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CALDERARO CRISOSTOMO
DEL DIN & PARTNERS

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ADMINISTRATIVE & COMPETITION LAW

1) EU Commission: Italian aid scheme for hydrogen development approved

On 30 March 2026, the European Commission approved, under the State aid rules, [an Italian scheme worth EUR 6 billion in support of the production of renewable hydrogen for the transport and industrial sectors](#). The decision forms part of the framework of the 2020 European Hydrogen Strategy and the Clean Industrial Deal.

The scheme, which will remain in force until 31 December 2029, has the objective of supporting an annual production of 200,000 tonnes of renewable hydrogen, encompassing both hydrogen produced by electrolysis from renewable energy sources and hydrogen obtained from biogenic sources through biological, bio-thermochemical and thermochemical processes.

Support will be provided by means of two-way contracts for difference: the strike price for hydrogen will be determined through competitive tendering procedures and, depending on the market trend of the price of the alternative fuel, it will be Italy to pay the difference to producers or, conversely, producers to pay it to the State.

The Commission assessed the measure pursuant to Article 107(3)(c) TFEU and the 2022 Guidelines on State Aid for Climate, Environmental Protection and Energy, finding it necessary, proportionate and having an incentive effect, with positive environmental effects sufficient to outweigh any potential distortions of competition.

2) Council of State: on the annulment in self-redress (*annullamento in autotutela*) of a building permit and the applicability of Article 38 of Presidential Decree No. 380/2001

By judgment No. 2542/2026, published on 26 March 2026, the Council of State confirmed the lawfulness of a demolition order in respect of a construction carried out pursuant to a building permit subsequently annulled for lack of entitlement on the part of the applicant, due to the fact that the erected construction also stood on land belonging to third parties.

The judges at Palazzo Spada reiterated that the issuance of a building title assumes a minimum degree of verification as to the effective ownership of the land subject to the intervention, as the Administration being unable to disregard objective evidence of the absence of the relevant qualifying precondition, even without substituting itself for the jurisdiction of the ordinary courts in relation to the determination of land ownership (*titolarità dominicale*).

It is further confirmed that Article 38 of Presidential Decree No. 380/2001 applies exclusively in the presence of procedural or formal defects in the building measure, in accordance with the consolidated position of the Plenary Session (*Adunanza Plenaria*) No. 17/2020, operating through a sequential system of remedies (validation, demolition, fiscal regularization).

It follows that, in the presence of substantive defects affecting the qualifying preconditions of the title, access to the relevant regime remains precluded, with the consequent obligatory nature of the demolition order. A different interpretation would result in an improper use of the institute in a substantially regularizing function, contrary to the principles of urban planning and orderly management of the territory.

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

3) Council of State: the decision to extend an ongoing service contract does not entail an implicit favourable assessment of the contractor's professional reliability

By judgment No. 2464/2026, published on 24 March 2026, the Council of State clarified that the decision of the contracting authority to grant a technical extension of a framework agreement during execution, pending the launch of a new tender procedure, does not entail an implicit favourable assessment of the professional reliability of the contractor.

In particular, according to the Council of State, the extension of a public contract responds to inescapable and imperative requirements of service continuity which have no bearing whatsoever on assessments of the (un)reliability of the same operator.

It follows that – even in the presence of any (prior) extensions granted in respect of the same economic operator – the contracting authority may certainly base a finding of serious professional misconduct where it identifies the symptomatic elements (i.e. prior terminations ordered for non-performance, imposition of contractual penalties) pursuant to Article 98 of the Public Procurement Code, without such prior extensions being considered sufficient to eliminate or otherwise "offset" those concerns.

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

4) ANAC: the balancing point between participation requirements and competition among economic operators

By [Resolution No. 86/2025](#) of 11 March 2026, the National Anti-Corruption Authority ("ANAC") addressed the relationship that must exist between participation requirements and the general principles of market access and competition provided for by European and national legislation on public contracts.

In particular, in the context of the matter underlying the ANAC resolution, a municipality had provided, among the economic-financial and technical-professional requirements relating to a public tender procedure, that: (i) competing economic operators must have performed, in the last 10 years, ordinary management, assessment and compulsory collection services for local revenues in at least 3 municipalities with a number of inhabitants equal to or greater than that of the Contracting

Authority (*Stazione Appaltante*); and that (ii) at least one of the said services must have included the assessment and compulsory collection service for the tourism tax (*imposta di soggiorno*).

