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Legance

The focus of this issue:

Special Issue: Budget Law

We'll also cover:

Real Estate and the Simplification Act // Punta Perotti: Planning Confiscation, Reliance, and Damages Following the 2025 Rulings // Building Amnesty and the Landscape Commission's Opinion: Optional Nature and the Special Character of the Procedure

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EDITORIAL *by Giuseppe Abbruzzese*

Every year, MIPIM in Cannes offers a snapshot of the health of the international real estate market – not so much through official statements, but through the atmosphere among investors, developers, advisors, and industry operators.

The 2026 edition took place against a challenging global backdrop: persistent inflation, a higher cost of capital compared to previous years, geopolitical tensions, and cautious financial markets. And yet, the prevailing sentiment appeared cautiously optimistic, with many operators describing a phase of market rebalancing rather than a crisis.

The shared impression – confirmed by speakers at the "Italian Real Estate Conference 2026" promoted by Legance and DILS two weeks before MIPIM – is that the real estate sector is entering a new phase: less speculative finance and greater focus on project quality, economic sustainability, and long-term development soundness.

Against this backdrop, Italy has once again begun to attract attention.

Many international investors continue to look at our country with interest, not only for large transactions in major cities, but also for urban regeneration projects, logistics development, hospitality, and technological infrastructure.

The most dynamic sectors appear to be logistics, build-to-rent residential, hospitality, and data centres – areas that require complex investments, long timeframes and, above all, a clear regulatory framework.

And this is precisely one of the themes emerging with increasing force: in today's real estate market, the quality of rules matters almost as much as the quality of assets.

Administrative procedures, certainty of building titles, planning regulations, taxation, and regulatory stability are factors that directly influence the decision of whether or not to invest in a given country.

It comes as no surprise, therefore, that many of the issues discussed by international operators are now finding a direct reflection in the Italian regulatory debate.

This issue of REviews follows that thread.

We begin with the changes introduced by the 2026 Budget Law, which addresses several key issues in the real estate sector: from the urban regeneration of amnestied buildings to housing policies, through to the new tax framework on short-term rentals.

These topics are accompanied by important updates in planning and administrative law, including the lawful state of properties, the amendments introduced by the Simplification Act, and a number of court rulings that continue to have a tangible impact on the circulation and development of real estate assets.

As is often the case in real estate, the market moves quickly and the law strives to keep pace and give shape to these transformations.

Understanding regulatory and case-law developments is not merely a technical exercise – it is an integral part of how real estate transactions are structured today.
It is in this spirit that this issue of RE-views has been put together, with the aim of offering a clear and practical overview of the key developments currently shaping the sector.

Happy reading.

REAL ESTATE AND THE BUDGET LAW *by Angela Maiuri*

The 2026 Budget Law (Law No. 199 of 30 December 2025) introduces a comprehensive set of provisions that significantly impact the real estate sector, addressing urban planning, construction, civil law, tax, and housing policy matters.

The legislative intervention is not characterised by isolated measures, but by a targeted review of several key issues in the sector: urban regeneration, the legal regime of amnestied buildings, housing policies, short-term rentals, renunciation of ownership, and the regulation of cemetery buffer zones.
Below is an overview of the main developments of interest.

1. Amnestied Buildings and Urban Regeneration Works
The legislator has amended Article 5, paragraph 10, of Decree-Law No. 70/2011 (the so-called *Decreto Sviluppo* – Development Decree), allowing urban regeneration works to be carried out on buildings for which a regularisation building permit has been issued or obtained, expressly including building amnesties (*condoni edilizi*) within this category.
The amendment has made it possible for amnestied buildings to access the incentives available upon completion of urban regeneration works, namely:
i. the recognition of additional volumetric capacity beyond the pre-existing one,
ii. changes to the building envelope required to achieve harmonisation with existing structures,
iii. changes of use towards compatible or complementary uses, and
iv. the relocation of the relevant volumetric capacity to one or more different areas.

This provision sits within a particularly restrictive case law context regarding the types of construction works considered permissible on amnestied buildings, as well as the qualification of lawful surface area (for a deeper analysis of the evolution of the concept of *stato legittimo* – lawful state of buildings, see *The Point* in this issue.
Coordination with regional legislation and municipal practice remains in any event essential, as both will continue to play a decisive role in identifying the works that are actually permissible on amnestied buildings – considering also the special nature of the provision amended by the Budget Law.

2. Abdicative Renunciation of Ownership
The Budget Law introduces specific

provisions on the abdicative renunciation of real property ownership (paragraphs 731 and 732 of Article 1 of the Budget Law), stipulating that such renunciation shall be null and void if the documentation certifying the compliance of the property being relinquished with current legislation - including planning, environmental, and seismic regulations - is not attached.

The aim is clearly to prevent renunciation from being used as a mechanism to dispose of irregular or non-compliant property, thereby transferring situations of dilapidation or unlawfulness to the State.

This new provision stands in contrast to the recent ruling of the Joint Divisions (*Sezioni Unite*) of the Court of Cassation (judgment No. 23093/2025), which recognised the abdicative renunciation as a unilateral and non-receptive act, as a further expression of the right of ownership. Specifically, the Joint Divisions held that:

i. the renunciation of real property ownership is an act of exercising the owner's power of disposition over their assets, functionally aimed at the extinguishment of the right, as a form of exercise and implementation of the power to dispose of property under Article 832 of the Civil Code;
ii. it follows that renunciation is lawful even where potentially driven by a "self-interested purpose", since (a) limitations on the exercise of the right of ownership may only be established by the legislator, and (b) no "duty to be and remain an owner for reasons of general interest" can be inferred from Article 42 of the Constitution.

Ultimately, the Budget Law marks a clear shift, introducing a legality filter that makes the validity of the act of renunciation conditional upon proof of the property's compliance with applicable regulations.

3. *Piano Casa Italia* and Housing Policies

The legislator has reformulated the framework governing the "*Piano Casa Italia*" – Italy's National Housing Plan (amendments to Law No. 207/2024, Article 1, paragraph 402, and introduction of paragraphs 402-*bis* and 403-*bis*), reinforcing its role as the central instrument for national housing policy planning.

The main changes concern:

- the identification of the types of projects eligible for funding and their intended beneficiaries; and
- the identification of the financial resources to be allocated to the implementation of the Housing Plan, with particular attention to the 2021-2027 European Structural Funds.

The Housing Plan is specifically geared towards the construction and renovation of subsidised rental housing for young people, young couples, and separated parents, as well as the development of social housing for the elderly, including through innovative housing models and public-private partnerships.

4. Works Within Cemetery Buffer Zones

The Budget Law amends the rules governing the types of works that may be carried out within cemetery buffer zones (amendments to Royal Decree No. 1265/1934, Article 338).

Specifically, the municipal council may authorise planning works and public infrastructure projects within cemetery buffer zones, subject to the following conditions:

i. a minimum distance of 50 metres from the cemetery facility;
ii. compliance of the works with health and hygiene requirements; and, in all cases
iii. obtaining a favourable opinion from the Local Health Authority (ASL).

The amendments are particularly significant in established urban areas.

5. New Rules on Short-Term Rentals

From 2026, the favourable tax regime for short-term rentals is available exclusively to operators who use, for that purpose, no more than two apartments per tax period.

Where this threshold is exceeded, for the purposes of consumer protection and fair competition, the activity is deemed to be carried out in an entrepreneurial capacity, with the consequent application of the relevant civil law, tax, and administrative framework. The provision aims to draw a clearer boundary between the private management of a real estate portfolio and an economically organised business activity.

TAX FOCUS: SHORT-TERM RENTALS, THE TAX CRACKDOWN *by Riccardo Petrelli and Nunziante Di Matteo*

The 2026 Budget Law (Law No. 199/2025) has amended Article 1, paragraph 595, of Law No. 178/2000, halving from four to two the maximum number of residential units that may be managed under a private (non-entrepreneurial) regime.

