FIVERS

Case-law update

Civil and Administrative Law

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BANKING AND FINANCIAL LAW

Italian Supreme Court, 13 June 2024, No. 16456 – failure to indicate the APR: the APR of the loan, not specifically identified in the contract, is determinable under Article 1346 of the Civil Code where it is numerically definable on the basis of the APR and other values in the contract, so that the indications contained in the contract may represent useful elements to make determinable, under Article 1346 of the Civil Code, the object of the agreement relating to interest.

Italian Supreme Court, 5 June 2024, No. 15695 – purpose loan contract: the loan can be qualified as a purpose loan only when the destination clause involves the direct or indirect interest of the lending institution. The indication of the reasons for which the loan is provided, unaccompanied by a specific contractual program aimed at their realization, is not sufficient for the purposes of qualifying the contract as a purpose loan.

COMPANY LAW

Italian Supreme Court, 10 June 2024, no. 16047 – repossession of the share and challenge of the shareholders' meeting resolution: a limited liability company shareholder who has pledged his share retains the right to challenge the shareholders' meeting resolution in which the pledgee creditor voted on his behalf, given that it follows from the combined provisions of Articles 2471-*bis* and 2352 of the Italian Civil Code that the shareholder whose share has been pledged loses only the right to vote in the shareholders' meeting, but retains, unless otherwise agreed, all other administrative rights connected with his status, including the right to contest resolutions contrary to the law or the deed of incorporation.

BANKRUPTCY LAW

Italian Supreme Court, 17 June 2024, no. 16723 – extraordinary administration of a company and takeover of commissioners in pending contracts: in extraordinary administration, on the one hand, no pending contract is automatically dissolved, but, on the other hand, in each contract, once the effect is stabilized with the declaration of takeover of the extraordinary commissioner, the rights of the other

contractor must always be parameterized to the rules of Artt. 72 and 83-*bis* l.f. and, among them, of Art. 74 l.f., which refers to all contracts of continuous or periodic performance, including that of contracting (in which, according to Art. 81, para. 1, l.f., the liquidator of the client's curatorship may also take over).

Italian Supreme Court, 6 June 2024, no. 15851 – declaration of bankruptcy of debtor admitted to a composition with creditors: a debtor admitted to approved composition with creditors agreement can be declared bankrupt if it is insolvent in the payment of composition debts, according to the amendments made by the Bankruptcy Law of 2006 and 2007, regardless of the termination of the composition agreement.

PUBLIC LAW

TAR Emilia - Romagna, sede di Parma, sez. I, 18 June 2024 – Concessions. New Public Contracts Code. Direct Award: not applicable to concession contracts.

Council of State No 4481 - 20 May 2024 – Extension of maritime State concessions. Illegitimacy. Obligation to award concessions by public procedure

Council of State, Section II, non final judgment 7 March 2024, no. 2228 – Building works not completed after expiry of the building permit. Applicable discipline. Forfeiture. Abusiveness.

BANKING AND FINANCIAL LAW

Italian Supreme Court, 13 June, 2024, No. 16456 – failure to indicate the APR: the APR of the loan, not specifically identified in the contract, is determinable under Article 1346 of the Civil Code where it is numerically definable on the basis of the APR and other values in the contract, so that the indications contained in the contract may represent useful elements to make determinable, under Article 1346 of the Civil Code, the object of the agreement relating to interest.

The Supreme Court, in Order No. 16456, published on June 13, 2024, ruled on the issue of the determinability of the TAN not stated in the contract.

