146].

It is acknowledged overdraft refers to the agreed-upon sum that the bank is willing to cover when a client issues a payment order despite lacking sufficient funds in their current account. The term 'overdraft' also applies when the paid amount surpasses the loan amount initially provided by the bank [147]. In such instances, it's worth noting that our laws do not provide an automatic right to credit, therefore any duty on the part of the bank to cover checks issued beyond the overdraft limits must stem from general legal norms [148]. The bank's decision not to cover these overdrafts, especially during a severe liquidity crisis, and its insistence on immediate reimbursement within the overdraft limits cannot be viewed as a case of the bank's liability, given the absence of any fault. Instead, these

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[145] E. Bertacchini, *op.cit.*, pp.1-20
[146] *Ibid.*
[147] "Sconfinamento Bancario: Che Cosa È, Quali Sono le Conseguenze", in Agicap, available at [Sconfinamento bancario: che cosa è, quali sono le conseguenze | Agicap], (last visited 25/08/2023).
[148] M. Tidona, "La Tolleranza della Banca nello Sconfinamento dal Fido Concesso ed Obblighi Conseguenti", in Tidona e Associati, available at [https://www.tidona.com/la-tolleranza-della-banca-nello-sconfinamento-dal-fido-concesso-ed-obblighi-conseguenti/], (last visited 25/08/2023).

instances typically align with the notion of "just cause" (in accordance with Article 1461 of the Civil Code), absolving the bank from responsibility in such conditions. Conversely, at times, overdrafts may serve as a protective measure within a fundamentally fair contractual relationship, aimed at preventing the adverse impacts of bounced checks due to insufficient funds for a client perceived as creditworthy, or to cater to temporary cash flow requirements while awaiting the completion of the credit line extension process. Even though it's unequivocal that the client doesn't hold an inherent right to enforce this practice, even when bank's tolerance occurred frequently, it is crucial to determine whether, based on the well-established principles of good faith and contract fairness, the bank has an obligation to maintain a behaviour that has given rise to an expectation of its continuity [149].

It could be contended that referring to Articles 1175 and 1375 of the Civil Code as the basis for a behavioural rule should not conflict with other legal principles. The continuous occurrence of overdrafts, which indicates a significant irregularity in the bank's functioning (identifiable during regulatory inspections), may lead to disciplinary measures against employees and potential liability claims against management in case of losses. As seen in the previously mentioned case, a broad application of Articles 1175 and 1375 of the Civil Code might inadvertently expand the bank's liabilities, and would represent a misinterpretation of the norms. Viewed from this angle, the issue of the bank's liability concerning an abrupt restriction of credit, following the acceptance of numerous overdrafts and without providing the customer with prior notice (thus allowing them to cushion the impact of the restriction), could be understood as a failure to demonstrate diligence in pursuing this course of action (Article 1176 of the Civil code) [150].

The Milan court, in a specific instance, acknowledged that a bank's conduct might generate a "credit expectation" for the customer. As a result, should the bank decline to cover overdrafts, it would be breaching its duty of diligent behaviour, also considering the significant adverse impacts for the customer resulting from the ensuing "protest" [151]. In another decision, the same Milan court sought to broaden this concept, arguing that the bank's misconduct could be established not just in scenarios of credit expectation, but also

[149] E. Bertacchini, *op.cit.*, pp.1-20
[150] *Ibid.*
[151] M. Tidona, *op.cit.*

when the first instance of overdraft is not tolerated. According to the case at hand, exceeding the overdraft limit does not grant the bank the right to abusively cease providing credit and unreasonably report to the "Centrale Rischi", assuming that this situation is temporary and does not lead to a permanent economic incapability akin to an emerging state of disintegration. In this scenario, there would be no just cause for the bank not respecting the right of withdrawal under Article 1845 of the Civil Code [152]. On the contrary, different judgments acknowledge the bank's prerogative to exercise complete discretion in determining whether to grant an overdraft on a case-by-case basis [153]. In addition, the Rome Court of Appeal has clarified that the bank's attitude towards such conduct should not be misconstrued as an indirect consent to extend the credit opening limit. Rather, this stance reflects a simple acceptance or "mere tolerance," as the bank awaits the account holder's compliance with the requirement to rectify the unauthorized exposure [154].

Upon reflection of the previously discussed aspects, it's undeniably apparent that this issue is still unresolved and open to varying interpretations. The complexity of the legal landscape surrounding overdrafts is further amplified by an essential observation. Article 117 of the TUB, a legislative decree which details contract forms, underscores the requirement for written agreements and declares the invalidity of contracts that don't adhere to these regulations. With the introduction of the TUB on January 1, 1994, the overdraft issue might be perceived different. The emphasis could shift from fostering a sense of credit expectation for the customer or appraising the transitory nature of a company's financial difficulties, towards contractlessness, resulting in no obligations

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[152] B. Riccio, "Inadempimento, Sconfinamento, Difetto di Istruttoria e Segnalazione alla Centrale Rischi. La Connessa Tematica della Rottura Abusiva della Concessione di Credito. Riflessioni Afferenti ad Ordinanza del Tribunale di Milano del 29 Agosto 2014", in DeJure, available at [INADEMPIMENTO, SCONFINAMENTO, DIFETTO DI ISTRUTTORIA E SEGNALAZIONE ALLA CENTRALE RISCHI. LA CONNESSA TEMATICA DELLA ROTTURA ABUSIVA DELLA CONCESSIONE DI CREDITO. RIFLESSIONI AFFERENTI AD ORDINANZA DEL TRIBUNALE DI MILANO DEL 29 AGOSTO 2014. - Favor Debitoris], (last visited 25/08/2023).

[153] M. Tidona, *op.cit.*

[154] Giustizia Civile Massimario 2021, Cassazione civile sez. I, 22/12/2020, n.29317, in DeJure, available at [https://dejure.it/#/ricerca/giurisprudenza_documento_massime?idDatabank=0&idDocMaster=8889069&idUnitaDoc=0&nVigUnitaDoc=1&docIdx=0&semantica=0&isPdf=false&fromSearch=true&isCorrelazioniSearch=false], (last visited 25/08/2023).

between the involved parties [155]. In this scenario, it appears overdrafts having no legal foundation, thus bestowing full discretion on the actions of the involved parties.

Another critical point to explore in this scenario is the involvement of the Central Risk Office. As of 2021, the EBA Regulation has put into effect more rigorous rules related to bank overdrafts, and the default classification in accordance with newly established criteria was revised [156]. Although these new rules are in place, banks retain the ability to authorize overdrafts based on their internal procedures. Furthermore, simply meeting the set criteria does not lead to automatic reporting to the Central Risk Office. Instead, the classification process mandates that the intermediary evaluate the client's entire financial landscape, without relying solely on specific events, such as occasional delays in settling debts [157].

Nevertheless, debtors are expected to rectify the outstanding debt with their bank not beyond prescribed time limit. A debtor's inability to fulfil this expectation might lead to their classification as a defaulter within the Central Risk Office's documentation, following the EBA's stipulations [158]. More specifically, the revised regulation introduces "materiality thresholds" that trigger the reporting process. These thresholds include:

- An absolute materiality threshold of 100 euros for individuals and 500 euros for enterprises.
- A relative materiality threshold consisting of 1 percent total exposure to the bank.
- A time limit of 90 days.

The reporting process is initiated only when these conditions are simultaneously met [159].

After a personal in-depth examination, the prevailing EBA (European Banking Authority) regulations appear excessively strict and may amplify the power imbalance between banks and businesses, instead of providing safeguards for banks. Potentially, these rules could lead banks to adopt a rigid stance towards businesses experiencing transient

[155] E. Bertacchini, *op.cit.*, pp.1-20
[156] "Q&A sulla Nuova Definizione di Default", in Banca d'Italia, available at [https://www.bancaditalia.it/media/notizie/2020/qa-nuova-definizione-default/index.html#faq8761-1], last visited 25/08/2023).
[157] *Ibid.*
[158] *Ibid.*
[159] *Ibid.*

financial distress, even in the case they solely experience minor payment delays. The rules establish a 90-day window for settling debts: this clause may undermine the, often recognized in legal judgments, temporary nature of economic difficulties, thus challenging the concept of overdrafts themselves. The outcome might blur the lines defining when an overdraft is viewed as a valid business entitlement or, conversely, an inappropriate request. In essence, these regulations seem to suggest that such flexibility is only tolerable within a short timeframe, sometimes likely insufficient to meet business's needs appropriately. In such a situation, these regulations could potentially expose businesses to considerable risks stemming from minor infractions. If situations like these grow prevalent, they might generate repercussions for the concerned single enterprise and result, further, in a ripple effect across the larger economic landscape. Take, for instance, a business with a total exposure of 50.000 Eur/'000, a turnover of 500.000 Eur/'000, and an accumulated bank overdraft of 500 Eur/'000 euros, possibly due to extraordinary delays of normal business operations. This business stands the risk of being reported to the Central Risk Office. Such a scenario could lead to immediate detrimental impacts and potential ripple effects prompting other creditors to seek immediate debt repayment. Such a chain of events could inflict severe lasting damage on the company, even if it is financially viable and only requires additional time to pay off the minor liability.

The lack of specific regulations that govern the issue of overdrafts, as well as the absence of norms or guidelines clearly defining the temporary state of a company's economic difficulties, and the stringent criteria that may lead to reporting to the Central Risk Office, in conclusion, all seem to direct the subject matter in a direction that does not adequately reflect the legitimate protection needs of both the parties involved. Future legislation, therefore, should at least delve into this matter further.

2.3.3 The Collection or Reduction of the Conferred Financing by Banks

The third and most intricate circumstance involves the termination of a credit contract. In such situations, the bank's actions result in the sudden halt of an existing and formalized contractual arrangement. A key aspect that determines whether or not the bank can be held accountable for this abrupt termination hinges on the presence of 'just cause' under Article 1845. Absence of such 'just cause' could potentially label the bank's action as illicit, which may result in the bank being held responsible for causing harm to the other

party involved [160]. Article 1845 of the Civil Code is a specific provision designed to clearly safeguard the interests of the bank and its credit-related concerns, thereby deviating from the general principle that contracts already concluded are not terminable (as per Article 1373 of the Civil Code) [161].

