

Tax & Legal Weekly Alert

July 18, 2019

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Regulation of the alternative transportation activities

On July 4, 2019, the Government's Emergency Ordinance no. 49/2019 ("GEO 49/2019") regarding the alternative transportation activities entered into force. GEO 49/2019 regulates the activity of digital platforms, which offer ride-sharing services, but also the activity of the drivers that offer transportation services registered on such platforms.

Guidelines adopted by the European Data Protection Board



Regulation of the alternative transportation activities

The scope of GEO 49/2019 is the management, authorization and control of the alternative transportation business with vehicle and driver made available through digital platforms.

According to the Ordinance, **the alternative transportation activity** is defined as carrying persons, with the help of a vehicle, based on **an alternative transportation contract** concluded between the passenger and the **alternative transportation operator** owner of the vehicle, who are liaised by a **digital platform operator** through a digital platform.

GEO 49/2019 mentions a series of obligations both for the alternative transportation operators and for the digital platform operators.

Conditions applicable to the digital platform operators

The obligations with which the digital platform operators must comply include:

- obtaining the **technical permit** issued by the Ministry of Communications and Informational Societies ("MCIS") for the digital platform – MCIS has the obligation to issue through order of the minister the norms and procedures for obtaining the technical permit, within 35 days since GEO 49/2019 entered into force – i.e. July 4;
- the contribution to the state's budget through an annual tax, amounting to 50,000 lei;
- the registration of a branch in Romania, in case the digital platform operator is a non-resident legal person. GEO 49/2019 specifically refers to the branch as a form of the digital platform operator's presence in Romania, appearing to limit the options in relation to the possibility to choose other forms of organization in according to corporate law.

The liaison of the alternative transportation by a natural or legal person through a digital platform that does not have the technical permit issued by MCIS represents an offence and is sanctioned with:

- an administrative fine between 50,000 lei and 100,000 lei, and
- the interdiction to carry out any kind of economic activities on Romanian territory, liaised through freestanding software programs, for a period of 2 years from the date the sanction is applied.

The imposition of such a sanction appears to be excessive and disproportionate, limiting in a significant way the operator's right to perform any commercial activities that are related to software programs.

In order to obtain the technical permit from MCIS, the digital platform needs to comply with a series of technical and organizational conditions, such as:

- the platform needs to have the technical capacity to register the proposed route and to be able to continuously monitor the rides, to offer data to the platform operator, such that it allows the issuing of the annual financial statements, as well as to issue and transmit to the passenger the electronic invoice;
- the platform needs to respect the legislation regarding data protection and the digital platform operator needs to implement complex methods and procedures in order to ensure cyber security and data protection.

The digital platform operators need to offer through the digital platforms information regarding the applicable tariff, the vehicle's license number and the route. All the information and all the available documents on the digital platform need to also be available in Romanian.

The digital platform operators need to provide to the passengers a platform for communication, available non-stop for the reporting of incidents regarding the performance of the ride and the possibility to report any incident directly to the digital platform operator.

Conditions applicable to the alternative transportation operators

In turn, the alternative transportation operator can carry out this activity only after obtaining the following documents:

- the alternative transportation authorisation, which is issued to each alternative transport operator;
- the certified copy of the alternative transportation authorization and the alternative transportation badge, which are issued for each car used by the alternative transportation operator.

The mentioned documents are issued by the territorial agency of the Romanian Road Transport Authority ("RRTA") from the district in which the alternative transportation operator has its establishment (or, if the case, the Bucharest-Ilfov area). They attest the fulfilment of the conditions set out by GEO 49/2019 by both the driver and the vehicle used for the performance of the alternative transportation activity.

From a tax perspective, all revenues obtained from carrying out alternative transportation activities would be taxed as per the Romanian legislation.

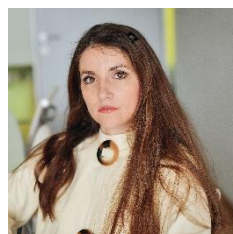
In case of direct payment from the passengers of the value of the services, either with cash or through credit/debit cards, the alternative transportation operators (car owners) have the obligation to use electronic cash registers, whereas in case the alternative transportation services are paid exclusively on-line through the digital platform, the issuance of invoices to the passengers is mandatory.

Natural and legal persons carrying out operations that fall under the GEO 49/2019 benefit from a transition period up until 1 November 2019.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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Guidelines adopted by the European Data Protection Board

On June 4, 2019, the European Data Protection Board (“**EDPB**”) updated the Guidelines 1/2018, the Guidelines 1/2019 and the Guidelines 4/2018, which offer information regarding the interpretation and implementation of the requirements and criteria of the General Data Protection Regulation (“**Regulation**”).

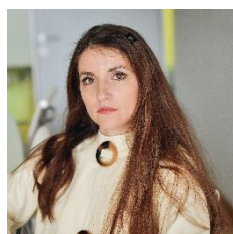
The aim of these Guidelines is to help member states, supervisory authorities and national accreditation bodies to establish a consistent, harmonised baseline for the accreditation of bodies that issue certifications in accordance with the Regulation. Therefore, they can act as a mechanism to demonstrate compliance with the Regulation and are issued (or updated) in order to provide more detailed and useful information on how to enforce the Regulation’s provisions.

These will take effects in different industries and sectors and are aimed to further develop into best practices for key players in the respective markets.

For further questions regarding the aspects mentioned in this alert, please contact us.



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