

Legal Alert

August 13, 2019

In this issue:

Amendment of the Companies' Law no. 31/1990

On August 5, 2019, Law no. 162/2019 regarding the amendment of art. 6 paragraph (2) of the Companies' Law no. 31/1990 ("**Companies' Law**") entered into force. The amendment regards the limits set in relation with the association right in order to carry out economical activities. More specifically, the limits in relation to a person who can be a founder of a company registered in accordance with the Romanian law have been modified.

Regulation on promoting fairness and transparency for business users of online intermediation services

On July 31, 2019, Regulation (EU) 2019/1150 of the European Parliament and of the European Council on promoting fairness and transparency for business users of online intermediation services entered into force (the "**Regulation**").



Amendment of the Companies' Law no. 31/1990

According to the new regulations, cannot be companies' founders the persons who, in conformity with the law, have no legal capacity or **were forbidden through a final court decision to exercise their right to be founders of a company as a complementary sanction** for committing one of the crimes mentioned by art. 6 paragraph (2) of the Companies' Law:

- crimes against property through contempt of trust;
- corruption crimes;
- embezzlement;
- forgery;
- tax evasion;
- crimes sanctioned by Law no. 656/2002 regarding the prevention and sanctioning of money laundering, as well as the implementation of measures to prevent and fight against the financing of terrorism, republished, as amended and supplemented;
- crimes stated in the Companies' Law.

Thus, as consequence of the amendments, only the persons who **were forbidden to exercise their right to be founders of a company through a final court decision as a complementary sanction to a sentence** cannot be founders of a company. As such, the persons who have been sentenced for one of the crimes mentioned in art. 6 paragraph (2), but against whom **no complementary sanction concerning the right to act as founder of a company was applied through the final court decision**, can act in this capacity.

The new regulation is applicable, in the same manner, to the persons that wish to occupy a position of director, manager, member of the supervisory council or of the directorate, censor or financial auditor.

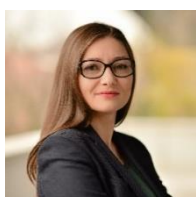
In its previous form, art. 6 paragraph (2) stated that the persons who, according to law, have no legal capacity or **were sentenced** for the above-mentioned crimes cannot be founders (or occupy any of the positions mentioned in the above paragraph).

We mention that the Romanian Constitutional Court rejected, as unfounded, the objection of unconstitutionality raised by the Romania's President and it observed that the provisions regarding the amendment of art. 6 paragraph (2) of the Companies' Law are constitutional in relation with the raised objections.

The legislation's amendment is also relevant from the perspective of the crimes mentioned in art. 277 paragraph (3) of the Companies' Law, which concern the fulfilment of functions and tasks by not taking into account the provisions regarding incompatibility. In this regard, the incompatibility notion also includes the interdiction mentioned in art. 6 paragraph (2) of the Companies' Law.

Thus, the article in its new form will be considered as the more favorable criminal law and will produce effects in the case of crimes that were already carried out, but for which no final court decision has not been issued yet.

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



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Regulation on promoting fairness and transparency for business users of online intermediation services

The Regulation introduces a new set of mandatory rules that ensure a fair, predictable, sustainable and reliable online business environment within the internal market, especially for businesses that use online platforms.

The drafting of the Regulation came due to investigations pursued by national competition authorities (e.g. in Germany and Austria) regarding the market behaviour of online intermediation service providers towards businesses that use their online platforms. The key finding of those investigations was that providers offered their online intermediation services in a discretionary and abusive manner, lacking the necessary transparency, in order for businesses to exploit the commercial opportunities offered by online platforms in full.

Scope of application

The Regulation applies to online intermediation services and online search engines provided to businesses, both natural and legal persons, which have their place of establishment or residence in the European Union and that offer goods or services within the European Union towards consumers – i.e. natural persons. The Regulation concerns a wide variety of online intermediation services, such as:

- Online marketplace platforms, as are Amazon, eBay, Uber and Airbnb etc.;
- Mobile app stores, such as Google Play, Samsung Smart TV etc.);
- Social media platforms for businesses (through Facebook, Instagram, Olx etc.);
- Price comparison platforms;
- Airfare aggregator platforms (Skyscanner, etc.);
- Nearby shop or restaurant localization platforms (TripAdvisor, Google My Business app etc.).

Note: the above-mentioned examples were taken from the impact assessment accompanying the Regulation, and it may be found [here](#).

Objective

The Regulation's purpose is to ensure that business users of online intermediation services and corporate website users in relation to online search engines, benefit from a comprehensive legal framework that allows them to exploit the commercial opportunities offered by online platforms in full. In this regard, the Regulation establishes numerous obligations mainly for providers of online intermediation services, such as:

- Standards that must be met by the terms and condition of online intermediation service providers;
- The procedure that must be followed when the online intermediation service provider decides to suspend, restrict or terminate the listing of goods/services on its online platform, including by offering the possibility to take action against the provider's decision;
- Description of any differentiated treatment that online intermediation service providers apply to their own goods or services, as opposed to the ones of other businesses that are present on the respective platform;
- The conditions in which technical and contractual access (or absence thereof) can be granted to business users of online intermediation services to any data generated through the online platform, as well as the conditions in which the providers of online intermediation services may process and aggregate the data generated by the online platform;
- Drawing up a code of conduct by providers of online intermediation services (including the associations representing them), together with business users of online intermediation services that are intended to contribute to the proper application of the conditions regarding the ranking parameters of the products. Thus, providers of online intermediation services are obliged to

establish the ranking mechanism clearly in order to enable the business users of such services to have an adequate understanding of whether the ranking mechanism takes into account the characteristics of the goods and services offered to consumers, as well as the relevance of those characteristics for those consumers.

Measures to be carried out by online intermediation service providers by July 12, 2020

Providers of online intermediation services have less than a year (until July 12, 2020) to review or, where the case may be, to adopt terms and conditions that regulate their commercial relationship with business users of online intermediation services. These should also include the conditions in which the suspension, restriction or termination of the services can take place.

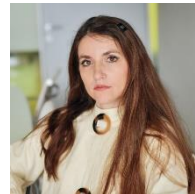
In its most recent investigation regarding the activity on Amazon's platform ([link](#)), the European Commission analysed the manner in which Amazon used the data collected from its online marketplace (regarding retailers, their products and transactions), in the context of its dual role as owner of the platform on which it also competes with other independent retailers. It is interesting to note the angle from which the European Commission is analysing the market behaviour, which focuses on both a possible abuse of a dominant position and on a possible agreements between Amazon and independent retailers regarding the data collected through its online platform.

In these circumstances, we recommend for both online intermediation service providers and retailers present on the respective platforms, to audit the whole system offering of online intermediation services in order to comply with the rules laid down by the Regulation. In the context of the national competition authorities' existing investigations, it is necessary to analyse the conditions in which access to data generated by the platforms takes place. Indeed, in most cases, procedures will need to be adopted (both legal and technical) concerning the access, aggregation and probably monetisation of the collected data.

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