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Collective Redress
in CEE & SEE

Romania

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a) Current collective redress regime

- **What forms of collective redress are available in Romania?**

On 21 December 2023, the Romanian legislator transposed the Representative Actions Directive (EU) 2020/1828 into national law by means of Act No 414/2023 on the conduct of representative actions for the protection of the collective interests of consumers (the “**Romanian Transposing Act**”). The Romanian Transposing Act provides a framework that allows qualified entities to bring collective actions on behalf of claimholders (consumers) before the national courts. The collective actions brought before the Romanian courts are settled according to the rules of the Romanian Code of Civil Procedure.

Alternatively, Art 59 of the Romanian Code of Civil Procedure also provides that multiple claimants or defendants may act together before the court if the subject matter of the proceedings is a common right or obligation, or if their rights or obligations have the same cause or if there is a close connection between them.

Moreover, Art 202 of the Romanian Code of Civil Procedure provides that in cases of multiple claimants or defendants, in order to ensure the normal conduct of court proceedings, the judge may request that the multiple claimants or defendants choose a common attorney. If the multiple claimants or defendants cannot agree on a common attorney, the judge may designate an attorney from a list provided by the Bar Association.

b) Key features of collective redress in Romania

- **Is collective redress available in all areas of law or only in certain sectors?**

The provisions of the Romanian Transposing Act apply only to the areas of law covered by the national or European Union legislation expressly designated in the List annexed to the Transposing Act. However, actions brought under Art 59 or Art 202 of the Romanian Code of Civil Procedure may generally apply to all areas of civil law, if not provided otherwise.

- **Who is entitled to bring an action (e.g. individuals, groups, qualified entities)?**

Under the Romanian Transposing Act, the right to initiate a collective action is granted to the qualified entities designated for those purposes by the national authorities or by EU member states. Qualified entities should meet certain criteria (they should be non-profit entities that are acting in the interests of consumers or should be authorities or bodies providing public services in the areas of law referred to in the List annexed to the Transposing Act).

- **Which mechanism applies – opt-in, opt-out or both?**

The Romanian Transposing Act provides for an opt-in mechanism for redress measures. Therefore, within 30 days from the filing of a collective action for redress measures, the qualified entities should request the written consent of the claimholders concerned by the collective action. However, qualified entities are not obligated to do so if they are only filing a collective action for injunctive measures (*i.e.* seeking the cessation of an infringement of consumers' rights).

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

A collective action can be brought against companies (*profesioniști*) that infringe upon the provisions of the national or EU legislation indicated in the List annexed to the Romanian Transposing Act. The Act does not provide for a minimum threshold for claims or claimholders.

- **What remedies are available (e.g. monetary compensation, injunctive measures, redress measures)?**

The Romanian Transposing Act provides for two main types of remedies: injunctive measures and redress measures.

With respect to injunctive measures, the court can: (i) order the company to cease the infringing action(s); (ii) establish that a certain practice constitutes an infringement; (iii) order the company to publish the court decision establishing the trader's infringement; and/or (iv) order the company to publish a corrective statement.

In terms of redress measures, a company might be obligated to offer consumers remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as may be appropriate and as available under the legal provisions.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

The Romanian Transposing Act does not make special provisions regarding the determination of the loss suffered by the consumers. Therefore, the provisions of the Romanian Civil Code apply, implying that each loss should be established and proven on an individual basis.

- **Which types of damages are recoverable (e.g. economic loss, damage to property)?**

Under the Romanian Civil Code, a claimholder (a consumer under the Romanian Transposing Act) is entitled to full compensation of damage suffered. This includes actual loss suffered as well as loss of profit. Moreover, compensation for non-pecuniary damages is possible. Romanian law does not recognise the concept of punitive damages.

- **How are damages quantified? On what basis are damages divided among class members?**

Damages are normally quantified based on the circumstances of each case and, in particular, on the evidence proving the harm suffered by each consumer affected by the collective action. If the actual damage cannot be determined with certainty, this may be quantified by the court.

Based on the above, each consumer affected by the collective action is entitled to compensation equal to the damage suffered.

- **What is the settlement structure, if any?**

Under the Romanian Transposing Act, the qualified entity and the company can propose a settlement to the national court on the redress for the consumers affected. The national court may also invite the qualified entity and the defendant to reach a settlement on redress.

The settlement is subject to the scrutiny of the national court, which may either approve or refuse such an agreement on the grounds that it is unfair, contrary to mandatory provisions of law or that it includes conditions that cannot be enforced, after having considered the rights and interests of all parties and in particular those of the consumers affected.

Once approved by the court, a settlement becomes binding upon the qualified entity, the defendant and the individual consumers affected.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

Collective redress proceedings are managed according to the generally applicable provisions of the Romanian Code of Civil Procedure. Additionally, a qualified entity should provide the court with a financial overview of the sources of funds used to support its collective action.

