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#DeRisk Newsletter



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Cyber

Insurance sector and cybersecurity: IVASS publishes initial instructions for implementing DORA

Andrea Pantaleo

Regulation (EU) 2022/2554, known as the Digital Operational Resilience Act (DORA), came into force on 17 January 2025, defining a new regulatory framework for digital operational resilience in the European cyber-financial sector. Insurance and reinsurance companies, and relevant intermediaries, are also subject to the new obligations.

To guide the Italian insurance market in implementing the new provisions, the Insurance Supervisory Authority (IVASS) published two Letters to the Market within a few weeks of each other.

- The first regulates the reporting of serious cyber incidents and, on a voluntary basis, cyber threats.
- The second introduces the periodic transmission of the register of information relating to ICT contracts.

These are two distinct but complementary requirements that usher in a new era of cyber surveillance for the insurance sector.

IVASS's regulatory intervention on ICT incidents and contracts with third-party suppliers marks a first concrete step towards the operational implementation of DORA in the insurance sector. The new reporting requirements, which are highly structured and coordinated at European level, require a profound organisational and procedural review, especially for more complex groups. Data quality, timely communication, and robust internal accountability are the cornerstones of sustainable compliance and effective operational resilience over time.

Reporting cyber incidents and cyber threats

With the [letter to the market No. 4856/25 of 14 February 2025](#), IVASS provided the first operational guidelines for implementing Article 19 of DORA, concerning the reporting of serious cyber incidents and cyber threats by insurance and reinsurance companies and intermediaries relevant for DORA purposes.

The document incorporates the contents of [the Delegated Regulation \(EU\) 2024/1772](#), which defines the thresholds and conditions for classifying an incident as "serious" and regulates the timing and content of reporting.

An incident is considered serious if it involves critical services referred to in Article 6 and meets at least one of the following conditions:

- It involves unauthorised access to computer systems, pursuant to Article 9(5)(b); or
- It exceeds at least two of the thresholds set out in paragraphs 1 to 6 of Article 9.

The notification process consists of three distinct phases:

- **Initial notification** within 24 hours of identifying the incident.
- **Interim report** within 72 hours of the initial notification (with any subsequent updates).
- **Final report** within one month of sending the last interim update.

Communications must be sent via certified email to the addresses indicated by IVASS:

- Vigilanza.prudenziale@pec.ivass.it for insurance and reinsurance companies.
- Vigilanzacondottamercato@pec.ivass.it for insurance and reinsurance intermediaries and relevant ancillary intermediaries.

Attached to the Letter, IVASS has provided two templates: one for the mandatory reporting of serious incidents and one for the voluntary reporting of cyber threats deemed relevant pursuant to Article 19, paragraph 2 of DORA.

According to the Authority, these reports temporarily replace those provided for in Article 16 of [IVASS Regulation No. 38/2018](#), pending the relevant update.

ICT contract register: Annual reporting obligation

With [Letter to the Market No. 21517/25 of 7 March 2025](#), IVASS implemented the obligations provided for in Article 28 of DORA, introducing the transmission of the register of information on contractual agreements entered into with third-party ICT service providers for supervised companies. The obligation applies to all insurance and reinsurance companies with registered offices in Italy, representatives of non-EEA companies operating in Italy, and insurance and reinsurance intermediaries relevant for DORA purposes, in accordance with the size criteria set out in Article 2 of the Regulation.

The register must be maintained and updated at entity level, on an individual, sub-consolidated, and consolidated basis. The minimum content of the register – to be communicated to IVASS at least annually – includes:

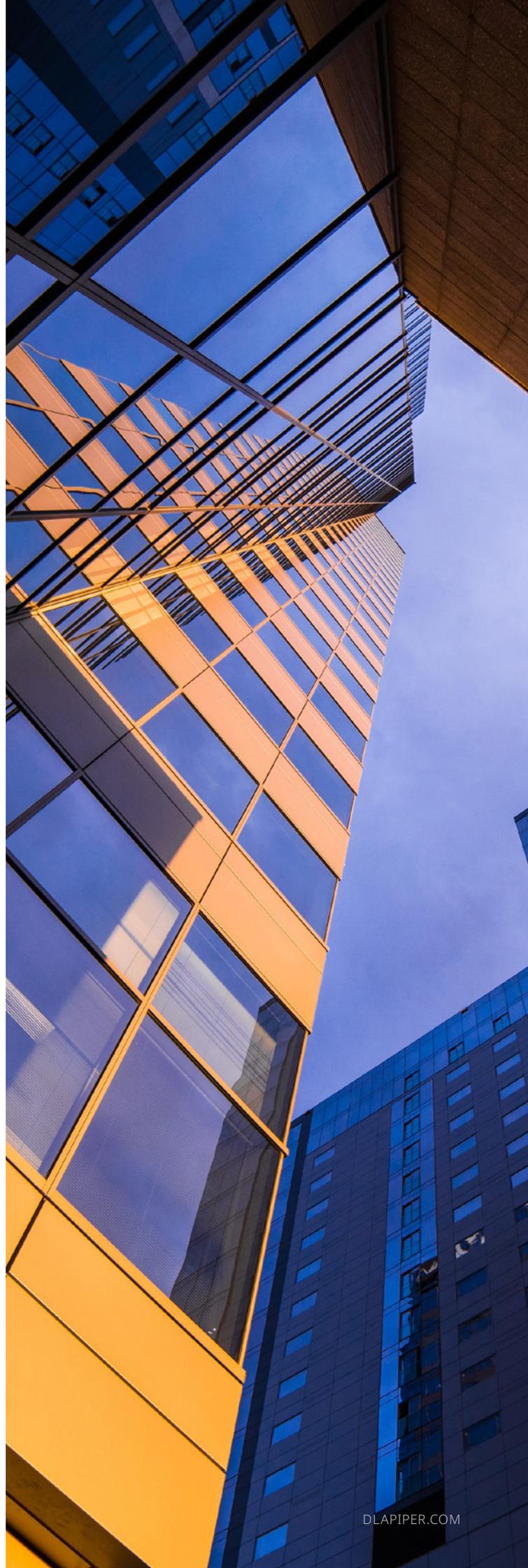
- The number of ICT contractual agreements entered into during the reference period;
- The categories of third-party providers involved;
- The types of contracts adopted; and
- The ICT functions and services acquired.

