

CMS | Romania transposes EU law on representative actions



On 23 December 2023, new legislation entered into force in Romania on the conduct of representative actions for the protection of the collective interests of consumers, which transposes the EU Directive 2020/1828.

The newly regulated concept of representative actions will enable litigation to proceed more rapidly and cost-effectively, especially against large companies. As a result, the act could potentially change business in Romania through its approach to consumer disputes.

Representative action

“Representative action” is defined by the law as an action to protect the collective interests of consumers that is brought by a **qualified entity** as a plaintiff on behalf of consumers to seek injunctive relief, remedial relief, or both. In other words, the law allows qualified entities, whether private entities or independent public authorities, to act on behalf of multiple consumers.

Court representation – qualified entities

For an entity to be a “qualified one”, it must fulfil some specific requirements, such as: (i) it must be a legal entity that can prove that it has carried out, during the 12 months preceding the application for designation, a public activity in relation to the protection of consumer interests; (ii) it must have a legitimate interest in protecting the interests of consumers; (iii) it must be a non-profit entity.

Possible remedies

The remedies available for the benefit of consumers are diverse, including damage, repair, replacement, price reduction or termination, varying on a case-by-case basis.

Consumer consent

In order to be represented collectively by the qualified entity for the purpose of obtaining redress, consumers must give their written consent within 30 days of the beginning of the action. This implies that consumers concerned will not be able to take further legal action against the same trader on the same matter, either individually or collectively. By contrast, for a qualified entity to apply for an injunction, individual consumers do not need to consent to be represented by the qualified entity.

The qualified entity and the trader can negotiate the compensation to be awarded to the affected consumers. If the outcome of the negotiations is deemed unfair, the court may refuse the agreement. If not, it becomes binding on the trader and the qualified entity.

Conclusions

Compared to the previous law, the concept of “representative actions”, as introduced by Law no. 414/2023, is different and departs from previous litigation that was practised in Romania.

In the past, despite the many similar disputes between businesses and customers, national courts would regularly issue different rulings in similar proceedings. Therefore, the new regulation will have a major impact on the courts by enabling a large number of customers to collectively and cooperatively file identical or similar claims against the same company in the same dispute, similar to the well-known class action model in the US.

The recently adopted system addresses many procedural issues, allowing the settlement of a large number of consumer claims in the same dispute, potentially affecting thousands of contracts and injured consumers, and ultimately resulting in a mechanism that unifies court practices.

For more information on this law, the EU Directive it is based on, and judicial reform in Romania, contact your CMS client partner or these CMS experts: Horia Draghici and Andra Ionescu.

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