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#DeRisk Newsletter

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Contents

ESG

Angelo Borselli, Giulia Indragoli, **ESG Corporate Disclosure in Italy: Insights from the Italian Securities and Exchange Commission** 3

Technology

Marianna Riedo, Gabriele Cattaneo, **New EU Space Act proposal and the Italian Space Law: Innovation or potential conflict?** 5

Insurtech

Giacomo Lusardi, Dorina Simaku, **Using AI to commit insurance fraud** 7

Non-life insurance

Leila Bianchi, **The enduring debate on claims made clauses in Italian Case Law: Recent developments and diverging interpretations** 9

Regulatory

Chiara Cimarelli, **Italy's Insurance Arbitrator: Regulatory framework and operational challenges** 11

Chiara Cimarelli, **ANIA Annual Meeting: the upcoming challenges for Italy** 14

Tax

Antonio Longo, Angela Dulcetti, **CEDU and tax audits: new scenarios for taxpayer rights in the Italgomme Case** 15

Events

Editorial Team, **Italian claims roundtable** 16

ESG

ESG Corporate Disclosure in Italy: Insights from the Italian Securities and Exchange Commission

Angelo Borselli and Giulia Indragoli

The integration of environmental, social and governance (ESG) factors into corporate strategy is a key factor in the ongoing transformation of European capital markets.

In March 2025, CONSOB, the Italian Securities and Exchange Commission, published a study entitled "The Integration of ESG Factors into Corporate Strategy: An Analysis of Corporate Disclosure. Preliminary Insights." It offers a valuable analysis of how a sample of Italian companies disclose ESG objectives in their corporate reporting.[1]

The study aims to assess how much ESG policies and objectives are integrated into corporate planning and the depth of the information provided. It considers a sample of 52 issuers (of which 41 listed at the end of 2021 and 38 at the end of 2022) that between 2020 and 2021 published a prospectus related to an offering and/or admission to trading of financial instruments. Of the 52 issuers, 32 operate in the industrial sector, and 20 in the financial sector. The majority of the issuers (approximately 73%) are listed on Euronext Milan, the main stock exchange organized and managed by Borsa Italiana S.p.A.

Besides the securities prospectuses, the analysis considered annual financial reports; non-financial statements (NFS); industrial plans communicated to the public through issuers' institutional websites and/or press releases.

While the documentation analyzed reflects the regulatory framework in force during the 2020–2022 period, which is currently evolving in the EU in light of the EU Omnibus I package reform,[2] the study appears to be highly relevant as it provides a concrete measure of the scope and depth of ESG objective disclosure by the companies analyzed.

The analysis shows that:

- in the published prospectuses, most issuers provided information on ESG factors within their corporate strategies and industrial plans, with particular focus on climate risk;
- in the non-financial statements, only a minority of the companies reported information on the ESG objectives included in their industrial plans, although this figure is growing;
- in the annual financial reports, there has been a progressive increase in ESG disclosure, although it's mainly qualitative in nature;
- in the documentation related to industrial plans, the number of companies providing information on ESG objectives within their plans remains limited, with disclosure mainly of a qualitative and quantitative nature.

The analysis conducted on the prospectuses published by the sample of issuers during the reference period revealed a progressive increase in the disclosure of ESG factors, including related risks (particularly climate risk) as part of strategic planning. A more limited number of issuers provided information on ESG objectives linked specifically to industrial plans, primarily from the financial sector. The disclosures are presented only (or predominantly) in qualitative terms.

Nearly all prospectuses between 2020 and 2022 included descriptions of risks related to at least one category of environmental, social, and/or governance factors – approximately 31% in 2020, 54% in 2021, and 19% in 2022.

Focusing on environmental risk factors, disclosure was most frequent in 2021 (reported in 9 cases in 2020, 21 in 2021, and 9 in 2022). These disclosures appeared both individually and in combination with other types of risks (social and governance).

As for social risk factors, they were never disclosed on their own, but only in conjunction with environmental and/or governance risks. Overall, they appeared less frequently in the prospectuses.

1 The study is available at: Comunicato stampa del 24 marzo 2025 – CONSOB.

2 See Commission simplifies rules on sustainability and EU investments, delivering over EUR6 billion in administrative relief - European Commission.

Finally, governance risks were disclosed either individually or alongside other risk categories in 16, 19, and 3 cases in 2020, 2021, and 2022 respectively.

The environmental risks most frequently reported in the prospectuses are:

- Risks related to non-compliance with or violation of existing environmental regulations, which may lead the issuer to incur unexpected costs (such as for remediation linked to the discovery of hazardous substances on owned land and/or buildings) and/or be liable for environmental and social damages in court due to accidental breaches of legal pollution thresholds linked to their operations (these types of risks are primarily reported by issuers in the industrial sector).
- Climate risk, subdivided into physical risk: associated with potential damage to business activities caused by extreme weather events (eg floods, droughts) and transition risk related to potential losses due to economic pressures or regulatory obligations to convert operations to less carbon-intensive activities.

Regarding social risks, the prospectuses mainly highlight risks tied to insufficient protection of health and safety in the workplace, as well as, in some cases, non-compliance with gender equality standards. More generally, risks also include failure to prevent discrimination and to uphold human rights, including along the supply chain.

As for governance, the main risk factors identified concern reliance on key personnel, potential conflicts of interest among board members, transactions with related parties, non-compliance of the internal organizational model with the requirements of Italian Legislative Decree 231/2001, and internal control weaknesses.

The analysis also has important implications for the insurance sector across various areas, including risk assessment, underwriting and product development.

The increasing integration of ESG factors – especially climate-related risks – into corporate strategies and disclosures allows insurers to gain greater insight into the risk profiles of their corporate clients. And it reinforces the strategic importance of incorporating ESG indicators into risk models, engaging with clients on sustainability planning, and developing solutions that support the transition to more resilient and sustainable business models.

Technology

New EU Space Act proposal and the Italian Space Law: Innovation or potential conflict?

