

MANAGING LARGE CORPORATE CRISIS IN ITALY: AN EMPIRICAL SURVEY ON EXTRAORDINARY ADMINISTRATION

Alessandro DANOVI
Bergamo University, Italy

ABSTRACT

Extraordinary Administration (amministrazione straordinaria), a sort of Italian Chapter 11, was introduced into Italian bankruptcy legislation in 1979, in order to manage large corporate crises.

Differently from other Italian bankruptcy procedures, Extraordinary Administration is a sort of hybrid since it is under the jurisdiction of both the administrative authority (Ministry of Industry) as well as the Court. Currently there are two distinct phases. During the initial “observation” phase, the company is managed by an extraordinary administrator who has to verify if there is a real possibility for restructuring. According to the restructuring program, prepared by the administrator, in the second phase the company, following a going concern logic, can either be sold to other investors or guided towards a stand alone recovery.

As often happens with bankruptcy laws, there is ample theoretical framework and a very large number of studies have been carried out, focused on the legal aspects (for a general overview in English see Panzani, 2009) while economic issues have not been thoroughly investigated. Among the few we refer to Floreani, 1997; Leogrande, 2003; Danovi, 2003; Falini 2008.

In such a context, this paper aims at presenting some initial empirical evidence regarding how the procedure was put into effect between 1999 (the year of the reform) and 2008. Sources of information are documents available from the Ministry of Industry, which sets out the procedure and has to approve the restructuring plan and the Court Houses that are empowered to accept filing for Extraordinary Administration, in cases of insolvency. The data collected, regarding almost all cases ruled by Act 270/1999 refer to 65 groups composed by 313 companies. The paper investigates: i) the economic relevance of the phenomenon; ii) the characteristics and assets of the companies involved; iii) time-frames and management aspects; iv) safeguarding of the work force. The author is aware that because of the statistical limits the analysis can be considered an initial survey, but it is worth presenting as the basis for future studies and to create the conditions for proper discussion for an institution whose real weight is often merely imagined, rather than known.

Keywords: *Corporate restructuring, Bankruptcy procedures in Italy, Extraordinary Administration*

Jel classification: G33 - Bankruptcy, Liquidation, K35 - Personal Bankruptcy Law

INTRODUCTION

Extraordinary Administration (amministrazione straordinaria), a sort of Italian Chapter 11, was introduced in Italian bankruptcy legislation in 1979, by Act 270/1999, in order to manage large corporate crises. It was reformed afterwards in 1999 according to EU recommendations and amended in 2003 and 2008 to deal with two of the biggest Italian crises, the Parmalat and Alitalia cases.

Differently from other Italian bankruptcy procedures, Extraordinary Administration is a sort of hybrid since it is under the jurisdiction of both the administrative authority (Ministry of Industry) as well as the Court. Currently there are two distinct phases. During the initial “observation” phase, an extraordinary administrator manages the company and also has to verify whether there is a real possibility for recovery. During the second phase (“recovery phase”), the restructuring program prepared by the administrator follows a going concern logic, and the company can either be sold to other investors or guided towards a stand alone recovery. If according to the program only some divisions of the company are sold, after the sale the rest has to be liquidate (liquidation phase).

As often happens with bankruptcy laws, there is ample theoretical framework and many studies have been carried out, focused on the legal aspects (for a general overview in English see Panzani, 2009), while economic issues have not been thoroughly investigated. Among the few we refer to Floreani, 1997; Leogrande, 2003; Danovi, 2003; Lacchini et Al. 2005; Falini, 2008. In such a context, this paper aims at presenting some initial empirical evidence regarding how the procedure was put into effect between 1999 (the year of the reform) and 2008. The research follows the ideal framework of the most complete empirical study in Italian literature (Floreani, 1997) which studied the phenomenon before the reform, analysing almost all cases up to 1996. It is a useful tool for comparing the effect of the new law on corporate reorganization in Italy. Information sources utilized to carry out the study were documents available from the Ministry of Industry, which sets out the procedure and has to approve the restructuring plan, and the Courts, that are empowered to accept filing for EA, in case of insolvency. The data collected, regarding almost all cases filed under Act 270/1999 (“Legge Prodi bis”), refer to 57 groups composed of 183 companies. The analysis was carried out on the EA cases under Act 270/1999 as it was more widely used than the revised version ruled by the Act 39/2004 (“Legge Marzano”). This law introduced a different version of the EA procedure, which was easier to access and aimed at recovering very large groups through economic and financial restructuring. Since 2003 under this law have filed 8 groups for a total of 130 companies (Parmalat, Finmek Access, GA.MA., Volare, Cit, Consorzio Gaia, Alitalia e Merloni).

From a methodological point of view, the survey is necessarily more descriptive than analytical: The size of the sample, in fact, while often representing the whole population, is too small to find statistically significant correlations. Although the phenomenon is little known, the analysis is still relevant.

This paper investigates: i) the economic relevance of the phenomenon; ii) the characteristics and assets of the companies involved; iii) timeframes and management aspects; iv) safeguarding of the work force.

