

## **Class actions: first precedent on preliminary stage of class action proceedings**

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In an ordinance of December 16 2010, which was filed with the Court of Milan on December 20 2010, a class action brought under Section 140*bis* of the Customer Code was declared admissible for the first time in Italy. However, this only means that the class action has passed the preliminary examination stage and avoided early dismissal - a first judgment on the merits is still a long way off.

The class action has been brought against a pharmacology company, Voden Medical Instruments SpA, by consumer association CODACONS in connection with a test for the H1N1 'swine flu' strain of influenza.

This ruling is highly significant for Italian jurisprudence because it is the first positive pronouncement on the admissibility of a class action. Five such actions have previously been initiated, but only one - negative - decision on admissibility had previously been issued. Thanks to this decision, lawyers are now more aware of how the procedure actually works.

Italian class actions are regulated by a single provision: Section 140*bis*. This means a high level of flexibility in applying the rules, but also a greater risk of uncertainty.

The Court of Milan stated that although the class action hearing is based on oral proceedings, this provision is aimed solely at expediting the process. The court specified that written briefs can be filed where there is a need to investigate complex legal or factual issues in greater depth.

In the present case, the court authorised the parties to file briefs to specify and modify their respective claims, as in ordinary civil proceedings.

The fact that so few class actions have been brought since the class action procedure was introduced over a year ago makes it reasonable to question the effect of the gaps in the applicable regulations. However, the Court of Milan's decision represents a first step towards learning how the preliminary stage of a class action proceeding works in practice. The same case should now show how the opting rule and the subsequent discussion of the merits will work.