The Supreme Court first affirmed that «*the APR - or ISC - and the annual nominal rate are different legal entities*» recalling that the APR was defined by the Ministerial Decree of July 8, 1992 as a «'synthetic and conventional indicator of the total cost of credit, to be determined by means of the prescribed formula whatever the methodology used to calculate the interest charged to the consumer' *(Article 2, paragraph 2). The formula for calculating the APR was contained in Annex 1 to the said ministerial decree (...) Article*

9, paragraph 2, of the CICR resolution of March 4, 2003 on 'Discipline of transparency of the contractual conditions of banking and financial transactions and services' *mandated the Bank of Italy to identify the transactions and services against which the aforementioned index* 'including interest and charges that contribute to determining the actual cost of the transaction for the customer' *was to be reported, as well as the formula for detecting it*. *Articulated indications on the APR are found, then, in par. 4.2.4 of the Bank of Italy's July 29, 2009 provision on the transparency of banking and financial transactions and services and the fairness of relations between intermediaries and customers (...) the competence, on the point, of the Bank of Italy, was subsequently confirmed by Article 121, paragraph 3, T.U.B., in the text amended by Legislative Decree no. 141 of 2010. In the same article of the Consolidated Text, in paragraph 1, letter m), it is explained that the APR indicates, as an annual percentage, the actual cost of credit (...) The Annual nominal rate, on the other hand, is the annual rate of interest due net of capitalization: it is the value referred to in Art. 117, paragraph 4, T.U.B. when it states that contracts* 'indicate the interest rate'. *The same rule provides that the contract must indicate, in addition to the interest rate,* 'every price and condition charged' *and the one and the other combine to define the aggregate figure of the TEGM*».

The Supreme Court went on to clarify that «*it would be incorrect to assume that the indication, in the contract, of the TEAG justifies the failure to specify, in it, the interest rate*» in fact «*Article 117, paragraph 4, T.U.B. requires that the contract specify the interest rate, prices and other conditions (including the higher charges in case of default) as it considers that this core of information - referring to the different elements of the obligation that bears on the customer - is indispensable to remove the cognitive asymmetry of the contracting parties. In the logic of the general regulation of the form of banking contracts, the punctual indication of the interest rate (not of an all-inclusive APR, which is not a contractually agreed rate but a numerical figure calculated on the basis of a mathematical formula, thus a simple cost indicator) assumes, in short, a central importance: and this is confirmed by the remedial apparatus prepared by the legislator, which takes into account nullity referring to agreements that affect not the effective overall rate, but the interest rate (Art. 117(7)(a)) and other contractual prices and conditions (Art. 117(7)(b))*».

Therefore, according to the Court, «*the idea that the explication, in the contract, of the APR is suitable to ensure, from the point of view that is relevant here, the validity of the contract, generates, as a consequence, an inoperability of the nullity of Article 117, paragraph 4, T.U.B. which is devoid of justificatory basis, given that there is no rule that derogates from the rule, inferable from paragraph 7 of the same article, whereby, in the absence of the fixing of the interest rate, there is a partial nullity with heterointegration of the contractual regulation*».

Having made these premises, the Supreme Court then posed the question «*whether nullity is to be excluded even where the amount of the interest rate, not specifically identified, can be identified, based on an arithmetic calculation, from the text of the contract identifying the APR*».

In this regard, the Supreme Court first recalled that «*in general terms, the ad substantiam written form of a contract does not exclude that the agreement may relate to an undetermined, but determinable object*».

In particular, the Court's reasoning continued, «*with reference to the hypothesis of the ultra-legal interest clause, which is also subject to formal strictness, the jurisprudence of this Court admits that the interest rate referred to in Article 1284, paragraph 3, of the Civil Code may not be indicated in figures, but determined through reference to pre-established criteria and extrinsic elements, provided that they are objectively identifiable, functional to the concrete determination of the rate itself (cf, ex aliis, Cass. no. 25205 of 2014; Cass. no. 8028 of 2018). A similar rule is affirmed with regard to the rule in Article 117, paragraph 4, T.U.B., which contemplates the obligation to indicate the interest rate in contracts that are already subject to the written form: also in this case, the interest rate can be determined per relationem, with the exclusion of reference to usages, but the contract must refer to pre-established criteria and extrinsic elements that, in addition to being objectively identifiable and functional to the concrete determination of the rate, must not be determined unilaterally by the bank*».

