

Italian Self-Proclaimed Overriding Mandatory Provisions to Fight Coronavirus

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1. Summary

The Italian Government has adopted a series of Decree-Laws [1] introducing measures to fight the emergency caused by the “new” Coronavirus.

These measures include “self-proclaimed” overriding mandatory provisions on the reimbursement of prices paid under transport, package travel and accommodation contracts by specified persons affected by the Coronavirus.

2. Arts. 28 of Decree-Law No. 9/2020 and 88 of Decree-Law No. 18/2020

In particular, on 2.4.2020, the Italian Government adopted Decree-Law No. 9, titled “Urgent measures to support families, workers and businesses, in connection with the epidemiological emergency by COVID-19” [2].

Article 28 of Decree-Law No. 9/2020 provides for “Reimbursement of Travel Tickets and Travel Packages”.

The first paragraph of Article 28 stipulates that, obligations arising from transport and package travel contracts, concluded by specified persons affected by the Coronavirus [3], are to be considered as impossible under Article 1463 of the Italian Civil Code [4].

Paragraphs 2 to 7 of Article 28 establish a specific procedure for obtaining and making the reimbursement of the price paid under the transport or package travel contract covered by the same Article.

The following paragraph 8 “proclaims”:

“The provisions of the present article constitute overriding mandatory provisions within the meaning of Article 17 of Law of 31 May 1995, No. 218 [“Italian PIL Act”] [5, 6] and of Article 9 of Regulation (EU) No. 593/2008 of the European Parliament and of the Council, of 17 June 2008 [“Rome I Regulation”]”.

On 17.3.2020, the Italian Government has adopted a new Decree-Law (dubbed “Heal Italy”), introducing new measures to fight the emergency caused by the Coronavirus [7].

Art. 88(1) of new Decree-Law No. 18/2020 extends the provisions of Art. 28 of Decree-Law No. 9/2020 to accommodation contracts.

3. Short Comment

As a short comment to the above, I note that it is not the first time that the Italian legislator enacts “self-proclaimed” overriding mandatory provisions [8].

However, as known, it is questionable whether, EU Member States can freely enact similar provisions when they fall within the material scope of Union private international law instruments, such as the Rome I Regulation.

In fact, this practice appears to be particularly questionable in cases such as that at issue, where the self-proclaimed overriding mandatory provisions do not appear to be “crucial” for safeguarding public interests within the meaning of Article 9(1) of the Rome I Regulation, but rather appear to be exclusively purported to protect private interests (for

however widespread they may be).

Notes

[1] In the Italian legal order, a Decree-Law is a provisional act having force of law, adopted in extraordinary cases of necessity and urgency by the Government. A Decree-Law must be “converted” into a Law within a period of 60 days from its publication, or otherwise it loses its effects. See, in particular, Art. 77 of the Costituzione della Repubblica Italiana, Gazzetta Ufficiale No. 298 of 27.12.1947, www.gazzettaufficiale.it/eli/id/1947/12/27/047U0001/sg.

[2] Decree-Law of 2.3.2020, No. 9, Misure urgenti di sostegno per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19, Gazzetta Ufficiale, Serie Generale No. 53 of 2.3.2020, www.gazzettaufficiale.it/eli/id/2020/03/02/20G00026/sg.

[3] See Art. 28(1)(a) to (f) of Decree-Law No. 9/2020.

[4] Article 1463 of the Italian Civil Code, headed “Total Impossibility”, can be translated as follows: “In [case of] contracts with reciprocal performances, the party that is freed due to supervening impossibility of the performance owed cannot demand counter-performance, and must return that which he has already received, in accordance with the rules on undue payment”. See, Royal Decree of 16.3.1942, No. 262, Approvazione del testo del Codice civile, Gazzetta Ufficiale, Serie Generale No. 79 of 4.4.1942, www.gazzettaufficiale.it/eli/id/1942/04/04/042U0262/sg.

[5] Law of 31.5.1995, No. 218, Riforma del sistema italiano di diritto internazionale privato, Gazzetta Ufficiale, Serie Generale No. 128 of 3.6.1995, Supplemento Ordinario No. 68, <https://www.gazzettaufficiale.it/eli/id/1995/06/03/095G0256/sg>.

[6] Article 17 of the Italian PIL Act, is the Italian

(autonomous) private international law provision governing overriding mandatory provisions. Article 17, headed “Norms of necessary application”, can be translated as follows: “Norms of necessary application. 1. Italian norms which, considering their object and their objective, must be applied notwithstanding reference to foreign law, prevail over the following provisions”.

[7] Decree-Law of 17.3.2020, No. 18, Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19, Gazzetta Ufficiale, Serie Generale No. 70 del 17.3.2020, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

[8] See, e.g., Article 32-ter of the Italian PIL Act.