



Laura Salvaneschi, BonelliErede

Q&A

'Reorganizing the System Is the Key': A Bonelli Partner Explains Italy's Sweeping Legal Reforms

Laura Salvaneschi, a partner at BonelliErede and a law professor, lays out the road ahead for the Italian civil justice system.

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Dispute Resolution

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After years of stop-and-start debate, the Italian government approved sweeping changes to the country's legal system at the end of 2021. The changes, which need to be enshrined in enabling decrees by the end of 2022, are aimed at speeding up Italy's notoriously slow civil justice system – something that is considered essential to attracting foreign investment and stimulating needed growth in the Italian economy.

The reforms aim to speed up the civil justice system with a series of measures, including setting strict time limits for appeals, encouraging mediation and increasing support staff in courtrooms.

Laura Salvaneschi, a partner at BonelliErede and a full professor of civil procedural law and arbitration law at the University of Milan, explains the reforms and lays out the road ahead for Italian legal practice.

Which practice areas in Italian business law stand to benefit the most from the reforms?

This reform specifically concerns civil litigation, so if it succeeds in its goal of drastically reducing the duration of civil proceedings – and thus the time needed to obtain an enforceable decision – all sectors that are currently negatively affected by that issue will benefit: trade, investments, and the economy in general. However, this objective is by no means easy to achieve. Everything will depend on the legislature's ability to bring about, through decrees, a deep-rooted overhaul of the civil justice system that goes beyond a few regulatory reforms.

The reforms state a goal of reducing the time of a civil trial by 40% by 2026. What are the sorts of civil trials that are the most backed up at the moment, and what effect does that have on the practice of law and on the economy?

Statistics show that there are no single types of civil proceedings that are more backlogged than others, but rather that some courts have a large backlog and others are faster. Regardless of case complexity, at some courts the number of backlogged cases is a small percentage of the total, i.e., approximately 6–11%; at others it is very high – between 31% and 45% of the total caseload. This goes both for first-instance courts and for courts of appeal. Also, the Supreme Court has considerable backlogs.

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The excessive length of civil proceedings, at the merits and enforcement stages alike, has a significant impact on businesses, willingness to invest, and Italy's overall economic growth. The inefficiency of the justice system not only discourages foreign investors, but first and foremost harms Italian investors, whose businesses are put in difficulty by a justice system that does not enable swift recovery of debts or rapid dispute resolution. The legal literature on the subject quantifies the impact of this inefficiency on the country's GDP at around 1%.

A little history: Why are Italian civil trials so long and cumbersome? Where did the trend start, and when, and why?

The disarray in which the Italian civil justice system finds itself has been ongoing for decades, and red flags became apparent as early as the 1980s. Statistics show that at that time the number of proceedings grew, and in the following 20 years the number of first-instance civil proceedings so much as doubled, without the number of judges and court offices increasing to match.

The reasons behind this exponential increase are hard to pinpoint but certainly have to do with the country developing and the number of business transactions and civil litigation thus increasing. This increase was also facilitated by the fact that court costs in Italy are lower than those in other countries, which allows broad access to civil litigation at all instances, including before the Supreme Court.

Around the same time, the number of qualified lawyers also increased exponentially because access to universities became more commonplace and because law faculties did not impose entry requirements, unlike faculties in other subjects. Furthermore, remunerating lawyers based on hourly rates (thus linking the remuneration to the length of the proceedings) was claimed by some to be a possible reason for the increase in litigation.

In those years, serial and specialized litigation increased, and collective remedies such as class actions had yet to be introduced. Civil proceedings thus became increasingly lengthy, thereby facilitating stalling techniques that favor out-of-court settlements rather than a long wait for a court decision.

Why have previous reforms been ineffective at achieving the goal of streamlining the process, and what specifically in this body of reforms will make a crucial difference?

I believe the failure is largely due to the focus having been mostly on regulatory changes and little on reorganizing the civil justice system, which is key to resolving the issue.

The recently approved framework law seems to move things in the right direction, as some of the guiding criteria are organizational in nature. The reform proposes an office for proceedings to ensure that judges are assisted by a team, state-of-the-art IT systems, and workflow management systems. The fact that some courts have managed to keep backlogs at bay within the current system clearly means that the issue is merely organizational in nature; the wording of the reform suggests a desire to focus on this aspect – something that will, however, need to be developed further.

