



# INSURANCE AND REINSURANCE NEWSLETTER ITALY

## **NEW METHODS FOR NOTIFYING THE TAX REGISTER OF DATA CONCERNING CONTRACTS AND INSURANCE PREMIUMS – ITALIAN INLAND REVENUE MEASURES NO. 51770/2013 OF 30 APRIL 2013**

According to the measure of the Italian Inland Revenue (*Agenzia delle Entrate*) of 30 April 2013, insurance companies must notify data concerning natural persons who have paid life and accident insurance premiums, as well as data and information concerning the contracting parties of insurance contracts (excluding those concerning third party liability and accessory guarantees) through the **new Data Exchange System (*Sistema d’Interscambio Dati – SID*)**.

The deadline for sending the notifications concerning 2012 is 4 December 2013. Starting with the notifications concerning 2013, the deadline is 30 April of the following year.

The measure of the Italian Inland Revenue is intended to rationalize and update the technical structure of notification records, introducing procedures to improve the transmission flows and quality control of data.

## **ILLEGAL DATA EXCHANGE AMONG INSURANCE COMPANIES – PROOF OF THE DAMAGE – COURT OF CASSATION JUDGMENT NO. 14027/13**

With judgment no 14027 of 4 June 2013 the Court of Cassation ruled on the issue of the proof of the damage incurred by a consumer as a result of unfair competition by an insurance company which resulted in the consumer having to pay higher motor third party liability insurance premiums than would have been required had the offence not been committed.

The judgment in question follows from Measure no. 8546/2000 of the Italian Antitrust Authority, which asserted that “...*the exchange of information [on motor third party liability insurance] among several insurance companies considerably exceeded the purposes – both legal and physiological for companies in this sector – of notifying each other of significant data for the determination of the **pure premium** (i.e., the portion of the premium which is proportionate to the nature and amount of risks) to include sensitive data, which contribute to determining the amount of the **commercial premium**: that is, the premium effectively agreed in the policy, which includes, in addition to the pure premium, taxes, mark-ups for costs and overheads and, above all, the company’s*

profit... This enabled the participating companies to “quickly set up... a collusive market balance, even without explicit price agreements” and to “adjust their strategies for the purpose of achieving a price balance associated with the highest joint profit for the industry as a whole, with serious damages to the correct operation of the market and to consumers...”.

According to the Court “...if it is true that the burden of providing the proof of the causal link [between the offence and the damage] is generally borne by the damaged party, it is also generally accepted that the proof may be provided through serious, precise and consistent presumptions, pursuant to [articles 2727 and 2729 of the Italian Civil Code](#), and that the grounds for Measure no. 8546/2000 of the Italian Antitrust Authority include numerous assessments and findings, based on the data acquired during the preliminary investigation that preceded its decision, which at least offer **assumptive proof of the disputed causal link**...”.

Thus, should the insured produce in legal the insurance policy and the administrative measure that ascertained the illegal agreement, **the court may deduce the existence of a causal link between the offence and the damage also using criteria of high logical likelihood and through presumptions, unless the insured provides suitable evidence to the contrary.**

In the case in point, the insurance company involved only provided generic indications of the circumstances that allegedly provoked an increase in the cost of motor third party liability policies, without providing any concrete, specific references to the method of formation of the insurance rates, before, during and after the years in which the conduct sanctioned by the Italian Antitrust Authority occurred, or concrete information on the structure and amount of the costs in relation to those of the previous period or those in force on the European market.

### **THE RETURN OF MANDATORY CIVIL MEDIATION – ITALIAN LEGISLATIVE DECREE NO. 69 OF 21 JUNE 2013**

Article 87 of the recent Italian Decree Law no. 69 **reintroduced mandatory civil mediation** for disputes, which had been covered by Italian Legislative Decree no. 28 of 4 March 2010. This includes **disputes on insurance matters** (with the exception of motor third party liability litigation).

