

**NEWS FROM THE FIRM**

**Former Yahoo! Italy GC joins the firm**

Federica Celoria has recently joined the firm as senior consultant. Federica held the position of Head of Legal and General Counsel with various multinational companies operating in the area of communications and the Internet and will bring to the firm her expertise in this field.

**Giuseppe Mazzaglia joins the firm**

The recent arrival of Giuseppe Mazzaglia has strengthened the litigation capability of the firm. Before joining the firm, Giuseppe worked at leading international firms, including Ashurst LLP and Grimaldi. He assists clients in a wide range of civil law, commercial, corporate, banking and finance proceedings, both routine as well as arbitration cases.

**Events**

The breakfast (30 September 2015) and *aperitivo* (12 October 2015) meetings at our Milan office on the Jobs Act reform attracted a strong attendance in a friendly atmosphere.

On 4 November, Fabrizio Sanna (partner in the IP/TMT department) will join the panel at the conference in Milan on "Internet and Copyright Law in the European perspective of The Digital Single Market Copyright" to discuss the topic "Copyright infringements on the internet: enforcement of rights".

**Recent publications**

[Safe Harbour, acque agitate per privacy tra UE e USA](#), Punto informatico 9 October 2015, L/C An interview (in Italian) of the ECJ Schrems' ruling.

[La Corte di Giustizia sull'accordo Safe](#), Italia Oggi 7 October 2015, a first review (in Italian) of the ECJ Schrems' ruling.

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**CAPITAL MARKETS**

**Public consultation on amendments to the Italian Financial Act**

On 12 October 2015, the Italian Minister of Economy and Finance (MEF) launched a public consultation on the implementation of Directive 2013/50/EU concerning transparency obligations applicable to listed companies, in compliance with Law no. 114/2015 (the so-called European delegation law). The consultation proposes to amend certain Articles of Legislative Decree no. 58 dated 24 February 1998 (the Financial Act), aimed at enhancing the transparency regime of information relating to listed companies, as well as shaping the system proportionately in accordance with the size of the issuers, suggesting, inter alia, the following amendments: (a) amendment of the definition of listed companies to include registered business associations without legal status and trusts (Article 1, Financial Act); (b) amendment of the definition of small and medium-sized enterprises (Article 1, letter w-quater.1, Financial Act); (c) the removal of the obligation to publish regulated information in national daily newspapers (Article 113-ter, paragraph 3, and Article 114, Financial Act); (d) increase from 2% to 3% of the threshold to report significant shareholdings (Article 120, Financial Act); (e) elimination of the interim report, granting Consob the power to require, by regulation, obligations to publish financial information more frequently, subject to the conditions laid down in Directive 2013/50/EU that Directive requires the performance of an impact assessment test to verify that the request does not result in a disproportionate financial burden, in particular for small and medium-sized issuers, and that the content of the information is proportionate to the factors that contribute to the investment decisions of investors (Article 154-ter, Financial Act). **The Consultation period ends on 27 October 2015.** See below the [link](#) published by MEF showing the proposed amendments to the Financial Act.

**CORPORATE**

**New rules for the extraordinary administration of insolvent companies**

On 1 October 2015, Law Decree no. 154/2015, introducing urgent measures concerning economic and social matters (the Decree), was published in Official Journal no. 228. The measures concern, inter alia, the special administration regulation. Article 2 of the Decree amends Article 57 of Law no. 270/1999 (the so-called Prodi-bis law) designed to prevent the automatic bankruptcy of the company on the expiry date of the procedure approved by the Italian Minister of Economic Development (the MED), if such procedure has not been carried out in whole or in part by the company. For the above-mentioned purpose, in accordance with the Decree, MED is entitled to extend the deadline for the procedures relating to the sale of business for a maximum period of 12 months, to enable the company to continue its business without prejudice to its creditors.

