

Europe *Italy*

New class action law: full steam ahead!

When it comes into force on 19 April 2020, Law 12 April 2019, no 31 will introduce significant change to Italy's class action mechanism. By providing material incentives that expand the current limited recourse to such actions, the new law will expose businesses and public service providers to higher risk by making claimants more likely to bring class actions. The ability to join a class action after a favourable decision on the merits also represents a serious threat.

Broader scope of application.

The new class action law significantly expands the number of possible claimants eligible to file a class action, as well as the rights that are protected. It will allow class actions to be brought for the enforcement of anyone's "homogeneous rights", instead of the consumers and users specified by the law now in force.

This means future class actions could be instrumental in protecting a wide range of contractual or non-contractual rights that go beyond consumer protection. That could include, for instance, the protection of rights in the fields of environmental law and financial services.

Opt-in mechanism

The right to join a class (opt-in) is allowed in two phases of the proceedings (i) at the beginning, following the publication of the court order declaring the class action's admissibility and (ii) later on, after the publication of a decision on the merits upholding the collective redress claim.

The claimants' use of the second opt-in window might be mildly discouraged by the unclear wording of the relevant provisions. These appear to limit the right to join the class after a decision on the merits to claimants who weren't able to exercise their rights within the first opt-in deadline. Italian case law will play a key role in clarifying how the relevant provisions should be interpreted.

The long opting-in window is clearly unfavourable to businesses. It creates real uncertainty over the number of potential members who could join a class at a very late stage in the proceedings (after judgment on the merits has been handed down).

Evidentiary phase

The new class action law introduces a form of discovery, significantly enhancing the investigating powers of the judge who will be able to order the defendant to disclose documents or evidence supporting the class action. The judge may also base their assessment of the case on unconventional evidence, like presumptions or statistical data.

Monetary rewards and further costs

The new law charges the defendant with additional costs to those normally awarded to a winning party (ie compensation and legal fees).

Where the judge upholds a class action, they will also order the defendant to pay a monetary reward directly in favour of the attorney assisting the class. The new law also introduces a monetary reward for the class representative (ie the party chosen by the court to represent the class during the third phase of the proceedings).

The monetary rewards for the attorneys of the winning party and for the class representative will be determined according to a table set out by the law. This provides fixed percentages on the total amount due to class members, decreasing as the number of class members increases. Where the monetary award for attorneys is concerned, the amount can be reduced by the judge by up to 50%. The reward for class representatives can be increased or decreased by a maximum of 50%.

The defendant will also have to cover the costs of any expert opinion ordered by the judge.

Comment

The new law substantially broadens the situations in which companies can be the target of a class action. And, in the absence of clear criteria for the admissibility of the class, it exposes them to great uncertainty over their potential financial exposure.

The innovations introduced, including monetary rewards and claimants' right to join a class after a favourable decision on the merits, might encourage the proliferation of actions based on the same title. There's also a risk that the new law will impose a disproportionate burden on defendants if it is used opportunistically. Additionally, the fact that the evidentiary phase of these proceedings is geared for speed could significantly compress a business's right of defence.

At the moment, the actual impact of this new class action law is hard to predict. Some of its provisions remain unclear and will require case-law interpretation. As they wait for the law to come into force, businesses should get prepared and consider their risk-mitigating strategies.



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