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CRCCD NEWS

March – Pt. 1
2026

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Milan Rome London
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CRCCD NEWS

March Pt. 1 – 2026

SUMMARY

ADMINISTRATIVE LAW & ANTITRUST

1) AGCM authorises the entry of French SNCF into the high-speed rail transport market in Italy

On 3 March 2026, the Italian Competition Authority (the "**AGCM**") adopted Decision No. 31869 concerning barriers to access to the passenger rail transport market on the high-speed network, following the complaint submitted by SNCF Voyages Italia ("**SVI**").

During the investigation - launched to ascertain a potential abuse of a dominant position ,which originated from a SVI's report concerning the alleged obstructive behaviour of Rete Ferroviaria Italiana S.p.A. ("**RFI**") in response to SVI's request to access the national rail infrastructure for the purpose of providing passenger transport services on the high-speed network - the AGCM examined the capacity allocation procedures and the so-called priority criteria adopted by RFI, in light of the European regulatory framework (Directive (EU) 2012/34 and Regulation (EU) 2016/545) and the observations of the sector regulator (the Transport Regulation Authority).

RFI proposed three commitments aimed at remedying the aforementioned concerns: *(i)* the allocation to SVI of a minimum package of 18 time slots on the main and cross-country routes, with a ten-year non-clawback commitment and backup mechanisms; *(ii)* the integration into the planning processes of the provisions of Regulation (EU) 2016/545 to ensure transparency and non-discrimination; *(iii)* transitional rules to protect the ramp-up of the new operator, with *"use it or lose it"* measures for unused capacity.

The AGCM deemed the commitments to be consistent and proportionate and made them binding pursuant to Article 14-ter of Law No. 287/1990, closing the investigation without finding an infringement and requiring RFI to submit an implementation report within 90 days.

2) European Commission: public consultation on amendments to the General Block Exemption Regulation (GBER) on State aid

On 25 February 2026, the European Commission launched a public consultation on the revision of Regulation (EU) 2014/651 (the General Block Exemption Regulation – "**GBER**") on State aid.

In particular, the GBER declares specific categories of State aid compatible with Article 107 and 108 of the Treaty on the Functioning of the European Union, if they fulfil certain conditions. Aid fulfilling these conditions is exempted from the requirement of prior notification and Commission approval. The amendments proposed by the Commission reflect an intention to simplify the Regulation and bring it into line with social, market and technological developments and streamline it by addressing inconsistencies and improving readability, for example, by introducing new simplified conditions for small-amount aid for certain projects or activities, regardless of the size of the company.

The consultation will remain open until 23 April 2026.

3) Council of State: recourse to the remedial assistance procedure (*soccorso istruttorio*) to supplement documentation proving possession of a requirement already declared at the time of tender is not permitted

By judgment No. 1300/2026 of 18 February 2026 (the "**Judgment**"), the Council of State revisited the scope of application of the remedial assistance procedure (*soccorso istruttorio*) provided for under Article 101 of Legislative Decree No. 36 of 31 March 2023 (the "**Public Procurement Code**", *Codice Appalti*), which, in summary, allows economic operators participating in a public tender to remedy administrative deficiencies and irregularities even after submission of their offer to the contracting authority, subject to some conditions and within certain limits.

Although Article 101 of the Public Procurement Code expressly establishes that the remedial assistance procedure cannot operate with respect to the documentation comprising the technical offer and the economic offer, but only in relation to the so-called administrative documentation, certain "grey areas" remain concerning cases where, for example, the contracting authority allows tenderers to submit *"new and different documents from those produced during the tender, with a view to proving the existence of a requirement (in this case, the so-called flagship services) that was indeed declared in the offer, but supported at that stage by documentation unsuitable for that purpose"*.