The party that submitted the report to ANAC considered that the imposition of the said requirements would result in a clear infringement of the principle of *favor participationis*, as it was aimed at unduly restricting participation in the tender.

ANAC, referring to Article 10, paragraph 3, of the Public Procurement Code – pursuant to which “[...] contracting authorities and awarding entities may introduce special requirements, of an economic-financial and technical-professional nature, relevant and proportionate to the subject matter of the contract, bearing in mind the public interest in the largest possible number of potential competitors and favouring, [...] market access and the possibility of growth for micro, small and medium-sized enterprises [...]” – and to Article 100, paragraph 2, which imposes on contracting authorities the obligation to ask for requirements that are proportionate and relevant to the subject matter of the tender, affirmed on the one hand that (a) contracting authorities are vested with broad discretion in drafting tender documents and in introducing provisions capable of limiting the pool of competitors, while on the other hand that (b) such discretion cannot be exercised in a manner that provides for requirements that are excessively and unreasonably restrictive of competition.

After reviewing the most relevant judicial guidance on the relationship between discretion in selecting special participation requirements for tenders and the protection of the principle of competition, with specific reference to the case in examination, ANAC held that: (i) the requirement referred to in point (i) above could be considered consistent with the characteristics of the award to which it related and therefore not excessive; and (ii) the requirement referred to in point (ii) appeared unreasonably restrictive of participation in the procedure, without the municipality in question having provided adequate and sufficient justification for such a choice, and accordingly invited it to remove that last requirement by way of self-redress (*autotutela*) and to identify, if appropriate, an alternative requirement of less restrictive scope.

STRUCTURED FINANCE, CAPITAL MARKETS & FINTECH

5) Consob: proposed amendments to reduce the impact of reporting obligations on securitisations open for consultation

On 7 April 2026, the National Commission for Companies and the Stock Exchange (“Consob”) launched a public consultation relating to certain proposed amendments to its provisions on securitisations (the “Consob Provisions”), issued pursuant to Article 4-septies.2 of Legislative Decree 58/ 1998 (the “TUF”).

The amendments proposed by the authority are aimed essentially at reducing the burdens on operators, in particular in cases where they are required to provide disclosure on securitisation transactions not only to Consob, but also to the prudential authorities.

Among the most significant interventions, the following ones are noteworthy:

- the extension of the deadline for notification of securitisation transactions to one month from the date of issuance, as compared with current 5 days (for simple, transparent and standardized (“STS”) securitisations) and 15 days (for non-standardized ones), in order to align it with that established by the prudential authorities, facilitating a unified management of the notification obligations due by banks involved in STS securitisation transactions;
- the introduction, for significant institutions, of the possibility of transmitting attestations of compliance with Regulation (EU) 2017/2402 signed by persons delegated by the management body;
- the introduction of the possibility of delegating to the servicer of the securitisation transaction the activity of transmitting information to Consob.

The [consultation](#) will remain open until 27 April 2026.

6) EBA: RTS on the assessment of the materiality of changes to IRB models published

On 30 March 2026, the European Banking Authority (“EBA”) published the [regulatory technical standards](#) (“RTS”) on material changes to internal ratings based (“IRB”) models, by means of which the EBA aims to significantly reduce the number of changes classified as material, enabling supervisory authorities to apply a more risk-based approach in the supervision of IRB models and reducing the administrative burden on both banks and supervisory authorities.

In particular, the EBA opted to recalibrate the materiality criteria for model changes, with a view to reducing the overall number of those subject to prior approval and thereby also reducing the response times of the competent authorities.

As a result, the revised RTS rely more heavily on quantitative thresholds, reducing the number of changes classified as material, while maintaining adequate supervisory visibility. The qualitative criteria are limited to changes involving model redevelopment and re-estimation of risk parameters, or significant changes in the definitions of default adopted by banks. Changes relating to routine model maintenance will generally be subject to notification, unless they exceed the quantitative thresholds.

Second, the RTS have been aligned with the amendments introduced by Regulation (EU) 2024/1623. In particular, references to approaches that are no longer part of the prudential framework have been removed, such as the IRB approach for equity exposures and the “Advanced Measurement Approach” (or “AMA”).

