British Institute of International and Comparative Law

COLLECTIVE REDRESS
ITALY

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British Institute of International and Comparative Law

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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I. Collective Redress Mechanism

1. Scope/ Type

The first Italian mechanism for collective redress, introduced in 2007, was sectoral and limited to product liability. Law no. 27/2012 broadened the scope of application of class actions to contractual rights of consumers and similar claims (including competition law). Art. 140-bis ICC (azione di classe) provided that consumers with homogenous interests had a right to file the azione di classe against a private corporation in three different cases: breach of contract; unfair or anticompetitive commercial practice; and product or service liability.

The Italian collective redress mechanism underwent a comprehensive reform with the introduction of Law no. 31 of 12 April 2019 which came into force on 19 May 2021.[1]

Paragraph 1 of article 840-bis provides that: 'Homogeneous individual rights may also be protected by class action, in accordance with the provisions of this Title. For this purpose, a non-profit organisation or association whose statutory objectives include the protection of such rights, or any member of the class may bring an action against the author of the infringing conduct for the establishment of the liability and for an order to pay damages and restitution.'.

Both compensation for damages and injunctive relief are available.

2. Procedural Framework

a. Competent Court

The application for class action shall be filed exclusively before the Specialised Commercial Chambers (Sezione Specializzata in materia di imprese) of the place where the defendant is domiciled (or the company has its seat).[2]

Law no. 27/2012 introduced the Specialised Commercial Chambers. They are an expansion of the existing specialised sections of courts which had jurisdiction over intellectual property matters.

b. Standing

Article 840-bis grants standing to:

- each member of the class,

- non-profit organisations or associations whose statutory objectives include the protection of homogeneous individual rights.

Only the organisations and associations registered in a public list established at the Ministry of Justice have standing to bring a collective claim.

Inclusion in the list is subject to the following requirements, which are confirmed by presenting documentation conforming to the directions and procedures established by an order from the Ministry of Economic Development:

- The organization or association must have been in existence for at least two years,
- The organisation or association shall not be profit-making,
- Its statutory objective must be the protection of homogeneous individual rights

c. Availability of Cross Border collective redress

The participation of foreign members to a collective action is not expressly excluded.

[1] *Legge 12 aprile 2019, n. 31 Disposizioni in materia di azione di classe* (19G00038) available in Italian in the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*) at <https://www.gazzettaufficiale.it/eli/id/2019/04/18/19G00038/sg>.
[2] Article 840-ter of the Italian Code of Civil Procedure.

Organisations recognised in another Member State of the European Union, registered on the list of entities entitled to bring a collective claim , published in the EU Official Journal, may act.

There are no reported cross-border cases to date.

d. Opt In/ Opt Out

The participation mechanism is opt-in. Legal scholars consider this option more closely aligned with the traditional principles of fairness and due process. Class members can opt in after the preliminary ruling on admissibility is issued (between a minimum of 60 days and a maximum of 150 days), or after the judgment on the merits is issued.[3]

3. Main procedural rules

a. Admissibility and certification criteria

After verifying the plaintiff's right of standing, the judge subsequently focuses on the admissibility of the action. The court establishes if there is a conflict of interest, if the main plaintiff can adequately represent the interests of the class, and if the rights of the proposed class members are homogenous.

b. Single or Multi-stage process

Single-stage process.

The Court issues a judgment by which – according to Article 1226 of the Civil Code - the final amounts due to those who have joined the act shall be paid, or shall establish the homogeneous *calculation criterion* to pay these sums. In the latter case, the Court assigns to the parties a period of not more than 90 days to agree on the liquidation of the damages. The minutes of the agreement, undersigned by the parties and the judge, is immediately enforceable. If the parties have not reached such agreement within 90 days, the judge, upon the request of at least one of the parties, liquidates the damages due to each member of the class.

c. Case-management and deadlines

At the first hearing the Court shall decide by order on the admissibility of the claim; however, it may suspend the judgment when there is an on-going investigation before an independent authority on the facts, which are relevant to the decision, or a trial before the administrative judge.

By the same order the Tribunal also determines the course of the procedure and, in particular:

- Settles the expenses;
- Determines the characteristics of the individual rights involved in the action, specifying the criteria according to which the individuals seeking to join are included in the class or must be regarded as excluded from the azione di classe;
- Establishes a peremptory time limit. Such a time limit shall not exceed one hundred and twenty days from the deadline for the public notification;
- Sets the terms and the most appropriate forms of notices to the public, so that those belonging to the class can join promptly. Public notification is a condition for the prosecution of the claim;
- Prescribes measures aimed at preventing undue repetitions or complications in the presentation of evidence or arguments.
- Regulates the preliminary investigation in the manner that it deems most appropriate and disciplines any other procedural matter, except for any formality, which is not essential to the debate.

By the peremptory time limit the plaintiff shall lodge the adhesion contracts at the registry. A copy of the order is sent by the registry to the Ministry of Economic Development, which is in charge of further publication, including on its website.

The order that determines the admissibility of the action can be appealed before the Court of Appeal in the peremptory time limit of thirty days from either its disclosure or notification, whichever occurs first. The Court of Appeal decides on the claim by an order and in closed session no later than forty days from the lodgement of the appeal. An appeal of the admissibility order does not suspend the proceeding before the Tribunal.

[3] Art. 840-quinquies of the Italian Code of Civil Procedure.

The intervention of a third party under Article 105 of the Code of Civil Procedure is prohibited.

d. Expediency (particularly in injunctive cases)

Where there are justified grounds of urgency, the action for an injunction shall be conducted pursuant to Articles 669-bis to 669-quaterdecies of the Civil Procedure Code. The length of the procedure is the same as for ordinary procedures. This means a period of two (2) years to obtain a judgment before the Tribunal.

e. Evidence/discovery rules

There are no rules of evidence particular to collective proceedings and the ordinary rules of civil procedure apply. As regards documentary evidence, there is no general duty to disclose documents to the adverse party. A party can apply for a specific document to be disclosed by the adverse party, provided it is established that:

- Such a document exists.

- It is in the possession of the other party.

- It is relevant to the matter at issue.

Attorney-client privilege applies in civil and criminal proceedings to cover any piece of information and/or documents made available by clients to lawyers (and the other way around).