**FINANCE**

**ESMA implementing MiFID II**

On 28 September 2015, the European Securities and Markets Authority (ESMA) published its final technical standards, implementing Directive 2014/65/EU (MiFID II). The most relevant issues in this document are: (a) **Liquidity assessment for non-equity instruments.** ESMA chose a combination of two different approaches. The first is applicable to commodity derivatives, classifying bonds in different groups and assessing liquidity on the basis of their size, while the second assesses the liquidity of single bonds; (b) **Trading of shares** In order to improve the functioning of the financial market, quantitative limits have been introduced for the trading of shares in "dark pools" (private trading platforms); (c) **New reporting system** The Authority specified how information needs to be presented. New rules have been introduced for the reports of European subsidiaries of non-European companies. Management companies will be liable for the communications concerning the transactions; and (d) **More details on the executions of orders** Investment companies shall publish annual data relating to the main trading venues for each class of financial instruments and the quality of the execution obtained.

**COPYRIGHT**

**Implementation assessment report on Directive 2001/29/EC published**

The European Parliament Research Service has published a so-called "implementation assessment" report aimed at briefing lawmakers on the current gaps and weaknesses in the existing EU copyright framework (Commission's legislative proposals for a reform thereof are expected by the end of 2015). **The assessment focuses on the implementation, application and effects of the Information Society Directive 2001/29/EC.** Notably, the report also suggests possible options to modernise the system, addressing, inter alia, the conflicts between copyright laws and the EU principles of competition and free movement, as recently raised by the Commission's investigations into territorial licensing and geo-blocking practices. Such options would aim to make legal digital content more widely accessible within the EU by (i) stimulating multi-territorial licensing beyond merely musical works for online use; and (ii) setting out eligible exceptions or limitations thereto. The assessment report is available [here](#).

**Broadcasting of music at a dentist's premises**

In its decision of 11 September 2015, the Italian Supreme Court ruled that a dentist was not bound to pay any fee to SCF (Società Consorzio Fonografici, the Italian music copyright collecting society) for broadcasting radio music in his surgery. That decision is in line with indications provided by the European Court of Justice (in its ruling of 15 March 2012, case C-135/10), to which the appeal panel referred for an interpretation of directives 92/100/EC (on rental and lending rights) and 2001/29/EC (on the harmonisation of certain aspects of copyright and related rights in the information society). The broadcasting of music in a private dentist's surgery is not deemed to be for profit, but for the enjoyment of the general public.

**DATA PROTECTION**

**ECJ ruled the Safe Harbour regime invalid**

On 6 October 2015, the European Court of Justice (case C-362/14) ruled as invalid the European Commission Decision 2000/520/EC, which had declared appropriate the level of data protection offered by the so-called "Safe Harbour" scheme for the transfer of personal data from EU Member States to the United States of America. In addition, according to the judgement, the decisions issued by the Commission could not replace or limit the power of the national data protection authorities to investigate the lawfulness of data transfers to the US. Despite the apparently disruptive effects of the judgement, the applicable legislation provides for alternative means in order to legally transfer data from the EU to the United States of America, such as (i) Binding Corporate Rules and (ii) so-called Model Contract Clauses. On 16 October 2015, the Article 29 Working Party issued a [statement](#) requesting that a new agreement between the relevant EU and US authorities be concluded by the end of January 2016. The EU Commission declared its key priorities on the matter, namely: (i) the protection of personal data transferred to the USA; (ii) the continuation of transatlantic data flows (iii) the need for a uniform application in the internal market.

**LABOUR**

**News on the Job Act**

The Jobs Act has simplified and extended the rules and scope of so-called "solidarity contracts" (contratti di solidarietà). In particular, this new labour reform is intended to encourage the use of a specific type of such contracts: expansion solidarity contracts (contratti di solidarietà espansiva). By signing this contract, employer and unions can agree to reduce the working hours of (some or all of) the current employees, and therefore "use" such working hours to hire new employees (with the employer benefiting from an appropriate social security discount). Expansion solidarity contracts can be very useful for companies where the average age of the employees is quite high: "older" employees can reduce their working hours to enable the company to hire "younger" employees. In this case, employees who (i) accept the reduction in their working hours, and (ii) are close to the State Pension age (maximum 24 months remaining) are entitled to receive an advance pension payment which can reduce/eliminate the negative impact arising from the reduction of their working hours.

