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Criminal Sanctions, Rewards and Corporate Crisis: A Behavioural Law-and-Economics Analysis of the Italian CCII

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ABSTRACT

This article asks a simple but often overlooked question: can criminal law actually help firms in distress come forward earlier, instead of just punishing failure after the fact? Focusing on the Italian Codice della Crisi d'Impresa e dell'Insolvenza, it argues that there is a structural tension between a preventive, value-preserving insolvency code and a largely unreformed set of insolvency-related offences. The result is a familiar paradox: sophisticated procedures for early intervention coexist with low and hesitant uptake, especially among small and medium-sized enterprises. In practice, many family-owned businesses still wait until suppliers stop delivering or banks pull the plug before speaking to advisors, partly because they fear undifferentiated criminal exposure.

To make sense of this gap, the article combines law and economics with behavioural insights. It adapts a simple p-S-R model – probability of

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detection, sanction severity, and reward – to classify directors into three behavioural clusters: 'rational' types, stigma-sensitive 'emotional' types, and more 'opportunistic' actors. For each cluster, it shows which mix of sanctions, criminal rewards, and soft measures is likely to change behaviour in the direction of timely filing. The discussion is illustrated with stylised scenarios drawn from common crisis trajectories.

On this basis, the article revisits key CCII provisions, namely Articles 24(5), 245, and 324, and the unimplemented Bricchetti proposals, suggesting how they could be refined to work as a real lever of allocative efficiency, rather than as a fragmented and somewhat uncertain set of exceptions. The article closes with a comparative perspective on India's Insolvency and Bankruptcy Code, 2016, showing that the adhesion paradox and the tension between preventive frameworks and unreformed criminal deterrents are structural challenges shared across jurisdictions, and that a reward-centred, cluster-aware design offers a transferable model for IBC reform.

TABLE OF CONTENTS

I. INTRODUCTION: A PREVENTIVE CODE, A PUNITIVE CORE

Over the last decade, Italian insolvency law has been reshaped around a clear ambition: to move away from a liquidation-centred view of corporate failure and to build a preventive framework that keeps viable firms alive for as long as possible.[1]

The Codice della Crisi d'Impresa e dell'Insolvenza (**CCII**) sits at the heart of this shift. It introduces early-warning tools, confidential negotiations, and plan-based restructuring procedures intended to encourage directors to act while there is still value to be saved, in line with the logic of the EU Preventive Restructuring Directive and the broader law-and-economics focus on the efficient allocation of distressed assets.[2]

Yet, on the criminal side, the picture looks very different. The core offences that come into play in corporate crisis – fraudulent and simple bankruptcy, abusive resort to credit, and related crimes – largely replicate the architecture and the language of the 1942 Bankruptcy Law,[3]

[1] Andrea Zorzi, 'The Italian Insolvency Law Reform' (2021) 32(5) *European Business Law Review* 935.
[2] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks and on discharge of debt and disqualifications [2019] OJ L172/18, recitals 2 and 22; Horst Eidenmüller, 'Comparative Corporate Insolvency Law, Second Edition' (2023) ECGI Law Working Paper No 738/2023 <https://www.ecgi.global/publications/working-papers/comparative-corporate-insolvency-law-second-edition> accessed 28 March 2026; Reinhard Bork, 'Corporate insolvency law – seen from a comparative perspective' (Corporate Finance Lab, 12 September 2020) <https://corporatefinancelab.org/2020/09/12/corporate-insolvency-law-seen-from-a-comparative-perspective/> accessed 28 March 2026.
[3] Regio Decreto 16 March 1942, n 267 (Legge Fallimentare); Legislative Decree 12 January 2019, n 14 (Codice della Crisi d'Impresa e dell'Insolvenza).

with only modest updates.[4] They still convey a predominantly punitive, ex post message: criminal law intervenes after the failure, to sanction misconduct and symbolically condemn the 'failed' entrepreneur.[5]

Attempts to introduce a more incentive-oriented logic, through provisions such as Articles 24(5), 245, and 324 CCII, remain partial and fragmented, and the more systematic reform blueprint elaborated by the Bricchetti Commission has not been implemented.[6]

