

CAPPELLI RIOLO
CALDERARO CRISOSTOMO
DEL DIN & PARTNERS

CRCCD NEWS

May – Pt. 1
2026



Studio Legale

SUMMARY

ADMINISTRATIVE & COMPETITION LAW	4
1) European Commission: consultation on new Draft Merger Guidelines	4
2) European Commission: temporary framework for State aid for sectors affected by the crisis linked to the conflict in the Middle East adopted, to be operative until 31 December 2026	4
3) Administrative Court of Campania: in-house providing and award of services to third parties.....	5
4) Council of State: the presence of a landscape constraint does not constitute an obstacle where the unauthorized works are exclusively internal in nature.....	5
5) Administrative Justice Council for the Region of Sicily: in matters of unlawful plot development (<i>lottizzazione abusiva</i>), the automatic application of ablatory measures against a subsequent purchaser of the area in question is unlawful	6
STRUCTURED FINANCE, CAPITAL MARKETS AND FINTECH	7
6) EBA: consultation on amendments to the RTS on the assignment of risk weights to specialized lending exposures under the Supervisory Slotting Criteria Approach.....	7
EMPLOYMENT LAW	8
7) Italian Supreme Court: on mobbing in cases of repeated unjustified reprimands.....	8
8) Decree-Law No. 62 of 30 April 2026, containing urgent provisions on fair wages (<i>salario giusto</i>), employment incentives (<i>incentivi all'occupazione</i>) and the fight against digital labour exploitation (<i>caporalato digitale</i>) published in the Official Gazette.....	8
REAL ESTATE	10
9) Decree Law No. 66 of 7 May 2026, containing urgent provisions for the Housing Plan, has been published in the Official Gazette	10
BANKING / FINANCIAL / INSURANCE REGULATION	11
10) ESMA: consultation on guidelines on stress test scenarios under the MMF Regulation.....	11
11) Bank of Italy: the guide to prudential supervision of banks and financial intermediaries updated and restructured.....	11
12) ESMA: simplified reporting requirements for funds	12
13) ESMA: consultation on draft guidelines on endorsement under the ESG Ratings Regulation	12
14) EBA: final guidelines on supervisory independence and on management of conflicts of interest under the CRD	13
15) EIOPA: draft technical standards on resolution colleges and reporting requirements (IRRD) submitted to the European Commission.....	13
16) FSB: guidelines on insurers subject to the recovery and resolution planning requirements.....	14

RESTRUCTURING AND INSOLVENCY PROCEEDINGS	15
17) EBA: amendments to the guidelines on the definition of default.....	15
CASE LAW	16
18) Italian Supreme Court: on failure to agree in writing individual contractual clauses and burden of proof	16
19) Italian Supreme Court: the clause of a guarantee contract (<i>contratto di fideiussione</i>) derogating from Article 1957, first paragraph, of the Italian Civil Code is unfair where the guarantor is a consumer.....	17
OTHER RELEVANT NEWS.....	20
20) European Commission: consultation on draft delegated regulations on simplified and voluntary sustainability standards	20

ADMINISTRATIVE & COMPETITION LAW

1) European Commission: consultation on new Draft Merger Guidelines

On 30 April 2026, the European Commission launched an open consultation on the new Draft Merger Guidelines, intended to replace the 2004 Guidelines on horizontal mergers and the 2008 Guidelines on non-horizontal mergers since the changed geopolitical and commercial context, also in the light of the evolution of the case practice of the European Commission and the case law of the Court of Justice of the European Union.

The draft proposes an updated analytical framework which, while confirming the centrality of the protection of competition for the benefit of consumers and markets, integrates into the assessment of transactions elements such as industrial scale, global competitiveness, innovative capacity, sustainability and the resilience of undertakings. The stated objective is to offer a legally and economically sound, comprehensive and durable framework, applicable to all economic sectors.

The written consultation will be accompanied by a technical workshop with stakeholders scheduled for 10 June 2026, while the economic study on the dynamic effects of mergers – commissioned by the Commission itself – will be presented in September. The finalization of the new Guidelines is expected in Q4 2026.

The [consultation](#) will remain open until 26 June 2026.

