

The Processo Civile Telematico and the Italian legal framework: a perspective

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Summary

On the 30 of June 2014, the Ministry of Justice introduced the Processo Civile Telematico (PCT) into the Italian legal system. The main purpose of PCT – which can be translated into On-line Civil Trial – is to increase the availability of on-line judicial services by improving the exchange of documents between courts (judges, public officials) and professionals (lawyers, experts) involved in civil cases.

About one year later, we can draw up a provisional balance sheet on the subject. First of all, we provide a brief description about the current state of the art supported by statistics to shed light on developments and latest trends. Secondly, a recent decision by the Court in Milan will be analysed to highlight how the new PCT is affecting the legal framework in practical terms. A number of additional points are illustrated to suggest how we might interpret the legal framework in the future and what changes are necessary.

Introduction to PCT

The Processo Civile Telematico (PCT) is a project of the Italian Ministry of Justice, which aims to develop the availability of on-line judicial services to improve procedures and the exchange of documents between courts and professionals involved in civil cases. In accordance with the provisions of the act Legge 24 Dicembre 2012 n. 218 (also called Legge di Stabilità 2013),¹ the PCT legal reform is mandatory and is to be strictly observed by the courts and lawyers. In other terms, the deposit of judicial documents in civil cases must be made exclusively via the on-line digital system.

More precisely, there are three main activities: (a) on-line consultation of the case folder; (b) data transmission of documents amongst judicial offices; and (c) on-line payment for judicial taxes (contributo unificato). All the principal activities physically fulfilled until now at the court can be made on-line directly

from the lawyer's firm or the judge's office.² To make a deposit via PCT, there are precise rules to follow. The new law, in combination with Decreto Ministeriale n. 44/2011,³ means that all judicial documents and attachments have to be certified via a digital signature to ensure the validity and confidentiality of the judicial office in charge. At this point, documents and attachments are signed and encrypted in the on-line civil system by means of a digital envelope (busta telematica) through certified e-mail.⁴

With regard to specific measures provided by constantly updated ministerial decrees, all the steps of dispatch, transmission and deposit of judicial documents are registered and certified into a documental repository remotely accessible by all parties in the trial.⁵

To hold a clearer picture of the PCT, official data from the Italian Ministry of Justice show an evident increase of use in the digital system overall. Only in one year (May 2014 – May 2015) it registered 3,494,832 deposited documents from lawyers and 2,538,990 deposited documents by judges and administrative personnel. Even more impressive is the estimate of the reduction of costs by administration offices of up to 48 millions of euro per year (see DGSIA 31/5/2015).⁶

Within this new scenario, other issues such as safety and reliability of the digital infrastructure must be taken into account. As pointed out by a group of Italian experts from 'La Sapienza' University of Rome, the Italian Digital Agenda (ADI) also requires adequate management of cyber security risks. The possibility of being a victim of cybercrime is real, and with

² Reale, M, (2015), *Il Processo Civile Telematico*, Altalex.

³ See Decreto Ministeriale no. 44/2011 available on-line at [http://www.processotelematico.giustizia.it/pdapublic/resources/D.M.%2021%20febbraio%202011%20\(nuove%20regole%20tecniche\).pdf](http://www.processotelematico.giustizia.it/pdapublic/resources/D.M.%2021%20febbraio%202011%20(nuove%20regole%20tecniche).pdf).

⁴ More information is available on-line at https://www.accessogiustizia.it/docs/guida_pct.pdf.

⁵ See the guidelines by Consiglio Nazionale Forense, available on-line at <http://www.consiglionazionaleforense.it/site/home/area-avvocati/processo-civile-telematico/articolo8598.html>.

⁶ See PCT – Ministero della Giustizia at http://www.processociviletelematico.it/images/doc/Elaborazione_dati_PCT_maggio2015.pdf.