The main conclusions are as follows:

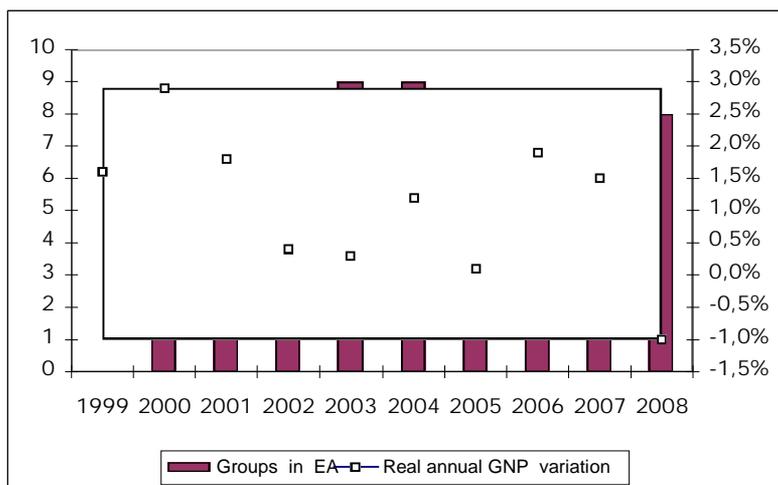
- The new legislation widened the sphere of application: the regulations introduced by the Act of 1999 notably increased the area of application, extending the intervention of the administrative authority to protect industry and national employment levels;
- The analysis of sectorial distribution illustrates how the phenomenon especially affects industrial sectors, like engineering and textiles, as well as commerce and wholesale, the same sectors especially hit by the crisis in Italy;
- Filing for EA often happens too late and this delay has negative effects on the possibilities for recovery. The principle of “merit” introduced by the new legislation, based on the observation phase, is an important filter for singling out companies which are effectively salvageable;
- The economic rebalancing of the companies seems to have been pursued almost exclusively through the sale of the whole company or at least some divisions to other competitors. There are only two cases of stand-alone restructuring. This suggests that the new legal tools serve to foster sales rather than carry out real internal recovery.
- The aim to protect the workers seems to be reached in the majority of cases through the transfer of a significant number of employees (about 51%) with the company still functioning. EA seems to be useful in safeguarding the work force in most cases.
- The deadlines fixed for the execution of the program have produced tangible benefits on the duration of the procedure, at least as far as regards the recovery phase.
- The liquidation phase is the most complex of the entire procedure. In fact, for those still in progress (87%), the total timeframe is more than 6 years, similar to bankruptcy procedures.
- In conclusion, while EA has proven to be generally efficient, effects on creditor’s rights are variable: in some cases there are significant recovery ratios, in others the percentages are not far from the ones creditors could have had if the company had gone bankrupt.

The author is aware that because of the statistical limits, this analysis can be considered as an initial survey. It is meant as the basis for future studies, to create the conditions for proper discussion for a procedure whose real weight is often merely imagined, rather than known.

THE DIMENSION OF THE PHENOMENON

After Act 270/1999 was approved and up to November 2008, 57 groups for a total of 183 companies were admitted to the procedure. Most admissions took place between 2003-2005 (42% for groups and 44% for single companies), in the following period the percentage was lower (29% for groups). The frequency appears linked to the general economic trend: the increase in the number of cases filed followed the downturn of the economy, with the usual delay as illustrated below. Vice versa, there were just a few cases during the expansive phase of the cycle.

Exhibit 1: The Economic Trend And EA Cases



Source: Ministry of Finance and Ministry of Industry data

A more general overview emerges from a comparison of the new and old law trends. Following the national economic trends, a larger number of groups filed for EA during the last decade. Fewer companies filed between 1999-2008 (183 against 229), but more groups were involved (57 against 25). This can be explained in light of the following elements introduced by the new law (Danovi, 2003, 71):

- a) lowering the dimension required to file for EA led to filing by smaller groups;
- b) greater access selectivity, i.e. only for recoverable companies as well as the removal of automatic extension to all other distressed companies within the group .

Exhibit 2 - The Historical Trend Of EA					
Act 95/1979			Act 270/1999		
Year	Groups	Companies	Year	Groups	Companies
1989	1	6	1999	0	0
1990	1	4	2000	4	20
1991	1	6	2001	5	18
1992	6	18	2002	8	13
1993	2	13	2003	9	40
1994	7	63	2004	9	29
1995	3	42	2005	6	11
1996	3	32	2006	2	13
1997	0	35	2007	6	17
1998	1	10	2008*	8	22
Total	25	229		57	183
Note:* Up to November 2008					
Source: Leogrande, 1999; 332; Floreani, 1997; 345; Ministry of Industry data					

THE SIZE OF GROUPS INVOLVED

The size of groups involved can be evaluated from the number of employees (Exhibit 4), the first requirement for access to the procedure or from the company turnover (Exhibit 3). Art. 2 of Act 270/1999 requires more than 200 workers, while under the previous Act 95/1979 the limit was more than 300.

