

Case-law update

Civil and Administrative Law

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BANKING AND FINANCIAL LAW

Italian Supreme Court, Joint Divisions, August 28, 2026, No. 24825 – regarding surety agreements that reproduce the clauses of the ABI model criticized by Bank of Italy Order No. 55/2005, the administrative ruling constitutes *prima facie* evidence of the anticompetitive agreement, but does not, outside its own temporal and objective scope, serve as sufficient evidence of the nullity of the “downstream” guarantee; a concrete assessment by the trial court remains necessary. Furthermore, the “on first demand” payment clause retains its independent validity and allows the creditor to avoid forfeiture under Article 1957 of the Civil Code, even through an out-of-court demand.

Italian Supreme Court, August 25, 2026, No. 24754 – verification of Liabilities and Abusive Granting of Credit: The delegated judge and the Bankruptcy Court may, in an incidental proceeding - including through the use of presumptions - determine the criminal unlawfulness of the lending bank’s conduct and the consequent nullity of the loan agreements, even if the bank is not a party to the proceedings. The judge is required to rule on the objection raised by the bankruptcy trustee for the purpose of verifying the existence of a claim for the repayment of the amounts disbursed and the possible application of Article 2035 of the Civil Code.

BANKRUPTCY LAW

Italian Supreme Court, 25 August 2026, no. 24754 – verification of claims and opposition to the statement of liabilities: in proceedings for the verification of claims (artt. 93 *et seq.* of the Italian Bankruptcy Law, hereby “*l.fall.*”) and for the opposition to the statement of liabilities (artt. 98–99 *l.fall.*), the delegated judge (“*giudice delegato*”) and the bankruptcy court (“*tribunale fallimentare*”) have a duty to rule on the parties’ objections concerning the validity or the existence of the title underlying the claim, even where such objections are grounded on the alleged criminal unlawfulness of the conduct of the lending bank (e.g. abusive extension of credit).

INSURANCE LAW

Italian Supreme Court, 31 July 2026, No. 24332 – The Italian Supreme Court held that even in policies operating under a claims-made regime, where the exception to Article 1917 of the Civil Code allows coverage of the insured's liability even for acts committed prior to the execution of the contract, the contractual provision requiring the insured to disclose, at the time of execution, any prior claims for compensation—and the resulting exclusion of insurance coverage with respect to such claims—is a provision intended to define the temporal scope of the insured risk and, therefore, the contractual risk, and does not in any way constitute a limitation of coverage.

ADMINISTRATIVE LAW

Calabria Regional Administrative Court, Catanzaro, Section II, August 28, 2026, No. 1613 – If adequately justified and not unreasonable, the resolution by which a municipality's Extraordinary Commission ordered the ex officio annulment *pursuant to* Art. 21 *-nonies* of Law No. 241/1990, of the resolution adopted by the City Council approving the Municipal Structural Plan and the Building and Zoning Regulations, due to the proven existence of significant formal errors, analytical omissions, design choices involving an unjustified reduction in minimum neighborhood standards and an unjustified increase in land-use ratios in favor of private individuals, and a significant change in the designated use of an extensive area of municipal territory, from a “zone for services and facilities” to a “predominantly residential” zone.

Piedmont Regional Administrative Court, Section I, August 27, 2026, No. 1786 – A dispute concerning the challenge of a municipal order requiring the enforcement of a surety bond provided by a company to guarantee the obligations assumed in connection with the authorization to operate a quarry—for the purpose of properly carrying out the environmental restoration measures provided for in that authorization—falls within the jurisdiction of the ordinary courts.

Emilia-Romagna Regional Administrative Court, Bologna, Section II, August 13, 2026, No. 1441 – A judicial appeal filed by a local government entity is inadmissible if it constitutes an action for a declaratory judgment that effectively entails an implicit review of the legality of orders for which the statute of limitations for challenging them has already expired.

