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AGRICULTURAL UNDERTAKINGS IN ITALIAN INSOLVENCY LAW: SUBSTANTIVE CLASSIFICATION, BORDERLINE ACTIVITIES AND RESTRUCTURING TOOLS IN A EUROPEAN PERSPECTIVE

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Abstract: European insolvency law promotes early restructuring and preservation of viable businesses, yet does not harmonize the treatment of agricultural undertakings in financial distress. This article examines Italy as a case study of how national law distinguishes agricultural multifunctionality from autonomous commercial activity. Agricultural entrepreneurs remain within the Italian crisis and insolvency framework, but judicial liquidation is reserved for non-small commercial entrepreneurs. Its availability therefore turns on whether the activity carried out remains agricultural under Article 2135 of the Civil Code. The article argues that differentiated treatment is legitimate only if it is selective, evidence-based and functionally justified. Tax treatment, administrative authorizations, CAP records and formal registration may inform but do not determine that assessment. Agro-energy and agrivoltaics show whether diversification supports agricultural production or displaces it as the undertaking's economic centre. Once agricultural status is established, the inquiry shifts to selecting the restructuring or over-indebtedness tool best suited to preserving or realizing productive agricultural value.

Keywords: Agricultural undertaking; insolvency law; agricultural multifunctionality; judicial liquidation; Article 2135 Italian Civil Code; agrivoltaics; preventive restructuring; renewable energy.

1. Introduction: agricultural undertakings between EU restructuring policy and national insolvency classifications

European insolvency law has not fully harmonized the treatment of agricultural undertakings in financial distress. Directive (EU) 2019/1023 is built around early restructuring, the preservation of viable businesses and the discharge of debt. Yet it

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confers broad discretion on Member States to shape the categories of debtors covered by their restructuring and insolvency systems, especially as regards access to liquidation-type procedures. This discretion matters for agricultural undertakings, whose treatment under insolvency law often reflects a tension between insolvency policy, agricultural policy and the protection of rural production [1].

That tension has intensified as agriculture has evolved. The contemporary agricultural undertaking is no longer confined to land cultivation, family labour and exposure to biological risk. It may operate through corporate structures, obtain structured credit, participate in integrated supply chains and receive support under the Common Agricultural Policy. It may also combine primary production with processing, direct marketing, agritourism, services, real estate management and renewable-energy production. EU agricultural, environmental and energy policies encourage this multifunctional development. Multifunctionality, however, complicates legal classification. The same undertaking may qualify as agricultural for public-support or rural-development purposes while functioning, in economic terms, as a commercial, service, real estate or energy business [2].

Across the Union, approaches differ. Some Member States subject agricultural enterprises to the ordinary insolvency regime, while others maintain sector-specific rules within that framework. Italy follows a distinctive path. It maintains a substantive distinction between agricultural and commercial activity, and that distinction governs access to judicial liquidation.

Italy provides a particularly instructive case study. Its Civil Code defines the agricultural enterprise by reference to the care and development of a biological cycle. This biologically grounded criterion, set out in Article 2135 of the Civil Code, has been refined through more than a decade of Supreme Court decisions on multifunctional activities. Those decisions offer unusually detailed guidance on how to distinguish genuine agricultural integration from autonomous commercial activity [3].

Italian law does not exclude agricultural entrepreneurs from the crisis and insolvency framework. The Italian Business Crisis and Insolvency Code includes them within the general system of restructuring and over-indebtedness tools. Judicial liquidation, however, is reserved for non-small commercial entrepreneurs who are insolvent. The legal crux, therefore, is not whether an agricultural undertaking may experience financial distress — it undoubtedly can — but whether the activity that generated the crisis remains agricultural in substance or has become commercial. The Italian model addresses this problem through a mechanism of selective protection:

exclusion from judicial liquidation depends on the undertaking retaining its agricultural character under Article 2135 [4].

The normative basis for this differentiation is functional rather than status-based. Agricultural value is created through biological cycles and seasonal production processes that cannot be accelerated, suspended or restarted without loss. Output may be perishable, while land-use relationships, supply-chain commitments and the timing of public-support payments may tie recovery to specific production windows. An abrupt cessation or the atomistic realization of assets may therefore destroy value that a suitably timed restructuring or orderly liquidation could preserve for creditors. Agriculture's wider functions—including food production, land stewardship and rural continuity—reinforce, but do not by themselves determine, the case for differentiated treatment. These features do not justify categorical immunity from insolvency law. They justify procedural tools and time horizons calibrated to genuine agricultural production, provided that they preserve or realize productive value while maintaining adequate creditor protection [5].

This tension manifests most clearly in borderline activities. Marketing and processing of agricultural products, agritourism, services involving animals outside traditional farming, real estate management, agricultural companies, cooperatives and agro-energy activities all test the limits of agricultural multifunctionality. In these cases, the court must decide whether the additional activity remains connected to the biological cycle, farm resources and agricultural organization, or whether it has become an independent commercial activity. Italian case law increasingly adopts a substance-over-form approach, with direct consequences for evidence and the burden of proof [6].

Agro-energy and agrivoltaics make the inquiry particularly relevant at EU level. Renewable-energy production is supported by EU and national policies, including the European Green Deal, the Renewable Energy Directive framework and national recovery plans. A photovoltaic or agrivoltaic plant may support agricultural activity, diversify farm income and contribute to the energy transition. But energy policy and insolvency classification pursue different functions. Where the plant absorbs capital, revenues, debt and organization while agricultural production becomes marginal, energy no longer supports the farm. It replaces it as the economic centre of the undertaking [7].

This article uses the Italian experience to examine a broader European problem: the legal classification of multifunctional agricultural undertakings in crisis. It adopts a functional case-study method rather than a comprehensive comparative approach. Its European perspective operates at three distinct levels: first, Italian law is examined as an in-depth case study of how a national insolvency system classifies

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multifunctional agricultural undertakings; secondly, EU restructuring, agricultural and renewable-energy law is treated as the regulatory setting that encourages diversification and thereby generates classification problems which national law must resolve; and, thirdly, the Italian sequence—substantive classification followed by procedural allocation—is considered as a possible analytical framework for examining analogous problems in other Member States, not as a rule derived from, or imposed by, EU law. The references to other national systems are therefore contextual: they illustrate different approaches to agricultural insolvency without purporting to provide an exhaustive comparison.

Recent scholarship has compared farmers' access to insolvency and restructuring proceedings across all EU Member States and has questioned the appropriateness of the Italian exclusion of agricultural undertakings from major insolvency proceedings [8]. The present article addresses a logically prior and complementary question: how a multifunctional debtor should be classified before the applicable restructuring or liquidation procedure can be identified. After setting out the European regulatory background, the article examines the Italian substantive criteria for agricultural classification, the allocation of the burden of proof between the applicant and the debtor, and the application of those criteria to borderline activities, including agro-energy and agrivoltaics. It then considers the restructuring and liquidation tools available to genuine agricultural undertakings and assesses whether the Italian classification sequence may provide a useful analytical framework for comparable problems arising in other Member States.

2. The European regulatory background: restructuring, agricultural multifunctionality and renewable energy

The classification of agricultural undertakings in insolvency law must be understood against the background of two overlapping European dynamics. The first is procedural and remedial: European law promotes restructuring, coordinates cross-border insolvency proceedings and encourages the preservation of viable businesses. The second is substantive and economic: European agricultural and energy policies encourage farms to diversify, innovate and participate in the renewable-energy transition. The tension between these two dynamics explains why the distinction between genuine agricultural activity and autonomous commercial activity has become increasingly important.

Directive (EU) 2019/1023 promotes early preventive restructuring, the preservation of viable businesses and the discharge of debt for honest entrepreneurs. Its rationale extends beyond creditor protection through liquidation. It seeks to ensure that

debtors in financial difficulty can act before insolvency becomes irreversible, provided that the business remains viable. This is particularly relevant to agriculture. Farms often face crises that are not purely financial: their ability to recover may depend on biological cycles and seasonality, as well as on land-use relationships, public subsidies, supply-chain contracts and access to agricultural credit.

At the same time, the Directive does not create a uniform European insolvency code. It does not harmonize all liquidation proceedings, nor does it determine whether a particular agricultural undertaking must be treated as a commercial debtor, an over-indebted debtor or a debtor subject to a special regime. Those questions remain largely a matter of national law. Member States may therefore pursue the shared European objective of preserving viable economic activity while adopting different rules on how agricultural status affects access to particular restructuring and insolvency procedures.

