

# A Myth Debunked: Class Actions Truly are a Threat to Global Businesses

July 2019

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## [New Rules Governing Expanded Class Action Lawsuits in Italy to Take Effect on April 19, 2020](#)

The old thinking that class actions are only a threat in the US is history. The latest European example is Italy, where on April 3, 2019, the Italian Parliament enacted legislation amending the laws governing class action lawsuits. The new Italian class action system will go into effect on April 19, 2020 — *i.e.*, one year after the official publication of the new law.

While the new system has numerous effects on class action litigations, the most critical changes relate to standing and rules governing class membership and administration. Companies doing business in Italy should be aware that they may face class action lawsuits from a broader range of plaintiffs related to violations falling within additional areas of law, and that class sizes in Italy are likely to grow under the new rules. Settlements are also likely to be harder fought and more expensive as the new rules provide greater monetary incentives for class representatives and plaintiffs' attorneys.

### [Extending Class Action Standing](#)

A critical piece of the new Italian law is that it transfers the relevant provisions governing class actions from the Italian Consumer Code (Italian Legislative Decree No. 206/2005) to the Italian Code of Civil Procedure. Under current law, only consumers—alone or through representative consumer associations—have standing to initiate class action litigation.

As a result of the changes effective April 19, 2020, consumers or businesses, along with non-consumers alleging violations of recognized rights, will be able to bring class actions in Italy. While under the current rules, class actions can be initiated to enforce only specific categories of consumer rights (*i.e.*, contractual rights, product liability, antitrust or unfair trade practices), under the new Italian class action rules it will be possible to enforce additional types of non-consumer related rights such as environmental, employment or health care rights; provided, that they meet the homogeneity requirement — *i.e.*, the rights relate to violations of the same right, in the same manner to persons similarly situated.

Further, the legislation also expands the ability of recognized consumer advocacy organizations to initiate class action litigation on behalf of consumers. Currently, the Ministry of Economic Development maintains a

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list of recognized organizations,<sup>1</sup> but the list of groups will be updated and the responsibilities will be migrated to the Ministry of Justice. These groups may seek damages, restitution and injunctive relief.

Similar to the “fencing in” of injunctive relief consent decrees in the United States, parties seeking injunctive relief will still be able to seek to enjoin not only the offending actions, but also request any order necessary to proactively remove or reduce continued negative effects.

## Class Membership, Opt-In Period and Administration

Another important shift under the new Italian class action law affects how class membership is determined, as well as how a purported class is administered.

The new law appears to extend the period for class members to opt-in until **after** a judgment on the merits, while currently the opt-in deadline is set by the judge following initiation of the class action suit. This apparent wait-and-see change may operate to allow potential class members to wait opportunely until a decision on the merits of the case, before deciding whether to join it.

Once a court issues a judgment on the merits, under the new amendments, the court will appoint: (i) a judge to oversee admission of class members and liquidation of the amounts due to the class members; and (ii) a common class representative, who will act as a public officer in this final stage of the procedure.

The class representative is tasked with proposing a “homogeneous rights plan,” setting out his conclusions on the factual allegations upon which putative members rely to opt into the class, and therefore, making class membership recommendations to the assigned judge. To that end, the representative may request the appointment of experts to assist in the assessment of the facts upon which the class members base their opt-in requests. In order to ensure independence in the performance of the above tasks, the class representative qualifies as a public officer (*pubblico ufficiale*) and must meet the same statutory requirements required for the appointment of insolvency receivers (*i.e.*, he should not be conflicted with putative class members).

In the decree deciding on the opt-in requests and awarding the amount due to each class member, the assigned judge will also apportion the fees and costs payable respectively to the class representative and plaintiffs’ attorneys, based on the size of the class. This new class fee structure (*quota lite*) awards class attorneys and representatives payment based on the size of the class (*i.e.*, 9 percent of the total award for classes between 1 and 500 members; 2.5 percent for classes between 10,000 and 100,000 members; 0.5 percent for classes with over a million members). This new pay structure, coupled with the extended opt-in period, is likely to motivate plaintiffs to stay in litigation longer and settle at higher amounts.

## Conclusion

Under the new rules, we expect to see an increase in the number of class action litigations in Italy, as has been the trend across Europe. Class sizes are posed to grow, as the opt-in period expands and the barriers to class membership continue to shrink. The changes are also likely to add additional leverage to classes during settlement negotiations based on the new fee structure for plaintiffs’ attorneys and class representatives.

As always, the stakes of class action litigation present a tremendous risk. Companies with business interests in Italy, and Europe generally, should review their insurance policies in light of the new rules. Additionally, legal teams should budget for litigation as soon as they become aware of class action exposure to mitigate risk and keep shareholders apprised. And, as always, consult with appropriate outside counsel to assess the risks and effects of your activities to mitigate potential class action litigation exposure.

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<sup>1</sup> Some examples of recognized organizations under current law include: Altroconsumo ([www.altroconsumo.it](http://www.altroconsumo.it)); Codacons ([www.codacons.it](http://www.codacons.it)); Movimento Consumatori ([www.movimentoconsumatori.it](http://www.movimentoconsumatori.it)); Unione Nazionale Consumatori ([www.consumatori.it](http://www.consumatori.it)).

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