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Financing Worker Takeovers in Italy: Unveiling the Functioning of the Marcora Act Framework

ABSTRACT

Law 49/1985, also known as the Marcora Act, allocates financial resources to Italian cooperatives in order to promote and consolidate worker-takeover operations. This legislation aims at preserving employment levels of distressed companies and comes into force in conjunction with insolvency, industrial and social security laws. Over the years, a series of legislative initiatives in Europe and North America have taken inspiration from this corpus of laws as a way to endorse the transition towards a cooperative, sustainable and democratic economy. The complexity of legislation and financing schemes of Italian worker takeovers are, however, vague to the international audience due to language barriers and the prominence of the Marcora Act with respect to all other pieces of legislation. To offer a complete overview and to ease the interpretation of such legislation, this paper identifies the financing schemes in favour of Italian worker takeovers, comments on their functioning and debates their weaknesses.

KEY-WORDS

COOPERATIVES, WORKER TAKEOVERS, INDUSTRIAL LAW, LABOUR LAW, MARCORA ACT,
ECONOMIC DEMOCRACY

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1. Introduction¹

Among cooperatives, worker takeovers (WTs) stand as an autonomous object of analysis (Diaz-Foncea and Marcuello, 2013). WTs are worker-led takeover operations which aim at either re-activating distressed companies or taking over going concerns (Paton, 1989). WTs are owned and democratically controlled by workers. Yet, differently from employee-owned companies that have been created from scratch (Mirabel, 2021a), WTs secure the assets of already-existing companies or one of their branches, and convert them into employee-owned companies (Delgado, Dorion and Laliberté, 2014). Thanks to the direct and profound involvement of workers, WTs differentiate themselves from other buyout strategies, such as leveraged and management buyouts (Montalenti, 1991).

WTs are internationally known for being resilient and alternative strategies to contrast business closures and job losses in times of crisis (Calogirou et al., 2010; Vieta, Depedri and Carrano, 2017; Antonazzo, 2019; Bassi and Fabbri, 2019; Orlando, 2019). In the process of preserving distressed companies and going concerns, job-threatened workers adopt democratic, self-managed and people-centred managerial practices, and achieve remarkable financial and economic performances (Mirabel, 2021b). WTs also generate positive externalities and provide advantages to companies, communities and regions in crisis (Vieta and Lionais, 2015; Castronovo, 2016): WTs scale worker ownership; tackle unmet social needs; provide jobs, goods, services and tax revenues to local communities; preserve the economic fabric of regions in crisis; and secure the transition of going concerns to new owners and managers—namely, the workers (CECOP-CICOPA, 2013; Delgado, Dorion and Laliberté, 2014; Rete Italiana Imprese Recupera, 2021).

WTs have sprouted up in all advanced economies of Europe, Latin- and North-America since the late 1990s (Vieta, Depedri and Carrano, 2017). Yet, Italian WTs are prominent examples of this phenomenon. Since the end of the Second World War, almost 400 WTs have emerged in Italy, providing around 14,500 workers with sound and fair job opportunities across all regions and economic sectors (CFI, 2021; Rete Italiana Imprese Recupera, 2021; Lomuscio, 2022). However, the uniqueness of the Italian context does not lie in the numbers; rather, in its innovative legislation, which supports the start-up, consolidation and development of WT operations in the country.

The inception of this favourable legislation can be traced back to the 1980s and, specifically, to Law 49/1985 (Aimar, 2018; CFI, 2021). To counteract the harsh economic conjuncture and to alleviate the socio-political tensions of the 1970s and 1980s, in 1985 Italian policymakers enacted a law to favour the start-up and consolidation of WTs. Law 49/1985, also known as the Marcora Act after its drafter, aims at preserving employment levels of distressed companies and going concerns via the provision of financial support to new-born worker and social cooperatives. Still, despite its central role, the Marcora Act comes into force in conjunction with insolvency, industrial and social security laws, which strengthen the financial provisions of the

¹ The paper is an improved and revised version of a chapter of the author's unpublished Ph.D. thesis.

Marcora Act and secure workers and target companies with complementary and independent benefits (Vieta, Depedri and Carrano, 2017). Table 1 sharply displays the legislation which relates to WT operations in Italy.

Table 1. Italian legislation relating to WTs in brief

	Legislation	Application
Insolvency laws	Royal Decree 267/1942, Legislative Decrees 14/2019 and 118/2021	They regulate how workers bid for the residual assets of insolvent companies
Industrial laws	Laws 49/1985 and 57/2001, Ministerial Decrees 04.12.2014 and 04.01.2021	They regulate the provision of finance to cooperatives and WTs
Social security laws	Law 223/1991, Legislative Decree 22/2015	They regulate the use of unemployment benefits as start-up capital for WTs
Other laws	Legislative Decree 112/1998, Law 59/1992	They regulate the functioning of regional and mutualistic funds for the development of cooperative and WT operations

Thanks to its longevity, proven robustness and effectiveness, the legislation of Italian WTs has no equal worldwide. In the face of this uniqueness, a series of legislative initiatives from other countries have sought to take inspiration from this legal framework to endorse the transition towards a cooperative, sustainable and democratic economy. Among the most recent cases, the UK (Co-operatives UK, 2021; Rees, 2021), Slovenia (Gonza et al., 2021; Ellerman, Gonza and Berkopec, 2022), Canada (Vieta, 2021) and Denmark (Mygind and Poulsen, 2021). This legal framework is rich and complex, since it is rooted in a variety of law codes. To an international audience, however, this complexity may limit the full access and understanding of the legal framework, due to language barriers and the prominence of the Marcora Act with respect to all other pieces of legislation. Indeed, the lack of integration, the fragmentation and the stratification of the Italian legal framework could easily divert international readers from accessing all the details of such legislation. In addition, over the years, a series of by-laws, ministerial decrees and new legal initiatives have been put in place to second and integrate the provisions of the Marcora Act, which add up to all ordinary laws that regulate the functioning of cooperative companies, the behaviour of cooperatives' members and the implementation of cooperative funding schemes.

Besides the information-and-dissemination activities of cooperative associations and institutional investors at the European and international levels, the details of recent pieces of legislation related to Italian WTs have not fully transpired to the international audience. On the one hand, this is due to the fact that there are no comprehensive publications, policy briefs or other forms of contributions which are intentionally meant for English-speaking scholars and practitioners. On the other, this is also due to the lack of up-to-date publications, since the latest contribution on this matter—see Vieta, Depedri and Carrano (2017)—was drafted in 2015 and published in 2017, and it is now

outdated. Novelties and updates of WT legislation followed in the last years but have not been coherently discussed in a scientific publication yet.