It is commonly argued that the termination of a credit facility always necessitates a valid reason [162]. The primary consideration lies in the contractual intent, wherein Article 1322 of the Civil Code allows parties to exercise "contractual autonomy" and predefine certain occurrences, events, or situations in the agreement that would justify withdrawal. In the absence of explicit provisions in the contract, any event significantly affecting the fundamental basis of the agreement should be considered a legitimate cause for termination [163]. This includes situations related to the debtor's financial condition, such as default, sudden insolvency, a considerable decline in their financial standing which poses a risk to repayment or, more broadly, behaviour eroding trust in adherence to future obligations [164]. Additionally, other objective circumstances carrying significance may also warrant termination [165]. The doctrine, in general, provides these circumstances to be considered sufficient grounds for terminating both fixed-term and open-ended contracts. It is fundamental, however, to emphasize that the analysis of whether a just cause exists can only be made on a case-by-case basis, and with a diligent assessment approach of the parties involved in the issue of interpreting the law playing a key role. Every business undertakes a distinct path, and each financial downturn is unique, encapsulating a variety of causes, potential resolutions, and specific characteristics of the company [166].

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[160] E. Bertacchini, *op.cit.*, pp.1-20

[161] C.M. Zauli, "Il Recesso della Banca dall'Apertura di Credito", in Avvocato Cesare Menotto Zauli, available at [https://cesaremenottozauli.it/il-recesso-della-banca-dallapertura-di-credito/], (last visited 25/08/2023).

[162] E. Bertacchini, *op.cit.*, pp.1-20

[163] C.M. Zauli, *op.cit.*

[164] F. Fiorucci, Cassazione civile sez. I, 16/04/2021, n. 10125, Il recesso della banca dal rapporto di apertura di credito: correttezza e buona fede, IUS Societario, in DeJure, available at [https://dejure.it/#/ricerca/giurisprudenza_documento_giurisprudenza_commentata?idDatabank=198&idDocMaster=9097688&idUnitaDoc=0&nVigUnitaDoc=1&docIdx=0&semantica=0&isPdf=false&fromSearch=true&isCorrelazioniSearch=false], pp.1-5, (last visited 25/08/2023).

[165] C.M. Zauli, *op.cit.*

[166] E. Bertacchini, *op.cit.*, pp.1-20

Putting the challenge of categorizing what may be considered as 'just cause'—a task largely handled through judicial interpretation—aside, the issue expands significantly beyond merely pinning down the components that could signify the presence or absence of 'just cause' for termination. Indeed, the matter of fitting observed conduct within banking operations into the framework of established civil laws presents complexities to be analysed [167]. Within the scope of codicil discipline, the act of halting the credit relationship is complemented by adherence to the so-called "Norme Uniformi Bancarie"(NUB). These involve banking contract standardized practices promoted by the "Associazione Bancaria Italiana" (ABI) across all banking institutions [168]. The NUBs are de facto the primary laws governing the relationship between a bank and its customers and fall under the jurisdiction of Articles 1341 and 1342 of the Civil code [169]. These laws introduce exemption to the codified regulation, thereby eliminating any differentiation between fixed-term and indefinite-term contracts imposed by Article 1845 of the Civil Code. Further, by taking advantage of the "unless otherwise agreed" clause at inception of Article 1845 of the Civil Code, they introduce the "loan up to revocation" clause. This provision grants the bank the right to withdraw at any time, even via verbal communication, from the credit agreement, if it was granted for a definite term as well [170].

Though the potential unconstitutionality of this clause might be subject to debate, it is worth noting that various legal scholars and judicial decisions appear to be validating this provision [171]. Historically, case law has typically upheld such clauses, seeing them as an expression of the freedom to negotiate [172]. This stance is exemplified in Judgment No. 997, delivered by the Court of Benevento on May 25, 2017 [173].

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[167] L. Franco, "Recesso Abusivo dal Contratto di Apertura di Credito", in DB non solo diritto bancario, available at [https://www.dirittobancario.it/art/recesso-abusivo-contratto-apertura-di-credito/], (last visited 25/08/2023).
[168] O. Capolino, *op.cit.*
[169] F. Benatti, "Le Clausole di Esonero da Responsabilità nella Prassi Bancaria", in Studi Urbinati, available at [https://journals.uniurb.it/index.php/studi-A/article/view/802], pp.1-41, (last visited 25/08/2023).
[170] L. Franco, *op.cit.*
[171] E. Bertacchini, *op.cit.*, pp.1-20
[172] O. Capolino, *op.cit.*
[173] Tribunale Benevento sez. II, 25/05/2017, n.997, in DeJure, available at [https://dejure.it/#/ricerca/giurisprudenza_documento_orientamento_locale?idDatabank

Indeed, it is commonly accepted that the rules of codicil discipline, defined in Article 1845 of the Civil Code, can be superseded by contracting parties' mutual agreements. Within the framework of fixed-term contracts, the law permits deviations from the requirement for a just cause for termination, allowing for the detailing of criteria for such scenario to occur through specifically established facts, events, and circumstances. For open-ended contracts, instead, it is possible to reduce or even eliminate the notice period. However, opinions vary, and it is not universally agreed that the total abolition of the notice period provided in Article 1845, paragraph 3, of the Civil Code is permissible [174]. With regard to this matter, it's significant to highlight the statement made by an Arbitrator in a ruling (ABF Rome, June 12, 2013, No. 3177). In this decision, the Arbitrator declared that such a clause is null and void, on the grounds that it conflicts with Article 125-quater, paragraph 2, letter a of the T.U.B [175]. In summary, the bank often retains the conventional right to end the relationship without the need for just cause or prior notice. This would result in the immediate halt in the use of the provided credit and the obligation on the part of the borrower to repay the utilized amounts as well [176].

Despite having the freedom to make their own choices, the parties' autonomy is not unlimited. It is tempered by the principles of fairness and good faith, which must be objectively interpreted, encompassing a sense of solidarity. Consequently, these principles give rise to a reciprocal obligation, compelling each party in a contractual relationship to act in a way that protects the interests of the other, independent of any explicit contractual obligations or specific legal provisions, as established in various legal cases, including Cass., Sez. Un., n. 28056/2008 [177]. Indeed, good faith in the execution of a contract demands that each party should strive to achieve the other's contractual interests, or at least, avoid causing any detriment to it. This extends even to the fulfilment of duties that are not explicitly mandated by either the law or the contract itself (Cass. 9th March 1991, n. 2503). Such obligations might include the provision of services that are

=8&idDocMaster=6911409&idUnitaDoc=0&nVigUnitaDoc=1&docIdx=1&semantica=1&isPdf=false&fromSearch=true&isCorrelazioniSearch=false], (last visited 25/08/2023).

[174] F. Fiorucci, *op.cit.*, pp.1-5

[175] C.M. Zauli, *op.cit.*

[176] F. Fiorucci, *op.cit.,* pp.1-5

[177] *Ibid.*

complementary to the contract [178]. In this scenario, in situations where a contract encompasses an "ad nutum" withdrawal provision benefiting one party, the court isn't simply relieved of scrutiny. Regardless of the parties deliberately adopting this clause as part of their contractual autonomy, the court is obliged to assess whether the invocation of this right adheres to the norms of fairness good faith that are expected to govern the conduct between parties in a contract [179]. Consistently, the bank cannot invoke the right of withdrawal (even if terminable "ad nutum") in a manner that is abrupt or arbitrary, as doing so would make it responsible for any resultant damages [180].

As further outlined in decision n. 10125 by the Civil Cassation section I on 16/04/2021, the legal principle concerning withdrawal rights and privileges within a banking relationship emphasizes that a bank must exercise such rights with caution [181]. If a bank has the right to withdraw from an ongoing credit relationship, this must be done in line with not only the existing laws and agreements but also with ethical conduct. This means the bank should avoid actions that might appear as a misuse or distortion of this right, causing an unwarranted burden on the other involved party. In this scenario, it has been further clarified that the manner in which the bank employs its right of withdrawal isn't entirely clear of to inspection, even though the legitimacy of its exercise, when viewed from the standpoint of just cause, cannot be questioned. Ensuring adherence to the fundamental principle of executing contracts in good faith remains of utmost importance. Should the withdrawal manifest unforeseen and arbitrary traits, and/or deviating from what those who rely on the bank's customary practices and the normal conduct of the business relationship would reasonably expect regarding the provision of credit in place during the agreed time period, then it becomes applicable that such withdrawal, even on the ground of just cause, may be considered illegitimate [182].

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[178] F. Galgano, "Il Dovere di Buona Fede e L'Abuso del Diritto", available at [https://www.csm.it/documents/21768/81517/quaderno+89/cc6cf981-3e29-4194-ab7e-02f403fee000], pp.1-16, (last visited 28/08/2023).
[179] F. Fiorucci, *op.cit.,* pp.1-5
[180] *Ibid.*
[181] *Ibid.*
[182] "CASSAZIONE – Caratteristiche del Recesso Abusivo della Banca in una Apertura di Credito Bancario", in Tidona e Associati, available at [https://www.tidona.com/cassazione-caratteristiche-del-recesso-abusivo-della-banca-in-una-apertura-di-credito-bancario/], (last visited 28/08/2023).

In general, good faith demands the right of withdrawal to be carried out loyally and solidly, avoiding any abusive or unjust actions that might harm the other contracting party, in alignment with Articles 1175 and 1375 of the Civil Code. These principles, deeply ingrained in the Constitutional Charter (Articles 2, 3, 41), are universally acknowledged and undoubtedly apply to banking relationships as well [183], thus safeguarding an interest that exerts a substantial influence on the country's overall economy [184].

Typically viewed as a principle enhancing the legal essence of a contract, the rule demanding adherence to good faith is guided by Article 1374. Therefore, any deviation from the obligation to conduct oneself in good faith amounts to a violation of the contract itself. These rules insist on mutual good faith conduct when fulfilling contractual duties (Article 1375), as already specified, but also: in the course of negotiations and contract creation, from which pre-contractual liability arises (Article 1337); during the interpretation of contract terms (Article 1366); in cases where contracts are contingent upon certain conditions or awaiting the fulfilment of conditions for termination (Article 1358); and while opposing objections to default (Article 1460, paragraph 2) [185].

