

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"  
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU  
NATIONAL REPORT FOR:**

**ITALY**

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## **(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes**

### **1. Main legal Sources**

The main legal source governing Italian jurisdiction in civil and commercial matters is Law No. 218 of 31 May 1995 on the Reform of the Italian System of Private International Law (hereinafter the "PIL Act")\*. It is important to note that the PIL Act should be considered as a "code" which applies to international disputes involving conflicts of laws in all matters and provides for rules on jurisdiction, the applicable law and the effects of foreign judgments and acts (Article 1)<sup>1</sup>.

With reference to jurisdiction, Article 3.1 of the PIL Act contains a general rule on jurisdiction which states that *"Italian courts shall have jurisdiction if the defendant is domiciled or resides in Italy or has a representative in this country who is enabled to appear in court pursuant to Article 77 of the Code of Civil Procedure, as well as in other cases provided for by law"*.

In addition to this general provision, Article 3.2 states that *"Italian courts shall further have jurisdiction according to the criteria set out in Sections 2, 3 and 4 of Title II of the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters with Protocol, signed in Brussels on 27 September 1968, enforced by Law No. 804 of 21 June 1971, with amendments in force for Italy, including when the defendant is not domiciled in the territory of a contracting State, with respect to any of the matters falling within the scope of application of the Convention. With regard to other matters, jurisdiction shall be also determined according to the criteria laid down for territorial jurisdiction"*.

This paragraph of Article 3 will be further discussed at § 3.

Other specific rules on jurisdiction are provided under Articles 22, 32, 37, 40, 44 and 50 of the PIL Act, which concern matters falling outside the scope of the Brussels I Regulation. Therefore, they are not relevant for purposes of the present study.

Other significant rules on jurisdiction are also provided under Article 9 on voluntary jurisdiction (*"jurisdiction gracieuse"*) and Article 10 on provisional measures (see further at § 3).

It is also worth noting that Italy is part to many bilateral and multilateral international treaties in civil and commercial matters, as it will be further explained below at § 8.

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\* A full translation of the PIL Act is enclosed as Annex I to this study.

<sup>1</sup> See N. Boschiero, *Appunti sulla riforma del sistema italiano di diritto internazionale privato*, Turin, 1996, p. 14; S.M. Carbone, *Il nuovo spazio giudiziario europeo dalla Convenzione di Bruxelles al Regolamento CE 44/2001*, Turin, 2000, p. 9; P. Mengozzi, *Il diritto internazionale privato italiano*, Naples, 2004, p. 32; F. Salerno, *Giurisdizione ed efficacia delle decisioni straniere nel Regolamento CE 44/2001 (La revisione della Convenzione di Bruxelles del 1968)*, Padua, 2006, p. 3. On Article 1 see S. Bariatti, "Articolo 1", *Commentario alla Riforma del Sistema italiano di diritto internazionale privato*, 1996, p. 879; F. Pocar, "Articolo 1", *Commentario del nuovo diritto internazionale privato*, Padua, 1996, p. 3.

## 2. Specific Rules (or Not) for Transnational Disputes

The Italian rules on jurisdiction set out in the PIL Act are specifically addressed to govern cross-border disputes. In addition, Article 3.2, final part, of the PIL Act refers to the rules on internal venue provided for in the Italian Code of Civil Procedure<sup>2</sup>. Said rules, set out under Articles 18-30 *bis* of this Code, determine a further extension of Italian jurisdiction in those matters which fall outside the scope of the Brussels Convention and are not relevant in the present study<sup>3</sup>.

## 3. Specific Rules (or Not) for Article 4(1) Jurisdiction

As regards national rules specifically addressed to govern the jurisdiction of courts when the “*defendant is not domiciled in a member State*”, as indicated by Article 4.1 of the Brussels I Regulation, the PIL Act introduces specific provisions to allow Italian courts to hear a cross-border dispute in civil and commercial matters where the defendant is domiciled in a non-EU State<sup>4</sup>.

In particular, Article 3.2, first part, of the PIL Act extends the application of the jurisdiction criteria of Sections 2, 3 and 4 of the 1968 Brussels Convention also to defendants that are domiciled outside the EU by stating that “*Italian courts shall further have jurisdiction according to the criteria set out in Sections 2, 3 and 4 of Title II of the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters [...] including when the defendant is not domiciled in the territory of a contracting State, with respect to any of the matters falling within the scope of application of the Convention*”<sup>5</sup>.

