

E-Business Legal Perspective

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Abstract

The existence of the electronic commerce law, doubled by the electronic signature law, will have positive implications on the entire country's economic framework. Banks will entail much more seriously in the development of the infrastructure that allows online payment and will try to find solutions not only for the card holders, but also for those who have bank accounts. In one form or another, the virtual transactions have been made so far. Although most payments are made in cash, upon the delivery of the product, or by cash on delivery, banks allow electronic operations ranging from gaining access to your account until the payment, transfer order, order of deposits and currency exchange.

On the other hand, the law should not be viewed only through the position of the advantages it brings, but also by the unseen costs of its absence. Insufficient use of the opportunities provided by the e-commerce represents a barrier to the expansion of the business. It is as if one would opt for autarky in an environment in which globalization and interdependence are the rule.

Keywords: *law, e-commerce, product definition, electronic signature, electronic control, merchant account, electronic payment.*

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1. LEGAL RULES ON E-BUSINESS

In a broad sense, the electronic commerce is an electronic exchange of information between a business and its customers. This can be done through fax, phone, voice-mail [1],[2],[3] , e-mail or internet, extranet [4] .

Narrowly, the electronic commerce is one of complex solutions offered by the Internet technology. This means that a multitude of applications and Internet service providers should work together in a perfect timing for an e-commerce site to be able to operate.

The concept of e-commerce, although known formerly to 2000, was not enacted in Romania until the advent of the electronic commerce Law no. 365/7 June 2002. The draft of this law No. 277/7 June 2000 was drawn up in accordance with UNCITRAL Directive on electronic commerce, adopted by the United Nations through the resolution No. 51/162 of 16 December 1996 with its adopted amendments in 1998 and with the Directive No. 0191/98 of 13 May 1998, of the European Union's electronic signature.

Electronic commerce involves the use of the computer networks in furtherance of acts and deeds of Commerce. The two main types of transactions in electronic commerce are business to business (among traders) and business to consumer (between merchants and consumers). In the first case it is necessary, first of all, the formalization of the documents has in its composition services as telnet for connecting to other computers on the network, FTP (File Transport Protocol)-used in bringing files in public archives scattered in Internet, Internet Phone and Fax-Internet telephony and fax services available through the Internet and www (world wide web) service that distributes information using a model called hypertext, or switching to another page of information by pressing a word or text in the home page; commercial, with contractual value, while in the second case we have put into place, in particular, the elements necessary for the functioning of the virtual store. The e-commerce industry also speaks more about the transaction "business to employee", referring to the transactions within a company, intended for employees of the company and carried out by its own intranet system.

To understand the concept of a commerce deed it must be started from the notion of a legal act, legal fact, to reach the commerce act, commerce deed or commercial operation. On the other hand, in order to analyze the two main types of transactions in electronic commerce, it should be established the notions of a trader (natural or legal), non-trader, consumer.

Electronic commerce is based on electronic signature, regulated by law No. 455/2001 and on the acceptance of standards relating to the safety of the transmission and storage of data (law 365/2002).

Within these general types of transactions there are several models of commercial activities on the Internet[5] , such as electronic [6], electronic supply stor[7] , electronic department store[8] , electronic companies[9], [10] , services suppliers[11] and others from a third party.

2. TERMS AND NOTIONS SPECIFIC TO ELECTRONIC COMMERCE

As regards to the definition of the product in cyberspace, the service provider and the applications are the first choices that the trader must make.

Shopping cart technology underlies any process of e-commerce. This system allows to be exposed images of the products, descriptions, prices, they provide mechanisms by which the consumer can choose the amount of products he wants to buy, verifying and recording the data, calculating and displaying the total amount of purchases, even including shipping charges, if applicable.

The components included in the application can be purchased from the web hosting provider with the selected service package, and some can be added and on the way.

Because of these variables, the producer-bidder should consider in choosing a shopping cart system, the following: If the shopping cart that the web hosting provider who intends to host the site offers has the necessary components of its products, which are the costs, how easy it is to install the system if the site is made within the company, and shall not resort to a specialized company[13] , how many such products may be exhibited in total, how many categories, what variations of the product, what features are allowed, if complementary products can be added in the future.

The merchant account (Merchant account) is different from the ordinary bank accounts, whereas it allows accepting payments via credit cards or debit cards as a form of electronic payment from the customers. On receipt of a merchant account, it will also be obtained and a number of the identity card (Merchant ID) and POS[14] – terminal at the point of sale. This terminal communicates through phone lines, as a fax. Through POS it should be read and recorded information about the consumer on the magnetic tape of a credit or debit card and details of the transaction shall be transmitted to the information and authorized institutions to process the payment or to the issuing bank, in the case of a debit card. They respond with the information if the existing loan funds are enough for the payment and authorises or declines the transaction.

With respect to the electronic order, there are several options for the display of products and submitting the online orders. The most common is a simple HTML page for display of the products and an order form.

