

Chapter 26

E-commerce

1. General

Romania has adopted a set of regulations on e-commerce, relying on the European Union regulations existing in this field. To this effect, the following main directives were considered:

- EU Directive no. 99/93 on electronic signatures;
- EU Directive no. 2000/31 on E-commerce;
- EU Directive no.2011/31 on consumers rights.

2. Main Regulations

- Law No. 365/2002 on E-commerce (“Law No. 365/2002”), amended and republished;
- - Government Emergency Ordinance No. 34/2014 (“GEO No. 34/2014”) on consumers’ rights in agreements concluded with professionals and for the modification and completion of different regulations;
- Law No. 455/2001 on electronic signature (“Law No. 455/2001”).

3. Information society services. Principles of providing information society services

3.1. General

The law defines the information society service as any provision of services made by electronic means and which has the following characteristics:

- (i) it is made in consideration of a economic benefit, usually procured to the provider of the offer by the recipient;
- (ii) it is not necessary for the provider of the offer and for the recipient of the offer to be physically present simultaneously at the same place;
- (iii) it is presented to the recipient by transmitting the information upon the recipient’s individual request.

3.2. Information services supply rules

Following EU regulations in the field, the Romanian legislation establishes the principles for the supply of information society services, in article 4 of the Law no.365/2002, as follows:

- (i) the provision of informational society services by different individuals or public entities is not subject to any prior authorization. However, this principle will not affect the legal provisions imposing prior authorization of activities carried out by individuals or legal entities, if such provisions do not expressly and exclusively aim at the information society services or at service providers;
- (ii) the provision of services is governed by the free and fair competition principles;
- (iii) establishing of a services supplier in a certain country is not necessarily conditioned on the place where the technical and technological means required for such supply of services are located;
- (iv) the information society services providers, established in the EU member states, will provide information society services in accordance with the European Agreement instituting an association between Romania, on the one hand, and the European Communities and their member states, on the other hand;
- (v) the information society services providers established in other states will provide information society services based on the bilateral agreements entered between Romania and such states;
- (vi) the legislation in the e-commerce sector is completed by the legal provisions regarding the execution, validity and effects of legal acts, with other legal provisions aiming at the consumer and public health protection, as well as any other legal provisions concerning private international law relations.

4. Transmitting information on information society service providers

The prerequisites specific to consumer protection oblige the information society services providers to ensure their recipients and public authorities the access to information regarding the providers' legal status and the type of services they provide. Such information is independent of any subsequent contracts conclusion by electronic means between the service providers and their addressees. This kind of information must be visibly, clearly and permanently shown on the Web page promoting such services.

Such information mainly refers to:

- (i) the provider's name;
- (ii) the provider's residence or head offices;
- (iii) telephone and fax number, mail address and any other data necessary to contact the services provider directly and effectively;

- (iv) the registration number and other similar identification means, if the services provider is registered with the Trade Register Office or other similar public register.

5. Commercial communication by e-mail

Any sort of commercial communications via e-mail is forbidden, save for cases when the recipient expressly agreed on receiving such e-mail communications, according to article 6 of Law no. 365/2002.

If the prior agreement for receiving commercial communications exists, such communications should observe the following requirements:

- (i) be clearly identifiable as such;
- (ii) the individual or legal entity on whose behalf such communications are made should be clearly identified;
- (iii) promotional offers, such as discounts, prizes and gifts, should be clearly identifiable and the conditions to meet in order to obtain such discounts, prizes and gifts should be easily accessible and clearly presented;
- (iv) competitions and promotional games must be clearly identifiable and the participation conditions should be easily accessible and clearly presented;
- (v) any other conditions imposed by the legal provisions in force.

6. Contract conclusion through electronic means

According to the law, the electronic means are electronic equipment and cable, optical fiber, radio or satellite networks, or other similar means used in processing, storing or transmitting information. The conclusion of contracts by such means has to be preceded by the offeror's duty to provide the recipient with all technical information needed for the proper conclusion of the contract.

As for the contract conclusion through electronic means, unless the parties agreed otherwise, the contract will be considered concluded as of the moment when the acceptance, by the recipient, of the offer to contract reaches the offeror.

Similarly, the contract, which by its nature or at the request of the beneficiary implies an immediate execution of a particular service, will be considered as concluded the moment the debtor starts performing its contractual obligations, unless the offeror has first requested to receive the acceptance of the offer.

7. Service provider's obligations

7.1. General

The services providers are subject to civil, criminal and administrative liability, unless otherwise provided by law, and they are responsible for the information supplied by themselves or on their own account.

