

Review

Some Implications of the Development of E-Commerce on EU Tax Regulations

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Abstract: E-commerce has progressed within Europe before, on the basis of the pre-pandemic raise, with COVID-19 determining an explosion of its evolution. The European e-commerce market is very important, linking together more than 500 million consumers. This paper presents the results of assessing the guidelines and trends observed in the European regulatory process in the current period, when e-commerce is developing appreciably, studying the applicable legal norms and their effects on facilitating the control of remote payments. Compliance with the VAT (value-added tax) regime is addressed in the context described by the two important categories of active legal rules: the rules for consumer protection and the rules related to ensuring data protection. The investigation of the legal framework in this regard started from the presupposition that the necessary changes in regulation for facilitating e-commerce are capable to determine indirect changes in many aspects of financial rules and taxation. While analyzing the regulation of online trade, the various measures undertaken recently in respect to European sources of law and their implications for national legal framework opened additional directions of investigation. This paper points out the indirect effect of e-commerce development on the regulatory framework, both in the area of consumer protection and in line with the difficult balance between the right to information and protection of data. The fiscal effects of e-commerce payments and the challenges for the value-added tax regime are also addressed, both from a theoretical point of view and with input from the Court of Justice of the European Union's jurisprudence. The analyzed documents show that, in this respect, the legal reform will go deeper and will continue with the rhythm of the development of the online activities.

Keywords: e-commerce; tax regulations; recent evolutions in EU; distance payments; VAT regime



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1. Introduction

In everyday language, the term “e-commerce” means online shopping on the World Wide Web, and it can be described as the buying/selling process through the transmission of data remotely. This approach is specific to the expansive policy of commercial companies of adapting to the e-trend in the global market. E-commerce (CE, e-Com or I-commerce) includes any commercial and financial transactions performed through electronic calculation systems, between business partners, suppliers and customers. The use of “e” is the most usual manner to describe a particular process/action or situation that made the leap to the internet format, the actors in the global trade talk about e-business more often than about e-commerce. The whole world is seduced by one of the most important facilities offered by the Internet: the ability to communicate across borders, time and space, cheaply and almost instantly.

However, electronic commerce (e-commerce) is a concept designating more than buying/selling products and services remotely/using the Internet, as it includes many other activities, such as marketing and publicity campaigns, exchanges of information and

negotiations among potential partners and internal processes of the companies in support of the e-commerce activities (purchase, supply, sale, employment, planning, etc.).

One more thing is important to add: e-commerce offers the biggest chance to market products worldwide, increasing the number of potential customers primarily by eliminating geographical barriers between customers and merchants (Serbu 2004). The creators of the Internet network, whatever their inner justifications, had the wonderful idea of creating a decentralized network by eliminating any central point whose destruction would mean the disappearance of the network. Following this goal, all networks cooperate; all are equal (Bodó et al. 2020). Democracy has dominated the virtual space from the beginning, thus eliminating mistakes in the real world. There are no national or regional monopolies on the Internet. Each provider is independent and dependent on others at the same time. Everyone has the interest to develop their own network as well as possible but also to interconnect (Cheng 2020). Without an authority to control internet data traffic, there is solidarity and interest in maintaining global connectivity, a feature that perfectly matches with international trade, as the participants in global commerce are connected by the same appreciation for the freedom of selling and buying goods and offering services (OECD 1998).

On the way to the level of organizing mankind's daily routine with the use of practically e-everything, our analysis focuses on the major impact of e-commerce on the regulatory level in general and on the useful clarification of its influence on the distance payments and value-added tax (VAT) regulation in particular. The key motivation for focusing on the implications of financial–fiscal nature is justified by the importance of correlating the financial and tax regulation with the regulation of e-commerce, the two being not only interdependent but also sharing the same fundamental goal of providing security, responsibility and consumer right protection to trade operations.

