

Legal issues in E-commerce and E-contract in Albania

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Abstract

Electronic commerce has become a key aspect for many businesses all around the world. This new form of commerce has reshaped the ways of trading, revolutionizing the way of doing business and has brought competitive advantages for both consumer and business. Over the last few years Albania is witnessing a digital revolution too, however although internet access has grown significantly only a few enterprises and a small number of companies have engaged in e-commerce activities. The development of e-commerce is an important element of national economy. Being a new important sector, e-commerce can only flourish where there is a good infrastructure, both legal and technological, which is attractive to consumers and business. So the need for rules and principles facilitating e-commerce has become increasingly evident, too. This paper attempts to provide an overview of the regulatory framework, legal issues and the challenges in the development of electronic commerce in Albania.

Keywords: E-commerce, e-contracting, e-transactions.

Introduction

Recently, there has been an increase in the penetration and use of internet and other forms of electronic communication in all spheres of life including commerce. The entry of this technologies into every aspect of life has changed how people live, work and how companies do business.

In the frame of the globalization, the success of the economy depends among others in the fact that business involves the use of the Internet in their daily activity. Nowadays, a wide range of products and services can be bought online. Customers can order items online and then pay for them in different ways through credit/debit cards, PayPal, bank transfer, payment through phone credits as well as cash payment when the purchased product is delivered.

The key distinguishing feature between e-commerce and traditional business is the way information is prepared and exchanged. E-commerce enables the communication of business information and business activities in the network so comparing with traditional markets it manages to eliminate distance, borders and visiting hours giving the opportunity for conducting business in cheaper, easier and faster way (Guo, 2011, 2496-2499).

In 2000, internet usage in Albania was with 0.1% one of the lowest in Europe, and thus it has hindered the digitization in various economic sectors. In the span of 16 years

this penetration increased to 62.8%.¹ Although the internet penetration has grown significantly in the last years, e-commerce is still in its early stages with only a few companies operating in this field. Besides the lack of technological infrastructure and economic factors, legislative intervention for the regulation of electronic commerce did not come up to 2008-2013, time in which a number of laws aimed at regulating this field have been approved. The approval of such legal framework had a special importance as it regulated a new important sector that aims to build a digital society in which e-commerce flourishes.

While Albanian consumers have shown interest in purchasing online they are still worried and skeptic about privacy and security issues.

Main concern of this study is to examine the Albanian legal environment in which electronic commerce is developing in order to evaluate if the current legal framework is adequate to deal with this new reality.

E-commerce: definition, classification and main regulatory framework

In a loose sense engaging in e-commerce means doing business over the electronic network, as the buying and selling of goods and services, which can be delivered offline as well as products which can be digitized and delivered online such as electronic materials (text, sound and visual image).

-Indirect e-commerce - which involves the buying and selling of online material goods and their delivery to the purchasers in the traditional way by post or courier.

-Direct e-commerce - which involves the sale of intangible assets namely "digital" (such as software, pictures, music, text, film) that can be obtained, by buyers directly electronically. In other words, products are advertised, sold, paid for and delivered via the internet.

Parties in an e-transaction may be private enterprises, consumers, or public authorities. Depending on the participating parties there are different business models under e-commerce transaction, among the most important one can be mentioned:

a) Business to Business (B2B): is a type of commerce transaction that exists between businesses, such as those involving manufacturers selling to distributors or a wholesaler selling to a retailer. It is usually characterized by large volumes of products and a small price margin.

b) Business to Consumer (B2C): is the type of commerce transaction in which businesses sell products or services to consumers. It is usually characterized by small volumes of products and a large price margin. In Albania, this form of electronic commerce can be illustrated with web pages that offer pharmaceutical products (farmaciaime.com), household products (www.melvinflex.com), books shtepiaelibrit.com/, etc.

c) Consumers to Consumers (C2C), it refers to websites or forums where individuals can buy or sell from each-other. These exchanges can involve a third-party mediator which can facilitate and provide the infrastructure for the transaction like eBay.com.

d) Business to Administration (B2A), it refers to commercial relations between companies and public bodies (for examples when following a government procurement agreement). However many other models of e-commercial transaction

¹ www.InternetLiveStats.com.

are developing as business, government and consumers participate in an increasingly virtual market place seeking to attend its benefits.

There are many differing definitions of e-commerce found in the literature. According to the World Trade Organization (WTO) E-commerce has been defined as: *“The production, distribution, marketing, sale or delivery of goods and services by electronic means”*.