The structure, record formats and compilation criteria follow the specifications defined by the European Banking Authority and by the Decision of the European Supervisory Authorities of 8 November 2024. For financial groups subject to consolidated supervision in the EU, the report must be submitted at the parent company level. In the absence of a parent company established in the EU, the obligation applies at the individual level.

The transmission must be made through the Infostat platform, using the new “DORA – Information Register” survey, available to users authorised to manage IVASS reports. The file to be transmitted must be compressed in .zip format and contain:

- 15 tables in .csv format relating to the contents of the register;
- Technical support files (reportPackage.json, FilingIndicators.csv, parameters.csv, report.json) according to the taxonomy published by the EBA.

The naming of the zip archive and the structure of the internal directories has to strictly comply with the standards defined in the IVASS and EBA operational documents. A “diagnostic” function is provided for the preliminary verification of the quality and formal consistency of the data before final submission.



Insurtech

AI and insurance: EIOPA responds to stakeholder concerns

Giacomo Lusardi

Following this spring's public consultation on "AI Governance and Risk Management," on 6 August 2025, the European Insurance and Occupational Pensions Authority (EIOPA) published its Feedback Statement responding to concerns raised by stakeholders. There are many interesting aspects to note.

New opinion, new obligations?

Several stakeholders appreciated the objective of EIOPA's opinion, its principles-based approach and its focus on risk and proportionality, as well as its alignment with the AI Act. But some were concerned that the repeated use of the term "should" could create implicit obligations, especially for small businesses or low-risk systems, suggesting that the opinion should be considered a mere recommendation. Others asked for more detailed guidance, such as risk assessment criteria or standardised documentation templates to facilitate its application.

Thoughts on the opinion's timeliness are divided: some have expressed the need to wait for the implementing measures of the AI Act and any Commission guidelines on the use of AI in the financial sector. Others have pointed out that most AI systems are not "high-risk" under the AI Act, so immediate action is needed to promote a consistent approach by operators and convergence among supervisory authorities.

EIOPA stressed the importance of international convergence on the general principles of AI governance to be applied taking into account the specificities of the insurance sector.

EIOPA then clarified that the opinion doesn't introduce new obligations but provides guidance on how to interpret insurance sector regulations in the context of AI systems, adopting a holistic approach based on risk and proportionality. According to EIOPA, the use of terms like "should" is consistent with other guidance documents and doesn't imply binding obligations.

Does the opinion overlap with the AI Act?

Stakeholders agreed with the scope of the opinion, which covers AI systems in the insurance sector that aren't considered prohibited practices or high-risk systems under the AI Act. Some requested clarification on the distinction between high-risk systems under the AI Act and those that could be considered high-risk following the impact assessment provided for in the opinion.

There was also agreement on the use of the definition of "AI systems" in the AI Act, although clarification was sought on traditional models such as Generalized Linear Models (GLM). Finally, some expressed concerns that references to Solvency II and IDD could inadvertently extend the regulatory scope, for example in relation to data management or fair treatment of consumers.

In response, EIOPA confirmed that the opinion applies only to AI systems that don't fall within prohibited practices or count as high-risk, avoiding unnecessary regulatory overlap and burdens. And it clarified that the high-risk assessment under the AI Act has legal meaning and implications independent of the impact analysis provided in the opinion. The opinion doesn't extend the requirements of the AI Act and recognises that risk levels may vary among systems not considered "high-risk."

With regard to the definition of AI systems, the opinion now explicitly refers to the European Commission's Guidelines and notes that further clarification may be provided in the future. Finally, references to Solvency II, DORA, and IDD don't change their scope of application, but the principles of the opinion, such as fairness, human oversight and data governance remain relevant and must be applied proportionately even by operators not subject to those rules, ensuring fair treatment of customers.

What are the burdens for small businesses and what efforts for low-risk systems?

In general, stakeholders welcomed the risk-based and proportionate approach outlined in the opinion, while expressing concerns about the possible compliance costs for low-risk AI systems and small businesses. Some asked for more detailed guidance on the impact and assessment criteria, suggesting that a distinction be made between customer-facing and internal systems, between new technologies such as generative AI and established machine learning technologies, and that the environmental impact be considered.

There were also requests for clarification on how to balance the nature of the system and its potential impact on consumers without compromising supervisory convergence at the European level.