Marianna Riedo, Gabriele Cattaneo

On 25 June 2025, the European Commission presented a proposal for a regulation to establish a common framework for space activities in the EU. This is the first attempt to create an internal market for space services and infrastructure, overcoming the current regulatory fragmentation resulting from a multiplicity of national laws.

The initiative, provisionally called the EU Space Act, aims to define uniform rules to ensure operational safety, robustness of infrastructure and environmental sustainability, with the goal of consolidating Europe's role in the global space economy.

The proposal is based on the need to ensure defined and coherent legal conditions for a rapidly expanding sector, which has an increasing number of players and significant economic, technological and geopolitical implications.

The new regulatory framework will apply both to operators established in the EU and to non-EU operators, with requirements calibrated according to company size and level of risk. The choice of the instrument of the regulation, which guarantees direct and uniform application, marks a change of approach compared to some member states' requests for a more flexible model.

Three areas of intervention: Safety, resilience, environmental impact

The text is structured around three main strands.

On the safety side, a harmonised authorisation system has been introduced for launching and handling space objects, with specific obligations for debris prevention and tracking in-orbit assets.

Resilience is addressed by introducing dedicated measures for cyber protection and risk management throughout the entire life cycle of space infrastructures.

In terms of sustainability, the proposal envisages the adoption of common technical standards to assess and limit the environmental impact of space activities, including by using enabling technologies like in-orbit maintenance and space waste removal.

A step-by-step path to European space governance

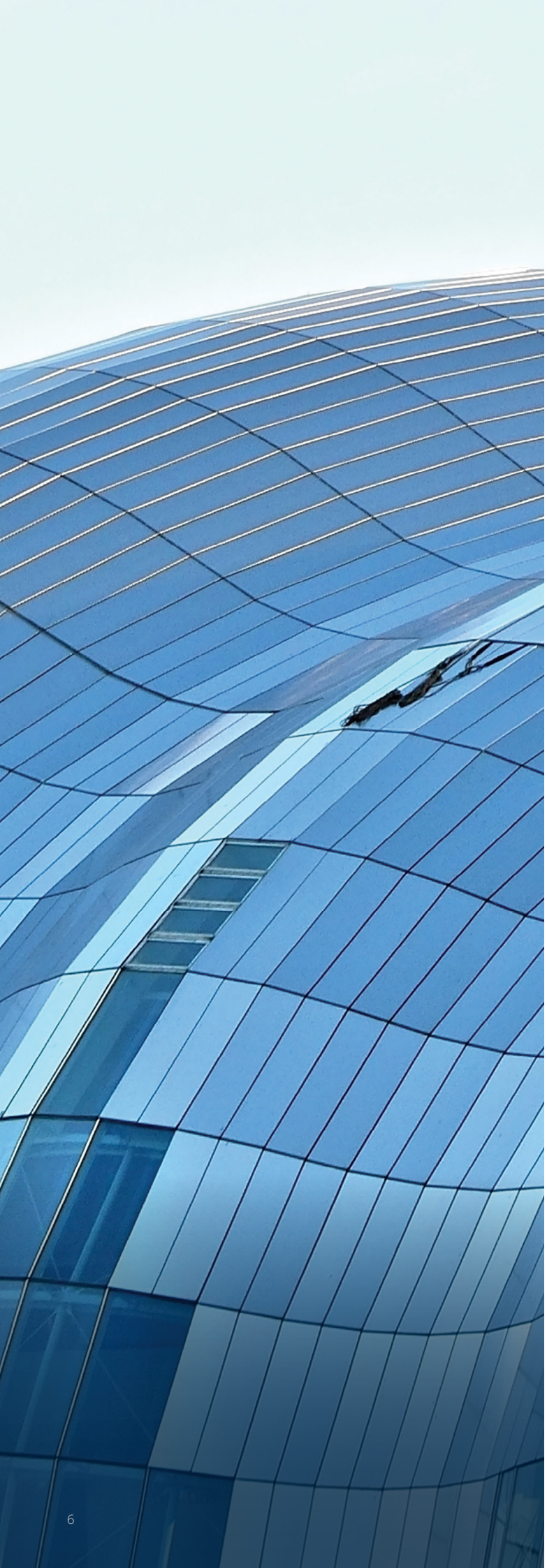
The initiative is one of the Commission's priorities. It's determined to counter the effects of current regulatory fragmentation, which hampers the competitiveness of cross-border value chains in the EU by preventing joint projects and exacerbating the environmental impact of space activities. The aim is to promote common governance that enables the EU to address the challenges of increasing orbital congestion, protecting strategic assets and industrial sustainability in a coordinated manner.

The text proposes a two-year transitional period before the application of the regulation to allow operators and member states to adapt to the new provisions. The Commission has announced its intention to accompany this phase with support measures, in particular for small and medium-sized enterprises, by means of tools dedicated to administrative simplification, access to test infrastructures and preparing authorisation requests. The final adoption of the regulation will now require formal discussion between the European Parliament and the Council under the ordinary legislative procedure.

National updates: Space Law published in the Official Gazette

In Italy, the legislative process of the proposed law for a national regulation of space activities was concluded on 24 June with the publication in the Gazzetta Ufficiale of Law no. 89 of 2025 (the Law on Space).

The Law on Space regulates, first of all, the authorisation regime for space activities operated by Italian companies, but also by foreign companies in Italian space. To operate in space, private companies have to obtain authorisation.



The authorisation certifies that the company has complied with specific objective requirements related to the safety, resilience and environmental sustainability of the individual operation. It also covers subjective requirements, including the conduct of the operator, technical skills, financial soundness and the presence of adequate insurance coverage.

The Space Law also introduces, alongside the liability of states as defined by international treaties, a strict liability on the part of individual space operators for damage caused to persons and property on Earth, and to aircraft in flight. The liability regime is also strongly linked to the introduction of compulsory insurance covering up to EUR100 million per claim, with reductions for innovative startups and research projects.

The creation of a EUR35 million Space Economy Fund by 2025 is also planned, to foster the market development of products and services based on space technologies, including by startups and SMEs.

EU Space Act and Space Law: Potential conflict?