Up to and including the 2025 tax period, the legislation allowed individuals to let up to four apartments on a short-term basis (*i.e.* under contracts not exceeding 30 days) without this constituting the carrying out of a business activity. Exceeding that threshold triggered an irrebuttable presumption that the activity was being conducted in an entrepreneurial capacity, resulting in exclusion from the favourable tax regime for short-term rentals under Article 4, paragraphs 2 and 3, of Decree-Law No. 50/2017.

The Budget Law has reduced this threshold, providing that **from the third property onwards (rather than the fifth), the letting activity is presumed to be carried out in an entrepreneurial capacity**.

In summary, with effect from the 2026 tax period:

- the short-term rental tax regime – which consists of the option to apply the flat-rate tax (*cedolare secca*) to income derived from the letting of residential units – is available only where no more than two apartments per tax period are used for short-term letting purposes;
- where the new maximum threshold of two residential units is exceeded, the short-term letting activity is deemed to be carried out in an entrepreneurial capacity, with all the consequent implications in terms of VAT registration, loss of the *cedolare secca*, social security position, and administrative compliance obligations.

The legislative amendment - aimed at reducing the competitive advantage enjoyed by private landlords over traditional hospitality businesses - requires affected taxpayers to carry out an immediate preventive reassessment of the structure and scale of their letting activity.

For owners of three or more units who wish to preserve operational simplicity and a favourable tax treatment, the alternative to the entrepreneurial regime will be a return to long-term lettings - the only arrangement that remains outside the presumption of entrepreneurial activity and continues to be eligible for the flat-rate tax scheme without the constraints of commercial activity classification.

THE POINT: LAWFUL STATE OF BUILDINGS, PERMITTED CONSTRUCTION WORKS, AND AMNESTIED AREAS *by Roberta Patrizia Giannotte*

Over the past two years, the concept of "stato legittimo", i.e. the "legal snapshot" of a property in its approved state, has been at the centre of legislative amendments and interpretive developments.

Below is a point-by-point overview of the most significant ones.

The Salva Casa Decree: Law No. 105 of 24 July 2024 (converting the Decree-Law) amends Article 9-*bis*, paragraph 1-*bis*, and adds paragraph 1-*ter* to Presidential Decree no. 380/2001, now reading as follows (amendments highlighted):

1-bis. The lawful state of a property or property unit is that established by the building permit that authorised its construction or that legitimised it, or by the permit ((, issued or approved,)) that governed the most recent construction works affecting the entire property or property unit, ((on condition that the relevant authority, when issuing the same permit, verified the lawfulness of the prior permits)), supplemented by any subsequent permits that authorised partial works. The permits referred to in the first sentence include those issued or formed pursuant to ((the provisions of Articles 34-ter,)) 36, 36-bis, and 38, subject to payment of the relevant penalties or regularisation charges. The lawful state of the property or property unit is also ((determined by)) payment of the penalties provided for under Articles 33, 34, ((37, paragraphs 1, 3, 5, and 6)), and 38, and the declaration referred to in Article 34-bis. For properties constructed at a time when it was not mandatory to obtain a building permit, the lawful state is that which can be ascertained from the original cadastral records, or from other supporting documents, such as photographs, cartographic extracts, archival records, or any other public or private document of proven origin, and from the building permit that governed the most recent construction works affecting the entire property or property unit, supplemented by any subsequent permits that authorised partial works. The provisions of the fourth sentence shall also apply where there is prima facie evidence of a building permit of which, however, neither a copy nor the identifying details are available.
1-ter. For the purpose of demonstrating the lawful state of individual property units, any non-conformities affecting the common parts of the building within the meaning of Article 1117 of the Civil Code shall be disregarded. For the purpose of demonstrating the lawful state of the building, any non-conformities affecting the individual property units thereof shall be disregarded.

MIT Guidelines on the Salva Casa Decree: On 30 January 2025, the Ministry of Infrastructure and Transport published the *"Guidelines and Interpretive Criteria on the Implementation of Decree-Law No. 69 of 29 May 2024, converted with amendments by Law No. 105 of 24 July 2024 (the Salva Casa Decree-Law)"* – hereinafter also referred to as the "Guidelines" (the full text can be downloaded at the following link: *https://www.mit.gov.it/linee-guida-dl-salva-casa*).

The Guidelines refer to both a formal simplification and a substantive simplification of the rules governing the demonstration of the lawful state of a property.

Formal simplification consists in the fact that, for properties affected by construction works carried out after the issuance of the original building permit, the lawful state may be proven by producing the permit that governed the most recent construction works, provided that the most recent building permit was issued by the relevant authority at the conclusion of a procedure that concerned, even partially, the same property, and that the authority was placed in a position to verify the lawfulness of the prior permits.

How can it be assumed that the authority examined the prior permits? The Guidelines appear clear on this point:

i. where the most recent permit was issued by the authority by means of a formal measure, the Public Administration must – even through standard form wording – expressly certify that the measure was adopted following verification of the lawfulness of the prior permits;
ii. with regard to permits issued by formal measure or formed implicitly by way of tacit consent (as in the case of a SCIA (Certified Notice of Commencement of Works), or a SCIA in lieu of a building permit), where the identifying details of the original permit and of subsequent permits relating to the property or property unit have been provided, and where, having regard to the documentation submitted, no objection was raised by the Public Administration regarding any non-conformities with the lawful state of the property.

Substantive simplification involves including, among the documents establishing the lawful state of a property, regularisation permits, compliance certificates, and measures resulting from the regularisation of works carried out on the basis of annulled building permits.

The Guidelines clarify the relationship between the two types of simplification using the following example:

By way of example, consider a case where a property has been affected by the following works:

a. construction, following the issuance of a building permit;
b. substantial extraordinary maintenance on the entire property, following submission of a SCIA; and
c. non-conformities with respect to the SCIA under b) above, followed by payment of the penalty provided for under Article 37 of the Consolidated Building Act.

Where the owner wishes to avail themselves of the formal simplification introduced by the first sentence of Article 9-*bis*, paragraph 1-*bis* of the Salva

Casa Decree-Law, the lawful state of the property will be that established by the SCIA (letter b).

However, since works were carried out that do not comply with the SCIA, the actual state of the property will not coincide with the legal state and it will therefore be necessary to supplement the aforementioned permit with the fiscal regularisation (*fiscalizzazione*) carried out pursuant to Article 37. It is in these terms that the expression '*concorre*' (*concur*) used in Article 9-*bis*, paragraph 1-*bis*, third sentence, of the Consolidated Building Act must be interpreted.

Lawful State and Amnestied Areas Prior to the Budget Law: Article 9-*bis* of the Consolidated Building Act makes no reference to areas that have been subject to a building amnesty.

This absence of legislative guidance has given rise, first, to inconsistency across regional legislation and, subsequently, to conflicting case law interpretations.

Inconsistency Across Regional Legislation: Prior to the Budget Law, the following coexisted:

i. regional legislation **expressly** providing **that the lawful state includes amnestied areas** (for example, Emilia-Romagna Regional Law No. 15/2013, Article 10-*bis*, paragraph (1), inserted by Regional Law No. 14 of 29 December 2020);
ii. regional legislation providing that **amnestied areas may be subject only to certain types of construction works** and not to volumetric increases, effectively excluding them from the lawful state (for example, Sardinia Regional Law No. 23/1985, Article 2-*ter*, paragraph 2, introduced by Regional Law No. 18 of 17 June 2025); and
iii. regional legislation providing a **mere open reference to the national framework** (for example, Tuscany Regional Law No. 65 of 10 November 2014, Article 133, paragraph 7-*bis*, as replaced by Regional Law No. 51 of 20 August 2025).

