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CRCCD NEWS

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SUMMARY

ADMINISTRATIVE & COMPETITION LAW

1) Council of State on the right of pre-emption and Project Financing: a procedural clarification of great practical importance

By judgment No. 3805/2026, published on 14 May 2026, the Council of State (the "**CdS**"), in compliance with the principle of the claim (*principio della domanda*), formally aligned itself with the Court of Justice of the EU (judgment of 5 February 2026, C-810/24) on the incompatibility of the right of pre-emption provided for under the Italian framework on Project Financing with the EU principles of competition and equal treatment, adding a clarification of a procedural nature but of great practical importance.

In particular, the CdS, whose subject matter of scrutiny "*is [...] whether, and on what terms, the ruling of the Court of Justice produces effects on the lawfulness of the challenged award decision [...] as it is based on the exercise of the right of pre-emption*", held that the conflict between the right of pre-emption and EU law constitutes a ground for voidability (*annullabilità*) and not of nullity (*nullità*) of the clauses of tender notices providing for it.

This clarification is of fundamental importance in that any clause of a tender notice that still provides for the right of pre-emption does not disappear automatically, but must be independently challenged by the interested competitor.

Accordingly, where no challenge is brought, the clause providing for the right of pre-emption remains effective, the court being unable to proceed on its own motion to disapply it.

To access the decision, click here.

2) Administrative Court of Lombardia: the Teatro alla Scala foundation is an entity governed by public law and is therefore required to apply the Public Procurement Code

By judgment No. 2271/2026, published on 11 May 2026, the Administrative Court of Lombardia held that the Teatro alla Scala foundation, Milan (the "**Foundation**") must be classified as an entity governed by public law, with the consequence that it is subject – when awarding contracts for works, services and supplies – to the application of the public procurement rules set out in the Public Procurement Code.

The decision under examination, on the one hand, retraces the case-law on entities governed by public law developed within the Court of Justice of the EU while, on the other hand, examines the Foundation in its entirety, taking into account all its peculiarities, ultimately concluding that these are not sufficient to demonstrate that it falls outside the classification as an entity governed by public law.

The Foundation, according to the judges, satisfies all three conditions, of EU origin, required for the classification of an entity as a body governed by public law: (a) the legal personality requirement, it being an entity endowed with legal personality under private law; (b) the requirement of dominant influence by a public entity, it being an entity subject to strict public control; (c) the teleological requirement, in that it is established to promote musical culture and thus to satisfy needs of general interest of a non-industrial and non-commercial nature.

To access the decision, click here.

3) European Commission: consultation on draft revised State aid rules for air transport

On 11 May 2026, the European Commission has launched a public consultation on the draft revised Guidelines on State aid to the air transport sector.

The draft updates the framework in force since 2014, in the light of the significant transformations undergone by the sector: from the COVID-19 pandemic to the energy crisis, through to the ambitious decarbonization objectives of the European Green Deal.

The main changes concern:

- operating aid to regional airports:
  - it will be possible exclusively for airports with fewer than one million passengers per year;
  - for those with up to 500,000 yearly passengers, an automatic exemption is envisaged under the new General Block Exemption Regulation (expected by end 2026);
  - airports between 500,000 and one million yearly passengers may instead benefit from operating aid to airports with up to one million passengers per year during a transitional period of five years;
- investment aid, which will be possible only for airports with up to three million passengers per year, with stricter environmental requirements for new infrastructure;
- start-up aid to launch new routes will no longer be allowed.

Furthermore, the Commission considers that the air transport sector may benefit from specific State aid measures for decarbonisation already provided for under existing rules, such as the Guidelines on State Aid for Climate, Environmental Protection and Energy, the forthcoming new General Block Exemption Regulation and the Clean Industrial Deal State Aid Framework.

The consultation will remain open until 11 June 2026.

STRUCTURED FINANCE, CAPITAL MARKETS AND FINTECH

4) Consob: amendments to the regulations implementing the Listing Act and the *Legge Capitali*

On 26 May 2026, Consob Resolution No. 23979 of 14 May 2026, introducing amendments to the regulations on issuers, markets and related-party transactions, in implementation of Regulation (EU) No. 596/2014 ("**MAR**"), as amended by the so-called *Listing Act*, and of Law No. 21/2024 (the so called "***Legge Capitali***"), was published in the Official Gazette.