Witnesses are heard only with the permission of the court and are requested to confirm or deny matters that are submitted to them through detailed questions. Only the judge can submit questions to witnesses. Questions are presented to the judge, in advance, and must be written exactly as they are to be put to the witnesses. The judge must assess the relevance and admissibility of the questions that the parties wish to submit but has no right to amend or supplement the questions and must either reject them or ask them as drafted by counsel.

Experts are not considered witnesses but rather professionals that advise the judge on specific technical issues. The judge can appoint an expert at any time (and irrespective of any application by the parties) for guidance on technical issues. Each party can appoint its own expert (and cover the fees).

f. Interim measures

There are no specific provisions for interim measures in collective proceedings although they are available according to the ordinary rules of civil procedure. Issue of an interim measure is subject to two requirements:

a) the periculum in mora, i.e. the well-founded fear that, pending issue of a ruling on the merits, the right which the interim measure seeks to safeguard may be irreparably harmed;

b) b fumus boni juris, i.e. a prima facie case for the claim.

The application for an interim measure is lodged with the competent court, which as a rule is the same as that handling the main case. The court examines the case briefly, hearing both parties, and then issues the interim measure. The interim measure may also be issued without hearing the other party, if summoning the other party might prevent application of the measure. The content of the interim measures varies according to the type of danger they are designed to avert. In these cases, they mainly consist of an order issued by the Court while the main proceeding is pending. Decisions on interim measures, whether granting or rejecting the application, may be appealed (Section 669-terdecies), on the grounds that they are flawed, or by submitting to the appeal court additional circumstances and grounds not included in the initial application.

g. Court directed settlement option during procedure

The Court does not expressly direct any settlement option during the procedure.

According to paragraph 15 of art. 140bis, “Waivers/releases or settlements between the parties are at no prejudice of the participants who have not expressly consented. The same applies if the action is discontinued or otherwise terminated early”. There is no judicial supervision of the content of the settlement, nor any provision for the prosecution of the action by non-consenting parties. In addition, a provision according to which a settlement, as well an out-of-court settlement with a procedural discontinuation of the action, has no effect on the rights of non-consenting participants. There is no requirement that the settlement be made available to participants, nor that it must cover all participants and not the parties themselves, although this is most likely a matter of debate for the courts.

So far, only one action has been concluded with a settlement. On March 21, 2016, the Tribunale di Roma admitted an action (Art. 140-bis) brought by a consumer association against a telecommunication provider (Wind) for compensation after a blackout of services occurred on June 13, 2014. The certification was revoked and the action discontinued, following an order of 26 May 2016, due to an undisclosed and unsupervised settlement.

It should be noted that a settlement prevents another *azione di classe* being brought (by others) against the same defendant, for the same facts, only if it is made after the term for opting-in contained in the ordinance admitting the action has expired (art. 140-bis, paragraph 14). A settlement made before such term expires should have the only consequence of terminating that specific action.

h. In case of out of court settlements: judicial control

Articles 139-140 ICC does not provide for a judicial control in case of out of court settlement.

4. Available Remedies

a. Type of damages

Only the following remedies are available (Art. 140 ICC):

- a prohibition order against actions damaging to the interests of consumers and users;
- suitable measures to remedy or eliminate the damaging effects of any breaches;
- orders to publish measures in one or more national or local daily newspapers where publicising measures may help to correct or eliminate the effects of any breaches (Art. 140, paragraph 1, letters from a) to c)).

b. Allocation of damages between claimants for compensatory claims/ distribution methods

In the judgment, the Court shall establish the homogeneous calculation criterion to pay these sums.

c. Availability of punitive or extra-compensatory damages and their conditions

On the 5th of July 2017, the Italian Supreme Court has for the first time admitted the recognition and enforcement of a foreign judgement providing for the payment of punitive damages. Until now, in fact, the institution of punitive damages had been denied access in our legal system, as deemed to be incompatible with public order, in consideration of the one and only function – economic damages compensation - that was attributed to civil liability. With this judgment (July 5, 2017, No. 16601), the Supreme Court has overturned the previous orientation and given recognition to the multifunctional nature of the Italian civil liability, whose functions of deterrence and sanction are immanent to the system. This also, in light of the several existing provisions which link the amount of the compensation to other factors than the measure of the damage caused (e.g. the tortfeasor's malice or the severity of the offence).

What is more, the Supreme Court redefines the very concept of public order, traditional limits to the application of foreign laws and decisions in the domestic system, and extends it to encompass the broadest protection of the individual's rights (the victim's ones), pursuable by all the means available and necessary, also in accordance with supranational law.

Still, the Court sets one fundamental condition: to be enforceable, the foreign judgement needs to derive from a legal system where punitive damages are normatively provided, therefore predictable and regulated in such a way that the tortfeasor's procedural and substantial right to defence is not jeopardised.

d. Skimming-off/ restitution of profits

There are no provisions or cases dealing with the restitution of profits his point is not relevant for the action under Article 140 ICC.

e. Injunctions

Article 139 provides for injunctions ruling the action for the protection of the consumers' interests. Art- 140-bis ICC does not provide for injunctions.

f. Possibility to seek an injunction and compensation within one single action

It is not possible to seek an injunction and compensation within one single action.

g. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

Yes, it is possible to act according to the Article 140-bis ICC.

In particular, the azione di classe may follow a determination of infringement/liability by an administrative authority (e.g. a decision of the Italian Competition Authority). These actions are rare for the moment.

h. Limitation periods

The ordinary rules applies to the Article 140-bis: 5 years (Tort Law), 10 years (Contract).

5. Costs

a. Basic rules governing costs and scope of the rules

Art. 91 of the Italian Code of Civil Procedure sets the basic rule concerning cost and fee allocation the Italian civil procedure. At the end of the proceedings, the judge deciding the case on the merits can order the losing party to reimburse the litigation costs incurred by the successful party (Article 91 of the Code of Civil Procedure) at the amount assessed by the judge (the so-called "British Rule"). However, the judge can also decide to set off the expenses when:

- parties are both partly successful; or
- the case involves the examination of complex matters; or
- there are "other serious and exceptional reasons" to be specifically indicated in the judgment.

The "loser pays all rule" also applies in appeal proceedings. This means that if a Court of Appeal issues a judgment in favour of the appellant it has the power to revise the allocation of costs made by lower courts.

b. Loser Pays Principle (and exceptions from it)

The general rule is that the loser pays the successful party's costs (see above).

6. Lawyers' Fees

The Law Decree No. 223/2006 abolished statutory fixed and minimum attorney fees. The system of lawyers' fees is therefore now open on fee arrangements: negotiations between lawyers and clients are unrestricted although the resulting arrangement should be drawn up in writing. Today, fixed fees and hourly rates as well as percentage fees are allowed.

