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ITALY

Responses submitted by:
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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Italy is a civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

For civil case it is a pure adversarial method of adjudication; in criminal cases it is an hybrid. As matter of fact penal investigations are inquisitorial and subject to strict secrecy, but when the investigations are over the criminal proceeding becomes adversarial and a civil case can be brought into the criminal case, to have the contextual adjudication of both the criminal and civil responsibility for a fact which constitute, or is alleged to constitute, a crime. When a civil case is brought into a criminal case Plaintiffs are named civil parties ("*Parti Civili*") to the criminal case.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Italian Judges are all mainly professional selected and appointed by way of a public exam; there are, also, a limited number of honorary judges but running almost only smaller cases (Judge of Peace) or relatively small and easy cases in the first instance Courts (Tribunals). All judges hold a master in law and honorary judges are selected amongst former lawyers.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes, there are procedures available for specialized courts. In particular Employment Courts have a condensed and mainly oral procedure; equally there are specially condensed procedures for civil urgent remedies. Last but not the least a special proceedings is provided for the class actions which have to be brought in front of specialized sections of certain Tribunals for the certification process before the case can be tried.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration is an option but has to be agreed to by the parties in writing. There are two kinds of arbitrations:

a) The first one is called formal arbitration, whose award is equal to a court judgement. These arbitrations are subject to either the procedure set forth in the Civil Procedure Code or the procedural rules of a recognised Arbitration Agency (in Italy amongst the most renowned are the Arbitration Chamber at the Milano Chamber of Commerce or the Italian Section of the Strasbourg Chamber of Arbitration);
b) The second one is called informal arbitration, whose award is no more and no less than a contract resolving the

dispute. These kinds of arbitrations have no special rules to be followed apart from the ones set by the parties in the arbitration clause or during the appointment of the umpire or of the arbitrators bench.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes if the award is a consequence of a formal arbitration. No if the award is a consequence of an informal arbitration, which can be attacked in Court for nullity/inefficacy due to vices of the will in making the award (fraud, violence, error or breach of the arbitration clause/mandate). Courts will stop litigation in court even before an award is made if a mandatory arbitration agreement is considered valid by the judge who shall dismiss the case in favor of the arbitration bench.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

In Italy, only for certain types of Court proceedings, mediation is mandatory according to the decree-law 21.06.2013 n.69. This provision at law imposes a compulsory mediation before any court proceeding can be launched for the case related to the following matters:

a) condominium
b) property rights and division
c) hereditary successions
d) family agreements
e) lease agreements
f) gratuity loan agreements
g) companies renting
h) compensation for damage arising from health and medical liability
i) compensation for defamation by press or other means of media and/or advertising
j) insurance, banking and financial contracts

8. What is the process for pre-hearing fact discovery (if any)?

There is no pre-hearing fact discovery in Italy. The discovery is entirely run within the Court Proceeding under the Judge's direct supervision. The responses below therefore relate to such Court Proceeding.

(a) Are there provisions for mandatory document disclosures?

No the parties are the masters of the discovery phase and they are entitled to produce only the documents in support of their own case. However, all documents which need to be produced in support of the case shall be logged with the court before the oral hearing where the oral discovery is discussed and eventually admitted.

(b) Is there provision for oral examinations of the parties or others?

Yes both Civil and Criminal Procedural Code contain provision for oral examinations of the parties or of the witnesses at the Court Proceeding. These provisions are the bases upon which the Judge will determine if some oral examinations, amongst

the ones requested by the parties, will be run and to which extent.

(c) Are there limits on the length of oral examinations?

No, there are no limits on the length of oral examinations. It is the Judge who will determine, case by case, the length of any examination on the basis of the list of questions submitted by the parties.

(d) Are witness statements or summaries to be provided before the hearing?

No, there are no provisions for witness statements or summaries to be provided before the hearing, also because such statements should be confirmed orally by the person who made the declarations. There is however a special provision for witness written statements after the Judge has ruled and admitted the discovery to be run in the case, but such provision is somewhat rare because it requires both parties agreement to have such way of evidence gathering admitted.