EMPLOYMENT LAW

7) Smart working: new employer disclosure obligations

[Law No. 34 of 11 March 2026](#) decisively intervened in the area of health and safety with reference to work activity performed in smart working arrangements in environments that do not fall within the legal control of the employer, amending Article 3 of Legislative Decree No. 81/2008.

In particular, Article 11 of the said Law No. 34/2026 introduced an obligation on the employer to deliver to the worker and to the workers' safety representative, at least annually, a written disclosure document identifying the general risks and the specific risks connected with smart working, in particular those linked to prolonged use of computers. The obligation of the worker to actively cooperate in the implementation of the prevention measures put in place by the employer remains unchanged.

This disclosure obligation, which until now had been devoid of any effective sanction, is now subject to criminal penalties in the form of arrest for a period of from two to four months or a fine from Euro 1,708.61 to Euro 7,403.96.

M&A

8) ESG Factors in business valuation

On 1 April 2026, the National Council of Chartered Accountants and Accounting Experts (*Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili* – “CNDCEC”) published a [guide on ESG factors in business valuation](#), dedicated to the integration of ESG (Environmental, Social, Governance) factors into business valuation processes.

This guide, which completes the work commenced in 2024 on the construction of the information base, aims to provide the necessary tools for a robust analysis and to offer operational proposals and examples with a view to constituting a valid support for businesses.

Among the minimum contents with which the valuation report must be provided, the Italian Valuation Principle (*Principio Italiano di Valutazione* – “PIV”) II.4.3 refers to fundamental analysis as content subsequent to the establishment and appreciation of the information base.

The document analyses, firstly, the strategy in place within the company, with specific attention to the strategic choices made in the past and the related results produced and secondly, addresses strategic intentions, the business model, models for strategic analysis and, finally, the operational modalities for the integration of ESG factors into the business plan.

REAL ESTATE

9) Italian Supreme Court: on the identification of the common parts of a building forming part of a condominium

On 25 March 2026, judgment No. 7222 of the Supreme Italian Supreme Court (Section II Civil) was filed, concerning condominium law and the criteria for overcoming the presumption of co-ownership (*presunzione di comunione*) under Article 1117 of the Civil Code.

The dispute concerned the classification of the under-stair space and its amenability to the regime of common parts, from which it had been excluded by the Court of Appeal of Palermo; the second-instance court had, moreover, recognised it as exclusively owned by the owners of the entire ground floor.

The Italian Supreme Court quashed the impugned decision, reaffirming that the assets listed in Article 1117 of the Civil Code are presumed to be common and that this presumption can be rebutted exclusively on the basis of the results of the title that gave rise to the formation of the condominium, *i.e.* the division of the building into individual properties.

It follows that when a condominium unit owner claims exclusive ownership of one of the assets listed in Article 1117 of the Civil Code – since proof of exclusive ownership simultaneously demonstrates the co-ownership of the assets contemplated by that provision – in order to rebut that presumption, it is incumbent upon the claiming condominium unit owner to furnish proof of his alleged exclusive ownership, without the title of acquisition of himself or his grantor being relevant for that purpose where such title is not the constitutive act of the condominium, but a disposition made by the initial sole owner who had not reserved to himself the exclusive ownership of the asset.

The judgment was accordingly quashed with remittal to the Court of Appeal of Palermo, sitting in a different composition.

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

BANKING / FINANCIAL / INSURANCE REGULATION

10) Regulation on the Collective Management of Savings

On 7 April 2026, [the Bank of Italy Measure of 23 March 2026](#), containing the sixth update to the Regulation on the collective management of savings set out in the Bank of Italy Measure of 19 January 2015, as subsequently amended and supplemented (the “**Bank of Italy Regulation**”), was published in the Official Gazette (Official Gazette, General Series No. 80, Ordinary Supplement No. 13).

The measure affects almost all Titles of the Bank of Italy Regulation (Titles I, II, III, IV, V, VI, VII and VIII) as well as numerous Annexes, certain of which are repealed.

The amendments respond to the need to update and reorganize the Bank of Italy regulatory framework on the collective management of savings in light of developments in the European and national regulatory landscape, including for reasons of accessibility for interested parties, simplification and adaptation to market developments.