For readers less familiar with Italian insolvency law, a brief orientation may be helpful. Article 24(5) CCII rewards timely activation of the composizione negoziata – a confidential, extrajudicial negotiation procedure for firms facing financial difficulty – by shielding directors from certain civil and criminal liabilities that would otherwise attach

[4] Renato Bricchetti and Francesco Mucciarelli, 'L'esigenza della revisione del diritto penale della crisi e dell'insolvenza' (*Sistema penale*, 2024) <https://www.sistemapenale.it/it/articolo/bricchetti-mucciarelli-lesigenza-della-revisione-del-diritto-penale-della-crisi-e-dellinsolvenza-uno-sguardo-dinsieme> accessed 28 March 2026; Renato Bricchetti, 'Diritto penale concorsuale: la riforma non può attendere' (*Archivio penale*, 2022) <https://archiviopenale.it/diritto-penale-concorsuale-la-riforma-non-puo-attendere/articoli/39505> accessed 28 March 2026.

[5] Alessandro Melchionda, 'Diritto penale fallimentare e nuova disciplina di gestione della crisi d'impresa: innovazioni e limiti di una riforma 'gattopardesca'' (*Archivio penale*, 23 December 2022) <https://archiviopenale.it/diritto-penale-fallimentare-e-nuova-disciplina-di-gestione-della-crisi-dimpresa-innovazioni-e-limiti-di-una-riforma-gattopardesca/articoli/39504> accessed 28 March 2026; Desirèe Fondaroli, 'Non c'è pace tra gli ulivi. La sperimentazione inesausta del diritto penale dell'impresa e dell'economia' (*Archivio penale*, 12 December 2022) <https://archiviopenale.it/non-c-e-pace-tra-gli-ulivi-la-sperimentazione-inesausta-del-diritto-penale-dell-impresa-e-dell-economia-spunti-per-un-confronto-di-idee/articoli/38450> accessed 28 March 2026.

[6] Emilio Bataglia, 'The new "Code of the business crisis and insolvency": criminal issues' (CMS, 4 March 2019) <https://cms.law/en/ita/publication/the-new-code-of-the-business-crisis-and-insolvency-criminal-issues> accessed 28 March 2026; Bricchetti and Mucciarelli (n 4) 2-2.5.

upon formal insolvency. Article 245 CCII further incentivises early disclosure of a crisis by connecting recourse to restructuring tools to favourable criminal-law consequences, effectively reducing the overall expected burden for directors who come forward before the situation becomes irreversible. Article 324 CCII functions as a formal criminal safe harbour: transactions and payments executed in implementation of a confirmed restructuring plan or a court-approved composition are exempted from specific bankruptcy offences, so that acting within the formal framework eliminates, rather than merely mitigates, criminal exposure. The 'Bricchetti blueprint' refers to an unimplemented set of reform proposals elaborated by a governmental commission chaired by Professor Renato Bricchetti, which envisages a more systematic and principled use of criminal rewards in the insolvency context, including broader safe harbours, a generalised model of 'repaired bankruptcy' (bancarotta riparata), and structured mitigating circumstances for timely and cooperative conduct in managing corporate distress.[7]

This coexistence of a preventive, value-preserving civil framework and a largely unreformed criminal core creates a tension that is more than just theoretical.[8] On paper, the CCII offers a sophisticated menu of procedures designed to make early disclosure and cooperative restructuring the dominant strategy for directors.[9] In practice, uptake of

[7] Commissione Bricchetti, *Proposte di revisione delle disposizioni penali del d lgs 12 gennaio 2019, n 14* (Ministero della Giustizia, 10 June 2022) <https://www.giustizia.it/cmsresources/cms/documents/commissione_BRICCHETTI_articolato_relazione_finale_10giu2022.pdf> accessed 28 March 2026.

[8] Francesco Mucciarelli, 'Crisi d'impresa e insolvenza: verso un nuovo assetto della disciplina penale' (*Diritto penale e processo*, 2022), n 8/2022, 1001.

