

## New Rules Affecting Commercial Litigation and Class Actions in Italy

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On 24 January, the Italian Government enacted emergency measures designed to aid the recovery of the Italian economy and improve its economic infrastructure (Decree no. 1/2012 of 24 January 2012). Some of the changes introduced under the Decree affect litigation. Most notably, there is an amendment to the class action provisions entered into force on 1 January 2010, and a provision for the establishment of specialised sections within the existing civil courts, dedicated to handling commercial litigation.

### Commercial Litigation

The provisions on specialised commercial sections within civil courts are contained in Article 2 of the Decree and will become effective after 90 days, i.e. after the attended Parliament's conversion of the Decree into law.

The purpose is to foster specialist knowledge and deeper understanding among the judges handling complex litigation cases. The legislator identified such complex cases in "commercial" litigation, whereby commercial is intended in the broadest sense i.e. as referring to anything that concerns a business activity including, among others, corporate and intellectual property litigation.

This new approach is an amendment and expansion of the specialised sections on intellectual property disputes, which entered into force in 2003.

### Class Actions

The class action provisions contained in Art. 6 of the Decree are effective immediately (subject to Parliament confirmation or amendment within 60 days).

The changes clarify the concept of "class". They specify that for a class to exist, the class members do not necessarily need to be in "identical" positions neither in terms of the facts, nor of the rights, on which the claims are based. Previously, the word "identical" referred to the factual positions of the class members and, in one instance, to the rights from which the class claims are derived. It is now sufficient that the factual position and the rights underlying the claims are simply of the same kind— or "homogeneous" using the new statutory wording—among the class members.

This definition is consistent with the overall tenor of the statute that introduced class actions in Italy on 1 January 2010 (Statute no. 99/2009, inserting Article 140-bis in the Consumer Code): indeed the older version of the newly amended provision already contained the word "homogeneous", although only in the first sentence and only in relation to the rights on which a class action could be based. It is also consistent with the US model—clearly used as a reference point by the Italian legislator—that requires only the existence of "questions of law or fact common to the class" (Rule 23 (a) (2) Federal Rules of Civil Procedure, FRCP) or, at most, "that the questions of law or fact common to the class members predominate over any questions affecting individual members" (FRCP 23 (b) (3)), as prescribed for the most frequent and relevant type of class action.

Even if it is just a fine tuning of the statute, the changes to the definition "class" point to an inclination by the Government to support avoiding over-restrictive interpretations of the class action provisions. It therefore shows a moderate approval for this relatively new procedural instrument.

The Government, however, has refrained from taking the initiative to expand the scope of claims that can be asserted through class actions. Currently, they can only be contract-based claims deriving from standardised contracts, product liability claims, and damage claims based on unfair commercial practices or antitrust violations. Other areas that it would be sensible to include, such as security regulation and environmental liability, remain excluded; at least to the extent that other elements of the case do not allow the channeling of these kind of claims into class actions through interpretation.

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