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EMPRESAS REGENERADAS MEDIANTE LA ADQUISICIÓN POR PARTE DE LOS TRABAJADORES (WBO): ESTUDIO DEL CASO DE ITALIA

COMPANIES REGENERATED WITH WORKERS' BUYOUTS (WBO): ITALY CASE STUDY

Federica Pasquariello
Professore Ordinario di Diritto commerciale
Università di Verona

Resumen

Este artículo examina las operaciones de la WBO en el marco de la normativa de la UE y con breves referencias al derecho comparado, antes de centrarse en la normativa y la experiencia italianas. El objetivo es poner de relieve las oportunidades que ofrece una herramienta para la regeneración empresarial, en consonancia con la sostenibilidad social y la continuidad.

Abstract

This essay examines WBO operations within the framework of EU regulation and with brief references to comparative law, before focusing on Italian regulation and experience. The aim is to highlight the opportunities offered by a tool for corporate regeneration, in line with social sustainability and continuity.

Palabras clave

Adquisición por parte de los trabajadores, crisis y continuidad de la empresa, insolvencia y sostenibilidad.

Keywords

Workers' buyout, Crisis and going concern, Insolvency and sustainability.

Sumario

I. INTRODUCTION. II. WBO IN THE EUROPEAN AND SUPRANATIONAL FRAMEWORK. III. WBO IN THE ITALIAN LEGAL FRAMEWORK. IV. WBO IN ITALIAN TRADITION AND PRACTICE. V. BIBLIOGRAPHY.

I. INTRODUCTION

The concept of Workers' Buyout (WBO) represents a distinctive instrument of business recovery in times of crisis or insolvency. It is a process through which employees take over the ownership and management of their enterprise, ensuring the continuity of production, the preservation of employment, and the regeneration of the company's economic and social function. Rather than being a mere reorganization strategy, WBO operations embody a deeper transformation—one that integrates social responsibility, sustainability, and human-centered corporate governance within the broader framework of economic recovery.

WBOs achieve what can be described as the regeneration or self-preservation of enterprises. They prevent the dispersion of professional expertise, safeguard the social function of labor, and redirect the company's assets toward sustainable market reintegration. In this sense, WBOs go beyond traditional insolvency solutions, which often culminate in liquidation, by introducing an alternative that aligns economic performance with social objectives. The workers involved become not only creditors but stakeholders actively participating in the company's renewal[1].

At the conceptual level, the WBO approach aligns with the global discourse on Corporate Social Responsibility (CSR) and the principles of Environmental, Social, and Governance (ESG) sustainability. Saving jobs, maintaining local production, and sustaining communities through newcos reflect a form of development that meets present needs without undermining the prospects of future generations[2]. By preserving employment and know-how, WBOs strengthen long-term corporate resilience and contribute to sustainable territorial development.

In addition, the WBO paradigm reintroduces the individual—particularly the worker—as the center of normative choices in company and insolvency law. It emphasizes human dignity, participation, and self-realization within the enterprise, countering purely profit-driven logics. Typically, WBOs arise in labor-intensive sectors characterized by highly skilled, territorially rooted workers, who are often older, socially integrated, and possess strong internal solidarity. This social cohesion forms the foundation for successful cooperative enterprises that emerge from crisis.

1 In 2021 Report "The Politics to Come", Giangiacomo Feltrinelli Foundation it is emphasized that a process of transition to a market economy characterized by processes of economic democratization is already underway, capable of overcoming old divisions and patterns, revitalizing economic relations linked to territories and local communities. In this context, WBOs are identified as vehicles capable of pursuing these social-economic objectives without hindering private enterprise. Economic support for WBOs, it is argued in the above-mentioned Report, represents a type of public intervention detached from welfare logics, capable of being in tune with the entrepreneurial ecosystem.

2 See World Commission on Environment and Development, 1987 (Brundtland's Report ´Our Common Future`), Oxford University Press, 1987, which defines "sustainable development" as "enabling the present generation to meet its own needs without compromising the ability of future generations to meet their own needs": it should be about meeting the needs of the present (overcoming the crisis) without compromising the possibilities of a 'future' (of a tomorrow) of the company itself, all stakeholders and the territory.

Finally, as Italy case study shows, WBOs reflect a renewed appreciation of cooperative enterprise models as essential tools for local economic regeneration and social inclusion. Their rootedness in local economies prevents industrial desertification, fosters employment stability, and preserves community identity. European institutions, recognizing these merits, have repeatedly encouraged the cooperative model as a means of achieving socially responsible and sustainable economic development. The European Economic and Social Committee and the European Parliament have repeatedly stressed the resilience of cooperatives and WBOs, promoting financial instruments and cooperative funds to support them. In this context, WBOs appear as key tools for achieving the EU's goals of sustainable development, economic democracy, and social cohesion[3].