In particular, the proposed amendments are aimed at removing certain burdens and compliance requirements incumbent on operators and issuers, while maintaining the focus on investor protection and market integrity. The amendments form part of the process of modernization and rationalization of the regulatory framework with a view to promoting the competitiveness and growth of the Italian capital market.

The main changes concern:

- the increase from EUR 20,000 to EUR 50,000 of the threshold relevant for internal dealing disclosures, in line with European developments, with a view to focusing market attention on the most significant transactions;
- the simplification of procedures relating to prospectuses and public offerings through the removal of the obligation to file equity and non-equity securities prospectuses with Consob following approval by the Commission;
- the removal of disclosure obligations incumbent on the placement agent (*responsabile del collocamento*) at the closing of the offering;
- the simplification of subscription procedures for offerings, by removing the obligation to prepare a dedicated subscription form;
- the extension of the possibility of using the English language to documentation required by EU legislation in public offerings conducted without a prospectus.

The resolution will enter into force fifteen days after the date of its publication in the Official Gazette.

5) OIC: consultation on proposed amendments to accounting standard OIC 10 on the cash flow statement

On 20 May 2026, the *Organismo Italiano di Contabilità* ("**OIC**") launched a public consultation on the proposed amendments to accounting standard OIC 10 (*Cash Flow Statement*) concerning the criteria for the preparation and presentation of the cash flow statement (*rendiconto finanziario*).

An empirical survey conducted on the cash flow statements published in 2022 revealed the need for OIC to intervene in order to clarify the accounting standard and reduce the issues identified, including - in particular - deficiencies in application and inconsistent practices among operators.

In particular, the OIC:

- introduces new classification rules;
- provides specific guidance, interpretative clarifications and concrete practical examples;
- proposes to classify cash flows relating to interest received and paid and dividends received on the basis of the nature of the transactions giving rise to them;
- clarifies interpretative doubts regarding cash flows arising from factoring and reverse factoring transactions; and
- introduces additional disclosure requirements on the composition of residual line items in the statement, where significant, with a view to ensuring an adequate level of transparency and comparability of the statement itself.

The consultation is open until 31 July 2026.

6) Bank of Italy: statistical survey on the management of non-performing loans

On 19 May 2026, the Bank of Italy prepared a statistical survey aimed at collecting the information necessary for the exercise of supervisory activity relating to the management of non-performing loans (*crediti in sofferenza*) on the basis of the supervisory provisions governing such management.

The survey is addressed to servicers of non-performing loans and, in part, to banks and financial intermediaries pursuant to Article 106 of the Consolidated Banking Act ("**TUB**") that carry out the non-performing loans management activities on behalf of purchasers of non-performing loans.

In particular, the survey must be submitted on an individual basis, or by the parent companies of groups that include banks and/or financial intermediaries pursuant to Article 106 of the TUB, that carry out the non-performing loans management activities on behalf of purchasers of non-performing loans, on a semi-annual basis, based on the information that will be made available through INFOSTAT.

The first survey, with a reference date of 30 June 2026, must be transmitted to Bank of Italy by 25 August.

7) Bank of Italy: EBA Guidelines on proportionate retail diversification methods implemented

On 19 May 2026, the Bank of Italy published Note No. 55 pursuant to which it stated that it had notified the European Banking Authority ("**EBA**") that it is compliant with the EBA guidelines on

proportionate retail diversification methods under Article 123(1) of Regulation (EU) No. 575/2013 (the "**CRR**") (the "**Guidelines**").

The Guidelines set out the metrics and thresholds to be used in order for retail exposures to be considered as one of a significant number of exposures with similar characteristics pursuant to Article 123(1) of the CRR, compliance with which is necessary to apply a preferential 75% credit risk weight to the retail portfolio.

Starting from from 19 May 2026, the Guidelines apply to less significant institutions and investment firms subject to the requirements under the CRR for which Bank of Italy is the competent authority; in particular, to entities that:

- apply the standardised approach for credit risk set out in Part Three, Title II, Chapter 2, of the CRR;
- apply the IRB approach for the purposes of calculating the output floor set out in Part Three, Title II, Chapter 3, of the CRR.