The final approval of the Space Law in Italy and the start of the legislative process on the EU Space Act raise doubts about the potential conflict between national regulations and the future European law.

In both cases, the rules on space activities follow the principle of territoriality. And the rules also apply to foreign operators carrying out activities in areas under the sovereignty of the Italian state or the EU. This will create a further obstacle not only for Italian companies, but also for foreign companies entering the Italian market. Once the EU Space Act comes into force, they will have to navigate between supranational provisions and local regulations.

The current role of the Italian Space Agency as a supervisory and regulatory authority could clash with a more centralised European regulatory framework. Several European countries have already adopted a law regulating space activities, which makes the approval of the Space Law a necessary step to ensure Italy's competitiveness in a fast-growing sector like the aerospace economy. At the same time, the timeframe for the approval of the EU Space Act is expected to be very long: although there's broad consensus on the importance of the space sector for the EU's competitiveness and strategic autonomy, member states have different opinions on the most appropriate legal basis and regulatory model for the intervention of the EU legislator.

We will have to wait to see the extent of the coordination intervention that will eventually be necessary to align the Space Act with the future EU Space Act. But the newly adopted national legislation can already provide clear and up-to-date rules, which are essential to navigate a rapidly developing sector like the new space economy.

Insurtech

Using AI to commit insurance fraud

Giacomo Lusardi and Dorina Simaku

AI has many benefits. It can improve efficiency, help make better decisions, and encourage innovation across different industries. But these advantages also come with serious risks – especially the potential for misuse in fraud or deception.

Like any powerful technology, AI can be used for both helpful and harmful purposes. This makes strong and thoughtful governance essential to maximize its benefits and protect against misuse.

Roberto Copia, Director at IVASS Inspectorate Service, spoke about this issue at the 4th National Congress of the CODICI Association on 17 May 2025. He pointed out a growing ethical concern: while AI can improve the efficiency of the insurance industry, it can also give fraudsters more advanced tools to commit fraud.

AI and insurance: An inseparable alliance

AI has become an indispensable tool in the insurance sector. Its applications range from risk assessment to product development, claims management and fraud prevention. Predictive algorithms, neural networks, and machine learning models allow the processing of vast datasets, improving underwriting accuracy, accelerating claim settlements and strengthening insurers' anti-fraud capabilities.

But these very tools – powerful, scalable and increasingly accessible – are also being weaponized by fraudsters. As Copia noted, "Those who seek to commit fraud are often skilled innovators – frequently one step ahead of those tasked with stopping them." (Our translation).

Insurance fraud in the age of AI: A quantum leap in criminal sophistication

Insurance fraud has always been a structural problem in the sector. Yet today, it's undergoing a qualitative shift. We're no longer dealing solely with fraudulent damage to property (Article 642 of the Italian Criminal Code) or fictitious claims. Modern fraud is digital, automated and highly sophisticated. AI has become a powerful enabler for those seeking to manipulate data, forge documents or create false digital identities.

A paradigmatic example is the *Ghost Broker* scam: websites that appear legitimate, often employing advanced social engineering techniques, real logos, and data stolen from unwitting intermediaries. AI allows these fraudulent portals to appear increasingly credible, complete with chatbots simulating customer service, AI-driven profiling of potential victims, and the delivery of highly personalized fake offers. The result is a seemingly flawless customer journey. But the buyer is left uninsured and unknowingly defrauded until a roadside inspection reveals the deception.

The cost of fraud: More than just financial

The statistics reveal a concerning trend. Forbes estimates global insurance fraud costs around USD300 billion annually.

In Italy, the situation is equally concerning: according to IVASS' 2023 Anti-Fraud Report, the share of suspected fraudulent claims in the motor liability sector rose sharply from 16% to 21% in just one year.

But the impact of insurance fraud extends far beyond the immediate financial losses suffered by insurers. At a systemic level, the consequences are even more troubling. Public safety is compromised when uninsured vehicles remain on the roads, placing third parties at risk, who must then turn to the Guarantee Fund (*Fondo di Garanzia per le Vittime della Strada*), which is financed by all law-abiding, insured drivers.

Reputational damage is another major concern, as legitimate insurers and intermediaries see public trust eroded, particularly in cases involving identity theft, an offence addressed under Article 494 of the Italian Criminal Code.

The growing incidence of fraud undermines confidence in digital channels, slowing the industry's transition to more efficient and accessible online services. And consumers themselves aren't spared: many of the victims are young, digitally literate individuals who, despite their digital skills, often lack a clear understanding of how insurance mechanisms work, making them particularly vulnerable to scams.

The role of the AI Act and the institutional response

To address these emerging challenges, the EU has adopted the Regulation (EU) 2024/1689 (AI Act), a cornerstone in the legal governance of AI in the internal market. While its primary aim is to establish a risk-based framework ensuring safety and fundamental rights, the AI Act also has relevant implications for the insurance sector, particularly in relation to fraud prevention and risk management.

Some AI systems, such as those used for biometric identification, credit scoring, or emotion recognition, are classified as high-risk and must comply with strict requirements, including risk assessment, transparency, traceability, and human oversight. Although "AI systems used for the purpose of detecting financial fraud" are not classified as high-risk under the AI Act, they may be considered high-risk when combined with other high-risk systems or when they include key high-risk features. This opens the door to closer scrutiny of both the AI tools used by insurers and those misused by fraudsters.

The Regulation also introduces new obligations for AI systems with transparency risks, especially those capable of generating synthetic content, deepfakes, or convincingly imitating real individuals – frequent features in ghost broker scams and identity theft schemes. Providers and deployers of such systems now have to ensure transparency, watermarking, and documentation, enhancing the traceability of malicious uses.

These provisions, combined with sector-specific laws (eg the Digital Services Act (DSA) and the GDPR), may serve as legal levers to hold developers and operators accountable when their technologies are repurposed for fraudulent ends. More importantly, the AI Act places a duty on member states and competent authorities to monitor the use of high-risk systems and to facilitate coordination at EU level.

This provides an opportunity for national regulators such as IVASS to play a proactive role not only in supervising industry compliance but also in reporting and investigating abuses involving AI in the insurance domain.