The Italian Court of cassation has repeatedly held that the reference to Sections 2, 3 and 4 of the 1968 Brussels Convention governs the extension of Italian jurisdiction in all cases where the defendant is not domiciled in a EU State pursuant the Convention rules. In these cases the Italian provisions on internal venue do not apply<sup>6</sup>.

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<sup>2</sup> The second part of Article 3.2 states that “*With regard to other matters, jurisdiction shall be also determined according to the criteria laid down for territorial venue*”.

<sup>3</sup> Cass. (s.u.), 27 November 1998 No 12056, *Riv. dir. int. priv. proc.*, 1999, p. 601; Cass. (s.u.), 9 December 1996 No 10954, *ibidem*, 1997, p. 958.

<sup>4</sup> On the structure of the rule of jurisdiction provided for in Article 3 of the PIL Act see, among others, G. Brogini, “Articolo 3”, *Commentario alla riforma del sistema italiano di diritto internazionale privato*, 1996, p. 905; R. Luzzatto, “Articolo 3”, *Commentario del nuovo diritto internazionale privato*, Padua, 1996, p. 19; T. Ballarino, *Diritto internazionale privato*, 3<sup>rd</sup> ed., Padua, 1999, p. 105; B. Barel, S. Armellini, *Diritto internazionale privato*, Milan, 2006, p. 232; T. Ballarino, D. Milan, *Corso di diritto internazionale privato*, Padua, 2006, p. 18. For an analysis on the specific rules of jurisdiction introduced by the PIL Act in matters of contract, tort, civil claim or restitution based on an act giving rise to criminal proceedings see S.M. Carbone, *Il nuovo spazio giudiziario europeo dalla Convenzione di Bruxelles al Regolamento CE 44/2001*, Turin, 2000, p. 66; G. Campeis, A. De Pauli, *La disciplina europea del processo civile italiano*, Padua, 2005, p. 53, and F. Salerno, *Giurisdizione ed efficacia delle decisioni straniere nel Regolamento CE 44/2001 (La revisione della Convenzione di Bruxelles del 1968)*, Padua, 2006, p. 126.

<sup>5</sup> See Cass. (s.u.), order 11 February 2003 No 2060, *Riv. dir. int. priv. proc.*, 2006, p. 547; Cass. (s.u.), order 17 January 2002 No 503, *ibidem*, 2002, p. 436; Cass. (s.u.), 19 June 2000 No 448, *ibidem*, 2001, p. 415; Trib. Udine, order 21 July 2000, *ibidem*, 2001, p. 974; Constitutional Court, order 18 October 2000 No 428, *ibidem*, 2001, p. 645; Trib. Avellino, order 18 August 1999, *ibidem*, 2000, p. 792; App. Milan, 20 March 1998, *ibidem*, 1998, p. 170.

<sup>6</sup> See Cass. (s.u.), order 17 January 2002 No 503, *Riv. dir. int. priv. proc.*, 2002, p. 436. In this case, in particular, the Court clarified that the fact that the Republic of San Marino is not party to the 1968 Brussels Convention does not affect the application of its rules on jurisdiction in a dispute concerning the opposition to an Italian *decreto ingiuntivo* proposed by an Italian national against a San Marino citizen. Those provisions are actually referred to by Article 3.2 of the PIL Act and thus apply automatically. See also Cass. (s.u.), 19 November 1999 No 794, *ibidem*, 2000, p. 1035.

Therefore, in the matters regulated by the Brussels Convention under Sections 2, 3 and 4, the Italian jurisdiction will be possibly established applying the criteria contained therein also to cases where the defendant is not domiciled in a EU State<sup>7</sup>. Please note that the PIL Act still refers to Sections 2, 3 and 4 of the Brussels Convention and it is not clear yet whether the replacement of the Convention with the Brussels I Regulation at EU level implies that the provisions of the latter apply within the scope of the PIL Act. In this perspective it is also to be considered that the provisions contained in the Sections of the Brussels Convention recalled by the Italian law do not correspond entirely to those actually contained in the corresponding Sections of the Regulation<sup>8</sup>.

