RSM STUDIO PALEA LAURI GERLA

Associazione professionale di Studio Palea, Studio L4C, Studio Gerla Associati

TAX NEWS

2018 – 10

RSM

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FOCUS ON TAX AND ACCOUNTING TOPICS

Updates about electronic invoicing

(Italian Tax Authorities, Measure of November 5th)

As is well known, the "revolution" of electronic invoicing will begin on January 1st, 2019.
Following the ideas of the past few months, please find below the events that have occurred in recent weeks on the subject, considering that also in the coming weeks other changes (both regulatory and interpretative) are expected.

Amendments under discussion

The Parliament is carrying out the legislative activity aimed at amending some sections of the regulations, both in view of the conversion of the so-called "Tax Decree" (Decree Law no. 119/2018) and within the approval of the 2019 Budget Law. Although the picture of the new developments is entirely *provisional*, please find below the main ideas offered in the parliamentary debates and in the parliamentary Committees on Budget and Finance:

- Moratorium on sanctions (up to September 2019?).
- Exclusion from electronic invoicing of transactions carried out with subjects not resident and *identified* in the territory of the State.
- Possibility to issue the invoice within 10 days after the time the transaction is carried out, indicating on the invoice also the date on which the transaction has been carried. If the invoice is issued in the first ten days of the month with reference to a sale or supply made in the previous month, the VAT due is then charged in the settlement of the previous month.
- Repeal of the obligation of progressive numbering of invoices.
- The taxpayer must make a note of the invoices issued by the 15th day of the month following the month in which the transaction was carried out and with reference to the same month.
- By the 16th of each month, the right to deduct the VAT relating to the purchase documents received and recorded by the 15th of the month following the one in which the transaction was carried out may be exercised (the rule does not apply to the "change of year", and therefore to the January notes/records relating to transactions carried out in December).

Issuing of November Measures

With the issuing of the Provision on November 5th, the procedures for the conferring/withdrawal of *proxies* for the use of electronic invoicing services were regulated.
On the assumption that the number of people involved in the electronic invoicing process is very large and that the expected invoice volumes will be significant, the Italian Tax Authorities:

- have created a service that allows intermediaries to send (both massively and punctually), a special *electronic communication*, aimed at activating the powers granted to them. The maximum duration of the proxy conferred is set at 2 years from the date of undersigning of the proxy form;

- have provided for a further procedure for the acquisition and management of the proxies, providing that the subjects who can certify the undersigning of the proxy send, through PEC (i.e. certified email address), a file containing the essential elements of the proxies granted, as well as a copy of the paper proxies, which they are required to acquire in advance, duly completed and undersigned and to keep them, in hard copy, in order to allow the appropriate checks by the Italian Tax Authority;

- have approved, in order to facilitate the taxpayer's compliance and to standardize the behavior of the intermediaries, with the measure of November 5th , a specific form for the conferring/revocation of the proxy for electronic invoicing services.

The findings of the Italian Data Protection Authority (i.e. Garante)

On November 15th the Garante "warned" the Italian Tax Authorities that the new obligation of electronic invoicing, as currently regulated,

"is characterized by significant critical issues with regard to compatibility with the legislation on the protection of personal data".

For this reason, the Garante has asked the Italian Tax Authorities to urgently state how they intend to bring the processing of data that will be carried out for the purposes of electronic invoicing into line with the Italian and European legislative framework.
From ministerial sources it emerged that in the Budget Law 2019 corrective measures will be introduced in order to adjust the observations of the Garante, without however changing the start date of January 1st, 2019 (if not, perhaps, for some categories such as doctors and pharmacists).

Updating of the thematic area of the Italian Tax Authorities

The portal on electronic invoicing set up by the Italian Tax Authorities is constantly evolving, given the continuous innovations in this field.

