

Class/collective actions in Italy: overview

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A Q&A guide to class/collective actions in Italy.

The Q&A gives a high level overview of class/collective actions, including current trends; the regulatory framework; limitation periods; standing and the procedural framework for bringing an action; funding and costs; disclosure; damages and relief; settlement; appeals; alternative dispute resolution and proposals for reform.

To compare answers across multiple jurisdictions, visit the Class Actions [Country Q&A Tool](#).

This Q&A is part of the [Class Actions Global Guide](#).

Overview of class/collective actions and current trends

1. What is the definition of class/collective actions in your jurisdiction? Are they popular and what are the current trends?

Definition of class/collective actions

Pursuant to Article 140 bis of Legislative Decree No. 206/2005 (Consumer Code), a class action is an action which can be brought by consumers to protect their collective or their individual interests, provided they are homogenous that is, of a similar nature rather than identical.

To this end, members of the class can seek redress (directly or through a representative body) for a breach of contract or for a violation of consumer regulations.

The class action governed by Article 140 *bis* of the Consumer Code should not be confused with the actions which representative entities can bring under Article 140 to seek injunctive relief against violations of the collective interests of consumers.

The definition of class action will partially change under a new law concerning class/collective actions (*Law No. 31/2019*), published in the *Italian Official Gazette (Gazzetta Ufficiale della Repubblica Italiana)* in early April 2019.

Specifically, the new definition of class action does not contain the word "consumers" which means that it could be applied to the "individual homogenous rights" of any class.

Use of class/collective actions

Class actions were introduced into the Italian legal system through Article 140 *bis* of the Consumer Code (*Law No. 244 of 24 December 2007, Article 2, §446*).

Article 140*bis* was amended by Article 6 of Law Decree No. 1/2012, which lowered the admissibility bar for class actions, allowing claims aimed at affirming similar rights of the affected consumer class.

Despite attempts made by the government to improve their effectiveness, class actions have not been widely used in Italy, with less than 100 having been commenced so far many of which were rejected for not meeting the admissibility requirements.

Despite the difficulties, class actions are slowly gaining popularity in Italy. In addition, thanks to the new legislation (*Law No. 31/2019*) due to come into force on 19 April 2020, collective redress is expected to become a key tool for claiming damages in several areas and on behalf of a wide range of classes. The new law aims to make class actions more attractive for consumers and other entities alike.

Current trends

A few class actions concerning overdraft fees applied by banks have been considered admissible by Italian courts. For example, on 30 June 2016, the Court of Appeal of Turin upheld the admissibility of the class action brought by a consumers' association on behalf of 104 account holders but due to a technicality only six claimants managed to obtain damages.

In this and earlier cases, the courts applied the provision in force before 2012 (*see above, Article 140bis Consumer Law*). Since the entry into force of the new admissibility bar (*see above, Article 6, Law Decree No. 1/2012*), about a dozen class actions have been declared admissible including:

- On 17 November 2015, the Court of Appeal of Turin overturned the ruling of a lower court and declared the admissibility of the class action brought by a representative entity against FCA Italy for unfair commercial practices (namely, the lead claimants claimed that the defendant had provided incorrect information on effective consumption and CO₂ emissions of its vehicles).
- On 16 June 2016, the Court of Appeal of Venice recognised that the rights actioned by the claimants were "homogeneous" and admitted a class action brought by a consumers' association against Volkswagen, with the number of claims reaching nearly 80,000, the largest ever in Italy. This case is still pending.
- In November 2016, the Court of Milan admitted a class action for damages caused by unfair trade practices. In particular, the claimants complained that some mobile devices manufacturers cheated about the real size of the memory cards installed in the devices. The proceedings are still pending and the class currently counts more than 2,000 consumers.
- On 25 August 2017, the Court of Appeal of Milan overturned the ruling of the lower court and awarded damages to 3,018 commuters (EUR100 each) for the massive disruptions of rail services in December 2012. Even though the disruptions affected around 700,000 commuters over 15 days, the number of claimants was small because of the strict limitation period (one year) set out in the Italian Civil Code on rights arising from transport contracts.
- On 31 January 2018, the Italian Supreme Court upheld the first product-related class action in Italy and recognised that the interests of a class of consumers can be effectively represented even by a single person. The case originated in 2010, when a consumers' association filed a lawsuit against a producer of medical instruments claiming damages related to the product and for unfair commercial practices. This class action

was also the first product action to be declared admissible by an Italian Court. After eight years, the claimant received a compensation equal to the purchase price (around EUR15).

