



The Legal 500 Country Comparative Guides

Italy

CLASS ACTIONS

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in Italy.

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ITALY

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

Italian law provides for three main types of class actions and collective redress mechanisms.

Class actions governed by Articles 840-*bis et seq.* of the Code of Civil Procedure (Royal Decree no. 1443 of 28 October 1940) can be brought by representative organisations or by individual members of the class against enterprises or bodies managing public services or public utilities. Such class actions can be aimed at either compensatory or injunctive relief:

- i. compensatory class actions can be brought in relation to the breach of homogeneous individual rights ("*diritti individuali omogenei*") resulting from acts or omissions incurred by the defendant(s) in the course of their activities. By such class actions, plaintiffs can seek a declaration of liability as well as compensation and/or restitution in the interest of the class members. Such class actions consist of two main phases: a preliminary phase and a decision-making phase. In the preliminary phase, the court rules on the admissibility of the action. The action is ruled admissible if (i) it is not manifestly unfounded, (ii) there is no conflict of interests between the claimant(s) and the defendant(s), (iii) it concerns homogeneous individual rights, and (iv) the claimant(s) appear(s) capable of taking adequate care of the latter. If it admits the action, the court must define the relevant class and set a time limit for class members – who are represented by a court-appointed class representative – to join the action. Following any joinders and the required evidence gathering, the court rules on the class members' claims, by liquidating the amounts owed to each original individual plaintiff and by setting uniform liquidation criteria for the other class members who have

joined in the action. In this latter instance, the court sets a deadline for the approval of a detailed liquidation schedule by the parties, failing which liquidation is made by the court in respect of all members of the class;

- ii. injunctive class actions seek the issuing of a cease-and-desist order, by which the court orders the defendant(s) to desist from a conduct harming the interests of a number of natural or legal persons. Procedure is simplified and more flexible compared to compensatory class actions, in that the course of the proceedings is largely determined by the court itself.

National or cross-border representative actions governed by Articles 140-*ter et seq.* of the Consumer Code (Legislative Decree no. 206 of 6 September 2005) can be brought by registered Italian or EU consumer organisations against natural or legal persons acting in the course of their trade, business, craft or profession, in relation to breaches of specific EU-derived consumer protection provisions. Such class actions can be aimed at either compensatory or injunctive relief, and were introduced in 2023 by way of transposition of Directive (EU) 2020/1828.

Finally, the so-called actions for the efficiency of public administrations (also known as public class actions), governed by Legislative Decree no. 198 of 20 December 2009, can be brought by users or consumers of public services, holding legally relevant and homogeneous interests ("*interessi giuridicamente rilevanti ed omogenei*"), or by representative organisations thereof, against public administrations or concessionaires of public services, seeking a court order that compels the defendants to abide by its statutorily or regulatorily mandated service performance standards, or to set service performance standards as required by law or regulation.

2. Who may bring class action or collective

redress proceeding? (e.g. qualified entities, consumers etc)

Class actions governed by the Code of Civil Procedure can be brought by natural or legal persons that are individual members of the relevant class, and/or by non-profit organisations or associations whose statutory purposes include the protection of the relevant homogeneous individual rights (“*diritti individuali omogenei*”) and that are registered on a list maintained by the Italian Ministry of Justice.

National or cross-border representative actions governed by the Consumer Code can be brought by one or more:

- i. nationally representative consumer or user associations based in Italy that are registered on a list maintained by the Italian Ministry of Enterprises and Made in Italy;
- ii. nationally representative consumer or user associations based in another EU Member State that are registered on the list maintained by the EU Commission pursuant to Article 5, paragraph 1, of Directive (EU) 2020/1828;
- iii. national public authorities designated by a EU Member State as responsible for enforcing EU consumer protection legislation, as defined by Article 3(6) of Regulation (EU) 2017/2394.

Actions for the efficiency of public administrations can be brought by natural or legal persons that are users or consumers of the relevant public service, and/or by associations or committees formed by such users or consumers.

