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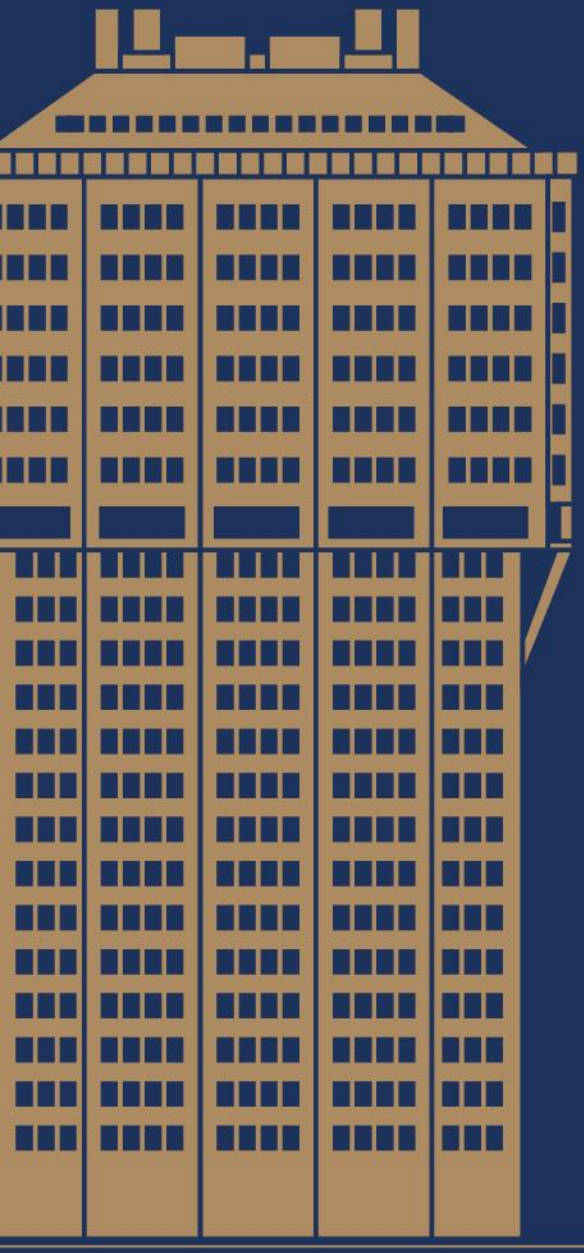
Real Estate News



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Highlights

Built-to-suit: the driving force behind growth in logistics properties

Sale of buildings to be demolished, contract for demolition works and VAT

The new authorisation framework for data centers in Italy

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On this edition

Real Estate

Built-to-suit: the driving force behind growth in logistics properties | *27 March 2026*

Built-to-suit as the driver of new logistics: Ivana Magistrelli, Partner of the Firm, wrote an article for Supply Chain Italy in which she explores how tailor-made real estate models are transforming development and investment strategies in the sector. Below is the full text of the article.

The Italian logistics real estate market closed 2025 with investments of around €2.2 billion, marking a 31% increase compared to the previous year.

At the heart of this growth is a phenomenon that has firmly taken hold: built-to-suit ("**BTS**"), namely the construction of warehouses designed and built entirely around the needs and requirements of the future user. Modern logistics is no longer about standard warehouses. The acceleration of e-commerce, the growing complexity of supply chains and the competitive pressure on delivery times have transformed the warehouse from a simple storage facility into a truly strategic infrastructure which, as such, cannot be fitted into pre-existing spaces. The features required by major operators are often impossible to find in existing stock: internal heights allowing for high-density racking, flooring with certified load-bearing capacity and flatness, the number and size of loading bays proportionate to handling volumes, automation systems integrated from the structural design phase, and electrical systems sized for robots and automated picking systems.

Added to this are ESG environmental certifications, which are now required by both tenants and investors. Demand for BTS properties mainly comes from third-party logistics operators (3PLs) and large retailers. A long-term lease agreement — typically lasting between ten and fifteen years — is the condition that allows the developer to start construction. The lease agreement initially takes an atypical form, as it becomes a hybrid instrument between a construction contract and a lease. BTS rents are structurally higher than those of a standard warehouse of the same size: they reflect the specificity of the investment, higher construction costs, and the risk taken on by the developer for an asset optimized for a single user. The limited availability of land in logistically strategic areas further increases pressure on values.

Once completed, a BTS warehouse becomes a highly attractive financial instrument. The tenant pays fixed rent for ten or fifteen years: for a real estate investment fund, this amounts to a stable and guaranteed cash flow. Growth in the logistics market is driven by the constant search for assets by specialized investors, as well as by sale-and-leaseback structures. Sale-and-leaseback represents the most sophisticated form of this cycle. The tenant — a major distributor, a 3PL operator, or an e-commerce player — develops its own warehouse and then sells the property to an institutional investor, while continuing to use it under a long-term lease agreement. Lease payments are tax-deductible, generating cash flow advantages that make the transaction economically rational on several levels.

The technical features that make a BTS facility "tailor-made" are not specific to any single operator: they are the standard of modern logistics, sought after by 3PLs, e-commerce operators, retail distributors and pharmaceutical platforms. This specialisation is not an obstacle

to relocation: it is a marketable asset. In a market where demand for high-quality logistics space structurally exceeds supply, finding a new tenant is rarely the main issue. A tailormade warehouse becomes, over time, a mature and liquid asset — capable of serving multiple generations of tenants and adapting to needs that do not yet exist today. Not a warehouse that ages, but an infrastructure that lasts.

There is a prejudice that still persists within local administrations: the perception that a logistics warehouse is a second class asset in terms of local attractiveness, a facility to be tolerated rather than actively pursued. A new-generation BTS warehouse is a green facility with careful energy management. It generates direct and continuous employment, with a widespread and measurable impact on the local area. Logistics supports physical flows that no digitalization can replace: medicines in hospitals, goods on store shelves, parcels delivered the same day. Recognizing this role in urban planning is not a step backward toward the industrial economy of the past; it is a strategic choice for the present.

