

Case Law Update

Civil Law and Administrative Law

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BANKING AND FINANCIAL LAW

Italian Supreme Court, 18 September 2026, No. 25523 – in proceedings for the verification of a claim arising from a loan agreement in insolvency proceedings, the creditor bears the burden of proving the existence of the title, its anteriority to the bankruptcy, and the repayment schedule, including the due dates and the agreed interest rate, without the production of the amortisation schedule constituting an indispensable element of proof; it is instead for the borrower, and for the insolvency administrator on its behalf, to prove payment of the instalments due prior to the bankruptcy declaration.

Italian Supreme Court, 6 September 2026, No. 25056 – in the field of financial intermediation, the necessary occasional link between the unlawful act committed by the financial promoter and the duties entrusted to them by the intermediary, which grounds the intermediary's joint liability, presupposes that the exercise of those duties made the harmful conduct possible or facilitated it; such joint liability may, however, be excluded where the investor engaged in anomalous conduct that facilitated the wrongdoing and is capable of breaking the causal link, such as sharing their own home banking credentials with the wrongdoer.

COMPANY LAW

Italian Supreme Court, Joint Civil Divisions, order, 6 September 2026, No. 25085 – effectiveness of a by-law clause conferring jurisdiction and directors' conflict of interest: a by-law clause devolving disputes between shareholders and the company – including disputes concerning the exclusion of a shareholder, the validity of resolutions and the winding-up of the company – to a foreign court automatically binds all shareholders, with no need for further approval; where the director is in a conflict of interest, the appointment of a special guardian cures, with retroactive effect, any defects in the company's procedural representation.

Italian Supreme Court, order, 8 September 2026, No. 25137 – time-bar nature of the deadline for notifying the refusal of a cooperative member's withdrawal: the sixty-day time limit laid down by Article

2532 of the Italian Civil Code, within which the directors must notify their refusal of a cooperative member's withdrawal, constitutes a time-bar; where that period lapses without notification, the effects of the withdrawal become final automatically, without any need for a prior judicial assessment of the relevant requirements.

BANKRUPTCY LAW

Italian Supreme Court, 16 September 2026, no. 25399 – action to set aside a loan agreement: a loan agreement constitutes a contractual transaction for valuable consideration that is subject to set-aside under the terms of Article 67, second paragraph, of the Italian Bankruptcy Law, (hereby “*l.fall.*”); consequently, the insolvency administrator may raise the defence of its invalidity under the terms of Article 95, first paragraph, *l.fall.*, for the purpose of excluding the claim for restitution based on that instrument.

INSURANCE LAW

Italian Supreme Court, 17 September 2026, No. 25476 – The Italian Supreme Court ruled that the authorization granted by the guardianship judge to the support administrator to make investments on behalf of the person under guardianship—including the purchase of a life insurance policy—does not extend, in the absence of a specific and precise provision, to the designation of the beneficiaries of the policy itself. The selection of beneficiaries, even if made generically by reference to the category of “*legitimate heirs*,” constitutes an act exceeding the scope of the guardianship mandate and the related authorization, with the consequent right of the entitled parties to challenge such designation pursuant to Article 412 of the Civil Code.

Italian Supreme Court, 7 September 2026, No. 25098 – The Italian Supreme Court ruled that, with regard to property insurance, a judicial declaration of the nullity or non-existence of assignments of the right to indemnity does not affect the starting date of the two-year statute of limitations provided for in Article 2952, paragraph 2, of the Italian Civil Code, since such a ruling has retroactive effect and implies that the claim has always remained with the assignor-insured (or in the event of the assignor's bankruptcy), who retains, from the outset, ownership of the right and the burden of interrupting the statute of limitations. It follows that the statute of limitations begins to run from the moment the right could have been exercised and not from the date the judgment establishing the nullity of the assignments became final.

ADMINISTRATIVE LAW

Council of State, Section IV, 25 September 2026, No. 7120 – an order to pay compensation for damage resulting from an unlawful decision is unlawful in the absence of proof of a causal link between the administration's conduct and the alleged harm, and where the injured party, through their own conduct, has contributed to causing or aggravating the damage within the meaning of Article 1227 of the Civil Code.

