OUR ECHO
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NEWS FROM THE FIRM

Francesco Rinaldi joins the firm

The recent arrival of Francesco Rinaldi has strengthened the M&A capability of the firm. Graduated in law from Bocconi University in Milan, after previous experiences in primary Italian law firms, Francesco worked for the Linklaters (Milan office) from 2011 to 2015. Francesco has developed a significant experience in the sector of acquisitions, joint ventures and other corporate extraordinary transactions.

Recent publications

Fabrizio Sanna, *La tutela d'autore dei disegni "industriali" bidimensionali*, [2015] Il diritto industriale 6, 585.

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CAPITAL MARKETS

Public consultation on ADR body regulation

On 8 January 2016, the National Commission for Companies and the Stock Exchange (Consob) launched a public consultation on the regulation governing the organisation and functioning of the new alternative dispute resolution body for the financial services sector (ADR). The ADR body was established pursuant to Law no. 130/2015 and the recently enacted Law no. 208/2015 (the Italian Budget Law for 2016) in order to ensure more effective protection than the existing Conciliation and Arbitration Chamber at Consob. Main characteristics of the ADR system are the following: use of the ADR by the financial intermediary is mandatory; the ADR process is completely free for the investor; the decisive nature of the dispute resolution proceeding; a deadline of 90 days for rendering a decision. The activities required to establish the ADR body will be carried out by the end of the first half of 2016 and will include, inter alia, the appointment of the members of the ADR body and an information system ensuring the efficiency of the procedure. The consultation period ends on 8 February 2016. See below the link published by Consob for the proposed regulation relating to the ADR body for the financial services sector. For further information please see here.

Implementation of directive on whistleblowing adopted

Following publication of ESMA's technical advice issued on 3 February 2015, the European Commission adopted a directive implementing the Market Abuse Regulation (EU 596/2014, the Regulation) in the part relating to whistleblowing. The directive (EU 2015/2392 dated 17 December 2015) was published in the O.J.E.U. on 18 December 2015. The Directive provides for the following, inter alia: (a) dedicated report management personnel; (b) the procedure to be applied for reporting infringements; (c) protection of personal data; (d) review of procedures at least every two years. Member States are required to implement the Directive by 3 July 2016 (i.e. the date on which the Regulation will become applicable). The text of the Directive is available here.

FINANCE

PSD directive enacted

On 23 December 2015, Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market (the PSD2) was published in the Official Journal of the European Union. PSD2 amends Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) no 1093/2010 and repeals Directive 2007/64/EC, with the aim of promoting the development of a safe, efficient retail payment market. In particular, PSD2 introduces, inter alia, the following relevant innovations: (a) the introduction of emerging types of payment services (Third Party Payment Service Providers) within the regulation; (b) the enhancement of consumers' rights in many sectors; (c) the introduction of specific safety requirements for epayments and the protection of consumers' financial data; (d) a prohibition on surcharging customers for the use of a given means of payment (in compliance with Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions). Member States are obliged to implement the PSD2 in national law by 13 January 2018. The text of the PS2D is available here.

ANTITRUST

Cash injection to Banca Tercas deemed incompatible State aid

On 23 December 2015, the European Commission issued a decision finding that the Euro300 million financial support granted by Fondo Interbancario di Tutela dei Depositi (FITD) to Banca Tercas with the approval of the Bank of Italy constitutes incompatible state aid for the following reasons: (i) Italy did not present a restructuring plan, so the Commission was not able to evaluate whether the aided entity could return to long-term viability; (ii) although Banca Tercas' existing shareholders fully contributed to the cost of restructuring, subordinated creditors did not make any contribution (as required under burden-sharing principles); (iii) finally, no measures were implemented that would have sufficiently limited the distortion of competition created by the aid. As incompatible State aid, the cash injection should be fully recovered by Italy according to State aid rules. However, private bank members at the FITD are now considering whether to voluntarily agree, without a mandate from the State, to support Banca Tercas, in which case no State aid issues would arise.

TRADEMARKS

New EU Trademark regulation enacted

Regulation (EU) No. 2015/2424, which amends the Community trademark regulation (the Amending Regulation), was published on 24 December 2015. The Amending Regulation will come into force on 23 March 2016. As from that date, the Office for Harmonisation in the Internal Market (OHIM) is to be renamed the European Union Intellectual Property Office (EUIPO), while the Community trade mark will be renamed the European Union trade mark. The Amending Regulation also revises the fees payable to the Office, including an overall reduction in their amounts, particularly in the case of trade mark renewal fees. In addition, according to Article 28(8) of the Amending Regulation, owners of EU trade marks applied for before 22 June 2012 which are registered in respect of the entire class heading of the Nice Classification may declare that their intention on the date of filing was to seek protection in respect of goods or services beyond those covered by the literal meaning of the heading of that class, provided that the goods or services so designated are included in the alphabetical list for that class in the edition of the Nice Classification in force at the date of filing. This declaration must be filed at the Office by 24 September 2016. The text of the Amending Regulation is available here.

