

# Newsletter April 2009



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Electronic civil proceeding in Italy

# Electronic civil proceeding in Italy

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## 1. What "electronic civil proceeding" means

The "electronic civil proceeding" (ECP) in Italy does not represent a new procedure ruling the civil trial, but just the option (and not an obligation) for proceedings parties, judges and chancellors, to create, to send and to file proceeding documents through electronic data transmission. Therefore, the ECP is optional electronic way added to usual papery formality in managing documents of civil proceedings. Main technical requirements for ECP are the digital signature of documents electronically transmitted and "certified email address" that every ECP user is required to have. The digital signature is a kind of asymmetric cryptography<sup>1</sup>. For messages sent through an insecure channel, a properly implemented digital signature gives the receiver reason to believe the message was sent by the claimed sender. Provided by L. 15/03/1997 n.59 and D.P.R. 10/11/1997 n.513 an electronic document, digitally signed, has the same legal effectiveness than a written unnotarised agreement ("scrittura privata") ex art.2702 of Italian Civil Code. Therefore, the electronic document transmission can now be considered fully legal in Italy. The Certified E-Mail System (Italian acronym PEC) provides senders with legally valid electronic documentation of the sending and delivery of electronic documents. "Certifying" both these key steps in the transmission of electronic files provides the sender with a receipt for any messages and attachments, if any, they have sent. This receipt is provided by the sender's email service operator and constitutes legal proof that the message was sent. ECP, ruled by detailed

<sup>1</sup> The distinguishing technique used in public key-private cryptography is use of asymmetric key algorithms because the key used to encrypt a message is not the same as the key used to decrypt it. Each user has a pair of cryptographic keys — a public key and a private key. The private key is kept secret, while the public key may be widely distributed. Messages are encrypted with the recipient's public key and can only be decrypted with the corresponding private key.

regulations<sup>2</sup>, implements an interaction between external users (lawyers, Public Authorities) and internal users (judges and chancellors). The external user enters into the "Justice internet domain"<sup>3</sup> through an internet "access point" authorised by Ministry of Justice (Ministero della Giustizia). Once authenticated, the external user can interact with the management system of the electronic files of chancelleries registers. Concerning the "on line" consultation of documents, the ECP works for 90% on tribunals and appeal courts but, regarding civil enforcements proceedings, the ECP works for 30% on tribunals and appeal courts.

## 2. The current situation of ECP

### 2.1 On line consultation of information and documents related to civil proceedings

This service works through the web system called "PolisWeb", that allows ECP users the internet access to information about civil suits, including labour suits, civil arbitrations and civil enforcements. In this way, lawyers do not need to go to chancellery offices of courts to collect information from employees. In order to decrease data manipulation risk, every night management data system will copy the data of each register of chancellery and it will transfer them to the central data bank located in Napoli. Lawyers that can access to electronic information about suits, through 120 authorised access points, are potentially 120.000 (all Italian lawyers are 200.000). Furthermore, the access is granted to all State lawyers.

### 2.2 Electronic document filing and electronic notice

The authentic ECP can be implemented through the swap of data and electronic documents having legal effectiveness, digitally signed and filed through authenticated and encrypted channels, in

<sup>2</sup>D.P.R. 123/2001 ("Regolamento recante disciplina sull'uso di strumenti informatici e telematici nel processo civile, nel processo amministrativo e nel processo dinanzi alle sezioni giurisdizionali della Corte dei conti"), D.M. 17/07/2008 ("regole tecnico-operative per l'uso di strumenti informatici e telematici nel processo civile") e D.M. 29/09/2008 ("strutturazione dei modelli informatici DTD (Document Type Definition) relativa all'uso di strumenti informatici e telematici nel processo civile")

<sup>3</sup> SIC = Sistema Informativo Civile (Civil Information System)

order to create an electronic procedure alternative to the traditional "papery" procedure.

This system uses "opened" electronic standards (as SOAP<sup>4</sup>, XML<sup>5</sup> and others) that allow to interact with software of law firms or of other Public Authorities that are different from Ministry of Justice. All documents of ECP, courts decisions included, are created as PDF<sup>6</sup> files and completed by an XML file with all requirements for the electronic consultation and for electronic update.

### 2.3 Benefits of ECP

We can synthesize main features of ECP as follows:

- 1) electronic filing of suits documents;
- 2) web consultation of suits documents and court decisions;
- 3) electronic requests and electronic grant of copies;
- 4) availability of a certified email address that must be the sole address where external users have to receive notice from chancellery office or from other lawyers.