Two national systems provide limited contextual examples of this diversity. German law adopts a general personal scope: under Section 11(1) of the Insolvenzordnung, insolvency proceedings may be opened over the assets of any natural or legal person, and agricultural status does not operate as a threshold ground for exclusion from the general insolvency framework. French law, by contrast, combines a substantive definition of agricultural activity with procedural inclusion and sector-specific adaptation. Article L. 311-1 of the Code rural et de la pêche maritime defines agricultural activity by reference to the management and exploitation of a biological cycle, while Article L. 351-8 applies the principal proceedings governed by Book VI of the Code de commerce—including safeguard, judicial reorganization and judicial liquidation—to persons carrying on such activity. Articles L. 351-1 et seq. also establish a sector-specific règlement amiable for eligible agricultural debtors. Italy connects agricultural classification and procedural access differently: genuine agricultural status excludes judicial liquidation, although it does not remove the debtor from the broader crisis and insolvency framework. The comparison is deliberately limited. It shows that national laws connect agricultural status and procedural access in different ways; it does not purport to establish broader doctrinal convergence among the Member States [9].

Regulation (EU) 2015/848 adds a cross-border coordination layer. It provides a framework for insolvency proceedings with cross-border effects, especially through rules on jurisdiction, recognition, applicable law and cooperation [10]. Its function is to ensure that insolvency proceedings opened in one Member State can produce effects across the Union. It does not, however, supersede national law on the substantive conditions for opening a particular procedure. For agricultural undertakings, this means that their cross-border treatment still depends on their

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classification under domestic law. Whether the debtor enters a liquidation-type proceeding, a restructuring proceeding or a special over-indebtedness procedure remains a matter of national law, within the limits of the European framework.

The procedural framework therefore leaves the key classification question unresolved. That question becomes more difficult because EU agricultural policy has changed the economic profile of farming. Regulation (EU) 2021/2115 establishes functional categories for the purposes of the Common Agricultural Policy, including agricultural activity, support eligibility, income support, rural development and environmental commitments [11]. These categories are essential for allocating public resources and implementing agricultural policy. They should not, however, be confused with private-law or insolvency-law classification. A farmer may be eligible for CAP support, hold eligible land or receive public funding without this being determinative of whether the undertaking remains agricultural in substance when insolvency law is applied.

This distinction is central to multifunctional agriculture. EU policy encourages farms to diversify, innovate and contribute to rural development, including through support for investments, sustainable business development, cooperation, local development and activities connected with the rural economy [12]. This policy choice makes the legal boundary between agricultural integration and commercial autonomy harder to draw. Processing, direct marketing, agritourism, environmental services and energy production may strengthen farm income and rural resilience. The same activities, however, may also change the economic centre of the undertaking. When they become the main source of revenues, investments and indebtedness, the question is no longer whether they are compatible with agricultural policy. The question is whether the undertaking still functions as an agricultural business for insolvency-law purposes.

Renewable-energy policy brings this tension into sharper focus. Directive (EU) 2023/2413, amending the Renewable Energy Directive framework, reinforces the Union's commitment to accelerating renewable-energy deployment [13]. Agricultural land and rural undertakings may play a significant role in that transition. Biomass, photovoltaic plants and agrivoltaic systems can generate income, support decarbonization and contribute to energy security. Yet renewable-energy policy does not determine whether energy production remains connected to agriculture for private-law purposes. A plant may be environmentally desirable and economically efficient, while still replacing agricultural activity as the real centre of the business.

Taken together, these frameworks perform different functions. European restructuring policy is concerned with the viability and rescue of businesses;

Regulation (EU) 2015/848 coordinates proceedings once they have been opened; agricultural policy encourages multifunctionality; and renewable-energy policy promotes energy production in rural areas. None of these frameworks determines whether the resulting undertaking must be classified as agricultural or commercial for domestic insolvency purposes. EU policies therefore contribute to the economic and regulatory conditions in which classification disputes become more frequent and complex, while leaving their resolution principally to national law.

The Italian case is relevant because it provides a structured substantive test for resolving that preliminary question. The test does not depend on eligibility for public support, tax treatment or formal registration. It examines the relationship between the activity actually carried out, the biological cycle, farm resources and the economic organization of the undertaking. Italian law is not presented as supplying a European classification rule. Rather, its sequence—substantive classification followed by procedural allocation—offers an analytical framework for determining whether differentiated treatment remains attached to a genuinely agricultural function rather than merely to an agricultural form.

3. The Italian model: biological cycle, connected activities and access to judicial liquidation

The Italian model operationalizes the discretion left by European law as a sequential method, not merely as a domestic exception. First, the court must determine the substantive nature of the undertaking. Secondly, it must draw the procedural consequences of that classification. The sequence is essential. An undertaking is not subject to judicial liquidation merely because it is insolvent, indebted or organized in corporate form. Judicial liquidation may be opened only if the activity actually carried out is commercial in substance, and the other statutory requirements are met.

This sequence is analytically relevant beyond the Italian context because it separates three questions that are often conflated in insolvency practice: the identity of the undertaking, the economic scale of the debtor and the existence of insolvency. The first question concerns agricultural substance. The second concerns the size of the commercial debtor. The third concerns the debtor's inability to meet its obligations regularly. Italian law requires the first question to be answered before the second and third become decisive.

The starting point is Article 2135 of the Italian Civil Code. Read in conjunction with Article 2082, it does not create a separate definition of enterprise. It determines when an organized economic activity qualifies as agricultural. The agricultural nature of the undertaking cannot be inferred from purely formal indicators such as tax status, social-security classification, administrative authorizations or company-register

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entries. Nor is it established by the mere ownership of land, rural buildings or agricultural assets. These elements may provide evidence, but they do not replace the assessment of the activity actually carried on [14].

The 2001 reform of Article 2135 shifted Italian law away from a purely land-based conception of agriculture. The provision now covers cultivation of land, forestry, animal breeding and connected activities. It defines the core agricultural activities by reference to the care and development of a biological cycle, or of a necessary phase of that cycle, whether plant or animal, using or potentially using land, woodland, or fresh, brackish or marine waters [15]. Land remains relevant, but it is no longer the exclusive foundation of the category. The decisive element is the entrepreneur's organized intervention in the biological cycle.

The biological test broadens the notion of agricultural activity while at the same time setting its outer limits. It allows agriculture to move beyond traditional land cultivation. It also ensures that not every rural, land-based or animal-related activity is classified as agricultural. Animals, land, rural facilities and agricultural equipment are relevant factors, but they are not decisive by themselves. The activity remains agricultural only if the business organization is directed to the care and development of the biological cycle. Where animals, land or rural structures serve merely as the basis for autonomous sporting, recreational, tourist or entertainment services, the undertaking falls outside the scope of the agricultural category [16].

Connected activities are the legal mechanism through which Italian law accommodates agricultural multifunctionality. Article 2135(3) treats as agricultural activities that might appear commercial if considered in isolation. It does so through two types of connected activity. The first covers the manipulation, conservation, processing, marketing and enhancement of products obtained predominantly from the main agricultural activity. The second covers the provision of goods or services through the predominant use of equipment or resources of the farm normally employed in the agricultural activity carried out [17].

Taken together, these rules establish a three-stage classification framework. First, the court must determine whether the main activity involves the care and development of a biological cycle within Article 2135(1) and (2). Secondly, where additional activities are carried out, it must verify the product-based or resource-based connection and the applicable prevalence requirement under Article 2135(3). Thirdly, the claimed connection must be tested against the economic and organizational reality of the undertaking. Revenues, costs, investments and liabilities, together with the allocation of assets, resources and entrepreneurial risk, are relevant at this third

stage as evidentiary indicators of the activity's actual function; they are not independent legal criteria of agricultural status.

The Italian Supreme Court has progressively refined this test in decisions concerning agritourism, real estate management, non-traditional animal breeding, agricultural companies, cooperatives and agro-energy activities. Across these areas, the Court has consistently adopted a substance-over-form approach. Formal status does not control the outcome. What matters is the economic and organizational function of the activity actually carried out [18].

The transition from Article 2135 to insolvency law depends on the real economic centre of gravity of the undertaking. If connected activities remain subordinate to the biological cycle and to the farm organization, the undertaking retains its agricultural character. If they become the principal source of revenues, investments, liabilities and entrepreneurial risk, the classification changes. The inquiry then moves from the qualitative identification of the undertaking to the legal consequences of that identification. This is the point at which agricultural policy, private-law classification and insolvency law intersect.