In this context, an instance prominently underscored in judicial precedents is the abrupt and unjustified end to preliminary contract discussions and/or failure to comply with preliminary agreements made with the counterparty. Indeed, this is seen as a breach of good faith when unexpected discontinuation of talks happens at a stage when the other party, relying on the conclusion of the contract, has either made financial commitments or foregone other potential agreements. In the event that a party fails to adhere to the principles of good faith throughout the contract negotiations, leading to a detriment for the other entity involved, they are held accountable to provide restitution. This concept, termed pre-contractual liability, is anchored in legal precedent as a transgression that transpires either in the lead-up to or during the inception of the contract [186]. Liability during the negotiation stage involves accountability for infringing on the freedom to

[183] F. Fiorucci, *op.cit.,* pp.1-5
[184] E. Bertacchini, *op.cit.*, pp.1-20
[185] F. Galgano, *op.cit.,* pp.1-16
[186] F. Galgano, *op.cit.*, pp.1-16

negotiate. This is also expressed as bearing accountability for "culpa in contrahendo" [187]. The primary jurisprudential principles regarding this matter are as follows: (1) it is of utmost importance that, even in the initial stages of negotiations, the parties thoroughly consider the fundamental aspects of the contract they are presenting or intending to engage in, (2) the termination cannot be justified if the party seeking withdrawal relies on circumstances that were already known at the outset of the negotiation or could have been readily discovered through ordinary diligence, (3) the possibility of terminating the contract can be justified when one party discovers that they were misled into the negotiation due to the other party's fraudulent actions [188].

In general, the overarching obligation of practicing good faith in contractual affairs, akin to the more expansive necessity for fair conduct between borrower and lender, is a mechanism for filling the inevitable voids in legislation. Despite its thorough nature, legislation cannot predict every potential scenario or always preclude abuses that parties may inflict on each other. The legislation is designed to cover the most probable situations, as well as to deter prevalent wrongdoings. Without this protective measure, numerous objectionable behaviours would go uncontrolled within the extensive limits of legal rules. This situation could arise if any activity not specifically forbidden is viewed as allowable, or if any behaviour not directly mandated by law is seen as discretionary. The responsibility rests with the judge to assess, in each individual case, if an action conforms to or violates the principle of good faith. Nonetheless, the judge's personal perspective on fairness or loyalty should not be the only guiding factor; they should consider conceptual broader societal rules which may exhibit more adaptability and flexibility to relevant matters compared to narrow personal interpretation of fairness. In this scenario, enforcing the general requirement of acting according to good faith is not strictly an application of law, but rather an application of juridical rules constructed by the judge, who is vested with legal authority to do so [189].

[187] M. Ferrari, "Responsabilità Precontrattuale: La Guida Completa", in Wolters Kluwer, available at [https://www.altalex.com/guide/responsabilita-precontrattuale], (last visited 25/08/2023).
[188] F. Galgano, *op.cit.*, pp.1-16
[189] F. Galgano, *op.cit.*, pp.1-16

To conclude, in the realm of banking, the jurisprudence of legitimacy translates to a clear legal expectation: the right of withdrawal must be executed with fairness and good faith. A departure from these principles in executing a withdrawal is deemed an "abuse of law". The fallout from such an abuse is not merely philosophical; it carries tangible legal obligations. The bank, in this instance, must make amends for any damages, following the stipulations laid out in Article 2058 of the Civil Code. However, according to specific rulings from various courts (including Cassation Court rulings no. 6186/2008 and no. 29317/2020), the responsibility falls on the party alleging improper termination (or failure to comply with preliminary agreements) to substantiate their claim. This entails detailing the reasons and supplying the necessary evidence to prove that the termination was carried out arbitrarily and in violation of good faith principles [190].

[190] F. Fiorucci, *op.cit.,* pp.1-5

CHAPTER 3: Navigating the Ethical Quagmire: A Case Study on Controversial Bank Practices

Having examined the legal structure concerning the unauthorized extension of credit and improper termination of credit agreements in the previous sections, we will now turn our attention to a particular case that is currently under investigation and legal scrutiny. This case involves the questionable actions of Epsilon Bank, which initially extended financing to the Company Alpha S.r.l., then revoked during the contract's execution. For privacy reasons, the real names of the parties involved will be kept confidential as the case is still currently under litigation.

3.1 Unfolding the Dynamics of the Litigation: The Alpha Case [191]

Alpha S.r.l. was founded as an "innovative startup" with a specialized focus on the development and marketing of flexible, low-cost holographic plastic films. These innovative films were engineered to be integrated with photovoltaic panels, aiming to substantially enhance their electrical energy output. Symbolizing an innovation marking a potential turning point in the solar energy industry, the idea behind this technology was to concentrate solar rays and enhance power efficiency,

The inception phase of the project was backed by an investment of 1.500 Eur/'000 from the company's shareholders, reflecting their staunch confidence and significant commitment. For the subsequent stage, Alpha sought a bank loan amounting to 2.400 Eur/'000 and successfully partnered with Epsilon Bank.

The project was carefully detailed in a comprehensive business plan. Not only did it elucidate the scientific foundations of the product but it also projected the immense growth trajectory within the photovoltaic panel market. With the global solar market experiencing exponential expansion, the unique product conceptualized by Alpha presented a game-changing opportunity within the industry.

Furthermore, the financial plan discussed and agreed upon with the bank, during the first two years of operation envisioned the survival of the company relying substantially on the aforementioned 2.400 Eur/'000 loan. Alpha's status as an innovative startup

[191] All the information were provided by the Management of the Company

facilitated access to an 80% guarantee of the full loan from Medio Credito Centrale (MCC). Epsilon Bank's acceptance of this plan, and their subsequent provision of a decade-long 2.400 Eur/'000 loan (with an 18 months grace period and structured semi-annual payments), was predicated on the company's absence of other liabilities, a robust equity capital, and the endorsement from CNR-IMM (Institute for Microelectronics and Microsystems) of Naples, guaranteeing the proper progression of the research.

However, the collaboration took an unexpected turn when Epsilon Bank, rather than adhering to the terms agreed upon in negotiations, released only an initial 800 Eur/'000 (with a 6 months grace period), assuring completion of the disbursement (the remaining 1.600 Eur/'000) through new financing within an agreed three-month period. Alpha, trusting in their financial partner's integrity, accepted this initial disbursement. Over the following six months, the funds were judiciously applied to continue the scientific development of the project, forge technical and commercial alliances (The company implemented a collaborative framework with industry giants such as ENI and ENEL further bolstering the project's seriousness and ambition), and cover expenditures, all in strict accordance with the financial plan sanctioned by Epsilon Bank.

The subsequent actions by Epsilon Bank marked a surprising shift: The bank fail to fulfil its promise to complete the financing, which caused Alpha to default on the first repayment instalment of the loan (the company has not managed to cover the investments and the planned expenses without the financing). Further, by virtue of the company's failure to reimburse, abruptly revoked the loan, demanding an immediate restitution of the utilized amount, thereby activating the guarantee from MCC. This sequence of facts, happened to the detriment of the company Alpha, led to a cessation of all activities related to the project and culminated in the loss of the entire company's share capital.

In the following sections, it will be investigated the company's history, and the project for which the funds were needed. We will then assess the company's financial standing at the moment the credit was granted and the guarantee was secured from Medio Credito Centrale, along with the forecasted economic and asset details, and the financial requirements outlined in the Business Plan that the bank approved, which subsequently shaped the terms of the financing during negotiations. Later, we will analyse the specifics

of the credit agreement and examine how, in the context of bank's revocation, the interplay between the involved parties may align with the Italian regulatory landscape.

3.2 Company Alpha: A Focus

Established as an "innovative start-up" engaged in research in the natural sciences and engineering, Alpha S.r.l. was founded in 2015. It is committed in the production, design, and marketing of innovative devices with high technological value and/or components, generators of electric energy from renewable energy sources, and the production and marketing of other related products as well. Since its inception, Alpha has been engaged in the development of a project which was centred around the design and promotion of holographic plastic films applicable to photovoltaic panels to enhance their power generation [192]. In this regard, the company holds two patents:

1) Patent No. 0001395352: Integrated system with very high energy conversion value, comprising holographic optical elements, thermal elements, and any module suitable for transforming solar energy into eco-compatible energy [193];
2) Patent No. 0001383174: Integrated system with very high energy conversion, including photovoltaic panels, plastic films with interferential optical grids, assembled with high transparency sheets [194].

Furthermore, Alpha, in April 2016, submitted to the Italian Patent and Trademark Office (UIBM) the patent application number: 102016000038163, entitled: "Holographic film of particular application in photovoltaic panels, in thermal-solar panels, and in solar light diffusion panels" [195].

The company's equity capital consist of a share capital valued at 11,7 Eur/'000 and a premium reserve of 1.500 Eur/'000. Ownership of the company is divided between two controlling entities, referred to as Gamma and Zeta, which hold stakes of 85% and 15%, respectively [196].

[192] Information provided by the Management of the Company
[193] *Ibid.*
[194] *Ibid.*
[195] *Ibid.*
[196] *Ibid.*

On March 24, 2015, a fresh classification of business, referred to as the Innovative Small and Medium Enterprise, was brought into existence by the passage of Law No. 33, transforming Decree-Law 3/2015 or the "Investment Compact." This legal change was designed to stimulate technological advancement throughout diverse economic fields and to fortify the competitiveness of the nation's industrial framework. The status of an Innovative SME endows the company with a variety of privileges and benefits [197].

An Innovative Small and Medium Enterprise (SME) is identified by specific criteria and benefits under the designation. To qualify, a corporation must reside in Italy or an EU member country, but it must also operate a production site or branch within Italy. Employment within the enterprise must be capped at 250 individuals, and there are financial limitations in place, with an annual turnover that cannot surpass 50.000 Eur/'000. Furthermore, these corporations must invest at least 3 percent of the greater value between cost or total production in research, development, and innovation. Being listed in the special section of the Business Register specifically for Innovative SMEs enables these entities to access a range of benefits [198]. These advantages primarily include:

- Flexible corporate management: Innovative SMEs structured as an S.r.l. (a type of limited liability company) can enjoy a more adaptable approach to corporate governance. Specifically, their articles of incorporation can be crafted to allow various classes of shares. These might include shares that either do not confer voting rights at all or assign voting rights in a way that doesn't correspond directly to the percentage of shares owned [199];
- Access to credit is made easier through the Central Guarantee Fund, a state-backed initiative. This fund aids Innovative SMEs in securing financial support by offering an 80% free guarantee on bank loans, simplifying the lending process [200];
- Innovative SMEs benefit from unique provisions when faced with consistent losses. Rather than immediate action, these companies are granted a one-year deferment

[197] Registro delle Imprese, available at [https://startup.registroimprese.it/isin/static/pminnovative/index.html], (last visited 28/08/2023).
[198] *Ibid.*
[199] *Ibid.*
[200] *Ibid.*

concerning the obligation to cover losses that surpass one-third of the share capital, offering more flexible terms for capital reduction [201].