Case Law: Over time, a restrictive line of case law has developed on this point, culminating in the ruling of the ***Consiglio di Stato*, No. 482 of 22 January 2025**, which, regarding the expansion of amnestied areas, clarified the following: *"The extraordinary regularisation governed by Chapter IV of Law No. 47/85, as referred to in Laws No. 724/94 and No. 326/2003 (the so-called 'building amnesty') is entirely exceptional in nature, allowing for the retention of construction works that cannot otherwise be regularised (...) such extraordinary regularisation operates solely in the sense that demolition of unauthorised structures is avoided and their legal transfer is permitted, but nothing more, given that these are structures built in breach of building and planning regulations. In other words: **a building amnesty does not render the amnestied work lawful**; it merely avoids its demolition and permits its transfer, which would otherwise be prohibited; consequently, amnestied structures cannot serve as the basis for carrying out further construction works, which would inevitably inherit their unlawful nature (...). Therefore, only ordinary maintenance, extraordinary maintenance, and conservative restoration works should be considered permissible on properties*

subject to a building amnesty, for the sake of mere consistency with the legislative consent given to the retention of the works themselves".

The Impact of the Budget Law: What Now?

As noted in the previous article, Article 1, paragraph 23 of the Budget Law amends Article 5, paragraph 10, of Decree-Law No. 70/2011 (the so-called Development Decree), allowing urban regeneration works to be carried out on buildings for which a regularisation building permit has been issued or obtained, expressly including building amnesties within this category.

The insertion of this new provision within a special regulatory framework leaves the general scope of the definition of areas to be included in the lawful state of a property still uncertain.

We await the consolidation of case law on the new provision and on the regional implementing regulations, while also wondering whether the Ministerial Guidelines will be updated accordingly.

REAL ESTATE AND THE SIMPLIFICATION ACT *by Vincenzo Acampora*

The Simplification Act (Law No. 182 of 2 December 2025) – published in the Official Gazette on 3 December 2025 and entering into force on 18 December 2025 – intervenes significantly on the real estate sector, affecting key aspects of administrative law, planning and building regulations, and the circulation of real property.

The legislative changes form part of a broader framework aimed at streamlining administrative procedures and reducing administrative burdens, with direct effects for real estate operators, developers, investors, hotels, and licensed hospitality and entertainment businesses.

The main changes are set out below:

1. Reduction of the Time Limit for *Ex Officio* Annulment by the Administrative Authority

The Simplification Act amends Article 21-nonies of Law No. 241/1990, reducing the maximum time limit for the *ex officio* annulment of unlawful administrative measures from twelve to six months.

The new framework provides that:

- authorisation measures or measures conferring economic benefits (including those formed by tacit consent) may be annulled *ex officio* within a reasonable period and in any event no later than six months from their adoption;
- the possibility of validation within a reasonable period remains available where there is a public interest in doing so;
- where false representations of fact or false self-certifications constituting a criminal offence have been established by a final judgment, annulment remains possible even beyond the six-month period.

2. Tacit Consent and Permitted Properties

The Simplification Act amends Article 20 of Presidential Decree No. 380/2001 on building permits, affecting the relationship between tacit consent and the protective constraints regime.

In particular:

- even where constraints are in place, tacit consent may be formed provided that the relevant acts of consent (authorisations, clearances, opinions) issued by the competent authorities have already been obtained and remain valid for the same works;
- the one-stop shop for building matters must issue, within 15 days of the request, a certificate confirming the expiry of the relevant time limits, in the absence of a refusal or pending preliminary enquiries.

3. Outdoor Structures and Removable Installations: Towards a Comprehensive Reorganisation

With regard to the installation of removable structures serving hotels and licensed hospitality and entertainment businesses (the so-called *dehors*), the Simplification Act firstly amends the deadline (extending it to 31 December 2026) by which the Government will adopt a legislative decree connected to the reorganisation of the regulatory framework governing *dehors* (outdoor structures).

Particular attention is given to structures that benefited from the Covid-19 emergency exemptions: a simplified regularisation procedure is provided for such installations. Specifically:

a. the application on the basis of which installation of the outdoor structures was requested must be submitted within a reasonable period, rather than within ninety days of the entry into force of the legislative decree;
b. licensed hospitality and entertainment businesses must, in the event of refusal of the required landscape, building or cultural heritage authorisations under applicable legislation, be granted a reasonable period of time to restore the affected areas; and
c. an extension until 30 June 2027 must be granted for permits obtained for the installation of outdoor structures.

4. Concessions of Public Road Land to Hotels

The Simplification Act also amends the Highway Code, providing that municipal authorities may grant hotels temporary use of portions of public road space for parking and for the loading and unloading of luggage, limited to urban roads (with the exception of major thoroughfares) and local roads.

5. Staff Houses: Streamlining of Urban Planning and Building Permit Procedures

The Simplification Act contains provisions that supplement, from an urban planning and building regulation perspective, the framework aimed at incentivising the creation, redevelopment, and modernisation of accommodation made available, at subsidised rates, to workers in the tourism and hospitality sector (so-called 'staff houses').

For renovation, demolition, and reconstruction works **commenced by 31 December 2026** and serving staff housing purposes, a favourable regulatory regime applies (*i.e.* Article 10, paragraph 7-*ter*, of Decree-Law No. 76 of 16 July 2020, converted into Law no. 120/2020) which, in a nutshell, allows:

- carrying out of the above works under the SCIA (Certified Notice of Commencement of Works) procedure;
- an increase in the existing building volume or gross floor area of up to 20%;
- a ten-year restriction on change of use;
- application of the rules on change of use under Article 23-*ter* of the Consolidated Building Act to individual property units; and
- the possibility of entering into agreements with car park operators to mitigate the increase in urban load (in relation to the new use and the number of occupants).

6. Transfer of Property Originating from Donation

The Simplification Act also addresses the traditionally critical issue of the legal transferability of property originating from donations.

While the civil law rules governing claims for reduction and restitution remain unchanged, the legislative intervention aims to strengthen legal certainty in property transactions, also with a view to protecting purchasers and lending institutions.

In particular, where property has been donated, the aggrieved forced heir (*legittimatario leso*):

i. will no longer be entitled to bring a restitution claim against third-party purchasers of the property; and
ii. will be bound by any encumbrances and mortgages placed on the property by the donee, and will only be entitled to monetary compensation from the donee (with all the risks arising from a potential insufficiency of the donee's assets).

It should be noted that these amendments will apply:

a. to successions opened after the entry into force of this Act; or
b. to successions opened before the entry into force of this Act, provided that, within six months of its entry into force, neither of the following has occurred:
   b1. the service and related registration of a claim for reduction; or
   b.2. the service and related registration of an out-of-court deed of opposition to the donation.

7. Acceptance of Inheritance and Registration in the Land Registers

The Simplification Act introduces a new procedure for registering the acceptance of an inheritance in the land registers.

More specifically, the new provision allows for the registration of the acceptance of an inheritance in the land registers where such acceptance has occurred through:

a. an act giving rise to tacit acceptance of the inheritance pursuant to Article 476 of the Civil Code; or
b. the acquisition of heir status as a result of failure to draw up an inventory, or failure to declare the intention to accept or renounce the inheritance within the time limits laid down in Article 485 of the Civil Code.

The provision further specifies that the substitute declaration may be made by the heir or by their universal successor.

ROMA CAPITALE: THE EXPLANATORY CIRCULAR ON CONSTRUCTION WORKS *by Michele Balducci*

On 31 December 2025, the Urban Planning Implementation Department of the Municipality of Rome issued the ***"Explanatory Circular: Construction Works and the Relevant Planning Permissions"*** *(ref. no. QI258012).*

The issuance of this circular – according to the Administration itself – became necessary because, since the issuance of the previous circular covering (substantially) the same subject matter (March 2012), the legal framework governing construction works and the relevant planning permissions has been amended on multiple occasions by the legislator. For this reason, many of the guidelines contained in the 2012 circular could no longer be considered up to date.

The circular – addressed primarily to the offices of the Municipality of Rome and its boroughs (*Municipi*) – also represents a significant development for private operators, as it contains many useful points to be taken into account when carrying out contruction works.