- In late 2018, the Italian consumers' association *Altroconsumo* started a class action against Facebook, claiming EUR285 per member for each year of subscription, for:
 - unfair practices; and
 - the violation of data protection regulations.
- The class currently counts over 80,000 members and the first hearing was scheduled for May 2019 before the Court of Milan.

According to the Italian Antitrust Observatory, the average length of this kind of proceedings is four years. Between 2008 and 2018, only one class action out of every two was declared admissible and only one out of seven obtained compensation.

The 2019 law should make it easier for claimants to fulfil the admissibility requirements.

Regulatory framework

2. What are the principal sources of law and regulations relating to class/collective actions? What are the different mechanisms for bringing a class/collective action?

Principal sources of law

Currently. The main source of law currently is Article 140 *bis* of the Italian Consumer Code (Legislative Decree No. 206 of 6 September 2005).

The new regime (from 19 April 2020). The new legislation will become binding after twelve months from the publication in the *Gazzetta Ufficiale* (April 2020) (Article 7, Law 31/2019). The relevant provisions on class actions will become Title VIII *bis* of the Civil Procedure Code, and comprise fifteen Articles (Articles 840 *bis* to 840 *sexiesdecies*).

Principal institutions

Class actions are currently heard by civil courts, by a panel of three judges. They must be brought before the main regional court where the defendant has its registered office (Article 140 *bis*, section 4, Consumer Code). Smaller regions fall under the jurisdiction of larger courts, as follows:

- Court of Turin: Valle d'Aosta.
- Court of Venice: Trentino-Alto Adige and Friuli-Venezia Giulia.
- Court of Rome: Marche, Umbria, Abruzzo and Molise.

- Court of Naples: Basilicata and Calabria.

After the entry into force of the new law, the competent authority will be the courts' specialised sections on business matters (Companies Courts) (*Tribunale delle Imprese*) having territorial jurisdiction over the place where the defendant has its registered office.

Different mechanisms

Class actions proceedings largely follow the ordinary rules of civil procedure, with some significant peculiarities, as follows:

- The lead claimant must serve a writ of summons on the defendant at least 90 days before the date set for the first hearing.
- The writ of summons must be filed before the competent court within ten days of the service.
- Under Article 140 bis of the Consumer Code, the writ of summons must also be served on the public prosecutor, who may express its opinion on the admissibility of the action.
- After the first hearing, the court rules on the admissibility of the class action or suspends the proceedings (if there are other proceedings concerning the same issues already pending before an administrative agency or an administrative court).
- The class action can be rejected at this preliminary stage if:
 - it is patently unfounded;
 - there is a conflict of interests;
 - the rights which the lead claimant seeks to uphold are not homogeneous to the entire class; or
 - it appears that the lead claimant cannot adequately protect the interests of the class.
- After the preliminary ruling, the court sets a deadline (which cannot exceed 120 days from the publication of the class action notice) for the opt-in of other members of the class. Italy has not adopted the US "opt-out" model (which some commentators believe may account for the lack of success of class actions in Italy), therefore, if the class action is deemed admissible, the court orders the defendant to publish a notice at its own expense to allow other members of the class to opt in.

From 19 April 2020. When the new statute is in force, the proceedings will be regulated by the special rules set out in Article 702 bis of the Civil Procedure Code, which provides for a more flexible approach in terms of timing and procedure.

The class will have to lodge an application that will be published on the Ministry of Justice's website by the Court Registry together with the court's decree setting the hearing date.

The court must decide on the admissibility within 30 days from the first hearing.

The costs of publishing the preliminary ruling on admissibility will no longer be borne by the claimants as the Court Registry will publish it online.

According to Law 31/2019, other members of the class will be entitled to join in two different phases of the proceedings:

- After the publication of the initial application.
- After the publication of the judgement on the merits.

In both cases, the time window set by the court will be between 60 and 150 days.