Therefore, according to the Supreme Court, «***the rate can also be identified from the context of the contract; as is obvious, even the indications contained in the body of the transaction can represent elements capable of making determinable, in accordance with Article 1346 of the Civil Code, the object of the agreement relating to interest***».

The Supreme Court has therefore affirmed that «***the APR of the loan, which is not punctually indicated, may well be determinable where it is susceptible to numerical definition on the basis of the APR and the other values reported in the contract (see substantially, in this sense, Cass. no. 13556 of 2024, also pronounced in a case similar to today's), so that the indications contained in the latter may represent useful elements to make determinable, pursuant to Art. 1346 of the Civil Code, the precise object of the agreement relating to interest***».

In confirmation of the above, the Court finally pointed out the «*motivational passage of Cass, SU, no. 15130 of 2024, in which (see p. 22 et seq.), moving from the premise that the inquiry into the determinacy of the object of the contract pertains to the structural construction of the negotiation transaction, that is, it is aimed at verifying that it has well-defined boundaries with regard to the an and quantum of (non-legal) interest, which must be agreed on the basis of objective criteria that are insusceptible of giving rise to margins of uncertainty, not on the basis of undefined elements or left to the discretion of one of the contracting parties (cf. ex plurimis, on the subject of determining the interest rate by referring to usages or uncertain parameters, Cass. Nos. 28824 and 36026 of 2023; Cass. No. 17110 of 2019; Cass. No. 8028 of 2018; Cass. No. 25205 of 2014),* ***it has been affirmed as subsisting such determinacy when the***

loan contract contains the indications proper to the legal type (Art. 1813 et seq. of the Civil Code.), that is, the clear and unequivocal indication of the amount financed, the duration of the loan, the periodicity of repayment and the predetermined interest rate, also providing, in the amortization schedule attached to the contract, the number and composition of the constant repayment installments with the division of the portions for principal and interest».

Italian Supreme Court, 5 June 2024, No. 15695 – purpose loan contract: the loan can be qualified as a purpose loan only when the destination clause involves the direct or indirect interest of the lending institution. The indication of the reasons for which the loan is provided, unaccompanied by a specific contractual program aimed at their realization, is not sufficient for the purposes of qualifying the contract as a purpose loan.

The Supreme Court, in its Order No. 15695, ruled on the legal qualification of the purpose loan contract.

The Supreme Court preliminarily recalled that «*the jurisprudence of legitimacy has long focused on the legal figure of the purpose loan, both in the so-called legal version and in the so-called conventional version, in the sense that in both cases the destination of the sums borrowed enters into the structure of the transaction connoting its causal profile*».

Having said this, the Court recalled that the purpose loan is «*preordained to the realization of a necessary conventional purpose, such as to mark its function, consisting in providing the borrower with the economic means intended for a constrained use; so that the nullity of such a contract for lack of cause subsists if (and only if) that destination is not respected. (cf. Cass. No. 25793-15, as well as the much earlier Cass. Nos. 317/01, 12123/90, 2876/88)*».

The Supreme Court then clarified that «*the conventional purpose loan, which constitutes a deviation from the contractual type referred to in Article 1813 of the Civil Code, is configured only when the borrower has expressly assumed an obligation towards the lender, by reason of the latter's interest -direct or indirect- in a specific way of using the sums for a specific purpose: it is in such a case, in fact, that the clause for the destination of the borrowed sum affects the cause of the contract, with the consequence that its non-observance gives rise to the nullity of the same*».

Therefore, the Court continued, «***the loan can be qualified as purposive only when the destination clause involves the direct or indirect interest of the financing institution, while the indication of the reasons for which the financing is provided, unaccompanied by a specific contractual program aimed at their realization, does not suffice for the purposes of such qualification***».

In the case at hand, the Supreme Court found that «***the judge of the merits did not comply with these principles, as he considered that he could qualify the loan agreement deduced in court as purposive without bothering in the least to ascertain whether there was also an interest of the financing bank in the pursuit of the indicated destination of the amount financed***».