In particular, the circular:

i. contains some specific definitions useful for interpreting the applicable legislation (for example, amongst other things, it explains the difference between a canopy (*tettoia*), a suspended canopy (*pensilina*), and a pergola with retractable awning (*pergotenda*), and clarifies the definition of urban appurtenance (*pertinenza urbanistica*) and technical volume (*volume tecnico*), etc.);
ii. provides a concrete definition of the types of construction works set out in Article 3 of Presidential Decree No. 380/2001, explaining – for example – when a project may fall within the category of building renovation (*ristrutturazione edilizia*) and when it constitutes new construction;
iii. associates the above types of contruction works with the correct administrative procedure to be followed in order to carry them out in compliance with the law. Among other things, it specifies when a project may be carried out without the need for a planning permission (*i.e.* free building activity requiring no notification), but also when, conversely, a notice of commencement of works must be submitted to the relevant public authority; it explains the difference between construction works that may be authorised by means of a SCIA, a SCIA in lieu of a building permit, or another type of planning permission;
iv. lists some of the most common construction works (including, amongst others, the installation of air-conditioning systems and the demolition of partition walls), specifying for each of them the category to which it belongs and, consequently, the planning permission required (if any); and

v. sets out in a clear and concise table in paragraph 7, for each category of planning permission, the competent public authority and the relevant validity periods.

The full circular can be downloaded via the following link: *http://www.urbanistica.comune.roma.it/images/Circ_Interventi_Procedure_31.12.2025_1.0.pdf*

CHANGE OF USE AND LIMITS ON PLANNING INSTRUMENTS AFTER THE SALVA CASA DECREE

by Vincenzo Acampora

With judgment no. 2533 of 9 February 2026, the Lazio Regional Administrative Court (TAR) addresses the relationship between municipal urban planning regulations (in this case, the Rome Master Plan – Piano Regolatore Generale, PRG) and the new provisions of the Consolidated Building Act (Testo Unico dell'Edilizia) on change of use, outlining the scope of the permissive legislative framework introduced by the Salva Casa Decree.

The dispute originated from a declaration of ineffectiveness of a SCIA filed for a change of use from 'office' to 'residential'. The Municipality considered the change impermissible under the Technical Implementation Rules (*Norme Tecniche di Attuazione*, NTA) of the PRG, which allowed only for the restoration of the property's original use - a circumstance not present in this specific case, as the property had never been intended for residential use).

The Court clarifies, first of all, that Article 23-*ter*, paragraph 1-*ter*, of the Consolidated Building Act (as amended by the so-called Salva Casa Decree – Decree-Law No. 69/2024, converted with amendments by Law No. 105/2024) – contrary to the provisions of the NTA of the PRG – **permits the change of use of individual property units between different functional categories, subject to the possibility for municipalities to introduce 'specific conditions'**.

Such conditions, in accordance with the guidelines of the Ministry of Infrastructure and Transport:

- must be express, objective, non-discriminatory, and duly justified;
- cannot be inferred implicitly from pre-existing planning provisions, but must instead be drafted in light of the substance of the new provisions introduced by the Salva Casa Decree.

In the absence of these requirements, municipal provisions cannot restrict the possibility of changing use recognised by national legislation, which consequently prevails.

In the case at hand, the Rome TAR specifies that the municipal provision predates the amendment made to Article 23-*ter* by the Salva Casa Decree and therefore cannot be taken into consideration. Furthermore, in any event, the municipal restriction does not appear to be supported by the required justification.

It follows that the conflict between the secondary regulatory provision - in this case the NTA of the PRG - and the primary legislation - in this case Article 23-*ter*, paragraph 1-*ter*, of the Consol-

idated Building Act - must be resolved by disapplying the former.
Rather than simply closing the case at hand, the judgment seems to raise a systemic question: how much autonomy remains for municipal planning provisions in the face of the new permissive legislative framework favouring flexibility of use of real estate assets?

FROM THE REGIONS (1) – CONSTITUTIONAL COURT RULING NO. 186/2025: THE TUSCANY CONSOLIDATED TOURISM ACT IS UPHELD *by Matteo Bianchi*

With ruling no. 186/2025, the Constitutional Court rejected several challenges to the constitutional legitimacy raised by the Presidency of the Council of Ministers with reference to Tuscany Regional Law No. 61/2024 (the so-called Consolidated Tourism Act – T.U. Turismo).

Among others, the Court examined the following provisions of the Consolidated Tourism Act:

i. Article 22, paragraph 6, which provides that hotels may incorporate, for the purpose of increasing their accommodation capacity and within the limit of 40 per cent of that capacity, residential property units at their disposal and located within two hundred metres, "*unless the Municipality sets a lower percentage*". The question of constitutionality was based on the alleged conflict with Article 3, "*because it does not lay down suitable criteria to limit the municipal power to set a lower percentage for the increase in accommodation capacity*", and with Article 41, because "*hoteliers' freedom of economic initiative would be exposed to the 'risk of territorial restrictions not justified by genuine public interest reasons*". The Constitutional Court found the challenge unfounded, reiterating that the "***general municipal function of regulating land use within its territory, [...] does not require specific guiding criteria in the law, as it is characterised by a high degree of discretion***";
ii. Article 41, paragraph 3, which mandates that properties used for non-hotel accommodation activities be designated for tourism and accommodation purposes. In this regard, the Presidency of the Council of Ministers contested a violation of Article 3 of the Constitution, "*because, if the accommodation facilities in question qualify (in the same contested law) on the grounds that they possess 'the characteristics of a private dwelling', it is unclear why they cannot have a residential use designation from an urban planning perspective*". ***"If a property is used on a permanent and organised basis as a non-hotel accommodation facility,"*** **the Court noted,** ***"the provision for a tourist-accommodation use designation cannot be considered inconsistent or unreasonable"***;
iii. Articles 42-45, which require non-hotel tourist accommodation facilities to be managed on a

commercial basis and set quantitative limits on them. In this regard, among other things, a violation of Article 42 of the Constitution was alleged, on the grounds that *"the decision not to permit non-commercial management of non-hotel accommodation facilities would deprive owners, 'in a wholly disproportionate and unreasonable manner', of the possibility of deriving income from their property."* **In its analysis, the Court reiterated that these provisions *"fall outside the scope of civil law and relate to the field of tourism, which falls within the full legislative competence of the Regions pursuant to Article 117, paragraph 4* [...]"**. On this point, the Court also commented on the complex issue of overtourism: *"It is well known that so-called home sharing,* [...] *has contributed to causing overtourism in various cities, which has produced negative 'externalities'. Firstly, there has been a reduction in the accommodation available to workers and students living away from home, with a consequent inflationary effect on the cost of such accommodation.* ***Furthermore, overtourism can lead to 'the urban transformation of entire neighbourhoods and city centres, with significant repercussions also on the management of local public services' (judgment No. 94 of 2024)****"*;

iv. <u>Article 59</u>, according to which municipalities may define specific criteria and limits for the conduct of short-term rental activities. The question of constitutionality originated from the alleged conflict, among other things, with Article 117 of the Constitution, on the grounds that the regional provision *"would unlawfully interpret public interests reserved for the exclusive legislative power of the State*. **In this case too, the Constitutional Court found no conflict with the constitutional provisions, reiterating that the provision falls within the remit of tourism and territorial planning and governance.**

FROM THE REGIONS (2) – THE NEW LOMBARDY LAW ON DATA CENTRES IS COMING *by Ristela Prendi*

The Lombardy Region has approved an ambitious bill (No. 150/2025) aimed at regulating the establishment of data centres, that is, physical infrastructures housing equipment (servers, storage systems, etc.) and IT resource management services – in other words, the IT infrastructure, serving one or more users (as described in the relevant Regional Guidelines approved by Regional Council Decision XII/2629 of 24 June 2024).

The Bill seeks to fill a regulatory gap in a sector in which the Lombardy region plays a leading role, accounting for over 60% of national applications. The legislative initiative aims to strike a balance between technological development and environmental protection, while providing legal certainty and urban planning consistency for operators in the sector.
Set out below are the most significant changes.

1. New Urban Planning Parameters and Land Use Designations (Article 4 of the Bill)
The Bill introduces clear criteria for the urban planning classification of sites, based on the required connection capacity:

- **Up to 5 MW**: installations are considered compatible with productive, tertiary, and office use designations; and
- **Over 5 MW**: the infrastructure is compatible exclusively with a productive use designation, regardless of its physical size.