Exhibit 3 - The Turnover of Companies Which Accessed EA		
Turnover (millions of Euro)	Count	%
more than 200	4	26.67%
from 100 to 200	5	33.33%
from 50 to 100	4	26.67%
less than 50	2	13.33%
Count	15	100.00%
Source: Mediobanca, 2000-2008		

About a third (33%) of the companies included in the sample had a turnover between 100 and 200 million Euro. A significant percentage (more than 26%) had a turnover between 50 and 100 million Euro or over 200 million Euro. The other companies do not exceed 50 million. Four listed companies filed for EA (only one with a turnover of over 200 million Euro) and this can be interpreted under a double profile:

- on the one hand, it is possible that the listed companies, since they are subject to greater controls, file more rarely;
- on the other hand, there is a sort of self-exclusion from the sample. Since 2003 the largest listed companies can file more easily for the new version of the law (under Act 39/2004), not included in our sample.
- In all, 25,308 workers were employed by companies that filed for EA between 2000 and 2008. More than half of the groups had fewer than 500 employees and during the first three years (2000-2002), almost all had fewer than 1000 employees. From 2003-2005, even though the majority of cases regarded companies with fewer than 500 employees, there was an increase in cases which involved groups between 1000 and 2000 employees. This is linked to the general crisis in labour intensive sectors (see Exhibit 5). The smaller number of large groups is due to the fact that since 2003 these crises have been dealt with using EA in accordance with Law 39/2004, not included in our sample.
- As the median data in 2000-2002 is under 300 employees, many groups would not have been able to access EA because of the size limit under the previous Law 95/1979. Compared with previous data (Floreani, 1997), the dimension of the groups involved under the new regulations is much smaller, suggesting that the renewed procedure involved medium-large sized companies.

Exhibit 4- The Size of Groups								
Employees	Entire period 2000-2008		2000-2002		2003-2005		2006-2008	
	Count	%	Count.	%	Count.	%	Count.	%
between 1000 and 2000	5	8.77%	1	5.88%	1	4.17%	3	17.65%
between 500 and 1000	11	19.30%	2	11.76%	7	29.17%	2	11.76%
less than 500	41	71.93%	14	82.35%	16	66.67%	11	64.71%
Total	57	100.00%	17	100.00%	24	100.00%	16	94.12%
Average and median employees per group								
Average	444		358		469		499	
Median	324		265		352		365	
Source: Ministry of Industry data								

ECONOMIC SECTORS MOST EFFECTED

Analysis of the sectorial distribution shows how the phenomenon effects the engineering, textile, commercial and distribution sectors. The high incidence of significant difficulties in the engineering field is due to the stagnation of 2007-2008. The textile sector also made widespread use of EA, particularly in 2006-2008. There is a correlation between the incidence and the economic sector trends, which experienced severe structural crises in the last years.

Exhibit 5 - Sectorial Subdivision of The Groups In EA								
	Total 2000-2008		2000-2002		2003-2005		2006-2008	
Sector	Count	%	Count	%	Count	%	Count	%
Food	2	3.51%	1	5.88%	1	4.17%	0	0.00%
Textiles and clothing	9	15.79%	2	11.76%	3	12.50%	4	25.00%
Paper and Publishing	3	5.26%	2	11.76%	1	4.17%	0	0.00%
Chemical	1	1.75%	1	5.88%	0	0.00%	0	0.00%
Commerce and distribution	6	10.53%	1	5.88%	4	16.67%	1	6.25%
Construction	4	7.02%	2	11.76%	1	4.17%	1	6.25%
Engineering	15	26.32%	4	23.53%	5	20.83%	6	37.50%
Electronics	3	5.26%	0	0.00%	3	12.50%	0	0.00%
Steel and Metallurgy	4	7.02%	3	17.65%	0	0.00%	1	6.25%
Plant Design	1	1.75%	1	5.88%	0	0.00%	0	0.00%
Transport	2	3.51%	0	0.00%	1	4.17%	1	6.25%
Telecommunications	4	7.02%	0	0.00%	4	16.67%	0	0.00%
Services	3	5.26%	0	0.00%	1	4.17%	2	12.50%
Total	57	100.00%	17	100.00%	24	100.00%	16	100.00%

Source: data from various files and from Mediobanca, 2000-2008

The entity of the crisis that has hit the industrial sector and the importance of EA is also illustrated in the Report on the State of Industry (Ministry of Industry & IPI 2003), which discusses crisis situations between 2002 and 2003. EA seems to be a solution to company crises, especially in industrial sectors. The most common situations were bankruptcy (55 cases) and company crises (119 cases). Ten cases made use of the preventive creditors' settlement procedure, and 14 turned to EA.

CAUSES OF THE CRISIS AND THE SITUATION AT THE MOMENT OF ACCESS

Once the state of insolvency has been declared, the observation phase of the procedure begins, aimed at verifying whether there are the conditions for restructuring. In this phase, managers can be allowed to continue running the company but usually they are substituted by the administrator.

Exhibit 6 illustrates the main causes of the crises as singled out in administrator reports regarding a sample of 22 companies which represent the largest industrial holdings (subsidiaries are not considered).

According to the administrator reports, the reasons for the crisis are as follows:

- strategic errors, due to acquisition or investment operations that are not accompanied by appropriate financial planning;
- rigid conditions in the production structure, due to prediction errors which have led to an excessive production capacity. This condition generates fixed costs that are not in proportion to the turnover, with the consequent lowering of operational margins and cash flows;

- decline of the product-market-technology: errors in the market choice, loss of brand image, bad product mix, lack of distribution channels. These errors result in lower competitiveness and consequently in the loss of company market quotas;
- financial imbalances, due to excessive leverage, lack of correlation between sources and uses of funds and insufficient liquidity. The financial imbalance generates growing financial burdens that progressively consume Ebitda margin.