In particular, as far as percentage fees are concerned, pursuant to the recent Law No. 247/2012, lawyers' fees can be based on a percentage of the amount awarded in the case, or on a percentage of the possible outcome for the client. This is not a true "contingency fee" but it is an agreement by which the amount of fees is linked to the result of the case. The Law prohibits for lawyers' compensation to be comprised of a share of the asset which is disputed in the case.

It is important to underline that some lawyers or law firms are specialised in representing consumer associations before the Courts. The ordinary rules apply to this case.

7. Funding

a. Availability of funding

The ordinary rules of civil procedure apply to the *azione di classe*.

The State provides a legal aid system. If a person falls below set financial thresholds, (i.e. if his annual income falls below EUR 10,766.33) they may qualify for free legal assistance and may be exempted from court fees and other charges. In this case, the State pays the costs of the action (namely legal fees and expert fees).

b. Origins of funding (public, private, third party)

Public and private funding.

The claimant is not required to disclose its source of funding to the court at the outset of a case.

The court does not have any jurisdiction to review/approve a funding arrangement.

c. Conditions and frequency of resort to third party funding

Third party funding is not used in Italy.

d. Control of funders (Courts/Legislators/Self-regulation)

Third party funding is not regulated under Italian Law.

e. Claimant-Funder relationship

See above.

8. Enforcement of collective actions/settlements

a. Framework for enforcement

The ruling establishes that the trial is binding upon the members. It is made without any prejudice to the single action of those individuals who do not join *azione di classe*.

b. Efficient enforcement of compensatory/ injunctive order

The ordinary rules of civil procedure apply to the enforcement of the judgment following the azione di classe.

The enforcement of domestic judgments is governed by the Italian Code of Civil Procedure (CPC). Article 282 states that first instance judgments are provisionally enforceable between the parties to the proceedings and this is the general principle of enforceability of a first instance judgment (starting from publication of the judgment). Enforcement proceedings vary depending on the nature of the assets to be attached or seized. Applicants must appoint an attorney to file an application for a declaration of enforceability.

The enforcing court can review the regularity of the service of the judgment only when the debtor raises its non-conformity as a defence. The service must be performed through the court bailiff, court clerk or any other public processer. Generally, the limitation period for enforcing a judgment is ten years.

With respect to injunctive actions (azione inibitoria), the court shall set a deadline for compliance with the obligations set out in the order, and in the event of non-compliance, shall order (at the request of the party who instigated the proceedings or another party) the payment of a sum of money of between € 516 and € 1,032 for each instance of non-compliance or each day of delay, commensurate with the gravity of the breach. In addition, prior to act the consumer association may begin a conciliation procedure at the Chamber of Commerce, Industry, Trade and Agriculture competent for the local area, as well as the other organisms dealing with out-of-court settlement of disputes. In any case, the organisation prepares a conciliation report. In the event of non-compliance with the obligations contained in the conciliation report, the parties may apply to the court by means of proceedings held in chambers so that, having ascertained non-compliance, it may order payment of said sums of money. Such sums of money shall be paid into State funds to be re-allocated by an order of the Ministry of the Economy and Finance to a fund to be set up as part of a special basic budgetary section of the Ministry of Productive Activities to finance initiatives for the benefit of consumers (Art. 139 ICC).

c. Cross border enforcement

Yes, it is available although there are no reported cases.

9. Number and types of cases brought/pending

There are no official statistics on either of the collective mechanisms.

As far as the *azione di classe* under art. 140-bis ICC is concerned, according to the non-official data collected by the Osservatorio Antitrust maintained by the University of Trento[4] since its enactment and as of 12 January 2016 there have been 58 azione di classe filed out of which:

- 18 were declared inadmissible and were rejected
- 10 were declared admissible (3 reached the decision)
- 30 are pending at the admission stage

[4] http://www.osservatorioantitrust.eu/it/azioni-di-classe-incardinate-nei-tribunali-italiani/

There are also eleven reported decisions by the Court of Appeal, mainly reviewing a decision on inadmissibility of courts of first instance.

Finally, there are two reported decisions by the Supreme Court:

- an interlocutory order by the Third Chamber of the Supreme Court requesting the President of the Court to refer a certain legal issue (the possibility to reintroduce an *azione di classe* once it has been declared as inadmissible) to the Joint Chamber of the Supreme Court for an authoritative decision.[5]
- a decision on the difference between the *azione di classe* pursuant to art. 140-bis ICC and the "public class action" of the Law 198/2009.[6]

10. Impact of the Recommendation/Problems and Critiques, including

a. Consequences where no collective redress mechanism is available

Injunctive Collective redress is available through the action ruled by Article 140 ICC. The Recommendation had no impact in this respect.

The azione di classe is scarcely used in practice. There have been only few cases and only a very small portion reached a decision on the merits. Even those cases that reached the decision on the merits, only in one case there were more than 100 members in the class (it is reported that the travel agency that was ordered to pay compensation to these 100+ members, filed a petition for bankruptcy).

b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The action has had a positive outcome in advancing consumer interests in the Italian legal system. Before the entering into force of Art. 140-bis ICC there was no specific action for compensatory collective damages. Only traditional remedies were available, depending upon the circumstances of the case, such as the joinder of parties ('litisconsorzio') and the possibility to bring a civil action into a criminal proceeding. Indeed, the offices of the public authorities and, particularly, the Attorney-General ("Pubblico Ministero") play a major role in protection of consumer rights by 'acting' as substitutes for compensatory collective redress. When private parties join criminal proceedings, they can benefit from the evidence offered by the prosecutors and can thus minimize the burden of persuading the court (a burden that in any event stays with the prosecutor). However, civil claimants' compensation depends on conviction. In criminal actions the standard of proof is different because proof beyond a reasonable doubt is required. In contrast, standards of proof in civil cases are more relaxed - even though, at least in Italy, they are usually stricter than the standard of the preponderance of evidence. In other words, this type of action is not structured to recover consumers' damages in a mass-fault scenario and the outcome has often been insufficient.

c. Incompatibilities with the Recommendation's principles

Standing

Article III. 4 (c) of the Recommendation states that *the entity should have sufficient capacity in terms of financial resources, human resources, and legal expertise, to represent multiple claimants acting in their best interest.*

Consumer associations seriously lack financial and human resources in Italy.

