

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

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Sustainability and inclusiveness have become central elements of the EU's long-term economic recovery strategy. Those principles affect the activity of EU enterprises guiding managerial decisions towards fewer costs for employment and the environment. On the other hand, it is more difficult to guarantee sustainability when an enterprise is insolvent, and the main concern of the legislator is to ensure the best satisfaction of creditors over the interests of other stakeholders.

In the Restructuring Directive, business continuity is central for a socially responsible restructuring, and employees are considered part of the organizational value of the enterprise. To this effect, in preventive restructuring frameworks “social dialogue” acquires great importance not only to avoid conflicts with employees' representatives, but also as a key element for the packaging of a restructuring plan. But alongside the traditional rights of information and consultation, workers should be granted the right to choose the most suitable restructuring measure and approve those that have a significant impact on work organization and contractual relations.

In Italy, business transfers to employees' cooperatives during insolvency proceedings are a good measure to avoid closures and safeguard the value of the enterprise and employment levels. These operations, known as workers' buy-outs (WBOs), still raise some doubts among insolvency law practitioners due to the hesitation of creditors when it comes to their approval, and the lack of employees' voting rights in restructurings. In light of the new European influences, this paper investigates employees' involvement in insolvency law. From the weakest forms of involvement granted through the rights of information and consultation of employees' representatives to the strongest ones that take place through WBOs, the objective of this paper is to reconcile traditional approaches to insolvency with the growing relevance of employees' rights in restructuring proceedings.