



## ELECTRONIC COMMERCE WITHIN THE CONTEXT OF GLOBALIZATION

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**Abstract:** *Electronic commerce has been rapidly expanding in many areas of social and economic life as a result of increased economic and market globalization. There is increased interest at international level to encode the electronic commerce so that security and safety of transactions on the Internet are ensured without hindering their development. An analysis and interpretation of the main international regulations points out the existence of two different orientations: the Community orientation, which has a tendency to legislate the main problems in the field, and the United States orientation which adopts the system of conceptual self-discipline in this area. Given the international character of electronic commerce, we consider that uniformization of rules in this area is imperative. The current study addresses legal practitioners faced with problems of international trade law in the field of electronic commerce. In information security, legislation is still under development. International legislation still has its drawbacks, especially in globalization acceptance and explicit definition of terms*

**Key words:** *commerce, information, legislation, globalization*

### 1. PRELIMINARY SPECIFICATIONS

The unprecedented development of information technology determined by rapid storage and transmission of information at the lowest cost has revolutionized global trade, which in turn triggered the emergence and development of new forms and ways of commercial contracts. As a result of growing economic and therefore market globalization, electronic commerce is increasingly emerging as an entity, a phenomenon that involves multiple connotations and interpretations from the part of the company but is also expanding rapidly in many areas of social and economic life. Currently, electronic commerce has become a key component of development policies, the term becoming synonymous with profit growth. From the juridical point of view, the Internet is the place where people can perform transactions, sales-acquisitions, insurance, services, financial, banking and economic operations, etc., therefore, the Internet has become a propitious commercial environment requiring its own regulations, new legislative approaches that should encourage and develop but also protect itself as well as those who are involved in electronic commerce. Mutations that have occurred in technological development and marketing especially in electronic-based product trading as well as in the continuous environmental and demographic change, particularly in terms of lifestyle change and reduced household time, have strongly favored electronic based sales which are going to further increase on a steady basis. Therefore, e-commerce can be defined as a new post-modernist method that identifies the traders', businesses' and consumers' attempts to reduce the expenditure, the time for goods and services delivery as well as to improve their quality (Schianu, 2001).

### 2. INTERNATIONAL CODIFICATION OF E-COMMERCE

All participants in the legal international trade relations - and e-commerce logically belongs herein - are highly preoccupied in codification. This is however, a complex process involving the world countries, but also international organizations, especially the United Nations Organization or international nongovernmental organizations. Codification refers to the following categories of activities: harmonization, standardization, unification and last but not least uniformization. The activity of international trade law standardization, implicitly that of e-commerce within the UN, was materialized through adoption of several legal instruments, international conventions, model laws, regulations, etc. One of most important initiatives in international electronic commerce is the *Model Law* of the United Nations Commission for International Trade Law. Model Law on Electronic Commerce was adopted through the UN General Assembly Resolution no.51/162 of December 16, 1996. The Model Law stipulates the principle of autonomy, characteristic of all contractual relations and aims to be flexible enough to accept any technological and innovative solutions, and this is undoubtedly extremely important (<http://www.iccwbo.org>).

The targeted objectives were to facilitate the use of e-commerce domestically and internationally, and to promote equal legal treatment among users of hard paper documentation and users of electronic information. Rules on electronic messages can also be found here and can represent standard rules in cases where the exchange of electronic messages has taken place without prior consent/agreement within the EU networks. Chapter two is devoted to problems of legal validity of the information contained in data messages, such as written messages or electronic signature. Model Law is based on the *functional equivalent principle*, according to which messages in electronic form are legally acknowledged as equivalent to written documents. This does not lead to a perfect equivalence of a data message with a paper-written message, however, it sets criteria for its legal equivalence, promoting non-discrimination, one of the basic principles of the Model Law. One of the most important aspects of electronic communication with a view to producing juridical effects is that linked to the dispatch and reception time and place, which is crucial for the process of contract drawing. Thus Model Law replaces the impracticable criterion of locating the information system placement with the location criterion where the subjects perform their commercial activity. Unlike the Model Law which establishes certain framework rules referring to formal requirements concerning the electronic commerce and electronic signature, there is another international legislative initiative, the General Usage for International Digitally Ensured Commerce (GUIDEC) which details aspects of electronic commerce. In particular, this document establishes the general framework of security and certification of digital messages based on pre-existing law or practice. A message is ensured

provided that there is evidence indicating the author's identity and that the message has not been altered since its ensurance. A potential subject must assign safety for an insured message to the ensured party. Therefore, if operating with usual care, a recipient sends by mistake to another user, a message that was altered because of the former's fault, the latter will ultimately be responsible for the consequences of wrong sending. An agent can ensure a message on behalf of another subject if he is entitled to do so under applicable laws. Rules of mandate and representation will apply.

