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#DeRisk Newsletter

DLA PIPER

Contents

ESG

The EU Omnibus Sustainability Package – proposals to postpone and simplify CSRD, CSDDD, Taxonomy and CBAM

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On 26 February 2025 the EU Commission presented the much-anticipated first Omnibus package of reforms, which forms part of the EU's simplification effort to increase the competitiveness of European industry in the global market.

The Omnibus package proposes various amendments to the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), the EU Taxonomy Regulation and some of its accompanying delegated acts, and the Carbon Adjustment Mechanism (CBAM). It proposes significant cuts to the scope of and delays to CSRD in particular.

The changes proposed go far beyond the anticipated 25% cut in regulatory burden. In the case of the CSRD for instance, 80% of currently in scope companies will drop out altogether, the remainder do not have to comply for a further two years and by the time they do, the ESRS reporting standards they report against are expected to have been dramatically cut-back.

It is important to remember that this Omnibus package is not final and still has some distance to travel through the legislative process before it becomes law.

Many businesses have already spent substantial sums preparing to comply with laws that, to protect their competitiveness, may now no longer apply to them. So whilst some will welcome the delays, others are likely to regard this as having been an unnecessary imposition on valuable business time and effort. Many will be concerned about the longer term implications of these measures for the EU's reputation as a world leader in this space.

The following is by no means exhaustive but is intended to offer an initial overview of what some of the most significant changes will look like if the proposed legislation is brought into effect in its current form.

CSRD

- Scope thresholds for CSRD will be increased, taking around 80% of companies currently captured out of scope according to the Commission, with companies in scope apparently being only those which have 1,000 employees (up from 250) and either:
  - EUR50 million turnover (left unchanged); or
  - EUR25 million assets (left unchanged)
- CSRD reporting will be postponed (for those not already reporting) by 2 years. This means the next wave of reporting will take place in 2028 for financial years beginning in 2027, for companies that remain in scope
- The principle of double materiality is retained, despite rumours to the contrary before the package was published
- Detailed information from value chain need only be obtained when value chain companies have more than 1,000 employees
- The detailed standards governing CSRD reporting (ESRS) are to be revised via a delegated act to substantially reduce the number of mandatory reporting datapoints
- The increased turnover threshold of EUR450 million that appeared from the leaked draft to be coming has not materialised, except in relation to Article 40a reporting by non-EU ultimate parent companies

Taxonomy

- The same postponement of reporting obligations and amendments to scope thresholds that apply to the CSRD above will also apply to obligations under the Taxonomy Regulation
- Non-financial undertakings that are otherwise in scope but generate less than EUR450 million in turnover may choose not to carry out Taxonomy reporting at all (albeit only if they accept that 100% of their activities are not aligned with Taxonomy sustainability criteria), and if they opt to report they may include KPIs relating to activities that are partially aligned with the sustainability criteria set out in the Taxonomy Regulation
  - Further, for entities that choose to report, the inclusion of the KPI relating to OpEx (operating expenditure) will become voluntary (turnover and capital expenditure remain mandatory)
- Non-financial undertakings are not required to assess the compliance of economic activities that amount to less than 10% of either turnover, capital expenditure or operational expenditure. Rather, these KPIs can be reported separately as simply 'non-material'.

CSDDD

- The CSDDD transposition deadline will be extended to 26 July 2027, with the initial phase of application for the largest (first wave) of companies being moved to 26 July 2028. Note, the deadlines for reporting by second and third wave companies are not proposed to change.
- The obligation to 'put into effect' a climate transition plan will be replaced with an obligation to 'adopt' a transition plan that includes implementing actions which aim for compatibility with the Paris Agreement.
- In scope companies will still need to consult stakeholders throughout the due diligence process, but the definition of 'stakeholders' will now exclude a number of parties, including consumers, employees of the company's business partners, national human rights and environmental institutions.
- In an effort to enforce maximum harmonisation, Member States will not be permitted to 'gold plate' the due diligence obligations established by the CSDDD
- The obligation to conduct mapping and in-depth analysis will be limited only to direct business partners. Some exceptions to this apply, including where the in-scope company has credible information to suggest this is also needed for indirect business partners.
  - This departs from the current CSDDD obliges in-scope entities to carry out this process for all direct and indirect business partners.
- No last-resort requirement remains to terminate a relationship with a business partner who has failed to address an identified adverse impact.
  - The requirement to suspend such a relationship is preserved, albeit without the requirement for stakeholder input that forms part of the current obligation.
- Companies must assess the adequacy and effectiveness of their due diligence measures every five years, rather than annually.
- No mandatory financial penalties based on a company's net global turnover will be imposed. These will be replaced with a requirement that the Commission work with Member States to set guidance for appropriate penalties
- The comprehensive civil liability regime under the current CSDDD will be removed, with existing national general liability regimes serving as the foundation instead.
  - This includes the CSDDD's rule on third-party standing, which will be eliminated in favour of the legal traditions and systems of individual Member States.