These facilities are designed with specific core goals in mind. They aim to encourage a nurturing environment for technological advancement, sustainable expansion, and job creation (i). Moreover, they intend to bolster innovative startups through growth, fostering an ecosystem conducive to innovation (ii), and to enhance the processes of technology transfer, research amplification, and the drawing of both talent and investment into Italy from foreign sources (iii) [202].

3.2.1 Unveiling the Project [203]

The project of Alpha pursued the development of a high-tech and high-added-value product for the worldwide photovoltaic market. The product was aimed at fulfilling the primary function of "passive solar trackers", understood as optimizing the electrical production of photovoltaic modules by ensuring, at all times, the best exposure of the panels to sunlight, the source of which varies in position over the course of the day and the seasons of the year.

In this regard, Alpha, through the use of optical and holographic techniques, was developing systems made up of nanostructures of multiple lenses etched onto flexible plastic films. These were supposed, without movement, to deflect sunlight, thereby increasing the amount of solar energy channelled onto the photovoltaic cells, thus generating an increase in their electrical production. Additionally, this would have ensured the improvement of the lifespan and efficiency of both the modules and the photovoltaic cells themselves.

With the intent to detail the characteristics and the various development stages of the project, of which the bank was aware at the time of the agreements' execution, the analysis is broken down into the following thematic macro-areas:

[201] Registro delle Imprese, *op.cit.*
[202] *Ibid.*
[203] All the information were provided by the Management of the Company

A. Project objectives

The project was based on the development of two primary and functional blocks of activity: (i) Creation of the hologram, and (ii) Reproduction of the hologram on film.

The first objective was represented by the study, design, and construction of a hologram capable of ensuring the optimal deflection of solar light in the shapes and measurements suitable to achieve the technical and economic result expected from the project. The second objective, the reproduction of the hologram on film, was related to the definition and fine-tuning of a production process for a flexible plastic film of low thickness and low cost, characterized by the continuous etching of high-efficiency surface holograms (systems of multiple nano-lenses), and appropriately treated with surface chemical-physical components and processes that give the material the expected characteristics in its functioning, ensuring the expected qualities of transparency, resistance, and durability for the specific use.

In the first and second project blocks, two significant technological challenges are represented:

1. The creation of a high-efficiency surface hologram (high percentage of light deflection) capable of ensuring a significant increase (>10%) in the electrical production of the photovoltaic module.

2. The definition of a technology to reproduce high-efficiency surface holograms on thin, flexible plastic supports that are widely commercially available and low in cost.

The final goal of the first phase of the company's activity cycle was represented by the completion of the innovative "product" and "process" path with the industrialization and commercialization of the first release of a plastic, flexible, holographic, long-lasting film, intended for external application on the glass of photovoltaic panels. Achieving these objectives aimed to enable the large-scale availability of an instrumental good (holographic film) of great technical and economic utility in application to photovoltaic technology.

B. Summary of the completed activities:

The Technical Project saw the start of activities in 2015. In just over 18 months from the project's start date, the company's operational headquarter was set up through the leasing of a building where laboratories and offices were prepared, and utilities and services were activated. The facility was equipped with all the necessary equipment. All of this put the company in a position to autonomously carry out all the research, design, and development activities for the planned innovative products and processes (holographic gratings and film). Additionally:

- Regarding the first objective: Creation of the hologram

The company undertook various actions. Initially, studies were conducted on the conversion efficiency of photovoltaic panels in relation to the angular position of the sun. Following these analyses, the structure of the first optical circuits that deflect sunlight was designed. Subsequently, verification and measurement tests were performed, confirming the validity of the technology and the achievability of the proposed objectives. At this point, the foundations were laid for an agreement worth 20 Eur/'000 with CNR-IMM, a world-renowned entity in applied research in the holographic sector. With experience in the development of holographic solar deflectors and concentrators for space photovoltaic applications, CNR-IMM would have provided high-level scientific and technical expertise, in addition to complementary resources and equipment to the company's own. This entity would also have been a source of highly qualified human resources that the company would have leveraged to strengthen its internal organization. In collaboration with CNR-IMM, the company would have proceeded with the design and creation of the final prototype of the hologram. Additionally, beyond two patents already obtained, the company also filed for a new patent that included the prospect of new products that could be realized by the company.

- Regarding the second objective: Reproduction of the hologram on film

Studies were conducted on various plastic materials available in thin film, and based on the characteristics that best corresponded to the project requirements, the most

suitable one was identified to be the basis for the product development. International suppliers were contacted, and industrial samples of experimental film were purchased.

C. Updating of the project

Once the main Research activities were concluded, the phase of Development of the innovative process would have begun. The tests conducted on the holograms and materials that were created with the designed and experimented processes confirmed: (i) the correct functioning of the holographic technology applied to the plastic film to obtain deflectors and solar concentrators, and (ii) the soundness of the guidelines followed by the company to develop the target hologram to be used in the form of film on photovoltaic panels. The company's work team, in collaboration with CNR-IMM, was supposed to channel its efforts on the final definition of the hologram, the basis for the first industrial product.

D. Timing and development

It was expected that the creation of a marketable hologram product would have taken about 12 months. This time period included the analysis, design, and calculation phases, necessary to arrive at the definition of the final hologram, and the laboratory activities to develop the hologram at industrial level.

E. Financial objective of Alpha

Regarding the financial objective, in light of what has been specified, the Business Plan approved by the bank for the granting of the loan stated:

"Up to now, the company has supported all its investments with its own capital injected by the partners (for a value of €1.500 Eur/'000) and has no exposure to the banking system. The company has financial needs to cover further expenses and project investments planned to reach the commercialization of the first product, and for this, it intends to request from the banking system a medium-term loan, backed by the guarantee fund for Innovative Start Ups. The estimated need to reach the project target is about 2.400 Eur/'000 to cover operating costs and investments necessary to reach the commercialization phase and record the start of revenues".

Specifically, the project expenses included: (i) personnel and technical consultancies, (ii) materials and equipment, (iii) missions and travel, (iv) communication, (v) project management, (vi) implementation and management of laboratories, (vii) others.

3.3 Alpha's Economic and Financial Profile [204]

It is important, within the scope of evaluating the approval of the requested financing, to analyse the financial aspects of the project and the forthcoming operations of the company as well. The following chapter thoroughly describes the income statement, the balance sheet, and the financial statement of the company, considering both historical and forecast standpoints, in addition to the projected cash budget. These are an excerpt, and key sections, of the Business Plan, which was drafted in accordance with the bank's advice and subsequently accepted by the bank itself, and thus significantly shaped the terms of the financing during negotiations.

[204] All the information were provided by the Management of the Company

3.3.1 Alpha's Historical and Projected Financial Statements

Below (Graph 3) are presented the company's reclassified historical income statement for the years 2015-2016, and the reclassified forecasted income statement for the period 2017-2021 prepared by the Management:

(GRAPH 3)

RICLASSIFICAZIONE CONTO ECONOMICO A RICAVI, VALORE AGGIUNTO E M.O.L.													
Valori espressi in (Euro)	STORICI			PREVISIONALI									
	2014	31/12/15	31/12/16	2017	A.Vert.	2018	A.Vert.	2019	A.Vert.	2020	A.Vert.	2021	A.Vert.
RICAVI OPERATIVI NETTI	0	0	0	0	0,0%	6.737.010	122,3%	18.319.655	124,2%	23.856.150	124,5%	27.557.982	124,7%
+/- Variazione Rimanenze													
Prodotti in Corso e Prodotti Finiti	0	0	0	0	0,0%	307.414	5,6%	92.905	0,6%	62.119	0,3%	71.758	0,3%
- Acquisti Prodotti Finiti	0	0	0	0	0,0%	1.682.314	30,5%	3.831.610	26,0%	4.930.721	25,7%	5.695.836	25,8%
+ Lavori in Economia	0	0	152.316	1.194.250	100,0%	146.450	2,7%	170.867	1,2%	172.575	0,9%	174.301	0,8%
= VALORE PRODUZIONE	0	0	152.316	1.194.250	100,0%	5.508.560	100,0%	14.751.816	100,0%	19.160.123	100,0%	22.108.205	100,0%
+/- Variazione Rimanenze													
Materie Prime e Imballaggi	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
Acquisti di Materie Prime	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
- Spese per Servizi	0	83.493	220.976	1.046.045	87,6%	2.726.385	49,5%	7.318.500	49,6%	9.574.304	50,0%	11.098.129	50,2%
- Lavorazioni Esterne	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
= VALORE AGGIUNTO	0	(83.493)	(68.660)	148.205	12,4%	2.782.175	50,5%	7.433.317	50,4%	9.585.819	50,0%	11.010.076	49,8%
- Costo del Lavoro	0	0	0	372.094	31,2%	473.646	8,6%	560.322	3,8%	565.925	3,0%	571.584	2,6%
- Acc.to Fondo T.F.R.	0	0	0	21.656	1,8%	27.567	0,5%	32.611	0,2%	32.937	0,2%	33.267	0,2%
	0	0	0	393.750	33,0%	501.213	9,1%	592.933	4,0%	598.862	3,1%	604.851	2,7%
= MARGINE OPERAT. LORDO (EBITDA)	0	(83.493)	(68.660)	(245.545)	(20,6%)	2.280.963	41,4%	6.840.383	46,4%	8.986.957	46,9%	10.405.225	47,1%
- Ammortamenti Materiali													
Economici Operativi	0	0	0	0	0,0%	85.941	1,6%	296.941	2,0%	597.941	3,1%	942.941	4,3%
- Ammortamenti Immateriali													
Economici Operativi	0	0	0	0	0,0%	457.323	8,3%	491.496	3,3%	559.344	2,9%	577.539	2,6%
- Accantonamenti ai F.di Operativi	0	0	0	0	0,0%	21.632	0,4%	41.102	0,3%	51.271	0,3%	58.458	0,3%
= REDDITO OPERATIVO (EBIT)	0	(83.493)	(68.660)	(245.545)	(20,6%)	1.716.067	31,2%	6.010.844	40,7%	7.778.400	40,6%	8.826.288	39,9%
- Oneri Finanziari	0	0	0	28.030	2,3%	47.849	0,9%	44.381	0,3%	39.910	0,2%	35.351	0,2%
+ Proventi Finanziari	0	0	13	4.254	0,4%	6.126	0,1%	21.167	0,1%	28.473	0,1%	28.660	0,1%
+/- Gestione non Operativa	0	52	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
= UTILE ORDINARIO LORDO	0	(83.441)	(68.647)	(269.321)	(22,6%)	1.674.345	30,4%	5.987.631	40,6%	7.766.963	40,5%	8.819.597	39,9%
+/- Gestione Straordinaria	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
- Imposte d'Esercizio	0	(20.024)	0	9.680	0,8%	501.859	9,1%	1.738.653	11,8%	2.247.214	11,7%	2.546.335	11,5%
(Interessi di Minoranza)	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
(Utile Netto di Gruppo)	0	(63.417)	(68.647)	(279.001)	(23,4%)	1.172.486	21,3%	4.248.978	28,8%	5.519.749	28,8%	6.273.263	28,4%
= RISULTATO D'ESERCIZIO	0	(63.417)	(68.647)	(279.001)	(23,4%)	1.172.486	21,3%	4.248.978	28,8%	5.519.749	28,8%	6.273.263	28,4%