9. What is the process for pre-hearing expert disclosure (if any)?

There is no pre-hearing expert disclosure in Italy. The experts are not witnesses and the expertise is not evidence but an instrument for the Judge to technically appreciate evidences already produced in court by the parties. In this sense a sort of pre-hearing expert disclosure takes place when the parties do lodge in court the technical tests run by the parties' experts with the latter's conclusions and findings.

(a) Are expert reports or written summaries required to be exchanged?

In Italy the parties do not exchange the documents but make them available to their counterpart/s by way of lodging the documents or pieces of evidence in Court.

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

No it is not possible, also because the experts are not witness in the Italian process.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

No there are no provisions requiring experts to meet and narrow issues before the hearing, also because the extent of the expertise shall be determined by the Judge, according to his/her needs to better understand/evaluate certain technical part/s of the controversy.

10. Are there other notable discovery rules?

Yes, case law construe the operativity of articles 115 and 167 of the Civil Procedure Code as imposing upon the parties a duty to contest and object to the facts presented by their counterpart. If no objection/s is/are made the uncontested fact/s is/are deemed proven in the proceeding. Hence the party shall not have to prove that fact/s.

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11. Is there a pre-hearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

There is no pre-hearing conference in Italy, all decisions about discovery and case management are made during the hearing phase.

12. Can a pre-hearing motion for judgment be brought? If so, what is the threshold test for judgment?

There is no pre-hearing motion for judgment in Italy. All decisions about discovery and case management are made during the hearing phase.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

No, there is no way for obtaining pre-hearing rulings with respect to evidence admissibility in Italy; in fact there is a specific hearing dedicated to evidence admissibility.

14. What is the standard for admissibility of expert evidence?

The standard for admissibility of expert evidence is the same for all other evidences (oral and documentary evidences): these must be relevant and decisive for the case and this appreciation is left to the Judge.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

When technical evidence is considered by the Judge being relevant and decisive for the case he can appoint his/her own expert to control if the technical findings presented by the part/ies are correct.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

There is no privilege, as known in the Common Law jurisdictions, because there is no duty to disclose the entirety of the documents, which are produced only if supporting the presented case. A general privilege is upon settlement discussions and/or correspondence passed between attorneys.

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17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Because the parties have the choice to produce the documents they like, there is no need to protect/ prevent disclosure of otherwise privileged information as the means for the counterpart to force the production of specific documents are very limited and very rigidly applied by the Courts.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The Judge running the case is the master of the discovery once the parties have made their decision of what to produce and what not to produce.

19. Briefly describe the trial process?

The court case start with the service of the writ of summon which imposes a term of 90 days between the date of service and the first hearing. Should the defendant wish to join a third party or to counterclaim he/she shall have to appear 20 days before the scheduled hearing; otherwise the defendant will lose such an opportunity. The defendant who choses only to resist the claim can regularly appear at the first hearing which is either scheduled on the writ of summon or postponed *ex officio* by the court to meet the Court calendar.

At the first hearing the judge makes an administrative control if all necessary parties are at the cause. If there has been some parties who remain in default the judge will inquire into the reason for that; if an improper or null service occurred he will grant a new term within which to properly serve the defendant.

Once this administrative phase opening the litigation is over, with an eventual default order against the party/ies who eventually did not appear, the discovery phase of the hearing will open.

At that hearing three deadlines will be set:
(a) to amend the defences,
(b) to present any eventual further discovery which might be necessary to support the case, and
(c) to rebut and oppose the counterpart discovery.

The deadlines are set *ex officio* by the judge depending on his/her workload as well as all the hearings within the proceedings. When the defences are lodged in court these are discussed by the Judge who will determine which discovery will be run, and in accordance with which timing/agenda. In the same court order the judge will decide if a technical expertise is required. If so he will fix a specific date to swear the court expert and to instruct him about the scope and object of the expertise.

Depending on the number of witnesses admitted and the number of questions posed to them, the case will be divided into more hearings scheduled generally every quarter.

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One independent expert is appointed by the court and one expert by each of the parties. The court appointed expert will lodge a written report to which the parties can contribute by way of producing memos, information and commenting or criticising the documents or opinion already produced in court. Should one or both parties be in disagreement with the court appointed expert the latter might be called to draft a supplementary report; this further report usually closes the discovery phase.

Should the Judge consider that no discovery/expertise is necessary, he/she will fix directly a hearing for the instructions to the court.