BANKING AND FINANCIAL LAW

Italian Supreme Court, Joint Divisions, August 28, 2026, No. 24825 – regarding guarantees that reproduce the clauses of the ABI model criticized by Bank of Italy Order No. 55/2005, the administrative ruling constitutes *prima facie* evidence of the anticompetitive agreement, but does not, outside its own temporal and objective scope, serve as sufficient evidence of the nullity of

the “*downstream*” guarantee; a concrete assessment by the trial court remains necessary. Furthermore, the “*on first demand*” payment clause retains its independent validity and allows the creditor to avoid forfeiture under Article 1957 of the Italian Civil Code, even through an out-of-court demand.

The Italian Supreme Court, sitting en banc, in the judgment in question, ruled on three issues concerning the nullity of guarantees incorporating the ABI clauses censured by the Bank of Italy’s 2005 order, and in particular on the relevance of the temporal aspect, on the extension to specific guarantees, and on the scope of the “on first demand” payment clause .

With regard to the first issue, the Supreme Court noted that the Joint Divisions in 2021 had attributed to the Bank of Italy’s ruling the status of “*preeminent evidence of anti-competitive conduct*” and of a “*functional link*” between the “upstream” cartel and the “downstream” contract. However, the Court clarified that such probative value cannot be automatically extended beyond the scope of the administrative investigation, **stating that “*the administrative finding cannot constitute privileged evidence outside the temporal scope covered by the finding itself*”** and that, in such cases, it constitutes an “*element of evidence that is, however, insufficient on its own to prove, beyond the described temporal limits, the agreement or concerted practice*”.

The Joint Divisions therefore clarified that **the trial court must assess “*the actual temporal scope*” of the administrative investigation, verifying “*whether and to what extent*”** it allows for the inference of the existence of an anticompetitive practice prior to or subsequent to the period covered by the Bank of Italy’s investigation.

The Court also emphasized that, even if the existence of an anticompetitive agreement is established at the time the guarantee was entered into, the bank may demonstrate that the contract constitutes “*the result of a different, actual, and—in the specific circumstances—free negotiation between the parties*”.

As for the second question, concerning specific guarantees, the Supreme Court observed that “*the objective scope of the Bank of Italy’s 2005 investigation cannot be disregarded*”, which expressly referred to omnibus guarantees.

In particular, the Court referred to the content of the administrative ruling, which had concerned “*the A.B.I. standard form regarding omnibus guarantees*” and the “*effects of contractual standardization*” resulting from the uniform use of the contested clauses.

The Court therefore held that a party invoking the nullity of a specific guarantee “*may and must prove (...) a concerted arrangement or practice (...) extending to specific guarantees that reproduce the three*

clauses”, and may use the Bank of Italy’s ruling only as *“evidence that is not sufficient on its own”*. According to the Joint Divisions, the trial court must therefore verify whether *“an objective restriction of the market”* resulting from the standardization of the same clauses—even in specific guarantees—has been demonstrated.

In light of the above considerations, the Court set forth the following legal principle: ***“In the case of a specific guarantee incorporating the clauses of revival, survival, and derogation from Article 1957 of the Civil Code, entered into prior to and after the time period covered by the Bank of Italy’s order (...) the trial court shall determine (...) whether or not the contractual template used corresponds to an agreement or concerted practice with restrictive effects on competition (...) using the aforementioned administrative finding as evidence, which is not sufficient on its own”***.

Finally, with regard to the third question, the Supreme Court noted that the “on first demand” payment clause serves, according to the Bank of Italy itself, a function of *“significant protection and, therefore, the useful dissemination of credit,”* distinguishing itself from the clauses censured in the 2005 ruling.

The Court therefore held that *“the invalidity of the exception to Article 1957 of the Civil Code—and thus to its related provisions—cannot, as a matter of law, imply the invalidity of the simplified out-of-court procedures, which constitute one of the specific effects of the distinct ‘on first demand’ clause.”*

Consequently, the Joint Divisions concluded that ***“if a guarantee contains a ‘payment on first demand’ clause, the creditor is thereby spared from incurring forfeiture even if an out-of-court demand is sent to the guarantor within the time limits set forth in Article 1957 of the Civil Code, even if the concurrent clause exempting compliance with those time limits has been declared null and void”***.