As regards the building contribution, data centres are treated on a par with industrial sites. However, in line with the 2024 Regional Guidelines referred to above, the law provides for a strong disincentive to land consumption: developments on agricultural land will result in a 50% increase in the building contribution, with these funds being allocated to urban regeneration and environmental restoration works.

2. Siting Priorities: Brownfield Focus (Article 5 of the Bill)
Logistics and industrial real estate must prioritise brownfield sites, that is, derelict, contaminated, or underused areas. Municipalities will be required to map these areas within 180 days of the law coming into force, failing which they will be excluded from regional tenders and funding programs. This mapping will be integrated into the regional Territorial Information System (*Sistema Informativo Territoriale* - SIT) to facilitate the identification of suitable sites.

3. Governance and Procedural Streamlining (Article 3 of the Bill)

To accelerate investment, the law introduces significant administrative changes:

- Regional competence: The Region becomes the competent authority for issuing the Integrated Environmental Authorisation (*Autorizzazione Integrata Ambientale* - AIA), a role previously held by the Provinces.
- One-stop shop and task force: A 'Regional One-Stop Shop for Data Centres' and a technical task force are established to standardise the procedures for the AIA and AUA (*Autorizzazione Unica Ambientale* - Single Environmental Authorisation).
- Co-planning thresholds: For large-scale impacts, co-planning is required: with the Province/Metropolitan City for projects above 10 MW and directly with the Region for projects above 50 MW.

4. Sustainability and Technical Requirements

In line with the MASE (Ministry for the Environment and Energy Security) guidelines of August 2024, the Bill rewards energy efficiency and the use of renewable sources. Key technical requirements include the reuse of waste heat (for district heating or energy communities) and the adoption of cooling systems that exclude the use of drinking water, favouring techniques with reduced water impact.

Within this regulatory framework, mention must also be made of the recent Decree-Law No. 21 of 20 February 2026, containing "Urgent measures to reduce the cost of electricity and gas for households and businesses, to enhance business competitiveness, and to decarbonise industry, as well as urgent provisions on resolving the virtual saturation of electricity grids and on integrating data centres into the electricity system" (the so-called Energy Decree-Law). Article 8, paragraph 8, provides that, in the case of "*projects relating to data centres requiring a user connection with a voltage exceeding 220 kV and which, on the date of entry into force of the decree, have already obtained the necessary authorisations, including environmental permits (...), for the implementation of the project, the competent authority for authorising the connection works shall be the region in which the project is located*".

With this measure, Lombardy positions itself as a national frontrunner in the regulation of data centres. For investors and property developers, the new law provides clear rules of engagement and a streamlined authorisation pathway, while requiring projects to be oriented towards urban regeneration and the highest standards of energy efficiency.

For the full text of the Bill and the accompanying explanatory report, please refer to the following link: *https://www.gse.it/normativa_site/GSE%20Documenti%20normativa/LOMBARDIA_DGR_nXII5312__17_11_2025.pdf*

PUNTA PEROTTI: PLANNING CONFISCATION, RELIANCE, AND DAMAGES FOLLOWING THE 2025 RULINGS *by Antonio Spampinato*

Punta Perotti is not just the name of an urban planning case that ended with a demolition.

The three rulings of the Court of Cassation in 2025 – in particular, civil judgments Nos. 21758 and 21759 of 29 July 2025 and order No. 31278 of 1 December 2025 – bring the case back to the centre of the debate, this time in terms of civil liability and the effects of the European Court of Human Rights' judgments on the domestic legal system.

The question is no longer whether the buildings were lawful. The question is: who pays – and to what extent – for what happened?

<u>From Confiscation to the ECtHR</u>: **In 2001, the Criminal Court of Cassation acquitted the defendants on grounds of excusable error, but nevertheless ordered planning confiscation under Article 19 of Law No. 47/1985. The ECtHR then found the measure to be disproportionate and incompatible with Article 7 of the ECHR (*nulla poena sine lege, i.e.* no punishment without law) and with the protection of property, ordering the Italian State to pay substantial compensation. But the European compensation did not bring the dispute to a close**.

<u>The Second Level: The Public Authorities' Liability</u>: The companies involved brought actions against the Municipality, the Region, and the Ministry, arguing that they had legitimately relied on the planning permissions issued.

The Court of Cassation's decisions of July 2025 clarify three key points:

1. An ECtHR judgment does not constitute *res judicata*, that is, it is not a final judgment in domestic proceedings. It creates an obligation to comply but does not automatically bar further claims for damages before national courts.
2. No duplication of damages. Compensation cannot be obtained twice for the same damage. A distinction must be made between what has already been awarded in Strasbourg and any further damages, taking into account also the claims brought before the European Court and (even implicitly) rejected, which cannot be brought again before the national court.
3. The damage, including any further damage not examined by the ECtHR, is never in *re ipsa*, that is, it is never presumed. The infringement of the right is not sufficient to establish damage: the claimant must plead and prove the actual harm suffered. Even after a favourable European ruling, the ordinary provisions of Article 2043 of the Italian Civil Code continue to apply.

The Current Issue: The fate of the site. In November 2025, the Court of Cassation (Order No. 31278 of 1 December 2025) revisited the case with regard to the current layout of the area, which is now a public park.
The matter is sensitive: how can ECtHR decisions be reconciled with an urban transformation that is now well established? It is a matter of balancing the enforcement of international decisions, the stability of the public interest, and any residual rights of private parties.
Why the Case Matters for Today's Market: Punta Perotti demonstrates how the issuance of unlawful planning permissions can give rise to long-term liability; that a private party's reliance on administrative acts is legally protected; that urban planning confiscation must now be weighed against the European principles of proportionality and culpability; and, above all, that even after an ECtHR ruling, damage must be proven in accordance with ordinary rules. The demolition closed a chapter in urban planning. Yet the 2025 rulings show that the legal chapter remains open.

SUPERVENING LANDSCAPE CONSTRAINTS: WHAT HAPPENS IN THE EVENT OF REGULARISATION AND BUILDING AMNESTY *by Valentina Brovedani*

The Consiglio di Stato (Section VII, decision No. 7754 of 3 October 2025) has confirmed once again that, in matters of building irregularities, the ***imposition of a landscape constraint after the realisation of the works prevents the granting of a regularisation permit unless the required opinion of the competent landscape authority has been obtained****. What matters is the overall legal regime of the area at the date of adoption of the final decision in the administrative proceedings.*

According to this approach, the subsequent imposition of a landscape constraint that is incompatible with the unlawful works cannot be regarded as irrelevant or neutral for the authority responsible for urban planning and territorial governance, even if the constraint was not in place at the time the unlawful works were carried out. Therefore, whilst the supervening constraint cannot operate retroactively, it cannot remain without legal consequences either.

It follows that, where a landscape constraint arises after the unlawful works have been carried out, there is a procedural obligation to obtain the required opinion from the competent authority. This principle applies both to regularisation under Article 36 of Presidential Decree No. 380/2001 and to the adoption of a demolition order.

In particular, where a supervening constraint exists, the so-called "double compliance" requirement set out in Article 36 of Presidential Decree No. 380/2001 is not sufficient: even where the unauthorised works can be regularised from a building regulations perspective, regularisation may be granted only if the works are deemed compatible with the protected landscape interest.

In a recent judgment, the Bari Regional Administrative Court (TAR) (Section I, 9 January 2026, No. 29) also reiterated the need to obtain an express opinion on landscape compatibility even in the event of an amnesty procedure.

In this regard, the Administrative Court recalled the established case law position according to which, where landscape and environmental constraints require an express opinion by law, the mechanism of tacit consent cannot apply. It follows that the right to amnesty cannot be deemed automatically established upon expiry of the twenty-

four-month period from the submission of the amnesty application if the competent landscape authority has not issued an express opinion.