2) European Commission: temporary framework for State aid for sectors affected by the crisis linked to the conflict in the Middle East adopted, to be operative until 31 December 2026

On 29 April 2026, the European Commission adopted a new temporary State aid [framework](#) aimed at enabling Member States to support the EU economy in the context of the Middle East crisis and the consequent energy shocks.

The temporary framework, applicable until 31 December 2026, introduces dedicated support measures for, in particular, the agriculture, fisheries, transport and energy-intensive sectors, also providing simplified procedures for the grant of aid of limited amounts. During the period of application of the framework, the Commission will periodically review its content, scope and duration in the light of developments in the Middle East and the general economic situation.

Various forms of support are provided by the Commission for businesses active in the agriculture, fisheries and transport sectors; the framework also includes a temporary adjustment of the rules on State aid in the context of the Clean Industrial Deal, to address the increase in electricity price spikes.

Measures under the framework will have to be notified to the Commission. The framework will allow for a fast approval process.

3) Administrative Court of Campania: in-house providing and award of services to third parties

By judgment No. 742/2026, published on 20 April 2026, the Administrative Court of Campania – Salerno Division (“**TAR Campania**”) clarified that the in-house providing model does not necessarily require the contracted company to perform the service entirely through its own human and instrumental resources. The award to third parties of specific services is therefore permitted, provided that the relevant operators are selected in compliance with the principles of public procurement (*evidenza pubblica*).

Indeed, whilst a private company competing in a tender procedure may freely identify its own subcontractor, given that the efficiency of the contract is ensured by the application of entrepreneurial management criteria in the context of market competition – in the case of an in-house company, such criteria are not sufficient to ensure the proper management of resources that are, ultimately, public, with the consequence that the selection of subcontractor must comply with public law rules.

The TAR Campania further clarified that responsibility for the performance of the service remains with the in-house company, which retains a role of coordination, control and monitoring of the outsourced activities, ensuring the correct and efficient delivery of the service as a whole.

To access the decision, click [here](#).

4) Council of State: the presence of a landscape constraint does not constitute an obstacle where the unauthorized works are exclusively internal in nature

By judgment No. 2993/2026, published on 15 April 2026, the Council of State ruled on the possibility of regularising an unauthorised building work carried out in an area subject to landscape protection constraints.

Referring to prior administrative case law, which had clarified that the frameworks on the so-called “third amnesty” (*terzo condono*) were applicable to works unlawfully carried out in restricted areas only where they could be classified as “minor works” (*opere minori*), the judges – with regard to areas burdened by landscape protection constraints – further clarified that, in such cases, the competent Authorities must also consider whether the intervention in question is effectively capable of causing a prejudicial impact on the landscape context in which it is situated.

Indeed, according to the Council of State, where the unlawfully carried out works are exclusively internal in nature and therefore not visible from the outside, no actual prejudice in landscape terms can be established.

Accordingly, where an application is submitted for the regularisation of an unauthorised work falling within an area burdened by landscape protection constraints, such work qualifies as a “minor work” and is exclusively internal in nature, the applicability of the regularization framework under

the so-called “third amnesty” is lawful, provided that such circumstances are duly certified by the applicant and are not contested by the Authority.

To access the decision, click [here](#).

5) Administrative Justice Council for the Region of Sicily: in matters of unlawful plot development (*lottizzazione abusiva*), the automatic application of ablatory measures against a subsequent purchaser of the area in question is unlawful

By judgment No. 246/2026, published on 14 April 2026, the Administrative Justice Council for the Region of Sicily addressed the question of the limits of the repressive powers of Municipalities in matters of unlawful plot development (*lottizzazione abusiva*) and the protection of purchasers in good faith.

In the first place, a clarification is provided on the institute of unlawful plot development (*lottizzazione abusiva*), which “*sits at the point of maximum tension between three sets of requirements: on the one hand, the public protection of planning and territorial governance, a primary and inalienable interest; on the other, the regulation of real estate transactions, which the legal system builds around public form, legal publicity, documentary obligations and instruments for the knowability of urban planning risk, with a view to guaranteeing the general security of legal commerce; and on the other still, the body of procedural and substantive guarantees – today inevitably read also in the light of the multi-level conventional and constitutional system – that become operative where the response of the legal order, rather than stopping short at classic prohibitory or restorative measures, tends to project itself towards an ablatory outcome, in the form of gratuitous acquisition or, in a different circuit, confiscation*”.