M&A

8) EU Court of Justice: beneficial ownership registers and trusts

On 21 May 2026, the EU Court of Justice (joined cases C-684/24 and C-685/24) ruled on the compatibility with EU law of the Italian regulatory framework concerning the beneficial ownership register, with particular reference to the information obligations incumbent on fiduciary companies *(società fiduciarie)* in relation to fiduciary mandates (*mandati fiduciari*).

The dispute concerned, in particular, the possibility of classifying Italian-law fiduciary mandates as legal arrangements similar to trusts within the meaning of the European anti-money laundering legislation, with consequent application of the obligations to communicate beneficial ownership information to the relevant register.

The Court clarified that EU law does not preclude a national legislation: (i) that classifies such fiduciary mandates among legal arrangements similar to trusts, where they present characteristics capable of giving rise to a separation between the person who administers or manages assets and the person in whose interest those activities are carried out; (ii) that permits access to beneficial ownership information on a trust or similar legal arrangement by private parties, in cases where knowledge of the beneficial ownership is necessary to pursue or defend an interest corresponding to a legally protected position, subject to certain conditions; (iii) that confers on a non-judicial administrative body the power to grant a derogation from access to beneficial ownership information. By contrast, in the Court's view, EU legislation does not provide that the beneficial owner concerned may benefit, in the event that such derogation is not granted, from provisional legal protection.

To access the decision, click here.

9) Italian Supreme Court: non-executive directors of supervised intermediaries are liable for failures in supervisory controls

By Order No. 13317/2026, published on 8 May 2026, the Italian Supreme Court again ruled on the supervisory duties incumbent on directors without operational delegations within supervised intermediaries, confirming the lawfulness of a sanction imposed by Bank of Italy against a former member of the board of directors.

The Italian Supreme Court reaffirmed that the absence of management delegations does not exempt directors from the obligation to exercise effective control over the conduct of delegated bodies and over the performance of the company. In particular, the duty of supervision cannot be reduced to a mere "passive waiting posture" ("*prestazione di attesa*"), but requires a concrete activity of monitoring, acquisition of information and verification of the adequacy of the organizational, administrative and control structures. In the case at issue, the Court held that the conduct of the directors conflicted with the obligation incumbent on them to foster genuine internal dialogue within the corporate

organization (which had instead been found to be deficient) on the substantive aspects of adequacy, prudence and freedom from operational risks.

To access the decision, click here.

REAL ESTATE

10) The Rome City Assembly (*Assemblea Capitolina*) approves the new Building Regulations of the City

On 12 May 2026, the Rome City Assembly (*Assemblea Capitolina*) approved the new Building Regulations of the City, updated with the objectives of the Climate Adaptation Strategy and the Climate Plan approved in 2025.

The resolution, proposed by the Urban Planning Assessorship (*Assessorato all'Urbanistica*), aims to ensure the environmental sustainability, climate adaptation and urban quality of building interventions in Rome. In particular, the measure redefines the criteria and requirements for building interventions in the light of the most recent European and national legislation in the energy and environmental fields.

Among the measure's main objectives, there is combating urban heat islands through concrete measures to improve the city's microclimate; particular attention is also given to energy and water conservation.

11) Italian Supreme Court: on the subordination (*postergazione*) of financing arising from a lease agreement between a shareholder and the company

By Order No. 13672/2026, published on 11 May 2026, the Italian Supreme Court ruled on shareholder loans to companies with particular reference to the granting of real estate assets to the company under a lease agreement.

In particular, the Court laid down the following principle: "*the shareholder loan provided for pursuant to Article 2467 of the Italian Civil Code also include the granting in favour of the company of real estate assets under a lease agreement, where such granting translates, by reason of the failure to collect the relevant rental instalments, into a voluntary and beneficial economic contribution by the shareholder, which has enabled the company to avoid immediately bearing the corresponding cost*".

The Supreme Court then revisited the interpretation of Article 2467, clarifying that the concept of "shareholder loans" must be construed in the broadest possible manner so as to include any subjective legal position that can be qualified as a "credit right" against the company, irrespective of the legal structure used from time to time.

In such case, the state of excessive imbalance in indebtedness constitutes, according to the Court, an obstacle to the shareholder's right to repayment of the financing made in favour of the company.

To access the decision, click here.