The OECD provides the following definition: *Electronic Commerce refers generally to all forms of commercial transactions involving both organizations and individuals, which are based upon the electronic processing and transmission of data, including text, sound and visual images.*

A definition more or less in the same line, is given by the Albanian law *“On electronic commerce”*, according to which e-commerce includes the trade of goods and services through the exchange of electronic documents. With *“Electronic document”* shall be understood any information created with *“documentary quality”*. However the Albanian law on electronic commerce has a limited scope of action because it excludes the application on several issues. The following documents are excluded:

- Notary acts or other similar actions directly related to the exercise of public authority;
- The representation of persons and protection of their interests before the courts, and in any institution, where the person's appearance can be done by third parties, through acts of representation;
- Activities with payment for the participation of players in betting, lotteries, gambling, electronic games, racetrack and casinos.

The law also does not extend to the legal relationships created in the field of taxation; for the protection of personal data; for issues related to practice and agreement regulated by competition law, and issues related to intellectual and industrial property rights.

The reasons of exclusions are different, referring to the fact that are areas that are regulated by special laws, or areas that due to their peculiar nature and complexity are very problematic and hasn't been subject of legislative unification between states. Main purpose of this law is to establish the rules of doing business electronically in order to create a legal framework in the internal market that will guarantee legal certainty for business and consumers, defining in the meantime the responsibilities of providers of information society services. It applies to all services offered by Information societies. The parties involved in an electronic transaction could be legal or natural, private or public without restriction. Albanian electronic commerce law does not require prior authorization or any other requirement for the parties that provide services of the information society. So state authorities cannot restrict the exercise of this activity by setting such restriction.

Electronic contracts: legal aspects

The wave of internet and the signing of Stabilization and Association Agreement have increased the usage of electronic contracts. In the digital environment, the importance of the contract is indisputable, since it lays the basis for the relations arising from electronic commerce either between two merchants or between a trader

and a consumer. Thus the ability to form enforceable contracts online is a fundamental requirement to the growth of electronic commerce on the Internet. Therefore it is important to give explanation of some basic questions relating to how e-contracts can be formed, performed, and enforced as parties replace paper documents with electronic equivalents.

Formation of contract on the internet

E-contracts are subject to electronic commerce law, the law on Consumer Protection, and the Civil Code. According to Article 659 of the Albanian Civil Code *"A contract is a legal action through which one or more parties' aim to create change or extinguish a legal relationship"*.

The same definition applies also to electronic contracts with the sole exception that such contracts are drafted and concluded by electronic means. One of the essential differences with traditional (face to face) contracts is the moment of contract signing. Generally a contract is legally in force when the proposal is duly accepted providing evidence for accepted liabilities. However, in an e-transaction the proposal and acceptance should be treated bearing in mind that the exchange is done remotely or that the parties may not always engage in real-time conversations. Therefore in the case of e-contract, before they are considered effective, the proposal and the acceptance must be communicated and in the same time parties have to prove to each other they are able to receive them electronically. Only after the communication of the acceptance is received by the proposer an electronic contract is concluded and can produce juridical effects for the parties.

In principle, general rules of contracts are also applicable to electronic contracts, since internet does not change the character of the contract but simply its manner of conclusion (Malltezi, Rustemaj, Pelinku, 2013, 495-502).

It's important to be aware, that just because a transaction has been performed online, still does not change the fact that all of the required elements of contract law are still applicable:

- Like in traditional contracts parties entering the transaction must have the legal capacity as well as the legal intention to be bound by the contract.
- The object of the contract needs to be lawful. Thus a contract for selling narcotic online is void. Objects of electronic transaction can be tangible or intangible items as well as services.

In our country marketing of online services is rapidly developing, and can be illustrated with pages like duapune.com which provides for registered individuals free benefit services in relation to employment and information about vacancy positions.

- There must be conviction and possibility of performance. A contract, to be enforceable, must not be ambiguous or unclear and there must be possibility of performance. A contract, which is impossible to perform, cannot be enforced.

- The contract must have the specific legal form. Electronic contracts as one of the types of electronic document in order to have legal value must meet all assessment criteria for the form and the structure of the electronic document provided on the electronic document law and at the same time it has to contain the electronic signature in order

to certify the identity of signatories. However in every country of the world there is a group of contracts that due to their importance cannot be concluded electronically.

The exclusions from the application scope

Under Albanian law, not all contracts can be concluded online. The legislator has clearly listed in article 12 of the E-commerce law all the contracts that do not fall under the scope of Albanian E-commerce law.

The first exclusion under article 12 is the formal contract related to the alienation of immovable property or immovable properties rights. These contracts according to article 83 and 750 of the Albanian civil code, must be notarized and registered, otherwise are not valid, and therefore cannot be concluded in an electronic form. Another argument is that contracts related to immovable properties are very sensitive and parties, seller and buyer should be very careful.

