

Italian Senate approves bill introducing class action: Debate is heating up.

By Avv. Felix Hofer¹

Uproar in the Italian public opinion as the Senate, while debating the annual financial law, approved - on November 16th, 2007, by a two vote's majority - an amendment (Section 53-bis) to the bill's original draft text, meant to enforce collective protection for consumers by introducing a class action system.

The amendment, if confirmed by the Chamber of the MPs, would introduce significant modifications to the Consumer Code in force (Legislative Decree no. 206 of September 6th, 2005); in their key aspects the new provisions would:

- while maintaining individuals' right to access courts in order to defend their rights, allow consumer protection associations to take collective action before the court of the place where the defendant has its residence (or legal seat) for claiming reimbursement or damage compensation with respect: to infringement of certain (one-sided or standard form) contracts, to unfair commercial practices, to acts of unfair competition (when performed by carriers/providers of nationwide services) and to illicit conduct,
- provide that such collective action would interrupt prescription deadlines for individuals,
- would entitle courts to establish the criteria based on which damages compensation awarded will have to be transferred to individuals,
- admit settlement agreements stipulated between the parties under the court's supervision,
- entitle courts to establishing, in case of claim acceptance or settlement agreement, an arbitration chamber, accessible by individual consumers, as well as to ordering broad public notice about the judgment issued,
- specifically with respect to one-sided or standard form contracts, imply – when misleading information to general public is found, that all individual contracts concluded during the period of diffusion of the incorrect messages are automatically void,
- while confirming the general (even if not automatically binding) principle according to which the losing party is charged also with the winner's legal costs, limit the winning party's attorney fees to a maximum of 10% of the global amount awarded in damages.

The amendment's - unexpected - approval led to a general outcry and heavy protest from many sides and interest groups:

- Consumer Protection Associations didn't fail to stress to importance of the new provisions, but felt that they had to be considered just as a first step towards even more effective enforcement measures (say 'punitive damages').

¹ **Felix Hofer** is a founding and naming partner of the Florence (Italy) based law firm Hofer – Loesch – Torricelli; he can be contacted at the following E-mail address: fhofer@hltlaw.it.

- The National Industry Entrepreneurs Association immediately predicted a simply disastrous perspective for its members' competitiveness and described the amendment as an obvious "act of hostility" towards entrepreneurship.
- The President of a National Lawyers Association referred to a "blitz" action, ignoring a number of legal issues and technical concerns flagged to the legislators' attention by legal experts.
- The representative of the National Association of Young Lawyers ironically referred to wrong terminology considering the proposed "class action" as a "false action".
- The Minister of the Department of Justice felt that the Chamber of MPs would have to look carefully into the issue in order to avoid national investments being directed abroad.
- On the contrary the Minister of the Department for Economic Development stated that in his view the new provisions would have a positive impact.
- Some less involved and more balanced commentators noted that the new bill – though probably anticipating a common position under discussion at the EU level – actually was simply replicating class action systems already in force in several other European countries.

All but easy to predict how this bill will pass the Chamber of MPs' examination. For sure the path will be crowded with obstacles and intense discussion.

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