Council of State, Section IV, 25 September 2026, No. 7126 – for the purposes of the simplified authorisation procedure (PAS) referred to in Article 6(2) of Legislative Decree No. 28/2011, the '*availability*' of the land required of the applicant does not necessarily presuppose the holding of a real right or physical possession of the property, as it may also be demonstrated by means of a preliminary contract of sale; such legal availability must, however, extend not only to the areas on which the plant is situated, but also to those necessary for the construction of the works connecting it to the electricity grid, constituting an objective and binding eligibility requirement for the project, so that the administration may argue in court – without this constituting an inadmissible retrospective addition to the grounds for the decision – that this requirement is lacking where it is apparent from the procedural documentation and is already structurally included in the subject matter of the contested refusal decision.

Council of State, Plenary Session, 9 September 2026, No. 8 – the special super-expedited procedure provided for in Article 36(4) of Legislative Decree No. 36/2023 for challenging decisions concerning the redaction of tenders, as it constitutes a derogation and an exception to the ordinary procedure for access, applies exclusively where the contracting authority has fully complied, at the time of notifying the award, with the information and disclosure obligations set out in the preceding paragraphs of the same article, whilst also notifying the decisions taken on requests for redaction.

BANKING AND FINANCIAL LAW

Italian Supreme Court, 18 September 2026, No. 25523 – in proceedings for the verification of a claim arising from a loan agreement in insolvency proceedings, the creditor bears the burden of proving the existence of the title, its anteriority to the bankruptcy, and the repayment schedule, including the due dates and the agreed interest rate, without the production of the amortisation schedule constituting an indispensable element of proof; it is instead for the borrower, and for the insolvency administrator on its behalf, to prove payment of the instalments due prior to the bankruptcy declaration.

In the order in question, the Italian Supreme Court ruled on the allocation of the burden of proof in ascertaining a claim arising from a loan agreement in the context of the verification of a bankruptcy's statement of liabilities.

In the case at hand, the appellant challenged the Court of Caltanissetta for having correctly stated the principle that production of the amortisation schedule is not an indispensable requirement for admission

of a loan claim to the statement of liabilities, but having then in fact betrayed that principle by imposing on the assignee of the lender *"the burden... of proving the partial discharge of the debt by the debtor to an extent different from that actually claimed in the application for admission to the statement of liabilities"*.

The Court upheld the ground of appeal, observing that the appellant has *"no other evidentiary burdens beyond those concerning the existence of the title, its anteriority to the bankruptcy and the repayment schedule"* (Supreme Court No. 3015/2020), a schedule that *"need not necessarily be demonstrated through production of the amortisation schedule"* (Supreme Court No. 26426/2017). Indeed, since the loan at issue carried a variable interest rate, the amortisation schedule *"could only ever be a theoretical and approximate projection, necessarily to be corrected in light of the actual trend of the variable rate agreed in the contract"*.

The Court clarified that *"a loan agreement, like any contract, must have a determined or determinable subject matter (Article 1346 of the Civil Code) and must therefore contain terms governing the interest rate that allow the precise determination – even if only retrospectively, where the rate is variable, but always on the basis of criteria predetermined in the contract – of the payment obligations borne by the borrower"*.

The Court found the lower court's decision inconsistent, observing that *"the terms governing the interest rate are either determined (that is, they allow the amounts owed by the borrower to be calculated) or they are not"*: in the latter case, the clause would be void, which had not been established by the lower court; in the former case, the court *"can and must ascertain, where necessary also by means of the proposed accounting expert examination, the correspondence between what was claimed in the application for admission to the statement of liabilities and what remains owed by the bankrupt company net of payments already made"*.

The Supreme Court therefore held that the lower court *"paid formal lip service to the correct principles established in case law, according to which: a) "production of the amortisation schedule does not constitute an indispensable element of proof of the residual loan claim" (Supreme Court No. 26426/2017); b) "a creditor acting in the verification of a bankruptcy's statement of liabilities on the basis of a loan agreement is required to provide proof of the existence of the title, its anteriority to the bankruptcy, and the repayment schedule, including the agreed due dates and interest rate, whereas the borrower (and, on its behalf, the insolvency administrator) bears the burden of proving payment of the loan instalments that fell due before the bankruptcy declaration" (Supreme Court No. 3015/2020); but had then in fact betrayed those principles by making the outcome of the dispute depend precisely on the failure to produce the amortisation schedule in the proceedings"*.