The services providers will not be responsible for the information transmitted, stored or which they enable access to by means of (i) intermediation by simple transmission, (ii) temporary storage of the information, (iii) permanent storage of the information and (iv) instruments for searching information and connections with other web pages.

Intermediation by simple transmission means the transmission within a communication network of the information supplied by a service addressee, or ensuring access to a communication network.

According to the law, the services provider will not be held liable for the information transmitted, if the following conditions are cumulatively met:

- (i) the transmission was not initiated by the services provider;
- (ii) the information receiver was chosen by someone else than the service provider;
- (iii) the contents of the transmitted message was not influenced by the services supplier.

The law also introduces two new specific information technology concepts that are related to providers' liability, namely caching storage and hosting storage.

7.2. Caching storage

Caching storage is an automatic, transitory and temporary storage of the transmitted information, as far as this operation takes place exclusively to make the information transmission to other recipients more efficient.

The services provider will not be held liable for the information transmission under such terms, if:

- (i) it does not distort the transmitted information;
- (ii) it observes the legal rules concerning access to that information;
- (iii) it observes the rules or the customs regarding information updating, similarly to the way they are widely used and applied in the industry;
- (iv) it does not prevent any person to legally use commonly known technologies that are also widely applied in the industry, in order to obtain data regarding the nature or the use of the information;
- (v) it expeditiously acts to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been

removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

7.3. Hosting storage

Hosting storage means permanent storage of the information by a services provider, upon the request of a recipient of services.

In hosting storage, the services provider is not legally liable if:

- (i) the services provider has no information about the stored activity or information being illegal, and is not aware of any facts or circumstances proving that such information or activity may damage third parties' rights;
- (ii) if the services provider is aware of issues under a) above, the services provider has taken immediate steps to eliminate or to block access to such activities or information.

The above-mentioned cases are not applicable if the services receiver acts under the authority or the control of that particular services provider.

8. Distance contracts

The GEO No. 34/2014 defines distance contracts as contracts concluded between a commercial offeror and a consumer, within a selling system or within an organized distance services supply system, where the simultaneous physical presence of the parties is not necessary and while exclusively using one or more distance means of communication, both until and during the execution of the agreement. According to the legal provisions of article 6 of GEO No. 34/2014, prior to the moment when a long distance contract shall produce mandatory effects on the consumer, the offeror must clearly communicate the consumer information mainly on:

- (i) main features of the product or service;
- (ii) offeror's identity, such as its commercial name;
- (iii) the postal address of the offeror, telephone number, fax number and the e-mail address that it frequently uses;
- (iv) total price of the products and services with all the taxes included or, the modality for calculating the price;
- (v) a mention regarding the existence of a legal guarantee regarding products conformity;
- (vi) existence and conditions for the advance payment or other financial guarantees that must be paid or offered by the consumer at the offeror's request;
- (vii) duration of the agreement.

Distance contracts are considered as validly concluded the moment the consumer receives from the offeror a message confirming his order.

9. The withdrawal right in distance contracts

Except for some particular situations expressly provided by the legislation (*e.g.* supply of certain products which may rapidly deteriorate or expire, supply of personalized products), the consumer is entitled to withdraw from a distance contract within 14 days, with no penalties involved and with no obligation to ground its decision. Only direct expenses incurred with sending back the product may be charged to the consumer.

The 14-day term starts running differently, as follows:

- (i) for services, on the date of the contract conclusion;
- (ii) for products, on the date of their receipt by the consumer or by a third party designated by the consumer;
- (iii) for the agreements regarding water, gas or electricity supply, on the date of the contract conclusion.

If the offeror fails to transmit the consumer the information provided by the law, the withdrawal term is of 12 months from the end of the initial 14 days withdrawal period.

If, during the 12 months period, the information reaches the consumer, the 14 days period for withdrawal will start running as of that moment.

The legislation provides certain particular situations in which the consumer cannot withdraw from a distance contract, such as:

- (i) agreements for the supply of services or product that have a price which does not depend on the offeror, but on the fluctuations on the financial markets;
- (ii) agreements for the supply of sealed products which may not be returned from health or hygiene protection reasons, if they were unsealed by the consumer;
- (iii) agreements for the supply of sealed audio or video records or sealed informatics programs which have been unsealed by the consumer;
- (iv) agreements for the supply of newspapers and magazines, except for the subscription contracts for supply of the aforementioned products;
- (v) agreements for the supply of products manufactured according to the consumer's specifications or specially personalized, as well as supply of products which, by their nature, cannot be returned or can rapidly deteriorate;

- (vi) agreements for provision of digital content not delivered on material support if the provision has commenced with the express agreement of the consumer and confirmed that he will lose its withdrawal right.