Article III. 7 of the Recommendation provides that *In addition, or as an alternative, the Member States should empower public authorities to bring representative actions*.

Public authorities are not bringing representative actions in Italy.

Admissibility

The Courts apply a strict interpretation of the admissibility requirements. This is clear by analysing the case law. It is of note that, in the few cases that reached a decision on the merits, Italian courts showed a tendency to

[5] Cassazione civile, sez. III, order of 24 April 2015 n. 8433
[6] Cassazione civile, sez. un., 30 September 2015 n. 19453 reported in Foro Amministrativo 2015, II, 11, 2745 (s.m) in Foro italiano 2015, 9, I, 2778 (s.m.)

narrowly interpret the formal requirements for being included in the class, excluding many participants because, for example, they lacked a verification of their signature. As a result, classes have been generally composed of very few members. There has only been one case in which the group comprised more than 100 members (a case decided by the Tribunal of Naples, section XII, 18 February 2013 no. 2195, M. v. W., (2013) 12 Guida al diritto, 16).

Information on a collective redress action

Dissemination methods are very poor in Italy. The public administration (both central and local offices) has no financial resources to fund initiatives to make consumers aware of the action and consumer associations are the only bodies in disseminating information.

Funding

The lack of funding limits the enforcement of consumer interests according to Article 14o ICC.

d. Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

Only authorized association may bring an action (Art. 139 ICC). However, the main restriction for consumers is the cost of the litigation and the lack of funding.

Time and burden of collective actions on courts and parties compared to non-collective litigation

The main shortcomings of this mechanism are the costs of the proceedings and the length of time to obtain a judgment.

Risks of and examples for abusive litigation

Reports indicate few cases of azione di classe. No risks have emerged in the litigation.

Effective right to obtain compensation

See the point before.

II. Sectoral Collective Redress Mechanism against the public administration ('azione per l'efficienza delle amministrazioni pubbliche e dei concessionari pubblici')

1. Scope/ Type

a. Horizontal/ sectoral

The restoration of the correct development of the public function is the ratio of the Legislative Decree of 20 December 2009 No. 198 issued to implement the legislative delegation contained in Law No.15 of 4th March 2009. The Law introduced into the Italian law system the institution of a public collective action against the public administration.

The possibility to pursue the collective action is allowed only against the public administration if citizens, addressees of functions and services, complain inefficiencies of Administration due to the failure to comply with the deadlines provided for the adoption of an administrative act required, or to provide services to an adequate standard.

The action concerns, for example:

- the breach of relevant interests for a plurality of users
- the breach of qualitative and economic standards (i.e.: the obligations contained in the so-called Charter of public services) or the violation of the terms, or
- the failure to issue a general administrative act (in this case, the object of judgment is closely linked to the prior definition of minimum quality levels).

b. Injunctive or compensatory or both

The main goal of the collective action is not the provision of compensation. Rather, the aim is to provide a kind of external judicial control on the compliance, of the Administration, with the levels of quality, cost effectiveness, timeliness imposed on them, ensuring, in practice, the performance of public actions for the benefit of whole community.

2. Procedural Framework

a. Competent Court

The plaintiff must file a complaint with the administrative courts.

b. Standing

The pursuit of the action is provided, for people that have a direct interest, concrete, and corresponding to a situation legally protected, and for associations and committees thereby protecting the interests of its associates.

c. Availability of Cross Border collective redress

The participation of foreign plaintiffs is possible, but rarely used.

d. Opt In/ Opt Out

Principal availability of either/or/both options?

The participation mechanism is opt-in.

e. Main procedural rules

Admissibility and certification criteria

The claimant is obligated, prior to the commencement of the action, to send to the Administration a preventive warning – with which he reveals the collective claim – in order to allow to the P. A. to repair the defects complained

Single or Multi-stage process

Single-stage process.

Case-management and deadlines

The ordinary rules of administrative procedure apply.

Expediency (particularly in injunctive cases)

The ordinary rules of administrative procedure apply.

Evidence/discovery rules

The ordinary rules of administrative procedure apply.

Interim measures

Interim measures are available according to the ordinary rules of administrative procedure.

Court directed settlement option during procedure

The Court does not expressly direct the settlement option during the procedure.

In case of out of court settlements: judicial control

Article 140-bis does not provide for a judicial control in case of out of court settlement.

3. Available Remedies

a. Type of damages

After the delivering judgment it is contemplated the activation of some procedures to individualize people that caused the inefficiency censored (in order to charge their responsibilities in the following disciplinary proceedings); furthermore, is established the transmitting of an office communication to the Italian Corte dei Conti and to the Commission for evaluation, transparency and integrity of the public administration-

The public administration has to comply with the judgment (if the latter continue to be unfulfilling), according to the principles of administrative process. There is no provision for punitive damages under Italian law. It is important point out, for completeness, that there is a strong limitation to pursue this action that expressly prohibits to advance actions for damages against the public administration.

b. Allocation of damages between claimants for compensatory claims/ distribution methods

See above

c. Availability of punitive or extra-compensatory damages and their conditions

See above

d. Skimming-off/ restitution of profits

See above

e. Injunctions

See above

f. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

Yes, it is possible to act also according to Article 139 and Article 140-bis.

g. Limitation periods

The ordinary rules apply to the Article 140-bis: 5 years (Tort Law), 10 years (Contract).

4. Costs

a. Basic rules governing costs and scope of the rules

The ordinary rules of the administrative process apply also with respect to the costs.

b. Loser Pays Principle (and exceptions from it)

See above

5. Lawyers' Fees

See section above

6. Funding

See section above.

7. Enforcement of collective actions/settlements

a. Framework for enforcement

The ordinary rules of administrative procedure apply.

b. Efficient enforcement of compensatory/ injunctive order

The ordinary rules of administrative procedure apply.

c. Cross border enforcement

There are no reported cases of cross border enforcement.

8. Number and types of cases brought/pending

There are no official statistics. Since its introduction, this action has strongly been called into question for its practical limits, especially considering the absence of any effective mechanism for obtaining compensation against the public administration.

9. Impact of the Recommendation/Problems and Critiques, including

Collective redress is available as described at the point before (Art. 139-140 ICC and Art. 140 ICC). The Recommendation had no impact in this respect.

Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The action against the public administration is scarcely used in practice.

a. Incompatibilities with the Recommendation's principles

See above

b. Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

The Courts apply the admissibility requirements in a strict interpretation. This is clear by analysing the case law. See above for further information

Time and burden of collective actions on courts and parties compared to non-collective litigation

See above

Risks of and examples for abusive litigation

Reports indicate few cases. No risks have emerged in the litigation.

Effective right to obtain compensation

See above, there is no right to obtain compensation against a public authority

III. Information on Collective Redress

1. National Registry

There are no official statistics on the collective mechanisms.

As far as the *azione di classe* under art. 140-bis, ICC is concerned, according to the non-official data collected by the Osservatorio Antitrust maintained by the University of Trento (http://www.osservatorioantitrust.eu/it/azioni-di-classe-incardinate-nei-tribunali-italiani/)

2. Channels for dissemination of information on collective claims

Generally, the consumer association advices the consumer(s) about the judicial and non-judicial options to protect their rights and interests. This advice is provided online, off-line (e.g. brochures, newsletters) and in person.

IV. Case summaries

The cases are summarised in two sections according to the competent court, i.e. Italian Supreme Court, Court of Appeal, and Tribunal.

Please note the section concerns, and is limited to, the leading cases under Italian Law, especially those decided after the year 2013.

The most recent cases concern, in particular, the azione di classe according to the Article 140-bis of the Italian Consumer Code.

Italian Supreme Court (Corte di cassazione)

Case name	**Keywords**
Codacons v. Soc. Bat Italia Cass. civ., sez. III, 24.04.2015, n. 8433 **Reference** Responsabilità Civile e Previdenza, 2016, 2, 550 **Subject area** Consumer Law – Health – Tobacco Litigation	Consumer association – Standing – Procedural issues **Summary of claims** The action launched by Codacons focused on compensation of damages due to addictive smoking. The case was focused on the class action brought in 2010 by Codacons and other subjects against British American Tobacco (BAT) in respect of an alleged addiction to smoking generated by the defendant. Therefore, the claimants sought the reimbursement of damages. According to the claimants, American Tobacco engaged in hazardous activities by producing and marketing cigarettes without exercising the duly precautionary measures to protect the smokers' health. On the merits, the trial court rejected the claims in the light of the reasons listed hereunder: (i) the rights enforced did not meet the identical requirement stated under section 2 of art. 140-bis; (ii) there were no proof of the material damage suffered; (iii) the alleged facts occurred before Art. 140-bis came into force. The appellate court accepted the reasoning of the trial court and confirmed the decision (Decision of Appeal issued in January 27.01.2012). The Court of Cassation stated that a class action which had been declared inadmissible by a Court of Appeal, cannot be challenged in the Court of Cassation because it is not a real decision on the merit, but instead a procedural statement (decisione di rito) which does not fall under the Court of Cassation competences .
Dispute resolution method Article 140-bis ICC **Court or tribunal** Cassazione civile	
Cross-border character/ implications, if any No	

Opt-in Yes **Type of funding** Public **Costs** Yes, loser pays principle applies **Abusive litigation** No	**Findings** The Court of Appeal, confirming the decision of the Tribunale on partially different grounds, held that, beside the action being barred ratione temporis, the damages suffered by each participants lacks uniformity and therefore were not "identical". Codacons made a petition to the Supreme Court that, disagreeing with its own earlier decision, in 2015 submitted the matter to the attention of the First President of the Court for a possible decision of the issue by the Joint Chambers, not yet made. Regardless, some of the statements made by the Court in its order are particularly interesting and deserve attention. The Court noted: ' it is not appealing to conclude that the azione di classe is merely a procedural form of judicial protection of rights, alternative and equal to individual action, so that once declared admissible the former, the possibility to bring the latter would prevent to consider a declaration of inadmissibility to have the content of a decision and to be final. If, in fact the Court deems it reductive to read in […] art. 140-bis just an alternative procedural 'form' […]'. **Outcomes** Codacons made a petition to the Supreme Court that, disagreeing with its own earlier decision, in 2015 submitted the matter to the attention of the First President of the Court for a possible decision of the issue by the Joint Chambers, not yet made. Settlement: no Remedy:damages Amount of damages awarded: no Distribution of damages: no

Case name **Codacons v. Intesa Sanpaolo** Cass. civ., sez. I, 14.06.2012, n. 9772 **Reference**	**Keywords** Consumer association – Standing – Procedural issues **Summary of claims** The first azione was against a bank (Intesa S. Paolo) for allegedly illegitimate banking fees.

Foro it., 2012, I, 2304, commented by De Santis, Giust. civ., 2012, I, 1667 **Subject area** Consumer Law – Banking services	**Findings** The action was declared inadmissible both at the first instance and on appeal. The first judge held that the plaintiff's right had not been harmed, and hence lacked standing to bring the ac-tion, regardless of whether other potential future members of the class did in fact suffered a damage. The Court of appeal confirmed and, thus, Codacons petitioned the Corte di cassazione, which, however, held that there is no appeal against the order of inadmissibility by the Court of appeal.
Dispute resolution method Article 140-bis ICC **Court or tribunal** Cassazione civile	**Outcomes** The Court of appeal confirmed and, thus, Codacons petitioned the Corte di cassazione, which, however, held that there is no appeal against the order of inadmissibility by the Court of appeal.
Cross-border character/ implications, if any No	Settlement: no Remedy:damages Amount of damages awarded: no Distribution of damages: no
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Court of appeal (Corte di appello)

