

QUICK GUIDE FOR SETTING UP AND RUNNING E-COMMERCE PLATFORMS IN ROMANIA

I. INTRODUCTION

E-commerce has seen an increase in the last three years, becoming one of the fastest growing sectors in the Romanian economy. This growth is determined by many factors, including the expansion in individuals' access to the internet, as well as the COVID-19 pandemic, which pushed people to shift their shopping habits and focus more on doing so online.

Consequently, the volume of online sales in 2020 was approximately 10% of all retail trade in Romania, compared to 7% in 2019.

According to recent statistics, the Romanian e-commerce market increased by over 30% in 2020, exceeding EUR 5 billion, which is huge considering that in 2013 the market value was only EUR 600 million. In this context, Romania is expected to continue this trend and have the fastest growth in online retail in Eastern European countries over the next five years.

II. LEGAL REQUIREMENTS

1. Legal entity

When deciding to set up an e-commerce business in Romania, one must firstly decide over the legal entity that will carry out the activities.

In this respect, it is relevant to mention that both Romanian and foreign entities can carry out e-commerce activities in Romania.

Thus, potential investors can choose either to set up a new company in Romania or use another foreign legal entity.

Should the decision be to have a local presence, the most common type of entity in Romania is a limited liability company and setting one up is quite easy. Activity can be started in about one week from submitting the documentation to the relevant trade registry office.

As mentioned, foreign companies can perform e-commerce activities without setting up a legal entity in Romania. Nevertheless, certain regulations have to be complied with as detailed in section 2 below.

2. Main legal aspects to consider

2.1. Licences and permits

Generally, no licence, authorization or permit is necessary for the online sale of goods in Romania. However, special requirements are regulated for the sale of particular types of products (e.g., food, medicinal products, etc.), regardless of the manner of sale (i.e., online or offline).

2.2. T&C and Privacy Policy

Given the increase in the use of e-commerce platforms, as well as the reduction of hard copy agreements, it has become increasingly necessary for platforms to regulate through their T&C all aspects that would usually be included in a hard copy agreement.

Consequently, in addition to the legal obligations imposed by the abovementioned normative acts, the platforms should be careful in drafting and implementing T&C, in order to avoid any negative consequences. T&Cs are intended to provide legally mandatory information and should be made available to the customer in advance of concluding a contract, for a valid consent regarding the terms of the contract. The higher information standards specific to consumer contracts should be observed.

Also, e-commerce platforms must fulfil their information obligation under the GDPR and ensure that the processing of personal data complies with GDPR rules. In this respect, creating a privacy policy is the most common way to provide all required information. It should be easily available and visible on the website, in advance of customer personal data being collected.

2.3. Cookie policy

If an e-commerce platform uses cookies or similar technologies, it must fulfil information obligations and obtain prior consent for the use of cookies or similar technologies that are not necessary for the transmission of communication or provision of a telecommunications service or a customer-requested service supplied electronically. Opt-in for non-necessary cookies or similar technologies is commonly obtained through cookie banners.

2.4. Data Protection

The General Data Protection Regulation (EU) 2016/679 entered into force on 25 May 2018. Consequently, since this date, all operators and processors have to comply with the provisions of the GDPR.

In this sense, it is mandatory for platforms to implement data protection policies, in accordance with the GDPR, focusing mainly on the following:

- Purpose and legal grounds for the processing. Companies that process personal data are asked to process the personal data in a lawful, fair and transparent manner.
- Limitation of purpose, data and storage. Companies are expected to limit the processing, collect only that data which is necessary, and not keep personal data once the processing purpose is completed.
- Data subject rights. The data subjects have been assigned the right to ask the company what information it has about them, and what the company does with this information. In addition, a data subject has the right to ask for correction, object to processing, lodge a complaint, or even ask for the deletion or transfer of his or her personal data.
- Consent. If the company has the intent to process personal data beyond the legitimate purpose for which that data was collected, clear and explicit consent must be asked from the

data subject. Once collected, this consent must be documented, and the data subject is allowed to withdraw his/her consent at any moment.