Only after this substantive assessment does Article 121 of the Italian Business Crisis and Insolvency Code become decisive. That provision subjects commercial entrepreneurs to judicial liquidation where they are insolvent and fail to prove that they jointly satisfy the requirements of a smaller enterprise [19]. It does not refer to agricultural entrepreneurs. This is the core of the Italian selective model: agricultural entrepreneurs are not outside crisis regulation, but judicial liquidation is reserved for non-small commercial entrepreneurs.

Article 121 imposes cumulative requirements. First, the court must determine the commercial nature of the activity by applying the classification framework set out above. Formal status, corporate organization and quantitative data may support that assessment, but they cannot replace it.

Secondly, once the activity has been classified as commercial, the law applies quantitative filters to determine the scale of the undertaking. Article 2(1)(d) sets three cumulative thresholds: annual assets not exceeding EUR 300,000; annual revenues not exceeding EUR 200,000; and total debts, including debts not yet due, not exceeding EUR 500,000. The first two thresholds are assessed over the three financial years preceding the filing of the application, or since the beginning of the activity if shorter.20]. These thresholds do not determine whether an undertaking is agricultural or commercial. They apply only after the activity has been classified as commercial. Economic size may, however, have evidentiary relevance where revenues, investments and liabilities show that connected activities have become the real centre of the business.

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Thirdly, the debtor must be insolvent. Under Article 2(1)(b), insolvency is manifested by defaults or other external facts showing that the debtor can no longer meet its obligations regularly. It must be distinguished from crisis, which Article 2(1)(a) defines as the state that makes insolvency probable and, for undertakings, is reflected in the inadequacy of prospective cash flows to meet obligations over the following twelve months [21]. Crisis may justify early restructuring or negotiated settlement tools. Insolvency may lead to judicial liquidation only where the debtor is a non-small commercial entrepreneur.

A further procedural filter applies. Under Article 49(5), judicial liquidation cannot be opened if the overdue and unpaid debts resulting from the preliminary investigation are below EUR 30,000 [22]. This threshold does not classify the undertaking as agricultural or commercial. It does not replace the assessment of insolvency. It operates only as a statutory bar to the opening of the procedure after commercial nature, non-small size and insolvency have been established.

The temporal element also matters. Whether an undertaking is subject to judicial liquidation may depend on the activity from which the insolvency originated. If a formally agricultural company carried out a predominantly commercial activity and the liabilities arose from that activity, the subsequent cessation of commercial operations does not necessarily preclude judicial liquidation. Conversely, the mere cessation or reduction of agricultural activity is not sufficient. Judicial liquidation requires a positive finding that commercial activity was actually carried out [23].

The Italian model thus separates substantive classification under Article 2135 from procedural allocation under Article 121. Reclassification as a commercial undertaking changes the procedural architecture of the crisis, but it does not automatically require liquidation. Judicial liquidation may be opened only where all its statutory requirements are met; where the business remains viable, the restructuring instruments available to non-small commercial entrepreneurs, including the restructuring plan subject to court approval and composition with creditors, may remain available [24]. This sequence — substantive classification before procedural allocation — is the feature of the Italian model that may prove analytically useful beyond the domestic context.

4. Evidence and documentary accountability in judicial liquidation proceedings

The substantive classification examined in the previous section has direct procedural consequences. Once Article 2135 of the Italian Civil Code is identified as the governing criterion, classification becomes an evidentiary matter. The resulting analysis must distinguish the legal burden of proof, which allocates the risk of

residual uncertainty, from a burden of production, which reflects a party's practical responsibility to place accessible evidence before the court. It must also distinguish the facts constituting the commercial nature of the undertaking from the facts relied upon to bring an otherwise commercial activity within Article 2135(3). The European framework does not prescribe how this question of evidence must be resolved in domestic proceedings for the opening of judicial liquidation. The court must therefore determine who bears the burden of alleging and proving the commercial character of the undertaking, what evidence is needed to confirm or rebut the debtor's agricultural status, and how formal public indicators interact with the economic reality of the business.

Since judicial liquidation is reserved for non-small commercial entrepreneurs, the applicant — whether a creditor or the public prosecutor — must allege and prove, as a constitutive condition of the application, the commercial nature of the debtor's activity [25]. Insolvency and the amount of liabilities are not enough. They may demonstrate financial distress, but not commercial character. The application must identify and substantiate facts indicating commercial activity, such as the structure of revenues, the composition of liabilities, the business model or the performance of activities unrelated to the biological production cycle. It is not sufficient for the applicant merely to cast serious doubt on the debtor's agricultural status. If the evidence remains insufficient to establish the exercise of a commercial activity, the legal burden remains with the applicant, and the resulting uncertainty cannot be resolved against the debtor.

A true legal burden of proof falls on the debtor only at the next stage of the inquiry. Once the applicant has established the performance of an activity that is commercial in its objective character, the debtor may contend that the activity remains agricultural because it satisfies the requirements governing connected activities under Article 2135(3). In that situation, the facts establishing functional connection and the applicable test of prevalence operate as facts preventing the opening of judicial liquidation. Under Article 2697(2), the party relying on those facts bears the corresponding legal burden of proof [26]. This is not a general presumption of commercial status, nor an automatic shift triggered by evidentiary doubt. It is the consequence of the debtor's reliance on the connected nature of an activity whose commercial character has first been established by the applicant.

A separate burden of production arises from the debtor's superior access to the relevant internal records. That evidentiary proximity places on the debtor the practical responsibility to produce the material within its control. Failure to do so may leave the applicant's proven case unrebutted or prevent the debtor from establishing the connected character of the activity. Documentary proximity does not,

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however, relieve the applicant of the legal burden of proving commercial activity in the first place, nor does it create an autonomous reversal of the burden of proof.

Where the debtor bears the legal burden concerning agricultural connection, it is not required to prove the negative proposition that no commercial activity has ever been carried out. It must instead establish the positive facts that bring the additional activity within Article 2135(3): functional integration with the main agricultural activity and compliance with the applicable product-based or resource-based prevalence test. The question is not whether the undertaking performs only traditional farming, but whether its multifunctional activities remain part of the agricultural organization or have acquired autonomous commercial character.

The difficulty lies in the coexistence of two different types of evidence. Formal or public indicators form the external shell of the undertaking. Company-register entries, corporate objects clauses, business names, tax classifications, administrative authorizations, sectoral registrations, CAP records, farm files and land-use declarations may all provide initial evidentiary indications. They show how the undertaking is presented to public authorities and how it is situated within the agricultural policy framework. They do not, however, determine insolvency-law classification. CAP categories allocate public support; insolvency law identifies the debtor's real economic activity [27].

The second level is substantive or private evidence. This is the evidence that reveals how the undertaking actually operates. For the main agricultural activity, relevant documents may include crop plans, farm records, herd registers, supply and delivery contracts, CAP-related data, invoices for technical inputs, employment records and documents concerning the use of agricultural land or facilities. Where a product-based connection is invoked, the party relying on it — ordinarily the debtor — must prove that the products handled, processed, marketed or enhanced are predominantly obtained from its own agricultural activity. Where a resource-based connection is invoked, the same party must prove the predominant use of equipment or resources normally employed in the agricultural activity carried out. These documents do not merely support the debtor's formal *status*. They allow the court to locate the real economic centre of gravity of the undertaking.

The composition of liabilities is particularly important because it often provides the clearest trace of the undertaking's economic substance. Debts do not merely record financial obligations. They signal the activity from which the crisis originated. The composition of liabilities is not, in itself, conclusive evidence of the undertaking's commercial character. It may, however, function as circumstantial evidence where the indications are weighty, specific and mutually consistent [28]. Liabilities arising

from regular purchases of products from third parties, stand-alone hospitality operations, real estate transactions or energy activities not integrated into agricultural production may point towards commercial activity. Conversely, debts relating to agricultural leases, technical inputs, agricultural labour or supplies connected to the production cycle may support agricultural classification. Liabilities thus operate as an economic trace of the activity from which the insolvency originated.

The court retains the power to verify whether the conditions for opening judicial liquidation are met. It is not bound by a purely formal reading of the parties' allegations and may assess the evidence acquired, request clarifications and examine the available documentation. These powers, however, do not alter the allocation of the burden of proof. In particular, the debtor's failure to produce documents cannot, by itself, establish a commercial activity that the applicant has not otherwise proved. Nor do the debtor's documentary filing obligations replace substantive evidence. Article 39 of the Business Crisis and Insolvency Code reinforces documentary accountability in the unitary proceeding, but it does not modify the rules governing proof of agricultural or commercial nature [29].

