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Italian Parliament Passes Reform of the Civil Justice System

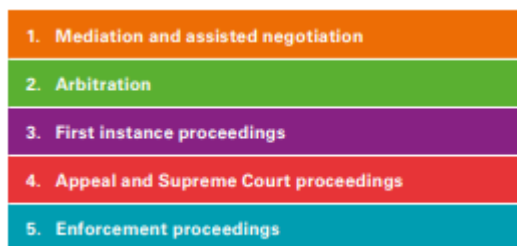
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On November 25, 2021, following the approval by the Senate, the House of Deputies has approved a bill (the Bill) that introduces a reform of the Italian civil justice system (the Reform). The Bill, which formally delegates the government to enact a number of legislative decrees, aims at improving the efficiency and transparency of the Italian civil justice system and revises the rules governing alternative dispute resolution (ADR) mechanisms.

The Reform is a key step towards fulfilment of commitments made to the EU Commission by the Italian government in the context of the Piano Nazionale di Ripresa e Resilienza (National Recovery and Resilience Plan). Such commitments were a prerequisite for Italy being given access to the significant funds granted by the Next Generation EU program. In total, the EU funding program is expected to grant up to 209 billion to Italy.

This long-awaited Reform is aimed at achieving the ambitious goal of reducing the overall duration of Italian civil proceedings by 40% over the next five years. The declared goal is to shorten the duration of civil proceedings to a maximum of 1,000 days, counted from the onset of the litigation until the issuance of a final judgment.

This brief summary focuses on certain key aspects of the Reform that should have an impact on conducting business in Italy. The aspects covered are as follows:



1. Mediation and Assisted Negotiation

The Reform gives a boost to mediation with the enhancement of tax advantages aimed at encouraging the reaching of extrajudicial agreements between the parties. The Bill also extends the mandatory recourse to mediation before commencing proceedings to contracts of partnership, consortium, franchising, network, supply of work, goods and services, partnership and subcontracting.

With a view to preventing disputes escalating to court, the Reform introduces the possibility of entering into assisted negotiation procedures also in relation to employment disputes.

Furthermore, the Reform provides for the consolidation of the technological innovations introduced following the COVID-19 pandemic. In this context, if the parties agree, mediation and assisted negotiation procedures can be carried out remotely, using video- and tele-conference tools.

2. Arbitration

In Italy, until now, arbitrators did not have the power to issue precautionary measures. The Reform closes the gap with many other European states and provides for the attribution to arbitrators of a new power to issue precautionary measures. The parties must grant such authority to the arbitrators by means of an arbitration agreement or in a subsequent written act. Ordinary courts will still decide upon appeals filed against precautionary measures issued by arbitrators. The courts will also maintain the power to issue precautionary measures when the parties make an application for precautionary measures before the nomination of the arbitral body.

3. First Instance Proceedings

The Reform provides for the possibility for courts to hold hearings remotely or by means of the exchange of written notes, fully implementing the measures the Italian government had introduced on an emergency basis following the COVID-19 pandemic.

One of the most noteworthy aspects of the Reform relates to the reshaping of the introductory phase of first instance proceedings. First instance proceedings will not represent a mere bureaucratic phase anymore, but will rather constitute an opportunity in which a significant number of procedural activities will be concentrated, with a view to streamlining the whole process. The aim is to define the subject matter of the dispute and evidentiary requests before the first hearing by setting terms for the parties to file their statements of defense and counterclaims. This marks a stark contrast with the procedural rules applicable hitherto, in which the subject matter of the dispute and the evidentiary requests were defined well after the first hearing.

Other significant innovations relate to (i) new power, given to the judge, to issue binding orders already following the first hearing; (ii) mandatory personal appearance of the parties during the first hearing for the purposes of attempting conciliation (failure to appear in person without justified reasons may be used by the judge as grounds for the decision); and (iii) reshaping of the final stage of the proceedings, especially by reallocating the deadlines for the filing of closing statements and objections.

The Reform also introduces an extension to the scope of application of summary proceedings. Following the Reform, summary proceedings may be applied also when (i) the constituent facts of the claim are not controversial and (ii) the investigation of the case is based on documental or ready-made evidence or requires a non-complex preliminary investigation activity.

4. Appeal and Supreme Court Proceedings

The Reform provides that appeals with no chance of being upheld should be declared manifestly unfounded right away. The relevant Court of Appeal may declare an appeal manifestly unfounded with a briefly motivated decision, if necessary, also referring to conforming precedents, following an oral discussion.

Moreover, the regime for the provisional enforceability of appealed judgments will also be amended. Currently, the relevant Court of Appeal may revoke the provisional enforceability of a first instance decision when serious and well-founded reasons exist, including in relation to the possibility of the insolvency of one of the parties. The Reform broadens the scope of the suspension of the provisional enforceability. In particular, the relevant Court of Appeal will have the possibility to revoke the provisional enforceability when the appeal is manifestly founded or when such enforceability will likely cause serious and irreparable damage.

Also, worth mentioning is a new power for judges, aimed at preventing the onset of litigation, to refer cases directly to the Supreme Court when the issue presents serious difficulties of interpretation, affects a number of proceedings and concerns a legal issue of significant importance.

5. Enforcement Proceedings

The Reform also impacts upon the functioning of enforcement proceedings. One of the most significant changes is the elimination of the formula esecutiva (order of enforcement), which should allow the creditor to save time in the credit recovery phase.

Conclusion

According to the note on the judiciary administration issued by the President of the Supreme Court, ordinary civil proceedings in Italy typically last an average of 1,800 days, taking into account three instances of judgment. Comparison of data with other European countries casts the current Italian civil justice system in an unfavorable light. To make things worse, the European Court of Human Rights on a number of occasions has ruled against Italy for violations of the principle of due process because of the excessive duration of proceedings: over 1,200 times since 1959. For these reasons, the Bill is certainly the result of a long-awaited Reform that hopefully will bring positive changes, as well as better results in terms of duration and quality of civil proceedings in Italy. Clearly, the impact of these measures will have to be assessed in light of the legislative decrees issued by the government and the concrete practice that will result therefrom.

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