From the date of the hearing for the instructions to the court, two deadlines start to run the first of sixty days to lodge the last written defence and the second to object and rebut final defences of the counterparts. Then the case is retained by the court for the decision.

This is the usual evolution, but at the end of the discovery the court might elect to proceed with the fast track according to article 281 c.p.c. and will only schedule the hearing for instructions. Ten day before that hearing, the parties shall have to lodge a very short brief to the court. At the hearing after having received the instructions, the Justice will listen to the oral pleadings, and issue the decision, with the rationale to be lodged in court later on.

(a) Are there opening submissions, in what form and of what length?

Apart from the labor/employment procedure which is mainly oral, all civil/commercial cases are mainly subject to written procedure with very limited discussion at a specific hearing when the Judge shall evaluate the evidences required by the parties.

(b) What is the order of presentation of witnesses?

The first witnesses to be examined are the plaintiff ones, after which the defendant will present his/her witnesses, if any. Nonetheless it is not uncommon to have examined one or more witness/es for each party at each hearing.

(c) Who conducts examination and in what order?

The Court will conduct examination on the basis of the questions expressly prepared by the parties in a specific writ. The order of examination is set by the Court in the discovery order or the order can also left to the party choice.

(d) What is the process for closing submissions?

Closing submissions can be, and mostly are, in writing but, in few cases, in accordance to article 281 Civil Procedure Code the Court can ask for oral arguments, in which cases only a very brief résumé of the oral pleadings will be lodged in court as a memento of the arguments verbally illustrated.

20. Please identify any other notable trial procedures.

There are two notable trial procedures which are within the case and one notable procedure after the trial due to the

immediate enforceability of the first instance judgment. The first two procedure are the decree of payment of uncontested sums which can be required when the controversy involves a sum of money and only a portion of it is contested. The second procedure is the interim proved right to a sum which can be required when the evidences have sufficiently proven the right but, for a number of reasons, the case must go ahead on other issues. The third notable procedure is the special request for the suspension of the immediate enforceability of the first instance judgment, which is presented to the Court of Appeal President who will adjudicate if the execution of the judgment will cause a definitive and irreparable damage to the debtor while waiting for the decision of the appeal.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The general rule is that the claimant shall bear the burden of proof of liability, causation and damages. In certain cases this burden is mitigated and the burden is in part, or totally, reversed upon the defendant. Examples of this are the product liability where the claimant shall prove the defect and the damage whereas the defendant shall either prove the lack of causation or one of the defenses especially provided for in the EU legislation, or the case of dangerous activities where the reversal of the proof goes to the limit of a strict liability, having the defendant to prove that the event occurred due to an act of God or to an unpredictable willful act of a third party.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

In Italy compensation for damage shall put the party in the same position as if the damaging event would have not occurred. Under this basic rule the Italian Supreme Court declared the punitive/exemplary damages alien to the Italian legal system. Notwithstanding this binding precedent, there are cases where the EU law has introduced damages which might resemble exemplary damages (i.e. the trifold damages which can be awarded in antitrust cases).

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not available in Italy.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Time limits in Italy impact upon the statute of limitation as well as the possibility to raise defenses/objections.
Normal statute of limitation for enforcement of rights in Italy is ten years from the event grounding the right, but shorter statutes can apply for specific subject matters as Tort with a five years statute of limitation, the insurance contract with a two years statute and the contract of transport with one year statute if national or European and eighteen months if the transport starts or ends outside Europe.

Time limits to respond are very important and these are set by the civil procedure code which requires the defendant to appear at least twenty days before the hearing indicated in the writ of summon or in a subsequent special Court order, if the defendant wants to raise procedural and substantive exceptions undetectable *ex officio* and/or if they want to cross-claim or

join a third party to the litigation.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Basic rule in Italy to determine if there is international jurisdiction is the EU regulation n.44/2001 (also named "Bruxelles I"); within the national territory the jurisdictional competence is set by a series of rules listed from article 18 thru article 30 of the Civil Procedure Code. The jurisdictional competence is rigid and cannot be moved on the basis that there is a more convenient forum. The only possible ways to move the case are the limited exception provided by the heretofore mentioned pieces of legislations.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes there is and the procedure has some quite rigid terms as the party who wants to cross-claim, join a party considered responsible or co-responsible for the loss actioned in court or from which claims to be guaranteed, shall have to go on record and appear twenty days before the hearing indicated in the writ of summon or in a subsequent special Court order.
The missing of this deadline does not bar the party's right to start a fresh action and eventually successfully consolidate the two cases in one but it is far more burdensome and difficult to achieve.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