Concerning the structure of this paper, the authors have agreed on the format with many sections following the introductory part. Thus, after presenting several concepts based on the study of specialized scientific papers (literature review), we address some data/indicators related to our topic, which characterize the European space (relevant statistics for EU e-commerce). The consistency of this approach is reflected in the following parts: research design, e-commerce regulation development within the EU, e-commerce regulation development reflected on other regulatory fields, e-commerce and fiscal effects: payments and VAT regulation. We consider the final section (discussion and conclusions), according to its design, very useful for readers, the authors hope that they managed to reproduce interesting/important elements related to the approached topic.

It is the authors' opinion that the relevance of this study is more significant as the e-commerce development is analyzed starting in the year 2020, the year of the global pandemic, in the context of the estimation of the 20% increase in e-commerce volume in the total of global commerce till 2022.

2. Literature Review

From the beginning, we would like to point out that there has been a predilection in the scientific literature for the study of economic and other implications (including legal), present and future, of advances in the digital sphere and of artificial intelligence (Reier Forradellas and Gallastegui 2021a, 2021b, 2021c). The appreciable development of computer interconnectivity in all segments of society has led to an increasingly obvious trend of companies to use these networks in the area of a new type of commerce, e-commerce on the Internet, to appeal to new services in addition to the old ones (Mansell and When 1999). E-commerce also involves the issuing and transferring of proofs of transaction, including but not limited to documents (from contracts and orders, to images or invoices and certificates of the conformity/quality of the goods) (Kutz 2016). Through the Internet, a relationship of services and exchange of goods connects the bidder and the future buyer, growing for the first input on the offer to the formal agreement and delivery or supply activity (Shin et al. 2019). Kalakota and Whinston (1997) define

e-commerce as “a modern business method that addresses the needs of companies, markets and customers by reducing costs while improving the quality of products and services and increasing the speed of delivery or delivery. Still, e-commerce cannot be treated without regard to computer networks, useful in searching for and finding the information needed to support the decision-making of both companies and consumers”. According to these two authors, e-commerce involves the purchase and sale of information, products and services through computer networks, which form the so-called information highway. Another definition in the “traditional” sense of what e-commerce means is given by [Mansell and Steinmueller \(2002\)](#): “E-commerce means the use in value-added networks of applications such as electronic document transfer, fax communications, barcodes, file transfer and e-mail”.

[Kestenbaum and Straight \(Open Learning World Com 2018\)](#) provide another description of e-commerce, namely: “E-commerce is an integration of e-mail, electronic funds transfer, electronic data exchange and other such techniques into an all-encompassing electronic system of economic functions”. [Geller \(2000\)](#) understands e-commerce by “the collection of tools and practices that involve the use of Internet technologies and that allow companies to create, maintain and optimize business relationships with other companies and individual consumers”. [Zwass \(1996\)](#) refers to e-commerce as “the distribution of economic information, the maintenance of business relations and the conduct of commercial transactions through telecommunications networks”. In *Buyer’s Guide to Electronic Commerce*, the following definition appears: “E-commerce is the use of information technology to improve relationships between business partners” ([Ohene-Djan 2008](#)). There are other ways to define e-commerce, starting from the way it is perceived by the different groups participating in this phenomenon, respectively from the perspective of users (seen as individual consumers), the business world, government institutions and information technology providers ([Ohene-Djan 2008](#)).

E-commerce has been broadly defined by the OECD in the document “OECD Working Party on Indicators for the Information Society” as “the sale or purchase of goods or services through computer networks, by methods specially created for the purpose of receiving or placing orders”. Goods and services, according to the OECD, are ordered through these methods, but their delivery does not necessarily have to be performed electronically ([OECD 2011](#)). An online transaction can take place with the participation of companies, households, individuals, public authorities or other public or private organizations ([OECD 2011](#)). At the European level, e-commerce is also defined in a manner similar to the OECD’s definition as “the sale or purchase of goods or services, between businesses, households, individuals or private organizations, through electronic transactions over the internet or through other computerized communication networks (online)” ([EUROSTAT 2021a](#)). At the same time, it is shown that the notion of e-commerce covers the transmission of orders for goods or services through computer networks; the payment or delivery of products can be made either online or offline.