COMPANY LAW

Italian Supreme Court, 10 June 2024, no. 16047 – repossession of the share and challenge of the shareholders' meeting resolution: a limited liability company shareholder who has pledged his share retains the right to challenge the shareholders' meeting resolution in which the pledgee creditor voted on his behalf, given that it follows from the combined provisions of Articles 2471-*bis* and 2352 of the Italian Civil Code that the shareholder whose share has been pledged loses only the right to vote in the shareholders' meeting, but retains, unless otherwise agreed, all other administrative rights connected with his status, including the right to contest resolutions contrary to the law or the deed of incorporation.

The Italian Supreme Court, in its Order No. 16047, published on 10 June 2024, ruled on the issue of challenging the shareholders' meeting resolution in the event of share attachment.

First of all, the Supreme Court addressed the issue of the effects on the shareholder of the pledgee's vote, stating that: «*the vote of the pledgee, insofar as it relates to the share of the respective holder, is not cast in the latter's stead, but in its place. This implies that the shareholders' meeting resolution, the vote of which was cast by the pledgee in place of the shareholder, binds the latter where it is consolidated as a result of the failure to challenge it*».

The Court then continued on the subject of the right to challenge the shareholders' meeting resolution, stating that: «*it must be held that the shareholder whose share has been pledged* ***retains the right to challenge the shareholders' meeting resolution in which the pledgee has participated****, given that its position is comparable to that of absent or dissenting shareholders,* ***since it certainly cannot be held that the vote in favour of the pledgee of the share precludes the shareholder from exercising the administrative powers to which it is entitled by virtue of its status as shareholder***».

The Court then goes on to state that: «*where there is no express conferral of the shareholder's power of representation, even substantive, on the pledgee, the latter is indeed entitled to participate in the shareholders' meeting in place of the shareholder, but* ***such substitution is certainly not such as to deprive the shareholder of the right to challenge the validity of the meeting***».

The Court then mentions Article 2471-*bis* of the Civil Code, which governs the pledge of shareholdings and expressly refers to Article 2352 of the Civil Code, stating that in the latter provision: «*it is clearly provided that the pledgee is exclusively entitled to the right to vote in the shareholders' meeting but that (see paragraph 6), in the absence of a different agreement,* ***the oppressed shareholder retains the administrative rights other than those inherent in the sole right to vote, which fully include the right to challenge the unlawful resolution***».

In conclusion, the Court affirmed the following principle of law: «***the shareholder of a limited liability company who has pledged his share retains the right to challenge the shareholders' meeting resolution in which the pledgee creditor voted on his behalf, given that it follows from the combined provisions of Articles 2471-bis and 2352 of the Italian Civil Code that the shareholder who has pledged his share retains the right to challenge the shareholders' meeting resolution in which the pledgee creditor voted on his behalf. It follows from the combined provisions of Articles 2471-bis and 2352 of the Italian Civil Code that the shareholder whose share has been pledged loses only the right to vote in the shareholders' meeting, but retains, unless otherwise agreed, all other administrative rights connected with his status, including the right to contest resolutions contrary to the law or the deed of incorporation***».

BANKRUPTCY LAW

Italian Supreme Court, 17 June 2024, no. 16723 – extraordinary administration and commissioners' takeover of pending contracts: the generalization of the rule deriving from Artt. 50 and 51 of d.lgs. no. 270/1999 (according to which the extraordinary commissioner may dissolve from contracts, including those with continuous or periodic execution, still unexecuted or not fully executed by both parties at the date of the opening of the extraordinary administration, and as long as the power of dissolution is not exercised, the contract continues to be executed) means that in the extraordinary administration, on the one hand, no pending contract is automatically dissolved, but, on the other hand, in each contract, once the effect is stabilized with the declaration of the extraordinary commissioner's takeover, the rights of the other contracting party must always be parameterized to the rules set forth in Artt. 72 and 83-*bis* l.f. and, among them, in Art. 74 l.f., which refers to all contracts of continuous or periodic performance, including that of contracting (in which, according to Art. 81, para. 1, l.f., the client's curatorship may also take over).