The second exclusion includes the contracts requiring by law the involvement of courts, public authorities, and professions who perform or provide a public service. This exclusion is logical because it respects the formality required by the law for certain documents. Also this field is very problematic and hasn't been subject of legislative unification.

The third exclusion includes guarantee contracts and collateral securities given by persons acting for purposes other than business, trade or their profession, as well as contracts for financial services or insurance services, for which marketing is applied in the distance. In this case reasons of exclusions are different referring to the fact that such contracts are regulated by other laws, or because of their specific nature cannot be carried out electronically.

And the last exclusion involves contracts provided by the Family Code, and legal actions, provided by Civil Code Section III title III "Inheritance Testament". Given the importance of such matters as well as their personal nature it's logical that they cannot be subject to the E-Commerce Law.

The obligation for information

In most cases we buy using senses, which means that we want to see, smell, or touch the product, creating a direct relationship with it. In E-commerce, such a thing is not possible. Consumers are in a particularly vulnerable position either because they do not previously know the supplier, or because they do not have direct contact with the product/service. They are also faced with a number of risks arising from the general lack of understanding of the operations in the internet.

In this regard the legislator has interfered through the law obliging the provider of goods or services to give adequate information, in the pre-contractual and contractual phase, particularly substantive and significant on the supplier and the product or service that is intended to buy.

So according to Article 7 of the law on E-commerce the contract should provide general information in relation to: the identity namely the trading name, the geographical

address at which is established, e-mail address, unique identification number. This information is important in order to enable the Consumer to contact him quickly and efficiently, or address any complaints.

Applicable law and jurisdiction

One of the main consequences of E-commerce has been the continuous internationalization of E- contracts. Since different countries have different laws, it is therefore important to clarify two essential issues: applicable law and jurisdiction in the event of dispute.

In Albania, in case of dispute in a situation where the parties are from different countries law no. 10428 date 02.06.2011 "On private international law" is applicable. This law has been approved in accordance with Regulation (EC) nr.593/2008 of the European Parliament and the Council "On the law applicable to contractual obligations" and Regulation (EC) nr.864/2007 of the European Parliament and Council "On the law applicable to Extra-contractual obligations applicable ".

According to article 45 of this law, the contract is governed, in the first place, by the autonomy of the parties (*lex voluntatis*), which may freely choose the law they wish to govern all or a part of contract. As long that such choice of law may be expressed, or clearly derived from the terms of the agreement or the circumstances of the case.

Despite the convenience of choice, which avoids wasteful preliminary battle about which set of laws should be used to interpret the parties' obligations, the parties do not always determine the law applicable to the contract.

In the absence of any choice of law, specific additional rules for different kind of contract are used to determine the applicable law. It is clear that this article is not exhaustive and is not intended to cover all types of contracts that can be concluded between the parties, therefore for the other types of contracts that are not mentioned by the law is foreseen that as applicable law is the law of the country in which the party that must complete the service which characterizes the contract has its usual residence at the moment where is stipulated the contract or when the contract is significantly associated with another country is applicable the law of this country.

Conclusions

The present work was an attempt to summarize the legal framework that governs E-commerce in Albania. The use of Information and Communication Technologies is now an integral part of modern everyday life in many countries all over the world including Albania. This automatically led to the need for legislative regulation regarding the technology issues and especially E-commerce. Albanian legislator responding to this need has adopted a legislative package in order not only to establish the rules of doing business electronically, but also to protect the consumers and sellers. Main purpose of this legal instruments is to guarantee legal certainty for business and consumers, defining in the meantime the responsibilities of providers of information society services. In this respect there have been progresses in the approximation of legislation and politics with *acquis communautaire* and with the Directives of the EU.

However being a dynamic sector the legal framework must be in continuous change in order to keep the pace with the relevant European developments.

With the growth of E-commerce, there is a rapid advancement in the use of E-contracts. Legally valid electronic contracts are essential for further development of electronic commerce. The existing contract law can be extended to the problems of electronic commerce and E-contract without a need for changes for this purpose. However online contracting does raise some novel legal issues such as how E-contracts can be formed, legal validity of digital signatures, consumer protection, security authentication, privacy and personal data protection etc.

Although internet access has grown significantly and businesses are continually becoming aware of the profit from E-commerce, only few companies are using E-commerce to conduct their national or international transactions. There are some main factors that have affected the slow development of electronic commerce in Albania, such as: technological, financial, legal, socio-economic and security issues.

In summary, we can say that great progress has been made on the legislation in the fields of E-commerce. Enforcement of these laws in practice is expected to provide greater opportunities for all parties involved as well as for the free movement of goods and services.

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