In particular, the intervention is aimed at coordinating the provisions contained in the Bank of Italy Regulation with: (i) the European regulatory framework on European venture capital funds (EuVECA) set out in Regulation (EU) 2013/345, as subsequently amended and supplemented; (ii) the European regulatory framework on European social entrepreneurship funds (EuSEF) set out in Regulation (EU) 2013/346, as subsequently amended and supplemented; (iii) the European regulatory framework on European long-term investment funds (ELTIFs) set out in Regulation (EU) 2015/760, as subsequently amended and supplemented; (iv) the European regulatory framework on money market funds (MMFs) set out in Regulation (EU) 2017/1131, as subsequently amended and supplemented; and (v) the European regulatory framework on depositaries of pan-European personal pension products (PEPPs) set out in Regulation (EU) 2019/1238, as subsequently amended and supplemented.

The amendments also take into account the simplifications introduced by Article 16 of Law No. 21 of 5 March 2024 (the so-called *Legge Capitali*) in relation to the supervision of externally managed SICAVs and SICAFs, as well as the most recent guidance of the supervisory authorities.

The new provisions entered into force on 8 April 2026; UCITS managers have a period of six months within which to achieve compliance.

11) Bank of Italy: proposed amendments to the rules on the preparation of financial statements of banks and IFRS intermediaries open for consultation

On 31 March 2026, the Bank of Italy launched a consultation on the proposed amendments to Circular No. 262 and to the Measure of 17 November 2022, which govern the formats and rules for the preparation of the financial statements of banks and “IFRS intermediaries”, as defined by Article 1,

paragraph 1, letter c), of Decree No. 136/2015, other than banking intermediaries (the “**IFRS Intermediaries**”).

The provisions subject to consultation are aimed at implementing:

- a) the amendments to International Financial Reporting Standard (“**IFRS**”) no. 9 “*Financial Instruments*” and IFRS no. 7 “*Financial Instruments: Disclosures*”, already applicable with effect from financial statements commencing on or after 1 January 2026;
- b) the new international accounting standard IFRS 18 “*Presentation and Disclosure in Financial Statements*”, which will replace International Accounting Standard (“**IAS**”) 1 “*Presentation of Financial Statements*” with effect from 1 January 2027; and
- c) the guidance provided in the joint Bank of Italy/Consob Communication of 6 March 2025 with regard to financial statement disclosures on crypto-assets.

The consultation is addressed to the categories of intermediaries currently governed by Circular No. 262 and by the Bank of Italy Measure of 17 November 2022 and, accordingly, to banks and IFRS Intermediaries, as well as to anyone who may have an interest in submitting observations and comments on the consultation document.

The [consultation](#) will remain open for 60 days from the date of publication of the document.

12) EIOPA: ITS on Solvency II reporting amended

On 30 March 2026, the European Insurance and Occupational Pensions Authority (“**EIOPA**”) published the [final report](#) relating, *inter alia*, to two implementing technical standards (“**ITS**”) concerning the supervisory reporting and disclosure requirements provided for under Directive (EC) 2009/138 (“**Solvency II**”), as recently amended.

The proposed amendments form part of the broader Solvency II review process and are aimed, on the one hand, at aligning the reporting framework with the regulatory changes that have taken place and, on the other hand, at supporting the European Commission's initiative to reduce administrative burdens on operators, providing for a reduction in reporting obligations of at least 25% (up to 35% for SMEs).

To that end, EIOPA proposes:

- the reduction in frequency and the elimination of certain reporting templates;
- a broader recourse to the principle of proportionality; and
- the introduction of technical simplifications and operational clarifications throughout the regulatory framework.

The amendments also include corrective interventions aimed at resolving inconsistencies that emerged in the initial application of the ITS currently in force, i.e. Implementing Regulation (EU) 2023/894 (ITS on supervisory reporting) and Implementing Regulation (EU) 2023/895 (ITS on public disclosure).

The new reporting requirements will enter into force from 30 January 2027. A transitional provision is also envisaged, exempting undertakings from the obligation to submit, in the 2026 annual report, the templates that are to be eliminated.

13) AIFMD II – implementing decree published in the Official Gazette

On 27 March 2026, [Legislative Decree No. 39 of 13 March 2026](#), implementing Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 (the so-called “AIFMD II”), was published in the Official Gazette (Official Gazette, General Series No. 72 of 27 March 2026).

