

CMS | Romania transposes Omnibus Directive into national law



Romania transposed the Omnibus Directive (Directive (EU) 2019/2161) into Romanian national law through Emergency Government Ordinance no. 58/2022, which entered into force on 28 May 2022 (EGO 58). EGO 58 brings changes in three main legislative domains: abusive clauses in consumer contracts, unfair trading practices and consumer rights in contracts concluded with traders.

The main changes brought about by EGO 58 include:

i. in the field of abusive clauses in consumer contracts:

- claims against unfair terms in pre-formulated contracts are no longer subject to a statute of limitations;
- courts will be required to analyse, at their own initiative, the abusive nature of a contractual clause as soon as they have sufficient legal and factual elements to do so;
- sanctions for abusive clauses in consumer contracts are increased and now range from RON 20,000 (EUR 4,000) to RON 100,000 (EUR 20,000);
- for large-scale or community-scale violations, which impose the application of penalties as per Regulation (EU) 2394/2017, the fine may range from 0.1% to 4% of the turnover of the undertaking obtained in Romania in the year preceding the application of the penalty;
- once a clause in a pre-formulated contract has been deemed as abusive, the entity using such clauses will be required to remove such clauses from all then current contracts in its portfolio and publish the court decision on its website.

ii. in the field of unfair trading practices:

- EGO 58 introduces a prohibition on selling dual-quality products (i.e. selling a product as being identical with a product sold in other EU member states), although the product has significantly different composition or characteristics (unless justified by legitimate and objective factors);
- breach of the prohibition against dual-quality products may lead to fines ranging from RON 20,000 (EUR 4,000) to RON 100,000 (EUR 20,000);
- if the violation affects more than 100 consumers, the minimum and maximum thresholds stated above will be doubled;
- for large-scale or community-scale violations of the prohibition against dual-quality products, which impose the application of penalties as per Regulation (EU) 2394/2017, the fine may range from 0.1% to 4% of the turnover of the undertaking obtained in Romania in the year preceding the application of the penalty.

iii. in the field of consumer rights in contracts concluded with traders:

- EGO 58 increases prior information and transparency obligations incumbent on the trader before a contract concluded remotely or similar offer on a digital marketplace may be deemed as binding on the consumer;
- new rules apply to customer reviews and the prohibition of fake reviews (which include deletion of negative reviews, creation of fictitious reviews, transferring positive reviews from one product to another, non-disclosure of paid search rankings, etc.);
- undertakings are prohibited from using content that has been provided or created by the consumer while using the digital content or service provided by the trader (exceptions apply), and the consumer is entitled to recover such digital content without any cost, within a reasonable timeline, in machine-readable format and without obstructions from the undertaking.

For more details on EGO 58, contact your CMS client partner or local CMS expert: **Cristina Popescu**.