

RESEARCH ARTICLE

The Italian exclusion of farming enterprises from major insolvency proceedings: An assessment of its appropriateness within the European Union insolvency context

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Abstract

The article examines the Italian approach to farming enterprises' insolvency. In Italy, farmers were traditionally excluded from the application of insolvency proceedings regardless of their corporate status. In the last decade, they have gained limited access to special insolvency procedures developed for consumers and small enterprises. The study seeks to compare the Italian perspective with the insolvency frameworks of the other European Union (EU) member states and place the Italian approach within the broader EU insolvency framework. The article questions the validity of the Italian exclusion of farmers from the major insolvency proceedings in light of the modern rationales of insolvency law (i.e., restructuring, rescuing and second chances). In doing so, the article has a fourfold structure. First, the article analyses the current Italian approach to the insolvency of farming enterprises. Second, it compares the Italian approach to the regimes concerning farmers' access to insolvency proceedings of the other 26 EU

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member states. Third, it analyses the EU insolvency framework concerning farmers' insolvency and evaluates the impact of the Directive on Restructuring and Insolvency on the rationale of the Italian insolvency regime. Last, the article seeks to put forward policy recommendations for future reforms of farmers' insolvency in Italy.

1 | INTRODUCTION

The relevance of food and, consequently, farming as the main means of food production is commonly recognised by governments worldwide.¹ To mirror such relevance, the Italian legal tradition provides farmers with a special negative legal status that, among other things, prevents them from accessing major insolvency proceedings.² This article questions whether this approach is justifiable and opportune in light of the rescue purpose of insolvency law, which is also formalised by the European Union (EU) Directive on Restructuring and Insolvency.³ The relevance of this question is pivotal—in this moment of turmoil in the international farming community⁴—as it seeks to assess whether a more modern approach to farmers' insolvency could foster more efficient restructuring processes for farmers. It is posed that enhancing restructuring processes for farmers would support the maintenance of expertise and value in sustainable farming practices.

In order to answer whether the Italian exclusion of farmers from major insolvency proceedings is good practice, the article compares and contrasts farmers' accessibility to insolvency and restructuring proceedings within the insolvency regimes of all EU member states. Consequently, the methodology adopted by the article is mixed. On the one side, the article adopts the traditional doctrinal method to evaluate the current Italian law. On the other side, the study also adopts a micro-comparative approach. The study compares and contrasts an individual element of the law (the farmers' ability to access insolvency and restructuring proceedings) among the 27 EU member states. Furthermore, this comparative approach adopts the functional method, which aims to analyse the function of legal institutions and compares legal institutions that are functionally equivalent in different legal systems.⁵ In this sense, the article will analyse equivalent—although diverse—national legal responses to farmers' financial and economic distress.

This article is divided into four main parts. The first part provides an overview of the Italian approach to farmers' insolvency. It analyses the legal status of farmers under Italian law and the insolvency framework applicable to them. The second part of the article provides a comparison of the insolvency approaches adopted by the other EU member states. The third part considers the broader EU insolvency framework, discussing the European Insolvency Regulation,⁶ the Directive on Restructuring and Insolvency,⁷ and the Directive proposal concerning the harmonisation of certain substantial aspects of insolvency law⁸ to question whether the exclusion of farmers from major insolvency proceedings is justifiable under the current EU approach. Finally, the fourth part proposes reform recommendations to improve farmers' access to insolvency and restructuring proceedings in Italy.



2 | THE ITALIAN APPROACH TO FARMERS' INSOLVENCY

The agricultural sector is extremely relevant in Italy. In 2018, the Italian economy counted 1,145,705 farming enterprises with a total of 912,100 employees and produced EUR 33 billion of added value.⁹ Notwithstanding the economic relevance, farmers, regardless of their corporate form, are excluded from applying to major insolvency and restructuring proceedings. This section will discuss the legal status of farmers in Italy and their limited ability to access the insolvency law system.

2.1 | the traditional legal status of farmers in Italy

Under Article 2135 of the Italian Civil Code, a farmer is defined as a sole trader who engages in activities such as land and animal farming, forestry, and 'connected activities'.¹⁰ Following the definition, the provision specifies that farming activities are those that aim at the care and development of a biological cycle or a necessary phase of the cycle of vegetables or animals that use or can use the land, the forest or waters.¹¹ In contrast, 'connected activities' aim at manipulating, conserving, transforming, marketing and enhancing products obtained mainly from the cultivation of land or forest or from the breeding of animals, as well as the activities involving the supply of goods or services through the prevalent use of farm equipment or resources normally employed in agricultural activities.¹²

Italian law distinguishes farmers from other business operatives, as it provides for a 'double track' approach. Under this 'double track' approach, separate legal frameworks apply to sole traders (called 'commercial entrepreneurs') and farmers (called 'agricultural entrepreneurs').¹³ Moreover, farmers enjoy a particular legal treatment defined as 'negative status'.¹⁴ Under the negative status, farmers are excluded from the application of a variety of provisions that are instead applicable to sizable enterprises carrying on a commercial activity.¹⁵

Historically, farmers who carried out agricultural activities as sole traders or in a simple partnership were exempt from the obligation to register in the register of enterprises¹⁶ and the obligation to keep book records.¹⁷ However, these exclusions did not apply when the farming activity was carried out in a corporate form.¹⁸ Indeed, other forms of partnerships and companies that conduct farming activities are obliged to keep the books so that the members are informed of the company's financial situation.¹⁹ Moreover, partnerships (other than simple partnerships) and companies that carried out farming activities had to register in the registers of enterprises because the corporate structure (form) was deemed to prevail over the farming activity exercised by the entity (the substance).²⁰ Nowadays, following legislative reforms, individual farmers acting as sole traders or in simple partnerships are also required to register in a special section of the register.²¹ Therefore, currently, all farming enterprises are registered in the register of enterprises, although in different sections depending upon their corporate form or lack thereof.

Moreover, regardless of their size and corporate structure, farming enterprises were historically excluded from the application of insolvency law.²² Insolvency proceedings are legal procedures addressing the inability of a natural or legal person to meet their financial obligations and pay their creditors when debts are due. Traditionally, insolvency law enforced the exit from the market of inefficient business entities.²³ However, more recently, insolvency law has broadened its scope to include the rescuing and restructuring of entities in financial distress.²⁴ Within this context, rescuing and restructuring involve a variety of techniques and legal procedures



that aim at averting the financial failure and closure of a business entity.²⁵ These may include, for example, the development of a payment plan to satisfy creditors, the sale of part of the business to collect money to pay the creditors, or the reorganisation of the structure of the business.²⁶

Article 2221 of the Italian Civil Code, now abolished, and Article 1 of the old Italian Insolvency Act provided that only sole traders exercising a commercial activity (as opposed to a farming or professional activity) are subject to the major collective procedures (i.e., *fallimento* and *concordato preventivo*).²⁷ Furthermore, the Court of Cassation has specified that the organisation of the farming activity in a corporate structure is irrelevant for accessing insolvency proceedings, as in this case, the farming activity exercised by the entity (the substance) is deemed to prevail over the corporate structure (form).²⁸ Therefore, access to major insolvency proceedings is granted exclusively to those companies that carry out a commercial—rather than agricultural—activity and that meet certain dimensional criteria.²⁹ Nevertheless, under the previous regime, there has been a gradual opening to allow farmers to access some restructuring proceedings, such as debt restructuring agreements and tax debt settlements.³⁰

Although the negative status of farmers has been slowly but steadily eroding,³¹ it is important to understand the historical reasons behind such a peculiar treatment. Historically, there have been a variety of factors that caused the Italian legislature to award farmers a negative status. First, it needs to be pointed out that the Italian insolvency system derives from the mediaeval institution of bankruptcy.³² In the Middle Ages, insolvency proceedings were reserved only for *mercatores*, who traded goods in exchange for money or other goods. Therefore, it has been suggested that the exclusion of farmers from insolvency roots back to this mediaeval limitation adopted by the 1807 Commercial Code.³³

Second, it has been suggested that farmers used less credit than other sole traders,³⁴ and their credit was often secured by security rights, creating proprietary interests over certain assets belonging to the farmer.³⁵ Third, the law of supply and demand is peculiar within the agricultural market.³⁶ On the one hand, the supply is inelastic as the price variations depend upon the harvest.³⁷ On the other hand, the demand is inelastic, as the produce satisfies primary needs, and an increase in production plummets the price due to a diminishing marginal utility of the produce.³⁸ Moreover, it has been reported that consumers' income increases do not affect demand for foodstuffs as much as for other types of goods.³⁹

Fourth, there is an argument that suggests the factual insolvency of farmers has a less negative impact on the overall economy than the insolvency of a commercial sole trader. In other words, it has been argued that there is a limited domino effect in the case of a farmer's insolvency over their suppliers and other stakeholders.⁴⁰ Finally, from a political point of view, the fascist regime celebrated the social function of agriculture and the economic weight of the primary sector, which, at that time, employed approximately half of the Italian population.⁴¹

Nevertheless, it has become clear that since farmers did not have access to collective insolvency procedures, they were left exposed to the individual enforcement procedures initiated separately by individual creditors that attacked the debtor's assets repeatedly until exhaustion. In practice, the exclusion that was developed to support farming activities ended up penalising farming enterprises by depriving them of access to rescue and restructuring procedures.⁴²

Such a result is particularly problematic in relation to the multifunctionality of the farming enterprise.⁴³ Indeed, farming activity is factually connected not only with the issues of food security and food health and safety but also other relevant matters such as, for example, landscape management and upkeep of landscape amenities, creation of wildlife habitat and animal welfare, maintenance of biodiversity, water management, improvement of water quality, flood



control, water harvesting, and creation of wind energy.⁴⁴ Consequently, it can be argued that a modern system of insolvency law that allows farming enterprises to liquidate and restructure efficiently would support sustainable agriculture and protection of the environment whilst fostering rural development.

