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Judicial System Reform in Italy—

A Key to Growth

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## **IMF Working Paper**

European and Legal Departments

### **Judicial System Reform in Italy—A Key to Growth**

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#### **Abstract**

The inefficiency of the Italian judicial system has contributed to reduced investments, slow growth, and a difficult business environment. The enforcement of civil and commercial claims suffers from excessive delays in court proceedings, resulting in a very large number of pending cases. The Italian authorities have, over the years, taken steps to remove bottlenecks and speed up judicial proceedings. While these measures are generally steps in the right direction, more can be done. Consideration could be given, inter alia, to reviewing court fees, improving the new mandatory mediation scheme, strengthening court management, and reforming the appeal system.

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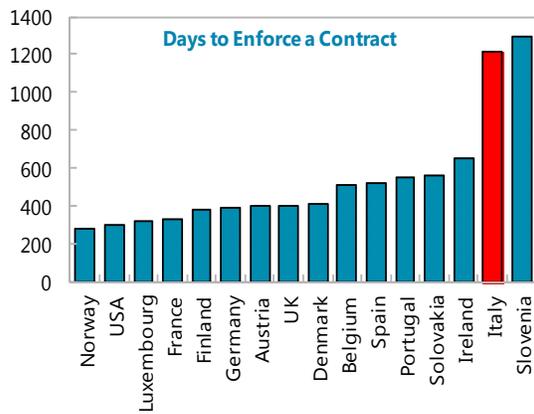
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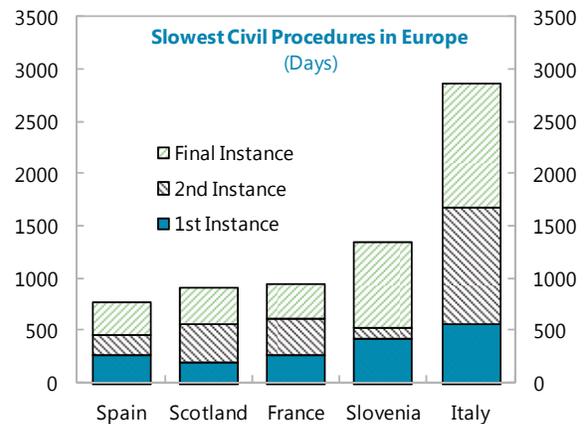
## I. THE ITALIAN JUSTICE SYSTEM—A FACTOR BEHIND A DIFFICULT BUSINESS ENVIRONMENT

**An efficient justice system is essential for sustained economic growth.** A well-functioning, independent, and efficient justice system is one where decisions are taken within a reasonable time, are predictable and effectively enforced, and where individual rights, including property rights, are properly protected.<sup>2</sup> Improving the efficiency of the judicial system can improve the business climate, foster innovation, attract FDI, secure tax revenues and support economic growth. This paper focuses on the enforcement of civil and commercial claims in Italy as a key way to improve the environment for sustaining economic growth.

**By many metrics, the performance of the Italian justice system is well below European and OECD averages.** For example, it takes an average of 1,185 days to enforce a contract in Italy, more than twice the OECD high-income country average (OECD, 2013, and Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ), 2012). Similar statistics from the 2013 EU Justice Scoreboard show that relative to its European peers, Italy scores poorly on the time needed to resolve administrative, civil and commercial cases. The OECD average to complete a civil case up to the Supreme Court level is 788 days, while it is almost 8 years in Italy (OECD, 2013).

