BABEŞ-BOLYAI UNIVERSITY
CLUJ-NAPOCA

FACULTY OF LAW

DOCTORAL THESIS

"THE ELECTRONIC COMMERCE"

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2011

SYNOPSIS

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Key-words:

Electronic commerce; dematerialization; providers of informational society services; electronic signature; electronic document; sales contract in the electronic environment; adhesion contract; obligation to inform; distance contracts; consumer's right to unilaterally terminate the contract; automation

1. Overview of the thesis' subject

The thesis tackles an up to date subject, *„electronic commerce"* being a global phenomenon in the context of the present age of dematerialised, quasi-instantaneous and markedly cross border digital communications. The present study, based on national and international bibliography, analyses to which extent the conclusion and performance of electronic contracts is subject to the traditional rules of sale, but also tries to highlight the changes undergone by commercial law as a result of the third industrial revolution – that of the microprocessor and its applications – such as the Internet.

The aim of the dissertation is to focus on the whole dynamic of sale contracts concluded by electronic means, in order to achieve a systematic review of the legal framework and of the e-commerce participants, bringing forward the specifics of electronic sales, but also the specific means of consumer protection, as consumers become more and more interested in this type of commerce. The results of this review lead to the conclusion that the legal realities still underlie a transition period from the economy based on direct contact between contractual partners to the one based on the use of distance communication means. In this context, the conclusions and proposals formulated in the dissertation draw onto the need to adapt the legal traditional instruments to the new technical and economical realities

and to develop new concepts and legal approaches as far as the electronic commerce is concerned.

The thesis is made up by five chapters and is structured in two parts, the first one - general, presenting along two chapters the concept of electronic commerce and the present regulatory framework at national and European level, insisting upon the particulars of the liability of the providers of informational society services and the matters of proof by means of electronic signatures and documents.

The special part of the thesis comprises three chapters dedicated to analysing contract formation and performance in the electronic environment, as well as the specific means of consumer and personal data protection in cyberspace. The conclusions and proposals *de lege ferenda,* especially regarding the complete automatisation of sale contract formation, sum up the analytical research.

2. Explaining the notion of „electronic commerce" and its principles

The thesis opens with the attempt to identify the **defining elements of electronic commerce** – a notion for which there are numerous definitions, generically designating the multitude of transactions with goods and services where electronic digital communications play an essential role (sale and purchase of products or information, access to databases, home banking, online auctions etc.). Among these characteristics there can be named: **dematerialization** – whereby the transactions are no longer paper based, **speed** – electronic communications being quasi-instantaneous and **internationality** – the extent of IT networks constituting the support of e-commerce (especially the Internet) having a world wide

span. These characteristics have influenced not only business-to-business trade (by allowing for data messages to be structured and automatically processed within closed communication networks – such as Electronic Data Interchange, to which partners from all over the world have acces based on prior agreements), but also business-to-consumer trade (an overwhelming numer of transactions in the electronic environment being perfected with consumers, in the sense of natural persons acting outside their professional capacity). As a result, the legislation governing distance selling had to be adapted accordingly, in order to protect the interests and bargaining power of this special category of contractual partners in the face of pre-determined clauses with which this type of commerce ussually operates.

Some regulatory principles of the electronic business environment follow – starting with the **principle of international compatibility** (the harmonization of incident national legislations in the matter of e-commerce having begun in Europe in the early '80s and yelded results at the end of the '90s by means of three Directives – Directive 1997/7/EC regarding distance selling, Directive 1999/93/EC regarding electronic signatures and Directive 2000/31/EC regarding electronic commerce); continuing with the **technological neutrality principle** – the law must not explicitly and restrictively mention certain technologies used in electronic commerce to which it recognises and bestows legal force; the **regulatory framework principle (minimalism)** – in order to ensure the required flexibility to the continual development of the e-commerce technologies starting from certain fundamental guidelines and standards; the **principle of functional equivalence –** ensuring equal treatment between clasical, paperbased trade and electronic commerce based on dematerialised information, as long as the electronic records and communications can offer at least the same

certainty and security to the legal relations as those offered by material documents.