IVASS, in cooperation with law enforcement authorities, has introduced a range of countermeasures to combat digital insurance fraud. These include the takedown of fraudulent websites, public awareness campaigns, network analysis, centralized claims databases, the creation of white lists, and the use of AI tools to identify suspicious patterns. Despite these efforts, institutional responses often struggle to keep pace with the rapid evolution of fraud techniques. At the same time, many insurers are investing in anomaly-detection systems and cross-verification technologies. Yet, criminal complaints remain limited, and fraud continues to be viewed – too often – as an unavoidable cost of doing business.

Towards a new paradigm: Accountability, awareness and law

Addressing this challenge requires both technical solutions and a cultural shift. Legal frameworks has to catch up with the rapid rise of generative AI, especially when it's used for criminal purposes like counterfeiting, fraud or identity theft. Moving forward, several key actions are critical:

- Automated accountability mechanisms: AI systems must not only detect anomalies but also certify and document fraudulent activity to support legal proceedings.
- Enhanced public-private collaboration: stronger data sharing and joint risk analyses between regulators and private actors are needed.
- Mandatory consumer education: like in the banking sector, consumers should receive mandatory training on the safe and informed use of digital insurance platforms.
- A harmonized EU framework: a cohesive European approach to ghost broking and digital insurance fraud is required, integrating the objectives of the DSA with sectoral supervisory efforts.

Non-life insurance

The enduring debate on claims made clauses in Italian Case Law: Recent developments and diverging interpretations

Leila Bianchi

The Foundational Rulings of the Joint Sections (2016–2018)

It's now well established that the Court of Cassation broadly recognises the legitimacy of *claims made* clauses. As early as 2016, the Joint Sections of the Supreme Court confirmed that the clauses are valid and not inherently unfair, if they're drafted in clear and intelligible terms and are deemed worthy of legal protection under Article 1322, paragraph 2 of the Italian Civil Code – namely, where they pursue a legitimate socio-economic interest.

In 2018, the Joint Sections further reinforced this position by recognizing the *claims made* clause as a "typical" contractual provision, subject to scrutiny under the doctrine of *causa concreta* (concrete cause) pursuant to Article 1322, paragraph 1 of the Civil Code.

A temporary deviation: The isolated precedent of 2020

The Supreme Court has consistently reaffirmed these principles over the years, albeit with occasional exceptions. A notable deviation occurred in Judgment No. 8894 of 13 May 2020, in which the court held that the *claims made* clause was invalid. The reasoning was that it imposed a forfeiture on the insured based solely on the conduct of the third-party claimant – namely, the filing of a claim for damages – which could occur long after the underlying wrongful act. As such, the clause was found to unduly hinder the insured's ability to exercise their right to indemnity, in violation of Article 2965 of the Civil Code, which renders null and void any clause that imposes a forfeiture period making it excessively difficult for one party to assert their rights.

But this interpretation has been expressly rejected by subsequent Supreme Court rulings. In particular, the court has clarified that the *claims made* clause does not constitute a conventional forfeiture clause falling within the scope of Article 2965. Rather, the third-party claim is to be regarded as an essential component of the insured risk itself – an integral element in defining the scope of coverage (See *Cass. Civ., Order No. 5165/2024*).

This position was reaffirmed in *Cass. Civ., Section III, Order No. 7890/2025*, which explicitly stated: "Judgment No. 8894 of 2020 represents an isolated precedent and is inconsistent with the principles established by the Joint Sections concerning *claims made* clauses. It must therefore be disregarded."

The June 2025 Decision: Sunset clauses and validity

The legal debate surrounding the validity of *claims made* clauses continues. As recently as June 2025, the Supreme Court addressed the issue once again in *Order No. 15447 of 10 June 2025*, ruling that the absence of a *sunset clause* (ie an extended reporting period) does not, in itself, render the clause invalid. The court reiterated that the validity of these clauses must be assessed in light of the *concrete cause* of the contract, taking into account the legitimate interests pursued by the parties.

Diverging interpretations in the lower courts

This debate also continues to play out in the lower courts. On one side, courts such as the Court of Milan have generally aligned with the Supreme Court's prevailing jurisprudence, upholding the enforceability of *claims made* clauses. On the other side, some courts have adopted a more restrictive stance.

Two notable examples are the decisions of the Court of Rome issued in April 2023 and July 2024. In both cases, the court declined to apply the *claims made* clause and rejected the insurers' objections. The reasoning was that the clause conferred an unjust and disproportionate advantage on the insurer, without any corresponding benefit for the insured. Specifically, the court found that the clause made the

insurer's obligation to indemnify contingent upon the will of the third-party claimant – namely, the timing of the claim – which could occur long after the wrongful act. As such, the clause was deemed unworthy of legal protection.

Conclusion – The *claims made* clause is still a focal point of insurance litigation in Italy

The jurisprudential trajectory of *claims made* clauses in Italy reflects a complex and evolving legal landscape. While the Supreme Court has, over time, consolidated a generally favourable stance – recognising the clause's typical nature and its compatibility with the principles of contractual autonomy and risk delimitation – occasional divergences, particularly at the level of trial courts, continue to fuel legal uncertainty.

The persistence of conflicting rulings, especially from courts of first instance, underscores the need for continued doctrinal and judicial clarification. In particular, the tension between the protection of the insured's rights and the legitimate interests of insurers in defining the scope of coverage remains a central issue.

Until a more uniform and stable interpretative framework is achieved – possibly through further intervention by the Joint Sections or legislative action – the *claims made* clause will likely remain a focal point of insurance litigation in Italy.

Regulatory

Italy's Insurance Arbitrator: Regulatory framework and operational challenges

Chiara Cimarelli

This article analyses the institution of the Insurance Arbitrator, focusing on the most critical profiles connected to the competence criteria and competition with other procedures.

On 23 May the Italian Insurance Supervisory Authority (IVASS) issued the "Technical and Implementing Provisions referred to in Article 13 of the Decree No. 215 of 6 November 2024, bearing the regulation concerning the determination of the criteria for the conduct of out-of-court settlement procedures for disputes with customers relating to insurance services and services arising from insurance contracts, etc." (the Provisions).

