

WAITING FOR THE NEW ITALIAN CLASS ACTION

The new Italian class action – provided for by Law No. 31 of 2019 – will come into force on 19 November 2020.

Here are the main news and the first critical issues for companies.

I. THE MAIN AMENDMENTS

1. The new Italian class actions can be brought against all companies, providers of public services, or entities managing services of public utility in relation to conducts carried out in the course of their business to seek redress and/or restitution for any type of contractual or tort infringement, without any limitations.
2. 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.
3. In case of a positive decision towards the class, the liquidation phase would begin, during which the Court awards compensation by means of a specifically-appointed common representative of the class. The latter should be considered a public official and, therefore, must satisfy the same requirements as a bankruptcy trustee and who is in charge of drafting a redress plan for liquidation of every harmed individual's claim.

II. PRELIMINARY ISSUES AND CONSEQUENCES FOR COMPANIES

1. It seems clear that the new class action is aimed at providing material incentives that could significantly expand the current (and indeed very limited) application of class actions in Italy.
2. However, the new rules could also lead to potential distortions of the system by encouraging opportunistic behaviors and complicating the management of cases.
3. In particular, defendants could face particular risks under the new Italian class actions provisions. Not only will claimants be more likely to bring class actions against companies and public service providers, but their ability to join a class action after a favorable decision on the merits represents a serious threat to defendants.

4. Specifically, defendants could be prevented until the end of the proceedings from knowing the actual perimeter of the class and hence the potential liabilities deriving from the relevant action.
5. As such, the new class action introduces an element of material uncertainty for defendants that is likely to impact their defense strategy, as well as their accounting and risk assessment abilities.

Milan, 20 October 2020