3. Which courts deal with class actions or collective redress proceedings?

The first-instance stage of class actions governed by the Code of Civil Procedure, as well as of national or cross-border representative actions governed by the Consumer Code, is generally dealt with by the specialised business section of the ordinary court (*tribunale*) of the place where the defendant maintains its registered office. There are 22 first-instance courts in Italy with a specialised business section (namely those of Ancona, Bari, Bologna, Bolzano, Brescia, Cagliari, Campobasso, Catania, Catanzaro, Florence, Genoa, L'Aquila, Milan, Naples, Palermo, Perugia, Potenza, Rome, Turin, Trento, Trieste and Venice). In antitrust matters, however, only the specialised business sections of the courts of Milan, Rome and Naples have jurisdiction. Appeals are dealt with by the relevant court of appeals (*corte di appello*) and, as the court of last

resort, by the Supreme Court of Cassation (*Suprema Corte di Cassazione*).

The first-instance stage of actions for the efficiency of public administrations is dealt with by the regional administrative court (*tribunale amministrativo regionale*) of the place where the defendant maintains its registered office. Appeals are dealt with by the Council of State (*Consiglio di Stato*) and, as the court of last resort in matters of jurisdiction, by the Supreme Court of Cassation.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

As regards class actions governed by the Code of Civil Procedure, no restrictions as to subject matter apply besides the requirement that uniform relief is sought against a breach of homogeneous individual rights (“*diritti individuali omogenei*”) – to be understood as protected legal interests that are uniformly harmed by one unlawful conduct or pattern of conduct – or, in the case of injunctive class actions, against a conduct harming the interests of a number of natural or legal persons. Class actions governed by the Code of Civil Procedure can, therefore, rely on statutory as well as contractual or non-contractual causes of actions.

Differently, national or cross-border representative actions governed by the Consumer Code can solely rely on the alleged breach of one or more of the EU-derived consumer protection provisions listed in Annex II-septies of the Consumer Code. These provisions concern, for instance, liability for defective products, unfair terms in consumer contracts, air carrier liability in respect of the carriage of passengers and their baggage, food safety, unfair commercial practices and personal data protection.

Finally, actions for the efficiency of public administrations can solely rely on the alleged failure to implement service performance standards as required of the defendant by force of statute or regulation.

5. Are there any limitations of types of claims that may be brought on a collective basis?

Compensatory class actions governed by the Code of Civil Procedure are aimed at the issuing a declaration of liability on the part of the defendant(s) as well as compensation and/or restitution.

Injunctive class actions governed by the Code of Civil Procedure are aimed at the issuing of a cease-and-desist order by the court.

Similarly, national or cross-border representative actions governed by the Consumer Code can be aimed at either compensatory or injunctive relief. Compensatory relief can consist of either the payment of a sum of money, repair, replacement, price reduction, rescission of the contract or reimbursement of the price paid, depending on the EU-derived consumer protection provisions that are relevant to the case. Injunctive relief consists of a cease-and-desist order.

Finally, actions for the efficiency of public administrations are aimed at the issuing of an order by the court, compelling compliance by the relevant defendant.

6. How frequently are class actions brought?

Until recently, class actions governed by the Code of Civil Procedure were seldom brought in Italy. The public online platform of the Italian Ministry of Justice documenting all such class actions brought since 2019 currently lists only 39 class actions. Of these, however, 22 were brought in 2023 alone, with a marked increase from those brought in the previous year (6).

We are not aware of any national representative action governed by the Consumer Code having been yet brought in Italy.