2.2 | The treatment of farmers within the new enterprise crisis and insolvency code

In 2017, the Italian Parliament delegated to the Italian Government the power to develop a comprehensive new insolvency law that should have incorporated all insolvency procedures in one legislative text addressing all different types of debtors.⁴⁵ This proxy led to the promulgation of the Legislative Decree no. 14/2019 that established the Code of Enterprise Crisis and Insolvency (i.e., *Codice della Crisi di Impresa e dell'Insolvenza*—CCII).⁴⁶ The CCII entered into force on 15 July 2022 and, theoretically, applies a unified approach to insolvency. Indeed, Article 1 of the CCII provides that the code applies to consumers, professionals, entrepreneurs, and farmers as legal or natural persons.⁴⁷ However, in practice, the code distinguishes between factual insolvency and over-indebtedness as trigger points for different insolvency procedures.⁴⁸ On the one hand, insolvency is defined as the status of a debtor unable to regularly meet their obligations.⁴⁹ On the other hand, over-indebtedness is defined more specifically as a state of crisis or insolvency of a consumer, professional, minor enterprise,⁵⁰ farmer, start-up, or any other debtor not subjected to major insolvency procedures.⁵¹

Consequently, farmers are excluded from the application of major procedures, which are the 'judicial liquidation' and the 'preventive composition with creditors'. It is essential to note that the exclusion of farmers from these major insolvency proceedings operates regardless of the size and corporate form of the farming enterprise.⁵² This means that farming enterprises cannot access these two types of insolvency proceedings even if, for example, they are incorporated as limited liability or public companies.

More specifically, Italian jurisprudence has held that the corporate form and company statutes are irrelevant for establishing the exemption from the major insolvency proceedings.⁵³ In practice, the Court of Cassation has recommended that judges dealing with the insolvency of farming companies should examine the nature of the company's activity to establish whether it carries out a farming activity regardless of its articles of incorporation.⁵⁴ Peculiarly, judges are called to evaluate in the specific case whether the company carries out an agricultural activity (i.e., the substance of the company) regardless of the corporate form of the company. Once it is established that the activity pertains to the agricultural sector, then the application of the major insolvency proceedings is excluded.

While it is clear that major insolvency proceedings do not apply to farming enterprises, it is not completely clear which minor insolvency proceedings apply under the newly established CCII. On the one side, the CCII provides some procedures and tools which are certainly applicable to farmers,⁵⁵ such as:

- i. The negotiated composition for the solution of the enterprise crisis (i.e., *composizione negoziata per la soluzione della crisi d'impresa*);⁵⁶
- ii. the simplified arrangement for the liquidation of assets (i.e., *concordato semplificato per la liquidazione del patrimonio*);⁵⁷
- iii. the minor arrangement (i.e., *concordato minore*);⁵⁸ and



iv. the controlled liquidation of the over-indebted (i.e., *liquidazione controllata del sovraindebitato*).⁵⁹

The negotiated composition and the simplified arrangement are early warning tools that the debtor can use when the enterprise's financial situation suggests the likelihood of imminent insolvency or over-indebtedness, and there are reasonable chances to rescue the enterprise.⁶⁰ The negotiated composition is an out-of-court pre-insolvency tool that aims to prevent the development of factual insolvency or over-indebtedness.⁶¹ The legislation provides that a debtor who shows the first signs of financial crisis can start negotiations with their creditors with the support of an independent mediator appointed by a commission established within the Chamber of Commerce.⁶² Instead, the simplified arrangement for the liquidation of assets is an in-court procedure that follows an unsuccessfully negotiated composition.⁶³ The procedure allows the over-indebted farmer to submit to the competent court a proposal for the debt composition by sale of assets.⁶⁴

In contrast, the minor arrangement and the controlled liquidation of the over-indebted are procedures that take place when the enterprise is already overly indebted.⁶⁵ The minor arrangement is an in-court procedure that allows debtors to form an arrangement with their creditors with the support of the Organism for Crisis Composition, which is established within the Chamber of Commerce or other public institutions.⁶⁶ Although the debtor needs to present specific accounting and fiscal documentation,⁶⁷ the content of the agreement is free for the debtor to decide, provided that the arrangement specifies 'when' and 'how' the crisis is expected to be resolved.⁶⁸ The minor arrangement can be used only when the proposal allows for the continuation of the business activity, or it is supported by new financing that considerably increases the creditors' satisfaction.⁶⁹ Finally, the controlled liquidation of over-indebtedness is a liquidating procedure that takes place in front of a judicial authority.⁷⁰ It is, as can be deduced from its name, a simplified version of judicial liquidation.

On the other side, the CCII provides some procedures and tools that might apply to farmers. However, the letter of the law is not completely clear about the applicability of these instruments to farming enterprises. Where there is a legislative vacuum concerning the applicability of an individual procedure to the farming enterprise, the Italian scholarship has suggested that an extension of their applicability is appropriate.⁷¹ These procedures are:

- i. Agreements implementing certified recovery plans (i.e., *accordi in esecuzione di piani attestati di risanamento*);⁷²
- ii. debt restructuring agreements (i.e., *accordi di ristrutturazione dei debiti*);⁷³
- iii. settlement of tax and social security debts (i.e., *transazione su crediti tributari e contributivi*);⁷⁴ and
- iv. moratorium agreement (i.e., *convenzione di moratoria*).⁷⁵

Briefly, agreements implementing certified recovery plans are an out-of-court tool that allows the insolvent (or likely insolvent) entrepreneur to submit to the creditors a plan that enables the company's debt exposure restructuring and ensures the rebalancing of its economic and financial situation.⁷⁶ The Explanatory Report to the Legislative Decree no. 14/2019 creates some confusion on this tool's application to farming enterprises.⁷⁷ On the one hand, the Explanatory Report, explaining Article 56, allows its application to all entrepreneurs, even non-commercial ones.⁷⁸ On the other hand, the Explanatory Report classifies the agreements implementing certified recovery plans within the major insolvency proceedings, which are not



applicable to agricultural entrepreneurs.⁷⁹ Therefore, due to this inconsistency, doubts remain concerning the applicability of Article 56 to the so-called agricultural entrepreneur.

Similarly, the scholarship is also divided on the applicability of agreements implementing certified recovery plans to farming enterprises. On the one hand, some authors, in a first comment to the reform, submit that these agreements do not apply to farming enterprises.⁸⁰ This is suggested because the main characteristic of these agreements is that the payments made in their execution are excluded from the application of insolvency avoidance actions within the judicial liquidation procedure.⁸¹ Since farmers are excluded from the judicial liquidation procedure, it has been argued that there would be little use for farmers of the agreements implementing certified recovery plans. Therefore, these instruments are not accessible to them. However, it can be disputed that payments arising from the agreements implementing certified recovery plans are also excluded from the application of the private law avoidance action, which is instead available within controlled liquidation.⁸² The latter procedure is indeed applicable to farmers; therefore, there would be a benefit for the farming enterprise to access the agreements implementing certified recovery plans.⁸³ This would allow the farming enterprise to exclude the payments undertaken because of the agreements from the application of the private law avoidance action in a subsequent controlled liquidation.

On the other hand, other authors present the opposite position concerning the applicability of agreements implementing certified recovery plans to farming enterprises.⁸⁴ They argue that since the letter of Article 56 does not make a distinction between commercial or agricultural entrepreneurs but refers in general to the concept of ‘entrepreneur’, the procedure of agreements implementing certified recovery plans should also apply to farming enterprises.

Debt restructuring agreements are proceedings that lead to the adoption of a restructuring plan, concluded with creditors representing at least 60% of the claims, subject to approval by the court.⁸⁵ Within the old insolvency regime, farmers were expressly authorised to adopt restructuring agreements.⁸⁶ However, the CCII has abolished the normative basis for such authorisation.⁸⁷ Therefore, currently, farmers seem excluded from the application of this procedure.⁸⁸ Furthermore, as mentioned above, the Explanatory Report to the Legislative Decree no. 14/2019 specifies that the application of over-indebtedness procedures is reserved for those subjects that are excluded from the application of major insolvency procedures, which include restructuring agreements.⁸⁹ Nevertheless, the scholarship strongly argues in favour of the applicability of restructuring agreements to farmers.⁹⁰ This is because Article 57 CCII, which regulates these agreements, specifically mentions non-commercial entrepreneurs.⁹¹ Furthermore, it would be more coherent to continue to allow farmers to adopt restructuring agreements as before the reform.

