

Abstract

The current context of economic crisis, which reflected its effects, particularly on the financial vulnerability of households and businesses, highlighted with greater intensity the phenomena of over-indebtedness of households and, in general, civil insolvency. These phenomena are, for the longest time, the object of analysis of the Bank of Italy and observers associated with consumer associations, which every year provide statistical data on erosion economic resources available to households and businesses and, therefore, the inability, for a given percentage of such persons to fulfill the financial obligations.

The tumultuous economic events and the subsequent spread of the economic and social crisis that involved Italy, together with other European Union countries, the legislature has given strong impetus to fill a regulatory deficit, that is, to provide a discipline, to all those who are excluded from the scope of the bankruptcy law, which aims to make it possible to resolve this crisis by over-indebtedness, reproducing institutions similar to those introduced by the reform of the bankruptcy law.

The issues relating to insolvency are linked to a greater extent civil to over-indebtedness active, ie to a wrong account on their future earning power, which leads to excessive exposure to consumer credit. Then there is the passive over-indebtedness, that is, determined by the accidents of life, such as serious illness, loss of job or divorce. Starting from the description of the phenomenon of over-indebtedness we analyze the recent introduction of a discipline in our system more flexible and modern in the civil sector insolvency, conforming with EU principles and the decisions taken by the other EU countries. The Community legislature has long felt the need to have a discipline able to contain the economic and social impact of over-indebtedness and to provide guidelines for the regulation of insolvency civil. In this context in 1992 was pronounced the Council Resolution on the future priorities for the development of policies for the protection of consumers, among which was included for the first time a research on

over-indebtedness, and then, with the resolution of the Economic and Social Committee of 27 May 1999 Commission was given the Single Market, Production and Consumers, the task of drafting a set of information about over-indebtedness of households and to proceed with the drafting of a Green Paper, which after analyzing the statistical data of the phenomenon, as well as the different national regimes, should come to the only definition of over-indebtedness from which to subsequent regulatory action. This process continued over the years until you reach the affirmation of the principle of utility of the fresh start on startup considered as an incentive for entrepreneurial initiatives, from which springs the need, given the economic and social importance of the phenomenon, to facilitate uniform discipline in laws of the Member of the European Union.

In the European Commission's Communication of 2007 on the fresh start for companies in crisis or insolvent, we report the favor in future draft legislation and harmonization legislation, to the policies of the second possibility, which promote enterprise restructuring rather than their liquidation, the raise, rather than the loss of corporate value and, in any case, the conception which physiological event of insolvency of the course of business. In Italy before the reform of bankruptcy laws have been presented draft legislation on the subject of civil insolvency. The first is deposited by Adiconsum at CNEL in 2001, then follows another bill presented to the Chamber of Deputies in 2004 by the DS group on the subject of civil insolvency, which allowed to individuals, including non-entrepreneurs, to get the “*esdebitazione*” or through a system of adjustment of debts approved by a majority of creditors and approved by the court, or through the liquidation of the entire competition its assets, entrusted to a trustee or a trustee of judicial appointment. During the preparatory work for the reform of the bankruptcy law, the Trevisanato Commission has taken into account a procedure that was addressed to all debtors civilians no fallible, including small business owners. It was agreed a restructuring agreement with all creditors and

in case of his absence, the application of a liquidation of the assets simplified character “*esdebitatorio*” for the debtor deserving. Subsequently, the Commission has taken a Trevisanato equally into account the debtors civilians, contractors and do not, but it has also presented as access to that procedure, a threshold of debt exceeding € 200,000.

Therefore, in this preparatory work, the issue was the application of mechanisms of “*esdebitazione*” also to the insolvent civil cases, but ultimately chose to maintain the distinction between the two procedures and apply only to the subjects fallible these institutions favor, citing What was the reason that it was outside the limits of the delegation.

This choice brought out the doubt that there could be a non-compliance with the principle of equal treatment provisions of art. 3 of the Constitution.

The legislature, in view of the presence in the European Union, of the insolvency laws governing civil and animated by strong impulses to fill such a regulatory deficit has, in a different context by the Bankruptcy Act, as part of the measures that on usury, drafted a bill S. 307, on the initiative of Senator Centaro, concerning "Provisions on usury and extortion, as well as the settlement of over-indebtedness crisis"

The process of formation of this law was very troubled, there was an extremely complex parliamentary scrutiny that led to the approval of a text only after several operations executive with emergency decrees, in a financially and politically extremely delicate.

This procedure ended with the promulgation of the law on the composition n.3/2012 crisis indebtedness, approved January 27, 2012, by which is meant to remedy the increasingly common situations of debt, natural persons and corporate bodies , which do not apply the provisions of bankruptcy, and who are offered the opportunity to agree a plan with creditors to restructure the debt. The current text provides full-bodied changes came into force, aimed at increasing operational effectiveness, including, in particular, the subjective

condition, identifying a specific process for the consumer who becomes the beneficiary of a special procedure relating to settlement of the crisis, with the grafting of a possible liquidation stage and the prediction of a sub procedure *esdebitazione*.

This is consistent with the need to attach the debtor's insolvency proceedings civil, the opportunity to benefit from the fresh start, that is, to start from scratch and regain an active role in the economy, without the burden of past debt situations. In this way Italy was equipped with a tool, like other European Union countries and the United States of America, the realization of discharge, ie the effect of *esdebitazione* the debtor-consumer, in accordance with certain limits to ensure that there is an abuse of that opportunity. This is aimed, on the economic and social impact, to allow a recovery in domestic demand, currently compressed, as is apparent from the decreasing trend of the indices of the propensity to consume of households, in addition, taking into account the position of the non-fallible, the 'introduction of the "*esdebitazione*" should encourage the use of credit and investment subjects that would otherwise be cut off from the circuit creditworthiness. Additional effects should also reverberate on the administration of justice, leading to a rationalization of individual enforcement actions and a contraction of the same for a percentage estimated to be about 20%.