AIFMD II amends Directive (EU) 2011/61 on alternative investment fund managers (“AIFMs”), while at the same time introducing certain coordination and alignment amendments to Directive (EC) 2009/65 concerning the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities. The principal objectives of AIFMD II are: (i) the harmonization of the rules applicable to AIFMs that grant loans; (ii) the definition of a clear and robust framework for liquidity management tools; (iii) the definition of the rules applicable to managers that delegate their functions to third parties; (iv) the equal treatment of entities providing custody services, facilitating their cross-border access to depositary services; (v) the optimization of the collection of supervisory data.

The implementing provisions amend Legislative Decree No. 58/1998 (the “TUF”) in order to transpose AIFMD II in full. In particular, the measure under examination expands the list of activities that AIFMs and UCITS managers may carry out, in line with the new European provisions.

Among the principal changes introduced to the TUF, noteworthy are the amendments to the regulatory framework governing AIFs that invest in loans (including loan-originating AIFs), contained in the chapter of the TUF which the measure under examination renames (replacing the previous designation “credit OICR” with “AIFs that invest in loans”) and reorganizes in a systematic manner.

The provisions introduced by the legislative decree apply with effect from 16 April 2026. Consob and Bank of Italy are granted the power to issue secondary legislation – to be adopted by 16 October 2026 – in compliance with the division of competences already established in the TUF.

RESTRUCTURING AND INSOLVENCY PROCEEDINGS

14) The Second Insolvency Directive published in the Official Journal of the EU

On 1 April 2026, [Directive \(EU\) 2026/799](#) of the European Parliament and of the Council of 30 March 2026, harmonizing certain aspects of insolvency law (the so-called Second Insolvency Directive), was published in the Official Journal of the European Union.

The Directive responds to the need to reduce divergences between national insolvency laws, which generate legal uncertainty and unpredictability as to the timing and values of recovery in cross-border procedures, with negative effects on the predictability of costs for creditors and investors in the internal market. The text introduces harmonized provisions on four main areas: (i) avoidance actions, with common minimum rules on suspect periods and the conditions for the unenforceability of transactions prejudicial to creditors; (ii) the tracing of assets of the insolvency estate, with direct and immediate access by insolvency practitioners to information on bank accounts and beneficial owners; (iii) the pre-pack procedure, which enables the sale of the business as a going concern to the best bidder in the course of the insolvency proceedings, structured in a preparation phase and a liquidation phase; (iv) the framework governing creditors' committees, with rules on their establishment, working methods, exercise of the relevant rights and obligations, and liability.

Member States are required to transpose the Directive by 22 January 2029, with the exception of the provisions on access to information on bank accounts, for which the deadline is set at 10 July 2029.

15) Italian Supreme Court: on the cross-class cram-down in continuity-based composition with creditors (*concordato preventivo in continuità*), the approval of a single class of voting creditors is sufficient

On 30 March 2026, the Italian Supreme Court published judgment No. 7663 concerning the interpretation of Article 112, paragraph 2, letter d), of the Code of Business Crisis and Insolvency (*Codice della crisi d'impresa e dell'insolvenza*), on the subject of the cross-class cram-down in continuity-based composition with creditors (*concordato preventivo in continuità*).

By this decision, the First Civil Section clarified that confirmation by cross-class cram-down pursuant to Article 112, paragraph 2, of the Code of Business Crisis and Insolvency – including in the version prior to the amendments introduced by Legislative Decree No. 136/2024 (the so-called *Correttivo-ter*) – requires the favourable vote of a single class of voting creditors, provided that it is composed of parties that would receive at least partial satisfaction in compliance with the order of legitimate causes of priority (*cause legittime di prelazione*) also on the value exceeding the liquidation value.

The Court favoured the majority interpretative approach, holding that the phrase “in the absence of” (*in mancanza*), which in the said Article 112, paragraph 2 of the Code of Business Crisis and Insolvency precedes the reference to approval by at least one class of creditors, refers not to the

absence of a majority – however required – of classes, but solely to the absence of majority approval. This reading is more consistent with the punctuation and structure of Article 11, letter b), of Directive (EU) 2019/1023 and with recital 54 thereof, which the national provision implements.

Legislative Decree No. 136/2024 subsequently expressly incorporated this approach, reformulating letter d) and now clearly providing for the possibility of proceeding to confirmation even in the presence of the favourable vote of a single class, in the absence of a majority of consenting classes.