The settlement of tax and social security debts is an ancillary agreement to the restructuring plan developed within the restructuring agreement proceedings.⁹² It consists of a proposal for the partial or postponed payment of taxes and contributions to social security.⁹³ If restructuring agreements were applied to farming enterprises, it could be argued that farmers could also access the benefits of the settlement of tax and social security debts.

Finally, the moratorium agreement is a procedure that provisionally regulates the effects of the crisis and concerns—among other things—the postponement of the deadline of claims, the waiver of judicial actions, and the proceedings or suspension of enforcement actions.⁹⁴ Also in this case, although the letter of the law does not specifically mention the agricultural entrepreneur, it includes entrepreneurs other than the commercial one, leading to the interpretation that the institution could apply to the farming enterprise.⁹⁵ In any case, a legislative or jurisprudential clarification of the applicability of these restructuring tools to the farming enterprise



would be welcomed, as it would provide a clearer framework for farmers and their legal counsel.

2.3 | The issues emerging from the current insolvency law framework

Within the insolvency law framework illustrated above, several considerations can be made concerning the current approach to farming enterprises' insolvency in Italy. First, it is opportune to point out that the structure of Italian farming enterprises is still considered less complex than that of commercial enterprises. Even though, in practice, farming enterprises have seen a gradual assimilation into commercial enterprises, with an increase in the use of credit, business relations and a greater presence in the market. This has been mirrored by the gradual erosion of the above-mentioned negative status, despite the fact that the peculiarities behind the negative status are not completely extirpated. Indeed, the particular risks of the farming enterprise still persist.⁹⁶

Consequently, nowadays, farming enterprises receive a 'hybrid insolvency treatment' as the Italian legislator places them halfway between business insolvency and consumer insolvency.⁹⁷ Indeed, on the one hand, farmers might be able to benefit from accessing institutions such as restructuring agreements, which are designed for large commercial enterprises, while, on the other hand, they remain relegated to the category of over-indebted debtors.⁹⁸

Moreover, the current Italian insolvency law does not distinguish farming enterprises based on their dimensions.⁹⁹ In other words, the proceedings discussed above do not distinguish between large and small, more structured and less structured farming enterprises. This means that regardless of size and corporate structure, farming enterprises can only access simplified procedures developed for small entities and consumers. Consequently, farming enterprises are limited in their ability to efficiently liquidate and, more importantly, restructure.¹⁰⁰

Furthermore, the use of such minor procedures for large farming enterprises could also have detrimental effects on the returns to creditors, as the minor procedures do not allow for the use of insolvency avoidance actions.¹⁰¹ Therefore, this exclusion deprives the farmers' creditors of an important tool for asset-tracing and recovery. Although within the controlled liquidation procedure, creditors can rely on the private law avoidance action,¹⁰² its conditions and effects are different—and arguably more limited—from those of insolvency avoidance actions available within the judicial liquidation.¹⁰³

Furthermore, as remains of the farmers' negative status, farming sole proprietorships and simple partnerships are not obliged to keep accounting records, which are pivotal for accessing and progressing within the newly established proceedings.¹⁰⁴ Indeed, the CCII requires the availability of a series of data and accounting documents for the complete disclosure of the financial situation of the enterprise. These data are also important for the early detection of the crisis itself. Therefore, the farming enterprise's exclusion from the obligation to keep book records ends up depriving individual farmers acting as sole traders or in simple partnerships of the necessary tools for a successful early detection and management of their financial crisis.¹⁰⁵

Finally, as is obvious from the discussion in section 2.2, there is a lack of clarity concerning the procedures applicable to farmers under the CCII. The explanatory report to the code and the text of the code itself present inconsistencies that create interpretation problems, particularly concerning the crisis regulation instruments that are potentially applicable to farmers. Therefore, the Italian insolvency law reform has opened up interpretive problems that lead to



questioning the opportunity of the exclusion of the farming enterprise from the application of major insolvency and restructuring procedures.

3 | COMPARISON AMONG EU MEMBER STATES

Having analysed the Italian approach to farmers' insolvency, the study will now explore whether farmers are also subject to a negative status in other EU member states. Generally speaking, insolvency law provides procedures that address debtors' factual insolvency (i.e., the inability to pay the debts). Member States may have different procedures, but the differences are generally due to the corporate structures more than the industry sector, as the complexity of the corporate structure is often mirrored in the complexity of the insolvency procedure. Therefore, in theory, farmers should be able to access a specific procedure depending on their corporate structure. However, in practice, insolvency frameworks across the member states are extremely diverse and give rise to confusing and problematic results.

Countries such as Austria,¹⁰⁶ the Czech Republic,¹⁰⁷ Denmark,¹⁰⁸ Germany,¹⁰⁹ Greece,¹¹⁰ the Netherlands,¹¹¹ Portugal,¹¹² Spain,¹¹³ and Sweden¹¹⁴ provide a unified approach to insolvency. In these systems, there is no distinction between the insolvency of a company (i.e., corporate insolvency), the insolvency of an enterprise not organised as a distinct legal entity (hereinafter 'commercial insolvency'), and the personal insolvency not related to the conduct of a business (i.e., consumer insolvency). However, already within this first group, there are some differences in the application of restructuring proceedings. Austria,¹¹⁵ Germany,¹¹⁶ the Netherlands,¹¹⁷ and Sweden¹¹⁸ allow restructuring proceedings only for business entities, while the other countries of this first category do not make such a distinction. In any case, within this first group, farming enterprises should be able to access all insolvency and restructuring procedures regardless of their size or corporate form.

Instead, countries like Cyprus,¹¹⁹ Estonia,¹²⁰ Finland,¹²¹ Ireland,¹²² Latvia,¹²³ Lithuania,¹²⁴ Malta,¹²⁵ and Slovenia¹²⁶ distinguish insolvency law branches between corporate insolvency and personal insolvency. The latter includes commercial insolvency law and consumer insolvency law. Therefore, farmers can access different types of proceedings depending on their corporate form. If a farmer acts as a sole trader, they will be able to access personal insolvency proceedings. Instead, if the farming activity is conducted by a company, then the company will be able to access corporate insolvency proceedings. However, Cyprus,¹²⁷ Lithuania,¹²⁸ and Slovenia¹²⁹ allow restructuring proceedings only for companies. Therefore, farmers who act as sole traders will not have access to the relevant restructuring proceedings. Instead, Latvia allows restructuring proceedings for both companies and sole traders.¹³⁰

Conversely, countries like Belgium,¹³¹ Bulgaria,¹³² Croatia,¹³³ France,¹³⁴ Hungary,¹³⁵ Poland,¹³⁶ Romania,¹³⁷ Slovakia,¹³⁸ and Luxembourg¹³⁹ mainly distinguish between business insolvency and consumer insolvency. Business insolvency includes the insolvency of a business either carried out by a legal person or by a natural person (i.e., an entrepreneur, a trader, a merchant, or a business operative). Additionally, not all these countries regulate consumer insolvency. In this last category, when farming occurs within a corporate structure, corporate insolvency law applies, but when the farming activity is carried out by an individual, different approaches arise, mainly depending upon the qualification of farmers as entrepreneurs.

On the one side, Belgium, Croatia, Hungary, Lithuania, Romania, and Slovakia do not provide a distinction for farmers and therefore include them within the concept of entrepreneur.



This allows farmers who operate in traderships or partnerships to access commercial insolvency procedures. On the other side, Bulgaria,¹⁴⁰ Luxembourg,¹⁴¹ and Poland¹⁴² exclude farmers from the concept of entrepreneur. In these countries, farmers cannot access commercial insolvency procedures, but they may be able to access consumer insolvency procedures, which, of course, are built to address economic needs that are different from those of a business. In Bulgaria, however, consumer insolvency law is not yet implemented.¹⁴³ Consequently, farmers who are not organised in the form of a company would not be able to access insolvency and restructuring proceedings.