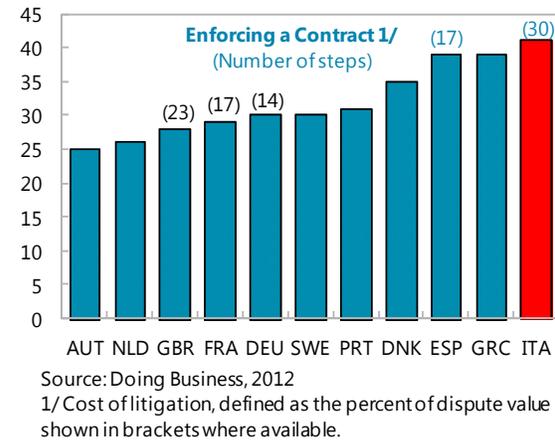
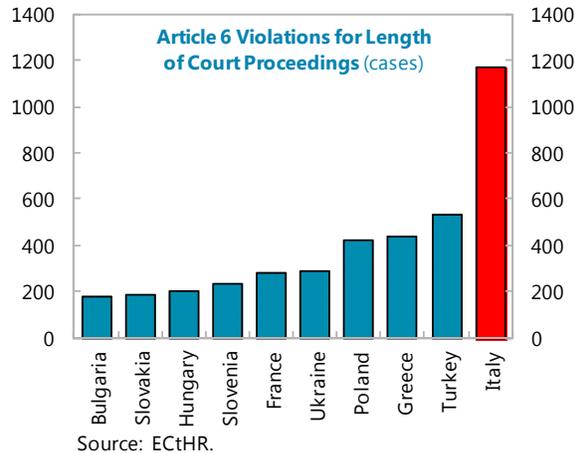


Source: Doing Business, 2013



Source: OECD (2013).

<sup>2</sup> See, for instance, Article 6 and Article 1 of Protocol No. 1 of the European Convention on Human Rights.



**Italy also has the highest number of violations of the “reasonable time” requirement enshrined in Article 6 of the European Convention on Human Rights (ECHR).** The Fraser Institute ranks Italy 112<sup>th</sup> in terms of legal enforcement of contracts and the World Economic Forum (2013 Report) ranks it 139<sup>th</sup> in terms of the efficiency of the legal framework. While 2012 has witnessed a reduction in the number of pending cases in courts, these numbers remain high overall, with 9.7 million pending cases, of which about 5 million are civil cases (end 2012 figures).<sup>3</sup>

**The inefficiency of Italy’s judicial system may be an important factor behind its poor growth performance.** Growth is projected to average 0.7 percent during 2013–18 and in the absence of deeper structural reforms potential growth is estimated at around ½ percent. A number of factors unrelated to the judicial system are relevant to understand the dynamics of Italian growth (e.g., ageing population and public-administration inefficiencies), but an increasing body of literature suggests that a weak judicial system has a more direct negative impact on growth than had hitherto been assumed. The key channels linking the judicial system and growth are:

- **Foreign direct investment.** Inward FDI is positively correlated with the quality of legal institutions (Bénassy-Quéré et al., 2007). In turn, FDI has been linked to better growth outcomes (Lim, 2001). Inward FDI is indeed low in Italy and the judicial system may be one of the factors deterring foreigners from investing in the country. Annual FDI inflows over 2005–11 were about 1/3 of the euro area average as a percent of GDP.

<sup>3</sup> For data on the number of pending civil and criminal cases in Italy, see [Ministry of Justice data](#) and the Report of the Italian Senate, *Dati statistici relative all’amministrazione della giustizia in Italia* (May 2013). By the end of 2011, there were also about 870,000 pending tax-related cases before the various organs of the “*giustizia tributaria*” (See the “*Relazione di monitoraggio sullo stato del contenzioso tributario e sull’attività delle commissioni tributarie (2011)*”).

- **Development of credit markets and cost of credit.** Weak contract enforcement raises the cost of borrowing, and shortens loan maturities (Bae and Goyal, 2009; Laeven and Majnoni, 2003), with a detrimental impact on investment, the depth of mortgage markets, and GDP (Bianco et al., 2002; Laeven et al., 2003; Djankov et al., 2008).
- **Firm size.** The literature also finds a positive correlation between the quality of the judicial system and firm size (Kumar et al. 2001, Beck et al. 2006). Weak incentives to invest and hire workers under uncertain contract enforcement and costly dismissal procedures are two factors that could explain this correlation.<sup>4</sup> Italy certainly fits the pattern: SMEs account for nearly 70 percent of value added and, as discussed above, the judicial system is inefficient along many dimensions. Giacomelli and Menon (2012) use differences in court efficiency across Italian municipalities to establish a causal link and estimate that halving the length of civil proceedings could increase average firm size by 8–12 percent. Beyond firm size, rates of firm creation and destruction also suffer from court inefficiencies (Garcia-Posada and Mora-Sanguinetti 2012).
- **Labor market.** Inefficient labor courts can have detrimental effects on the composition of employment and labor market participation (Gianfreda and Vallanti 2013a). Labor courts also affect job reallocation, which in turn impacts productivity and capital intensity (Gianfreda and Vallanti 2013b).
- **Weak enforcement reinforces vulnerabilities.** Weak enforcement leads to late payments, which triggers liquidity issues, bumps up insolvency, and increases unemployment. Pervasive late payments are closely linked to a weak enforcement system (Intrum Justitia, 2013).
- **Entrepreneurship and innovation.** Ardagna and Lusardi (2008) establish a link between entrepreneurship rates and the efficiency of the judicial system using micro data for a sample of countries including Italy. Berkowitz et al. (2006) find that stronger contract-enforcement institutions are positively correlated with more complex exports and less sophisticated imports. The structure of exports suggests that entrepreneurship and innovation may suffer from judicial-system inefficiencies in Italy: high-technology products account for only 7 percent of manufactured exports, 9 percentage points below the OECD average.