EIOPA confirms that it will maintain its risk-based and proportionate approach, balancing opportunities and risks and limiting compliance burdens for low-risk systems and small businesses. The opinion clarifies that supervisory expectations for low-risk systems will be limited and that the conduct of the impact assessment may be proportionate to the actual impact of the system.

Without providing an exhaustive list, EIOPA has added examples of assessment criteria to the opinion, such as the distinction between customer-facing applications and internal uses with no direct impact on customers, and the number of customers involved. The assessment must consider both the impact on consumers and operators, taking into account the nature and complexity of AI systems.

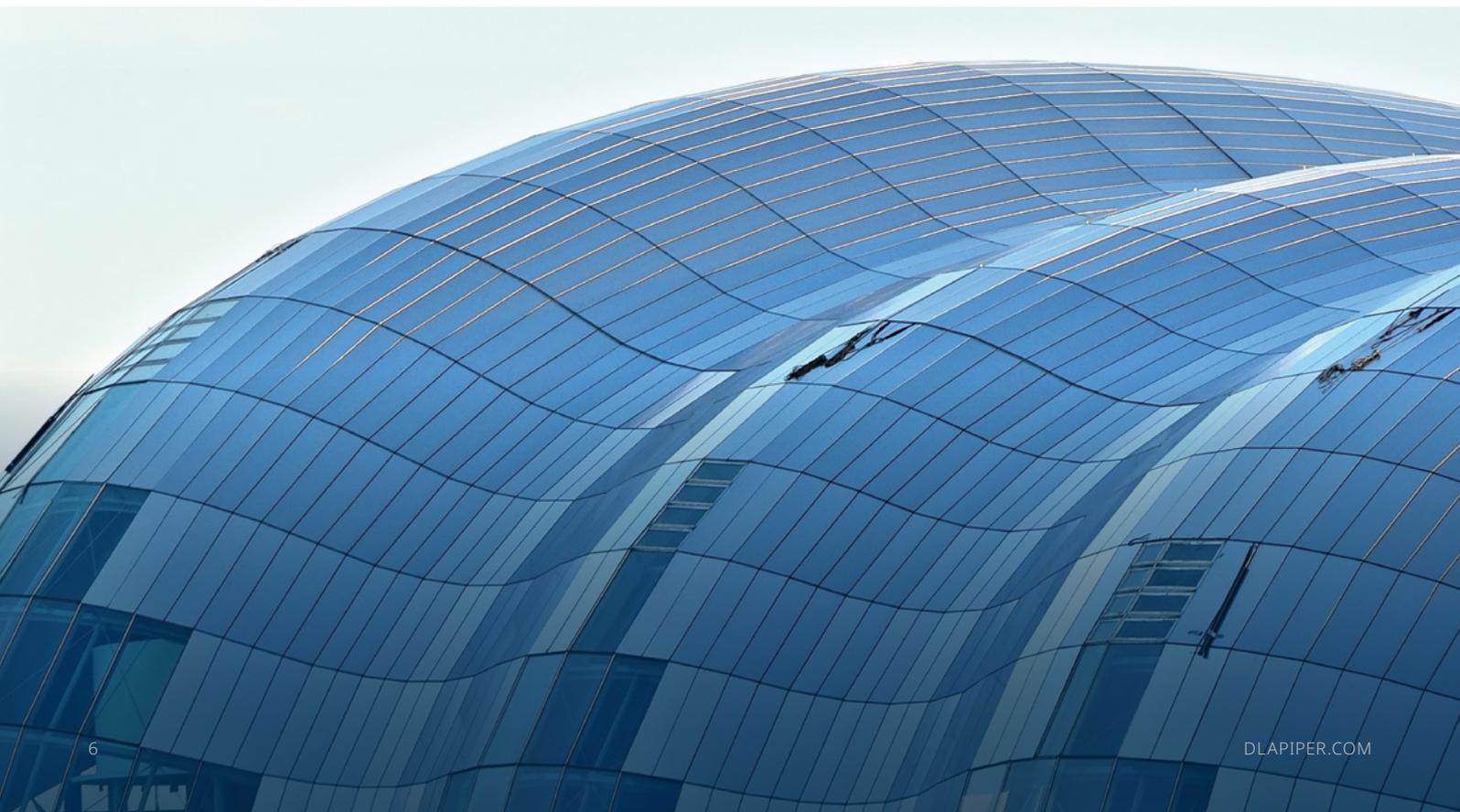
Risk management systems and how to manage third-party risk?

Some stakeholders have asked for clarification on whether existing Enterprise Risk Management (ERM), model risk management, or Product Oversight and Governance (POG) frameworks should be used to govern the use of AI systems, without having to develop new specific tools. A distinction between the responsibilities of “developers” and “deployers” was also suggested, highlighting the difficulties in ensuring data governance or “explainability” for tools provided by third parties, such as generative AI.

EIOPA confirms that companies can use existing or updated frameworks (ERM, model risk management, POG, IT strategies, data, or AI) as long as they reflect the key principles outlined in the opinion. Furthermore, while being responsible for the AI systems used, even when developed by third parties, companies must obtain information and guarantees about the systems provided. And, if they have difficulties in implementing certain principles (eg data governance or explainability), companies have to mitigate risks with complementary measures, contractual clauses, external audits, due diligence, and continuous monitoring.

What now?