In doing so, *"the lower court infringed Articles 115 and 116 of the Code of Civil Procedure, having failed in its duty to prudently assess all the available evidence, by attributing to one piece of evidence a value of statutory proof prevailing over the others, notwithstanding the absence of any statutory provision to that effect"* (Supreme Court No. 5800/2026).

Italian Supreme Court, 6 September 2026, No. 25056 – in the field of financial intermediation, the necessary occasional link between the unlawful act committed by the financial promoter and the duties entrusted to them by the intermediary, which grounds the intermediary's joint liability, presupposes that the exercise of those duties made the harmful conduct possible or facilitated it; such joint liability may, however, be excluded where the investor engaged in anomalous conduct that facilitated the wrongdoing and is capable of breaking the causal link, such as sharing their own home banking credentials with the wrongdoer.

In the case at hand, the heir of a bank account holder brought proceedings against the bank for compensation for damage arising from unlawful diversions of funds from the account holder's current account, carried out by the *bank's own financial promoter (the account holder's former son-in-law) through home banking transactions executed without the account holder's consent and with forgery of her signature. The Court of Appeal had excluded the bank's liability, finding that the necessary occasional link between the promoter's duties and the wrongdoing had been broken, owing to the account holder's anomalous conduct, including sharing her home banking access credentials with her son-in-law.*

The Court premised that, in the field of financial intermediation, *"the necessary occasional link between the unlawful act committed by the financial promoter and the duties or tasks entrusted to them by the intermediary, on which the intermediary's joint liability for the damage caused by the promoter is based, presupposes that the exercise of those duties made the harmful conduct possible, or at least facilitated it, even where that conduct arose autonomously within the scope of the assignment or even exceeded its limits, including by disregarding instructions received, it still being necessary to ascertain that the agent pursued purposes consistent with those for which the duties were entrusted to them, rather than purposes of their own in which the principal has no interest, even indirectly, or involvement"* (Supreme Court No. 3425/2025).

The Court nonetheless clarified that *this line of case law has been tempered, in that "the intermediary's joint liability under Article 31 of Legislative Decree No. 58 of 1998 may be excluded where there are elements indicative of anomalous conduct on the part of the investor, capable of evidencing collusion or conscious acquiescence in the breach of the rules binding the promoter"* (Supreme Court No. 28952/2024). In that light, *"once it is found that the injured party engaged in conduct that facilitated the*

intermediary's wrongdoing, characterised by anomalous features, the court of merit must be regarded as precluded from discretionarily excluding the existence of a causal contribution on the part of that injured party" (Supreme Court No. 11240/2025).

In the case at hand, the Court held that the Court of Appeal's finding could not be reviewed, namely that "there is no doubt that such delivery" of the home banking access key "constituted the efficient cause of the wrongdoing committed by the bank's employee", further observing that "the failure to exercise due care in examining the account statements also facilitated the employee's unlawful conduct, since such examination would have made it possible to verify the diversions of funds from the current account in favour of the same employee".

The Court therefore dismissed the appeal, confirming that the Court of Appeal had "correctly" held that "the causal link between the exercise of the bank employee's functions and the wrongdoing committed had been broken, as a consequence of the investor's anomalous conduct set out above", with the consequent exclusion of the intermediary's joint liability under Article 31 of Legislative Decree No. 58/1998.

COMPANY LAW

Italian Supreme Court, Joint Civil Divisions, order, 6 September 2026, No. 25085 – effectiveness of a by-law clause conferring jurisdiction and directors' conflict of interest: a by-law clause devolving disputes between shareholders and the company – including disputes concerning the exclusion of a shareholder, the validity of resolutions and the winding-up of the company – to a foreign court automatically binds all shareholders, with no need for further approval; where the director is in a conflict of interest, the appointment of a special guardian cures, with retroactive effect, any defects in the company's procedural representation.

The Joint Civil Divisions held that "the inclusion of the clause in the articles of association has binding effects on the shareholders, with no need for further approval", since "the incorporation of a company presupposes a commonality of interests in the pursuit of shared purposes; each shareholder holds, in its relations with the other shareholders and with the corporate bodies, rights and obligations deriving from the articles of association, an instrument which produces effects analogous to those of a contract".