3. Intermediaries – specific actors of the electronic commerce

An important section of this general part of the thesis is dedicated to the analysis of specific actors in the electronically perfected transactions – the **intermediaries** –entities whose services are used to facilitate the transactions between the seller and the purchaser in the electronic environment. These intermediaries may be:

- Suppliers of parties' identities or signatures' certification services;
- Suppliers of access services to IT networks, such as the Internet;
- Suppliers of searching or content hosting services;
- Suppliers of time stamping services;
- Suppliers of instantaneous/distance payment instruments.

Providing the above mentioned services may be based on contract – most of the times containing pre-determined clauses which shape the way, terms and conditions under which the "information society services" are provided, understanding hereby any services which are usually offered against payment, using distance communication electronic equipment, consisting of information handling and hosting at the individual request of the respective services' beneficiary. The extent of the liability of such services' providers for the inappropriate or lack of contractual performance is also contractually provided for. There are also cases when such a contract is not in place (especially where access services to the

Internet are offered) – in such cases, however, the exercise of reasonable care by the intermediary is to be expected, as well as the observance of standards, rules and procedures in providing the respective information society services.

Therefore, the liability of these intermediaries for damages caused to the recipient of their services may be, on the one hand, **contractual –** so that establishing exonerating contract provisions becomes of utmost importance; on the other hand, a **tortuous liability** may also be taken into account for damages caused to service users or to third parties in the absence of a service agreement (such as breach of confidentiality, integrity and availability of data or improper functioning of the systems causing the impossibility of a contract closing, therefore causing damages to the involved parties).

Limiting the liability of the afore mentioned intermediaries appears as a natural consequence of the fact that, most of the times, they operate with data and information coming from third parties, over which the intermediaries have little or no control.

Three special situations when liability is limited or downright excluded are regulated by Directive 2000/31/CE on electronic commerce, but also by Law no. 365/2002 on electronic commerce:

- **Acting as a "mere conduit" –** by means of a communication network or by providing access to it. The exoneration operates when the provider does not initiate the transmission, does not select the recipient of the information and does not modify the content of the transmitted information; storage of this information is only allowed in order to enable the transmission and has to be automated and temporary. According to Romanian law, the

exoneration will apply to all forms of liability – civil, criminal and contraventional. The reason for this exoneration resides in the fact that the affected intermediaries only transmit further information which has been supplied to them, whose content they have not influenced; the burden of proof in a possible lawsuit reststs with the intermediaries.

- **"Caching" –** is temporary, automated and comes up exclusively in order to improve the transmission of information coming from third parties, towards other recipients. Liability exoneration operates only when the intermediary does not modify the stored information, exclusively allows secured access to it - based on access passwords, updates the stored information according to industry standards or usages and acts swiftly in order to eliminate stored information or in order to block access to it upon obtaining actual knowledge of the fact that the information is illegal.

- **"Hosting" –** defines storage of information provided by third parties (such an example being a website or a discussion forum infrastructure). Liability will not be incumbed if the intermediary has no knowledge of the illegal character of the stored information or, upon obtaining such knowledge or awareness of the trespassing of a third party's rights, removes the illegal information or blocks access to it (however, no prior obligation to check the legal character of the hosted information is imposed upon the provider).

As far as **„obtaining knowledge**" is concerned, the present dissertation upholds the opinion that this notion has to be construed restrictively – simple notice not being satisfactory, unless an official decision of a court or administrative authority establishing the **illegal character** of the respective information has been passed. On the contrary, where the possibility of trespassing of a third parties' rights

is involved, mere notice coming from the allegedly affected third party should be enough.

Providers of services such as search engines or links to other web pages also benefit form the above mentioned liability exoneration for facilitating access to information supplied by third parties, when they cannot exercise control, nor do they have knowledge concerning the content of the provided information. These providers are also not liable when, after obtaining knowledge of the illegal character or about circumstances by means of which third parties' rights may be harmed, they block the access to the respective information. "Obtaining knowledge" may only be inferred based on decisions of competent authorities, which have been made public, search engines or links to other web pages providers being under no obligation to monitor or actively look for illegal content which may harm third parties' rights.

Contractual provisions for the limitation or exoneration of liability of information society service providers are extremely diverse in practice, most frequently touching upon time or value limitations of the liability towards the beneficiaries for each damage, negligence or any other circumstance which may arise from or in conjunction with the provided services.

