



WARNING LETTER: PAY ATTENTION TO THE PERIOD OF TIME FOR FULFILMENT TO BE GRANTED TO THE DEBTOR!



A party which suffers a serious contractual breach attributable to the other party and not justified by force majeure or similar circumstances has various legal remedies at its disposal to terminate the contract.

One instrument widely used for this purpose, often in an inappropriate way, is the warning letter under Article 1454 of the Italian Civil Code, according to which:

- in the event of non-performance, the party suffering the non-performance may invite the other party, in writing, to perform within a "reasonable period of time";
- the "reasonable period of time" is a period of 15 days, unless otherwise agreed by the parties and unless a shorter period is reasonable having regard to the nature of the contract or customary usage;
- after the expiry of such period of time without the contract having been performed, the contract must be considered automatically terminated.

The Italian Supreme Court, in a recent judgment, was rather reluctant to consider as "reasonable", for the purposes of the termination of the contract, periods of time shorter than the "ordinary" one of 15 days, expressly stating that - apart from the cases mentioned in Art. 1454

(different agreement, nature of the contract or customary usage) - the assignment of a period of time for fulfilment shorter than 15 days entails the unsuitability of the warning letter to determine the termination of the relationship between the parties.

In the same decision the Supreme Court also stated that the previous requests to the other party to obtain the performance, as well as the failure of the other party to challenge the period of time assigned and the continuation of the non-performance beyond the period of time assigned are irrelevant.

In fact, even in the presence of the above circumstances, *"a warning letter unlawfully served for a period of time of less than fifteen days is in itself incapable of producing extinguishing effects with respect to the relationship established between the parties"* (Civil Supreme Court, judgment no. 8943 of 14 May 2020).

Therefore, particular care must be used in the drafting of the warning letter with reference to the period of time to be granted to the other party for the performance of its contractual obligations, in order to ensure that the warning letter itself can achieve the effect to terminate the relationship.