The Court therefore held that "all the claims, both principal and subordinate", brought in a corporate dispute – including the claim for the exclusion of shareholders for abuse of right and conduct detrimental to the company's assets, the claim to set aside the resolution appointing the director, and the claim for the winding-up and liquidation of the company – fall within the by-law provision devolving jurisdiction to the

foreign court, *"since what is in issue is the defendants' membership of the corporate body and alleged breaches of the corporate contract"*, clarifying that such devolution is *"consistent with the criterion of the company's effective seat"*.

As regards the conflict of interest affecting the defendant director, the Court clarified that *"the subsequent appointment of a special guardian for the company cured, with retroactive effect, the defects relating to procedural representation"*, preserving the defences and procedural activities previously carried out, including the objection as to jurisdiction, and specifying that *"a conflict of interest may, at most, entitle the opposing party to request the appointment of a special guardian"*, but not to challenge the validity of the representative's appearance in the proceedings.

The Joint Civil Divisions further clarified that a company duly incorporated abroad under its law of origin must, for the purposes of Italian law, be regarded as having its own distinct legal personality according to the corporate form recognised in that jurisdiction, *"thereby excluding the possibility of characterising it as a mere co-ownership for enjoyment or as a simulated articles of association"*.

Italian Supreme Court, order, 8 September 2026, No. 25137 – time-bar nature of the deadline for notifying the refusal of a cooperative member's withdrawal: the sixty-day time limit laid down by Article 2532 of the Italian Civil Code, within which the directors must notify their refusal of a cooperative member's withdrawal, constitutes a time-bar; where that period lapses without notification, the effects of the withdrawal become final automatically, without any need for a prior judicial assessment of the relevant requirements.

In a dispute concerning the withdrawal of members from a cooperative company, the Court held that *"the withdrawal exercised by a member pursuant to Article 2532 of the Italian Civil Code constitutes a unilateral declaration, the effects of which arise at the time when the board of directors issues the notice of the decision ascertaining whether the statutory or by-law requirements are met; conversely, where the board of directors fails to act within the time limit laid down by the second paragraph of the same Article 2532, the effects of the withdrawal become final upon expiry of the sixty-day period, which must be characterised as a time-bar"*.

The Court further excluded that, in the event of inaction by the administrative body, the member must first apply to the courts to obtain a judicial assessment of the requirements for withdrawal, holding that such a burden would be incompatible with the effective protection owed to the cooperative member and with the prohibition – extended to cooperative companies – against making the exercise of withdrawal more burdensome.

BANKRUPTCY LAW

Italian Supreme Court, 16 September 2026, No. 25399 – action to set aside a loan agreement: a loan agreement constitutes a contractual transaction for valuable consideration that is subject to set-aside under the terms of Article 67, second paragraph, of the Italian Bankruptcy Law, (hereby “*l.fall.*”); consequently, the insolvency administrator may raise the defence of its invalidity under the terms of Article 95, first paragraph, *l.fall.*, for the purpose of excluding the claim for restitution based on that instrument. The Italian Supreme Court, in its order no. 25399, published on 16 September 2026, ruled on the issue of an action to set aside the loan agreement pursuant to Article 67, *l.fall.*

Firstly, the Court, with reference to Article 67, *l.fall.*, stated that *"a literal interpretation of the provision precludes (...) the need for a further restrictive interpretation of acts for consideration that are revocable under the terms of Article 67, second paragraph, l.fall., since it must be inferred – from a systemic perspective – that all acts for valuable consideration affecting the estate, where carried out during the suspect period, however commercially lawful they may be (carried out between solvent parties), are to be considered “anomalous” in the context of insolvency proceedings where carried out during the suspect period and liable to be declared ineffective for the purposes of the insolvency proceedings as regards their contractual effects (...) Any contractual basis for a transaction for valuable consideration is, therefore, liable to be declared ineffective in insolvency proceedings"*.

The Supreme Court therefore held that *"where, furthermore, the transaction for valuable consideration constitutes a prerequisite for the enforceability of the relevant claim against the estate, Article 95, paragraph 1, l.fall. – a procedural provision designed to safeguard the drawing up of the statement of liabilities (...) – permits the insolvency administrator to raise, by way of summary proceedings, a set-off action to render the transaction entered into during the suspect period ineffective"*.

The Court further clarified that *"it is irrelevant that the transaction did not cause direct harm to the debtor's assets or, in the case of a loan, that it resulted in an abstract benefit to the debtor as a consequence of the provision of funds. In this case, the revocability of the act stems from the increase in liabilities resulting from the obligation to repay the principal and interest"*.