To such an extent, it shall be noted that in this portal (www.agenziaentrate.it), it is possible, among other things to:

- have access to a specifically dedicated thematic area;
- download an operational guide;
- read numerous FAQs;
- have access to the portal "Invoices and fees";
- consult all the legislation and practice on the subject;
- view special tutorials and presentations

For further information, please contact:

Dr. Alessandro Carturani
RSM Studio Palea Lauri Gerla Milano
Foro Buonaparte, 67
20121 Milan
Tel: (+39) 02.89095151 Fax: (+39) 02.89095143 email alessandro.carturani@rsm.it
www.rsm.it.

DEADLINES – NOVEMBER 2018

- this list is not comprehensive of all tax deadlines; the most recurrent administrative deadlines have been omitted

- From January 1st, 2014, the compensation limit has increased from Euro 516.456 to Euro 700.000.
  Please remind the following limitations applicable to compensations:

  - ☐ in terms of VAT
  - ☐ in terms of taxes on income and IRAP
  - ☐ in the presence of tax debts entered on the tax roll and expired for amounts exceeding Euro 1,500

Friday 30th

Payments on account 2018

The carrying out by natural persons of the second payment on account (or single instalment) of IRPEF for 2018 resulting from 2018 tax return

In order to determine whether or not the IRPEF payment on account for 2018 is due, it is necessary to check the amount indicated in the section "difference" in the 2018 tax return form: if this amount does not exceed € 52, no payment on account is due, while if it is higher, the payment on account is due at 100% of its amount.
Please note that the payment on account thus determined must be carried out:

- ❑ in a lump sum by November 3th , 2018, if the amount due is lower than € 257,52:

- ❑ in two instalments, if the amount due exceeds Euro 257,52 of which:

  - ❑ the first one, for the amount of 40% by June 3th , 2018;
  - ❑ the second one, for the remaining amount 60%, by November 30th, 2018.

If the taxpayer expects a lower tax to be paid in the following tax return, he may determine the payments on account to be made on the basis of that lower tax ("forecast method").

For the subjects involved, by the above date the second payment on account related to the "flat tax", substitute taxation on income from real estate lease or the various substitute taxes for IRPEF (e. g. IVIE-IVAFE) should also be made.

Second payment on account (or single instalment) of IRES by the parties required to fill in the Income form 2018 for corporations with tax period corresponding to the calendar year

The payments on account of IRES for 2018 are made in 2 instalments, provided that the payment to be made does not exceed € 103; in fact, if the amount of the "difference" section does not exceed this amount, the payment must be made in a single instalment by November 30th,2018.
The percentage of the payment on account is determined at 100% of the amount indicated in the "difference" section of the 2018 Income Return, if the amount indicated in this section does not exceed

the amount of Euro 20.66, the IRES payment on account is not due.
40% of the payment on account due shall be paid on expiry of the first instalment and the remaining amount on expiry of the second instalment.
The payment shall be made, respectively:

- for the first instalment, within the deadline for the payment of the balance due on the basis of the return for the previous tax year, taking into account that this first instalment may be paid within the thirtieth day following the normal deadline, increasing the amounts to be paid by 0.40% as interest due;

- for the second instalment, in November, with the exception of the one due by subjects whose tax period does not coincide with the calendar year, who pay this instalment by the last day of the eleventh month of the same tax period.

Please note that if the option for *national or worldwide tax consolidation* is exercised, only the consolidating company is required to pay the payment on account.

Also for parties subject to IRES the rule, according to which the taxpayer who forecasts a lower tax to be declared in the following tax return, can determine the payments on account to be made on the basis of this lower tax, shall apply.

IRAP payment on account

The IRAP payment on account for the tax period in progress as at December 31st, 2018 is due for the amount of 100% of IRAP2017.

Scrapping of tax bills and tax litigations – instalment payment

With reference to the two forms of amnesty mentioned above, and in the case of an option for instalment payment, by the above date the payments of the amounts due (depending on the instalment plan chosen) shall be carried out.