The conclusion of the public consultation is more of a starting point than a finish line. We await further clarification and guidelines from both EIOPA and the Commission and national authorities in the near future. In the meantime, operators must initiate and consolidate their compliance plans, navigating a complex and fragmented regulatory landscape that includes the European AI Act, Italian adaptation legislation, and guidance from supervisory authorities. This will be far from a simple and straightforward process.



AI and preventing insurance fraud: From automatic identification to compliance

Giacomo Lusardi and Chiara Cimorelli

AI is perhaps the most advanced tool in the fight against insurance fraud. Machine learning and generative AI can analyse large volumes of heterogeneous data (claims, social media, open data) and identify anomalous patterns that could indicate attempted fraud.

But AI is also being used to trick consumers. One example is the “ghost broker” scam. Websites and chatbots, using generative AI, simulate real agencies and produce fake policies, managing to deceive even the most experienced users.

AI-based anti-fraud systems can cross-reference historical, behavioural and biometric data, detecting anomalies in real time, such as multiple requests from different individuals with identical or similar data, false documents generated by AI or serial claims. AI also helps automate cross-checking between public and private databases, drastically reducing identification times and the risk of human error.

The most advanced applications in the field of anti-fraud include:

- **Computer vision techniques** to compare images of claims and validate the authenticity of the damage detected.
- **Behavioural biometrics** to detect inconsistencies in user interaction patterns.
- **NLP (Natural Language Processing)** to analyse the content of claims and identify linguistic inconsistencies that could potentially indicate fraud.
- **Automatic cross-checking** of medical records, testimonies and satellite data to validate the veracity of catastrophic events.

The role of the AI Act and the institutional response

The EU has adopted Regulation (EU) 2024/1689, known as the AI Act, to address the challenges posed by the rapid evolution of AI. The AI Act represents the cornerstone of AI regulation and governance in the internal market. The primary objective is to protect safety and fundamental rights through a risk-based approach. But the AI Act also has significant implications for the insurance sector.

Some AI systems, like those for biometric recognition, credit scoring or emotion recognition, are classified as “high risk” and have to comply with strict requirements in terms of risk assessment, transparency, traceability and human oversight. AI systems used to detect financial fraud don't automatically fall into this category, but they could if they're integrated

with other features or systems already considered high risk. This paves the way for closer scrutiny of both the tools used by insurance companies and those misused by fraudsters.

The AI Act also introduces specific rules for systems that generate synthetic content like deepfakes or realistic imitations of people, which are increasingly common in ghost broker scams and identity theft. Suppliers and users of these systems will have to ensure transparency, affix digital watermarks and provide adequate documentation, increasing the traceability of any illegal uses. Member states and competent authorities now also have to monitor high-risk systems and coordinate at European level.

These developments are an opportunity for national authorities like IVASS to take a proactive role, not only in supervising the sector, but also in preventing and suppressing AI abuse in the insurance industry. The Insurance Supervisory Authority's reports pay close attention to attempts at fraud against policyholders.

Fraud attempts especially affect the motor vehicle liability insurance sector. It's an extremely large market, divided among many operators, many of whom operate online. But fraud attempts could affect all sectors of the insurance business, particularly those with a high incidence of serial fraud.

The Insurance Supervisory Authority hasn't yet expressed its opinion on the use of AI in systems designed to identify fraudulent situations. But it is considering using AI for more routine activities, such as managing consumers' complaints.

Using AI skilfully and appropriately could significantly improve insurance products in general. It could encourage companies to offer services that users want. For example, assistance policies, where resources freed up in the serial and documentary management of contractual positions could be used for personal services.

This is a long process that requires an approach different from the world of services. But it seems industry regulations are already setting the path to follow by imposing a balanced cost/benefit ratio for insurance product customers.

Case Law

Civil Cassation Section, 13/05/2025, no. 12714: Qualifying reinsurance contracts in light of the regime governing deposits and commissions

Francesco Cerasi, Mauro Carretta

The ruling in this case relates to a tax assessment referring to reinsurance treaties.

The company in question reinsured its portfolio of unit-linked policies. As is often the case, the premiums due to the reinsurer were retained in the form of a deposit with the cedant (known as funds withheld).

Deposits are usually set up to guarantee the reinsurer's commitment to contribute to settling claims (or providing benefits in life insurance) for the portion of risk ceded to it.

Since the deposits earn interest, which increases the deposit itself, the company treated these amounts as interest expense, deductible for IRES and IRAP purposes.

The Italian Revenue Agency – Lombardy Regional Directorate thought that the interest shouldn't have been considered remuneration for the deposit itself (ie the premiums remaining at the disposal of the reinsured). But rather it should have been remuneration for the financial activity carried out by the reinsurer through financing pre-calculated commissions.

Pre-calculated commissions are used to remunerate the distribution network in relation to the payments that the insured will make throughout the policy period. They represent a certain cost (advance payment of future commissions) against an uncertain revenue (collecting periodic/recurring premiums after the initial premium).

The Agency re-taxed the amount of approximately EUR6 million for interest expense deemed non-deductible for IRAP purposes.

The company first appealed and then took the case to the Court of Cassation. It pointed out the insurance nature of the underlying policies, given the company's obligation to pay the insured value to the beneficiaries when an event relating to human life (death or life event) occurred. So there was a demographic risk associated with the policies.

The company considered that the Regional Tax Commission had incorrectly assessed the nature of the reinsurance treaties based on the characteristics of the underlying unit-linked policies, excluding the (re)insurance cause and not considering the additional risks assumed by the reinsurers.