¹ See Legge di Stabilità 2013, available on-line at <http://www.gazzettaufficiale.it/eli/id/2012/12/29/012G0252/sg>.

impressive potential damages not only for the justice system, but for the public sector on the whole. For all these reasons, the national cyber security strategy plans to act on some areas with the aim of establishing a more efficient network with high quality of service as well as by building a structure that is adequately preserved and protected.⁷

One of the points noted above deserves a more detailed explanation: the validity of the deposit at the court. First, article 16-*bis* of Legge di Stabilità 2013⁸ paragraph 7 points out that the deposit is considered to be effective only after an official receipt is produced by the Internet Service Provider responsible for the certified e-mail of the Ministry of Justice:

‘Il deposito di cui ai commi da 1 a 4 si ha per avvenuto al momento in cui viene generata la ricevuta di avvenuta consegna da parte del gestore di posta elettronica certificata del Ministero della Giustizia.’

‘The deposit referred to in paragraphs 1 to 4 is generated at the time of the delivery receipt by the operator of the certified mail of the Ministry of Justice.’

However, apart from force majeure episodes due to the malfunctioning of the entire system as illustrated in paragraph 8, paragraph 9 affirms that, for specific reasons, the judge can order the deposit of documents in paper format:

‘Il giudice può ordinare il deposito di copia cartacea di singoli atti e documenti per ragioni specifiche.’

‘The court may order the filing of paper copies of individual documents for specific reasons.’

The legislator did not specify the reasons in paragraph 9. Because of this lack of specification, judges and lawyers started to create PCT protocols to fill the gap and developed commonly recognised rules.

For instance, one of the problems was the difficulty in reading the digital copy in instances where the scan was of a very low quality.⁹ Because of this lack of

coherence between the two norms (par. 7 and par. 9 of article 16-*bis* Legge di Stabilità), the paradox is that one year after it was introduced, rather than assisting the exchange of information between lawyers and judges, the common discussion is the validity of what is now called the courtesy copy (*copia di cortesia*) in paper, caused by the difficulty of interpreting the legislator’s words properly. To put it differently, due to the lack of coherence, there is a difference between the PCT protocols that are not followed by different tribunals within the country, and what is required by law in terms of validity of the deposit. In other words, judges and courts often use the provisions of paragraph 9 to stay loyal to the old procedure with paper documents, and possibly because of their lack of knowledge in using the digital tools.

A number of PCT protocols¹⁰ have been created in all Italian courts to provide guidance with the aim of resolving any practical misunderstandings, and to provide a uniform guide to the national law on the subject.

It could be argued that the PCT protocols illustrate that it is necessary to coordinate them with the codes of law, although they might be considered as similar to the Civil Procedural Rules in England and Wales regarding electronic disclosure, for instance.¹¹ As a fundamental principle, in case of contrasts between the law on one side and the protocol on the other, is that the former must prevail as a peremptory norm. The issue is how to strike a balance within this scenario: how the new PCT might deal with the Italian legal framework and the possible changes that might be necessary in the future once the system is in operation.

PCT in the Italian legal framework

Given the above discussion, the most important aspect in this argument is related to what are called ‘courtesy copies’ (*copie di cortesia*), in other terms, paper copies which provide an extra guarantee about the digital deposit of the document at the court both for administrative and legal purposes.

⁷ See more details at CIS Sapienza, 2013 Italian Cyber Security Report, December 2013, page 21, available at <http://www.dis.uniroma1.it/~cis/media/CIS%20Resources/2013CIS-Report.pdf>

⁸ Legge di Stabilità 2013 is available on-line at <http://www.gazzettaufficiale.it/eli/id/2012/12/29/012G0252/sg>.

⁹ Fabbrini, B, (2013), Il Processo Civile Telematico. Tra interpretazione del vigente e future evoluzioni, page 291, available on-line at

http://www.distretto.torino.giustizia.it/Distretto/allegato_corsi.aspx?File_id_allegato=1614

¹⁰The PCT protocols are available on-line at <http://www.processociviletelematico.it/circolari-e-protocolli.html>.

¹¹Available at http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd_part31b.

Actually, the significant point is the relationship between the violation of PCT protocols – which are interpreted and applied differently amongst courts within the country – and the procedural remedy provided in article 96(3) of the Civil Procedure Code (c.p.c.).¹² Article 96(3) was introduced by Legge 18 Giugno 2009 n. 69 to establish that, with respect of the general principles set out in article 91 c.p.c. - the judge, by virtue of his office, can order the unsuccessful party to pay the costs of the trial even if not required by the plaintiff.