FOCUS ON EMPLOYMENT

(IN COLLABORATION WITH DE LUCA & PARTNERS AND HR CAPITAL IN MILAN)

DID YOU KNOW THAT ...

the new regulations governing fixed-term contracts will enter into full effect on 1 November?

The transition period ended on 31 October 2018. It allowed for alignment to the new regulations governing fixed-term contracts, as introduced with Decree Law 197/2018, (the "Dignity Decree"), which was then converted into Law 96/2018. In particular, the Dignity Decree had provided that the new provisions would be applicable to renewals and extensions after 31 October 2018. Essentially, the new provisions will enter into full force on 1 November 2018. This means that a contract may be without specified reason in its initial 12 months, but thereafter specific reasons must be indicated, as failure to do so automatically transforms the contract into an open term one. The contract (i) may be freely extended for the first 12 months but thereafter, extensions must be supported by specific reasons and (ii) can only be renewed in the presence of specific reasons, regardless of its duration. Violation of these rules will also automatically transform the contract into an open term one. The contract's duration cannot exceed 24 months (previously the limit was 36 months) and it can be extended up to 4 times (as compared to 5 times previously).

JUDGEMENT OF THE MONTH

First disapplication of the increasing protections after the Constitutional Court's ruling

On 26 September 2018, the Constitutional Court announced in a press release that it had declared art. 3 of Legislative Decree 23/15 ("*Provisions governing open term increasing protections employment contracts implementing Law no. 183, 10 December 2014*") constitutionally unlawful in the part that is not amended by Legislative Decree 87/2018 (the "Dignity Decree"), converted into Law 96/2018, which determines in a rigid manner the indemnity due to a worker who has been unjustifiably dismissed. This is because, as the press release specifies, providing for an increasing indemnity only in relation to the worker's seniority "*is contrary to the principles of reasonableness and equality, and contradicts the law and the employment protection set out by Articles 4 and 35 of the Constitution.*" Pending publication of the judgement, with order 7016 dated 11 October 2018, the Court of Bari decided to disapply the calculation criterion that was declared to be unconstitutional.

<u>The ruling of the Labour Court</u>

The Labour Court of Bari, having to establish whether the dismissal of a worker employed under the Jobs Act following the conclusion of a collective dismissal procedure was unlawful, declared the employment relationship terminated and ordered the former employer company to pay an indemnity equal to 12 monthly pays based on the worker's last salary used for the calculation of the severance indemnity, instead of the 4 monthly pays the worker would have been entitled to based on his 1.5 year seniority.

In particular, in reaching this decision, the Court indicated that:

- pursuant to Article 10 of Legislative Decree 23/2015 "*(...) In the event of violation of the procedures indicated in Article 4, paragraph 12 or of the selection criteria under Article 5, paragraph 1 of Law 223/1991, the regime under Article 3, paragraph 1 will apply*";
- Article 3, paragraph 1, of Legislative Decree 23/2015 states the following: "*Without prejudice to the provisions of paragraph 2, in cases where it is ascertained that the grounds for dismissal for a*

justified objective reason or for a justified subjective reason or for just cause are lacking, the Court shall declare the employment relationship terminated as of the dismissal date and shall order the employer to pay an indemnity which shall not be subject to social security contribution equal to two months of the last salary used for calculation of that employee's severance indemnity for each year of service, but which shall nevertheless be no lower than four and no higher than twenty-four monthly pays";