BANKING / FINANCIAL / INSURANCE REGULATION

12) Italian Supreme Court: on the violation of anti-money laundering obligations by banks

By judgment No. 13945/2026, published on 13 May 2026, the Italian Supreme Court, Third Civil Section, ruled on the civil liability of a credit institution towards the bankruptcy proceeding for alleged violations of anti-money laundering legislation.

The matter originated from the action brought by the insolvency administrator (*curatela fallimentare*) of a company against a bank, which was charged with allowing the continuation of banking relationships notwithstanding the obvious anomalies in the transactions carried out by the shareholders of the company – from 2006 to 2010 – without reporting the suspicious transactions to the supervisory authorities, in breach of Article 3 of Legislative Decree No. 231/2007.

The Court reiterated that anti-money laundering legislation is primarily of a public law nature and that its breach does not in itself constitute an automatic source of civil liability towards the customer; however, the anti-money laundering rules may become relevant in relations between private individuals when they are incorporated into the content of the contractual banking relationship, giving concrete form to the duties of correctness and good faith under Articles 1175, 1375 and 1218 of the Italian Civil Code.

In particular, the Court states that, where a bank has "*in practice ignored multiple and significant anomaly signals, such as to deviate substantially from the compliance model adopted*", effective civil liability of the bank itself may arise. Indeed, compliance with the anti-money laundering regulatory model must not remain a purely formal analysis: the compliance system *"cannot be of a formal nature [...] but must be capable of effectively combating the phenomenon of money laundering in practice"*.

To access the decision, click here.

13) New European rules on bank crisis management and depositor protection published in the EU Official Gazette

On 20 April 2026, two legislative acts significantly reforming the European framework for bank crisis management and depositor protection were published in the Official Gazette of the European Union.

In particular:

- Regulation (EU) 2026/808 amends Regulation (EU) 806/2014, strengthening coordination between the ECB, national authorities and the Single Resolution Board. Key changes include: clearer criteria for the assessment of the public interest for the purposes of recourse to resolution, more precise rules on bail-in in relation to liabilities of uncertain determination,

and a review of the functioning of the Single Resolution Fund, with new provisions on ex-post contributions and irrevocable payment commitments.

- Directive (EU) 2026/804 amends Directive (EU) 2014/49 (the so-called *Deposit Guarantee Schemes Directive*), expanding the scope of depositor protection. The Directive introduces additional protection for temporarily high deposits, with a minimum threshold of Euro 500,000 up to Euro 2.5 million for real estate transactions, for a period of six months. Preventive measures and cross-border cooperation between authorities are also strengthened.

The two acts complete the European reform package on crisis management launched in recent years.

RESTRUCTURING AND INSOLVENCY PROCEEDINGS

14) Italian Supreme Court: on the application for crisis resolution measures following the conclusion of a negotiated composition of crisis (*composizione negoziata della crisi*)

By Order No. 13997/2026, published on 13 May 2026, the Italian Supreme Court established a legal principle on access to crisis and insolvency resolution instruments whilst proceedings for the opening of judicial liquidation are pending.

The Court clarified that "*Article 40, paragraph 10, last sentence, of the Code of Business Crisis and Insolvency (CCII) provides for an exception to the general rule pursuant to which the application for access to a crisis and insolvency resolution instrument must be filed, on pain of forfeiture, by the first hearing scheduled pursuant to Article 41 of the CCII; the eligibility of the application, which may thus be deferred, is not, however, consistent with a time limit running from the mere withdrawal by the debtor from the administrative negotiated composition of crisis procedure; rather, it presupposes that the application is submitted once the negotiations conducted in the negotiated composition of crisis procedure have been concluded and, therefore, within sixty days of the communication of the expert's final report*".

The exception under Article 40, paragraph 10, last sentence, is therefore functional to finalising the outcome of the negotiations conducted during the negotiated composition of crisis procedure, balancing the need to facilitate restructuring with the need to avoid dilatory conducts that are detrimental to creditors and to the relevant market.

To access the decision, click here.

15) ESMA: resolution briefing on the effective use of resolution tools in CCP crisis planning published

On 13 May 2026, the European Securities and Markets Authority ("**ESMA**") published a resolution briefing on the effective application of resolution tools in the crisis planning of central counterparties ("**CPs**"), developed under the regulatory framework established by Regulation (EU) 2021/23 on the recovery and resolution of CCPs (the "**CCPRRR**").

