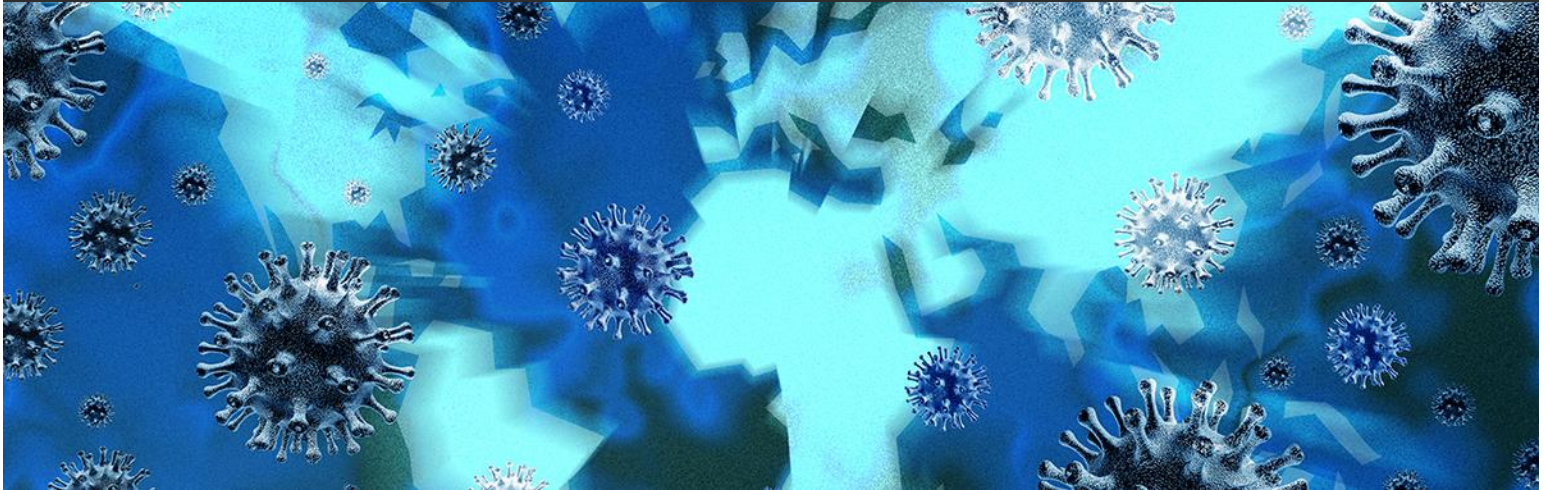


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019 – Focus on Italy



12 March 2020

Q&A: The Impact on COURT PROCESSES of Coronavirus Disease 2019 Measures Taken by the Italian Government

On March 8, 2020, by Law Decree no. 11/2020 (the **Law Decree**), the Italian government issued a series of emergency measures aimed at limiting the spread of Coronavirus Disease 2019 (COVID-19) throughout the entire national territory.

The Law Decree consists of six articles, four of which are specifically dedicated to the various jurisdictions in which the administration of justice is divided: civil, criminal, tax, and military (Articles 1 and 2), administrative (Article 3), and accounting (Article 4).

Articles 1 and 2 set out measures aimed, respectively, at different time horizons: **(i)** a more immediate and shorter one, which is largely regulated by the Law Decree itself (from March 9, 2020, to March 22, 2020) (the **Short Term**), and **(ii)** a broader term, the regulation of which is largely entrusted to the discretion of each competent court (between March 22, 2020 to May 31, 2020) (the **Longer Term**).

Of course, it is reasonable to believe that due to the expanding emergency status and the adoption of further measures taken on March 11, 2020, the Short Term will be further extended. Such an extension would require approval of a new law decree.

The **Presidential Decree dated March 11, 2020**, providing for the suspension of commercial and other activities in the entire Italian territory, does not relate to court processes.

More specifically, the most relevant provisions are set out below.

- (i) The first paragraph of Article 1 regulates **hearings and deadlines** falling in the Short Term, and states that “*hearings in civil and criminal proceedings pending at all judicial offices*”, with some exceptions, “*shall be postponed ex officio until after 22 March 2020*”.

This is a reference to **hearings already scheduled**, either by choice of the plaintiff or by decision of the judge, on a date within the Short Term.

The second paragraph of Article 1 states that “*from the day following the date of entry into force of this decree until 22 March 2020, the deadlines for the completion of any act of the proceedings indicated in paragraph 1 are suspended, without prejudice to the exceptions mentioned*”. Article I further states that, as a result of the suspension, “*where the proceedings begin during the period of suspension, the start of the proceedings shall be postponed until the end of that period*”.

The suspension implies that **any term that would expire during** the relevant period will resume starting from the end of the Short Term (i.e., March 23, 2020).

These measures relate to all Italian judicial offices.

- (ii) Article 2 covers the Longer Term.

The Decree authorizes the **heads of the competent Courts**, “*after consultation with the regional health authority, through the President of the Regional Council, and the Council of the Bar Association*”, as well as “*in agreement with the President of the Court of Appeal and the Attorney General of the Republic at the Court of Appeal of the respective districts*”, to adopt organizational measures, “*also related to the treatment of judicial affairs*”, necessary to comply with the prophylactic measures prescribed by the health authorities.

