

## ITALY

### LEGAL BASIS

- 1. Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Italy has ratified the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) on 6th May 2013. It has neither signed nor ratified the European Convention on State Immunity (1972).

In relation to EU Member States, Italy applies EU Regulation no. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Italy is a Party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965.

- 2. Please provide information on:**

- a. National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

Italy has acceded to the 2004 UN Convention through Law no. 5 of 14<sup>th</sup> January 2006 ("Adesione della Repubblica italiana alla Convenzione delle Nazioni Unite sulle immunità giurisdizionali degli Stati e dei loro beni, fatta a New York il 2 dicembre 2004, nonché norme di adeguamento all'ordinamento interno", available in Italian at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013;5>).

As other European States, Italy has not enacted a specific national legislation on service of process on a foreign State. Article 142 of the Civil Procedure Code ("Codice di Procedura Civile") establishes general rules applicable to service of process on addressees residing abroad. According to paragraph 2 of Article 142, service of process shall take place according to International Conventions and Italian consular law (D.P.R. 5 gennaio 1967, n. 200, sost. Decreto legislativo 3 febbraio 2011, n. 71, available in Italian at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2011;071>).

- b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

Italian Courts review the lawfulness of the service of process either by operation of law or upon objection.

### PROCEDURE

- 3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

According to a rule of customary international law and without prejudice to the obligations under the Vienna Convention on Diplomatic Relations (1961), Italy considers that service of process on a foreign State is to be effected through diplomatic channels. International law does not set forth a procedure on how service of process through diplomatic channels should

be effected. The meaning of “diplomatic channels” itself is under discussion. In the absence of an applicable international convention, Italy applies the following procedure: judicial documents are sent by Italian Judicial Clerk to the Ministry of Foreign Affairs (Diplomatic Protocol) which will transmit the documents under cover of a Note Verbale to the Embassy of the defendant State accredited in Italy.

Such a practice respects courtesy to Foreign Missions in Italy and is based on customary international law and provided for by circulars of the Ministry of Justice.

The rationale is to give immediate notice of suit to the defendant State – considering the clear interest of the State to be informed – and guarantee free and undisturbed exercise of diplomatic functions, as well as respect of diplomatic agent’s dignity.

Service of process is deemed to have been duly effected following the receipt testifying that all relevant documents were delivered to the addressee.

The lawfulness of the service of process is treated by the Court as a preliminary question. Whether the Court judges on the validity of serving, process could go on in absentia of the State concerned, should the latter opt not to appear before the Court. Otherwise, the service should be renewed and the hearing postponed.

- a. How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

The terms “diplomatic channels” are interpreted by Italian authorities as meaning that the service to the defendant State is effected through the diplomatic mission of the defendant State accredited in the State of the forum. A notification through the diplomatic mission of the State of the forum accredited in the defendant State is not foreseen.

- b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

The terms “if necessary” are understood by Italian authorities as referring to the official language of the State of the forum.

- 4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

Italy does not accept the service if it is not effected through diplomatic channels: in these cases, documents are returned to the Ministry of Foreign Affairs of the State concerned, requesting to effect the service through diplomatic channels.  
Italy accepts the service to its embassy in the State of the forum.