In particular, the decision reaffirms that the administration cannot automatically apply the sanctions provided for by the Consolidated Building Act (*Testo Unico Edilizia*) without first ensuring compliance with the rules of administrative procedure; the Municipality is required to give notice of the commencement of the procedure to the parties involved, enabling them to participate and to put forward their defenses.

The administrative judge further underlines the need to distinguish the position of any party responsible for the unlawful act from that of third parties who have purchased the property without awareness of the urban planning violation. In such latter cases, the good faith and legitimate expectation of the third party take on additional significance, imposing on the public administration a heightened burden of investigation and reasoning where public action tends towards the dispossession of the asset at the expense of the subsequent third party.

To access the decision, click [here](#).

STRUCTURED FINANCE, CAPITAL MARKETS AND FINTECH

6) EBA: consultation on amendments to the RTS on the assignment of risk weights to specialized lending exposures under the Supervisory Slotting Criteria Approach

On 7 May 2026, the European Banking Authority (“EBA”) launched a public consultation on the proposed amendments to Commission Delegated Regulation (EU) 2021/598, containing the regulatory technical standards (“RTS”) on the assignment of risk weights to specialized lending exposures under the Supervisory Slotting Criteria Approach (“SSCA”), developed pursuant to Article 153(9) of Regulation (EU) 2013/575 (the “CRR”).

In particular, the amendments proposed by the EBA are aimed at:

- aligning the Delegated Regulation with the amendments introduced by Regulation (EU) 2024/1623 (“CRR 3”);
- inserting into the RTS specific references to ESG factors, to clarify how such factors are to be taken into account in the application of the supervisory slotting criteria; and
- improving the simplified and harmonized application of the assessment criteria.

Through these amendments, the EBA aims to ensure consistent and robust prudential treatment of specialized lending exposures under the SSCA across the Union, in support of sound risk management and financial stability.

The [consultation](#) will remain open until 7 August 2026.

EMPLOYMENT LAW

7) Italian Supreme Court: on mobbing in cases of repeated unjustified reprimands

By judgment No. 12547, published on 4 May 2026, the Italian Supreme Court confirmed that the implementation of particularly persistent and unjustified monitoring by the employer may be relevant, together with other conduct, for the purposes of establishing a case of workplace mobbing.

The Supreme Court recognised the existence of a mobbing scenario where persecutory conduct, motivated by a harassing intent and carried out in a systematic and prolonged manner by a superior against an employee, had taken place. In particular, having regard to the totality of the conduct engaged in by the superiors against the employee – all characterised by the requisite *animus nocendi* and consisting of unjustified and excessive monitoring activity, systematic differential treatment compared to colleagues, continuous and unmotivated reprimands, the unjustified denial of leave, as well as the established downgrading (*demansionamento*), the Supreme Court held the concept of mobbing to be satisfied.

To access the decision, click [here](#).

8) Decree-Law No. 62 of 30 April 2026, containing urgent provisions on fair wages (*salario giusto*), employment incentives (*incentivi all'occupazione*) and the fight against digital labour exploitation (*caporalato digitale*) published in the Official Gazette

On 30 April 2026, [Decree-Law No. 62 of 30 April 2026](#), containing “*Urgent provisions on fair wages, employment incentives and the fight against digital labour exploitation*”, was published in the Official Gazette. The decree entered into force on 1 May 2026.

The measure is structured along three main pillars:

- employment incentives: social security contribution exemptions are provided for the hiring of women, youths and the unemployed in the so-called Special Economic Zone for Southern Italy (*Zona economica speciale per il Mezzogiorno*). The decree further introduces an exemption from employer-side social security contributions for private employers who, in the period from 1 August to 31 December 2026, convert fixed-term employment relationships of no more than 12 months – established by 30 April 2026 – with workers under 35 with no prior experience of stable subordinate employment into permanent contracts;
- fair wage: the concept of “fair wage” is defined pursuant to and for the purposes of Article 36 of the Constitution, by reference to the “overall economic treatment” (*trattamento economico complessivo*) set for in national collective agreements “*entered into by the employer and worker organizations that are comparatively most representative at national level, having regard to the relevant productive sector and category, as well as the principal or prevalent activity carried out, the*

size and the legal nature of the employer". Access to the benefits provided for under the decree is expressly made conditional on the application of that remuneration standard; and

- fight against digital labour exploitation: the decree intervenes in particular on the criteria for the classification of the employment relationship mediated through digital platforms, establishing that such relationship is presumed to be of a subordinate nature, unless proved otherwise, where indicators of control or external direction (including when exercised through algorithmic management) emerge. Transparency obligations and supervisory mechanisms applicable on digital platform operators are also strengthened.