Tax

Student housing, PNRR funding and tax incentives for deeds relating to student accommodation | *11 March 2026*

The Italian Tax Authority has addressed the exemption from registration tax and stamp duty applicable to deeds relating to properties intended for student accommodation in the context of projects financed under the National Recovery and Resilience Plan (PNRR).

Article 1-*bis*, paragraph 10, of Law no. 338/2000 provides for an exemption from registration tax and stamp duty for deeds concerning properties intended for university student housing entered into in connection with proposals admitted to PNRR funding.

The case addressed in ruling no. 60 of 3 March concerns an operator that applied to the Ministry of Universities and Research ("**MUR**") for PNRR funding and intends to acquire a property to be used as student accommodation as part of a transfer of a business unit.

With regard to deeds for the acquisition of real estate, the tax incentive essentially applies to purchasers acquiring properties from private individuals or properties included in a business unit. In both cases, the transaction falls outside the scope of VAT and, in the absence of the above-mentioned tax relief, would ordinarily be subject to proportional registration tax (9%) and stamp duty.

The Tax Authority clarifies both the scope of application of the tax relief and the timing requirements for the real estate deed in order to benefit from the exemption.

The transfer of a business unit including a property intended for student accommodation may fall within the category of deeds concerning properties intended for university student housing entered into in connection with proposals admitted to PNRR funding. Accordingly, such a deed may benefit from the exemption from registration tax and stamp duty, limited to the portion relating to the property intended for student accommodation.

A timing requirement also applies: the tax relief applies only to deeds executed after admission to the PNRR funding pursuant to Article 2 of Ministerial Decree no. 481 of 2024. Conversely, deeds executed after the submission of the application to the MUR but before admission to PNRR funding would not benefit from the exemption from registration tax and stamp duty.

Specifically, the ruling states that "*once the applicant becomes the recipient of the public funding in question and, therefore, where the proposal has been admitted to funding pursuant to Article 2 of the above-mentioned Ministerial Decree no. 481 of 2024, the applicant may benefit from the tax incentives provided for under Article 1-bis, paragraph 10 of Law No. 338 of 2000 and, in particular, from the exemption from stamp duty and registration tax*".

The interpretation provided in the ruling regarding the timing requirement does not appear entirely convincing. The ruling appears to rely mainly on Article 18 of Ministerial Decree no. 481 of 2024, according to which "*entities responsible for projects admitted to funding benefit from the applicable tax incentives*", including those provided for under Article 1-*bis*, paragraph 10.

However, there are systematic arguments supporting the application of the tax relief also to deeds executed after the submission of the application for PNRR funding and before the formal admission to the funding.

For instance, the statutory provision introducing the tax incentive (Article 1-*bis*, paragraph 10 of Law no. 338/2000) refers to deeds entered into "*in connection with*" proposals admitted to PNRR funding, without expressly requiring that the deed be executed only after the formal admission to funding.

Moreover, the applicable rules provide for the revocation of the tax incentive where certain requirements cease to be met after admission to PNRR funding. This mechanism appears consistent with a tax relief potentially granted to deeds executed during the period between the submission of the application to the MUR and the formal admission to PNRR funding.

According to the current position of the Tax Authority, as expressed in the ruling, deeds relating to properties intended for student accommodation executed between the submission of the application and the formal admission to PNRR funding would not qualify for the tax incentive, even if the property were subsequently admitted to PNRR funding.

This issue directly affects the scope of application of the tax relief. Limiting the benefit only to deeds executed after admission to PNRR funding may, in practice, significantly reduce the effectiveness of the tax incentive.

Sale of buildings to be demolished, contract for demolition works and VAT | *5 March 2026*

The Italian Supreme Court has addressed the criteria for distinguishing, for VAT purposes, between the sale of a building and the sale of building land. The decision focuses on the criteria to determine whether the transfer of buildings intended for demolition should be treated, for VAT purposes, as the sale of a building or as the sale of building land.

This distinction is relevant for VAT purposes because the sale of building land is always subject to VAT at the standard rate of 22%, without the application of the reverse charge mechanism. By contrast, the sale of buildings may be subject to VAT under the reverse charge mechanism.

The case concerned a property sale in which the demolition of the existing building was already envisaged at the time of the notarial deed. The parties treated the transaction as subject to VAT under the reverse charge mechanism, meaning that VAT was not charged in the invoice in addition to the purchase price.

The Tax Authority subsequently reclassified the transaction as the sale of building land, leading to the application of VAT at the 22% rate. This reclassification was upheld by the second-level Tax Court.

While referring the case back to the lower court for a decision on the specific facts, the Supreme Court clarified the interpretative criteria to be used in determining, for VAT purposes, the nature of the asset transferred in cases involving buildings intended for demolition, taking into account the case law of the Court of Justice of the European Union on VAT.

The Court made three observations that are particularly relevant from a practical tax perspective:

(i) The key issue is whether the demolition of the building located on the land constitutes an operation independent from the sale or whether it is so closely linked to it that the two transactions should be treated as a single supply for VAT purposes.

(ii) The purchaser's intention to demolish the building and construct a new one, even if recorded in the preliminary agreement, is not in itself sufficient to establish that a single supply exists. Consequently, such intention alone is not sufficient to reclassify the object of the transfer as building land rather than a building for VAT purposes.

(iii) If the sale is accompanied by the conclusion of a contract for demolition and reconstruction works, the contractual arrangements must be analysed carefully. In particular:

  (a) if the demolition contract is entered into by the purchaser, the demolition should generally be regarded as independent from the property transfer for VAT purpose

  (b) if the demolition contract is entered into by the seller, this circumstance may lead to the transaction being treated as a single supply for VAT purposes, in which case the transaction may be qualified as the sale of building land (subject to VAT at 22% without reverse charge) rather than the sale of a building (which may be subject to VAT under the reverse charge mechanism, subject to certain conditions)

The judgment does not address the cadastral classification of the property.

In this respect, it should be noted that, according to the Tax Authority (Ruling of 7 November 2022, no. 554), the transfer of buildings classified in the land register under category F/2 (derelict buildings) is subject to:

- VAT at the 22% rate, without the possibility of applying the reverse charge mechanism, as a transfer of a generic asse
- registration tax, mortgage tax and cadastral tax in the fixed amount of EUR 200 each

In such cases, therefore, the same VAT regime applicable to the sale of building land applies.

