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PAYMENT ORDERS: the ITALIAN EXPERIENCE

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Payment orders – the Italian experience

- An ancient procedure, regulated by the civil procedure code since 1940
- c.p.c. (civil procedure code), art. 633 – 656
- Marginally amended (2002, partial immediate enforceability)
- A two-stage procedure
- Stage one: the first to be entirely computerized
- In a few Courts since 2003
- Since 30 June 2014 before all “tribunale”

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A two-stage procedure, BUT ONE civil trial at first instance

- Stage one: without contradictory
 - Only with written evidence
- Or
- For special kinds of monetary claims
 - Stage two: reversal of the initiative; up to the debtor, after serving the order
 - almost a normal civil trial (burden of proof lying with the creditor)
 - But somehow constantly influenced by the original order

- **Enforceability**
- IMMEDIATE, in special circumstances (art. 642 c.p.c.)
- ALSO after the statement of opposition and pending stage two, if creditor's right looks valid (art. 648 c.p.c.)
- FINAL, if the opposition is rejected or if the procedure doesn't come to a final judgment

UP TO THE DEBTOR TO
REACT AND TO KEEP VALID
THE PROCEEDINGS



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SPECIAL CIRCUMSTANCES FOR IMMEDIATE ENFORCEABILITY

- Promissory note,
- Bank cheque,
- Instruments drawn by a notary public;
- if any delay is supposed to be harmful;
- if documents used are signed by the debtor.

**The creditor might lodge a security, by
Court order**



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A WIDESPREAD PROCEDURE

- in civil and commercial transactions, whenever a creditor hasn't yet got an enforcement instrument
- Especially by suppliers of goods or services
- to get the balance of the purchase price or of their fees and costs
- the buyer or client generally opposes a counterclaim for a default of the counterparty (e.g. defective goods)
- Since major 1995 reform of civil procedure, each judge in every Court is competent to issue a p.o.



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STAGE ONE ENTIRELY COMPUTERIZED

In fact (at least theoretically), everything is remotely played:

- The plaintiff DOESN'T go to the Court office;
- The Court officer and the judge in charge of the case will never have papers or other written documents in their hands
- the dossier is processed – and the attachments examined – directly from the judge's control panel («consolle del magistrato», «judge's control panel»);
- Any interaction with the creditor (e.g. : if evidence is not deemed sufficient, there can be an invite to the plaintiff to supplement the documents lodged in support of his application);
- Eventually, the payment order is remotely issued
- And sent through the proper official software to the Court office



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Computerized case processing FOUR STEPS

- 1 - creating the electronic dossier
- 2 - sending it to the Court office
- 3 - issuing the payment order
- 4 - after the issue of the order

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STEP ONE

Creating the electronic dossier

- A normal word processor is used
- **BUT, to be admissible:**
 - the file must be eventually transformed into native pdf (portable document format) format
 - NO images, macros, variable fields and other active elements
 - technical specifications are set out in a ministerial decree
 - all documents in paper form – among which the proxy, to be generally signed in original and in paper form – must be scanned and digitized in specific electronic formats (pdf, pdf/a, rtf, txt, xml, tiff, jpg, gif, zip or rar)
- the file application is to be digitized, with specific data
- maximum total file size:
30 MB
- most software supply a word processor, compose and fill in the “file application” automatically
- the proof of payment of the Court fees can be also electronically managed



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STEP TWO

Sending and lodging the dossier to the Court office

- Only by telematic link, or anyway by electronic means
- Specific software needed, either freeware or supplied by private vendors against payment
- An «electronic envelope», (non-editable) with all these acts, is created
- *without the need for those procedural steps to be confirmed by post or by the physical delivery of such documents*



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STEP TWO

Sending and lodging the dossier to the Court office

- The “envelope” must be eventually given – to be admissible – an Electronic Signature supported by a Qualified Certificate just before being sent
- The same software is set to send the “envelopes” to specific electronic official addresses of any Court office
- Four proofs of receipt formed
- To be attached to the electronically formed document
- The third one, that confirms that Court office hardware system has received the envelope, is the most important



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STEP THREE

Issuing the payment order

- * the judge examines all the documents electronically sent to his personal control panel
- And, if no further evidence is required
- * the judge himself issues the payment order, using a specific software supplied by the Ministry of Justice; and the order is electronically registered
 - * the Court office electronically sends a notification about this issue



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STEP FOUR

After the order issue

- The plaintiff's lawyer may then electronically require a copy of the payment order
- The copy is electronically signed and sent to the plaintiff by the Court office
- After receiving it in electronic form, the lawyer shall transform it in a physical document, certifying himself that it is authentic



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STEP FOUR

After the order issue

- Afterwards, the lawyer can serve its copies, choosing:
- the normal method, by means of a Court Officer [«ufficiale giudiziario»],
- or, as an alternative, by electronic means, but only with an Electronic Signature supported by a Qualified Certificate.
- In the same way the plaintiff can require, get and eventually serve a certificate of entry into force of the payment order



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A WIDESPREAD PROCEDURE

- Training schemes and activities have been put in place for lawyers and court offices (court officers and judges)
- generally organized by each representative body
- for court personnel, by their Unions, or unions representing employees
- often by the Ministry of Justice
- or by High Magistrates School
- or by Bar Associations
- supported by some public or private websites.