REAL ESTATE

9) Decree Law No. 66 of 7 May 2026, containing urgent provisions for the Housing Plan, has been published in the Official Gazette

On 7 May 2026, [Decree-Law No. 66 of 7 May 2026](#), the so-called “**Housing Plan**” (*Piano Casa*), was published in the Official Gazette. The decree introduces a comprehensive measure aimed at the recovery and regeneration of the public residential housing stock, with a focus on urban regeneration and the increase in the supply of housing at capped rents.

The decree – with a view to addressing the housing needs of young people and university students, out-of-town workers, young couples and separated parents, as well as to implementing models of solidarity-based domestic cohabitation for elderly persons (*senior cohousing*) and intergenerational cohousing – sets out extraordinary measures to promote the development and enhancement of public, social and integrated residential housing projects, intended for sale or rental at capped prices, including through building replacement interventions, recovery and conversion of non-income-generating and unused public real estate assets, and projects to counter urban, building, environmental and social degradation or for urban regeneration, with the aim of increasing the sustainable supply of affordable housing.

In particular, the decree provides, *inter alia*, for an extraordinary programme for the recovery of unused or non-standard public housing units, intended to be returned to the market through leases or subsidised disposals. The identification of the relevant properties is entrusted to an extraordinary commissioner who will determine the assets involved, operating in coordination with local authorities and public companies. Administrative simplifications are also introduced: the simplified services conference (*conferenza di servizi semplificata*) procedure applies to interventions for the recovery of public assets, with reduced time limits (30 days, or 40 where constraints apply) and procedural acceleration mechanisms. For urban planning, building restructuring and demolition and reconstruction interventions, recourse to the SCIA (*Segnalazione Certificata di Inizio Attività*) is permitted.

The decree entered into force on 8 May 2026.

BANKING / FINANCIAL / INSURANCE REGULATION

10) ESMA: consultation on guidelines on stress test scenarios under the MMF Regulation

On 5 May 2026, the European Securities and Markets Authority (“ESMA”) launched a public consultation on a new approach for the update of the parameters relating to the stress test scenarios provided for under the regulatory framework for money market funds (“MMFs”) under Regulation (EU) 2017/1131 (the “**MMF Regulation**”).

In particular, ESMA – with a view to simplifying the process of updating the stress test guidelines and improving their accessibility – proposes to replace the current mechanism, which provides for the annual update of those guidelines by ESMA, with an annual online publication of the relevant benchmark parameters. Under the proposed approach, the guidelines would continue to define the reference framework and methodology for stress tests, while ESMA’s website would serve as a single access point for the updated parameters, enabling market operators to apply those new parameters immediately after their approval.

The [consultation](#) will remain open until 6 August 2026.

11) Bank of Italy: the guide to prudential supervision of banks and financial intermediaries updated and restructured

On 5 May 2026, Bank of Italy published the 17th [update](#) to Circular No. 269 of 7 May 2008, containing the Guide to supervisory activity, as part of the broader process of simplification of the prudential supervisory framework applicable to banks and non-banking supervised intermediaries.

The principal innovation introduced consists in a new structure of the Guide, organized into five thematic modules dedicated, respectively, to:

- the supervisory review and evaluation process (*SREP*);
- inspection activity;
- supervisory action and sanctioning procedures;
- administrative procedures; and
- organization and coordination.

Each module is in turn subdivided into three levels of depth: level 1 sets out the general principles; level 2 collects the more analytical aspects relating to supervisory methodologies and processes; level 3 comprises the technical annexes of a more operational character.

Bank of Italy has communicated that it will assess possible expansions of the public version of the Guide, the sharing of further simplification initiatives in processes and methodologies, as well as the development of further functionalities for the search and access to content.

12) ESMA: simplified reporting requirements for funds

On 4 May 2026, the European Securities and Markets Authority (“ESMA”), as part of the broader program of simplification and reduction of reporting burdens launched in 2025, published a [report](#) on the integrated collection of fund data.