This treatment is based on the fact that such properties do not qualify as residential or instrumental buildings for VAT purposes, since they cannot be used as real estate units due to their severe state of disrepair. These typically include abandoned or unusable buildings (see Circular of the Italian Land Registry Agency no. 2 of 9 July 2010).

This concerns the VAT regime and transfer taxes, without prejudice to the fact that, from a contractual standpoint, the object of the transaction remains the buildings as identified in the Land Register.

MLBO transaction costs and VAT | *27 February 2026*

With Resolution no. 7 of 12 February 2026, the Italian Tax Authority confirmed the deductibility of VAT on transaction costs incurred in MLBO transactions, thereby superseding its previous contrary interpretation.

Key takeaways from the Resolution no. 7/2026 include the following:

(a) SPV entities in merger leveraged buy-out transactions may deduct VAT on transaction costs and consequently recover such tax burden, as such costs derive from activities forming part of an economic activity for VAT purposes under the EU VAT Directive and ECJ case law.

(b) Past transactions where VAT was not deducted: opportunity to file amended VAT returns and claim VAT refunds, subject to applicable statute of limitation.

(c) The Italian Tax Authority has reversed its previous restrictive approach, which treated SPVs (BidCo, NewCo) as passive holding companies, now recognizing that such entities perform a preparatory role for future taxable economic activity to be carried out after merger completion.

(d) This approach is consistent with recent case law and market practice prior to the Italian Tax Authority's guidance.

(e) Transaction costs incurred by SPVs are considered preliminary investment expenses enabling future transactions of the merged entity.

The issue arose from the interpretation set out by the Tax Authority in Circular no. 6/E of 30 March 2016, subsequently reiterated in Public Opinion no. 17/E of 17 June 2019.

According to such view, the SPV (or BidCo or NewCo) in a MLBO cannot qualify as a "passive person" for VAT purposes, *i.e.*, as a person that actual exercises an economic activity.

Consequently, SPV was treated as a passive holding company, that, under Italian VAT law, does not qualify as VAT taxable persons where the activity consists only in the mere holding of financial assets without any commercial activity.

This resulted in VAT being non-deductible, increasing overall transaction costs in contrast with the VAT neutrality principle.

The Italian Tax Authority amended its view in light of the ECJ case law (*e.g.*, decision of November 12, 2020, Case C-42/19, Sonaecom SGPS SA) according to which the principle of VAT neutrality requires that the first investment costs incurred for the purpose of starting a taxable

economic activity be considered as themselves expressing economic activities that confer the right to deduction.

It also considered the case law of the Italian Supreme Court (see Supreme Court, Section V, 9 August 2024, no. 22608 and Section V, 9 August 2024, no. 22649).

Given that, in the context of MLBOs, SPVs are established not merely to hold equity interests for the medium/long term, but to enable the investment, the transaction costs can be considered as costs that are preparatory to the commencement of the target company's economic activity and therefore deductible for VAT purposes.

The SPV has a "preparatory" and "preliminary" role in the exercise of the economic activity that will be carried out as a result of the acquisition of the target company, following the reorganization achieved through the MLBO. The SPV, therefore, qualifies as a taxable person for VAT purposes pursuant to the nexus between the transaction costs and the taxable output transactions that will be carried out by the company resulting from the merger.

Town planning

The new authorisation framework for data centers in Italy | *19 March 2026*

An article has been published in Il Sole 24 Ore – Real Estate 24, focusing on the new authorization framework for data centers in Italy, an increasingly central topic for the development of digital infrastructure and for attracting investment in the real estate sector.

The article features excerpts from an interview with our Founding Partner Silvia Gnocco regarding the procedure introduced by the recent "Energy Decree", which provides for a single authorisation process for the development of data centers.

While the new framework represents a first step towards simplifying the regulatory landscape, it also raises a number of practical questions for market operators.

The article also refers to the international paper prepared in collaboration with our French and German colleagues from the law firms Fairway and Reius, comparing European regulatory models for data centers and exploring possible future developments in the regulatory framework.

A brief summary of the key points is set out below.

Data centers: towards a new authorisation framework

- Data centers are key infrastructure for cloud, AI and digital services
- In recent years, investments in Italy have exceeded EUR 7 billion
- The main barrier to development remains the complexity of the authorisation process
- The legislator is introducing new procedures aimed at streamlining the authorisation process.

The new authorisation procedure aimed at accelerating investments in the digital sector

The "Energy Decree" introduces:

- a single authorisation procedure for the development of data centers
- a statutory timeline for the authorization procedure of 10 months (extendable by up to 3 months)
- the integration of the main environmental and administrative permits.

Pending issues

Certain implementation aspects remain unclear, including:

- the competent authority is the one responsible for the Integrated Pollution Prevention and Control (IPPC) permit; however, the threshold for triggering the IPPC procedure is set at 50 MW, potentially excluding smaller projects from the new authorization process
- the inclusion of building permits and coordination with urban planning instruments
- the inclusion of procedures requiring different levels of design development, which are logically interdependent (EIA – AIA)
- the existence of fixed timelines, which, however, run from the admissibility of the application (a stage that may itself require significant time).

The Council of State on tacit approval in building permit procedures | *19 March 2026*

By Judgment no. 1878 of 9 March 2026, the Italian Council of State confirmed the case law according to which tacit approval in relation to a building permit may arise even where the relative application presents inconsistencies with urban planning provisions.

Specifically, the Council of State reaffirmed the abandonment of the previous judicial approach whereby the formation of tacit approval would require the application to be fully compliant with the applicable "*urban planning regulations and planning instruments*". According to the Court, such an interpretation finds no support in the statutory framework and is inconsistent with the simplification purpose underlying the tacit approval mechanism. Moreover, it undermines legal certainty by placing the applicant in a state of ongoing uncertainty as to whether the building title has been effectively granted.