Hence, the specific set of rules governing Italian jurisdiction according to the PIL Act may be summarized as follows:

- a) Italian courts shall have jurisdiction if the defendant, whatever his nationality, is domiciled or resident in Italy or has a representative pursuant to Article 77 of the Code of Civil Procedure, i.e., a representative empowered to act in court for the defendant (Article 3.1, first part, PIL Act)<sup>9</sup>.  
Case law recently emphasised this rule underlining that the PIL Act allows Italian courts to have jurisdiction when the defendant is domiciled or resident in Italy, irrespective of his nationality<sup>10</sup>.
- b) Pursuant to Article 3.1, final part, of the PIL Act, Italian courts are entitled to assume jurisdiction in other cases prescribed by the law (see, in particular, Article 14 of Navigation Law<sup>11</sup>, Article 120 of the Industrial Property Code<sup>12</sup>, Articles 28 and 29 of Law of 13 June 1942 No. 794)<sup>13</sup>.

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<sup>7</sup> We underline that, by introducing such a rule, the PIL Act removes a discrimination between a European defendant and a foreign defendant. See A. Giardina, “Le norme sulla giurisdizione”, *La riforma del diritto internazionale privato italiano*, Atti del Convegno SIDI, 1996, p. 28; N. Boschiero, *Appunti sulla riforma del sistema italiano di diritto internazionale privato*, 1996, p. 108; T. Ballarino, *Diritto internazionale privato*, 3<sup>rd</sup> ed., Padua, 1999, p. 114; S.M. Carbone, *Il nuovo spazio giudiziario europeo dalla Convenzione di Bruxelles al Regolamento CE 44/2001*, Turin, 2000, p. 32; G. Campeis, A. De Pauli, *La disciplina europea del processo civile italiano*, Padua, 2005, p. 51; T. Ballarino, D. Milan, *Corso di diritto internazionale privato*, Padua, 2006, p. 15; F. Salerno, *Giurisdizione ed efficacia delle decisioni straniere nel Regolamento CE 44/2001 (La revisione della Convenzione di Bruxelles del 1968)*, Padua, 2006, p. 99.

<sup>8</sup> See G. Conetti, S. Tonolo, F. Vismara, *Commento alla riforma del diritto internazionale privato italiano (Legge 31 maggio 1995, n. 218)*, Turin, 2001, p. 14; B. Barel, S. Armellini, *Diritto internazionale privato*, Milan, 2006, p. 23.

<sup>9</sup> For a recent specification of the concept of a “representative who is enabled to appear in court” according to the rule provided for in Article 3.1 of the PIL Act see Cass. (s.u.), 17 November 1999 No 785, *Riv. dir. int. priv. proc.*, 2000, p. 1023; Cass. (s.u.), 30 June 1999 No 369, *ibidem*, 2000, p. 741.

<sup>10</sup> See Cass. (s.u.), order 7 March 2005 No 4807, *Riv. dir. int. priv. proc.*, 2006, p. 161; Cass. (s.u.), order 11 February 2003 No 2060, *ibidem*, 2006, p. 547; Constitutional Court, order 18 October 2000 No 428, *ibidem*, 2001, p. 645.

<sup>11</sup> Article 14 of the Navigation Law allows Italian courts, in addition to the cases provided for under Article 4 of the Code of Civil Procedure, to have jurisdiction in matter of collision of sea-going ships or aircraft as well as assistance, rescue or salvage on the high sea or in another area or place non-subject to the sovereignty of any State when the sea-going ship or the aircraft which caused the collision or which has been rescued or saved as well as the persons who have been saved or rescued are located in Italy.