3. Are class/collective actions permitted/used in all areas of law, or only in specific areas?

Currently. Class actions can be brought to seek redress for the violation of the following rights, which must be "homogenous" for the entire class (*Article 140 bis, Consumer Code*):

- Contractual rights of a class of consumers towards the same trader. These rights may also arise from standard terms and conditions and mass contracts.
- Rights arising from product liability, even in the absence of a direct contractual relationship with the producer.
- Rights to compensation for damage suffered due to unfair commercial practices or anti-competitive behaviour.

From 19 April 2020. One of the key innovations of the reform regards the widening of the scope of application which means that non-profit organizations and associations will also be able to file a class action for the violation of "homogenous individual rights" of any class of persons, not just consumers.

Other areas in which class actions may be permitted are:

- **Product liability.** Product liability is explicitly mentioned under Article 140 *bis* as an admissible ground for a class action, even in the absence of a direct contractual relationship with the producer.
- **Environmental law.** There is no case law on the matter. However, since the current formulation of Article 140 *bis* of the Consumer Code only mentions "consumers", scholars tend to exclude the admissibility of class actions for environmental damages in the absence of a contractual relationship. From 19 April 2020, however, under the widened scope of the new law, in principle nothing should prevent the filing of a class action for environmental damages.
- **Competition law.** Anti-competitive behaviour is explicitly mentioned under Article 140 *bis* as an admissible ground for a class action.
- **Pensions disputes.** Class actions concerning pension disputes fall within the scope of Article 140 *bis* and can therefore be considered admissible.
- **Financial services: consumer redress.** Rights arising from financial services contracts fall well within the scope of application of Article 140 *bis* of the Consumer Code and therefore represent admissible grounds for a class action. Class actions concerning overdraft fees applied by banks have been considered admissible by Italian courts.

- **Other areas of law/policy.** Class action proceedings must be stayed if the same facts are also being investigated by agencies or administrative courts. The decision of an agency which ascertains a violation of competition law or an unfair commercial practice can be used as evidence in a class action.

Limitation

4. What are the key limitation periods for class/collective actions?

The limitation periods are those applicable to the actioned rights. In general, the limitation period for actions based on breach of contract is ten years. However shorter limitation periods apply to the actions and rights arising from specific types of contracts (for example, transport and insurance contracts) while a three-year limitation period applies to product liability claims.

The limitation period for actions based on tort is five years from the moment when the event occurred or the claimant should have reasonably become aware of the damage.

The limitation periods are suspended by the service of the writ of summons (for the leading claimant) and by the filing of the opt-in application (for other members of the class) (*Article 140 bis, Consumer Code*). Consequently, the filing of a class action does not prejudice the limitations period for other potential claimants who did not opt in.

Moreover, consumers are barred from commencing a separate class action for the same conduct after the expiry of the deadline to opt in. If a separate class action is commenced before the expiry of this deadline, the proceedings are joined.

As a general rule, limitation periods can be suspended by sending a claim letter to the defendant.

From 19 April 2020. The new legislation does not modify the general limitation periods but only introduces a 60-day deadline for filing additional class actions based on the same grounds. The delay starts from the publication of the initial application on the Ministry of Justice's website. Class actions based on the same grounds are joined into the main proceedings.

Standing and procedural framework for bringing an action

Standing

5. What are the rules for bringing a claim in a class/collective action?

Definition of class

The class includes all consumers and users who can claim homogenous rights towards the same trader. However, the Italian Consumer Code does not explicitly provide a definition of the notion of "class".

From 19 April 2020. Class actions will be available to any class of persons (natural and legal), and not just consumers (*see Question 3*).

Potential claimant

The legal basis for standing in a class action is set out in Article 140 bis of the Consumer Code. The subjects entitled to bring the claim are the individual users or consumers which/who have suffered damage due to the conduct of the defendant, provided they can claim "homogenous" rights.

National consumer associations, committees and representative entities have locus standi only if they have received a specific mandate from members of the class.

Finally, for the class action to be admissible the lead claimants must be able to adequately protect the rights of the class.

From 19 April 2020. Under the new law, not only consumers but any class of natural and legal persons is entitled to commence a class action to protect "individual homogeneous rights" violated by companies or public services providers.

In addition, class actions can be initiated by non-profit organisations and associations that are listed in a public registry of the Ministry of Justice and whose purpose is the protection of those violated rights.