E-commerce is not a simple individual process, but there are already many models for doing business on the Internet, which can be classified according to the number of suppliers or service providers to customers as follows: 1-to-1 (e-shop), more-to-1 (e-mall), more-to-more (e-auction) ([Kalakota and Whinston 1997](#)). Thus, a service chain is established where a specific element can be dominant. The first element is the provider of products or services, the second is the Internet service provider, which can provide from the space on the web page to the possibility of integration in an email ([Teece 2010](#)). Furthermore, the e-commerce industry distinguishes between several types of transactions, some assets pending others ([Kumar and Raheja 2012](#); [Rouibah et al. 2015](#); [Rėklaitis and Pilelienė 2019](#); [Martinez and Esparcia 2008](#); [Turban et al. 2006, 2018](#)) (Appendix A).

The field of electronic commerce is a vast one, which involves a series of activities of the actors involved in its development and a suite of technologies in continuous development. [Turban et al. \(2018\)](#) consider that e-commerce applications form the e-business environment, respectively an environment consisting not only of selling and buying products

online, but also any other type of business/part of the business conducted in the electronic environment—communication with customers in order to offer support, collaboration with business partners, provision of e-learning services, etc.

As expected, we have considered, while conceptualizing the draft of our paper, further aspects in connection to e-commerce, elaborated in articles signed by one of the most valuable researchers at the international level, aspects such as the economic impact of online shopping, the conduct and satisfactory reaction of the buyers when using a virtual platform, etc., (Ijaz and Rhee 2018; Hollowell et al. 2019; Meilhan 2019; Wagner et al. 2020; Ionescu 2020) or topics as the importance and means to realize the procession of private data (Rădulescu 2018; Zhuravleva et al. 2019; Popescu Ljungholm 2018).

3. Relevant Statistics for EU E-Commerce

Globally, the representation of e-commerce in the overall commerce industry reached 17% during the 2020 pandemic (Oprea 2020), which is an impressive raise. Moreover, e-commerce has experienced an important traipse within the EU, the COVID-19 crisis having generated an unexpected development. The explanation is in connection with the fact that many consumers have preferred to shop online, valuating the safety of the transaction for their own benefit.

It is important to consider the dimension of the e-commerce market within the EU, including more than 500 million consumers and a volume of transaction of USD 602 billion. The average yearly raise rate is about 15% for the domestic commerce and more than 25% for e-commerce between different states (Fair 2019). “The EU, being the second biggest in the world cross-border buyer of goods, established own e-commerce processes, rules, know-hows and ways for engagement of stakeholders” (EUFORDIGITAL 2020). In this respect, the EU is in line with the current and perspective demands, the situation being revealed by the number of EU citizens with internet connection (Figure 1):

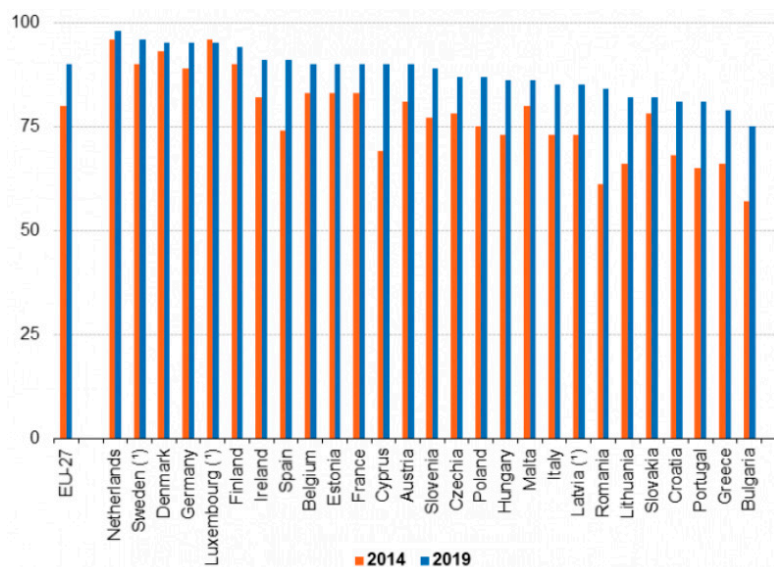


Figure 1. Internet access of households (% of all households, 2014 and 2019) (EUROSTAT 2021b).