To fill these gaps, this paper guides international readers into the legislation of WTs, by addressing the sources of the legislation, the functioning of support mechanisms and the pitfalls of the application of the Marcora Act framework. In line with the doctrinal legal research methodology (Consultative Group on Research and Education in Law, 1983; Chynoweth, 2008), this paper provides a first answer to research questions such as: what is the legislation of Italian WTs? And how do these legal mechanisms work? To complement the review of legislation and add an additional interpretative layer to the analysis, the paper questions: what are the financial schemes to support WTs? And are there any issues in the application of this legislation? By clarifying and analysing the specificities of the Italian legal framework of WTs, the paper aims at debating on the sources of economic democracy, by revealing how support mechanisms for WTs work in one national context.

This research contribution is innovative for five reasons. Firstly, the contribution informs international scholars, practitioners and policymakers about the specific functioning of the Italian legal framework of WTs and its recent reforms. Indeed, many outstanding research outcomes on the topic are in Italian, and language issues limit knowledge diffusion abroad. In addition, scientific publications in English on this topic are now outdated. A new research initiative is, thus, necessary to account for novel funding schemes. Secondly, it presents the Marcora Act framework in its entire composition, by moving from insolvency laws to social security laws and additional funding opportunities. Thirdly, this paper provides an accurate historical background of the Marcora Act to better position this initiative within the political and social debate of the 1980s. Rarely previous research took into consideration the socio-political background of the Marcora Act, which, however, is essential to understand its functioning, the nature of the funding schemes and its goals. Fourthly, the paper analyses the economic and financial implications of legislation, by reviewing the sources of financing, the functioning of the financing mechanisms, and the interactions among funding schemes. Finally, the paper increases the awareness of the pitfalls, gaps and drawbacks of the Marcora Act framework, and identifies areas for potential adjustments and integrations. The identification of such limitations feeds the debate on the functioning of WT-supporting strategies and drives new legal initiatives towards fine-tuned applications.

2. Historical background of the Marcora Act

Early experiences of workplace self-management and occupations in Italy trace to the 1910s and 1920s, and predate the fascist era (Vieta, Depedri and Carrano, 2017). The self-management of companies is a form of workers' participation at the company level, whereby workers autonomously control the operations of such companies (Spognardi, 2019). The conclusion of Second World War brought novel socio-political tensions, which, in conjunction with the devastation left by the war, catalysed a new wave of labour struggles and occupations in the late 1940s and the early

1950s (Orlando, 2017). And yet, it was with the conclusion of the *Trente Glorieuses* and with the Oil crisis of 1973 that the debate on WTs got a political emphasis at the national scale. Indeed, albeit evocative and progressive, early experiences of workplace self-management were generally temporary and intended to improve workplace conditions via labour struggles and trade unionism (Vieta, Depedri and Carrano, 2017). The implementation of stable and radical changes in the control and ownership of companies was a marginal claim in that period. Differently, the number of WTs in Italy—whether just attempted or successful—started to grow at a stable rate from the 1970s onwards (Aimar, 2018; Lauria, 2021).

The 1970s was a decade of labour conflicts and advancements in workplace conditions, such as the passing of Law 300/1970, the Italian workers' statute. However, labour struggles were a threat to the governing Democratic-Christian party (Lauria, 2021). With the idea to counteract pickets, strikes and occupations, ruling policymakers debated alternative strategies to face mass layoffs, unemployment and the dissolution of the manufacturing fabric. Among the options, ministries and members of the parliament addressed the growing interest in worker cooperatives as a suitable compromise between workers' demands and the rising socio-political tensions. The history of Law 49/1985, titled "Measures for cooperative credit provision and urgent actions for preserving employment levels", is rooted in the troubled 1970s. The draft law was initially presented by Giovanni Marcora in May 1982 after years of groundwork, but it was not approved at that time due to the fall of the government. Giovanni Marcora was a member of the Italian parliament, also minister of agriculture and industry, and a leader of the conservative Democratic-Christian party (Aimar, 2018). He is considered the father of Law 49/1985, issued in 1985 and eventually named the Marcora Act after Marcora's death, which occurred in 1983. After the death of Marcora, the draft law was re-submitted twice at the parliamentary debate and it was finally issued on the 27th of February 1985 thanks to the endorsement of the socialist minister Gianni De Michelis (Aimar, 2018).

To mitigate both the socio-political conflicts and the rising unemployment, and inspired by the social Catholic doctrine, Marcora opted for an economic solution grounded in mutualistic values: the cooperative (Aimar, 2018). In its essence, the measure was meant to provide financial support to dismissed workers willing to set up new companies in the form of worker cooperatives. Indeed, in the late 1970s, Italy experienced a surge in the amount and variety of cooperative organizations, whose number grew from 75,000 in 1974 to 126,000 in 1980 (Orlando, 2017). Worker cooperatives were considered the proper devices to satisfy both the demands of workers, willing to increase their economic participation, and the necessity to safeguard employment levels and productive assets of failing companies without incurring labour conflicts.

The first-ever recorded WT in Italy dates to 1952, a glass-making cooperative in Tuscany (Ferraro, 2015). However, before the passing of Law 49/1985, the implementation of WT operations was marginal. Vieta, Depedri and Carrano (2017) estimate that 29 WTs were created between 1979 and 1984 in Italy. Of those 29, only four of them had been retroactively financed via the Marcora Act

provisions at least once in their lifetime. Differently, in the five years following the passing of the Marcora Act—between 1985 and 1989—78 new WTs had been put in place, almost three times the takeovers accomplished between 1979 and 1984. As of late 2014, 202 WTs and 12,700 workers countrywide, almost 80% of the Italian worker-takeover population at that time, benefited from the provisions of the Marcora Act (Vieta, Depedri and Carrano, 2017). Nowadays, more than 380 WTs have been censused by Cooperazione Finanza Impresa (CFI), Euricse and Area Studi Legacoop (Bernardi et al., 2022; CFI, 2022; Lomuscio, 2022).

