

JONES
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CLASS ACTIONS WORLDVIEW

A Study of Trends Around the Globe

PART II – ITALY AND SPAIN • OCTOBER 2023

Part II: Class Actions in Italy and Spain

Although class actions have been common in the United States for decades, they have not been as widely used in the rest of the world. The situation and risks remain in flux, however, as more countries have renewed momentum to enact class actions or class action-like procedures—sometimes without key procedural safeguards that exist in U.S. class proceedings. Jones Day has one of the largest and most successful groups of defense-side class action practitioners in the world. Building on the experience of litigators in 40 offices on five continents, this Guide examines new developments and risks in class action procedures around the globe (in particular, in Argentina, Australia, Belgium, Brazil, China, England and Wales, France, Germany, Italy, Japan, Mexico, Spain, and The Netherlands), and assesses the common trends and differences among respective national laws. It is our goal that, armed with these insights on class action trends, companies operating across the world can understand, assess, and manage class and collective litigation risks in the global marketplace.

In Part II, we examine class actions activities in Italy and Spain. Italy is one of the frontrunners in the implementation of the EU Representative Action Directive, while Spain entitles third parties or groups of affected people to bring Collective Actions. This is the second installment of an in-depth, multipart series on class actions that will spotlight a wide array of jurisdictions worldwide.

Previously in series:

[Part I: The United States and the European Union](#)

Upcoming in the series:

Part III: Australia, Germany, and France

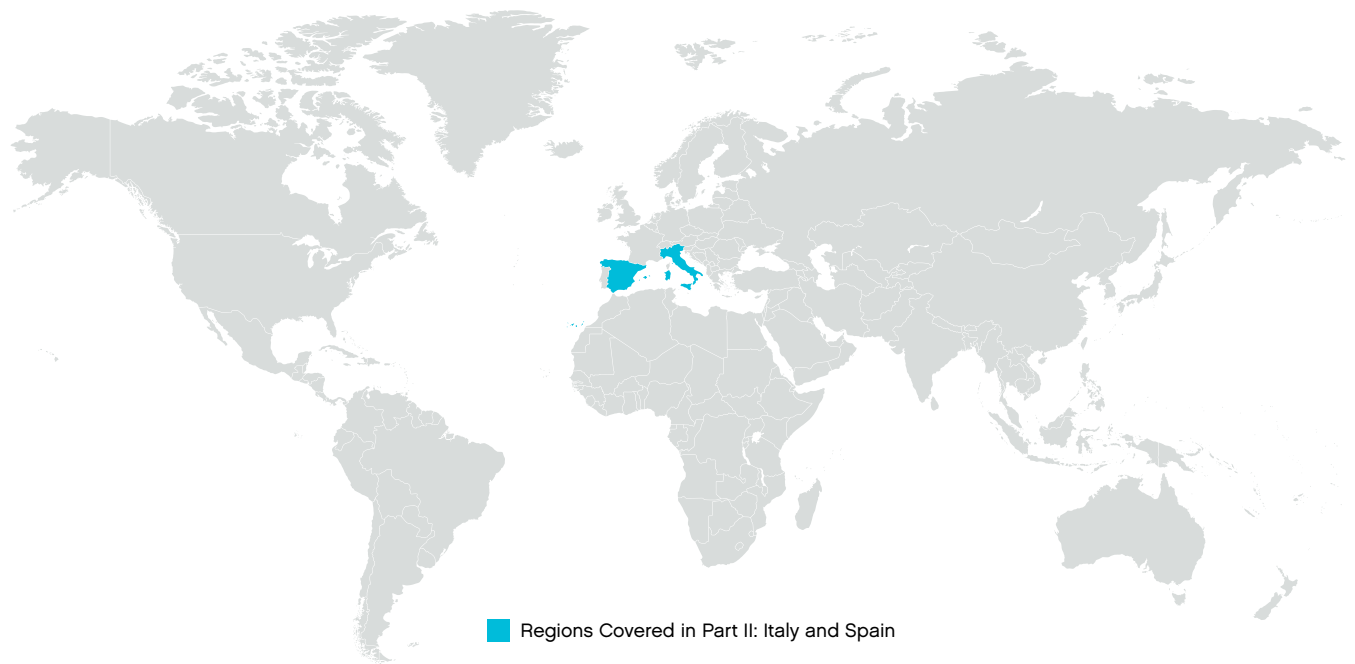
Part IV: China, Japan, Belgium, The Netherlands, and England and Wales