The picture seems more promising in countries like France and Latvia, which provide rules and procedures designed for farming enterprises.¹⁴⁴ In both France and Latvia, farmers are subject to all normal insolvency proceedings. However, France has designed a special restructuring procedure called *règlement amiable* designed for farmers.¹⁴⁵ This is an out-of-court restructuring procedure that seeks to achieve a restructuring plan with the creditors.¹⁴⁶ Such a restructuring plan needs to include:

- i. A description of the circumstances of economic and financial difficulties;
- ii. the technical measures planned to improve the profitability and competitiveness of the farming enterprise;
- iii. the enterprise's commitments;
- iv. the adjustments granted by the main creditors;
- v. the financial aid from the State or other public institutions; and
- vi. the expected results of the plan.¹⁴⁷

Remarkably, the *Règlement amiable* also provides for financial aid from the state or local authority to support the success of the restructuring plan.¹⁴⁸

Instead, Latvia has designed some provisions that address the peculiarities of the insolvency process for the producer of agricultural products.¹⁴⁹ Among other provisions, Article 124 of the Latvian Insolvency Act provides that:

‘When deciding on the sale of the property of the producer of agricultural products, the seasonal nature of agricultural production and its dependence on natural and climatic conditions, as well as the possibility of meeting the demands of creditors from the income that the producer of agricultural products can obtain after the end of the relevant period of agricultural activity, are taken into account’.¹⁵⁰

The approaches to farmers' access to insolvency and restructuring procedures are considerably diverse within the member states of the European Union. Similarly to Italy, a few member states exclude farmers from the application of major insolvency proceedings. This composite picture has the potential to undermine the goal of creating a level playing field for commercial actors across the EU. Indeed, farming enterprises will have different rescue possibilities depending on the place of business and the insolvency regime of that country. Furthermore, the lack of a consistent insolvency and restructuring approach to farmers' insolvency may negatively affect some of the key objectives of the Common Agricultural Policy, such as:

‘to ensure a fair income for farmers; to improve the position of farmers in the food chain, to support generational renewal’.¹⁵¹



Therefore, it is also necessary to examine the EU insolvency framework to assess if these disparities at the national level are somewhat mitigated at the EU level.

4 | THE EU APPROACH TO INSOLVENCY AND ITS IMPACT ON ITALIAN FARMERS' INSOLVENCY

After addressing farmers' access to insolvency proceedings in the European Union member states from a comparative perspective, this section addresses the European Union Insolvency Law framework, which includes:

- i. The European Insolvency Regulation;
- ii. the Directive on Restructuring and Insolvency; and
- iii. the Proposal for a Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law.

The European Insolvency Framework is a quite recent development within the EU context. The first efforts to develop a European Insolvency Convention started in the sixties, but they were unsuccessful for a long time.¹⁵² The first European Insolvency Regulation was approved only in May 2000,¹⁵³ and it was recast in 2015.¹⁵⁴ The European Insolvency Regulation ('EIR') provides a unified conflict of law system for insolvency matters as it addresses rules on jurisdiction, applicable law, recognition, and enforcement of insolvency proceedings displaying cross-border elements. Moreover, it provides rules on the coordination of insolvency proceedings opened in different member states. In contrast, the EIR does not provide substantive rules on insolvency law.

The EIR adopts a unified approach to cross-border insolvency proceedings, and it applies irrespective of whether the debtor is a natural or legal person, an entrepreneur, or a consumer.¹⁵⁵ Consequently, it does not provide any specific provisions concerning cross-border farmers' insolvency. Annex A of the EIR lists the national insolvency procedures to which the rules laid out in the Regulation apply. After the introduction of the Italian CCII, Annex A includes only the controlled liquidation of the over-indebtedness, the restructuring agreements, and the minor arrangement.¹⁵⁶ Instead, other procedures applicable to farmers, such as negotiated composition, the simplified arrangement for the liquidation of assets, the agreements implementing certified recovery plans, the settlement of tax and social security debts and the moratorium agreement are not included within Annex A of the EIR. This means that if an insolvent farmer pursues one of these procedures, issues of cross-border recognition and enforcement may arise. The lack of inclusion of these procedures within the Annex may also increase the costs and practical difficulties for foreign creditors from EU countries if they want to take part in these procedures. This issue is potentially quite significant as Italy's imports and exports in the agricultural sector are considerable, and therefore, cross-border credit relationships are quite common.¹⁵⁷

Only in 2019, the Parliament and Council approved the Directive on Restructuring and Insolvency.¹⁵⁸ This more modern instrument addresses substantive issues of insolvency law by introducing minimum standards for preventive restructuring frameworks and general measures to increase the efficiency of procedures aiming at restructuring.¹⁵⁹ The Directive on Restructuring and Insolvency embraces the more modern function of insolvency law. While traditionally



insolvency law concerned the exit of unviable businesses from the market, in more recent years, insolvency law's goals have shifted towards rescuing and restructuring.¹⁶⁰ The Directive on restructuring and insolvency has three main goals. First, it seeks to ensure that member states provide viable businesses in financial distress with access to restructuring procedures. Second, the Directive lays down standard rules concerning the discharge of the debts of individual entrepreneurs. Third, it aims to enhance the effectiveness of national restructuring procedures and shorten their length.¹⁶¹

Although the Directive specifically targets individual entrepreneurs, it does not provide a harmonised and comprehensive definition of entrepreneur at the EU level.¹⁶² As seen above, the approaches to entrepreneurs' insolvency are considerably diverse among the member states. Therefore, whether the provisions of the directive apply to farming enterprises or not would depend on the national approach to the notion of entrepreneur.

Additionally, it is worth pointing out that the Directive applies to business entities without any distinction or classification based on size or industry sector.¹⁶³ The Italian 'double track' approach, which provides a separate regime for farmers based on their industry sector, seems inconsistent with the EU approach. Moreover, the current Italian approach places the legal status of farmers somewhere between sole traders and consumers, and consumers are outside the scope of the directive's application.¹⁶⁴

Finally, in December 2022, the Commission proposed a new directive concerning the harmonisation of certain substantial aspects of insolvency law.¹⁶⁵ In particular, the proposal focuses on:

- a. Avoidance actions;
- b. the tracing of assets belonging to the insolvency estate;
- c. pre-pack proceedings;
- d. the duty of directors to submit a request for the opening of insolvency proceedings;
- e. simplified winding-up proceedings for microenterprises;
- f. creditors' committees; and
- g. the drawing up of a key information factsheet by member states on certain elements of their national law on insolvency proceedings.¹⁶⁶

It must be noted that this proposal also does not address farmers' insolvency directly. However, in practice, some provisions, in particular those covering the simplified winding-up proceedings for microenterprises, will most likely be of concern in farmers' insolvency. Nevertheless, the proposal still needs to be approved by the Council of the European Union and the European Parliament, and the discussion on its impact on farmers' insolvency would be speculative at this point, as its text will most likely be subject to amendments during the ordinary legislative procedure.¹⁶⁷

Overall, the EU insolvency framework does not specifically address insolvency and restructuring within the agricultural sector. Nevertheless, some EU provisions have an indirect effect on the management of farmers' financial distress. It is argued that the European Insolvency Framework should take into consideration the peculiarities of the agricultural sector to achieve the aims and objectives of its legislative instruments across all industry sectors. Furthermore, it is argued that the European Insolvency Framework should be consistent with the EU's overall policy. Consequently, it should facilitate or, at least, not hinder the goals of the CAP 2023.



5 | SOME CRITICAL CONSIDERATIONS AND RECOMMENDATIONS FOR THE ITALIAN CASE

It is clear that the double-track approach established by the 1942 Italian Civil Code reflected the economic and farming setting of that time. In the 1940s, Italian farms were technologically undeveloped and mostly aimed solely at self-sustenance.¹⁶⁸ Nowadays, the wording of Article 2135 of the Civil Code encompasses a variety of connected activities, including activities aimed at the supply of goods and services, activities to enhance the territory and rural and forestry heritage, as well as reception and hospitality activities, which are part of the national and European legislative framework aimed at encouraging the pluri-activity of the agricultural entrepreneur.¹⁶⁹ Some Italian authors have criticised the broadening of the category of farming activity as this increasingly equates farming enterprises to commercial ones.¹⁷⁰ In turn, this expansion calls into question the traditional distinction between the two categories of enterprise.

Nevertheless, as already pointed out by the Italian scholarship in the past, it can be appreciated that Italian farms nowadays can be co-industrialised with business relations that are comparable to commercial enterprises.¹⁷¹ Consequently, the opportunity for exclusion of farming enterprises from major insolvency proceedings has been called into question by part of the Italian scholarship, which has defined it as a 'monstrous and anachronistic privilege'.¹⁷²

On the topic, this article suggests two possible solutions. On the one side, it would be opportune to reconsider the negative status of the farming enterprise. Some of the procedures mentioned above, such as the minor agreement, the agreements implementing certified recovery plans, and the debt restructuring agreements, require the availability of a series of data and accounting documents for the complete disclosure of the financial situation of the enterprise to restructure it.¹⁷³ The exemption from keeping these documents granted to small farming enterprises leads to a prejudicial outcome for their likelihood of restructuring. Indeed, it has been pointed out that if farming enterprises are to benefit from the new rescuing procedures of the CCII, then the legislator should have also reformed the Civil Code provisions and extended the obligation of bookkeeping to all legal types of entrepreneurs.¹⁷⁴

Moreover, it would be beneficial to reconsider the 'hybrid insolvency treatment' of farmers under the newly established CCII. Indeed, on the one side, the legislator should clarify which procedures are available for farmers in insolvency. As explained in section 2.3, some procedures are certainly applicable to farmers, while others' applicability is questionable. Notoriously, legal uncertainty has detrimental effects on the economy.¹⁷⁵ In particular, in this case, it is argued that such uncertainty undermines the restructuring chances of farming enterprises.