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<sup>4</sup> In the case of Italy, long judicial proceedings for worker dismissals result into higher firing costs for firms with more than 15 employees.

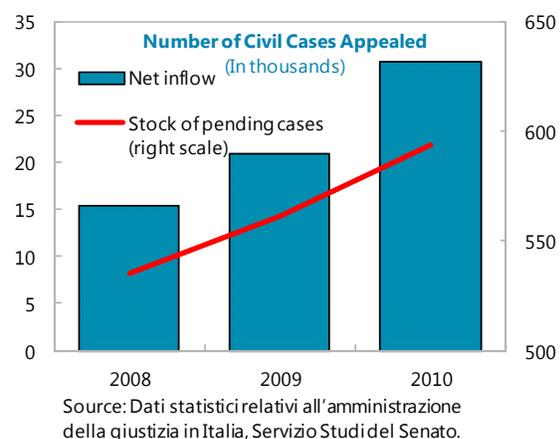
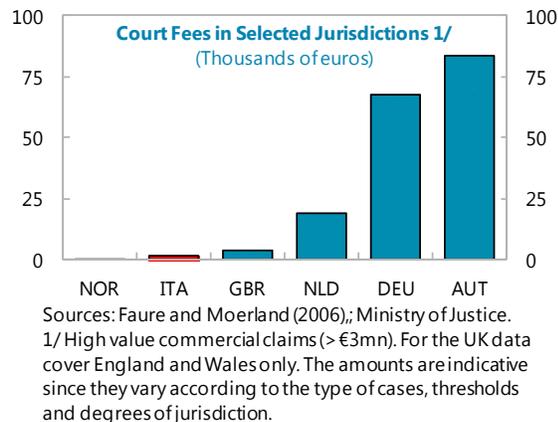
## II. DIAGNOSTIC AND POSSIBLE REMEDIES

This section highlights the main reasons for the inefficiency of the Italian judicial system. It then describes the measures taken by the authorities to address some of the shortcomings, and concludes by making recommendations for further reforms that the authorities could consider.

### A. Main reasons for the inefficiency and bottlenecks

**A combination of large number of courts and low court fees has been a source of inefficiency.** Italy has the second highest number of courts in the EU (1,231 first instance courts of general jurisdiction (CEPEJ, 2012)) and traditionally low court fees.<sup>5</sup> Low court fees have a dual effect: they lead to larger inflow of cases and a higher appeal rate, and they increase public expenditure, since only a very small part of costs is passed on to the market. The issue of court fees is now being re-considered in Italy.

**Another source of inefficiency is the large number of pending cases in courts.** This is mainly due to the high inflow of cases, low clearance rates, and extended disposition time<sup>6</sup> (Checchi, 1975; Chiarloni, 1999). The inflow is very high both in first instance courts and in appellate courts. The latter results from the ease with which the parties can appeal first instance decisions or “jump” directly to the Court of Cassation.<sup>7</sup> Easy access to the Court of Cassation has increased its inflow of cases from 3,000 per year in the 1960s to nearly 30,000 in recent years (Chiarloni, 1999).