The Judgment addressed this specific scenario, providing that:

- in the event that the tenderer in the context of the remedial assistance procedure has not merely provided simple clarifications to prove a requirement declared and already documented during the tender, but has filed new documents, an inadmissible integration of the technical offer occurs, since the contracting authority was able to evaluate the latter only following the production of the new documentation, produced in compliance with the request for clarification; documentation which should instead have been attached to the offer *ab origine*;

- integrating, in the course of the tendering procedure, an essential element of the offer, consisting of a technical requirement prescribed under penalty of exclusion, constitutes a prohibited operation that cannot be remedied through the remedial assistance procedure (which cannot concern profiles pertaining to the offer);

- it is not possible to submit new documentation demonstrating, for the first time in the course of the tendering procedure, the existence of the technical requirement prescribed under penalty of exclusion, as this is precluded by the principle of self-responsibility, which entails that the tenderer bears the negative consequences of its own conduct, namely – in this case – the error in completing the application for participation and in attaching the relevant documents;

- the principle according to which it is incumbent upon the tenderer to document the possession of the requirements prescribed under penalty of exclusion from the tender must apply, so that where the documentation freely and spontaneously produced in the offer is insufficient for that

purpose, no further documentation – not produced in the first instance – may be submitted at the justifications stage to prove the requirement that was *ab origine* insufficiently documented

To consult the decision, click here.

4) CJEU: right of pre-emption in Project Financing declared incompatible with European law. Effects of the judgment on currently ongoing procedures and future procedures

By judgment of 5 February 2026 (Case C-810/24), the Court of Justice of the European Union (the "**CJEU**") ruled on the long-standing issue of the compatibility with EU law of the right of pre-emption granted to the project promoter pursuant to Article 193, paragraph 12, of Legislative Decree No. 36 of 31 March 2023.

In particular, according to the CJEU, the granting of the right of pre-emption in favour of the promoter, which allows that it adjusts its offer to match that of the initial successful tenderer, thereby becoming the successful tenderer for the concession – structurally affects the principle of equal treatment and the effective competition, conferring upon the promoter an informational and negotiating advantage that is incompatible with the European Union framework. European law therefore prevents a Member State from recognizing, in favour of the promoter in a project financing procedure, a right of pre-emption allowing it, under certain conditions, to adjust its offer to match the one considered as being the best and thus be awarded that contract.

In light of the conclusions reached by the CJEU, the Court of Auditors (*Corte dei Conti*) (Deliberation No. 14/2026/PAR) expressed its views on the practical effects of the CJEU's judgment, with particular attention to project financing procedures currently under way (including those initiated prior to 8 October 2025, the date the infringement procedure was initiated). It affirmed that judgments rendered by the CJEU in preliminary ruling proceedings (as in the present case) are binding and immediately applicable; consequently, the courts and administrations of the Member States are bound to disapply domestic provisions deemed incompatible.

It therefore follows that the right of pre-emption cannot apply in project financing procedures initiated after the CJEU's judgment, nor in procedures initiated at an earlier stage (for which the relevant tender notice has not yet been published), even if prior to the commencement of the infringement procedure (i.e., those initiated before 8 October 2025).

To consult the CJEU decision, click here.

STRUCTURED FINANCE, CAPITAL MARKETS & FINTECH

5) Confidi and de-stocking securitisations: final approval of the annual law on SME

On 4 March 2026, the Italian Senate definitively approved the annual law on SME. Among its main provisions, the measure introduces a delegation to the Government to reorganize the regulatory framework governing *Confidi* (credit consortia**),** with a view to supporting their activity in favour of small and medium-sized enterprises by broadening their corporate base and revising the requirements for registration in the register pursuant to Article 106 of the Consolidated Banking Act, in order to stimulate mergers and the provision of advisory services. At the same time, the legislation amends Law No. 130/1999 in order to enhance the efficiency of the use of securitisations for de-stocking purposes and to facilitate the financial valorization of inventory assets. For a more in-depth analysis of the provisions amending Law No. 130/1999, please refer to our legal insight available at the following link.

6) Consob and ANAC: Memorandum of Understanding on listed public companies

On 2 March 2026, the National Commission for Companies and the Stock Exchange ("**Consob**") and the National Anti-Corruption Authority ("**ANAC**") signed a memorandum of understanding aimed at establishing, within the scope of their respective institutional competences, a productive collaboration between the two authorities.

In particular, the objective of the memorandum of understanding is to enable Consob and ANAC to collaborate, including by means of requests for opinions and mutual consultation, in areas of common interest, including listed public companies, as well as in the context of dissemination activities, academic initiatives and staff training.