The Supreme Court, referring to its own case law, added that *"it should be noted, in this regard, that this Court (Supreme Court, No. 3462/2024) held that the guarantee would be subject to an ordinary revocation action under Article 2901 of the Civil Code, in summary proceedings, as an act disposing of assets, such as to impose on the debtor's assets a further guarantee arising from a contractual relationship (...), since the subsequent exercise of a right of recourse against the principal debtor is not sufficient to remedy the prejudice caused to the debtor's assets, given the greater difficulty in satisfying the guarantor's claim for*

recourse. This argument is also applicable in the context of a summary bankruptcy revocation action, without it being necessary to establish prejudice to the estate, as such prejudice is inherent in the nature of the matter (in re ipsa) by virtue of the fact that an additional obligation to make restitution, arising from the conclusion of the loan agreement, has been imposed on the debtor's assets".

In light of the foregoing, the Supreme Court set out the following principle of law: *"a loan agreement constitutes a contractual transaction for valuable consideration which is subject to revocation under the terms of Article 67, second paragraph, l.fall.; consequently, the insolvency administrator may raise a defence of invalidity under the terms of Article 95, first paragraph, l.fall., for the purpose of excluding the claim for restitution based on that title".*

INSURANCE LAW

Italian Supreme Court, 17 September 2026, No. 25476 – The Italian Supreme Court ruled that the authorization granted by the guardianship judge to the support administrator to make investments on behalf of the person under guardianship—including the purchase of a life insurance policy—does not extend, in the absence of a specific and precise provision, to the designation of the beneficiaries of the policy itself. The selection of beneficiaries, even if made generically by reference to the category of *"legitimate heirs,"* constitutes an act that exceeds the scope of the guardianship mandate and the related authorization, with the consequent right of the entitled parties to challenge such designation pursuant to Art. 412 of the Civil Code.

In the judgment in question, the Italian Supreme Court ruled on the validity of the designation of beneficiaries in a life insurance policy taken out by the support administrator in the best interests of the person under guardianship.

In the case at hand, the guardian had been authorized by the guardianship judge to invest a sum of €350,000.00 through an insurance policy, designating the ward's legal heirs as beneficiaries. Following the ward's death, one of the testamentary heirs challenged the designation, arguing that it exceeded the powers granted to the guardian and requesting either a declaration of nullity of the beneficiary designation or the annulment of the act.

The Italian Supreme Court clarified that, in the case at hand, *"the request made by the guardian ad litem to the guardianship judge was aimed at identifying an investment vehicle for the sum of three hundred fifty thousand euros in order to preserve, if not increase, the assets"* of the ward *"and, therefore, the identification of the beneficiaries—that is, as actually occurred, the intestate heirs—was entirely outside the scope of the authorization granted, since that authorization implied that the investment be directed*

toward individuals who were to be identified precisely at the time of the request and, subsequently, at the time the guardianship judge granted the authorization.”

The Supreme Court then clarified that designating the legitimate heirs as beneficiaries of the policy *“effectively had the effect of removing said sum from the estate as intended by the person under guardianship—that is, the estate as established by will—and, therefore, exceeds the scope of the support administrator’s mandate—or, at most, the support judge’s authorization for the transaction—as defined in Article 412 of the Civil Code,”* and, consequently, *“said act is subject to annulment.”*

Furthermore, the Italian Supreme Court clarified that *“the clause designating the beneficiaries may, therefore, be omitted, and, given its non-essential nature, it may also be invalidated—that is, annulled—without the entire contract being rendered void,”* and specified that *“the arbitrary identification of beneficiaries by reference to the category of statutory heirs”* by the administrator *“constitutes an act not falling within the scope of the administrator’s powers or the purpose of the investment for which authorization was sought, which was aimed at increasing the assets of the person under administration.”*

Italian Supreme Court, 7 September 2026, No. 25098 – The Italian Supreme Court ruled that, with regard to property insurance, a judicial declaration of the nullity or non-existence of the assignments of the right to indemnity does not affect the starting date of the two-year statute of limitations provided for in Article 2952, paragraph 2, of the Civil Code, since such a ruling has retroactive effect and implies that the claim has always remained with the assignor-insured (or in the event of the assignor’s bankruptcy), who retains, from the outset, ownership of the right and the burden of interrupting the statute of limitations. It follows that the statute of limitations begins to run from the moment the right could have been exercised and not from the date the judgment establishing the nullity of the assignments became final.