For tacit approval to arise, it is sufficient that the application be accompanied by the documentation considered "essential" by law, namely the documents listed in Article 20(1) of Presidential Decree no. 380/2001. Where such documentation is submitted, the application must be regarded as "effectively filed", with the consequence that the public administration is required to issue its decision within the statutory time limit. If the administration fails to act within that period, tacit approval is deemed to arise.

Conversely, potential inconsistencies with urban planning provisions do not fall within the minimum essential elements required for the application and therefore do not render the

application unsuitable for examination by the administration. As a result, such inconsistencies do not prevent the building permit from being formed by tacit approval.

As a consequence of the formation of the permit through silent consent, the Council of State also observed that the permit remains subject to annulment by the administration under the self-review powers provided by Article 21-nonies of Law no. 241/1990.

The full sentence is available here: Sentenza n.1878.pdf.

PNRR Law Decree: agreed building permit for co-financed student housing | *25 February 2026*

On 19 February 2026, Law Decree no. 19, titled "*Further urgent provisions for the implementation of the National Recovery and Resilience Plan (PNRR) and concerning cohesion policies*" (the so-called PNRR Law Decree), was published in the Official Gazette.

Among the most significant changes, for student housing co-financed with PNRR funds, we would like to highlight the introduction of a simplification of urban planning and administrative procedures, allowing the use of an accelerated administrative procedure for the construction of student housing accommodation.

In particular, Article 20 of the PNRR Law Decree provides, inter alia and insofar as relevant, for:

(i) the extension of the mandate of the Extraordinary Commissioner for Student Housing until 31 December 2029

(ii) the possibility that, even where urban planning instruments require the prior approval of an implementation plan or a second-level planning instrument however named, student housing projects co-financed through PNRR funds may be carried out by means of an agreed building permit pursuant to Article 28-*bis* TUE, where the construction of urbanization works is required to upgrade existing infrastructure functionally connected to the project and to be assigned to the Municipality.

The above certainly constitutes an important simplification measure, which would be useful to extend to all students housing construction projects.

Energy Decree-Law: single authorisation procedure for data centers | *20 February 2026*

On 18 February 2026, the Council of Ministers approved the Decree-Law entitled "*Urgent measures to reduce the cost of electricity and gas for households and businesses, to strengthen the competitiveness of undertakings and to promote industrial decarbonisation, as well as urgent provisions concerning the resolution of virtual congestion of electricity networks and the integration of data centres into the electricity system*" (the so-called "Energy Decree" or "Utility Bills Decree").

Among the measures of particular relevance to the digital sector is the introduction of a single authorization procedure for the construction and expansion of data centers and their related connection infrastructure, regardless of voltage level.

The Decree-Law entered into force on 21 February 2026 upon its publication in the Official Gazette.

Article 8 of the Energy Decree provides for:

(i) the issuance of the authorization for the construction of data centers and their related user connection infrastructure by the authority competent for the Integrated Pollution Prevention and Control (IPPC) permit, namely:

  (a) the Region or Autonomous Province, for installations involving the generation of electricity with a total thermal capacity exceeding 50 MW

  (b) the Ministry for the Environment and Energy Security (MASE), for installations involving generation of electricity with a total thermal capacity exceeding 300 MW

(ii) the initiation of the single authorisation procedure at the request of the operator by means of an application for a single authorization, including all documentation and technical drawings required for the issuance of permits, authorizations, agreements, clearances and approvals however described, including those relating to EIA, IPPC, landscape or cultural heritage authorisation, water use and atmospheric emissions

(iii) the completion of the single authorisation procedure within 10 months from the date of verification of the completeness of the documentation accompanying the application, extendable – on an exceptional basis – by up to three additional months in cases of project complexity; within the single authorization procedure, the time limits applicable to the EIA are halved

(iv) the issuance of the single authorisation following a Conference of Services pursuant to Article 14-*bis* of Law no. 241/1990, in which all competent authorities participate

(v) where a project is subject to EIA screening and the screening procedure concludes with a decision that the project is to be made subject to a full EIA, the project promoter shall submit an EIA application within 90 days; failing submission within that period, the application for the single authorisation shall be deemed to have been withdrawn, without prejudice to the right to submit a new application

(vi) in the case of projects declared to be of national strategic interest pursuant to Article 13 of Decree-Law no. 104/2023 (converted, with amendments, into Law no. 136/2023), the issuance of the single authorization by the Extraordinary Commissioner in accordance with paragraphs 5 and 6 of the same article

(vii) for data center projects which, as of the entry into force of the Decree-Law, already hold the necessary building and environmental permits and require authorization for the construction of user connection works with voltage exceeding 220 kV, the competent authority for issuing such authorization shall be the Region territorially concerned by the works.

Milleproroghe* Decree – Further extension of time limits for building permits and urban planning agreements | *20 February 2026

Following the latest amendment to the "*Milleproroghe*" Decree (Decree-Law no. 200/2025), recently approved by the Constitutional Affairs and Budget Committees of the Chamber of Deputies, the special regime introduced by the "Ukraine Decree" in 2022 to support the construction sector, affected by increased material costs and supply chain disruptions, has been further extended.

The new amendment, which will enter into force only upon approval of the conversion law and its publication in the Official Gazette, extends the favourable regime to all building permits and other authorisations issued or perfected by 31 December 2025.

In addition, the extended validity period for the commencement and completion of works is increased from 36 to 48 months, resulting in an overall extension of up to four years beyond the ordinary statutory time limits provided under the Consolidated Building Act (Presidential Decree no. 380/2001).

The extension applies to the main building titles and authorisations, including:

- building permits
- certified notifications of commencement of works (SCIA)
- landscape authorisations
- environmental authorisations and declarations, however named
- implementation plans

Certain conditions remain applicable: the relevant time limits must not have already expired at the time of notification of the intention to benefit from the extension, and the building titles must comply with newly adopted urban planning instruments.

Data center sector update selected legal developments in France, Germany, and Italy | *13 February 2026*

Founding Partner Silvia Gnocco, together with colleagues from Fairway Avocats (France) and Reius (Germany), has prepared a report on the main legal aspects of the data center sector in Italy, France and Germany.