To that end, a technical round table has been established, attended by representatives of both authorities, with the aim of ensuring the coordination of activities of common interest, examining technical issues relating to the implementation, amendment and integration of the memorandum of understanding, and promoting further activities and forms of collaboration deemed necessary and/or useful.

LABOUR LAW

7) The Italian Supreme Court again on the relation between disciplinary procedure and the finding of the facts in criminal proceedings

By judgment of 2 March 2026, No. 4684, the Italian Supreme Court confirmed the full admissibility of a disciplinary charge *per relationem (contestazione disciplinare per relationem)*, by reference to the acts of the criminal proceedings brought against the employee, provided that the charges formulated

in the criminal proceedings are known to the employee, thereby ensuring compliance with the principles of fairness and adversarial proceedings.

Second, the Supreme Court clarified that the employer (in this case, the Public Administration) is free to independently assess the acts of the criminal proceedings for disciplinary purposes, without any need to carry out a further and independent investigation, and may rely upon them even in the context of appeals to establish the soundness of the charges.

Lastly, the judgment specified that the criminal court's reclassification of the facts that are the subject of the disciplinary charge – which was considered in disciplinary proceedings in its concrete dimension and not because it relates to the commission of a specific criminal offence – does not require the employer to reopen the disciplinary procedure, by notifying the employee of a new disciplinary charge.

To consult the measure, click here.

8) The Italian Supreme Court on the dismissal of an employee who synchronises hundreds of strategic files during annual leave

By Order of 26 February 2026, No. 4371, the Italian Supreme Court confirmed the second-instance judgment according to which the conduct of an employee who, on a day of annual leave, had simultaneously synchronised hundreds of files of strategic importance for the company is disciplinarily relevant, but does not constitute just cause for dismissal (*giusta causa di licenziamento*), in the absence of proof on the part of the employer of the fraudulent purpose pursued, the damage actually suffered and the misappropriation of confidential data.

On the basis of the principle that the proportionality assessment between the disciplinary charge and the dismissal sanction is reserved to the court of merit and is not subject to review in the Supreme Court's proceedings, save in cases of fundamental motivational defects, the Supreme Court confirmed the condemnation of the company to the payment of an indemnity, pursuant to Article 3, paragraph 1, of Legislative Decree No. 23/2015, with the exclusion of reinstatement in the position.

To consult the measure, click here.

M&A

9) European Commission: public consultation launched on private equity investment exit mechanisms

On 2 March 2026, the European Commission launched a consultation directed in particular at private equity and growth capital investors, aimed at gathering contributions on the difficulties that such investors encounter in exiting their investments in the European market and on possible solutions.

Among the main concerns identified by the Commission there are, for example, the difficulty of waiting for an Initial Public Offering (IPO) in order to realise capital gains, and the absence of a reliable valuation of private assets, which may hinder the conclusion of divestment transactions. Those difficulties reduce market activity, limiting the availability of growth capital and possibly prompting promising young companies to move outside the EU in search of funding.

For these reasons, through this consultation the Commission collect evidence on possible barriers or issues for exiting private equity investments in the EU, merits and possible design features of a platform for secondary trading of private company shares, and merits of an extended use of such a platform for raising new equity capital.

The consultation will remain open until 27 April 2026.

REAL ESTATE

10) Data Centers – Decree-Law introducing the unified procedure for the construction of data centers published in the Official Gazette

On 20 February 2026, Decree-Law No. 21/2026 (the so-called Energy Decree) was published in the Official Gazette. The Decree-Law, *inter alia*, introduced a unified administrative procedure for the construction and expansion of data centers as well as their related user connection networks.

In this context, the authority competent for issuing the unified authorisation has been identified as the authority competent for issuing the Integrated Environmental Authorisation (*Autorizzazione Ambientale Integrata*), as determined pursuant to Legislative Decree No. 152 of 3 April 2006.

The time limits for the procedure have been set at a maximum duration of ten months, which may not be extended except for exceptional circumstances and, in any event, for a maximum of three months, starting from the date of verification of the completeness of the documentation — i.e., the documentation and design elaborations required by sector regulations for the issuance of authorisations, agreements, licences, opinions, concerted actions, clearances and consents, however denominated, including those for the integrated environmental authorisation, the environmental impact assessment, the landscape or cultural authorisation — attached to the authorisation request. The time limits for environmental impact assessments are halved.