"Certification" is a message ensured by a party who certifies the accuracy of the facts contained therein in order to legally guarantee another party's act. Certificators have to inform the interested parties regarding the problems which they have encountered and which can condition the certification guarantee. They must have sufficient financial resources to exercise their profession and to cover potential risks; they should keep an archive of materials relating to the certificates for some time, and have certain obligations when they interrupt their activity.

*Global Action Plan for Electronic Commerce* aims to provide a guide that is intended primarily for the attention of governments, private entrepreneurial world, referring to those factors of electronic commerce that have to be allowed to interact with free market forces. Therefore, this document comprises the principle according to which participation in e-commerce should be secured through open competition and a transparent market, the state intervention being accepted only if it appears as indispensable, transparent, non-discriminatory, flexible, objective and technologically neutral. (Klander, 1998)

Usage of Digitally Ensured Commerce for International and Global Action Plan for Electronic Commerce are legislative initiatives of the International Chamber of Commerce (ICC), an institution that directly involves the private economic sector. In an area as large as the electronic commerce, where denial of the state monopoly regulations is fundamental and where operators continually expand, ICC seems to be a privileged place where ideas and new forms of self-regulation can be found.

### 3. COMUNITY UNIFORM RULES ON ELECTRONIC COMMERCE

The process of introducing a free market for information society services – the so-called "eEurope", has its origins in a Commission Communication dated 1997 and is encountered in a series of legislative provisions whose combination results in a regulatory framework, still incomplete, but very well structured and consistent compared to the difficulty of legislating in such a new and dynamic field. In this respect, Directive 00/31 was first legislated on certain legal aspects of information society, in particular electronic commerce domestically, and Community Directive 99/93 regarding the community framework on the electronic signature. The community legislature chose to limit their intervention only to issues considered strictly necessary to ensure free movement of information society services. Particular emphasis was placed on the consumer protection within networks. Directive nr.97 / 7 was passed in this respect, and it initially aimed to protect the weaker party in aggressive sales performed by most modern marketing channels. In their final form, regulations have proved flexible enough to be implemented satisfactorily to online contracts, resulting in encouraging European consumers to exploit their commercial potential (Schianu, 2001).

### 4. CONCLUSION

Electronic commerce, as striking manifestation of economic globalization, actually requires to inevitably overcome the current regulations that differ from one area to another, during the next average-long period of time. Given the supranational character of the Internet, adoption of uniform rules aimed at

encouraging trade is fully justified, but also safety ensurance of the participants involved. Certain legal issues in electronic commerce, however, are caused by the difficulty to apply the existing rules in the cyberspace, rather than by the absence of specific rules. Hence the concept adopted in the United States, of avoiding specific regulatory output and resorting to self-discipline. This orientation is based on the consideration that, as a matter of fact, the Internet is not the only means by which goods and services are supplied; more suspicious consumers could resort to traditional trade channels.

On the other hand, those who already consider the network secure enough should not be overwhelmed by formalities, rather the Internet should be seen as a medium of extremely quick and informal global exchange. On the other hand, community legislature has intervened in electronic commerce due to consumer mistrust towards using the new technology and the premise of simultaneous adoption of legislative provisions with national character (as in Germany and France) that should have created a system of divergent rules hindering the harmonious development of this area.

În delicata chestiune între reglementare și autodisciplină nu este ușor să indicăm cea mai bună soluție, aceasta fiind legată de prea multe variabile care merg de la mentalitatea diferită a consumatorului până la schimbările rapide în domeniul comerțului. Considerăm totuși că soluția europeană ar trebui să prevaleze deoarece, se caracterizează printr-o intervenție normativă prudentă, care se concentrează pe problemele care par a fi de mare sensibilitate.

We consider that the international community should establish a uniform system out of the two different legislative orientations in electronic commerce. There is no easy choice in the delicate issue between regulation and self-discipline, as this is linked to too many variables ranging from different consumer mentality to rapid changes in the trade. We believe, however, that the European solution should prevail as it is characterized by a prudent regulatory intervention, which focuses on issues that seem to be highly sensitive.

The scientific research performed prior to the elaboration of this paper led to a set of conclusions.

In information security, legislation is still under development. International legislation still has its drawbacks, especially in globalization acceptance and explicit definition of terms.

Lately, the crime phenomenon has been growing enormously in this area, the online environment offering the perfect mix of possibilities, anonymity, security and escape.

Various government organizations and international structures should intensify their efforts to cooperate and harmonize legislation in the area, so that safety and security of Internet users should be ensured.

This paper represents a first step in the field of electronic commerce research. Further research will deepen this theme and bring concrete proposals on the harmonization of international law with case studies and the proposed solutions

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