If, however, the number of products is higher and customers are buying, as usual, a large number of products, it requires a more complex scripts: free JAVA scripts or CGI, or what may be sufficient in the first stage, or the e-commerce solutions offered

by the web hosting providers. Unlike the latter, free scripts are more difficult to install, are more difficult to maintain in terms of product updates or pricing, are less dynamic, offer limited possibilities for special promotions, do not provide tools for managing the portfolio of the customers, have limited opportunities for the exposure of products, load pretty slowly, some versions expire over time and do not justify the effort consumed with their installation on your web server.

On the electronic payment methods, the choice of the method depends on what kind of commerce site is managed: Business to consumer, addressed to the consumer or Business to business type dedicated to the business transactions.

The development of the commercial activities between the merchants located at great distances to each other cannot be conceived without the use of some electronic payment systems. These electronic means of payment allow very quick and convenient transfer of the money between the merchants.

The most common methods of payment are the payment order, the transfer, payment by credit card or debit card, travellers cheques. The websites of Business to consumer type the most common method is by credit card, and at the Business to business type, the money orders and transfers.

In addition to these methods, there are some methods of payment in electronic commerce: the value cards [15], electronic funds transfer at the sale point system[16] , credit cards system [17],[18] , or the electronic exchange of financial data.

The notion of the Trade Act and merchant

The civil legal act represents a manifestation of will submitted with the aim of producing legal effects, that is to born, modify or extinguish a specifically civil/legal relationship [19] . To determine the relationship that forms the object of the commercial law, the commercial code lists in articles 3 some legal acts and operations which it describes as "facts of trade", by committing to which legal relations are governed by the rules of the commercial law. The name of the commercial code is improper, since the distinction between acts and civil torts and by tradition, doctrine and examines the facts of Commerce, although under that name are also contained commercial legal documents. Due to the fact that, unlike the French or the Italian commercial code, the Romanian commercial code governs the facts and not the acts of Commerce, the

Romanian legislature passed the regulation of the commercial law, not only the obligations resulting from legal acts but also those arising from unlawful legal acts (unjust enrichment, are not due payment, business management) or in illicit activities on the dealer commits them in connection with its usual, professional activities.

The commerce facts represent those documents, acts or operations which are carried out through the production of goods, performance of works or provision of services or the interposer in turnover, by an operator, natural or legal person, or even by a non-commerçant, in order to obtain profit.

Also, art. 5 of the commercial code states that there is no deed of purchase of goods or merchandise, or for the use of the buyer (if that's the merchant) or his family, the resale of the products or the sale the products that the owner or the producer has acquired from his land or cultivated by him. Therefore, being entitled to conclude legal acts and foreign professional activity the dealer may, that through his own will to endow this fact a non-commercial character.

Therefore, although the commercial code adopts the objective theory over trading, it alternatively admits the subjective one.

From the objective facts of trade there can be distinguished two subcategories, namely that of the documents whose commercial nature results from the shape of the instrument itself, such as the ticket to the draft order or the cheque and documents which are of a commercial nature, encompassing all those acts which, in general, are expressly defined as acts of trade.

The natural person trader

The commercial code does not define the trader, but it only specifies what people have the quality of traders, in art. 7, according to which "there are retailers who do trade facts having trade as usual profession and companies". We consider this provision incomplete and obsolescent from two points of view: first, due to the fact that a person does not become merchant only by committing acts of Commerce as a regular profession, and secondly because not only those listed are traders .[20] That is why we will consider that the above mentioned provisions have been changed by certain default acts arising subsequently, which specify clearly and more completely which is category

of traders and under what conditions the natural person, respectively the legal person acquires the status of a trader.

Law No. 507/2002 concerning the organisation and conduct of economic activities by natural persons, which repealed and replaced the Decree-Law nr. 54 in 1990, has retained the traditional conception of the legal nature of the family Association for the purposes of the Association without legal personality, the simple form of the exercise of a commercial set up with a view to obtaining profits.

In conclusion, we consider that a natural person, in order to acquire the status of a trader, must meet the following conditions, cumulatively:

- to do trade facts
- trade works to be perpetrated by way of ordinary profession
- facts of trade to be perpetrated in its name
- to be obtained prior administrative authorization.

Legal person trader

Art. 7 of the commercial code lists, in the field of the legal persons only the companies dealers.

Art. 1 from Law no 26/1990 [21] on the commercial register as amended by Law no 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and in business, the prevention and sanctioning of corruption, defines the traders as "... the trading companies, national companies and national firms, autonomous and cooperative organisations and administrations". Note that in this definition there have been included as distinct topics also the national companies, yet we believe that these also represent trading companies and their distinct provision in the remembered regulatory act is pointless.

Also, art 1 of the Law No 64/1995 concerning the procedure of bankruptcy and judicial reorganization, as amended by the governmental order no 38/2002, included in the category of traders a number of legal entities, such as the consumer cooperatives and craft cooperatives and associations of such cooperatives.