Exhibit 6 - The Main Cause of The Crisis		
Factors of the crisis	Count	%
Strategic errors	6	27.27%
Overcapacity/rigidity	5	22.73%
Decline of product/market/technology combination	4	18.18%
Financial and asset imbalance	7	31.82%
Count	22	100.00%
Source: Administrator reports		

The causes listed above refer to internal company factors. Sometimes the crisis originates from external factors, which management wasn't able to or didn't wish to face, like market globalization, economic cycle trends and changes in consumer behaviour.

In many cases, before filing, companies unsuccessfully tried to negotiate a financial settlement through a workout or a preventive creditors' settlement.

Documentation shows a generalized delay between when the state of insolvency was detected and when it was filed. This happens for different reasons: especially when entrepreneurs are unwilling to give up management and/or creditors hope to collect a higher percentage of their due from the going concern of the company.

The lateness of many insolvency claims is shown by the balance figures for a sample of 54 companies, for which financial statements at the date of filing were available.

Exhibit 7 –Assets Vs. Debts Ratio When EA Is Filled				
	Sample 2000-2008	Sub-samples		
		2000-2002	2003-2005	2006-2008
Average	55.43%	53.69%	53.64%	61.58%
Median	50.65%	44.66%	50.66%	56.13%
Count	54	26	16	12
Source: Company financial statements and administrator reports				

Net assets vs. the total debt ratio, which approximates the likelihood of satisfying creditors, seems to be almost half (rising to more than 61% in recent years) but, for a smaller sample in which comparison is possible, administrator-reviewed data show completely different figures from the company balance sheets.

Exhibit 8 - Assets VS. Debts Ratio		
	Companies' balance sheet data	Administrators' data
Average	66.62%	36.46%
Median	75.55%	40.09%
Count	16	16
Source: Administrator reports		

Company financial statements overestimate the asset value by about 30%. This is due to the habit of window dressing (when not falsifying) figures during the period of decline.

Administrator reports also give information about creditors' seniority (in Italy there are more classes of secured creditors than in the U.S.). Exhibit 9 shows the incidence of secured creditors for a sample of 48 companies.

As secured creditors represent roughly 30%, they absorb the greatest percentage of the total asset value, which, as was stated above, can be roughly estimated to be worth 40% of the total.

Exhibit 9 - Secured Creditors Vs. The Total Debt				
	Sample 2000-2008	Sub-samples		
		2000-2002	2003-2005	2006-2008
Average	31.59%	36.44%	26.37%	29.62%
Median	24.67%	26.99%	25.65%	21.11%
Count	48	21	15	12

COMPANY MANAGEMENT DURING EA.

If the administrator report states that there is a real possibility for recovery, the second phase of the procedure starts with a Court Order. During this phase, EA can be extended to other insolvent companies within the group. In our sample, this happened 33 times, involving 126 companies.

About 23% of the group companies in EA were considered recoverable, while the other 77% was attracted by virtue of the opportunity for unified management of insolvency. Considering the total number of companies (183 units), 47% of them presented the conditions for economic recovery. 53% of the companies in the group do not appear to be recoverable, and are thus destined to be liquidated. The significant number of companies admitted due to unified insolvency management is a result of the articulation of industrial groups which include various financial companies without productive activities, for which there is no foreseeable reallocation in the market..

For companies with the possibility for recovery (86 as shown above), the appropriate type of program was adopted.

Exhibit 10 - Types of Authorized Programs				
Types of programs	Sample 2000-2008	Sub-samples		
		2000-2002	2003-2005	2006-2008
Sale programs	76	27	31	18
Restructuring programs	3	0	3	0
Unavailable data	7	0	0	7
Count	86	27	34	25
Source: Ministry of Industry data				

The recovery was carried out almost exclusively through sale programs. Only one group (Arquati) really turned around in 2005, through an agreement with creditors, with the consequent return *in bonis* of the company. This evidence is due to the fact that the choice to recover is obviously more complex than simply a sale of the factories. In fact, a stand-alone going concern process necessitates the continuation of the activities while a buyer is sought for the company facilities. Perhaps the EA procedure lacks appropriate tools to implement economic and financial restructuring, while the new version under Law 39/2004 seems to be better equipped to reach this goal.

It was possible to analyze the turnover and the operational results, to observe the effective trend and results of the management during EA only for a limited sample of groups (5 groups and 10 companies). The average of operational results/turnover ratio for the period 2000-2005 was -9,61% and the median -10,44%.

As can be expected, companies show a negative operational result. Inefficiencies are difficult to overcome in the time available to the administrator. Often a lack of resources and cost cutting policies make restructuring difficult. The aim is to minimize these inefficiencies while waiting for new entrepreneurial solutions.

Regarding the management phase, the effective duration of the procedure for a sample of companies was gathered. 55 companies out of 86 deemed to be recoverable completed the sales program. The duration of the conservative phase was calculated by comparing the admission date with the program termination date. The number of cases decreased since for the last period considered 27% of the companies which met the requirements for recovery (23 out of 86) have as yet to complete the program.

Exhibit 11 -Duration of The Procedure (Days)				
		Sub-samples		
	Entire period	2000/2002	2003/2005	2006/2008
Average	583	584	616	275
Median	588	586	652	252
Extensions	22	11	11	0
Count	55	25	27	3
Source: Ministry of Industry data				

The average duration of the procedure was 583 days (1.59 years). This is justified by the fact that 22 cases requested an extension at the end of the period.

