

The new Italian class action legislation

On May 19, 2021 the new Italian class actions legislation, originally introduced by **Law no. 31/2019 at articles 840-bis et seq. of the Italian Code of Civil Procedure**, came into force after a 13-month postponement due to the Covid-19 pandemic. The new legislation will only apply to facts happened after its entry into force; its most relevant features can be summarized as follows:

- the so-called ‘compensatory class action’ aims to seek compensation (or restitution) from business entities or public services providers for damages that their conduct caused to the class members. In further detail, the latter are identified as holders of ‘homogeneous individual rights’, i.e., a series of rights whose features are common to all class members (*g.*, as they might all be compensation rights arising from ‘common circumstances’, as the Italian Supreme Court defined in the past) although not identical (*e.g.*, as their amount may vary);
- Unlike the now repealed legislation dating back to 2010 (which, in any case, was applied in quite rare cases) the right to be class members is no longer reserved to consumers. Today, public and private bodies, companies and public administrations can be members of a class;
- Each class member may bring a class action. Alternatively, an association or non-profit organization enrolled in a specific Ministry list and whose statutory objectives include the protection of class members’ rights is entitled to bring an action on their behalf;
- Unlike the American model, the Italian class action has an opt-in structure: each class member must adhere to it in order to benefit from its outcome. For this purpose, a number of procedural documents (particularly the introductory complaint, the decree of setting of hearing and the judgement) must be published on a website managed by the Ministry of Justice;
- Proceedings are held before the business chamber of the Court which has jurisdiction over the defendant’s registered office and are governed by the so-called summary procedure (i.e. a set of rules, simpler and generally faster than the ‘ordinary procedure’, set forth under articles 702-bis et

seq. of the Italian Code of Civil Procedure). They are divided into three phases:

- Ascertainment of the admissibility of the class action;
- decision on the merits of the 'common issues' (e., which the common features of the class members' 'homogeneous individual rights' are and whether those rights were in fact jeopardized by the defendant's conduct);
- the so-called 'adhesion procedure': verification of the admissibility of the adhesions to the part of the class members and case-by-case application of the decision mentioned at the previous point;
- The third phase culminates in a decree ordering the defendant to pay or deliver the amount due to each adherent. The decree is immediately enforceable, but only the common representative of the class may be in charge of its enforcement;
- The legislation does not appear flawless nor deprived of potentially problematic aspects: for instance, it does not clarify if a defendant is entitled to bring counterclaims or request third party joinders. By contrast, the choice of expressly enabling the Court to 'make use of statistical data and presumptions' in 'ascertaining the defendant's liability' could appear questionable in a Constitutional law perspective and might indeed give rise to complex issues;
- Another problematic aspect might be the fact that, if an expertise is ordered, its expenses must be advanced by the defendant 'in absence of specific reasons' to the contrary.

Along with the aforementioned compensatory class action, the legislation also permits a collective injunction action. The latter may be brought by any party who seeks an 'order to cease' 'conducts which jeopardize a number of persons or entities'.

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