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

16) Italian Supreme Court: the reopening of bankruptcy proceedings assumes the prior resolution or annulment of the composition with creditors (*concordato*)

On 24 March 2026, the Italian Supreme Court published Order No. 7054 concerning the conditions necessary for the reopening of bankruptcy proceedings already closed following the confirmation of a bankruptcy composition with creditors (*concordato fallimentare*).

The First Civil Section of the Supreme Court affirmed the principle that the order which reopens the bankruptcy proceedings, entailing the revival of the original procedure, necessarily presupposes the prior resolution or annulment of the composition with creditors (*concordato*) that had determined its closure. This is because the reopening reactivates the same insolvency procedure, without the need to re-examine the subjective and objective conditions for access, but requiring the extinguishing effect produced by the confirmation of the composition with creditors to be eliminated.

The Court relies, in support of this conclusion, on Articles 121, 137 and 138 of the Bankruptcy Law (*legge fallimentare*), noting that Article 121, in regulating the revival of the bankruptcy, expressly refers to the articles dedicated to the resolution and annulment of the composition with creditors (*concordato*). The legislative framework, together with the continuity and unity of the procedure, therefore requires that only the elimination of the composition with creditors (*concordato*) enables the court to order the reopening.

In the case under examination, no judgment of resolution or annulment having been made, the Italian Supreme Court held the reopening ordered by the Tribunal to be unlawful and quashed the judgment without remittal.

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

17) Italian Supreme Court: provisional continuation of business (*esercizio provvisorio*) by the liquidator and assessment of the state of insolvency

The Italian Supreme Court, by Order No. 6666 of 24 February 2026, published on 20 March 2026, ruled on the powers of the liquidator during the winding-up phase of a company.

In particular, by the said order the Supreme Court expressed three principles of law.

RESTRUCTURING AND INSOLVENCY PROCEEDINGS

By means of the first principle, the Court affirms that *“in the event of the winding-up of a capital company, the liquidator, in the absence of a different determination by the shareholders, has the power to carry out all acts useful for the liquidation of the company, including the provisional continuation of the business”*. It follows that where the shareholders’ meeting has not resolved on the powers conferred upon the liquidator, the latter is vested, pursuant to Article 2489, paragraph 1, of the Civil Code, with the power to carry out *“all acts useful for the liquidation of the company”*, including therefore also the provisional continuation of the business.

By means of the second principle of law, the Court clarifies that: *“the winding-up of the company may be validly resolved also while proceedings directed at the opening against it of judicial liquidation are pending”*. As a result, there is no doubt – according to the judges – that, in the absence of a provision to the contrary, the shareholders’ meeting may validly resolve on the winding-up of the company also after it has been served with the application for the opening of judicial liquidation proceedings against it, and therefore while the consequent proceedings are pending.

Finally, by means of the third principle of law, the Court affirms that: *“for the purposes of the opening of judicial liquidation, when the company is in liquidation, the assessment by the court for the purposes of establishing the state of insolvency must be directed solely at ascertaining whether the corporate assets make it possible to ensure the full satisfaction of creditors, and the difficulty of prompt realisation of assets may be relevant in so far as it is symptomatic of a realisation result lower than that recorded by the debtor, thus ultimately expressing values that are objectively inadequate to fully satisfy the body of creditors”*. Accordingly, whenever the court finds that the liquidation of the company’s assets is unable, by reason of the amount and/or timing of actual realisation, to enable payment of the sums owed to corporate creditors within the established time limits, the debtor company must be considered to be in a state of insolvency and, as such, subject to judicial liquidation.

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

CASE LAW

18) The extension of credit to an insolvent undertaking (*impresa decotta*) enabling the entrepreneur to delay the declaration of bankruptcy while worsening the state of insolvency, in violation of criminal law, entails the nullity of the loan agreement for breach of mandatory rules and the irrecoverability of the disbursed sums on grounds of contrariety to public morality (*buon costume*)

By the order under comment, the Italian Supreme Court ruled on the validity of two loan agreements entered into between a bank and an insolvent company, on the ground of an alleged violation of criminal law, confirming in that scenario the nullity of the agreements for breach of mandatory rules and the exclusion, on grounds of contrariety to public morality, of the credit institution's right to recover the disbursed sums.