The Authority has used these implementing provisions to dictate the rules for conducting proceedings before the Insurance Arbitrator. The provisions comply with Article 13 of the Ministerial Decree (the Decree)[3] and Article 187.1, paragraph 1,[4] of Legislative Decree No. 209/2005 (Private Insurance Code, the Code).

The latter is not yet operational. IVASS has five months from the publication of the Provisions to publish the provision declaring the operation of the Arbitrator on its website. Presumably this will take place after the summer.

The introduction of the Insurance Arbitrator in the Italian legal system is in response to the obligations to comply with the provisions of Article 15 (Out-of-court dispute resolution)[5] of Directive (EU) 2016/97 of the European Parliament and of the Council on insurance distribution. Italy complied with this directive through Legislative Decree No. 68 of 21 May 2018 and the subsequent Legislative Decree No. 187 of 30 December 2020.

However, one wonders how the body will fit into a context where there are already other systems of out-of-court settlement of disputes that may arise from concluding an insurance contract.[6]

First of all, it's worth noting that the complainant can appeal to the Insurance Arbitrator once a complaint has been lodged with an insurance company and/or an intermediary. That is if they don't respond within the 45 days provided for by IVASS Regulation No. 24/2008 or it they don't respond satisfactorily. An appeal can't be lodged when more than 12 months have passed since the date the complaint was lodged. Or when the facts that are the subject of the appeal date back more than three years from the date on which the complaint was lodged.

The appeal to the Arbitrator concerns insurance companies and brokers, whether domestic or EU/non-EU, that have an establishment in Italy or operate in our country under the freedom to provide services regime. It doesn't include companies that, operating under the latter regime, have indicated to IVASS by next 30 July that they don't wish to automatically join the Insurance Arbitrator, as they've joined a similar out-of-court dispute resolution system in their home country.

On this last point, IVASS clarified, when formally questioned by means of Consultation Document No. 1/2025 that preceded the issuance of the Provisions, that it had adhered to the letter of the Decree. This is clearly a systemic

3 See Article 13 ("Referral to technical and implementing provisions") of Ministerial Decree No. 215 of 6 November 2024, which provides as follows:
"1. Within four months of the entry into force of this Regulation, IVASS shall adopt detailed technical and implementing provisions as to:
a) membership of the insurance arbitrator;
b) procedure for the selection and appointment of the members of the board
c) technical and operational modalities for the conduct of the panel's meetings
d) activities of the technical secretariat;
e) formalities for filing the appeal to the insurance arbitrator;
f) formalities following the decision;
g) publicity of non-compliance with the decision.
2. The insurance arbitrator shall be declared operational by IVASS by its own measure, to be published on its website, upon conclusion of the provisions of paragraph 1, and in any case no later than five months after the publication of the technical and implementing provisions referred to in paragraph 1."

4 Pursuant to Article 187.1, paragraph 1 of the Code, "Without prejudice to the provisions of Article 32-ter of Legislative Decree No. 58 of 24 February 1998, the persons referred to in Article 6, paragraph 1, letters (a) and (d), as well as insurance intermediaries on an ancillary basis, shall adhere to the systems for the out-of-court settlement of disputes with customers relating to insurance services and performances arising from all insurance contracts, without any exclusion."

5 "Member States shall ensure that adequate, effective, impartial and independent complaints and out-of-court dispute resolution procedures for the settlement of disputes between customers and distributors of insurance products concerning rights and obligations arising from this Directive are established in accordance with the relevant Union and national law, using existing bodies where appropriate. Member States shall ensure that these procedures are applied to the distributors of insurance products in respect of whom the procedures have been initiated and that the jurisdiction of the relevant body is extended to them. Member States shall ensure that the bodies referred to in paragraph 1 cooperate in the resolution of cross-border disputes concerning rights and obligations arising from this Directive."

6 Among others, compulsory mediation (see Legislative Decree No. 28/2010), assisted negotiation (see, in this regard, Decree-Law No. 132/2014), as well as arbitration (see Arts. 806 et seq. of the Code of Civil Procedure).

inconsistency that's difficult to explain. And it creates a disparity between operators that's not easy for complainants to understand and manage.

If we look at the powers of the Insurance Arbitrator, we notice the following.

The powers are delimited by Article 3 of the Decree, and the safeguard clause at the beginning of Article 187.1 of the Code.

The former, in defining the disputes referred to the jurisdiction of the Arbitrator, specifies that the latter is entrusted with "(...) the ascertainment of rights, including those of compensation, obligations and faculties inherent in insurance services or the failure to comply with the rules of conduct (...) inherent in the exercise of insurance distribution activities": in this case, no monetary thresholds are envisaged to delimit the Arbitrator's jurisdiction.

Considering the fact that a prerequisite for activating the procedure before the Insurance Arbitrator is filing a complaint (which could also be addressed for information to IVASS), it appears complex to delineate the areas of competence, in part competing, between the extrajudicial dispute resolution body and the Insurance Authority.

The Authority has suggested, in terms of no particular clarity, that the Arbitrator be reserved for dealing with aspects of individual customer protection. While the complaint will be handled by the Institute exclusively for any supervisory and sanctioning profiles. It's difficult to imagine a clear dividing line between the two areas.

With specific reference instead to disputes involving the payment of a sum of money, disputes concerning the following contracts that don't exceed the monetary thresholds indicated below will be devolved to the jurisdiction of the Arbitrator (see Article 3 paragraph 4 of the Decree):

- EUR300,000 for life insurance contracts referred to in class I of Article 2(1) of the Code which provide for a death benefit; or EUR150,000 for all other life insurance contracts, including class I contracts, other than those referred to above; and
- EUR2.5 million for liability insurance contracts where the action is brought by the injured third party who is a direct claimant; or EUR2.5 million in all other non-life insurance contracts.

The further delimitation of the jurisdiction of the Insurance Arbitrator *ratione materiae* is in the safeguard clause in the first paragraph of Article 187.1 of the Code.