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A. BRIEF OVERVIEW AND HISTORY

Italy-based class actions provide unique litigation opportunities as they build on an *ad hoc multi-layered and ever-evolving system* of legal norms. The general notion of “class actions” indeed encompasses three legal tools, which coexist as they serve distinct scopes of application and pursue different goals: (1) (Private) Class Actions; (2) Representative Actions; and (3) Administrative Class Actions. In sum:

1. **(Private) Class Actions**¹ aim at protecting the *homogeneous individual rights* of the members of a certain class against enterprises/undertakings or entities in charge of public services or public utilities, with respect to misconducts that occurred from May 19, 2021, onward² while rendering their respective activities. Today, this is considered the very “general” class action tool (*lex generalis*) in that it establishes the key collective redress principles under Italian law and features a broad scope of application. This is consistent with the legislative choice to make it part of the Italian Code of Civil Procedure.
2. **Representative Actions**³ aim at protecting *consumers’ collective interests* arising from the violation of certain EU regulations and directives (as implemented in Italy), effective June 25, 2023.⁴ Today, this is considered a subset of the (Private) Class Action (*lex specialis*), which is included in the Italian Consumer Code. (Private) Class Actions and Representative Actions together form a “*double track system*.”
3. **Administrative Class Actions**⁵ aim at protecting *collective rights against public administrations* and concessionaires of public services that deviate from certain pre-set qualitative and economic standards, or violate the rules governing their operations, effective January 15, 2010. Today, this is considered a self-standing redress, with limited interplay with the “double track system,” if at all, as it embodies the constitutional principle of “quality performance” and “impartiality” that the Public Administration must ensure (Art. 97 of the Italian Constitution).

All the above tools provide for *opt-in* mechanisms.

B. TYPES OF CLAIMS AND SCOPE OF LAWSUITS THAT CAN BE FILED

Each class actions tool is designed to pursue specific claims.

(Private) Class Actions. Art. 840-*bis* of the Italian Civil Procedure Code stipulates that individual homogeneous rights, in contract and/or in tort, may be judicially enforced by means of class actions governed by the new Title VIII-*bis*. While the law-maker did not elaborate on the notion of “individual

homogeneous rights,” generally these are *rights arising from the very same contractual breach or tortious event, which may give rise to a harm-type across the class that may be determined via uniform criteria*. Virtually, any right may form, under the circumstances, a *homogenous right* eligible for (Private) Class Action protection, unless a special tool (such as the Representative Action or the Administrative Action if pre-conditions are met) governs that specific case. The redress tools comprise *damages or restitution* claims to remedy a homogenous right violation, and *injunctions* to impede the (further) perpetration of unlawful conducts.

Representative Actions. Pursuant to Art. 140-ter of the Italian Consumer Code the collective interests of a number of consumers who were or may be harmed by a violation of certain legal provisions devised to govern the subject matters listed in Annex II-septies thereof—i.e., certain EU Regulations and/or EU directives, as implemented—may be pursued via Representative Actions. “Collective interests” echo the well-established notion of “diffused interests,” which indicate interests that belong collectively, rather than individually only, to anyone part to a certain category or community and may potentially include all the citizens and residents of Italy. When collective interests are at stake, the scope of application of Representative Actions strictly hinges on Annex II-septies, as incorporated in the Italian Consumer Code, which covers, i.a., the following: unfair trade practices, consumer goods warranties, misleading advertising, transportation, electricity, gas, tourism, e-commerce, digital services, data protection, product and food safety, insurance and investment funds. The redress tools comprise *injunctive relief* to inhibit the continuation of an unlawful conduct, *compensatory damages*, and *restitution* claims to remedy a collective interest violation.

Administrative Class Actions. According to Art. 1, paragraph 1 of Legislative Decree no. 198/2009, administrative class actions seek to restore “the correct course of the administration’s duty or the correct provision of a public service” when a *direct, tangible, and current violation of identical material interests occurs*. These actions are indeed also known as “collective actions for the effectiveness of the action of government entities and the providers of public services.”

C. CLASS REPRESENTATIVES AND STANDING TO SUE

Each class actions tool may be invoked by and against specific persons.

