

EDITORIAL: Governance responsibility in Italy to monitor corporate performance — Code of Corporate Crisis and Insolvency

Dear readers!

We are glad to share with you the recent studies from the *Journal of Governance and Regulation*.

The Corporate Crisis and Insolvency Code officially entered into force on July 15, 2022, following appropriate amendments made by Legislative Decree 83/2022 to Legislative Decree 14/2019, which had already provided for an initial version of this legislation. Before proceeding with the explanation of the content of the Code, it is important to understand the context and motivations that led to its drafting.

The continuous economic crises that have characterized the last few years have forced a review of the concept of 'how to do business', especially in terms of risk-taking and the prevention of crisis and insolvency. Therefore, based also on the complex historical moment that worsened dramatically in the pandemic period and then was once again urged on by the outbreak of the Russian-Ukrainian conflict, an organic reform of bankruptcy law was unavoidable, given also the continuous evolution of economic and social realities and the thrust of the European Union.

The new Corporate Crisis and Insolvency Code was created to implement Directive 2017/1132/EU on restructuring and insolvency and replaced by the Insolvency Directive 2019/1023/U. We are, therefore, faced with a work started years ago aimed at the regulatory modernization given the need for legal certainty and simplification of the procedures, in order to make them more effective and efficient also in view of the Italian bureaucratic delays and difficulties in the bankruptcy resolution procedures.

The new code was born, therefore, for innumerable needs: terminology, prevention, internal control and in order to ensure better functioning of the European market, but also to replace a regulation, that of the bankruptcy law, which had always been much criticized also because of its negative impact on the commercial entrepreneur, given its strongly punitive view of the 'bankrupt'.

The main aspects affected by the new rules are very different in nature. The first aspect, perhaps the most obvious, concerns a problem of nomenclature: bankruptcy is no longer used as terminology since it could have had a negative meaning, but it is known as judicial liquidation.

A new definition of crisis, identified by the inadequacy of cash flows over a twelve-month period, is also proposed. To remedy this, the entrepreneur must have special arrangements in place to detect early and early signs of crisis and new obligations to report to public creditors and banks in the presence of certain warning signs or changes in credit facilities (one of the first signs of crisis).

Thus, a new crisis regulation system was introduced, called the restructuring plan subject to approval (PRO), and a new group insolvency regulation, not yet present in our country.

The history of the Code of Business Crisis and Insolvency is very long and complex, it originated from a European directive that was later amended and came into force with a legislative decree that was also amended: we can thus say that the code has undergone a real regulatory evolution, from its primary form to the final one that came into force on July 15, 2022.

As mentioned above, Legislative Decree 83/2022 amends the already existing Legislative Decree 14/2019 to supplement and better regulate the preventive restructuring frameworks

for the debtor in financial difficulty and for whom there is a likelihood of insolvency, in order to prevent insolvency, exoneration and disqualification, procedures that lead to the exoneration from debts incurred by the insolvent entrepreneur.

More specifically, citing the most obvious changes in the code envisaged in 2019 and the one that actually came into force in 2022, the concept of arrangements that a company must adopt in order to foresee the onset of a crisis in good time was introduced. We are talking, for example, about the detection of imbalances in the balance sheet and the sustainability of debts and the prospects of business continuity in the next 12 months.

We also find a number of indications as to which elements constitute signs for the prediction of a crisis such as the existence of payroll debts overdue by at least 30 days amounting to more than half of the total monthly payroll amount, or the existence of payables to suppliers overdue by more than 90 days in an amount exceeding the debts not overdue, but also the exposure of debts to banks.

Another element of substantial change is the deletion of that part of the code that provided for the exclusion of banks, financial intermediaries, mutual funds, insurance companies and many others, from the application of the warning instruments.

It is very important to generate new knowledge to understand the emerging issues of corporate governance in a cross-disciplinary context and contribute to the previous research by Mantovani, Kostyuk, and Govorun (2022), Gigante and Venezia (2021), Lagasio (2021), Arora and Singh (2021), Kostyuk, Braendle, and Capizzi (2017).

The authors of the papers published in this issue of the journal provide a serious contribution to the previous research in the field.

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