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Italy

Urgent measures in the field of administrative justice, administrative proceedings and environmental compliance: the “Cura Italia” Decree and its extensions

April 2020

By Decree Law No. 18 of March 17, 2020 (the “Cura Italia” Decree), published in the Official Gazette of 17 March 2020, new measures in the field of, inter alia, administrative justice, administrative proceedings and environmental compliance were ordered, superseding the previous provisions of Decree Law No. 11 published on 8 March 2020, which only set out measures on administrative justice, without regulating the suspension of administrative proceedings. Decree Law No. 23 of 8 April 2020 (“Decree Law 23/2020”), published in the Official Gazette on 8 April 2020, has recently provided for the extension of some of the said measures.

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1. Suspension of time limits applicable to administrative proceedings - Article 84, paragraphs 1 and 2 of the “Cura Italia” Decree; Article 36, paragraph 3 of Decree Law 23/2020

The above-mentioned legislation lays down a diversified discipline for the various types of time limits for proceedings.

Article 84, paragraphs 1 and 2, of the “Cura Italia” Decree already provides for the suspension of all time limits for administrative proceedings, except for precautionary proceedings, from 8 March to 15 April 2020 inclusive.

Article 36, paragraph 3 of Decree Law 23/2020 has extended from 16 April to 3 May 2020 the suspension of time limits for the service of claims only. The explanatory statement clarifies that the suspension applies to time limits for the service of “claims at first and second instance, introductory claims, appeals, cross claims, claims for additional reasons, etc.”.

Therefore, the discipline on time limits for proceedings, in accordance with the provisions of the “Cura Italia” Decree on the conduct of open court and chamber hearings (see paragraphs below), is as follows:

- the time limits for the filing of claims at first and second instance, cross-claims, claims for additional reasons, other claims for “challenging” purposes (e.g. revocation or third-party proceedings) shall be suspended from 8 March 2020 to 3 May 2020;



- the time limits for all other written submissions (e.g. briefs and replies) or procedural formalities (filing of claims, claims for additional reasons, etc.) shall be suspended from 8 March to 15 April 2020;
- the suspension shall not apply to the time limits for precautionary proceedings.

2. Postponement of open court and chamber hearings scheduled for between 17 March and 15 April 2020; special procedure for precautionary proceedings - Article 84, paragraph 1, of the “Cura Italia” Decree

All open court and chamber hearings relating to proceedings pending and scheduled during the above-mentioned period will be postponed *ex officio* to a later date.

Precautionary proceedings commenced or pending during the above period:

- shall be adjudicated by a single-judge decree of the President or of the magistrate delegated by him, in compliance with the time limits for defence (under Article 55, paragraph 5, of the Italian Code of Administrative Process) and after ascertaining compliance with the adversarial procedure requirement;
- the single-judge decree shall set the chamber hearing date, on a date immediately following 15 April 2020, for the adversarial discussion of the precautionary motion;
- the single-judge decree shall be effective until the chamber hearing scheduled for discussion of the precautionary motion and may be revoked or amended upon the request of a party.

In cases of extreme seriousness and urgency such as not to even allow for postponement of precautionary rulings in compliance with the ordinary time limits for defence, a single-judge decree may in any event be requested, to be issued in accordance with the standard procedure under Article 56 of the Italian Code of Administrative Process.

3. Special procedure for open court and chamber hearings scheduled for between 6 April and 15 April 2020 - Article 84, paragraph 2, of the “Cura Italia” Decree

A special procedure is provided for the above hearings in derogation from the provisions under paragraph 2 above.

The special procedure shall apply only if requested by all the parties by a joint application to be filed within the mandatory time limit of two clear days before the hearing:

- the case shall be adjudicated without oral debate on the basis of the documents filed;
- the parties shall be entitled to make brief submissions up to two clear days prior to the hearing;
- in precautionary proceedings in which a single-judge decree has been issued upholding, fully or partially, the precautionary motion, the collegiate discussion in chambers shall be set, insofar as is possible, at the earliest hearing in chambers after 6 April 2020;



- iv. the panel of judges shall settle the precautionary phase in accordance with this paragraph, unless, within two clear days before the hearing in chambers, any of the parties affected by the precautionary measure files an application for postponement, in which case the hearing shall be postponed until immediately after 15 April 2020.

4. Special procedure for open court and chamber hearings scheduled for between 16 April and 30 June 2020 - Article 84, paragraph 5, of the “Cura Italia” Decree

Cases shall be adjudicated without oral debate on the basis of the documents filed.