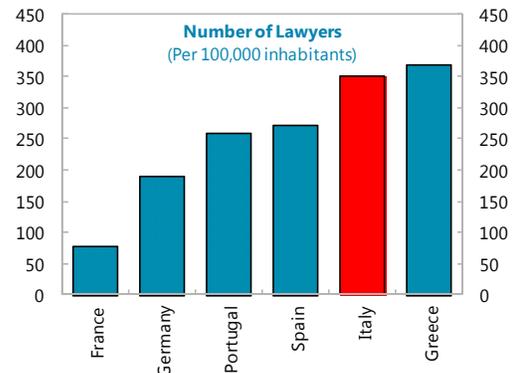
<sup>5</sup> The share of court fees in supporting court expenditure ranked Italy in the bottom 6 countries of Council of Europe states in 2012 (OECD 2013:110, MoJ 2012).

<sup>6</sup> Time needed to bring the case to an end.

<sup>7</sup> The "Corte Suprema di Cassazione" or Court of Cassation is the highest court in the Italian judicial system. It ensures, among others, "the correct application of the law and its uniform interpretation, together with the unity of the national law and the respect of the boundaries among the various national jurisdictions." (See Court of Cassation web site at: <http://www.cortedicassazione.it/Cassazione/Cassazione.asp>.)

**Also, the number of practicing lawyers in Italy is very high at about 350 per 100,000 inhabitants.**

In addition, any lawyer of certain seniority can plead before the Court of Cassation, while in the other countries, only lawyers certain specific qualifications are allowed to plead before the Highest Court. This is considered one of the factors behind the high number of incoming cases, especially before the Court of Cassation (Lupo, 2012).<sup>8</sup>



Source: CEPEJ.

**The workload of appeal courts remains high, despite several legislative interventions.**<sup>9</sup> Law 83/2012 introduced new measures aimed, *inter alia*, at rationalizing the appeal system. In particular, the law provides that, with a number of exceptions,<sup>10</sup> a case shall be excluded from appeal “*if it does not have a reasonable chance of being accepted.*” The question, however, is how a court of appeal can determine, at first sight, whether an appeal has reasonable chances of being accepted, without actually re-litigating the case in full again or at least re-hearing the parties (even if in summary form) to determine whether it meets the test of inadmissibility. In addition, a dismissal may be appealed—again—before the Court of Cassation.

**An important factor which boosts litigation is the unpredictable outcome of court cases.**

Reports indicate that the high volume of cases at the Court of Cassation, in combination with frequent legislative changes, make it extremely hard for the Court of Cassation to deliver on its mandate of ensuring legal consistency. Also, the lengthy court process invites situations in which conflicting case law co-exists for a long time before an issue is finally settled before the Court of Cassation. This weakens respect for case-law, which in turn invites litigation and undermines confidence of both individual and businesses in the justice system as a whole (Muiznieks, 2012).

<sup>8</sup> See the statement by the President of the Court of Cassation of January 2013, on “The administration of justice in 2012”, page 32.

<sup>9</sup> The measures have shifted the burden to the appeal courts (Szego, 2008) where Italy has a high reversal rate (i.e. the rate at which appeal court overturn lower court decisions) that is twice as high as France’s (34.54 versus 11.74). A high reversal rate incentivizes appeals. The inflow of appeals cannot be solely tied to appeal grounds, but must be matched by improved quality of first instance courts. The proposed consolidation and specialization of the lower courts will help significantly in that respect.

<sup>10</sup> See Article 348 bis of the Code of Civil Procedure.

**Complex and lengthy court procedures contribute to delays in court proceedings and in the enforcement process.**<sup>11</sup> In turn, lengthier proceedings are associated with higher cost of trials (Palumbo et al. 2013). The regime is characterized, on the one hand, by rigidity, and, on the other hand, by a great number of interim and interlocutory procedures. This allows for deferrals, and opens the door to a fragmentation of the actual dispute into a large number of sub-disputes, which are often subject to their own appeals. For example, the duration of foreclosure in Italy is amongst the highest in European countries, and with the highest costs. This increases overall transaction costs (a high down payment ratio, as well as interest rates), and the difficulty in accessing credit. The enforcement process itself (i.e., the execution of court decisions, orders or title documents) is highly problematic, with a low recovery rate and a lengthy time for collection (Chiarloni, 1999).

