

# Kluwer Arbitration Blog

## Enforcement of Foreign Interim Measures in Italy: Is the Reformed Italian Arbitration Law a Game-Changer?

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The recent reform of Italian arbitration law, which went into effect on 28 February 2023, has finally put an end to the historical prohibition for Italian-seated sole arbitrators and arbitral tribunals to grant *interim* measures. This ban was one of the most atypical features of Italian arbitration law (which is still found only in very few jurisdictions, *e.g.*, China and Thailand). The reform is certainly a [game-changer for arbitral tribunals seated in Italy](#). They now enjoy – subject to certain conditions – the power to grant provisional measures. The reform has another major implication, perhaps less analysed thus far: the possibility to enforce in Italy provisional measures rendered by arbitral tribunals seated abroad. The relevance of this issue when promoting jurisdictions as arbitration-friendly has recently been highlighted by the [key issues paper published by Germany's Federal Ministry of Justice on the modernisation of German arbitration law](#). This post discusses the procedure to enforce foreign arbitral *interim* measures set forth by the reformed Italian arbitration law and the potential implications for orders issued by emergency arbitrators.

### I. Enforcement of Foreign *Interim* Measures: The New Italian Approach

Given the high number of Italian parties involved in international arbitration proceedings (in 2020, Italy, together with France, was the fourth most frequent nationality among parties to ICC arbitrations after U.S., Brazil, and Spain) and the frequent recourse to *interim* measures in cross-border disputes, the issue of the enforceability in Italy of provisional measures rendered by foreign arbitral tribunals has always been of key importance. Yet, before the recent reform, the enforcement of such measures was mainly hindered by their non-final nature (making them fall outside the scope of the [New York Convention](#)) as well as by the overall disfavour towards arbitral provisional measures resulting from the pre-existing prohibition for arbitrators to grant them.

This has now changed. The lifting of the general ban on arbitral *interim* measures has now been coupled with a specific provision, Article 818-ter of the [Italian Code of Civil Procedure \(ICCP\)](#), which expressly sets forth a mechanism to give effect in Italy to *interim* measures rendered by arbitral tribunals seated abroad.

Article 818-ter ICCP provides that “the enforcement of interim measures granted by arbitrators is governed by [the provision governing enforcement of judicial interim measures] and is carried out

under the control of the court in whose district the seat of arbitration is located or, if the arbitration is not seated in Italy, the court of the place where the provisional measure is to be implemented.” The envisaged enforcement procedure therefore follows the very same rules applicable to judicial *interim* orders granted by Italian judges. The only difference relates to the court competent to oversee enforcement procedures. For judicial *interim* measures, the same judge who issued the order oversees its enforcement. For arbitral *interim* measures issued by arbitral tribunals seated in Italy, enforcement procedures are overseen by the court of the seat of arbitration; while for foreign arbitral *interim* measures, the court overseeing enforcement is that of the place where the measure is to be implemented.

The procedure envisaged by Article 818-ter ICCP is extremely practical and does not require any prior *exequatur*. This notwithstanding, a leading commentator argued that Italian courts overseeing enforcement procedures should nevertheless preliminarily assess the enforceability of arbitral provisional measures through the lens of the formal and substantive requirements for the enforcement of arbitral awards under Articles IV and V of the [New York Convention](#). Although not specifically mentioned by Article 818-ter ICCP, such criteria would arguably apply by analogy.<sup>1)</sup>

Interestingly, Article 818-ter ICCP does not restrict the pool of enforceable measures to those available under Italian law. This would therefore give parties the possibility – subject to public policy restrictions – to enforce in Italy types of provisional measures unknown to the Italian legal system.

## II. What About Emergency Arbitration?

Despite the significant improvement brought about by the recent reform, one of the questions that still remain unanswered relates to the enforceability of orders issued by emergency arbitrators. This is an instrument still unknown under Italian arbitration law, despite the [arbitration rules of the main Italian arbitration institution – i.e., the Milan Arbitration Chamber](#) – do envisage it.

In this context, the now-amended Article 818(2) ICCP provides that “prior to the acceptance of the sole arbitrator or the constitution of the arbitral tribunal, the application for provisional measures shall be brought before the [ordinary] court.” Italian courts, therefore, have exclusive jurisdiction to grant provisional measures before the arbitral tribunal is constituted. Yet, the scope and practical legal effect of this provision are unclear.

