

Chapter 26

E-commerce

1. General

Romania has adopted a set of regulations on e-commerce, relying on the existing European Union regulations in this field. To this effect, the following main directives are 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.
- 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 signatures ("**Law No. 455/2001**").

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

2.1. General

The law defines an 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 an 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 simultaneously physically present in the same place;
- (iii) it is presented to the recipient by transmitting the information upon the recipient's individual request.

2.2. 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 information society services by different individuals or public entities is not subject to any prior authorization. However, this principle does not affect the legal provisions which impose a 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 free and fair competition principles;
- (iii) the establishment of a service supplier in a certain country is not necessarily conditioned on the place where the technical and technological means required for such supply of services is located;
- (iv) information society service providers established in other states will provide information society services based on the bilateral agreements entered into between Romania and such states;
- (v) 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.

3. Transmitting information on information society service providers

The prerequisites specific to consumer protection oblige information society service providers to ensure for their recipients, and public authorities, access to information regarding the providers' legal status and the types of services they provide. Such information is independent of the conclusion of any subsequent contracts 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 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 service provider directly and effectively;
- (iv) the registration number and other similar identification means, if the service provider is registered with the Trade Register Office or other similar public register;
- (v) Fiscal Identification Code;
- (vi) the identification data of the competent authority, if the service provider's activity is subject to an authorization regime;
- (vii) the professional title and the state in which it was granted, the professional body or any other similar body to which the provider is part, an indication of the regulations applicable to said profession in the state where the service provider is established, as well as the means of access to these regulations if the services develop a regulated professional activity, or the provider is a member of a profession;

- (viii) the charges for services provided, indicated in compliance with the rules on the marketing of the products and services, indicating the exception, inclusion and non-inclusion of VAT, as well as its value;
- (ix) the inclusion or non-inclusion of delivery costs in the price, and their value, if it be the case;
- (x) any other information that the service provider is bound to provide to the recipients in accordance with the legal provisions in force.

4. Commercial communication by e-mail

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

If 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 necessary 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 conditions of participation should be easily accessible and clearly presented;
- (v) any other conditions imposed by the legal provisions in force.

5. Contract conclusion through electronic means

According to the law, 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 necessary technical information for the proper conclusion of the contract.

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

Similarly, a contract, which by its nature or at the request of the beneficiary implies an immediate execution of a particular service, is 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.

6. Service provider's obligations

6.1. General

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

Service providers are responsible for 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, a service provider is not 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 other than the service provider;
- (iii) the content of the transmitted message was not influenced by the service supplier.

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

6.2. Caching storage

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

The service provider is not 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 the update of information, similar to the way they are widely used and applied in the industry;
- (iv) it does not prevent any person from the legal use of commonly known technologies which are also widely recognized and 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 its stored information 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 a removal or disablement.

6.3. Hosting storage

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

In hosting storage, the service provider is not legally liable if any of the following conditions is met:

- (i) the service provider has no information about the stored activity or information being illegal, and as regards any actions for damages, is not aware of any facts or circumstances proving that such information or activity may damage a third parties' rights;
- (ii) if the services provider is aware of issues under a) above, the service 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 service receiver acts under the authority or the control of that particular service provider.

7. 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 service 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 distance contract produces 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 it frequently uses;
- (iv) total price of the products and services with all taxes included, or the modality for calculating the price;
- (v) a mention regarding the existence of a legal guarantee regarding conformity of the products;
- (vi) existence and conditions for any 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, on a durable medium.

8. Withdrawal rights in distance contracts

Except for some particular situations expressly provided for 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 justify its decision. Only direct expenses incurred from 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 agreements regarding water, gas or electricity supply, on the date of the contract conclusion.

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

If, during the 12 month period mentioned above, the information reaches the consumer, the 14 day period for withdrawal starts running as of that moment.

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

- (i) providing products or services whose price depends on fluctuations in the financial market that the professional cannot control, and which may occur during the withdrawal period;
- (ii) agreements for the supply of sealed products which may not be returned for 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 subscription contracts for the 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 the provision of digital content not delivered on support material, if the provision commenced with the express agreement of the consumer who has confirmed they will lose their withdrawal right;
- (vii) providing products that are, upon delivery, according to their nature, inseparably mixed with other items;
- (viii) providing alcoholic drinks whose price was agreed when concluding the sale agreement, and whose delivery can not be performed before a 30 days term, and whose real value depends on fluctuations in the market that the professional cannot control;
- (ix) contracts where the consumer has specifically requested the professional to come to their domicile for the view of carrying out urgent repairs or maintenance works;
- (x) contracts concluded at an auction;

- (xi) provision of accommodation other than for residential purposes, transport of goods, car rental services, catering or leisure services, where the contract provides for a date or specific period of execution.

9. Legal regime of electronic deeds

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

An logically incorporated electronic deed attached to or associated with an electronic signature, and which is acknowledged by the person it is opposed to, has the same effects as an authentic document between its signatories and the persons representing their rights.

In 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 to or associated with an extended electronic signature, based on a qualified certificate and generated by means of a secured signature creation device.

If one of the parties contests the deed or the signature, the court orders 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, signatory, or certificate beneficiary.

10. Electronic signature certification services

10.1. 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 service provider is bound to notify the specialized supervision and regulatory authority, 30 days prior to beginning its activity, and to submit complete information to this authority regarding the safety procedures and certificates used within its activity. However, in order to issue qualified certificates, 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 service provider must take all necessary steps to inform the user of the correct use of its system, providing information such as its operational procedure, any fees levied or the means of dispute settlement, etc.

Certification services providers are bound to create and keep records of issued certificates, 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 a suspension or revocation, as the case may be.

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

10.2. Qualified certification services

Qualified certificates include:

- (i) an indication of its issuance as a qualified certificate;
- (ii) the identification data of the certification service provider, its citizenship or nationality;
- (iii) the signatory's name or nickname, and other identification details of the signatory, if relevant; for example, the personal identification code of the signatory;
- (iv) the signature verification data, corresponding to the signature creation data under the exclusive control of the signatory;
- (v) indication of the beginning and end of the validity period of the certificate;
- (vi) identification code of the qualified certificate;
- (vii) the extended electronic signature of the certification service provider who issued the certificate;
- (viii) limits for using the qualified certificate or the value limits of the operations the qualified certificate may be used for, if that is the case;
- (ix) any other information established by the specialized regulatory and supervisory authority.

Ccertification service 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) at the signatory's request, after a prior verification of the signatory's identity;
- (ii) a court order requiring suspension;
- (iii) in the case that the information provided by the certificate is not actual anymore, unless the 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.

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

A certificate suspension or revocation becomes ostensible to third parties as of the date it was registered with the electronic certificate records.

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

11. Evolution of E-commerce law

Apart from the above synthesized regulatory framework, even though electronic commerce is continuously developing from a strict business perspective, E-commerce law in Romania is, however, not yet influenced by complex and comprehensive self-regulatory schemes employed by service 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 on legal approaches which are common at an international level.