**INDUSTRIES**

**FOOD**

**The four-fingered Kit-Kat bar denied trademark registration**

The judgment issued on 16 September 2015 (case C-215/14; Société des produits Nestlé SA v. Cadbury UK LTD), by the Court of Justice of the European Union has broad ramifications for the registration of three-dimensional trademarks. The relevant dispute dates back to 2010, when Nestlé filed an application for the 'four-finger' shape bar as a three-dimensional trademark in the United Kingdom (in reference to various goods in Class 30, including chocolate, chocolate confectionery and chocolate products). The UK Intellectual Property Office (UKIPO) rejected the application, ruling that the requested trademark was devoid of inherent distinctive character and had not acquired such a character through use. Nestlé challenged the above decision before the High Court of Justice, Chancery Division. The High Court referred the case to the ECJ. The ECJ ruled that, for the purposes of registration, the applicant must prove that the shape trademark alone identifies the firm from which the goods originate.

**MEDIA**

**ECJ has ruled that web-video newspaper may fall under the EU audio-visual rules**

On 21 October 2015 the Court of Justice of the EU issued a judgment in Case C-347/14 - New Media Online stating that the offer of a short video on a newspaper's website may fall under the EU audiovisual media service legislation (Directive 2010/13/EU). The Directive expressly provides that it does not apply to electronic versions of newspapers and magazines. However, in the judgment the Court considers that an audiovisual service must not be systematically excluded from the Directive's scope solely on the ground that the operator of the website concerned is a publishing company of an online newspaper. Rather, when the offer has content and form which is independent of that of the journalistic activity of the online newspaper, the publication of videos of short duration consisting of local news bulletins, sports and entertainment clips falls within the scope of the Directive. The judgment is available [here](#).

**TECHNOLOGY**

**Italian Civil Aviation Authority approves a new regulation on drones**

On 16 July 2015, the Italian Civil Aviation Authority (ENAC) adopted a new regulation on drones. The new provisions distinguish between drones (a) weighing less than 25kg, for which only a pilot certificate is required, and (b) weighing over 25 kg, for which a proper pilot's licence is required. The new regulation also deals with a number of aspects relating to the operation of drones such as (i) insurance requirements, (ii) unlimited liability of operators, (iii) adoption of common security standards, (iv) compliance with Italian privacy rules and specific guidelines to be issued by the Italian Data Protection Authority, and (v) the sanctions applicable for violation. For further information please click [here](#).

**E-COMMERCE**

**Revised directive on Payment Services adopted**

On 8 October 2015, the European Parliament adopted the revised Directive on Payment Services (PSD2). The new rules will apply in all EU Member States two years after publication of the Directive in the Official Journal of the EU, which should take place in late 2015. New rules introduced by PSD2 include strict security requirements for the initiation and processing of electronic payments, the protection of consumers' financial data and the prohibition of surcharges (e.g. additional charges for the right to pay with a card). PSD2 is aimed at making online payments safer and more transparent and will greatly benefit European consumers by making it easier to shop online', said Commissioner for Competition Margrethe Vestager. For further information see [here](#).

**TELECOMMUNICATIONS**

**EU Council approves new rules on roaming and net-neutrality**

On 1 October 2015, the Council of the European Union approved its position on roaming and net-neutrality. The rules has been then approved by the EU Parliament during the parliamentary session of 26-29 October 2015). **Roaming surcharges should be reduced** as follows from 30 April 2016 (and then totally abolished as of July 2017): (i) 0.05 EUR/per minute for calls, (ii) 0.02 EUR for text messages, (iii) 0.05 EUR/MB for data traffic. In the same decision, the Council of the European Union also confirmed the principle of equal and non-discriminatory access to the internet with the exception of traffic management measures for specific content (e.g., e-health services) that may be adopted by the operators. For further information please click [here](#).

**Public consultation on geo-blocking and internet platforms opened**

On 24 September 2015, the European Commission launched a public consultation in the context of the Digital Single Market strategy with two public surveys: one on various forms of geographically-based restrictions and the other on the economic role of internet platforms in online content distribution. The consultation on geo-blocking will gather opinions on what barriers prevent the buying and selling of products and services cross-border within the EU, but does not cover copyright-protected content licensing practices. The second consultation explores to what extent and in what way online intermediaries should respond to illegal usage of content and any duty of care intermediaries may have towards their users. The responses to the consultation will probably drive future regulation on admissible geo-restrictions to online sales as well as on the liability of online intermediaries. Further information and links to the surveys are available [here](#).

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