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# CRCCD NEWS

June – Pt. 2  
2026



Studio Legale

# CRCDD NEWS

June Pt. 2 - 2026

## SUMMARY

<b>ADMINISTRATIVE &amp; COMPETITION LAW</b> .....	<b>3</b>
1) Italian Constitutional Court: the exclusion of in-house companies from the derogation from the <i>in peius</i> revision of incentive tariffs for electricity produced from solar sources is lawful .....	3
2) Administrative Court of Lazio: on the unlawfulness of immediately excluding clauses in a tender notice ....	3
<b>STRUCTURED FINANCE, CAPITAL MARKETS AND FINTECH</b> .....	<b>5</b>
3) Borsa Italiana: amendments to the Rules of the Markets of Borsa Italiana on commodity derivatives .....	5
4) Consob: consultation on proposed amendments to the regulations on issuers, intermediaries and markets .	5
5) Delegated Regulation on the EU follow-on prospectus and EU growth issuance prospectus published in the OJEU.....	6
6) ESMA: the White Paper obligation does not apply to tokens traded exclusively on non-EU platforms .....	7
<b>M&amp;A</b> .....	<b>8</b>
7) Italian Supreme Court: on the limits on compensation for <i>mala gestio</i> in the event of avoidance actions .....	8
8) Italian Supreme Court: accrued goodwill is to be included in the value of the withdrawing shareholder's stake in a company placed into liquidation, unless its effective loss is ascertained .....	8
<b>REAL ESTATE</b> .....	<b>10</b>
9) Italian Supreme Court: on cadastral reclassification and the obligation of specific reasoning in the notice	10
<b>BANKING / FINANCIAL / INSURANCE REGULATION</b> .....	<b>11</b>
10)EBA: final draft amending ITS on the Pillar 3 disclosure framework implementing CRR 3.....	11
11) EBA: report on simplifications to the EU bank capital framework .....	11
12)Electronic payments: new Memorandum of Understanding to reduce costs for merchants.....	12
13)Italian Supreme Court: on the requirements for the authorisation to conduct banking investigations .....	12
14)Italian Supreme Court: the need to obtain the certificate of pending tax liabilities for the purposes of creditworthiness assessment must be ascertained on a case-by-case basis .....	13
15) EBA: Q&A on the application of Article 207(2) of the CRR to financial collateral in counterparty credit risk .....	13
<b>RESTRUCTURING AND INSOLVENCY PROCEEDINGS</b> .....	<b>14</b>
16)Italian Supreme Court: on the admissibility of the application for access to <i>concordato minore</i> filed by a deregistered entrepreneur .....	14

ADMINISTRATIVE & COMPETITION LAW

**1) Italian Constitutional Court: the exclusion of in-house companies from the derogation from the *in peius* revision of incentive tariffs for electricity produced from solar sources is lawful**

By judgment No. 103/2026 of 17 June 2026, the Italian Constitutional Court ruled on the constitutional legitimacy of Article 22-*bis* of Decree-Law No. 133/2014, which provides for the non-applicability, exclusively in favour of photovoltaic installations built by local authorities or schools, of the rules on the *in peius* revision of incentive tariffs recognised for electricity produced from solar sources under Article 26 of Decree-Law No. 91/2014.

The Council of State had raised the question of constitutional legitimacy, considering that the exclusion violated the principles of equality and sound performance of the public administration set out under Articles 3 and 97 of the Constitution, in so far as it does not include, among the beneficiaries of the derogation from the revision, also plants whose responsible entities are in-house companies established by local authorities, in the light of the institutional and functional proximity between such companies and local authorities and the substantial correspondence of the interests pursued by both.

The Constitutional Court declared the questions unfounded. While acknowledging the existence of areas in which the legislature chose to subject in-house companies to the public law regime, it reaffirmed that the latter retain a distinct legal personality of a private law nature and cannot be automatically equated to public entities in every sector of the legal order. The derogation provided by the legislature constitutes an exception to the general framework and may be limited to local authorities and schools alone without violating the principle of equality.

The Constitutional Court also noted that in-house companies may operate, within certain limits, also on the market and are subject to competition and State aid rules, elements that justify their differentiated treatment. Accordingly, the legislative choice not to extend the favorable regime to them is neither unreasonable nor detrimental to the principle of sound performance of the administration.