- Personal data breaches. Organizations must maintain a Personal Data Breach Register and, based on severity, the regulator and data subject should be informed within 72 hours of identifying the breach.
- Privacy by Design. Companies should incorporate organizational and technical mechanisms to protect personal data in the design of new systems and processes; that is, privacy and protection aspects should be ensured by default.
- Data Protection Impact Assessment. To estimate the impact of changes or new actions, a Data Protection Impact Assessment should be conducted when initiating a new project, change, or product. The Data Protection Impact Assessment is a procedure that needs to be carried out when a significant change is introduced in the processing of personal data. This change could be a new process, or a change to an existing process that alters the way personal data is being processed.
- Data transfers. The controller of personal data has the accountability to ensure that personal data is protected and GDPR requirements respected, even if processing is being done by a third party. This means controllers have the obligation to ensure the protection and privacy of personal data when that data is being transferred outside the company, to a third party and/or other entity within the same company.
- Data Protection Officer. When there is significant processing of personal data in an organization, the organization should assign a Data Protection Officer. When assigned, the Data Protection Officer would have the responsibility of advising the company about compliance with EU GDPR requirements.
- Awareness and training. Organizations must create awareness among employees about key GDPR requirements, and conduct regular training to ensure that employees remain aware of their responsibilities with regard to the protection of personal data and identification of personal data breaches as soon as possible.

2.5. Domain name registration

Before launching an e-commerce platform, one of the important points to check is to choose a trading name under which your customers should be able to easily locate you on the Internet, upon entering such name in a search engine.

This is achieved by purchasing a domain name.

The main purpose of a domain name is to identify the website of your e-commerce platform, as the address through which users can locate and access the website on the Internet. The domain name system is required for any Internet access operation like internet browsing, e-mail transmission, orders or online purchases; it is thus a critical component for access to e-commerce services.

While the domain is the name of the website, a URL (the acronym standing for “Universal Resource Locator”) will lead to any one of the pages within the website. Every URL contains a domain name, as well as other components needed to locate the specific page or piece of content.

A typical Internet domain name, <http://www.yourcompanyname.com>, is comprised of both the secondary level domain (SLD), i.e., “yourcompanyname”, and a top-level domain (TLD), i.e., “.com”. The “.com” TLD was originally established for commercial users, the “.org” TLD for non-profits, and the “.net” TLD for network service providers, although these TLDs are not restricted to such uses and are used by many types of organizations and individuals.

On the legal side, since in Romania domain names and trademarks are regulated by different rules under supervision of separate authorities that hold separate publicity registers, because purchase of a domain name is on a “first-come/first-served basis”, without warning about potentially confusing trademarks, there is a risk your domain name could be infringing third-party trademark rights without you even knowing it.

Therefore, before purchasing a domain name it is recommendable to proceed with a proper trademark availability search in the online trademark register available on the State Patent and Trademark Office’s (“OSIM”) website, to identify any competitor having rights over confusingly similar names.

The Romanian Informatics Institute (ROTLTD), is the officially accredited domain registrar for Romania. It manages the “.ro” TLD domain and sub-domain name registration applications for domains such as “.ro”, “.com.ro”, “.org.ro”, and “.www.ro”.

Registration of one of the above-mentioned domain and sub-domain names may be conducted through either ROTLD or any of its authorized resellers following payment of a one-off fee of between \$30 and \$60.

The first step of the registration should be to determine whether the proposed domain name is available or taken. You can do this by searching on the website www.allwhois.com, or going directly to the ROTLD site (www.rotld.ro) to inquire on-line whether a certain domain name is available.

The registration requirements are minimal: the applicant need only follow some simple steps relating to identification and the provision of information in the application form.

According to ROTLD registration rules, a domain name registration application can be refused if the domain name:

- contains more than 63 characters;
- contains non-permitted characters;
- is identical to an existing registered domain name;
- is trivial; or
- is contrary to public order.

Domain names are not protected by copyright law. A copyright protects the original works of a creator including literary work, music, art, software codes, architecture, and more. Ideas, facts, systems or methods of operation are not protected by copyright.

To obtain for your domain name a higher protection than the mere right of use granted by registration with the ROTLD, you may be interested in claiming the protection of your domain name as a trademark.

However, in order to qualify as a trademark your domain name must function as such — meaning that it must be distinctive and serve as an indicator of source (not as a mere informational indication).

A domain name could qualify as a trademark if it is distinctively displayed on your e-commerce website (not just in the respective URL) in a way that your customers will obviously perceive it as a symbol of origin in direct connection with the goods and services traded online.

However, what could be an unmistakable domain name in connection with the goods or services offered on your e-commerce platform, could be considered not distinctive enough to be accepted by the OSIM as a trademark and be afforded legal protection of a registered trademark for products or services.

Therefore, it is important to avoid using generic or descriptive terms as a domain name. Thus, you will be able to benefit of the rights deriving from a registered trademark and control unwanted use by competitors of the powerful or original words that you choose to differentiate your business and win you a market share.

2.6. Language

As per Romanian law, all information concerning products provided to consumers in Romania must be provided (also) in Romanian, therefore a Romanian translation should be provided whenever the information concerning the products is provided in a foreign language. The above will apply in particular if the platform is operated by a Romanian entity, or by a foreign entity selling or advertising to Romanian consumers;

2.7. Financial services provided to customers

Law no. 209/2019 transposed into Romanian legislation EU Directive 2015/2366 on payment services in the internal market, imposing specific requirements to payment services providers and regulating the processing of customer payments through electronic means.