4. Electronic signature

The second major theme analysed during the general part of the thesis concerns **identifying the e-commerce participants –** as a prerequisite in order to call upon the liability of a party in a transaction, as well as far as proof is concerned. **Electronic signatures** may be, in this context, considered as the equivalent of a manuscript signature, from the perspective of five functions of the latter:

- **identifying the signatory** (the signature's author) without a doubt – made possible by the security and control mechanisms offered by electronic signatures;

- **certifying** the manifestation of will contained in the signed document;

- **proof –** according to the principle of functional equivalence, an electronic document sealed by an electronic signature (extended, as required by Romanian law) is equivalent, as far as its legal effects are concerned, with a document which has been privately signed and, as far as it is recognised by the one to which the document is opposed, it will have the same effects between the signatories as an authenticated document;

- **closing –** the statement of will being complete once the signature is affixed;

- **warning** the signatory of the legal significance and of the consequences of signing.

The equivalence of electronic signatures with the manuscript ones and the admissibility of the first ones as proof in court is stated by regulations such as the Model Law of Electronic Signatures adopted by UNCITRAL in 2001, Directive 1999/93/EC for electronic signatures and Law no. 455/2001 regarding electronic signatures. Identification of the signatory, of its statement of will and of the data message content integrity are ensured by means of cryptography – coding and decoding the transmitted information with the use of mathematical algorithms, whose complexity makes tampering with

the content of these data almost impossible in the absence of the encryption and deciphering keys.

The European legislation, transposed into Romanian law, institutes a binary system of electronic signatures – simple and advanced ones, drawing on whether they benefit or not by a "qualified" certification issued by a competent third party, regarding the signatory's identity; their validity and probatory force are nonetheless the same. In this context, the diligence of the provider of such certification services in order to provide certainty regarding the certified signatory's identity and the confidentiality of the data enclosed into the qualified certificate is of utmost importance. In this respect, the said provider has to update the information comprised into the electronic signature, based on the data received from the beneficiary and by suspending or revoking the qualified certificates, upon demand of the beneficiary or for non compliance with legal provisions. This way, the certified electronic signature becomes equivalent with a manuscript one and thereby admitted as proof. Limiting the liability or exonerating the afore mentioned service providers usually takes place conventionally – for example, by means of contractual provisions regarding the use by the beneficiary of the respective certificates without observing certain (time, value, legal etc.) limits.

5. Legal framework of electronic commerce

The special part of the dissertation draws upon the statement according to which the automation and the cross-border character of e-sales have exercised a significant pressure upon various national legislators towards **convergence –** achieved by the effect of harmonisation or approximation of national legal frameworks regarding electronic commerce and electronic signatures.

On **European level,** the analysis of the incidental legal provisions has focused on relevant statutes in the sphere of electronic commerce, such as Directive 2000/31/EC on electronic commerce, Directive 1997/7/EC on the protection of consumers in respect of distance contracts and Directive 1999/93/EC for electronic signatures. The three Directives represent the reference framework for the legislations of Member States as far as the legal situation of electronic contracts, intermediaries' liability or solving the disputes arising of these contracts are concerned.

Analysing the European legal framework of electronic contracts has allowed the identification of the following guidelines as far as the legal status of these contracts is concerned:

- exercising control upon the information society service provider exclusively by its origin state and mutual recognition of accreditations stemming form other Member States;
- the valid closing of contracts by electronic means and recognition of their legal effects;

- the development of requirements as far as consumer protection is concerned – providing necessary information before contract formation and after this moment using a durable and easily accessible support depending on the actual communication means which are used, so as not to forfeit the advantages of electronic commerce (such as the lack of paper based documents);

- the functional equivalence between simple and advanced electronic signatures, as well as between advanced electronic and manuscript signatures, as far as legal effects and admissibility as proof in court are concerned; regarding the legal status of service

providers for the certification of these signatures, the lack of an accreditation and of the qualified certificates does not have to be an impediment in using the electronic signatures.