CBAM

- The following elements of CBAM will be delayed:
  - Sale of CBAM certificates, delayed from 1 January 2026 to 1 February 2027.
  - Obligation for CBAM declarants to hold certificates equivalent to 50% of emissions embedded in imported goods at the end of each quarter, delayed from 1 January 2026 to 1 January 2027.
- Around 90% of importers will now be exempt from CBAM reporting (according to the Commission these account for only around 1% of embedded emissions). The EUR150 value threshold for imports of goods in-scope of CBAM will be removed And importers, including authorised CBAM declarants, will now only be subject to CBAM for imports exceeding 50 tonnes net mass per calendar year.
- CBAM declarations will now be due by 31 August each year instead of 31 May, and the date for surrendering CBAM certificates will be moved from 31 May to 31 August.
- If the carbon price for goods paid in a third country can't be determined, CBAM declarants will be able to claim a reduction in CBAM certificates surrendered based on yearly default carbon prices.
- CBAM declarants will be required to hold CBAM certificates equivalent to 50% of embedded emissions in imported goods at the end of each quarter (reduced from 80%). The number of CBAM certificates purchased and subject to repurchase during a calendar year will be limited to the number equating to 50% of embedded emissions each quarter, rather than one third of the total purchased.
- CBAM declarants will now have until 30 November to submit repurchase requests (extended from 30 June).

Policies covering catastrophes: new obligations for Italy-based companies and insurers

Karin Tayel

On 27 February 2025, Decree no. 18, drafted by the Ministry of Economy and Finance and the Ministry of Enterprise and Made in Italy, was finally published in the Official Gazette no. 48.

The aim of the decree is to regulate the implementation and operating procedures for policies covering catastrophes.

The so-called *Milleproroghe* decree states that, as of 31 March 2025, corporate entities have to take out – and insurers have to offer – policies covering certain natural catastrophes.

Here's a brief summary of the key points.

Which corporate entities have to comply with the new insurance obligations?

- Companies with their registered office in Italy.
- Companies with their registered office abroad with a permanent establishment in Italy that have to be registered in the Register of Companies pursuant to Article 2188 of the Civil Code.

Only agricultural companies are excluded.

Which assets have to be insured?

All fixed assets referred to in Article 2424, first paragraph, section Assets, item B-II, numbers 1), 2) and 3), of the Civil Code, for any reason whatsoever used in the conduct of business, ie:

- land
- buildings
- plant and machinery
- industrial and commercial equipment

Which catastrophic events have to be insured?

Coverage doesn't include all natural events but only the following catastrophic events:

- floods, inundations and overflows
- earthquakes
- landslides

The decree specifies if these events continue within 72 hours from the first event, they're considered as a single event.

What are the coverage exclusions?

The decree provides the following coverage exclusions:

- property encumbered by building abuse or constructed without the required permits or encumbered by abuse arising after the date of construction
- damage that's the direct consequence of active human behaviour or damage to third parties caused by the insured property as a result of events
- damage that's the direct or indirect consequence of acts of armed conflict, terrorism, sabotage or riot
- damage relating to nuclear energy, weapons, radioactive, explosive or chemical substances or resulting from pollution or contamination

Which deductibles apply?

- 15% for assets with a value up to EUR30 million
- parties are free to negotiate for assets valued at over EUR30 million and for large companies (ie those with an income higher than EUR150 million and with 500 or more employees)

What are the applicable limits?

- 1 million in case of assets valued up to EUR1 million
- 70% for assets valued between EUR1 million and EUR30 million
- parties are free to negotiate for assets valued at over EUR30 million and for large companies (ie those with an income higher than EUR150 million and with 500 or more employees).

What are the consequences for companies that don't comply with the obligation?

The Budget Law for 2024 already stated that non-compliant companies won't benefit from contributions, subsidies or facilitations of a financial nature from public resources, including those provided for during calamitous and catastrophic events.

Future scenarios

What will change for companies and entrepreneurs?

According to Article 4 of the Decree, the measures companies take to prevent risks and protect the insured fixed assets must be considered when determining the premium. For example, earthquake-resistant real estate will be assessed as less risky.

On one hand, this will create a greater culture of risk prevention; on the other hand, it will also likely generate additional costs, not only related to insurance premiums.

When taking out policies, insurance companies ask for an assessment of the assets to be insured to evaluate the risk. Omissions and reticence at the stipulation stage may lead to coverage exclusion.

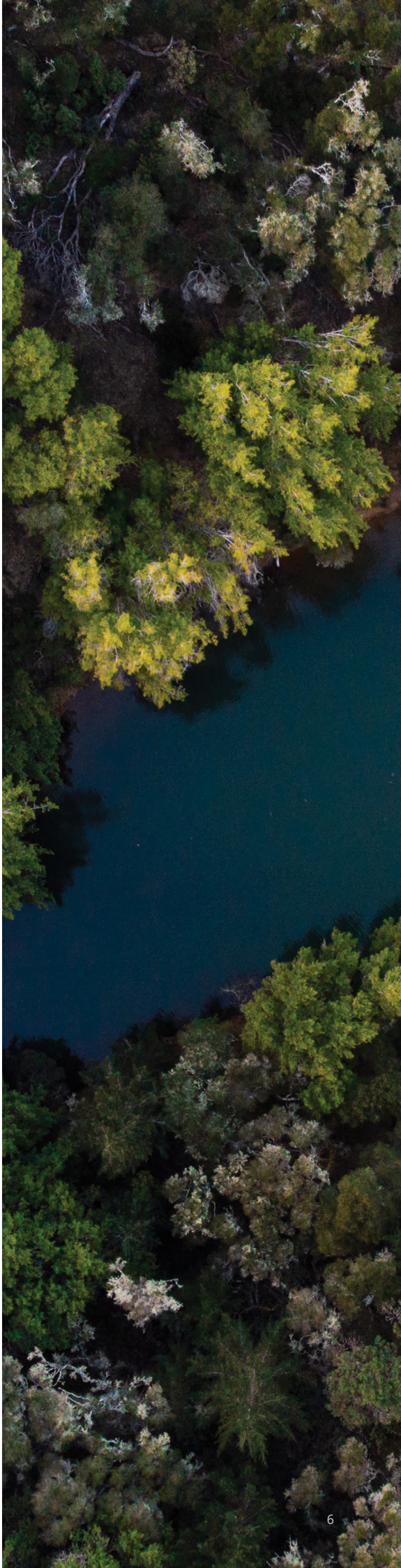
However, the entrepreneur is not always able or knowledgeable enough to carry out an assessment and they might need the help of a technician.