According to a recent study, about 87% of European citizens (578 million in 2019) use the Internet, and more than two thirds of them shopped online in 2019, when the pandemic threat was not present (Isaac 2021).

Moreover, big differences have been noted between the e-commerce rate in West Europe (83%) and the rate in East Europe (only 36%), which points out a major development opportunity in the eastern part of the EU for all e-commerce activities. The expenses for digital commerce business-to-consumer (B2C) are expanding each year; the volume of EUR 717 billion in 2020 representing more than 5% of the total GDP.

It is obvious that, together with the improvement of the custom digital procedures, the security of transport, delivery and consumers safety will increase, especially in the Eastern countries of the EU, reflected in measurable indicators for the dimension of e-commerce in the EU. Moreover, in this line, it is important to underline that the COVID-19 pandemic has irreversibly changed e-commerce development internationally, most of the companies launching impressive transactions and implementing projects they did not dare to design before and managers acknowledging the future is for those who use digitalization and not the traditional commerce methods. The companies realized that they have to change their way of approaching clients in response to the new reality of e-commerce and how they invest in the digitalization of their activity (Oprea 2020).

In this context, the estimation of the 20% raise in e-commerce in the overall commerce industry till 2022 seems realistic. Altogether, it means that we are in the presence of a huge “new beginning” of the e-commerce era, not only within the EU but all over the world.

4. Materials and Methods

4.1. Research Design

This paper targets as key issues the regulation in force addressing e-commerce procedures and the effects of its development in various regulatory fields, including financial regulation and taxation, by analyzing the concept of e-commerce, its features and the need of adopting the appropriate rule of law to eliminate the specific risks accompanying online transactions. First, we have reviewed the relevant literature for e-commerce development and the changes in EU regulation by pointing out definitions, key concepts, advantages and disadvantages of each of the topics. Our methodological approach reflects a qualitative analysis of relevant available data in connection with the topic of e-commerce, following deductive and inductive reasoning.

We have collected some of the important opinions and research results presented in the literature, describing the particularities and mandatory features of the concept of e-commerce at the EU level and its effects on other regulatory fields. In the following step, our research uses the qualitative sequential approach, identifying empirical evidence used to ensure coherence and validation to our research design. Thus, we have addressed the secondary objectives to describe the effects of the development of the e-commerce legal framework at the EU level on the other sector of regulation. It is the result of our analyses and observance that the state of art in the field has not connected the development of the regulation on e-commerce with its effects on financial and fiscal regulation at the EU level, in general, and for the member states legal framework, in particular.

In order to further clarify the novelty of our contribution, the methodological design of the paper uses the four steps framework:

Stage I. Analysis of the e-commerce concept and the features of each component of this process: from the establishment of the company to the delivery of goods or services, including the settlement of disputes between the participants in the e-commerce operation.

Stage II. Analysis of the general normative framework of electronic commerce within the European Union but also of the ones that, by their nature, have indirect applicability in the field of electronic commerce, such as the normative framework in the field of personal data protection; the normative framework in the field of consumer protection; the normative framework in the field of copyright; the normative framework regarding the settlement of disputes and the general legal framework in the matter of postal services.

Stage III. Analysis of the influence generated by e-commerce regulation on the fiscal regulatory framework, emphasizing the challenges for distance payments and the VAT regime.

Stage IV. Analysis of the gaps in legislation and the proposal of the possible re-enforcements.

The limitations of this research are in connection with the accuracy of the emphasized challenges, as the field is very forward moving and it is completely hazardous to consider the concluding issues as actual or formulated from a perspective point of view.