The court, when ruling on admissibility, must establish the features of the "homogeneous individual rights" and specify the requirements for the inclusion of new members.

Claimants outside the jurisdiction

The relevant provisions do not expressly address the possibility of the opt-in of foreign consumers or of class actions brought against foreign companies. National, international and EU provisions on conflict of laws apply.

In principle, there is nothing in the provisions governing class actions which would prevent a foreign consumer from opting into a class action filed before an Italian court.

Professional claimants

The assignment of consumer claims is generally considered to be admissible (provided that the claim is not of a strictly personal nature) and, over recent years, the role of professional claimants has grown significantly, especially in the field of motor insurance and air passengers' rights. There is, however, no specific reference to professional claimants in the provisions governing class actions.

Qualification, joinder and test cases

6. What are the key procedural elements for maintaining a case as a class action?

Certification/qualification

There are no specific certification/qualification rules. However, Article 140 bis provides for an admissibility test.

Accordingly, a class action is inadmissible if:

- It is patently unfounded.
- There is a conflict of interests.
- The rights which the claimants seek to defend are not homogeneous for the whole class.
- It appears that the lead claimant cannot adequately protect the interests of the class.

The competent court rules on the admissibility of the class action after the first hearing.

If the class action is deemed to be admissible, the court also sets out the opt-in criteria for other claimants.

If the case is declared inadmissible, consumers can commence individual proceedings against the defendant.

From 19 April 2020. The admissibility test of the new regime is identical to the current one. The preliminary ruling on admissibility must be issued within 30 days from the first hearing and published on the Ministry of Justice's website.

The preliminary ruling on admissibility can be appealed within 30 days and the court must make a decision within a further 30 days.

Minimum/maximum number of claimants

Article 140 bis of the Consumer Code does not provide for a minimum number of claimants required to bring a class action.

From 19 April 2020. The new statute does not provide for a minimum number of claimants either. If the class runs out of members as a result of settlement agreements, the action can proceed only if at least one new member opts in.

Joining other claimants

To start the proceedings, the lead claimant must serve a writ of summons on the competent public prosecutor and the defendant at least 90 days before the date set for the first hearing. The writ of summons must be lodged with the competent court within ten days of the service.

After the first hearing, the court rules on the admissibility of the class action or orders a stay if there are proceedings concerning the same issues pending before an administrative agency or an administrative court.

Italy has adopted the "opt-in" model, therefore, if the class action is deemed to be admissible, the court orders the defendant to publish a ruling notice at its own expense, to allow other members of the class to opt-in. The judge has considerable autonomy about what form the advertisement of the class action should take.

One of the procedural objections raised by the defendant in a class action concerning bank overdraft fees currently pending before the Court of Turin was the non-compliance with the order to advertise the action. However, on 30 June 2016 the Court of Appeal of Turin rejected the appeal filed by the defendant and confirmed the admissibility of the class action.

With the preliminary ruling, the court also sets an opt-in deadline (which cannot exceed 120 days from the publication of the class action).

Potential claimants can opt in without the assistance of a lawyer. By opting in, they relinquish the right to sue the defendant separately.

From 19 April 2020. The opt-in mechanism introduced by the new legislation will allow claimants to join the class action in two different periods (see *Question 2, Different mechanisms*). More specifically, the court must grant potential claimants two different time periods, each between 60 and 150 days, starting from the publication of (respectively) the:

- Preliminary ruling on admissibility.
- Judgment on the merits.

Test cases

Neither the current nor the new relevant provisions provide for "test cases".

Timetabling

7. What is the usual procedural timetable for a case?

Pursuant to the general rules on civil procedure, at least 90 days must elapse between the service of the writ of summons and the first hearing (the time limit is 150 days if the service needs to take place abroad).

If the court rules that the class action is admissible, it sets a deadline for the publication of the order and a further deadline (which must not exceed 120 days from the publication) for the opt-in of other members of the class.

After this preliminary stage, the competent court sets the procedural timetable, which will likely vary on the basis of the complexity of the evidentiary phase.

The final ruling on the merits of the case becomes enforceable 180 days after its publication.

From 19 April 2020. After the entry into force of Law 31/2019, courts will have to issue a preliminary ruling on admissibility within 30 days from the first hearing.