Italian Supreme Court, August 25, 2026, No. 24754 – Verification of Liabilities and Abusive Granting of Credit: The delegated judge and the Bankruptcy Court may, in an incidental proceeding—including through the use of presumptions—determine the criminal unlawfulness of the lending bank’s conduct and the consequent nullity of the loan agreements, even if the bank is not a party to the proceedings. The judge is required to rule on the objection raised by the bankruptcy trustee for the purpose of verifying the existence of a claim for the repayment of the amounts disbursed and the possible application of Article 2035 of the Civil Code.

The Italian Supreme Court, in Order No. 24754, published on August 25, 2026, ruled on the powers of the bankruptcy judge regarding the determination of the unlawfulness of granting loans within the context of the verification of liabilities and the subsequent opposition proceedings.

In the case at hand, the delegated judge had rejected the claim for inclusion in the list of creditors filed by the assignee of the claim, finding that the bank—despite the financed company’s obvious state of insolvency—had engaged in unlawful conduct such that, pursuant to Article 2035 of the Italian Civil Code, it could not obtain repayment of the loan disbursed.

The Court, to which the matter was referred in the opposition proceedings against the statement of liabilities, had instead ruled out the possibility that such conduct could be established—even incidentally—since it pertained to parties not involved in the proceedings. It had further observed that there was no *“evidence definitively establishing the existence of unlawful conduct involving the abusive granting of credit”* and that the elements cited by the receivership had *“merely circumstantial value.”*

The Supreme Court deemed these rulings *“legally erroneous,”* stating, first of all, that *“the incidental determination of the (alleged) criminal unlawfulness of the conduct of the (officials) of the bank that disbursed the loans (by the assignee of the alleged claim) as the basis for the claim for inclusion in the list of creditors, is in no way incompatible either with the proceedings challenging the list of creditors (Articles 98 and 99 of the Bankruptcy Law) or, more generally, with the proceedings for the verification of claims against the bankrupt (Articles 93 et seq. of the Bankruptcy Law).”*

The Court therefore clarified that *“the delegated judge (Articles 95, paragraph 3, first and second sentences, and 96, paragraph 1, of the Bankruptcy Law), in fact, like the Bankruptcy Court (Articles 99, paragraphs 9 and 11, Bankruptcy Law), has all the powers—first as an investigating judge and then as a trial judge—to determine, even on the basis of (mere) circumstantial evidence (provided that, in accordance with general rules, such evidence is substantial, precise, and consistent)”* whether the granting of the loans constitutes a criminal offense and what the consequences of such an offense are for the validity of the relevant contracts.

In particular, the bankruptcy judge is required to determine *“whether or not the disbursement of the alleged loans constitutes a criminal offense, resulting in the nullity of the contracts that were entered into in violation of a mandatory provision.”*

This determination also serves to verify *“whether, therefore, the bank (or the assignee of the alleged assigned claim, as such, with all possible defects in the relevant title of assignment) is entitled to the return of the disbursed sums, or whether, on the contrary, the disbursement of the sums covered by the loan constituted (in addition to a transfer made pursuant to a void instrument) a performance carried out, for the purposes set forth in Article 2035 of the Italian Civil Code, in violation of public policy.”*

The Supreme Court thus clarified that the absence of the disbursing bank from the proceedings does not prevent the judge overseeing the verification of liabilities from incidentally examining the conduct of its officers, since this assessment is necessary not to issue a judgment against the bank, but to establish the existence and validity of the claim asserted in the insolvency proceedings by its assignee.

The Court of Cassation also criticized the lower court's decision on the grounds of a violation of the principle of correspondence between the relief sought and the judgment rendered. In fact, the contested decree, *“where it held that the ‘unlawful conduct alleged by the bankruptcy estate cannot be ascertained even incidentally,’ and, on the basis of that finding, rejected the objection of nullity regarding the contractual instruments underlying the claim—which the bankruptcy estate had raised—essentially (knowingly but, nonetheless, unlawfully) failed to rule on that objection despite actually having both the power and the duty to do so.”*

In doing so, the Court violated the principle enshrined in Article 112 of the Code of Civil Procedure, *“according to which the judge (including a bankruptcy judge) has the duty to rule not only on the motion (for admission) but also on all objections raised by the parties, including the trustee,”* as established, for the delegated judge, by Article 95, paragraphs 1 and 3, the Bankruptcy Law, and, for the Court, by Article 99, paragraphs 2 and 7, of the Bankruptcy Law.