In 2000-2002, the average values were in line with those gathered for the entire period. From 2003-2005, the procedure took about 30 days more than during the first period, with a median value of more than 60 days. This is justified by a considerable shift in terms for a few of the procedures.

From 2006-2008 the EA timespan was shorter. Only three cases were completed in a shorter amount of time.

The total sale time under the new law was much briefer than those considered by the literature (Floreani, 1997) for the ante-reform period with the consequent reduction in direct costs generated during this phase.

The Judiciary Authority is granted the power to convert the procedure into bankruptcy when it cannot be successfully followed through or when the program has not been carried out according to the terms set out. This provides greater protection for creditors. This aspect has been evaluated for a sample of companies (see Exhibit 14) and either leads to:

- a) a physiological result: the sale of the company or the turnaround;
- b) a pathological result: the declaration of bankruptcy.

In the majority of cases the execution of the program led to the sale with the total liquidation of the company. The only recovery from 2003-2005 was for the companies in the Arquati group, which underwent economic and financial restructuring.

Bankruptcy was declared in 4 cases: in one case for one of two branches of a company, in another for the only company it was not possible to sell, despite the sale of the group. The other bankrupt companies belonged to two groups which, during the recovery phase, were evaluated to not have concrete perspectives for restructuring.

Exhibit 12 -Result of The Execution of The Program								
Sample			Subsample					
Result			2000/2002		2003/2005		2006/2008	
Sale of the company	53	61.63%	23	85.19%	27	79.41%	3	12.00%
Restructuring	6	6.98%	2	7.41%	4	11.76%	0	0.00%
Bankruptcy	4	4.65%	2	7.41%	2	5.88%	0	0.00%
in progress	23	26.74%	0	0.00%	1	2.94%	22	88.00%
Count	86	100.00%	27	100.00%	34	100.00%	25	100.00%

Source: Ministry of Industry data

SALE OF THE COMPANY

The sale phase is the moment in which the conservative aims are realized. The sale of a company allows for it to be reallocated on the market, as well as the partial or total contextual placement/transfer of the work force.

To evaluate the results with respect to the objective, the timeframe for the sales of 55 companies which completed the sale program were gathered.

The average duration (445 days) is fairly high due to the fact that the sale operations are long and complex, requiring numerous authorizations from the Ministry during the negotiations. In any case, these activities require administrator management for almost the entire period of the recovery phase.

During the period 2000-2002, the average duration (441 days) was in line with the entire sample, while in the second triennial the sale time tended to become longer (477 days). This seems to be due to the presence of numerous companies for which the sale was more difficult, as shown by the median value (514 days). During the third period, the reallocation time on the market for companies was particularly fast (184 days). This is coherent with the fact of the continuation of the company's activity during the same time period.

The objective to safeguard employment has generally been achieved in cases where the greatest number of employees were transferred with the company to other entrepreneurs. Out of 55 recoverable companies which completed the program, 49 companies transferred the employees according to the Exhibit below.

The total number of employees at filing in the groups examined was 17,192, of which 9,254 were transferred with the sale of the companies while 4,359 remained in charge of the procedure. The other employees found a different collocation during the initial phase of EA.

Exhibit 13 -Employees Transferred with Their Companies				
Period	Companies	Employees	Transferred employees	%
2000-2002	24	6575	3875	58.94%
2003-2005	23	10352	4713	45.53%
Subtotal	47	16927	8588	50.74%
2006-2008	2	865	666	n.s.
Total (surveyed)	49	17792	9254	52.01%
Not surveyed	6			
Total programs concluded	55			

Source: Ministry of Industry data

The percentage of employees transferred, during the first two periods, was about 51%. This index was calculated for procedures which were initiated until 2005, while the ones begun during the successive triennial period were not considered, since the majority of them are still in progress.

There is a significant difference between the first triennial and the second. The sales of companies which took place during the first years of EA application allowed for the transfer almost 60% of the employees, while during the following period the percentage fell to 46%. This could be linked to the negative trend of 2003-2005, and the consequent difficulties in reallocating the employees.

THE LIQUIDATION PHASE

The liquidation phase characterizes only those EA procedures involved in a sale program. During this phase, besides following up the sale of the company, cash is returned to creditors.

Exhibit 14 illustrates closed procedures and their duration (not including companies that went bankrupt).

Exhibit 14 - Closed Procedures					
				Duration (in years)	
	Closed	Open	% Closed	Average	Median
2000-2002	6	43	12.24%	4.52	4.67
2003-2005	5	67	6.94%	1.98	1.98
2006-2008	0	52	0.00%		
Count	11	162	6.36%	3.36	1.98
Closures for the procedure	Count	%			
Creditors settlement	8	72.73%			
Partial debt payment	3	27.27%			
Total completed procedures	11	100.00%			
Source: Ministry of Industry data					

Of all the cases filed between 2000 and 2008, only 11 completed the liquidation phase with an average duration of 3.36 years. During both the first and second periods there were cases which ended with creditors' settlements, so the average duration was lower.