On the other side, it would be opportune to establish an insolvency law framework that distinguishes farming enterprises on the basis of their dimensions or corporate structure. In other words, this article argues that small and less-structured farming enterprises should continue to be able to access minor insolvency proceedings, while large and more-structured farming enterprises should be enabled to access major insolvency proceedings, with the benefits that arise from these. Furthermore, it would be opportune to clarify and adapt the minor procedures. First, it can be noted that major insolvency proceedings are regulated systematically, meaning the CCII regulates each major procedure in full detail, ordinately. Instead, the regulation of the minor proceedings is a patchwork of general rules and specific provisions scattered throughout the Act.¹⁷⁶ Arguably, this has a detrimental effect on the predictability and efficiency of the procedures, as there is much left to the interpretative efforts of legal practitioners.



Second, the opening of the judicial or controlled liquidation has different effects on the *ad interim* continuation of the business. On the one side, the opening of the judicial liquidation does not interrupt the business activity of the debtor.¹⁷⁷ Instead, it allows the insolvency practitioner to conditionally continue the business activity to maximise the creditors' returns.¹⁷⁸ On the other side, the opening of the controlled liquidation does not have a provision that allows the continuation of the business awaiting the declaration of insolvency.¹⁷⁹ The case law on the topic is currently contradictory on the applicability of Article 211 of the CCII to the controlled liquidation: while the Ravenna Tribunal has excluded the continuation of the business awaiting the declaration of insolvency,¹⁸⁰ the Bologna Tribunal has instead allowed it.¹⁸¹ It is also clear that farming enterprises and their creditors, in light of the multi-operativity of the farming enterprise, would benefit from the conditional continuation of farming activity,¹⁸² not only for the maximisation of the return to creditors but also for compliance with other regulations, such as, for example, the numerous ones concerning animal welfare.¹⁸³

Third, as mentioned above, within the major insolvency proceedings, the insolvency practitioner can utilise the insolvency avoidance actions, while within the minor proceedings, only the private law avoidance action is available.¹⁸⁴ In particular, within judicial liquidation, the remedies available are:

- i. Article 163 of the CCII targeting gratuitous acts;
- ii. Article 164 of the CCII targets payments of not-yet-due debts;
- iii. the private law avoidance action called ordinary revocatory action (i.e., *azione revocatoria ordinaria*); and
- iv. the main insolvency avoidance action is called the insolvency revocatory action (i.e., *azione revocatoria fallimentare*).

Instead, within controlled liquidation, the insolvency practitioner can only use the ordinary revocatory action. Therefore, in the first place, the creditors participating in controlled liquidation are deprived of the automatic invalidity of the pre-insolvency acts regulated by Articles 163 and 164 of the CCII. Such a distinction between the two types of proceedings weakens the operation of the collectivity principle in controlled liquidations. Furthermore, this may have detrimental consequences on the cost of credit to farming enterprises, as creditors will incur higher monitoring costs.¹⁸⁵

Fourth, the CCII displays a considerable difference in terms of refinancing safeguards. On the one side, new financing injected into the execution of the preventing agreement has been granted super-priority in a possible subsequent liquidation.¹⁸⁶ Instead, such a super-priority status is not available within the minor agreement, which inevitably affects the likelihood of accessing new finance.¹⁸⁷

Finally, as farming enterprises still show distinctive features that set them apart from other business sectors, it is argued that a tailor-made procedure could be developed taking into consideration the peculiarity of farming enterprises.¹⁸⁸ Professor Carmignani even suggested that farming enterprises should have an obligation to access the debt restructuring procedure, currently called negotiated composition, for the solution of the enterprise crisis as they encompass several distinct types of public interests.¹⁸⁹ To a certain extent, the negotiated composition may vaguely recall 'farm debt mediation schemes' available in certain countries like Australia and the United States.¹⁹⁰ However, while the latter schemes are developed specifically for farmers, the Italian approach addresses all entrepreneurs. Therefore, although Carmignani's suggestion is indeed agreeable, there is room for further tailoring of the procedures that takes into



consideration the peculiarities of agricultural activity and those of agricultural creditors. Such tailoring needs are justified by the relevance of the farming sector for—among other things—food security and environmental protection. Furthermore, due to the exposure to the additional atmospheric risk, exacerbated by climate change, it is pivotal that the Italian legislator addresses the financial distress of farmers with *ad hoc* solutions that foster the maximisation of creditors' returns and restructuring chances.

6 | CONCLUSION

The article has discussed the double-track approach to the legal concept of farming enterprise and the so-called negative status of the farming enterprise within the Italian legal system. It has explained the historical reasons behind this approach and the consequent issues emerging in the current Italian insolvency law regime. From the lack of clarity of which procedures apply to the farming enterprise to the inconsistency emerging from the need for bookkeeping for the early detection of financial distress, it has been argued that the approach to farmers' insolvency needs a more thought-out revision.

The comparison with the other EU member states has highlighted that the exclusion of farmers from accessing corporate insolvency proceedings is not common. Nevertheless, there are still some EU countries that share a similar approach to Italy and may display the same limitations in facilitating the efficient rescuing and restructuring of farming enterprises. This is also aggravated by the lack of specificity of the EU insolvency law instruments that do not address farmers' insolvency nor clarify whether farmers qualify as entrepreneurs under the EU framework. By leaving it to the national legislator to classify farmers as entrepreneurs or not, the EU insolvency framework opens up the risk of inconsistent approaches and an uneven playing field for farmers across the EU and weakens some of the key objectives of the Common Agricultural Policy. It is suggested that further research on the topic of farmer insolvency and restructuring in the EU is necessary to lead to a better alignment between the EU insolvency framework and the Common Agricultural Policy.

Finally, the article argues that the Italian exclusion of farmers from major insolvency proceedings and the lack of distinction of farming enterprises on a dimensional basis negatively affect the ability to rescue farming businesses. Such an approach should be revised in light of the modern function of insolvency law. On this, a suggestion for a possible reform at the Italian level would be to create an *ad hoc* system for agricultural restructuring, including a scheme of debt mediation that supports the farming enterprise towards the continuation of its universally essential activity.

ENDNOTES

- ¹ Kym Anderson (ed), *Distortions to Agricultural Incentives: A Global Perspective, 1955 to 2007* (The World Bank and Palgrave Macmillan, 2009).
- ² Article 2221, Italian Civil Code (Royal Decree 16.03.1942 no. 262); Article 1, Insolvency Act (Royal Decree 16.03.1942 no. 267). Article 2221, Civil Code has been abolished by Article 384, Code of Enterprise Crisis and Insolvency (Legislative Decree 12.01.2019 no. 14/"CCII") starting from the date of its entry into force (15.07.2022). The old Insolvency Act remains transiently applicable to those procedures opened before July 2022.
- ³ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the



efficiency of procedures concerning restructuring, insolvency, and discharge of debt, and amending Directive (EU) 2017/1132 ("Directive on Restructuring and Insolvency").