II. WBO IN THE EUROPEAN AND SUPRANATIONAL FRAMEWORK

Across jurisdictions, WBOs manifest in diverse legal and economic forms. Comparative analysis identifies three primary models: the conflictual model, the Employee Stock Ownership Plan (ESOP) model, and the negotiated model[4].

The first, of a "conflictual" nature, has found wide diffusion in Latin America, in the form of the Empresas Recuperadas por sus Trabajadores, developed in Argentina following the economic crisis of 2001, where in a situation of open conflict between entrepreneurs, local authorities and workers, many workers occupied their factories *sine titulo* and then set up workers' cooperative societies aimed at preserving the production complex[5].

3 Of all these, mention should be made of the Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the promotion of cooperative societies in Europe, Brussels, 23.2.2004, which reaffirmed the "increasingly important and positive role of cooperatives as a means to achieve many of the Community's objectives in areas such as employment policy, social integration". The European Economic and Social Committee (EESC - 2012/C 191/05) had the opportunity to underline the potential interest of workers in the survival of their enterprises also outside crisis contexts, inviting member states to develop policies and rules outlining 'a framework for transfers of enterprises to employees based on best practices in order to avoid closures: an example of this is [...] the Marcora law in Italy' . The EESC, in the aforementioned document, also emphasises the resilience of cooperatives to the 'turbulence of the crisis compared to conventional enterprises', also in relation to the pre-eminence of the remuneration of production factors represented by human capital as well as investments, sacrificing if necessary the remuneration of capital. Furthermore, see EU Commission Action Plan 9 December 2021 (COM 2021 778, Creating an economy that serves people: an action plan for the social economy) for the social economy and the promotion of cooperative societies, which can "play a crucial role in cases where cooperatives are established as part of enterprises regenerated by workers in order to preserve employment and maintain sustainable economic activity".

4 See E. Pagani , *La partecipazione finanziaria dei lavoratori tra diritto interno e diritto europeo*, Milano, 2021.

5 See S. Pacchi, Una possibile alternativa per la continuità indiretta: l'acquisto dell'azienda da parte dei lavoratori, in Ristrutturazioni aziendali, 30.6.2021; Id., *La ristrutturazione dell'impresa come strumento per la continuità nella Direttiva del Parlamento europeo e del Consiglio 2019/1023*, in *Dir. fall.*, 2019, I, 1259;

In the United States, on the other hand, WBO are carried out through Employee Stock Ownership Plans (ESOPs), institutions of a benefit nature officially recognized only with the enactment in 1974 of the Employee Retirement Income Security Act (ERISA).The ESOP model relies on employee ownership through trusts financed by employer contributions and leveraged loans, enabling workers to acquire controlling shares[6].

The negotiated model, common in continental Europe, relies on legal frameworks and public policies encouraging cooperative takeovers of failing companies[7].

The European approach situates WBOs within a broader transformation of corporate governance, characterized by the decline of shareholder primacy and the rise of stakeholder-oriented management. EU policies—such as the 2001 and 2011 Green Papers on Corporate Governance[8]—emphasize sustainability, long-term value creation, and worker participation. Insolvency Directive 2019/1023, in particular, integrates employee protection into restructuring processes, underscoring that viable enterprises should be preserved to prevent job losses and safeguard skills[9].

6 See H.C. Blackiston, L.E.Rappaport, L.A. Pasini, ESOPs: what they are and how they work, in The Business Lawyer, nov. 1989, 85

7 This is the case in Spain, where the unemployed worker is allowed to apply for a lump sum payment of three years' unemployment benefit (so-called "pago único") and to use such money for the realization of WBO through a cooperative body. Moreover, in France, Law 85/2014 accepted workers' right to be informed in the event of the transfer of a company or of its branch and provided the possibility of setting up 'transitional cooperative societies' ("scop d'amorcage")

8 EU Commission Green Paper, July 18, 2001, Promoting a European framework for Corporate Social Responsibility: see paragraphs 2.1.3. EU Commission Green Paper, April, 5, 2011,The EU corporate governance framework, 2.8 : "Employees' interest in the long-term sustainability of the company for which they work is an element that a corporate governance framework should take into account.

