

Italy

Introduction

In the future collective actions in Italy are likely to be brought on the following grounds:

- Infringement of homogenous contractual rights of a number of consumers
- Infringement of homogenous rights of a number of consumers relating to product liability, and
- Infringement of homogenous rights of a number of consumers relating to antitrust matters.

The complexity of the laws in Italy is discouraging recourse to class actions, due mainly to excessive bureaucracy - such as the initial stage of admissibility - notwithstanding the fact that it is mainly consumer associations who are pursuing this kind of action.

For that very reason a draft Bill is under discussion which would introduce a number of changes that would streamline the class action process in Italy making it quicker and more efficient.

The main change contemplated in the draft Bill regards the legal capacity to sue, namely the ability to start a class action, which will cease to be the exclusive power of consumer associations (including committees) and will allow individual classes to take action. This means that one of the individuals seeking to redress damage will have the responsibility of commencing an action.

Notwithstanding the above, the number of class actions in Italy has been substantially increasing, with some major and significant ones such as the Samsung and Volkswagen class action which are currently ongoing.

In terms of shareholder class actions it is still very early days in Italy and after some failed attempts, Italy has yet to see its first shareholder class action come to an end. Class actions are nonetheless expected to become a more common - and effective - means of safeguarding shareholders' interests.

General features

- Class actions were introduced in Italy by Art. 140-bis of the Italian Consumer Code (ie Law Decree 206 - 06 September 2005) which entitles consumers and consumer associations/committees to start legal proceedings against a company or a professional on the following grounds:
 - ▪ (i) infringement of homogenous contractual rights of a number of consumers
 - ▪ (ii) infringement of homogenous rights of a number of consumers relating to product liability
 - ▪ (iii) infringement of homogenous rights of a number of consumers relating to antitrust matters.

Class actions in Italy work on an opt-in basis and consumers may claim (i) the compensation of damage caused by a counterparty's default and (ii) the reimbursement of the amounts the consumer has already paid.

Italian law does not provide for "punitive damages".

Types of collective redress

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 - - infringement of homogenous contractual rights of a number of consumers
 - infringement of homogenous rights of a number of consumers relating to product liability
 - infringement of homogenous rights of a number of consumers relating to antitrust matters.

Funding and costs

- The Italian courts have not yet broached the subject of the third party funding of litigation. However, in principle there is nothing to prevent third party funding of litigation.

Recent developments, trends and predictions

- **Gradual increase in class actions**

To date there have been a handful of shareholder class actions launched to protect the infringement of investors' rights and to compensate for losses incurred as a result of misinformation on the companies' financial statements which led to a significant overstatement of profit and, in turn, to an artificially inflated share price during the relevant period.

Recent cases include a class action brought against Samsung Electronics SpA before the Tribunal of Milan. This is a follow-on class action filed after the Italian Antitrust Authority issued a fine of €1m against Samsung for unfair commercial practices. Samsung did not properly inform its customers about the true amount of RAM available on certain devices (eg tablets and smartphones). This resulted in clients being misinformed about the technical features of the assets they purchased. In fact Samsung did not specify to customers that the stated amount of RAM did not match with the amount actually available on the devices, given that some of the RAM was already used by the resident and pre-installed software. The Tribunal of Milan declared the class action as admissible given the similarity of rights and prejudice involved and referred to the class. Proceedings are still pending

More recently the Tribunal of Venice admitted the class action which is now ongoing against Volkswagen AG and Volkswagen Group Italia SpA. Also in this case class action was issued as a follow-on action after the fines levied by the Italian Antitrust Authority for unfair commercial practices, in that the car manufacturer had misinformed clients about the levels of gas emissions in certain Volkswagen car models.

Finally the Court of Appeal of Milan awarded damages against an Italian Railway Company, in favour of a class of passengers which incurred continued and repeated delays to their trips due to repeated and unaddressed malfunctioning of the Railway Company's software. The Court awarded damages in the aggregate equal to €300,000, which is far less than the aggregate amount of damages incurred by passengers. The Court held that only the non-pecuniary damages could be restored within the class action proceedings, given that only this kind of damage was substantially the same for the whole class.

Looking to the future

The Samsung and VW cases mentioned, and others still pending, are an interesting indicator of how class actions will develop before the Italian Courts.

There are several consumers' associations/committees in Italy, such as Federconsumatori, Altroconsumo and Adusbef, which assist with consumer protection against banks and big corporations and are now extremely active in promoting class actions and in taking every chance to issue proceedings whenever an opportunity arises.

In terms of the future, a draft Bill on class actions is currently being considered by the Italian Parliament.

If approved, the bill will result in material changes for Italian class actions, which we have summarised below:

- ▪ (i) there will be no restriction on who can launch a class action (not just consumers) for compensation of damage resulting from either a contractual breach or tort
- ▪ (ii) an action will only be inadmissible if (i) it is prima facie without any merit, (ii) it is not aimed at protecting similar rights, (iii) there is a potential conflict of interest between the representative claimant and the defendant, (iv) the association or the committee does not properly represent the claimed interests
- ▪ (iii) participants may join a class action brought by the representative claimant at any time:
 - ▪ (a) within the period set by the court when the class action is declared as admissible, and
 - ▪ (b) after the decision on the merits within a mandatory period of 180 days from publication of the relevant judgment.
- ▪ (iv) the representative claimant may request interim measures aimed at prohibiting the continuation of certain unlawful conduct
- ▪ (v) the representative claimant's lawyer is awarded contingency fees based on the number of participants in the class action.

The specialised court division on company matters will have jurisdiction over any new class action proceedings.

Given that, if the draft Bill is passed, it will be possible to claim damages for any kind of tortious conduct (which caused damage), not just in connection with the supply of defective products, it is likely there will be an increase in actions against defendants who cannot currently be sued in class actions. This could affect certain clients such as funds, for example, relating to prospectus liability (albeit a controversial topic) or to mismanagement/poor performance (etc).

Contact

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