2.8. Consumer protection

Even if an e-commerce platform is operated by a foreign entity, certain requirements for compliance with the local consumer protection legislation have to be met, in particular when Romanian consumers are targeted directly.

However, if a foreign company carries out certain activities in Romania which are connected to online sales, this could trigger tax obligations such as the registration of a permanent establishment in Romania, as defined under relevant law. A case-by-case analysis should be conducted to determine if the activities to be carried out in Romania would lead to tax obligations for the foreign legal entity engaged in online sales.

2.9. Product returns

Online sales are subject to specific rules for product returns and defective goods. In this respect, the consumer may withdraw from the agreement within 14 days from the receipt of the acquired goods (in the case of products) or from the date the agreement is concluded (for online sale of services). If the consumer was not informed before the conclusion of the contract about his/her right to withdraw, such right will be extended for another 12 months after the initial period of 14 days. The seller has to reimburse the customer with the price paid, as well as any other expenses incurred (e.g., delivery costs).

2.10. Warranty for defective products

Consumers have a legal right to a two-year warranty for defective products, free of charge, if the products bought are faulty or not as advertised. An extended warranty period may be offered by the seller/manufacturer through a commercial warranty, which, once granted, becomes legally binding.

III. EU DIRECTIVES ON E-COMMERCE

1. Directive 2019/770 and Directive 2019/771

In order to provide a higher level of conformity within the e-commerce area, the European Parliament and the Council adopted Directive 2019/770 concerning contracts for the supply of digital content and digital services and Directive 2019/771 on contracts for the sale of goods.

Directive 2019/770 was implemented in Romania by Emergency Government Ordinance no. 141/2021 and Directive 2019/771 by Emergency Government Ordinance no. 140/2021.

These directives regulate a set of rules for the trader, such as:

- **Subjective requirements for conformity**

In order to conform with the sales contract, the goods shall, in particular, where applicable:

- be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;
- be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;
- be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and
- be supplied with updates as stipulated by the sales contract.

- **Objective requirements for conformity**

In addition to complying with any subjective requirement for conformity, the goods shall:

- be fit for the purposes for which goods of the same type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
- where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;
- where applicable, be delivered along with such accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive;
- be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling;
- in the case of goods with digital elements, the seller shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity. Where the consumer fails to install within a reasonable time the updates supplied, the seller shall not be liable for any lack of conformity resulting solely from the lack of the relevant update

- **Incorrect installation of the goods**

Any lack of conformity resulting from the incorrect installation of the goods shall be regarded as lack of conformity of the goods, if:

- the installation forms part of the sales contract and was carried out by the seller or under the seller's responsibility; or
- the installation, intended to be carried out by the consumer, was done by the consumer and the incorrect installation was due to shortcomings in the installation instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or by the supplier of the digital content or digital service.

- **Liability of the seller**

The seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered and which becomes apparent within two years of that time.

- **Remedies for lack of conformity**

In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract.

In order to have the goods brought into conformity, the consumer may choose between repair and replacement, unless the remedy chosen would be impossible or, compared to the other

remedy, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

- the value the goods would have if there were no lack of conformity;
- the significance of the lack of conformity; and
- whether an alternative remedy could be provided without significant inconvenience to the consumer.

The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on the seller that would be disproportionate.

- **Repair or replacement of the goods**

Repairs or replacements shall be carried out:

- free of charge;
- within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and
- without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods.

Where the lack of conformity is to be remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller. The seller shall take back the replaced goods at the seller's expense.

Where a repair requires the removal of goods that had been installed in a manner consistent with their nature and purpose before the lack of conformity became apparent, or where such goods are to be replaced, the obligation to repair or replace the goods shall include the removal of the non-conforming goods, and the installation of replacement goods or repaired goods, or bearing the costs of that removal and installation.

The consumer shall not be liable to pay for normal use made of the replaced goods during the period prior to their replacement.

- **Termination of the sales contract**

The consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract.

Where the consumer terminates a sales contract as a whole or in relation to some of the goods delivered under the sales contract:

- the consumer shall return to the seller, at the seller's expense, the goods; and
- the seller shall reimburse to the consumer the price paid for the goods upon receipt of the goods or of evidence provided by the consumer of having sent back the goods.

- **Commercial warranties**

Any commercial warranties shall be binding on the guarantor under the conditions laid down in the commercial warranty statement and associated advertising available at the time, or before the conclusion, of the contract.