The unified authorisation is issued following a specific services conference (*conferenza di servizi*) convened pursuant to Articles 14-bis et seq. of Law No. 241 of 7 August 1990. Every competent administration participates in the services conference.

The intervention falls within a context of growing interest in the data center sector in Italy, recognized as a strategic sector for the development of digital infrastructures and for attracting industrial investments, both in the real estate and energy sectors.

11) Student Housing – Decree-Law simplifying the administrative procedure for building intervention relating to student accomodations financed with PNRR resources published in the Official Gazette

On 19 February 2026, Decree-Law No. 19/2026 was published in the Official Gazette, setting forth, *inter alia*, specific urban planning simplification measures for building intervention aimed at the development of university residences financed with resources from the National Recovery and Resilience Plan (the "***PNRR***").

In particular, pursuant to paragraph 2 of Article 20 of Decree-Law No. 19/2026, which amends Article 1-*quater* of Law No. 338 of 14 November 2000, it is provided that in such cases it is no longer necessary to obtain approval of an implementing plan or a different second-level plan, even where this was required by the town planning instruments. The interventions may be carried out by means of a conventional building permit (*permesso di costruire convenzionato*) pursuant to Article 28-bis of Presidential Decree No. 380/2001, should it be necessary to construct or upgrade urbanisation works functional to the intervention, which must be transferred to the Municipality.

The regulatory intervention falls within a context of growing interest in the student housing sector of the Italian real estate market. According to a recent JLL report, investments in the sector reached approximately EUR 500 million in 2025, confirming the attractiveness of the asset class for domestic and international investors. The report also notes a significant gap between supply and demand for Purpose-Built Student Accommodation (PBSA).

BANKING/FINANCE/INSURANCE REGULATION

12) Consolidated Law on Financial Intermediation: the legislative decree implementing amendments to align with EU legislation published in the Official Gazette

On 5 March 2026, Legislative Decree No. 28 of 9 February 2026 was published in the Official Gazette; pursuant to it, Legislative Decree No. 58/1998 (the "**TUF**") was aligned with certain European provisions relating, *inter alia*, to investment services, central depositories, the European Single Access Point ("**ESAP**") and the regulation of third-country central counterparties.

In particular, alignment amendments were introduced with respect to:

- Regulation (EU) 2023/2845 (the so-called CSDR Refit) on central securities depositories;
- Regulation (EU) 2023/2631, concerning the introduction of an EU-level standard to ensure that funds raised through so-called *European green bonds* are deployed in sustainable projects;
- Regulation (EU) 2024/2987 (the so-called EMIR 3.0), aimed at strengthening the financial stability of the EU by introducing, *inter alia*, the obligation for financial and non-financial

counterparties meeting certain requirements to open and maintain with an authorized European central counterparty at least one active account complying with specific characteristics, through which a representative number of transactions relating to certain types of instruments must be cleared (the so-called *active account*);

- Regulation (EU) 2024/791 and Directive (EU) 2024/790, aimed at simplifying access to consolidated market data at European level in order to allow investors more straightforward access to key information on financial instruments;

- Directive (EU) 2023/2864, concerning the accessibility of companies' information through the ESAP.

Legislative Decree No. 28 of 9 February 2026 has also introduced certain supplementary and corrective provisions with regard to the discipline relating to income tax information reporting by certain companies and branches (pursuant to Legislative Decree No. 128 of 4 September 2024, implementing Directive (EU) 2021/2101).

Among the main innovations introduced by the decree, particular mention should be made of the amendment to Article 90-*ter*, which redefines the competences of the national competent authorities with respect to access between trading venues and post-trading infrastructures and strengthens their supervisory functions. Specifically, the National Commission for Companies and the Stock Exchange ("**Consob**") assumes a central role in control and coordination activities, operating in collaboration with the Bank of Italy to ensure the proper functioning of trading platforms and the infrastructures supporting financial exchanges. The objective is to ensure greater transparency and to prevent potential risks to the stability of the system.