ESMA's briefing is addressed to national resolution authorities ("**NRAs**") and aims at providing practical guidance on how to operationalise the write-down and conversion of instruments tool ("**WDCI**") available in CCP crisis scenarios.

In particular, NRAs should define the relevant data to be collected by the CCPs, with a view to calibrating the resources available through a WDCI. In doing so, NRAs should take into account the impact on relevant stakeholders, such as clearing members, financial markets and financial market infrastructures. The authorities should ensure that processes are in place for the effective implementation of the WDCI, including preparations for the subsequent reorganization of the CCP following the application of the WDCI.

ESMA's promotion of consistent practices across jurisdictions supports the effectiveness of financial markets and financial stability, which are strategic priorities for ESMA itself.

16) Italian Supreme Court: on the "attenuated dispossession" (*spossessamento attenuato*) regime pursuant to Art. 167 of the Bankruptcy Law

By Order No. 13242/2026, published on 7 May 2026, the Italian Supreme Court enunciated a principle of law in the area of composition with creditors (*concordato preventivo*) introduced by application pursuant to Article 161, paragraph 6, of Royal Decree No. 267/42 (the **"Bankruptcy Law"**), the so-called composition with creditors *"with reservation"* (*concordato con riserva*).

The Court clarified that the prohibition on commencing or continuing enforcement or interim actions provided for under Article 168 of the Bankruptcy Law does not preclude the tax authority from enrolling and notifying a tax demand (*cartella di pagamento*) against the debtor admitted to the composition with creditors. However, from the date of filing of the application, the regime of "attenuated dispossession" (*spossessamento attenuato*) under Article 167 of the Bankruptcy Law applies and, as a consequence, the payment of pre-petition debts – including tax debts subject to instalment arrangements – constitutes an act of extraordinary administration and is permitted only with the prior authorization of the delegated judge.

It follows that the failure to pay the instalments, resulting from compliance with that regulatory constraint, cannot be characterized as intentional breach, nor can it justify the application or recovery of penalties linked to the forfeiture of the benefit of the instalment arrangement. This regime applies in full also during the reservation phase of the composition with creditors with reservation (*concordato con riserva*), given the immediate operation of the "attenuated dispossession" (*spossessamento attenuato*) regime from the filing of the application.

To access the decision, click here.

CASE LAW

17) Italian Supreme Court: on the right of the consumer, in the event of early repayment of a consumer credit agreement (even if executed before 25 July 2021), to receive the pro rata restitution of all costs incurred at the time of execution

In the event of early repayment of a consumer credit agreement, the consumer is entitled to the pro rata restitution of all costs incurred at the time of execution, including not only recurring costs but also up-front costs, even if the agreement has been executed before 25 July 2021.

By the order no. 13328/2026, published on 8 May 2026, the Italian Supreme Court ruled on the right of the consumer to a reduction of the total cost of credit in the event of early repayment of a consumer credit agreement executed before 25 July 2021, i.e. the date of entry into force of the new formulation of Article 125-sexies of the Consolidated Banking Act ("**TUB**").

The dispute originated from the early repayment of a salary-backed loan (*contratto di finanziamento contro cessione di quote della pensione*), on the occasion of which the bank had recognized in favour of the consumer a reduction limited to the costs referable to the residual life of the agreement, excluding the pro rata reimbursability of distribution network commissions, as they could be characterized as up-front costs. The consumer had accordingly brought proceedings to obtain restitution of the unaccrued portion of those up-front commissions, obtaining a favourable outcome at both stages of the proceedings on the merits. In support of their decisions, the lower courts had referred to the principle, affirmed by the Court of Justice of the European Union in the Lexitor judgment (Case C-383/18), according to which the reduction of the total cost of credit provided for under Article 16(1) of Directive 2008/48/CE must be extended to all costs charged to the consumer, and therefore not only to recurring costs but also to up-front costs.

The financing bank filed an appeal on a point of law, arguing that, by virtue of the transitional provision under Article 11-octies, paragraph 2, of Decree-Law No. 73/2021, the former Article 125-sexies of the TUB should continue to apply to agreements concluded before 25 July 2021, with the consequence that only recurring costs would be reimbursable.