A recent decision by the Court in Milan points out the fundamental aspects in clearer terms, and permit us to understand the practical effect of the most recent PCT measures introduced into the Italian legal framework. The case of Tribunale di Milano – II Sez. Civ. N. 534/2015¹³ was a case of bankruptcy. The Milanese district court held that the person who submitted the judicial document via the on-line form also had a responsibility under article 96 paragraph 3 c.p.c. to deposit the ‘courtesy copy’ on paper (in accordance with the internal protocol of the district court in Milan and the Bar of Lawyers in Milan dated 26 June 2014).¹⁴ In simple terms, the lack of duty to provide a courtesy copy has compromised the regular availability of access to documents, and is causing more difficulty for the court’s examination of the parties. For this reason, on 15 of January 2015 the judge ordered the party considered in default to pay a fee of euro 5,000.

The judge’s decision was based on the infringement of the PCT protocol of the court in Milan, or more precisely, due to a lack of diligence by the legal representative of the defendant for the deposit of the courtesy copy in paper.

However, because of the harsh contrast in jurisprudence about the most appropriate interpretation on the issue, the bankruptcy administrator expressly renounced the payment in favour of him (5,000 euro) under article 96(3) c.p.c.,

which was approved by the delegate judge on the following hearing held on 7 February 2015.¹⁵

After this controversial decision, by the spring of 2015 a more serious discussion started with regard to the enforcement of the PCT in Italy. For instance, particular attention was given to the notification procedure for peremptory terms and deadlines in the judgement. Within the old system such procedure was made by the chancellor at the court by means of a paper receipt with the impression of an official stamp. Within the PCT, it is for the Internet Service Provider (ISP) to produce the official receipt by certified e-mail of the Ministry of Justice. Following this perspective, some experts underlined the limit of such practice. In fact, if we translate the legal effect of the deposit from the paper stamp to the digital forward by the ISP responsible for the certified e-mail system, we will affect the value of the public certification procedure. In other words, the justice system is technically conferring to the ISP the power to emanate official receipts and, at the same time, substantially depriving the judge of his power to control and release public certifications.¹⁶

Both judges and lawyers stressed the difficulties they had in managing the PCT system in accordance with the law.

After the case in Milan, a judge at the district court in Naples postponed his judgement until 2016 because of a malfunction of the PCT system. More precisely, the judge indicated the practical problems, such as a considerable overload of files on the system, plus difficulties in ordering and numbering documents uploaded in pdf format.¹⁷

The national association of lawyers (Associazione nazionale avvocati italiani – Anai) described the current state of art and the PCT as an ‘incomprehensible scenario’. District courts around the country are following different interpretations of the subject due to a lack of uniformity on the laws and also because of problems with technology support and maintenance. To give some examples, a sort of

¹²The Codice Procedura Civile is available on-line at <http://www.altalex.com/documents/news/2014/12/01/disposizioni-general-delle-parti-e-dei-difensori#art96>.

¹³Content available on-line at <http://www.processociviletelematico.it/images/doc/Trib-Milano-decr-534-2015.pdf>.

¹⁴PCT protocol original version available on-line at https://www.tribunale.milano.it/files/protocollo%20PCT_P_5813_14.pdf.

¹⁵PCT protocol original version available on-line at https://www.tribunale.milano.it/files/protocollo%20PCT_P_5813_14.pdf.

¹⁶ Fabbrini, B. (2013), *Il Processo Civile Telematico. Tra interpretazione del vigente e future evoluzioni*, pages 281-287, available on-line at http://www.distretto.torino.giustizia.it/Distretto/allegato_corsi.aspx?File_id_allegato=1614

¹⁷ See decision Tribunale di Napoli, 20/03/2015 (extract) at <http://www.processociviletelematico.it/12-giurisprudenza/88-trib-napoli-20-marzo-2015.html>.