Furthermore, the various changes made by the Italian Decree Law in question include the introduction of article 185-*bis* into the Italian Code of Civil Procedure,

which **requires the Court to “...formulate a proposal for amicable settlement or arrangement to the parties...”**, also specifying that “...the rejection of the proposal made by of the Court, without a justified reason, shall constitute conduct that may be considered...for the purposes of the ruling”.

The new provisions concerning mandatory mediation shall enter into force on the thirty-first day following the entry into force of the law converting Decree Law no. 69.

### **PERSONAL MINOR INJURIES – ARTICLE 139 OF THE ITALIAN INSURANCE CODE – DECREE OF THE MINISTRY OF ECONOMIC DEVELOPMENT OF 6 JUNE 2013**

The Ministry of Economic Development has updated the **parameters for determining personal injury as a result of minor injury** deriving from motor vehicles and vessels accidents pursuant to article 139 of the Insurance Code.

Starting from April 2012, the amounts set forth in subsection 1 of article 139 of the Insurance Code (most recently recalculated by Ministerial Decree dated 17 June 2011) shall be updated as follows:

- €783.33 – the amount for the first point of invalidity (permanent personal injury);
- €45.70 – the amount for each day of complete disability (temporary personal injury).

The parameters for determining personal injury as a result of non-minor injury (pursuant to article 138 of the Insurance Code) are still to be determined. For the purposes of quantifying said damage, reference must currently be made to the tables applied by the leading Courts, including those applied by the Court of Milan, recently recognised as generally applicable by the Court of Cassation (judgments no. 12408/11 and 19376/12).

### **LIABILITY OF NOTARIES – COURT OF CASSATION, JUDGMENT NO. 14865 OF 13 JUNE 2013**

The Court of Cassation has returned to the issue of liability deriving from the performance of notary work, affirming that: “...for the notary assigned to prepare and draw up a public deed of transfer of real estate, the advance verification of the freedom from encumbrances and availability of the asset and, more generally, the data from the real estate registries constitutes an obligation deriving from the assignment granted by the client and, thus, is included in the performance of professional services. Even though the contract for professional performance may be entered into by only one



of the parties to the contract the notary is certifying, specifically due to said function of the notary's activities, creditors entitled to correct performance of notary services shall thus be all the parties to the contract being drawn up. In this case, in relation to the party that did not request the contract be drawn up, the contract for professional performance of the notary shall have the effects of a contract in favour of a third party, and, as a result, the latter party may directly enforce against the notary...its right to correct performance...".

Therefore, the Court continues, "...only the joint

agreement of the parties, not just the will of the party that concluded the contract for intellectual property services with the notary (and was responsible for payment of the consideration) may exonerate the notary from carrying out the accessory and subsequent activities required to achieve the result desired by the parties and, specifically, from carrying out the "searches of land registry records" and mortgage records for the purpose of exactly identifying the asset and verifying that it is free from encumbrances...".

## KEY CONTACTS



### Francesco Cerasi

Partner – Rome  
T +39 06 688801  
francesco.cerasi@dlapiper.com



### Bruno Giuffrè

Partner – Milan  
T +39 02 806181  
bruno.giuffre@dlapiper.com



### David Marino

Partner – Milan  
T +39 02 806181  
david.marino@dlapiper.com

## OTHER CONTACTS

### Mauro Carretta

Senior Associate – Milan  
mauro.carretta@dlapiper.com

### Marco Dimola

Senior Associate – Milan  
marco.dimola@dlapiper.com

### Karin Tayel

Associate – Milan  
karin.tayel@dlapiper.com

### Sara Sparagna

Associate – Rome  
sara.sparagna@dlapiper.com

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

If you would like further information, please e-mail [daniela.marinaro@dlapiper.com](mailto:daniela.marinaro@dlapiper.com).

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

 [@DLA\\_Piper\\_Italy](https://twitter.com/DLA_Piper_Italy)

[www.dlapiper.com](http://www.dlapiper.com)

In Italy DLA Piper is the trading name of Studio Legale Tributario Associato. DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at [www.dlapiper.com](http://www.dlapiper.com)

Copyright © 2013 DLA Piper. All rights reserved. | JUL13 | 2596167