The analysis continues with the United Nations Commission for International Trade Law (UNCITRAL) initiatives for the harmonization of various international legislations regarding electronic commerce, resulting in two framework-statutes, respectively the Model Law on electronic commerce, passed in 1996 and the Model Law on electronic signatures, passed in 2001. These two statutory frameworks uphold the functional equivalence within the electronic environment of certain concepts tightly bound to the paper support – such as „*document*", „*signature*", „*original*" by using certain evaluation standards of the legal value of electronic messages. Based upon the non-discrimination principle, the validity of a contract may not be affected solely because its formation has taken place electronically. The Model Law on electronic signatures even establishes certain criteria of technical accordance and flexibility regarding the equivalence of electronic and manuscript signatures, based on the functions of cryptography and on the certification of the parties' identities by so-called "trusted third parties".

The initiatives of the International Chamber of Commerce from Paris regarding electronic commerce have also been analysed. These have lead to the drawing up of guidelines within the „Project for Electronic Commerce" and the „ Global Action Plan for Electronic Commerce", which are solely devised for business-to-business transactions. These proposals tackled the governance of the electronic environment by the principle of autonomous will in the context of minimal state intervention, acceptable in only a few areas, such as intellectual property or taxes and solely devised to eliminate obstacles to the free market.

The afore mentioned EC legal provisions have been transposed into Romanian law by means of Law no. 365/2002 regarding electronic commerce, respectively Law no. 455/2001 regarding the electronic signature, whose provisions have been critically analysed.

Law no. 365/2002 regarding electronic commerce regulates the activity of the „**providers of informational society services**" – meaning those services rendered by transmitting information upon the individual request of the addressee, using electronic devices, having commercial character, without the parties being simultaneously present in the same place. The statute covers closing, validity, legal effects and proof of contracts perfected by electronic means, claiming the equivalence of legal effects of such contracts with those of traditional contracts, as far as the traditional validity requirements (capacity, consent, consideration and determined object) have been met.

In such circumstances, the **obligation** of the provider of such services **to inform** the beneficiary (irrespective of the latter being a **consumer** or **another professional**) regarding certain minimal elements required by the law is typical. Such information concerns the providers' identification details, the required technical steps leading to contract formation, the extent to which the content of the future contract will be preserved and accessible to the beneficiary, ways of correcting material errors, possible guidelines to which the provider subscribes. Disregard of this legal obligation leads to **relative nullity** of the contract thus concluded.

Law no. 455/2001 regarding the electronic signature establishes the equivalence of electronic documents with the traditional ones (privately signed), as far as the first bear an **extended**

electronic signature, based on a **valid qualified certificate** and generated by means of a **secured device,** thus being able to uphold the security requirements in the electronic environment (confidentiality, integrity, authenticity and non-repudiation); as far as the electronic document is recognised by the person to which it is opposed, the legal value of such document will be that of an authenticated one, as far as its subscribers and their successors in rights are concerned. On the subject of being acceptable as proof, the probatory force of electronic documents ceases to exist once the qualified certificate attached to their electronic signature is no longer valid. The legal status of the providers of informational society services is also tackled by Law no. 455/2001 regarding the electronic signature, including their legal duties to check and report to their supervisory authority the information enclosed in the qualified certificates they issue, as well as to suspend or withdraw the respective certificates according to the legal provisions.

6. Commercial sales in the electronic environment

The specifics of commercial sales in the electronic environment makes up the object of a detailed analysis within the fourth chapter of the thesis, from the perspective of three defining elements of this type of transaction – immateriality, interactivity and cross border character.

The formation of these contracts requires the meeting of minds by means of electronic messages incorporating the terms of offer and, respectively, acceptance. Due to the acceptance mechanism (click on the "Accept" button in order to acquiesce to the proposed contractual terms) such contracts are overwhelmingly adhesion contracts. However, the large variety of offers available in the cyberspace provides enough counterbalance.

The offer in the electronic environment is made up from websites – the electronic equivalent of shop windows, catalogues, commercials, usually accompanied by order forms with a predetermined content and by the pre-contractual information that have to be supplied according to the usages governing the sale of the respective goods (for which reason it can be certainly stated that buyer information in cyberspace is most of the times, if not always, superior to that provided by traditional forms of commerce). Withdrawal of the offer has to be immediately announced to the addressee, but also to the potential providers of informational society services or to the webmasters hosting the respective website, in order to update accordingly the contents, under penalty of contractual liability of the withdrawing offeror for the damages thusly caused, including towards an accepting third party who has done so in good faith.