4.2. E-Commerce Regulation Development within the EU

The Internet, the most open and democratic communication system, is built on the idea of freedom: freedom of knowledge, information and exchange of views, making this ever-growing network perfectly suitable for the development of actual trade. The network providers only offer the means of communication, i.e., the infrastructure to support it, but they cannot considerably influence the flow of opinions and information in the network. Senders and addressees remain relatively anonymous, messages are encrypted and they often remain unreadable to the authorities. The Internet stretches across borders and obviously raises the issue of some form of censorship, which, when conducted in its most reasonable way, leads to the adoption of the regulatory framework that keeps its virtues and prevents the identified risks (European Parliament and Council 1995).

The European Union (EU) responded to the need to regulate e-commerce by adopting Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce in the internal market (e-commerce directive) (European Parliament and Council 2000). The document includes the definition of the information society services as those comprising a wide range of economic activities that take place online.

These activities may consist, in particular, of the sale of goods online, because activities such as the delivery of goods or the provision of offline services are not covered. Information society services are not limited to services that result in online contracts, but, to the extent that they are an economic activity, extend to services that are not remunerated by the recipients, such as online information services, commercial communications or those that provide tools for searching, accessing and retrieving data (European Parliament and Council 2003a, 2003b).

When a customer orders a product from the online store through the exclusive use of an electronically organized sales system, they conclude a distance contract. For the classification of these notions, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce (European Parliament and Council 2000), gives certain definitions to participants in the electronic commerce process (Table 1).

Table 1. Definitions to participants in the electronic commerce process (European Parliament and Council 2000).

Order No.	Definitions	Specifications
1.	Information society service provider	Any natural or legal person that provides a fixed or indeterminate number of persons an information society service.
2.	Information service provider established in a State	A service provider having a permanent establishment in the territory of a State and actually pursuing an economic activity using that establishment established in the territory of a State, for an indefinite period; the establishment of a service provider in a State is not necessarily determined by the place where the technical and technological means necessary for the provision of the service are located.
3.	Recipient of the service or recipient	Any natural or legal person who uses, for commercial, professional or other purposes, an information society service, in particular for the purpose of seeking information or providing access to it.
4.	Consumer	Any natural person who acts for purposes other than those of his commercial or professional activity.

E-commerce cannot be analyzed apart from the concept of information society, which includes services referring to the transmission of information through a communications network, the provision of access to a communications network or the hosting of information

which is at disposal of a certain recipient of the service. In line with this observation, television services are to be mentioned, referring to the meaning explained in Directive EEC/89/552 (European Parliament and Council 2003a, 2003b).

Consequently, the broadcasting services are not under the scope of information society services, as they do not fall under the scope of the services offered on individual request. Instead, point-to-point services, such as video-on-demand or the provision of commercial communications by e-mail, are information society services. The use of electronic mail or other equivalent means of communication by natural persons acting for purposes which are not usually their commercial or professional activities; the use of such means for the conclusion of contracts between such persons included is not under the scope of the concept information society service.

The labor contract, and the rights and obligations derived from it, both for the employee and the employer, are not under the scope of the information society service. Moreover, all the operations which, in consideration of their particularities, could not be executed by remote activities nor by electronic means, such as medical examinations which require the physical evaluation of the patient, are not information society services. Still, it is important to observe that during the COVID-19 global pandemic crisis, different types of services that were considered by considering their inner core particularities outside the scope of information society are now possible using online facilities (such as education, remote medical evaluation and treatment, etc.).

According to the same Directive (European Parliament and Council 1995), all European Union Member States are competent to create the framework for the development of the information society services offered within their territory, and they may control and sanction the misfunctions eventually proved to be active and relevant in this field. In addition, it should be noted that Member States may not restrict the free movement of information society services in other Member States on the basis of reasons relevant to the coordinated field.

Relevant to the field of electronic commerce is also the definition provided in Regulation (EU) no. 524/2013 of the European Parliament and of the Council on the online settlement of consumer disputes (European Parliament and Council 2003b) and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC (Consumer SOL Regulation). This regulation is applicable to the sale contract or to the supply of online services, when this online contract refers to the operation of selling or supplying services where the trader or his intermediary offers, through a website or other electronic means, goods or services that the consumer orders on that website or through other electronic means (European Parliament and Council 2013a, 2013b).