The first two years from the date of the company's establishment, 2015 and 2016, reflect the historical economic condition of the company and represent the company's ability to generate income and revenues. The subsequent years, from 2017 to 2021, represent the

Plan period. Based on the outlined strategies present in the Business Plan, the forecast section provides an overview of the coming years. These forecasts should have been carefully evaluated by the bank in granting financing, as they represent an indicator of future financial sustainability and the company's ability to honour future financial commitments.

The analysis of the economic data of the Plan period showed how the company should have begun to generate revenue from sales and earnings from the year 2018. Revenues were estimated to grow from a value of about 6.737 Eur/'000 in 2018 to a value of about 27.558 Eur/'000 in 2021, achieving a positive CAGR (18-21) of around 60%. EBITDA was estimated to grow from a value of about 2.280 Eur/'000 in 2018 to a value of about 10.405 EUR/'000 in 2021, achieving a positive CAGR (18-21) of around 59%.

Below are presented the company's historical balance sheet for the years 2015-2016, and the forecasted balance sheet for the period 2017-2021 prepared by the Management:

(GRAPH 4)

RICLASSIFICAZIONE STATO PATRIMONIALE CRITERIO A "INDEBITAMENTO FINANZIARIO NETTO"												
Valori espressi in (Euro)	STORICI			PREVISIONALI								
	2014	31/12/15	31/12/16	2017	A.Vert.	2018	A.Vert.	2019	A.Vert.	2020	A.Vert.	2021	A.Vert.
Liquidita' Differita:	0	104.881	116.365	325.218	10,7%	1.059.956	51,6%	1.992.376	71,6%	2.449.545	46,2%	2.750.425	45,5%
Crediti netti verso Clienti	0	0	0	0	0,0%	1.059.956	51,6%	1.992.376	71,6%	2.449.545	46,2%	2.750.425	45,5%
Crediti Diversi Operativi	0	104.881	116.365	325.218	10,7%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
Ratei Attivi	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
Magazzino Netto e Risconti Attivi	0	0	0	0	0,0%	307.414	15,0%	400.319	14,4%	462.438	8,7%	534.196	8,8%
Passivita'di Funzionamento a Breve:	0	(32.595)	(10.842)	2.956	0,1%	(1.786.221)	(86,9%)	(2.620.158)	(94,1%)	(1.100.965)	(20,8%)	(953.492)	(15,8%)
Debiti Commerciali	0	(32.413)	(30.866)	2	0,0%	(752.860)	(36,6%)	(479.360)	(17,2%)	(509.360)	(9,6%)	(588.399)	(9,7%)
Debiti Diversi Operativi	0	0	0	(7.390)	(0,2%)	(560.232)	(27,3%)	(931.993)	(33,5%)	(107.868)	(2,0%)	(96.929)	(1,6%)
Fondo Imposte dirette	0	0	20.024	10.344	0,3%	(469.311)	(22,8%)	(1.205.355)	(43,3%)	(480.664)	(9,1%)	(265.475)	(4,4%)
Ratei e Risconti Passivi	0	(182)	0	0	0,0%	(3.818)	(0,2%)	(3.450)	(0,1%)	(3.073)	(0,1%)	(2.690)	(0,0%)
Altri Fondi Rischi e Spese	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
TOTALE CAPITALE CIRCOLANTE NETTO	0	72.286	105.524	328.174	10,8%	(418.851)	(20,4%)	(227.462)	(8,2%)	1.811.018	34,1%	2.331.128	38,6%
Immobilizzaz. Materiali nette	0	17.360	63.764	313.764	10,4%	427.823	20,8%	930.882	33,4%	1.732.941	32,7%	2.390.000	39,5%
Immobilizzazioni Immateriali	0	1.351.184	1.499.248	2.743.498	90,6%	2.432.625	118,4%	2.111.996	75,9%	1.825.227	34,4%	1.421.990	23,5%
Immobilizzazioni Finanziarie	0	50.000	50.000	50.000	1,7%	50.000	2,4%	50.000	1,8%	50.000	0,9%	50.000	0,8%
Passivita'di Funzionamento a M/L:	0	(512.000)	(387.000)	(408.656)	(13,5%)	(436.223)	(21,2%)	(81.834)	(2,9%)	(114.772)	(2,2%)	(148.039)	(2,4%)
Fondo T.F.R. (Quota a M/L)	0	0	0	(21.656)	(0,7%)	(49.223)	(2,4%)	(81.834)	(2,9%)	(114.772)	(2,2%)	(148.039)	(2,4%)
Altri Debiti a Medio-Lungo	0	(512.000)	(387.000)	(387.000)	(12,8%)	(387.000)	(18,8%)	0	0,0%	0	0,0%	0	0,0%
TOTALE ATTIVO FISSO	0	906.544	1.226.012	2.698.606	89,2%	2.474.225	120,4%	3.011.044	108,2%	3.493.396	65,9%	3.713.951	61,4%
TOTALE CAPITALE INVESTITO NETTO	0	978.830	1.331.536	3.026.780	100,0%	2.055.375	100,0%	2.783.581	100,0%	5.304.414	100,0%	6.045.079	100,0%
Passivita' Finanziarie a Breve:	0	0	755	755	0,0%	222.029	10,8%	226.477	8,1%	230.259	4,3%	0	0,0%
Debiti Finanziari a Breve	0	0	755	755	0,0%	222.029	10,8%	226.477	8,1%	230.259	4,3%	0	0,0%
Passivita' e Attività Finanziarie a M/L:	0	0	0	2.400.000	79,3%	2.069.729	100,7%	1.844.007	66,2%	1.613.748	30,4%	1.613.748	26,7%
Mutui e Altri Debiti Finanziari	0	0	0	2.400.000	79,3%	2.069.729	100,7%	1.844.007	66,2%	1.613.748	30,4%	1.613.748	26,7%
Mutui e Altri Crediti Finanziari	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
Liquidita' Immediata:	0	(468.931)	(48.332)	(474.087)	(15,7%)	(2.508.981)	(122,1%)	(5.808.478)	(208,7%)	(5.580.918)	(105,2%)	(5.883.256)	(97,3%)
Cassa e Banche	0	(468.931)	(48.332)	(474.087)	(15,7%)	(2.508.981)	(122,1%)	(5.808.478)	(208,7%)	(5.580.918)	(105,2%)	(5.883.256)	(97,3%)
Investimenti Mobiliari a Breve	0	0	0	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
INDEBITAMENTO FINANZIARIO NETTO	0	(468.931)	(47.577)	1.926.668	63,7%	(217.223)	(10,6%)	(3.737.994)	(134,3%)	(3.736.911)	(70,4%)	(4.269.508)	(70,6%)
Capitale e Riserve	0	1.511.178	1.447.760	1.379.113	45,6%	1.100.112	53,5%	2.272.598	81,6%	3.521.576	66,4%	4.041.325	66,9%
Utile Netto d' Esercizio	0	(63.417)	(68.647)	(279.001)	(9,2%)	1.172.486	57,0%	4.248.978	152,6%	5.519.749	104,1%	6.273.263	103,8%
(di cui Dividendi deliberati)	0	0	0	0	0,0%	0	0,0%	3.000.000	107,8%	5.000.000	94,3%	6.000.000	99,3%
TOTALE PATRIMONIO NETTO	0	1.447.761	1.379.113	1.100.112	36,3%	2.272.598	110,6%	6.521.576	234,3%	9.041.325	170,4%	10.314.587	170,6%

Upon examining the historical and forecasted balance sheet of the company for the prospective years 2017-2021, a financial debt of 2.400 Eur/'000 emerges. This amount

is tied to the financing sought by Alpha company, and it is the root of the conflict with Epsilon Bank.