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

**2) Administrative Court of Lazio: on the unlawfulness of immediately excluding clauses in a tender notice**

By judgment No. 10469/2026, published on 8 June 2026, the Administrative Court of Lazio (“**TAR Lazio**”) addressed the question of the immediate challengeability of clauses contained in public tender notices and clarified when they may be considered immediately excluding, in particular with reference to provisions of the *lex specialis* of the tender held to be unlawful as restrictive of participation in the procedure.

The TAR Lazio reaffirmed the principle that a tender notice may be challenged immediately only where it contains clauses that objectively and manifestly prevent a normal tenderer from submitting an offer or render participation in the tender impossible. A relevant element in excluding the existence of that precondition is the fact that other economic operators are taking part in the same procedure. According to the TAR judges, that circumstance demonstrates the absence of an effective bar to participation on the part of the appellant economic operator.

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

STRUCTURED FINANCE, CAPITAL MARKETS AND FINTECH

**3) Borsa Italiana: amendments to the Rules of the Markets of Borsa Italiana on commodity derivatives**

On 18 June 2026, Borsa Italiana published [Notice No. 31867](#), in which – in the light of the amendments to the Rules of the Markets organized and managed by Borsa Italiana (the “**Rules**”) and the related Instructions, adopted by Consob – it communicated the further updates aimed at extending certain types of transactions already available for commodity derivatives in the derivative markets of the Euronext group.

Among the new features, noteworthy is the introduction of the possibility of executing transactions in the forms of:

- Exchange for Swap (EFS), which enables the trading of futures contracts available on the market as counterpart to an over-the-counter swap transaction having the same or similar underlying, in order to eliminate execution risk; and
- Against Actuals (AA), which enables futures contracts relating to a specific transaction on the same or similar underlying to be traded on the market, in order to implement basis trading strategies, for hedging purposes or for adjustment of the position held on the relevant underlying.

The time limit for the validation of wholesale transactions is also extended from 15 minutes to the end of the trading session.

The amendments entered into force on 29 June 2026.

**4) Consob: consultation on proposed amendments to the regulations on issuers, intermediaries and markets**

On 18 June 2026, Consob launched a public consultation on the amendments to the regulations on issuers, intermediaries and markets in order to implement the so-called *Listing Act* and to align the recent amendments to the Consolidated Law on Finance by Legislative Decree No. 86/2026 and Legislative Decree No. 47/2026.

In particular, the main proposed amendments under consultation concern:

- the increase of the exemption threshold from the obligation to publish a prospectus from EUR 8 million to EUR 12 million, also for offers of financial products other than securities;
- the maintenance of the current threshold (EUR 8 million) for the determination of the overall amount relevant for the purposes of the concept of public takeover or exchange offers (“**OPA**”);
- the transparency obligations for public offers of securities below EUR 12 million;

- the opportunity to allow regulated market operators to use the criteria indicated in the European regulatory framework for the assessment of sufficient distribution of shares in addition to the minimum threshold of 10% free float;
- the information that must be communicated to Consob for the purposes of the registration of growth markets for small and medium-sized enterprises;
- the introduction of a transitional provision for the application of the obligations relating to issuer-sponsored research;
- the alignment, in relation to the OPA, between the amendments introduced by Legislative Decree No. 47/2026 to the TUF and the new primary regulatory framework.

The [consultation](#) remains open until 20 July 2026.

### 5) Delegated Regulation on the EU follow-on prospectus and EU growth issuance prospectus published in the OJEU

On 15 June 2026, [Delegated Regulation \(EU\) 2026/773](#) (the “**Regulation**”) was published in the Official Journal of the European Union, amending Delegated Regulation (EU) 2019/980 as regards the reduced content and the standardized format and sequence of the EU follow-on prospectus and the EU growth issuance prospectus under Regulation (EU) 2017/1129 (the so-called *Prospectus Regulation*).

Regulation (EU) 2024/2809 had introduced two new types of prospectus in simplified form, in order to make the Union’s public capital markets more attractive and facilitate access to capital by SMEs: the EU follow-on prospectus, intended for secondary issuances of securities by companies already listed on a regulated market or an SME growth market; the EU growth issuance prospectus, designed primarily for SMEs and companies listed or to be listed on the same markets.