Where the debtor appeals a judgment opening judicial liquidation, it must plead with specificity. It cannot merely rely on its declared agricultural status. It must identify the evidence that was omitted, misunderstood or incorrectly assessed, and explain how that evidence establishes agricultural status under Article 2135. The challenge may also affect the suspension of management acts under Articles 51(4) and 52 of the Code [30].

The evidentiary dimension is therefore central to the selective treatment of agricultural undertakings. Its operation follows the allocation described above: if the applicant fails to prove the exercise of a commercial activity, judicial liquidation cannot be opened; where such activity is established, and the debtor invokes its connected agricultural character, the debtor must prove the requirements of Article 2135(3). Where the evidence shows that the agricultural form has become an external shell for autonomous commercial activity, the debtor becomes subject to the insolvency regime applicable to the non-small commercial entrepreneur. This evidentiary framework is the mechanism through which the legal system prevents agricultural status from being used strategically to avoid the ordinary consequences of commercial insolvency. Documentary accountability is, in this sense, the practical counterpart of selective agricultural protection.

5. Borderline activities: agricultural connection and commercial autonomy

The evidentiary framework examined in the previous section must now be applied to situations in which agricultural multifunctionality blurs the boundary between

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agricultural and commercial activity. These are not marginal cases. They are the practical terrain in which the selective treatment of agricultural undertakings is tested. From a European perspective, they also reflect the broader transformation of agriculture into a multifunctional sector. Farms increasingly combine primary production with marketing, processing, hospitality, services, real estate management, corporate structures and cooperative organization. The legal question is how the classification framework established in Section 3 applies to these different forms of diversification.

These borderline cases can be grouped into three types of tension. The first concerns the economic extension of agricultural products. The second concerns the functional use of agricultural assets. The third concerns the organizational forms through which agricultural activity is carried out. This typology avoids treating multifunctionality as a single phenomenon. It shows that agricultural identity may be challenged by different mechanisms: the product may be detached from the farm, the asset may be converted into a source of rent, or the legal form may conceal a commercial organization.

As explained in Sections 3 and 4, revenues and liabilities are evidentiary indicators rather than independent criteria of classification. In borderline cases, they help reveal how an additional activity functions within the undertaking; their amount, considered in isolation, does not determine whether that activity is agricultural or commercial.

The first type of tension is product-based multifunctionality. Marketing and processing of agricultural products provide the clearest example. The relevant criterion is not the sales channel or the sophistication of the commercial organization. Direct sales, organized distribution and digital platforms are means of bringing products to market. They do not, by themselves, transform the undertaking into a commercial enterprise. What matters is whether the activity represents the economic extension of the undertaking's own agricultural production, or whether it has become an established business of intermediation, processing or resale of third-party products. The decisive issue is the test of prevalence between the farm's own products and the products marketed or processed by the undertaking [31].

Agritourism belongs to the same product-based and organizational logic, but it adds a further element: hospitality. The boundary is not determined by the mere presence of accommodation, catering or hospitality services, because those services are intrinsic to the agritourism model. Hospitality services retain their agricultural character only where they are integrated into the farm organization and support and enhance cultivation, forestry or animal breeding. If the hospitality component

acquires its own scale, structure and economic function, to the point of becoming the prevailing activity and displacing agricultural production, it ceases to qualify as a connected agricultural activity [32].

Administrative criteria do not replace this substantive assessment. Regional rules, working-time parameters and authorizations may be relevant for administrative purposes, but they do not bind the insolvency court. For insolvency-law classification, the court must apply the private-law criteria of Article 2135 of the Civil Code, as supplemented by the national legislation on agritourism, and examine the actual relationship between agricultural activity and hospitality services. Product origin in catering is a relevant indicator, but it is not conclusive. Isolated breaches may not suffice. They become relevant when they show that catering operates as an autonomous service rather than as an activity integrated into the farm. Product traceability, authorized capacity, records of meals and guests, and accounting separation between agricultural and agritourism activities may all inform the assessment [33].

The second type of tension is asset-based multifunctionality. Here the problem is no longer whether the product remains connected to the farm, but whether land, buildings or rural infrastructure still serve agricultural production or have become independent sources of income. Real estate management illustrates this risk. Land, rural buildings and farm assets are inherently ambivalent. They may be part of a productive agricultural organization, but they may also become the basis of an autonomous real estate business. The court must therefore distinguish the incidental use or valorization of farm assets from the systematic management of immovable property as an independent source of income. Occasional or functional use of property does not transform the undertaking into a commercial enterprise. By contrast, where the organization is centred on purchase, sale, construction, renovation, leasing or management for income of immovable property, and there is no proof of the care and development of a biological cycle, the mere ownership of agricultural land is not enough [34].

Non-traditional animal breeding also requires a functional assessment. The replacement of the term "livestock" with the broader term "animals" expanded the scope of Article 2135, but did not remove the biological-cycle requirement. Animal breeding is agricultural where the animal is the object of the biological cycle tended and developed by the undertaking. It falls outside the scope of Article 2135 where the animal is merely the means through which the undertaking provides sporting, recreational or entertainment services. The decisive distinction is not the species involved, but the role played by the animal within the business organization [35].

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A procedural variant of the same problem arises where an agricultural company is in voluntary liquidation. Liquidation does not, in itself, alter the legal character of the undertaking. The liquidator may preserve assets, settle pending relationships and realize value within the powers determined under company law. The position changes if the company, although formally in liquidation, starts purchasing, reselling, intermediating or providing services unrelated to the liquidation process and to the original agricultural business. In that case, liquidation does not negate the commercial nature of the new activity. If the liquidator's conduct constitutes the carrying on of a new commercial enterprise, the company may fall within the scope of judicial liquidation [36].

The third type of tension concerns legal and organizational form. Corporate form does not determine agricultural status. An agricultural company, including one with share capital, may carry out genuine agricultural activity. Conversely, a company with an agricultural business name, agricultural objects clause or agricultural company-register entry may still be reclassified as commercial where its real activity so requires. The same applies where the agricultural form is used as a vehicle for financial, real estate or equity transactions. Credit, investment and extraordinary transactions do not in themselves cause the loss of agricultural status. They do so when they become the economic core of the activity and of the crisis, revealing a commercial or financial function no longer instrumental to agriculture [37].

The Italian *società semplice* (simple partnership) agricola raises a distinct issue. Article 2249(1) of the Civil Code allows the simple partnership form to be used only for non-commercial activities. A genuinely agricultural simple partnership is therefore consistent with the legal type chosen by the parties. If, however, a formally agricultural simple partnership carries out predominantly commercial activity, it cannot rely on its legal form to avoid the regime applicable to the activity actually performed. The first issue is one of private-law classification: the relationship between the partners may need to be reclassified according to the rules applicable to an irregular commercial partnership. Only after that assessment can the insolvency-law consequences for the partnership and the unlimited partners be considered [38].

Agricultural cooperatives raise a distinct issue: agricultural nature is not the same as mutuality. The requirement of prevalent mutuality concerns the cooperative structure and the relationship with members. The agricultural character of the activity concerns the nature of the activity actually carried out. The problem is not limited to Italy. Agricultural cooperatives and producer organizations across the European Union also have to reconcile collective organization with a genuine agricultural function. For insolvency-law purposes, however, mutuality is not enough. It must be

shown that the cooperative predominantly uses products supplied by members who are agricultural entrepreneurs, or that it provides them with goods or services functionally connected to the care and development of the biological cycle. In processing cooperatives, what matters is not the formal cooperative structure, but evidence that the members actually carry on agricultural activity, their deliveries and the functional link between the cooperative's operations and agricultural production [39].

The typology developed in this section shows that multifunctionality may lose its agricultural character in three distinct ways: products may become detached from the farm's own production, agricultural assets may cease to serve productive activity, or organizational form may conceal autonomous commercial operations. These applications give concrete content to the framework established in Section 3 without modifying its legal criteria. From a European perspective, they also show how insolvency law may accommodate agricultural diversification without allowing formal agricultural status to shield economically autonomous commercial activity.

6. Agro-energy activities: biomass, photovoltaic plants and agrivoltaics

Agro-energy activities are among the most demanding applications of the classification framework established in Section 3. They lie at the intersection of agricultural law, renewable-energy policy, tax law, public incentives and insolvency law and have become increasingly important as farms participate in the energy transition. Their environmental or policy value does not determine their private-law or insolvency-law classification. The relevant inquiry is how energy production functions within the undertaking: it may support the farm, stabilize income and valorize agricultural resources, or absorb land, capital, debt and managerial attention to the point of displacing agricultural production.

