

**NEWS FROM THE FIRM**

**The firm advises Blackstone on the issue of a USD 1.5 billion bond**

The firm, together with Simpson Thacher & Bartlett and Garrigues, advised Blackstone on the issue of a USD 1.5 billion bond. Our team, including [Federica Paniz](#) and [Elisa Cappellini](#), was led by [Pierfrancesco Giustiniani](#) and [Manfredi Leanza](#).

**Marco Consonni among the World's Leading Patent Professionals 2018**

[IAM Magazine](#) has ranked partner [Marco Consonni](#) among the World's Leading Patent Professionals.

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**CAPITAL MARKETS**

**Consob starts consultation for adapting Issuers' Regulation to the new EU Prospectus Regulation**

On 28 June 2018, the Italian stock exchange supervisor (Consob) started a [consultation](#) for adapting the Issuers' Regulation to [Regulation \(EU\) No. 1129 of 14 June 2017](#) dealing with the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. The consultation focuses, *inter alia*, on the provisions related to the exceptions to the obligation to publish a prospectus when the aggregate value of the offer (calculated over a 12-month period) falls below the threshold of Euro 8 million. Taking into consideration the exemption threshold of Euro 5 million currently applicable in Italy, Consob's consultation document highlights three possible scenarios to determine the maximum exemption thresholds to be applicable for Italian prospectuses: Option 0: confirmation of the current 5 million Euro threshold; Option 1: threshold set at 8 million Euro for any sort of public offer; and Option 2: threshold set at 8 million Euro solely for offers of capital securities issued simultaneously with, or immediately after, a listing on a regulated market or on a growing market for SMEs, maintaining the current threshold of 5 million Euro for any offer made by unlisted companies.

**ADVERTISING**

**Italian Advertising Self-Regulation Body on influencers**

On 26 June 2018, the Italian Advertising Self-Regulation Body (*Istituto dell'Autodisciplina Pubblicitaria - IAP*) issued its first [decision on the promotion of products by "influencers"](#). In its decision, the IAP prohibited the singer Fedez from making further dissemination on his Instagram profile of a story showing Fedez testing a car and praising its characteristics and functions. The IAP deemed this story to be a commercial communication breaching Article 7 of the Code of Marketing Communication Self-Regulation which states that "*marketing communication must be clearly distinguishable as such. [...]*", because the story was not labelled with the hashtag #advertising as required by the Digital Chart rules published by the IAP. The same approach was taken recently by the Italian Consumer Protection Authority (AGCM), see [Our Echo July 2017](#).

**DATA PROTECTION**

**EU Parliament on potential suspension of the Privacy Shield**

On 26 June 2018, the European Parliament lodged a motion for [a resolution on the adequacy of the protection afforded by the EU-US Privacy Shield](#), the agreement protecting the fundamental rights of EU citizens whose personal data are transferred to the US for commercial purposes (the "Resolution"). The EU Parliament highlighted a number of deficiencies in the implementation of the Privacy Shield by the US authorities and consequently called on the EU Commission to suspend the Privacy Shield if the US authorities were not to be fully compliant by 1 September 2018. Among other issues, the EU Parliament objected that: (a) the US administration has not yet appointed a permanent Ombudsman – an independent body aimed at handling privacy complaints – thus compromising effective redress for EU citizens; (b) there are no specific rules and guarantees in the Privacy Shield for decisions based on automated processing and profiling; (c) the Privacy Shield principles do not follow the EU model of consent-based processing, allowing the data subject to object in very specific circumstances only; and (d) the "national security" mechanism under the Privacy Shield – which allows the US authorities access to personal data for national security reasons – is not sufficiently circumscribed and there is still a lack of clarity about how the US National Security Agency collects and processes bulk data.

**The European Data Protection Board on transfers of personal data to third countries**

On 25 June 2018, the European Data Protection Board ("EDPB") – the body which replaced the Article 29 Working Party and which is composed of representatives from the national supervisory authorities of each EU member state and the European Data Protection Supervisor – adopted its final [Guidelines on Article 49 of the GDPR](#) (the "Guidelines"). Article 49 of the GDPR sets forth the circumstances in which a transfer of personal data outside of the EU can be effected. In particular, those circumstances include, *inter alia*, explicit consent from the data subject, the fulfilment of contractual undertakings and in the public interest. In particular, as far as consent is concerned, the data subject must be informed of the specific risks resulting from the transfer of data to a country which does not provide for adequate protection. Further, the data controller must specify all data recipients (or categories of recipients) and the countries to which the personal data are being transferred. In addition, as specific consent is required for the particular data transfer or set of transfers, the Guidelines provide that the data transfer may be executed only if the relevant transfer was envisaged at the time of collection of the consent. Further, the EDPB highlighted that the data transfer must also comply with the general requirements issued by its predecessor, the Article 29 Working Party.