Below are presented the company's historical cash flow statement for the years 2015-2016, and the forecasted cash flow statement for the period 2017-2021 prepared by the Management:

(GRAPH 5)

RENDICONTO FINANZIARIO (Euro)							
Fonti = Valori Positivi	STORICI		PREVISIONALI				
Impieghi = Valori Negativi	31/12/15	31/12/16	2017	2018	2019	2020	2021
SALDO FINANZIARIO INIZIALE A BREVE (a)	0	468.931	47.577	473.332	2.508.226	5.807.723	5.580.918
(+) Ricavi Monetari Operativi	0	0	0	6.737.010	18.319.655	23.856.150	27.557.982
(-) Costi Monetari Operativi	0	(68.660)	(245.545)	(4.456.047)	(11.479.271)	(14.869.193)	(17.152.757)
= M.O.L. (EBITDA)	0	(68.660)	(245.545)	2.280.963	6.840.383	8.986.957	10.405.225
(+) Saldo Gestione Finanziaria	0	13	(23.776)	(41.722)	(23.213)	(11.437)	(6.690)
(-) Imposte d'Esercizio	0	0	(9.680)	(501.859)	(1.738.653)	(2.247.214)	(2.546.335)
(+) Saldo Altre Gestioni Extra-Caratteristiche	0	0	0	0	0	0	0
(+) Accantonamento T.f.r.	0	0	21.656	27.567	32.611	32.937	33.267
(-) Utilizzo Fondi di Accantonamento	0	0	0	0	0	0	0
= CASH FLOW POTENZIALE (b)	0	(68.647)	(257.345)	1.764.948	5.111.128	6.761.243	7.885.467
Crediti Commerciali	0	0	(0)	(1.081.588)	(973.522)	(508.440)	(359.338)
Magazzino Netto	0	0	0	(307.414)	(92.905)	(62.119)	(71.758)
Altri Crediti Operativi	0	(11.484)	(208.853)	325.218	0	0	0
= Variazione Attivo Circolante (c)	0	(11.484)	(208.853)	(1.063.784)	(1.066.427)	(570.558)	(431.095)
Debiti Commerciali	0	(1.548)	(30.867)	752.861	(273.500)	30.000	79.039
Altri Debiti Operativi	0	(20.206)	17.070	1.036.315	1.107.437	(1.549.193)	(226.512)
= Variazione Passivo Circolante (d)	0	(21.754)	(13.797)	1.789.176	833.937	(1.519.192)	(147.473)
= VARIAZIONE C.C.N. OPERATIVO (e)= (c) + (d)	0	(33.238)	(222.650)	725.393	(232.491)	(2.089.751)	(578.568)
Immobilizzazioni Materiali e Immateriali	0	(194.468)	(1.494.250)	(346.450)	(970.867)	(1.672.575)	(1.774.301)
Immobilizzazioni Finanziarie	0	0	0	0	0	0	0
Disinvestimenti	0	0	0	0	0	0	0
= CASH FLOW ATTIVITA' INVESTIMENTO (f)	0	(194.468)	(1.494.250)	(346.450)	(970.867)	(1.672.575)	(1.774.301)
= FLUSSI DISPONIBILI PER AZIENDA (g) = (b)+(e)+(f)	0	(296.353)	(1.974.245)	2.143.891	3.907.771	2.998.917	5.532.597
Rimborso Finanziamenti e altri Debiti M/L (h)	0	(125.000)	0	(2.508.997)	(608.274)	(225.722)	(230.259)
= FLUSSI DISPONIBILI PER AZIONISTA (i) = (g) + (h)	0	(421.353)	(1.974.245)	(365.106)	3.299.497	2.773.195	5.302.338
Erogazione dividendi (l)	0	0	(0)	0	0	(3.000.000)	(5.000.000)
= FABBISOGNO FINANZIARIO (m) = (i) + (l)	0	(421.353)	(1.974.245)	(365.106)	3.299.497	(226.805)	302.338
Accensione Mutui e Finanziamenti M/L (n)	0	0	2.400.000	2.400.000	0	0	0
Variazione Capitale e Riserve (o)	0	(1)	0	0	(0)	0	0
= CASH FL. ATTIVITA' FINANZ. (p)=(h)+(l)+(n)+(o)	0	(125.001)	2.400.000	(108.997)	(608.274)	(3.225.722)	(5.230.259)
= SALDO FINANZIARIO NETTO ESERC. (q)=(g)+(p)	0	(421.353)	425.755	2.034.894	3.299.497	(226.805)	302.338
SALDO FINANZIARIO FINALE A BREVE (a) + (q)	0	47.578	473.332	2.508.226	5.807.723	5.580.918	5.883.256

The analysis of the company's forecasted cash flow clearly shows that, to sustain the operational and financial activities during the first two years of the Plan, the business needs external funding amounting to 2.400 Eur/'000.

3.3.2 Alpha's Cash Budget

Below, the cash budget for the Plan years 2017, 2018, and 2019 is illustrated, providing details on the use of the 2.400 Eur/'000 requested as financing in the Business Plan.

- Forecast cash budget – 2017 *(GRAPH 6)*:

BUDGET DI CASSA PREVISIONALE MENSILE
ESERCIZIO 2017 (Euro)

ENTRATE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
SALDO INIZIALE	48.332	0	0	0	0	0	0	0	0	0	0	0	48.332
Incassi da Clienti	0	0	0	0	0	0	0	0	0	0	0	0	0
Crediti Diversi - Contributi	2	2	2	2	2	2	0	0	0	0	0	0	12
Proventi Finanziari	0	0	28	0	0	741	0	0	1.634	0	0	745	3.148
Acconti da Clienti	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Disinvest. Beni Strumentali	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitale Proprio	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz. Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Variaz.Crediti non Finanz. M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Accens. Finanz. Passivi a M.L.	0	0	0	0	0	2.400.000	0	0	0	0	0	0	2.400.000
Accens. Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquidaz. Investim. a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE ENTRATE	2	2	30	2	2	2.400.743	0	0	1.634	0	0	745	2.451.492

USCITE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
Fornitori Operativi	0	0	0	0	0	0	0	0	10.289	10.289	10.289	0	30.867
Costo Personale	0	0	0	0	0	0	65.625	65.625	65.625	65.625	65.625	65.625	393.750
Lavorazioni Esterne	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Tecnici/Produttivi	0	5	5	5	5	5	5	5	5	5	5	5	55
Trasporti Clienti	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi di R. & S.	0	0	0	0	0	0	89.167	89.167	89.167	89.167	89.167	89.167	535.000
Royalties Tecniche	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Amministrativi	8.000	8.000	8.000	8.000	8.000	8.000	25.000	25.000	25.000	25.000	26.000	26.985	200.985
Compenso Amministratore	0	0	0	0	0	0	16.667	16.667	16.667	16.667	16.667	16.667	100.000
Assicurazioni	0	0	0	0	0	0	0	0	0	0	0	0	0
Locazioni, Affitti e Noli	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Commerciali	0	0	0	0	0	0	18.333	18.333	18.333	18.333	18.333	18.333	110.000
Provvigioni	0	0	0	0	0	0	0	0	0	0	0	0	0
Royalties Commerciali	0	0	0	0	0	0	0	0	0	0	0	0	0
Pubblicita' e Sponsorizzazioni	0	0	0	0	0	0	16.667	16.667	16.667	16.667	16.667	16.667	100.000
Mostre, Fiere e Convegni	0	0	0	0	0	0	0	0	0	0	0	0	0
Iva su Spese Generali	1.188	1.188	1.188	1.188	1.188	1.188	17.523	17.523	17.523	17.523	17.673	17.821	112.718
Acconto Forniture Merci	0	0	0	0	0	0	0	0	0	0	0	0	0
Acconto Forniture C/Cap.	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Attivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Leasing	0	0	0	0	0	0	0	0	0	0	0	0	0
Oneri Finanziari	0	0	8	0	0	4.008	0	0	8	0	0	24.008	28.030
Imposte Dirette	0	0	0	0	0	0	0	0	0	0	0	0	0
I.v.a. Conto Erario	0	0	0	0	0	0	0	0	0	0	0	0	0
Investimenti Strumentali	0	0	0	0	0	0	61.000	61.000	61.000	61.000	61.000	61.000	366.000
Erogazioni altri F.di >12 mesi	0	0	0	0	0	0	0	0	0	0	0	0	0
Erogazione Fondo T.f.r.	0	0	0	0	0	0	0	0	0	0	0	0	0
Dividendi	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz.Passivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Variaz. Debiti non Fin. a M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Erogazione Finanz.Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Investimenti a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Ratei passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE USCITE	9.188	9.193	9.201	9.193	9.193	13.201	309.987	309.987	320.283	320.276	321.426	336.277	1.977.406
SALDO LIQUIDITA' MESE	(9.186)	(9.191)	(9.171)	(9.191)	(9.191)	2.387.542	(309.987)	(309.987)	(318.649)	(320.276)	(321.426)	(335.532)	
SALDO BANCHE C/C	39.147	29.955	20.784	11.592	2.401	2.389.943	2.079.956	1.769.969	1.451.320	1.131.045	809.619	474.087	
(di cui fuori fido)	0	0	0	0	0	0	0	0	0	0	0	0	

In the Business Plan, the company planned to obtain funding from Bank Epsilon worth 2.400 Eur/'000 in June 2017. The use of this funding for operational management

would have begun the following month, in July. According to a 10-year preliminary credit agreement with an 18-month grace period agreed with the bank, principal repayment was expected to trigger in November 2018, but with the obligation to pay interest rates starting from the first month, all with half-yearly instalments.