Another relevant definition at the European level is the definition of the “distance contract”, provided by Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (European Parliament and Council 2011). The above regulation states that distance contract means “any contract concluded between the trader and the consumer in an organized distance sales or service system, without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication, up to and including when the contract is concluded”.

From this definition, it can be concluded that contracts concluded by electronic means are included in the scope of distance contracts, but there is no perfect similarity between these two concepts, distance contracts being a broader notion, which also includes the contracts concluded by means of remote communication, other than electronically. Thus, starting from the definition of this concept at the European level, it can be concluded that the cumulative fulfillment of certain conditions is essential for the qualification of a particular operation as entering the sphere of electronic commerce (Table 2).

Table 2. The conditions for the qualification of an operation as entering the sphere of electronic commerce (European Parliament and Council 2011).

Order No.	State the Conditions to Be Met
1.	The operation carried out relates to the sale or purchase of goods or services.
2.	The operation is carried out between enterprises, households, individuals or private organizations.
3.	The formation of the contract should be conducted through the Internet or other computerized communication networks (online), i.e., both the contracting offer and the acceptance of this offer should be conducted through electronic communications networks.

The electronic platforms providing sets of tools and specific information environments for collaboration between enterprises, between them and external collaborators and between experts, act as a virtual enterprise towards the outside world. If the platform does not belong to a specific company, the operator must pay special attention to the status of neutrality, data protection and security of communication, in order to prevent the leakage of information of interest to the competition (Walther and Levine 2001).

There is a wide list of other normative acts relevant to electronic commerce activity, while there are currently many other regulations at the European level adjacent to the field of electronic commerce. In Appendix B, we present the most relevant normative acts together with their purpose or object of regulation, and, where appropriate, a brief presentation of the most significant provisions.

4.3. E-Commerce Regulation Development Reflected on Other Regulatory Fields

There are some particularities that our research points out while analyzing the legal framework for e-commerce. We do note the two levels of regulatory act: the European one and the regional/local/national one. As mentioned above, e-commerce is regulated at the European level mainly by Directive 2000/31/EC of the European Parliament and by the Council on certain legal aspects of information society services, in particular e-commerce in the internal market (European Parliament and Council 1995). In line with the EU law, the notion of e-commerce falls into the legal category of information society services, the relationship being from part to whole. Thus, e-commerce is in fact a kind of information society service.

The act of electronic commerce is the sale of goods or the provision of services or an interposition in the circulation of goods, in order to obtain profit; the formation of the contract being validly carried out by electronic means, the provisions of the e-commerce directive influence other normative acts. Therefore, both information society service providers (i.e., traders) and their customers can be both individuals and legal entities. Although e-commerce legislation does not take into account other actors, in reality, the e-commerce act is carried out not only with the participation of the supplier and the customer, but also with the participation of a whole series of other actors that facilitate the act of commerce.

Among them, there can legitimately be mentioned public regulatory authorities, public control authorities, postal and courier service providers (offering customs clearance, sorting, transport and delivery of parcels), transport service providers, payment solution providers, support service providers (accounting, human resources, etc.), marketing and advertising service providers, security service providers, providers of technical solutions, logistics outsourcing companies, etc.

In Table 3 we show the e-commerce components.

Table 3. The e-commerce components (Bajaj and Siau 2000).

Order No.	Components	Specifications
1.	Product/service	Tangible/intangible good or service that the consumer orders from the merchant.
2.	Consumer	This is, whether we are talking about a natural or legal person, a person behind the screen of a computer, tablet or phone who checks the existence of the desired product or service on the merchant's website and places the order to the merchant.
3.	Merchant	This is, whether we are talking about an individual or a legal entity, a person or a group of people behind a computer screen, who manage the internal systems of the trader in order to deliver the good or service to the consumer.
4.	Payment systems	These are the systems used by the consumer to pay the merchant the value of the good or service purchased.
5.	Delivery	Service performed by the delivery service provider, which ensures the transport and delivery of goods purchased by consumers.

