



In this issue:

New legal framework for conducting technological and industrial cooperation operations in the defence and security domains. Establishment, organization, and functioning of the Romanian Agency of Technological and Industrial Cooperation for Security and Defence

GEO no. 124/2023 represents the new legal framework applicable to offset operations attached to national defence and security public procurement. In comparison with the previous framework, the new legal enactment implements important amendments with respect to eligible offset operations and the mechanism for concluding technological and industrial cooperation agreements.

First time regulation of Representative Actions in Romania and the European Union

At the end of the last year, Romania adopted the legislation on the Representative Actions for the protection of the collective interests of consumers (Law no. 414/2023) by transposing the European Union (EU) Directive 2020/1828, which has the potential to change the paradigm of the disputes between consumers and companies.

I. The provisions of Government Emergency Ordinance no. 124/2023

On 29 December 2023, in the Official Gazette of Romania, Part I, the Government emergency ordinance no. 124/2023 for conducting technological and industrial cooperation operations in the defence and security domains, for the establishment, organization and functioning of the Romanian Agency of Technological and Industrial Cooperation for Security and Defence and form amending and supplementing government emergency Ordinance no. 57/2015 regarding the remuneration of personnel paid with public funds in 2019, extension of certain terms, as well as specific fiscal-budgetary measures (“**GEO no. 124/2023**”) was published.

GEO no. 124/2023 explicitly repealed GEO no. 189/2002 regarding offset operations pertaining to public procurement contract for defence, public order and national security, thus becoming the main legal enactment in the hierarchy of the applicable legal framework over offset operations attached to contracts having as object the procurement of technology in the national defence and security domain.

Main provisions of GEO no. 124/2023

1. The establishment of the Romanian Agency of Technological and Industrial Cooperation for Security and Defence (“**ARCTIS**”), subordinated to the Ministry of Economy, Entrepreneurship and Tourism, by reorganizing the Office for Offset of Special Technical Procurements which is dissolved

ARCTIS’ activity pertains to (i) concluding the technological and industrial cooperation agreements, (ii) managing the implementation of cooperation operations, and (iii) supervising the eligible entities concluding cooperation agreements.

2. Amendments to the procedure for concluding technological and industrial agreements (the „**Agreements**”)

In accordance with the new framework, the Agreements are signed before the signing of the public procurement agreements with all economic operators that have qualified and were selected for the last stage of the public procurement procedures.

The object of the initial Agreement will be restrained to the approval of the technological and industrial cooperation plan. The cooperation plan represents the proposal forwarded by each selected economic operator detailing the means of implementing the offset operations.

The Agreement will enter into force either at the public procurement agreement’s signing date, or at a further date that will be explicitly provisioned under the public procurement agreement.

3. Amendments to the interval for establishing the value of technological cooperation operations

GEO no. 124/2023 provisions the interval for establishing the value of technological cooperation operations, respectively between 20% and 100% of the public procurement agreement’s value. The applicable percentage will be established by CSAT, at the proposal of the contracting authority and ARCTIS.

4. Establishing the preference for direct technological cooperation operations

The new framework formally conveys the government’s preference for conducting direct technological cooperation operations. The definition given by the new framework over technological cooperation operations significantly restricts the accepted operations, in comparison with GEO no. 189/2002. Thus, the operations may target:

- transfer of technology, representing the knowledge, technical assistance transfer or other technological transfer activities;
- cooperation in research and development, aimed at producing new materials, products or installations, as well as substantially enhancing the existing equipment;

- subcontracting, representing the manufacturing by a Romanian economic operator of parts or components of the equipment that constitutes the public procurement agreement's object. Subcontracting includes the maintenance of the acquired equipment;
- exporting equipment.

The technological cooperation operations mentioned above constitute, in accordance with the previous legal regime, direct offset operations. The last category of operations may be qualified as indirect or direct offset, depending on the connection of the exported equipment with the procurement agreement's object.