Provided by art. 51 of D.L. 112/2008, each court district can make effective ECP, but just as additional chance to the usual proceeding. This means that parts of a proceeding can choose to use ECP or usual papery procedure. But if they choose ECP, all notice and all proceeding acts will be realised exclusively through electronic way according to ECP rules.

Expected benefits of ECP are:

- "just in time" notice and information for lawyers;
- working time saving for clerks of courts (30%-40%);
- working time saving for chancelleries employees (20%-30%);
- press cost saving (toners, envelopes, stamp duties);

- mail cost saving.

### 3. "Work in progress"

The "first experiment" of ECP, which started in December 2005, involved second level Italian courts (tribunals) of Bari, Bologna, Catania, Genova, Lamezia Terme and Padova, and concerned all injunction proceedings "*ante causam*". This experiment involved roughly 100 lawyers, 150 judges and 50 chancellors. On the 11<sup>st</sup> of September 2006 the "electronic injunction" by the Milano tribunal began effective. It involved more than 1200 lawyers, 50 judges and 30 chancellors.

During 2008 the "electronic injunction" was effective also by tribunals of Napoli, Genova, Catania, Padova, Vigevano, Lodi and Varese. Each month more than 1200 injunction were managed through the electronic system.

ECP may be used by lawyers registered at authorised internet access points. Judges can use a customised software, called "judge console" (console del magistrato) which enables magistrates to send electronically their orders, decisions and measures. They can make this activity also outside their office (through a laptop or a smartphone).

Main purposes of ECP are:

- To reduce difficulties in accessing to judicial offices;
- To reduce difficulties related to the management of "papery" proceedings;
- To reduce working times of judicial offices employees.

Furthermore, during 2007 an agreement between Minister of Justice and ABI (Italian banks association) was signed. The main purposes of this agreement was the progressive introduction of ECP in civil enforcements. This project involved 12 tribunals: Bari, Bologna, Brescia, Catania, Firenze, Genova, Milano, Monza, Napoli, Padova, Palermo, Roma, Torino and Verona. The test of electronic system was concluded in December 2008. The tribunal of Verona was the first one where

<sup>4</sup> SOAP, originally defined as Simple Object Access Protocol, is a protocol specification for exchanging structured information in the implementation of Web Services in computer networks.

<sup>5</sup> XML (Extensible Markup Language) is a general-purpose specification for creating custom markup languages. It is classified as an extensible language, because it allows the user to define the mark-up elements. XML's purpose is to aid information systems in sharing structured data, especially via the Internet, to encode documents, and to serialize data;

<sup>6</sup> Portable Document Format (PDF) is a file format created by Adobe Systems in 1993 for document exchange. PDF is used for representing two-dimensional documents in a manner independent of the application software, hardware, and operating system.

<sup>7</sup> The judge can issue pre-action interim decisions in advance of a judgment on the merits in the so-called *ante causam* procedures (for example, in the course of the evidentiary phase a temporary injunction for payment of the sums of money not contested by the debtor or an order to deliver a specific good can be issued).

electronic enforcements started (February 2009).

#### 4. Expected Savings

Following chart shows expected<sup>8</sup> savings arising from a complete diffusion of electronic civil proceeding.

<b>Electronic service</b>	<b>Human resources costs savings (Euro)</b>	<b>Other savings (Euro)</b>
On line proceedings documents consultation	2 millions	
Electronic notices	5,3 millions	21 millions
Electronic filing of documents	10 millions	
<b>TOTAL</b>	<b>17,3 millions</b>	<b>21 millions</b>

#### 5. Expected diffusion timing of ECP

The expected diffusion timing of ECP is:

##### *On line consultation*

Within the end of 2009, we expect that it will work for Supreme Court of Appeal (*Corte di Cassazione*);

##### *Electronic notices*

- June 2009: 30% of cognizance proceedings and Supreme Court proceedings;
- October 2009: 70% of cognizance proceedings;
- December 2009: all cognizance proceedings and 40% of enforcement proceedings;
- March 2010: all cognizance proceedings;
- June 2010: all enforcement proceedings.

##### *Electronic filing*

- All documents concerning Supreme Court proceedings: within December 2009;

- All documents concerning all judicial offices: within December 2011.

<sup>8</sup> Ministero della Giustizia: Servizi telematici della giustizia civile – Stato dell'arte e prospettive, January 2009  
<http://www.processotelematico.giustizia.it/pdapublic/resources/PCT%20%20Stato%20dell%27arte%20e%20prospettive%20-%20gennaio%202009.pdf>