The decision originates from a decree by which the Tribunal of Rome had rejected the opposition to the statement of liabilities filed by a bank seeking admission to the bankruptcy estate of the credits arising from two loans granted pursuant to Law No. 40/2020 (the so-called *decreto liquidità*) and secured by the Mediocredito Centrale guarantee fund. The Rome Tribunal had held that the execution of the two agreements was in conflict with the criminal provision set out in Article 217, first paragraph, No. 4), of the Bankruptcy Law, as they involved sums knowingly disbursed to an insolvent company with the effect of worsening its financial distress and delaying the declaration of insolvency. To that end, the Tribunal also relied on the fact that part of the borrowed sums had been used to reduce a pre-existing current account exposure, essentially enabling the bank to *"restructure a pre-existing unsecured claim with another of equal amount but secured by a public guarantee"*. On those grounds, the Tribunal of Rome declared the nullity of the agreements pursuant to Article 1418 of the Civil Code and the irrecoverability of the disbursed sums on grounds of contrariety to public morality pursuant to Article 2035 of the Civil Code.

The credit institution filed an appeal on a point of law, arguing, in summary, that no provision capable of giving rise, from the violation of the aforementioned criminal rule, to the nullity of the loan agreements, let alone to the non-recoverability of the disbursed sums, existed.

Seized of the matter, the Italian Supreme Court acknowledged that *"[t]here is no doubt that, as a matter of principle, an agreement that is prejudicial to the rights of creditors, in the absence of a provision that generally prohibits the entry into contractual arrangements prejudicial to third parties, is not, in itself, unlawful and that its conclusion is not, therefore, void for unlawfulness of the cause, for fraud on the law or for a common unlawful motive"*.

The Supreme Court, however, clarified that *"if the contract was entered into by the parties, not only to the detriment of the creditors (of one of them), but also in violation of a mandatory rule, such as a criminal law provision, the contractual act so performed is sanctioned, pursuant to Article 1418, first paragraph, of*

the Civil Code, with its nullity". In such cases, the so-called reatio-contratto scenario comes into play, namely the "case in which it is precisely the [] execution [of the contract] that achieves, by reason of the arrangement of interests contained therein, the result prohibited by criminal law", and it is thus "the very existence [of the contract] that conflicts with the mandatory rule".

Turning to the restitutory consequences of the declaration of nullity, the Court affirmed that, for the purposes of the *soluti retentio* under Article 2035 of the Civil Code, "*performances contrary to public morality are not limited to those that conflict with the rules of sexual morality or decency, but also include those that are inconsistent with the ethical principles and requirements constituting social morality in a given environment and at a certain historical moment, accordingly, the disbursement of sums in favour of a company already in a state of insolvency, constituting a genuine loan transaction, which enables the entrepreneur to delay the declaration of bankruptcy while increasing the company's debt exposure, must be considered as contrary to public morality, and therefore irrecoverable, being, in truth, one aimed at violating the rules of correctness governing market relations*".

In conclusion, the Supreme Court clarified that "*nothing prevents an agreements judged unlawful and, as such, void pursuant to Article 1418 of the Civil Code, from also being subject to the civil sanction of irrecoverability laid down by Article 2035 of the Civil Code, where [...] performances motivated by immoral purposes are identified, given that a contractual act found to be in conflict with a mandatory rule or with public policy may certainly be, at the same time, susceptible to an assessment in terms of contrariety to public morality, precisely for the effects referred to in Article 2035 of the Civil Code*".

On those grounds, in light of the findings of fact made by the first-instance court, the Italian Supreme Court confirmed as "*undoubtedly correct*" the rulings reached by the Tribunal of Rome as to the nullity of the loan agreements and the non-recoverability of the disbursed sums, dismissing as unfounded the appeal filed by the financing bank.

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19) Italian Tax Authority: on the tax regime of controlled foreign companies

On 31 March 2026, by means of [ruling No. 106520/2026](#) (the “**Ruling**”), the Italian Tax Authority (*Agenzia delle Entrate*) replaced the previous ruling, which had become obsolete following the amendments made by Article 4 of Decree-Law No. 84/2025, converted with amendments by Law No. 108/2025, to the optional regime set out in paragraph 4-ter of Article 167 of Presidential Decree No. 917/1986 (the “**TUIR**”).

