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The Implementation of Directive (EU) 2019/1023 ("Insolvency") in the Member States of the European Union: Comparative Experiences and Reform Perspectives, with Particular Reference to Discharge of Debt

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Abstract

This doctoral dissertation examines the interaction between European Union insolvency law and national legal systems, with a particular focus on the Italian implementation of the rules governing discharge of debt (*esdebitazione*). The research is situated within the broader process of European economic integration and addresses the growing need for coherent, efficient, and predictable insolvency frameworks capable of supporting the functioning of the internal market and the Capital Markets Union.

The starting point of the analysis is the evolution of insolvency law at the European level. Historically, insolvency regimes were regarded as an expression of national sovereignty, deeply embedded in domestic procedural traditions and economic policies. However, the increasing cross-border nature of business activities has progressively exposed the inadequacy of fragmented national systems. Divergences in insolvency rules have generated legal uncertainty, increased transaction costs, and fostered forum shopping, ultimately undermining the freedom of establishment and the free movement of capital guaranteed by the Treaties.

Against this background, the European Union has gradually developed a multi-layered strategy. Initial efforts focused on private international law and procedural coordination, culminating in Regulation (EU) 2015/848 on insolvency proceedings. While this instrument improved cross-border cooperation and jurisdictional certainty, it deliberately avoided substantive harmonisation. The limits of this approach became increasingly apparent, particularly in light of the financial crisis and its aftermath, which highlighted the need for preventive and restructuring-oriented tools capable of preserving economically viable enterprises.

This shift in perspective found its normative expression in Directive (EU) 2019/1023 on preventive restructuring frameworks, discharge of debt, and disqualifications. The Directive embodies a paradigmatic transition from a liquidation-oriented and punitive conception of insolvency towards a "rescue culture" centred on early intervention, business continuity, and the principle of the "second chance". The Directive aims to ensure that viable but distressed businesses have access to restructuring mechanisms before insolvency becomes irreversible, while also guaranteeing that honest entrepreneurs can obtain a full discharge of debt within a reasonable time.

The thesis provides a systematic analysis of the Directive's objectives and structure. Particular attention is devoted to preventive restructuring frameworks, the stay of individual enforcement actions, debtor-in-possession mechanisms, and the introduction of cross-class cram-down tools designed to overcome creditor holdouts. The Directive's provisions on discharge of debt are examined as a cornerstone of the new European insolvency paradigm, reflecting a deliberate policy choice to reduce the social and economic costs of entrepreneurial failure.

Equally significant are the Directive's efficiency-oriented measures, including requirements concerning the competence of judicial authorities, procedural timelines, and data collection. Article 33 of the Directive, which introduces a review clause, and Recital 92, which emphasises the collection of empirical data on national implementation, demonstrate that the European legislator conceives insolvency harmonisation as a dynamic and iterative process rather than a one-off intervention.

A comparative analysis of the implementation of the Directive in selected Member States—France, Belgium, and Austria—reveals different legislative techniques and degrees of continuity with pre-existing national frameworks. France opted for an adaptive approach, reinforcing its already well-developed preventive instruments and integrating European innovations, such as creditor classes and cram-down mechanisms, into a mature rescue-oriented system. Belgium anticipated many of the Directive's objectives through a comprehensive reform of its insolvency law, later adjusting it to European standards with relatively limited amendments. Austria, by contrast, illustrates a model strongly focused on procedural simplification and social support mechanisms, particularly through the integration of advisory services for debtors.

These comparative findings highlight both the strengths and the inherent limits of the Directive's minimum harmonisation approach. While a convergence of fundamental principles can be observed, significant divergences persist in terms of access conditions, judicial involvement, and the balance between creditor protection and debtor relief. This fragmentation raises questions about the effectiveness of minimum harmonisation in achieving a genuine level playing field within the internal market. The core of the dissertation is devoted to the Italian implementation of Directive (EU) 2019/1023, primarily through Legislative Decree No. 83/2022 and the broader framework of the Italian Code of Business Crisis and Insolvency (*Codice della crisi d'impresa e dell'insolvenza*). The Italian reform process is analysed as the result of a complex interaction between domestic policy choices and European constraints. Although the Code was formally conceived prior to the adoption of the Directive, its subsequent amendments were explicitly designed to align national law with European standards.

The research critically assesses the Italian approach to preventive restructuring, with particular emphasis on the negotiated settlement procedure (*composizione negoziata*). While this instrument reflects the Directive's emphasis on early intervention and debtor autonomy, the thesis identifies structural weaknesses, including the absence of a clear statutory distinction between economically viable firms and those suffering from irreversible decline. The failure to incorporate a robust concept of the "viable enterprise" risks allowing inefficient firms to access restructuring tools, potentially distorting resource allocation and undermining the Directive's economic rationale.