Agro-energy activities do not normally constitute cultivation of land, forestry or animal breeding, but they may fall within the agricultural sphere as connected activities. Their classification requires a distinction between three situations: biomass, where the connection may derive from the origin of the material used; photovoltaic production, where it depends on the relationship between the plant and the agricultural organization; and agrivoltaics, where the relevant issue is the effective coexistence of energy production and agricultural continuity.

Biomass illustrates the first scenario. The assessment focuses primarily on the origin of the material used. A distinction must be drawn between the cultivation of biomass, which may constitute cultivation of land, and the production of energy from biomass, which is not itself a main agricultural activity. Energy production from biomass may therefore qualify as a connected activity only where the biomass, the farm

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organization and the energy plant remain functionally integrated. If the biomass is predominantly obtained from third parties, or if the agricultural organization plays only a marginal role in relation to the plant, the activity tends to lose its agricultural connection [40].

This distinction prevents tax or incentive-based parameters from becoming automatic civil-law criteria. Energy production remains compatible with agricultural classification only so long as it enhances the undertaking's agricultural production or resources. It becomes autonomous where the plant generates turnover, indebtedness, supply contracts and technological investments capable of shifting the economic centre of the undertaking from agriculture to energy. In that situation, energy no longer complements agriculture. It replaces it.

Photovoltaic energy raises a different issue. Unlike photovoltaic production, biomass may consist of plant or agroforestry material originating from agricultural activity. In photovoltaic production, there is no agricultural product transformed into energy. The connection test cannot therefore be based on product origin. It must focus on the relationship between the plant, the land, farm resources and the continuing existence of the main agricultural activity. Photovoltaic production is not cultivation, forestry or animal breeding. It may fall within the agricultural sphere only as a connected activity, within the limits in which special legislation links it to Article 2135 of the Civil Code and provided that the plant does not replace agricultural activity in organizational and economic terms [41].

The distinction between ground-mounted photovoltaic plants and agrivoltaic systems is central. In ground-mounted photovoltaic projects, agricultural land may become a mere physical support for the plant, with total or partial loss of its productive function. In agrivoltaic systems, by contrast, the coexistence of agricultural production and energy production is a structural feature. A plant can properly be described as agrivoltaic only if it preserves the continuity of crop or pastoral activities on the installation site [42].

Advanced agrivoltaics introduces a further dimension. It refers to a more qualified technical and incentive-based category, normally characterized by integrated systems, elevated modules and monitoring of the impact on crops and agricultural productivity. These features reduce the physical risk that the plant will displace agricultural use of the land. They do not, however, resolve the civil-law and insolvency-law question. It remains necessary to verify that agricultural activity is effective, organized, economically meaningful and not merely instrumental to energy production. The label "advanced agrivoltaic" does not by itself prove agricultural substance [43].

Consistent with the distinction developed in Section 2, neither renewable-energy objectives nor sectoral classifications determine the private-law character of the undertaking. Tax, cadastral and incentive criteria perform their own legal functions within their respective sectoral regimes. For insolvency-law purposes, however, they operate only as evidentiary indicators; the substantive classification of the undertaking remains governed by Article 2135 of the Civil Code. Tax guidance may consider the relationship between the plant, the land, the cultivated surface, agricultural turnover and energy production exceeding privileged thresholds. These elements may help to determine whether energy remains connected to the agricultural organization or has become autonomous and prevailing. The same is true of cadastral treatment and incentive eligibility. They may confirm compatibility with sectoral rules, but they do not decide whether, in the concrete case, the energy activity has absorbed the agricultural undertaking [44].

The principle is particularly important for photovoltaic and agrivoltaic plants. A plant may retain rural or agricultural relevance for tax or cadastral purposes even where the entrepreneur does not own it but uses it under a lease or similar contractual arrangement, provided that the applicable subjective and objective requirements are met. That sectoral treatment does not resolve the insolvency-law inquiry, which remains governed by the framework established in Section 3 [45].

Advanced agrivoltaic plants make the same distinction unavoidable. For tax purposes, the sale of energy produced by advanced agrivoltaic plants may follow the rules applicable to agricultural photovoltaic plants, within statutory thresholds and subject to connection requirements. For insolvency-law purposes, those tax rules remain evidentiary; cultivation or pastoral activity must still be shown to be effective, documented and economically significant.[46].

The documentation required under incentive schemes confirms the same point. Agrivoltaics is not a mere label attached to an energy plant. Operating rules may require an agronomic report, an updated farm file, georeferenced documents, photographic documentation and technical attestations concerning the conformity of the project. These requirements are not civil-law criteria. They do, however, confirm that agricultural continuity must be demonstrable throughout the life of the project. In a dispute over classification, such documents may become relevant circumstantial evidence of effective agricultural activity. Their function is evidentiary: they help show whether the plant coexists with agriculture or whether agriculture has become a formal condition for an energy project [47].

The factors specific to this application of the Section 3 framework include the origin of biomass or other resources, the continuity of agricultural activity, the allocation of revenues, the origin of liabilities, the weight of energy-related investments and

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the documentation of agricultural production. Where these elements show that the plant absorbs organization, capital and indebtedness while agriculture remains marginal, energy production no longer operates as connected activity. It becomes autonomous from the agricultural undertaking [48].

Agro-energy therefore does not require a separate classification test. It is the most demanding application of the framework established in Section 3: agricultural status persists only while energy production remains connected to an effective agricultural organization and does not displace its productive function.

7. Restructuring and insolvency tools for genuine agricultural undertakings

The classification inquiry is not an end in itself; it determines the procedural architecture of the crisis. Where the undertaking is commercial in substance, the applicable framework includes judicial liquidation, provided that the requirements of Article 121 are met, as well as the restructuring instruments available to non-small commercial entrepreneurs. Where the undertaking remains agricultural under Article 2135, judicial liquidation falls outside the applicable procedural framework, but the debtor remains subject to the Business Crisis and Insolvency Code and may use the restructuring and over-indebtedness instruments available to agricultural entrepreneurs. The legal inquiry therefore shifts from the gateway question of whether judicial liquidation may be opened to the selection of the instrument best suited either to preserve a viable agricultural organization or to realize its productive value in an orderly manner [49].

This shift from classification to procedural selection is consistent with Directive (EU) 2019/1023, which is built around early restructuring, preservation of viable businesses and discharge of debt. Italian law implements these objectives through a differentiated architecture. The relevant distinction is not simply between agricultural and commercial entrepreneurs. Once agricultural status has been established, the operative distinction is between agricultural undertakings that retain viable productive capacity and those whose continuation would merely worsen the deficit and reduce creditor recoveries.

For genuine agricultural undertakings, restructuring and insolvency tools should be understood as a spectrum of responses to different degrees of productive viability. At one end are continuity tools, designed to preserve the agricultural organization where the biological cycle can still be aligned with a credible financial recovery plan. At the other end are value-realization tools, designed to liquidate assets without destroying residual agricultural value. The central issue is therefore not only which procedures are legally available, but whether the selected procedure corresponds to

the farm's remaining productive capacity and offers an appropriate response to its financial condition [50].

This spectrum reflects a structural tension between financial and biological time. Crop maturation, livestock growth, seasonal campaigns, delivery windows and public-support payment cycles cannot be accelerated without loss of productive value. Negotiated crisis settlement is therefore particularly suitable where distress remains reversible, because its flexible structure may align immediate creditor pressure with seasonal cash flows, land-use relationships and supply-chain commitments. Viability must be assessed not through financial projections alone, but in the light of the farm's actual production cycle, agricultural credit, technical inputs and expected public-support payments. The procedure is justified only where the agricultural organization retains viable productive capacity; it is not a means of preserving a farm in name only [51].

Where a negotiated solution can be achieved, certified recovery plans and restructuring agreements may serve the same continuity function. A certified recovery plan may be suitable where the crisis can be addressed without court approval, and the plan is based on a reliable representation of the farm's productive and financial condition. Restructuring agreements may be useful where the crisis involves significant bank, tax or social-security exposure and the statutory creditor-consent thresholds can be met. Where tax or social-security liabilities are significant, their treatment may determine whether restructuring is feasible [52].