The Italian Supreme Court, in its decision no. 16723, issued on 17th June 2024, ruled on the extraordinary administration and the takeover of commissioners in pending contracts under, on the one side, Artt. 50 and 51 of d.lgs. no. 270/1999 and, on the other side, Artt. 72, 83-*bis* and 74 l.f.

Firstly, the Supreme Court premised that «*art. 50 of d.lgs. no. 270/1999* […] *provides that: "1. (...) the extraordinary commissioner may dissolve from contracts, including those with continuous or periodic execution, which are still unexecuted or not fully executed by both parties on the date of the opening of the extraordinary administration. As long as the power of dissolution is not exercised, the contract shall continue to be executed. (...)* [...] *Article 1-bis of Decree Law No. 134/2008, conv. by Law No. 166/2008, then clarified that the provision in Article 50, paragraph 2, of Legislative Decree No. 270/1999 "should be interpreted to mean that the execution of the contract, or the request for the execution of the contract by the extraordinary commissioner, does not invalidate the power of dissolution from the contracts referred to in the same article, which remains unaffected, nor does it entail, until the express declaration of the extraordinary commissioner's takeover, the attribution to the other contractor of the rights provided for in the case of the extraordinary commissioner's takeover by Article 51, paragraphs 1 and 2, of Legislative Decree No. 270 of 1999"*».

Consequently, the Court affirmed «*the rule that* ***in extraordinary administration, the pending contract, unexecuted or partially executed, continues ope legis and continues to be executed even after the opening of the procedure, unless the commissioner exercises, at any time, the power granted to him by law to dissolve it; as long as such a power is not exercised, the credits accrued by the performing contractor in consideration of the services performed after the opening of the procedure are to be paid in "prededuction"****, pursuant to Art. 52 of Legislative Decree No. 270/1999, according to which "claims arising for the continuation of the operation of the enterprise and the management of the debtor's assets shall be satisfied in "prededuction" pursuant to Article 111, first paragraph, number 1) of the Bankruptcy Law, even in bankruptcy following the extraordinary administration procedure"(see Cass. No. 19146 of 2022, in motiv.)*».

On the other hand, the Court continued stating that «***the commissioner's takeover of the contract implies the stabilization of the relationship****, with the attribution to the other contracting party of the rights provided by Article 51, paragraphs 1 and 2, Legislative Decree cited above, which refers to the provisions of Section IV of Chapter III of Title II of the Bankruptcy Law.* [...] ***Hence the applicability, among other things, of Article 74 of the bankruptcy law, which in the current text, to which reference must be made ratione temporis, establishes that if the curator takes over a contract with periodic or continuous performance, he must pay in full the price even of deliveries already made or services already provided***».

In conclusion, the Supreme Court stated the following principle of law: «***the generalization of the rule deriving from Articles 50 and 51 of Legislative Decree No. 270 of 1999 means that in the extraordinary administration on the one hand no pending contract is automatically dissolved, but, on the other hand, in each contract, once the effect is stabilized with the declaration of the***

extraordinary commissioner's takeover, the rights of the other contracting party must always be parameterized to the rules in Articles. 72/83 bis l. bankruptcy and, among these, also and precisely to art. 74, which, in the text that is relevant, can no longer be confined within individual types of contracts, but alludes to all contracts of continuous or periodic performance, including that of contract (in which, moreover, according to what is expressly provided by art. 81, paragraph 1, can also take over the receiver of the bankruptcy of the principal)».

Italian Supreme Court, 6 June 2024, no. 15851 – declaration of bankruptcy of a debtor admitted to a composition with creditors' agreement: a debtor admitted to an approved composition with creditors may be declared bankrupt if it is insolvent in the payment of the composition debts, according to the amendments made by the Bankruptcy Law of 2006 and 2007, regardless of the termination of the composition agreement. Indeed, notwithstanding, thanks to the homologation, the state of insolvency is "definitively and irrevocably assigned to the agreed debt restructuring and the satisfactory modalities contemplated therein", this does not preclude the declaration of bankruptcy whenever the satisfactory modalities ultimately prove unworkable.