Actions for the efficiency of public administrations are quite rare.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

The current Italian scenario of class action and collective redress litigation suggests the following as the top three emerging business risks:

- i. securities and truth-in-lending class actions, which until recently were virtually unheard of in Italy, have been brought against several banking and financial intermediaries, as well as against a cryptocurrency trading platform, with allegations of prospectus misrepresentation and/or mis-selling;
- ii. there has been a marked increase in class actions and collective redress litigation concerning unfair commercial practices,

particularly in class actions being brought following the issuance of administrative sanctions by the Italian Competition Authority (AGCM) and taking advantage of the AGCM's own findings of fact and law (please see the answer to Question 19 below);

- iii. class actions and collective redress proceedings relating to ESG matters are emerging in both the environmental and social domains (please see the answer to Question 20 below).

8. Is your jurisdiction an "opt in" or "opt out" jurisdiction?

Italy is an opt-in jurisdiction.

Members of a class may join a compensatory class action governed by the Code of Civil Procedure, or a national or cross-border representative action governed by the Consumer Code, within a court-set deadline after the court admits the class action or after the court rules on the class members' claims in favour of the latter. Members of the class join in the action by filing a standard online application form established by a decree of the Italian Minister of Justice.

Differently, members of a class may join an action for the efficiency of public administrations up to 20 days before the first hearing in the case, by serving the other parties with a brief of appearance and then filing it with the court.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

Class actions governed by the Code of Civil Procedure, as well as representative actions governed by the Consumer Code, are started by filing an application with the competent court. The court then sets the date for the first hearing of the parties, by an order which the applicant must serve on the defendant(s) alongside the application. The application and the order are published by the court's clerk on a public online platform of the Italian Ministry of Justice. No class actions or representative actions can be brought on the basis of the same fact pattern and against the same defendant(s) once 60 days have elapsed from the day on which the application and the order are so published.

Actions for the efficiency of public administrations can only be brought if the plaintiff(s) has served prior notice on the relevant public administration(s) or concessionaire(s) of public services, demanding

compliance by a deadline of no less than 90 days. The plaintiff(s) can then serve and subsequently file an application with the competent court, in which they must state that the defendant(s) have not fully remedied their state of non-compliance within the allotted 90 days or more. The application must be published on the defendant(s)'s website(s), and must be notified by the court's clerk to the Italian Minister for Public Administration.

10. What remedies are available to claimants in class action or collective redress proceedings?

Please see the answer to Question 5 above.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

Italian law does not contemplate punitive or exemplary damages.

Please note, however, that following a successful compensatory class action governed by the Code of Civil Procedure, the court must order the defendant(s) to pay a special reward to the class representative and to each of the lawyers representing the successful class members. Such amounts are determined by the law as a percentage (depending on the number of class members) of the total compensation or restitution awarded to the class members, and can be raised or lowered up to 50 percent at the court's discretion.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

Italian law does not provide for the use of juries in civil proceedings, and class actions or collective redress proceedings are no exception.

13. What is the measure of damages for class actions or collective redress proceedings?

Damages in class actions and collective redress proceedings are awarded on the basis of the "full compensation" principle. Accordingly, the amount of damages awarded to each class member is intended to place the latter in the economic position it would have been if not for the misconduct on the defendant(s)'s

part, net of any contributory negligence by the relevant class member and with no room for punitive or exemplary damages.

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

There are no ad hoc rules on jurisdiction regarding class actions or collective redress proceedings. Accordingly, jurisdiction is determined according to the generally applicable provisions of EU and Italian law, including Regulation (EU) 2012/1215, as interpreted by the EU Court of Justice and the Italian courts (most importantly, the Supreme Court of Cassation), even in the event of a foreign defendant.

Regarding the separation between ordinary jurisdiction and administrative jurisdiction, it has been suggested by some authors that it should not be possible to bring class actions before the ordinary courts if the subject matter thereof falls within the domain of the so-called exclusive jurisdiction of the administrative courts, i.e. subject matters that would ordinarily fall under the jurisdiction of the ordinary courts but are expressly reserved to the administrative courts by law. This view is, however, disputed.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

In class actions governed by the Code of Civil Procedure, there are no limits on the nationality or domicile of claimants that are individual members of the relevant class. Differently, non-profit organisations or associations cannot act as claimants in such class actions if their registered office is outside the European Union.