<sup>12</sup> The Industrial Property Code has come into force on 19 March 2005 (L.D. No 30/2005). In particular, Article 120 provides that all actions in matter of industrial property, whose titles are granted or are to be granted, shall be brought before the Italian court of the defendant’s residence or domicile whatever the nationality of the parties. In case the place of residence or domicile of the defendant are unknown, the court of the defendant’s abode shall have jurisdiction. Furthermore, if the defendant’s residence, domicile or abode are not in the territory of the State, the court

- c) As already underlined above, Italian courts shall have jurisdiction according to the criteria set out in Sections 2, 3 and 4 of Title II of the Brussels Convention even when the defendant is not domiciled in a EU State, with respect to all the matters falling within the scope of application of the Brussels Convention (Article 3.2, first part, PIL Act).
- d) Italian courts shall have jurisdiction with regard to other matters, according to the criteria laid down for internal venue in the Code of Civil Procedure (Article 3.2, final part, PIL Act)<sup>14</sup>.
- e) Where the parties have expressly conferred jurisdiction on an Italian court or the defendant appears before an Italian court without contesting jurisdiction (Article 4.1 PIL Act)<sup>15</sup>.
- f) According to Article 5 of the PIL Act, Italian courts do not have jurisdiction over claims concerning rights *in rem* on immovables situated abroad. The Court of Cassation clarified that Article 5 of the PIL Act may apply also in case of possessory actions as long as these actions concern property strictly linked with the person ("*aventi carattere personale*"). The Court thus decided to affirm the jurisdiction of the Italian court to hear a dispute concerning a lease-rent, clarifying that the jurisdiction has to be established pursuant to Article 3.1 of the PIL Act when the defendant is domiciled or resides in Italy regardless of the fact that the immovable is located abroad<sup>16</sup>.
- g) Pursuant to Article 9 of the PIL Act, "*in matters of voluntary jurisdiction, Italian courts shall have jurisdiction, in addition to the cases specifically referred to in this law as well as whenever the territorial jurisdiction of an Italian court is provided for, if the decision which is sought concerns either an Italian national or a person who is resident in Italy, or where the decision concerns situations or relationships to which Italian laws applies*".
- h) Under Article 10 of the PIL Act, Italian courts shall have jurisdiction when a provisional measure obtained abroad is to be enforced in Italy or an Italian court has jurisdiction over the merits<sup>17</sup>.

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of the plaintiff's residence or domicile will be competent. If neither the plaintiff's nor the defendant's place of residence, domicile or abode are in the territory of the State, the court of Rome will be competent.

<sup>13</sup> These provisions allow the court of the main claim to decide also on the payment due for the legal fees: App. Milan, order 27 December 2001, *Riv. dir. int. priv. proc.*, 2002, p. 695.

<sup>14</sup> Cass. (s.u.), 27 November 1998 No 12056, *Riv. dir. int. priv. proc.*, 1999, p. 601; Cass. (s.u.), 9 December 1996 No 10954, *ibidem*, 1997, p. 958.

<sup>15</sup> Cass. (s.u.), 23 November 2000 No 1200, *Riv. dir. int. priv. proc.*, 2001, p. 994; Cass. (s.u.), 30 June 1999 No 369, *ibidem*, 2000, p. 741; Cass. (s.u.), 9 December 1996 No 10954, *ibidem*, 1997, p. 958.

<sup>16</sup> Cass. (s.u.), 25 July 2002 No 10994, *Riv. dir. int. priv. proc.*, 2003, p. 503. Please note that in this case the immovable was situated in the Vatican City.

<sup>17</sup> In an other case Trib. Udine, order 21 July 2000, *ibidem*, 2001, p. 974 ruled that the notion of "place where the provisional measure is to be enforced" of Article 10 of the PIL Act "*shall include all circumstances in which the non-observance of a provisional measure would affect the rights of a person somehow linked with Italy*". Thus, the Court held its jurisdiction to decide on a provisional measure concerning the inhibitory of the examination of a guarantee ("*inibitoria di escussione di una garanzia bancaria*") issued by a bank located abroad (Singapore). See also Trib.

#### 4. Influence of EU Law

Since the jurisdiction criteria used in the PIL Act are the same criteria of the Brussels Convention, we expect that Italian courts follow the interpretation of the Brussels I rules given by the ECJ<sup>18</sup>. The same applies to a certain extent to the rule concerning jurisdiction clauses (Article 4 of the PIL Act, above at § 3(e))<sup>19</sup>. No influence is expected as regards the other criteria.

#### 5. Impact of Other Sources of Law

The rules on jurisdiction in civil and commercial matters must comply with principles of the Italian Constitution (such as Articles 3 and 24 Constitution and *actor sequitur forum rei* principle), human rights protection and public international law.