Based on the circumstances of the case, the court can:

- Schedule hearings.
- Order the discovery of certain documents.
- Appoint experts.
- Grant parties the opportunity to submit writs and other documents.

If the application is granted, in its ruling the court will:

- Determine the redress to which each class member is entitled.
- Establish the opt-in requirements.
- Appoint the representative of the class.
- Publish the notice for admission of class members and set a time window between 60 and 150 days for submissions.

Once the notice is published, the defendant can submit its observations within 120 days from the expiry of the deadline for joining the class, as set by the court.

The representative of the class will then present a submission (*progetto*) on the admissibility of class members within 90 days, with the defendant and class members entitled to submit written observations within 30 days.

A further 60-day period is then granted to the representative of the class to amend the project on the basis of the observations submitted.

The court will then decide on the admission of class members and order the defendant to pay damages to each of them.

The court can also order the defendant to pay legal costs to the applicant's legal representatives as well as to the representative of the class, calculated as fixed percentages of the amount of awarded damages.

Parties can challenge the final court decree on class certification within 30 days of its declaration.

Effect of the area of law on the procedural system

8. Does the applicable procedural system vary depending on the relevant area of law in which the class/collective action is brought?

The applicable procedural system does not vary on the basis of the area of law in which the class action is brought.

Funding and costs

Funding

9. What are the rules governing lawyers' fees in class/collective actions?

Fee agreements can vary as for any other claim. Under Italian law, however, success fees calculated as a fraction of the award are prohibited.

10. Is third party funding of class/collective actions permitted?

While in principle there is nothing to prevent a third party from funding litigation, direct third-party funding of litigation is not common in Italy and there is very little case law on this subject.

Third party funding of litigation in the form of the assignment of rights to professional claimants is however increasingly common, especially with regard to air passengers' claims.

11. Is financial support available from any government or other public body for class/collective action litigation?

Financial support from the Italian Government is available for claimants whose annual income falls below a threshold set by the law (currently EUR11,493.82 per year). Any potential claimant who fulfils the income requirements must file an application before the local Bar Association.

12. Are other funding options available to claimants in class/collective actions?

No specific funding opportunities are available to claimants in class actions. In principle, after-the-event insurance would be admissible under Italian law.

Costs

13. What are the key rules for costs/fees in class/collective action litigation?

Costs are assessed by the court at the end of the proceedings. Under Italian law there is a general "loser pays" principle which generally allows for the recovery of some lawyers' fees and expenses.

However, costs and fees can generally be recovered only at the end of the proceedings and in the case of a favourable outcome.

The court assesses whether the lawyers' fees are reasonable and whether they should be reimbursed in full or only in part. Ministerial Decree No. 55/2014 sets, in very broad terms, the parameters which the court should follow in this assessment.

When dealing with vexatious litigation and patently unfounded claims the court has the power to significantly increase the costs awarded to the winner.

With regard to class actions, the costs of the publication of the action notice are borne by the defendant, but the relevant provisions grant considerable autonomy to the court in the assessment of the other costs of the proceedings.

Generally, if the case is settled out of court, the court will not rule on costs.

From 19 April 2020. Article 840 novies of the Civil Procedure Code of the new law, states that the costs awarded to the claimants' lawyers and to the representatives of the class must be calculated as a percentage of the amount of the aggregated damages payable to the class.

Key effects of the costs/funding regime

14. What are the key effects of the current costs/funding regime?

Potential claimants may well have been discouraged by the difficulty of obtaining legal aid from the government (due to the particularly low income threshold) or funding from third parties, and the risk of having to bear lawyers' fees and some of the defendant's costs if the class action is declared inadmissible, or if the claim is rejected.

Further, even if the outcome of the action is successful, claimants will have to await the final judgment for the (often only partial) reimbursement of the legal costs.

Most practitioners would agree that the current regime on costs and funding may be one the main causes of the lack of success of class actions in Italy.

From 19 April 2020. The new provisions on legal costs may result in class actions becoming more attractive for claimants' lawyers, their amount being calculated as a percentage of the damages awarded to the class, although the court will retain some discretion over the actual percentage awarded. In general, however, awarded costs are likely to be higher.

Disclosure and privilege

15. What is the procedure for disclosure of documents in a class/collective action?

There are no specific rules concerning the disclosure of documents in class actions.

