



Italy introduces consumer class actions

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Budget law [24 December 2007, n. 244](#) introduces, for the first time into Italian law system, a type of class action (called "azione collettiva risarcitoria") for awards of compensatory damages or payments of amounts to multiple individual users or consumers.

Class Action is regulated by art. 140 *bis* of the Italian consumers' code and will be in force from 1 Jan 2009.

Although very different from common law-style class actions and not the Copernican revolution announced by the Italian media, this is an important change for our system, where previously consumers could seek protection of their rights only through individual actions.

In complete contrast with American system, standing to sue does not belong to individuals but to the 16 accredited consumers associations with a nationwide presence and to *ad hoc* committees (*sufficiently representative of collective interests* as assessed by the judge).

These representative entities can bring an action against any commercial, financial, banking and insurance enterprise in the interest of all consumers who have been damaged by the same act.

According to *codice dei consumatori*, they can claim that individual consumer rights of the same nature (that is closer to the American experience) have been violated by: a) breach of contract; b) tort; c) unfair trade practices; d) breaches of competition law.

One major difference between the Italian law and the US process is that, in the first regime, there is an opt-in process for claimants, as opposed to the US opt-out process. Users or Consumers may opt into the collective action by a simple written notice (without any particular formality) to the plaintiff, which must be sent no later than the last hearing for conclusions of the appeal judgment. Only opt-in consumers will be bound by the result.

A consequence of this late deadline may be that many consumers may decide to opt in only if the action succeeds in the first instance of the proceedings. The final decision shall also produce legal effects on the consumers and users who have joined the class action (called



"intervenienti"). On the other hand, individual consumers or users who have not joined the class action or intervened in the proceedings shall maintain the right to bring individual actions.

The opt-in process will apply after the court has given judgment determining liability and quantifying damages, or a court settlement is reached.

Competent court for the purposes of the Class Action is that of the place where the Enterprise has its registered office. In the preliminary hearing court must verify if the class action is admissible. In particular, it must determine that the action is not preposterous, there is not a conflict of interests and the action is to protect a super-individual right.

If the Class Action is then deemed admissible, the plaintiff is ordered to duly advertise the content of the claim, in order to enable consumers to opt into the action, if they so wish.

The second phase of the proceedings will consist of a trial. If the court ultimately rules in favour of the claimants, the judge does not award a specific amount of damages. Rather, makes the substantive declaration and sets out the *criteria* useful to calculate the amount to be paid or given back to the individual consumers and users who have joined the class action or intervened in the proceedings. Whenever possible, the court also establishes the minimum amount payable or refundable to each consumer.

Individual consumers, who have not participated or opted-in, maintain the right to pursue an individual action against the defendant.

Within 60 days of the service of the decision, the relevant Enterprise could make a written proposal of payment. Any form of proposal accepted by the consumer or user shall be enforceable.

If the company fails to make its offer within 60 days, or if the offer is not accepted during that time, the President of the court shall appoint a *Camera di Conciliazione* (conciliation committee) to set the amounts to be paid or given back to the consumers and users who have joined the class action or intervened and who so request. The *Camera di Conciliazione* is composed of a lawyer duly indicated by the plaintiff and one by the summoned company, and it is chaired by a lawyer appointed by the president of the court.



If the composition fails or if one of the parties doesn't want to conciliate, consumers are entitled to proceed for their own damage with individual actions governed by the Code of civil procedure.

Damages - once proved - will be liquidated according to the *criteria* laid down by the court in the judgment rendered on the collective action.

This summary of Italian collective action for damages reveals by itself the baroque complexity of the text. Furthermore, doubts may be raised about the procedures providing for damage recovery by individual consumers. In particular, the rule according to which individual consumers who cannot settle their claims must start their own lawsuit does not seem to advance the cause of consumers' rights, particularly in a country in which court congestion and delays are a serious problem.

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