This is without prejudice to the possibility of settling the proceedings by means of an abridged judgment pursuant to Article 60 of the Italian Code of Administrative Process; given the absence of oral discussion, the obligation to give notice to the parties in this regard shall not apply.

For public hearings for which the time limits for the filing of documents and pleadings fall within the period of suspension of deadlines (8 March - 15 April 2020), the parties:

- i. shall be entitled to make brief submissions up to two clear days prior to the hearing, or
- ii. may, within the same time limit of two clear days before the hearing, apply for relief from the time limit for the filing of documents and pleadings.

In such case, the judge shall adopt measures for the further and more expeditious conduct of the proceedings, possibly setting a new hearing, in relation to which the time limits for the filing documents, pleadings and replies (Article 73, paragraph 1, of the Italian Code of Administrative Process) shall be halved.

5. Organisational measures to contain any adverse effects of the health emergency - Article 84, paragraphs 3 and 4, of the “Cura Italia” Decree

The administrative justice bodies and, in particular, the Presidents of the Divisions of the Council of the State, the President of the Council of Administrative Justice for the Sicilian Region and the Presidents of the Regional Administrative Courts and of the relevant Divisions, after consulting the Regional Health Authority and the Bar Council of the city where the Office is located, may adopt any organisational measures, also affecting the handling of judicial and advisory affairs, that are required to allow compliance with the hygienic-and-sanitary instructions provided by the Ministry of Health in order to avoid gatherings in court offices and close contacts among people.

Measures may also be taken, *inter alia*, to postpone hearings until after 30 June 2020, ensuring in any event that they are dealt with as a matter of priority, including through a reschedule of hearings, with the exception of open court and chamber precautionary hearings, electoral hearings and proceedings the delay of which may cause serious harm to the parties.

For the latter cases, a declaration of urgency shall be issued by a decree not challengeable by the persons taking the above measures.



Where the adoption of the organisational measures referred to above may result in the forfeiture of the parties' procedural rights, relief from time limits for the parties shall automatically apply.

There is also the possibility for the panel of judges to convene chamber hearings to adjudicate on (trial and precautionary) proceedings by using remote technology.

6. Administrative proceedings - Article 103 of the "Cura Italia" Decree; Article 37 of Decree Law 23/2020

According to Article 103, paragraph 1, of the "Cura Italia" Decree, as amended by Article 37 of Decree Law 23/2020, for the purposes of calculating directory, mandatory, preparatory, intraprocedural, final and executive time limits relating to the conduct of administrative proceedings, upon the request of a party or *ex officio*, pending as of the date of 23 February 2020 or commenced thereafter, the period between said date and 15 May 2020 shall not be taken into account, in order to avoid any delay or significant silence on the part of the Administration.

The terms for the formation of the final will of the Administration in the forms of significant silence provided for by the law shall be extended or deferred too, accordingly.

In any case, public administrations are required to adopt *"all appropriate organisational measures to ensure a reasonable duration and expeditious conclusion of proceedings, with priority being given to those to be considered urgent, also on the basis of reasoned requests by the parties concerned"*.

Furthermore, all authorisations, permits and licences, howsoever named, expiring in the period between 31 January 2020 and 15 April 2020 shall remain valid and effective until 15 June 2020.

As expressly set out in paragraph 4, the suspension of the time limits for proceedings shall not apply to payments to be ordered by administrative authorities.

Finally, the enforcement of measures for vacation of property, including for non-residential use, shall be suspended until 30 June 2020.

7. Waste-related obligations – Article 113 of the "Cura Italia" Decree

Deadlines shall be postponed until 30 June 2020 in relation to certain waste-related obligations, namely:

(a) submission of the single environmental declaration form (MUD) referred to in Article 6, paragraph 2 of Law No. 70 of 25 January 1994;

b) submission of the annual communication of data relating to batteries and accumulators placed on the national market in the previous year, as referred to in Article 15, paragraph 3, of Legislative Decree No. 188 of 20 November 2008, and transmission of data relating to the



collection and recycling of waste portable, industrial and vehicle batteries and accumulators pursuant to Article 17, paragraph 2, c) of Legislative Decree No. 188 of 20 November 2008;

c) submission to the Coordination Centre of the communication under Article 33, paragraph 2, of Legislative Decree No. 49 of 14 March 2014 (on Waste from Electrical and Electronic Equipment - "WEEE");

d) payment of the annual fee for registration in the National Register of Environmental Managers referred to in Article 24, paragraph 4, of Decree No. 120 of 3 June 2014.

This article is for information purposes only and is not, and cannot be intended as, a professional opinion on the topics dealt with.

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