Under the general rules on the disclosure of documents in civil proceedings, any party can request the judge to order the disclosure of documents held by any other party to the proceedings or by third parties and agencies. The failure to comply with the disclosure order can be taken into account by the judge in its final decision on the merits of the case.

No party can be ordered to disclose documents covered by legal or professional privilege or in breach of the rules on professional secrecy.

Moreover, both criminal law and professional ethics prohibit the disclosure by lawyers of documents covered by professional secrecy.

From 19 April 2020. Under the new regime, following the claimants' reasoned request, the court can issue a disclosure order against defendants and third-parties. The court must specifically identify the evidence or the categories of evidence that are subject to disclosure.

The new regime provides for specific safeguards that the court may require in case of disclosure orders regarding confidential information, such as closed-door hearings or redacted documents.

The party or the third-party who disregards a disclosure order issued by the court or destroys relevant evidence will be subject to a fine of between EUR10,000 and EUR100,000.

16. Are there special considerations for privilege in relation to class/collective actions?

There are no special considerations for privilege where class actions are concerned.

From 19 April 2020. The new statute expressly provides that communications between the parties and their lawyers are protected by legal privilege.

Evidence

17. What is the procedure for filing factual and expert witness evidence in class/collective actions?

There are no specific rules as regards the filing of factual and expert witness evidence in class actions.

There are also no specific requirements as regards pre-trial witness statements and there are no particular restrictions on the evidence that can be filed, provided it is relevant to the case at issue.

Witnesses can only answer the questions put to them by the court. The party which requested that a witness be heard proposes the questions to the court, which rules on their admissibility.

If the case involves particularly complex or technical issues, the judge can appoint a court expert and set out the questions that must be submitted to the expert. The parties are also able to appoint their own experts who will assist the court expert and take part in the proceedings.

From 19 April 2020. Under the new regime, the fees of the experts appointed by the court will be paid by the defendant in the first place (subject to recovery from the claimant).

Defence

18. Can one defendant apply to join other possible defendants in a class/collective action?

Joining other defendants

Nothing prevents a defendant from applying to summon other possible defendants to join the class action, provided it has an interest in doing so. For example, a defendant can apply to summon other parties responsible for the alleged damage to be (partially or totally) indemnified. The application must be made in the first written submission filed before the court.

It is not, however, possible for other parties to voluntarily join the proceedings as either co-defendants or claimants. Potential claimants can therefore join the proceedings only through the opt-in, and within the timeframe set by the court.

Rights of multiple defendants

In principle, nothing prevents multiple defendants from sharing confidential information and co-ordinating their defensive strategies.

Moreover, multiple defendants are free to instruct the same lawyers or joint experts, provided there are no conflicts of interest.

Damages and relief

19. What is the measure of damages under national law in the field of class/collective actions?

Damages

According to the established case law of the Italian Supreme Court (*Corte di Cassazione*), exemplary or punitive damages are not admissible under Italian law.

There is no cap on the quantum that can be recovered, either from a single defendant or overall, and money damages are apportioned between the claimants by the court on the basis of the damage suffered by each of them. However, if the breach of contract did not entail wilful misconduct the claimant can only claim compensation for the damage which was foreseeable when he entered into the contract.

In determining the damages the court can take into account moral damage, actual economic losses and lost profits.

Recovering damages

Any defendant may recover damages paid in a class action from other subjects which may be responsible for the alleged conduct. To this end, the defendant can request the court's authorisation to summon these subjects to join the proceedings.

Interest on damages

The interest accrued on the damages is calculated on the basis of the legal interest rate set by the Ministry of Finance. A higher interest rate is applicable starting from the moment when the action is brought.

20. What rules apply to declaratory relief and interim awards in class/collective actions?

Declaratory relief

In class actions the claimants seek a declaratory judgment on the defendant's liability, compensation for the damage suffered and/or the reimbursement of sums unduly paid (*Article 140 bis, Consumer Code*). There do not appear to be legal grounds for seeking declaratory relief.

Interim awards

The court may adopt interim awards to adjudicate on preliminary issues (such as jurisdiction, locus standi, and so on).

From 19 April 2020. The court will be able to issue an injunction to terminate the unlawful conduct of the defendant. Non-profit organisations and associations whose statutory purpose is to protect the allegedly violated rights will also be able to seek an injunction.

