A New Rule of Venue for Proceedings involving Foreign Companies in Italy

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The Italian Government has recently adopted a package of measures aimed at stimulating growth and enhancing the efficiency of public administration (decree No 69 of 21 June 2013). Some of these measures relate to civil procedure. One of them is specifically concerned with litigation featuring a foreign element.

Under article 80 of the decree, where jurisdiction lies with Italian courts (be it under EU rules, international conventions or domestic provisions), civil proceedings involving a company whose seat is situated outside Italy may be decided solely by the Tribunal of Milan, Rome and Naples. Milan shall be in charge of proceedings that would otherwise need to be commenced before the courts of northern regions; Rome would do the same in respect of cases that would normally be brought before the courts of central Italy, including Sardinia; Naples will cover the southern part of the country, including Sicily.

The new provision shall apply, in principle, to all proceedings in civil and commercial matters to which a foreign company is a party, provided the latter does not have a branch or an establishment with a permanent representative in Italy. Multi-party proceedings involving but one foreign company shall likewise fall within the scope of the rule. This shall include cases where a foreign company is sued as a third party in an action on a warranty or guarantee: in this scenario, should the original proceedings be instituted before a court other than the "major" courts mentioned above, both the original and the third-party proceedings shall be transferred – upon the request of the foreign company at stake – to the competent "major" court.

By way of exception, the ordinary provisions on venue shall remain applicable in matters relating to consumer contracts, employment contracts and social security, as well as to proceedings to which an Italian administrative authority is a party.

The new provision, it is submitted, shall not prevent an Italian court other than the courts indicated above to entertain a claim where it is the court specifically designated by a valid choice-of-court agreement. In matters governed by article 23 of the Brussels I regulation (and, tomorrow, article 25 of regulation No 1215/2012), a different reading would actually defeat the purpose of the uniform regime and should accordingly be disregarded as inconsistent with the primacy of EU law. The same may be said of choice-of-court agreements governed by the Lugano Convention of 2007, the respect for which is equally ensured by EU law through article 216(2) of the TFEU.

Article 80 of the decree does not purport to affect the provisions governing venue in respect of enforcement and insolvency proceedings.

The new rule is intended to apply to proceedings instituted on or after the thirtieth day following the entry into force of the statute expected to convert the decree into law. During the conversion procedure, due to be concluded by the end of August, the provision might be amended by the Italian Parliament.

It is reasonable to expect that, further to the reform, Italian judges having a particular expertise in the field of private international law will tend to concentrate in the "major" courts indicated above.

UPDATE – On 15 July 2013, the committees of the Italian Chamber of Deputies charged with constitutional affairs and financial matters have jointly adopted a resolution proposing, inter alia, to delete Article 80 of the decree altogether. While the resolution does not represent in itself the final decision of the Italian Parliament on the issue, it is now highly likely that the statute whereby the decree will be converted into law will not include the new rule on venue. As a matter of fact, a strong opposition against the new provision had appeared soon after the decree was published, coming from different stakeholders, including the Italian Bar Council.