Seized of the matter, the Italian Supreme Court first referred to the Lexitor judgment, emphasizing that that ruling of the Court of Justice "*enshrined the principle of reimbursability of all costs connected with the extension of credit*".

The Court then examined the transitional provision under Article 11-octies, paragraph 2, of Decree-Law No. 73/2021. Noting that the original formulation of that provision was declared constitutionally illegitimate by the Constitutional Court in judgment No. 263 of 2022, it drew from the latter confirmation of the principle that "*in the event of early repayment of a consumer credit agreement, the consumer is entitled to the pro-rata restitution of all costs incurred at the time of execution, even where that took place before 25 July 2021, the date of entry into force of the new Article 125-sexies of the TUB*", with

reference to "*each individual cost item incurred by the [consumer] in connection with the financing granted, whether up front or recurring*".

The Supreme Court then excluded that the subsequent amendment of the same transitional provision, made by Law No. 103/2023, could justify a different conclusion, observing that the provision now makes "*literal reference to compliance with EU law and the rulings of the Court of Justice of the European Union: if the legislature wished to emphasize that for agreements executed before 25/07/2021 the former text of Article 125 sexies of the TUB applies in compliance with EU law as interpreted by the CJEU, it is evident that that article must still be interpreted in accordance with the dictates of the "Lexitor" judgment, with consequent reimbursability also of up-front costs in proportion to the actual duration of the financing*". It further specified that distribution commissions must be included among up-front costs, even where reversed by the credit institution to the financial intermediary, since "*among the components of the total cost of credit to be reimbursed in the event of early repayment there must also be included (as being a «total cost») the charges borne by the financier towards third parties*".

In the light of those considerations, the Italian Supreme Court enunciated the following principle of law: "*in the event of early repayment of a consumer credit agreement, the consumer is entitled to the pro-rata restitution of all costs incurred at the time of execution, even where that took place before 25 July 2021, the former text of Article 125 sexies of the TUB also having to be interpreted in the light of the ruling of the CJEU of 1 September 2019, Case C-383/18 (the so-called Lexitor judgment), and of the interpretation given by Constitutional Court judgment No. 263 of 22/12/2022, with the consequent subjection to reduction also of so-called up-front costs, including intermediation costs*".

To access the decision, click here.

18) Italian Supreme Court, Joint Sections: on contractual expert determination (*perizia contrattuale*) (and on the conditions necessary for it to assume the nature of arbitration)

Contractual expert determination is distinguished from arbitration where neither party is precluded from bringing judicial proceedings in respect of the dispute or the portion of the dispute entrusted to the expert, and its activation produces an interrupting effect, day by day, for the entire duration of the expert determination proceedings.

By the judgment no. 11959/2026, published on 30 April 2026, the Joint Sections ruled on the nature of contractual expert determination (*perizia contrattuale*), clarifying its relationship with the parties' right to bring judicial proceedings and with the running of limitation periods.

The dispute originated from the action brought by an insurer to obtain, among other things, a declaration that the insured's right to indemnification had become time-barred. The insured had raised a plea of lack of jurisdiction, arguing that questions relating to the identification and quantification of the damage should be referred, by virtue of the general policy conditions, to an arbitral tribunal. At the stages on the merits, the insurer's claim had been upheld on the ground that

the contractual remedy had been invoked after the expiry of the two-year limitation period. Furthermore, the Court of Appeal had identified in the general policy conditions not an arbitration clause, but a framework for the possible recourse to a contractual expert determination in the event of disagreement on the identification and quantification of the damage, without any renunciation by the parties of the right to exercise their rights before the ordinary courts.

Seized of the appeal brought by the insured, the Joint Sections proceeded from the plurality of forms that contractual expert determination may assume in practice and from the observation that, whilst it finds its basis "*in a contractual stipulation that employs the scheme of the collective mandate*", its nature "*does not lend itself to being defined in general and absolute terms, but is necessarily correlated to the characteristics of the stipulation that the contracting parties intended to perfect and comes into consideration on a case-by-case basis*".

The Court then referred to the distinguishing features of arbitration, observing that "*[t]he referral of the dispute to arbitrators is configured as a renunciation of the exercise of judicial action and of the jurisdiction of the State, through the choice of a resolution of the dispute by means of an instrument of a private-law nature*".