The Court of cassation expressly recalled the need of the application of Article 24 of the Italian Constitution in a case concerning the opposition of an Italian *decreto ingiuntivo*<sup>20</sup>. In this case, in particular, the Court underlined that the said constitutional provision, according to which everybody is entitled to institute legal proceedings for the protection of his own rights, has to be applied also to a non-national domiciled or resident in Italy regardless his nationality.

Furthermore, the Constitutional Court recently made reference to the principles set out in Articles 3 and 24 of the Constitution in relation to the rule provided under Article 4 of the PIL Act<sup>21</sup>. According to the Court, the principle of equality and the right to access to court which have to be always granted, are not jeopardized by the provision contained in Article 4 of the PIL Act.

#### 6. Other Specific Features

The most specific feature of Italian jurisdictional rules is that they are contained in the PIL Act, which also lays down the criteria for determining the applicable law and governs the effects of foreign judgments. As to jurisdiction, the PIL Act makes a distinction between general rules and specific rules of jurisdiction. The general rules are set out under Title II, Articles 3-11 and deal with: scope of jurisdiction, acceptance and derogation of jurisdiction, actions concerning rights *in rem* in immovables situated abroad, preliminary questions, *lis pendens*, time for determining jurisdiction, voluntary jurisdiction, provisional measures and pleading for lack of jurisdiction.

The specific rules of jurisdiction provided for in the PIL Act are set out under the various Chapters of Title III. They are specifically addressed to individual matters, such as disappearance, absence and presumption of death of natural persons (Article 22.2), invalidity, nullity, separation and dissolution of marriage (Article 32), filiation (Article 37), adoption (Article 40), protection of persons of full age (Article 44), and succession (Article 50).

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Avellino, order 18 August 1999, *ibidem*, 2000, p. 792, establishing the Italian jurisdiction to decide on a seizure of immovables located in Italy.

<sup>18</sup> This conclusion is confirmed in principle by Italian Courts. See App. Milan, 20 March 1998, *Riv. dir. int. priv. proc.*, 1998, p. 170.

<sup>19</sup> Among others, see G. Brogini, "Articolo 3", *Commentario alla riforma del sistema italiano di diritto internazionale privato*, 1996, p. 909; T. Ballarino, *Diritto internazionale privato*, Padua, 1999, p. 113.

<sup>20</sup> Cass. (s.u.), 8 February 2001 No 46, *Riv. dir. int. priv. proc.*, 2002, p. 137.

<sup>21</sup> Constitutional Court, order 18 October 2000 No 428, *Riv. dir. int. priv. proc.*, 2001, p. 645.

## 7. Reform

No legislative change is currently contemplated.

### **(B) Bilateral and Multilateral Conventions**

#### **8. Conventions with Third States**

Article 2 of the PIL Act specifies that “*the provisions of this law shall not affect the application of any international conventions to which Italy is a party*”<sup>22</sup>.

In fact, Italy is part to several conventions in this field. Most of them only concern the recognition and the enforcement of foreign judgments and, consequently, do not have any relevance at jurisdictional level.

Nevertheless, there are some bilateral and multilateral agreements still in force which apply to matters that fall within the scope of the Brussels I Regulation.

#### Multilateral Conventions

- Warsaw Convention of 12 October 1929 for the unification of certain rules relating to international carriage by air;
- Brussels Convention of 10 May 1952 for the unification of certain rules relating to civil jurisdiction in matters of collision of sea-going ships;
- Brussels Convention of 10 May 1952 for the unification of certain rules relating to the arrest of sea-going ships;
- Rome Convention of 7 October 1952 on damage caused by foreign aircraft to third parties on the surface;
- Geneva Convention of 19 May 1956 on contracts for the international carriage of goods by road;
- Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;
- Brussels Convention of 31 January 1963, Supplementary to the Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy;
- Brussels Convention of 29 November 1969 on civil liability for oil pollution damage;
- Protocol on jurisdiction and recognition of decisions in respect of the right to the grant of a European Patent of 5 October 1973;
- Geneva Convention of 6 April 1974 on a Code of Conduct for liner conferences;

