

Get Ready! Class Actions in Italy

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On July 23, 2009, the Italian Parliament approved a new law introducing a form of class action in Italy (the Law),¹ which will go into effect on January 1, 2010. The new collective remedy (renamed *Azione di Classe* in Italian) will apply only to conduct occurring after August 15, 2009. Such limited retroactivity aims to prevent the Law from becoming a judicial tornado, but has been criticized by the media for making the Law inapplicable to the current financial crisis.

The introduction of a collective remedy to protect group interests is unprecedented for the Italian legal system and culture. As a consequence, some form of “class action awareness” would surely benefit the whole business community, since there are likely to be direct and substantial consequences affecting their way of doing business.

Companies involved in the Italian market, whether Italian, foreign, or multinational, should consider purchasing *ad hoc* insurance to prepare for a potential class action. They also will have to consider whether they want to restructure their corporate governance in order to be safeguarded from class action liability, and whether they should set aside a specific budget to cover potential class action damages.

Class Action Law

Individual plaintiffs, belonging to a group, will be allowed to bring a class action. The Law has adopted an opt-in system for consumer class actions (as compared to the US opt-out regime), which means that individual consumers must choose whether they want to join the class. Final judgment under the Law is binding only on those consumers who have joined the case (and not on all potential class members).

The Law does not speak to the award of legal costs, nor is it clear who will have to pay legal fees for the class action. This is a crucial point since in the United States class members generally do not have to front money to prosecute the action and the law firms assume the risk of an unsuccessful suit. It is relevant to note, however, that, in 2007, the Italian Government approved liberalization measures for professional services,² including the repeal of the prohibition against success fee arrangements in the legal context.

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Under the Law, courts in the region where the respondent has his legal seat will have jurisdiction to rule on the appropriateness of a proposed class action.³ The assigned court will give a first order (*ordinanza*) determining whether to admit or dismiss the case, which has the same function as the class certification in the United States. The evaluation will include inquiries into potential conflicts of interest, the identity of the rights sought to be vindicated and the capacity of the claimant to represent the class.

If the case is admitted, the court will establish terms and procedures to make it public and allow individuals of the same class to join. The court will also set deadlines for other individuals belonging to the group to join the class action (not more than 120 days as of the admissibility order).

The Law does not envision any “numerosity” requirement.⁴ This is consistent with the opt-in system and the fact that the judgment has binding effect only on those who have opted-in and joined the class action.

During the first hearing, the court may decide to defer the decision on the admissibility of the class action if there is an investigation pending before an independent authority (such as the Italian Competition Authority in an antitrust or unfair competition case) or an administrative court.

The order on the admissibility can be challenged before the court of appeal. However, the appeal of this decision before the court of appeal does not suspend the main procedure before the court of first instance. The court of appeal has 40 days to make a ruling.

The Law does not have specific provisions on the settlement procedure akin to Rule 23(e) of the Federal Rules of Civil Procedure, and thus class settlements will be evaluated under the ordinary civil procedure.

The Law additionally provides that the final ruling will determine the amount of money due to the members of the class. The judgment becomes binding after 180 days from its publication date, and, as mentioned above, it only binds individuals who have opted-into the class. The ruling can be challenged before the court of appeal. The latter's judgment can be further appealed before the Italian Supreme Court (*Corte di Cassazione*), limited to the points of law.

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¹ Article 140-bis of Legislative Decree n. 206 of 6 September 2005, last amended by Article 49 of Law n. 99 of 23 July 2009, published in Gazzetta Ufficiale n. 176 of 31 July 2009 – Supplemento Ordinario n. 136.

² Article 2 of Law n. 248 of 4 August 2006, published in Gazzetta Ufficiale n. 186 of 11 August 2006.

³ There are nine exceptions: Val d'Aosta will be under the jurisdiction of Turin; Friuli and Trentino under Venice; Marche, Abruzzo, Umbria, and Molise under Rome; and Calabria and Basilicata under Naples.

⁴ Fed. R. Civ. P. 23(a), which states that a class action is permissible only when the joinder of all members is impracticable.