Are insurers subject to the duty to insure?

Insurance companies subject to the duty to insure include:

- all insurance companies, either individually or as a member of a group;
- licensed in Italy to underwrite non-life insurance business under class 8, including FOE or FOS insurers; and
- that individually or at group level, actually underwrite the risks listed in the Decree (see above).

For insurance groups (with an Italian ultimate parent company), one or more undertakings of the group can be designated as entities authorized to fulfil the insurance obligation set out under the decree.



What are the consequences if insurers don't comply with the duty to insure?

Insurance companies that refuse or evade their "duty to insure" can be sanctioned with a fine of between EUR100,000 and EUR500,000.

Which obligations do insurers have to fulfil?

- Insurers have to adopt new policy wordings that comply with the new law no later than 30 days from the decree date of publication.
- For policies already in force, adjusting them to the provisions of the law will take effect from the first renewal.
- To ensure the transparency and competitiveness of insurance service offers, insurers will have to publish on their website all information documents and insurance terms and conditions.
- Insurers will have to define their risk appetite, consistent with their overall solvency needs, and set their risk tolerance limits.

Are there any forms of reinsurance for insurance companies?

Insurance companies can transfer the risks arising from their entire portfolio of policies covering catastrophic events to SACE S.p.a. Policies that don't comply with legal requirements are excluded from the reinsurance coverage.

SACE will act as reinsurer, indemnifying up to 50% of the indemnities paid by insurance companies. The coverage will be capped at EUR5,000 million for 2024. For 2025 and 2026, the cap will be the greater of EUR5,000 million or – as at 31 December – the available free resources of the previous year that weren't used for indemnity payments in the reference year.

Small and non-complex undertakings: News on sustainability reporting in insurance

Angelo Borselli

On 28 January 2025, Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 entered into force. It amends Solvency II and contains, among other things, some innovations on sustainability reporting in the insurance sector. Member states have to transpose the Directive by 29 January 2027.

The Directive recognises that reporting requirements shouldn't be unduly burdensome for insurance and reinsurance companies. To this end, it introduces some simplifications and modifications, in accordance with the proportionality principle.

This article focuses on sustainability reporting amendments to Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

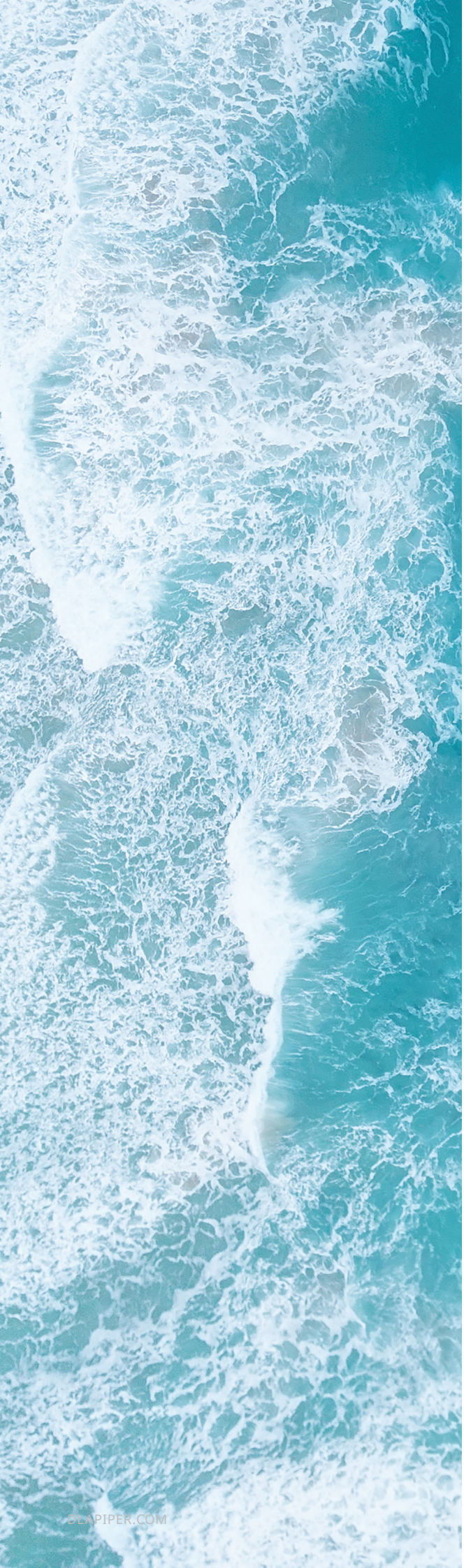
An exemption from the general rules has been introduced for "small and non-complex undertakings." They're defined, according to the provision introduced in Solvency II, as insurance or reinsurance undertakings (including captive insurance or reinsurance undertakings) that meet certain risk-based criteria specifically provided for in the new Article *29a* of Solvency II for the two consecutive fiscal years immediately preceding classification. Exclusions include firms that use an approved partial or full internal model to calculate the Solvency Capital Requirement, parent undertakings of a financial conglomerate or insurance group (except for small, non-complex groups).