9 Article 13, EU Directive 2019/1023: "Article 13. Workers. 1.Members States shall ensure that individual and collective workers' rights, under Union and national labour law, such as the following, are not affected by the preventive restructuring framework: (a) the right to collective bargaining and industrial action; and (b) the right to information and consultation in accordance with Directive 2002/14/EC and Directive 2009/38/EC, in particular: (i) information to employees' representatives about the recent and probable development of the undertaking's or the establishment's activities and economic situation, enabling them to communicate to the debtor concerns about the situation of the business and as regards the need to consider restructuring mechanisms; (ii) information to employees' representatives about any preventive restructuring procedure which could have an impact on employment, such as on the ability of workers to recover their wages and any future payments, including occupational pensions; (iii) information to and consultation of employees' representatives about restructuring plans before they are submitted for adoption in accordance with Article 9, or for confirmation by a judicial or administrative authority in accordance with Article 10; (c) the rights guaranteed by Directives 98/59/EC, 2001/23/EC and 2008/94/EC. 2.Where the restructuring plan includes measures leading to changes in the work organisation or in contractual relations with workers, those measures shall be approved by those workers, if national law or collective agreements provide for such approval in such cases".

III. WBO IN THE ITALIAN LEGAL FRAMEWORK

Italy has developed one of the most structured and supportive legal frameworks for WBOs in Europe. Rooted in constitutional principles (Articles 9, 41, and 45), the Italian system recognizes the social function of labor and cooperation.

Firstly, the Marcora Law (Law 49/1985) established the foundation for Italian WBOs by providing state-backed financial support for cooperatives formed by employees of failing firms. Revisions under the Marcora II Law (2001) replaced grants with repayable financing and equity participation through finance companies like Cooperazione Finanza Impresa (CFI)[10]. Subsequent legislation expanded these mechanisms, granting workers preemptive rights to acquire their enterprises and access to cooperative development funds. These institutions transformed WBOs from isolated initiatives into a systemic component of Italy's labor and industrial policy[11].

A typical WBO in Italy unfolds through a sequence of interdependent steps: (1) employees decide to acquire their company or a branch; (2) they establish a cooperative newco; (3) financing is secured through capitalization of unemployment benefits (NASpI) and institutional investment[12]; (4) additional credit may be sought from banks; and (5) the cooperative formally acquires the business, often exercising a legal right of preemption[13].

This process represents an indirect form of business continuity, transforming workers into cooperative entrepreneurs. The capitalization of NASpI benefits allows employees to reinvest welfare payments into productive capital, converting passive expenditure into sustainable growth. Finan-

10 CFI remains the central institutional investor in Italian WBOs, combining capital investment with technical and managerial assistance. From its creation to 2022, it supported over 580 cooperatives, safeguarding more than 27,000 jobs. This demonstrates that WBOs not only serve as recovery instruments but also generate measurable public returns in fiscal and employment terms.

11 M.C. Cataudella, *Workers buyout e soci lavoratori di cooperativa*, in G. Zilio Grandi, M. Biasi (a cura di), *Commentario breve alla riforma Jobs Act*, Padova, 2016, 437-450

12 Social Insurance for Employment 1 May 2015, part of the instruments introduced by the Labour Market Reform (also known as 'Jobs Act'). NASpI replaced Aspi and Mini-Aspi. As regards the NASPI, INPS Circ. No. 21 of 10 February 2023 specified that the employee, in the case of judicial liquidation, must submit the application within the time limit of 68 days starting from the date on which the employee tenders his resignation and not from the date of termination of employment (date of opening of the judicial liquidation) and in the case of of termination of employment due to withdrawal by the liquidator/collective dismissal, from the date on which the employee came to the knowledge of the liquidator's communication or for termination by operation of law, from the date on which the relationship is understood to be terminated as of right. As specified by INPS and as as is known, the unemployment benefit starts from the eighth day following the date of the resignation/termination of the curator/ termination of employment, if the application is submitted before the eighth day, from the first day following the date of submission of the application, if the application is submitted after the eighth day.

13 G.Di Cecco, *Il diritto di "prelazione" previsto dalla disciplina italiana del workers' buyout a favore delle cooperative cpstituite dai lavoratori delle imprese in crisi*, in *Fallomento*, 2016, 633

ce companies created by the Marcora framework serve as minority equity partners, ensuring governance support and stability during the initial phase of operation. Overall, the WBO mechanism fuses labor policy, cooperative finance, and insolvency law into a single human-centered recovery tool.