13) EBA: third-country branches – publication of guidelines on capital endowment requirements and ITS on supervisory reporting

In early March 2026, the European Banking Authority (the **"EBA"**) published – pursuant to Directive (EU) 2013/36, as amended from time to time – the final guidelines on instruments for compliance with the capital endowment requirement for third-country branches and the final report on the draft implementing technical standards **("ITS")** on the supervisory reporting of third-country branches.

In particular, the guidelines – which will apply from January 2027 – establish the list of instruments that third-country branches may use to meet capital endowment requirements and specify the minimum operational conditions that ensure the availability of such instruments when needed. The purpose is to ensure that capital endowments protect local depositors at the level of the third-country branch, or remain available to pay appropriate claims and satisfy local creditors in the event of resolution or winding-up of the third-country branch. The guidelines also clarify the minimum operational conditions that third-country branches must meet in order for the capital endowment

instruments to serve their purpose effectively and remain available in the event of resolution or winding-up of a third-country branch.

In the report on the draft ITS, the EBA defines a package of regulatory and financial information that third-country branches must periodically report to their competent authorities and, in particular, introduces uniform reporting formats, definitions and frequencies to ensure consistent and comprehensive reporting across the European Union. The objective is to provide supervisory authorities with high-quality information, while ensuring proportionality, clarity and operational feasibility for reporting entities. The ITS proposes two sets of templates, covering both financial and regulatory information at the level of the third-country branch and quantitative and qualitative data at the level of the parent undertaking. The first reference date for the application of the ITS is set for 31 March 2027.

14) ESMA: publication of draft RTS on transparency in relation to clearing fees and margins requirements under EMIR 3

On 2 March 2026, the European Securities and Markets Authority (the "**ESMA**") published two Final Reports containing new draft regulatory technical standards ("**RTS**") on transparency regarding clearing fees and associated costs and margin requirements pursuant to the revision of Regulation (EU) 2012/648 ("**EMIR 3**").

In particular, the package published by ESMA comprises:

- the draft RTS on information on clearing fees and associated costs pursuant to Article 7c(4) of EMIR 3. The draft specifies the transparency requirements imposed on clearing service providers ("**CSPs**") towards current and potential clients. The RTS require CSPs to detail costs for each central counterparty ("**CCP**") served and, where relevant, for each clearing service, separating base fees from pass-on costs. In addition, charges must be analytically broken down into onboarding fees, fixed fees, transaction fees and other fees and costs, ensuring greater comparability and including an indication of any applicable discounts, rebates or fee caps;

- the draft RTS on margin transparency requirements. significantly expand the disclosure obligations relating to initial margin models and margin calls. In the first place, the draft establishes that CCPs must provide clearing members with detailed information on the functioning and design of margin models, including the results of simulation tools based on current, backward-looking and forward-looking stress market scenarios. In the second place, the RTS introduce analogous and proportionate disclosure requirements on CSPs in relation to their respective end clients, requiring an explanation of the procedures adopted and any add-ons applied by the CSP, while balancing such transparency with the protection of intellectual property and the confidentiality of proprietary models.

15) Bank of Italy: Strategic Plan 2026–2028 published

On 2 March 2026, the Bank of Italy published its Strategic Plan for the three-year period 2026–2028, setting out the priorities and lines of action of the Institution in order to address a complex and rapidly changing international environment.

The Plan identifies four main strategic objectives: (i) strengthening the Institution's capacity to act proactively in response to external changes and shocks; (ii) developing and enhancing human capital, with a responsible use of artificial intelligence to simplify processes and increase efficiency; (iii) consolidating the Bank's role in domestic and cross-border payment systems, in particular in the development of central bank digital currency; (iv) overseeing the technological evolution of the financial system, strengthening stability supervision, anti-money laundering measures, customer protection and cyber resilience of payment and market infrastructures.

16) European Commission: public consultation launched on the competitiveness of the European banking sector

On 11 February 2026, the European Commission launched a consultation aimed at gathering contributions useful for the preparation of the 2026 report on the competitiveness of the European Union's banking sector. This consultation forms part of the strategy outlined by the Commission in its Communication of 19 March 2025 on the Savings and Investments Union, which acknowledges the central role of the banking sector in financing the European economy and supporting the digital, green and industrial transitions.