In fact, considering that less than 13% of the procedures initiated in 2000-2002 were completed by 2008, the other 87% will last more than 6 years. The liquidation phase lengthens the total duration, bringing it close to the 8-year period seen for bankruptcy procedures in recent times.

Such a time frame, if it should continue over the next years, would constitute a serious disadvantage for creditors, who have already been relegated a marginal role in EA, besides making the procedure more onerous but the average timespan is shorter than the one for procedures under Act 95/1979 (Floreani, 1997).

There are 4 ways EA can end: the lack of passivity (that never occurs), recovery, settlement with creditors, debt payment (even in percentage). About 73% of the procedures ended with a creditors' settlement, while the remaining 27% paid a percentage of the debts. In the cases considered, the creditors' settlement was chosen by large companies with the chance to restructure, while ending the procedure due to percentage debt payment regarded smaller companies under EA for group reasons.

CONCLUSIONS

During the period 1999-2008, a total of 57 groups (186 companies) filed for EA. If this data is compared to cases filed under the previous Law between 1989 and 1998 (25 groups with 225 companies), access to EA is more than double. This can only be partially blamed on the diverse economic trends during the two time periods studied.

The dimension of the phenomenon is even larger considering that 8 other large groups made up of 130 companies filed for EA under the Act 39/2004 version.

The average dimension of the groups is far lower with respect to those filed under the previous regulations. Roughly 72% of the companies have fewer than 500 employees and the average number of employees per group is 444.

If we consider that 26 of the 57 cases filed involve companies with fewer than 300 employees (the minimum required by Act 95/1979), the increase of eligible companies, thanks to the new law, is evident.

The distribution analysis of EA cases over time confirms the close link between this management tool and insolvency situations together with the trend of the economy. 42% of the cases, in fact, were filed between 2003-2005, and 15% in 2008, periods characterized by the worst variations of the real GDP in the decade.

The spreading of the phenomenon seems to be linked to trends in specific economic sectors (engineering, textile, distribution) which showed signs of weakness throughout the period, and resorting to EA was a last attempt in order to preserve existing production capacities and protect employment levels.

These two aspects seem to confirm the growing importance that EA has taken on as a tool of political economy.

The causes of bankruptcy were investigated for a few companies. Court documents show that the main causes of bankruptcy were strategic management errors (mistaken acquisitions, activation of new markets without adequate production and financial planning), decline in the market-technology combination due to a delay in the perception of the market and the sector, greater production supply with respect to the demand because of not reaching the required targets. These factors, if not dealt with in a timely manner, seriously altered the income capacity of the company, feeding into a progressive financial imbalance. The causes for the crisis were not sudden, as can be seen in the financial statements of these companies in the years preceding filing. The situation of the companies when EA was put into effect is the result of a progressive degeneration of the economic-financial structure of the company.

This situation was examined in light of the total profit/debt proportion in a sample of 54 companies from 18 groups. The result shows high indebtedness (the proportion is about 55%), close to figures (Floreni, 1997) for companies which filed for EA before the new Law (about 58%). This value approximates the capacity to satisfy company creditors.

If we consider the filing costs and the fact that among creditors 31% were secured creditors (often mortgages), the possibility to satisfy the unsecured creditors decreases significantly.

The delay with which the state of insolvency is declared will last as long as this serious problem is not recognized in time, both by the entrepreneur and the creditors.

Regarding the recovery phase, only 86 of the 183 companies involved were deemed to be recoverable and placed in a sale and/or a restructuring program, while the others were simply destined to be liquidated. This is a positive result, which means greater rapidity and facilitates the process, resulting in lower direct costs.

The analysis of administrator programs shows the generalized tendency towards sale for companies (in the sample studied, there were only 3 restructuring programs, all for companies belonging to the same group). Thus it seems that the new law is more concentrated on recovering entrepreneurial activities through the sale of companies and not on true restructuring. This seems correlated to the short timespan for carrying out the process, as well as the excessive indebtedness of companies which file for EA.

From the sample studied, for the companies for which the sale program was authorized and completed, the average duration of the continuation phase was 583 days. This is close to the maximum duration allowed for the sale program (455 days plus eventual extensions), and is still shorter than the length of time provided for in the previous legislation (about 3,29 years). Much of this time is for preparing for the sale of the company, since the average sale time is 455 days.

- the sales timeframe for the company;
- the number of employees transferred (Exhibit 13)⁴.

Regarding the liquidation phase, the duration was calculated based on completed cases (Exhibit 14), referring to 11 companies out of a total of 173⁵.

The results of the data gathered is summarized in the following prospectus.