In light of these considerations, the Supreme Court upheld the first two grounds of the cross-appeal filed by the Bankruptcy Estate, thereby rendering moot the main appeal and the additional grounds concerning the nullity of the pledge, and quashed the contested decree, remanding the case to the Court of Vicenza, with a different panel of judges, so that it may conduct a new examination of the objection regarding the nullity of the contracts forming the basis of the claimed debt.

BANKRUPTCY LAW

Italian Supreme Court, 25 August 2026, no. 24754 – verification of claims and opposition to the statement of liabilities: in proceedings for the verification of claims (artt. 93 *et seq.* of the Italian Bankruptcy Law, hereby “l.fall.”) and for the opposition to the statement of liabilities (artt. 98–99 l.fall.), the delegated judge (“*giudice delegato*”) and the bankruptcy court (“*tribunale fallimentare*”) have a duty to rule on the parties’ objections concerning the validity or the existence of the title underlying the claim, even where such objections are grounded on the alleged criminal unlawfulness of the conduct of the lending bank (e.g. abusive extension of credit).

The Italian Supreme Court, in its order no. 24754, published on 25 August 2026, ruled on the matter of the verification of claims pursuant to artt. 93 *et seq.* l.fall. and of opposition to the schedule of liabilities pursuant to artt. 98 and 99 l.fall.

Firstly, the Supreme Court noted that, in the case at hand, *«the Court (...) dismissed the objection (of nullity of the contractual titles underlying the claim asserted) raised by the opposed Bankruptcy estate (...) on the ground, in essence, that – the “unlawful conduct alleged by the Bankruptcy estate cannot be ascertained even on an incidental basis (...)” since it “concerns parties (...) that are not before the court”, the proceedings being “aimed solely at ascertaining the concurrent creditor’s right to participate in the distribution” by means of a “decision having effect only within the insolvency proceedings”; – “the elements relied upon by the receivership in support of the alleged unlawful conduct”, in the absence of “a title definitively ascertaining the existence of the unlawful conduct of abusive extension of credit”, “have”, “as matters stand”, “a merely circumstantial value”, “and such a gap renders the opposing party’s submission in itself unacceptable”».*

The Supreme Court then held that the above-mentioned *«findings are legally erroneous»* for the reasons summarised in the following paragraphs.

First, the Court clarified that **«the incidental ascertainment of the (alleged) criminal unlawfulness of the conduct (...) of the bank that extended the financing relied upon (by the assignee of the alleged claim) as the basis of the application for admission to the statement of liabilities is in no way incompatible either with the proceedings of opposition to the schedule of liabilities (Articles 98 and 99 of the Bankruptcy Law), or, more generally, with the proceedings for the verification of claims asserted against the bankrupt (Articles 93 *et seq.* of the Bankruptcy Law)».**

The Supreme Court further added that **«the delegated judge (Article 95, paragraph 3, first and second sentences, and Article 96, paragraph 1, of the Bankruptcy Law), indeed, just like the bankruptcy court (Article 99, paragraphs 9 and 11, of the Bankruptcy Law), has all the powers (first evidentiary and then adjudicatory) to determine, even by means of (mere) circumstantial evidence (provided that, in accordance with the general rules, it is serious, precise and consistent) – whether the extension of the financing in question constitutes, or does not constitute, an unlawful criminal act, with the consequent nullity of the contracts that were the expression thereof by reason of the breach of a mandatory rule; – whether, therefore, the bank (or the assignee of the alleged claim so assigned, together with any and all defects of the relevant constitutive title) holds the claim for the restitution of the sums disbursed, or whether, on the contrary, the disbursement of the sums that are the object of the financing amounted (in addition to an attribution carried out on the basis of a void title, also) to a**

performance rendered, for the purposes set out in Article 2035 of the Italian Civil Code, in breach of public morality (buon costume)».

