LEGAL FEATURES OF CONTRACTS CONCLUDED BY ELECTRONIC MEANS

CARACTERISTICI JURIDICE ALE CONTRACTELOR ÎNCHEIATE PRIN MIJLOACE ELECTRONICE

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Summary. *Electronic commercial transactions have been particularly widespread in the business environment, which has led to an acceleration in the widespread adoption of computers, making them indispensable tools in all commercial operations.*

Concomitantly with the evolution of electronic transactions, the Internet has also marked a scale of evolution, without which, economic agents would not have been able to develop this industry of trading by electronic means.

However, the effective implementation of these technological tools has also encountered legislative barriers and ambiguity regarding the legal recognition of electronic transactions. In this respect, a reconsideration of the legal framework has been necessary to ensure a smooth integration of new technologies into commercial practices and to strengthen confidence in their legal effects.

In relation to the conclusion of a contract by electronic means, it can be defined as "an agreement of wills between two or more persons to create, modify or terminate a legal relationship, expressed in electronic form", capturing "on the one hand, the proximate genus, represented by the contract as an agreement to create, modify or terminate a legal relationship, and on the other hand, the specific difference, a difference which consists in the (electronic) form of expression of the concordant wills".

The scope of contracts in electronic form is limited to those contracts materialized in the form of documents in electronic form. All other situations in which the will of a contracting party is expressed by means of an electronic data-processing tool are covered by electronic commerce.

Keywords: *contract, trade, transaction, electronic, consumer*

INTRODUCTION

Electronic commerce, also known as E-commerce, is a key catalyst in promoting economic globalization. By facilitating cross-border interactions and minimizing spatial and temporal barriers, E-commerce speeds up and simplifies international trade processes. This trade method is not limited to trading physical goods, but it extends also to the provision of services, encompassing a wide range of economic activities, from traditional to innovative activities, including virtual store operations. E-commerce is thus a key element in energizing and making more effective the economy at global level, offering a platform for fast and efficient business, regardless of the geographical distance between business partners.

The implementation of electronic commercial transactions has evolved with a significant speed, surpassing the initial forecasts of economic operators. This rapid expansion can be attributed mainly to the ubiquity of computers, which have become an essential tool in commercial transactions. In this context, the global internet network has played a crucial role, marking a fundamental transition in the way trade is conducted. It has been recognized by traders as an irreplaceable tool, facilitating a wide range of commercial transactions and opening new horizons for E-commerce.

The Model Law contains clear rules on electronic means, the protection of personal data confidentiality, the liability of the parties and other issues relevant for running online transactions. The aim is to provide a predictable and efficient legal framework for the development of E-commerce, thus facilitating the growth of the digital economy and of consumer confidence in the online environment.

MATERIALS AND METHODS

Starting from the need to adopt the regulations concerning the trading activity by electronic means of insurance contracts, we have identified the determining factors influencing the consumer in concluding a contract by electronic means.

The new regulations addressed by the "Model Law" represent a "careful capitalization of the experience gained in the use of computerized systems and other modern technical means in international trade relations". The content serves at international level in the process of evaluating and improving "certain aspects of national regulations and practices in the field of commercial relations involving the computerized system or other means of modern technology, as well as for the introduction and use of appropriate rules in this field in those countries where no regulations in the area exist".

This "Model Law" was implemented to change the activity deriving from the means of communication between the parties who use computerized system and other means of modern technology in conducting business.

The measures implemented by the authorities for regulating the commercial activity by electronic means, as well as the measures and priorities for consumer protection stay at the methodological and theoretical basis of this research.

From the perspective of integrating the qualitative and quantitative methods, the limitations of the research derive from the restricted, even limited number of specific researches on the commercialization of contracts by electronic means in relation to the current context undergoing a major expansion and for which we are dealing with objectives specific to some informational levels, such as the attitude and behavior of the community at national level, in relation to the broad level of this trade means.

RESULTS. CURRENT RULES ON CONTRACTS IN ELECTRONIC FORM

The contract in electronic form does not have a defined legal regime, as it is regulated in the context of the E-commerce law, a transposition of the European Directive.

The framework of electronic commerce is regulated by "Law no. 365/2002 on electronic commerce, and the legal regime of the contract in electronic form (concluded by electronic means) is regulated by art. 7, art. 9 paras. (1) and (2) and Art. (1) of this law".

The correlation of the E-commerce Act with the E-Signature Act shows that the notion of "*contract concluded by electronic means refers to a contract which is concluded and evidenced by a document in electronic form"*. In this regard, the legislative regulation uses the term "contract concluded by electronic means", but the term "contract in electronic form" is understood as a specific concept.

In other words, we can say that there are contracts materialized in the form of documents in electronic form. All other situations, where the will of a contracting party is expressed by means of an electronic data-processing instrument, are excluded from the legislative framework.