Therefore, the retailers are legal persons:

- trading companies
- the autonomous administrations

-cooperative organizations

The consumer

The Government Ordinance No. 21/1992, as amended and supplemented successively by a series of regulations, defines the consumer (article 2) as the natural person who acquires, uses or consumes, as the ultimate recipient, products obtained from operators or receiving services provided by them. The doctrine focused on the definition of the customer purchase, acquisition, use and consumption of products or services, in addition to the professional activity of the consumer.

3. CONCLUSIONS

The E-commerce law is a law inspired by the European legislation, which provides protection to the consumer in B2C relationship. The promulgation of this law will increase the consumer's confidence during the online transactions, which should lead to an increase of the volume.

In fact, the long-awaited law on electronic commerce will not do anything other than create the legal framework for conducting transactions on the Internet and to regulate the problem of delinquency, being referred to long prison terms for crimes such as hacking and carding. Provisions of the law are complemented by articles of the criminal code, and the Ministry of communications and information technology (MCTI) preparing for this year a special law draft on crime in the electronic environment.

The law of the electronic commerce, doubled by the electronic signature law, will have positive implications, however. Banks will entail much more seriously in the development of infrastructure that allows online payment and will try to find solutions not only for the card holders, but also for those who have bank accounts. In one form or another, virtual transactions have been made so far. Although most payments are made in cash, upon delivery of the product, or by cash on delivery, banks allow electronic operations ranging from gaining access to your account until the payment, transfer order, order of deposits and currency exchange.

The real earning of the law would be for the banks to increase the speed of the clearing operations. The law of electronic commerce will not directly influence this aspect, but by increasing the traded volume, the improvements might come right inside the banking system. Through this regulatory action traffic on the Internet will increase

and will diversify the range of services of the Internet providers and operators of the mobile communications. Both categories of companies would be able to provide customers with various credit financial services, such as mobile banking. In addition, the benefits of the new law will not just be the banks whose traded volumes will increase, but also at the level of reviews that will incur reduced monetary costs.

On the other hand, the law should not be viewed only through the prism of the advantages it brings, but also by the unseen costs of its absence. Insufficient use of the opportunities provided by the e-commerce represents a barrier to the expansion of business. It is as if one would opt for autarky in an environment in which globalization and interdependence are the rule.

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- [1] The Voice mail is a type of mail practiced on-line by which it sends a message in the form of an audio file;
 [2] The E-mail is a communication system via which you can transmit a text with or without attachment;
 [3] The Extranet represents a network between remote computers;
 [4] The Internet represents a global network of computers bringing together the majority of local and national networks into a single "virtual world space";
 [5] Gherorghe Stancu, „Some considerations on electronic commerce”, in the Commercial Law Magazine, no. 7-8/2003, publishing house Lumina Lex, Bucharest, 2003, pages 122 – 139;
 [6] Called e-shop, it is managed by a company for marketing and sales of its products or services; through these it attracts a large number of clients without the distance may be an impediment;
 [7] By this, auctions are held by the big trading companies and even by public authorities, to purchase goods and services; by publishing the tender specifications on the Internet decreases the time and cost of

transmission and increases considerably the number of contractors who find out about the auction in due time (article 3, paragraph b from the G.O. No. 20/2002 regarding the procurement through electronic auctions);

[8] Represents a combination of electronic shops, using various models of transactions, depending on the type of service that the universal shop owner wants to offer ofere;

[9] There are used where large organizations or Government bodies launch calls for the purchase of goods and services;

[10] In this case it uses a user interface for the company's product catalog, the interface belongs to a third party, usually an Internet service provider or a bank;

[11] It may be any natural or legal person who shall make available to a given number or indeterminate persons an information society service (article 1 paragraph 3 of law No. 365/2002 on electronic commerce);

[12] Special packages of applications for electronic commerce;

[13] Whereas the majority of the suppliers who induced commerce packages in the installation interface is accessible and is based on the choice of options from an undefined set;

[14] Point of sale terminal;

[15] It represents a form of cash, where the value is not stored physically, but electronically;

[16] It represents a form of cash, where the value is not stored physically, but electronically;

[17] The buyer presents the seller the credit card, the seller sends the identification data of the credit card and the transaction details to a system of authorization, authorizing the transaction directly or routed to the issuing bank of the credit card, for approval. Periodically, the seller sends the details of the transactions approved by its bank. At the end, the consumer receives invoices that he must pay;

[18] Involves the transmission of data related to a transaction, as well as the information regarding the sending of funds from a payer to his bank, for a subsequent submission by the beneficiary or his bank;

[19] Gheorghe Beleiu, „Romanian civil law. Introduction to civil law. The subjects of civil law”, Press and publishing house „Şansa” SRL, Bucharest, 1995, page 118;

[20] In the legislature from 1887, the traders from the first category were individuals, because the merchant was then the prototype trader, while small companies in the second category were the only legal entities with relevant commercial vocation; for a more extensive development, Ioan Schiau, „Some considerations on the recent legislative developments of the concept trader - as natural person”, in Commercial Law Magazine, no 9/2003, page 72-84;

[21] As amended and supplemented by the Emergency Ordinance of the Government No. 76/2001;