Case name	Keywords

Masciullo e altri v. Monte dei Paschi Siena Corte appello Firenze 15 July 2014 **Reference** Foro it, 2015, 9, 2778 **Subject area** Consumer Law – Securities	Consumer association – Standing – Procedural issues – Securities **Summary of claims** As widely known, a substantial portion of US class action go under the label of "securities class action" aimed at settling mass disputes between a company and its scattered shareholding. The Italian azione di classe does not expressly include or exclude securities, but gives standing only to "consumers or users" and limits its objective scope. Precisely, there have been two attempts at bringing securities actions under the Art. 140-bis. The first attempt involved an action brought by a consumer association (ADUSBEF) against one of Italy's major bank (Monte dei Paschi di Siena – MPS), currently experiencing hard times.
Dispute resolution method Article 140-bis ICC **Court or tribunal** Corte di appello Firenze	**Findings** The Court of appeal of Florence, confirming the lower court, held that, when the subject matter of the claim is stock options, potential class members are acting as shareholders and cannot be considered "consumers or users"; the claim, therefore, is outside the scope of art. 140-bis.
Cross-border character/ implications, if any No	**Outcomes** Similarly to Dieselgate and other cases, it is reported that also for MPS other consumer associations are trying to exploit criminal proceedings already pending in Milano, by gathering potential victims and have them participating to the criminal trial with their civil claim for damages.
Opt-in Yes	
Type of funding Public / Consumer assocation	Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name	**Keywords**
Gasca et al. v Intesa Sanpaolo Corte di appello Torino 30 June 2013 **Reference** Corte d'appello Torino, 30 June 2016, at https://www.altroconsumo.it/organizzazione/-/media/lobbyandpressaltroconsumo/images/in-azione/class-action/intesa%20sanpaolo/sentenza%20corte%20appello%202016/sentenza%20nella%20causa%20civile%20d'appello%20r,-d-,g,-d-,%20n,-d-,%201505_2014.pdf (last visited 13 Jan 2017). Subject area Consumer Law – Banking Services	Consumer association – Standing – Procedural issues – Banking Services **Summary of claims** Altroconsumo is another leading consumer's association, which is still particularly active in exploring the potential of the Italian class action. The first azione launched by Altroconsumo was against a major Italian bank. The first part of the script is a common one: the Tribunale di Torino declared the action inadmissible (for lack of identity of the claims, insufficient resources of plaintiff to carry out the proceedings, and denying the standing of the association), while the Corte di appello di Torino allowed it, interpreting the requirement of identity in terms of "homogeneity". In what is one of the first decision on the azione di classe, the court held that the "identity" of the claims has to be referred only to the nature of the objective elements that identify the action, but does not extend to the amount claimed by each participants, which can be different. It also noted that, although the members of the class did not show adequate resources, the participation of a renowned association cleared both the requirement of resources and the guarantee of adequate representation of the interests of the class. **Findings** The action, thus, returned before the Tribunale that in 2014 decided on the merits, holding that in fact the bank had inserted unfair terms in its contracts, but rejected most of the 104 participants to the class due to a defect in their participation documents. In fact, the Tribunale required each participant's signature to be authenticated by a public officer, but many did not do it.
Dispute resolution method Article 140-bis ICC **Court or tribunal** Corte di appelllo di Torino	**Outcomes** In the end, thus, the Tribunale granted the claim of the three "named" plaintiffs and of only three out of 104 participants, ordering the bank to pay sums between € 50,00 and € 430,00 and legal costs of € 36.000,00. The Court of Appeal recently confirmed the decision of the Tribunale. <u>Note</u>:
Cross-border character/ implications, if any	Altroconsumo launched another action against a bank before the Tribunale di Napoli in 2012, held admissible by both the Tribunale and the Corte d'appello, but the action seems to be still pending on the merits

No	before the first-instance judge (Corte appello Napoli 29.06.2012, Banca Campania v. Assoconsum onlus (2013) 1 I Foro it. 342). Settlement: no Remedy: damages Amount of damages awarded: see before Distribution of damages: see before
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name Associazione Codici Onlus e Centro diritti cittadino v Società Trenord **Reference** Corte di Appello di Milano, 3 March 2014 Foro it., 2014, I, 5, 1619 Subject area consumer law, railway sector **Dispute resolution method** Article 140-bis ICC **Court or tribunal** Corte di appello Milano	**Keywords** Consumer association – Standing – Procedural issues - Railways **Summary of claims** The action brought by this association was against a train service provider, Trenord, for a series of issues occurred in December 2012 that led to significant delays and discomfort for travellers. The Tribunal of Milan has declared the action inadmissible in 2013 for lack of homogeneity, but the Court of Appeal overturned such order in 2014 and sent back the case to the first judge for a decision on the merits. The Court's reasoning follows the line of the decision of the Court of appeal of Torino above, specifying that «homogeneity of claims …, during the admissibility phase, in which issues of quantification are not relevant, is satisfied if the source of damages is the same for all and the quantification appears to be possible on the basis of uniform criteria ». The Court adds that the participation to a class action implies a certain degree of "standardisation" of each individual claim, which loses part of its specificity. **Findings**

Cross-border character/ **implications, if any** No **Opt-in** Yes **Type of funding** Public **Costs** Yes, loser pays principle applies **Abusive litigation** No	On the merits, the court rejected the claims, stating that the extra-judicial compensation already offered by Trenord to users (a reimbursement of 25% the price of a train pass) was enough. Interestingly, there had been around 6.130 participants that opted-in over a potential class of around 700.000. It is reported that appeal on the merits is pending. **Outcomes** Two other actions were declared inadmissible, one in Rome the other in Florence. Both aimed at recovering illegitimate VAT paid by users to waste service companies in Italy, but both courts found the action to be outside the scope of art. 140bis and therefore inadmissible. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no

Tribunal (Tribunale)

Case name Martina Marinari, Letizia Benedetta Ghizzi Panizzi (who purchased a Volkswagen car and are represented by Altroconsumo) and Volkswagen AG and others **Reference** Tribunale Venezia, Order issued on 25 May 2017 Reported **The Order** **is accessible at**	**Keywords** Consumer association – Standing – Procedural issues **Summary of claims** The case at issue constitutes the outcome in the Italian legal system of the worldwide scandal so called “dieselgate”, which broke on 18 September 2015 in the United States. The Germany company has admitted to have provided some models of her cars with a defeat device in order to cheat on the real level of emission of the NOX gas during regulatory testing. **Findings**