The tax reassessment carried out by the Office, and confirmed by the Regional Court, was based on denying the insurance nature of the reinsurance contracts concluded by the taxpayer company, given the presumed nature of the linked policies that were the subject matter of the contracts as investment contracts. And it was also based on the financial and non-insurance purpose, connected with the financing of the cost represented by the "pre-calculated" commissions, which the contracts referred to as reinsurance.

The Court of Cassation considered this assessment by the Revenue Agency and the Tax Commission (regional, most recently) to be correct.

The insurance and risk component linked to the event of death is, according to the Court of Cassation, entirely minor. And the financial component of the contracts themselves prevails, excluding the nature of remuneration of the sums paid to establish reinsurance deposits, which must be classified as interest.

The Regional Tax Commission, with an unquestionable assessment of legitimacy, determined that the real purpose of the insurance and reinsurance contracts in question was financial and not insurance-related. This was because the capital to be paid at the contractually agreed maturity date was determined on the basis of the investment made by the policyholder, who paid the company the premiums that it was supposed to invest in its own fund.

The sums deposited with the reinsured companies after the formal transfer of risk through reinsurance treaties were calculated as equal to the NAV, ie the value of the investment made by the insured, and not in relation to the “demographic risk.” This risk existed only to a minimal extent of 2.5%, ie in the NAV surcharge provided for in the contract in the event of the policyholder’s premature death.

The contributing company hadn’t transferred only 2.5% of the NAV to the reinsurers, but the entire amount, so also the predominant component corresponding to the investment contract, which didn’t entail any risk for either the company or the reinsurance companies, as the risk of total or partial loss of the linked investment remained entirely with the insured.

Nor could there be any transfer of risk with regard to the pre-calculated commissions, which the reinsurance companies advanced to the cedant, thereby financing it.

The risk that the pre-calculated commissions wouldn’t be reimbursed due to the death of the policyholder before the expiry of the contract or due to the contract being redeemed early constitutes a normal form of risk in the financing contract, ie the risk of total or partial non-fulfilment by the borrower of its repayment obligation. This is a purely contingent risk, and certainly not a qualifying risk for reinsurance contracts, which were entered into on the assumption that the pre-calculated commissions could be recovered by the reinsurers, who had advanced them through interest on NAV deposits.

Beyond the tax aspects, the ruling is interesting both because it addresses the nature of linked policies, seen for the first time from the reinsurer’s perspective, and because rulings on reinsurance are generally quite rare – even more so those that analyse the nature and characteristics of reinsurance contracts, in particular individual clauses or specific aspects.

Tax

Insurance Premium Tax: The Italian Tax Authorities' new interpretation in the motor sector

Christian Montinari, Gabriele Savoca

Over the past few weeks, several insurance companies operating in the Italian market have been facing a new wave of tax questionnaires and audits on how to apply the Insurance Premium Tax (IPT) to driver accident (*infortuni sul conducente*) and roadside assistance (*assistenza stradale*) insurance guarantees.

These proceedings – largely coordinated at a national level – reflect a renewed interpretative approach by the Italian Tax Authorities (*Guardia di Finanza* or *Agenzia delle Entrate* – ITA). The ITA seems to be questioning the long-standing tax treatment adopted by the entire insurance industry for decades.

At the same time, rumours reported in the Italian financial press suggest that possible amendments to the IPT regime might be included in the 2026 Budget Law, potentially with retroactive effects, in particular with reference to driver accident (*infortuni sul conducente*) insurance guarantees.

Understanding both the rationale of the new tax assessments and the historical evolution of the IPT legislation is crucial in assessing the solidity of the insurance sector's position and to anticipate potential legislative adjustments.

Italian Budget Law 2026: Possible amendments to the IPT regime

According to press leaks, the government is considering introducing a new law provision in the 2026 Italian Budget Law concerning the applicability of the 12.5% IPT rate to insurance guarantees "*related to motor vehicle circulation*," including *driver accident* guarantees. It's not clear whether this law provision will have retroactive effects, bearing in mind that at least ten years are still open for IPT tax assessments.

If confirmed, this intervention would be a substantial shift from the current framework, where these insurance guarantees are taxed at 2.5% (for driver accident cover) and 10% (for roadside assistance cover). Both rates are explicitly grounded in the long-standing interpretation of Law No. 1216 of 29 October 1961 (IPT Law), as progressively amended by subsequent legislation and clarified by ministerial guidance.

A legislative intervention aimed at imposing the 12.5% rate across all motor-related insurance guarantees would generate a significant financial impact for insurers and policyholders. But it would also risk contradicting the logic of the existing Italian tax framework, which is founded on a clear distinction between compulsory motor liability insurance and optional insurance coverages.

The Italian Tax Authorities' potential interpretation

In parallel with these potential legislative developments, the ITA is sending insurance companies formal tax questionnaires starting from fiscal year 2015 requiring IPT-related information. The ITA is also requesting a memorandum regarding the tax and legal treatment adopted by the companies with reference to driver accident (*infortuni sul conducente*) and roadside assistance (*assistenza stradale*) insurance guarantees.

