

## ITALY (revised reply of 20 February 2024)

### 1. Delegations are invited to provide information on any domestic legislation existing on this particular issue.

Italy has ratified and acceded to the 2004 UN Convention on Jurisdictional Immunities of States and Their Property by Law no. 5 of January 14, 2013.

However, there is no domestic legislation regulating the possibility for the Italian Ministry of Foreign Affairs and International Cooperation (MAECI) to raise public international law issues in procedures pending before national tribunals and relating to States' or international organisations' immunities.

The Italian Constitution enshrines the principle of independence of the judiciary (Art. 104.1) and it is up to the competent Court to decide whether States' or international organizations' immunities apply. Indeed, Italian Courts apply the *jura novit curia* principle, by which the judge must know any kind of law (included international law) and must adjudicate any legal issues independently.

By Article 117.2 Cost., in deciding a judicial case judges must abide by law only - hereby the term "law" includes any law ratifying international treaties and conventions - and pursuant to Article 10.1 Cost. "*the Italian legal system conforms to the generally recognized rules of international law ...*".

Only when questions were raised with regards to the constitutionality of a particular law, the Presidency of the Council of Ministers may intervene in a proceeding before the Constitutional Court.

In any case, this faculty is granted to the Presidency of the Council of Ministers only and not to the MAECI autonomously.

### 2. Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field.

National Courts are expected to be competent to apply and interpret international law, but sometimes they may ask the MAECI for more information in order to learn more about the facts involved in proceedings. For example, when public prosecutors or judges deem it necessary, they may ask the MAECI for more information and acquire acts, records and other kinds of documents, or even through listening to a public official (cf. Articles 234, 256, and 358 of the Code of Criminal Procedure, or Article 213 of the Code of Civil Procedure).

Similarly, in criminal proceedings the suspect's defender may conduct defensive investigations (cf. Article 391 *quater* of the Code of Criminal Procedure), or in civil and administrative proceedings plaintiffs and defendants may request information from the Public Administration (cf. Articles 210 and 211 of the Code of Civil Procedure, and Article 22 of Law no. 241/1990).

As regards immunities, it is an exclusive power of national Courts to decide, in any given case, if they have legitimate jurisdiction and whether the alleged immunity applies or not.

Furthermore, when the MAECI is the legal person offended by a crime, it may request the official permission of the Presidency of the Council of Ministers to constitute itself as a civil Party (cf. Article 1 of Law no. 3/1991). In this case, the MFA brings a civil action in the criminal trial against the defendant through the State Attorney's Office in order to claim compensation for damages suffered. Accordingly, the Public Administration can exercise all the greater powers associated with being a Party to the trial, such as that of producing records, documents, and any evidence in support of its arguments (cf. Articles 76 et seq. of the Code of Criminal Procedure).

In addition, the Ministry may eventually intervene to support the arguments of any of the parties when it also has an interest of its own (cf. Article 105 of the Code of Civil Procedure).

**3. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?**

In the criminal sector, pursuant to Article 256 *ter* of the Code of Criminal Procedure, when asked to exhibit certain acts or documents, the Public Administration (and thus also the MAECI) may call for State secrecy for those acts or documents so qualified under the legislation on confidentiality. In such a case, the deposit and the disclosure of the relating acts and documents to the Judicial Authority are suspended. Consequently, those acts and documents shall be sealed in special envelopes and promptly forwarded to the President of the Council of Ministers, who shall authorize their acquisition or confirm the State secrecy within thirty days. In the absence of a decision by the President of the Council of Ministers, the Judicial Authority may order the exhibition of the related documents.

In the civil sector, pursuant to Article 213 of the Code of Civil Procedure, the Public Administration (and thus also the MAECI) shall transmit the information requested or give the reasons for the refusal, within sixty days from the notification of the request of information that is usually forwarded through the State Attorney's Office.

More in general, no legislative provisions formally prevent the MAECI from presenting or highlighting before national Courts, when deemed useful, specific issues which it considers relevant from the point of view of the international law. However, there is little or no practice in this regard in the absence of a specific request from the Court and in any case, in the light of the independence of the Judiciary, these submissions would in no way bind the Court.

**4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:**

- **the principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication ?)**
- **the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law)**
- **the principle of independence of the Judiciary**
- **any other related issue.**

The principle of independence of the Judiciary together with the principle of equality of arms entail that any communication of the Public Administration (such as the MAECI) with the Parties engaged in legal proceedings should comply with the law and thus must be limited to specifically regulated legal situations. Accordingly, apart from the rules already mentioned in Sections 2 and 3, there are no other specific domestic provisions concerning communication by the Ministry with the Parties engaged in procedures pending before national Courts.