In light of the foregoing, the Supreme Court held that *«the challenged decree, in so far as it held that the “unlawful conduct alleged by the Bankruptcy estate cannot be ascertained even on an incidental basis”, and, on the basis of that finding, dismissed the objection of nullity of the contractual titles underlying the claim, which the Bankruptcy estate had raised, in essence (knowingly but, nonetheless, unlawfully) failed to rule on that objection although it in fact had the power, as well as the duty, to do so, and thereby breached the principle, laid down by Article 112 of the Italian Code of Civil Procedure, whereby the court (including the bankruptcy court) has a duty to rule not only on the application (for admission), but also on all the objections raised by the parties, including the receiver, as unequivocally established, for the delegated judge, by Article 95, paragraph 1, second sentence, and paragraph 3, first sentence, of the Bankruptcy Law, and, for the Court, by Article 99, paragraph 2, no. 4, and paragraph 7, of the Bankruptcy Law».*

INSURANCE LAW

Italian Supreme Court, 31 July 2026, No. 24332 – The Italian Supreme Court held that even in policies operating under a “claims-made” regime, where the exception to Article 1917 of the Civil Code allows coverage of the insured’s liability even for acts committed prior to the execution of the contract, the contractual provision requiring the insured to disclose, at the time of execution, any prior claims for compensation—and the resulting exclusion of such claims from insurance coverage—is a provision intended to define the temporal scope of the insured risk and thus the contractual risk, and does not in any way constitute a limitation of coverage.

In the judgment in question, the Italian Supreme Court ruled on the applicability of the insurance policy in the presence of a “claims-made” clause that limited the policy’s coverage to events of which the insured had prior knowledge.

In the trial on the merits, the insured’s claim for indemnification had been rejected because the first claim for compensation had already been made against the insured prior to the policy’s execution.

In the proceedings before the Supreme Court, the insured argued that *“the clause excluding insurance coverage for claims arising prior to the effective date”* was unfair *“in that it limited the insurer’s liability and, in any event, constituted a purely discretionary condition, pursuant to Article 1355 of the Civil Code.”*

In ruling on the appeal filed by the insured, the Supreme Court first clarified that, although the insurance company had failed to appear in the lower court, *“such failure to appear does not constitute ‘non-*

contestation’ as referred to in Article 115 of the Code of Civil Procedure,” adding that **“the coincidence between the risk that has materialized and the risk as defined in the policy is a constitutive element of the claim; therefore, its absence is an exception that may be raised ex officio and, as such, may also be raised on appeal when—as in the present case—it does not introduce a new issue of fact into the proceedings.”**

Based on these premises, the Court also affirmed that the “claims-made” clause *“derogates from Article 1917 of the Civil Code, allowing coverage of the insured’s liability for acts committed prior to the conclusion of the contract,”* specifying that **“that clause, however, does not and could not derogate from the general principle that the causal element of insurance is the uncertainty—at least subjective uncertainty (so-called putative risk)—of the risk described in the contract,”** and further held that such uncertainty **“would cease to exist if it were permissible to enter into an insurance contract after having caused damage, knowing that one had caused it, and after having already received a claim for compensation.”**

The Court noted that *“in the case of repeatable risks, such as in civil liability insurance, the element of chance must be assessed with reference to each individual risk for which compensation is at issue”* and that, in the present case, the insured had **“entered into a civil liability insurance contract not only knowing that he had already caused damage to a third party, but even after having already received an initial claim for compensation: a situation, therefore, in which not only was there no actual risk, but there was not even a putative risk.”**

In light of the foregoing, the Supreme Court concluded that *“the provision requiring disclosure, at the time of execution, of prior claims for compensation, and the consequent exclusion of such claims from insurance coverage, is a provision intended to define the temporal scope of the insured risk and thus the contractual uncertainty, which does not permit knowledge of prior claims for compensation, and therefore did not constitute a limitation of coverage at all.”*

ADMINISTRATIVE LAW

Calabria Regional Administrative Court, Catanzaro, Section II, August 28, 2026, No. 1613 – If adequately justified and not unreasonable, the resolution by which a municipality’s Extraordinary Commission ordered the ex officio annulment *pursuant to Art. 21 -nonies* of Law No. 241/1990, of the resolution adopted by the City Council approving the Municipal Structural Plan and the Building and Zoning Regulations, due to the proven existence of significant formal errors, analytical omissions, design choices involving an unjustified reduction in minimum neighborhood standards and an unjustified increase in land-use ratios in favor of private individuals, and a

significant change in the designated use of an extensive area of municipal territory, from a “zone for services and facilities” to a “predominantly residential” zone.