3. The Marcora Act and its reforms

From 1985 to 2001, the Marcora Act supported laid-off workers receiving the *Cassa Integrazione Guadagni* (CIG) or other unemployment benefit schemes, in their attempt to rescue, take over and restart insolvent small and medium enterprises (SMEs) via the set-up of worker cooperatives. The provisions granted by Law 49/1985 also support the start-up of worker cooperatives made up of dismissed workers, independently from the rescuing and restart of a third-party failing company. The provision schemes granted by the Marcora Act stopped functioning in 1993, after an allegation by Confindustria, the Italian employers' federation. The allegation revolved around the lack of a repayment horizon for loans provided by CFI to target cooperatives, which spurred the EU Commission to take measures against this funding scheme (Bernardi et al., 2022). The notification turned into an infringement procedure issued by the EU Commission due to non-compliance with the EU State Aid Directive and with competition laws, and Law 49/1985 was then reformed in 2001 with Law 57/2001 (Lomuscio and Salvatori, 2021). Here follows an introduction to the original law and its reform.

The Marcora Act is made up of two titles. Title I regulates the functioning of the revolving fund Foncooper. The revolving fund provides debt capital at subsidised rates to cooperatives. The provisions were granted to cooperatives willing to carry out investment programs to increase productivity and employment levels, or the takeover of productive assets of failing companies (Pagani, 2020). Title II regulates the functioning of the Special Fund, the second financing tier of the Marcora Act. The original function of the Special Fund was to supply resources to cooperative institutional investors (Law 49/1985, Art. 16). These institutional investors were then entrusted to directly grant them to worker cooperatives made up of dismissed workers. The provisions of the Special Fund were *de facto*, but not *de jure*, non-repayable, since the law did not provide any time limit for the repayment of the grants. Worker cooperatives would receive “up to three times the share capital subscribed by the cooperative members and up to a maximum amount equalling three annual *Cassa Integrazione [Guadagni]* payouts for every associated worker” (Vieta, Depedri and Carrano, 2017: 61, italics in original). Law 49/1985 also commanded that if the newly-financed cooperatives would cease within three years, institutional investors would get back the resources invested as risk capital. Ultimately, institutional investors would transfer these resources back to the Special Fund. Vieta, Depedri and Carrano (2017) offer a detailed, article-by-article commentary on Law 49/1985.

Besides legitimising and favouring WT operations, the Marcora Act was a carrier of additional cooperative innovations. Among them, the Marcora Act allowed worker cooperatives benefiting from its provisions to co-opt a juridical entity of a financial nature as an investor member. Investor members would acquire financial instruments (i.e., shares) issued by target cooperatives, consequently providing finance to cooperatives themselves. In addition to the financial advantage provided for by investor members, this measure proved instrumental in enhancing the credibility of such cooperatives, particularly in their dealings with credit institutions, suppliers and customers. It took more than seven years for the measure to be extended to all cooperatives by virtue of Law 59/1992. In this regard, the Marcora Act anticipated almost a decade of cooperative reforms intended to legitimate cooperative finance and attract financial resources from traditional credit institutions.

Despite the innovative momentum of this piece of legislation, over the last three decades, the Marcora Act underwent redefinitions and integrations. Provisions of the Special Fund have been constantly re-financed and enlarged to face the intensification of applications—see, for example, Legislative Decrees 181/1989 and 236/1993, and Laws 273/2002 and 232/2016. The re-financing of the Special Fund was also due to the necessity to strengthen the funding schemes of institutional investors in light of the transfer of Foncooper's activities to Italian regional administrations in 1999 (Pagani, 2020). Besides these re-financing dynamics, Law 49/1985 underwent a major reform in 2001, as a consequence of the infringement procedure issued by the European Commission. Law 57/2001 extensively amended the original version of the Marcora Act, by reforming Articles 1, 7, 8 and 17 of Law 49/1985, and abrogating Articles 3, 5, 6, 14, 15, 16, 18 and 19.

Law 57/2001 redefines the provision mechanisms of Titles I and II of Law 49/1985, redesigns the scope of the provisions themselves, and broadens the spectrum of beneficiaries of legislation (Pagani, 2017; 2020; Vieta, Depedri and Carrano, 2017). Specifically, Law 57/2001:

1. forbids the supply of non-repayable grants;
2. caps the duration of the risk-debt participation of institutional investors, now minority shareholders, at a maximum of 10 years;
3. replaces non-repayable grants with risk-debt financing instruments, directly supplied by institutional investors such as CFI;
4. limits the provision of risk-debt capital to a maximum ratio of 1:1 compared to the capital subscribed by the cooperative members or to a ratio of 2:1 if cooperatives possess adequate reserves, whereas at the moment of the inception of Law 49/1985 this ratio was 3:1;
5. regulates the payback mechanisms of risk-debt provisions, by requiring cooperatives to refund at least 25% of the received provisions in the first five years of activity;
6. addresses the provisions not only to worker cooperatives, but also to small- and medium-sized social cooperatives.

Ministerial Decrees 04.04.2001, 16.04.2003 and 13.12.2005 stipulate that institutional investors would become investor members and minority shareholders of financed cooperatives via the acquisition of financial instruments issued by target cooperatives (Pagani, 2020).

After the reform, investors have acquired a key role in directly financing cooperative WTs. Before 2019, CFI and *Società Finanza Cooperazione* (SOFICOOP) had been the two major institutional investors in Italy, had financed 536 cooperative companies—not just WTs—and had invested EUR 282 million (CFI, 2021). In May 2019, the Ministry of Economic Development mandated the merger between CFI and SOFICOOP, which resulted in the incorporation of SOFICOOP into CFI in October 2019 (Ministerial Decree 21.12.2019). Nowadays, CFI is the leading financial vehicle of the Marcora Act provisions. Besides WTs, CFI finances and supports both start-up and consolidation projects of worker and social cooperatives. The Italian Ministry of Economic Development is the major shareholder of CFI and controls 98.6% of its capital. In addition to the Ministry of Economic Development, 370 cooperatives are members of this second-tier cooperative, among which InvItalia, the Italian agency for inward investment and economic development, and Italian mutualistic funds (CFI, 2021).