- ⁴ Kate Abnett, 'Europe's Restless Farmers are Forcing Policymakers to Act' (*Reuters*, 3 April 2024), <<https://www.reuters.com/world/europe/europes-restless-farmers-are-forcing-policymakers-act-2024-04-03/>>.
- ⁵ Ralf Michaels, 'The Functional Method of Comparative Law', in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP, 2006), 345–389.
- ⁶ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast) [2015] OJ L141/19.
- ⁷ Directive on Restructuring and Insolvency (above note 3).
- ⁸ Proposal for a Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law Brussels, 7.12.2022 COM (2022) 702 final 2022/0408 (COD).
- ⁹ Coldiretti, 'L'Agricoltura Italiana in Numeri' (Coldiretti, 2020), <https://www.terrainnova.it/wp-content/uploads/sites/3/2020/05/REPORT-FINALE_LAgricoltura-italiana-in-numeri-1.pdf>.
- ¹⁰ Article 2135, Italian Civil Code (above note 2). The activities "connected" to the "main" agricultural activity are those activities which, in the absence of connection, would be subject to commercial regulations; see Alberto Germanò, *Manuale di Diritto Agrario* (9th edn) (Giappichelli Editore, 2022), 91 ff.
- ¹¹ Article 2135(2), Italian Civil Code (above note 2).
- ¹² Ibid., paragraph 3. To delve deeper into the topic of connected activities, see Luigi Costato and Luigi Russo, *Corso di Diritto Agrario Italiano e dell'Unione Europea* (5th edn) (Giuffrè Francis Lefebvre, 2019), 356 ff; Germanò (above note 10); Alberto Germanò and Eva Rook Basile, 'L'impresa Agricola. Le attività', in Luigi Costato, Alberto Germanò and Eva Rook Basile (eds), *Trattato di Diritto Agrario, Il Diritto Agrario: Circolazione e Tutela dei Diritti* (Volume I) (Wolters Kluwer, 2011), 775 ff.
- ¹³ Anna Genovese, 'La Nozione Giuridica dell'Imprenditore Agricolo' (1992) Part I *Rivista di Diritto Agrario* 227, 228; Germanò (above note 10), 57 ff.
- ¹⁴ Costato and Russo (above note 12), 408; Luigi Costato, 'Imprenditore Agricolo, Novità Codicistiche e Polemiche Retro' (2006) I *Rivista di Diritto Civile* 89, 90 ff.
- ¹⁵ Idem.
- ¹⁶ Article 2136, Italian Civil Code (above note 2).
- ¹⁷ Ibid., Article 2214.
- ¹⁸ Costato and Russo (above note 12), 408 ff. See also Umberto Belviso, 'Il Regime Pubblicitario dell'Imprenditore Agricolo (La Riforma d'Inizio Secolo)' (2002) Part I *Rivista di Diritto Agrario* 10 ff; Giuseppina Nigro, 'La Nuova Impresa Agricola in Stato di Insolvenza' (2004) III *Diritto e Giurisprudenza Agraria e dell'Ambiente* 133 Nota 1.
- ¹⁹ Costato and Russo (above note 12), 409. They highlighted that, to access certain EU subsidies, farmers in sole tradership or simple partnership need to keep the books. Therefore, although in theory these subjects are excluded from the obligation to keep the books, in practice they may end up keeping them anyway.
- ²⁰ Article 2200, Italian Civil Code (above note 2). Costato and Russo (above note 12), 412 ff. Belviso (above note 18), 10; Nigro (above note 18), 133 Nota 1.
- ²¹ Article 2, Decree of the President of the Republic 14 December 1999 no. 558.
- ²² Article 2221, Italian Civil Code (above note 2) (now abolished); Article 1, Insolvency Act (above note 2).
- ²³ Manfred Balz, 'The European Union Convention on Insolvency Proceedings' (1996) 70 *American Bankruptcy Law Journal* 485.
- ²⁴ Gert-Jan Boon and Stephan Madaus, 'Toward a European Business Rescue Culture', in Jan Adriaanse and Jean-Pierre van der Rest (eds), *Turnaround Management and Bankruptcy: A Research Companion* (Routledge, 2017), 238, 242.
- ²⁵ Bo Xie, *Comparative Insolvency Law* (Edward Elgar Publishing, 2016), 4.
- ²⁶ Idem.



- ²⁷ Article 2221, Italian Civil Code (above note 2); Article 1, Insolvency Act (above note 2).
- ²⁸ Court of Cassation Order 13.07.2017 no. 17343.
- ²⁹ Article 2221, Italian Civil Code (above note 2) (now abolished); Article 1, Insolvency Act (above note 2).
- ³⁰ Law Decree 06.07.2011 no. 98; Law no. 27.03.2012.
- ³¹ Elisa Salvadori, *Lo Stato di Crisi e di Insolvenza dell'Imprenditore Agricolo. I Rimedi Nazionali, le Tendenze Normative dell'UE e Quelle di Alcuni Ordinamenti Europei di Civil Law* (DPhil thesis, Università degli Studi di Udine, 2022), 23 ff.
- ³² Umberto Santarelli, *Per la Storia del Fallimento nelle Legislazioni Italiane dell'Età Intermedia* (CEDAM, 1964), 87.
- ³³ Leonardo Giani, 'Ragioni Storiche e Perduranti Dubbi circa la Fondatezza di Alcuni Casi di Esclusione da Fallimento e Concordato Preventivo' (2013) *IX Ianus* 86 ff.
- ³⁴ Michele Mozzarelli, 'Il Presupposto Soggettivo', in Oreste Cagnasso and Luciano Panzani (eds), *Crisi d'Impresa e Procedure Concorsuali* (Volume I) (Wolters Kluwer, 2016), 300. Pietro Masi, 'L'Impresa Agricola tra Diritto Agrario e Diritto Commerciale' (1983) *II Rivista di Diritto Civile* 469; Sonia Carmignani, 'Imprenditore Agricolo e Prospettive di Riforma delle Procedure Concorsuali' (2018) *3 Diritto Agroalimentare* 531, 533, <<https://www.osservatorioagromafie.it/wp-content/uploads/sites/40/2023/02/fascicolo-3-2018.pdf>>; Maria Ambrosio, *Attività e Impresa Agricola* (Giuffrè Francis Lefebvre, 2008), 225.
- ³⁵ Francesco Ferrara Jr., *Il Fallimento* (4th edn) (Giuffrè Editore, 1989), 46 ss.
- ³⁶ Louis Bean, 'Characteristics of Agricultural Supply and Demand Curves' (Summary of Address before Section X of the American Association for Advancement of Science in Joint Programme with the Econometric Society, Syracuse NY 22.06.1932).
- ³⁷ Anthony Endres, 'The King-Davenant 'Law' in Classic Economics' (1987) *19(4) History of Political Economy* 621, 623.
- ³⁸ John Thompson, 'The Nature of Demand for Agricultural Products and Some Important Consequences' (1916) *24(2) Journal of Political Economy* 158.
- ³⁹ Sonia Carmignani, 'Sul Fallimento di Società Agricola Cessata' (2015) *1 Diritto e Giurisprudenza Agraria, Alimentare e dell'Ambiente* 1, 3 ff. <<https://www.rivistadga.it/wp-content/uploads/2015/12/Carmignani-n-rosso-219-cass-civ-17397-20153.pdf>>. See also Alberto Germanò, 'L'Imprenditore Agricolo e il Fallimento' (2011) *20(11) Diritto e Giurisprudenza Agraria, Alimentare e dell'Ambiente* 722; Sonia Carmignani, 'Attività Vivaistica, Qualificazione Giuridica e Procedure Concorsuali' (2006) *2 Diritto e Giurisprudenza Agraria, Alimentare e dell'Ambiente* 119, 123; Sonia Carmignani, 'Imprenditore Agricolo e Prospettive di Riforma delle Procedure Concorsuali' (2018) *3 Diritto Agroalimentare* 531, 534; Sonia Carmignani, 'Fallimento e Oggetto Sociale: Breve Riflessione sul Ruolo dell'Effettività' (2019) *Diritto Agroalimentare* 79, 82; Mario Mauro, 'Imprenditore Agricolo e Crisi di Impresa' (2018) *4 Diritto e Giurisprudenza Agraria, Alimentare e dell'Ambiente* 1, 4, <<https://www.rivistadga.it/wp-content/uploads/2018/07/Mauro-Lucifero-n-rosso-14-cass-civ-17343-2017-rev.pdf>>; Alberto Germanò, 'A «Difesa» della Perdurante Specificità dell'Impresa Agricola' (2002) *Part I Rivista di Diritto Agrario* 177, 178.
- ⁴⁰ Antonio Carrozza, 'Problemi e Mezzi del Risanamento delle Aziende Agricole in Dissesto. Premesse per un Diritto Agrario Fallimentare' (1985) *Part I Rivista di Diritto Agrario* 390.
- ⁴¹ Costato (above note 14), 89.
- ⁴² Filomena Prete, *L'Impresa Agricola in Difficoltà di Pagamenti* (Cacucci, 2013), 16 ff. See also Sonia Carmignani, 'Attività Vivaistica, Qualificazione Giuridica e Procedure Concorsuali' (above note 38), 125; Michele Tamponi, 'Impresa Agricola e Procedure Concorsuali', in Ettore Casadei, Alberto Germanò and Eva Rook Basile (eds), *Gli Attuali Confini del Diritto Agrario* (Giuffrè, 1996), 73.
- ⁴³ Costato and Russo (above note 12), 353 ff; Noemi Ricolli, 'L'impresa Agricola Sociale verso Nuove Forme di Attività Connesse' (2019) *3 Diritto e Giurisprudenza Agraria, Alimentare e dell'Ambiente*, <<https://www.rivistadga.it/limpresa-agricola-sociale-verso-nuove-forme-di-attivita-connesse/>>; Saverio Senni, 'L'Agricoltura Sociale Come Fattore di Sviluppo Rurale' (2005) *1(2) Agriregionieuropa*, <<https://www.rivistadga.it/numero-3-2005/>>.



