**Romania’s contribution**

**in view of the 2018 study on social media, search and freedom of expression**

On a general note, responsibility of the Internet service providers (IPSs) for not complying with their obligations, thus touching upon their actions or inactions, rights of legitimate interests of persons, will be made in accordance with provisions of Chapter IV – Civil Responsibility of the Civil Code, republished, which is the common law in the field of civil responsibility, while special laws sets special regimes and derogations in the field.

**Legal sources for blocking, filtering and eliminating of illegal content**

The main regulating internal document is Government Emergency Ordinance (GEO) no. 111/2011 regarding electronic communications, which is the framework for activities related to the electronic communication services in Romania, for the authorization regime and measures meant to encourage competition on the electronic communications networks and the services market. The Ordinance regulates rights and obligations for the electronic communications networks and service providers and the rights of final consumers, as well as the establishment of the National Authority for Communications Administration and Regulation – ANCOM -, the competent authority to implement the Ordinance provisions.

The legislation regarding e-commerce, gambling, pornography, psychoactive products also include provisions regarding the blocking of illegal content on the Internet.

1. **Regulations regarding e-commerce**

 EU Directive regarding e-commerce was transposed into Romanian legislation through Law no. 365/2002. Art. 11 – 15 of this Law make reference to the responsibility of Internet service providers. In general, the responsibility of Internet service providers for illegal or harmful content with the exception of the situations where it is proved that the service providers were aware of the illegal or harmful content. In accordance with art. 14(2), the service provider is considered aware and may not ignore the illegality of the content if there is a decision of a public authority (a Court or administrative body) that qualified the content as illegal.

Art. 16 of the same law provides for the obligation of the Internet service providers to report to the competent authorities alleged illegal activities and temporary or permanently suspend transmission or retention of information provided by the final beneficiary of the respective services, by eliminating the content or blocking the access to such information, by blocking the access to a communication network or any other service provided by the information society, if these measures were imposed by the public authority acting ex officio or as a follow-up to an announcement or a complaint.

Also to be noted that art. 11. 3 – 5 of Government Decision 1308/2002 regarding adoption of methodological norms for implementation of Law no. 356/2002 provides for the obligation of the service providers to implement a free procedure through which complaints may be made by any person in respect to apparently illegal activities of the service receivers or about apparently illegal information that they provide. The procedure has to be available electronically and ensure receipt of complaints within 48 hours from their sending. The provider has the obligation to make this procedure public on its website.

1. **Regulations regarding e-communications**

The main internal regulation is GEO no. 111/2011 regarding electronic communications as up-mentioned.

In accordance with art. 16 of Law no. 365/2002 regarding the e-commerce, the internet service providers (ISPs) are obliged to inform immediately the competent authorities about any apparently illegal activities by the final users of their service or about apparently illegal information provided by the final users, as described under the previous point. Consequently, in accordance with all these provisions, the competent authority evaluates whether the content is illegal and decides on the blocking of content on the Internet.

The public authority is defined as an entity of the public administration expressly authorized by law to take such measures or, depending on the cases, the Courts. When setting the general authorization regime for any of the networks or services categories, ANCOM sets the conditions for offering the services as well as the rights and obligations of the ISPs, including the restrictions on the illegal and harmful content.

ANCOM monitors and verities the conformity of the website with the provisions of GEO no. 111/2011 regarding electronic communications, of other specific legislation regarding e-communications and other ANCOM or EU regulations, when this monitoring and verification activity is foreseen within its competences.

In this respect, the service providers have the right to receive complaints from injured parties (any person who considers that was affected by the internet content). IPSs that have received a complaint or a notification regarding illegal activities by the final users of their services or information provided by the final users of their services, must inform competent public authorities within 24 hours, while they take all necessary measures to ensure the retention of that information.

1. **Pornographic content**

Pornographic content is regulated by two different laws, one regarding prevention and combating pornography and the second regarding prevention and combating of human trafficking.

The Law on prevention and combating pornography no. 196/2003 provides that ANCOM requests ISPs to block websites with pornographic content that do not implement the legal obligation to create passwords for the websites and request an access tax for pornographic websites.

In accordance with art.7 of Law no. 196/2003, websites with pornographic content may allow access only after payment of the access tax per minute set by the author of the website and declared to the fiscal authorities. Also, it is mandatory for the pornographic websites to impose an access password. Art. 11 (2) of the same law, provides that ANCOM is competent to request ISPs to block pornographic websites if obligations imposed by art. 7 are not respected.

In respect to child pornography, art. 18 of Law 678/2001 regarding prevention and combating of human trafficking provides for criminal responsibility for any person who exposes, sells, disseminates, creates, transmits offers or makes available objects, films, photos or any other visual supports with pornographic content involving minors (under 18). These actions are punishable by 3 to 10 years imprisonment.

1. **Online gambling**

GEO no. 77/2009 regarding organization and exploitation of gambling, art. 10.7provides that internet providers as defined by GEO no. 111/2011 have to respect the decisions of the Supervision Committee of the National Gambling Office (ONJN) regarding the limitation of gambling websites authorized in Romania, as well as those regarding advertising of gambling organized by unauthorized operators in Romania.

Government Decision no. 298/2013, art. 7.2. provides that the National Gambling Office (ONJN) is competent for monitoring and supervising of the online gambling. In accordance with paragraph 2.c. ISPs offer information to the ONJN in respect to the access which was identified as unauthorized, so that the Office can put into practice the legal measures.

In accordance with art. 73.1.c. of Government Decision 870/2009, monitoring operator has the attribute and duty to communicate immediately to the Supervision Committee of the National Gambling Office (ONJN) and the ISPs in view of blocking the access to these websites. If the ISPs do not block the websites the monitoring operator has the obligation to report immediately to the Supervision Committee. The Supervision Committee adopts decisions, signed by the president of the ONJN which are mandatory and may be appealed.

1. **Products susceptible of having psychoactive effects**

 The law on countering the operations with products susceptible of having psychoactive effects, other than those already mentioned by the existing legislation, art. 13.2., provides for the Ministry for the Informational Society to request ISPs the blocking of websites through which operations with products susceptible of having psychoactive effects are made (eg. products, substances, plants etc similar with drugs and psychotropic substances). The Ministry for the Informational Society requests the blocking of a website upon receipt of a notification from the legal representative of the Health Ministry, The National Authority for Consumer’s Protection and of the National Sanitary Veterinary and Food Safety Authority. The Notification is sent when there is a justified presumption there is a risk that operations with products susceptible of having psychoactive effects are made. The administrative decision that imposes a measure may be appealed.