

Italy's New Extraordinary Administration Insolvency Proceedings: Casting a Wider Net

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The Italian government has tabled a bill in Parliament (the “Bill”) envisaging an overhaul of the so-called extraordinary administration (*amministrazione straordinaria*) proceedings (“EA”), a special form of insolvency proceedings managed by government-appointed commissioners (with limited involvement of the courts), which was conceived in the late 1970’s to rescue large insolvent companies. The Bill would mandate the government to adopt one or more legislative decrees on the basis of the principles and guidelines set forth in it.

Highlights of the Bill

- Repeal of the current EA regime (consisting of two separate pieces of legislation, repeatedly tinkered with over time) and replacement with a unified legal framework;
- merger of the two current types of EA proceedings in a single regime, while in practice still envisaging a dual-track process, under either court or government control, depending on how the process is kicked off (who submits which application and to which authority);
- broadening of the categories of debtors that may be placed in EA proceedings, now including any company holding strategic assets, defined by reference to the very broad Italian FDI legislation, subject to a minimum headcount to be determined;
- if a company has a government-controlled shareholder, standing to petition the government to place the company in EA is granted also to any shareholder holding at least 30% of the share capital; and
- strengthening of the government’s role in out-of-court composition proceedings (*composizione negoziata*) concerning companies eligible for EA.

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I. Introduction

Besides rationalizing the current EA legislation, a prominent policy goal of the Bill¹ appears to be increasing the government's grip over the insolvency of companies of "strategic relevance" for the country.

The Bill comes at a time of continued significant interventions, at both the European and national levels, to overhaul and modernize the generally applicable insolvency legislation, starting with the Directive (EU) 2019/1023 of June 20, 2019 (the "Insolvency Directive"), which accords precedence to debtor-in-possession and business continuity restructuring procedures, and was implemented into Italian law by the so-called Corporate Distress and Insolvency Code² (adopted in 2019 and entered into force in 2022).

Through the Bill, the government seeks a mandate from Parliament to reform the entire EA regime, whose clarity and consistency have been undermined as a result of the multiple amendments occurred over the past 15 years, often intended to address the circumstances of a specific situation.

The Bill will now need to be debated by Parliament, and, if approved, it will be translated in one or more legislative decrees to be adopted by the government within 12 months of Parliament's approval.

II. Background of the EA regime

Since the late '70s, the Italian government has made large use of EA proceedings, with mixed results over time in terms of the stated goal of preserving the value of the businesses in question.

The EA was first introduced in 1979 and then reformed in 1999 (the so-called "Prodi-bis" Law).³ In 2003, in connection with the Parmalat downfall, a special form of EA was introduced (the so-called "Marzano" Decree),⁴ which was in turn reformed in 2008 (upon the collapse of Alitalia) and on various other occasions thereafter (in practice, with a view to addressing the specificities of each major case).

III. Two legal frameworks, one problem

As noted, the EA proceedings are a special form of insolvency proceedings applicable to relatively large insolvent companies whose business must present concrete chances of recovery.

EA proceedings are supervised (and, in the case of the Marzano Decree, also instituted) by the Italian government, acting through the Minister of Enterprises and Made in Italy ("MIMIT"), whereas the role of the bankruptcy courts – unlike in standard insolvency proceedings – is rather limited.

Importantly, the EA proceedings are not debtor-in-possession: upon admission to the proceedings, the government designates or appoints one or three extraordinary commissioners, who take over the management of the company, whose corporate bodies (including the shareholders meeting) are disenfranchised.

The main purpose of the EA proceedings is to preserve the business continuity and employment levels of the insolvent company. This goal can be pursued through an economic and financial restructuring, or (almost invariably) the sale of the business as a going concern to a third-party buyer.

At present, the EA regime consists of two separate frameworks, whose application mainly depends on the size of the company.

Under the standard (Prodi-bis Law) EA, the bankruptcy courts decide both whether the company is insolvent and whether to admit it to the EA proceedings (as opposed to judicial liquidation), acting also upon the opinion of MIMIT, which also designates one or more extraordinary commissioners.

Conversely, under the special Marzano Decree EA, it is up to the government (acting through MIMIT or the Prime Minister) to decide on the admission of the company to the EA proceedings and appoint the

¹ The Bill is available (in Italian) [here](#).