[9] Lorenzo Stanghellini, 'The Pandemic as a Chance to Modernise Italian Insolvency and Restructuring Law' (2023) 24 *European Business Organization*

tools such as the composizione negoziata (negotiated settlement), early compositions and going-concern plans often remains low and hesitant, especially among small and medium-sized enterprises.[10] Many family-owned firms delay formal steps until liquidity has evaporated and key relationships have broken down,[11] even when advisers and early-intervention channels are available.[12]

One reason, repeatedly highlighted by practitioners, is the fear that any formal move towards restructuring will attract criminal scrutiny in an undifferentiated way, regardless of whether the underlying behaviour is

Law Review 251; Francesco Fimmanò, 'L'allocazione efficiente dell'impresa in crisi mediante la trasformazione dei creditori in soci' (2010) *Rivista delle società* 150.

[10] European Commission: Directorate-General for Justice and Consumers and University of Leeds, *Study on a new approach to business failure and insolvency – Comparative legal analysis of the Member States' relevant provisions and practices* (Publications Office 2016) (EC report); Lana K Gotvan, '*Research Blog: A Behavioural Approach to the Initiation Problem in Insolvency Law* (Insolvency Law Collection, 15 November 2024) <https://www.insolvencylawcollection.org/news/research-blog-a-behavioural-approach-to-the-initiation-problem-in-insolvency-law/> accessed 28 March 2026.

[11] EC report (n 10); Steven L Schwarcz and Jesse M Seymour, 'Insolvency and Systemic Risks: The Macroeconomic Costs of Director Liability' (2023) Australian Business Law Review.

[12] Empirical evidence supports this pattern. According to data published by the Ministero della Giustizia, the composizione negoziata received approximately 1,100 applications in its first two years of operation (2022-2023), a figure that practitioners and academic commentators have consistently described as well below the potential addressable population of firms in financial difficulty: see Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili, 'Composizione negoziata della crisi: analisi dei dati statistici' (2023); see also European Commission, Restructuring and Insolvency – Annual Report (2023), noting persistently low voluntary uptake of preventive tools across EU Member States with active SME sectors, available at <https://ec.europa.eu/info/law/better-regulation/have-your-say>.

opportunistic or genuinely aimed at preserving value.[13] From a law-and-economics perspective, this pattern can be read as an 'adhesion paradox'. The system invests in preventive procedures and signalling devices that should lower the private cost of early filing, but leaves in place criminal rules and enforcement cultures that raise the perceived risk of coming forward.[14]

The result is a misaligned incentive structure – directors who might rationally choose early use of CCII tools under a purely civil regime may instead opt for concealment and delay when they factor in the possibility of criminal liability, reputational stigma and uncertain case law on the scope of safe harbours.[15]

If the aim is to achieve not only ex post efficiency in the allocation of failed firms, but also ex ante discipline and timely emergence of distress, criminal law cannot remain an external, purely repressive layer.[16] It must be integrated into the preventive architecture as a calibrated mix of

[13] Giuseppe Saccone and Alfonso Laudonia, 'Profili penali della composizione negoziata' (*Manuale teorico-pratico della composizione negoziata della crisi d'impresa* ESI, 2023); ibid, 'Composizione negoziata ed' art 324 CCII.
[14] Erling Eide, Paul Rubin and Joanna Shepherd, *Economics of Crime* (Now Publishers 2008).
[15] Daniel Kahneman and Amos Tversky, 'Prospect Theory: An Analysis of Decision under Risk' (1979) 47 *Econometrica* 263.
[16] Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986); John Armour, 'The Law and Economics of Corporate Insolvency: A Review' in RD Vriesendorp, JA McCahery and FMJ Verstijlen (eds), *Comparative and International Perspectives on Bankruptcy Law Reform in the Netherlands* (Boom Juridische uitgevers 2001).

sanctions and rewards that takes seriously how different types of entrepreneurs perceive and react to legal incentives.[17]

II. BEHAVIOURAL CLUSTERS AND THE 'ADHESION PARADOX'

The adhesion paradox cannot be explained by legal design alone. It also reflects how different types of entrepreneurs perceive risk, stigma and opportunity in the vicinity of insolvency.