(Private) Class Actions. The standing to sue is especially broad as in principle *anyone holding an individual homogenous right* that may form a class, may bring a (Private) Class Action, be they consumers and/or users, professionals, enterprises, trade associations, etc. Associations or organizations, whose statutory objective includes the protection of homogeneous rights, may also initiate (Private) Class Actions, provided that they are enrolled in a specific public register established by the Ministry of Justice. As to the standing to be sued, (Private) Class Actions may be brought against business entities or entities providing public services or public utilities limited to conducts put forth in the course of their activities. It is debated whether professionals may be sued under this tool.

The redress tools comprise *injunctive relief* to inhibit the continuation of an unlawful conduct, *compensatory damages*, and *restitution* claims to remedy a collective interest violation.

Representative Actions. The standing to sue is significantly limited compared to (Private) Class Actions. Pursuant to Art. 140-*quater* of the Italian Consumer Code, *only*: (i) *nationally representative consumer and user associations* (included in a *special register* held by the Ministry of Enterprises and Made in Italy); (ii) *independent public bodies* in charge of the application of European Union rules on the protection of consumer interests; and (iii) public and private bodies representing the interests of consumers in another Member State (enrolled in a *special register* held by the European Commission), may file Representative Actions *before Italian courts* (aka “*Domestic Representative Actions*”). Pursuant to Art. 140-*quinquies* the same entities, if they meet specific experience, resources, independence, and transparency requirements and are registered in a special section of the register held by the Ministry of Enterprises and Made in Italy, may bring cross-border Representative Actions *before the competent courts of another Member State* (aka “*Cross-Border Representative Actions*”). This means that these entities only may bring Representative Actions on behalf of consumers, irrespective of having received any specific power or mandate from consumers, while consumers themselves do not have an individual right to seek redress via this tool. However, consumers may in any case bring individual actions, i.e., the (Private) Class Action (this may cause a risk of overlapping between judicial tools). As to the standing to be sued, Representative Actions may be *filed against any “professional person,”* defined as any natural or legal person, public or private, acting, including through another person, for purposes relating to his or her trade, business, craft or profession in order to obtain injunctive or compensatory relief. This is a particularly broad notion, which comprises any enterprise, public or private, including entities operating public services or utilities.

Administrative Class Action. Administrative class actions may be filed by consumers, users or any association representing their interests. Governmental entities, public bodies, and providers of public services can be sued as defendants, while independent administrative authorities, jurisdictional bodies, legislative assemblies, constitutional bodies, and the Presidency of the Council of Minister are by law excluded from the pool of possible defendants (i.e., passive standing limitations).

D. KEY PROCEDURAL REQUIREMENTS

Each class actions tool features different procedural requirements.

(Private) Class Actions. (Private) Class Actions encompass three phases: (i) the (procedural) decision on admissibility; (ii) the decision on the merits (an); and (iii) the liquidation of damages (quantum). The first two phases are decided by the court, while the last one is decided by a delegated judge, who is specifically appointed by the court in the third phase.

- **As to the first phase:** According to Art. 840-*ter* of the Code of Civil Procedure, once a (Private) Class Action is filed by means of a petition with the competent Specialized Business Division of the court where the defendant is geographically located (based on e.g., its registered office, residence, or domicile), the presiding court renders a summary proceedings decision on the admissibility of the case in 30 days of the first hearing. The presiding court may stay the proceedings if the same subject matter is under the scrutiny of administrative courts or under the purview of an independent authority. The court declares the class action inadmissible if: (i) the action is manifestly ungrounded; (ii) the concerned rights are not homogeneous; (iii) the plaintiff is in conflict of interests with defendant; and (iv) the plaintiff lacks the prerequisites to properly represent the collective rights asserted in court. If inadmissible, the court rules on legal fees allocation right away. Inadmissibility orders may be appealed against in 30 days of their service.
- **As to the second phase:** The court may decide on the merits based on presumptions and statistical data. In case the court appoints an expert, any cost whatsoever will be advanced by the defendant. Upon a specific disclosure motion by the plaintiff, the court may order the defendant to disclose relevant evidence, an order which, if not complied with, exposes defendant to the sanctions under Art. 840-*quinquies*. The decision on the merits determines whether the defendant is liable and, in the affirmative, the aggregate amount of damages due.
- **As to the third phase:** This serves for the presiding court to determine the requirements to join the class action, set a period between 60 and 150 days for the holders of homogeneous rights to opt in, appoint a delegated judge and a

class representative. Once the defendant files its defences against the allegations of those members who joined in, the class representative submits a “project for the individual homogeneous rights,” which regulates the damage/compensation distribution or restitutions among the members of the class (bearing in mind the aggregate damage amount found in the second phase). The project, once approved by the delegated judge, constitutes an enforceable title under Art. 840-*octies* of the Italian Civil Procedure Code. When all the due amounts are paid to the members of the class, the delegated judge declares the third phase closed.