#### Comparative Foreclosure Procedures in European Countries (2002)

	<b>Global Compet. Index 2012</b>	<b>Mortgage loans in % of GDP</b>	<b>Down payment ratio</b>	<b>Duration of mortgage foreclosure (months)</b>	<b>Legal expenses as % of mortgaged house price</b>
Sweden	5.53 (4)	56	15	--	--
NL	5.50 (5)	43	25	2-3	11
Germany	5.48 (6)	27	27	12-18	6
UK	5.45 (8)	52	9	12	5
Denmark	5.29 (12)	--	--	--	--
Austria	5.22 (16)	4	30	13	--
France	5.11 (21)	22	20	10-12	12-18
Spain	4.63 (36)	15	20	36	5-15
<b>Italy</b>	<b>4.46 (42)</b>	<b>5</b>	<b>42</b>	<b>36-60*</b>	<b>18-20</b>

Source: Japelli et al. (2002)

(\*) In a 2004 study the World Bank estimated an average length of foreclosure procedures in Italy of 90 months, significantly higher than in Japelli et al. (2002) and seven times longer than in most European countries. See Silvestri (2010) p.213 for details.

### B. Measures taken by the authorities

**The Italian authorities have taken a number of measures to address the inefficiencies and bottlenecks in the functioning of their justice system.** These include measures to reduce case inflow (e.g., by increasing court fees, creating appeal barriers, and changing lawyers' fee

<sup>11</sup> The enforcement of courts decisions and other title documents in Italy is extremely complex and takes an exceedingly long time. Even the enforcement of a money claim, which as a fungible good should be simple, is a "maze of very detailed and complex rules" (Silvestri, 2010). This is compounded by major difficulties in the identification of assets. This particularly affects financial institutions which must go through long and expensive searches of public records to find out whether a debtor has assets for garnishment. There is no obligation for the debtor to provide full disclosure of their assets, and the access of bailiffs to public records, while expanded in 2005, is still restricted. The Code of Civil Procedure lacks a comprehensive regime of coercive orders, such as the French *astreintes*. The World Bank estimated the average length of a foreclosure procedure (attachment and auction of real estate) to take 90 months in Italy, which was seven times longer than similar procedures in most other European countries. See Silvestri (2010) for more details.

structure), promote out-of-court settlements (including by further enhancing mandatory mediation), reduce the number of courts (by creating economies of scale and fostering specialization), strengthen court management (e.g., by giving a greater management role to the Chief Judge of a court, creating case schedules, managing judges' workload), and speed up case processing. The steps have had some positive effect, such as the 43 percent decline in the inflow of small claims as a result of increased fees. However, other measures described below have had mixed results.

**The Pinto Law attempted to improve the situation in 2001 by giving litigants right to damages in case of excessively lengthy court proceedings.** The Pinto Law (Law No. 89/2001), however, did not have the intended effect of speeding up the court process because it failed to build in the necessary incentives for the judiciary to reform.<sup>12</sup> Instead, the law generated additional litigation and budgetary costs (Fabri 2009, Bossi, 2012).<sup>13 14</sup>

**Funds used to compensate litigants for excessive delays in the judicial process could have been used to improve the efficiency of the justice system (Bossi, 2012).** The compensation awarded for actions filed under the Pinto Law was significant (€200 million by 2011).<sup>15</sup> Instead of being used to compensate litigants for the excessive length of the judicial process, these funds could have been invested more usefully in supporting institutional changes. In response to Council of Europe's Committee of Ministers Interim Resolution CM/Res DH (2010) 224, the government enacted legislation in 2012 which aimed at clarifying the scope of the Pinto Law, but it did not address the underlying incentive problems.<sup>16</sup> However, it reduced incentives for opportunistic behavior by introducing caps. Indeed, the number of cases filed at courts of appeal has fallen significantly (from 15,300 new cases in the second semester of 2012 to 5,700 in the first semester of 2013).

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<sup>12</sup> Thus, even though the Pinto law specifically gave the Italian Court of Auditors the right to impose on judges the obligation to contribute to the damages, this right was hardly exercised, if ever. The compensation for Pinto Law cases did not, in fact, cut into the budget for the courts since a special allocation was granted. The Pinto Law therefore failed to create individual and institutional incentives for change (see Dipartimento affari giuridici e legali (Presidenza del Consiglio dei Ministri), *Relazione al Parlamento anno 2010: l'esecuzione delle pronunce della Corte Europea dei Diritti dell'Uomo nei confronti dello Stato Italiano- legge 9 Gennaio 2006, n.12* (2010)).

