

Юридическое закрепление третьего поколения прав человека сопряжено с возведением основных прав и свобод человека в ранг международного права и созданием механизма их защиты, как на национальном, так и на международном уровнях. Все это нашло отражение во Всеобщей декларации прав человека 1948 г., Международном пакте о гражданских и политических правах 1966 г., Заключительном акте Хельсинкского совещания 1975 г. и другие.

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REGULATION OF THE ELECTRONIC CONTRACTS IN LAW OF EU, COLLISIONS AND PERSPECTIVES

The beginning of XXI century can be defined as the time of significant changes in the world's economic structure owing to the development of informational technologies, new communication facilities and introducing the internet in the all spheres of life. Nowadays, there is a transfer of high developed states to the new stage of development – the stage of informational society (Toshiyuki Kono, Christoph G. Paulus, Rajak Harry: *Selected Legal Issues of E-commerce*, 2002, 35).

The phrase electronic commerce can be interpreted as 'commerce conducted in a digital form or on an electronic platform', or 'selling or buying goods and services on the Internet' (Gerald Spinder. *European Commerce Law in Europe and the USA*, 2002, 215).

The Organisation For Economic Cooperation and Development (OECD) defines electronic commerce from an economic and social point of view as: all forms of commercial transactions involving both organisation and individuals, which are based upon the electronic processing and transmission of data, including text, sound and visual images.

Buying goods and services online is now ingrained in consumer culture. The latest figures from the Office for National Statistics of United Kingdom show that at a snapshot in time in September 2010, people were spending on average 481 million per week online, amounting to 8,8 % of total retail sales. In September 2009, the average weekly online spend in UK was 188, 5 million (3, 6 % of total retail sales). This means that between 2008 and 2010, the online spend increased more than threefold. This upward trend is expected to continue despite difficult economic conditions.

The E-Commerce Directive 2000 stipulates extensive prior information requirements to enter a contract. Prior information requirements refer to information that must be provided by a service provider «prior to an order being placed by the recipient of the service.» This requirement is applicable to business-to-consumer («B2C») and business-to-business («B2B») transactions, but the rule allows derogation from this obligation for B2B transactions. The Service Provider must provide information on (a) the different technical steps that a consumer must follow to conclude a contract, (b) whether the contract will be filed by the service provider and whether it will be accessible, (c) the technical means for identifying and correcting input errors prior to the

placing of the order, and (d) the languages offered for the conclusion of the contract. Contracts and general conditions must be made available in a way that would allow the consumer to store and reproduce them. The contractual terms should appear on the screen before making any purchase.

In contract law – terms become parts of contracts because the parties agree with them. In electronic contracting parties agree to the terms and conditions (T&C) which are a record of data messages appearing on the PC screen. Sometimes, after clicking the ‘I agree’ button, T&C disappear and it is impossible to get back to them or download them afterwards. Even if it is possible to access them or reproduce them afterwards often standard T&C are inalterable and parties asked to ‘agree’ to the terms in some instances will have no easy alternative other than to submit.

Under the E–Commerce Directive, the Service Provider must also comply with prior information requirements established in the Community Law (Article 5), such as those contained in the Distance Contracts Directives, and sectoral Directives such as insurance, travel packages, etc. For instance, the Distance Contracts Directives provide the rule on when and what information should be provided to the consumer before a distance contract is concluded. It supplements requirements, which are in the E–Commerce Directive and extends the provisions of the distance selling directive by placing the obligation on the service provider to provide the information even where no contract is to be formed.

Under the E–Commerce Directive, contracts concluded exclusively by email or by equivalent individual communications are exempted from the prior information requirements (Article 10(4)). The rationale is that necessary information can be asked easily in case of an individual consumer.

The E–Commerce Directive not only requires that contract terms and general conditions be made available in a way that allows the consumer to store (retain) them, but the consumer must also be able to reproduce them. Such a provision clearly calls into question the form of click–wrap agreement, where the agreement is displayed in a separate window from which it cannot be downloaded or printed. The central principle behind the prior information requirement is to establish the confidence of consumers and enterprise in e–commerce. Information varied across the different member states and customers had no clear view of the contractual terms, or the genuineness and reliability of the seller (Arno R. Lodder, Henrik W. K. Kaspersen. E-Directives: Guide to European Union Law on E–Commerce, 2002, 175). By mandating a prior written requirement, the Directive aims to remove any disparities between the laws of the Member States and to enable the consumer to evaluate both the product and the offer before the contract is concluded (Stephen Errol Blythe, E–Commerce Law around the world, 2011, kindle edition)

Consumers will only be willing to use electronic commerce if they are convinced that it is as safe and reliable as conducting transactions on the traditional market. Consumer confidence requires sufficiently harmonized levels of consumer protection throughout the Union so that consumers are effectively protected in their own country as in other Member States. Adopting regulatory approaches based on a coherent EU regulatory framework within the Single market will result in the legal certainty and market harmonization.