The new Regulation specifies the reduced content and the standardized format and sequence for both:

- with regard to the EU follow-on prospectus, more limited and different disclosure requirements to be included in the prospectus are provided for equity and non-equity securities respectively. A more flexible version denominated “EU follow-on base prospectus” is also provided for;
- with regard to the EU growth issuance prospectus, the Regulation adopts an analogous approach for the standardized format and the possibility of resorting to a base prospectus (the so-called “EU growth issuance base prospectus”) is also provided for.

The Regulation entered into force on the third day following its publication in the Official Journal of the European Union.

**6) ESMA: the White Paper obligation does not apply to tokens traded exclusively on non-EU platforms**

On 21 May 2026, the European Securities and Markets Authority (“ESMA”) published [Q&A No. 2671/2026](#), providing clarifications on the scope of application of Regulation (EU) 2023/1114 (“MiCAR”), delineating the boundaries of the disclosure obligations incumbent on issuers of crypto-assets.

In particular, the question concerned the possible non-applicability of the exemptions under Article 4, paragraphs 2 and 3 of MiCAR in the case of trading in crypto-assets exclusively on exchange platforms (CEX or DEX) established in non-EU jurisdictions.

ESMA, in its response, clarified that the restriction provided for by Article 4, paragraph 4 – which causes the exemptions to lapse where there is an intention to seek admission to trading – refers exclusively to requests made within the EU. As a consequence, where admission to trading occurs exclusively on platforms provided by non-EU providers, the exemption does not lapse and offerors are not required to draw up and publish the white paper.

## M&amp;A

**7) Italian Supreme Court: on the limits on compensation for *mala gestio* in the event of avoidance actions**

By order No. 20550/2026, published on 23 June 2026, the Italian Supreme Court ruled on the liability of directors for *mala gestio*, clarifying the criteria for the quantification of recoverable damages in cases where the conduct of directors has led to the bringing of avoidance actions (*azioni revocatorie*) by the bankruptcy trustee.

The Supreme Court reaffirmed that compensation for damages arising from *mala gestio* cannot be automatically measured by reference to the amount subject to a successful avoidance action, but must be determined in accordance with the general principles under Article 1223 of the Civil Code, pursuant to which recoverable damages must constitute an immediate and direct consequence of the challenged conduct.

In particular, the Italian Supreme Court specified that the court is required to ascertain, on a case-by-case basis, the causal link between the acts of *mala gestio* attributable to the directors and the prejudice actually suffered by the company or the body of creditors, taking into account the allegations and evidence provided by the parties. It follows that damages cannot be assessed automatically or on a presumptive basis, but require a specific evidential examination aimed at ascertaining their actual extent.

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

**8) Italian Supreme Court: accrued goodwill is to be included in the value of the withdrawing shareholder's stake in a company placed into liquidation, unless its effective loss is ascertained**

By judgment No. 20552/2026, published on 18 June 2026, the Italian Supreme Court ruled on the inclusion of goodwill in the value of withdrawing shareholder's stake in the event of the subsequent liquidation of the company.

The Supreme Court clarified that although an undertaking in liquidation operates in a perspective that is legally not capable of generating new goodwill, this does not preclude taking into account, in the assessment of the business's value, the goodwill accrued up to the opening of the liquidation, as a positive element capable of being transferred to third parties together with the business assets.

According to the Italian Supreme Court, this conclusion is confirmed by Article 2487, first paragraph, letter c), of the Italian Civil Code, which provides for the power of the liquidator to dispose of the business or of individual assets of the company in order to preserve its overall value.

The Supreme Court therefore held that goodwill is to be deducted from the overall value of the business only where it is ascertained that the business assets have lost such added value as a result

of the interruption of the business activity following the liquidation of the company. In the absence of such a finding, goodwill must be included in the assessment of the realisable value of the assets disposed of by the liquidator pursuant to Article 2487 of the Civil Code.

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

## REAL ESTATE

**9) Italian Supreme Court: on cadastral reclassification and the obligation of specific reasoning in the notice**

By order No. 18763/2026, published on 9 June 2026, the Italian Supreme Court, Civil Tax Division, ruled on the lawfulness of the cadastral reclassification ordered pursuant to Article 1, paragraph 335, of Law No. 311/2004, clarifying the limits of the Administration's activity.

