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NEWS FROM THE FIRM

The firm expands in Rome

As from 1 January 2020, the Rome based firm of Verusio and Cosmelli joined Orsingher Ortu - Avvocati Associati. Giovanni Verusio and Giorgio Cosmelli join the firm as of counsel, while Francesca Pulejo becomes a partner. Giovanni Verusio, Giorgio Cosmelli, Francesca Pulejo and their team will continue their practice in the areas of civil litigation, international law and commercial contracts, assisting international and Italian clients.

New partners

Ludovico Anselmi and Francesca Flego have been made up as partners of the firm as from 1 January 2020. Ludovico's practice focuses on intellectual property, including litigation. Francesca has significant experience in domestic and multijurisdictional mergers and acquisitions and public takeovers.

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DATA PROTECTION

Guidelines on the right to be forgotten

On 2 December 2019, the European Data Protection Board ("EDPB") adopted Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR, which aim to interpret the Right to be Forgotten in the search engines cases in light of the provisions of Article 17 GDPR (the "Right to request delisting"). The Right to request delisting implies two rights: the right to object and the right to erasure. Those Guidelines cover two topics: (a) the grounds on which a data subject may rely to request delisting by a search engine provider pursuant to Article 17.1 GDPR. That provision sets out a general principle providing for the cancellation of the relevant data in six specific cases, although the data subject may make a delisting request to a search engine provider based on more than one of the relevant cases; (b) the second topic concerns the exceptions to the Right to request delisting according to Article 17.3 GDPR, which identifies the cases in which paragraphs 17.1 and 17.2 do not apply because the processing is necessary for one of the reasons identified therein. Additionally, there is an appendix dedicated to the assessment of criteria for handling complaints for refusals of delisting.

The AG on EU Standard Contractual Clauses

On 19 December 2019, Advocate General Saugmandsgaard Øe (the "AG") of the ECJ issued his Opinion (the "Opinion") in case C-311/18 (Data Protection Commissioner v. Facebook Ireland Limited, Maximillian Schrems). The case was referred to the ECJ for a preliminary ruling to ascertain whether the EU Standard Contractual Clauses (the "SCCs") actually provide "appropriate safeguards" for the transfer of personal data out of the EU to countries pursuant to Article 46 of the GDPR. According to the Opinion, in the case of a transfer of personal data based on the SCCs, "appropriate safeguards" are in place, provided the rights of the owner of the relevant data are transferred with a level of protection "essentially equivalent" to that which follows from the GDPR, as interpreted in the light of the Charter of Fundamental Rights of the European Union. If the level of protection provided by the third country of destination does not, de facto, comply with the criteria set out above, including the enforceability of the data subject's rights and the effectiveness of legal remedies, it is up to the data controllers and supervisory authorities to prohibit or suspend the transfers, as the SCCs would no longer be able to carry out their compensating function vis-à-vis the deficiencies of the legal order of the third country of destination. The Opinion is not binding on the ECJ.

FINANCE

New Bank of Italy regulation implementing MiFID II and MiFIR

On 5 December 2019, the Bank of Italy published a new regulation (the "Regulation") implementing Articles 4-undecies and 6, paragraph 1, letters b) and c-bis) of the Italian Consolidated Law on Finance, which transposed certain provisions of the MiFID II and MiFIR European legislation (respectively, Directive 2014/65/EU and Regulation (EU) no. 600/2014). The Regulation governs the obligations of financial intermediaries which provide investment services and collective asset management activities, including investment intermediaries (SIMs), banks (limited to investment service activities), asset management companies (SGRs), SICAVs and SICAFs. The new provisions are related to certain matters regulating, *inter alia*, (a) corporate governance of the intermediaries, including the role and appointment of corporate bodies, (b) administrative and accounting organisation, (c) the company's risk management and internal audit, (d) remuneration schemes, (e) the internal violation reporting systems and (f) the deposit of customer assets. The intermediaries shall comply with the corporate governance provisions of the Regulation by 31 March 2020 or, if amendments to the companies' by-laws are required, from the date of approval of the 2019 financial statements by their shareholders' meeting.