In national or cross-border representative actions governed by the Consumer Code, claimants must be based in the European Union as explained in the answer to Question 2 above.

Finally, there are no specific limits on the nationality or domicile of claimants in actions for the efficiency of public administrations.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

Class actions or collective redress proceedings having a cross-border dimension may, like any other Italian civil proceedings having a cross-border dimension, be impacted by international conventions or EU legislation on jurisdiction, service of process, conflict of laws, evidence, and recognition or enforcement of foreign judgments.

Having said this, we have not observed specific impacts by international laws on the conduct of class actions or collective redress proceedings in Italy. This may partially be due to the fact that the Italian legislation on the matter was largely consistent with the principles set out in the EU Representative Actions Directive even before the latter was formally transposed in Italy.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

Yes.

Class actions governed by the Code of Civil Procedure can be settled on a proposal by the court or by the class representative. While the court can issue a settlement proposal up to the first hearing in the case, the class representative and the defendant(s) may agree on a settlement proposal even after the court has ruled on the class members' claims. In both cases, the settlement proposal must be published by the court's clerk on a public online platform of the Italian Ministry of Justice, and members of the class may accept or reject such proposal within 45 or 15 days of publication, respectively. No answer implies acceptance, while rejection only counts as such if the relevant class member provides a formal explanation for it.

National or cross-border actions governed by the Consumer Code can be settled on a proposal by either the court or on a joint proposal by the claimant(s) and the defendant(s). In both cases, the settlement proposal must be made before the first hearing in the case.

There is no formal mechanism for the collective settlement of actions for the efficiency of public administrations.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Yes.

In class actions governed by the Code of Civil Procedure, once 45 days have elapsed from the publication of the

settlement proposal (please see the answer to Question 17 above), the court, having regard to the interests of the class members, must issue an order by which it either authorises or refuses to authorise the entering into of the settlement proposal by the class representative on behalf of the class. Prior rejections of the proposal by class members (please see the answer to Question 17 above) are not binding for the court, but class members who rejected the proposal are not bound by the settlement if they confirm their rejection by an online filing within 15 days of publication of the above-mentioned order in the public online platform of the Italian Ministry of Justice.

Similar rules apply to the settlement of national or cross-border actions governed by the Consumer Code. In this context, however, authorisation of a settlement by the court is subject to the explicit additional requirement that such settlement does not conflict with any mandatory provisions of law and does not include clauses or obligations that are, in effect, unenforceable.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

The only general provision in this respect is Article 840-ter of the Code of Civil Procedure, which provides that the court may abstain from ruling on the admissibility of a compensatory class action if an investigation on the relevant facts is pending before an independent administrative authority (*autorità amministrativa indipendente*).

Specific provisions exist in the realm of antitrust law.

In this latter regard, Article 7 of Italian Legislative Decree no. 3 of 19 January 2017 (transposing Directive 2014/104/EU) provides that final decisions by the Italian Competition Authority (AGCM) finding a violation of antitrust law have binding effect on all Italian civil courts regarding the existence and unlawfulness of the relevant anticompetitive conduct.

This provision clearly facilitates any civil actions, including class actions, aimed at compensation and/or restitution arising from violations of antitrust law, since the court can rely on the AGCM's findings regarding the alleged anticompetitive conduct.