On the one hand, it may be argued that the provision prohibits emergency arbitrators altogether. From an Italian law perspective, parties would therefore be precluded from conferring upon emergency arbitrators the power to grant provisional measures as well as from enforcing their orders. This would affect arbitrations seated in Italy – where the prohibition would operate as mandatory norm of the law of the seat – as well as those seated abroad – where the prohibition would rather take effect as *lex fori* when attempting to enforce emergency arbitrators’ orders in Italy.

On the other hand, Article 818(2) ICCP may be read differently. In line with the overall arbitration-friendly spirit of the reform, one could either consider that the wording “sole arbitrator or . . . arbitral tribunal” also encompasses emergency arbitrators (so to limit the timeframe of exclusive

jurisdiction of Italian courts up until the appointment of the emergency arbitrator) or that the provision is not mandatory in nature. This would allow parties to derogate from the Italian courts' exclusive jurisdiction over pre-arbitration provisional measures, for instance by making reference to arbitration rules envisaging emergency arbitration procedures. It remains to be seen how Italian courts will interpret Article 818(2) ICCP, if and when faced with a petition to enforce an emergency arbitrator's order.

### III. Conclusion

The Italian arbitration reform – at least from the perspective of arbitrators' powers to grant provisional measures – seems to finally meet the needs of arbitration users, aligning Italian arbitration law with international standards. The specific provision on the enforceability of arbitral provisional measures issued abroad certainly contributes to add clarity and legal certainty to the Italian arbitration legal framework. Its practical application by Italian courts will be crucial. Yet, the legal regime applicable to orders issued by emergency arbitrators – both seated in Italy and abroad – still remains unclear.

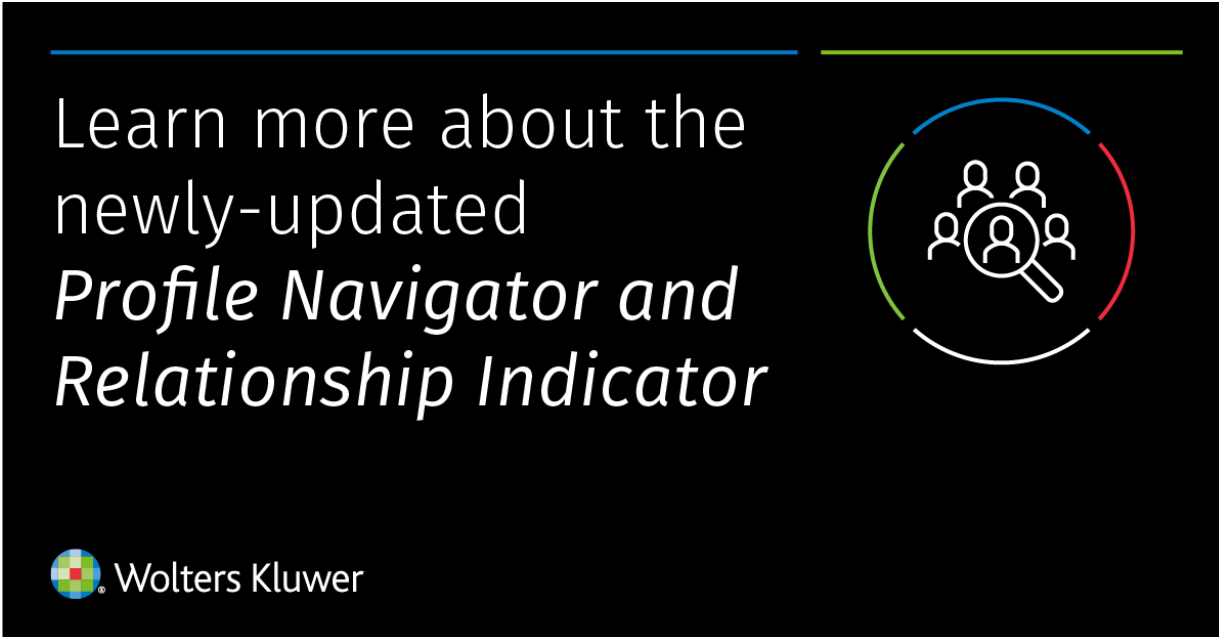
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## References

- <sup>1</sup> A Briguglio, “Il potere cautelare degli arbitri, introdotto dalla riforma del rito civile, e la inevitabile interferenza del Giudice” in *Rivista dell’Arbitrato*, January 2023.

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