Acceptance is dematerialized, consisting of an electronic gesture (clicking on the button *Yes/Confirm/I agree* etc.). This automation of the will manifestation has lead to the idea of concluding a contract by means of the interaction of IT systems which have been pre-programmed by the contract parties, respectively to expressing the consent by means of **electronic agents** (without initiative or willpower, acting neutrally, based on prior programming). In order to explain the extent to which the actions of a computer have the value of a person's consent, various theories have been devised:

- the computer has been assimilated to a legal person, but it soon became obvious that it lacked the legal attributes of such an entity, which could not be applied to a computer program;
- the computer has been compared to a proxy; this theory could not resist in front of criticism pointing out the lack of legal

capacity of the respective computer program, required from the proxy;

- it has also been tried to place the electronic agent under the legal guardianship of the person that had programmed it, person who would therefore be tortiously liable for any faulty conclusion of a contract due to some error in programming, based on the appearance theory and on the principle of good faith and security of contractual relationships.

The moment of contract formation (from which it can be derogated) has been subjected to the information theory, the contract being therefore concluded when the offer acceptance reaches the offeror; the exception statuated by art. 36 of the Commercial Code regarding the immediate performance of the characteristic obligation by its debtor, either due to the nature of the obligation or at the offeror's request, which also counts as acceptance, is likewise applicable. The legal presumption according to which the addressee of the electronic message has knowledge of its contents at the moment of its receipt is instituted. Law no. 365/2002 regarding electronic commerce imposes on the offeror the duty of **written confirmation** to the acceptant regarding receipt of his/her acceptance or regarding the provider accepting the offer made by the beneficiary of informational society services (both parties being able to act either as offeror or as addressee); this written confirmation will represent proof regarding the formation and contents of the respective contract.

As the parties are delocalised, the Directive 2000/31/EC on electronic commerce imposes on the provider of informational society services to state the geographical address where it is established and from where it conducts its business. Therefore, according to the traditional theory, **the place where an electronic**

contract is concluded will be where the offeror is located at the time when the acceptance is received.

The law applicable to an electronic contract is left at the parties' discretion, being, in principle, that of the Member State where the provider of informational society services is established; this principle does not, however, apply to such services providers from outside the European Union. Moreover, consumers will always be protected by the law of their own state, if the protection thus offered is superior to the one contractually agreed.

Analyzing the applicable law for a contract concluded in the electronic environment has lead to the detailed analysis of the provisions of the United Nations Convention on Contracts for the International Sale of Goods, adopted in Vienna in 1980, in order to establish their compatibility with the regulatory requirements in the field of electronic commerce. The possible application of the Vienna Convention in the case of an international sale of goods (even when the object of the sale is IT material, according to the French doctrine) would confer the advantages of the flexible (non-compulsory) character of its provisions and the autonomy of this legal instrument, to which its internationality and the principle of observing good faith are added.

The potential advantages of applying this legal instrument governing the formation of contracts of international sales of goods, parties' obligations, risk transfer and sanctions for non-compliance with contractual obligations have proven, however, to be insufficient compared to the highlighted disadvantages:

- the Vienna Convention does not approach the sale of services or information; moreover, the concept of „goods" is fairly

difficult to define in cyberspace – could it comprise software-, IT programmes or musical pieces sale?

- this Convention is only applicable in business-to-business transactions (excluding therefore the ones business-to-consumer, consumer-to-consumer or consumer-to-business); its scope does not cover electronic auctions or sales of financial instruments (shares, bonds, investment products, negotiable instruments);

- it does not apply to interactive systems for automated ordering (such as virtual shops), where contractual terms are pre-programmed and non-negotiable;

- it either does not define important notions in the context of electronic commerce (such as „the place of business", „original", „signature" etc.) or it defines them to restrictively – as in the case of written form.

As far **performance of electronic sales contracts** are concerned**, the duty to deliver** only differs from the traditional one when it comes to rendering services or delivering software programmes or digital services – as these are „delivered" dematerialised, as a digital string of bytes, mostly by downloading with the help of a CD or directly from the Internet (they differ, however, form the "pure" services' contracts – such as home banking or maintenance of IT systems). Are these goods or services? The English doctrine sees software programs made available with the help of a physical support (such as a CD, cassette, card etc.) as being closer to a goods delivery than the rendering of services. On the other hand, digital products obtained directly from the virtual environment or with the help of other communication systems requiring downloading from the World Wide Web, tend to be framed in the

category of services (the English doctrine also applies in this context the "predominant purpose" test, by answering the question "What did the buyer think he/she was acquiring?").