In the judgment in question, the Italian Supreme Court ruled on the effects of a finding of nullity or non-existence of the assignments of the indemnity claim in relation to the commencement of the two-year statute of limitations provided for in Article 2952, paragraph 2, of the Italian Civil Code.

In the case at hand, the insured following a fire that spread through a warehouse, filed a claim for compensation with the insurance company, which, considering the policy invalid, did not pay the requested amount. The insured subsequently assigned part of the indemnity claim to certain creditors, and in a first instance judgment, the claim was deemed compensable; however, the Court ruled that the assignments had not resulted in the transfer of the claim to the assignees. The insured’s bankruptcy trustee then filed a subsequent lawsuit to obtain payment of the remaining portion of the indemnity. The claim, initially dismissed on the grounds that the statute of limitations had expired, was upheld by the

Court of Appeals, which held that the statute of limitations began to run from the date the previous judgment became final.

The Supreme Court ruled that the company *“had remained the holder of the claims that it had itself—albeit without justification—assigned to third parties and, therefore, could well have asserted, at least as a precautionary measure, its own claims against the insurance company for the same amount.”*

The Italian Supreme Court clarified that, in the case at hand, *“since neither the company—which was still solvent—nor the bankruptcy estate had taken any action to interrupt the statute of limitations—which began to run from the time the right could be asserted and, therefore, well before the previous judgment became final—the two-year statute of limitations for insurance matters, pursuant to Article 2952, paragraph 2, of the Civil Code, as worded at the time, had already expired.”*

Finally, the Supreme Court clarified that *“if a judgment declares an assignment of a claim to be non-existent or void (even if, at least in theory, erroneously), that assignment of the claim must be considered as never having taken place and never having produced any effects,”* specifying that, in the present case, *“the lower court thus confused the starting point for the production of legal effects (the judgment becoming final) with the retroactive effect of those effects themselves: once a contract entered into at an earlier date is declared null and void, that contract is considered null and void and without legal effect from the moment of its conclusion; it does not lose its validity today, but as of today it is established that it never had any validity.”*

ADMINISTRATIVE LAW

Council of State, Section IV, 25 September 2026, No. 7120 – an order to pay compensation for damage resulting from an unlawful measure is unlawful in the absence of proof of a causal link between the administration’s conduct and the alleged harm, and where the injured party, through their own conduct, has contributed to causing or aggravating the damage within the meaning of Article 1227 of the Civil Code. In Judgment No. 7120 of 25 September 2026, the Fourth Section of the Council of State ruled on the necessary conditions for an order to pay compensation for damage resulting from an unlawful administrative act.

The Council of State noted that established administrative case-law has emphasised *“that the judicial annulment of the measure does not automatically give rise to a right to compensation, as an independent assessment of all the constituent elements of the tort is required and, in particular, verification of the infringement of a legal interest, the causal link between the unlawful act and the damage, the administration’s fault, and the existence of unjust damage”*. In this regard, the unlawfulness of the measure

constitutes nothing more than a *"presumptive indication of fault and does not allow for the establishment of strict or quasi-strict liability on the part of the public administration"*.

Unjust damage – the Section continues – must be *"causally linked to the unlawful conduct of the administration"*: in light of the principle of party disposition, it is for the injured party to provide evidence of the damage suffered, *"as the method of evidence specific to an action for annulment does not apply"*. The equitable assessment of damage (Article 1226 of the Civil Code), in cases where precise proof is impossible or extremely difficult to obtain, *"relates solely to the quantification of the amount of damage (quantum debeatur) and does not relieve the claimant of the burden of proving the existence of the damage itself (an debeatur)"*.

With regard to the present case, the Council of State therefore does not consider the damage arising from the infringement of the ius aedificandi, resulting from the imposition of a restriction intended to pave the way for expropriation, and from the infringement of the freedom of economic activity resulting from a measure blocking sales, to be compensable. The judges state that no evidence has been provided of the direct causal link between the unlawful administrative action and the legal position of the company in question and, in particular, regarding the alleged sales freeze on the property in question, as well as the fact that the property itself and the buildings to be constructed could in any case have been sold at a fair price, unaffected by the time elapsed, even taking into account that this item of damage is influenced by the time required for the construction of the properties and the time taken to sell them – entirely hypothetical figures – which do not allow the causal link between the municipality's conduct and the claimed damage to be deemed proven.

