



Class Action in Europe: impact on the Italian Consumer Code

The decree implementing the **EU Directive 2020/1828** was published in the Italian Official Journal, thereby introducing representative actions, a new instrument for the protection of the collective interests of consumers against breaches of **European provisions**. It represents a real boost for Italian class actions, which thus acquire an international scope. In the following sections we will provide some highlights of the main provisions which have been introduced into the **Italian Consumer Code** and which will be effective as of June 2023.



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Overview



Legislative Decree no. 28 of 10 March 2023 (the Decree) introduces new provisions implementing EU Directive 2020/1828 in the Italian Consumer Code. The new set of rules, which supplement, and partially recall, the class actions provisions already included in articles 840-*bis* and ff. of the Italian Code of Civil Procedure, are intended to regulate the new **representative actions**, i.e. claims brought to seek protection of collective interests of groups of consumers with the aim of obtaining injunctive and/or redress measures. The scope of application of the new rules is broad and aims at protecting consumers against breaches of European provisions, ranging from consumers protection to data protection, from health to unfair competition. The new claims can be brought by qualified entities, with no need of specific instructions from the consumers concerned, starting from **25 June 2023**.

Consumer Code	Highlights	Takeaway
Art.140- <i>ter</i>	Domestic representative action	The representative action brought before an Italian court by an association of consumers or users (included in the list under Art. 137 of the Consumer Code) or by national independent public bodies.
Art.140- <i>ter</i>	Cross-border representative action	<p>The representative action brought before:</p> <ul style="list-style-type: none">– an Italian court by one or more qualified entities of other Member States (included in the list under Art. 5 of the Directive as drafted by the European Commission);– a court of another Member State by a qualified entity (included in the special list under Artt. 137 and 140-<i>quinquies</i>), even jointly with qualified entities of other Member States, if the breach prejudices (or could prejudice) consumers of different Member States. <p>In order to qualify as a cross-border action, the location of the defendant business is of no significance; the only requirement is that it is brought in one Member State other than the one in which the qualified entity has been designated.</p>
Art.140- <i>ter</i>	Claimants and defendants in representative actions	As mentioned, the actions are only available to qualified entities. With regard to the defendants, they include all natural and legal persons, both public and private, which act for purposes related to their trade, business, craft or profession, even through another entity which operates in their name and/or on their behalf.

Consumer Code	Highlights	Takeaway
<p>Art.140-<i>ter</i> and Annexe II-<i>Septies</i> of the Decree</p>	<p>Scope of application of representative actions</p>	<p>Representative actions constitute a remedy for breaches of the legal provisions of the European Union listed under Annexe II-<i>Septies</i> of the Decree. They consist of approximately 70 legislative acts, including regulations and directives, such as, by way of example, rules in matters of consumer protection, product liability, e-commerce, distance marketing of consumer financial services, air and railway transport, GDPR and data protection, medicinal products and medical devices, and unfair commercial practices. The application scope is very wide and set to gradually expand as new EU provisions are added.</p>
<p>Artt.140-<i>septies/octies/nonies</i></p>	<p>Measures which could be requested by representative actions</p>	<p>By representative actions, a qualified entity could request measures such as:</p> <ul style="list-style-type: none"> - injunctive measures aimed at ceasing or forbidding any conduct in violation of EU provisions. In this case the evidentiary rules are simplified, in that the qualified entity is not required to prove the negligence or fraud of the recipient of the action, nor the losses or damages suffered by the individual consumers concerned. Furthermore, an interim measure may be granted where there are justifiable reasons for urgency; - redress measures aimed at remedying the unfair effects of the breach of EU rules on the consumer. They may consist in an indemnity, compensation, replacement, reduction or reimbursement of the price paid.



Latest developments in Europe



As of today, only a few Member States have implemented the Directive, whereas many of them are still in the process of transposing EU provisions into national laws, which, in any event, shall come into force by 25 June 2023. For more details on the status of implementation in the European Union, please ask our ***Class Actions and Group Litigation team*** who can assist you with any specific questions.

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