- ⁴⁴ Guido Van Huylenbroeck, 'Multifunctionality of Agriculture: A Review of Definitions, Evidence, and Instruments' (2007) 1 *Living Review in Landscape Research* 3, 7.
- ⁴⁵ Law 19.10.2017 no. 155.
- ⁴⁶ CCII (above note 2).
- ⁴⁷ Ibid., Article 1.
- ⁴⁸ Ibid., Article 2.
- ⁴⁹ Ibid., Article 2(1)(b).
- ⁵⁰ A minor enterprise is defined as an enterprise with annual assets amounting to less than EUR 300,000, gross revenues not exceeding EUR 200,000 and liabilities capped at EUR 500,000.
- ⁵¹ CCII (above note 2), Article 2(1)(c).
- ⁵² Costato and Russo (above note 12), 412.
- ⁵³ Court of Cassation Order (above note 28).
- ⁵⁴ Idem.
- ⁵⁵ Article 2, comma 1, letter c) and Article 65, CCII (above note 2).
- ⁵⁶ Ibid., Article 12 and Article 25-quater.
- ⁵⁷ Ibid., Article 25-sexties.
- ⁵⁸ Ibid., Article 74.
- ⁵⁹ Ibid., Article 268.
- ⁶⁰ Ibid., Title II.
- ⁶¹ Ibid., Article 12 ff.
- ⁶² Ibid., Article 13, paragraph 6.
- ⁶³ Ibid., Article 25-sexties.
- ⁶⁴ Idem.
- ⁶⁵ Ibid., Title IV.
- ⁶⁶ Ibid., Article 76.
- ⁶⁷ Ibid., Article 75(1).
- ⁶⁸ Ibid., Article 74(3).
- ⁶⁹ Ibid., Article 74(1) and (2).
- ⁷⁰ Ibid., Article 268.
- ⁷¹ Salvadori (above note 30), 131 ff.
- ⁷² Article 56, CCII (above note 2).
- ⁷³ Ibid., Article 57.
- ⁷⁴ Ibid., Article 63.
- ⁷⁵ Ibid., Article 62.
- ⁷⁶ Ibid., Article 56.
- ⁷⁷ Explanatory Report to the Legislative Decree no. 14/2019, <http://www.ilfallimento.it/wp-content/uploads/2018/10/relazione_illustrativa_-_schema_di_d.lgs__recante_codice_della_crisi_e_dellinsolvenza-1.pdf>.
- ⁷⁸ Ibid., 67.
- ⁷⁹ Ibid., 73.
- ⁸⁰ Giovanni Battista Nardecchia, *Il Nuovo Codice della Crisi d'Impresa e dell'Insolvenza. Disciplina, Novità e Problemi Applicativi* (NelDiritto Editore, 2019), 231; Ivan Libero Nocera, 'La Proposta di Concordato Minore tra Categorie Civilistiche e Regole Operazionali', in Enza Pellecchia and Lara Modica (eds), *La Riforma del*



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⁸¹ Article 166, comma 3, letter d, CCII (above note 2).

⁸² *Ibid.*, Article 274.

⁸³ Daniela Carloni and Tommaso Iannaccone, 'Il Piano Attestato di Risanamento nel Nuovo Codice della Crisi' (2022) 3 *Ristrutturazioni aziendali*, <https://ristrutturazioniaziendali.ilcaso.it/Articolo/238__Il-piano-attestato-di-risanamento-nel-nuovo-codice-della-crisi>.

⁸⁴ Sonia Carmignani, 'Attività agricola e crisi d'impresa' (2021) 3 *Diritto agroalimentare* 470; Amedeo Bassi, 'I presupposti delle procedure concorsuali nel codice della crisi e dell'insolvenza', in Guido Bonfante (ed), *Codice della crisi d'impresa e dell'insolvenza* (2019) 8–9 *Giurisprudenza italiana* 1950; Giuseppe Antonio Michele Trimarchi, *Manuale del diritto della crisi e dell'insolvenza* (Edizioni Scientifiche Italiane, 2023), 197; Fabrizio Di Marzio, *Diritto dell'insolvenza* (Giuffrè, 2023), 423.

⁸⁵ Article 57, CCII (above note 2).

⁸⁶ Article 23, comma 43, Law Decree 06.07.2011 no. 98.

⁸⁷ Article 374, CCII (above note 2).

⁸⁸ Filippo Lamanna, *Il Nuovo Codice della Crisi d'Impresa e dell'Insolvenza* (Volume I) (Giuffrè Francis Lefebvre, 2019), 56.

⁸⁹ Explanatory Report to the Legislative Decree no. 14/2019 (above note 77), 73.

⁹⁰ Costato and Russo (above note 12), 412; Antonio Jannarelli, 'La parabola della "specialità" dell'impresa agricola dopo il d.lgs. sulle crisi di impresa: considerazioni critiche', in 'Ripensare la specialità dell'impresa agricola' (Convegno del 10 maggio 2019—Palermo) (2019 parte I) *Rivista di Diritto Agrario* 230; Claudio Cecchella, *Il diritto della crisi dell'impresa e dell'insolvenza* (CEDAM, 2020), 505; Amedeo Bassi (above note 84), 1950; Vittorio Zanichelli, 'Gli Esiti Possibili della Composizione Negoziata' (2021) *Diritto della Crisi* 20 ff., <www.dirittodellacrisi.it>; Giovanni Battista Nardecchia, *Il Nuovo Codice della Crisi d'Impresa e dell'Insolvenza* (NelDiritto Editore, 2019), 235; Alberto Amatucci, 'Lessico e Semantica nelle Procedure Concorsuali' (2021) 3 *Giurisprudenza Commerciale* 365; Gianfranco Benvenuto, 'Gli Accordi di Ristrutturazione dei Debiti nel Codice della Crisi e dell'Insolvenza' (2019) 3 *Rivista dei Dottori Commercialisti* 537, 540 ff; Nocera (above note 80), 190; Carmignani (above note 84); Gian Franco Campobasso, *Diritto commerciale* 3 *Contratti, titoli di credito, procedure concorsuali* (UTET Giuridica, 2022), 474 ff; Trimarchi (above note 84), 201.

⁹¹ Article 57, CCII (above note 2).

⁹² *Ibid.*, Article 63.

⁹³ *Idem.*

⁹⁴ *Ibid.*, Article 62.

⁹⁵ Salvadori (above note 31), 141; Trimarchi (above note 84), 216.

⁹⁶ Luigi Costato, 'I Confini del Diritto Agrario dopo i Decreti d'Orientamento' (2001) 9/10 *Diritto e Giurisprudenza Agraria e dell'Ambiente* 500 ff.; Carmignani, 'Sul Fallimento di Società Agricola Cessata' (above note 39), 3; Germanò, 'L'Imprenditore Agricolo e il Fallimento' (above note 39), 722.

⁹⁷ Filomena Prete, 'Attività Principali e Connesse nell'Impresa Agricola in Crisi' (2020) 2 *Rivista di Diritto Agrario* 92, 103.

⁹⁸ *Idem.*

⁹⁹ Except for the negotiated composition.

¹⁰⁰ Amatucci (above note 90); Jannarelli (above note 90), 230 ff.

¹⁰¹ Title V, Chapter I, Section IV, CCII (above note 2).

¹⁰² *Ibid.*, Article 274.

¹⁰³ Luca Della Tommasina, 'Le Azioni Revocatorie nella Liquidazione Controllata dell'Impresa Agricola' (2020) 3 *Rivista Trimestrale di Diritto e Procedura Civile* 1037, 1038 ff.



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- ¹⁰⁶ Section 1, Austrian Federal Law on Insolvency Proceedings (Insolvency Ordinance/"IO") RGBl 337/1914 (as last amended in Federal Law Gazette I No 38/2019).
- ¹⁰⁷ Sections 1, 3 and 6, Czech Act No 182/2006 Coll Bankruptcy and Remedies Act (Insolvency Act).
- ¹⁰⁸ Section 1, Danish Bankruptcy Act, LBK No 1600 of 25 December 2022 (as last amended in 2024).
- ¹⁰⁹ Section 1, German Insolvency Code of 5 October 1994 (Federal Law Gazette I, 2866) (as last amended by Article 2, Act of 7 May 2021 (Federal Law Gazette I, 850)).
- ¹¹⁰ Article 7, Greek Insolvency Law No 4738/2020 (as amended by Law 4818/2021).
- ¹¹¹ Article 1, Dutch Bankruptcy Act (Faillissementswet).
- ¹¹² Article 2, Portuguese Code of Business Insolvency and Recovery (approved by Decree-Law No 53/2004 of 18 March 2004 and amended by Decree-Law No 57/2022 of 25 August 2022).
- ¹¹³ Article 1, Spanish Royal Legislative Decree 1/2020 of May 5, which approves the consolidated text of the Bankruptcy Law.
- ¹¹⁴ Section 1, Swedish Bankruptcy Act (1987:672).
- ¹¹⁵ Section 2, Austrian Federal Law on the Restructuring of Companies (Restructuring Code/"ReO") BGBl I No 147/2021.
- ¹¹⁶ German Corporate Stabilization and Restructuring Act of 22 December 2020 (BGBl I, 3256) (as last amended by Article 12, Law of 20 July 2022 (Federal Law Gazette I, 1166)).
- ¹¹⁷ Article 369, Dutch Act of 7 October 2020 to amend the Bankruptcy Act in connection with the implementation of the possibility of court confirmation of a private restructuring plan (Act on the confirmation of private restructuring plans).
- ¹¹⁸ Section 1, Swedish Act (2022:964) on Company Restructuring.
- ¹¹⁹ Section 3, Cypriot Bankruptcy Law Cap 5; Part V, Companies Law Cap 113.
- ¹²⁰ Sections 1 and 8, Estonian Bankruptcy Law adopted on 22.01.2003, RT I 2003, 17, 95.
- ¹²¹ Section 3, Finnish Bankruptcy Act 120/2004.
- ¹²² Section 7, Bankruptcy Act 1988; Part 11, Companies Act 2014.
- ¹²³ Section 2, Irish Insolvency Law 06.08.2010 No 124.
- ¹²⁴ Article 1, Latvian Law on Personal Bankruptcy 10.05.2012 No XI-2000.
- ¹²⁵ Title III, Lithuanian Commercial Code, Cap 13; Companies Act, Cap 386.
- ¹²⁶ Articles 5 and 7, Slovenian Act on Financial Operations, Insolvency Procedures and Compulsory Winding Up (ZFPPIPP) Official Gazette of the Republic of Slovenia, No 176/21.
- ¹²⁷ Cypriot Companies Law (above note 119).
- ¹²⁸ Article 1, Lithuanian Law on Insolvency of Legal Entities of the Republic of Lithuania No XIII-2221.
- ¹²⁹ Article 1, Slovenian Act on Aid for Rescuing and Restructuring Companies and Cooperatives in Difficulty (ZPRPGDZT) Official Gazette of the Republic of Slovenia, No 5/17.
- ¹³⁰ Section 32, Latvian Insolvency Law 06.08.2010 No 124.
- ¹³¹ Article XX.1er, Book XX, Belgian Code of Economic Law.
- ¹³² Articles 1, 2 and 608, Bulgarian Commerce Act, State Gazette No 48/18.06.1991.
- ¹³³ Article 3, Croatian Act of 17.06.2015 on Bankruptcy Procedure; Act of 6.07.2018 on Consumer Bankruptcy.
- ¹³⁴ Article L611-1, Book VI, French Commercial Code.
- ¹³⁵ Section 2(1), Hungarian Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings.