Council of State, Section IV, 25 September 2026, No. 7126 – for the purposes of the simplified authorisation procedure (PAS) referred to in Article 6(2) of Legislative Decree No. 28/2011, the availability of the land required of the applicant does not necessarily presuppose the holding of a real right or physical possession of the property, as it may also be demonstrated by means of a preliminary contract of sale; however, this legal availability must extend not only to the land on which the plant is situated but also to that necessary for the construction of the works connecting to the electricity grid, constituting an objective and binding requirement for the admissibility of the project, so that the administration may argue in court – without this constituting an inadmissible retrospective addition to the grounds for the decision – that this requirement is lacking where it is apparent from the procedural documentation and is already structurally included in the subject matter of the contested refusal decision.

In its judgement No. 7126 of 25 September 2026, the Fourth Section of the Council of State ruled on how the *'availability of the areas'* required by Article 6(2) of Legislative Decree No. 28/2011 should be interpreted for the purposes of the Simplified Authorisation Procedure (PAS).

According to the judges of the Council of State, Article 6(2) of Legislative Decree No. 28/2011, in the part where it identifies the persons entitled to submit the PAS as *"anyone who has availability over the properties affected by the plant and the associated works"*, *"does not equate the right of disposal required for the purposes of the PAS with ownership of the land, nor does it expressly require the holder to have a real right or to be in actual possession of the property"*.

Administrative case law has, in fact, clarified that the concept of *"disposal"* must be assessed *"with regard to the actual legal situation of the applicant and their ability to permit the exercise of the powers necessary for the implementation of the project"*.

In this regard, the Council of State has clarified that *"the conclusion of a preliminary contract is, in the abstract, sufficient to ensure the future full availability of the land, not least by virtue of the remedy provided for in Article 2932 of the Civil Code in the event of breach by the promisor of the sale"*; however, it must be verified in practice whether, pending the conclusion of the final contract, *"the preliminary contract grants the prospective purchaser sufficient powers to fulfil the obligations necessary to obtain the authorisation, including through physical availability limited to the activities required for that purpose"*. Indeed, it is necessary to ascertain the actual availability, *"having regard to the powers of enjoyment and use conferred on the proposer, and the preliminary contract is, in the abstract, capable of satisfying this requirement, provided that it confers on the prospective purchaser sufficient powers to carry out the activities necessary for the authorisation process, as full entry into possession is not required"*.

In the present case, the Council of State considers that the preliminary contract conferred *"upon the prospective purchaser a series of powers immediately exercisable over the land, including early entry into possession for the purpose of carrying out preliminary activities, the possibility of carrying out site inspections, surveys and technical checks, including through appointed third parties, as well as the right to submit to the competent authorities the applications and requests necessary to obtain the authorisation permits, whilst also undertaking the commitments relating to ownership required within the framework of the relevant proceedings"*. In light of this, the Court also observes that *"a different interpretation, which would require the applicant to already be the owner of the site or the holder of a fully exercisable right in rem even before the conclusion of the authorisation process, would ultimately attribute to the legislative concept of "availability" a meaning substantially coinciding with that of "ownership", thereby nullifying the distinct provision contained in Article 6(2) of Legislative Decree No 28 of 2011"*.

Council of State, Plenary Session, 9 September 2026, No. 8 – the special super-accelerated procedure provided for in Article 36(4) of Legislative Decree No. 36/2023 for challenging decisions concerning the withholding of tenders, as it constitutes a derogation and an exception to the ordinary procedure for access, applies exclusively where the contracting authority has fully complied, at the time of notifying the

award, with the obligations regarding disclosure and presentation set out in the preceding paragraphs of the same article, whilst also notifying the decisions taken on requests for redaction.

By judgment no. 8 of 9 September 2026, the Plenary Session of the Council of State resolved the conflict in case law that had arisen regarding the interpretation of Article 36(4) of the Public Contracts Code, which provides for appeals against decisions on requests to redact tenders to be served and filed within ten days of the digital notification of the award.