In recent years, data centers have emerged as a strategic asset class at the intersection of digital transformation, energy policy and real estate development.

As enablers of cloud computing, artificial intelligence and data-driven services, they support activities ranging from public administration to global finance, healthcare and logistics. Their physical footprint — large, power-intensive and dependent on infrastructure — has significant implications for urban planning, environmental regulation and the resilience of the national power grid.

Across Europe, the growth of data centers is being driven by increasing demand for low-latency services, the expansion of cloud infrastructure and the geopolitical push for digital sovereignty. This trend, however, is also attracting growing scrutiny: data center siting, energy consumption, water use and their integration into national critical infrastructure frameworks are all subject to an evolving regulatory landscape.

As digital infrastructure becomes increasingly strategic, all three of the above-mentioned countries are experiencing a rise in transactions and a clear commitment by governments to promote a legal framework conducive to this type of investment.

Regulation must strike a delicate balance: attracting and facilitating investment in these infrastructures — generally regarded as beneficial to national economies — while at the same time safeguarding national security, promoting environmental sustainability and preserving coherent urban planning.

Click here to download the full text.

Municipality of Verona – Amendment to the territorial planning framework | *23 January 2026*

On 2 January 2026, the amendment to the Territorial Planning Framework (PAT) of the Municipality of Verona was published in the Official Bulletin of the Veneto Region (BURVET), having been adopted through a concerted procedure pursuant to Article 15 of Veneto Regional Law no. 11/2004 and aimed at aligning the municipal planning framework with the provincial (PTCP) and regional (PTRC) higher-level planning instruments.

- The amendment entails a coordinated update of the knowledge framework, cartographic documentation and Technical Implementation Rules, with particular reference to
- the system of constraints and territorial planning instruments
- the infrastructure network and production areas of provincial interest
- the protection of widespread historical and cultural heritage, including industrial archaeology and 20th-century architecture.

After 15 days from publication, the amendment entered into force and became an integral part of the municipal planning framework, acquiring direct relevance for implementation planning and for the assessment of urban development and transformation projects within the municipal territory.

Lombardy Regional Administrative Court (TAR) confirms the lawfulness of Municipal policy guidelines requiring the approval of detailed plans | *22 January 2026*

By Judgment no. 59/2026, the Lombardy Regional Administrative Court (TAR) – Milan section – confirmed the lawfulness of certain municipal policy guidelines — namely Service Directive no. 4/2024 and City Board Resolution no. 199/2024 — which require the approval of detailed plans ("*piani attuativi*") for building works characterized by a significant urban impact (It should be noted that the case concerned a project for a new construction development on an undeveloped area, with a building volume exceeding 3 cubic metres per square metre, in deviation from the applicable morphological rules).

Of particular relevance is the passage in which the Court recognizes the broad technical discretion vested in the Municipality in identifying the urbanization needs of the territory. The Court clarified that, even in the case of enclosed plots ("*lotti interclusi*"), the Municipality may require the prior approval of detailed plans where the proposed development results in an increase in the urban load without a corresponding enhancement of the existing provision of areas for public services.

Data centers, the regulatory framework between national and regional levels: Silvia Gnocco's commentary in Milano Finanza's long form | *19 January 2026*

According to Silvia Gnocco, Partner at Studio Inzaghi, Italy currently lacks comprehensive legislation recognizing data centers as strategic infrastructure.

These facilities continue to be authorised as standard industrial buildings and the lack of bespoke procedures — with expedited or simplified provisions —creates unpredictable timelines and regulatory uncertainty, complicating investment decisions.

However, the landscape is evolving from the proposed national Enabling Law to the 2025 Energy Decree, up to the initiative of the Lombardy Region, which has introduced a specific regulatory framework to address the existing gap in a territory that accounts for more than 60% of data centers development requests.

This is a key issue for those working in the tech and digital infrastructure sectors.

Silvia Gnocco's analysis is available here.

Building Regulation in Rome: New notice on building works and permitting regimes published | *14 January 2026*

Introduction

Following a notice by STTI – Studio Amministrativisti, we point out that Notice no. 258012 of 31 December 2025 has been issued by the Municipality of Rome to update Notice no. QI/19137/2012, with the aim of providing a systematic and updated overview of the applicable regulatory framework in light of recent legislative and case law developments.

Summary of Contents

In particular, the Notice:

(i) incorporates the uniform definitions set out in the Agreement adopted by the Unified Conference no. 125/CU/2016, clarifying—consistently with the most recent case law—that an urban planning appurtenant area must not entail an increase in the urban load, lacks any autonomous market value, and must maintain a functional link with the main building

(ii) adopts as a systematic reference the definitions of building works set out in Article 3 of Presidential Decree no. 380/2001, clarifying—pursuant to paragraph 2 of the same article—the primacy of such definitions over any inconsistent provisions contained in general urban planning instruments and building codes

(iii) considers the recent amendments to Article 23-ter of Presidential Decree no. 380/2001 concerning changes of use

(iv) provides an illustrative list of works attributable to each building category, in line with specific regional opinions and judicial guidance

(v) sets out, in schematic form, for each type of building title, the competent Municipal districts and the relevant validity periods.

Focus – Variations to building titles

With regard to the regulation of variations, the Notice clarifies that the following are subject to SCIA pursuant to Article 22 of Presidential Decree no. 380/2001:

(i) non-essential variations to building permits, whether submitted during the execution of works or filed upon completion of the works

(ii) variations during execution relating to a SCIA in lieu of a building permit pursuant to Article 23, if they do not qualify as essential variations

(iii) variations during execution relating to a SCIA pursuant to Article 22, regardless of whether or not they entail an essential variation.

This approach differs from the administrative practice adopted by the Municipality of Milan, which—through a restrictive interpretation of Article 22 of Presidential Decree no. 380/2001—tends to exclude the admissibility of variations under Article 22 where the main building title consists of an ordinary SCIA or a SCIA in lieu of a building permit.

Focus – New construction works

Finally, in line with the recent case law of the Council of State (Judgment no. 8542/2025) concerning the distinction between building refurbishment and new construction, the Notice classifies as new construction works also those involving demolition followed by reconstruction:

(i) of a single building, with reconstruction into two or more buildings.