² Legislative Decree No. 14/2019, as amended.

³ Legislative Decree No. 270/1999, as amended.

⁴ Decree-Law No. 347/2003, as amended.

extraordinary commissioners,⁵ subject to the court thereafter verifying whether the company was insolvent.⁶

Over time, the coexistence of these two partly overlapping regimes has given rise to significant practical challenges, including procedural duplications and interpretative uncertainties.

IV. The proposed solution: a partially unified regime

Ostensibly, the Bill seeks to simplify the currently fragmented framework by unifying the two types of EA proceedings in a single regime, although in practice it still envisages a dual track process.

On the one hand, the Bill sets forth a number of common principles, which are expected to translate in specific rules applicable to all EA proceedings, regardless of the features of the debtor company and who seeks access to the EA. These include:

- granting to bankruptcy courts the authority to declare the company insolvent;
- determining the legal effects arising from the opening of the EA proceedings and those ensuing from the declaration of insolvency;
- entrusting to extraordinary commissioners the management of the company during the proceedings;
- allowing the company's recovery to be pursued either through the sale of its business as a going concern, or

alternatively the economic and financial restructuring;

- entrusting the MIMIT with the supervision over the implementation of the EA program;
- providing for the extension of the EA proceedings to companies that appear to be under common management with the company initially placed in EA;
- establishing the procedures and conditions under which companies may access (unspecified) public support measures designed to facilitate restructuring processes.

However, similarly to the current set-up, the Bill maintains a dual-track process, although on different premises. In particular, whereas, as noted, under the current regime the application of different procedures depends on the size⁷ of the relevant companies, under the Bill the differentiation between the two tracks will depend on how the process is kicked off (who submits which application and to which authority).

○ Track one: court-approved framework

The Bill does not specify which parties are entitled to initiate the EA proceedings under the new standard framework, leaving that determination to the government's legislative decree. However, similarly to how the standard EA currently works, presumably this new standard framework will apply in case the process is kicked off by the creditors or the public prosecutor, as well as the debtor itself, by submitting an insolvency application to the

⁵ Interestingly, since in this scenario the admission to EA is decided by MIMIT, judicial review becomes bifurcated, with the administrative courts obtaining jurisdiction over appeals against the MIMIT decree and bankruptcy courts over the insolvency declaration, which generates significant complexities.

⁶ Other notable differences between the two types of proceedings concern the composition with creditors (*concordato*), theoretically possible in both cases, but only in the Marzano Decree EA may dissenting creditors be crammed down by the majority of creditors, subject to certain conditions.

⁷ Notably, (i) under the standard (Prodi-bis Law) EA, the debtor's headcount must be at least 200, and its liabilities must be at least equal to 2/3 of both its assets and revenues, whereas (ii) under the special (Marzano Decree) EA, the debtor's headcount must be at least 500, and its liabilities must be at least equal to Euro 300 million. As noted in § V.A, the dimensional requirements will be revised by the government in the legislative decree to be adopted once the Bill is approved.

court of the place where the company has its center of main interests. In that case, the bankruptcy court will retain a more central role: in particular, the court will sequentially (i) assess the existence of the company's insolvency, (ii) taking into account the MIMIT's opinion on the fulfilment of the admission requirements, authorize the company's admission to the EA proceedings and appoint the MIMIT-designated extraordinary commissioners, and (iii) supervise the EA procedure thereafter (including the implementation of the EA program, which presumably will first have to be approved by MIMIT).

○ **Track two: government-approved framework**

In the event that the debtor⁸ elects to kick off the process by submitting to MIMIT an application to access the EA proceedings (similarly to the current Marzano Decree), the primary role will be played by MIMIT.⁹ Once it receives the debtor's application, MIMIT shall immediately issue a decree placing the company (if eligible) into EA, and appointing the extraordinary commissioner(s). Only thereafter will the debtor, possibly acting through the commissioners, petition the

bankruptcy court for the formal assessment of the company's insolvency.¹⁰

V. Casting a wider net

The reform operates a twofold, decisive extension of the EA proceedings.