The form of electronic contracts is defined by art. 1245, which refers to the special law: "contracts concluded by electronic means are subject to the formal requirements laid down by the special law", because the new Civil Code does no longer regulate the form of electronic contracts.

The regulation on the time of concluding contract in electronic form is applicable even if that contract falls outside the scope of electronic commerce (as defined by the law, i.e., as providing services of the information society).

As we have shown, it is possible to interpret the E-commerce Act as containing two types of rules: some generally applicable and others limited to the field of information society services. Earlier we have analyzed the rules which we consider to be the most comprehensive.

Such a contract is governed by consumer law, which is mainly aimed at protecting consumers against unfair or abusive practices by traders. The consumer's rights include, among other things, the right to correct and complete information about the product or service purchased, the right to return the product within 14 days without giving a reason, the right to have the product repaired or replaced if it is faulty or defective, as well as the right to compensation if they suffer damage because of a defective product.

DISCUSSION

Regarding electronic contracts, they can be signed digitally, without the need for physical documents or trips to a lawyer or notary's office. This makes the process of concluding a contract faster and more efficient, helping to simplify commercial and legal activities.

On the other hand, there are certain risks associated with electronic contracts, such as the security of personal data or the possibility that the party with whom you conclude the contract does not comply with the terms and conditions. It is therefore important to take additional measures to protect information and to check the reputation and privacy policy of the business partners.

Electronic contracts are a natural evolution in the digital age, offering new opportunities and considerable advantages for consumers and businesses. However, it is im-

portant to take precautions and follow the rules and standards in place to avoid potential problems or disputes in the future.

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It is therefore important for consumers to be well informed and aware of their rights when entering a contract to purchase or provide a service so that they can benefit from the protection that the law affords them. It is also important to be aware of how to protect themselves online, such as secure payment or the use of intermediary platforms in disputes with traders.

On the other hand, there are also certain risks associated with electronic contracts, such as the security of personal data or the possibility that the party you are contracting with may not comply with the terms and conditions of the contract. Therefore, it is important to take additional measures to protect the information and to check the reputation and privacy policy of business partners.

We could not find a definition of "concluded by electronic means" given by the legislator, this being due to the speed with which technology evolves and the alert way in which the business models are updated. "In foreign doctrine, we find either simple definitions, such as the electronic contract is the contract concluded by electronic means, or analyses entitled <What is an electronic contract?>, where the types of contracts concluded by electronic means and their valid conclusion are analyzed, without proposing a definition".

According to art. 1179 of the Civil Code, we find the conditions "essential for the validity of the contract" listed, and they are "legally considered structural elements of the legal act: capacity, consent, object and cause".

"The special provisions on the form of the contract, namely Articles 1240-1245 of the New Civil Code, include electronic form among the forms that the will to contract may take; thus, the will may be expressed: verbally, in writing, by a conduct that leaves no doubt as to the intention of producing legal effects, or electronically. We cannot therefore fail to note that all the electronic means of expressing a legal will are included in a much more comprehensive wording adopted by the New Civil Code".

Given that Romania is a Member State of the European Union, the law applicable to the conclusion of a contract by electronic means, via the Internet, in a contractual relationship with a partner from a Member State will be Law no. 365/2002 on E-commerce, which, according to Article 3 paragraph 1 "applies to service providers established in Romania and the services offered by them". In this respect, the law of the office where the provider carries out its activity is attributed.

If the contractual relationship takes place with a partner from a non-EU Member State, "the conflictual rule will be that of common law, namely Law No. 105/1992 on the

regulation of private international law relationships, namely Book VII of the New Civil Code, and the applicable law will be the one determined in this way. Where, in relations with certain States, there are international conventions which determine the applicable law, they will be applied in priority to Law No 105/1992 or to the provisions of private international law contained in Book VII of the New Civil Code.

CONCLUSIONS

The concepts of time and value are intertwined in a complex way in the digital economy. The time to deliver, communicate and complete a transaction are becoming critical success factors in a fiercely competitive marketplace. At the same time, consumers are becoming increasingly demanding in terms of speed and quality of service online.

This phenomenon has led to the emergence of platforms and apps that facilitate the process of buying and selling online, radically changing the way we relate to time and value. Online contracting can thus be an optimal solution to save time and acquire value in a simple and affordable way.

As for electronic contracts, they can be signed digitally, without the need for physical documents or trips to a lawyer or notary's office. This makes the process of concluding a contract faster and more efficient, helping to simplify commercial and legal activities.

In conclusion, electronic contracts are a natural evolution in the digital age, offering new opportunities and considerable advantages for consumers and businesses. However, it is important to take precautions and follow the rules and standards in place to avoid potential problems or disputes in the future.

It is therefore important for consumers to be well informed and aware of their rights when entering a contract to purchase or provide a service, so that they can benefit from the protection that the law affords.

In conclusion, knowledge of the consumer's rights is essential to be able to benefit from the legal protection afforded when concluding a contract, and the compliance with these rights is crucially important.

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