LABOUR

Procedure to hand in valid resignations clarified

The Italian Ministry of Labour has recently issued a decree providing some clarification on the new procedure concerning the validation of resignations and mutually agreed terminations introduced by the Jobs Act. As from 12 March 2016, resignations and mutually agreed terminations can only be made by using a specific form downloaded from the Ministry of Labour's website (the full text of the Ministerial Decree can be found here).

Exemption from the payment of social security extended in 2016

The Italian Parliament has approved the Italian Budget Law for 2016 which includes provision for the extension of the exemption for companies from the payment of social security contributions for new permanent employment contracts (and also the conversion of fixed term employment to permanent employment). As noted in a previous issue, the exemption for 2016 will differ from that in force for new jobs/conversions in 2015: the new exemption lasts for up to 24 months (instead of 36), concerns 40% of total social security contributions (instead of 100%) and can be used for up to Euro 3,250 each year (instead of Euro 8,060).

TECHNOLOGY

Agreement on Cybersecurity approved by EU Member States

On 18 December 2015, the Coreper (the Committee of Permanent Representatives from EU Member States) reached an agreement on the Network and Information Security Directive (the NIS Directive). The NIS Directive represents the first step aimed at (a) strengthening cybersecurity across the European Union, (b) increasing cooperation among Member States, and (c) imposing new obligations for providers of digital services. The Member States shall ensure, through the implementation of the regulation at national level, standard security requirements and incident notification processes (art. 15a). Furthermore, each Member State shall designate one or more national authorities to deal with penalties for infringement. The NIS Directive is expected to come into force as of spring 2016, taking into consideration that it must first be approved by the EU Council and the Parliament. Once effective, Member States will have 21 months to implement the regulation and an additional 6 months to identify the systemically-important operators established in their territory. For further information please see here.

DATA PROTECTION

EU data protection regulators to meet February 2 on EU-U.S. data transfers

Further to the invalidation of the Safe Harbour framework by the European Court of Justice on 6 October 2015 (see here) and the subsequent guidelines issued by certain data authorities (see here), European regulators will gather in Brussels on 2 February 2016 to try to find a common position on the next step to be taken and on the legal instruments which may be used to lawfully transfer personal data to the United States. It is reported that in the meanwhile the European Commission is considering Washington's latest proposals on a new EU-U.S. data-transfer agreement.

INDUSTRIES

FOOD & BEVERAGE

Scottish legislation on alcohol minimum price contrary to EU law

On 23 December 2015, the CJEU issued a judgment (Case C-333/14) stating, in substance, that a 2012 Scottish Act requiring alcoholic drink retailers to observe a minimum price per unit of alcohol (MPU) disproportionately restricts the free movement of goods and competition within the EU on the grounds that a less restrictive tax measure with the same or a broader objective could be imposed. According to the CJEU's case-law, such a restrictive measure may be justified on grounds of the protection of health only and on condition that it is proportionate to the objective pursued. The Scottish law's objective was to protect human life and health by discouraging the consumption of alcohol within its territory and, in the opinion of the Scottish legislature, that objective could not be achieved as efficiently by means of tax measures. Further information available here.

GAMING

Changes to Italian gaming framework

The Italian Budget Law for 2016 has introduced several changes in the Italian legal framework on gaming. Firstly, taxation has been significantly modified in relation to video lotteries, online sports betting, skill games (including poker tournaments and fantasy sports games) and online bingo. These changes have been accompanied by the removal of the Euro 500 million contribution due by slot-machines and VLT concessionaires that had led to major disputes in 2015. Moreover, a tendering process for the award of 120 new online gaming and betting licences is to be launched by 31 July 2016. In addition, a tendering process is to be launched by 1 May 2016 for the award of (i) 10,000 betting shop licences and (ii) 5,000 corner shop licences. Finally, the Budget Law 2016 provides that advertising of games with cash winnings will be prohibited during "generic" programs from 7 am to 10 pm.

MEDIA

Ministry of Economic Development to decide on DTT frequencies

Following to the Italian Budget Law for 2016, the Ministry of Economic Development (the Ministry) has been granted exclusive power to set usage fees for Digital Terrestrial Television frequencies. The Ministry will establish by 29 February 2016 fees to be paid by the relevant operators according to the following principles: (i) transparency; (ii) proportionality to the relevant scope; (iii) objectivity and non-discrimination on the basis of the geographical coverage of the authorised licence and the market value of the frequencies; (iv) rewarding mechanisms with reference to competition and use of innovative technologies. For further information please click here.

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