- for workers who are subject to the regime set by the Fornero Law, failure to observe the procedures in question leads to the "*high indemnity*" protection under Article 18, par. 7, third sentence of Law 300/1970, which in turn refers to paragraph 5 of the same article. In particular, (i) paragraph 7 provides that: "*in the other cases in which the Court ascertains that the grounds underlying the aforementioned justified reasons are lacking, the provisions under paragraph five shall be applied. In this latter case, to determine the indemnity within the minimum and maximum amount provided, the Court shall also consider, in addition to the criteria under paragraph five, the initiatives taken by the worker to find new employment and the conduct of the parties in the procedure under Article 7 of Law 604 of 15 July 1966, as subsequently amended*" and (ii) paragraph 5 states that "*In the other cases in which the Court ascertains that the grounds for a justified subjective reason or just cause alleged by the employer do not apply, the Court shall declare the employment relationship terminated as of the dismissal date and shall order the employer to pay a comprehensive indemnity of at least twelve and at most twenty-four monthly pays, based on the last comprehensive salary actually received by the worker, in relation to the worker's seniority and in consideration of the number of staff employed, the size of the economic activity, the conduct and conditions of the parties, while a specific reason must be provided in that respect*"). In fact, this protection was invoked by the worker in the conclusions stated in his appeal;
- as the worker was hired under the Jobs Act, the provisions of Legislative Decree 23/2015 will undoubtedly apply, but not the new provisions introduced by the Dignity Decree, which most recently amended Article 3, paragraph 1 of Legislative Decree 23/2015, increasing the amount of the indemnity (now between six and thirty-six monthly pays). This is because the dismissal in question was enforced prior to the entry into force of the Dignity Decree.

Therefore, in the Court's opinion, the worker would have only been able to hope for an indemnity of 4 monthly pays, based on the last salary used for the calculation of the severance indemnity. Despite this, the Court considers that account still must be taken of the Constitutional Court's decision.
In consideration of the above, the Judge concludes that "*while taking into account that "The rules declared to be unconstitutional cannot be applicable from the day following publication of the ruling " (Article 30 par. 3 of Law 87/1953, pursuant to Article 136 par. 1 of the Italian Constitution), and that such publication has not yet occurred in this case, Article 3 par. 1 should be interpreted with a constitutional orientation, as still applicable (presumably for just a few days), setting the indemnity payable to the unjustly dismissed worker of a minimum of 4 and a maximum of 24 monthly pays, based on the previously mentioned criteria of Article 18 par. 5 of the Italian Workers' Statute, which is in turn referenced in Article 18, par. 7, that is "in relation to the worker's seniority and in consideration of the number of staff employed, the size of the economic activity, the conduct and conditions of the parties.*"
In determining that the indemnity due to the worker would amount to 12 monthly pays, the Court considered, in addition to the worker's seniority, also other criteria such as (i) the considerable seriousness of the procedural omission (within the collective dismissal procedure), (ii) the low number of staff employed by the company and (iii) the size of the company's economic activity.

CASE LAW

Working hours and lunch breaks for part time workers

With its judgement no. 21562 filed on 3 September 2018 (decision in camera on 13 March 2018), the Court of Cassation examined the issue of breaks at work (in the case in question, the lunch break), with specific attention paid to the case of a part time worker.

The Facts

An employee hired under a part time employment contract appealed to the Labour Court to ascertain his right to payment for hours worked over and above the working hours contractually agreed upon (which were 30 hours, as compared to the standard 37.5 hours of work per week), including, inter alia, the 30-minute lunch break which was unilaterally imposed by the employer subsequently to the beginning of the relationship. The Court rejected to worker's claim. The worker filed an appeal against this first instance ruling. The local Court recognised the worker's entitlement to receive the additional pay for the overtime work, but did not include the 30-minute lunch break in the calculation of the working hours. In confirming the first instance ruling in regard to the claim for indemnity connected to the late notification of the shift schedules, the Court pointed out that, conversely to what he had claimed in his own defence brief, the worker had not submitted the applicable regulatory and contractual sources indicating that there did in fact exist an obligation to promptly notify the shift schedules. As if that did not suffice, according to the Court of Appeal, the worker had neglected to submit specific facts that would indicate the alleged violation of the principles of fairness and good faith in the performance of the contract, nor had he identified specific monetary and non-monetary effects on his working and personal life that would have enabled the acknowledgement of the damage he was claiming indemnification for. The worker then resorted to the Court of Cassation, which rejected his claims.