Lastly, the 2022 Crisis and Insolvency Code, implementing EU Directive 2019/1023, emphasizes employment preservation alongside creditor satisfaction, creating legal space for cooperative takeovers. The Code integrates WBOs into a modern framework for managing business crises. Although WBOs are not explicitly regulated, several provisions support them. Article 191 extends the right of preemption for cooperatives to all crisis and insolvency procedures. Articles 189–212 emphasize the preservation of employment and continuity as guiding principles for business leases and judicial liquidations. Together, these norms recognize WBOs as legitimate instruments of restructuring aligned with social sustainability and cooperative principles[14].

IV. WBO IN ITALIAN TRADITION AND PRACTICE

Italy's tradition of worker-led enterprise recovery dates to 1874, when the Cooperativa Ceramica d'Imola was founded. Contemporary examples—such as Fonderia Dante Ferroli—illustrate the continued vitality of this model. Empirical data show that 60% of Italian WBOs are concentrated in industrial sectors, 35% in services, and 5% in agriculture, with strong representation in the central and northeastern regions. Reports from Legacoop and CFI highlight significant socio-economic returns: between 2011 and 2021, 88 WBO projects generated €365 million in production and sustained over 2,200 jobs, with each euro invested yielding approximately 6.8 euros in social and fiscal benefits[15].

Nevertheless, Italian practice teaches us that WBO are not always successful, as in some cases the difficulties of the recovered company are transferred to the cooperative, effectively making recovery, consolidation and future development impossible. It is therefore necessary for the operation to be carefully planned, assessing the concrete feasibility of the project and trying to reconcile the interests and expectations of all those involved.

WBOs represent an exemplary intersection of social justice, economic resilience, and democratic participation. Their success depends on robust financial planning, professional management, and strategic restructuring to prevent the repetition of past failures. When effectively implemented, they create regenerated enterprises—organizations reborn through collective ownership and solidarity. WBOs illustrate a model of capitalism where human dignity and community welfare coexist with market efficiency, offering a sustainable blueprint for the future of enterprise recovery in Europe[16].

14 M. Pizzolato, *Le operazioni di "workers buy out" ed il CCII tra coordinamento normativo e opportunità operative*, in *Diritto della crisi*, 25.11. 2024

15 Legacoop Area Studi, Nota 8 - Le imprese recuperate in Italia, marzo 2020, in http://areastudi.legacoop.coop/note-brevi-2/;

16 See M. Vieta, S. Depedri, *Le imprese recuperate in Italia*, in EURICSE – European Research Institute on Cooperative and Social Enterprises, 2015.

V. BIBLIOGRAPHY

Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the promotion of cooperative societies in Europe, Brussels, 23.2.2004.

EU Commission Action Plan 9 December 2021 (COM 2021 778, Creating an economy that serves people: an action plan for the social economy) for the social economy and the promotion of cooperative societies.

EU Commission Green Paper, April 5, 2011, The EU corporate governance framework, 2.8.

EU Commission Green Paper, July 18, 2001, Promoting a European framework for Corporate Social Responsibility.

EU Directive 2019/1023.

European Economic and Social Committee (EESC - 2012/C 191/05).

G.DI CECCO, *Il diritto di "prelazione" previsto dalla disciplina italiana del workers' buyout a favore delle cooperative cpstituite dai lavoratori delle imprese in crisi*, in *Fallomento*, 2016, 633.

GIANGIACOMO FELTRINELLI FOUNDATION, 2021 Report "The Politics to Come".

H.C. Blackiston, L.E.Rappaport, L.A. Pasini, ESOPs: what they are and how they work, in The Business Lawyer, nov. 1989, 85.

Legacoop Area Studi, Nota 8 - Le imprese recuperate in Italia, marzo 2020, in http://areastudi.legacoop.coop/note-brevi-2/;

M. PIZZOLATO, *Le operazioni di "workers buy out" ed il CCII tra coordinamento normativo e opportunità operative*, in *Diritto della crisi*, 25.11. 2024.

M. VIETA, S. DEPEDRI, *Le imprese recuperate in Italia*, in EURICSE – European Research Institute on Cooperative and Social Enterprises, 2015.

M.C. CATAUDELLA, *Workers buyout e soci lavoratori di cooperativa*, in G. Zilio Grandi, M. Biasi (a cura di), *Commentario breve alla riforma Jobs Act*, Padova, 2016, 437-450.

S. PAGANI, *La partecipazione finanziaria dei lavoratori tra diritto interno e diritto europeo*, Milano, 2021.

S. PAGANI, La *ristrutturazione dell'impresa come strumento per la continuità nella Direttiva del Parlamento europeo e del Consiglio 2019/1023*, in *Dir. fall.*, 2019, I, 1259.

World Commission on Environment and Development, 1987 (Brundtland's Report ´Our Common Future`), Oxford University Press, 1987.