Providing specific criteria for identifying small and non-complex undertakings meets the objective of strengthening the application of the proportionality principle in the insurance sector and ensuring consistency in its implementation among member states.

Undertakings that meet the criteria can notify the supervisor to be classified as small and non-complex undertakings, following a straightforward procedure. The notification must also include a statement that the enterprise isn't planning any strategic changes that would lead to non-compliance with any of the criteria in the next three years. And the undertaking should indicate the proportionality measures it plans to implement.

The supervisory authority can oppose the classification of the undertaking as small and non-complex within two months after receiving the notification. It can oppose the classification if the undertaking doesn't comply with the criteria or the Solvency Capital Requirement, or when an undertaking represents more than 5% of the life market or, where applicable, the non-life market of the undertaking's home member state. If the supervisory authority doesn't oppose the classification, the undertaking will be classified as a small and non-complex undertaking as of the expiration of the two-month period following the notification.

Once classified as a small and non-complex undertaking, in principle, the undertaking benefits from the proportionality measures identified in reporting, communication, governance, review of written policies, calculation of technical provisions, internal risk and solvency assessment, and liquidity risk management plans.



Among the simplifications, it's worth mentioning that small and non-complex undertakings don't have to analyse long-term climate change scenarios. But they still have to assess the materiality of exposure to climate change risks, which is required of all insurance and reinsurance undertakings. It's also stipulated that small and non-complex undertakings aren't subject (unless otherwise stipulated by member states) to the audit requirement that's been introduced for other insurance and reinsurance undertakings in relation to the balance sheet presented as part of the solvency and financial condition report. The exemption is explained by the fact that small and non-complex undertakings aren't considered relevant for the financial stability of the EU.

With specific reference to sustainability reporting, by way of derogation from the general rules in Article 19a of Directive 2013/34/EU, "small and non-complex undertakings" can limit sustainability reporting to the following information:

a. a brief description of the company's business model and strategy;

b. a description of the company's policies in relation to sustainability matters;

c. the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;

d. the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;

e. key indicators necessary for the disclosures referred to in points (a) to (d).

If they use the exemption, small and non-complex undertakings report information in accordance with the sustainability reporting principles applicable to SMEs set out in the Directive. They can make use of proportionality measures, unless restricted by the supervisory authority on the basis of specific concerns in relation to the undertaking's risk profile.

Specifically, it's stipulated that a serious concern exists when the Solvency Capital Requirement is no longer met or there's a risk that it won't be met in the following three months. Or when the system of governance of the undertaking isn't effective, or when material changes in the undertaking's risk profile could result in significant non-compliance with any of the criteria established for identifying the undertaking as small and non-complex.

Overall, the changes introduced aim to implement the proportionality principle across member states and avoid excessive burdens on insurance and reinsurance companies.

More broadly, the Directive recognises that insurance undertakings can provide private sources of financing for European businesses and contribute to the goals of the European Green Deal by making the economy more resilient and providing protection against a wide range of risks. It aims to provide incentives for insurers to contribute to the long-term sustainable financing of the economy.

Sustainability reporting, even in its simplified form for small and non-complex undertakings, will be the litmus test for ascertaining the undertaking's sustainability strategy and its impact on sustainability matters.

Mandatory insurance of tangible fixed assets against catastrophic risks

The Editorial Team

We held the second event in the series "*The Green Way: Sustainability Across Sectors*," with a focus on mandatory insurance of tangible fixed assets against catastrophic risks.

DLA Piper professionals from the Insurance and Real Estate Sectors and insurance industry representatives discussed topics of great relevance in the context of business adaptation to climate change and ecological transition.

Let's see what emerged.

Awareness and culture of risks prevention

In her introductory remarks, **Alice Villari** drew the link between the insurance obligation against catastrophic risks and climate change, emphasizing how insurance coverage is among those tools that are part of climate change adaptation. In particular, sustainability-related goals must address the promotion of both tools, including mandatory ones, that reduce the insurance protection gap and a culture of risk prevention and awareness.

It has been noted that in 2023, in just two Italian regions (Emilia Romagna and Tuscany), climate and catastrophic damages totaling more than EUR12 billion euros were recorded, of which only EUR800 million were covered by insurance policies.

The Budget Law and the expected interministerial Decree

Karin Tayel and **Valentina Grande** then offered an analysis of the new legislation, providing obligations and responsibilities of companies and insurance companies, respectively.

On 30 December 2023 the Italian Parliament issued the Budget Law for 2024 fiscal year (i.e., Law no. 213/2023, the "Law").

The Law introduced – for the first time – a specific duty for corporate entities (with head office or permanent establishment in Italy) to take out-and for insurers, to offer – policies covering certain natural catastrophes.

The Law required the issue of an interministerial decree by the Ministry of Economy and Finance and the Ministry of Enterprises and Made in Italy, to set out implementing rules. So far have been circulated only two drafts. The final version of such decree is expected soon. In fact, the deadline to enter into mandatory policies covering catastrophic events will expire on 31 March 2025.