- ¹³⁶ Article 1, Polish Bankruptcy Law of 28.02.2003 (Journal of Laws No 60, item 535) and consolidated text of 22.02.2019 (Journal of Laws of 2019, item 498).
- ¹³⁷ Article 1, Romanian Law No 85 of 25.06.2014 on Insolvency Prevention and Insolvency Proceedings, Article 3; and Law No of 26.06.2005 on Insolvency of Natural Persons (“Personal Insolvency Law”).
- ¹³⁸ Section 3, Slovakian Law 09.12.2004 7/2005 Coll on Bankruptcy and Restructuring and on The Amendment of Some Laws; Section 1, Law 16.03.2022 111/2022 Coll on The Solution of Imminent Bankruptcy and on The Amendment of Some Laws.
- ¹³⁹ Articles 1 and 2, Luxembourgish Code de Commerce; Article 2, Law 08.01.2013 Concerning Over-Indebtedness.
- ¹⁴⁰ Article 2, Bulgarian Commerce Act (above note 132).
- ¹⁴¹ Article 2, Luxembourgish Code de Commerce (above note 139).
- ¹⁴² Article 6(5), Polish Bankruptcy Law (above note 136).
- ¹⁴³ However, a reform to introduce a personal insolvency act is current under discussion under the National Recovery and Resilience Plan.
- ¹⁴⁴ See, for example, the *Règlement amiable* in Articles L-351-1 to L351-7-1, French Rural and Maritime Fishing Code; Chapter XXIII, Latvian Insolvency Law (above note 130).
- ¹⁴⁵ Francine Macorig-Venier, ‘Dispositif de Soutien aux Entreprises Agricoles en Difficulté’ (2009) *Revue Trimestrielle de Droit Commercial* 447.
- ¹⁴⁶ Article D-354-7, French Rural and Maritime Fishing Code.
- ¹⁴⁷ *Idem*.
- ¹⁴⁸ *Ibid.*, Article D-354-1.
- ¹⁴⁹ Chapter XXIII, Latvian Insolvency Law (above note 130).
- ¹⁵⁰ *Ibid.*, Article 124.
- ¹⁵¹ ‘Key Policy Objectives of the CAP 2023–27’, <https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27/key-policy-objectives-cap-2023-27_en>.
- ¹⁵² Paul Omar, ‘Genesis of the European Initiative in Insolvency Law’ (2003) 12 *International Insolvency Review* 147, 148.
- ¹⁵³ Council Regulation n 1346/2000 of 29 May 2000 on Insolvency Proceedings [2000] OJ L160/1.
- ¹⁵⁴ Regulation (EU) 2015/848 (above note 6).
- ¹⁵⁵ *Ibid.*, Article 1.
- ¹⁵⁶ *Ibid.*, Annex A.
- ¹⁵⁷ Istituto di Servizi per il Mercato Agricolo Alimentare, *Rapporto sull’Agroalimentare Italiano 2023*, 143, <<https://www.ismea.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/12542>>.
- ¹⁵⁸ Directive on Restructuring and Insolvency (above note 3).
- ¹⁵⁹ *Idem*.
- ¹⁶⁰ Boon and Madaus (above note 24), 238, 242.
- ¹⁶¹ Directive on Restructuring and Insolvency (above note 3).
- ¹⁶² Javier Arias Varona, Johanna Niemi and Tuomas Hupli, ‘Discharge and Entrepreneurship in the Preventive Restructuring Directive’ (2020) 29 *International Insolvency Review* 8.
- ¹⁶³ Directive on Restructuring and Insolvency (above note 3).
- ¹⁶⁴ *Ibid.*, Recital 21.
- ¹⁶⁵ Proposal for a Directive Harmonising Certain Aspects of Insolvency Law (above note 8).
- ¹⁶⁶ *Ibid.*, Article 1.
- ¹⁶⁷ Procedure 2022/0408/COD, <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=celex:52022PC0702>>.



- ¹⁶⁸ Costato (above note 14), 89.
- ¹⁶⁹ Germanò (above note 10), 101 ff.
- ¹⁷⁰ Costato (above note 14), 94.
- ¹⁷¹ Carrozza (above note 40), 390 ff; Genovese (above note 13), 234.
- ¹⁷² Lorenzo Mossa, *Trattato del Nuovo Diritto Commerciale* (CEDAM, 1957), 226.
- ¹⁷³ Articles 75, 56 and 57, CCII (above note 2).
- ¹⁷⁴ Amatuucci (above note 90), 365 ff.
- ¹⁷⁵ Jiwon Lee, David Schoenherr and Jan Starmans, 'The Economics of Legal Uncertainty' (5 July 2023) (European Corporate Governance Institute—Law Working Paper No 669/2022), <<https://doi.org/10.2139/ssrn.4276837>>.
- ¹⁷⁶ Enza Pellecchia, 'La Riforma Del Sovraindebitamento Nel Codice Della Crisi D'impresa E Dell'insolvenza', in Pellecchia and Modica (above note 80), 22; Domenico Benincasa, 'Le Procedure In Caso Di Sovraindebitamento Ai Sensi Dell'art. 2, 1° Comma, Lett. C' in Bonfante (above note 84), 2039.
- ¹⁷⁷ Article 211(2), CCII (above note 2).
- ¹⁷⁸ Idem.
- ¹⁷⁹ Ibid., Article 268.
- ¹⁸⁰ Tribunale of Ravenna 23.03.2023 no. 15.
- ¹⁸¹ Tribunale of Bologna 14.06.2023 no. 90.
- ¹⁸² Antonio Sciaudone, 'La Specialità dell'Azienda Agricola', in 'Ripensare la Specialità dell'Impresa Agricola' (above note 90), 352.
- ¹⁸³ See, for example Law 20.07.2004 no. 189 Provisions concerning the prohibition of mistreatment of animals, as well as their use in clandestine fights or unauthorized competitions; 78/923/EEC Council Decision of 19.06.1978 concerning the conclusion of the European Convention for the protection of animals kept for farming purposes [1978] OJ L 323/12; Law 14.10.1985 no. 623 Ratification law of the European Convention for the protection of animals for farming purposes adopted in Strasbourg on 10 March 1976 and of the European Convention for the protection of animals for slaughter, adopted in Strasbourg on 10 May 1979 respectively; Legislative Decree 26.03.2001 no. 146 Implementing Directive 98/58/EC on the protection of animals on farms.
- ¹⁸⁴ Article 274(2), CCII (above note 2); Della Tommasina (above note 103), 1037 ff.
- ¹⁸⁵ Della Tommasina (above note 103), 1043.
- ¹⁸⁶ Article 101, CCII (above note 2).
- ¹⁸⁷ Carmignani (above note 84), 472; Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (above note 105), note 5.
- ¹⁸⁸ Carmignani (above note 84), 475.
- ¹⁸⁹ Idem.
- ¹⁹⁰ See, for example, South Australia Farm Debt Mediation Act 2018 or US Agricultural Credit Act of 1987 § 505, 7 USC § 5105 (1988).

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