In Judgment No. 1613 of August 28, 2026, the Second Section of the Regional Administrative Court of Calabria—Catanzaro ruled on the power to annul ex officio the general urban planning instrument of a municipality dissolved pursuant to Article 143 of Legislative Decree No. 267/2000.

First, the panel observed that the actions of the Extraordinary Commission were fully in accordance with the relevant legal framework. As part of the preliminary investigation leading up to the review of the Municipal Structural Plan (PSC) and the Building and Urban Planning Regulations (RUE), the judges highlighted that two separate technical reports had been obtained, which analyzed the documents from both procedural and substantive-technical perspectives, thereby identifying various formal errors, analytical omissions, design choices involving an unjustified reduction in minimum neighborhood standards and an unjustified increase in land-use ratios in favor of private individuals, as well as a significant change in land use designation for an extensive area of the municipal territory.

In light of the identified issues, the Court therefore observes that the *“revocation of the resolution adopting the PSC and the REU is, in fact, firmly grounded in the protection of the territory and in established case law, according to which urban planning decisions are characterized by broad discretion and constitute a substantive assessment that is beyond the scope of judicial review, except in cases of manifest unreasonableness and illogicality, which are not present in the case at hand (see Council of State, Section II, December 16, 2021, No. 8383; Section II, February 12, 2020, No. 1095; Section IV, May 25, 2016, No. 2221)”*.

Therefore, the ex officio review was necessary *“to correct errors and clarify ambiguous provisions of the PSC”* in order to allow interested parties to properly evaluate the Plan and submit comments; *“to examine in greater depth and revise certain planning decisions in order to improve the quality of the urban settlement system with regard to land-use designations, the adequacy of building density indices for both completion and expansion areas, and the location and scale of urban planning standards—particularly neighborhood-level urban planning standards”*; as well as to *“re-examine the urban planning decisions set forth in the adopted PSC with a view toward greater compliance with the principles of regional territorial planning.”*

In light of these reasons, the judges hold that the *modus operandi* of the Extraordinary Commission *“excludes any element of unreasonableness and serves a current and concrete public interest.”* Furthermore, the Court continues, the appellants’ arguments—that the Plan’s shortcomings could have been resolved or remedied in subsequent stages of the progressive development of the urban planning

instrument—cannot be upheld: according to the judges, such a “*procedural model does not function as a general remedy for original defects of legality, nor can it compensate for a radical deficiency in the investigating process by the adopting administration,*” such as that which weighed on the essential core of the planning authority. The Panel concludes by observing that, even from this perspective, the exercise of the power of self-protection “*constituted a necessary and legitimate act, since the administration could not and should not have allowed a structurally flawed proceeding to continue, the continuation of which would only have perpetuated a violation of the public values of the territory, exposing the entity to the concrete risk of costly litigation following the application of safeguard measures*”.

Finally, the Court holds that the ex officio annulment does not constitute “*an undue encroachment on the ‘political discretion’*”: on the contrary, “*it pursues the objective of bringing urban planning into conformity with the public interest in an orderly, coherent, and sustainable development of the territory.*”

Piedmont Regional Administrative Court, Section I, August 27, 2026, No. 1786 – A dispute concerning the challenge of a municipal order requiring the enforcement of a surety bond provided by a company to guarantee the obligations assumed in connection with the authorization to operate a quarry—for the purpose of properly carrying out the environmental restoration measures provided for in that authorization—falls within the jurisdiction of the ordinary courts.

In Judgment No. 1786 of August 27, 2026, the Piedmont Regional Administrative Court, Section I, clarified which court has jurisdiction over an appeal against a municipal order directing the enforcement of a surety bond provided by a company to guarantee the obligations assumed at the time of authorization.