The round table: risks assessment and use of artificial intelligence

During the panel discussion, moderated by **Francesco Ascione** and **Karin Tayel**, speakers included **Laura Marotto**, Legal Director of HDI Assicurazioni; **Roberto Carnicelli**, Co-Founder and CEO of Eoliann; and **Francesco Testa**, Head of the Complex Claims Office at Crédit Agricole Assicurazioni.

Discussion was focus on various different topics.

Laura Marotto commenced the round table with a preliminary consideration concerned the coverage exclusion for properties that arose ab origine with building abuse or that underwent subsequent alterations without title.

Next, Roberto Carnicelli from Eoliann focused on the use of artificial intelligence for assessing the risk of extreme events and evaluate the conditions of the assets to be insured.

Finally, Francesco Testa shares is experience with the natural events occurred in July 2023 affecting Lombardy, Veneto, and Friuli Venezia Giulia, which had a major impact on the insurance company at the level of opening claims and involved the creation of a task force to proceed promptly with settlements by, for example, strengthening the tool of video expertise with the technicians involved.

EIOPA and the global context

Finally, **David Marino** highlighted the complex context of the challenges facing both businesses and insurance companies. The Italian regulations are part of a broader context, represented in a recent joint paper by the Bank of Italy and EIOPA, which analyzed the European context and beyond to identify possible solutions to arrive at a coordinated European catastrophe risk management system.

Non-life insurance

Italian Parliament approves new rules on statutory auditors' liability

Karin Tayel

On 12 March 2025 the Senate of the Italian Parliament approved the legislative proposal to amend Section 2407 of the Civil Code on statutory auditors' liability.

The law text should be published in the Official Gazette in the next few days.

The new rules will introduce:

- limits to statutory auditors' liability, which are now anchored to the level of fees (except in case of fraud);
- a five-year limitation period for bringing liability actions against statutory auditors, as already provided by Article 15(3) of Legislative Decree no. 39/2010 in respects of liability action against external auditors.[1]

Section 2407 of the Civil Code has been amended as follows.

PREVIOUS WORDINGS	NEW CHANGED WORDINGS
1. Statutory auditors must discharge their duties with the professionalism and diligence required by the nature of the office; they are responsible for the truthfulness of their attestations and must keep the facts and documents of which they have knowledge by reason of their office confidential.	UNCHANGED
2. They are jointly and severally liable with the directors for the latter's actions or omissions, when the damage would not have occurred if they had supervised in accordance with the obligations of their office.	**2. Except where they acted with fraud ...the liability of statutory auditors towards the company, shareholders, creditors and third parties is limited to a multiple of the annual fees perceived, as follows:** **– up to EUR10,000, 15 times;** **– from EUR10,000 to EUR50,000, 12 times;** **– over EUR50,000, 10 times.**
3. The provisions of Articles 2393, 2393-bis, 2394-bis and 2395 apply to liability actions against statutory auditors.	UNCHANGED
	4. The statute of limitations applicable to liability actions against statutory auditors is five years running from the date of the filing of the report under Article 2429 (ie the statutory auditors' report attached to the financial statements) relating to the year in which the damage occurred.

1 As reported in one of our previous DeRisk edition, the Italian Constitutional Court stated that the prevision of a different discipline on statute of limitations for audit firms and statutory auditors respect the directors is legitimate (see decision no. 11 published on the Official Gazette no. 27 of 3 July 2024).

Par. 2, relating to joint and several liability of directors and statutory auditors, has been deleted.

Joint and several liability of statutory auditors has always been a debated corporate governance question: statutory auditors have a supervisory role but can't intervene in management. And directors' remuneration is far higher than that of auditors. Despite this, the previous applicable law provided for unlimited liability of both directors and statutory auditors, which has penalized statutory auditors.

The new applicable rules don't clarify:

- if they retroactively apply, including for pending liability claims;
- what happens if the company fails to pay compensation to the statutory auditors, which frequently happens in case of bankruptcy adjudication (the new Article 2407 of the Italian Civil Code refers only to the compensations "perceived"); and
- which annuity is to be considered for this calculation.

We'll monitor the developments in the courts and keep you posted.

Insurtech

EIOPA launches public consultation on AI governance and risk management in the insurance sector

Giacomo Lusardi

The European Insurance and Occupational Pensions Authority (EIOPA) has launched a public consultation on its opinion on AI governance and risk management in the insurance sector. The consultation is open until 12 May 2025 and gives stakeholders an opportunity to help shape regulatory expectations in this rapidly evolving area.

Context and legal basis

EIOPA's opinion is based on its mandate under Regulation (EU) No 1094/2010, which aims to promote a harmonized supervisory culture across the EU. It's also consistent with Directive (EU) 2016/97 (Insurance Distribution Directive), Directive 2009/138/EC (Solvency II Directive) and Regulation (EU) 2022/2554 (Digital Operational Resilience Act – DORA).

The opinion provides guidance on AI governance, complementing the AI Act (Regulation (EU) 2024/1689), which establishes a risk-based approach to AI regulation across industries.

Scope and objectives

AI is increasingly being integrated across the insurance value chain, offering benefits such as improved risk assessment, automated claims handling and fraud detection. But AI also poses risks, including bias, lack of accountability and governance challenges.