Representative Actions. Pursuant to Art. 140-*septies* of the Italian Consumer Code the Specialized Business Division of the competent civil court sitting in the place where the professional who allegedly engaged in an unlawful conduct is based hears Representative Action cases, which commence by means of a specific petition/statement of claim in the context of simplified civil proceedings. At a minimum, for admissibility purposes the petition shall: (i) establish that the petitioner falls in the closed list of parties having *standing to sue* under this tool; (ii) indicate the elements necessary to determine the *group of consumers affected* by the Representative Action; (iii) confirm the *jurisdiction* of the Italian courts and elaborate on *applicable law*; (iv) disclose the financing to support the initiative, as received or promised by third parties (*aka third-party funding*, a relatively new tool under Italian law), including in order to clear potential *conflicts of interest*; (v) confirm that, in case damage compensation is sought, the relevant consumers’ rights are *homogeneous*; and (vi) establish that the action is *not manifestly inadmissible*. The Court rules on admissibility in 30 days of filing (the order shall be published on a specific Ministry of Justice webpage). The Court may decide to stay the proceedings when the underlying relevant facts are under investigation before an independent Authority (e.g., the Italian Antitrust Authority) or under the scrutiny of an administrative court. No third-party joinder is allowed.

Administrative Class Actions. The plaintiff can initiate a public class action by serving a notice to the defendant, who can remedy the alleged breaches within 90 days. If no remedy is taken, the plaintiff has one year to file the action in front of the administrative court. The petition must be published on the defendant’s website and by the Ministry of Justice. Other

members of the class can join the action within 20 days before the first hearing. The final decisions and the measures taken by the defendant to remedy the collective harm must be published, as well.

E. BINDING OTHERS

Italy has adopted an opt-in model, according to which a final judgment or order is binding only and exclusively upon those who have joined in the class action. This means that the in principle members of a class, who did not join in, may bring separate individual actions against a certain defendant involved in a class action.

(Private) Class Actions. Only the parties who properly opted in are bound.

Representative Actions. Opt-out principle applies to injunctive orders, otherwise the standard opt in rule governs.

Administrative Class Actions. Decisions issued by the administrative court have binding effects upon the concerned public administration only, which is consistent with the adopted opt-in model. Compliance with such decisions usually benefit not only the concerned plaintiff(s), but the whole relevant community, albeit indirectly.

F. REMEDIES AVAILABLE

As a general guideline, under Italian law compensatory damages include actual damages (“*danno emergente*”) and loss of profit (“*lucro cessante*”), while punitive or multiplicative damages (resulting in overcompensation) are not contemplated. Besides these remedies, Italian law comprises, i.a., restitution claims and injunctive relief. All of these remedies apply to class actions falling in the “double track system.”

(Private) Class Actions. The presiding court rejects or upholds the claims for compensation or restitution when deciding on the merits, which is the second phase of the proceedings. In the third phase, the delegated judge approves the damage allocation project prepared by the class representative concerning the individual compensation due to each class member. Alternatively or cumulatively, restitution orders may be

sought (for instance, in cases where a consumer's contract is found to be null and void), as well as injunctive relief.

Representative Actions. Pursuant to Articles 140-*octies* and 140-*nonies* of the Italian Consumer Code, injunctive and/or compensatory relief may be sought in a Representative Action. Specifically, when injunctive release is sought, cease and desist orders may be obtained, as well as the publication of any order against defendant(s). Likewise, petitions for urgent provisional orders may be launched, provided that 15 days of a formal out-of-court cease and desist notice unsuccessfully elapsed. In these cases only, the plaintiff is not burdened with the onus to prove the defendant(s)'s wilful misconduct or gross negligence, nor any plaintiff's harm shall be established (the burden of proof is thus lightened). When compensatory relief is instead sought, damages may be awarded only if homogeneous compensatory rights across the represented claims are proven. Standard burden of the proof requirements apply. Besides damages, compensatory relief includes repair, replacement, price reduction, termination of the contract or reimbursement of the price paid. Representative Actions for damages follow the same rules on damage compensation devised by the (Private) Class Action.