It seems that the ITA is evaluating if these insurance guarantees allegedly constitute "*risks related to the circulation of vehicles*," a category that – according to this interpretation – may be assimilated to RC Auto regime under Article 1-bis, IPT Law. In other words, the ancillary nature of these covers vis-à-vis the compulsory RC Auto policy should entail their taxation at the same rate (12.5%), irrespective of whether they're sold together or separately.

This potential interpretation would mark a significant departure from both administrative practice and industry consensus, given that the tax treatment was explicitly recognised by the Ministry of Finance through the Circular No. 301716 of 3 December 1983 and the Italian market has uniformly followed this approach. The ITA itself had never previously questioned it.

Preliminary remarks on the Italian Tax Authorities' interpretation

From a legal and systematic standpoint, the ITA's position doesn't seem to be supported by the relevant legislation, nor by the interpretative acts issued over the past six decades.

From a formal point of view, all these kinds of policies fall within different insurance branches (*driver accident*: Ramo 1 – *Infortuni*; *RC Auto*: Ramo 10 – *Responsabilità civile autoveicoli terrestri*; *roadside assistance*: Ramo 18 – *Assistenza*).

From a substantial point of view, Ministry of Finance Circular No. 301716/1983 expressly clarified that driver accident insurance fell under the 2% IPT rate (now 2.5%), while motor liability insurance was subject to 10% IPT rate (now 12.5%). The circular also identified which insurance guarantees could be considered "*risks related to the circulation of vehicles*" – such as legal expenses, driving license withdrawal or cleaning costs after an accident – none of which are remotely comparable to driver accident or roadside assistance guarantees.

In a nutshell, both the law and the administrative guidance have consistently upheld a dual regime:

- Driver accident and roadside assistance covers are distinct and separately taxable.
- Only those risks directly connected to the liability of the driver fall under the RC Auto rate (Circular No. 301716/1983 expressly pointed out those kind of risks).

Unless and until the legislature expressly amends the law, the application of the 2.5% and 10% IPT rates to these insurance guarantees should be regarded as fully compliant with both the letter and the spirit of the applicable rules. Any attempt to requalify them as "related risks" to RC Auto – whether through tax audits or retroactive interpretation – would lack any legal foundation, generating unnecessary disputes, uncertainty and costs across the insurance market.

Even assuming that the ITA interpretation will be carried forward, administrative penalties should be excluded, by applying art. 8, Legislative Decree n. 546/1992 and art. 6, Legislative Decree n. 472/1997, in light of the objective conditions of uncertainty affecting these provisions.

If the legislator attempts to introduce an "authentic interpretation" of the IPT regime – retroactively extending the 12.5% rate to driver accident and roadside assistance insurance guarantees – it would raise serious constitutional concerns.

Ultimately, a transparent and forward-looking dialogue between the government, the insurance industry, IVASS and ANIA would be the most effective way to modernise the IPT framework without compromising legal certainty or undermining long-established market practices.

IRAP Refund on EU Dividends: perspectives under the 2026 Budget Law

Antonio Longo, Angela Dulcetti

Introduction

The 2026 Budget Bill aims to implement the *Mediolanum* ruling of the Court of Justice of the European Union (CJEU, 1 August 2025). The ruling looked at the IRAP regime applicable to banks, financial intermediaries and insurance companies and how compatible it is with the Parent-Subsidiary Directive. The Bill seeks both to adapt the regime for the future and, with respect to the past, to recognise the right to a refund or a special form of compensation.

The CJEU stated that the Parent-Subsidiary Directive applies to any tax whose taxable base consists, in whole or in part, of dividends originating in the EU (including the Italian IRAP, with specific reference to banks, financial intermediaries and insurers). Secondly, the court found that the Italian IRAP regime was incompatible with EU law as it required the inclusion of EU-source dividends in the taxable base of banks and financial intermediaries at 50% of their amount, which exceeds the limits of taxability permitted by the Directive, which is only up to 5%.

Following the CJEU ruling, many banks, financial intermediaries and insurance companies have filed (or are currently filing) claims for reimbursement of the excess IRAP unduly paid to the tax authorities.

Remedies available for the refund

In light of these European rules and principles, the Italian legislator, through the draft Budget Law, intends to act on two fronts: for the future, by amending the IRAP rules applicable to banks, financial intermediaries and insurance companies to bring them into line with European requirements; for the past, by expressly recognising the right to a refund of the excess IRAP unduly paid, subject to the timely submission of a refund claim.

Article 17(1)(a) and (b) of the draft Budget Law provides that, where the requirements laid down in the Parent-Subsidiary Directive (as implemented by Article 27-bis of Presidential Decree No. 600/1973) are met, dividends received by financial intermediaries and insurance companies from subsidiaries resident in other EU member states will be excluded from the IRAP tax base for 95% of their amount.

Pursuant to paragraph 2 of the same article, this provision will apply from the tax period ending on 31 December 2025. So the future regime will be aligned with the Directive, limiting the inclusion of intra-EU dividends in the IRAP tax base to 5% of their amount.

Provisions governing the past

The most noteworthy provisions concern the past – namely, the mechanisms for recovering amounts already paid in excess during previous tax periods.

Under paragraph 3 of Article 17, taxpayers are entitled to reimbursement of the amounts already paid, provided that the limitation period set out in Article 38 of Presidential Decree No. 602/1973 (ie 48 months from payment) is observed.