According to the document, notwithstanding the progress made over the past fifteen years — including the establishment of the banking union and the strengthening of the prudential framework — the European banking market continues to be characterized by persistent fragmentation, limited cross-border activity and incomplete single market integration, factors that hamper the full competitiveness of EU intermediaries.

The consultation is structured around three main areas:

- banking competitiveness in the EU and globally;
- the single market and the banking union;
- complexity and effectiveness of the regulatory framework.

The consultation will remain open until 19 April 2026.

CASE LAW

17) In interest rate swaps, the indication of the mark to market value, the anchoring of "probabilistic scenarios" to historical data and proper pre-contractual disclosure may ensure the legal worthiness of such transactions by virtue of the existence of a "rational risk" (Italian Supreme Court, First Civil Division, Decision No. 2262 of 3 February 2026; Italian Supreme Court, First Civil Division, Decision No. 2358 of 4 February 2026)

With these two recent decisions, which largely mirror each other and were issued by the same panel of justices, the Italian Supreme Court has revisited matters relating to interest rate swaps ("**IRS**"). Both decisions originate from judgments of the Court of Appeal of Milan which, in different disputes, had declined to declare contracts of this kind null and void, notwithstanding challenges raised regarding the absence of indications relating to the mark-to-market value ("**MTM**") and "probabilistic scenarios", under the case law guidance provided in those respects by the well-known "**Cattolica Judgment**" (Italian Supreme Court, Joint Civil Divisions, Decision No. 8870 of 12 May 2020).

In the first case, which gave rise to Decision No. 2262/2026, the Court of Appeal of Milan, ruling on an appeal against an arbitral award, found that the failure to indicate MTM and "probabilistic scenarios" by the financial intermediary could not entail nullity of the contract for the violation of mandatory rules of law, but at most give rise to the intermediary's liability for the breach of pre-contractual information duties. Conversely, in the matter which gave rise to Decision No. 2358/2026, the same Court of Appeal found the failure to disclose "probabilistic scenarios" to be irrelevant to the investor's understanding of the contractual risk, on the grounds that MTM could be easily calculated on the basis of information in the public domain.

Seised of these issues, the Italian Supreme Court took the opportunity to clarify the scope of the principle, expressed by the Cattolica Judgment and by subsequent Supreme Court case law, according to which the validity of an interest rate swap requires "*an agreement between the intermediary and the investor on the extent of the contractual risk, to be calculated according to scientifically recognised and objectively shared criteria, with the consequence that such agreement cannot be limited to the indication of the MTM, but must also encompass the 'probabilistic scenarios' and concern the qualitative and quantitative extent of said contractual risk as well as costs (even if implicit)*".

By these two decisions, the Italian Supreme Court started out by clarifying that the above requirement does not pertain to the structural requirements of a sufficient agreement between the parties (*accordo*), purpose (*causa*) or object (*oggetto*) of the contract (under Article 1325 of the Italian Civil Code), but rather to the legal worthiness (*meritevolezza*) of the contract itself (under Article 1322, second paragraph, of the Italian Civil Code), based on the consideration that "*the execution of*

an IRS not supported by a rational risk pursues an interest not worthy of protection as it conflicts with economic public policy (ordine pubblico economico), which does not tolerate wagers having as their object an exchange of financial flows, so to speak, 'in the dark'".

According to this perspective, the examination of the existence of a rational risk – now defined by the Italian Supreme Court as the situation in which the investor assumes a risk *"in a conscious manner, being aware of its defining characteristics and, therefore, being in a position to decide to enter into the contract taking into account the extent of the risk"* – is preliminary to the examination of the structural requirements of the IRS, in the sense that *"only after the judgment of legal worthiness of the contract (giudizio di meritevolezza del contratto) has been positively concluded and, therefore, it has been determined that the contract was entered into by an investor placed in a position to become aware of the risk inherent in such a contract, does the question of assessing its validity, in relation to the existence of the requirements set out in Article 1325 of the Civil Code, arise".*