In particular, in the report, developed pursuant to Articles 69-bis of Directive (EU) 2011/61 (the “AIFMD”) and 20-bis of Directive (EC) 2009/65 (the “UCITS Directive”), ESMA outlined a transition from fragmented national reporting to an integrated European reporting framework centered on a single common reporting model designed to remain proportionate to the different sizes of funds and the different investment strategies, while at the same time meeting supervisory needs. ESMA’s objective is to reduce duplications, improve data consistency and enhance their usability for authorities. To that end, ESMA proposes a hybrid operational model, pursuant to which data validation, storage and analysis will be organized at European level, while data collection will remain at national level.

13) ESMA: consultation on draft guidelines on endorsement under the ESG Ratings Regulation

On 29 April 2026, the European Securities and Markets Authority (“ESMA”) launched a public consultation on the draft guidelines on the endorsement of non-EU ESG ratings, developed in implementation of Regulation (EU) 2024/3005 on the transparency and integrity of environmental, social and governance rating activities (the “ESG Ratings Regulation”).

The ESG Ratings Regulation establishes a regulatory framework for providers of ESG ratings in the European Union and includes specific provisions which set out how ESG rating providers established in the Union can endorse ratings from outside the Union, with a view to ensuring market integrity and investor protection.

The guidelines are aimed at supporting the consistent application of the endorsement regime, providing in particular guidance on the information to be submitted by the ESG rating providers as part of the relevant endorsement application. Through the consultation, ESMA intends to gather contributions to ensure that the guidelines are clear, proportionate and applicable in practice, in line with the objectives of the ESG Ratings Regulation.

The [consultation](#) will remain open until 29 May 2026.

14) EBA: final guidelines on supervisory independence and on management of conflicts of interest under the CRD

On 28 April 2026, the European Banking Authority (“EBA”) published the final [Guidelines](#) on supervisory independence under Directive (EU) 2013/36 (the Capital Requirements Directive, “CRD”), developed pursuant to Article 4 bis para.9 of the same Directive.

The Guidelines clarify the arrangements that competent authorities should adopt to prevent and manage conflicts of interest involving their staff and the members of their governance bodies. In particular, the Guidelines:

- set out minimum harmonised standards for the submission and assessment of declarations of interest on a pre-employment, annual and ad-hoc basis;
- introduce harmonised procedural requirements for the sale or disposal of financial instruments that may give rise to conflicts of interest, also specifying the prohibition on trading provided for by the CRD;
- define procedures and assessment criteria for the determination of the duration of so-called “cooling-off” periods, ensuring a proportionate and consistent approach across the EU where national laws allow for cooling-off periods beyond the minimum period set out in the CRD.

15) EIOPA: draft technical standards on resolution colleges and reporting requirements (IRR) submitted to the European Commission

On 24 April 2026, the European Insurance and Occupational Pensions Authority (“EIOPA”) submitted to the European Commission two draft technical standards to support the implementation of Directive (EU) 2025/2169 on the recovery and resolution of insurance undertakings (the **Insurance Recovery and Resolution Directive**, “IRR”), whose operation is envisaged from 2027.

The [first draft](#) defines the regulatory technical standards (“RTS”) on the functioning of resolution colleges, *i.e.* the colleges responsible for coordinating the resolution activities of insurance groups. The RTS define the operational modalities of the colleges, with particular reference to cooperation in the preparation of resolution plans, the assessment of the resolvability of groups and the address of substantive impediments to such resolvability, as well as the governance principles applicable in the resolution of cross-border groups.

The [second draft](#) concerns the implementing technical standards (“ITS”) governing the procedures and a minimum set of standardized templates and forms that insurers should use when submitting to resolution authorities the information required for the preparation of resolution plans. The ITS have been prepared taking into account the existing reporting procedures under Directive (EC) 2009/138 (the so-called “**Solvency II**”) and the experience of national supervisory authorities with resolution-related reporting, with the objective of limiting the administrative burden on insurers.

16) FSB: guidelines on insurers subject to the recovery and resolution planning requirements

On 29 April 2026, the Financial Stability Board (“FSB”) published the [final report](#) containing the guidelines on the scope of application of the recovery and resolution planning (“RRP”) requirements for insurers, in line with the FSB’s key attributes of effective resolution regimes for financial institutions (the “**Key Attributes**”).