The latter provides that establishing the Insurance Arbitrator won't affect the competences and cognition of out-of-court dispute resolution systems already concerning entities under Consob's supervision and concerning disputes with investors other than professional clients.

With respect to this last point, it's perhaps not very clear who will be responsible for ruling, for example, on any complaints lodged on life products with a financial content, by non-professional clients.

If, then, to the above, we add the exclusions provided for in Article 3 paragraph 2 of the Decree (ie the Insurance Arbitrator has no jurisdiction over claims handled by the guarantee fund for hunting and road victims, nor over those falling under the jurisdiction of CONSAP and/or those concerning large risks), and the provisions of Articles 9, paragraph 1, letter l) and 11, paragraph 7, letter b) of the Decree, the purposes for which the Insurance Arbitrator is established would appear to be even less certain.

In fact, Article 9 paragraph 1 letter l) of the Decree provides that an appeal to the Insurance Arbitrator is inadmissible when it relates to a dispute that, at the date of the submission of the appeal to the Arbitrator, is already pending before a judicial authority or the Insurance Arbitrator themselves or is already the subject of an alternative dispute resolution procedure.

The second provision of the law (ie Article 11 paragraph 7 lett. b) of the Decree), on the other hand, provides that an appeal to the Arbitrator can't be lodged if, after filing the appeal, a court application is filed or other out-of-court proceedings are instituted concerning the same dispute, which is still pending before the Arbitrator.

In essence, recourse to the Insurance Arbitrator will be possible, in addition to the cases and according to the limits indicated by the Decree and the Code as to the jurisdiction *ratione materiae*. But that's only if the dispute referred to the jurisdiction of the Arbitrator isn't, either at the date of the appeal or subsequently (while the appeal before the Insurance Arbitrator is still pending), being discussed before a court or the subject of another out-of-court dispute resolution procedure.

With reference to compulsory mediation, assisted negotiation and arbitration, we briefly note the following.

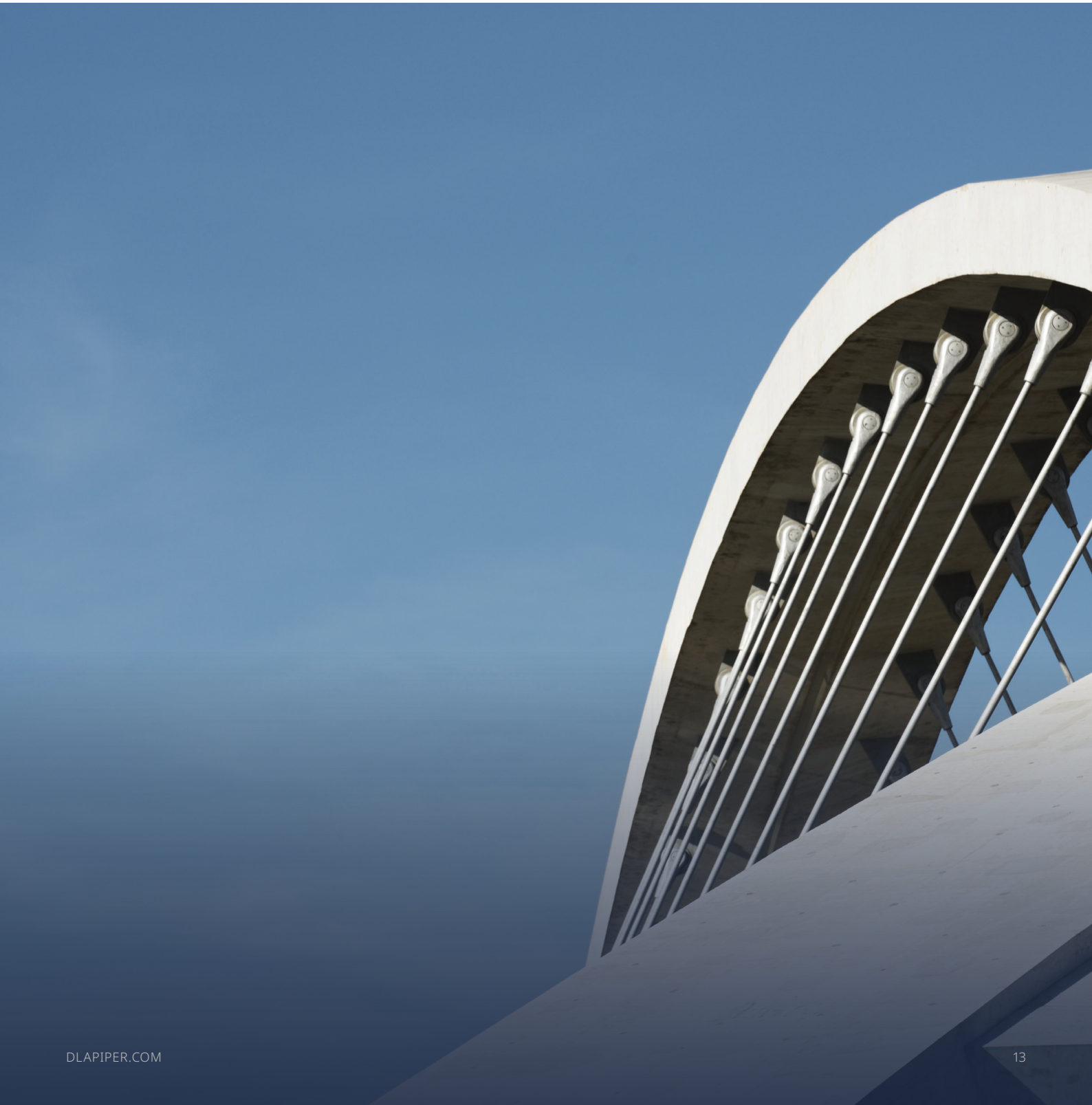
Compulsory mediation: pursuant to Article 5 of Legislative Decree No. 28/2010 for insurance contracts, mediation is compulsory as a condition for the admissibility of the court proceedings.