<sup>13</sup> By 2011, about 50,000 Pinto Law cases were filed before the Italian Courts of Appeal, a fair number of which involved complaints of late payments of compensation awarded under Pinto Law actions.

<sup>14</sup> Not coincidentally, as of 2011, approximately, 5,000 of the 14,500 pending applications against Italy before the European Court of Human Rights (ECtHR) concerned "Pinto" proceedings, with more than 300 such applications arriving each month (Muiznieks 2012).

<sup>15</sup> Presidency of the Council of Ministers, *Misure per la crescita sostenibile* (2012), p.13. This compensation was covered by a special budget allocation from the government, rather than from the judicial budget, and the judiciary therefore had no incentive to address the issue.

<sup>16</sup> See Article 55 Decree-Law 83/2012 and conversion Law no.134 of August 7, 2012.

**The introduction of mandatory mediation in 2010 was another important corrective measure** (Decree-Law 28/2010). While originally limited to specific disputes only, the scope of the law was extended in 2011. The new system faced a number of challenges, both logistical and institutional. Despite the difficulties, reports indicate that the use of mediation increased following the enactment of the law,<sup>17</sup> and was successful in siphoning off cases from the courts for at least some procedures (Severino 2012, Bank of Italy communication, June 29, 2013). This legislation was however declared unconstitutional by the Constitutional Court in October 2012 (see below for recent developments in the area of mediation).

**Further changes included streamlined first-instance court proceedings and online civil case management in pilot courts.** Other measures such as “backlog-reduction teams” in certain courts, and civil procedure reforms were also adopted. These measures proved successful in some pilot courts, with the Torino and Bolzano courts often presented as success stories. Some of the measures were supported by EU structural funds.<sup>18</sup>

The so-called “*Decreto del Fare*” (Law 98/2013, August 2013)<sup>19</sup> includes, *inter alia*, the following additional measures:

- Law-clerk apprenticeships to work in courts and support judges;
- A task force of 400 magistrates to clear the backlog in the courts of appeal;
- Compulsory mediation (see below);
- New associate judges in the Court of Cassation;

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<sup>17</sup> According to the International Institute for Conflict Prevention & Resolution, the number of mediation procedures increased from 1,000 to 250,000 over 2009–10.

<sup>18</sup> Since 2004, the EU supported a roll-out of the Torino and Bolzano courts’ experience to the entire country (Program Title: *Diffusion of best practices in the Italian Judicial Offices*). This program made some progress (e.g. for the Milan Court). However, the program faced implementation constraints as well as jurisdictional issues between regional and central authorities. The central government has taken a stronger role in program management since 2010-2011, with the Ministry of Public Administration setting up an effective central monitoring system in 2011 and the Ministry of Justice putting in place professional management in 2012. This helped secure the EU structural funds. G. Vecchi, ‘Systemic or incremental path of reform? The modernization of the judicial system in Italy’, *International Journal for Court Administration* February 2013), and <http://ec.europa.eu/esf/main.jsp?catId=46&langId=en&projectId=416>

<sup>19</sup> Greater integration of magistrates (“giudici onorari”) into the “ordinary” court system could be considered, perhaps by amending Article 57 of the *Decreto del Fare* to allow the use of magistrates in proceedings before the Court of Appeal when it acts as single jurisdiction (“*Corte di appello in unico grado*”), such as the preparatory phase of proceedings under the Pinto Law.

- First hearing to be mandatorily scheduled within 30 days and settlement of litigations expected at the first hearing in most cases.

**The “Destination Italy” initiative presented in September 2013 reaffirms the government’s commitment to tackle the problems in the judicial system.** The first draft of Destination Italy initiative points to a number of proposals in the judicial area in line with the National Reform Program outlining Italy’s targets towards the Europe 2020 strategy. These include measures to:

- Extend the competences of the commercial courts to all commercial litigation;
- Introduce restrictions to appeals;
- Allow parties to a mediation not to be assisted by a lawyer;
- Extend the competences of judges of the peace;
- Ensure the full operation of the “e-civil process” (so-called “*Processo Telematico Civile*”) as of June 2014;
- Complete the “data warehouse” project;<sup>20</sup> and
- Monitor the implementation of the Administrative Procedure Code, with a view to proposing improvements, as needed.