Settlement

21. What rules apply to settlement of class/collective actions?

Settlement rules

Cases can be settled out of court, under Article 140 bis of the Consumer Code, and waivers and settlements are without prejudice for the claimants who have not expressly given their consent to the waiver or the settlement.

The court can determine the definitive amount which must be paid to each claimant or it can set out the criteria which should be applied in determining the amount (*Article 140 bis, Consumer Code*) In the latter case, the court must also set a deadline for the parties to reach an agreement on the amount of the damages. If the parties fail to reach an agreement, the court will then adjudicate on the damages owed to each claimant.

From 19 April 2020. A specific provision on settlement agreements in the new statute states that the court can submit to the parties a settlement proposal up until the date of the main hearing (discussion hearing).

A draft of the settlement agreement will be published on the Ministry of Justice's website by the claimant's lawyer so that members of the class can challenge it.

Separate settlements

In principle, nothing prevents a defendant from settling the claim separately. In this case, the proceedings would continue between the claimants and the remaining claimant(s). However, if any other defendant has requested to be indemnified by the defendant in question, a settlement with the claimants would not allow the latter to extricate itself from the proceedings.

Appeals

22. Do parties have a right to appeal decisions relating to class actions, such as a decision granting or denying certification of a class action?

The parties have the right to appeal the preliminary decision on the admissibility of the class action before the competent Court of Appeal ("*reclamo*") within 30 days from the publication of the ruling or its service to the interested party. The Court of Appeal must rule within 40 days from the filing of the appeal, however the deadline is not binding.

The final decision on the merits of the case can be appealed before the Court of Appeal ("*appello*") within 30 days of the service of the judgment to the interested party, or within six months of the publication of the decision.

Under Italian law the appeal does not generally automatically suspend the enforceability of judgments. It is however possible to request a suspension to the Court of Appeal.

It is established case law that the decision of the Court of Appeal on the admissibility of a class action cannot be subject to further appeals on points of law before the Italian Supreme Court.

From 19 April 2020. The new statute has also amended the rules on appeals. Parties will always have six months to lodge an appeal (irrespective of whether the judgement has been served on the other party).

Class members will be able to challenge the decision on the merits only in the extraordinary circumstances foreseen by Article 395 of the Civil Procedure Code (fraud, gross negligence or a departure from a previous decided case) or if they are able to allege collusion between the parties.

Alternative dispute resolution

23. Is alternative dispute resolution (ADR) available in class/collective actions?

While there are no specific provisions on alternative dispute resolution where class actions are concerned, the Italian Consumer Code includes provisions on alternative dispute resolution between consumers and professionals or undertakings.

It is possible to activate ADR procedures before litigation and in some cases the parties must try at least in principle to settle the controversy through a mediation procedure before an action can be brought.

Proposals for reform

24. Are there any proposals for reform concerning class/collective actions?

In April 2019, after the approval of the Italian Senate, the much anticipated reform concerning the rules on class action was published in the *Official Gazette* and will apply from 19 April 2020.

In summary, the key innovations are the following:

- The migration of the provisions on class actions from the Consumer Code to the Civil Procedure Code widens the applicability to any persons who seek redress for the violation of "homogeneous individual rights" as well as to non-profit organisations and associations whose statutory purpose is to protect the such rights.
- Collective actions will be heard by specialised business courts, the (*Tribunale delle Imprese*) and the proceedings will consist of three stages:
 - the court will decide on the admissibility of the class action;
 - it will rule on the merits of the dispute; and

- if the action is successful, the court will issue an order on compensation of class members and legal costs.
- The opt-in of potential claimants will be possible:
 - after the publication of the court decision on admissibility; and
 - after the publication of the ruling on the merits.
- The new regime will allow the court to issue an injunction to terminate unlawful conduct by the defendant.

The new legislation partially implements the EU Commission recommendations on common principles for injunctive and compensatory collective redress mechanisms. Although the new law introduces the opt-in mechanism and locus standi of representative bodies, it however remains silent about the admissibility of third-party financing.

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Professional associations/memberships. Italian Bar Association (admitted to the high courts), International Bar Association; International Chamber of Commerce; Italian Antitrust Association; *Studienvereinigung Kartellrecht*; European Air Law Association; *Union des Avocats Européens*.

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