Administrative Class Actions. Art. 1 of legislative Decree no. 198/2009 expressly provides that no damages can be awarded by the administrative court. The presiding administrative court may only enjoin the sued administration to fulfil certain obligations (a "facere" order is rendered, unless the petition is rejected).

G. SETTLEMENTS AND FINANCING

(Private) Class Actions. As to settlements, pursuant to Art. 840-*quaterdecies* of the Italian Code of Civil Procedure settlements may take place pending the proceedings following one of these two paths: (i) the court may submit a settlement proposal (subject to comments and amendments) to the parties, which is published on the website and delivered to the members of the class, who may ultimately decide to adhere or not; and (ii) the class representative may seek a settlement agreement further to the rendering of the decision on the merits, subject to the final approval of the delegated judge. As to financing, (Private) Class Actions may benefit from certain

direct and indirect financial incentives to lower costs for plaintiffs in order to make this tool accessible, such as incentives for the plaintiff lawyers and for the class representative, including awards on legal fees proportional to the total aggregate damages established in favor of the class members.

Representative Actions. As to settlements, pursuant to Art. 140-*decies* of the Italian Consumer Code, when compensatory relief is sought representative bodies and the sued professionals may, spontaneously or upon invitation of the Court, reach a settlement agreement, which the concerned consumers are free to accept or not. The settlement agreement, which shall be published on the electronic services portal of the Ministry of Justice, will become effective only for those consumers who have joined the Representative Action for compensation once declared admissible and expressly declare to adhere to such settlement. In this context, Art. 840-*quaterdecies* of the Italian Code of Civil Procedure applies to the extent compatible with Representative Actions. As to financing, third-party funding is expressly contemplated and subject to specific disclosure obligations.

Administrative Class Actions. The potential plaintiff can decide, in place of filing the lawsuit, to seek a settlement with the public administration by submitting a formal request. The settlement agreement must be reached within 30 days of such request.

H. OTHER KEY CLASS ACTION ISSUES

Italian class actions stand on nearly two decades of court precedents and experience. Introduced for the first time in 2009, the applicable legal framework has been revised, if not overhauled, several times, at times further to EU inputs, at time addressing domestic needs. This ever-evolving approach aiming at perfecting the class action legal regime has awarded Italy the title of "frontrunner" in the (relatively young) EU collective redress panorama. To date, Italy indeed offers a very sophisticated, accessible, and multilayered class action system.

The numbers provide clarity on the evolution of the Italian class actions path.

Under the Surviving Old Regime, out of the 79 class actions filed over 10 years, only 25 met the admissibility threshold, of which only 5 resulted in an award of damages. These numbers are indicative of the initial lukewarm interest collective redress raised in Italy when first introduced, the relative inexperience of courts, practitioners and right-holders in this field, and the relative ineffectiveness of the procedural tools available.

The (Private) Class Action effective from 2021 has originated at least 13 purely domestic cases in two years only and many are underway as the main consumers associations, such as Altroconsumo and Codacons, are aggressively pitching initiatives.

Bearing in mind that the Surviving Old Regime still applies to pursue unlawful conducts which took place before the entry into force of the (Private) Class Action in 2021, the official numbers available (under revision by the Ministry of Justice) concerning the (Private) Class Action are encouraging and evidence an increasing interest in collective redress. With the increasing interest the stakes become higher and higher, including considering that opt-in rights further to the decision on the merits may make prediction on damage exposure extremely challenging. This may ultimately encourage settlements.

No official data is instead available at this stage on commenced Representative Actions (domestic or cross-border) since they were introduced only at the end of June 2023. Yet, there is turmoil in Italy and across the EU in this respect as many national and European associations are promoting actions. For instance, the association ALI is promoting a Representative Action in Spain in order to seek damages arising from a cardboard cartel for industrial packaging found by the Italian Antitrust Authority and judicially confirmed.

Game on!