In this regard, the Italian Supreme Court specified, in the decisions at hand, that the analysis of the structural requirement of the *causa* of an IRS consists in verifying the existence of an *"adequate characterisation, as hedging or speculative"*, of the financial instrument (as indeed already indicated in the Cattolica Judgment), such that *"there is congruence between the contractual terms adopted and the purpose pursued, in relation to the suitability of the specific form of the contract to fulfil the function corresponding to the interests that the parties intend to pursue".* Conversely, with regard to the structural requirement of the *oggetto* of an IRS, the Italian Supreme Court specified that "*the nullity of an IRS for indeterminability of the object may … arise only where one or more elements necessary for the identification of the content of the mutual obligations are absent, but not also where (other) elements designed to allow the parties a more precise understanding of the risk assumed are lacking. In other words, if the IRS contains the indication of the essential elements listed by the Italian Supreme Court in the Cattolica Judgement … (notional amount, dates, rates of interest), the object of the contract is for that reason alone determined or determinable, nor does it become indeterminable because the rational risk (alea razionale) is constructed on entirely incorrect or non-agreed MTM and probabilistic scenarios".*

Having thus defined the correct parameters for the examination of the rational risk ("*alea razionale*"), the Italian Supreme Court addressed the persistent doctrinal uncertainties on further matters left unresolved by the Cattolica Judgment.

To that end, the Italian Supreme Court observed that the only useful references for such an analysis are found in National Commission for Companies and the Stock Exchange's Communication No. 9019104 of 2 March 2009 and in the performance scenarios provided as key pre-contractual information under the EU legislation on packaged retail and insurance-based investment products pursuant to Regulation (EU) No. 1286/2014.

On the basis of those references, the Italian Supreme Court concluded that *"the probabilistic scenarios cannot be understood as a (clearly impossible) certain prediction of the future trend of rates, so that any inclusion of such a prediction – entirely theoretical, aleatory and bordering on divination – in the body of IRS would be useless, and indeed potentially misleading"*. Rather, the expression "*probabilistic scenarios*" should be understood "*as referring to the set of information relating to historical data (principally, average return and volatility) used for the determination of the MTM and revealing the 'quality' of the contractual risk and, therefore, of the extent of the costs, even if implicit*". In summary, therefore, the content of the "*probabilistic scenarios*" is centred "*on the historical analysis of the average performance of the financial product, on the assumption that the future will behave as the past, and devoid of any assessment of corrective variables based on changing future expectations which, as already noted, necessarily suffer from a lack of objectivity, being the reflection of subjective and non-univocal assessments that do not allow for an accurate prediction of future rates*".

For there to be an adequate agreement on such *"probabilistic scenarios*", the Italian Supreme Court emphasised that *"it is sufficient to indicate those elements indispensable for that purpose, without it being necessary to specify a series of parameters so elaborate and complex as to be hypertrophic and ultimately counterproductive*". This was accompanied by the further crucial clarification whereby "*the greater the complexity and elaborateness of the financial instrument, the more information must be communicated so that the contract is transparent and the client can make an informed decision*".

In this perspective, an important aspect of the two decisions at issue lies in the Italian Supreme Court's explicit rejection of formalistic and "monolithic" approaches in defining the necessary "*agreement on the extent of the contractual risk*", which instead "*varies according to the overall degree of complexity of the individual IRS and the variables that affect its performance*". Thus, "*the accuracy in the indication of the 'probabilistic scenarios' will be directly proportional to the complexity of the same individual, concrete, IRS, there being a need for the object thereof to be determined or determinable, but not for it to be set out in detail going beyond the standard of determinateness*".

In accordance with this approach, the Italian Supreme Court concluded that IRS transactions characterised by an elementary structure (so-called plain vanilla IRS) may in practice be so standardised *"that in such cases a specific indication might well be considered unnecessary, where the same can in any event be inferred from the architecture of the concrete transaction and is based on widely used and commonly adopted models, always bearing in mind that what is relevant is not disclosure obligations, but the adequate delineation of the object of the contract in its component of rational risk (alea razionale)"*.

In this final respect, an important clarification contained only in Decision No. 2358/2026 is that the legal worthiness (*meritevolezza*) of the agreement, from the perspective of the rational risk (*alea razionale*), "*does not require that the information relevant to the assessment of the rational risk (alea*

razionale) be inserted in the contract and form part thereof, it being sufficient that the investor has been provided with the appropriate information".