5. Amendments to the procedure for determining the technological and industrial cooperation multiplier

In accordance with the new legal framework, the value of the technological and industrial cooperation multiplier will be determined with reference to the strengthening effect over the Romanian industry or to the development of a production, integration, testing or maintenance facility mainly using transfer of technology.

The entering into force of GEO nr. 124/2023 will have a significant impact in the domain of defence and national security public procurement, especially in regard to the sphere of operations which are accepted by CSAT or ARCTIS. The new legal enactment will be supplemented by methodological norms for enforcing the GEO which will be drafted by the Ministry of Economy, Entrepreneurship and Tourism in 90 days after the enter into force of GEO no. 124/2023.

II. [First time regulation of Representative Actions in Romania and the European Union under Law no. 414/2023 and Directive 2020/1828](#)

The new regulation allows a very large (virtually unlimited) number of consumers to make identical or similar claims against the same company in the same dispute, collectively and in a coordinated manner. This type of litigation is inspired by the famous American model of class actions, but in contrast, the EU has opted for a model that balances the encouragement of collective management of consumer interests in court with the protection of companies from abusive litigation.

Collective litigation (introduced by Law no. 414/2023, under the European name of Representative Actions) differs from volume litigation, which was previously practised in Romania, namely a large number of similar disputes between a company and its clients, where each individual dispute did not have a particular relevance.

The new system is designed to deal with situations where a very large number of consumers, potentially entire portfolios, are settling claims in the same dispute, which in some industries exceed hundreds of thousands of contracts. Thus, the outcome and impact of a single representative action could be extremely high, as it will settle claims or contractual situations for a potentially unlimited group of consumers.

Law no. 414/2023 does not change the legislation governing companies' obligations towards consumers, but makes this new type of litigation applicable in most areas of consumer and personal data protection.

Which entities can initiate a dispute between consumers and companies

The main novelty brought by Law no. 414/2023 is that, through Representative Actions, it will be possible to manage the claims of a potentially unlimited number of consumers through a single plaintiff entity, which will acquire by the effect of the law the prerogative to represent and manage the interests of the relevant consumers.

These entities have been given the name "*qualified entities*" and can be (if they meet several legal conditions):

- On the one hand, public authorities;
- On the other hand, non-governmental organizations (even organized on an ad hoc basis).

Once the right to initiate proceedings and to represent a particular group of consumers in the representative action is established, the qualified entity no longer must obtain instructions or the opinion of consumers on the management of the dispute, and consumers will not be able to influence the conduct of the proceedings (e.g. on arguments, evidence or strategy).

Measures that can be sought in court by qualified entities on behalf of a consumer group

Qualified entities can seek two categories of measures in court following an alleged infringement by a company of its clients' rights:

- On the one hand, Representative Actions can seek provisional or definitive injunctive measures against traders' practices;
- On the other hand, the main novelty introduced by Law no. 414/2023 concerns redress measures, which may consist of compensation, reduction or reimbursement of the prices paid, product repair or replacement, as well as compensation for companies' breaches of their obligations towards consumers.

The option of consumers to be represented or not (opt-in and opt-out systems)

The only way consumers can influence the conduct of a representative action is by consenting to be or not to be represented in an action brought by a qualified entity.

In the case of injunctive measures, consumers do not have to express their consent to be represented by qualified entities, but only have the possibility to express their refusal to be represented by the qualified entity (opt-out system).

In contrast, in the case of Representative Actions for redress measures, consumers must give their express consent within certain time limits provided by law (opt-in system).

Industries that may be covered by Representative Actions

Law no. 414/2023 does not change the legal framework of the companies' obligations towards consumers, but it contains a list of almost 70 normative acts which, if violated, can lead to Representative Actions. These acts cover both consumer protection in general and more specific areas such as liability for defects, financial industries, transport, communications, tourism, energy and natural gas, the retail industry, personal data protection, etc.