Prospectus 1 – Sample Composition							
GROUPS	Date of the main procedure	Count of companies in EA	Companies which meet ex art.27 requirements	Inclusion in the Mediobanca sample	Causes of the crisis	Situation at the time of filing for EA	Result of commissariatale management
1. GRUPPO BONGIOANNI	27/03/2000	21	7		X	X	X
2. GRUPPO FIORONI	07/04/2000	8	2		X	X	
3. CALZIFICIO CARABELLI S.p.A	19/06/2000	1	1				
4. TIBERGHEN MANIFATTURA TESSILE S.p.A.	18/08/2000	1	1	X	X		
5. GRUPPO CONFALONIERI	05/04/2001	4	3				
6. SCALA S.p.A	22/06/2001	1	1	X	X	X	
7. K&M INDUSTRIE METALMECCANICHE S.p.A.	06/07/2001	1	1		X	X	
8. FLEXIDER S.p.A.	14/09/2001	1	1		X	X	
9. GRUPPO ILVA PALI DALMINE	14/11/2001	3	1		X		
10. GRANDE DISTRIBUZIONE AVANZATA S.p.A.	08/02/2002	1	1		X	X	
11. SOCIETA' ITTICA EUROPEA S.p.A.	21/05/2002	1	1				
12. OCEAN S.p.A	03/06/2002	1	1	X			
13. GRUPPO ITEA	19/06/2002	2	1				
14. GRUPPO COSTAFERROVIARIA	13/08/2002	3	2		X	X	
15. MILANOSTAMPA S.p.A.	10/08/2002	2	1				
16. A T B S.p.A.	02/09/2002	1	1	X			
17. GRUPPO FEDERICI STIRLING	20/09/2002	4	1				
18. G.E. Gruppo ELDO S.p.A	29/01/2003	7	1				
19. MANZONI Group	12/02/2003	2	1	X	X	X	X
20. S.r.l. - ISTITUTO DI VIGILANZA PARTENOPEA COMBATTENTI E REDUCI	03/04/2003	1	1				
21. GRUPPO CE.DIS.	03/07/2003	3	1				

1 The size of the sample is not homogeneous since it reflects the limit of the lack of availability/difficulty in gathering certain information.

2 No information regarding the Bongioianni Legno srl company was gathered in the Bongioianni group, since there were no documents to consult.

3 To homogenize the sample, we decided not to include companies belonging to the Arquati group, under economic and financial restructuring, as well as EA cases which led to bankruptcy.

4 The sample refers to 49 rather than 55 companies, due to a lack of information regarding the following companies: Fioroni Sistema S.p.A., Vobis Network S.p.A., Syspoint S.r.l., Vobis Microcomputer S.p.A., Tecnodifusione Trade S.r.l., Sami S.r.l..

5 From the total sample (183 companies), 6 cases converted into bankruptcy were not included as well as those 4 companies managed by a restructuring program, leaving a total of 173 companies to investigate. In particular, the following cases were not studied: Fomb Fonderie; Bongioanni S.r.l., Calzificio Carabelli S.p.A., Marketing Sud S.r.l., Tecdis S.p.A., Tectel S.r.l., Minerva Airlines S.p.A., Arquati GmbH, Arquati S.p.A., Arquati Cornici S.p.A., Arquati Industrie S.r.l..

22. GRUPPO MERKER	04/07/2003	6	3		X	X	
23. GRUPPO COOPCOSTRUTTORI	13/08/2003	5	1	X			
24. GRUPPO CIRIO	10/10/2003	12	1		X		
25. GRUPPO TECNOSISTEMI	22/12/2003	8	1		X	X	
26. GRUPPO GIACOMELLI	28/11/2003	8	1	X			
27. CE.SA.ME. Ceramica Sanitaria del Mediterraneo S.p.A.	19/01/2004	1	1				
28. MINERVA AIRLINES S.p.A.	25/02/2004	1	1				
29. ALGAT S.p.A.	10/03/2004	1	1				
30. FERRANIA S.p.A.	14/04/2004	1	1				
31. GRUPPO ARQUATI	01/04/2004	4	4				
32. GRUPPO COMPUTER MANUFACTURING SERVICE	05/07/2004	6	6				
33. GRUPPO CARTIFICIO ERMOLLI	22/11/2004	3	1	X	X	X	
34. OLCESE S.p.A	14/12/2004	1	1	X	X	X	X
35. GRUPPO LARES COZZI	22/12/2004	2	1		X	X	X
36. GRUPPO FORMENTI SELECO	02/02/2005	2	1		X	X	X
37. TREND S.p.A.	08/03/2005	1	1				
38. GRUPPO TECDIS	20/07/2005	2	1				
39. GRUPPO F.D.G.	07/07/2005	2	1				
40. GRUPPO SELFIN	20/09/2005	9	4		X	X	
41. GRUPPO LAMIER	09/11/2005	3	3		X	X	
42. GRUPPO IAR SILTAL	06/04/2006	2	2	X	X		
43. SANDRETTO INDUSTRIE S.r.l.	05/05/2006	1	1				
44. GRUPPO LANIFICIO LUIGI BOTTO	31/01/2007	3	3	X			
45. GRUPPO TECNO A.	30/01/2007	4	2				
46. BBS RIVA S.r.l.	18/07/2007	1	1				
47. GRUPPO RAUMER	25/09/2007	6	1	X			
48. ISTITUTO VIGILANZA DELL'URBE	08/11/2007	1	1				
49. SOCIETA' EUROPOL GUARDIE	31/10/2007	1	1				
50. GRUPPO FILATURA GRIGNASCO	11/02/2008	3	1	X			
51. SOCIETA' ROMAGNA RUOTE S.r.l.	27/02/2008	1	1				
52. SOCIETA' CARROZZERIA BERTONE	08/04/2008	1	1	X			
53. GRUPPO TOORA	17/04/2008	2	1		X	X	
54. GBS GROUP	06/05/2008	4	1		X	X	
55. ALPI EAGLES	29/05/2008	1	1				
56. GRUPPO MAHA S.p.A	26/06/2008	1	1				
57. GRUPPO LEGLER	25/11/2008	4	1	X			
TOTAL		183	86	15	22	18	5

REFERENCES

Alessi, G. (2000), *L'amministrazione straordinaria delle grandi imprese insolventi. Commento sistematico al D.lgs. 8 luglio 1999, n.270*, Milano, Giuffr .