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<sup>22</sup> On this issue see S. Bariatti, “Articolo 2”, *Commentario alla Riforma del sistema italiano di diritto internazionale privato*, 1996, p. 989; N. Boschiero, *Appunti sulla riforma del sistema italiano di diritto internazionale privato*, Turin, 1996, p. 19; S:M: Carbone, “Articolo 2”, *Commentario del nuovo diritto internazionale privato*, Padua, 1996, p. 8; T. Ballarino, *Diritto internazionale privato*, 3<sup>rd</sup> ed., Padua, 1999, p. 113; G. Conetti, S. Tonolo, F. Vismara, *Commento alla riforma del diritto internazionale privato italiano (Legge 31 maggio 1995, n. 218)*, Turin, 2001, p. 6; P. Mengozzi, *Il diritto internazionale privato italiano*, Naples, 2004, p. 84.

- Hamburg Convention of 31 March 1978 on the Carriage of goods by sea;
- Convention concerning International Carriage by rail of 9 May 1980 (COTIF);
- Montreal Convention of 28 May 1999 for the unification of certain rules for international carriage by air.

#### Bilateral Conventions

- Convention between Switzerland and Italy of 3 January 1933 on the recognition and enforcement of judgments in civil and commercial matters;
- Convention between Kuwait and Italy on the recognition and the enforcement of judgments on civil matters, done in Kuwait on 11 December 2002.

Moreover, please note that some bilateral conventions concerning the judicial assistance in civil, commercial and criminal matters govern recognition and enforcement of judgments. Among others, the following conventions may be mentioned:

- the Convention between Italy and Argentina on judicial assistance and the recognition and the enforcement of judgments in civil matters, signed in Rome on 9 December 1987;
- the Convention between Italy and Lebanon on the reciprocal judicial assistance in civil, commercial and criminal matters, as well as the recognition and the enforcement of judgments and arbitral awards and the extradition, signed in Beirut on 10 July 1970;
- the Convention between Italy and Tunisia on the reciprocal judicial assistance in civil, commercial and criminal matters, as well as the recognition and the enforcement of judgments and arbitral awards and the extradition, signed in Rome on 15 November 1967;
- the Convention between Italy and the Republic of San Marino of friendship and good neighbourhood, signed in Rome on 31 March 1939 as amended by the Agreement of 28 February 1946.

### **9. Practical Impact of international conventions with third states**

The multilateral conventions listed above provide for specific jurisdiction criteria and apply as “conventions on specific matters” within the meaning of Article 71 of the Brussels I Regulation.

The bilateral conventions do not have a direct impact on the Italian rules of jurisdiction as they provide for rules on recognition and the enforcement of judgments. However, some of them provide for a rule on *lis pendens* which may bar the application of national rules on jurisdiction in order to avoid conflicting decisions.

### **(C) Applicable National Rules Pursuant to Article 4 of Brussels I Regulation**

#### **10. Structure**

The general structure of the rules of jurisdiction is described above at § 3 .

#### **11. General Jurisdiction**

The only general rule on jurisdiction for cross-border cases is Article 3.1 of the PIL Act, described above at § 3.

Please note that Italian courts have ruled to have jurisdiction in a dispute concerning a trust administration where the defendant was domiciled or resident in Italy<sup>23</sup>.

## 12. Specific Rules of Jurisdiction

There are no specific rules of jurisdiction which apply in the cases indicated under (a), (b), (c), (d), (e) and (f) since the PIL Act refers to the Brussels Convention rules (see above at § 3).

## 13. Protective Rules of Jurisdiction

As to consumer contracts, employment contracts and insurance matters, please see above at § 3. No specific rule of jurisdiction applies to claims against parties domiciled in non-EU States concerning distributorship agreements, commercial agency agreements, franchise agreements or any other specific matter since the PIL Act refers to the Brussels Convention rules.

## 14. Rules for the Consolidation of Claims

As to the rules of jurisdiction that allow consolidated claims before the same court in the cases indicated under (a), (b) and (c) please refer to § 3.

With regard to (d), the PIL Act does not contain a specific rule of jurisdiction on connected claims, but Article 3 of the PIL Act refers to the rules on internal venue (see *supra* at § 2), thus allowing an Italian court to exercise jurisdiction on the basis of connection with claims already pending before the same Italian court (namely Articles 31-33, 36, 103 and 104 of the Code of Civil Procedure)<sup>24</sup>.

