

▪ **Newsletter 2002-02**

GIURISPRUDENZA

Redazione e revisione di contratti e transazioni internazionali

European Court of Justice judgment C-168/00

Following a preliminary ruling question posed by Landgericht Linz (Austrian Appeals Judge) concerning whether Article 5 of the Council Directive 90/314/EEC of 13 June 1990 on packaged travel, packaged holidays and packaged tours is to be interpreted as meaning that compensation is in principle payable in respect of claims for compensation for non-material damage, the Court of Justice, broadening consumer protection in the European contest, held that Article 5 is to be interpreted as conferring, in principle, on consumer rights the compensation for non-material damage resulting from the non-performance or improper performance of the services constituting a packaged holiday. The Court found that the existence in some Member States but not in others of an obligation to provide compensation for non-material damage would cause significant distortions of competition given its importance in the field of packaged holidays. This decision will have an important impact on Italian law, if considered the narrow regulation of the non-material damage provided by the civil code.

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Diritto comunitario e della concorrenza

The Court of the European Community, with sentence dated 26/02/02, mentions that even the companies in critical financial condition may receive public aid, provided the latter is granted with restrictions and taking into account the overall situation of the company.

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Diritto comunitario e della concorrenza

In the case *Arduino* (C-35/99), the European Community Court of Justice stated that the indication by ministerial decree, proposed by the National Council, concerning the minimum and maximum of lawyers fees does not violate the competition principles. Following the Court advice, art. 5 and 85 of the Treaty do not forbid the adoption, from one of the Member States, of a legislative or controlled measure that approves, based on an established project from a professional association, a price indicating a minimum and a maximum for the members of that association. (We thank Mr Bruno Micolano for his kind contribution).

GIURISPRUDENZA

Diritto civile e contenzioso

The company may be responsible for a car accident occurred to an employee compelled to work under stressful conditions. The Supreme Court, in sentence n.5 02/02/02, interpreted art.2087 of the Civil Code, whereby the employer is obliged to adopt any measure that, according to the type of work, the experience and the technique, aims to protect the employee. Accordingly the employer is always contractually responsible when there is a sufficient causality between the employer behaviour and the event which has occurred to the employee.

GIURISPRUDENZA

Proprietà intellettuale, marchi e brevetti

European Court of Justice, decision 20/11/01

The Court of Justice stated that on a proper construction of Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, the consent of a trade mark owner to the marketing within the European Economic Area of products bearing that mark which have previously been placed on the market outside the European Economic Area by that owner or with his consent may be implied, where it follows from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the European Economic Area which, in the view of the national court, unequivocally demonstrate that the proprietor has renounced his right to oppose placing of the goods on the market within the European Economic Area.

GIURISPRUDENZA

Proprietà intellettuale, marchi e brevetti

France - Court of Cassation, commercial section, judgment 22/02/00

The French Court of Cassation, following the international case-law, valued as infringement of trademark the risk of confusion among people. In particular, the fact that the trademark

description of a dish soap did not mention the green tonality of the product, is not relevant whereas the combination of other elements (such as the bottle and label shape and colors) can make people identify that product with the one protected by the trademark.

GIURISPRUDENZA

Appalti pubblici

Public procurement

State Council Section V ("Consiglio di Stato, sez. V"), judgment n.919, 15/02/02

The procuring entity can lawfully request in the tender call, that tenderers show to have performed the same services as the procurement ones in the precedent three years. Such a condition, despite not being provided by the D.L. 157/95, does not contrast with any rule. The criterion in order to judge the lawfulness of such clauses will be that of reasonableness, keeping in consideration also the goals that the public administration wants to achieve.

GIURISPRUDENZA

Appalti pubblici

European Court of Justice - judgment in joined cases C-285/99 and C-286/99

Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts must be interpreted as follows: it precludes a Member State's legislation and administrative practice which allow the contracting authority to reject tenders offering an abnormally low price, taking into account only those explanations of the prices proposed, without giving the tenderers the opportunity to argue their point of view, after the opening of the envelopes, on those elements of the prices proposed which gave rise to suspicion. It also precludes a Member State's legislation and administrative practice which require the contracting authority to take into consideration, for the purposes of examining abnormally low tenders, only explanations based on the economy of the construction method, technical solutions chosen, or exceptionally favorable conditions available to the tendered, but not explanations relating to all those elements for which minimum values are laid down by law, regulation or administrative provisions or can be ascertained from official data.