It highlights how the interaction between global (UNCITRAL), regional (European Union), and national sources does not reflect a rigid hierarchy, but rather a dynamic of functional complementarity. The UNCITRAL Legislative Guides—particularly the one dedicated to micro and small enterprises (MSEs)—operate as soft law instruments capable of fostering convergence among legal systems through shared principles: early access to restructuring, the debtor-in-possession model, cram-down mechanisms to overcome creditor dissent, discharge of debt, and cross-border cooperation. EU law, through Directive (EU) 2019/1023 and Regulation (EU) 2015/848, incorporates and re-elaborates these standards, contributing to the construction of a "global insolvency space" grounded in procedural proportionality, stakeholder protection, and multilevel crisis governance.

The analysis further examines the infrastructural dimension of harmonisation, with particular reference to access to asset registers, beneficial ownership registers, and the information sheets published on the European e-Justice Portal. The Insolvency III proposal builds upon existing digital instruments within the EU legal order—developed in areas such as anti-money laundering, judicial cooperation, and interoperability through systems like e-CODEX—transforming them into tools that enhance the

effectiveness of insolvency proceedings. Asset tracing and the standardisation of information concerning national regimes reduce informational asymmetries, strengthen equal access among European practitioners, and directly affect risk predictability for investors. From this perspective, digitalisation does not constitute merely a technical support mechanism, but an evolutionary mode of exercising EU competence, capable of generating indirect harmonisation through common technological standards.

The combined analysis demonstrates that the integration of European insolvency law currently unfolds along a dual trajectory: a normative-systemic dimension, shaped by the dialogue between global soft law and Union hard law, and an infrastructural-digital dimension, characterised by the development of a European network of insolvency information. This results in a model of multilevel governance in which functional harmonisation, cross-border cooperation, and the digitalisation of justice converge in the formation of a European—and increasingly global—insolvency space oriented toward efficiency, transparency, and the protection of the internal market.

A substantial part of the dissertation is dedicated to the institution of discharge of debt. The analysis traces its evolution from a traditionally restrictive and creditor-oriented mechanism to a more expansive, debtor-oriented instrument. Particular attention is paid to the Italian rules on discharge for insolvent individuals, over-indebted consumers, and—most innovatively—companies. The extension of discharge to legal persons represents a significant departure from both traditional Italian insolvency law and the minimum requirements of EU law, raising profound systemic questions. Through doctrinal analysis and examination of recent case law, the thesis explores the implications of discharge for the balance between creditor interests and the economic dignity of the debtor. The Italian model

is positioned between creditor-oriented systems, such as the German *Restschuldbefreiung*, and more debtor-friendly approaches. This intermediate position reflects an attempt to reconcile economic efficiency, social inclusion, and market confidence, but it also exposes the system to risks of inconsistency and moral hazard.

Empirical evidence, drawn from Unioncamere data, provides an essential complement to the normative analysis. The data reveal a growing use of negotiated restructuring tools by medium-sized enterprises, while liquidation procedures remain prevalent among micro-enterprises and structurally weak firms. This dual trend confirms the partial success of preventive mechanisms but also underscores the persistence of late crisis emergence and the limited diffusion of adequate organisational and accounting structures among Italian firms.

The dissertation then examines the European Commission's Proposal of 7 December 2022 (COM (2022) 702 final), often referred to as "Insolvency III". This proposal represents a further step in the harmonisation process, focusing on specific aspects of liquidation proceedings, asset tracing, pre-pack sales, directors' duties, and simplified procedures for micro-enterprises. The analysis of the proposal's seven pillars highlights the Commission's continued reliance on minimum harmonisation as a methodological choice, aimed at addressing the most economically relevant divergences without imposing a fully unified insolvency regime.

The final chapter of the thesis develops a set of conclusions and proposals aimed at advancing the construction of a more coherent European insolvency law. It argues that while Directive (EU) 2019/1023 has successfully initiated a cultural shift towards prevention and second chance, its effectiveness is constrained by excessive national discretion and uneven implementation. The thesis advocates a more selective and evidence-based harmonisation strategy, capable of strengthening

substantive convergence where divergences most severely affect market integration.

In particular, the research emphasises the need to refine access criteria for preventive restructuring, enhance data-driven evaluation of national regimes, and improve digital infrastructure for cross-border insolvency information. The role of European institutions and legal practitioners is identified as crucial in shaping a more efficient and inclusive insolvency framework, capable of balancing creditor protection with economic dignity and sustainable entrepreneurship.

Ultimately, the dissertation argues that the evolution towards a European insolvency law should not be conceived as the mere aggregation of national reforms, but as a coordinated process guided by clear economic and legal principles. Discharge of debt, preventive restructuring, and procedural efficiency emerge as central components of this evolving framework, reflecting a broader transformation of insolvency law from an instrument of exclusion to a mechanism of economic renewal and social reintegration.