None of those is solely devoted to the computerized processed payment order



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A WIDESPREAD PROCEDURE

- No additional cost imposed
- Nowadays no alternative to the computerized processing for new cases
- Costs for any payment orders reported in the next slide, as regards a small claim (€ 3.000).

Advantages tangible and plain for all to see:

- no access to the offices, no paper to be sent or moved;
- work in real time
- a few minutes might suffice

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COSTS - € 3.000 claim

- to get the order
 - Court fees € 115,26
 - lawyers' fees from € 225 up to € 810 (as the Court adjudicates)
 - € 15 service
 - total € 355,26 minimum
 - IF DEBTOR DOES NOT OPPOSE: for the writ of enforcement, lawyers' (but not mandatory) fees € 135, service € 15
 - to enforce the order
 - That depends on what kind of enforcement is chosen
 - garnishment orders: Court fees € 225,26 (plus € 428 up to € 1539 for lawyers' fees);
 - attachment of immovable assets: other than lawyers' fees € 1.750 (plus € 415 up to € 1444 for lawyers' fees);
 - attachment of movable assets: it may vary, but similar (a little less than) to garnishment orders
- The costs are listed in different official websites**

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PAYMENT ORDERS AND GARNISHMENTS (NOT ONLY ON BANK ACCOUNTS)

Tab. 1 - Number of filed processes

Office	Object	Year 2012	Year 2013	first half 2014
Tribunale ordinario	Payment orders in interim stage	544.094	562.677	278.827
Tribunale ordinario	attachments on movable assets (not only garnishments)	440.967	492.455	242.119
Tribunale ordinario	Attachments on immovable assets	80.270	76.377	41.174
Giudice di pace	Oppositions to payment orders (stage two, normal civil trials at first instance)	26.635	27.945	15.086

Tab. 2 - Number of enforced instruments ⁽¹⁾

Office	Object	Year 2012	Year 2013	first half 2014
Tribunale ordinario	attachment on movable assets, against natural persons	188.112	164.880	84.188
Tribunale ordinario	attachment on movable assets, against legal persons	156.800	147.607	74.616

Tab. 3 - Average duration, in days

Office	Object	Year 2013
Tribunale ordinario	Payment orders in interim stage	35
Tribunale ordinario	attachments on movable assets (not only garnishments)	221
Tribunale ordinario	Attachments on unmovable assets	1.325
Giudice di pace	Oppositions to payment orders (stage two, normal civil trials at first instance)	567

⁽¹⁾ (130 central "tribunale" offices of 140 for first half 2014)

Source: Ministero della Giustizia – Dipartimento dell'organizzazione giudiziaria, del personale e dei servizi - Direzione Generale di Statistica

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A SWIFT PROCEDURE, **BUT**

The context of the Italian civil trial is rather ineffective

- not as performing and effective as it ought to be
- notwithstanding a continuous procedural law reform process (18 reform measures in 20 years, a new bill to be proposed to the Parliament in these days by the Government)

Negative impact of this general ineffectiveness of normal Italian civil trial, if payment order switches to stage two, that is a normal civil trial at first instance, though with slightly different rules, more advantageous for the creditor, as mentioned above



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ANYWAY, interim stage even swifter

- Even though such a short time has passed since the computerized case processing has become mandatory before the tribunals
- benefit of this innovation: beyond dispute
- the creditor might soon get a tool permitting enforcement, even in a few days (or hours), moreover not necessarily in default of a statement of opposition by the debtor
- what's really important in the situation of Italian civil process.

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Most depends

i) on the structure desired for the procedural pattern, whether:

- A simple invite to react, to be neutralized by a simple statement of the debtor,

or

- something more sophisticated, that can assure a creditor to get an enforceable instrument with special characteristics and by easier procedures, as a reward for his credit's special conditions or object or evidence.

ii) on the general effectiveness of civil trial



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A truly significant experience

Even to improve

- official websites to create and visit
- ensure any applicant equal conditions and no additional cost
- make the procedure more and more user friendly

ANYWAY,
a further opportunity for creditors,
that is, to grant everyone's rights