In Italy legal costs are subject to the "cost follows the events" rule. Hence the winning party shall recover from the losing party the costs and expenses in accordance to the Court statements contained in the rendered judgment. On top of the costs the losing party is also liable, reflecting the judgment statuitions on costs, for the subsequent costs and expenses including the Court Tax (so called *Tassa di Registro*).

28. Are contingency fees allowed?

No they are forbidden in accordance to article 1261 Civil code provisions, albeit recently the 4th codicil of article 13 law n.247/2012 introduced the possibility for the Client and the lawyer to agree, in writing, a fee that is proportional to the overall benefit obtained by the first one at the end of the legal assistance.

29. Is third party funding of claims permitted? Under what circumstances?

Third party funding of claims is virtually unknown in Italy despite the fact that there is no provision prohibiting it.

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30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Yes class or multi-party actions are allowed In Italy but with little use and even less success at the end of the proceedings. Collective redress are available for all cases that are qualified by the commonality of the issues at stake and by the mass of injured party and are subject to special proceedings to be brought in front of specialized sections of certain competent Tribunal.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Claims can be commenced by a consumers association or other representative organization subject to the fact that the relevant consumers association is listed in the special Register kept by the Ministry of Economic Development and Production Activities, or by an association and/or consumers committee which is *"…adequately representative of the collective interests actioned on.*"

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

In general it is impossible to anticipate the time necessary from the service of the writ of summons to the judgement; usually an entire proceeding lasts from 2 to 3 years. In particular it is impossible to determine the time necessary to a Court to make their decision. Normally the decision takes from 3 to 14 months and a lot will depend on the defences exchanged by the parties and the court workload.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Appeals are always available but following the 2012 reform article 348-bis of the code of civil procedure has been introduced and accordingly, the examination of the merit of the appeal, is subject to a preliminary stage where the Court evaluates the chances of success of the proposed argument upon which the appeal is grounded.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No in civil cases hearing rooms are not available for electronic trials or appeals, unlike criminal cases where documents and transcripts are presented on computer monitors and sometime, for security reasons, the witnesses can testify by video conference. In civil cases though, more often the court hearing transcripts are made by computers and are available on line. The Electronic Civil Process with electronic deposits of the defenses and documents came into force on June 30, 2014 and currently all written defenses, but the writ of summon, shall be lodged in court electronically.

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35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

In general graphics incorporated into defenses are quite common whereas computer animation, power point and the like, in trials are not yet admitted/accepted.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

In Italy the trial lawyer is the same and is responsible throughout the entire case. There is no solicitor/barrister distinction but there is a distinction between lawyer who are admitted to defend till the Court of Appeal and the ones who can defend at the Superiors Jurisdictions as the Court of Cassation, the Constitutional Court and the *Consiglio di Stato*.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

In Italy there is a full comparative fault assessment with joint and several liability among tortfeasors. The responsible party who has paid the full indemnity has a full right of recourse against the other co-liable parties but if one or more are insolvent the other parties shall pick-up the eventual shortfalls.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

Service of a complaint issued outside Italy is there permitted either by the means provided into the Commission Regulation (EC) n.1348/2000, relating to notification and communication in the EU Member States of judicial and extrajudicial documents in civil and commercial matters, or under the Hague Convention.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No prohibition impede the export of relevant documents for the purposes of litigation outside Italy, but fishing expeditions might be prevented or blocked if privacy rules or other reasons (i.e. industrial know-how) might ground opposing argument for an innominate urgent remedy according to article 700 Civil Procedure Code.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

None.

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41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

The Italian Civil Procedure and the role of the Judge, if correctly applied do provide a proper balance between the parties.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Yes, legislative efforts are trying to shorten the length of the civil process but are all hitting the wrong target not addressing the lack of terms to respect for the judges and the lack of duty for them to be present in court every day. In this situation the length and outcome of the cases depends, for their length, almost exclusively on the judge workload and his/her goodwill to finalize the cases.