The document offers supervisory authorities a structured approach for assessing which insurance companies should be subject to RRP requirements. In particular, the guidelines outline six key criteria that authorities should consider: (i) nature; (ii) scale; (iii) complexity; (iv) substitutability; (v) cross-border activities; and (vi) interconnectedness with the financial system.

The guidelines further identify specific circumstances in which RRP requirements should apply, such as when an insurer provides a critical function or when its failure is likely to have a material impact on the financial system or the real economy. The approach aims to promote the consistent application of the Key Attributes across jurisdictions, while at the same time maintaining a degree of flexibility to accommodate differences in market structures, legal frameworks and supervisory practices. The guidelines are also aligned with the Insurance Core Principles of the International Association of Insurance Supervisors.

RESTRUCTURING AND INSOLVENCY PROCEEDINGS

17) EBA: amendments to the guidelines on the definition of default

On 7 May 2026, the European Banking Authority (“EBA”) published the [final report](#) amending the guidelines on the application of the definition of default, developed in implementation of Article 178 of Regulation (EU) 2013/575 (the “CRR”), as amended by Regulation (EU) 2024/1623 (“CRR 3”), which mandates the EBA to review and update the Guidelines.

In particular, the principal amendments introduced concern the following aspects:

- with regard to non-recourse factoring, the reference period for the technical past-due treatment at the of individual invoice level has been extended from 30 to 90 days, with a view to better reflecting the operational features of invoice-based receivables and reducing the risk of incorrect default classification; and
- the guidelines have been aligned with the amendments introduced by CRR 3; and
- the adequacy of the 1% threshold applied to reductions in net present value (the so-called “NPV threshold”) has been confirmed as sufficiently flexible, risk-sensitive and consistent with the accounting framework, as well as aligned with the other thresholds used for the identification of default. An increase in the NPV threshold would risk undermining the efforts made after the financial crisis to reduce non-performing loans, with consequent significant operational costs.

CASE LAW

18) Italian Supreme Court: on failure to agree in writing individual contractual clauses and burden of proof

The holder of a bank account who brings an action for the recovery of sums received by the bank on the ground of the nullity of individual contractual clauses for their failure to be agreed in writing cannot subsequently allege the failure to agree the contract itself in writing, the burden of proving which lies in any event on the claimant and cannot be considered satisfied by the mere non-compliance of the bank with a request under Article 119, fourth paragraph, of the Consolidated Banking Act.

By Order No. 12216/2026, published on 1 May 2026, the Italian Supreme Court again ruled on the action for recovery of sums unduly paid brought by the holder of a bank account against the credit institution, specifying the pleading and evidentiary burdens incumbent on the claimant who alleges the failure to agree in writing individual contractual clauses or the account contract itself.

The dispute subject to the proceedings concerned the action brought by a company to obtain, among other things, a declaration of the nullity of the provisions on above-legal-rate debit interest applied by the bank on two advance account agreements (*conti anticipati*), on the ground that they had not been agreed in writing, and the related order for the credit institution to refund the sums charged on that basis.

On appeal against the first-instance judgment, which had been entirely in favour of the claimant, the Court of Appeal reformed the Tribunal's ruling on that point on the basis of two considerations. In the first place, the Court of Appeal held that, since the claimant had alleged in the introductory pleading at first instance only the failure to agree in writing the clauses on debit interest, it had forfeited the right to allege the failure to agree in writing the advance account contracts (*contratti di conto anticipati*) themselves. In the second place, the Court of Appeal held that, even if the claimant were considered entitled to expand its claim in that direction, the burden of proving the failure to agree the contracts in writing would in any event lie with it, and that burden would have to be discharged by means of a prior request for copies of the contracts from the bank (pursuant to Article 117, first paragraph, of the Consolidated Banking Act) or by means of an application for their production in the course of the proceedings (pursuant to Article 210 of the Code of Civil Procedure).

Against those rulings of the Court of Appeal, the company raised two grounds of appeal on a point of law centred on the argument that the burden of proving the agreement in writing of the advance account contracts (*contratti di conto anticipati*) should lie with the bank, in compliance with the principle of proximity of evidence (*vicinanza della prova*).