ENDNOTES

- 1 Law no. 31 dated April 12, 2019, introducing a new framework for class actions, i.e., the (Private) Class Action, by adding Title VIII-*bis*, named "On collective proceedings," to the Italian Civil Procedure Code, which comprises the legal provisions from Art. 840-*bis* to art. 840-*sexiesdecies*.
- 2 Conducts occurred before May 19, 2021, ("Cut-Off Date 1") may instead be pursued under the former class action governed by Article 140-*bis* of the Italian Consumer Code, which was first introduced in the Italian legal system by the Italian Budget Law no. 244 dated December 24, 2007, supplementing the Legislative Decree no. 206/2005 or Italian Consumer Code, as later amended and supplemented (several times) ("*Surviving Old Regime*"). To the extent the applicable statute of limitations for violations occurred before May 19, 2021, runs, the Surviving Old Regime, albeit formally repealed, will survive and apply. Disputes as to applicable law for conducts that occurred across the Cut-Off-Date 1 are thus expected. For an overview of the Surviving Old Regime we refer you back to our former class actions publications.
- 3 Legislative Decree no. 28/2023 transposing the EU Directive 2020/1828 on representative actions, amending the Italian Consumer Code.
- 4 It is debated whether conducts occurred before June 25, 2023, ("Cut-Off Date 2") may be pursued under the Surviving Old Regime or if they can be pursued at all under the Representative Actions regime.
- 5 Legislative Decree no. 198/2009, as amended and supplemented from time to time.



Spain

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- I. Class Actions Arising From COVID-19

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A. BRIEF OVERVIEW AND HISTORY

In Spain, there are no class actions as such, but there are mechanisms that expand legal standing to non-damaged third parties or groups of affected people. Law 1/2000, of January 7, on Civil Procedure (the “LCP”), which entered into force on January 8, 2001, introduced these mechanisms for the first time. We refer to these mechanisms here as “Collective Actions.”

To date, parties’ use of Collective Actions in Spain has been limited. In the last few years, however, a number of local law firms have begun to specialize in claims representing consumers in similar cases, including with respect to certain financial products issued by savings banks. These claims are contingency fee based. And while claimants in these cases are not using Collective Actions *per se* (but rather suing on an individual basis), the local law firms filing the cases appear to be seeking new types of cases for use of Collective Actions.

B. TYPES OF CLAIMS AND SCOPE OF LAWSUITS THAT CAN BE FILED

Collective Actions are available in civil lawsuits related to the rights of consumers of products and users of services (Spanish law makes this distinction, but we refer to both of them as “consumers”). A consumer uses a product or service for his or her private consumption, as opposed to business or economic activities.

Although certain groups and associations have legal standing to initiate other types of actions affecting the rights of groups of people (e.g., contentious administrative challenges in the context of environmental matters), Collective Actions are most similar to class actions and are, accordingly, discussed here.

C. CLASS REPRESENTATIVES AND STANDING TO SUE

The regulation of the Collective Actions is certainly limited, since it does not include, for example, the requirements that this action must meet in order to be admitted for processing. However, it can be said that collective actions are available in the following circumstances:

- When the same harmful event injures a group of identified or easily identifiable consumers: (i) a consumer association (these entities have to meet certain legal requirements and be included in an official registry) can bring a Collective Action; as can (ii) a legally incorporated entity that has as its purpose the defense of such group; and (iii) groups of affected consumers, even if they do not have a separate legal personality, provided they evidence that the group represents the majority of the affected consumers;

- When a harmful event injures a group of non-identified consumers, or it is difficult to identify injured consumers, legal standing to bring Collective Actions belongs to representative consumer associations, according to defined criteria;
- In the context of the legislation on general terms and conditions of contracts, associations of businessmen, professionals or farmers, Official Chambers of Commerce, and administrative bodies dedicated to the protection of consumption can bring Collective Actions;
- The Public Prosecutor has standing to bring any Collective Action; and
- Entities authorized by EU legislation can bring actions requiring the cessation of infringing conduct in a number of matters, such as misleading advertising, contracts negotiated away from business premises, consumer credit, unfair terms in consumer contracts, etc. (this provision transposes Directive 98/27/EC, of May 19, 1998, on injunctions for the protection of consumers' interests).

D. KEY PROCEDURAL REQUIREMENTS

For a group of affected people to be a party in a Collective Action, the group must show that it represents the majority of the affected individuals. The person acting on behalf of the group must show that the group elected him or her for such purpose. The LCP does not establish any specific requirements for selection or identification of the Collective Action representatives. When a consumer association brings a Collective Action, the bylaws of the relevant association define the representatives before the court.

E. BINDING OTHERS

The final judgment in a Collective Action binds non-parties holding the rights that have been adjudicated in the Collective Action. This means that the final judgment has *res judicata* effect for non-parties, and they cannot bring second proceedings on the same subject matter against the same defendant.



