

THE LATEST UPDATES ON THE REFORM OF THE ITALIAN CLASS ACTION

ABSTRACT

Law No. 31 of 2019 introduced the reform of Italian class action and will come into force in October 2020, instead of April as originally planned. The reform, in an attempt to strengthen the class action as legal instrument, has greatly expanded the audience of possible applicants. However, the revision of the mechanism for joining the class action (even after the issuance of the decision in first degree) may undermine the defense rights of companies and the possibility for the latter to predict the monetary consequences of the action itself, with potential heavy economic and financial implications for the companies involved.

I. THE MAIN AMENDMENTS

- Subjective and objective extension: The action will always be available to who allege the violation of any “*homogeneous individual rights*”, therefore no longer only to consumers or users.
- The action may be commenced by each member of the “class”, as well as the non-profit organizations or associations, that have as their institutional purpose the protection of the aforementioned rights, which are registered in a list held by the Ministry of Justice.
- The class action can only be brought against companies and bodies that manage public services.
- The competent judge will be the Commercial Courts and the action will be started through a request to such Courts (the rules of the summary proceedings will apply, Articles 702-*bis* and following of the Italian Civil Procedure Code).
- The request to be a participant in the class action (so called “opt in”) may take place within certain deadlines, not only in the phase following the admission order in the preliminary stage but also in the phase following the Court ruling. The reform subverts in a certain sense the procedural principles, with the possibility of having the single question examined after the assessment of the unlawful conduct was generally carried out by the judge.

II. FIRST ISSUES

- a. Potential extension of the protection to any hypothesis of non-contractual liability.
- b. The right to participate in the class action (“opt in”) at a later stage may lead to even more difficult effects to manage for companies. In fact, the ruling with which the relevant Court may find the class action grounded will not close (as today) the proceeding but will open to a subsequent phase focused on quantifying:
 - (i) the damage, and
 - (ii) the “opt in” requests. This may entail the high risk of time dilation and tightening of the dispute.
- c. The possibility granted to each participant in the class action (even without the help of a lawyer) to request proof and make claims could render the companies’ right of defense really difficult.
- d. Continued absence of effective and rapid special remedies to restore any image damage caused to the defendant company in the event of media coverage of the action.

III. CONSEQUENCES FOR COMPANIES

As already mentioned above, the companies called upon to defend themselves in a class action, with the new regulations, could suffer severe economic, social and financial damages.

First of all, the possibility of adhering also in the phase following the issuance of the decision that defines the judgment in first degree could:

- (i) make the economic consequences of a negative decision by the court very difficult to predict, since it is not possible to determine how many people will “opt in” after the decision is handed down,
- (ii) weaken the company’s right of defense: In fact, each member of the class (even without the help of a lawyer) can file other documents and make further claims, and
- (iii) significantly slowdown the process of calculating the sum to be paid to the members of the class, assimilating this phase to a bankruptcy procedure with the appointment, moreover, of the Representative of the members, who would cover the function of a sort of Trustee.

In addition, it should also be considered that the class action reform – with the opening of the action to all who allege the violation of “*individual homogenous rights deriving from one or more sources of the obligation indicated in Section 1173 of the Civil Code*” – has greatly expanded the audience of possible plaintiffs to include, at least in theory, the employees of the company, who could use this action as an instrument of pressure on the company itself.

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