The obligation to pay the price in the context of the sale perfected in cyberspace will also be performed by means of secured electronic transactions, requiring the users' authentication and the keeping of confidentiality of the transmitted data. Electronic payments may be made by using one of the following three types of instruments:

- electronic payment instruments – debit/credit cards; electronic checks – signed electronically or intermediary third parties sending money between worldwide accounts with the help of their own transfer accounts;
- distance access payment instruments –home banking or Internet banking;
- electronic currency payment instruments (digital cash), based on cash deposits accordingly converted into value units allowing for small payments into cyberspace.

The last part of the thesis approaches the theme of the protection of a category of buyers which is very present as far as electronic commerce is concerned, but is also very vulnerable - legally and economically under the auspices of such contractual relationships – consumers. As in any other contract where one of the parties is a consumer, in the case of electronically concluded sale contracts the specific legislation intervenes in favour of the party considered to be economically and legally weaker, by providing it with a series of special rights, derogatory as far as classic contract law is concerned, in order to balance the positions of the contract parties. The protective mechanism also extends to the e-commerce sellers, in

the form of limitation or exoneration of liability for inconsistencies or lacking goods or services, as long as the respective sellers act within the boundaries of the legal frame governing electronically concluded contracts.

7. Consumers' and personal data protection in the context of electronic commerce

Electronic commerce manifests itself mainly by means of distance selling contracts, therefore it is subject to the applicable legal provisions, which usually impose imperative limitations concerning the contractual provisions that may be varied or excluded from consumer contracts.

Regarding the **closing of distance contracts with consumers,** the comparative analysis of the Romanian legal provisions (the most relevant being Government Ordinance no. 130/2000 concerning consumer protection at the closing and performance of distance contracts, Consumers' Code, Government Ordinance no. 21/1992 regarding consumers' protection, Law no. 193/2000 regarding unfair terms in consumer contracts) and the intra-community ones (such as Directive no. 97/7/EC on the protection of consumers in respect of distance contracts, Directive no. 93/13/EEC on unfair terms in consumer contracts, Directive no. 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises, Directive no. 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees) as far as consumers' protection is concerned, has focused on the three major moments of this contractual relationship, respectively:

- **the pre-contractual phase –** governed by the special obligation of the seller to provide information regarding its

identification details, object and contractual terms, consumer's right to unilaterally terminate the contract, deadlines for the performance of contractual obligations. These information have to be imparted to the consumer in a way that is adequate with respect to the distance communication technique that is being used, which constitutes an evolution compared to the initial requirement of Directive no. 97/7/EC on the protection of consumers in respect of distance contracts, to provide these information in writing; on the other hand, the obligation to inform subsists during the whole contractual period (it being reiterated and developed inclusively by the Preliminary Project of the European Code of Contracts), the breach of this obligation entitling the consumer to annul the electronic contract thus perfected;

- **the moment of contract formation –** is subsequent to the sending of the order by the consumer, when the latter receives from the seller the confirmation of this order – this being a derogation from the rule of electronic contract formation. Moreover, **after the contract formation, the seller has to send a second confirmation to the consumer,** regarding the essential elements of the offer, accompanied by more information that has not been enclosed in the offer;

- **performance of distance contracts concluded with consumers** has to be undertaken by the seller within a legal non-compulsory timeframe of thirty days as of order receipt from the consumer. Should the ordered good not be available, the only alternative is to return the paid price to the consumer within thirty days. The delivery of replacement goods is only possible if prior agreed upon by the consumer, otherwise being considered as a **delivery in the absence of an order,** which exonerates the consumer from all and any consideration, the latter's silence not having the meaning of consent in this case. On the other hand, there are no legal

deadlines for the performance of the contractual duties by the consumer. Nonetheless, information regarding the price of the ordered good/service, ways of payment and payment deadlines has to be provided to the consumer starting with the pre-contractual phase.