Furthermore, the Court of Cassation has constantly declared that the reference to Article 3 of the PIL Act permits the application of the rules contained in Article 6 of the Brussels Convention<sup>25</sup>.

## 15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

As to the jurisdictional rules listed in Annex 1 to the Brussels I Regulation, please note the following:

### a) *The rules listed in annex I*

Annex 1 to the Brussels I Regulation refers to Articles 3 and 4 of the PIL Act; no further exorbitant rule of jurisdiction exists.

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<sup>23</sup> Trib. Milan, 21 November 2002, *Riv. dir. int. priv. proc.*, 2003, p. 539.

<sup>24</sup> See A. Di Blase, "Articolo 3", *Commentario alla riforma del sistema italiano di diritto internazionale privato*, 1996, p. 912; N. Boschiero, *Appunti sulla riforma del sistema italiano di diritto internazionale privato*, Turin, 1996, p. 113; T. Ballarino, *Diritto internazionale privato*, 3<sup>rd</sup> ed., Padua, 1999, p. 111; P. Mengozzi, *Il diritto internazionale privato italiano*, Naples, 2004, p. 36.

<sup>25</sup> Cass. (s.u.), 10 August 1999 No 579, *Riv. dir. int. priv. proc.*, 2000, p. 989; Cass. (s.u.), ord. 17 January 2002 No 503, *ibidem*, 2002, p. 436.

***b) Practical use of the rules listed in Annex I***

At present there is no reported or known case where the Italian courts have applied Article 4.2 of the Brussels I Regulation.

**16. Forum *necessitatis***

There is no domestic rule allowing Italian courts to exercise jurisdiction on the basis that there is no other forum available abroad (*forum necessitatis*).

**(D) National Jurisdiction & Enforcement of Non-EU Judgments**

**17. National rules of jurisdiction barring the enforcement of a non-EU judgment**

There is no rule barring the enforcement in Italy of a judgment rendered in a non-EU State on the basis that the Italian courts have exclusive jurisdiction to entertain the claim in civil and commercial matters.

**(E) Declining Jurisdiction**

**18. Forum Non Conveniens**

There is no general rule or practice allowing Italian courts to decline jurisdiction or staying proceeding in case that the defendant is domiciled in a non-EU State and the jurisdiction is based on domestic law.

### 19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

When the defendant is domiciled in a non-EU State and the jurisdiction is based on domestic law, Italian courts may decline or stay the proceeding in favour of a non-EU court where:

(a) there is a choice of court clause designating the court of that non-EU State;

(b) that non-EU State court is seized of a parallel proceeding. According to Article 7 of the PIL Act, where proceedings involving the same cause of action and between the same parties are brought in a foreign court, an Italian court should stay proceedings if it deems that the future foreign decision will be able of producing effects in Italy. In case the foreign court declines its jurisdiction or the foreign judgment is not recognised in Italy, the parties may resume the claim before the Italian court. It is worth stressing that according to Article 7 of the PIL Act the Italian court seized does not have any obligation to stay the proceedings since its decision rests upon the assessment of the future effects of the foreign judgment in Italy<sup>26</sup>.

(c) As already pointed out at § 12, Article 5 of the PIL Act expressly provides that “*Italian courts shall have no jurisdiction over actions concerning rights in rem in immovables situated abroad*”.

### 20. Declining Jurisdiction When the Defendant is Domiciled in the EU

When the defendant is domiciled in a non-EU State and the jurisdiction is based on the Brussels I Regulation, Italian courts may decline or stay the proceedings in favour of a non-EU court when:

#### (a) Non-EU Jurisdiction Agreements

There is a choice of court clause designating the court of a non-EU State;

#### (b) Parallel Proceedings in a non-EU court

A non-EU State court is seized of a parallel proceeding; or

#### (c) “Exclusive” Jurisdiction in a non-EU State

There is “*exclusive jurisdiction*” in a non-EU State.

Otherwise, and in compliance with the ECJ case-law, there is no room in the Italian legal system for national courts to decline jurisdiction in favour of non-EU courts on the basis of *forum non-conveniens*.

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<sup>26</sup> Cass. (s.u.), 19 June 2000 No 448, *Riv. dir. int. priv. proc.*, 2001, p. 415; Trib. Varese, order 9 May 2002, *ibidem*, 2003, p. 468.