PATENTS

Italian Supreme Court on fair compensation

On 6 December 2019, the Italian Supreme Court issued its order No. 31937 and held that in the case of patented inventions made by a company employee, the right to fair compensation may not be granted in favor of the employee if the relevant patent is held null and void.

COPYRIGHT

The ECJ on second-hand sales of e-books

On 19 December 2019, the EU Court of Justice (ECJ) issued its judgment in case C-263/18 (Nederlands U. et al. v. Tom Kabinet), regarding the lawfulness of second-hand sales of e-books. More specifically, the issue before the ECJ was whether internet downloads of e-books are covered by the right of distribution (subject to the exhaustion rule), or the right of communication to the public (not subject to the exhaustion rule). According to the ECJ, the supply of an e-book to the public by downloading for permanent use is covered by the concept of 'communication to the public' and, more specifically, by that of 'making works available to the public' in such a way that members of the public may access them from a place and at a time individually chosen by them, within the meaning of Article 3(1) of Directive (EU) No. 29/2001 of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Thus, internet downloads of e-books are not subject to the exhaustion rule.

CAPITAL MARKETS

Provisions on electronic reporting in force

As from 1 January 2020, the new regulatory technical standards on the specification of a single electronic reporting format will apply to issuers, pursuant to Commission Delegated Regulation (EU) No. 2018/815 of 17 December 2018 (the "Regulation"). In particular, issuers will be required to prepare annual financial reports in XHTML format and to highlight certain information contained in the consolidated financial statements using the Inline XBRL specifications. Only annual financial reports prepared in compliance with the Regulation will be considered definitive [and binding] and the use of other formats (such as PDF) will no longer be permitted. Where annual financial reports also contain consolidated financial statements prepared in accordance with IFRS principles, issuers must [highlight][mark up] the information listed in Annex II to the Regulation. That process provides for a first phase starting from 1 January 2020 (marking up of all numerical currency items), and a second phase starting from 1 January 2022 (marking up of both numerical values of a monetary nature and information contained in the notes to financial statements).

EMPLOYMENT

Italian DPA on the e-mail address of a former employee

On 4 December 2019, the Italian Data Protection Authority (the "DPA") issued its Decision No. 216/2019 relating to the processing of personal data contained in the e-mail address of a former employee. Notably, the Italian DPA concluded that an employer may not, following termination of employment, maintain a former employee's company e-mail account active and access the emails contained therein , as data protection principles require the employer to protect the confidentiality of the former employee. Immediately after the termination of employment, the employer must remove any e-mail address that can be traced back to an employee, adopt automatic systems with alternative addresses to those who contact the mailbox, and introduce technical measures to prevent the display of incoming messages.

INDUSTRIES

E-COMMERCE

The ECJ rules that Airbnb is an "information society service"

On 19 December 2019, the ECJ issued its judgment (the "Judgment") in case C-390/18 (AIRBNB Ireland UC v. Hotelière Turenne SAS, Association pour un hébergement et un tourisme professionnel, Valhotel). The case was referred to the ECJ for a preliminary ruling to ascertain whether the services provided by AIRBNB Ireland fall within the scope of the restrictive French rules as applicable to real estate agents or, conversely, whether it should be considered as an 'information society service' under Article 1(1)(b) of Directive (EU) No. 2015/1535 of 9 September 2015 (laying down a procedure for the provision of information in the field of technical regulations and rules on information society services). In line with the earlier Opinion of the AG on the matter, the ECJ ruled that AIRBNB is an "information society service" since, primarily, it does not exercise decisive influence over the conditions for the provisions of the accommodation services to which its activity relates and it does not provide a service which is indispensable to the provision of accommodation services, since the guests and hosts have a number of other channels in that respect. Following the well-known case regarding Uber, the Judgment represents a judicial milestone for the regulation of e-platforms.

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