Article 2(1)(c) expressly includes agricultural entrepreneurs within the over-indebtedness framework. For them, the minor composition procedure (*concordato minore*) is the principal collective restructuring instrument where creditors must be bound, and continuation remains viable. Under Article 74(1), the proposal is admissible where it permits continuation of the entrepreneurial activity. Outside that case, Article 74(2) permits a minor composition only where external resources appreciably increase the assets available at the time of filing. The procedure must therefore not be used merely to postpone liquidation where productive continuity is no longer credible [53].

Value-realization tools become central when productive continuity can no longer be credibly preserved. Following the negotiated crisis settlement, simplified composition for asset liquidation may become available only where the statutory conditions laid down in Article 25-sexies are met. Its function is not to replace restructuring, but to provide a court-supervised liquidation solution where the expert's final report confirms that negotiations were conducted properly and in good faith and that none of the solutions referred to in Article 23(1) and (2)(b) is practicable [54].

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Where continuation is no longer realistically achievable, controlled liquidation becomes the principal collective liquidation procedure for genuine agricultural entrepreneurs outside judicial liquidation. It must be distinguished from judicial liquidation: the former applies to debtors in a state of over-indebtedness, whereas the latter presupposes a non-small commercial entrepreneur in a state of insolvency. Since Article 2(1)(c) defines over-indebtedness as encompassing both crisis and insolvency, controlled liquidation is not confined to debtors who are already insolvent [55].

Agricultural liquidation should not be conceived as an economically indiscriminate shutdown. A sudden halt may destroy value where crops are growing, livestock require continued care, products are perishable or supply and delivery contracts remain economically valuable. The liquidation programme should therefore preserve, so far as the applicable rules permit, the value generated by ongoing biological and contractual processes. Temporary continuation of specific operations, or a lease of the undertaking, may be considered only where the court regards it as compatible with the controlled-liquidation framework and it is demonstrably capable of improving creditor recoveries. The aim is not to maintain the business at all costs, but to avoid the unnecessary destruction of agricultural value [56].

Discharge of debt is also central. For individual agricultural entrepreneurs and, where relevant, for partners with unlimited liability affected by the procedure, liquidation is not only a mechanism for collective distribution. It may also be the path to release from outstanding debts. Ordinary discharge in controlled liquidation must be distinguished from the special regime applicable to an over-indebted individual debtor who is unable to offer creditors any direct or indirect benefit, even prospectively. Where the statutory requirements are met, discharge prevents the agricultural crisis from leaving a permanent residual debt burden [57].

The choice between rescue and liquidation must be substantiated by an agricultural business plan. That plan is not merely a financial annex: it must identify the farm's productive structure, available assets, land-use and supply-chain relationships, liabilities, biological and seasonal assumptions, and the basis of its prospective cash-flow projections.

Procedural selection also has an ex ante governance dimension. Directors of agricultural companies remain subject to duties of early detection of distress and must ensure that organizational, administrative and accounting structures are commensurate with the size and complexity of the undertaking. Adequate records, reliable planning and timely detection are conditions for the responsible management of an undertaking exposed to credit, public support, market volatility and complex

production cycles. If selective protection depends on genuine agricultural substance, managers must be able to identify when that substance is deteriorating, when the economic centre of gravity is shifting and when continuity has become merely nominal. Early detection cannot therefore be reduced to standard accounting indicators; it must also take account of biological volatility, seasonal cash flows, commodity-price movements, subsidy timing and the operational risks of agricultural production [58].

The Italian system thus links substantive classification to procedural choice. Once genuine agricultural status has been established, the selected instrument must correspond to the undertaking's actual condition: rescue where productive viability remains, orderly value realization where it does not, and discharge where the statutory requirements are met. Differentiated treatment is therefore defensible only as a means of preserving or realizing productive agricultural value, not as protection of formal agricultural status.

8. Conclusions: agricultural undertakings between selective protection, restructuring policy and organizational responsibility

Modern agricultural insolvency law is shaped by a structural tension. European agricultural, environmental and energy policies encourage farms to diversify, integrate services, participate in rural development and contribute to the renewable-energy transition. Insolvency law, however, must preserve legal certainty, protect creditors and identify the real economic nature of the debtor. The central problem is therefore not whether agriculture may evolve beyond primary production, but how far multifunctionality can expand before the agricultural undertaking loses its agricultural character for insolvency-law purposes.

The Italian model responds to this tension through selective protection. Exclusion from judicial liquidation is not a formal privilege, but the consequence of substantive classification based on the activity actually carried out. Public-law classifications, administrative authorizations, tax regimes, CAP records and company-register entries may provide evidence, but they do not determine that classification. Because the inquiry concerns the undertaking's actual economic and organizational structure, it also entails documentary accountability and managerial responsibility throughout the life of the business.

The decisive issue is not whether the undertaking has a rural appearance, owns land or participates in agricultural policy schemes. The decisive issue is whether agricultural production remains effective, organized and economically meaningful. Connected activities retain their agricultural character only where they remain functionally subordinate to the agricultural organization. Where they absorb

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investments, indebtedness and risk to the point of displacing agriculture as the true economic centre, they cease to qualify as agricultural.

This classification determines procedural allocation. Once genuine agricultural status has been established, the inquiry shifts to the selection of the tools examined in Section 7 that are best suited to preserve or realize productive value: restructuring where viable productive capacity remains and controlled liquidation where it does not. If the activity is commercial in substance and the requirements of Article 121 are met, the ordinary framework applicable to non-small commercial entrepreneurs, including judicial liquidation, becomes available.

The model also has an ex ante organizational dimension. For agricultural undertakings organized in corporate or collective form, Article 2086(2) of the Civil Code requires organizational, administrative and accounting structures commensurate with the nature and size of the activity carried out. From a European perspective, these duties reflect the logic underlying modern restructuring policy: early detection of distress, preservation of viable value, responsible selection of the appropriate procedure and reliable information for creditors and courts.

The Italian sequence — substantive classification before procedural allocation — may offer a transferable analytical framework for Member States facing comparable problems of agricultural multifunctionality and energy transition. It allows differentiated treatment to follow productive agricultural substance without extending it to activities that have acquired commercial autonomy.

Ultimately, the legitimacy of agricultural exceptionalism in insolvency law rests on its ability to distinguish productive diversification from economic displacement. To preserve the integrity of credit markets and the predictability of insolvency regimes, special protections must follow the biological cycle, not merely the administrative label. Protection must attach to productive substance, not to commercial autonomy hidden behind agricultural form.

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32. Legislative Decree No. 190 of 25 November 2024, as amended by Decree-Law No. 175/2025, converted into law by Law No. 4/2026.
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Notes:

[1] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019, Recitals 1, 24, 73 and 84 and Articles 4 and 20. The Directive pursues minimum harmonization of preventive restructuring frameworks, discharge of debt and procedural efficiency, while leaving important aspects of restructuring and insolvency systems to national law.

[2] Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 on support for strategic plans under the Common Agricultural Policy. On renewable energy, see Directive (EU) 2018/2001, as amended by Directive (EU) 2023/2413.

[3] Article 2135 of the Italian Civil Code, as replaced by Article 1(1) of Legislative Decree No. 228 of 18 May 2001.

[4] 4 Articles 1(1), 2(1)(c) and 121 of Legislative Decree No. 14 of 12 January 2019 (Italian Business Crisis and Insolvency Code).

[5] S. Carmignani, Attività agricola e crisi d'impresa, in Diritto agroalimentare, 2021, No. 3, p. 470 ff.

[6] Corte di Cassazione, First Civil Section, 21 July 2016, No. 17928; 13 July 2017, No. 17343; 28 November 2023, No. 32977; and 14 April 2026, No. 9577.

[7] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023; Legislative Decree No. 190 of 25 November 2024, as amended by Decree-Law No. 175 of 21 November 2025, converted into law by Law No. 4 of 15 January 2026; Ministry for Ecological Transition and Ministry of Agricultural, Food and Forestry Policies, *Guidelines on Agrivoltaic Plants*, 27 June 2022.

[8] O. Casasola and E. Salvadori, The Italian Exclusion of Farming Enterprises from Major Insolvency Proceedings: An Assessment of Its Appropriateness within the European Union Insolvency Context, in International Insolvency Review, 2025, Vol. 34, No. 1, pp. 161–182, doi: 10.1002/iir.1567.

[9] For the comparative framework, see Casasola and Salvadori, cited above note 8, especially pp. 169–170. For Germany, see Section 11(1) of the *Insolvenzordnung*. For France, see Articles L. 311-1, L. 351-1 and L. 351-8 of the *Code rural et de la pêche maritime*.

