

RECENT CLASS ACTION DEVELOPMENTS IN THE ITALIAN LEGAL SYSTEM

Development in Parliament

On 21 December 2007, in a departure from traditional Italian Civil principles, the Italian Parliament introduced a new type of lawsuit to protect consumers. Article 140-bis was inserted into the Italian Consumer Code to regulate “*azione collettiva risarcitoria*” (collective redress). The rule provided that, where a company infringes the rights of a group of consumers, certain specific collective bodies, representative of consumers’ collective interests, may undertake legal proceedings to obtain compensation for the individuals affected.

The “*azione collettiva risarcitoria*” for consumer protection was originally intended to come into force on 1 July 2008. However, both the collective bodies entitled to bring this new type of action and several representatives of the Italian Parliament expressed concerns about the legislation and requested that significant changes be made.

The introduction of the new provision was therefore postponed to 1 January 2009, and then again to 1 July 2009.

On 13 May 2009, the upper house in Parliament voted through some amendments to the legislation, including extending the number of collective bodies entitled to bring the action and introducing the possibility of bringing action against public authorities. Reviews by the lower house have led to a further postponement of the provision.

Finally, on 23 July 2009 the Italian Parliament approved a further amendment of the provision of Article 140-bis of the Consumers’ code (published on the Official Gazette on 31 July); the new provision, regulating a class action rather than a collective redress, will enter into force as

of 1 January 2010, and will cover only the infringements and violations occurred since 15 August 2009.

I. The current provision

According to the current text of Article 140-bis, consumers’ individual rights and interests may be protected through the so called “*azione di classe*”; the member of the class, damaged as a consequence of infringement of contractual obligations, defective products or unfair commercial practices, may undertake legal proceedings aimed at the ascertainment of the liabilities, at the compensation for damages and at the reimbursements.

The action may be brought by each member of the class, even through consumer associations and committees.

The system requires affected consumers to opt in and the statute of limitation is suspended as soon as the claim is issued or the joining to the action is filed, respectively for the consumers adhering to the action or joining at a following stage of the proceedings.

The procedure is structured in two phases, the first of which is aimed at the ascertainment of the admissibility of the claim; if the claim is admitted, the court orders that the contents of the claim be divulged to allow the joining of the members. Once the term for the joining is elapsed, no further actions for the same infringements and against the same entrepreneur are allowed.

Compensation and reimbursements are awarded by means of a final judgment, which is enforceable after 180 days from its issue.

II. Other remarks

While the original text of Article 140-bis has been harshly criticised by consumers associations as an unsatisfactory tool for defending consumer interests and as incompatible with the Consumer Code and EU overtures in relation to cross-border class actions, it seems now that the new provision may fulfil the main purposes of class action (reducing or eliminating serial litigation and increasing the consistency of judgments).

The reduction of the multiphase proceedings, originally provided, to a two-phase structure proceedings and the provision of a sole action are steps forward to the harmonisation of tools for consumers’ protection at a European level.

Nevertheless, as the new provision introduces a further type of trial, there may be some issues of compliance with the procedural rules of the code of Civil Procedural Law.

The efficacy of the new procedural instrument shall be therefore verified only after its entry into force, but the practice will surely have the opportunity to underline limits of the new provision and to suggest how to improve it in order to better address consumer needs and improve management of the proceedings.

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PAOLA GHEZZI,
CMS ADONNINO ASCOLI & CAVASOLA
SCAMONI, ITALY
PAOLA.GHEZZI@CMS-AACS.COM

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LAURA OPILIO,
CMS ADONNINO ASCOLI & CAVASOLA
SCAMONI, ITALY
LAURA.OPILIO@CMS-AACS.COM