Bertoli, G. (2000). *Crisi d'impresa, ristrutturazione e ritorno al valore*, Milano, Egea.

Bianchi, A. (ed.) (2003), *Rapporto sullo stato dell'industria: analisi su produzione industriale, occupazione, aree di crisi e strumenti d'intervento*, Roma, Ministero delle Attività Produttive e Istituto Promozione Industriale.

Boccuzzi, G. and Cercone, R. (1993), "Tutela dei creditori e riallocazione dell'impresa nella normativa fallimentare", Banca d'Italia, *Temi di discussione*, n. 204.

Boccuzzi, G. (2003), "Il rilievo strategico delle procedure concorsuali di risanamento per la soluzione della crisi". Relazione al Convegno di studi sul tema: *Il valore strategico per le PMI della Riforma della disciplina delle crisi aziendali.*, Bari, 28 marzo.

Brugger, G. (1984), "Gli interventi professionali nelle situazioni di crisi", *Finanza, Marketing e Produzione*, n.2; 43-66.

Brugger, G. (1988), "La nozione di insolvenza: un concetto che muta. Crisi finanziaria, crisi strutturale ed insolvenza d'impresa: economia e diritto a confronto", *Il Fallimento*, n.9; 899-903.

Candelo, E. (2005), *Le strategie di turnaround*, Milano, Egea.

Caprio, L. (1997), "L'efficienza economica delle procedure di gestione del dissesto in Italia: un'interpretazione delle evidenze empiriche della ricerca". In Caprio, L. (ed.), *Gli strumenti per la gestione delle crisi finanziarie in Italia*, Milano, Mediocredito Lombardo.

Carapellotti, F. (ed.) (2008), *Report Statistico Settoriale*, Roma, Ministero delle Attività Produttive e Istituto Promozione Industriale.

Cenciarini, R.A. (1998), *Ristrutturazione e crescita. Le strategie adottate dalle imprese di successo*, Milano, Giuffr .

Costa, C. (2008), *L'amministrazione straordinaria delle grandi imprese in stato di insolvenza dopo il D.lgs. 12.09.2007, n.169*, Torino, Utet.

Danovi, A. (2003), *Crisi d'impresa e risanamento finanziario nel sistema italiano*, Milano, Giuffr .

De Sensi, V. (2006), "Il sistema concorsuale italiano tra economia mista e di mercato". In DE SENSI, V. (a cura di) *La ristrutturazione della impresa in crisi. Una comparazione tra diritto italiano e statunitense*. Articolo Ceradi - Centro di ricerca per il diritto d'impresa, Universit  Luiss G. Carli.

Falini, A. (2008a), "Controllo e comunicazione nelle imprese in Amministrazione Straordinaria ex d.lgs.270/99", Relazione al Convegno Aidea sul tema: *Corporate Governance: governo, controllo e struttura finanziaria*, Universit  degli studi Federico II, Napoli, 16 ottobre.

Falini, A. (2008b), *La straordinaria amministrazione. Elementi di criticit  nella comunicazione e nel controllo delle imprese in procedura di amministrazione straordinaria*, Franco Angeli, Milano.

Floreani, A. (1997), "L'amministrazione straordinaria delle grandi imprese in crisi: un'analisi delle procedure dal 1979 al 1996", in Caprio, L. (ed.), *Gli strumenti per la gestione delle crisi finanziarie in Italia*, Milano, Mediocredito Lombardo.

Guatri, L.(1986), *Crisi e risanamento delle imprese*, Milano, Giuffr .

Guatri, L.(1995a), *Turnaround. Declino, crisi e ritorno al valore*, Milano, Egea.

Lacchini, M., Scafarto, T. and Trequattrini, R. (ed.) (2005), *Conservazione dei valori d'impresa e amministrazione straordinaria*, Padova, Cedam.

Leogrande, G. (2003), "L'amministrazione straordinaria delle grandi imprese in stato di insolvenza: primo bilancio a tre anni dall'entrata in vigore del D.lgs. 8 luglio 1999, n.270", *Il Fallimento*, n.3

Mediobanca (ed.), *Le principali società italiane*, Anno 2000.

Ministero del Tesoro, del Bilancio e della Programmazione Economica, *Relazione Generale sulla Situazione Economica del Paese*, Anni 2000-2007.

Ponti, L. and Spadetto, F. (2006), *L'amministrazione straordinaria delle grandi imprese in crisi. Dalla "Prodi bis" alla "Marzano" problemi applicativi*, Padova, Cedam.

Rebecca, G. (ed.) (2006), *Indagine Istat sui fallimenti*.

Stanghellini, L. (2007), *La crisi d'impresa tra diritto ed economia. Le procedure di insolvenza*, Bologna, Il Mulino.

Tedeschi-Toschi, A. (1993), *Crisi d'impresa tra sistemi e management. Per un approccio allo studio delle crisi aziendali*, Milano, Egea.

Zito, M. (1999), *Fisiologia e patologia delle crisi d'impresa*, Milano, Giuffré.