- **Is there a deadline by which claimholders must join proceedings?**

Under the Romanian Transposing Act, the qualified entity must request the written consent of the consumers affected by the collective action within 30 days of initiating an action for redress measures. Consumers then have 30 days to express their consent from the communication of the qualified entity's request. However, the latest a consumer can express its consent to be represented by a qualified entity is the date of the closing arguments on the merits of the case.

- **Are there any time limits on initiating court proceedings?**

The Romanian Transposing Act does not make specific provision on the statute of limitations for bringing collective actions. Therefore, the general limitation period of three years provided for by the Romanian Civil Code will also apply to these actions. Exceptionally, a limitation period of one year (for attorney's fees), two years (for insurance fees) or ten years (for pecuniary/moral damage caused by violence) may apply.

Moreover, under the Romanian Transposing Act, consumers can benefit from the redress measures ordered by a court within three years from the date of the final decision granting them such measures.

- **Is pre-trial discovery available?**

The Romanian Code of Civil Procedure does not provide for a pre-trial discovery procedure. However, it stipulates that if a person has a justified interest in the urgent administration of certain evidence (*i.e.* evidence that might disappear), it may request the court to administer such evidence both before and during the trial.

Under the Romanian Code of Civil Procedure, each party must substantiate its claims/defences by means of evidence. The judge may order the opposing party, on its own initiative or at a party's request, to disclose certain evidence.

d) **Costs and funding of collective actions**

- **Is there a rule as to who has to bear the fees / legal fees? Does the "loser pays" principle apply?**

The Romanian Code of Civil Procedure provides that the "loser pays" principle applies if the prevailing party has made such a request to the court. Therefore, the prevailing party is entitled to recover the court fees, attorney's fees, expert's fees and any other necessary costs incurred, in accordance with its private agreements (with an attorney/expert).

However, the judge may, on its own initiative or at the request of the opposing party, suppress the attorney's and/or the expert's fees awarded to the prevailing party, taking into account the necessity and appropriateness of that cost in relation to the value and complexity of the case. This measure will not affect the contractual relationship between the attorney or expert and the prevailing party in any way.

The Romanian Transposing Act provides a special rule exempting the individual consumers affected by a collective action from paying the costs of collective redress proceedings. Only in exceptional circumstances (*i.e.* intentional or neglectful conduct) can an individual consumer be ordered to pay the costs of such proceedings.

Moreover, under the Romanian Transposing Act, qualified entities are exempt from payment of the court fees.

- **How are the costs of proceedings shared among class members?**

Under the Romanian Transposing Act, individual consumers are in principle exempt from payment of the costs of the proceedings. If, in exceptional circumstances, the individual consumers are ordered to pay the costs of the proceedings, those costs may be shared equally, on a *pro rata* basis, or jointly and severally according to their position in the proceedings or the nature of the legal relationship between them.

- **Is third-party litigation funding permitted in Romania?**

Third-party litigation funding is not prohibited in Romania. The Romanian Transposing Act expressly provides that third-party litigation funding is permitted, provided there are no conflicts of interests.

- **Are there any restrictions on third-party litigation funding?**

The restrictions on third-party litigation funding consist of measures to prevent of conflicts of interests. The qualified entity's decisions should not be unduly influenced by a third-party funder in a manner detrimental to the interests of the individual consumers. A third-party cannot fund a collective action brought against its competitor or against a defendant on which the funder is dependent. Accordingly, the qualified entity must disclose to the national courts the sources of funds used to support the collective action.

- **Are contingency fees permitted in Romania?**

Under Romanian law, contingency fees are prohibited between clients and attorneys. However, the parties to the legal service agreement are allowed to negotiate a combination of fixed, hourly and success fees. The success fee is conditional on achieving a certain result.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

Under the Romanian Transposing Act, cross-border collective actions can be initiated only by the qualified entities designated by EU Member States for that purpose.

- **Can claims be brought by residents of other jurisdictions?**

Individual consumers who are not resident in Romania but are included in a collective action brought before a Romanian court must express their consent in writing in order for the outcome of the collective action to be binding on those consumers.

Similarly, if a collective action is brought before a court in another EU Member State, the consumers affected by the collective action that are resident in Romania must express their consent in writing in order for the outcome of the collective action to be binding on those consumers.

Consumers who gave their consent to be represented in a collective action cannot be represented in another collective action with the same subject matter and against the same company, nor can they individually bring an action with the same subject matter or against the same company.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

Although the Romanian Transposing Act was adopted on 23 December 2023, the Romanian legislator is still expected to communicate to the European Commission the list of the qualified entities that are designated for the purpose of bringing cross-border collective actions.

However, under the Romanian Transposing Act, an entity may be designated on an *ad hoc* basis as a qualified entity for the purpose of initiating a domestic collective action in certain conditions.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

There are no available statistics on the frequency of the collective actions brought before the Romanian courts. However, their number is expected to rise considering the legal framework established by the Romanian Transposing Act. In practice, the target domains of collective actions include financial services (credit institutions, insurance), e-commerce, retailers, telecoms, energy suppliers, transporters, healthcare and digital services.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

High risk.

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