4. Insolvency laws

Measures and provision schemes implemented by, and in accordance with, the Marcora Act directly address the start-up of cooperative companies made up of dismissed or job-threatened workers. Before takeovers take place, however, distressed companies are usually subject to one of the insolvency procedures provided for by Italian legislation (Jensen, 2011; Lomuscio, 2022). The enactment of insolvency laws predates the implementation of the Marcora Act's funding mechanisms. Not all Italian WTs undergo insolvency procedures and not all the cooperatives supported by institutional investors stem from insolvent firms (Table 2). This is the case of successful companies which either suffer from inheritance and succession issues or are confiscated by public authorities from criminal organizations. It is, nevertheless, crucial to understand the functioning of insolvency laws since they regulate the transfer and/or restructuring of distressed companies via WTs.

Table 2. Former companies and insolvency procedures

Type of insolvency procedure	No. of WTs	Percentage
Not under insolvency procedure	17	33%
Arrangement with creditors	6	12%
Bankruptcy	17	33%
Receivership	6	12%
Administration	2	4%
Confiscation from organised crime	3	6%
Total	51	100%

Notes: Survey data from 51 out of 117 active Italian WTs as of June 2021. In grey, four of the five insolvency procedures provided for by the Italian legislation, as reported by respondents of the survey.

Source: Lomuscio (2022: 7).

Insolvency laws regulate the liquidation or restructuring of distressed, insolvent and bankrupt companies. The Italian insolvency legislation applies to all companies and employers located in Italy. The legislation comes into force whenever an employer suffers an enduring crisis condition to the extent that she is not able to repay her debts in the present and the near future (Rossi, 2019). Companies whose crisis is persistent are declared insolvent by creditors, prosecutors or employers themselves (Rossi, 2021). The Italian insolvency legislation encompasses five insolvency procedures: *fallimento*, *concordato preventivo*, *liquidazione coatta amministrativa*, *amministrazione controllata* and *amministrazione straordinaria*—namely, bankruptcy, arrangements with creditors, compulsory liquidation, receivership and administration (Royal Decree 267/1942; Legislative Decree 270/1999; Legislative Decree 5/2006; Legislative Decree 169/2007; Law 119/2016).

The insolvent employer is subject to one of these five procedures according to the size of the company, its legal form, the financial performance of the company and its debt exposure, and the viability of debt restructuring. Above all else, the severity of employers' exposure to debts determines the insolvency mechanisms that shall be put in place and, consequently, the magnitude and schemes of the liquidation of insolvent companies. Insolvency laws prioritise the satisfaction of creditors and the repayment of accrued debts via the restructuring of debts, the replenishment of the necessary capital, or the partial or full liquidation of companies' assets. Insolvency procedures can also command the secondment or the removal of executive boards of insolvent companies on behalf of temporary administrators and receivers, who are appointed by judicial authorities. Insolvency laws also regulate how third-party agents bid for the acquisition and/or the rent of these companies' assets.

To keep business activities running, secure going concerns and protect employment levels (Magnani, 2017), Legislative Decrees 14/2019 and 118/2021 introduced negotiated restructuring mechanisms to anticipate the repayment of debts, and to facilitate the resolution of company crises by preventing companies from undergoing judicial trials (Sacco, 2019; Rossi, 2021). Negotiated crisis resolutions are non-judicial restructuring mechanisms which anticipate and bypass insolvency procedures by monitoring possible over-indebtedness situations and alerting restructuring experts and controlling boards. Bylaws mandate creditors, prosecutors and employers to anticipate the resolution of predictable crises, and to address judicial insolvency procedures only if negotiated and anticipated resolution mechanisms fail (Ricciardiello, 2020).

However, even before the reform of the Italian insolvency law, workers of dissolving companies have had little or no voice in judicial and extra-judicial negotiations of companies at risk or under insolvency procedures (Bovenga, 2021). Ensuring the optimal satisfaction of creditors was and remains the paramount legal and practical guiding principle for resolving company crises (Legislative Decrees 14/2019, Art. 4). Interests of workers are then taken into account if workers can claim credits, such as unpaid wages. Once their credits are satisfied, if any, workers lose their claims on the assets of distressed companies. Additionally, if receivers and judicial administrators realize that distressed companies are no longer viable, then workers are dismissed and companies are fully wound up (Magnani, 2017). Receivers and judicial administrators are arbitrary gatekeepers, whose

decisions are not subject to legal standards or norms, but to negotiations among creditors, debtors, trade unions and workers. However, due to institutional biases and a non-neutral institutional climate, which are adverse towards cooperatives and WT operations (Doucouliagos, 1995), the arbitrary agency of these actors drastically hampers the development of WT operations. Besides the protection of employment relations for going concerns under insolvency procedures (Bovenga, 2021), the Italian insolvency law offers no voice option to workers.

Rather, the Marcora Act framework provides a viable alternative to the top-down management of distressed companies under insolvency procedures via cooperative WTs, whose workers can exercise a right of first refusal on the assets of insolvent companies. The right of first refusal was included in Article 14 of Law 49/1985, the original Marcora Act (Pagani, 2017). Yet, Law 57/2001, the Marcora Act's reform, abrogated that article. The right of first refusal for workers seeking to take over insolvent companies was then reintroduced with Law 9/2014. Nowadays, workers' right of first refusal only and solely applies to insolvent companies whose workforce is willing to establish cooperative WTs (Pagani, 2020).

5. Other financing schemes

Law 49/1985 and its reforms regulate the base mechanisms which grant workers the necessary financial instruments to take over distressed companies or going concerns. There are, however, several pieces of legislation which integrate the Marcora Act measures and provide workers and cooperative members with further and independent resources to accomplish their goals. The sources and amount of financing these schemes can provide are not trivial and, in most cases, their volumes exceed the sole Marcora Act provisions. These financing schemes can increase the resources made available via the Marcora Act, but can also be used independently from it. These are the cases of WTs that emerged before the passing of the Marcora Act or "labour-conflict" WTs (Vieta, Depedri and Carrano, 2017), whereby workers were unwilling or unable to interact with a state agency. Workers are, thus, able to ponder the adequate sources of financing with respect to the needs of their cooperatives. In a nutshell, these financing schemes are the advances of the unemployment benefit, the severance pays accrued by workers, the mutualistic funds, the regional Foncooper funds and connected initiatives, and the so-called New Marcora Act. With the exclusion of the mutualistic and regional funds, all other mentioned sources of financing are specific to WT operations. It is worth re-asserting that, as legally-recognised cooperative companies, WTs can benefit from all other financing mechanisms that have been put in place to support cooperatives and, more generally, all active companies.