As an alternative to reimbursement by the Revenue Agency, paragraph 4 allows taxpayers, at their discretion, to offset refundable amounts against the substitute tax referred to in Article 20 of the same Bill. This is proposed to release the reserves referred to in Article 26(5-bis) of Decree-Law No. 104/2023 (a substitute tax at a rate of 27.5% for the release (*affrancamento*) of reserves existing at the end of the current financial year on 31 December 2025 and 33% for the release of reserves existing at the end of the following financial year).

Purpose and interpretation

The right to reimbursement of taxes paid and then deemed inconsistent with EU law is a consequence of EU law itself. In this sense, Article 17(3) of the draft finance bill merely reiterates a principle already implicit in the legal system.

It could be argued that, through this provision, the legislator simply intended to ensure that the tax authorities proceed with the refund, avoiding unnecessary litigation.

By expressly providing for the right to a refund or to special compensation through the substitute tax referred to in Article 20, the legislator seems to be attempting to define the remedies available to taxpayers to recover unduly paid amounts. If this interpretation were correct, taxpayers would be precluded from using alternative mechanisms, in particular supplementary tax returns (*dichiarazione integrativa*).

Conclusion

The legislator's effort to comply with the CJEU's Mediolanum ruling is certainly commendable.

However, it remains to be clarified whether the provision constitutes merely confirmation and acknowledgment of the right to reimbursement, or whether it represents a measure limiting the procedural instruments available to taxpayers – in particular, by excluding the possibility of filing a supplementary tax return. The implications would be significant: refund claims are subject to a limitation period of 48 months while supplementary tax returns are governed by the longer time limits applicable to tax assessments by the authorities (i.e. until 31 December of the fifth year following the year in which the original return was filed).

Withholding Tax on Insurance Commissions: Italian Revenue Agency clarifies insurance agent obligations

Tax Team

With Ruling No. 286 of 5 November 2025, the Italian Revenue Agency clarified the withholding tax obligations introduced in 2024, which now also apply to insurance agents.

The case concerned a Belgian insurance and reinsurance company (the Applicant) operating in the EU and EEA markets through an outsourced underwriting model. The model relied on Managing Agents, Coverholders and brokers acting as intermediaries across different jurisdictions.

In Italy, the Applicant operates under two regimes:

- Freedom of services (FOS) – for contracts managed by intermediaries not established in Italy; and
- Freedom of establishment (FOE) – through a permanent establishment registered in Italy (the SO ITA), authorized by IVASS in 2018.

SO ITA provides administrative, legal and compliance support to the Belgian head office. It's also responsible for certain operational functions, including the formal signing of Italian insurance policies (as required by regulation) and compliance with Italian insurance tax obligations.

The Italian business model involves several layers of contractual relationships:

- Accredited Brokers, who collect and submit insurance proposals to the Applicant.
- Local brokers and Coverholders, who deal directly with clients in Italy.
- Managing Agents, who coordinate the network of intermediaries.

The Applicant:

- Directly or through the Managing Agent, enters into agreements with Accredited Brokers who collect and submit insurance proposals to the Applicant; and
- Enters into a framework agreement with the Managing Agent, which coordinates local intermediaries and, under an undisclosed agency arrangement, may appoint Coverholders acting as insurance agents in Italy.

Commissions are paid to Accredited Brokers and Coverholders as a percentage of the premiums collected. Coverholders have to remit to SO ITA the amounts related to the insurance premium tax, while the net premiums are transferred to the Applicant.

The tax question raised by the Applicant concerned the possibility – introduced for administrative simplification – that SO ITA might temporarily receive insurance premiums from Accredited Brokers and Coverholders on behalf of the Applicant, without acquiring economic ownership of those amounts, subsequently remitting them to the Belgian head office via the designated broker.

The Applicant sought clarification on the potential withholding tax implications at SO ITA level, with respect to two specific operational cases:

- **Case 1:** SO ITA receives insurance premiums from local brokers and Coverholders net of the commissions due to them.
- **Case 2:** SO ITA transfers the collected premiums to the Entrusted Brokers, which may include commissions owed to those brokers.

The Applicant asked whether, under these circumstances, SO ITA should be regarded as a withholding tax agent (*sostituto d'imposta*) pursuant to Article 25-bis of Presidential Decree No. 600/1973. This decree governs withholding tax on commissions paid to intermediaries such as agents, brokers and representatives.

According to the Italian Revenue Agency, in both cases SO ITA has to apply withholding tax on commission. The withholding obligation arises when the commission is paid (cash basis), even when commissions are retained by intermediaries from insurance premiums. In such cases, the commission is deemed to be "paid" when retained, and SO ITA must apply the relevant withholding tax.