### **Additional steps needed to improve the judicial system**

**Reforms so far are steps in the right direction but more can be done to accelerate claim enforcement.** One way would be to further reform the judicial system to better support effective and efficient enforcement of civil and commercial claims. Consideration could be given to, *inter alia*, reviewing court fees, strengthening the new mandatory mediation scheme, improving court management and accountability, and reforming the appeal system. The “*Destinazione Italia*” initiative shows that some of these measures are very much part of the reform debate. Swift adoption and implementation of these reforms is key to reduce the overall number of incoming cases, while preserving access to justice, and to ensure a timely and effective resolution of the dispute when it enters the court system.

#### ***(i) Public finance and litigation incentives—court fees***

**A comprehensive review of the economic incentives underlying the justice system is critical to the development of an effective and efficient judicial process.** The objective should be to achieve a more reasonable and equitable distribution of the expenditure between the taxpayer and the market, while upholding basic principles of access to justice. A more balanced

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<sup>20</sup> Database of judicial proceedings for each court.

distribution of litigation costs is also likely to impact on the inflow of cases, by weeding out spurious and vexatious litigation.<sup>21</sup> Recent cross-country developments in this area elsewhere in Europe could be useful guidance.

**Court fees have generally increased throughout Europe (Faure, 2006; Hodges et al., 2010; CEPEJ, 2012).** While no justice system is fully funded by court fees, a number of jurisdictions in Europe (e.g., the United Kingdom, the Netherlands, and Germany) have increased court fees significantly, notably for commercial procedures. Countries that did not have court fees, such as France, have now introduced them. Increasing or introducing court fees has three main beneficial effects: first, it helps prevent spurious litigation; second, it shifts the expenditure burden from taxpayers to litigants, and if carefully targeted, re-distributes the burden to those litigants most able to carry it; and third, it increases overall public revenue.

**Recent measures adopted by the Italian authorities increase court fees to a certain extent.**<sup>22</sup> Notwithstanding, court fees remain modest and capped (even for high value commercial litigation). For both budgetary and legal purposes, the authorities should consider a comprehensive assessment (including both an impact and a policy assessment) of court fees for civil, commercial and tax cases, and increasing court fees, while upholding access to justice (e.g., through a properly developed legal aid system).<sup>23</sup>

### *(ii) Strengthening out of court dispute settlement*

**After being declared unconstitutional in 2012, compulsory mediation was reinstated in 2013.** This is a positive development. However, thus far, mediation has not been widely and consistently used in Italy following its introduction three years ago. The reasons range from a lack of strong incentives for all parties to a limited knowledge among the general public about the “mediation avenue.” That said, the inefficiency of the justice system itself is a key obstacle. Cross country experience shows that mediation works well and is widespread in countries where the justice system also works well. Where the justice system is inefficient, parties (notably, a party that expects to lose the case) may not find it attractive to settle the disputes at an early stage through mediation and may prefer to take advantage of the lengthy judicial process. Notwithstanding, data provided by the authorities indicate that mediation is starting to pick up. It remains to be seen whether this trend will continue as a result of the adoption of the new mediation legislation.

**The compulsory presence of lawyers in mediation could be reconsidered.** The compulsory presence of lawyers in all mediation proceedings may create an unnecessary reserved area for

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<sup>21</sup> Anecdotal evidence suggests that Italian courts split costs of litigation evenly between the parties too often. Greater costs for parties engaging in spurious litigation would help weed out such cases.

<sup>22</sup> See the “*Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia*”.

<sup>23</sup> This assessment should also explore cross-subsidizing court fees, in which high fees for some procedures can lower fees for others.

lawyers, increase costs, hamper competition, and reduce the ability of other professionals (who may be more adequately trained to deal with the dispute at stake) to intervene in the mediation process. It is positive that the new legislation requires lawyers to be trained in mediation. This will however take time and pose complications since compulsory mediation has been introduced for an initial period of four years only.