First, the Court reaffirmed that the various cadastral revision procedures have autonomous and non-interchangeable prerequisites, so that if the administration has resorted to one of the available procedures, it may not, in judicial proceedings, justify its claim by invoking conditions and factors that are not relevant to the chosen procedure.

The Supreme Court then specified that, where the new classification is adopted pursuant to Law No. 311/2004 in the context of a revision of the cadastral parameters of the micro-zone, the mere reference to the reclassification measure to that revision is not sufficient to render the new classification lawful. The notice must indicate, in a concrete and specific manner, the reasons why the increase in the values of the zone has affected the specific real estate unit concerned.

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

**BANKING / FINANCIAL / INSURANCE REGULATION**

**10) EBA: final draft amending ITS on the Pillar 3 disclosure framework implementing CRR 3**

On 22 June 2026, the European Banking Authority (“EBA”) published its [final draft](#) Implementing Technical Standards (“ITS”) relating to the disclosure requirements of the so-called Third Pillar (*Pillar 3*). This action was necessary to align the transparency framework with the changes introduced by Regulation (EU) 2024/1623 (CRR 3).

The new ITS focus on the following main areas:

- ESG risks: the disclosure obligation is extended to a broader range of institutions (Article 449-bis), albeit within a framework based on the principle of proportionality and simplification;
- equity exposures: the new disclosure requirements under Article 438 are incorporated;
- shadow banking: templates are introduced to map, on an aggregate basis, exposures to the shadow banking system (Article 449-ter).

The amendments published by the EBA aim to streamline regulatory compliance obligations, improving data consistency and interoperability with future reporting channels.

The new rules will take effect as from 31 December 2026, for institutions generally, while for small and non-complex institutions, the effective date is deferred to 31 December 2027.

**11) EBA: report on simplifications to the EU bank capital framework**

On 16 June 2026, the European Banking Authority (“EBA”) published a [report](#) setting out recommendations aimed at simplifying the so-called stacking order of capital and resolution requirements under the European Union’s prudential framework.

The document analyses the interactions between the capital requirements established by Regulation (EU) 2013/575 (“CRR”) and Directive (EU) 2013/36 (“CRD”) and the minimum requirement for own funds and eligible liabilities (“MREL”), governed by Directive (EU) 2014/59 (“BRRD”).

In the report, the EBA highlights how the current stacking order of the various requirements under the CRR, the CRD and the BRRD may give rise to operational complexity, reduce the transparency of the regulatory framework and generate unintended effects in institutions’ capital management. While noting that the existing system has contributed to strengthening the resilience of the banking sector, the EBA identifies possible simplification measures aimed at making the application of capital buffers and MREL clearer, while preserving the prudential and resolution objectives.

**12) Electronic payments: new Memorandum of Understanding to reduce costs for merchants**

On 15 June 2026, ABI, APSP, Assofin, CNA, Confartigianato, Confcommercio, Confesercenti and FIPE entered into a new [Memorandum of Understanding](#) aimed at promoting the mitigation, improved comprehensibility and comparability of the costs of acceptance of electronic payment instruments borne by merchants.

The Memorandum, which is open to accession by further trade associations as well as by individual operators not affiliated with any trade associations, represents an evolution of the agreement signed in July 2023 and forms part of the broader process of digitalisation and modernisation of payment services, with the objective of promoting greater transparency in the economic conditions applied by acquirers and, consequently, of encouraging competition in the sector.

Among the key changes, the Memorandum (which will have a duration of 24 months) extends its scope of application to merchants with revenues of up to EUR 750,000, thereby broadening the pool of beneficiaries compared to the previous agreement, which was directed primarily at operators with revenues of up to EUR 400,000. Furthermore, participating acquirers will be required to present their commercial offers using standardized formats, differentiated according to the commission structure adopted, with a view to ensuring greater simplicity, transparency and immediate comparability of the economic conditions applied, including those relating to POS devices.

**13) Italian Supreme Court: on the requirements for the authorisation to conduct banking investigations**

By order No. 19956/2026, published on 15 June 2026, the Italian Supreme Court, Fifth Division, clarified the requirements that must characterise the authorisation for the conduct of banking investigations in the context of tax assessments.