In the present case, following the award of a contract for legionella sampling services, the runner-up had received, at its own request, a copy of the award decision as well as a redacted version of the successful tenderer's technical proposal, together with the declarations in which the latter had requested partial redaction. In view of the failure to disclose the additional documents required, the company had repeatedly urged the examination of its request for access and, only subsequently, had lodged an appeal against the award; The Lombardy Regional Administrative Court, ruling on the incidental application for access, had declared inadmissible – on the grounds that it was lodged after the ten-day deadline provided for in Article 36(4) – the request seeking full disclosure of the technical bid and the supporting documents relating to the anomalies.

On appeal, the Third Section of the Council of State noted a conflict in case law regarding the interpretation of the provision and referred the matter to the Plenary Assembly, pursuant to Article 99 of the Code of Administrative Procedure, putting forward two questions: whether the special super-expedited procedure for access to information provided for in Article 36(4) of Legislative Decree No. 36 of 31 March 2023 is intended to apply only where the contracting authority has duly fulfilled the publication and notification obligations referred to in paragraphs 1 to 3 of that article, with the consequence that, in the event of non-compliance with those obligations, the general provisions of Article 116 of the Code of Administrative Procedure must apply once again, or whether the aforementioned special procedure remains applicable even in such cases of non-compliance, with the sole clarification that the ten-day time limit for lodging an appeal shall run from the date on which the tenderer became aware of the successful tenderer's redacted tender or of the decisions taken by the contracting authority regarding the request for redaction; and whether, and if so under what conditions, the publication or display of the successful tenderer's technical tender, redacted in whole or in part, may constitute an implied decision by the contracting authority on the request to redact that tender, thereby triggering the shortened time limit for challenging the decision referred to in the aforementioned Article 36(4) of Legislative Decree No 36/2023.

On the first question, the Plenary acknowledged the existence of an initial line of reasoning according to which the ten-day time limit would apply not only when the notification of decisions on redaction takes place simultaneously with the award in accordance with the legal framework, but also when it is

subsequent or follows a specific request for access. Contrary to this approach is a different view, which has become the majority opinion, according to which, given the exceptional nature of the provisions of Article 36, the notification of the award made in breach of the statutory model deprives the case in question of the structural prerequisites required by the derogatory provision, with the consequence that the ordinary procedure set out in Article 116 of the Code of Administrative Procedure is reinstated, with the corresponding thirty-day time limit.

The Plenary Assembly endorsed this latter view, emphasising the literal wording of the provision, which sets the shortened time limit as commencing *"from the digital notification of the award"*, and the exceptional and derogatory nature of the provision, which cannot be applied by analogy, particularly in light of the absolute statutory reservation referred to in Article 111 of the Constitution.

The Court therefore formulated the following principle of law: *"the special super-expedited procedure concerning access to information, provided for in Article 36(4) of the Public Contracts Code set out in Legislative Decree of 31 March 2023, No. 36, in so far as it is provided for by an exceptional provision not open to extension by analogy, is applicable only in the specific case where, at the same time as the digital notification of the award referred to in paragraph 1, the contracting authority or the procuring entity has fulfilled the information obligations referred to in the preceding paragraphs, whilst also acknowledging the decisions taken on requests for redaction. In the event of material non-compliance with these obligations, the rules governing the access procedure set out in Article 116 of the Code of Administrative Procedure shall apply"*.

As regards the second question, the Plenary Session endorsed the majority view, ruling out the possibility of an implied decision arising from the mere publication of the redacted tender – whether on its own or accompanied by the request for redaction – noting that *"it is one thing to be able to inspect the successful tenderer's technical bid, parts of which have been redacted, and quite another to be aware of the 'decision' taken by the contracting authority regarding the request for redaction, that is, the reasons why the latter was deemed worthy of acceptance"*, and clarifying that the unambiguity required by the provision *"clearly concerns not only the 'what', but also the 'how', and, above all, the 'why'"*.

The Plenary Session therefore set out the second principle of law: *"the special super-accelerated procedure for access provided for in Article 36(4) of the Public Contracts Code referred to in Legislative Decree of 31 March 2023, No. 36, requires the adoption of a specific and express decision on the request for redaction; the mere publication of the technical tender in a redacted form, in whole or in part, possibly accompanied by the request for redaction, cannot be considered sufficient as an implied measure"*.