The reforms aim to strengthen alternative dispute resolution tools, creating tax incentives for their use. Can you explain more fully what those incentives are?

These very technical measures address a number of issues, including: increasing the exemption from registration tax on conciliation agreements; establishing tax credits commensurate with the remuneration of lawyers assisting parties in mediation, and with court fees paid for any proceeding that ends in a mediation agreement; extending legal aid to mediation, with tax credit for mediators' indemnities; and reforming the costs of initiating mediation and the indemnities paid to mediation bodies.

The framework law also promotes more and better training for mediators, as well as the use of mediation during litigation, i.e., court-ordered mediation. This latter remedy is viewed by many in a highly favorable light. On the contrary, the envisaged extension of compulsory mediation as a condition for the admissibility of court proceedings is widely criticized.

Digitization is seen as an important tool for expediting the legal process. Can you talk about the state of digitization in the Italian legal system today, and what more needs to happen?

Italian law firms have been investing in and even embracing digital tools for some time. The digitization of civil proceedings was introduced a few years ago and, thanks to close monitoring and supervision by the courts, seems to be working well. That said, at the moment we are seeing some problems relating to the limitations on formats that can be used to produce documents and a rather strict case law on the inadmissibility of documents and other filings submitted in incorrect electronic formats.

One of the aims of the reform is to continue to implement and improve the digitization of the legal process. Offices for proceedings will have to be staffed with people with IT skills who can help not only court offices but also clerks make optimal use of IT tools. These teams – which, as mentioned, will assist judges – will also be in charge of cataloguing, archiving and researching case law, all of

which requires appropriate IT support. Court filings will have to be submitted only by electronic means, which could very well entail the use of new technologies and solutions compared to those used today; IT specialists are studying the whats and hows as we speak

Now that the reforms have been approved by the legislature, the next step is the implementing decrees, which must be issued in 2022. Can you describe that process a little more fully, and what is the final deadline for the decrees?

The government has one year from the framework law's entry into force to issue one or more legislative decrees that outline the formal and substantive reform of civil proceedings, namely by introducing new rules or amending existing ones in the Civil Procedure Code and in special procedural laws. The outlines of the new rules, once adopted by the relevant ministries, are then submitted to Parliament for an opinion from the competent committees – including an assessment of spending aspects – within 60 days of submission.

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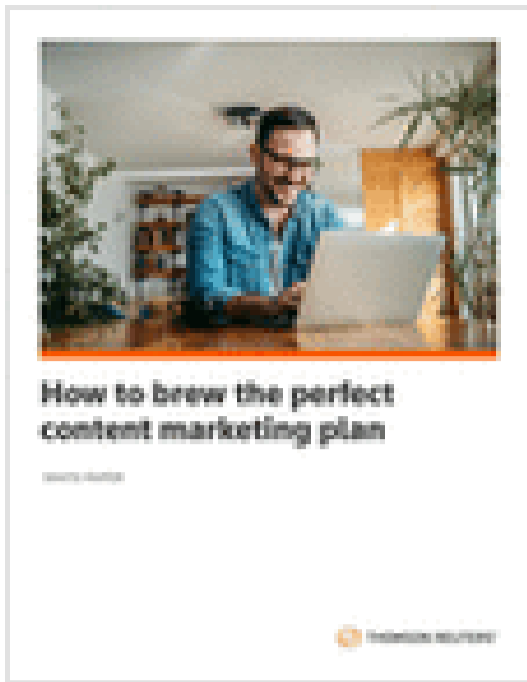
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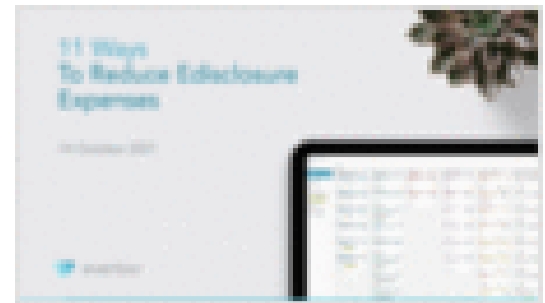
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