http://www.foroitaliano.it/wp-content/uploads/2017/05/trib-venezia-.pdf Subject area consumer law, automotive, toxic gas emissions, Certification of the azione di classe	The azione di classe was filed by Altroconsumo alleging the unfair commercial practice perpetrated by Volkswagen AG and its Italian distributor, as already ascertained by a decision of the Italian Competition Authority (ICA) who condemned both defendants to pay a fine of 5 milion euro. The decision of the ICA is PS10211 - VOLKSWAGEN-EMISSIONI INQUINANTI AUTOVEICOLI DIESEL no. 26137 Therefore the class action is requested in order to claim for compensation of the damages allegedly caused by this unfair commercial practice and consisting in the loss of value of the cars purchased plus the moral damages related to the fact that these cars are not ecology friendly as pretended in their marketing.
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Venezia, Sez III, issued the Order under the procedure no. 3711/2016	The Tribunale di Venezia allowed the action having considered the homogeneity of the claimants legal titles, with explicit reference to the decision of the Corte d'appello di Torino 30 June 2016 and the decision of the Corte d'appello di Milano 3 March 2014. In particular, the Tribunale di Venezia affirmed that the requirement of homogeneity is fulfilled whenever the cause of the damage is common to all the participants to the class action and each compensation can be calculated on the basis of an objective criteria (and therefore despite the fact that each individual compensation is not equal to the others). Furthermore the Tribunale di Venezia considered that the claim is not prima facie groundless since Volkswagen has marketed the product with specific green claims pretending to be eco-friendly.
Cross-border character/ **implications, if any** No	**Outcomes** The action is still pending Settlement: No Remedy: No Amount of damages awarded: No Distribution of damages: No
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name	**Keywords**
Mr. Vighenzi (who purchased a Volkswagen car and is represented by Altroconsumo) v. Volkswagen AG and others	Consumer association – Standing – Procedural issues
Reference	**Summary of claims**
Tribunale Venezia, sez. III, 12 January 2016	The case at issue constitutes the outcome in the Italian legal system of the worldwide scandal: the Volkswagen emissions scandal broke on 18 September 2015 in the United States (the so-called "dieselgate"). Basically, the German company was found responsible for having produced cars with higher levels of pollution emission than what publicly provided.
Reported in	**Findings**
Foro it., 2016, I, 1017	The azione di classe was filed by Altroconsumo against an unfair commercial practice perpetrated by Volkswagen AG and sanctioned by the Italian Competition Authority and its Italian distributor consisting in a public declaration of incorrect data about emissions and fuel consumption with reference to the cars produced and marketed since October 2012 by Volkswagen. Furthermore, the claimants asked for the reimbursement of the damages.
Subject area consumer law, automotive, fuel emissions, Certification of the azione di classe	
Dispute resolution method Article 140-bis ICC	In first place, the trial court rejected the action in the light of the fact that the mere purchase of a cars of the same model is not sufficient per se to meet the homogeneity requirement necessary for a class action. Indeed, the Court found a lack of homogeneity between the interests of the plaintiff and those of the members of the class. The Court stated that the monetary damages arising from the alleged unfair commercial practice pursued by Volkswagen are dependent upon several specific circumstances which vary on a case-by-case basis and are not related to the purchase decision (such as, the driving style, the actual state of the vehicle, the road surface, use of safety equipment). Therefore, the Court held that the facts and the type of remedy sought in the lawsuit could not be considered the same for every member of the class.
Court or tribunal Tribunale di Venezia	
Cross-border character/ implications, if any No	Secondly, the alleged misconduct of Volkswagen AG has been deemed by the Court purely speculative and based on generic and unproven assumptions.
Opt-in Yes	Lastly, the Court stated the inadmissibility of the action against Volkswagen Italia, in its capacity of distributor of Volkswagen cars in the Italian market since the lack of any demonstrable link between the knowing misrepresentation of the emissions and fuel consumption data by the parent company (Volkswagen AG) and the Italian distributor.
Type of funding Public	

Costs	Outcomes
Yes, loser pays principle applies	As a consequence of the decision, Altroconsumo has been sentenced to pay two thirds of the defendant legal fees.
Abusive litigation	
No	Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no

Case name	Keywords
Silesu et al. v. Abbanoa S.p.A, Tribunale di Cagliari 17 October 2016	Consumer association – Standing – Procedural issues – Water Supply **Summary of claims**
Reference available at http://www.sviluppoeconomico.gov.it/images/stories/documenti/Ordinanaza_3160-15-class-action-ABBANOA.pdf	Water supply has been the focus of at least three actions (Art. 140-bis). *Tribunale Roma sez. II 02.05.2013, Contucci et al. v. Com. Montenero di Bisaccia, in (2014) 3 Responsabilità Civile e Previdenza 965, and Foro italiano 2014, 1, I, 274.*
Subject area Consumer Law – Water Supply	In the first, some of the citizens of a small village in Molise remained without drinkable water for a few days across 2011 New Year's Eve and asked restitution of fees paid for the water supply service, as well as damages. The court declared the action admissible, and the municipality (Comune) was allowed to join into the proceedings the utilities companies that manage the water supply (that in turn called their insurance providers). On the merits, however, the court ruled that in fact the issue was caused by unforeseen events and that the municipality, which did not have the responsibility for supplying the water, had done all it could to protect its citizens and minimize any damage. Furthermore, plaintiff failed to extend their claims to the other parties (i.e., utilities companies), alt-hough – in any case – according to the judge the claim had no merits.
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Cagliari	
Cross-border character/ **implications, if any**	

No **Opt-in** Yes **Type of funding** Public **Costs** Yes, loser pays principle applies **Abusive litigation** No	A similar action has been promoted also against the Comune di Petacciato for similar facts, but there is no record of a decision on the merits. *Tribunale di Roma, 02.05.2013, Casalanguida v. Comune di Petacciato, available at http://www.consumatoridirittimercato.it/wp-content/uploads/2013/06/Petacciato.pdf* On a different perspective, the Court of appeal of Florence in an action brought by citizens/users against the service utilities company for failure to properly act when a heavy, but expected, snow covered the city in white. There, the court adopted an opposite reasoning: since the contractual relationship is between the city and the service utilities company, while citizens are a third party, then the action was inadmissible. **Findings** The Tribunale di Cagliari has recently declared a second action involving water supply issues admissible. A group of 127 users have gathered together with one law firm to bring proceedings against Abbanoa S.p.a., water service provider, claiming lack or in-sufficient supply of water in the area of Buggerru, Sardinia. **Outcomes** The court admitted the action only for the claim of restitution of all sums paid in the five years before the action and on the equitable damage for lack of availability of these sums. Other claims of damages, which had not been fully described by the plaintiffs, were not "certified" because the court found it impossible to assess the requirement of homogeneity. Decision on the merits is now pending. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no