[10] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, especially Articles 3, 7, 19 and 20, which concern international jurisdiction, applicable law, recognition and effects of insolvency proceedings.

[11] Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021, Articles 3, 4 and 6, concerning the definitions of farmer, holding and agricultural activity, and on the specific objectives of the Common Agricultural Policy Strategic Plans.

[12] Regulation (EU) 2021/2115, Articles 69–78, concerning rural development interventions, including support for investments, setting up of young farmers and new farmers, start-up of rural businesses, cooperation, knowledge exchange and local development.

[13] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018, as amended by Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023, on the promotion of energy from renewable sources.

[14] Articles 2082 and 2135 of the Italian Civil Code. Article 2082 contains the general definition of an entrepreneur, while Article 2135 identifies the agricultural entrepreneur. On the modern notion of agricultural enterprise following the 2001 reform, see A. Germanò, *Manuale di diritto agrario*, 10th ed., Giappichelli, 2026; A. Jannarelli, *Comparazione e diritto agrario. Saggi*, Cacucci, 2021; M. Cossu, La nuova impresa agricola tra diritto agrario e diritto commerciale, in *Rivista di diritto agrario*, 2003, p.73. On the need to determine the agricultural nature of the undertaking by reference to the activity actually carried out, rather than by formal indicators, see Corte di Cassazione, First Civil Section, 28 November 2023, No. 32977.

[15] Article 2135 of the Italian Civil Code, cited above in note 3. The provision includes cultivation of land, forestry, animal breeding and connected activities, and defines the main agricultural activities by reference to the care and development of a biological cycle, or of a necessary phase of that cycle, whether plant or animal.

[16] Article 2135(2) of the Italian Civil Code. On the biological-cycle criterion as the decisive element of agricultural activity, see Corte di Cassazione, First Civil Section, 10 November 2016, No. 22978; and 16 January 2018, No. 831.

[17] Article 2135(3) of the Italian Civil Code. The provision includes, among connected activities, the manipulation, conservation, processing, marketing and enhancement of products obtained predominantly from the main agricultural activity, as well as the provision of goods or services through the predominant use of equipment or farm resources normally employed in the agricultural activity carried out. On connected activities as the legal technique through which Italian law accommodates agricultural multifunctionality, see Jannarelli and Cossu, cited above in note 14.

[18] See, among others, Corte di Cassazione, First Civil Section, 8 August 2016, No. 16614; 13 July 2017, No. 17343; 22 February 2019, No. 5342; 24 January 2023, No. 2162; 7 July 2023, No. 19311; and 28 November 2023, No. 32977. These decisions confirm that the agricultural or commercial nature of the undertaking must be assessed in substance. On the relationship among connected activities, corporate form and insolvency, see M. Cossu, Ancora sul fallimento della S.p.A. agricola: il caso dell'impresa florovivaistica, in Riv. giur. Sarda, 2003, pag. 341 ss.

[19] Article 121 of the Legislative Decree No. 14 of 12 January 2019, Italian Business Crisis and Insolvency Code. The provision identifies the subjective and objective requirements for the opening of judicial liquidation and refers to commercial entrepreneurs who are insolvent and do not prove that they jointly satisfy the requirements of a smaller enterprise.

[20] Article 2(1)(d) of the Italian Business Crisis and Insolvency Code. The smaller enterprise is defined by three cumulative thresholds: annual assets not exceeding EUR 300,000; annual revenues not exceeding EUR 200,000; and total debts, including unmatured debts, not exceeding EUR 500,000. The first two thresholds are assessed over the three financial years preceding the filing of the application, or since the beginning of the activity if shorter.

[21] 21 Article 2(1)(a) and (b) of the Italian Business Crisis and Insolvency Code. Crisis is defined as the state that makes insolvency probable and, for undertakings, is reflected in the

inadequacy of prospective cash flows to meet obligations over the following twelve months. Insolvency is manifested by defaults or other external facts showing that the debtor can no longer meet its obligations regularly.

[22] Article 49(5) of the Italian Business Crisis and Insolvency Code. The court may not open judicial liquidation if the amount of overdue and unpaid debts resulting from the preliminary investigation is below EUR 30,000.

[23] On the relevance of the activity from which the insolvency originated, see Corte di Cassazione, No. 5342/2019; on the need for a positive finding of commercial activity and the insufficiency of formal or merely negative indicators, see Corte di Cassazione, Nos 17343/2017 and 32977/2023, all cited above in note 18.

[24] Articles 64-bis and 84 et seq. of the Italian Business Crisis and Insolvency Code, on the restructuring plan subject to court approval and composition with creditors. The reclassification of a formally agricultural undertaking as commercial changes the procedural framework of the crisis or insolvency, but does not automatically require liquidation where restructuring tools remain available.

[25] Article 121 of the Italian Business Crisis and Insolvency Code, cited above in note 19.

[26] Article 2697(2) of the Italian Civil Code. On the allocation of the burden of proof between the applicant, who must establish commercial activity as a constitutive fact, and the party invoking Article 2135(3), who must prove the connected nature of that activity as a fact preventing the opening of judicial liquidation, see Corte di Cassazione, First Civil Section, 8 August 2016, No. 16614; 7 February 2023, No. 3647; 28 November 2023, No. 32977, especially paras 6.3–6.5; and 9 March 2026, No. 5268. Although these decisions concern the former Bankruptcy Law, the same allocation has been expressly applied under Article 121 of the Business Crisis and Insolvency Code: see Tribunale di Siena, 19 April 2025, No. 17

[27] Regulation (EU) 2021/2115, Articles 3 and 4, concerning the notions of farmer, holding and agricultural activity for Common Agricultural Policy purposes. These functional notions are relevant for public-support eligibility and the allocation of agricultural resources, but do not automatically determine civil-law or insolvency-law classification under Italian law.

[28] Article 2729 of the Italian Civil Code, on presumptions. Liabilities may operate as circumstantial evidence of the activity from which insolvency originated where the indications are serious, precise and consistent.

[29] Article 39 of the Italian Business Crisis and Insolvency Code, on the debtor's filing duties in the unitary proceeding for the regulation of crisis and insolvency.

[30] Articles 51(4) and 52 of the Italian Business Crisis and Insolvency Code, on appeals against the judgment opening judicial liquidation and on the possible suspension of liquidation of assets, the formation of the statement of liabilities and other management acts.

[31] Article 2135(3) of the Italian Civil Code. On the requirement that manipulation, conservation, processing, marketing and enhancement concern products obtained predominantly from the main agricultural activity, see Corte di Cassazione, Nos 16614/2016 and 3647/2023, cited above in note 26. On the theoretical distinction between agricultural connection and autonomous commercial activity, see Cossu, cited above in note 18.

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[32] Law No. 96 of 20 February 2006 on agritourism, especially Articles 2 and 4. On the need to assess whether agritourism remains connected to the agricultural undertaking or becomes an autonomous hospitality activity, see Corte di Cassazione, First Civil Section, 15 February 2023, No. 4790.

[33] Law No. 96/2006, Articles 2, 4 and 5. Regional administrative criteria and authorizations may be relevant for administrative purposes, but insolvency-law classification remains governed by Article 2135 of the Italian Civil Code and by the concrete relationship between agricultural activity and hospitality services.

[34] Corte di Cassazione, No. 32977/2023, cited above in note 18. The decision confirms that, for insolvency purposes, the agricultural or commercial nature of an undertaking must be determined under the Civil Code and insolvency legislation, not under tax or sectoral rules. It is particularly relevant where real estate income or the use of rural assets is invoked to support agricultural classification.

[35] Article 2135(2) of the Italian Civil Code. The replacement of the former reference to livestock with the broader reference to animals expands the objective scope of agricultural activity, but does not remove the requirement that the undertaking be directed to the care and development of a biological cycle. On this criterion, see Corte di Cassazione, Nos 22978/2016 and 831/2018, cited above in note 16.

[36] Article 2487, Italian Civil Code, on the powers and criteria governing voluntary liquidation. On the relevance, for insolvency purposes, of commercial activity from which the indebtedness originated, even where that activity has subsequently ceased, see Corte di Cassazione, No. 5342/2019, cited above in note 18. See also Article 121 of the Italian Business Crisis and Insolvency Code, cited above in note 19.

[37] Articles 2135 and 2247 et seq. of the Italian Civil Code; Article 2 of Legislative Decree No. 99 of 29 March 2004, concerning agricultural companies. On the insufficiency of company form, statutory object, tax treatment or sectoral classification to determine agricultural status for insolvency purposes, see Corte di Cassazione, No. 32977/2023, cited above in note 18. On the relationship among agricultural companies, connected activities and insolvency classification, see Cossu, cited above in note 14.