**The authorities' efforts to actively promote out of court dispute settlement, including mediation, are steps in the right direction.** However, these efforts could be strengthened by:

- Allowing mediation to take place without the compulsory presence of lawyers;
- Developing standards for the selection, responsibilities, training and qualification of mediators;
- Informing market participants and the public at large about which procedures are subject to mediation (mandatory or otherwise) and about the time, process, and costs of mediation;
- Creating expedited procedures for mediation decisions which are challenged in court

*(iii) Improving court management - data systems and performance accountability*

**Effective court organization and management could be strengthened with the objective of enabling the court to actively manage the case process and drive it forward.** This includes a broad range of elements such as the reorganization of courts (notably consolidation aiming for professionalization of management and specialization of judicial functions), simplification of administrative procedures, digitalizing processes, proactive case management, improved budgetary mechanisms, and performance accountability (van Dijk et al, 2013; European Network of Councils for the Judiciary, 2012).

**The authorities have already taken measures in this area.** These include a court retrenchment program, the development of a “data warehouse”, and court work-plans based on individual caseload assessments. These are important steps since court management and accountability enable a cost-effective and rational use of court resources and maximize output, while preserving the quality of the justice system. Swift implementation of these measures would be key in terms of proper use of public funds and cost-effective use of judges' time.

**Court management and accountability require the development of performance indicators.**

In this context, the ongoing work of the Italian authorities to set a “data warehouse” of litigation in all courts is welcomed. It aligns Italian practice with that of other countries and with recommendations by international institutions, such as the CEPEJ. The challenge lies in how those data are processed and translated into policy and institutional accountability. Initiatives

such as the “Strasbourg Program” by the Turin Court (Fabri et al. 2013)<sup>24</sup> could be used as examples, and consideration could be given to extend them to other courts. In this vein, the authorities are encouraged to set performance targets for judges, with the performance of (each chamber of) judges being tracked for internal monitoring and publication purposes. Such a system exists in various other European judiciaries (including at supreme courts’ levels).

***(iv) Strengthening and streamlining civil procedure and enforcement—the appeal system***

**The efficiency and effectiveness of civil procedure could be strengthened**, with the objective to ensure a smooth process of cases in court. This includes (i) an effective regime of pre-trial disclosure and of interim measures; (ii) an enhanced role for judges in managing cases and an increased number of single judge processes; (iii) a simplification of the decision-format for lower courts; (iv) a review of the appeal system (in line with international recommendations), including to the Court of Cassation; (v) a stronger IT-based processing; and (vi) effective enforcement.

**Among these measures, priority could be given to a comprehensive review of the appeal system.** The authorities are taking measures to rationalize the appeal system and to tackle the large number of cases pending in the Court of Cassation. However, these reforms have not always led to the expected results. Various Supreme Courts in Europe have instituted filters to reduce the inflow of cases, including regimes of summary dismissals and pre-selection. For instance, some countries do not allow appeals to the Supreme Court if courts of appeal have upheld the first instance decision.<sup>25</sup> A comprehensive review of the appeal system (both at court of appeals and court of cassation levels) could therefore be undertaken, in light notably of [Council of Europe Recommendation R\(95\)5](#) concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases, and of the recommendations by the European Judicial Network. Consideration could also be given to allow the court of appeal flexibility in the decisions it issues depending on the type of reply it wishes to provide to the appellant. This may include a new appeal judgment that fully re-discusses and replaces the 1st instance decisions or a simple, much shorter rejection of the appeal with a combined request to the 1st instance court to re-discuss the substance of the case.

### III. CONCLUSION

The performance of Italy’s judicial system is below European averages in many respects. The weaknesses in the judicial system contribute to Italy’s poor business environment and low growth. Judicial reform should be an integral part of a strategy to lift potential growth and create jobs. The authorities have taken steps to improve the efficiency of the judicial system but more is needed to support growth. In this connection, consideration could be given to reviewing court

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<sup>24</sup> This is one of the first experiences of case management in Italy aiming at substantially reducing the backlog and the time within which civil disputes are resolved. This project was awarded the Crystal Scale of Justice prize in 2006 by the Council of Europe. For more details, see Fabri and Carboni (2013),

<sup>25</sup> European Network of Councils for the Judiciary, *Timeliness Report* (May 2011).

fees, improving the new mandatory mediation scheme, strengthening court management, and undertaking a comprehensive review of the appeal system.

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