The special, derogatory and protectionist legal treatment of this category of buyers inclusively provides them with discretionary rights, such as **the consumers' right to unilaterally terminate the distance contracts.**

This type of termination does not impose on the consumer the obligation to pay damages and not even to state any reason for this termination (as an exception from the principle of symmetry as far as contracts are concerned) and aims to protect the consumer who could not ascertain *in concreto* the properties of the goods or services before closing the contract. The time limit for the unilateral contract termination (without observing any other formal condition) is, according to the Directive no. 97/7/EC on consumer protection, of **seven working days,** its starting point depending upon the object of the contract (goods or services), but also whether the seller has complied with his/her legal obligation to inform the consumer. According to Romanian law, the termination deadline (termination which has to be exercised in writing) is longer – **ten working days:**

- **for goods – as of the moment they are received by the consumer**
- **for services – as of the day when the contract has been closed,**

in both cases under the presumption that the **obligation to inform has been performed by the seller according to the legal requirements;** otherwise, the contract may be terminated within a

maximal deadline of **ninety days as of any of the above mentioned moments.**

As an effect of this termination, the seller has to reimburse to the consumer within thirty days as of the termination moment the amounts paid by the consumer, the latter not being under any obligation to contribute to the costs of this return. Non-compliance by the seller with this obligation, just like lack of or inadequate performance of his/her other legal duties constitutes contraventions punishable with fines, the burden of proof resting with the seller.

The applicable law to this type of contracts is the law of the origin state of the seller (if this is located within the European Union); on the other hand, the more favourable legal provisions of the consumer's state of origin will always be applicable and for the lawsuits arising out of these contracts, the competent courts will be the ones form the consumer's domicile.

Moreover, the consumers have the right to be **informed (**completely, correctly, precisely as far as the essential characteristics of the goods and services are concerned), **protected** and **to receive compensation** for the damage incurred due to defective products. At the same time, at the closing of electronic sales contracts with consumers (which are overwhelmingly adhesion contracts) the provision according to which a contractual clause that has not been negotiated with the consumer will be considered unfair as long as by itself or in conjunction with other contractual clauses, it creates to the detriment of the consumer and against good faith, a significant imbalance between the parties' rights and obligations, has to be observed.

The final part of the fifth chapter of the thesis tackles in conjunction with the subject of consumer protection the theme of **the legal protection of personal data** which are necessarily being forwarded in the context of electronic commerce. These can be collected form the buyer digitally, saved and afterwards used, therefore their private and confidential character has to be preserved at all times.

The notion „personal data" is construed as having maximal coverage and meaning all information related to an identified or identifiable person. „Processing" concerns collecting, recording, storage, adaptation or alteration, use, disclosure by transmission, dissemination or otherwise making available these information to third parties.

Obtaining these information in order to conclude or perform an electronic contract is only possible with the prior, informed consent of the concerned party regarding the nature and purpose of the processing, sufficient legal justification having to be provided; at the same time, the requested data have to be adequate and must not exceed the purpose of their being collected. In this context, the visible indication of the privacy policy within the website used as a platform for electronic transactions becomes very important.

In the electronic environment, „cookies" are small files of the sellers' websites, which collect and store for a longer or shorter period of time information on the pages which have been accessed by a user, without expressly asking the user for permission – this has to be posted within the respective website, continuation to navigate the page representing a silent agreement for the collection of personal data. Personal data operators have to treat these as being confidential and secured, the European legislation forbidding the transfer of these data to third states that do not offer an adequate level of protection.

8. Conclusions

The results of the research lead to the conclusion according to which the legal realities are still marked by a period of transition from the economy based on direct contact between contracting parties to the one based on using distance communication means. The closing of electronic contracts is subject to the traditional rules of sale, what distinguishes these sales being the form in which the parties' will is expressed - electronically. The legal status and framework of paper based documents has changed radically when electronic documents have become sufficient in order to confer validity or the guarantee of proof of a legal relationship. The challenge in this matter has been finding the necessary and sufficient balance between the requirement to ensure legal certainty – indispensable as far as proof is concerned – and the wish for the necessary flexibility within a contractual relationship born on-line. In this context, the fact that (European and national) lawmakers have chosen to rather reform the existent laws than to create other special sets of rules (a good example being the matter of proof) is remarkable. Therefore, the conclusions and proposals formulated in the present thesis draw upon the necessity to adapt the traditional legal instruments to the new technical and economical realities and to develop new concepts and legal approaches as far as electronic commerce is concerned.