5.1 Advances of the unemployment benefit, severance pays and mutualistic funds

Law 223/1991 reforms and regulates the unemployment benefit schemes in Italy in the wake of the EU legal integration. It precisely regulates the functioning of the Cassa Integrazioni Guadagni and of the *Indennità di mobilità*, the two core devices that had been put in place to

contrast redundancies, dismissals and temporary unemployment. Besides the general functioning of these schemes, Law 223/1991 also rules how workers can turn their temporary unemployment benefit *Indennità di mobilità*, supplied by INPS—the Italian Social Security Provider—into cooperatives’ capital as a one-time prepayment of the benefit (Law 223/1991, Art. 7, Par. 5; INPS memorandum 67/2011). After the 2012 and 2015 reforms of unemployment-benefit legislation (Law 92/2012; Legislative Decree 22/2015), the possibility to capitalise the unemployment benefit provisions now refers to the so-called NASpI, the “New Social Security Provision for the Employment” (INPS memoranda 145/2013, 94/2015 and 74/2017). The possibility of turning the unemployment provisions into cooperatives’ capital is licit for worker and social cooperatives only (INPS memorandum 67/2011). The capitalised unemployment benefit is totally tax-exempt in compliance with Article 12 of Law 190/2019. In addition to the unemployment provisions, workers can also turn their accrued severance pay into cooperatives’ capital. The invested severance pay is totally tax-exempt in compliance with Article 1, Paragraph 270 of Law 178/2020.

The financing schemes of Laws 49/1985 and 57/2001, together with the possibility to invest both the unemployment benefit and the severance pay into cooperatives’ capital, are further strengthened and complemented by resources from mutualistic funds. In compliance with Law 59/1992, mutualistic funds indirectly managed by cooperative associations, such as Legacoop’s Coopfond or Confcooperative’s Fondosviluppo, support the start-up and development of Italian cooperatives. Similarly to other institutional investors, mutualistic funds provide debt capital at subsidized rates, risk capital and grants to cooperative start-ups, consortia of cooperatives, already-established cooperatives and WTs. Mutualistic funds are autonomously managed and so are their financing initiatives. Cooperatives are free to affiliate with one or more associations of cooperatives and their respective mutualistic funds. Resources of mutualistic funds originate from the transfer of a 3%-share of the annual net profits of all affiliated cooperatives, which is commanded by the law (Law 59/1992, Art. 11). Additionally, mutualistic funds get further resources via the incorporation of the residual reserves of dissolving cooperatives, which cannot be redistributed among members and should be invested for the development of the cooperative movement (Law 59/1992). As of 2016, the assets of the four largest mutualistic funds in Italy amounted to EUR 717 million (European Economic and Social Committee, 2018). Among the many merits of Law 59/1992, this piece of legislation has also extended the possibility of becoming an investor member of the cooperatives to all people and legal entities, including other cooperatives.

5.2 Regional Foncooper funds and connected initiatives

Besides mutualistic funds, WTs receive financial and administrative support from ad-hoc regional agencies. In compliance with the transfer of the Foncooper schemes to regions (Legislative Decree 112/1998), regional administrations have enacted specific local policies to support emerging WTs on a regional scale of intervention. Among the 20 Italian regional administrations, however, only three of them have enacted local policies in the wake of Legislative Decree 112/1998: Emilia-Romagna

(Regional Decrees 415/2015, 103/2018, 187/2020 and 600/2022), Piedmont (Regional Law 23/2004, Regional Decrees 33-2829/2011, 17-1183/2015 and 20-4753/2022) and Lazio (Regional Decrees 1911/2001 and 171/2012; Regional Law 13/2018, Art. 4, Parr. 40-44; Regional Decree 717/2019). Regional revolving funds, whose management is entrusted to third-party organizations such as banks, operate in accordance with the scopes and procedures of the original Foncooper.

All Foncooper regional agencies provide new or already-existing cooperative companies, among which WTs, with debt capital for their start-up, development and consolidation operations. The functioning of regional revolving funds emulates the functioning of the original Foncooper fund (Law 49/1985, Title I), previously administered by Banca Nazionale del Lavoro (Vieta, Depedri and Carrano, 2017): each cooperative can obtain up to EUR 2 million and use these resources to finance up to 70% of their investment plans; interest rates are capped by law at 25% of the Central European Bank base interest rate, and debt capital must be repaid within eight years; eligible expenditures also include investments in real estate properties, machinery, patents and wages. Emilia-Romagna's Foncooper is managed by Artigiancassa S.p.A. and Unicredit S.p.A. and was initially granted EUR 84 million. The eligible expenditures of start-up, development and consolidation operations, variations of interest rates and repayment horizons of loans and grants vary according to Regional Decree 600/2022. Piedmont's Foncooper is managed by Finpiemonte S.p.A. and, at the end of 2021, it was worth EUR 12,8 million. At first, Lazio's Foncooper was managed by Coopercredito S.p.A.—from 2012 onwards, by Lazio Innova S.p.A.—and it was granted EUR 6 million in total, EUR 2 million per three years. Lazio's Foncooper was active from 2001 to 2015 (Regional Decree 729/2015). In 2019, however, the regional administration of Lazio reinstated the funding mechanism to support WTs.

Whenever regional administrations have not put in place specific pieces of legislation in favour of WTs in the wake of Legislative Decree 112/1998, they may have implemented specific supporting strategies, usually revolving funds. These are the cases of Veneto, Basilicata, Campania, Marche, Lombardy and, again, Lazio. While supporting and financing all cooperative companies located within their regional area of intervention, regional agencies and policies have demonstrated themselves able to fortify WT operations (Ferraro, 2015; Vieta, Depedri and Carrano, 2017; Lauria, 2021).

Veneto Sviluppato is the regional economic development agency of Veneto and specifically addresses the development of cooperative companies with a provision of EUR 3,5 million per year (Regional Law 17/2005; Regional Decree 4489/2007). Each cooperative can obtain a maximum of EUR 300,000 and must repay the loans within a maximum of 10 years. In 2018, the regional administration of Basilicata enacted a revolving fund to preserve employment levels of companies located within regional borders via worker cooperatives and WT operations. Basilicata's revolving fund was financed with EUR 3,9 million (Regional Law 12/2015; Regional Decree 1366/2018). Similarly, Lazio reinstated a revolving fund in favour of cooperative start-ups and WTs, precisely. Lazio's fund was granted EUR 6 million, EUR 2 million per year from 2019 to 2021 (Regional Decree 717/2019). Both Campania (Regional Decree 388/2015) and Marche channelled quotas of European Regional Development Funds and European Social Funds to the promotion and development of cooperative companies, with direct reference to worker buyouts and WTs (Ufficio

Speciale Nucleo per la Valutazione e la Verifica degli Investimenti Pubblici Regione Campania, 2020). Finally, Lombardy has enacted a specific credit line to support cooperative companies and, indirectly, cooperative WTs (Regional Decrees 4097/2020 and 4478/2021).