- Forecast cash budget – 2018 *(GRAPH 7)*:

BUDGET DI CASSA PREVISIONALE MENSILE

ESERCIZIO 2018 (Euro)

ENTRATE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
SALDO INIZIALE	474.087												474.087
Incassi da Clienti	0	0	0	270.397	450.662	901.323	901.323	901.323	901.323	901.323	901.323	901.323	7.030.322
Crediti Diversi - Contributi	0	0	0	0	0	0	0	0	0	0	0	0	0
Proventi Finanziari	0	0	210	0	0	539	0	0	1.586	0	0	2.198	4.534
Acconti da Clienti	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Disinvest. Beni Strumentali	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitale Proprio	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz. Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Variaz.Crediti non Finanz. M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Accens. Finanz. Passivi a M.L.	0	0	0	0	0	0	0	0	0	0	0	0	2.400.000
Accens. Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquidaz. Investim. a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE ENTRATE	0	0	210	270.397	450.662	901.863	901.323	901.323	902.909	901.323	901.323	903.521	9.434.856

USCITE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
Fornitori Operativi	0	0	0	0	61.353	122.705	185.917	185.917	185.917	185.917	185.917	185.917	1.299.562
Costo Personale	36.343	36.434	36.434	36.434	36.434	36.434	36.434	36.434	36.434	36.434	36.434	72.869	473.554
Lavorazioni Esterne	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Tecnici/Produttivi	5	0	0	0	0	7.873	7.873	7.873	7.873	7.873	7.873	7.868	55.112
Trasporti Clienti	0	0	0	22.915	22.915	22.915	22.915	22.915	22.915	22.915	22.915	22.915	206.235
Altri Costi di R. & S.	28.333	28.333	28.333	28.333	28.333	28.333	28.333	28.333	28.333	28.333	28.333	28.333	340.000
Royalties Tecniche	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Amministrativi	8.333	8.333	8.333	8.333	8.333	8.333	8.333	8.333	8.333	8.333	8.333	50.980	142.647
Compenso Amministratore	15.140	15.140	15.140	15.140	15.140	15.140	15.140	15.140	15.140	15.140	15.140	15.140	181.682
Assicurazioni	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	50.000
Locazioni, Affitti e Noli	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Commerciali	10.000	10.000	10.000	10.000	10.000	10.000	21.667	21.667	21.667	21.667	21.667	21.667	190.000
Provvigioni	0	0	0	0	0	0	115.492	115.492	115.492	115.492	115.492	115.492	692.950
Royalties Commerciali	0	0	0	0	0	0	0	0	0	0	0	0	0
Pubblicita' e Sponsorizzazioni	10.000	10.000	10.000	10.000	10.000	10.000	40.000	40.000	40.000	40.000	40.000	40.000	300.000
Mostre, Fiere e Convegni	0	0	0	0	0	0	0	0	0	0	0	0	0
Iva su Spese Generali	11.021	11.021	11.021	14.458	14.458	15.639	39.213	39.213	39.213	39.213	39.213	45.609	319.289
Acconto Forniture Merci	0	0	0	0	0	0	0	0	0	0	0	0	0
Acconto Forniture C/Cap.	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Attivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Leasing	0	0	0	0	0	0	0	0	0	0	0	0	0
Oneri Finanziari	0	0	8	0	0	10.008	0	0	8	0	0	10.008	20.030
Imposte Dirette	0	0	0	0	0	13.610	0	0	0	0	5.895	0	19.505
I.v.a. Conto Erario	0	0	0	0	0	0	0	0	51.134	93.755	93.755	93.755	332.399
Investimenti Strumentali	0	0	0	0	0	0	40.667	40.667	40.667	40.667	40.667	40.667	244.000
Erogazioni altri F.di >12 mesi	0	0	0	0	0	0	0	0	0	0	0	0	0
Erogazione Fondo T.f.r.	0	0	0	0	0	0	0	0	0	0	0	0	0
Dividendi	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz.Passivi M.L.	0	0	0	0	0	0	0	0	0	0	132.997	0	2.532.997
Variaz. Debiti non Fin. a M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Erogazione Finanz.Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Investimenti a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Ratei passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE USCITE	123.343	123.428	123.436	149.781	211.133	305.158	566.151	566.151	617.292	659.906	798.798	755.386	7.399.961
SALDO LIQUIDITA' MESE	(123.343)	(123.428)	(123.226)	120.616	239.528	596.705	335.173	335.173	285.617	241.418	102.526	148.136	
SALDO BANCHE C/C	350.744	227.316	104.090	224.706	464.235	1.060.940	1.396.112	1.731.285	2.016.902	2.258.320	2.360.845	2.508.981	
(di cui fuori fido)	0	0	0	0	0	0	0	0	0	0	0	0	

In 2018, the company continued to commit to paying interest rates to the bank (on a half-yearly basis). As previously mentioned, Alpha made the first principal repayment, amounting to about 133 Eur/'000, in November 2018.

- Forecast cash budget – 2019 *(GRAPH 8)*:

BUDGET DI CASSA PREVISIONALE MENSILE
ESERCIZIO 2019 (Euro)

ENTRATE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
SALDO INIZIALE	2.508.981												2.508.981
Incassi da Clienti	1.144.704	1.306.958	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	1.712.592	19.577.579
Crediti Diversi - Contributi	0	0	0	0	0	0	0	0	0	0	0	0	0
Proventi Finanziari	0	0	2.692	0	0	3.487	0	0	4.313	0	0	5.172	15.664
Acconti da Clienti	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Disinvest. Beni Strumentali	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitale Proprio	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz. Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Variaz.Crediti non Finanz. M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Accens. Finanz. Passivi a M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Accens. Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquidaz. Investim. a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE ENTRATE	1.144.704	1.306.958	1.715.284	1.712.592	1.712.592	1.716.078	1.712.592	1.712.592	1.716.905	1.712.592	1.712.592	1.717.764	19.593.242

USCITE	Gennaio	Febbraio	Marzo	Aprile	Maggio	Giugno	Luglio	Agosto	Settembre	Ottobre	Novembre	Dicembre	TOTALE
Fornitori Operativi	299.910	496.675	568.315	508.894	379.977	379.977	379.977	379.977	379.977	379.977	379.977	414.428	4.948.065
Costo Personale	44.121	43.102	43.102	43.102	43.102	43.102	43.102	43.102	43.102	43.102	43.102	86.203	561.341
Lavorazioni Esterne	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Tecnici/Produttivi	9.185	9.185	9.185	9.185	9.185	9.185	9.185	9.185	9.185	9.185	9.185	9.185	110.224
Trasporti Clienti	46.734	46.734	46.734	46.734	46.734	46.734	46.734	46.734	46.734	46.734	46.734	46.734	560.806
Altri Costi di R. & S.	16.833	16.833	16.833	16.833	16.833	16.833	16.833	16.833	16.833	16.833	16.833	16.833	202.000
Royalties Tecniche	0	0	0	0	0	0	0	0	0	0	0	0	0
Altri Costi Amministrativi	62.500	62.500	62.500	62.500	62.500	62.500	62.500	62.500	62.500	62.500	62.500	62.500	750.000
Compenso Amministratore	57.320	59.595	59.595	59.595	59.595	59.595	59.595	59.595	59.595	59.595	59.595	59.595	712.863
Assicurazioni	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	4.167	50.000
Locazioni, Affitti e Noli	23.333	23.333	23.333	23.333	23.333	23.333	23.333	23.333	23.333	23.333	23.333	23.333	280.000
Altri Costi Commerciali	41.667	41.667	41.667	41.667	41.667	41.667	41.667	41.667	41.667	41.667	41.667	41.667	500.000
Provvigioni	115.492	115.492	115.492	235.538	235.538	235.538	235.538	235.538	235.538	235.538	235.538	235.538	2.466.321
Royalties Commerciali	0	0	0	0	0	0	0	0	0	0	0	0	0
Pubblicita' e Sponsorizzazioni	41.667	83.333	83.333	83.333	83.333	83.333	83.333	83.333	83.333	83.333	83.333	83.333	958.334
Mostre, Fiere e Convegni	0	0	0	0	0	0	0	0	0	0	0	0	0
Iva su Spese Generali	51.548	57.798	57.798	69.205	69.205	69.205	69.205	69.205	69.205	69.205	69.205	69.205	789.988
Acconto Forniture Merci	0	0	0	0	0	0	0	0	0	0	0	0	0
Acconto Forniture C/Cap.	0	0	0	0	0	0	0	0	0	0	0	0	0
Rettifiche per Risconti Attivi	0	0	0	0	0	0	0	0	0	0	0	0	0
Leasing	0	0	0	0	0	0	0	0	0	0	0	0	0
Oneri Finanziari	0	0	8	0	0	8	0	0	8	0	0	8	30
Imposte Dirette	0	0	0	0	0	692.443	0	0	0	0	304.662	0	997.106
I.v.a. Conto Erario	58.907	65.343	65.343	65.343	65.343	65.343	65.343	65.343	65.343	65.343	65.343	65.343	777.674
Investimenti Strumentali	81.333	81.333	81.333	81.333	81.333	81.333	81.333	81.333	81.333	81.333	81.333	81.333	976.000
Erogazioni altri F.di >12 mesi	0	0	0	0	0	0	0	0	0	0	0	0	0
Erogazione Fondo T.f.r.	0	0	0	0	0	0	0	0	0	0	0	0	0
Dividendi	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Finanz.Passivi M.L.	0	0	0	0	132.997	0	0	0	0	0	132.997	0	265.994
Variaz. Debiti non Fin. a M.L.	0	0	0	0	0	0	0	77.400	77.400	77.400	77.400	77.400	387.000
Erogazione Finanz.Attivi M.L.	0	0	0	0	0	0	0	0	0	0	0	0	0
Investimenti a Breve	0	0	0	0	0	0	0	0	0	0	0	0	0
Rimborso Fin. c/Anticipi e Vari	0	0	0	0	0	0	0	0	0	0	0	0	0
Ratei passivi	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALE USCITE	954.718	1.207.089	1.278.736	1.350.763	1.354.843	1.914.297	1.221.846	1.299.246	1.299.253	1.299.246	1.736.905	1.376.806	16.293.746
SALDO LIQUIDITA' MESE	189.986	99.868	436.547	361.829	357.749	(198.218)	490.746	413.346	417.652	413.346	(24.313)	340.958	
SALDO BANCHE C/C	2.698.967	2.798.836	3.235.383	3.597.212	3.954.961	3.756.743	4.247.489	4.660.835	5.078.487	5.491.833	5.467.520	5.808.478	
(di cui fuori fido)	0	0	0	0	0	0	0	0	0	0	0	0	

In 2019, the company continued to make efforts to pay interest rates to the bank and to repay the principal, with payments scheduled on a semi-annual basis.

3.3.3 Alpha's Rating

The credit rating assigned to Alpha company by MCC is detailed below. This rating was determined using historical financial data at the time the 80% guarantee – covering the 2.400 Eur/'000 financing required from Epsilon Bank – was granted. As repeatedly emphasized throughout the process, the bank is mandated to assess the creditworthiness of the applicant when granting the loan (under articles 120-undicies and 124-bis of the TUB). This assessment aims to safeguard both the financial institutions and the enterprises involved in the process.