The AI Act classifies certain AI applications in insurance as high-risk, particularly those related to risk assessment and pricing in life and health insurance. These systems are subject to strict governance and risk management requirements. EIOPA's opinion focuses on AI applications in insurance that aren't classified as high-risk or prohibited by the AI Act. It aims to clarify how existing insurance legislation applies to them.

Key principles for AI governance and risk management

EIOPA's opinion adopts a principle-based approach, ensuring consistency with existing sectoral regulations. It outlines eight key governance and risk management areas:

Risk-based approach and proportionality:

- Insurers have to assess the risks associated with AI use cases and implement proportionate governance measures.
- Criteria such as data sensitivity, level of automation and potential impact on consumers should be considered.

Risk Management System:

- AI systems need to be integrated into an insurer's broader governance framework.
- Policies should address fairness, data governance, transparency and cybersecurity.

Fairness and ethics:

- AI models should avoid bias and discrimination.
- Consumer-centric AI practices should be embedded throughout the insurance value chain.
- AI-driven decisions that affect customers should be explainable and contestable.

Data governance:

- Data used in AI models must be accurate, complete and representative.
- Bias mitigation techniques should be applied to training and operational data sets.

Transparency and Explainability:

- Customers need to be informed when interacting with AI.
- AI-driven decisions should be understandable and, where necessary, supplemented by human oversight.

Human oversight:

- AI systems should be subject to human oversight and intervention where appropriate.
- Accountability frameworks should define the roles of senior management, compliance teams and data protection officers.

Documentation and record keeping:

- Insurers have to maintain clear records of AI models, including training data, methodologies, and decision-making rationales.
- Proper documentation ensures transparency, facilitates audits, and supports regulatory compliance.

Accuracy, robustness, and cybersecurity:

- AI models should be designed to maintain high levels of accuracy and reliability across their lifecycle.
- Adequate cybersecurity measures must be in place to safeguard AI systems against data breaches, adversarial attacks, and manipulation.

Next steps and industry involvement

EIOPA invites stakeholders, including insurers, regulators and consumer organizations, to provide feedback via the EU Survey platform by 12 May 2025. Following the consultation, EIOPA will assess the contributions, refine its opinion and publish a final version incorporating stakeholder perspectives. EIOPA also plans to monitor AI adoption trends in the insurance sector and assess regulatory convergence across EU member states.

Regulatory

Insurance arbitrator: A new out-of-court mechanism for resolving insurance disputes

David Marino, Valentina Grande, Erica Simone

On 6 November 2024, Decree No. 215 established the Insurance Arbitrator, an independent body set up by the Ministry of Enterprises and Made in Italy, in collaboration with the Ministry of Justice. Published in the Official Gazette on 9 January 2025, this initiative places the Arbitrator under the authority of IVASS (the Italian Insurance Supervisory Authority).

The Insurance Arbitrator should offer a streamlined alternative to traditional mediation, aiming to resolve certain insurance disputes efficiently, affordably, and with strong consumer protection in mind.

Scope of application

The Insurance Arbitrator handles disputes arising from insurance contracts, including compensation claims and issues involving rights, obligations, or options related to insurance benefits. Complaints about violations of conduct rules outlined in the Italian Private Insurance Code (Chapter IX, Sections IV, III-bis, and III-ter) are also within its remit.

But some disputes are excluded from its jurisdiction:

Disputes related to large risks (as defined in Article 1, paragraph 1, letter r, of the Insurance Code).

Claims managed by the Guarantee Fund for Victims of Hunting and Road Traffic.

Disputes overseen by CONSAP.

Claims before Insurance Arbitrator may also concern the payment of a sum of money, provided the following limits are not exceeded:

Life insurance: up to EUR150,000, or EUR300,000 for Class I policies where benefits are paid only upon death.

Non-life insurance: EUR2,500 for third-party civil liability claims filed by individuals with direct action rights.

EUR25,000 for all other types of non-life insurance disputes.

Access requirements and procedure

To file a claim with the Insurance Arbitrator, the claimant first has to submit a formal complaint to the insurance company or intermediary in compliance with IVASS Regulation 24/2008. This complaint must be filed within the preceding 12 months. If the company's response is unsatisfactory or absent, the claimant can proceed with filing a claim.

The claim must be filed within 12 months of receiving the company's response or the deadline for a response. Disputes related to events that occurred more than three years before the complaint are inadmissible.

For complaints filed before the launch of the Arbitrator, the filing deadline is extended by an additional 12 months from the date the system becomes operational.

The claim must include proof of the original complaint and supporting evidence. The process is modeled on the Financial Banking Arbitrator (ABF) and follows similar rules and deadlines.

The procedure is fully digital. The individual can submit claims directly, without legal representation, or through a proxy or consumer association. Cases are decided exclusively based on written documentation, although the Arbitrator might, in rare instances, choose to hear from the parties. No expert reports or oral testimony are permitted.

Decisions are issued within 90 days, with extensions allowed only for complex cases.

Automatic membership for insurers and intermediaries

Insurance companies and intermediaries operating in Italy are automatically included in the arbitration system through their existing registration in national directories (eg the Register of Insurance Companies or the Unified Register of Intermediaries).

However, companies operating under freedom of services or freedom of establishment can notify IVASS of their decision to opt out, if they identify an alternative dispute resolution (ADR) mechanism recognized in their home member state.

Consequences of non-compliance with arbitrator decisions while the Insurance Arbitrator's rulings aren't legally binding, non-compliance may carry reputational consequences.