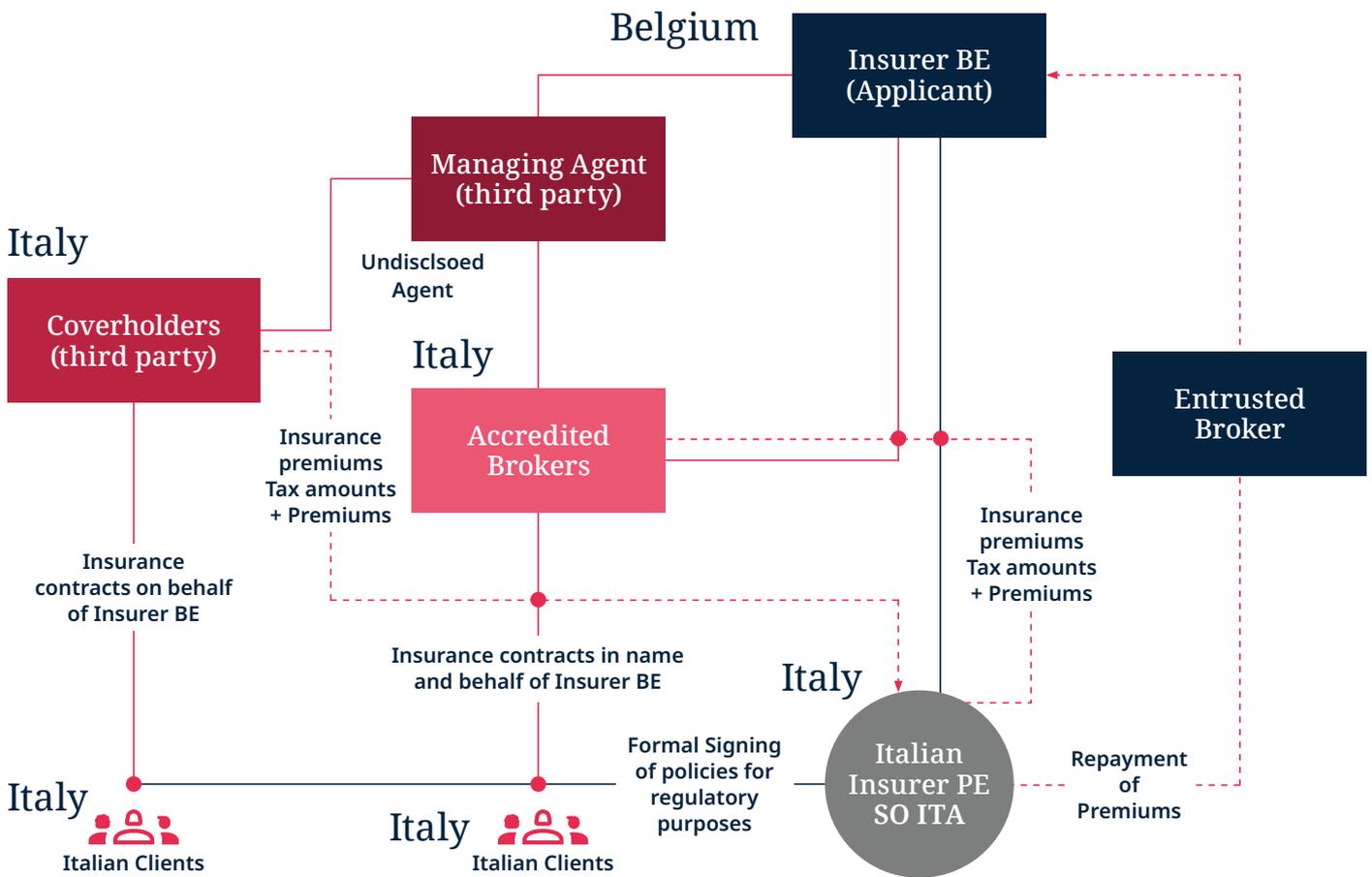
The Revenue Agency emphasised that, under Articles 23 and 64 of DPR 600/1973, a foreign company's permanent establishment in Italy (SO ITA) is treated as fiscally equivalent to the non-resident entity itself. So, when the PE manages or processes payments related to commissions earned by intermediaries – whether resident or non-resident with a PE in Italy – it has to withhold tax on those amounts.

Specifically, in this case:

- When local brokers and Coverholders remit insurance premiums to SO ITA net of commissions (Case 1), the latter must treat that moment as the payment of commissions and apply withholding tax.
- When SO ITA subsequently transfers premiums to Entrusted Brokers, which include commissions owed to them (Case 2), the same withholding obligation applies.

The Agency rejected the taxpayer's argument that the SO ITA shouldn't be considered as making the payment of commissions, noting that the SO ITA's involvement in the financial flow and its fiscal autonomy under Italian law are sufficient to trigger the withholding requirement.

This interpretation confirms that foreign insurers operating in Italy through a permanent establishment have to manage withholding obligations on commissions paid (or deemed paid) to intermediaries in the Italian insurance market, even if the payments are made on behalf of the foreign head office.



Authors:



Francesco Cerasi

Partner

T +39 06 68 880 1

francesco.cerasi@dlapiper.com



Chiara Cimarelli

Partner

T +39 06 68 880 1

chiara.cimarelli@dlapiper.com



Giovanni Iaselli

Partner

T +39 02 80 618 1

giovanni.iaselli@dlapiper.com



Antonio Longo

Partner

T +39 02 80 618 1

antonio.longo@dlapiper.com



Christian Montinari

Partner

T +39 348 406 7896

christian.montinari@dlapiper.com



Mauro Carretta

Legal Director

+39 02 80 618 1

mauro.carretta@dlapiper.com



Giacomo Lusardi

Legal Director

T +39 02 80 618 1

giacomo.lusardi@dlapiper.com



Andrea Pantaleo

Lead Lawyer

T +39 02 80 618 1

andrea.pantaleo@dlapiper.com



Angela Dulcetti

Senior Lawyer

T +39 028 061 8658

angela.dulcetti@dlapiper.com



Gabriele Savoca

Lawyer

+39 02 80 618 1

gabriele.savoca@dlapiper.com

dlapiper.com