(GRAPH 9)

CALCOLO DEL RATING M.C.C.										
Livello anno 31/12/15	C						B		A	
	1	2	3	4	5	6	7	8	>= 9	
Livello anno 31/12/16	C						B		A	
	1	2	3	4	5	6	7	8	>= 9	
FASCIA ASSEGNATA:	1									
INDUSTRIA, EDILIZIA, ALBERGHI PROPRIETARI DELL'IMMOBILE, PESCA E PISCICOLTURA										
Imprese in contabilità ordinaria							31/12/15		31/12/16	
							Valore	Scoring	Valore	Scoring
A = (Mezzi propri+Pass. Cons.)/Immobilizzazioni							138,2%	3	109,5%	3
B = Mezzi propri/Totale Passivo							72,7%	3	77,6%	3
C = Margine operativo lordo/Oneri finanziari lordi							n.d.	3	n.d.	3
D = Margine operativo lordo/Fatturato										
- ciclo produtt. ultrannuale (si=1;no=0):	0						Punteggio	9		9
							Livello Mcc	A		A

The credit rating of Alpha was calculated on the basis of four indicators: (i) Equity capital plus consolidated liabilities, all divided by fixed assets, (ii) Equity capital over total liabilities, (iii) Gross operating margin on gross financial expenses, e (iv) Gross operating margin on turnover. For each indicator a score from zero to three has been given. A value close to the maximum represents a lower credit risk. Conversely, a low rating can be an obstacle to the granting of credit [205]. In this case, the MCC awarded

[205] "Basilea 3: Le Regole del Mondo Finanziario", in FareNumeri, available at [https://farenumeri.it/basilea-3/], (last visited 28/08/2023).

the highest score (=3) for each indicator, thus assessing the company Alpha as creditworthy, and therefore worthy of guarantee.

Given the fact each bank follows different procedures for assessing creditworthiness, in this context, this evaluation will be used as a representative indicator of the assessment carried out by Epsilon Bank to determine the granting of credit.

3.4 Understanding the Alpha Case: An Interpretation within the Italian Legal Framework

Considering the information provided, we should situate the suggested case within the context of the Italian legal system. This complex situation effectively illustrates the delicate boundary discussed and identified in this paper between lawful and unlawful banking practices in the realm of credit agreements.

Indeed, upon examining the case in question, it would seem that the use of Epsilon Bank's right to obtain reimbursement of a loan is correct from a formal standpoint. There is a resolution, a financing agreement accepted by Alpha S.r.l., a missed instalment payment, and a subsequent revocation of the credit provided. However, the assessment of Epsilon Bank's actions might be viewed differently if the entire pre-contractual negotiation phase were properly taken into account. This phase was characterized by verbal agreements that culminated in the complete acceptance of the final version of the business plan (BP) and the related financial plan.

In light of the dynamics of the case, and based on what was discussed in the previous chapters, I believe that several civil liabilities may be attributed to Bank Epsilon:

- Pre-contractual liability:

Under the premise that proof must be secured for agreements reached between the parties during negotiations, and that these agreements must be endorsed by a qualified executive

who represents the credit institution, these arrangements, even if made verbally, carry the same legal weight as a written contract [206].

Given this context, the failure to uphold preliminary agreements with Alpha company, manifested in the non-disbursement of the second loan amounting to 1.600 Eur/'000, might lead to the bank being held liable for a breach of good faith in the negotiation and formation of the contract, as per Article 1337 of the Civil Code. This failure has unmistakably caused the company, relying on the successful conclusion of the contract, to invest and lose both the initial funding provided by the bank (800 Eur/'000) and the entire equity capital (1.500 Eur/'000) injected by the shareholders. The consequence has been the cessation of operations, resulting in substantial damage.

- Contractual liability:

The bank might also be held accountable for failing to adhere to the much-mentioned principles of fairness and good faith in the execution of the contract, which are outlined in Articles 1175 and 1375 of the Civil Code. Indeed, in response to the company Alpha's failure to fulfil the first instalment payment, the bank proceeded to terminate the contract and demand the repayment of the utilized funds, in accordance with Article 1845 of the Civil Code. However, a deeper examination of the facts reveals that bank's activities, instead, caused, in primis, this failure.

By neglecting the negotiation phase with the other party and overlooking normal commercial relationships, the bank failed to disburse the second instalment of financing. This funding would have allowed the company, through investments and adherence to the strategic guidelines outlined in the business plan, to fulfil its obligations within the agreed-upon time frame. Building on what has been described, and referencing the second chapter, good faith encompasses more than just the obligations explicitly mandated by law or the contract [207]. It also extends to upholding the unwritten expectations of fairness and propriety. Should the withdrawal exhibit unexpected, arbitrary characteristics, or

[206] G. Gentile, "Accordi Verbali: La Validità Legale è La Stessa degli Accordi Scritti?", in deQuo, available at [https://www.dequo.it/articoli/accordi-verbali-validita-legale#:~:text=Da%20ci%C3%B2%20si%20evince%20che,essere%20coinvolti%20in%20una%20controversia], (last visited 28/08/2023).
[207] F. Galgano, *op.cit.*, pp.1-16

deviate from what those familiar with the bank's customary practices and regular business conduct would reasonably anticipate concerning the ongoing credit provision during the agreed time frame, then such withdrawal could be seen as illegitimate, even if executed on ostensibly justifiable grounds [208].

- Extra-contractual liability:

The behaviour of the bank as described may also entail an extra-contractual liability on the part of the bank, in accordance with Article 2043 of the Civil Code. Indeed, the bank's alleged improper behaviour has caused harm not only to the company but also to: (i) the shareholders of Alpha S.r.l., who incurred financial losses amounting to 1.500 Eur/'000 due to the bank's actions, (ii) industrial partners like ENI and ENEL, who were involved and had invested faith and time in the project, engaging in commercial agreements with Alpha, (iii) suppliers and creditors who had business relations with Alpha and may have suffered losses due to the cessation of the company's activities, (iv) employees who faced economic losses as a result of the company's shutdown and the consequent unemployment, and (v) research and development entities such as CNR-IMM, who experienced damage valued at 20 Eur/'000 due to the termination of activities.

Additionally, some academic scholars, having been informed of the litigation and asked to comment on the events, identified a potential criminal act of fraud by the bank against the customer, as per Article 640 of the Penal Code. This alleged wrongdoing centres around the bank's unjust profit (including the interest earned from the financing charge of 800 Eur/'000, coupled with the failure to assume associated project risks) at Alpha company's expense. However, in my opinion, in this particular case, it would be difficult to ascertain whether the bank acted in bad faith and used deceptive means, as defined by Article 640 of the Penal Code, to deliberately mislead the other party.

Moreover, the dynamics of the case lead us to examine another type of responsibility that converges in the abusive granting of credit. Indeed, it might be the case that the bank superficially assessed Alpha company's creditworthiness, only to later recognize the complexities that the project entailed. For instance, the bank, possibly influenced by the

[208] CASSAZIONE – Caratteristiche del Recesso Abusivo della Banca in una Apertura di Credito Bancario", *op.cit.*

substantial guarantee from MCC, might have extended credit to the company without properly evaluating the feasibility of the business plan. However, I personally tend to dismiss this possibility. In this case, we are relying on the assumption that Epsilon's banking procedures in credit granting are efficient, by using the rating calculated by the MCC for the provision of the guarantee as a proxy for the correct credit extension process by the bank. Furthermore, Alpha's financial distress does not appear to be caused by the standalone financing itself (nor was the company already in a state of distress), but rather by the actions of Bank Epsilon that followed the granting of the credit.

CONCLUSION

Throughout this study, a range of aspects intertwining and contributing to the understanding of the blurred boundary between lawful and abusive practices by banks in financing contracts have been, in-depth, analysed and discussed. In this context, through the exploration of diverse stances, a critical analysis of existing regulations, as well as an empirical investigation, an attempt to provide a clear and nuanced view of the issue under examination have been made.

The complexity of the subject matter required an accurate, methodological, approach and a critical evaluation of the various facets involved as well. Allowing for a sequentially more accurate, and grounded, framework, each section contributed a piece to the understanding of the phenomenon.

The analysis, in first instance, began with an investigation into the history, and evolution, of the banking system. It was outlined how the latter has grown and transformed over time, culminating with the inception of the fractional reserve system at the foundation of today's banking system. Underscoring the significant role they have within an economy, primarily through the financing of enterprises, focus subsequently shifted to the significance of banks as drivers of economic development and company expansion.

The realm of regulation was next explored. It encompassed the laws and regulations governing the granting of credit both at the European and Italian legal context. The analysis brought, hence, question to the aspect of credit-granting, which is still largely neglected within the Italian legal system. The legal issue has jurisprudential creation, and it is traced back to a responsibility arising from 'social contact,' a notion that lacks real normative support.

Insight was further provided into the specific Italian laws that govern the revocation of a credit contract, which is an area that owns challenges and complexities. This legal issue is regulated by Article 1845 of the Civil Code. However, the 'unless otherwise agreed' clause at the beginning of the article overrides this provision and opens the door to the concept of 'contractual autonomy,' as governed by Article 1322 of the Civil Code. Within this described context, the principles of fairness and good faith come into play, pursuant

to Articles 1175 and 1375 of the Civil Code. Highly prominent in our legal system is the notion of good faith, with its interpretation left to the judiciary on a case-by-case basis.

As a final step, through a specific case study, the previously discussed theoretical arguments were put into practice. The study, to be specific, was an opportunity to perform a, detailed, examination about a legal dispute between a bank and a business, stemming from ambiguous behaviours on the part of the bank. The scenario which was illustrated shed light on the difficulties and intricated dynamics that are actual of the contemporary banking world. It explained how, even when acting with just cause, a bank might commit an unlawful act by committing an abuse of law within the scope of the bank-business relationship.

As ultimate analysis, after delving into the regulations governing both the granting and revocation of credit, it is somewhat evident that, in some cases, banks have a considerable latitude in their operations. Though likely aiding in adaptation to market dynamics and individual needs, this, unconstrained, behaviour raises significant questions about balance and fairness within the bank-business relationship, The study conducted underscores flexibility to interpretation to current legislation, therefore, at times, leaving room for potential excessive discretion, as well as channelling behaviours of involved parties. There may arise, in this context, a necessity for more stringent regulations that can ensure greater transparency, equity, and predictability in bank-business interactions as well. Still, the relevance of the concept of contractual autonomy, existent in our legal system, stands as a fundamental consideration reflecting the complexity of striking the right balance in this intricated field.

Potentially contributing to the academic literature, drawn conclusions can provide new sights for banking conducts as well. Future, further, debate on the matter will be significant in order to ensure dynamics to reflect the multifaceted and lively nature of modern banking and finance.

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