Any instance of non-compliance will be publicly disclosed on the Arbitrator's website for five years. For six months after publication, the non-compliant company or intermediary has to display this information prominently on its homepage and provide proof of compliance to the Arbitrator's secretariat.

Case law

Italian Supreme Court rules on Decennial Liability Policies on buildings

Karin Tayel, Erica Simone

The Italian Supreme Court (Third Civil Section) has issued ruling no. 1909 of January 27, 2025. The ruling clarifies the nature and enforceability of decennial insurance policies that construction companies have to enter into in favor of property buyers under Legislative Decree no. 122/2005 for defects emerging after construction works are completed.

The ruling redefines the interpretation of the insured party's rights and obligations, emphasizing the role of the buyer in enforcing these policies.

Background of the case

The case arose from a structural failure involving an industrial warehouse and its surrounding yard, used by a company ("**Company A**") under a financial leasing contract. The warehouse, built by a third company, collapsed in May 2009 due to a landslide, prompting Company A to initiate legal action against various parties, including the designers, project managers, construction companies involved in the project and the construction company's insurer.

Company A sought compensation under Article 1669 of the Italian Civil Code, which governs structural defects affecting buildings' stability, and Article 2043, which pertains to general tort liability. The Court of First Instance dismissed the claim under Article 1669 due to the expiration of the statute of limitations, granting only partial compensation under Article 2043.

The Court of Appeal upheld this ruling. The court argued that any potential reversal wouldn't have affected the amount of compensation but merely the enforceability of the decennial insurance policy entered into force by the construction company in respect of which Company A lacked standing.

Company A then appealed to the Supreme Court of Cassation, challenging both the dismissal of its claim under Article 1669 and the Court of Appeal's decision on the insured party's rights under the policy.

The Supreme Court's key rulings

The nature of the policy

The Supreme Court stated that the decennial insurance policy mandated by Legislative Decree no. 122/2005 isn't liability insurance for the constructor but rather insurance for the benefit of the buyer. The policy aims to provide direct protection to the buyer of the property rather than merely indemnifying the builder.

Traditionally, disputes have centered on whether only the constructor (as policyholder) can enforce the policy or whether the buyer of the property also has direct standing. The Supreme Court determined that the buyer, as the insured party, has the right to directly claim benefits under the policy.

But the ruling also acknowledges the possibility of concurrent standing, meaning that while the buyer is the primary insured party, the constructor can, in some cases, also have the ability to act under the insurance contract; for example, if explicitly agreed in the policy terms.

The implications for corporate buyers

One of the most debated aspects of the ruling concerns whether corporate entities can benefit from these protections. The court clarified that Legislative Decree no. 122/2005 applies primarily to natural persons, meaning that the statutory obligation to provide decennial insurance applies when the property is purchased by an individual, not necessarily when acquired by a company.

However, if a corporate buyer has been explicitly designated as the insured party in the contract, it retains standing to enforce the policy against the insurer. This ruling expands protection to corporate buyers, if the policy was contractually intended to cover them.

Impact on the statute of limitations

The court also revisited the timing of claims under Article 1669 and ruled that the limitation period should be assessed based on the progressive worsening of the defect, rather than a rigid calculation from the initial discovery of the issue. This means that if the damage evolved over time, the statute of limitations doesn't necessarily begin at the first sign of defects but when the full extent of the damage and the liabilities involved became apparent.

Legal and commercial implications

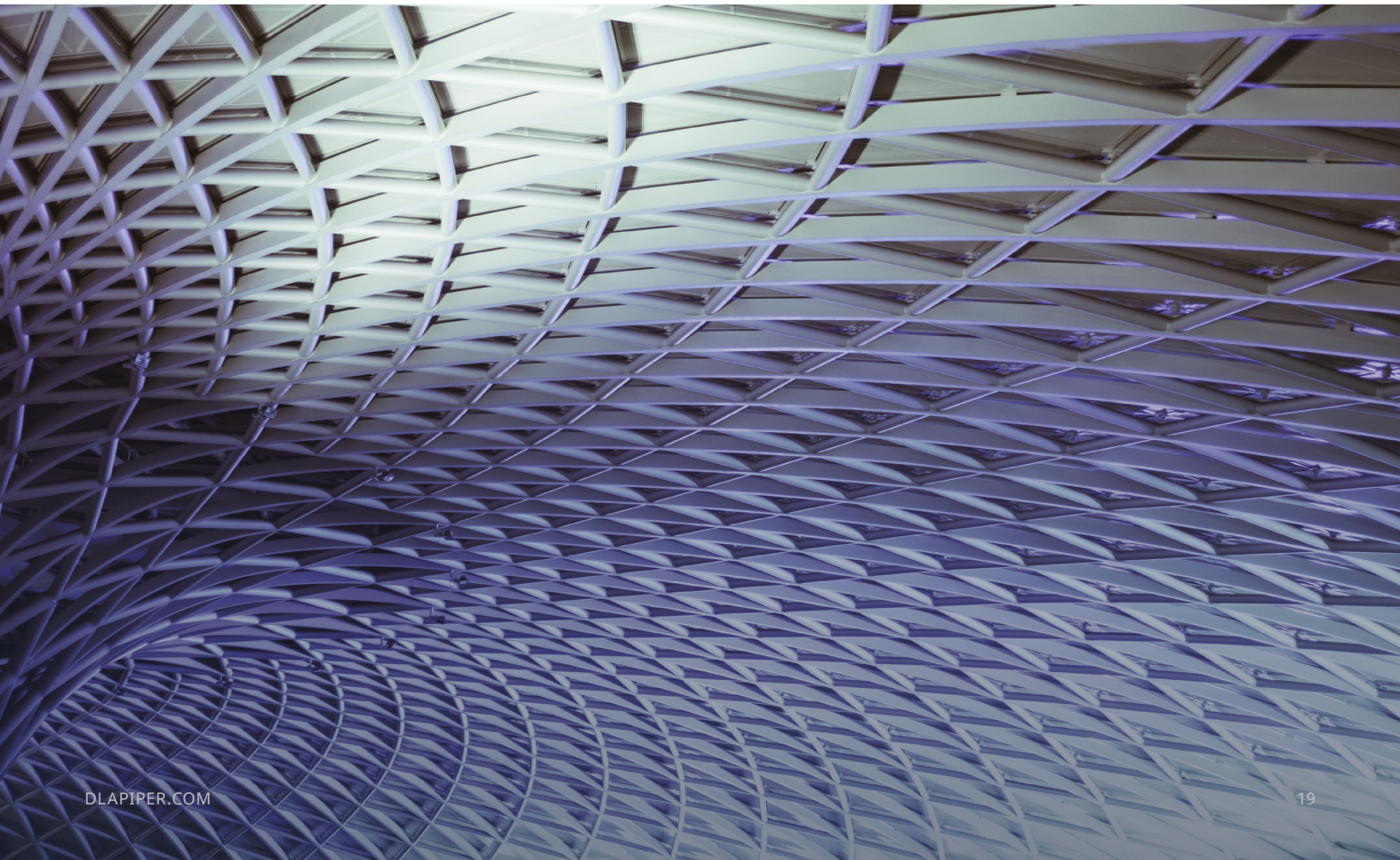
This decision has substantial implications for the real estate and insurance sectors, and for construction companies and property buyers.