**(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules**

**21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts**

Up to now, there is no known case where the Italian courts have exercised jurisdiction on the basis of national rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of non-EU States.

**22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection**

At present there is no known case or practice where Italian courts have found not to have jurisdiction or have declined jurisdiction to hear a claim brought by a European consumer against a professional domiciled in a non-EU State and by a European plaintiff domiciled in the EU in Community regulated matters.

Please note that the Court of Cassation decided on a claim brought by a European employee against an employer domiciled in a non-EU State (Kuwait) in matter of dismissal<sup>27</sup>.

**23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State**

At present, no case is reported or known where an Italian citizen has not been able to invoke the protection of Community legislation because the parties involved in the dispute were no longer domiciled in a EU State at the time the proceedings were instituted.

**24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules**

Up to now, no case or circumstance may be mentioned, where the application of domestic jurisdictional rules have lead in practice or are likely to lead to affect the application of mandatory Community legislation or the proper functioning of internal market or the adequate judicial protection of EU nationals and domiciliaries.

**(G) Residual Jurisdiction under the new Brussels II Regulation**

**25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)**

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<sup>27</sup> Cass. (s.u.), 12 June 1999 No 331, *Riv. dir. int. priv. proc.*, 2000, p. 728.

The PIL Act sets out also rules on jurisdiction in matter of parental responsibility. In particular, under Article 37 of the PIL Act Italian courts have jurisdiction over "*filiation and personal relations between parents and children*" whenever either one of the parents or the child is Italian or resides in Italy, and this in addition to the criteria provided for by Articles 3 and 9 of the PIL Act<sup>28</sup>.

Moreover, pursuant to Article 42 of the PIL Act, the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants applies<sup>29</sup>.

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<sup>28</sup> On this provision see G. Carella, "Articolo 37", *Commentario alla riforma del sistema italiano di diritto internazionale privato*, 1996, p. 1200; C. Campiglio, "Articolo 37", *Commentario del nuovo diritto internazionale privato*, Padua, 1996, p. 192.

<sup>29</sup> On this issue see Cass.(s.u.), 9 January 2001 No 1, *Riv. dir. int. priv. proc.*, 2002, p. 128. In this case the Court affirmed the Italian jurisdiction for the purpose of taking all the necessary measures for the protection of a child who was in Italy, according to the reference made in Article 42 of the PIL Act to Article 9 of the said Hague Convention.

**SUPPLEMENTAL REPORT FOR:**

**ITALY**

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26. NA

**27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)**

*What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?*

As regards rules of jurisdiction in matters of parental responsibility, and in general on the international protection of children, the following conventions are to be mentioned:

**Multilateral Conventions:**

- Hague Convention of 12 June 1902 concerning the protection of children;
- Rome Convention of 14 September 1961 extending the competence of authorities empowered to receive declarations acknowledging natural children;
- Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors;
- Luxembourg Convention of 20 May 1980 on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children;
- Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

**Bilateral Conventions:**

- the Convention between Belgium and Italy concerning the repatriation of minors having escaped paternal or tutorial responsibility, signed in Rome on 7 February 1934;
- the Convention between Lebanon and Italy concerning the cooperation on family matters, signed in Beirut on 15 July 2004.

*Furthermore, as regards parental responsibility arisen as a consequence of adoption, please note that Italy is also party to the following multilateral conventions: Hague Convention of 15 November 1965 on jurisdiction, applicable law and recognition of decrees relating to adoptions and Hague Convention of 29 May 1993 on*

*protection of children and cooperation in respect of inter-country adoption. On the same matter, Italy has also concluded the following bilateral treaties: the Convention between Peru and Italy on inter-country adoption, signed in Lima on 17 December 1993; the Convention between Bolivia and Italy on inter-country adoption, done in Rome on 15 February 2002 and the Convention between Vietnam and Italy on cooperation in respect of inter-country adoption, signed in Hanoi on 13 June 2003.*

## **28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility**

*Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)*

There is no rule barring the recognition and the enforcement in Italy of a judgment rendered in a non-EU State on the basis that the Italian courts have exclusive jurisdiction to entertain the claim in matters of parental responsibility.

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