

# PETERKA PARTNERS

THE CEE LAW FIRM

## GOOD PRACTICES GUIDE FOR E-COMMERCE & AMENDMENTS TO LAW NO. 241/2005 FOR PREVENTING AND COMBATING TAX EVASION

CZECH REPUBLIC SLOVAKIA UKRAINE BULGARIA  
RUSSIA POLAND ROMANIA BELARUS HUNGARY

## **GOOD PRACTICES GUIDE FOR E-COMMERCE**

The Romanian Association of Online Stores recently published a good practices guide (the “Guide”) for e-commerce platforms operators, containing recommendations for a fair and transparent relation between such operators and their users.

The Guide focuses on certain matters, that we shall present below.

### **I. Predictability of contractual terms and conditions**

In order to ensure predictable and trustworthy relationships, platform users undertake to formalize the contractual relations with their users by drafting clear terms and conditions (“T&C”). In this sense, the T&C have to be simple and easily understood and also provide the procedure for dispute resolution. Also, the operators have to notify any amendment of the T&C, offering users reasonable time to accept or reject them.

### **II. Creating a system enabling communication with users**

The T&C must provide a reasonable deadline for responding to users.

### **III. Justifying the decisions taken by the platform and access to alternative means of dispute resolution**

The T&C must provide a description of the reasons for suspending or restricting the use of services and the users have to be informed of such measures.

The operators have to regulate effective procedures for mediation and/or other remedies against the elements that led to the decision to suspend or restrict the use of services.

### **IV. Transparency regarding algorithms**

The operators have to provide the users with information regarding the main parameters taken into consideration by the algorithms used by the platform.

### **V. Combating improper products**

Operators have to elaborate procedures regarding quality control and, if necessary, introduce additional quality control procedures for certain specific products (e.g., sanitary masks).

### **V. Conclusion**

Given the development of e-commerce, especially during the recent COVID-19 pandemic, as more and more people have changed their shopping habits and focused on buying most of their products online, regulating this field has become more necessary than ever. The aim of the Guide is to eliminate or at least reduce the risk that users might face while using e-commerce platforms, thus offering a higher degree of protection of consumer rights.

## **AMENDMENTS TO LAW NO. 241/2005 FOR PREVENTING AND COMBATING TAX EVASION**

On December 17, 2021, the Romanian Government adopted Emergency Ordinance no. 130/2021 regarding some fiscal-budgetary measures, the extension of some terms, as well as for the modification and completion of some normative acts (hereinafter referred to as “**GEO no. 130/2021**”) which, among others, brings with it a series of amendments to Law no. 241/2005 for preventing and combating tax evasion (hereinafter referred to as “**Law no. 241/2005**”).

In this respect, the provisions of art. XXIX of GEO no. 130/2021 state the following:

*Law no. 241/2005 for preventing and combating tax evasion, published in the Official Gazette of Romania, Part I, no. 672 of July 27, 2005, as subsequently amended and supplemented, is amended and supplemented as follows:*

1. *After Article 6, a new Article 61 is inserted, with the following wording:*

*“ Art. 6<sup>1</sup>*

*(1) The withholding and non-payment, the collection and non-payment, within 60 days from the due date provided by law, of taxes and/or contributions provided in the annex to this law constitute criminal offences and are punishable by imprisonment from 1 year to 5 years or by a fine.*

*(2) The provision from par. (1) shall enter into force on 1<sup>st</sup> of March 2022”*

Thus, this legislation is understood to incriminate also (i) **withholding and non-payment**, respectively (ii) **collection and non-payment**, within 60 days from the due date provided by law, of the taxes and/or contributions provided in the annex to Law no. 241/2005

At the same time, the mentioned annex presents exhaustively the taxes and the contributions whose withholding/collection and non-payment attract criminal liability, under the conditions of art. 6<sup>1</sup> of Law no. 241/2005, as follows:

