



January 2010: the launch of class actions in Italy.

Consumers' associations that campaigned for the introduction of class actions in Italy now celebrate the entering into force of the relevant rules announcing a number of actions, ranging from actions against banks such as Intesa San Paolo and Unicredit for allegedly illegal commissions applied to clients, to action against Microsoft for recovering the price of the software mandatorily included in the PCs, to actions against the public administration for malfunctioning of public services such as roads and railways.

The rules exist, and are into force and effect. But what is the situation really like?

First of all, it should be noted that presently there are two different sets of rules, both commonly regarded as concerning class actions, although none of them probably provides for a real class action.

In particular, article **140 bis of the Consumer Code** (Legislative Decree 206/2005) was originally introduced by Law 244/2007, significantly amended by the art. 49, Law 99/2009 and its entering into force progressively deferred until January 1, 2010. Said rule provides the possibility for individuals, as well as for associations, to bring a single action aiming at the protection (i) of contractual rights of a group of consumers having the same position vis-à-vis an enterprise; (ii) of identical rights of end users of a single product vis-à-vis the manufacturer, irrespective of the existence of a contractual relationship; (iii) of identical rights to recover the prejudice incurred by consumers and users due to unfair commercial practices or anticompetitive behaviours. The procedure entails a first assessment of the admissibility of the action, and - further to such decision, subject to appeal - a second phase, including the gathering of evidence, that terminates with a decision as to the damages granted or as to the criteria to be applied to quantify the same. It should be noted that the **characteristic of such class action is the opt-in system**: therefore, not more than a single class action can be started, but individual actions can always be brought, pursuant to the ordinary rules. Although subject to specific rules aiming in principle at speeding up the proceedings, the class action is brought before **specialised sections of the civil courts** and is subject to the general principles of civil procedure.

On the other hand, **Legislative Decree 198/2009** - into force as from January 15, 2010 - has introduced special proceedings aiming at ensuring efficiency in the public administration. The actions can be started by individuals or by associations, assuming that consumers' or users' rights have been breached due to the public administration not complying with mandatory terms or with service charters, or because it has breached set quality and economic standards. The action has to be previously notified to the competent offices, so as to enable them to adopt the necessary measures. The actual action can be started only after a ninety-day period from the mentioned notification has elapsed, and if no remedy, or only partial remedies, have been adopted by the relevant offices. **The action must be started before the administrative Courts (subject to the relevant procedure) and the decision does not allow to obtain the recovery of damages**, for which the ordinary remedies remain available.

Independent agencies (such as AGCM or CONSOB), as well as Courts, legislative assemblies, constitutional bodies and the Government cannot be subject to the special procedure established for Public Administration. Furthermore, in case an action for the protection of collective interests pursuant to the Consumer Code is, or has been, started, the same shall be resolved with priority, and the proceedings against the Public Administration pursuant to Legislative Decree 198/2009 will stay – and eventually recalled afterwards – until the termination of the said judgment.

Legislative Decree 198/2009, art. 7, has also established that due to the need of defining the obligations included in the service charters and the quality and economic standards (for which violation an action can be started against the Public Administration), as well as to evaluate the financial and administrative impact in the relevant sectors, before an action can be actually started against the Public Administration, specific provisions for the definition of the just mentioned issues shall be adopted: therefore, the actual **implementation** of the provision is **deferred**, and no time limit set.

A lot still has to be defined. So far (it has been two years since the first introduction of the concept of class action) scholars have speculated on many aspects of the new rules. Arguments have been spent on the possibility to start class actions pursuant the Consumer Code even for events occurred before August 16, 2009, doubt now negatively settled, as well as on the characteristics of the plaintiffs (can they be consumers only? Can the purchasers of financial instruments bring a class action under certain circumstances?), and on a number of procedural issues. From now on, to the scholars' opinions, that of the judges will be added, which will contribute to better define the impact of the new rules.

As a conclusion, we can only say that this is the starting point of the steeplechase: but unless one takes part, there is no chance to win!

For more information on the matter, please write to: d.jouvenal@nmlex.it and m.silvetti@nmlex.it

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Roma

00186 Roma
Piazza di Pietra, 26
Tel. +39 06 695181
Fax +39 06 69518333

Milano

20121 Milano
Foro Buonaparte, 70
Tel. +39 02 6575181
Fax +39 02 6570013

Bologna

40123 Bologna
Via d'Azeglio 44
Tel. +39 051 330502
Fax +39 051 6447906