In particular, the Ruling governs the optional regime provided for the taxation, at the level of the parent company, of the income generated by the so-called Controlled Foreign Companies (“**CFCs**”) referred to in Article 167 of the TUIR.

Under this regime, companies controlling CFCs that have: (i) passive income representing more than one third of total revenues earned; and (ii) financial statements subject to audit and certification by professional operators authorised to that end by the foreign State in which they are located, may elect the pre-tax accounting income produced by the CFC – as resulting from the application of the accounting principles of the consolidated financial statements of the relevant group or, in the absence thereof, of the standalone financial statements, and after application of the regulatory adjustments – to taxation in Italy through the payment of a substitute tax to be applied on its own shareholding (direct or indirect) in the profits of the same CFC, at the rate of 15%.

Pursuant to the Ruling, the option is exercised by the parent company and takes effect from the tax period subject to the tax return and:

1. has a three-year duration and, unless revoked in the tax return for the fourth tax period following the one in which the option was exercised, is deemed to be tacitly renewed;
2. applies to all CFCs of the parent company, including those acquired during the reference period of the option;
3. is irrevocable.

The Ruling further: (i) governs the effects of the early termination of the option, which operates with respect to all CFCs; (ii) confirms the effectiveness of the option exercised pursuant to the previous ruling of 30 April 2024; and (iii) clarifies that companies which, in determining the taxable income for the financial year 2024 and in application of the previous measure of 30 April 2024, had excluded from taxation the income received in 2024 by the entities referred to in letter a) of paragraph 4 of Article 167 of the TUIR, (a) are required to redetermine the taxable income by treating such income as taxable and, consequently, to settle the additional taxes in respect of which no penalties are applied, and (b) may benefit from the tax credit provided for by Article 165 of the TUIR in respect of the related taxes paid abroad.

20) The Fiscal Decree published in the Official Gazette

On 27 March 2026, [Decree-Law No. 38 of 27 March 2026](#) (also known as the “**tax decree**”) was published in the Official Gazette, introducing a coordinated set of measures for the rationalization of the tax system in the areas of corporate income taxation, compliance obligations and incentives schemes.

In particular, the Decree-Law:

- (i) with regard to the general tax framework:
 - updates the tax regime for inbound workers (*lavoratori impatriati*), with effect from the 2027 tax period (Article 2);
 - governs the tax treatment of negative goodwill for entities adopting International Accounting Standards (IAS), providing for its taxation through allocation in five equal annual instalments, with retroactive effect from the tax period current as at 31 December 2024 (Article 3);
 - reinstates the participation exemption regime and the 95% exclusion of dividends (Article 11);
- (ii) with regard to tax compliance obligations:
 - limits the new VAT regime for barter and exchange transactions (*operazioni permutative*) to contracts entered into or renewed from 1 January 2026, it being understood that no tax refunds will be made in respect of conduct previously adopted (Article 1);
 - defers to 1 May 2026 the application of the withholding tax on agency commissions (*provvigioni*), introducing a transitional regime for the mitigation of compliance burdens (Article 6);
 - intervenes on the framework governing the early return of tax rolls entrusted to the tax collection agent by redefining the relevant time limits in relation to specific scenarios (Article 10);
 - increases the stamp duty on current accounts and statements to EUR 118 for entities other than natural persons (Article 12);
- (iii) with regard to incentive measures:
 - provides for the tax neutrality of interest on debt securities paid to deposit guarantee schemes until 31 December 2028 (Article 4);

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- extends the enhanced depreciation regime under paragraph 427 of the 2026 Budget Law, by removing the requirement for production in European Union or European Economic Area Member States (Article 7);
- introduces a tax credit equal to 35% (now 89.77% pursuant to Decree-Law No. 42 of 3 April 2026) of the “Transition 5.0” tax credit previously claimed, for undertakings that had received the technical conformity communication from the GSE (*Gestore dei Servizi Energetici*) together with the communication relating to the absence of available resources (Article 8);
- by means of paragraph 3-bis added by Decree-Law No. 42 of 3 April 2026, introduces a contribution calculated in proportion to (i) expenditure incurred for investments in plant for the self-production of electricity from renewable energy sources intended for self-consumption and (ii) expenditure incurred for certifications relating to accounting documentation, as well as (iii) expenditure incurred for demonstrating the reduction in energy consumption and compliance with the “Do No Significant Harm” (DNSH) principle, issued by authorized entities.

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