A. New admission requirements: management of strategic assets

Under the Bill, the new EA will apply not only to insolvent companies exceeding (individually or as a group) certain dimensional parameters (as it is the case currently), which will be set in the government's legislative decree,¹¹ but also to insolvent companies (with a minimum number of employees to be determined) managing "strategic" assets, defined by reference to the Italian foreign direct investment review ("FDI") regime.¹²

The Italian FDI regime, which as originally meant to apply to national defense and security, and energy transport and communication networks, has been progressively extended to a wide assortment of sectors, including water management, healthcare, data, financial services, certain advanced technologies (e.g., AI, machine learning, block-chain), electoral infrastructures, non-military space, dual-use, media pluralism, agri-food, and steel industry.¹³

Therefore, if confirmed, this new "strategic asset" eligibility criterion would result in a very significant

⁸ As discussed in greater detail in § V.B, below, for these purposes the debtor company may apply through its board or, alternatively, any shareholder holding at least 30% of the share capital, provided that the company is unlisted and the state administration holds an equity stake in it.

⁹ Based on the Bill, the Prime Minister no longer appears to be empowered to place a company into EA proceedings, unlike under the current framework of the Marzano Decree, where such power is granted also to the Prime Minister with regards to companies operating an essential public service or an industrial plant designated of national strategic interest.

¹⁰ Given the inversion of the opening steps (EA decree issued before the insolvency assessment), if the court rejects the insolvency petition or finds the admission requirements (see § V.A) wanting, the effects produced by the EA decree will immediately lapse.

¹¹ In terms of revenue, indebtedness and employees (which may not be fewer than 200).

¹² Articles 1, 1-*bis* and 2 of Decree-Law No. 21/2012, as amended. For each sector broadly identified in the statute, implementing regulations have compiled extensive lists of strategic assets. Nonetheless, it is often unclear whether a company falls within the scope of the FDI rules and is ultimately determined by the government office in charge of their enforcement. As a consequence, the Bill's reference to the FDI rules is likely to add considerable uncertainty to the applicability of the new EA rules.

¹³ As identified in detail under the Prime Minister Decree 179/2020. For an overview of the Italian FDI regime, see, among others, our alert memoranda dated [January 12, 2022](#), [March 24, 2022](#) and [June 29, 2023](#).

extension of the scope of the EA, particularly if the minimum employee threshold will be low (e.g., 200).

Also, the proposed applicability criterion based on the FDI categories is likely to generate legal uncertainty, since the FDI regulations often employ broad language and catch-all categories,¹⁴ so much that almost 50% of all FDI filings are ruled out of scope by the competent government office.¹⁵ Finally, it is possible that MIMIT or the bankruptcy courts would develop interpretations of the FDI rules diverging from the competent FDI authority.

B. Shareholders holding at least 30% of the share capital

It is a basic tenet of Italian corporate and insolvency law that the power to apply for insolvency and other restructuring measures is vested in the debtor's board of directors.

The Bill confirms and materially expands a controversial exception to this rule (originally introduced in the Marzano Decree in 2023 and amended in 2024),¹⁶ empowering shareholders holding, directly or indirectly, individually or in the aggregate, at least 30% of a company's share capital (that is, even non-controlling shareholders) to apply to MIMIT for its admission to EA overruling the will of its board of directors, provided that (i) such company's shares are not listed on a stock exchange, and (ii) an Italian state

instrumentality directly or indirectly holds an equity stake in it.¹⁷

Unlike the existing Marzano Decree provision, applicable only to insolvent companies (meeting the applicable dimensional thresholds) that operate one or more industrial plants designated of national strategic interest by statute,¹⁸ the Bill would extend the shareholders' petition right to any company subject to the new EA regime.¹⁹

C. The extension of EA proceedings when a *de facto* group is involved

The Bill also significantly broadens the conditions under which EA proceedings already initiated against a company may be extended, at the initiative of its commissioners, to other related companies. Under the current provisions, EA proceedings may be extended to group companies or other entities having established economic or production ties to the insolvent company subject to EA, in order to facilitate a unified management of the group insolvency.

Pursuant to the Bill, EA proceedings could also be extended to companies that, based on the composition of their governing bodies or "*other consistent factors*", appear to be under "common direction" with the company initially admitted to the EA proceedings.