- **For real estate developers and constructors:**
  - The ruling reaffirms their obligation to provide insurance coverage that directly benefits the buyer, rather than merely covering their own liability.
  - It potentially limits their ability to rely on contractual exclusions that restrict buyers' rights under such policies.
- **For property buyers:**
  - The decision strengthens their position by confirming their right to claim directly against the insurer without needing the builder's intervention.
  - This enhances financial protection for buyer, ensuring they can access compensation even if the constructor faces insolvency.
- **For insurance companies:**
  - The ruling could increase claims directly from buyers, requiring insurers to carefully draft policy terms to define the scope of their obligations.
  - It may lead to greater scrutiny in underwriting and more stringent conditions in decennial insurance policies.

Conclusion

The Supreme Court's ruling sets a precedent that strengthens the rights of property buyers under decennial insurance policies. By distinguishing between insurance against damages and liability insurance, the court ensures that buyers, whether individuals or corporate entities, can claim protection under the policy, if the contract designates them as beneficiaries.

This decision ultimately aligns with the Legislative Decree no. 122/2005, which aims to provide effective and equitable protection to property buyers, particularly in cases where structural defects arise long after construction is completed. The ruling also highlights the importance of precise contract drafting, ensuring that all parties clearly understand their rights and obligations under the policy.



Tax

Insurance in Italy: Withholding tax obligation on commissions for intermediation services

Antonio Longo, Angela Dulcetti

The Italian Revenue Agency, in Ruling No. 269/2024, has clarified the withholding tax obligations on commission paid by insurance companies to insurance agents and brokers.

Article 25-bis of Presidential Decree 600/1973 imposes withholding tax obligations (withholding tax at 23% rate – *ritenuta di acconto* – on 50% of the amount of the commissions) on commission for services relating to intermediary services. The fifth paragraph provides an exemption on commission paid to "insurance agents for services rendered directly to insurance companies" and "insurance brokers for their relations with insurance companies and with general agents of public insurance companies or their subsidiaries that provide services directly to insurance companies on a reciprocal exclusive basis." This exemption was repealed on 1 April 2024 by Article 1, paragraphs 89 and 90, of Law 213/2023.

A French insurance company operating in Italy requested the ruling. It wanted guidance on whether the withholding tax applies to commissions paid to intermediaries involved in selling travel insurance and home insurance policies. The company asked whether commissions paid to travel agencies and utility companies – which distribute these policies as part of their service – should be subject to withholding tax. It especially asked about cases where the intermediaries don't have to register in the Insurance Intermediaries Register (*Registro Unico Intermediari* – RUI) according to art. 107, par. 4, of the Private Insurance Code, since they carry our intermediary activities on an occasional and ancillary basis.

In its ruling, the Italian Tax Authorities clarified that, following the amendment introduced by the Italian Budget Law 2024, the exemption from withholding tax for commissions paid to insurance agents and brokers ceased to apply as of April 1, 2024. The tax authorities emphasized that the withholding tax obligations apply to all commission related to insurance intermediation services even if performed as a secondary and ancillary activity and the intermediaries aren't registered in the RUI – ie travel agencies and utility companies – if they offer insurance intermediation services.

According to this interpretation, the withholding tax obligation applies to all the entities that provide insurance intermediation services, regardless of their registration status, to ensure equal treatment among the operators providing services of the same nature.

So insurance companies should pay the withholding taxes to the Treasury by the 16th day of the month following the one in which the withholding taxes were applied.

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