Case name	**Keywords**

Altroconsumo v. FCA Corte appello Torino, 17 November 2015 Reference Foro it., 2016, I, 1017 Subject area consumer law, automotive, fuel emissions, Certification of the azione di classe	Consumer association – Standing – Procedural issues **Summary of claims** Altroconsumo has launched two actions (Art. 140-bis) against car manufacturers in Italy. The first is against FCA in Torino, where the Court of Appeal, with a very well reasoned decision, overturned the Tribunal order of inadmissibility and directly admitted the action, mandating for the first-instance to carry out the merits phase. Altroconsumo claims that it filed with the Tribunale di Torino 21.031 declarations of participation. **Findings** The action is admissible. **Outcomes** Not available to date Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Torino	
Cross-border character/ implications, if any No	
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name Altroconsumo v. AMA Tribunale di Roma, 10 November 2014 **Reference** available at https://www.altroconsumo.it/organizzazione/-/media/lobbyandpressaltroconsumo/images/in-azione/class-action/iva%20sulla%20tia%20-%20ama%20roma/ordinanza%20di%20inammissibilit%C3%A0/ordinanza%20inammissibilit%C3%A0.pdf **Subject area** Consumer Law – Taxation - VAT	**Keywords** Consumer association – Standing – Procedural issues - VAT **Summary of claims** The action aimed at recovering illegitimate VAT paid by users to waste service companies in Italy, but both courts found the action to be outside the scope of art. 140-bis and therefore inadmissible. **Findings** The action was declared inadmissible. **Outcomes** No. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Roma	
Cross-border character/ implications, if any No	
Opt-in Yes	
Type of funding Public / Consumer association	
Costs	

Yes, loser pays principle applies	
Abusive litigation No	

Case name Altroconsumo v. AMA Tribunale di Firenze, 18 Marzo 2014 10 November 2014 **Reference** Tribunale di Firenze, Altroconsumo v. Quadrifoglio Spa, 18/03/2014, available at https://www.altroconsumo.it/organizzazione/-/media/lobbyandpressaltroconsumo/images/in-azione/class-action/iva%20sulla%20tia-%20quadrifoglio%20firenze/rigetto%20quadrifoglio%20per%20sito.pdf (last visited 13 Jan 2017). **Subject area** Consumer Law – Taxation - VAT	**Keywords** Consumer association – Standing – Procedural issues - VAT **Summary of claims** The action aimed at recovering illegitimate VAT paid by users to waste service companies in Italy, but both courts found the action to be outside the scope of art. 140-bis and therefore inadmissible. **Findings** The action was declared inadmissible. **Outcomes** No. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Firenze	
Cross-border character/ **implications, if any**	

No	
Opt-in Yes	
Type of funding Public / Consumer assocation	
Costs Yes, loser pays principle applies	
Abusive litigation No	
Case name Comitato Tutela del Risparmio v. Banca Carige Spa **Reference** Tribunale di Genova, 13 June 2014 available at http://www.osservatorioantitrust.eu/it/wp-content/uploads/2014/06/Ord-Trib-GE_Comitato-c-Carige-2014.pdf Subject area Consumer Law – Securities	**Keywords** Consumer association – Standing – Procedural issues – Securities **Summary of claims** The Italian class action does not expressly include or exclude securities, but gives standing only to "consumers or users" and limits its objective scope. Amidst uncertainty, there have been two attempts at bringing securities actions under the Art. 140-bis. Both cases have been reported. **Findings** An action was brought against another bank (Carige), but the Tribunale di Genova declared the action inadmissible because the plaintiff lacked standing to sue. Plaintiff in the action was in fact a comitato, a collective association of the bank's shareholders and stakeholders: the court reasoned that a comitato was neither an association for the purpose of art. 140bis, nor it had a valid power of attorney to sue - and discontinued the action. **Outcomes**
Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Genova	

Cross-border character/ implications, if any No	Overall, securities class actions do not seem to fit squarely the current scope of art. 140bis. The courts would hardly allow shareholders' actions, particularly because the azione di classe is limited by the wording of Art. 140-bis to "consumers or users". On the contrary, claims based on financial products or other securities distributed to the consumers may well be found to be within the scope – although the immediate defendant of the action will likely be the bank or institution that sold a specific product to the consumer. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name **Codacons v. Ristorazione di Milano** Tribunale di Milano, 2013 **Reference** Tribunale di Milano, Codacons v. Milano Ristorazione, unreported, 2013, available at http://www.corteappello.milano.it/allegato_corsi.aspx?File_id_allegato=1283 (last visited 13 May 2017). Subject area Consumer Law – Food – Public Schools	**Keywords** Consumer association – Standing – Procedural issues **Summary of claims** The azione di classe promoted by Codacons focused on the services of the canteens of schools in Milano. **Findings** The Tribunale di Milano in 2013 declared the action inadmissible, on a ground that there was no *commonality* among the claims. The Court held that the action was manifestly ungrounded. In short, from the moment that individual issues outweighed common issues, it could not be said that the claims were homogeneous – hence the negative decision.
Dispute resolution method Article 140-bis ICC	

Court or tribunal Tribunale di Milano	**Outcomes** It appears that the order was not appealed and became final. Settlement: no Remedy: damages Amount of damages awarded: no Distribution of damages: no
Cross-border character/ implications, if any No	
Opt-in Yes	
Type of funding Public	
Costs Yes, loser pays principle applies	
Abusive litigation No	

Case name M. v. W. Tribunale Napoli, sez. XII, 18 February 2013 no. 2195 **Reference** Guida al diritto, 2013, no. 16, 12 **Subject area** Consumer Law – Travel package	**Keywords** Consumer association – Standing – Procedural issues – Travel Package **Summary of claims** In the first action decided on the merits, the plaintiffs and the participants to the class (it is not clear how many) claimed that a travel agency breached their rights in relation to an "all-inclusive" travel package. In short, the consumers bought a package specifying certain facilities and services in Zanzibar, but once arrived, they have been hosted for three days in a different facility, of lesser quality. They have also spent the rest in the resort, which – however – was still under construction.

Dispute resolution method Article 140-bis ICC **Court or tribunal** Tribunale di Napoli	**Findings** The Tribunale di Napoli, after admitting the action, ordered the defendant to compensate each of the twelve members of the class admitted to the action a sum of € 1.300,00 (in relation to a package whose cost was € 1.950,00), and a cost order of total € 8.850,00 (for all participants). Soon thereafter, the travel agency filed for bankruptcy.
Cross-border character/ implications, if any No	**Outcomes** It is noteworthy that the court adopted a quite restrictive notion of homogeneity, requiring that both the an and quantum of damages being identical/homogeneous. It, therefore, excluded from the class around thirty consumers who were hosted in a different structure because their damages were found not to be identical as to the quantum (and due to lack of evidence, that such facility was not adequate).
Opt-in Yes	
Type of funding Public	Settlement: no Remedy: damages
Costs Yes, loser pays principle applies	Amount of damages awarded: no Distribution of damages: no
Abusive litigation No	

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