Measures that each Court may take include:

- the limitation of public access to courts, provided that access for urgent activities is guaranteed;
- the limitation of the opening hours of the court offices to the public, or, only for offices that do not provide urgent services, the closure to the public;
- the regulation of access to services through advance booking, making sure the orderly access to the public offices at fixed time;
- the adoption of binding guidelines for the setting and handling of hearings;
- the limitation of public hearings, taking advantage as much as possible of remote connection systems;
- with certain exceptions, the postponement of hearings to a date after May 31, 2020.

Measures have been already taken by a number of courts including Bergamo, Cagliari, Cassino, Cremona, Foggia, Forli, Genova, Latina, Macerata, Marsala, Milano, Oristano, Padova, Perugia and Pescara. In some circumstances such measures are fairly comprehensive, already in effect, and aimed not only at preventing the spreading of the virus but also at making sure the current situation does not compromise proper court operations and processes. For instance, the Circular Letter issued by the Bankruptcy Division of the Court of Milan in relation to real estate auctions states that the reason for suspension of the activities is also aimed at preventing real estate assets from being sold at non-market rates.

Operators should therefore exercise caution in assessing challenges which might be carried out in the future as to judicial actions taken in this period.

For ease of reference, following is a Q&A relating to the above summary:

1. *Are all Italian courts closed?*

No. For now, the measures mostly relate to hearings and situations where contact among individuals might occur. In general, the civil hearings already scheduled during the Short Term are postponed by operation of law to a date, to be set by the judge, subsequent to March 22, 2020, except for proceedings of particular importance (e.g., cases relating to maintenance, compulsory health treatment). Each judge will therefore set a new hearing on a date falling after this 14-day period.

2. *Are all measures that relate to lawsuits and foreclosures set forth by the Emergency Measures?*

No. The Law Decree gives a lot of **discretion to each competent court**, especially for the Longer Term. Government measures can therefore be supplemented with measures issued locally by the heads of each court.

For example, in relation to bankruptcies, the Bankruptcy Division of the Court of Milan has already ordered that all auctions (public or not) be moved to after May 31, 2020. In addition, in relation to the Longer Term, the Law Decree gives competent courts greater discretion, including for the opening of offices, the setting and handling of hearings, and the manners in which hearings are conducted (e.g., videoconferencing). Therefore, based on what the Law Decree currently says, there may be (partially) different rules for each court district.

3. *Can I still file for a notice of payment (“ricorso monitorio”)?*

Yes; activities for this type of proceeding are not suspended. In general, the petition to initiate this type of proceedings must be filed electronically, as the related procedure implies neither a hearing nor, usually, any additional term or deadline.

Should there be a hearing on the debtor’s opposition to the payment order (“decreto ingiuntivo”) up until March 22, 2020, it would be postponed automatically at a new hearing to be set after March 22, 2020.

4. *What happens to terms set based on a hearing that is no longer happening?*

All deadlines related to civil proceedings whose hearings are subject to automatic postponement under the Law Decree are suspended for the Short Term. If such terms were to expire within that 14-day period, their expiration is delayed for a corresponding number of days (e.g., a term

expiring on March 11 should be postponed to March 25). Terms that were to start running within the 14-day period will be also postponed and will start running after the end of that period (e.g., a term set to start on March 11 should be postponed to March 23).

Reverse terms (i.e., duty to file a paper at least X days before a hearing) are not covered by the Law Decree. Therefore, reverse terms are still deemed to expire within the 14-day period, unless they are related to a hearing falling within the Short Term. In this latter case, since all hearings set within the Short Term have been delayed by operation of law, the related reverse term also will be postponed in line with the postponement of the hearing.

As to the Longer Term, the authority conferred to competent courts does not extend to procedural terms and deadlines.

5. *What happens to auctions that have already been set, and in general to the enforcement process?*

Enforcement proceedings follow the same rules as those identified for civil proceedings generally. Since auctions in enforcement proceedings are conceived as public hearings before the enforcement judge, this implies that **any public auction** set within the 14-day period is subject to automatic postponement, just as any other hearing set within that period. The enforcement judge would therefore issue a decree indicating the new date of the auction hearing.

Sales by private tenders of the foreclosed estates have not been expressly included in the Law Decree; however, many courts are taking the view that the suspension of auctions shall also apply to private tenders. In any event, from a practical perspective, sales could be affected given the more general lockdown.

For instance, the Enforcement Division and the Bankruptcy Division of the Court of Milan have already ruled, both in relation to public auctions and private tenders, that:

- all auctions established up to and including May 31, 2020, are revoked;
- bids for those auctions will not be accepted;
- bidders will not be admitted to the hearing of the revoked auction;
- the real estate release activities are suspended until April 3 (except for spontaneous releases);
- the following activities are suspended until 31 May 2020, inter alia: filing of sales notices and related advertising; access of custodian and appraiser to the properties; visits to the properties: the sale already planned (even if it falls on a later date) is therefore revoked.

6. *What happens to foreclosures (“Pignoramento”)?*

Foreclosures are not directly impacted by the measures set out by the Law Decree. They may still be applied for and performed, although the lockdown put on the overall Italian territory on March 8, 2020, would inevitably make it difficult – if not impracticable – for a service officer to serve the foreclosure on a debtor. If the debtor is a company or a professional, the service officer could still serve the foreclosure electronically by certified email. On the other hand, if the debtor is a consumer or an individual, the service could become difficult. This may imply that the suspension of terms and deadlines set out by the Law Decree for the Short Term also apply to

foreclosures (which must be served on debtors within certain dates after the service of notice of payments).

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