In the case at hand, the Piedmont Regional Administrative Court raised an objection regarding lack of jurisdiction, stating that, according to “*the principles expressed by the Joint Divisions of the Italian Supreme Court,*

‘A dispute concerning the municipality’s enforcement of a surety bond issued to guarantee the fulfillment of obligations and duties assumed by a private party in connection with a concession agreement for public property falls within the jurisdiction of the ordinary courts, given that, in such a case, the public administration acts within the context of a private-law relationship, without exercising, even indirectly, public powers’ (Civil Italian Supreme Court, Joint Divisions, Order No. 10560/2017, CED Italian Supreme Court precedent; see, in particular, pp. 3–5 of the reasoning).”

The judges go on to state that the subject “*of judicial review is therefore neither the exercise of an authoritative power nor a discretionary assessment connected to such power and aimed at ensuring that, throughout the duration of the authorization, quarry operations are carried out in accordance with the public interest, but rather the exercise of a credit right by the public administration (based on an ancillary*

guarantee contract to which a third party is a party) aimed at remedying damage resulting from the private party's failure to comply with environmental restoration obligations, at a time when the latter no longer carries out the authorized activity, as the relevant authorization expired years ago."

Nor does the petitioner's argument—that the contested act does not constitute a formal request for enforcement of the policy against the insurance company but merely a preliminary act, issued in accordance with the procedural requirements set forth in Law No. 241/1990—alter the court with jurisdiction: the Panel states that these are *"aspects that in no way alter the nature of the relationship at issue in the case or the legal positions asserted in court by the parties, and which therefore do not affect the determination of the court with jurisdiction."* If one were to reason otherwise—that is, to allocate jurisdiction depending on whether the actual act of enforcement of the surety bond or preliminary acts prior to the request have been issued—*"would entail the risk of a conflict between administrative res judicata and civil res judicata on the same substantive issue concerning whether or not the conditions for enforcement of the guarantee exist,"* with the resulting paradox that *"the administrative court would have jurisdiction only over procedural acts within the proceedings for enforcement of the surety policy—with the consequent risk that the related appeal would be deemed inadmissible due to the lack of current harm to the subjective legal position asserted (as, moreover, objected to in the present case by the defendant Municipality)—whereas, once the order enforcing the surety bond—concluding the proceedings—is issued, jurisdiction would "shift" to the ordinary court."*

Emilia-Romagna Regional Administrative Court, Bologna, Section II, August 13, 2026, No. 1441 – A judicial appeal filed by a local government entity is inadmissible if it constitutes an action for a declaratory judgment that effectively entails an implicit review of the legality of orders for which the statute of limitations for challenging them has already expired.

In Judgment No. 1441 of August 13, 2026, the Regional Administrative Court of Emilia-Romagna, Bologna Division, Section II, clarified that an action for a declaratory judgment cannot be filed when it requires an implicit review of the legality of measures for which the statute of limitations for challenging them has expired.

In the case at hand, several contiguous municipalities had formed a Union of Municipalities, approving an agreement concerning the transfer to the Union of the functions of the Municipal Police Force and Civil Protection activities. Upon realizing that the method for allocating revenues derived from fines imposed under the Highway Code was incorrect, the Union amended the original agreement on several occasions, with acts adopted years later.

The dispute in the proceedings therefore centered on the failure to apply the contractual terms originally provided for in the agreement, which were, however, never contested by the appellant municipality: the Court of Appeal holds, in fact, that *“acquiescence to the Union’s actions had been established, which, on the one hand, precludes the municipality’s standing to sue and, on the other, renders the administrative acts adopted by the Union immune from judicial review,”* which is why *“the appeal in question was filed as an action for a declaratory judgment and not as an action to set aside the agreement; however, allowing the appeal to rely on such a subterfuge would amount to nullifying the effect of the statute of limitations for challenging the agreement.”*

The determination of the claim asserted by the petitioner *“would entail an implicit review of the legality of the measures by which the amendment to the agreement was ordered and by which the subsequent implementing acts were adopted, which would ultimately circumvent the principle of the finality of administrative measures once the statute of limitations for challenging them has expired.”* The Court therefore holds that it should follow the legal principle according to which *“an action for declaratory judgment cannot be brought if it effectively asks the court to annul administrative measures that have not been explicitly challenged, thereby becoming a procedural expedient to circumvent the limits and time limits set forth in the Code of Administrative Procedure.”*

In conclusion, the administrative court is precluded from addressing the merits of the complaints raised; the appeal must therefore be declared inadmissible.