GIURISPRUDENZA

Trusts

Tribunal of Pisa ("Tribunale di Pisa"), decree 22/10/01

A trust settled in accordance with the provisions of the Convention on the law applicable to trusts and on their recognition signed at The Hague in 1985 must be recognized in Italy even if the only "foreign" element is represented by the law applicable to the trust. Art.12 of the Convention can be considered as a new case admitted to registration within the limits of State regulations, opening in this way the possibility to introduce the trust in the closed registration world as present in Italy according to the mandatory rules provided by civil code.

LEGISLAZIONE

Redazione e revisione di contratti e transazioni internazionali

Legislation

Consumer Protection

D. Lgs. N.24/02 implementation of the directive 1999/44/CE on certain aspects of the sale of consumer goods and associated guarantees.

The decree puts this regulation inside the civil code. In particular, it has been placed in the section concerning the sale of goods from article 1519-"bis" to article 1519-"nonies" of the civil code. The Italian law fully absorbs what is set out by the directive for consumer protection, including the mandatory nature of this regulation, the conformity with the contract, and consumer rights. Art.1519-"bis" equates, for this special regulation, the sale contracts to barter and supply as well as procurement ones, and to all other contracts directed to the supply of goods to be produced.

LEGISLAZIONE

Diritto dell'informatica, di internet e del commercio elettronico

With D. Lgs. 10/02, Italy implemented the directive 1999/93/CE regulating electronic signatures. The Italian legislator distinguished between an "advanced" and a "weak" electronic signature, where the latter provides less guarantees. The Art.8 of this decree contains dispositions on the electronic identity card as well as the national service card.

LEGISLAZIONE

Proprietà intellettuale, marchi e brevetti

China: Measures against counterfeit products commerce. It has been set up a national committee of coordination against trademark infringements and an information campaign started against trademark counterfeiting and for the quality of products. In April 2001 new administrative guidelines were approved for the interpretation and application of Intellectual Property Law. According to the criminal code, the crime of counterfeiting is prosecutable and is sanctioned depending on the seriousness of the criminal conduct.

LEGISLAZIONE

Diritto della fiscalità internazionale

The Decree of January 23, 2002 from the Ministry of Economy and Finances, confirms "the non-deductibility of expenses and other negative components as a result of operations with companies registered in States or territories having a too favourable fiscal regime". The Decree, which concerns only extra-EU Countries, has updated the black list that shows the States and territories considered as a tax haven.

LEGISLAZIONE

Diritto della fiscalità internazionale

The compensation for a multi-year agreement between an Italian licensor and an English licensee for the grant of a patent and relative know how is immediately and totally taxable.

With the Resolution n.5/E of January 10, 2002, the Agency of Income stated that the patent and know how, even if extended for the entire period of the patent (ten years), are subject to taxation, according to art. 75 "Tuir", when the relative contract is agreed upon.

LEGISLAZIONE

Diritto della fiscalità internazionale

Decree of January 23, 2002 by means of the Ministry of Economy and Finances, updated the Italian black-list.

LEGISLAZIONE

Diritto della fiscalità internazionale

With Resolution n.4/2002 of January 9, 2002, the Agency of Income states that the VAT regime is to be applied to services supplied in Italy by a non-resident, but with "permanent establishment" in the State territory.

LEGISLAZIONE

Diritto della fiscalità internazionale

"SHIELD" (SCUDO), TIME FOR EXTENSION

As already anticipated in the last newsletter, the deadline concerning the repatriation or adjustment of assets and other business owned abroad in violation of tax laws, has been extended to May 15, 2002.

LEGISLAZIONE

Investimenti nazionali e stranieri

The companies, commercial entities and non-resident companies, may benefit from the fiscal advantages stated in art. 4, law 383/2001 (c.d. Tremonti-bis), which encourages investments over capital and instrumental goods, provided they hold a permanent establishment in Italy.

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