The procedure is generic in its indication of the insurance contracts for which mediation is mandatory. So the two procedures (mediation and Insurance Arbitrator) end up being alternatives in the event of a claim (which falls within the jurisdiction of the Insurance Arbitrator). But it will in fact be up to the claimant to decide which procedure to activate. We might wonder whether, in the event of an unsatisfactory outcome, a complainant who's appealed to the Insurance Arbitrator will have to go through mediation before being able to go to court, in the event of a court application. This will increase the time and costs compared to the original intentions of the EU legislator. The Insurance Arbitrator, in fact, was conceived to lighten the load of disputes pending before the courts, with low costs for the complainant.

Assisted negotiation cannot be used in cases where mediation is compulsory. And since assisted negotiation must be used for disputes concerning the payment of a sum of money not exceeding EUR50,000, we can assume an alternative between recourse to the Insurance Arbitrator and assisted negotiation, left to the appreciation of the claimant.

With respect to arbitration, IVASS doesn't make any pronouncement, at least in the outcome of Consultation Document No. 1/2025. It defers, in fact, to the complainant the appreciation of the advisability of resorting to one or the other procedure. Although this procedure isn't frequently present in the policy conditions, and certainly absent in those applied to retail clients, it's nevertheless a method of out-of-court settlement of disputes sometimes present in certain non-life contracts and in certain life contracts aimed at high-net-worth clients. Commonly referred to in the informal form, (which allows the parties to settle the dispute by simple negotiation), it is, even in this case, difficult to imagine how the complainant could opt for one or the other instrument, in the absence of a well-considered choice, supported by external counsel.

This procedure is intended to give complainants access to a simplified alternative dispute resolution system. But it could mean the subject who intends to use it has to have technical knowledge to avoid possible subsequent foreclosures, at least in the first phase of operation, considering the significant number of competing extrajudicial settlement procedures.



ANIA Annual Meeting: the upcoming challenges for Italy

Chiara Cimarelli

On 2 July ANIA, the National Association of Insurance Companies, held its annual meeting in Rome. Ministers Giorgetti (Economy and Finance) and Urso (Enterprise and Made in Italy) were present and IVASS' President Signorini also participated.

This was the first meeting of the Association chaired by President Giovanni Liverani (Generali), who took over from Bianca Maria Farina (Poste Italiane), president emeritus of ANIA since 2024.

In his opening speech, President Liverani highlighted the positive state of the Italian insurance sector, which last year collected premiums totalling EUR150 billion (up more than 16% compared to 2023). Of that total EUR110 billion was in the life sector and over EUR41 billion was in the non-life sector. With an average solvency ratio of 260%, 89 domestic companies and 92 EU companies, and approximately 300,000 employees, including in related industries, the insurance sector is attractive to both large institutional investors and retail savers.

But, according to President Liverani, the worrying figure of underinsurance remains. The Association has observed a tendency among Italians to "self-insure," ie to seek forms of very short-term savings and protection.

All this in a context in which the four traditional insurance sectors (ie risk protection, pension and savings, prevention, and assistance), especially during the year that just ended, saw the insurance market committed to mitigating risks and acting as a stabilizing force in times of uncertainty.

This is particularly evident in the introduction of compulsory insurance against natural disasters, strongly supported by the government and the Ministries of Economy and Finance and of Enterprise and Made in Italy with the 2024 Budget Law. The market has acted quickly. In the first few months of this year it's already recorded an increase in requests for coverage for products offered at low cost – a few hundred dollars a year for micro and medium-sized enterprises – and with the same coverage for all companies. This has made it easier for policyholders to compare products and for companies to compete.

To highlight the importance of the effects of the legislative intervention on the Italian insurance market, a recent press release from the Association, dated 7 July, informed the sector of the creation of a "cat-nat" insurance pool. It's a consortium of insurance companies, which has already been joined by 75% of Italian companies. It will give member companies more efficient (and presumably less expensive) access to global reinsurance. According to the press release, the consortium, which has independent legal status, *will* in fact "neither assume risk nor capital, but will act in the name and on behalf of the member companies, negotiating and transferring risks to third-party reinsurers outside the consortium (including the public reinsurer Sace)."

The Association, through its President, also highlighted other challenges the country will face in the coming decades:

- revising the welfare system;
- expanding the contribution of the insurance sector;
- revising supplementary pension schemes and strengthening the National Healthcare System with a second and third insurance pillar;
- monitoring regulatory initiatives;
- simplifying the regulatory framework;
- stimulating technological innovation and modernizing industrial processes; and
- strengthening and modernizing the Association, both by promoting the adoption of new technologies and by focusing the Association's work on the added value that can be provided to its members.

These considerations were agreed by the ministers present and were also shared and endorsed by IVASS' President Signorini. In his report, President Signorini emphasized the Supervisory Authority's concern about the demographic trend in Italy and the need to quickly put the insurance sector at the service of the social security system to promote its sustainability.

Tax

CEDU and tax audits: new scenarios for taxpayer rights in the Italgomme Case

Antonio Longo, Angela Dulcetti

The European Court of Human Rights issued a judgment on 6 February 2025 in the case of *Italgomme Pneumatici S.r.l. and Others v Italy* (application no. 36617/18). The court found a conflict between the Italian legal framework on tax audits and Article 8 of the European Convention on Human Rights (ECHR). Article 8 protects the right to respect for private life and home – a concept that includes business and professional premises when these constitute the seat of a business activity.

According to the court, the Italian legal framework gives the tax authorities investigative powers whose breadth and pervasiveness are not balanced by adequate judicial safeguards, neither before access is granted nor when the audit activity is completed.

The ECHR identified three key aspects of the Italian tax audit rules that need structural reform:

Lack of prior judicial review of tax inspections

Current legislation allows the tax authorities to access business premises without prior authorization from a judicial authority, unlike in cases involving access to private homes. The ECHR pointed out that that this approach doesn't provide an adequate balance between the power of assessment and the taxpayer's rights, as the decision to carry out an inspection is based solely on administrative authorisation, without a judicial review.