The Italian Supreme Court, in its decision no. 15851, issued on June 6, 2024, ruled on the homologation of a composition with creditors and on the declaration of bankruptcy of a debtor admitted to such an agreement pursuant to Article 186 l.f., as amended by Legislative Decrees no. 5/2006 and no. 169/2007.

Firstly, the Supreme Court pointed out that «*the contested judgment held, in explicit contrast with the case law expressed by some decisions of this Court, that the reform set forth in Legislative Decree No. 169 of 2007, having restated the text of Article 186 bankruptcy law. and abrogated the possibility of an automatic and ex officio bankruptcy as a consequence of the declared termination of the arrangement, would have moved in the sign of the intended privatise accentuation of the composition with creditors itself as a "pact between debtor and creditor", subject to a control of mere legality, without substitutive relevance of the decisions that pertain to the economic sphere of the creditor.* [...] *On the basis of the foregoing premises, the previous judgement stated that "the termination of the composition with creditors is the only possibility of reaction created by the system for the non-performance of the obligations undertaken with that specific approved arrangement".* [...] *Moreover, it argued that bankruptcy would thus be possible only for new debts and new insolvency* [...]».

Based on these premises, the Supreme Court argued that «[t]*hese statements are manifestly erroneous and contrary to what this Court,* […]*, has recently ruled, in continuity with unambiguous prior case law*».

In particular, the Court recalled that «**[i]*n the regulations of the bankruptcy law resulting from the amendments made by Legislative Decree No. 5 of 2006 and No. 169 of 2007, the debtor admitted***

to the approved composition with creditors' agreement, who proves to be insolvent in the payment of the composition debts, can be declared bankrupt*, upon application of the creditors, the public prosecutor or his own, even before and regardless of the termination of the composition agreement pursuant to Article 186 of the bankruptcy law. (Cass. Sec. U No. 4696-22)*».

In conclusion, the Supreme Court ruled the following principle of law: «***notwithstanding, thanks to the homologation, the state of insolvency is "definitively and irrevocably assigned to the agreed debt restructuring and the satisfactory modalities contemplated therein", this does not preclude the declaration of bankruptcy whenever the satisfactory modalities ultimately prove unworkable***».

PUBLIC LAW

TAR Emilia - Romagna, sede di Parma, sez. I, 18 June 2024 – Concessions. New Public Contracts Code. Direct Award: not applicable to concession contracts.

The ruling clarified that 'the procedure for *awarding concessions below the threshold of European relevance may take place according to the procedures outlined in the aforementioned Article 187, that is, by means of a negotiated procedure, without publication of a call for tenders, after consulting, where they exist, at least 10 economic operators, without prejudice to the option of the grantor entity to use the tender procedures governed, for concessions, by the other provisions of Title II, of Part II of Book IV of the Code*. *Consequently, therefore, "art. 50 of the new Public Contracts Code According to the aforementioned art. 50, therefore, direct awarding only concerns works contracts for an amount of less than €150,000 and supply and service contracts (including engineering, architecture and design contracts) for an amount of less than €140,000.00. In such cases, the awarding of the contract may also take place without prior consultation and to operators possibly drawn from lists of the contracting station, but after verification of documented experience*'.

In fact, according to the Parma Regional Administrative Court, the legislator's choice in the new public contracts code was to autonomously regulate concessions, as a *species of* the *genus of* the public-private partnership type of contract, recognising their autonomy with respect to tender contracts not only as regards their substantive aspects, but also as regards their specific relevance to procedural profiles.

Council of State No 4481 - 20 May 2024 – Extension of maritime State concessions. Illegitimacy. Obligation to award concessions by public procedure.