(ii) of two or more buildings, with reconstruction into a single building.

The full text of the Notice is available here.

Urban planning and building law: when reading the statute is not enough | *12 January 2026*

There is broad consensus on the need for legislative reform, and several proposals are currently pending before Parliament. What appears to be lacking, however, is a clear awareness both of the urgency of such reform and of the need for an organic, system-wide approach to the subject matter.

In an article published in Il Sole 24 Ore, Guido Alberto Inzaghi addresses the operational challenges arising from the interpretation of urban planning and building regulations, underscoring the urgent need for a comprehensive overhaul of the legal framework.

Starting from the conflicting case law surrounding the definition of "building renovation" under Presidential Decree no. 380/2001, Inzaghi highlights how, in the fields of urban planning and construction law, statutory provisions often lend themselves to multiple – and mutually incompatible – interpretations, inevitably generating legal uncertainty. In other words, "reading the statute is not enough."

This uncertainty is compounded by the fragmented nature of the regulatory framework and has tangible consequences: stalled construction sites, families left in limbo, and liability risks for those who have followed practices previously deemed legitimate. The negative effects extend further, impacting investment flows and employment.

Inzaghi therefore outlines guiding principles for reform of the regulatory framework, advocating greater cooperation between the public and private sectors and, above all, the establishment of a clear and coherent legislative system, capable of restoring legal certainty in a timely manner.

Click here for the full article.

Milan Municipality introduces new adjustment measures for prosecutor-blocked projects | *7 January 2026*

Resolution no. 1634/2025 (the "**Resolution**") approves a set of policy and administrative guidelines enabling the Municipality of Milan to enter into substitutive or supplementary agreements in lieu of, or in addition to, a final administrative decision, pursuant to Article 11 of Law no. 241/1990, solely for the purpose of allowing the continuation and completion of building and planning proceedings that have become stalled as a result of the new interpretative guidelines adopted by the Municipality in 2024 and 2025.

1. Scope of application

The resolution provides for action to be taken by analogy with the provisions set out in Resolution no. 1409/2025 and does not indiscriminately apply to all building titles; it refers to proceedings presenting at least one of the following characteristics:

- proceedings in which the building title has not yet been issued or has not yet come into effect, with particular reference to proceedings that have already been examined but were interrupted or precluded by the new municipal policy guidelines;
- self-declared or issued building titles in respect of which the Municipality has already initiated self-review proceedings that have not yet been concluded.

The Resolution is therefore designed to manage "stalled" proceedings that are still at the investigation stage or are otherwise not definitively consolidated.

2. Purpose of the agreements under Article 11

Agreements entered into pursuant to Article 11 (the "**Agreements**") are conceived as an exceptional instrument aimed at:

- safeguarding the investigations already carried out (opinions, services conferences, technical assessments)
- avoiding the complete nullification of pending proceedings
- allowing the resumption of the administrative process in accordance with the new municipal interpretative criteria
- reducing and preventing administrative litigation

Such agreements are not automatic, are not imposed ex officio, and require a specific application by the interested party.

3. Essential content of the Agreements

According to the Resolution, the Agreements must provide for:

(i) On the part of the Municipality:

- (a) continuity of the investigations already carried out within the new proceeding, including by preserving the effects of previously issued opinions, while expressly reserving the competent authority's discretionary powers in the further handing of the matter;
- (b) transmission of the administrative file to the competent offices;
- (c) completion of the proceeding within the statutory time limits.

(ii) On the part of the private party:

- (a) submission of a new building application consistent with the already adopted guidelines (Resolutions n 199/2024 and no. 552/2025) for the approval of the building project within 3 months from the execution of the Agreement;
- (b) waiver of any pending or future litigation against the measures already adopted by the Municipality.

The authority to enter into such Agreements lies with the competent municipal executives (*Dirigenti*), and not with the Giunta Comunale.

4. Relationship with criminal proceedings

The Resolution refers to the existence of criminal investigations solely as a factual background, and does not attribute any automatic legal effect to such investigations with respect to building permits that have already been issued.

In particular, it does not introduce:

- automatic suspension of building permits
- mandatory administrative review
- mandatory participation in Agreements.

Contracts

Project Financing after CJEU Judgment C-810/24: The end of the pre-emption right and the operational consequences for promoters and contracting authorities | *9 February 2026*

With its ruling of 5 February 2026 (Section II, Case C-810/24), the Court of Justice of the European Union declared incompatibility with EU law of the pre-emption right granted to the project promoter in project financing procedures governed by Italian law. This ruling, whose implications were immediately acknowledged by the Regional Audit Chamber for Emilia-Romagna

of the Italian Court of Auditors in Decisions nos. 14 and 15/2026 of 26 February 2026, marks a turning point for one of the most characteristic features of public-private partnership, set to profoundly reshape the way project financing transactions are structured by public authorities and real estate operators.

The pre-emption right — namely, the right of the promoter, should it not be awarded the contract, to match the offer submitted by the best bidder and thereby obtain the concession — has, since its introduction under the Merloni Law (Law no. 109/1994, Article 37-quater), been the main mechanism for incentivising private initiative in project financing. Its function was to compensate the promoter for the design and financial effort incurred in conceiving and structuring the proposal, by ensuring it a privileged position in the subsequent competitive stage. The mechanism has been confirmed, with variations, by all subsequent legislation on public contracts, including the new Public Contracts Code (Article 193 of Legislative Decree n 36/2023).

The Court of Justice's ruling is not an isolated event, but the culmination of a long-standing tension between the Italian approach — traditionally aimed at enhancing the role of the promoter — and the EU principles of equal treatment, effective competition and non-discrimination governing the regulation of concessions.

The grounds of the Court of Justice

The ruling, issued following a request for a preliminary ruling from the Italian Council of State (Order no. 9449/2024) and preceded by the reopening of infringement procedure INFR 2018/2273 (European Commission letter of formal notice of 8 October 2025), is based on straightforward reasoning.