Building on economic analysis of law and on behavioural law and economics, the underlying research models reflect directors' choices through a probability of detection (**p**), the overall cost of sanctions (**S**), and a reward parameter (**R**), collectively known as the p-S-R structure, capturing the reduction of that cost when directors opt for timely filing and cooperative use of restructuring tools.[18]

In a purely rational world, a sufficiently generous and credible R should make early use of CCII procedures the dominant strategy for most firms: if the reward for timely filing reliably offsets the expected costs of entering formal proceedings, a rational actor should cooperate with the preventive framework. In practice, however, standard deterrence and incentive models capture only part of the picture. Systematic behavioural distortions, including loss aversion, present bias, excessive optimism about survival prospects, and acute sensitivity to social stigma, cause directors to discount future rewards heavily, overweight immediate

[17] Kenneth Dau-Schmidt, 'An Economic Analysis of the Criminal Law as Preference-Shaping Policy' (1990) *Duke Law Journal* 1; Alon Harel, 'Economic Analysis of Criminal Law: A Survey' in Alon Harel and Keith N Hylton (eds), *Criminal Law and Economics* (Edward Elgar 2012).
[18] Gotvan (n 10).

psychological costs, and systematically underestimate the probability of detection. The result is that even well-designed incentive structures may fail to produce the expected behavioural shift unless they are calibrated to address these non-standard, but empirically robust, responses.[19]

On this basis, directors in crisis can be grouped into three behavioural clusters, in stylised but policy-relevant terms.[20] 'Rational' types come closest to the benchmark of expected-utility maximisers. They respond to changes in p, S and R in a relatively predictable way, and will usually cooperate if the legal system offers clear, stable and legally reliable rewards for timely filing. 'Emotional' or stigma-sensitive types give disproportionate weight to non-monetary losses, such as reputational damage, loss of status and the psychological cost of admitting failure. For them, even well-designed rewards may be outweighed by the fear of public exposure and the hope of avoiding formal proceedings altogether.[21]

Finally, more 'opportunistic' actors are relatively tolerant of legal risk, tend to underweight p and may engage in asset diversion, abusive use of credit or creative accounting in an attempt to shift losses onto creditors.

[19] Michael G Allingham and Agnar Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1 *Journal of Public Economics* 323; Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 *Journal of Political Economy* 169.
[20] Eide, Rubin and Shepherd (n 14) ch 2; A Mitchell Polinsky and Steven Shavell, 'The Economic Theory of Public Enforcement of Law' (2000) 38 *Journal of Economic Literature* 45.
[21] Christine Jolls, Cass R Sunstein and Richard H Thaler, 'A Behavioral Approach to Law and Economics' (1998) 50 *Stanford Law Review* 1471; Kahneman and Tversky (n 15).

They are the primary targets of traditional deterrence-oriented criminal law.[22]

A simulation exercise based on this clustering, calibrated on stylised populations of directors with different risk attitudes and stigma sensitivities, helps to translate these intuitions into more concrete terms.[23] When the R is increased from low to medium levels, rational and stigma-sensitive clusters show a marked shift towards early recourse to restructuring tools, with corresponding gains in expected creditor recoveries and going-concern preservation.[24] For opportunistic clusters, by contrast, even substantial rewards have a limited effect unless combined with targeted increases in p in high-risk scenarios and clear exclusion of opportunistic conduct from the safe harbour perimeter.

Put differently, the same premial regime can promote timely filing among rational and emotional entrepreneurs, while leaving opportunistic actors largely unmoved if enforcement remains diffuse and unspecific. Seen through this lens, the adhesion paradox is less surprising. A preventive code with a punitive criminal core exposes all three clusters to the same formal menu of procedures, but they 'read' that menu through very different cognitive and emotional filters.[25]

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[22] Becker (n 19).
[23] Kahneman and Tversky (n 15); Gotvan (n 10).
[24] Constantin Duvac, 'Fraudulent bankruptcy in comparative law' (2012) 3 *Criminal Law Review* 133; Mario Antinucci, 'The Italian Criminal Law Perspective on Bankruptcy Cases' (2020) <https://www.piselliandpartners.com/wp-content/uploads/2020/06/ANTINUCCI-The-Italian-Criminl-Law-Perspective-on-Bankruptcy-Cases-ABSTRACT-PDF.pdf> accessed 28 March 2026.
[25] Eide and Bowles (n 14).

The rational entrepreneurs may hesitate if they perceive the reward side of the CCII – articles 24(5), 245, and 324 – as narrow, unstable or difficult to invoke in practice. Stigma-sensitive entrepreneurs may continue to procrastinate even in the presence of generous rewards, because the social and psychological costs of early filing loom larger than the abstract reductions in expected sanctions. Opportunistic actors, finally, may see in a fragmented premial regime an opportunity to externalise losses while betting on low detection, weak enforcement or the possibility of requalifying opportunistic conduct as plan-implementing acts.

