



## Italy to Overhaul Class Actions

### IN SHORT

**The Situation:** Under the new Italian framework, class actions will no longer be limited to consumer protection matters, and collective redress may be sought through simplified proceedings.

**The Developments:** A recently proposed [European directive](#) aims at creating a horizontal EU approach to collective redress in consumer harm situations. The new Italian law not only matches the objectives of the proposed directive but even goes beyond them.

**Looking Ahead:** The new framework means companies should stay alert to an increasing number of class actions, as claimants will benefit from updated redress proceedings.

### The New Class Action Framework in Italy Anticipates EU Legislation

So far, consumer opt-in procedures and relatively high costs have limited the number of class actions filed in Italy. To streamline procedures, the Italian Parliament overhauled the applicable framework regulated under the Consumer Code with the enactment of Law No. 31 of April 12, 2019 ("New Law"). The New Law will become effective in April 2020 and will likely pave the way to an increasing number of class actions. Businesses should thus expect that a new wave of court actions may be filed.

Remarkably, the timing of the New Law is in sync with the [EU-level plan to harmonize class actions across Member States](#). In April 2018, the European Commission issued a proposal for a directive intended to ensure more effective remedies for mass consumer harm situations ("EU Proposal") by supplementing—not replacing—national regulations. The New Law is not only substantially in line with the EU Proposal's provisions but attempts to go several steps further by: (i) covering a broader range of infringements in different businesses (e.g., financial services, energy, environment); (ii) extending its scope of application to *anyone* (not only consumers or users) whose rights may be affected; (iii) ensuring faster and more efficient procedures to keep procedural costs from becoming a financial obstacle to bringing collective actions; and (iv) providing different types of remedies as appropriate, depending on the circumstances of the case.



Whoever holds an individual homogeneous right—not only consumers or users—may now bring class actions and seek redress or restitution for collective rights' infringements in a wider range of economic sectors.



### Main Features of the New Law

The New Law provides that whoever holds "individual homogeneous rights" has standing to bring a class action against private entities or providers of public services acting within the scope of their businesses. Likewise, certain nonprofit associations, e.g., consumer associations, duly enrolled in a specific registry will have standing to pursue class actions independently.

The New Law sets forth a new ad hoc opt-in procedure. Eligible class members will have a

longer time frame to opt in and may do so either after the court's decision on the admissibility of the action or even after the court's decision on the merits. At the same time, respondents are now entitled to specifically object to the merits of each opt-in application.

Class members will benefit from several novel features of class actions proceedings implemented by the New Law:

- Shorter proceedings and broad discovery powers held by the courts, which may also compel respondents to submit evidence prejudicial to their case;
- A wider range of available remedies (restitution, injunctive and compensatory redress, collective cease and desist orders, measures to remove the effects of infringements), and collective enforcement proceedings allowing a class representative to directly enforce damage awards on behalf of the class members; and
- Reduced costs that, if the class action is upheld, will be charged to respondents. Respondents will also be responsible for paying any contingency fees—an unprecedented occurrence in Italy—of the class action's lead lawyer (contingent upon the number of class members and the overall amount awarded). The court may also award premium fees if the case is sufficiently complex.

Also unprecedented is the fact that *courts*—not only the parties—may put forward settlement proposals. In addition, a class representative may be empowered to enter into settlement agreements with respondents even after a court decision found the class action grounded and respondents were condemned to pay damages to claimants. Class members, however, may always object to any such settlement proposal and refuse to be bound by it.

While focusing on claimants' rights, the New Law also introduces certain procedural safeguards for respondents. For instance, once a class action is filed, other class actions brought against the same respondent and relating to the same infringement are either consolidated into the first proceeding or dismissed. Also, class members are prevented from bringing individual actions on the same subject matter and are bound by the court's decision on the class action, unless they timely withdraw their opt-in application.

The New Law thus, in principle, improves the claimants' position in class actions and adds burdens on respondents. It is also broad enough to be consistent with the main goals of the EU Proposal, which, assuming it is adopted, will thus not require fundamental changes to the current Italian framework.

The New Law will be tested in Italian courts, and the Italian experience with its provisions may provide guidance for fine-tuning the EU Proposal.

### THREE KEY TAKEAWAYS

1. Italy has overhauled its national class action framework, expanding its scope of application beyond mere consumer protection, in an attempt to create a class-action-friendly environment that may pave the way to an increasing number of class actions starting in 2020.
2. Businesses must be aware that the new Italian framework now provides for simpler opt-in procedures and a clearer allocation of costs that will make class actions more attractive to claimants but more burdensome on respondents. In particular, respondents in class actions may be compelled upon court order to disclose evidence prejudicial to their interests and face significant costs, including lawyers' contingency fees.
3. The New Law reflects the European aim to ensure more efficient collective redress proceedings by allowing all potentially aggrieved parties—not only



Lamberto Schiona  
Milan



Anna Masser  
Frankfurt



Christian B. Fulda  
Munich



Margherita Farina  
Milan

*Rachele Perez, a law clerk in the Milan Office, assisted in the preparation of this Commentary.*

[All Contacts >>>](#)

consumers—to bring class actions, provided that class members enjoy "homogeneous" rights. As such, the Italian New Law may serve an important formative role in helping shape the European plan to harmonize class actions across its Member States.

---

**YOU MIGHT BE INTERESTED IN:** [Go To All Recommendations >>](#)



[French Class Actions at a Glance and Their Prospects for Development](#)



[Collective Redress in Europe: Comparing the European and German Framework](#)



[Collective Redress in Europe: Developments in Key Jurisdictions—The Netherlands](#)



[Germany Introduces Class Actions for Consumer Claims](#)

---

SUBSCRIBE

SUBSCRIBE TO RSS



---

Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm Worldwide®

**Disclaimer:** Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at [www.jonesday.com](http://www.jonesday.com). The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day  
North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190  
[www.jonesday.com](http://www.jonesday.com)