5.3 The New Marcora Act

In addition to the provisions of the Marcora Act, Decree 04.12.2014 of the Ministry of the Economic Development, titled “New Support Regime for the Start-up and Development of Small and Medium Cooperatives”, also known as the New Marcora Act, enacted complementary financial resources for worker and social cooperatives (Rete Italiana Imprese Recuperate, 2021). Recently strengthened by Decree 04.01.2021 of the Ministry of the Economic Development, Ministerial Decree 04.12.2014 regulates a complementary financing scheme for the provision of debt capital at subsidized rates to small- and medium-sized cooperatives, regardless of their sector of activity (CFI, 2021). Resources of the so-called New Marcora Act are entrusted to CFI, which is nowadays the leading founding institution for WTs in Italy. Ministerial Decrees 04.12.2014 and 04.01.2021 multiply the financial resources that workers have at their disposal to a ratio higher than 1:1 (or 2:1 if cooperatives possess adequate reserves), a possibility that was revoked with the reform of the Marcora Act in 2001.

However, funding mechanisms of these Ministerial Decrees strictly depend on the provisions of the original Marcora Act (Laws 49/1985 and 57/2001): CFI resorts to the New Marcora Act provisions only and solely in proportion to the investment in equity it accords to cooperatives under the Marcora Act, and can provide debt capital up to five times the risk capital initially invested by CFI itself in each cooperative. All worker and social cooperatives which benefit from CFI equity can apply to the financing schemes of the New Marcora Act; or else, all worker and social cooperatives which apply to the subsidized financing schemes of the New Marcora Act also need to apply to and get the risk-capital investments accorded by CFI. These provisions of the New Marcora Act cannot exceed EUR 2 million or five times the debt capital provided to each cooperative. The interest rate is 0% and each cooperative shall repay the debt in 10 years maximum (CFI, 2021). CFI can finance either the start-up or the development of already-existing worker and social cooperatives.

6. Issues in the application of the Marcora Act framework

The legal framework of WTs in Italy is rich and complex, and has provided around 14,500 workers with the necessary finance to start up and develop WT operations (CFI, 2021; 2022; Rete Italiana Imprese Recuperate, 2021; Lomuscio, 2022). The implementation and functioning of this complex legal framework are, however, subject to gaps and pitfalls. This section analyses five of the shortcomings of the Italian legal framework of WTs. More precisely, the issues connected with the legislation concern: (i) the consequences of the new insolvency law on the WT legal

framework; (ii) the size of cooperative companies entitled to the Marcora Act provisions and their complementary schemes; (iii) the use of the lump-sum payment of the unemployment benefit as equity in new-born WTs; (iv) the implementation of regional policies and agencies; and (v) the lack of non-financial support.

6.1 *The new insolvency law*

As emphasised in Section 4, most Italian WTs emerge in the wake of the insolvency laws' enforcement (Jensen, 2011; Lomuscio, 2022), whose implementation affects the mechanisms and timings of WT operations. Thanks to continuous adjustments, the legal framework of WTs was granted an acceptable degree of coherence among all its components, including legal mechanisms that concern insolvency regulations (CFI, 2022). The reform of the Italian insolvency law as to Legislative Decrees 14/2019 and 118/2021, however, introduced new devices for the crisis management of companies. As already mentioned, negotiated crisis resolutions anticipate insolvency procedures to the extent that employers can even avoid insolvency procedures thanks to the mediation of experts. Experts are skilled professionals who are selected by local Chambers of Commerce to provide going concerns with their expertise and, potentially, guide companies outside troubled waters.

Since companies would not be *de facto* subject to insolvency procedures, workers willing to achieve a takeover may have an even lower bargaining power than previously granted. This is because they cannot bid for residual assets of distressed companies. After all, companies are not technically subject to insolvency procedures. Additionally, workers cannot exercise the right of first refusal as to Law 9/2014, which only applies to companies under *fallimento*, *concordato preventivo* or *amministrazione straordinaria*, three of the five insolvency procedures regulated by law. While facilitating the resolution of companies, these decrees do not adequately provide workers with up-to-date tools to take over distressed business activities and *de facto* limit the alternatives workers, employers and experts have for resolving companies' crises.

6.2 *The size of cooperative companies entitled to support*

The provisions which are connected to the Marcora Act, the *Foncooper* regional agencies and the New Marcora Act address the start-up, development and consolidation of small- and medium-sized cooperatives. While the provisions of mutualistic funds and other funding schemes apply to all cooperative companies located in the corresponding areas of intervention regardless of their sizes, all measures linked to Law 49/1985 specifically address SMEs. SMEs are the backbone of Italian regional economies and labour markets (Trigilia and Burrone, 2009; ISTAT, 2022). They are strategic for national and regional economic development and, therefore, they are the target of a spectrum of policies and support actions by public authorities (Bruzzo, 2011). The Marcora Act is among these strategies and does not address the takeover of large companies. WTs of large companies, therefore, are not covered by specific support measures.

There are no more than 4,000 large companies in Italy out of 6,1 million companies (InfoCamere, 2022; ISTAT, 2022). Yet, they employ one-fourth of all Italian employees and generate one-third of the overall value-added of Italian companies (ISTAT, 2022). In addition, large companies and their branches are not immune to group restructurings, relocations, failures and closures, especially in the post-COVID scenarios. Among many other examples, this is the case of the Italian automotive industry and the slow but relentless withdrawal of Stellantis and Fiat Chrysler Automobiles from producing vehicles in the country (Calabrese, 2020; Pardi, 2021). The case of GKN Driveline Firenze mostly exemplifies how and to what extent large automotive companies are subject to restructurings even when financial performances are assured (Carta, 2022). And how WT operations may preserve employment levels and productive know-how when employers are not able to provide them (Collettivo di fabbrica GKN, 2022; Un piano per il futuro della fabbrica di Firenze, 2022).