Litigation funding

Law no. 414/2023 regulates for the first time in Romania the concept of "litigation funding", which implies that the third party:

- can provide for the costs of bringing Representative Actions, without the funder acquiring any litigation rights or the prerogative to influence the course of the litigation, but only the possibility of a possible gain from the outcome of the lawsuit (in the event of a favorable solution);

- must meet certain conditions to prevent potential conflicts of interest (e.g. the action cannot be brought against a company that is a competitor of the funder or against a defendant on which the funder is dependent).

Possibility of concluding agreements to settle Representative Actions

Another novelty under Law no. 414/2023 is the possibility to reach an amicable settlement between the qualified entity (acting on behalf of consumers) and the companies. Under the new legislation, companies involved in a representative action can negotiate directly with one person (and not with each individual consumer) with the aim of settling the dispute amicably. The courts must verify and validate the terms of the settlement to protect consumers' interests.

Conclusions

From all perspectives, representative actions bring a new paradigm that will fundamentally change the way disputes between consumers and companies are conducted.

Since this is an innovation across the European Union, introduced by Directive 2020/1828, which also covers cross-border representative actions, the practice in all Member States becomes relevant to understanding and anticipating the effects of this new reality. The European Commission will also have a role to play soon in developing this practice and creating communities of support for representative action in Europe. To this end, the Commission has already set up a new digital instrument called EC-REACT, respectively a collaborative platform for representative actions, to support the development of representative actions (set up under article 14 (3) of the Directive) and intends to offer national courts, persons acting as contact points for implementing the regulation as well as qualified entities the possibility to communicate and exchange information on representative actions through this platform.

In the following period, we will revert with a series of events on how other Member States are implementing the new system of representative actions, based on Reff & Associates' membership of the international Deloitte Legal network, which analyzed the situation across the European Union.

Also, the experts within Reff & Associates | Deloitte Legal in the specific matters where representative actions will be applicable can help companies navigate the impact of these new regulations on their relationship with consumers.

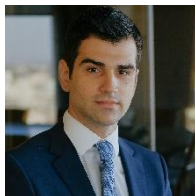
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Georgiana Singurel
Partner
Reff & Associates | Deloitte Legal
gsingurel@reff-associates.ro



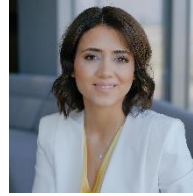
Adrian Coman
Senior Managing Associate
Reff & Associates | Deloitte Legal
acoman@reff-associates.ro



Victor Popa
Associate
Reff & Associates | Deloitte Legal
vpopa@reff-associates.ro



Mihnea Galgoțiu-Săraru
Partner, Dispute Resolution
Reff & Associates | Deloitte Legal
mgalgotiusararu@reff-associates.ro



Ana Galgoțiu-Săraru
Senior Managing Associate, Dispute Resolution
Reff & Associates | Deloitte Legal
agalgotiusararu@reff-associates.ro



Anca Belciu
Senior Associate, Dispute Resolution
Reff & Associates | Deloitte Legal
abelciu@reff-associates.ro



Silvia Axinescu
Senior Managing Associate, Corporate M&A
Reff & Associates | Deloitte Legal
maxinescu@reff-associates.ro



Andreea Zaharia
Managing Associate, Corporate M&A
Reff & Associates | Deloitte Legal
anzaharia@reff-associates.ro



Andrea Grigoraș
Senior Managing Associate, Competition
Reff & Associates | Deloitte Legal
agrigroras@reff-associates.ro



Andrei Burz-Pînzaru
Partner, Banking & Finance
Reff & Associates | Deloitte Legal
aburzpinzaru@reff-associates.ro



Andreea Șerban
Senior Managing Associate, Banking & Finance
Reff & Associates | Deloitte Legal
andserban@reff-associates.ro

Reff | Associates

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