

New procedural rules to speed-up and make italian litigation more efficient

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The recently formed Letta government has issued its first regulation aimed at restarting the Italian economy. This new regulation also concerns the field of justice, since it has several things to say regarding legal proceedings and the reduction of related expenses.

In this brief alert we will focus on Law Decree no. 69/2013 (the "Decree") issued on June 21, 2013 and in force since June 24, 2013. Significantly, insiders have named it "Decreto Fare", suggesting that its aim is to put in place tangible and productive measures.

The most relevant rules regarding justice pertain to:

- The introduction of up to 400 new judges to the Italian Court of Appeals. One of the major problems faced by the Italian judicial system has been the length of the appeal process (which averages three years). With this rule the government aims at reducing the number of the claims still pending. The Decree sets mandatory results for the new judges, introducing a duty to rule on a minimum of 90 claims per year. If a judge fails to achieve this minimum standard, he/she will be not confirmed for the following year.
- The introduction, in ordinary proceedings, of the duty of the judge to put forward a proposal to settle or conciliate the claim to the parties. A party's refusal of the proposal without a valid reason could be considered by the judge as part of the final decision (i.e. regarding the legal expenses to be allocated). Obviously, the judge would not be required to make such an offer if it were clear that it was impossible to settle the claim. Also this measure is clearly aimed at reducing the number of pending proceedings. It is interesting to note that, contrary to the provisions related to Labor proceedings and to other rules providing conciliatory attempts, the Decree seems not to require the party (or indeed its authorized representative) to attend the hearing personally in order to accept or refuse the proposal. This means that the power to accept or refuse could be granted by the party to

its lawyer by power of attorney; this is good news for international companies that have a foreign authorized representative.

- The willingness to accelerate proceedings started by a creditor to recover money. In particular, a specific remedy for the judge has been introduced in order to avoid dilatory behavior on the part of the debtor in cases of his/her challenge of a court order of payment issued against him/her. The hypothesis describes the debtor scheduling the first hearing of the challenge proceeding (Italian Law grants this choice to the claimant) at a date too far from the minimum term that has to pass between the service of the writ of challenge and the first hearing (45 days). In this case the judge - upon the request of the creditor - shall re-schedule the hearing for not more than thirty days after such minimum term.

In addition, it is set forth that if, during the challenge proceedings, the judge decides to grant the immediate enforceability of a court order of payment that was not already enforceable when it was issued, then he must make such a decision at the first hearing. Previously lacking such an amendment, judges generally used to grant the enforceability after the first hearing. The new rule is clearly aimed at allowing creditors to start the collection of debt in advance and should therefore be welcomed.

- The introduction of specific rules regarding the competence of the courts if a foreign company without a branch in Italy is involved in a proceeding. The Decree identifies three main city courts (one located in the north: Milan; one located in the center: Rome; and one located in the south: Naples) as authorized to hear claims involving a foreign company that would otherwise fall within the competence of other courts pursuant to the general rules of the Italian Civil Procedural Code. Pursuant to this rule, the Decree aims at directing claims that involve foreign (and probably large) companies before bigger courts that are easily reachable and likely more familiar with international litigation. The rule of competence will be applicable only to those proceedings started 30 days after the issuance of the confirmation Law of the Decree. It is, however, interesting to note one specific area of uncertainty in the current formulation of the Decree. In order to protect more vulnerable parties, the rule does not apply to certain proceedings (for example labor proceedings or proceedings started pursuant to the Italian Customer Code). However, the government seems to have forgotten the fact that proceedings involving travelers have been excluded from the Italian Customer Code. Therefore, although a traveler can be classified as a customer, it is not certain that the protection will also apply to him/her. It remains to be seen both if the confirmation Law will make some specifications in this regard, and also how the Italian courts will interpret the scope of the rule.
- The re-introduction of mandatory mediation in some matters before commencing court proceedings. This constitutes a re-introduction, as mandatory mediation (for roughly the same matters) was initially introduced by Legislative Decree no. 28/2010, which was deemed unconstitutional by the Italian Constitutional Court in December 2012. Letta's government, encouraged by the recommendation of the EU Council n. 362 issued on May 29, 2013, is trying to re-establish this measure aimed - along with the duty of the judge to propose a settlement as described above - at reducing the number of proceedings before the Italian Courts. The maximum length of the mediation proceeding has been reduced to three months instead the four months set by the previous regulation, and the refusal of a party to attend the mediation proceeding could be considered by the judge as part of his/her decision. Some of the very important matters for which mediation is now mandatory include leases, asset transfers and defamations issues. Despite the fact that, by contrast to the previous measure, the "new" mandatory mediation requires the presence of the defense counsel, the lawyers' association has complained vociferously about its re-introduction, threatening strikes if the mediation provision is not removed by the confirmation Law.

Also, the mandatory mediation will only be applicable 30 days from the issuance of the confirmation Law of the Decree.

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We will see whether such innovations will be confirmed by the confirmation Law and, if so, whether they will lead to tangible results. One thing remains certain: although the new rules have been greeted differently by insiders, the fact that something has been done to render Italian trials more compliant with the EU demand for their expedition has to be welcomed.

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