'puzzle' can be recognised within the PCT enforcement: in Foggia and Salerno there is no digital system at all at present; in Turin, Padova and Pavia, some judicial documents are excluded from the PCT procedure by default; in Vercelli, pdf files that include an image are not allowed; in Milan almost 14,000 digital envelopes have been suspended because of an overload of the entire system.¹⁸

To resolve such problems, some people are supporting the creation of a specialised commission created by the Ministry of Justice to manage this fragile stage. Mr Mariano Sciacca, previously responsible for best practices and currently public prosecutor in Catania, clearly affirmed a lack of coherence between the Civil Procedure Code and the series of rules created in support of the PCT. In his opinion, there is a need for a consolidated version of laws able to offer standard practices uniformly applied within the country and amongst courts. Moreover, particular attention must be given to the training of the public administration staff to deal with ordinary technological incidents.¹⁹

This brief analysis takes us to the importance of a legislator's intervention to clarify practical uncertainty and legal vacuum on the subject.

Results and final considerations

Actually, there is a clearer picture about the PCT evolution in Italy. Taking into account the practical and professional feedback, there is no doubt that a general feeling of distrust embraces the PCT development. The big expectation about the introduction of such a digital tool theoretically able to improve the judicial system is causing a lot of unforeseen problems. A series of practical and technical misunderstandings are interpreted by the users as unsolvable obstacles of the entire PCT scheme. For instance, apparently easy interruptions (e.g. blocked PINs for the expiration of the digital certificate and the daily managing of on-line accounts) are associated by users, particularly not very digital-friendly users, as a problem of the PCT system overall. The latter approach in practice is causing even more dysfunction, rather than blurring legal interpretations. It is not our intention to be over simplistic in this

¹⁸ See Altalex 08/04/2015 at <http://www.altalex.com/documents/news/2015/04/08/processo-civile-telematico-anai-denuncia-il-caos>

¹⁹ See Associazione Nazionale Forense (ANF) news available on-line at <http://www.associazionenazionaleforense.it/27-04-15-italia-oggi-il-pct-finisce-sotto-accusa/>

analysis, however, it is never enough to remember how an appropriate training of legal insiders on the subject might guarantee the first step to follow a good direction in favour of the enforcement of the PCT.²⁰

More to the point, we can describe three programmatic points that will be implemented over the next period to fill the gap between the old framework and the new digital dimension. The proposed answer is threefold:

Firstly, the PCT has not only been created to organise a series of incoming and exiting documents, but to provide a benefit from all the data achieved in favour to all parties in the trial. The final aim is to reach more advanced management of the digital judicial system. Until today, this digital structure has been limited to the essential and simple sharing of documents via certified e-mails. To make one step further, the real target is the improvement of the digital judicial system following the interoperability model of the 'cloud' platform. In such a way, the entire block of documents available through digital envelopes could even help the single user by being connected with the judge's folder in any moment and anywhere, with the possibility to speed up the research of information and so saving considerable amounts of time.

Secondly, another misunderstanding was the idea of considering the PCT sufficiently developed to satisfy all incoming necessities without providing adequate training to legal insiders as well as to organise a new specialised office. With particular regard to the administrative personnel at the court, it is necessary to train them in the digital background.

Finally, apart from macro-structural interventions such as uniformed norms equally observed within the country, more importance must be given to the practical details. New techniques in writing legal documents supported by hyperlinks should be strongly recommended to facilitate a real and fruitful sharing of experience.²¹

²⁰ In support of this reasoning see more details in Sciacca, Verzelloni, Miccoli and others, *Giustizia in Bilico*, (2013), content available on-line at <http://www.aracneeditrice.it/aracneweb/index.php/pubblicazione.html?item=9788854859005>.

²¹ In support of this reasoning see one more time Sciacca, Verzelloni, Miccoli and others, *Giustizia in Bilico*, (2013), content available on-line at <http://www.aracneeditrice.it/aracneweb/index.php/pubblicazione.html?item=9788854859005>.

Apart from the above proposals, a recent provision by the Italian parliament has approved an amendment to re-introduce the obligation to produce paper copies into the On-line Civil Trial (PCT). In case of approval by the senate chamber, the Minister of Justice would be able to establish the paper copy for deposit, alongside the digital submission via the PCT system. In other terms, the paper risks coming back again, and causing a dangerous double-track in civil proceedings. There are two particular issues: arresting the positive reduction of costs started with the new digital model of PCT, and one last exit for lawyers and judges against the progressive digitalisation of judgements.

This proposed reform could be disadvantageous not only because is totally anachronistic, but also it would constitute an unsolvable arrest of development toward the reform, which is against the interests of the Italian citizen.

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