BUILDING AMNESTY AND THE LANDSCAPE COMMISSION'S OPINION: OPTIONAL NATURE AND THE SPECIAL CHARACTER OF THE PROCEDURE *by Giulia Massimo*

With judgment No. 182/2026, Section VII of the Consiglio di Stato provides an important clarification on the role of opinions issued by the local Landscape Commission in the building amnesty procedure, establishing a principle that draws a substantive distinction between the phase leading to the grant of amnesty and the phase leading to its refusal.

In examining the complaint regarding the failure to obtain the opinion of the *Soprintendenza* and the local Landscape Commission in a procedure that ended with the rejection of the private party's amnesty applications, the Court reiterates that **the favourable opinion of the authority responsible for the protection of the heritage restriction is required – pursuant to Article 32 of Law No. 47/1985 and Article 39 of Law No. 724/1994 – solely for the purpose of granting the amnesty permit. It follows that the refusal of amnesty is lawful even in the absence of such an opinion, particularly where the works are, in general, not eligible for regularisation in a protected area**.

The *Consiglio di Stato* thus reiterates the view that, given the special nature of the amnesty procedure compared to the ordinary procedure for issuing a building permit, and in the absence of a specific statutory requirement, the opinion in question is not mandatory but merely optional. It may be sought by the administration for evidentiary purposes in particularly complex or doubtful cases, but it does not constitute an indispensable step in the amnesty procedure.

The Court also notes that the Commissions governed by Article 148 of Legislative Decree No. 42/2004 perform advisory functions within ordinary authorisation procedures (Articles 146, 147, and 159); moreover, the original classification of such opinions as mandatory was removed by the amendments introduced by Legislative Decree No. 63 of 2008.

The Court's decision reinforces a principle of systemic consistency: amnesty remains an exceptional and specific procedure, governed by a strict assessment of the statutory requirements, without any automatic application of the procedural stages typical of the ordinary authorisation regime to areas protected by landscape restrictions.

Moreover, at the procedural level, the judgment highlights two further points:

- It appears to be one of the few cases in which the monetary penalty under Article 13-*ter* of the Implementing Provisions of the Code of Administrative Procedure (CPA) was applied for exceeding the length limits of procedural documents; and
- It reiterates that *"the notice of rejection under Article 10-bis of Law No. 241 of 1990, given its general scope, also applies to regularisation and amnesty proceedings"*, and likewise that *"Article 21-octies, paragraph 2, first sentence, of Law No. 241 of 1990 applies, whereby the absence of such prior notice of rejection does not invalidate the decision where the Administration could not in any event have adopted measures other than those actually issued"*.

SELF-REVOCATION AFTER 17 YEARS: THE WEIGHT OF FALSE STATEMENTS *by Flavia Maria Veroux*

With judgment No. 34 of 2 January 2026, the Consiglio di Stato confirmed that the Administration may annul a building permit even after the six-month statutory period, if the applicant has provided false information.

But what does this mean in practice?
In the case at hand, the claimant sought the annulment of a municipal self-revocation measure concerning a building permit issued 17 years earlier.
The Municipality considered it necessary to annul the permit by way of self-revocation on the grounds that the application for the permit contained false information: it failed to disclose prior suspension and demolition orders issued in relation to the property.
Article 21-nonies of Law No. 241/1990, which also applies to building permits, allows the Administration to exercise its self-revocation powers, that is, to annul its own act when they realise that they erred in their assessment.
Such annulment must normally occur within a specific time limit (recently reduced to six months from the adoption of the measure: see Real Estate and the Budget Law.
However, **the Administration may annul a building permit even after that period where the private party has presented a pre-existing situation – even merely by remaining silent on relevant circumstances – that differs from reality**. This is because the inaccurate presentation of the factual circumstances led the Administration – even unintentionally – to "err" and adopt an unlawful measure.
The *Consiglio di Stato* further clarified that it is irrelevant:

- whether the applicant was aware of the falsity of the situation presented, since self-revocation is not a sanctioning mechanism and what matters is the mere discrepancy between reality and representation; and
- whether the Municipality could have verified the incorrect circumstances, because the very purpose of self-revocation is to correct errors committed by the Administration.

Moreover, the reasoning for a self-revocation measure – *i.e.* the *ex officio* annulment of a building permit issued on the basis of untrue factual premises – does not require rigorous justification: the public interest in the orderly management of the territory prevails over the private party's legitimate reliance, and the false representation of the factual prerequisites prevents the consolidation of any favourable legal position over time.
Finally, a brief note on legal standing: the judgment clarifies that even a person who is not the current owner of the property, but rather the transferor (do-

nor), has legal standing (to appear in court), because, *"as the addressee of the self-revocation measure, they may also be the addressee of further related measures,* (...) *may be civilly liable, pursuant to Articles 797 and 798 of the Civil Code, towards the donee for the condition of the transferred property"*.

EXPROPRIATION DISPUTES AND ALLOCATION OF JURISDICTION *by Jessica Falcone*

*With **Decision No. 29680 of 10 November 2025**, the Joint Divisions of the Court of Cassation reaffirm a well-established principle governing the allocation of jurisdiction between the ordinary courts and the administrative courts in disputes concerning expropriation.*

The decision is particularly noteworthy because it draws a clear distinction between claims for compensation for lawful occupation and **claims for damages arising from unlawful occupation**. Although both may originate from the same factual situation, they are ontologically distinct and must be brought before different courts. Specifically, the former fall within the jurisdiction of the ordinary courts, whilst the latter belong to the administrative courts.

The case that prompted the Court to restate this principle originated from the occupation of privately owned land by the Municipality of Avellino as part of an expropriation procedure. The urgent occupation decree had been lawfully issued; however, the subsequent expropriation decree was issued after the occupation had ceased to be effective. As a result, the occupation was lawful during the initial period but became unlawful thereafter.

The claimant therefore brought two separate claims:

1. one for the determination and payment of the indemnity for lawful occupation; and
2. the other claim for restitution of the property or, alternatively, for damages for the occupation once it had become unlawful.

The Court of Appeal referred both claims to the administrative court, invoking the principle of concentration of remedies. The Regional Administrative Court (TAR), however, raised **a negative conflict of jurisdiction,** taking the view that the indemnity claim fell within the jurisdiction of the ordinary courts.

The matter was thus referred to the Court of Cassation, which –upholding the conflict – reaffirmed the settled view that jurisdiction is determined by **the nature of the legal situation asserted**.

Starting from this premise, the Court draws a sharp distinction between the two claims:

- the claim for indemnity for lawful occupation is indemnificatory in nature, protects a subjective right, and falls within the jurisdiction of the ordinary courts pursuant to Article 133, paragraph (1), letter (g) of the Code of Administrative Procedure;
- the claim for damages for unlawful occupation requires an assessment of the (unlawful) exercise of administrative power and therefore falls within the jurisdiction of the administrative courts.

These are, therefore, claims based on different premises and structurally autonomous.
The decision confirms a clear principle: in complex situations – as often occurs in expropriation procedures – the landowner's protection may need to be pursued before different courts. This solution may appear less efficient procedurally but reflects the logic, firmly reiterated by the Court, of the substantive nature of the legal situations involved.

PHOTOVOLTAIC SYSTEMS AND LANDSCAPE PROTECTION: A POSSIBLE BALANCE ACCORDING TO THE TUSCANY TAR *by Filippo Grigolon*

A project involving the removal of asbestos sheets covering several industrial sheds and their replacement with metal roofing designed to host a photovoltaic system had already obtained a favourable landscape authorisation with conditions.

On this basis, an energy company submitted a SCIA (Certified Notice of Commencement of Works) to carry out the above works in the town of Manciano.

However, the Municipality prohibited the works for one of the sheds, considering them contrary to the urban planning provisions on buildings of historical and heritage significance contained in the Municipal Operational Plan (POC). In particular, Articles 4 and 8 of the NTA (Technical Implementation Regulations) stipulated that the refurbishment of roofs on protected buildings must replicate the existing style, thereby unconditionally excluding the installation of photovoltaic systems on such buildings.

With judgment No. 32 of 9 January 2026, the Third Section of the Tuscany Regional Administrative Court (TAR) partially upheld the company's appeal.