The principle of equal treatment requires tenderers to be placed on an equal footing, both when preparing their tenders and when those tenders are assessed. It follows that a tender may not be amended after it has been submitted. The pre-emption right infringes that principle because it allows the promoter to align its offer with the conditions of the initially selected successful tenderer; as a result, the submission of the most economically advantageous tender during the tender procedure does not guarantee that the bidder which submitted it will actually be awarded the contract. According to the Court, this constitutes a concrete advantage that alters the very structure of the competitive process and amounts to a distortion of the requirement of effective competition required by Article 41 of Directive 2014/23/EU, as well as a restriction on freedom of establishment under Article 49 TFEU.

The Court rejected any possible justification: neither the organisational flexibility granted to the contracting authority (recital 68 of the Directive), nor the derogation for innovative solutions (Article 41(3)), nor the promotion of private initiative as an expression of the principle of horizontal subsidiarity can justify a derogation from the principle of equal treatment.

The incompatibility also affects the 2023 Code: The Corrective Decree does not preserve the pre-emption right

The ruling, delivered following a preliminary question referred by the Council of State (Order no 9449/2024) and preceded by the reactivation of infringement procedure INFR 2018/2273 (the Commission's letter of formal notice of 8 October 2025), is based on a straightforward line of reasoning.

The ruling of the Court of Justice formally concerns Article 183 of Legislative Decree 50/2016, a provision that is no longer in force; however, the declared incompatibility also applies to Article 193 of Legislative Decree 36/2023, as amended by the Corrective Act.1

In resolution no. 14/2026, the Regional Audit Chamber for Emilia-Romagna of the Court of Auditors gave an unequivocal answer: the incompatibility was not attributed to a formal defect in the previous Legislative Decree no. 50/2016, but to the fundamental principles of the European concessions regulations, which apply in exactly the same way within the framework of Legislative Decree no. 36/2023. The amendments introduced by the 2024 Corrective Act — the mandatory preliminary expression-of-interest stage, the anticipation of the comparative stage, and the extension of the pre-emption right to other bidder — were not deemed sufficient to neutralise the distortive effect of the preferential mechanism. By resolution no. 15/2026, issued at the same meeting, the Chamber confirmed the same conclusions in relation to a similar request for an opinion submitted by another local authority.

It follows that the pre-emption right, in whatever legislative form, is incompatible with EU law and can no longer be applied in either future or ongoing procedures.

The obligation to disapply and the principle of *tempus regit actum*

The aspect creating the greatest uncertainty for operators concerns procedures that have already been commenced. In resolution no. 14/2026, the Emilia-Romagna Court of Auditors addressed this issue in response to the Municipality of Cattolica, which had requested to retain the pre-emption right in a procedure initiated before the Corrective Act entered into force.

The Chamber did not agree with the solution proposed by the administration, for three reasons.

First, the principle of *tempus regit actum* applies to acts already finalised, not to those still to be adopted: so long as the tender notice has not yet been published, the tender rules must comply with the legal framework in force at the time of their adoption, including any subsequently applicable EU law.

Second, the promoter's legitimate expectations are not protected because — as clarified by the Council of State, Fifth Chamber, ruling no. 8928/2025, cited in the same resolution — an operator submitting a project financing proposal has no more than a mere factual expectation until the final award is made, while the administration retains the power to revoke the declaration of public interest on the basis of supervening public interest reasons.

Finally, the two-stage nature of the project financing procedure ultimately requires an assessment of the legitimacy of each individual act, rather than that of the procedure as a whole.

The Chamber's conclusion is clear: "*the need to limit financial risk cannot justify the application of domestic legislation incompatible with the higher-ranking legal framework*." Retaining the pre-emption right exposes the authority to a risk of unlawfulness far more serious than any possible damages claims brought by the promoter.

Operational consequences for future and ongoing procedures

The principles set out by the Court of Justice — namely, the prohibition on modifying a tender after the deadline for submission laid down in the call for tenders, and the incompatibility of any mechanism allowing one bidder to align itself with the terms of the best tenderer, thereby

overturning the ranking — have a scope that extends beyond the strict confines of project financing.

The *ratio* of the ruling can be extended to any competitive procedure in which national law grants the proposer or promoter a pre-emption right or a functionally equivalent mechanism, such as the special public-private partnership procedures governed by Article 134(4) of Legislative Decree no. 36/2023 for the enhancement of cultural heritage, procedures for awarding technical sponsorship contracts with a concession component, or value-enhancement concessions relating to public real estate assets. In all such cases, the provision of a pre-emption right or of a mechanism enabling the proposer to match the best offer is exposed to the same finding of incompatibility with the principles of equal treatment and effective competition.

This is particularly important for operators in the real estate sector. Project financing and the various forms of partnership provided for by general and sector-specific legislation have so far constituted the preferred instruments for structuring complex transactions aimed at enhancing and developing public real estate assets, where the design and financial input of the private promoter has represented the driving force behind the initiative.

The impossibility of providing for a pre-emption right in favour of the proposer significantly reduces the incentive for operators to bear the — often very substantial — costs of the conception, design and structuring phase, in the knowledge that the competitive advantage associated with their role as promoter of the initiative is no longer supported by the guarantee of being able to match the best tender in the bid stage. This makes it necessary to rethink the way such transactions are structured by identifying alternative instruments capable of preserving the attractiveness of private initiative within the framework of EU principles.

In the immediate term, however, the most pressing issue for operators involved in procedures already underway is that of the concrete consequences of disapplication.

The applicable regime varies depending on the stage reached by the procedure, and each scenario presents different risk profiles and different options available. It can be sum up as follows.

(a) Proposals currently under assessment: the procedure may continue under Article 193 of the Code, with the clarification that the selected promoter cannot be granted any pre-emption right. The right to reimbursement of proposal costs remains applicable, as it is not affected by the Court of Justice's ruling. If the deadline for the call for competing proposals is still open, the notice must be republished in order to inform the market that the pre-emption right will be disapplied. The granting authority is also required to inform the promoter and any other bidders, seeking confirmation of their interest: the absence of the pre-emption right affects the economic viability assessment of the project and may lead operators to withdraw their initial proposal in order to submit a more competitive one.