By way of preliminary observation, the Italian Supreme Court reaffirmed the principle that *"the account holder who claims the restitution of sums unduly paid by reason of void clauses must prove the*

absence of the cause of the payments, by producing in the proceedings the contract containing those clauses".

After that, the Italian Supreme Court characterised as primarily inadmissible the two grounds of appeal under examination, on the ground that they were directed against an ancillary head of the impugned judgment (that concerning the proof of the failure to agree the contracts in writing) rather than against the truly decisive head of the judgment (that which had held the subject matter of the dispute to be confined to the failure to agree individual contractual clauses in writing).

The two grounds of appeal were accordingly held to be inadmissible, as *"the appellant contests the impugned decisions as regards the allocation of the burden of proof on the failure to agree the advance account contracts in writing, given that the Court of Appeal addressed that matter only by way of hypothesis, having found that the challenges set out in the original statement of claim had focused only on the absence of the written agreement of certain clauses and that, accordingly, the [company] had not pleaded, at first instance, that the advance account contracts had been concluded only verbally"*.

In any event, the Italian Supreme Court also held the two grounds of appeal of the company relating to the burden of proof to be unfounded, finding that the burden of proving the failure to agree the contracts in writing could not be considered discharged by the mere non-compliance of the credit institution with the request under Article 119, fourth paragraph, of the Consolidated Banking Act submitted by the company prior to the commencement of the proceedings.

On that point, the Italian Supreme Court noted in particular that *"the appellant did not allege having complained, at first instance, of the Bank's failure to comply with the obligation to deliver of the advance account contracts at the time of their conclusion, pursuant to Article 117, paragraph 1, of the Consolidated Banking Act, so that, in the absence of such a complaint, there was no obligation on the Bank to demonstrate that it had complied with that delivery"*. The Supreme Court further rejected an additional argument of the company based on the fact that the bank had produced the current account contracts (*contratti di conto corrente*) but not the advance account contracts (*contratti di conto anticipi*) in the proceedings, observing that from that circumstance *"no proof can be drawn [...] as to the agreement in writing of the clauses of the advance account contracts (contratti di conto anticipi)"*.

To access the text of the decision, click [here](#).

19) Italian Supreme Court: the clause of a guarantee contract (*contratto di fideiussione*) derogating from Article 1957, first paragraph, of the Italian Civil Code is unfair where the guarantor is a consumer

The clause of a guarantee contract (contratto di fideiussione) derogating from Article 1957, first paragraph, of the Italian Civil Code by exempting the creditor from compliance with the six-month time limit for bringing proceedings against the principal debtor is an unfair term and void where the guarantor

is a consumer, with the consequence that its invalidity must be raised by the court of its own motion (d'ufficio).

By Order No. 11858/2026, published on 29 April 2026, the Italian Supreme Court ruled on the validity of a clause derogating from Article 1957, first paragraph, of the Civil Code inserted in the general conditions of a guarantee contract (*contratto di fideiussione*) incumbent on a consumer, confirming its nullity as an unfair term and reaffirming the duty of the court to raise its nullity of its own motion (*d'ufficio*).

The dispute subject to the proceedings originated from an order for payment (*decreto ingiuntivo*) obtained by a bank against two guarantors for the payment of sums owed by a principal debtor company. In both stages of the proceedings challenging the order for payment (*giudizio di opposizione a decreto ingiuntivo*), the two guarantors had argued that the bank should be considered to have forfeited the right to enforce the personal guarantee, as the application for the order for payment (*ricorso per decreto ingiuntivo*) had been filed more than six months after the expiry of the principal obligation (pursuant to Article 1957, first paragraph, of the Italian Civil Code) and the clause derogating from Article 1957, first paragraph, of the Italian Civil Code agreed in the guarantee contract (*contratto di fideiussione*) should be held void as an unfair term (*vessatoria*) pursuant to consumer protection legislation. The Court of Appeal had, however, rejected that plea of the opposing parties, holding that, since they had omitted to raise it in the statement of claim challenging the order for payment, they had forfeited the right to raise it in the course of the proceedings on the merits.