The above civil actions, including class actions, are further facilitated by Articles 4, 5 and 6 of Legislative Decree no. 3, which provide that the court:

- i. may compel the production of evidence

contained in the investigation files of the AGCM or of another national competition authority of the European Union, if no party to the proceedings is able to submit such evidence;

- ii. may admit evidence obtained by a party through access to the investigation files of the AGCM or of another national competition authority of the European Union;
- iii. may request the AGCM to submit appropriate guidelines on the quantification of damages arising from the relevant anticompetitive conduct.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

To our knowledge, class actions and collective redress proceedings brought in Italy to date include the following concerning ESG matters:

- i. a representative action brought in 2016 by a consumer organisation against the mother company and the Italian subsidiary of the Volkswagen Group, relating to the notorious "Dieselgate" scandal. The plaintiff organisation's compensatory claims concern, *inter alia*, alleged greenwashing by the Volkswagen Group in respect of the emissions performance of its vehicles. These claims are framed as statutory breaches of Italian legislation banning unfair commercial practices. The proceedings were settled out of court in May 2024;
- ii. a class action brought in 2022 by an anti-discrimination organisation, on behalf of a flight attendant, against ITA Airways, seeking injunctive relief in connection with alleged gender-based discrimination in the defendant's hiring practices. The plaintiff's claim is framed as a statutory breach of Italian legislation banning gender-based discrimination;
- iii. a class action brought in 2023 by residents of the southern city of Taranto against the owner and the operator of the Taranto steel mill, claiming compensation for damages allegedly resulting from the air and ground pollution caused by the steel mill's operations. The plaintiffs' claim is framed as a tortious breach of their rights to health and to respect for private and family life, as enshrined in the Italian Constitution, in the European

Convention on Human Rights and in the EU Charter of Fundamental Rights.

21. Is litigation funding for class actions or collective redress proceedings permitted?

Italian law does not prohibit litigation funding, but neither does it regulate it extensively.

However, litigation funding falls under the purview of specific provisions of the Consumer Code on national or cross-border representative actions, which:

- i. in setting out the requirements to be met by entities wishing to bring cross-border representative actions, require any such entity (i) to include in its articles of association rules ensuring the entity's independence and the absence of influence from persons other than consumers, particularly from traders who have a commercial interest in bringing representative actions, (ii) to include in its articles of association appropriate measures preventing and resolving any conflicts of interests that may arise between the entity, its funders and the consumers, and (iii) to disclose on its website (or by other appropriate means) information on its sources of funding allowing an assessment on potential conflicts of interests;
- ii. require the above entities to disclose in their application what funding has been provided or promised by third parties for the purposes of the action;
- iii. provide that the action is inadmissible if it has been brought in a state of conflict of interests, particularly if it appears that the person funding the action is a competitor of, or dependent on, the defendant; the court may declare inadmissibility on this ground of its own motion, provided it has set a deadline for the claimant to put into place alternative funding arrangements and the claimant has failed to comply.

More generally, it is advisable for entities interested in litigation financing in Italy to eliminate, from their standard contracts, clauses aimed at transferring the ownership of the things or claims in dispute to the financing entity as a security before the commencement of the litigation, since this circumstance, if revealed during the proceedings, could lead to the dismissal of the claim on the merits owing to lack of ownership of the disputed right.

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

Italian law prohibits arrangements whereby lawyer's fees are tied, in whole or in part, to the amount recovered on behalf of the client. Accordingly, such arrangements are null and void as a matter of Italian law. This also applies to class actions or collective redress proceedings.

Conversely, it is permissible under Italian law:

- i. to tie lawyer's fees, in whole or in part, to the amount in dispute (e.g. as a percentage thereof), without regard to the eventual outcome of the dispute;
- ii. to agree on an additional fee to be paid by the client in the event of a favourable outcome of the dispute (the so-called *palmario*), provided that such fee is not tied to the amount recovered.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

Yes. Italian courts generally award costs to the winning party on the basis of the "loser pays" principle, according to standard criteria for liquidation established by a decree of the Italian Minister of Justice.

In addition, with specific regard to class actions or collective redress proceedings, please see the answer to Question 11 above.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

No proposal for the reform of class actions or collective redress proceedings is currently being discussed in the Italian parliament.

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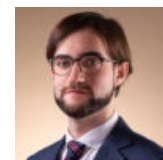
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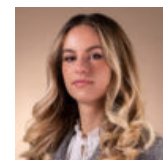
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