The TAR noted that "*under the urban planning regulations in force in the municipality* (...) *the installation of photovoltaic panels in general, and specifically on roofs, always constitutes an element that is out of harmony with the urban landscape of the historic centre*". According to the TAR, the rigidity of these rules cannot ensure an adequate balance between landscape protection and the need to promote energy production from renewable sources.

In this regard, the TAR referred to recent case law of the *Consiglio di Stato* (judgment No. 2808/2025), which clarified that, "***since the transition to energy production from renewable sources constitutes an objective of national interest, it is no longer possible to apply traditional aesthetic categories to photovoltaic panels, as these would inevitably lead to classifying such elements as intrusions***".

On the contrary, "*the presence of photovoltaic panels on a roof, in light of current energy requirements, can no longer be perceived in absolute terms as a visual disturbance; instead, the focus of the relevant authorities must be on the manner in which the photovoltaic panels on the roof are integrated into the buildings hosting them and into the surrounding landscape*".

The TAR therefore annulled the prohibition measure, holding that **municipal planning regulations which, through "*drastic options*", impose an absolute ban on photovoltaic panels on buildings of historical value are not consistent with the principles estab-**

lished by case law, as they do not allow for case-by-case assessments. Furthermore, such provisions **fail to consider the possibility of adequate aesthetic integration**, such as that envisaged in the favourable opinion of the *Soprintendenza* and obtained by the applicant company.

This judgment reinforces the principle of compatibility between the protection of historical heritage and the promotion of renewable energy, affirming the need for a balance between landscape conservation and new energy requirements. Local authorities may therefore reconsider overly restrictive regulations and move towards a more flexible approach that allows photovoltaic panels to be integrated into the urban and landscape context, while always respecting local specificities.

FORCED SALES, PRE-EMPTION RIGHTS, AND TRANSFER OF OWNERSHIP: TWO RECENT CASE-LAW CLARIFICATIONS *by Carlotta Degli Effetti*

1. Forced sale and pre-emption right: compatibility only within strict limits

In judgment No. 28918 of 2 November 2025, the First Section of the Court of Cassation examined the compatibility between pre-emption rights and forced sales – an issue that continues to give rise to conflicting interpretations, particularly with regard to the pre-emption right granted under Article 38 of Law No. 392/1978 in favour of commercial tenants.

As is widely known, allowing the commercial tenant's pre-emption to operate at any stage of the sale procedure could induce the tenant not to participate in the bidding process and instead intervene only after the sale, as they would be given preference over any other potential buyer – thus discouraging participation and undermining the principle of maximising competitive bidding.

It is also well known that the Joint Divisions (judgment No. 14083/2004) ruled out that pre-emption in itself could adversely affect the interests of insolvency creditors, thereby closing a decades-long debate on whether pre-emption applies in forced sales. The recent approach set out in judgment No. 28918/2025, while rejecting any "ontological" incompatibility between pre-emption and forced sales, restricts its operation so as not to compromise the principle of maximum participation and best realisation, which is the primary interest in insolvency proceedings.

From this perspective, **the tenant's pre-emption right in a forced sale may be exercised only if the lease agreement was entered into by the solvent debtor (*in bonis*) (and not by the insolvency administrator) and provided that the pre-emption does not distort equality among bidders**: the party exercising the pre-emption right must participate in the auction and may exercise their right only at the first auction attempt.

Equally crucial is the transparency of the auction notice, which must expressly state the existence of the pre-emption right; failing this, the sale procedure is flawed, as it compromises the proper formation of bids.

Pre-emption is therefore not excluded but must operate in a manner consistent with the competitive dynamics of the sale.

2. Award and transfer of ownership in forced sales conducted by the public administration

When does ownership transfer occur in sales conducted by a public administration through public auction or private tender? This is the question addressed by the Court of Cassation (Section II, ruling No. 23365 of 16 August 2025).

The answer depends on the type of property:

- If the property is precisely and fully identified in the final award report, the report itself is sufficient to immediately effect the transfer of ownership;
- If, instead, the property is complex and described only in general terms in the tender notice, ownership does not transfer upon award, but only upon the subsequent execution of the notarial deed.

The distinction is far from merely formal: it affects the moment when risk passes, the ability to claim defects or discrepancies, and ultimately, the certainty of the legal relationships arising from the procedure.

COASTAL EROSION CAUSED BY OFFSHORE WORKS: WHO COMPENSATES THE PRIVATE PARTY? *by Giuliana Serra*

In judgment No. 28278 of 24 October 2025, the Third Section of the Court of Cassation addressed ***liability for coastal-erosion damage caused by works carried out by beach establishments****, clarifying the correct basis of liability for both concessionaires and the Public Administration.*

The case concerned damage suffered by a residential property overlooking the coast, the stability of which had been compromised by altered marine currents resulting from works (the installation of a barrier of jute sacks) carried out by certain beach establishments.

The Court of Appeal had held the Region and the Municipality jointly and severally liable for the damage suffered by the private party under Article 2051 of the Civil Code, considering them custodians of the maritime public domain. The Court of Cassation, while upholding the outcome of the decision, corrected the reasoning.

The Court of Cassation **excluded that the Region and the Municipality could be regarded as custodians of the stretch of sea** covered by the concession. It noted that, although the territorial sea does not form part of the maritime public domain, a **special right of use** may arise **in favour of the beach-resort concessionaire, who therefore bears the related duties of custody and liability under Article 2051 of the Civil Code**.

The liability of the public authorities was instead grounded **in Article 2043 of the Civil Code,** for **failure to supervise the concessionaires' activities** and to ensure compliance with the conditions set out in the beach concessions, in light of the powers of planning, control and protection over coastal areas attributed to them by national and regional legislation. In other words, the Region and the Municipality are liable for failing to monitor the works carried out by the beach-resort concessionaires – within the areas of sea effectively under their control – in breach of the authorisations issued to them.

Finally, the judgment recognised the possibility of **concurrent liability** between concessionaires and public authorities, clarifying that the wrongful act of a third party does not automatically exclude the liability of the public administration unless it has exclusive causal effect.

ENVIRONMENTAL FOCUS : ENVIRONMENTAL OFFENCES AND INTERVENTIONS ON SITES UNDERGOING REMEDIATION *by Francesca Carlesi and Martina Corrozzini*

Decree-Law No. 116 of 8 August 2025 and the Relevant Conversion Law: What Changes in the Area of Environmental Offences

On 8 October 2025, Law No. 147 of 3 October 2025 came into force, converting with amendments Decree-Law No. 116 of 8 August 2025, containing urgent measures to combat unlawful activities in the waste sector and amending certain provisions of Legislative Decree No. 152 of 3 April 2006 (the "Environmental Code"). Among other things, these amendments strengthened the sanctions regime and reclassified several offences from misdemeanours (*contravvenzioni*) to felonies (*delitti*).

i. The **offence of unlawful waste abandonment** has been "split" into three distinct categories, depending on the nature of the waste:
   a. Article 255 of the Environmental Code governs the **misdemeanour of unlawful abandonment and uncontrolled deposit of "non-hazardous" waste**, providing for an increase in penalties (the fine rises from €1,000-10,000 to €1,500-18,000) and introducing
      a. distinct misdemeanour where the offenders are business owners or managers of organisations;
   b. Article 255-*bis* introduces the **felony of unlawful abandonment and uncontrolled deposit of non-hazardous waste in "particular cases**", where the conduct creates a risk *(i)* to human life or personal safety, *(ii)* of impairment or deterioration of an environmental matrix (*e.g.*, water, air, soil, subsoil), the ecosystem, biodiversity, flora or fauna, or *(iii)* where the conduct is committed in contaminated or potentially contaminated sites, or on access roads to such sites and their appurtenances;
   c. Article 255-*ter* punishes the **felony of unlawful abandonment and uncontrolled deposit of "hazardous waste"** with imprisonment from one to five years. Harsher penalties are provided where the felony is committed in the same "particular cases" (*i.e.* where the conduct creates a risk to human life or personal safety, and/or of impairment or deterioration of an environmental matrix, or where the conduct is committed in contaminated or potentially contaminated sites).