[38] Articles 2249(1), 2297 and 2317 of the Italian Civil Code. A simple partnership may be used only for non-commercial activities; where commercial activity is actually carried out, the relationship may have to be assessed according to the rules applicable to irregular commercial partnerships. On the insolvency consequences for partnerships and partners with unlimited liability, see Article 256 of the Italian Business Crisis and Insolvency Code.

[39] Articles 2135(3) and 2513 of the Italian Civil Code; Article 111-septies of the Implementing Provisions of the Italian Civil Code. On agricultural cooperatives and consortia, see Corte di Cassazione, No. 831/2018, cited above in note 16, according to which exemption from bankruptcy requires verification of the legal form and quality of members, the performance of agricultural or connected activities under Article 2135, and the statutory requirement that the relevant activity be carried out in favour of members who are agricultural

producers. For the EU framework on producer organizations, see Regulation (EU) No. 1308/2013, Article 152 et seq.

[40] Article 2135(3) of the Italian Civil Code. On agro-energy activities as connected agricultural activities, see Article 1(423) of Law No. 266 of 23 December 2005, as subsequently amended, concerning the production and sale of electricity and heat from renewable agro-forestry and photovoltaic sources, as well as fuels and chemical products derived predominantly from agricultural products. On renewable-energy production and the new frontiers of agricultural enterprise, see M.C. Rizzuto, Le nuove frontiere dell'impresa agricola: le fonti di energia rinnovabile, in Ordines, 2019, No. 1, pp. 307–360.

[41] Article 2135(3) of the Italian Civil Code; Article 1(423) of Law No. 266 of 23 December 2005. Photovoltaic production is not, in itself, cultivation of land, forestry or animal breeding. It may be treated as a connected activity only within the limits in which special legislation links energy production to the agricultural undertaking and provided that the plant remains functionally connected to agricultural activity.

[42] Ministry for Ecological Transition and Ministry of Agricultural, Food and Forestry Policies, Guidelines on Agrivoltaic Plants, 27 June 2022, cited above in note 7.

[43] F. Tedioli, Agrivoltaics in Italy: Agricultural Continuity, Authorization, and Suitable Areas under Law No. 4/2026, Land Management and Utilization, Vol. 2, Issue 1, 2026, p. 1 ff., doi: 10.54963/lmu.v2i1.2317.

[44] Italian Revenue Agency, Circular No. 32/E of 6 July 2009. The Circular identifies criteria for the tax treatment of electricity produced by agricultural entrepreneurs from photovoltaic sources, including the relationship between the plant, the land, the cultivated surface, agricultural turnover and energy produced beyond the privileged threshold. These criteria may operate as evidentiary indicators, but they do not replace the civil-law test under Article 2135 of the Italian Civil Code.

[45] Corte di Cassazione, Tax Section, 28 February 2024, No. 5335. The decision confirms, for cadastral and tax purposes, that photovoltaic plants may retain rural character even where the agricultural entrepreneur uses the plant under a leasing arrangement, provided that the relevant subjective and objective requirements are met. This cadastral or tax classification does not, by itself, determine the insolvency-law classification of the undertaking.

[46] Italian Revenue Agency, Ruling No. 61 of 4 March 2025. The ruling states that the sale of energy produced by advanced agrivoltaic plants follows, for tax purposes, the rules applicable to agricultural photovoltaic plants: within the annual threshold of 260,000 kWh, production and sale of energy are treated as connected activities generating agricultural income; for the portion exceeding that threshold, the flat-rate regime under Article 1(423) of Law No. 266 of 23 December 2005 applies only if at least one of the connection requirements identified by Circular No. 32/E of 2009 is satisfied.

[47] Gestore dei Servizi Energetici (GSE), Operating Rules for access to incentives for innovative agrivoltaic systems under the National Recovery and Resilience Plan, Mission 2, Component 2, Investment 1.1. The required documentation includes, among other elements, an agronomic report, the updated farm file, georeferenced documentation, *post-opera*tion photographic documentation and technical attestations concerning project conformity. These

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documents are not civil-law criteria, but may provide circumstantial evidence of agricultural continuity and of the actual coexistence between energy production and agricultural activity.

[48] Article 2135(3) of the Italian Civil Code; Article 121 of the Italian Business Crisis and Insolvency Code. For insolvency-law purposes, the decisive inquiry remains whether energy production is functionally connected to the agricultural organization or whether it has become an autonomous activity in terms of revenues, investments, liabilities and business organization. Where the plant absorbs organization, capital and indebtedness while agriculture remains marginal, the activity falls outside the protective perimeter of agricultural enterprise. On the production of energy from renewable sources as a connected agricultural activity, see Rizzuto, cited above in note 40; F. Tedioli, La produzione di energia da fonti rinnovabili quale attività agricola connessa, in Rivista per la consulenza in Agricoltura, 2020, No. 53, p. 1 ff.

[49] Directive (EU) 2019/1023, cited above in note 1, especially Recitals 1, 2, 24 and 72 and Articles 4 and 20, concerning preventive restructuring frameworks, preservation of viable businesses and discharge of debt. For agricultural undertakings, see also Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili, Linee guida per il risanamento delle imprese agricole, 2021.

[50] Article 2(1)(c), of the Italian Business Crisis and Insolvency Code, which includes agricultural entrepreneurs within the over-indebtedness framework; Articles 12 et seq., concerning negotiated crisis settlement; Articles 56 and 57, concerning certified recovery plans and restructuring agreements; Articles 65 et seq., concerning over-indebtedness procedures; Article 74 et seq., concerning minor composition with creditors; and Article 268 et seq., concerning controlled liquidation.

[51] Articles 12 and 17 of the Italian Business Crisis and Insolvency Code, concerning access to negotiated crisis settlement and its functioning. On the flexible and early-rescue function of the negotiated procedure, see S. Ambrosini, La nuova composizione negoziata della crisi: caratteri e presupposti, in Ristrutturazioni Aziendali, 23 August 2021; L. Panzani, Il D.L. "Pagni" ovvero la lezione positiva del Covid, in Diritto della crisi, 25 August 2021.

[52] Articles 56 and 57 of the Italian Business Crisis and Insolvency Code, concerning certified recovery plans and restructuring agreements. On negotiated and court-supported restructuring tools under the Code, see S. Ambrosini, Le soluzioni negoziate della crisi d'impresa, Giappichelli, 2021; S. Pacchi and S. Ambrosini, Diritto della crisi e dell'insolvenza, Zanichelli, 2023.

[53] Articles 65 et seq. and 74 et seq. of the Italian Business Crisis and Insolvency Code, on over-indebtedness procedures and minor composition with creditors. For agricultural entrepreneurs, the relevant point is whether continuation has real productive viability or whether the procedure would merely postpone liquidation.

[54] Articles 23 and 25-*sexies* of the Italian Business Crisis and Insolvency Code, on the possible outcomes of negotiated crisis settlement and on simplified composition for the liquidation of assets. Simplified composition presupposes the expert's final report, fair and good-faith negotiations, and the impracticability of the solutions referred to in Article 23.

[55] Article 268 of the Italian Business Crisis and Insolvency Code, on controlled liquidation. The procedure belongs to the over-indebtedness framework and must be distinguished from judicial liquidation under Article 121. Where the application is filed by a creditor, controlled liquidation is not opened if overdue and unpaid debts resulting from the preliminary investigation are below EUR 50,000.

[56] Article 272 of the Italian Business Crisis and Insolvency Code, on the liquidator's programme and the liquidation of the debtor's assets. On the agricultural need to preserve productive value during liquidation, see Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili, Linee guida per il risanamento delle imprese agricole, 2021.

[57] Articles 282 and 283 of the Italian Business Crisis and Insolvency Code, on discharge of debt in controlled liquidation and on the insolvent individual debtor with no assets. These provisions implement, in the Italian system, the broader second-chance logic promoted by Directive (EU) 2019/1023.

[58] Article 2086(2), Italian Civil Code, on adequate organizational, administrative and accounting structures; Article 2476, Italian Civil Code, on directors' liability in limited-liability companies. On crisis detection and governance duties under the Business Crisis and Insolvency Code, see Pacchi and Ambrosini, cited above in note 52; S. Ambrosini, Diritto dell'impresa in crisi, 2026, 2nd ed., Pacini Giuridica.

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