Notion of working hours and breaks

To contextualise the case the Court of Cassation examined, one must start from the notion of working hours and outline the provisions which have been amended and revised over the last few decades. To date, it is Legislative Decree 66/2003, with its transposition of two EU directives (i.e., 93/104/EC and 2000/34/EC) that has dictated a regulatory framework applicable to working hours. Based on the legislation, working hours can be defined as "*any period in which the worker is at work and available for the employer and performs his or her activities and functions.*" Therefore, the remuneration obligation does not apply only when the employer can prove that the employee is free to act at will or is not subject to the hierarchic powers at the given time. In relation to said breaks, when such a break is provided during the work activity, if there is no express legislative (i.e., breaks for workers who work in front of video terminals) or contractual provision that considers such a break as part of the working hours, it is the worker's obligation to prove that the break is in some way connected or related to the work itself, and ordered by someone other than the worker, and is therefore not left to the worker's free choice.

The ruling of the Court of Cassation

In the ruling in question, the worker's appeal to the Court of Cassation essentially consisted of two main claims: (a) the first is related to the need to consider lunch breaks as part of working hours and (b) the second is related to the conduct of the employer, who had imposed a 30-minute lunch break after the beginning of the employment relationship.

Lunch break and working day

Concerning the first claim, the Court of Cassation recalled a now established principle (see, most recently, Court of Cassation 13466/2017) and reiterated the principle of law according to which working hours are nevertheless part of the "*time a worker spends at the company while pursuing the*

activities that are preliminary and ancillary to the duties assigned to that worker, in the strict sense (...). Therefore, in order to be exempted from the remuneration obligation, the employer must prove that to pursue said activities connected to his or her services the worker is free to act autonomously and is not subject to [the employer's] hierarchical power." That same Court of Cassation then indicated that "*lacking a legal or contractual provision that includes that period of time as being a break in the working hours (...) it is the worker's obligation to allege and prove that the break time is connected or related to his or her services, has been ordered by someone other than the worker and the duration of the break time is not left to the worker's free choice.*" The Court of Cassation underlined that in the case submitted to it, there was no legislative or contractual provision that would lead it to consider the lunch break as an integral part of the working hours (which would therefore require remuneration). Similarly, the Court observed that the worker had not proven that there existed a relation between his working activity and the lunch break during the working day. Consequently, the Court of Cassation found that the worker was not entitled to the claimed remuneration differences in regard to the lunch breaks.

Unilateral order to take a break by the employer

Regarding the second claim, the Court of Cassation deemed lawful the unilateral modification of the working hours ordered by the employer, with the introduction of a 30-minute lunch break. In fact, the Court of Cassation underlined that "*according to his or her specific requirements, the employer is obviously allowed to organise activities in shifts. Nevertheless, even if there are no specific legal or contractual provisions, these shifts must be notified to the workers reasonably ahead of time so as to allow them to arrange their plans ... The good faith in the performance of the contract lies, among other things, in a general obligation of solidarity that requires each party to act in such a manner as to protect the interests of the other party (...). Verification in practice of the violation of these duties of fairness shall be carried out by the court in charge that will rule on the basis of the allegations made by the parties.*" Therefore, according to the Court of Cassation, the mere introduction of a break or the organisation of the work in shifts cannot be considered as a change in status from full time to part time.

Conclusions

In conclusion, as expressed by the Court of Cassation in its judgement above, without prejudice to the legal and contractual exceptions and the possibility afforded to the worker concerned of proving the causality between the break and the pursuit of the work, a break is not considered to be part of working hours and is therefore not to be remunerated. Moreover, and again according to the reasoning followed by the Court, a break can be imposed by the employer, consistently with the organisation of the company and fulfilling contractual obligations fairly and in good faith, without requiring the consent of the worker, adequate notification being considered sufficient.

Verbal dismissal: appeal and time limit, a confirmation from the Court of Cassation

With its order 25561 of 12 October 2018, the Court of Cassation handed down its ruling on the time limits by which the dismissal of an individual announced verbally can be challenged. In fact, the concept according to which this type of dismissal is not subject to the 60-day time limit but the limitation period of 5 years, was reiterated.