10. Legal regime of electronic deeds

According to Law no.455/2001, any electronic deeds that were logically incorporated or associated an extended electronic signature, based on a qualified valid certificate, and generated by means of a secured device for electronic signature creation, will be assimilated in terms of effects and conditions, to a deed bearing a private signature.

An electronic deed that was logically incorporated, accompanied or associated an electronic signature and that is acknowledged by the person it is opposed to, will have the same effects as an authentic document between its signatories and the persons representing their rights.

In such cases where, according to the law, the written form is required for proof or validity purposes, an electronic document may meet this requirement if it was logically embodied, attached or associated an extended electronic signature, based on a qualified certificate and generated by means of a signature creation secured device.

If one of the parties contests the deed or the signature, the court will order a technical expertise. To this end, the expert or specialist must require qualified certificates, as well as any other documents necessary under the law, in order to identify the document's author, the signatory or the certificate beneficiary.

11. Electronic signature certification services

11.1. General

Certification services may be provided by any Romanian or foreign entity, and consist in the issuance of simple or qualified certificates or other e-signature related services.

Certification services are not subject to any prior authorization, and the certification services provider is bound to notify the specialized supervision and regulatory authority, 30 days prior to beginning its activity, and to submit to such authority complete information regarding the safety procedures and the certificates used within its activity. However, in order to issue qualified certificates the providers of certification services must fulfill certain conditions or request to be accredited and thus to subject themselves, before providing the service, to an audit performed by the regulatory authority or by an auditor appointed by the regulatory authority.

At the same time, the certification services provider must take all the necessary steps to inform the user on the correct use of the certification system and the system, on its operation procedure, on the fees levied or dispute settlement means, etc.

Certification services providers are bound to create and keep records of the certificates issued, and such records must include the following data:

- (i) the exact date and time of the certificate issuance;
- (ii) the exact date and time of the certificate expiry;
- (iii) the exact date and hour of the certificate suspension or revocation, including grounds for such certificate suspension or revocation.

The records should be permanently available for consulting, also on-line.

11.2. Qualified certification services

Qualified certificates basically include:

- (i) the indication of its issuance as qualified certificate;
- (ii) the identification data of the certification services provider, its citizenship or nationality;
- (iii) signatory's name or nickname, and other identification details of the signatory, if relevant;
- (iv) beginning and end of the certificate validity period;
- (v) identification code of the qualified certificate;
- (vi) the extended electronic signature of the certification services provider that issued the certificate;
- (vii) limits for using the qualified certificate or the value limits of the operations the qualified certificate may be used for.

The certification services providers have the obligation **to suspend** a certificate within 24 hours from the moment they acknowledged or from the moment they should and could have acknowledged the occurrence of any of the following events:

- (i) the signatory's request, after a prior verification of signatory's identity;
- (ii) a court order requires the suspension;
- (iii) in case that the information contained by the certificate proves to be false, unless revocation of the certificate is required;
- (iv) other cases that represent situations which require the suspension of the issued certificates, in accordance with the legal provisions.

The certification services providers have the obligation **to revoke** a certificate within 24 hours from the moment they acknowledged or from the moment they should and could have acknowledged the occurrence of any of the following events:

- (i) the signatory's request, after a prior verification of signatory's identity;
- (ii) signatory's death or putting under an interdiction;
- (iii) in case when a court order disposes the revocation of the certificate;
- (iv) the information based on which the certificate was issued proves to be erroneous or false;
- (v) if data in the certificate is no longer accurate;
- (vi) signature creation data confidentiality was violated;
- (vii) fraudulent use of the certificates.

The certificate suspension or revocation becomes ostensible to third parties on the date of its registration with the electronic certificates records.

The services provider may terminate his activity further to its dissolution, voluntary or legal liquidation, bankruptcy, or any other similar cause.

12. Evolution of E-commerce law

Apart from the above synthesized regulatory framework, even though electronic commerce continuously develops from a strict business perspective, E-commerce law in Romania is, however, not yet influenced by complex and comprehensive self-regulatory schemes employed by services providers communities, nor has case law a relevant contribution to its development.

Nevertheless, in the past years, international renowned electronic service providers tend more and more to carefully focus on Romanian E-commerce legislation when adapting their legal terms and conditions for providing services to Romanian consumers. Such legal approaches may well induce a stimulating effect on Romanian service providers, making them more connected to self-regulation and codes of conduct, thus modeling their business terms and conditions to legal approaches which are common on an international level.