6.3 The use of the unemployment benefit

The use of the lump-sum payment of the unemployment benefit as equity to be invested in new-born cooperatives' capital is common among workers involved in WT operations (Lomuscio, 2022). Its use assures relatively abundant financial resources to workers before institutional investors provide them with additional, multiplier capital (Vieta, Depedri and Carrano, 2017). Empirical evidence suggests that the financial resources collected by workers by using the unemployment benefit are the most employed and copious for WT operations (Lomuscio, 2022). In this regard, the use of the lump-sum payment of the unemployment benefit is a key source of finance for workers. The usage of the unemployment benefit as equity, however, has a series of practical and juridical drawbacks.

Firstly, as the mechanism intrinsically suggests, the conversion of the unemployment benefit is possible only when workers are unemployed according to the law, as in the case of motivated and justified dismissals. Whenever workers maintain their employment relationship with active companies, they are not entitled to unemployment schemes and, consequently, to the conversion of the unemployment benefit into cooperatives' capital. This tautology determines practical inconveniences for workers employed by distressed but still-active companies, since workers do not have the right to the precious financial resources provided by the use of the lump-sum payment of the unemployment benefit. These are the cases, for example, of negotiated crisis resolutions provided for by the new insolvency law code, and inheritance disputes.

Secondly, once workers opt for the lump-sum payment of the unemployment benefit, they lose their claims to a second-chance unemployment allowance, unless they work for an additional 13 weeks (INPS memoranda 145/2013 and 94/2015). However, to obtain the maximum length of unemployment benefits and the higher advantages that derive from them, workers must cumulate social security contributions—or else, they have to work—for four years, continuously (Legislative Decree 22/2015). This means that if dismissed workers are entitled to the maximum length of the unemployment benefit—two years—and use it as equity in new-born cooperatives, they will benefit from another period of unemployment benefit of the same duration only if they consecutively

work for an additional four years. In a nutshell, by converting their unemployment benefit into cooperatives' capital, workers expose themselves to the risk of not having an equivalent, second-chance unemployment mechanism in case WTs are not successful in the beginning.

Thirdly, workers who opt for the lump-sum payment of the unemployment benefit and who affiliate with cooperative companies cannot enter an employment relationship with other companies and cannot exercise professional or autonomous jobs for a period which equals the duration of the unemployment provision accorded to each worker (Legislative Decree 22/2015). Workers who disaffiliate from cooperative employment relations before the natural expiring date of their unemployment benefit are sanctioned by the Italian Social Security Provider. If violations of the norm exist, workers can recover the sum from the cooperatives but they must give it back entirely to the Social Security Provider. This mechanism discourages workers' mobility in the labour market and ties them down to cooperatives as long as workers are subject to the unemployment mechanisms. Difficulties in managing worker-members willing, or in need, to leave cooperatives can raise tensions among workers and managers, and these tensions can, eventually, undermine collective decision-making and workplace well-being. That is, workers discouraged by a limited career horizon in the same cooperative, such as young workers, can decide not to adhere to WT operations to avoid an inflexible employment relationship.

Fourthly, and lastly, the use of the lump-sum payment of the unemployment benefit as equity to be invested in new-born cooperatives' capital distorts the enactment of human and social security rights. The protection against unemployment is a human right enacted by the Universal Declaration of Human Rights (United Nations, 1948, Art. 23, Par. 1). The protection against unemployment is also a social security and economic right, formalised by the International Covenant on Economic, Social and Cultural Rights (United Nations OHCHR, 1966, Art. 9) and by the General Comment 19 of the UN Committee on Economic, Social, and Cultural Rights (UN Committee on Economic, Social, and Cultural Rights, 2007). It is well-recognized how leveraging the unemployment benefit to finance the start-up of cooperatives provides workers with the necessary resources to afford takeovers, bid for core assets and pay out wages, deferred payments and bills (Pagani, 2017; Vieta, Depedri and Carrano, 2017; Semenzin, 2019; CFI, 2021; 2022; Lomuscio, 2022). However, opting for the lump-sum payment in place of the monthly unemployment-benefit provision is ethically and politically questionable (Calcagno and Mazzone, 2022).

As emphasised before, using the unemployment benefit to finance the start-up of cooperatives leaves workers at risk of not being covered by the same unemployment mechanisms in case takeovers are not successful in the beginning. The conversion of the unemployment benefit into a lump-sum payment does not *de jure* eliminate the right of workers to unemployment protections. Yet, it intrinsically modifies how and to what extent workers individually benefit from provisions. That is, the conversion of the unemployment benefit into a lump-sum payment increases distributive inequalities and exposes workers to an array of unbalanced risks. On the one hand, workers, who receive a monthly salary in exchange for their labour force (Sylos Labini, 1978; Gallino, 2007), are *de facto* subject to two different sources of risks in WT contexts: they are subject to business

risks, but also to the risk of zeroing their monthly earnings in case failures occur (Doucouliagos, 1995; Tognonato, 2016). On the other hand, workers, who suffer the most from closures and dismissals (CECOP-CICOPA, 2013; Delgado, Dorion and Laliberté, 2014), have to invest their only source of earnings to takeover distressed companies, going concerns or companies with no successors. Nevertheless, it is important to highlight that the risks faced by workers in the use of the unemployment benefit could serve as an incentive for workers to carefully consider the decision to pursue an acquisition via a WT operation. In this light, workers should ponder the takeover with the utmost rigour and attention.

6.4 The implementation of regional policies and agencies

Nowadays, CFI manages the provisions which stem from the second tier of Law 49/1985, the Special Fund. Indeed, Foncooper's schemes were transferred to regional administrations in the wake of Legislative Decree 112/1998. Nevertheless, regional administrations have struggled to implement Foncooper's schemes at the regional level and only three of them enacted regional Foncooper's schemes accordingly. Despite the creation of secondary funding mechanisms to channel regional development funds, there is an evident lack of regional initiatives in the wake of Legislative Decree 112/1998. This perhaps explains why lawmakers commanded the transfer of a residual of EUR 8,3 million from the former, national Foncooper fund to institutional investors (SOFICOOP and CFI) in 2012; funds which have not been employed for their intended scopes for more than a decade after the transfer of competences to regions (Law 134/2012).