Any serious attempt to realign incentives, therefore, has to start from this heterogeneity, rather than from an implicit assumption that the debtor is a single, homogeneous decision-maker.[26]

III. CLUSTER-BASED POLICY DESIGN FOR CRISIS MANAGEMENT

A cluster-based reading of the p-S-R framework suggests that a 'one-size-fits-all' design of criminal sanctions and rewards is structurally ill-suited to the corporate crisis context.

Rational, emotionally driven and opportunistic entrepreneurs react differently to the same combination of p, S and R, so that uniform increases in sanctions or generic reward clauses cannot deliver the allocative outcomes that the CCII is supposed to pursue.[27] The question, therefore, is not whether criminal law should be punitive or premial in the abstract, but how the mix of sticks and carrots can be calibrated ex

[26] Dau-Schmidt (n 17); Harel (n 17).
[27] Stanghellini (n 9); Jackson (n 16).

ante to the prevailing behavioural profile of the agents who are expected to use or to avoid the new crisis management tools.[28]

A. Rational Clusters

For rational clusters, the primary obstacle to early resort to pre-insolvency and restructuring procedures is the expected cost of cooperation, broadly understood as the sum of civil, criminal and reputational consequences associated with a timely filing.[29] For these agents, policy measures should focus on making the economic content of the R transparent, credible and legally stable.[30]

This includes clearly defined safe harbours and exemptions for transactions carried out under confirmed plans, such as those envisaged by Article 324 CCII, predictable mitigation for timely cooperation, and coherent coordination between criminal rewards and civil-law protections, for example, under Article 24(5) CCII and related provisions.

When rational directors can reliably anticipate that early filing and plan-based restructuring will reduce their overall expected burden, including the risk of ex post requalification of plan-consistent acts as fraudulent or preferential, the model predicts sizeable shifts towards cooperation and, in turn, higher recovery rates and better preservation of going-concern value.

[28] Eide and Bowles (n 14).
[29] Allingham and Sandmo (n 19); Becker (n 19).
[30] Saccone and Laudonia (n 13).

B. Stigma-Sensitive Clusters

For emotionally or stigma-sensitive clusters, by contrast, the main barrier is not the absence of rewards in the statute book, but the weight of psychological costs that are not captured by standard deterrence models. Loss aversion, fear of reputational damage, and optimism bias about the possibility of 'turning things around' without formal intervention all push in the direction of concealment and delay, even where the objective cost-benefit calculus would favour early restructuring.[31] Policy instruments for these agents must therefore go beyond legal payoffs and address the perception of insolvency procedures themselves.[32]

This can be done by investing in awareness campaigns and professional training that normalise the use of preventive tools, by designing procedural environments that reduce stigma, for example, through confidentiality in early phases and less adversarial narratives; and by clearly signalling that good-faith use of CCII mechanisms is treated as a marker of diligence rather than as an admission of failure or guilt.[33]

In economic terms, such 'soft' measures operate as behavioural complements to R, lowering the psychological disutility of early filing and bringing the perceived utility of cooperation closer to the rational benchmark.

[31] Kahneman and Tversky (n 15); Gotvan (n 10).
[32] Gotvan (n 10); EC report (n 10).
[33] Directive (EU) 2019/1023, recitals 2, 22 and 70 (n 2); European Law Institute, 'Rescue of Business in Insolvency Law: An ELI Instrument' (2017).

C. Opportunistic Clusters

Finally, opportunistic clusters present the most demanding policy challenge. These agents tend to under weigh the p, tolerate higher levels of legal risk and are more willing to engage in asset diversion, abusive use of credit or complex schemes to externalise losses onto creditors.[34] For them, generous rewards alone are unlikely to be sufficient and may even risk being exploited if not carefully conditioned on verifiable, plan-consistent behaviour. Policy design should, therefore, combine a visible, but conditional, reward component with targeted reinforcement of p in high-risk scenarios.[35]

This entails concentrating investigative and prosecutorial resources on paradigmatic cases of fraudulent trading, related-party abuse and systematic misuse of credit, tightening screening around transactions that fall outside the safe harbour perimeter, and excluding manifestly opportunistic conduct from the scope of criminal exemptions.[36] In this way, the system creates a credible 'bisturi' that cuts sharply between good-faith rescue efforts and strategic exploitation of premial rules, raising the expected cost of opportunism while keeping the cooperative path attractive for rational and stigma-sensitive directors.[37]

[34] Duvac (n 24); Antinucci (n 24).
[35] Eide and Bowles (n 14).
[36] Bricchetti and Mucciarelli (n 4) 2.1-2.5.
[37] Dau-Schmidt (n 17); Harel (n 17).