The use of an intentionally broad expression such as "*other consistent factors*" suggests the government's

¹⁴ For instance, in the financial sector, a company is deemed relevant for FDI purposes if, regardless of whether it holds any strategic asset, it employs at least 250 employees and its turnover is at least equal to Euro 300 million. Similar provisions are also provided in the energy, water management, healthcare, and data sectors.

¹⁵ As per the latest annual government report to Parliament on the application of the FDI regime during 2024, showing that out of 660 filings received during 2024, 310 were deemed out of scope.

¹⁶ Article 2, paragraph 2, of the Marzano Decree. In its 2023 version, the special right to petition MIMIT was reserved to state instrumentalities owning at least a 30% of the company's equity. The 2024 amendment – formally extending the right to any 30% shareholder (provided always that the company has an Italian state investor) – was introduced to allay concerns of non-compliance with the EU law prohibition of nationality-based discrimination. Arguably, however, it appears likely that only a state (30%) minority

shareholder would (successfully) petition to put into government-administered EA a company over the objection of its board.

¹⁷ This power can be exercised only after the qualified shareholders have notified the management body of the company about the existence of the requirements for admission to the EA proceedings, and the management body has failed to submit the application to open the proceedings within the following fifteen days, or, within the same period, has refused to proceed despite the above mentioned requirements being met.

¹⁸ At present, only the Taranto steelworks and the Priolo oil refinery have been so designated.

¹⁹ Therefore, this special shareholder right would not be "limited" to companies managing assets deemed strategic under the FDI regime. However, the Bill's explanatory report asserts that the presence of the state in the equity evidences a company's strategic nature, which would justify a stricter oversight by the shareholders of management decisions.

intention to extend the potential reach of EA by capturing more nuanced interdependencies.

VI. MIMIT's active role in out-of-court composition proceedings: early oversight

In case of a company that, if insolvent, could be subject to EA proceedings but seeks instead access to an out-of-court composition (*composizione negoziata della crisi*) under the Corporate Distress and Insolvency Code,²⁰ the Bill provides for a formal, significant involvement of the MIMIT.

In particular, two members of the commission within the local chamber of commerce responsible for appointing the third-party expert overseeing on the out-of-court composition will be designated by the MIMIT. In turn, this commission will need to select the expert from a dedicated list, consisting of professionals holding the required expertise, experience, and professionalism in managing the distress of large-scale and strategically significant companies. Such expert will then be required to maintain continuous communications with MIMIT, providing regular updates on the progress of the out-of-court composition.

Accordingly, for companies of strategic importance or considerable size, the government will be able to closely monitor the debtor's restructuring efforts, without awaiting the potential initiation of EA proceedings.

VII. Compliance with the Insolvency Directive

The Bill's explanatory report recalls that the main innovation introduced by the implementation of the EU Insolvency Directive into Italy through the Corporate Distress and Insolvency Code is the promotion of preventive restructuring procedures where debtors remain in control of their assets and the day-to-day operation of their business.

The Bill itself mandates the government to coordinate the new legislation with the Corporate Distress and Insolvency Code, without any specific instruction.

This leaves open the question whether the Bill's implementing legislation will reiterate another controversial provision added to the Marzano Decree in 2024,²¹ pursuant to which the filing of the EA application with MIMIT prevents access to, or the continuation of, an out-of-court composition and any other instruments for the resolution of distress and insolvency situations under the Corporate Distress and Insolvency Code.

Therefore, it is unclear whether and how the new EA regime will indeed be harmonized with the European legal framework on this critical aspect.

VIII. Next steps

The Bill may undergo amendments during the parliamentary approval process. Once it is definitely approved by Parliament, the government will have twelve months to enact one or more legislative decrees implementing the Bill.

The legislative decrees implementing the Bill will also lay down the interim provisions applicable to companies subject to EA proceedings prior to the entry into force of the implementing legislation.

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²⁰ A debtor in financial difficulty may start a composition, if a recovery appears reasonably possible, by requesting the appointment of a third-party expert to the local chamber of commerce. The expert's main mission is to facilitate the negotiations between the debtor, creditors and other stakeholders

with a view to addressing the situation of financial difficulty and reaching a consensual solution. For an overview, please see our alert memoranda dated [September 19, 2022](#) and [October 18, 2024](#).

²¹ Article 2, paragraph 2, of the Marzano Decree.