Absence of effective post-audit control

The taxpayer doesn't have any tools to immediately challenge the legitimacy of a tax audit, other than appealing against any subsequent tax assessment before the judge. The court noticed that not having an immediate protection mechanism puts the taxpayer at risk of being subject to illegal or disproportionate audits, without the chance to get an injunction.

Disproportionate and extensive measures by the tax authorities

The judgment highlighted that Italian tax audits can involve acquiring huge amounts of data and documents, without adequate delimitation of the scope of the investigation. The court held that a tax inspection cannot result in the indiscriminate collection of information, but must be limited to what is strictly necessary for the ongoing assessment.

The ECHR judgment could represent a turning point in the Italian tax audit system, prompting the legislator to revise the legal framework to ensure a better balance between the prerogatives of the tax authorities and the fundamental rights of taxpayers.

At the same time, businesses involved in ongoing proceedings will need to carefully assess the impact of the ECHR ruling on their procedural position. They should consider the possibility of raising objections to the admissibility of evidence obtained in breach of procedural safeguards or reformulate their defence strategies in light of the principles established by the court.

Pending any legislative or judicial developments, it's essential that companies closely monitor the effects of the ruling, adopting a strategic approach in managing tax audits to prevent potential critical issues and ensure effective protection of their rights during litigation.

Events

Italian claims roundtable

Editorial Team

On 1 July, our Insurance sector team hosted the first "Italian Claims Roundtable." The event offered practical insights and case-based examples for professionals involved in insurance claims handling.

The event also offered a comprehensive overview of legislative reforms, alternative dispute resolution mechanisms and tax and insurance implications of claims handling.

Key topics discussed included:

- The impact of recent reforms on defendants and third parties involved in civil litigation.
- The latest rulings of the Court of Cassation and lower courts: between established guidelines and new directions.
- Insured-insurer relations with regard to legal appointments.
- The main tax issues in insurance claims management.

The event highlighted how legal and regulatory reforms and evolving case law are reshaping the insurance claims landscape in Italy.

Speakers: Bruno Giuffrè, David Maria Marino, Francesca Onorato, Leila Bianchi, Alessandra Plocco, Erica Simone, Karin Tayel, Angela Dulcetti, Maria Teresa Madera, Angelo Borselli.

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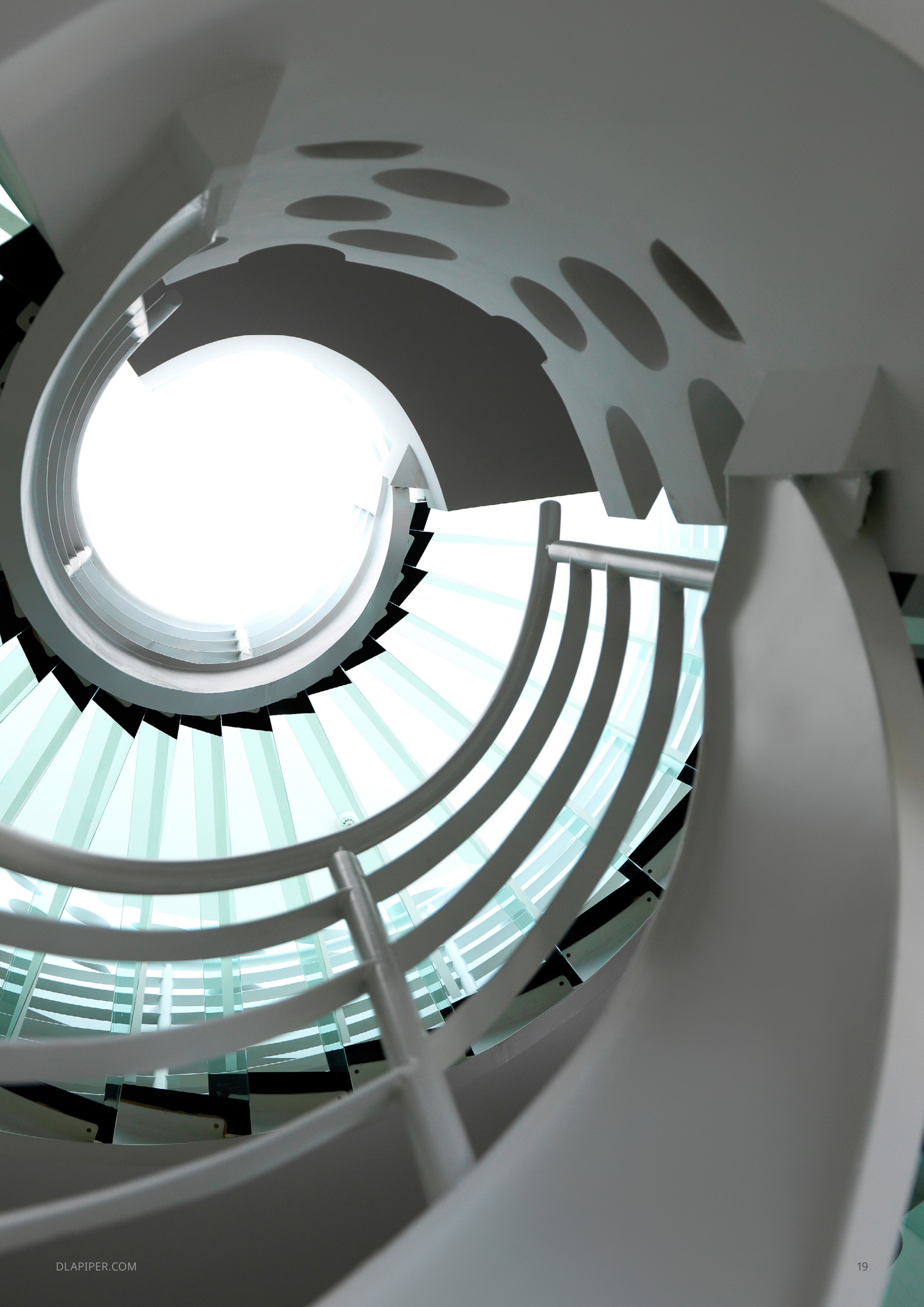

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