IV. CCII TOOLS AND THE BRICCHETTI BLUEPRINT AS LEVERS OF REWARD

Within the CCII, three provisions are particularly relevant as potential levers of reward: Articles 24(5), 245, and 324.[38] Article 24(5) links the timely activation of the composizione negoziata and other early procedures with protections that shield directors from certain civil liabilities, signalling that those who come forward early should not be treated in the same way as those who persist in concealment and opportunistic delay.[39] Article 245 strengthens this logic by tying recourse to crisis-regulation tools to favourable consequences in other areas of the law, further reducing the overall burden of acting promptly. Article 324, finally, functions as a criminal safe harbour: transactions and payments carried out in execution of a confirmed restructuring plan or a court-approved composition are exempted from specific bankruptcy offences, effectively reducing the S to zero for qualifying acts and thereby increasing the R for directors who operate within the formal framework.[40]

Taken together, these provisions could, in principle, underpin a coherent incentive strategy. For rational clusters, they map directly onto the p-S-R model: early filing and plan-consistent conduct lowers expected sanctions and civil exposure, making cooperation the economically sensible choice. For emotional clusters, the existence of clear safe

[38] Legislative Decree (n 3) arts 24(5), 245 and 324.
[39] Saccone and Laudonia (n 13).
[40] Bataglia (n 6); Antinucci (n 24)

harbours partially reassures those who fear criminal 'boomerang effects' when entering formal procedures.[41]

For opportunistic clusters, the exclusion of acts outside the perimeter of approved plans keeps a credible threat of liability in place. In practice, however, the rewarding potential of these tools remains only partially realised.

The scope and conditions of Article 324 are still debated in case law and scholarship; Article 24(5) is applied cautiously; and the overall picture is that of a patchwork of incentives, rather than of a system that openly and consistently rewards meritorious crisis management.[42]

The unimplemented reform blueprint prepared by the Bricchetti Commission[43] shows how this logic could be pushed further.[44] It envisages a more systematic use of criminal rewards, including broader safe harbours for plan-implementing transactions, a generalised model of 'repaired bankruptcy' and structured mitigating circumstances or exemptions for timely cooperation and effective remedial conduct. These

[41] Bataglia (n 6); Bricchetti and Mucciarelli (n 4) 2.1-2.5

[42] Renato Bricchetti, 'Codice della crisi d'impresa – rassegna delle disposizioni penali' (*Diritto penale contemporaneo Rivista trimestrale*, 2019) <https://archiviodpc.dirittopenaleuomo.org/d/6773-codice-della-crisi-d-impresa-rassegna-delle-disposizioni-penali-e-raffronto-con-quelle-della-legge> accessed 28 March 2026; Marco Gambardella, 'Il codice della crisi d'impresa: nei delitti di bancarotta la liquidazione giudiziale prende il posto del fallimento' (2019) 2 *Cass pen* 488-520.

[43] Bricchetti and Mucciarelli (n 4); Commissione Bricchetti, *Schema di revisione del diritto penale della crisi e dell'insolvenza* (2021), summarised in Francesco Mucciarelli, 'Crisi d'impresa e insolvenza: verso un nuovo assetto della disciplina penale' (2022) *Diritto Penale e Processo* 1001.

[44] Franco Bricola, 'Funzione promozionale, tecnica premiale e diritto penale' in AA VV, Diritto penale e sistema premiale (Giuffrè 1983) – the foundational text situating the premial function within the Italian criminal law framework.

proposals are explicitly grounded in the notion of meritevolezza, i.e., the worthiness of directors' conduct in managing distress, and aim to distinguish, in a principled way, between opportunistic behaviour and genuine attempts to preserve value for creditors. Read through the p-S-R lens, they would expand and stabilise the R for rational and stigma-sensitive clusters in the simulations, while sharpening the focus of p and S on paradigmatic cases of abuse.