If the conditions laid out in the commercial warranty statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial warranty shall be binding under the conditions laid down in the advertising relating to the commercial warranty, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made.

2. **GEO no. 140/2021 and GEO no. 141/2021**

As mentioned above, Directive 2019/770 was implemented in Romania by Government Emergency Ordinance no. 141/2021 ("**GEO no. 141/2021**") and Directive 2019/771 by Government Emergency Ordinance no. 140/2021 ("**GEO no. 140/2021**").

These ordinances concern mainly contractual relationships between merchants and consumers, with the main objective of ensuring a high level of consumer protection and increased legal certainty in the context of current technological developments.

In this respect, GEO no. 140/2021 applies to sales contracts concluded between sellers and consumers for any category of movable items, including water, gas and electricity, where they are put up for sale in a limited volume or a set quantity, but also to any items that incorporate or are inter-connected with digital content or a digital service, so that the absence of that digital content or digital service would prevent the goods from performing their functions.

On the other hand, GEO no. 141/2021 shall apply to those contracts under which the merchant supplies or undertakes to supply the consumer with digital content (e.g., computer programs) or a digital service (e.g., social media), and in return the consumer (i) pays or undertakes to pay a price or (ii) with certain exceptions, provides or undertakes to provide personal data to the merchant. The requirements set forth under GEO 141/2021 shall also apply to any tangible medium, such as DVDs, CDs or USB sticks, provided that it serves exclusively as a support for the digital content.

These ordinances set out similar rules applicable to contracts for the sale of goods and the supply of digital content and services, in particular related to (i) compliance of the goods, the digital content or the digital service respectively, with the contract and (ii) the contractual liability of the seller.

Certain aspects should be addressed in regard to the contractual liability of the seller. In this respect, although the two ordinances are similar, they differ in regard to their object, as follows:

- (i) The seller's liability under contracts for the sale of goods. According to GEO no. 140/2021, the seller shall be liable to the consumer for any non-conformity that exists upon delivery of goods and which becomes apparent within two years from the date of delivery. Non-compliance with the provisions regarding the seller's liability shall be sanctioned with a fine ranging between RON 5,000 (approximately EUR 1,000) and RON 25,000 (approximately EUR 5,000).

- (ii) The seller's liability under contracts for the supply of digital content or digital services. The seller shall be liable for any non-conformity existing at the time of supply and which is identified within five years from the date of supply, in the case of contracts with a single act of supply or a series of individual acts of supplies. In addition, where the contract provides for continuous supply during a certain period, the merchant shall be liable for any non-compliance which occurs or is discovered within the time limit during which the digital content or digital service must be provided under the contract. Non-compliance with the provisions regarding the merchant's liability shall be sanctioned with a fine ranging between RON 10,000 (approximately EUR 2,000) and RON 40,000 (approximately EUR 8,000).

Both ordinances regulate certain specific conditions under which consumers will be entitled to have the goods, digital content or digital service brought into conformity, and also, where such non-conformities persist, to receive a proportional reduction in price or to terminate the contract.

IV. GOOD PRACTICES GUIDE

The Romanian Association of Online Stores recently published a good practices guide for e-commerce platform operators, containing recommendations for a fair and transparent relation between such operators and their users.

The guide focuses on certain matters, such as:

- **Predictability of contractual terms and conditions.** In order to ensure a predictable and trustworthy relation, the 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.
- **Creating a system enabling communication with the users.** The T&C must provide a reasonable deadline for responding to the users.
- **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.
- **Transparency regarding algorithms.** The operators have to provide the users information regarding the main parameters taken into consideration by the algorithms used by the platform.
- **Combating improper products.** Operators have to elaborate procedures regarding quality control and, if there is a problem, introduce additional quality control procedures for certain specific products (e.g., sanitary masks).

V. RELEVANT AUTHORITIES

The main authority with competence for legal enforcement regarding e-commerce in Romania is the National Authority for Management and Regulation in Communications (“ANCOM”).

Nevertheless, specific sanctions regarding e-commerce may also be applied by other authorities, such as the National Authority for Consumer Protection or the National Supervisory Authority for the Processing of Personal Data.

VI. CONCLUSIONS AND RECOMMENDATIONS

In conclusion, e-commerce has been one of the fastest developing sectors in the Romanian economy and, understandably, the legislation has been focusing on creating a safe space for consumers.

Consequently, e-commerce platforms now face more regulatory challenges than ever before, in order to comply with the applicable legislation.

Also, given the high level of protection offered to consumers, it is more important than ever to implement policies and measures that would limit the liability of the e-commerce platforms, while also protecting the right of consumers.

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

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