The offences under Articles 255-*bis* and 255-*ter* are now also punishable **by negligence**.

ii. Article 256 of the Environmental Code is amended with regard to **unauthorised waste management activities**: the collection, transport, recovery, disposal, trading, and brokerage of non-hazardous waste carried out without the required authorisation, registration, or notification constitute a misdemeanour (punishable by imprisonment for three months to one year or a fine from €2,600 to €26,000), whereas the same activities involving hazardous waste constitute a felony (imprisonment for one to five years), with increased penalties in the "particular cases" referred to in Article 255-*bis*.

iii. The offence of **constructing or operating an unauthorised landfill**, under Article 256, paragraph 3 of the Environmental Code, is reclassified from a misdemeanour to a felony, again with increased penalties in the "particular cases" referred to in Article 255-*bis*.

The liability regime is also amended for operators who, although holding the required authorisations to carry out waste treatment activities, act in breach of those authorisations: they are now subject to a fine ranging from €6,000 to €52,000 or imprisonment for up to three years, pursuant to Article 256, paragraph 4 of the Environmental Code.

Finally, Article 259-*bis* introduces a new **aggravating circumstance** where certain conduct (*e.g.*, unauthorised waste management activities) is carried out as part of **a business activity** or any other organised activity.

Interventions and Works on Sites Undergoing Remediation: The Criteria and Procedures Adopted by the Lombardy Region.

By Regional Council Resolution No. XII/5478 of 9 December 2025 (the "**DGR XII/5478 of 2025**"), the Lombardy Region approved the "*Criteria and procedures for the assessment and control of interventions and works referred to in Article 242-ter of the Environmental Code in sites undergoing remediation not included among sites of national interest, and identification of categories of interventions that do not require prior assessment by the competent authority*", the adoption of which is expressly provided for in paragraph 3 of Article 243-*ter* of the Environmental Code.

Below is a brief overview of the main provisions.

- First, Article 4 identifies the categories of interventions/works that do not require the so-called 'interference assessment', namely **interventions that do not interfere with environmental matrices**, such as above-ground demolition and decommissioning works and interventions that do not involve excavation or soil movement. These interventions **may be carried out without any obligation to notify** the competent authority for the remediation procedure, either beforehand or upon completion.
- The Resolution also identifies cases subject to certain **procedural 'simplifications'**, specifically:

  a. Urgent and non-deferrable in-

terventions and works, *i.e.* those that must be carried out promptly to ensure the protection of workers' health and safety and/or the environment, as well as the prevention of major accidents. For such interventions/works, a **notification** must be submitted to the competent authority and to the entities responsible for remediation **at least 24 hours before commencement of the activity**, specifying the reasons for the urgency;

b. **Interventions and works to be carried out in sites subject to operational safety measures** ("MISO"), which require submission of a notification to the competent authorities **at least 30 days before the start of the works**. Within the following 20 days, ARPA (Regional Environmental Protection Agency) may determine that the proposed interventions/works would prejudice MISO activities or alter the final conceptual model or the MISO project, notifying both the proponent and the competent authority. The latter must then, within 10 days, order either a prohibition on commencing the works or authorise commencement subject to conditions. **If the 30-day period expires without any response from the competent entities, the interventions and works are deemed authorised**;

c. **Specifically listed interventions and works**, which may be carried out upon submission to the competent authority and the entities responsible for remediation of a notification accompanied by a **certified technical report drawn up by a qualified expert**. These include, by way of example: *(i)* interventions necessary to remove architectural barriers; *(ii)* interventions on existing structures and infrastructure, including where excavation is involved, provided that they do not entail further occupation of soil or subsoil; *(iii)* connections and maintenance works on utility networks, including with new soil occupation, for the operation of public services, provided that soil movement is limited (not exceeding 40 cubic metres), the design excavation depth does not exceed 2 metres below ground level, and the saturated zone of the soil is not affected; and *(iv)* works and interventions that do not interfere with any groundwater remediation activities, provided that the soil has been verified not to exceed contamination threshold concentrations and the saturated zone is not affected.

- Where an '**interference assessment**' is **expressly** required, Regional Council Resolution XII/5478 of 2025 distinguishes according to whether the intervention/work:
  a. is subject to **SCIA *(Certified Notice of Commencement of Works)*** or **CILA *(Certified Notice of Commencement of Minor Works)***, specifying that the clearance (*nulla osta*) for carrying out the interventions must be obtained before submitting the SCIA or CILA;
  b. is subject to **EIA** (*Environmental Impact Assessment*), **AIA (*Integrated Environmental Authorisation*)**, **or other authorisation pro-**

cedures (*e.g.*, building permits), in which case the interference assessment is carried out as part of those procedures, through the issuance of the clearance by the competent authority following a dedicated internal procedure. The clearance is valid from the date of the final decision;

c. **does not fall within the previous categories**. In this case, the proponent must submit to the competent authority and the entities responsible for remediation a dedicated project report for the purpose of obtaining the clearance to carry out the intervention/ work.

- **Where the area concerned by the intervention has not yet been characterised, Regional Council Resolution XII/5478 of 2025 allows the proponent to ascertain the potential contamination status of the site through a preliminary investigation plan** to be agreed with ARPA and submitted, 30 days before the start of the investigations, to the competent authority and the entities responsible for remediation. If the preliminary investigation confirms that contamination threshold concentrations have been exceeded, the proponent must immediately notify the competent entities; otherwise, the proponent must submit a self-certification.
- Finally, as regards control procedures, the Resolution provides that ARPA and the Province/Metropolitan City may carry out inspections, including on a sampling basis, both through on-site checks during the execution of works and through documentary reviews. Assessments relating to the absence of risks to workers' health and to other users of the area fall within the remit of the ATS (*Agenzia di Tutela della Salute* – Health Protection Agency). The Resolution also introduces an additional express requirement: the preparation of a **final technical report**, containing the elements specified in Article 12 of Regional Council Resolution XII/5478 of 2025, to be submitted to the competent authorities within 30 days of completion of the works.

CONTACTS

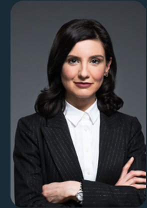
The professionals at Legance are available for any further clarification or request that you may require, also in relation to specific cases.

For further information:

Giuseppe Abbruzzese
Partner
gabbruzzese@legance.it

Francesca Carlesi
Senior Counsel
fcarlesi@legance.it

Riccardo Petrelli
Senior Counsel
rpetrelli@legance.it



Roberta Patrizia Giannotte
Senior Associate
rgiannotte@legance.it

Vincenzo Acampora
Associate
vacampora@legance.it

Michele Balducci
Associate
mbalducci@legance.it

Matteo Bianchi
Associate
mbianchi@legance.it

Valentina Brovedani
Associate
vbrovedani@legance.it

Martina
Carrozzini
Associate
mcarrozzini@legance.it

Carlotta
Degli Effetti
Associate
cdeglieffetti@legance.it

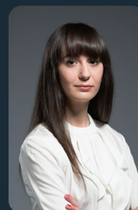
Nunziante
Di Matteo
Associate
ndimatteo@legance.it

Jessica
Falcone
Associate
jfalcone@legance.it

Filippo
Grigolon
Associate
fgrigolon@legance.it

Angela
Maiuri
Associate
amaiuri@legance.it

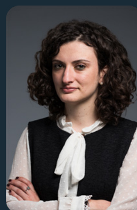
Giulia
Massimo
Associate
gmassimo@legance.it



Ristela
Prendi
Associate
rprendi@legance.it

Giuliana
Serra
Associate
gserra@legance.it

Antonio
Spampinato
Associate
aspampinato@legance.it



Flavia Maria
Veroux
Associate
fmveroux@legance.it

Legance

REviews
is a project by Legance

Contacts
osservatoriorealestate@legance.it

Edited by
Legance

Graphic Design
vitamineD