From a policy perspective, the choice facing the Italian system is therefore not whether to 'introduce' criminal rewards – they already exist in embryonic form – but whether to complete the transition from scattered exceptions to a structured incentive architecture.

Clarifying and, where appropriate, expanding the scope of Article 324, making Article 24(5) more predictable in its effects, and enacting at least part of the Bricchetti proposals on repaired bankruptcy and remedial conduct would move the regime from a defensive, fear-driven equilibrium towards one in which directors can plan around stable, intelligible rewards for timely and transparent behaviour. In such a setting, criminal law would cease to function primarily as a retrospective sanctioning device and would instead become an integral component of the CCII's allocative machinery, nudging rational and emotional clusters towards early intervention while reserving its full punitive force for genuinely opportunistic misconduct.[45]

[45] Dau-Schmidt (n 17); Harel (n 17).

A. Comparative Perspective: The Indian Insolvency and Bankruptcy Code

The analytical framework developed in this article has relevance beyond the Italian context. A brief comparative perspective on India's Insolvency and Bankruptcy Code, 2016 (**IBC**), illustrates how the tension between preventive insolvency frameworks and criminal sanctions is a structural challenge shared by multiple jurisdictions, and how the cluster-based, reward-centred model could inform reform in a range of legal systems.[46]

The IBC introduced a unified, time-bound Corporate Insolvency Resolution Process, mandating completion within 180 days (extendable to 330 days under Section 12 of the IBC), and established a clear hierarchy between restructuring and liquidation, privileging the former where viable. This broadly mirrors the philosophy of the Italian CCII: both regimes reflect the global shift from liquidation-centred insolvency towards preventive, value-preserving frameworks. However, the IBC's criminal law dimension operates differently from the CCII's. Under the IBC, director liability provisions – including wrongful trading-type liability under Sections 66 and 67, avoidance of preferential and undervalued transactions under Sections 43-51, and fraudulent trading under Sections 69-70 – function primarily as ex-post deterrence rather than as ex-ante incentive mechanisms. There is no direct equivalent of CCII Articles 24(5), 245, or 324, and no implemented blueprint comparable to the Bricchetti Commission proposals that expressly

[46] Insolvency and Bankruptcy Code, 2016 (India). On the CIRP and its evolution see Sikha Bansal, 'The Insolvency and Bankruptcy Code: An Analysis' (2017) 9 Indian Law Review 1; Insolvency and Bankruptcy Board of India (IBBI), Annual Report 2022-2023 (IBBI 2023), available at <https://ibbi.gov.in/home/annual-report> accessed 9 April 2026.

condition criminal rewards on meritorious conduct in crisis management.

The three behavioural clusters identified in this article are nonetheless equally visible in the Indian context. Empirical studies on the IBC's uptake have noted significant reluctance among Micro, Small and Medium Enterprises (**MSMEs**) to initiate voluntary proceedings. This reluctance reflects the same behavioural dynamics identified in the Italian context: stigma-sensitive entrepreneurs fear that any formal filing will permanently damage their reputation and signal failure to customers, suppliers and family; rational actors discount the expected benefits of early filing when criminal exposure appears undifferentiated and the reward structure is opaque; and the prospect of ceding managerial control to an insolvency professional consistently outweighs the more diffuse and delayed benefits of orderly restructuring. The introduction of the Pre-Packaged Insolvency Resolution Process (**PPIRP**) for MSMEs, a hybrid procedure, established by the Insolvency and Bankruptcy Code (Amendment) Act 2021, that allows promoters to retain operational control while negotiating a resolution plan prior to formal admission, was in part a policy response to this pattern, designed to reduce stigma and lower the procedural cost of early disclosure – a measure that parallels the Italian composizione negoziata in its aims, if not in its legal architecture. Yet uptake of the PPIRP has also remained limited.[47] As documented by the World Bank and IBBI data, fewer than twenty cases had been admitted under the PPIRP in its first three years

[47] Mahesh Uttamchandani, 'India's Pre-Packaged Insolvency: Early Lessons' (World Bank, 2022), available at <https://blogs.worldbank.org/trade/indias-pre-packaged-insolvency-early-lessons> accessed 9 April 2026.