It follows, according to the Court, that only in the presence of such a renunciation "*may the contractual expert determination assume, by reason of its particular content and where that content is referable to the provisions of Article 808-ter of the Code of Civil Procedure, the nature of irritual arbitration (*arbitrato irrituale*) and preclude the ordinary court, resort to which the parties have renounced, from ruling on the dispute*".

Conversely, in the absence of such renunciation, "*the contractual expert determination (so to speak «pure») does not have the nature of arbitration, but constitutes a fully atypical contractual arrangement [...] [which] gives rise to a contractual obligation to give effect to the result of the contractual expert determination only where the same has been carried out and brought to completion, but not to a renunciation of jurisdiction*".

With reference to "pure" contractual expert determination, the Joint Sections therefore excluded that there could be "*a suspension of the limitation period for inexigibility of the claim, with the consequent inadmissibility of the claim*", given that "*in the case of (so-called «pure») contractual expert determination, there is no renunciation of judicial protection, so that there is no impediment whatsoever to the judicial assertion of the credit claim*". On the contrary, the commencement and continuation of the expert determination proceedings "*is incompatible with the normative assessment of inertia on the part of the holder which, pursuant to Article 2934(1) of the Civil Code, [...] justifies the running of the limitation period and means that the interrupting effect is reproduced for the entire duration of the operations constituting the contractual expert determination*", day by day.

The Joint Sections accordingly enunciated the following principles of law:

- "*contractual expert determination consists, in general, in a contractual clause whereby the contracting parties wish a third party, chosen for his specific technical knowledge and the trust they repose in him, to intervene on one or more questions relevant to a legal relationship subsisting between them, for the clarification of which the application of the rules of experience of a certain sector is necessary, and they agree to subject themselves to a twofold obligation, that arising from the agreement by virtue of which they undertake to entrust to a third-party expert the resolution of a certain question and that arising from the expert determination that the third-party expert will carry out*";

- "*contractual expert determination may assume, where its content is referable to the provisions of Article 808-ter of the Code of Civil Procedure and provides for a definitive renunciation by the parties of the right to exercise their rights before the ordinary court, the nature of irritual arbitration (*arbitrato irrituale*); in the absence of such a renunciation, contractual expert determination constitutes a fully atypical arrangement having the nature of a contractual obligation by which the parties identify a mechanism that, if used and brought to completion, enables them to overcome in a binding manner a portion of the existing dispute through the creation of a new arrangement of interests dependent on the opinion of the third party, which the contracting parties undertake to observe*";

- "*pure contractual expert determination has a merely obligatory nature and does not preclude either party from bringing judicial proceedings in respect of the portion of the dispute entrusted to the expert; such conduct constitutes a breach and exposes the party to all the consequential damages claims*";

- "*the exercise of the right effected through the act of «calling» the pure contractual expert determination (*atto di "chiamata" della perizia contrattuale pura*) and the consequent commencement of proceedings that develops into a protracted and continuous series of operations, in accordance with the contractually agreed modalities, constitute conduct (of protracted performance of this contractual obligation) incompatible with the normative assessment of inertia on the part of the holder which, pursuant to Article 2934 of the Civil Code, justifies the running of the limitation period and produces an interrupting effect* de die in diem *for the entire duration of the operations constituting such expert determination, until its conclusion or the expiry of the time limit contractually established for that purpose*".

To access the decision, click here.

OTHER RELEVANT NEWS

19) IFRS accounting standard for SMEs: proposed amendments

On 12 May 2026, the International Accounting Standards Board launched a consultation on a proposed amendment to the IFRS for SMEs Accounting Standard.

In particular, the proposed amendments are aimed at extending the applicability of the exemption (provided for in paragraph 9.3 of the IFRS for SMEs Accounting Standard) from the obligation to present consolidated financial statements for SMEs where their ultimate (or intermediate) parent companies do not present consolidated financial statements.

On the basis of the proposal, SMEs are therefore exempt from the presentation of consolidated financial statements if the ultimate (or intermediate) parent company produces financial statements compliant with full IFRS Accounting Standards in which subsidiaries are measured at fair value through profit or loss, in accordance with IFRS 10.

The consultation will remain open until 9 September 2026.

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