1. Tax on dividends paid by a Romanian legal entity to a Romanian legal entity
2. Tax on income from independent activities based on sporting activity contracts
3. Tax on income from intellectual property rights
4. Income tax on salaries and those assimilated to salaries
5. Income tax on agricultural lease
6. Income tax on interest
7. Tax on taxable income obtained from the liquidation of a legal entity or from the reduction of the share capital, according to the law

8. Income tax on dividends
9. Income tax on pensions
10. Income tax on prizes and gambling
11. Tax on income from other sources
12. The tax on income obtained by a natural person from an association with a legal entity, taxpayer according to title II of Law no. 227/2015, with subsequent amendments and completions
13. Tax on income obtained by a natural person or entity– association without legal personality from an association with a legal entity, taxpayer according to Law no. 170/2016 on the specific tax, with subsequent amendments and completions
14. The tax on income obtained by a natural person from an association with a legal entity, taxpayer according to title III of Law no. 227/2015 with subsequent amendments and completions
15. Social security contribution
16. Social health insurance contribution
17. Withholding tax on income obtained from Romania by non-residents
18. Tax due on income from the transfer of real estate from personal patrimony
19. Contribution to the Environment Fund

However, this amendment gave rise to discussions on the constitutionality of these provisions, not excluding a possible referral to the Constitutional Court of Romania (hereinafter referred to as the "CCR") in this regard.

For context, it is necessary to mention the fact that, in a previous form, Law no. 241/2005 contained, in art. 6, a regulation similar (but not identical) to that of the current art. 6<sup>1</sup>, which was declared unconstitutional by Decision no. 363, pronounced by the CCR on May 7, 2015.

However, it cannot be concluded that the new provisions also violate the mandatory provisions of the Romanian Constitution, given that there are a number of differences between the two regulations, as well as the reasons why the CCR admitted the exception of unconstitutionality in 2015.

In the initial version, art. 6 of Law no. 241/2005 had the following wording: *"The withholding and non-payment, with intent, within a maximum of 30 days from the due date, of amounts representing withholding taxes or contributions constitute a criminal offence and it is punishable by imprisonment from one year to 6 years"*.

The first distinction between the previous regulation and the new amendment is represented by the scope, the old art. 6 incriminating only the withholding and non-payment of taxes/contributions, while the new art. 6<sup>1</sup> incriminates both their withholding and non-payment, as well as their collection and non-payment.

It is important to make a number of remarks on the two ways provided by this legal text, namely the withholding and collection.

Thus, the **withholding** applies to taxes and contributions which, according to the law, are withheld at source, for example income tax on wages and those assimilated to wages, tax on income in the form of dividends, income tax on pensions, social security contributions, social health insurance contributions. Consequently, the withholding and non-payment, within a maximum of 60 days from the due date, of taxes and/or contributions by the persons who are obliged to withhold these amounts constitute a criminal offence.

With regard to **collection**, this concept refers to taxes and contributions that, according to the law, are collected by a person for a third party, such as the tax due on income from the transfer of real estate from personal patrimony, which is collected by the notary public and subsequently paid by him/her.

The second difference concerns the scope. In this respect, the old regulation did not expressly present the taxes/contributions whose withholding and non-payment entailed criminal liability. On the other hand, art. 61 in the form adopted by GEO no. 130/2021 refers to the taxes/contributions indicated in the annex.

However, the reason for admitting the exception of unconstitutionality was precisely the fact that this criticized norm *"does not specify, concretely, what the withholding tax incomes are"*, the CCR considering this to be unpredictable.

Therefore, strictly from the perspective retained by the CCR, the current art. 6<sup>1</sup> provides exhaustively the taxes and contributions whose withholding and non-payment, respectively collection and non-payment constitute a criminal offence.

To conclude, although the new regulation is similar to the previous one, there are still a number of significant differences, so it is necessary for the targeted subjects to pay more attention to the withholding, respectively the collection of taxes/contributions as described above.

PETERKA & PARTNERS Romania remains at your disposal to provide more information and related legal assistance connected to this topic.

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