of operation. The reasons are instructive: procedural complexity and the requirement to have a base resolution plan approved by at least fifty-one percent of financial creditors before admission deter promoters who have not yet secured creditor cooperation; the absence of a credible criminal safe harbour equivalent to Article 324 CCII leaves residual criminal exposure unaddressed; and the social stigma associated with formal insolvency proceedings continues to push MSME promoters towards informal bilateral arrangements or simple default. Taken together, these features reproduce, in the Indian context, the same adhesion paradox that afflicts the Italian composizione negoziata: a procedure designed to lower the cost of early engagement is underutilised precisely because the surrounding criminal and reputational environment raises the perceived cost of using it. This suggests that the adhesion paradox is not uniquely Italian but reflects a broader structural tension between preventive ambitions and unresolved criminal law deterrents.

The Bricchetti blueprint's approach – differentiating between meritorious and opportunistic conduct through structured criminal rewards – offers a potentially instructive model for the IBC's reform agenda. Introducing a generalised 'safe harbour' for directors who initiate insolvency proceedings in good faith and cooperate with the resolution process, alongside a structured mitigating-circumstance framework for timely and transparent disclosure, would operationalise a reward function capable of reaching rational and stigma-sensitive clusters without compromising the deterrence logic targeted at opportunistic actors. This comparative lens reinforces the article's central argument: the integration of calibrated criminal rewards into a

preventive insolvency framework is not a parochial Italian solution, but a structural design choice available to any legal system that combines preventive procedures with a criminal insolvency law regime.

V. CONCLUDING REMARKS: FROM CRIMINAL HAMMER TO ALLOCATIVE LEVER

The trajectory traced by the CCII and by the Bricchetti blueprint invites a rethinking of Italian bankruptcy criminal law not as a blunt punitive hammer, but as a calibrated lever within a broader allocative architecture.

Criminal sanctions and rewards can either entrench the adhesion paradox by amplifying fear, stigma, and defensive behaviour, or help to dissolve it by making timely recourse to crisis-management tools the default, economically and psychologically acceptable option for most directors.

Seen through the p-S-R lens and the three behavioural clusters, the Italian system is currently suspended between two equilibria. On the one hand, a still-dominant punitive narrative, rooted in traditional bankruptcy offences, keeps the expected S salient and fuels stigma-driven delay, especially among emotional entrepreneurs.[48] On the other hand, embryonic rewards under Articles 24(5), 245, and 324 of CCII, along with the more ambitious Bricchetti proposals, point towards a setting in which criminal law explicitly distinguishes between meritorious and opportunistic crisis management, stabilising a higher R

[48] Duvac (n 24); Antinucci (n 24).

for the former and a more selective, intelligence-driven increase in p and S for the latter.[49]

The allocative question is thus no longer whether criminal law should be 'softened', but how precisely it should be re-targeted. A system that continues to treat the debtor as a homogeneous figure, subject to undifferentiated threats and scattered exceptions, will struggle to mobilise rational and stigma-sensitive clusters and will leave opportunistic actors ample room to game the rules.

By contrast, a cluster-aware, reward-centred design would: (i) offer rational directors clear, reliable safe harbours and mitigation paths; (ii) reduce the psychological cost of early filing for emotional types through de-stigmatising procedures and credible assurances against punitive boomerangs; and (iii) concentrate punitive energy on carefully selected patterns of abuse that fall outside any plan-based perimeter.[50]

Recasting bankruptcy criminal law as an allocative lever, therefore, means accepting that its primary function, in the context of corporate crisis, is ex ante: shaping expectations, guiding choices and channelling heterogeneous behavioural profiles towards socially preferable uses of CCII tools.[51]

The Bricchetti blueprint shows that this transformation is conceptually and technically feasible. What remains is a political and cultural decision to move beyond the comfort zone of the criminal hammer, and to embrace a model in which punishment and reward are expressly

[49] Legislative Decree (n 3); Bricchetti and Mucciarelli (n 4).
[50] Dau-Schmidt (n 17); Harel (n 17).
[51] Jackson (n 16); Eidenmüller (n 16).

governed by criteria of “meritevolezza” and allocative efficiency in the management of business distress.