In particular, the Court affirms that the authorisation provided for by Article 32, first paragraph, No. 7, of Presidential Decree No. 600/1973, in the field of direct taxes, and by Article 51, second paragraph, No. 7, of Presidential Decree No. 633/1972, in the field of VAT, while retaining its nature as a preparatory and organizational act in domestic law, constitutes the title legitimising interference in the taxpayer's banking data, provided that it precedes the investigations and has a minimum content sufficient to make verifiable, even *ex post*, the preconditions, the subject matter and limits of such interference. In this way it will be considered as consistent with the principles of protection of private life and protection of personal data set out under Article 8 of the European Convention on Human Rights and in Articles 7, 8 and 52 of the Charter of Fundamental Rights of the European Union.

According to the Court, as a consequence, where the taxpayer specifically challenges the lawfulness of the investigative activity and the authorisation is missing or lacking the requisite essential content,

the banking documentation acquired will be unusable given the invalidity of the assessment notice in the part based on such findings.

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

**14) Italian Supreme Court: the need to obtain the certificate of pending tax liabilities for the purposes of creditworthiness assessment must be ascertained on a case-by-case basis**

By judgment No. 19262/2026, published on 11 June 2026, the Italian Supreme Court ruled on the standards of professional diligence that a bank must observe when assessing a company's creditworthiness, clarifying the circumstances under which it is necessary to obtain a certificate of pending tax liabilities.

The Court, after reviewing national and EU legislation on creditworthiness assessment, emphasised that the mere regularity of the financial statements and the absence of any reports or anomalies do not, in general, preclude the need for the bank to obtain a certificate of pending tax liabilities. Rather, an assessment of all the circumstances of the specific case is required, given the particular impact of tax and social security debts on the company's economic and financial stability.

The Italian Supreme Court also noted that the certificate of outstanding tax liabilities need not be obtained automatically and indiscriminately for every financing, even where the financing is backed by a public guarantee. In fact, compliance may still prove unnecessary in practice, for example, due to the knowledge of the client acquired over time or the small amount of the financing.

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

**15) EBA: Q&A on the application of Article 207(2) of the CRR to financial collateral in counterparty credit risk**

On 29 May 2026, the European Banking Authority ("EBA") published the final answer to [Q&A No. 7576/2025](#), providing an interpretative clarification on the application of Article 207(2) of Regulation (EU) 2013/575 ("CRR") to financial collateral used in the context of counterparty credit risk.

The EBA specifies that, both for exposures calculated using the SA-CCR (standardised approach for counterparty credit risk) and for those measured using the IMM (internal model method), only financial collateral eligible under the credit risk mitigation framework provided for by the CRR may be recognised. It follows that such collateral must satisfy all the eligibility requirements established by Article 207(2) of the CRR, pursuant to which there must be no significant positive correlation between the credit quality of the debtor and the value of the collateral.

The clarification accordingly confirms that the requirement of the absence of significant positive correlation applies also within the prudential framework relating to counterparty credit risk.

RESTRUCTURING AND INSOLVENCY PROCEEDINGS

**16) Italian Supreme Court: on the admissibility of the application for access to *concordato minore* filed by a deregistered entrepreneur**

By judgment No. 20141/2026, published on 16 June 2026, the Italian Supreme Court ruled on the admissibility of the application for access to *concordato minore* filed by an entrepreneur deregistered from the companies register, clarifying the scope of application of Article 33, paragraph 4, of the Code of Business Crisis and Insolvency (the “CCII”).

The Supreme Court affirmed the principle whereby the application for access to *concordato minore* filed by an entrepreneur already deregistered from the companies register must be deemed inadmissible in any event, irrespective of whether the entrepreneur concerned is an individual or a collective entrepreneur and regardless of the liquidation or continuity nature of the composition proposal.

According to the Italian Supreme Court, deregistration from the companies register constitutes an expression of the entrepreneur’s intention to cease its business activities definitively and therefore precludes any recourse to crisis resolution instruments aimed at the restructuring of the business. The Court further specified that the literal wording of Article 33, paragraph 4, CCII does not permit the introduction of distinctions not provided for by the legislator between individual and collective entrepreneurs or between liquidation-based and continuity-based composition with creditors.

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

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