The Facts

This case originates from an appeal filed to the Court of Cassation against a ruling of the Court of Appeal having jurisdiction, which had admitted the first instance ruling declaring that a dismissal announced verbally was not effective.

In particular, the local Court had, among other things, found that the appellant's complaint regarding the forfeiture of the worker's right to challenge the dismissal lacked grounds, as it considered that Article 6 of Law 604/1966 was applicable, in light of the uncontested verbal nature of the dismissal in question. The Court of Cassation reviewing the ruling rejected the appeal and ordered the appellant to pay the

court fees.
Here we will discuss the second of the two reasons put forth by the Court of Cassation, i.e. the alleged violation and/or incorrect application of Article 6 of Law 604/1966, as subsequently amended, and therefore the supposedly unlawful rejection of the preliminary objection relating to time limits, due to the lack of legal action.
According to the appellant, the court in charge had overlooked the lack of legal action against the dismissal within the time limits set by the law and, in any case, the lack of a formally valid legal action prior to the establishment of a ruling declaring the unlawfulness of the dismissal.

The ruling of the Court of Cassation
The legislative data which the Court of Cassation initially applied was precisely the above-mentioned Article 6, par. 1, as amended by Article 32 of Law 183/2010, which reads: "*the dismissal must be challenged within 60 days from receipt of its communication in writing or the communication of the reasons thereof, also in writing, under penalty of forfeiture, or where not simultaneous, by any written document, including an extra-judicial document which appropriately indicates the will of the worker (...)*". This legal action is considered to be ineffective if not followed by submission of an appeal to the Registry of the Court acting as Labour Court (Article 6, par. 2 of Law 604/1966), within 180 days.
In fact, with its order analysed herein, the Court of Cassation reiterated its own established principle (inter alia, Court of Cassation, Labour Section, Judgement no. 10547 of 20 May 2016; and Judgement 22825 of 9 November 2015), based on which the action aiming to render the verbal dismissal ineffective is not subject to the obligation to start an out-of-court action, due to the absence of a written document based on which the time limit for the appeal could be measured, pursuant to Article 6 above.
Therefore, in this case, as the verbal nature of the dismissal was not contested, the Court of Cassation ruled that the Court of Appeal correctly considered that the 60-day time limit under Article 6 of Law 604/1966 was not applicable, thereby making the dismissal subject only to the set limitation period.

Conclusions
Essentially, based on the ruling in question and the principle it was based upon, a worker who is dismissed verbally is not required to challenge the dismissal within 60 days (the time limit). A worker can therefore challenge it within the limitation period of five years from the time it is announced pursuant to Article 1442 of the Italian Civil Code.

Directors: waiver of remuneration must be specified in the contract

With its order 24139/2018, the Court of Cassation clarified that in order to render the office of a company's director gratuitous rather than remunerated, a lack of requests for payment is not sufficient, as a specific clause indicating the gratuitous nature of the director's services must be included in the contract or the company's articles of association.

The Facts
This case began from a request for payment made by a director of a limited liability company, which was accepted in the first instance, but rejected on appeal.
In particular, the director had claimed remuneration for the period he was in office from 2001 to 2006.
The Court of first instance had accepted the claim and recognised that remuneration was due. The Court of Appeal having jurisdiction for the action brought by the company had accepted the latter's claims, finding that the lack of a claim for remuneration, whether while the director was in office or after termination, constituted a waiver due to conclusive facts.
The Court of Cassation dealing with the director's appeal once again reversed the ruling and accepted the reasons put forth for the claim.