However, due to their proximity to cooperatives, regional players and authorities can have a beneficial and not trivial impact on the development of WT operations. The development of regional initiatives in support of cooperative WTs is of primary importance for workers, but also for communities and territories in crisis. The spectrum of initiatives Italian regions have deployed in addition to Foncooper's schemes demonstrates how flexible regional initiatives can be and how diversified the resources they channel. The lack of Foncooper regional initiatives should be of primary importance for policymakers and regional agencies of local development, especially in the wake of the pandemic.

6.5 The non-financial support

The support granted to WTs is mainly financial. At different administrative levels and through various channels, the legal framework of WTs provides companies with a variety of financial instruments. While WTs, as all cooperatives, are also granted tax advantages, it is less clear whether, how and to what extent workers and new-born WTs benefit from other sources of support, such as legal, administrative, technical or managerial forms of support. Converting companies into employee-owned firms entails re-addressing and acquiring technical, administrative and managerial competencies (Rizza and Sermasi, 2008; Marchetti, 2013). This is of higher importance whenever

workers face managerial inexperience. A lack of non-financial support may lead takeover operations to failure whereby workers are not familiar with cooperative decision-making and managerial practices (Paton, 1989). It is not uncommon for managers and directors of new-born WTs to denounce a lack of cooperative spirit and participation (Ruggeri and Di Nepi, 2014). Equally, it is not uncommon to observe a de-mutualization of cooperative WTs, which, after the conversion into cooperatives, move back to traditional managerial practices. It is not even uncommon to observe worker cooperatives which adopt hierarchical management techniques (Marchetti, 2013).

Legislative Decree 35/2005 partially modifies the Marcora Act by introducing the possibility for institutional investors (e.g., CFI) to devolve a fraction of public funds for consultancy and support activities. This fraction amounts to a maximum of 1% of those funds that had been invested in cooperative operations in the previous year (Law 49/1985, Art. 17, Par. 3). Thanks to this update, besides financial instruments, CFI is now able to supply additional support to worker cooperatives. Similarly, cooperative associations mentor and guide co-operators throughout the processes of conversion and restructuring. All forms of support are pivotal for the start-up, development and consolidation of WT operations. Nevertheless, tools and resources for non-financial support remain limited. As emphasised by Vieta, Depedri and Carrano (2017), non-financial support for WTs is crucial to strengthening workers' skills and their ability to successfully run cooperative companies. Competencies and more efficient managerial practices are necessary to mitigate the withdrawal of institutional investors from cooperatives' capital and the potential liquidity crisis cooperatives may face after 10 years of collaboration with institutional investors.

7. Conclusions

The paper summarises the nature, functioning and implications of core pieces of legislation which are part of the so-called Marcora Act framework. It provides evidence of the historical background of the Marcora Act, the composition of the Marcora Act framework and the pitfalls of its application. The paper provides readers with up-to-date information on the legislation of Italian WTs and specifically analyses the practical implications connected to the financing of WTs. The analysis reveals what are the sources of financing, their use, the interactions among pieces of legislation, and the drawbacks of their implementation. The analysis suggests that policymakers should pay more attention towards the interconnections between insolvency laws and the Marcora Act framework. Additionally, findings reveal a series of potentially harmful drawbacks, among which stand the size of WTs which are the target of support initiatives linked to the Marcora Act framework, the lack of regional initiatives, and the use of the unemployment benefit to capitalise the new ventures.

The lack of proper devices to support takeovers of large companies undermines workers' ability to cooperatively mitigate closures, mass layoffs and dismissals of going concerns. To provide large-company WTs with higher financial support than the legal framework of WTs does, potentially

new policies and actions should consider the involvement of sovereign wealth funds, such as *Cassa Depositi e Prestiti* and *InvItalia*. This is, for example, what trade unions, public authorities and the worker council envisioned concerning the re-industrialization plan of the GKN Driveline Firenze's plant in Campi Bisenzio, close to Florence (Collettivo di fabbrica GKN, 2022; Un piano per il futuro della fabbrica di Firenze, 2022).

The proximity to WT operations is a core asset for institutional investors and stakeholders. Close, informal and dense relationships among key actors of WT operations facilitate the diffusion of knowledge, confer legitimacy on WT projects and grant resilience to these organisations, especially in their early stages. While evidence suggests that the local scale of intervention is fundamental to bringing the necessary support to WTs, regional support initiatives languish. Besides the efforts of the few regional administrations who have already made improvements in this direction, practitioners, policymakers and associations of cooperatives should lobby regional authorities to make regional initiatives more effective. In this regard, regional initiatives may encompass: the diffusion of information on WTs and their benefits, the diffusion of the already-present WT know-how among job-threatened workers, the set-up of ad-hoc credit lines, the implementation of fiscal incentives for both workers and former owners to facilitate WT operations, the set-up of ad-hoc regional agencies, the allocation of unused public real-estate properties to WT initiatives.

Finally, policymakers should consider the risks workers bear whenever they use their unemployment benefits to finance WT operations (Doucouliagos, 1995). To smooth and, potentially, erase these risks, policymakers can opt for at least three strategies. Firstly, policymakers can encourage workers, institutional investors and stakeholders to use alternative resources, connected to already-available sources of financing. That is, they should enlarge current provisions connected to the Marcora Act and/or ease access to such funds. Secondly, they can modify social security laws so that workers investing their unemployment benefit provisions may get a second-chance allowance. Thirdly, they can command institutional investors to issue guarantees or insurances to protect the investments of workers which stem from the lump-sum payment of the unemployment benefit. These three options entail minor integrations to the current regulations, but can assure workers the necessary financing at lower or zero risks, thus enhancing their commitment to WT operations.

The five issues reported in the previous section are not a direct threat to the functioning of the legal framework of WTs. However, one or more of these issues can undermine the implementation of its policies and support strategies. The enactment of legal and practical expedients to solve these issues can have beneficial effects on the diffusion of WT operations and their success rate, by smoothing procedures, facilitating access to provisions, lowering the risks for workers and enlarging beneficiaries. Moreover, the diffusion of WTs generates significant benefits and advantages not simply for workers, but also their families, local communities and regions (Vieta and Lionais, 2015; Jossa, 2017). National and regional policymakers should pay higher attention to these gaps in the legislation to offer improved support mechanisms and, therefore, alternative strategies to cope with business closures, mass layoffs, inheritance issues and restructurings.

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