The Council of State reaffirmed that «*in the wake of the case law of the Court of Justice, of the Plenary Assembly's decision no. 17 of 2021 and of all the aforementioned subsequent case law, that all extensions*

of maritime State concessions for tourism and recreational purposes - including those in favour of concessionaires who had obtained the title by virtue of a previous selective procedure where the relationship has exhausted its effectiveness due to the expiry of the relevant term (Council of State, sez. St. St., sez. VII, 19 March 2024, no. 2679) - are illegitimate and must be disapplied by administrations at any level, including municipal ones, requiring, even in such a case, the calling of a transparent, impartial and non-discriminatory selective procedure».

It follows, therefore, that all the national provisions which have introduced and continue to introduce, in systematic breach of European Union law, extensions of State-owned maritime concessions for tourist-recreational purposes must be disapplied because they are contrary to Article 12 of Directive 2006/123/EC and, in any event, to Article 49 of the Consolidated Law on the Functioning of the European Union, and in particular

(a) the extension provisions provided for on a generalised and automatic basis, and now repealed by Article 3, paragraph 5, of Law No. 118 of 2002 (Article 1, paragraphs 682 and 683, of Law No. 145 of 2018; Article 182, paragraph 2, of Decree-Law No. 34 of 2020, converted into Law No. 77 of 2020; Article 100, paragraph 1, of Decree-Law No. 104 of 2020, converted into Law No. 126 of 2020);

(b) the most recent extensions introduced by Articles 10-quater, paragraph 3, and 12, paragraph 6-sexies, of Law Decree No. 198 of 2022, inserted by Conversion Law No. 14 of 2023 and by Article 1, paragraph 8, of the same Law No. 14 of 2023, which introduced paragraph 4-bis to Article 4 of Law No. 118 of 2022.

Moreover, the ruling states how no constitutional protection of the legitimate expectations of the current concession holders can be invoked, given that the application of Dir. 2006/123/EC and/or art. 49 T.F.U.E. to the sector of State maritime concessions for tourism and recreational purposes requires the immediate opening of the market, where the resource is scarce or where, even if the resource is not scarce, the individual concession is certainly of cross-border interest, and any requirement related to the current concession holders' legitimate expectations certainly cannot justify automatic extensions or the postponement of the tender procedures.

Council of State, Section II, non final judgment 7 March 2024, no. 2228 – Building works not completed after expiry of the building permit. Applicable discipline. Forfeiture. Abusiveness.

With the judgment in question, the Council of State referred to the Plenary Assembly of the Council of State the question as to which legal regulation is applicable to works partially executed under a lapsed building permit and which have not been completed by virtue of a new building permit.

In particular, as observed by the referring judge, «*the jurisprudence of this Council has repeatedly expressed itself on this issue, stating that the forfeiture of the building permit due to failure to complete the works within the time limits - i.e. for a fact attributable to the holder and relating to the manner of use/unuse of the permit - is effective ex nunc and not ex tunc and therefore does not imply the obligation to order the demolition of the works carried out during the period of validity of the building permit (which, therefore cannot be held to be unauthorised) - where they comply with the project approved with the building permit - but merely entails the need, for the lapsed holder, to apply for a new permit to carry out the works that have not yet been completed; in the absence of an extension or renewal of the permit, works carried out after the lapse of the permit are unauthorised, which entails the legitimacy of the demolition order only for what has been carried out after the lapse of the permit, but not for what has been carried out previously (Council of State sez. VI, 27/06/2022, n.5258, 19/03/2021, ord no. 1377 and therein recalled. Cons. St., IV, 6 August 2019 no. 5588)*».

Otherwise, according to the court of first instance, «*although the permit lapses - once the deadline for completion of the works has expired in vain - only for the part not completed, the maintenance of the works presupposes the possibility of completing the work begun; otherwise, in the opinion* of the court of first instance, it *should be possible for the private holder of a building permit to abandon the unfinished work - especially if it is not functionally autonomous - with unjustified disfigurement of the surrounding context, especially if the work is in conflict with the urban planning regulations of the area*».

It was therefore necessary to refer the matter to the Plenary Assembly to resolve the jurisprudential conflict because there is no rule that explicitly states the regime of works partially executed that are not followed by the completion of the works by virtue of a new title.