The ruling of the Court of Cassation

According to the Supreme Court the office of a director is presumed to be remunerated in accordance with Article 1709 of the Italian Civil Code, stating that: "*The office is presumed to be against remuneration. If not determined by the parties, the amount of the remuneration shall be determined based on professional fees or practices; in the lack thereof, it shall be determined by the court.*" By accepting the office, the director therefore acquires the right to receive remuneration and any failure to act, i.e. failure to claim the remuneration, while in office and upon termination, is not in and of itself sufficiently indicative of a tacit, valid and effective waiver pursuant to Article 1236 of the Italian Civil Code. This is because in this case no intention that was objectively incompatible with maintaining the right to be remunerated was detected. Finally, the Court underlines that, given the presumption of remuneration, the gratuitous nature of the office must be established expressly or through a specific provision in the company's articles of association or a specific agreement to this end with the Director.

Conclusions

The director of a company is entitled to receive remuneration for his or her service, which is presumed to be provided against remuneration. This is notwithstanding any failure to act by the director. The gratuitous nature of the office can therefore only ensue from an ad hoc arrangement.

PRACTICE

The European Data Protection Board "dialogues" with the Italian Data Protection Authority with regard to the DPIA

Background

Opinion 12/2018 adopted on 25 September 2018 by the *European Data Protection Board* or "EDPB", has recently been made public. The EDPB is the body that is mainly in charge of ensuring a uniform and consistent application of EU Regulation 679/2016 on the protection of natural persons with regard to the processing of personal data ("GDPR") in all member States. The EDPB succeeded the previous "*Working Party 29*" or "WP29" and has broader powers and new duties.

As part of its work of aligning the various internal practices, in the last few months the Supervisory Authorities of the member States submitted to the EDPB their list of "*types of data processing*" which require a prior "*data protection impact assessment*" (DPIA) as a condition for legality of the processing.

The Italian case

The list submitted by the Italian Data Protection Authority defines six types of processing that require that a DPIA be conducted beforehand. Specifically, these are:(i) processing of biometric data; (ii) processing of genetic data; (iii) processing carried out using innovative technologies; (iv) monitoring of employees; (v) "*further processing of personal data*" and (vi) processing that refers to a "*specific legal basis*".

The EDPB answered the Italian Data Protection Authority with its own observations, some of which were of a general nature while others were of a detailed "*prescriptive*" nature.

Specifically regarding the processing of biometric and genetic data or processing carried out using new technologies, the EDPB considers that this type of processing is not in and of itself able to create a clear risk to the rights and freedoms of the data subjects. In its opinion, for a DPIA to be required, the presence of at least one more of the nine cases listed in the "*Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679*" adopted by Working Party 29 and commonly referred to as the WP248 guidelines (e.g.: processing that enables judgement of an individual based on profiling; systematic monitoring; matching of various data sets) is necessary.

On the other hand, the EDPB agrees with the Italian Data Protection Authority when the latter claims that systematic monitoring of individuals that are in and of themselves vulnerable, such as employees, constitutes processing that requires a DPIA.

Prospects

In conclusion, it will be interesting to see how the Italian Data Protection Authority will proceed: if it decides not to follow the "prescriptions" provided by the EDPB, Italy could be the first to be involved in a new dispute resolution mechanism by the Board, with the so-called "consistency mechanism" pursuant to Articles 63, 64 and 65 of the GDPR.

For further information please contact:

Avv. Vittorio De Luca
De Luca & Partners
Largo A. Toscanini, 1
20122 Milan
Tel. +39 02 365 565 1 Fax +39 02 365 565 05 email: info@delucapartners.it;
www.delucapartners.it

or

Dott. Stefano Turchini
HR Capital
Gall. San Babila 4/B
20122 Milan
Tel. +39 02 365 930 1 Fax +39 02 365 930 00 email: info@hrcapital.it
www.hrcapital.it

RSM STUDIO PALEA LAURI GERLA

Milan office – Foro Buonaparte 67, 20121 – Milan
Tel +39 02 89095151
Fax +39 02 89095143

Rome – Via delle Terme Deciane 10 – 00153, (registered office and operating office)
Turin – Via Ettore De Sonnaz 19 – 10121 (operating office)

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