**COPYRIGHT**

**EU Parliament postpones discussion on Copyright in the Digital Single Market**

On 5 July 2018, the European Parliament elected to postpone the start of the negotiation with the Council on the draft Directive of the European Parliament and of the Council on Copyright in the Digital Single Market (the "Copyright Directive") proposed by the European Parliament's Committee on Legal Affairs ("JURI") (see [Our Echo of June 2018](#)).

**FINANCE**

**Italian Supreme Court judgment on maximum overdraft charges**

On 20 June 2018, the Italian Supreme Court issued its judgment (No. 11181/2018) on the maximum overdraft charge (*commissione di massimo scoperto*) for the purposes of the rules on usury. The Supreme Court ruled that, with reference to banking relationships entered into prior to the entry into effect of [Law Decree No. 185 of 29 November 2008](#), a separate comparison, additional to that concerning the overall average interest rate, will need to be undertaken between (a) the maximum overdraft charge agreed between the parties and (b) the maximum overdraft charge threshold applicable from time to time for usury purposes. A breach of the relevant limitation will occur only if that threshold is exceeded. However, the Supreme Court has also added that an overdraft charge which exceeds the relevant threshold may not in the end trigger the application of the usury rules where it is mitigated by an amount equal to the negative difference, if any, between the overall average chargeable interest rate applicable from time to time and the overall average applicable interest rate agreed between the parties. For further information, please see [here](#).

**PATENTS**

**EU and UK confirm agreement on SPC during Brexit**

On 15 June 2018, the EU and UK Government negotiators released a [joint statement](#) providing an update on the draft agreement on the UK's withdrawal from the EU (the "Brexit Draft Agreement"). The statement confirmed agreement on Article 56 of the Brexit Draft Agreement which regulates pending applications for Supplementary Protection Certificates for plant products and medicinal products ("SPCs"), providing that SPCs submitted in the UK before the end of the Brexit transition period (i.e. currently expected on 31 December 2020) will: (a) still be granted after the end of that period; and (b) provide for the same level of protection as that provided for SPCs under the existing EU Regulations (i.e. [Regulation \(EC\) No. 1610/96](#) or [Regulation \(EC\) No. 469/2009](#)).

**LABOUR**

**New decree with impacts on labour law enacted**

Law Decree No. 87 of 12 July 2018 (the so-called "[Decreto dignità](#)") was published in the Italian Official Gazette on 13 July 2018 and is now in force. This decree contains certain provisions on fixed term employment agreements, and confirms, *inter alia*, that if any such a fixed term agreement lasts more than 12 months, the employer must justify the fixed term on the basis of one of the grounds listed in the decree. In any event, the fixed term may not last for more than 24 months. The decree also clarifies that a "justification" is not required for so-called seasonal contracts.

**HAPPY SUMMER BREAK!**



**INDUSTRIES**

**MEDIA/ISP**

**The Court of Milan "open" order to Network Access Providers**

On 18 June 2018, the Court of Milan issued an [order](#) to Italian network access providers to take the most appropriate technical measures to prevent recipients of their services from gaining access to certain protected works, either through the domain name "Italiashare.net", or through any "alias" sites, within a maximum of ten working days from receipt of a notification of the "alias" by the right holder/applicant (with the right to request reimbursement of technical costs).

**TECHNOLOGY**

**Italian implementation of NIS Directive enacted**

On 9 June 2018, [Legislative Decree No. 65 of 18 May 2018](#) – implementing [Directive \(EU\) 2016/1148](#) of the European Parliament and of the Council of 6 July 2016 and concerning measures for a common level of security of network and information systems across the Union – was published in the Italian Official Gazette ("Legislative Decree No. 65/2018"). Legislative Decree No. 65/2018 is aimed at enhancing the national cyber security strategy and defining appropriate security policies. For those purposes, the following bodies have been established: (a) the Network and Information System Authorities ("NIS Authorities") which will supervise compliance with the above-mentioned Legislative Decree; (b) the national Computer Security Incident Response Team ("CSIRT"), a technical body which is intended to prevent and react to IT incidents; and (c) the Single Contact Point, aimed at promoting cooperation between Italian and European NIS Authorities. In addition, Essential Services Operators ("ESOs" - i.e. public or private organisations operating in the energy, transportation, banking and finance markets, digital infrastructures, healthcare and supply and distribution of drinking water) as well as Digital Service Providers ("DSPs", i.e. e-commerce, search engines, and cloud computing operators) are required to adopt technical-organisational measures to manage risks and prevent IT incidents. In the event of an IT incident, the relevant ESOs and DSPs are to report the event to the CSIRT and specify its impact on the services provided. Administrative fines of up to Euro 150,000 may be applied in the event of a failure to comply with the obligations set out in Legislative Decree No. 65/2018 by ESOs and DSPs. Legislative Decree No. 65/2018 entered into force on 24 June 2018.

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