

The Modernization of Security Rights over Corporate Assets in Italy

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Abstract: *Culminating a legislative process that began in 2016, the Italian registry for non-possessory pledges over corporate assets came into effect on 15 June 2023. From this date, it became operative under Italian law a new type of pledge, which differs significantly from the traditional pledge envisaged by the Italian Civil Code. Against this backdrop, this contribution aims to assess the newly introduced pledge by comparatively examining the Italian, English and Dutch legal frameworks, primarily through the lens of a law-and-economics approach. To ensure a more balanced analysis, the protection of the interests of unsecured creditors and security providers is also considered. The inquiry is structured in two parts, each addressing a core feature of the new Italian regime: (1) the non-possessory nature of the pledge and its associated public registration mechanism; and (2) the scope of the non-possessory pledge, namely the types of eligible collateral, its floating nature, and the range of obligations it may secure. The paper argues that such a reform brings the Italian system closer to the English and Dutch models, although relevant differences remain among the three jurisdictions. Furthermore, it is contended that the expanded scope of the new non-possessory pledge necessitates the introduction of additional safeguards to more effectively protect the position of unsecured creditors and security providers. Without prejudice to the foregoing, the overall assessment of the Italian reform is positive, since it modernizes the Italian system of security rights and contributes to its greater efficiency.*

Résumé: *Aboutissement d'un processus législatif entamé en 2016, le registre italien des gages sans dépossession portant sur les actifs des entreprises est entré en vigueur le 15 juin 2023. À compter de cette date, un nouveau type de gage est devenu opérationnel en droit italien, se distinguant sensiblement du gage traditionnel prévu par le Code civil italien. Dans ce contexte, la présente contribution vise à évaluer cette nouvelle sûreté en procédant à une analyse comparative des cadres juridiques italien, anglais et néerlandais, principalement sous l'angle de l'analyse économique du droit. Afin d'assurer une approche plus équilibrée, la protection des intérêts des créanciers chirographaires et des constituants de sûretés est également prise en considération. L'étude est structurée en deux parties, chacune portant sur une caractéristique centrale du nouveau régime italien: (i) la nature du gage sans dépossession et le mécanisme de publicité par enregistrement qui lui est associé; et (ii) le champ d'application du gage sans dépossession, à savoir les types de garanties éligibles, sa nature fluctuante ainsi que l'éventail des obligations qu'il est susceptible de garantir. L'article indique qu'une telle réforme rapproche le système italien des*

^{*} Associate at Pavesio Studio Legale, Turin (Italy). This article is based on the Adv LL.M Thesis the Author submitted in fulfilment of the requirements of the Master of Laws: Advanced Studies in International Civil and Commercial Law, Leiden Law School (Leiden University). The Author is grateful to his thesis supervisor, Dr Jeroen van der Weide, for his guidance and support in the drafting of the thesis and this article. Any inaccuracies are solely the Author's responsibility. The final version of this article was submitted on 18 Oct. 2025. Email: albertobuffa17@gmail.com.