Seized of the appeal on a point of law lodged by the two opposing parties, the Italian Supreme Court first confirmed that “*the clause of a guarantee contract (contratto di fideiussione) derogating from Article 1957, first paragraph, of the Italian Civil Code, in favor of the creditor, by exempting it from compliance with the six-month time limit provided therein for enforcing its rights against the defaulting principal debtor, must be considered unfair (vessatoria) pursuant to Article 1469-bis of the Civil Code (applicable ratione temporis)*”. This is because, “*in derogating in broader terms from the six-month period following the expiry of the principal obligation provided for by Article 1957 of the Italian Civil Code, the period during which the Bank may bring proceedings not only against the principal obligor but also against the guarantor, holding an obligation accessory to that of the principal debtor, who also remains bound towards the guaranteed creditor Bank, is extended*”.

The Supreme Court further reaffirmed that the said consumer protection legislation, now incorporated into the Consumer Code (Legislative Decree No. 206 of 6 September 2005), “*stands alongside the – separate and different but concurrent – framework under Articles 1341, second paragraph, and 1342 of the Italian Civil Code on onerous clauses in general conditions of contract, relating to contracts unilaterally drawn up by one party on the basis of standard forms or formularies for use in an indefinite series of transactions*”.

From this the Italian Supreme Court drew the conclusion that, in respect of a clause derogating from Article 1957, first paragraph, of the Italian Civil Code incumbent on a consumer guarantor, *“whether by means of the unilateral preparation of standard forms or formularies for use in an indefinite series of transactions (Articles 1341, second paragraph, 1342 of the Civil Code) or on the occasion of the conclusion of a single contract drawn up for a specific transaction, through the unilateral preparation and imposition of the relevant contractual content, the professional party may indeed assert its (de facto) contractual authority over the consumer”*, the consequence being a *“breach of the private autonomy of the consumer [...] [which] founds, in both scenarios, the application of the consumer protection framework in question”*.

In the light of the foregoing, the Supreme Court accordingly quashed with remittal the judgment of the Court of Appeal, on the ground that, by failing to apply the said consumer protection framework, *“the court of merits failed to verify of its own motion the scope of the contractual clause waiving the time limits under Article 1957 of the Italian Civil Code, as it was required to do, it being an unfair term (clausola vessatoria) that creates to the detriment of the consumer a significant imbalance in the rights and obligations arising from the contrac”*.

To access the text of the decision, click [here](#).

OTHER RELEVANT NEWS

20) European Commission: consultation on draft delegated regulations on simplified and voluntary sustainability standards

On 6 May 2026, the European Commission launched a public consultation on (i) the [draft Delegated Regulation](#) amending Delegated Regulation (EU) 2023/2772 relating to the simplification of certain sustainability reporting standards, and (ii) the [draft Delegated Regulation](#) supplementing Directive (EU) 2013/34 by establishing sustainability reporting standards for voluntary use by undertakings protected by the value chain cap.

In particular:

- the amendments proposed – by means of the first Delegated Regulation – to the current European Sustainability Reporting Standards (“ESRS”) are aimed at clarifying the provisions of Delegated Regulation (EU) 2023/2772 considered unclear and at simplifying the structure and presentation of the standards without, however, compromising the objectives of Directive (EU) 2022/2464 (the “CSRD”), which requires certain undertakings to publicly disclose information concerning the undertaking’s impacts, risks and opportunities in relation to sustainability matters;
- by means of the second Delegated Regulation, the Commission aims to align the voluntary sustainability reporting standards introduced by Directive (EU) 2013/34 (as amended by the CSRD and Directive (EU) 2026/470) with the revised ESRS, enabling undertakings in the value chain with no more than 1,000 employees (the so-called “**protected undertaking**”), not subject to reporting obligations, to access sustainable finance and to understand and monitor their own sustainability performance, thereby improving their resilience and competitiveness, as well as their reputation with consumers, stakeholders and regulatory authorities.

The consultation will remain open until 3 June 2026.

CRCCD NEWS edited by

Elena Ghi and Claudia Marcuzzo

Contributors to this edition:

Alberta Berruti, Sofia Cavallina, Federico Li Pomi, Matteo Manenti, Anna Manfredini, Nicolò Orlich, Flaminia Pallini, Benedetta Pedrolli, Mohammad Shamal, Luca Simoni, Gregorio Torazzi, Raffaella Tortora, Chiara Uggias, Giulia Vianello.