

New Mandatory Fee for Corporations with Revenues over EUR50millions to Finance the Italian Antitrust Authority (AGCM)

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The Italian Government has recently amended* the Law no. 287 of October 10, 1990 (specifically, section 10, paragraph 7-ter and quarter) in relation to the modalities to fund the Italian Antitrust Authority (the "Authority") by requiring Italian corporations (S.p.A.) and limited liability companies (S.r.l.), with annual revenues greater than 50 million Euro, to pay a mandatory fee. As a consequence, such mandatory fee shall apply to the above companies regardless of those required to notify concentrations to the Authority.

The Italian Government has recently amended* the Law no. 287 of October 10, 1990 (specifically, section 10, paragraph 7-ter and quarter) in relation to the modalities to fund the Italian Antitrust Authority (the "Authority") by requiring Italian corporations (S.p.A.) and limited liability companies (S.r.l.), with annual revenues greater than 50 million Euro, to pay a mandatory fee. Starting from January 1, 2013, such mandatory fee will replace the fee previously applied to the companies requested to notify concentrations to the Authority.

On August 27, 2012, the Authority issued guidelines and instructions** to clarify the new provision and ensure that the fee was fully implemented as follows:

- Italian companies ("S.p.A. and S.r.l.") with annual revenues from sales and services greater than 50 million Euro based on their latest financial statement are required to pay the fee (specific indications have been provided for banks and insurance companies to identify the relevant annual revenues);

- the fee amount due for 2013 is 0.08 per thousand of revenues (shown in item "A1" of a company's income statement pursuant to section 2425 of the Italian Civil Code) according to the company's most recent financial statement (approved before July 18, 2012);
- fee amount due for 2013 will range from a minimum of 4,000 Euro to a maximum of 400,000 Euro. After 2013, the new provision allows the Authority to modify the fee amount and criteria for determining it, as long as it does not exceed 0.5 per thousand of relevant "total revenues";
- **such fee must be paid to the Authority via wire transfer by October 30, 2012** (payments are accepted starting from October 1, 2012). **By November 30, 2012, companies must send the proof of payment (through a form available on the Authority's website) to the following certified email address: contributo.agcm@pec.agcm.it** Beginning to the fee due for the 2014, the contribution must be paid by July 31 of each year;
- companies linked by control or affiliation pursuant to section 2359 of the Italian Civil Code, or under the direction or coordination of other companies, should pay separate fees based on revenues from their own financial statements. In such case the parent company is entitled to pay the fee on behalf of each subsidiary according to the FAQ published by the Authority on September 28, 2012. Furthermore the Authority clarified that, for 2013, the aggregate fee amount for companies belonging to the same group may not exceed Euro 400,000.

The Authority will confirm payment of the correct fee and, if only partial or no payment has been received by the stated deadlines, will proceed to recover the amount due plus interest.

* Through the Decree no. 1 of January 24, 2012 (Law no. 27 of March 24, 2012)

** Provision no. 23787