

17TH NATIONAL CONFERENCE

ITALIAN ASSOCIATION
OF COMMERCIAL LAW'S SCHOLARS
HORIZONS OF COMMERCIAL LAW

***“COMMERCIAL LAW FROM A
EUROPEAN PERSPECTIVE:
BETWEEN OVERREGULATION AND DEREGULATION,
MANDATORY RULES AND PRIVATE ORDERING,
HARMONIZATION AND FLEXIBILITY”***

Rome, 27-28 February 2026

LUCA ORCIANI

ASSEGNISTA DI RICERCA NELL'UNIVERSITÀ DI BOLOGNA

**REFLECTIONS ON THE DISCUSSION RIGHT
AT SHAREHOLDERS' MEETINGS
IN JOINT-STOCK COMPANIES AND COOPERATIVES:
NEW BALANCES BETWEEN
MANDATORY AND DEFAULT RULES?**

Abstract

The paper examines whether the shareholder's right to take part in the discussion phase of general meetings may be restricted or rather made conditional upon a minimum shareholding threshold through the bylaws of joint-stock companies. The issue has received remarkably little scholarly attention from this standpoint. The analysis unfolds in three stages. First, it reconstructs the nearly thirty-year legislative evolution that has progressively undermined the traditionally mandatory character of the collegial method, from postal and electronic voting to the recognition of voting agreements, culminating in the exclusive appointed representative under the 2024 Capital Markets Act. Second, it demonstrates that no equivalent phenomenon has occurred in cooperative companies, where the one-member-one-vote principle makes the discussion right structurally unavoidable, excluding any unitary solution across corporate types. The central and most original claim is advanced in the third stage. The author argues that a general principle has emerged, drawn from the cumulative

legislative trajectory, whereby the discussion right can no longer be classified as mandatory even beyond the instances of departure expressly contemplated by law. On this basis, the bylaws may lawfully configure discussion as a threshold-based right. This rests on three interconnected propositions: (i) the said general principle; (ii) an extensive construction of the share-ownership ceilings under Article 2351, paragraph 3, of the Italian Civil Code, encompassing minimum thresholds and all membership rights amenable to graduation; and (iii) the sufficiency of a qualified-majority resolution, without the consent of sub-threshold shareholders, departing from Milan Notarial Council Opinions.

The article further addresses *ad hoc* limitations, shareholders' meeting rules of procedure, and the infringement proceedings recently initiated by the European Commission against Italy. Ultimately, the inquiry seeks to demonstrate that private ordering already has the tools to reshape the discussion right, and need not await a legislative intervention that, if and when it comes, may well take the direction charted here.