

**CAPITAL
MARKETS**

**Appointment of new members of ADR body for
the financial services sector**

On 23 November, the National Commission for Companies and the Stock Exchange appointed new members of the Alternative Dispute Resolution Body for the financial services sector (see [Our Echo June 2016](#)). The ADR will comprise 5 standing members and 10 substitute members. The appointments will be effective from 12 December 2016 and the ADR will commence its activity on 9 January 2017.

**DATA
PROTECTION**

**Italian Data Protection Authority authorises data
transfers under the Privacy Shield**

On 27 October 2016, the Italian Data Protection Authority (the "DPA") issued Decision no. 436/2016 (the "Decision") authorising data transfers by companies that have adhered or will adhere to the Privacy Shield. The Privacy Shield was adopted following the invalidation of the so-called Safe Harbour scheme by the ECJ (see [Our Echo October 2015](#) and [Our Echo February 2016](#)). The DPA reserved its right to carry out inspections on compliance with the relevant rules and to take action on any violation. The EU Commission has stated that it will monitor implementation of the Privacy Shield by each Member State on an annual basis. For further information, please click [here](#).

Italian Data Protection Authority rules on updates to online news

On 20 October 2016, the DPA issued Decision no. 430/2016 (the "Decision") stating that any update to online articles/news must be implemented as soon as possible, both in the title and the preview. The DPA took this view in the case of a public figure who was involved in a court case and subsequently acquitted. The relevant news was updated only by a brief note at the bottom of the original article. According to the Decision, updates to articles involving the rights of individuals must be effective and visible to readers, so as to ensure their immediate understanding of the relevant content. For further information, please click [here](#).

COPYRIGHT

ECJ rules on reproduction of out-of-print books

On 16 November 2016, the EU Court of Justice (ECJ) issued its judgment in [case 301/15](#) (Marc Soulier and Sara Doke v. Prime Minister and Minister of Culture and Communication), ruling that Copyright Directive no. 2001/29/EC of 22 May 2001 (on the harmonisation of certain aspects of copyright and related rights in the information society) prohibits national legislation from authorising the digital reproduction of out-of-print books in breach of the exclusive rights of authors. The fact that authors may oppose the above digitalisation within a period of six months after the registration of their books in a special database, was deemed not sufficient to safeguard their copyright. Indeed, a mere lack of opposition, the Court said, cannot be regarded as an implicit consent to the use of the relevant works, especially since authors may not be aware of the planned use of their works and, consequently, are unable to oppose it.

LABOUR

**Agreement between Union and employers
reached for the Industrial Sector**

On 6 December 2016, the major Italian unions reached an agreement with the main employers' associations on the renewal of the collective bargaining agreement for the so-called Industrial Sector (i.e. the sector including most of the manufacturing industries). The agreement includes provisions on flexible benefit plans, continuous learning and smart working. Many provisions of the collective bargaining agreement will be implemented through company-level bargaining agreements, the importance of which has been confirmed and emphasised by this national-level agreement.

FINANCE

**New regulation on financing of cooperative
companies and online crowdfunding**

On 8 November 2016, Banca d'Italia issued a regulation governing the collection of savings by entities other than banks (the "Regulation"). The Regulation introduces (with effect from 1 January 2017) a new set of provisions on (a) financing of cooperative companies granted by their stockholders, and (b) online crowdfunding. With particular reference to online crowdfunding, the Regulation set out certain conditions according to which online crowdfunding shall not be considered as a collection of savings from the public and, therefore, will not breach the "bank monopoly" rule that forbids unauthorised entities from carrying out such activity (for example, it will not apply to the receipt of funds to be placed in payment accounts exclusively used to make payments, the acquisition of funds through direct negotiations with the lenders or the acquisition of funds by entities subject to prudential supervision, as regards web portal borrowers). For further information, please click [here](#).

PATENT

Italy ratifies the UPC agreement

Pursuant to law no. 214/2016, which came into force on 26 November 2016, Italy ratified the Agreement on a Unified Patent Court. The ratification will be effective from the date of filing of the instrument of ratification with the General Secretariat of the Council of the European Union.

The implementation of the UPC will have various impacts in Italy. These include (i) Italian courts ceasing to have jurisdiction over matters relating to the new unified European patent, which will be referred exclusively to the new Unified Patent Court, formed by a central division flanked by local and regional divisions (Italy's local division will be in the Milan Court and is expected to be operational by mid-June 2017) and (ii) the Article 66 of the Italian Industrial Property Code to expressly provide for indirect patent infringement (already sanctioned by Italian courts on a case law basis).



INDUSTRIES

TELECOMMUNICATIONS

**Italian Communications Regulatory Authority
summarises outcome of public consultation on
Licensed Shared Access**

Italian Telecoms operators fined by Authority

On 3 November 2016, the Italian Communications Regulatory Authority (the "Authority") issued a summary of the information supplied by respondents to the public consultation referred to in Resolution no. 121/16/CONS of 7 July 2016 concerning the shared use of radio spectrum resources under the "Licensed Shared Access" (LSA), regime for electronic communications services. The LSA approach is a regulatory approach intended to facilitate the introduction of radiocommunications systems operated by a limited number of licensees under an individual licensing regime in a frequency band already assigned or expected to be assigned to one or more incumbent users. The respondents were required, *inter alia*, to indicate potential technical and market barriers to the introduction of the LSA approach, as well as possible incentives. In terms of potential technical and market barriers, respondents underlined the complexity of the protection mechanisms of the incumbent operator; the increase in costs and the difficulty of managing the shared use of radio spectrum resources. On the other hand, respondents highlighted the greater speed of access to frequencies, the favourable economic conditions for the allocation of shared spectrum access rights, the clarity and guarantees on sharing rules and the absence of special coverage constraints.

In two decisions issued on 3 November 2016, the Authority fined two major telecommunication players for breaching the information requirements concerning mobile phone number cessation and reactivation. The Authority found that the information provided to customers did not make them aware – with at least 30 days' notice – of the actual date of suspension and/or cessation of the SIM card and that the free (and online) reactivation services of the SIM card were permitted only to the holder of another prepaid top-up SIM card of the same operator (otherwise the client was required to visit the operator's store and purchase a new SIM card). The Authority found that such procedures contradict the principle that reactivation of a mobile number is to be effected by a simple procedure and within 48 hours of the request (other than in exceptional circumstances).

E-COMMERCE

EU Council agrees to remove geo-blocking barriers to e-commerce platforms

On 28 November 2016, the Council of the European Union (the "Council") agreed to adopt an EU Regulation banning certain geo-blocking measures of e-commerce websites in relation to cross-border users within the European Union. Price differentiation based on the user's country of origin will still be allowed and the relevant operators will therefore be free to offer different general conditions of access, including prices, for specific territories. For further information, please click [here](#).

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