

**A sustainable approach to Insolvency Law:  
Insights from EU Law and the Italian Model of  
WBOs**

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## A Social Approach to Insolvency

### Green Paper of 2001 on Corporate Social Responsibility

-A Socially responsible restructuring: balance and take into consideration the interests and concerns of all those who are affected by changes and decisions; participation and involvement through open information and consultation (rec. 36)

### Restructuring Directive of 2019

- Preventive Restructuring frameworks:** business continuation, reduction of job losses, preservation of know how and competences;
- Easy debt discharge of **viable enterprises** that are in financial difficulties
- Out of court arrangements
- Social Dialogue** and involvement of workers

## Employees and Insolvency

Employees are both privileged creditors and stakeholders of the insolvent enterprise:

- As **creditors**, they find satisfaction in every insolvency proceeding (restructuring or liquidation) that can guarantee the **payment of their wages**;
- As **stakeholders**, their interests only come **secondary** to one of the creditors, but their relevance changes according to the type of proceeding adopted and can find more satisfaction through instruments that guarantee their involvement in the governance of insolvency.

## Employees in EU Insolvency Law (I)

Employees' involvement in insolvency proceedings takes the form of the rights of information and consultation:

-Previous information and consultation of employees or their representatives on transfer's reasons and its legal and economic effects [Art. 7 Directive 2001/23/CE]

-Timely information and consultation are prerequisites for a successful restructuring [Recital 9 Directive 2002/14/CE]

## Employees in EU Insolvency Law (II)

The Restructuring Directive positively influences the role of employees:

- Right of information and consultations [Art. 13]
- Possibility for the MS to include workers among the “affected parties” and strengthen their influence in the proceedings:
- Right to vote for the approval of the restructuring plan [art. 9]
- Right to approve the restructuring measures that lead to a change in the work organizations or contractual relations [art. 13.2]

## Employees in Italian Insolvency Law

- Bankruptcy Proceeding (*Liquidazione Giudiziale*):
- Suspension of employment contracts under the opening of a bankruptcy proceeding (*Liquidazione giudiziale*) (art. 189 CCII)
- Lease of the business to a third party that can guarantee the safeguard of employment levels (art. 212 CCII)
- Restructuring Proceeding (*Concordato Preventivo*):
- The plan should allow to «safeguard creditors interest and preserve, as possible, employment levels» (art. 84 CCII)
- Workers can vote for the approval of the restructuring plan if with 30 days the plan fails to satisfy their claims as secured creditors (art. 109 CCII).
- Power of the Court to confirm the appealed decision if the interests of creditors and workers prevail over the one of the claimant (art. 53.5 bis CCII).

## Employees Participation and WBOs (I)

Workers Buy-outs (WBO) is a transfer of a business to a cooperative constituted by the employees of the enterprise under insolvency proceeding

- Bankruptcy proceedings: workers cooperatives have a **pre-emption right** in a competitive sale procedure
- Negotiated proceeding: restructuring plans that forecast the acquisition of the business by a worker cooperative
- Negotiated workout: out-of-court agreements among entrepreneurs, creditors, banks, institutional investors and employees' representatives

## Employees Participation and WBOs (II)

### Key elements of a WBO

- Workers' willingness to invest in their business:
  - Advanced payment of unemployment benefits
  - Personal savings
- State funding to support the start-up of the workers' cooperative (Legge Marcora)
- Employees' representatives and insolvency administrators have a fundamental role in the support of the WBO
- A market that is interested in the recovery of the business.



## The benefits of a WBO: a Socially responsible restructuring

- Safeguard of business continuity and value of the enterprise
- Concern for social matters
- Democratic governance and mutualistic scope
- Creation of employment and social value
- **Long-term business recovery:**
- Recovery plans to manage insolvency made by employees
- Flexible financial structure of the cooperative (no legal capital rule and buffer reserves).

## The WBOs in EU Insolvency Law

EU Parliament Resolution 2012/2321 on “*the contribution of cooperatives to overcoming the crisis*”:

- Business transfers to employees as a tool for the economic recovery
- Relevance of the cooperative model in time of crisis
- Call for a regulatory framework and EU financial assistance for the development of forms of employees’ ownership

**WBO in other countries:**

Negotiated WBOs: Italy, France and Spain

## What's next?

- More voice to employees and their representatives in restructuring proceedings
- Incentives to business transfers to worker cooperatives also in the form of SCE (Regulation 1453/2003).
- European fundings to workers cooperatives.