Although certain groups and associations have legal standing to initiate other types of actions affecting the rights of groups of people (e.g., contentious administrative challenges in the context of environmental matters), Collective Actions are most similar to class actions.

When a Collective Action claim is filed, the court publishes the initiation of the proceedings in the media widely followed in the territory where the damage or breach of rights took place. The court also communicates the initiation of the proceedings to the Public Prosecutor to consider if it should become a party to the proceedings.

In cases involving a group of identified or easily identifiable consumers, the claimant must have previously communicated its intent to file the claim to all of the affected consumers who can then choose to participate in the case. The consumer can opt in to the proceedings at any time, but can only take part in procedural acts that have not been precluded.

In cases involving a group of non-identified or difficult to identify consumers, the procedure differs. The claimant publishes the initiation of proceedings, and the court suspends the case for up to two months to give the affected individuals the chance to appear as a party in the proceedings. Once the relevant term has expired, the court cannot accept new individuals as parties.

For those cases initiated by a consumer association, the judgment must determine, if possible, the individual consumers that may benefit from it. Where it is not possible to identify all of the potential individual beneficiaries, the judgment sets forth the requirements that a consumer must meet to benefit from the judgment. Those individuals who believe that they meet the requirements can ask the court to recognize them, and after hearing from the respondent, the court decides whether to accept the applicant's position. To the extent the court agrees with the applicant, it issues an order that constitutes valid title to initiate enforcement proceedings against the respondent.

The Public Prosecutor may also initiate the enforcement proceedings for the benefit of an affected group of consumers.

F. REMEDIES AVAILABLE

Available remedies in Collective Actions include both damages and declaratory or injunctive relief. Damages compensate the claimants for harm suffered, including loss of profit and non-material damages (i.e., damages for pain), but claimants must prove entitlement to relief.

No punitive damages exist under Spanish law. The court can also order cessation or prohibition of unlawful acts or conduct for claims based on consumer rights, and in certain cases, the court can require that the parties publish the judgment in the media.

G. SETTLEMENTS AND FINANCING

There are no specific rules governing the settlement of Collective Actions in Spain, and the general rules of contract law govern settlements. Settlements are available at any point during, or even after, the proceedings. It is possible, but not necessary, for the court to approve a settlement—although a settlement agreement approved by the court allows a party to initiate enforcement proceedings. Courts approve settlement agreements except in cases of a legal prohibition (i.e., when the law establishes limitations for reasons of general interest or the benefit of a third party).

Contingency fee arrangements are permitted for Collective Actions.

Thus far, there is no legislation about third-party funding of Collective Actions, but taking into account that third-party funding is on a trajectory of significant growth, this practice likely will end up being regulated and admitted, as long as it does not represent or give rise to any conflict of interest.

H. OTHER KEY CLASS ACTION ISSUES

With the publication of the EU of the Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, which had to be transposed by the Member States no later than December 25, 2022, the Spanish national regulation will be reshaped. According to the Directive (EU) 2020/1828, the national regulations resulting from the transposition must enter into force as of June 25, 2023.

No punitive damages exist under Spanish law. The court can also order cessation or prohibition of unlawful acts or conduct for claims based on consumer rights, and in certain cases, the court can require that the parties publish the judgment in the media.

On December 20, 2022, the Spanish Government approved and published the content of the Preliminary Draft Law on representative actions for the protection of the collective interests of consumers (the "Preliminary Draft Law"). Although the Spanish legal system already foresees the possibility of filing Collective Actions in consumer matters, the Preliminary Draft Law seeks to address the difficulties and deficiencies of the current regulations by providing a more robust framework for collective protection. This Preliminary Draft Law seeks to configure collective protection as an authentic special protection by introducing a number of key provisions and mechanisms that will enhance the ability of consumers to defend their collective interests.

I. CLASS ACTIONS ARISING FROM COVID-19

Due to the COVID-19 pandemic, some platforms of affected persons and groups were created with the intention of offering advice for those who have or might have suffered any problem directly or indirectly caused by this situation and, specifically, not also offering and giving information, but analyzing measures and establishing lines of action and responsibility at an individual and collective level.

Collective Actions have been filed in a few areas, such as employment claims (on the occasion of the temporary suspension of the work contracts of those companies affected by some financial or productive contingency), or government entities (facing the risks and the failure to guarantee the health of the citizens, claims for property damage liability against the State for those affected by the State of Alarm and having treated patients without adequate means and having agreed on erroneous health action protocols).

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