Based on the principles set out above, the Italian Supreme Court reached, in the two decisions at issue, opposite conclusions as to the correctness of the analysis carried out by the lower courts:

- in Decision No. 2358/2026, the Italian Supreme Court agreed with the approach of the lower court, emphasising that *"where, as in such case, an IRS has a hedging purpose, is based on the mere exchange of financial flows and amounts to a conversion of a loan from a floating rate to a fixed rate, the structure is generally relatively simple, to the point of requiring a reduced flow of information to allow rational risk (alea razionale) of the contract to be assessed. In addition, it may be considered that within the range of information relevant to such an assessment, information that is in the public domain or, in any event, that, as expressed by standard criteria and widely used models, is readily available to the client may be omitted; the client, also in application of the principle of self-responsibility (principio di autoresponsabilità), is required to act in a prudent manner";*

- in Decision No. 2262/2026, on the other hand, the Italian Supreme Court found the assessments of the lower court to be insufficient, noting that "*the decision of the Milan Court of Appeal has manifestly placed itself in conflict with the position consistently expressed by this Court in stating that, in the absence of a specific rule providing for the MTM or probabilistic scenarios as forming the object of the contract, the failure to determine such elements does not give rise to any conflict with mandatory rules relevant to the nullity of the IRS*".

To consult the text of Decision No. 2262/2026, click here.

To consult the text of Decision No. 2358/2026, click here.

OTHER RELEVANT NEWS

18) Consumer Code: amendments to protect consumers from so-called greenwashing published in the Official Gazette

On 9 March 2026, Legislative Decree No. 30 of 20 February 2026 was published in the Official Gazette, implementing Directive (EU) 2024/825, known as the "*Empowering Consumers for the Green Transition Directive,*" on empowering consumers for the green transition through improved protection against unfair practices and better information.

The aforementioned legislative decree, which will enter into force on 24 March 2026, amends Legislative Decree No. 206 of 6 September 2005 (the "**Consumer Code**"), introducing certain important protections for consumers against the phenomenon of so-called greenwashing. In particular, the legislative decree, *inter alia*:

- expands the *black list* provided for under Article 23 of the Consumer Code, introducing, among the commercial practices considered suspicious in all circumstances, sustainability-related cases such as, for example, unverifiable generic environmental claims, the use of sustainability labels lacking certification systems or not established by public authorities, and conducts which artificially affect durability, repairability or the use of consumable materials and spare parts;

- strengthens pre-contractual information obligations for (i) contracts other than distance contracts, (ii) distance contracts and (iii) contracts negotiated away from business premises, including, for example, the indication of the existence of a commercial durability guarantee at no additional cost.

19) Corporate sustainability: the Omnibus I package, published in the Official Journal of the European Union, addresses corporate sustainability reporting requirements and due diligence obligations for sustainability purposes

On 26 February 2026, Directive (EU) 2026/470 (the "**Directive**") was published in the Official Journal of the European Union (the "**OJEU**"), amending Directive (EC) 2006/45, Directive (EU) 2013/34, Directive (EU) 2022/2464 (the "**CSRD**") and Directive (EU) 2024/1760 (the "**CSDDD**") in relation to corporate sustainability reporting obligations and certain corporate due diligence obligations for sustainability purposes (the so-called "**Omnibus I package**").

In particular, the Directive narrows the scope of application of the sustainability reporting obligation originally provided for under the CSRD and introduces the category of so-called protected undertakings (identified, among undertakings forming part of the value chain of the reporting undertaking, on the basis of certain numerical indices), which benefit from a reduction in the quantity and quality of information to be provided to the reporting undertaking.

Furthermore, with regard to corporate due diligence obligations regarding sustainability, the Directive, *inter alia*, restricts the personal scope of application of the due diligence obligation provided for under the CSDDD, removes the obligation for companies to draw up and implement *Climate Transition Plans* – necessary to align their emissions with European climate targets and those of the Paris Agreement – and eliminates the civil liability regime introduced by Article 29 of the original text of the CSDDD, remitting it entirely to the civil liability regimes of the national legal laws.

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