(b) Proposal declared to be in public interest, but call for tender not yet published: the administration is required to publish the tender notice after removing the clause relating to the pre-emption right. The promoter nevertheless remains entitled to reimbursement of the costs incurred up to the limit of 2.5% of the investment value. The resolution of the Court of Auditors clarified that the declaration of public interest does not bind the administration to preserve the pre-emption right where supervening circumstances require reconsideration of the initial choice.

(c) Call for tender already published containing a pre-emption right clause: the administration must proceed with annulment under its own authority pursuant to Article

21-novies of Law no. 241/1990 and then republish it once the clause has been removed. This measure is necessary even where the right has not actually been exercised, since its mere inclusion is capable of altering competitive dynamics and market participation by economic operators. If the pre-emption right has already been exercised but the contract has not yet been awarded, the authority may intervene pursuant to Article 17(5) of the Code by referring the procedure back to the entity responsible for evaluating tenders for reconsideration in light of the non-applicability of the pre-emption right.

(d) Contract already executed: where the contract has already been signed and the time limits for challenging the award have expired, the legal position of the successful contractor must be considered as settled. Rulings of the Court of Justice do not render acts adopted on the basis of provisions declared incompatible null and void, but merely subject to annulment. Once the contract has been executed, therefore, the only remedy still theoretically available is withdrawal pursuant to Article 123 of the Code, a solution which nevertheless requires careful assessment in light of the stage of performance reached by the contract and which in any event presupposes the payment of compensation to the party suffering the withdrawal.

Practical considerations: what instruments can be used to incentivise the promoter?

The Court of Justice's ruling does not affect the entire structure of privately-led project financing proposals, but only the pre-emption right mechanism. The right to reimbursement of design costs up to 2.5% of the investment value remains in force, as does the possibility of providing for reward criteria at the award stage pursuant to Article 193(13) of the Code, together with the competitive dialogue instruments already envisaged by the EU Directives and transposed into the Code.

The abolition of the pre-emption right, however, significantly reduces the attractiveness of the mechanism for private operators, which bear substantial costs in conceiving and structuring the proposal without any longer having the guarantee of being able to match the best tender at the bid stage.

Accordingly, legislative action is needed in order to identify alternative incentive mechanisms compatible with European law.

In a recent operational note, ANCI (National Association of Italian Municipalities) outlined several possible approaches for future legislative amendments that deserve attention: opening, after the declaration that the proposal is in the public interest, a competitive dialogue phase — an instrument already governed by Article 74 of the Code in implementation of Article 30 of Directive 2014/24/EU — in which several operators are invited to develop alternative or improved project solutions through a structured dialogue with the administration; revising the award criteria in favour of the promoter pursuant to paragraph 13 of Article 193; and increasing the percentage of reimbursement of design costs.

The framework is evolving and, pending legislative action, operators in the real estate and infrastructure sectors will have to structure their initiatives on the basis that the absence of the pre-emption is now an established fact.

The complexity of the scenario — characterised by the overlap between EU law, national legislation currently undergoing change, initial guidance emerging from accounting and administrative case law, and the positions taken by regulatory authorities — calls for a specialist approach combining expertise in EU law, public contracts law and the structuring of partnership transactions.

Here the full text of the ruling.

Litigation

Article 1669 of the Italian Civil Code does not apply where the works have not been completed | *March 2026*

The ruling of the Court of Cassation, Civil Division II, no. 6928 of 23 March 2026, falls within a series a series of rulings aimed at defining the liability scope pursuant to Article 1669 of the Italian Civil Code, clarifying its structural requirements and, in particular, the necessary connection with the completion of the works.

The key point of the decision lies in the principle that the rules governing responsibility for "serious defects" cannot apply when the contracted works remained uncompleted. In the case at hand, the works had in fact been definitively suspended due to instability issues that emerged during execution, without ever reaching completion.

The Court emphasizes both the literal and functional interpretation of Article 1669 of the Civil Code, holding that the notions of collapse, risk of collapse, and serious defects presuppose a "finished" work – in relation to which it is possible to make an overall assessment of stability and functionality. From this perspective, the failure to complete the works prevents the anomalies identified from being classified as "defects" in the technical sense; rather, they must be qualified as manifestations of improper performance of the contractual obligation.

This leads to a consequence of systemic significance: reporting issues that arise during the execution of works does not constitute a claim for defects, but rather an exercise of the supervisory powers vested in client. Indeed, the Court criticizes the ruling of the first instance judges, which had attributed to such reporting the typical effects of a notice under Article 1669 of the Civil Code, thereby improperly triggering the running of limitation and forfeiture periods.

Therefore, where the works remain incomplete, the standard for assessing the contractor's liability (and, more broadly, that of other parties involved) is not the special rules on warranties for defects, but rather Articles 1218 and 1453 of the Civil Code, with the possible concurrent application of tort liability where its requirements are met.

How to claim damages from a Municipality that changes its position or proves unreliable | *23 January 2026*

Recent developments in Milan’s urban planning practice—where building procedures were initiated on the basis of municipal practices and guidelines that were subsequently reconsidered—have brought renewed attention to the issue of legitimate reliance by private parties on the conduct of public authorities.

This issue is addressed by two recent and innovative rulings of the Joint Chambers of the Italian Supreme Court, which are decisive in determining when and before which court damages may be claimed.

In ruling of the Joint Chambers no. 8236 of 28 April 2020, the Court held that liability based on legitimate reliance may arise even in the absence of a formal administrative act, where the damage results from improper conduct by the public administration, such as misleading information, reassurances, or inconsistent administrative practices.

In such cases, claims for damages fall within the jurisdiction of the ordinary civil courts.

More recently, Ruling of the Joint Chambers no. 26080 of 25 September 2025 clarified that where such conduct occurs within the context of a relationship aimed at the issuance of a building title, the resulting damage falls within the scope of urban planning and building law. Consequently, the claim for damages must be brought before the administrative courts, even though it concerns the infringement of a subjective right.

In conclusion, even where a Municipality acts lawfully, it may still be held liable for damages if it has created innocent and legitimate reliance on the part of private parties. The choice of the competent court depends on the origin of the reliance and the legal field involved.