It is our belief that each of these components requires particular regulation, both in EU law and at the level of national regulation. The definition of “consumer” is a key element, especially in the area of regulation for consumers’ protection, as the conclusion of distance contracts raises the issues of abusive contractual clauses, the guarantees of use for the products and the alternative dispute resolution between consumers and traders. However, an examination of the relevant Community legislation shows that such a definition is not consistent with EU law but is also dealt with in particular in the national law of the EU Member States.

From the perspective of Community and national law, the concept of “consumer” presents particularities, addressed not only in the Community acquis on consumer protection, but also in the relevant EU private international law doctrine, in particular in relation to the Rome I and Brussels Regulations I, both including particular pieces of regulation for consumer protection (Maňko 2013).

The research points out that, although they are formulated in different documents, the large majority of available definitions for the concept of “consumer” in EU law use a similar pattern. The determinant feature of this definition is negative, in the sense that the precondition for inclusion in the category of “consumer” is that the data subject acts outside the scope of an undertaking. It is commonly accepted that the consumer represents a natural person, whose activity is manifested within the framework of the economic field of action (business, production, commerce or liberal profession). However, a relevant exception to this rule can be found in Directive 2015/2302 of the European Parliament and of the Council on package travel and package travel services, amending Regulation (EC) No. 882/2004, 2006/2004 and Parliament’s Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC using a broad notion of “consumer”, expanding its scope in order to include companies and business travelers (buyers and users of travel services) (European Parliament and Council 2015a).

At the European level, issues related to knowledge of legal obligations towards consumers, knowledge and compliance with consumer protection legislation, as well as views on product safety, consumer complaints and awareness of alternative dispute resolutions have been the subject of many studies developed by the European Commission (2016a).

Moreover, the Court of Justice of the European Union (“CJEU”) was called to give the interpretation of the law when the obligation to transpose the EU law was not satisfactorily accomplished. In the case of C-421/12 Commission v. Belgium, in which the CJEU found that Belgium had infringed on the obligation to transpose Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market by introducing legal

provisions in national law transposing on low-priced sales ([European Court of Justice 2014](#)), which involved:

- Reporting the notice of reductions in a reference price, defined by Belgian national law as the lowest price charged by the trader in the month preceding the notice of sale at a reduced price.
- Limiting the period of practice of sales at a reduced price by the trader to a minimum of 1 day and a maximum of 1 month.

In arguing its decision, the CJEU noted that Directive 2005/29/EC contains an exhaustive list of commercial practices that should be considered incorrect, a list that does not include the legal provisions of the Belgian national law on discounted sales. Finally, the CJEU established that the imposition by Member States of more restrictive national measures than those provided for in Directive 2005/29/EC constitutes a violation of the provisions of art. 4 of Directive 2005/29/EC, which provides that: Member States shall not restrict the freedom to provide services, nor shall they restrict the free movement of goods for reasons falling within the scope of this Directive ([European Court of Justice 2010](#)).

Regardless of their origin, the products should respect the Union harmonization legislation applicable when they are made available on the European single market. In advance from being in the possession of the final user of a particular product or service in the EU, products from non-EU countries must successfully exit the procedure for being released for free circulation on the internal European market; all the products must be checked by the authorities responsible for border control, under the provision of Regulation (EC) No. 765/2008. All national market surveillance authorities are entitled to conduct control missions on the products made available on the market and are empowered to organize, to ensure coordination between institutional structures at the national level and the EU level. The General Product Safety Directive also contains provisions for market surveillance, the relationship between Regulation (EC) No. 765/2008 ([European Parliament and Council 2008](#)) and that Directive is described in detail in the working document of 3 March 2010 ([European Commission 2010a](#)).

In legal theory, products sold on electronic channels do not differ from those sold on traditional channels. They can take the form of tangible/intangible goods or services. As a separate category, digital goods or products can be defined as tangible and intangible goods produced by scientific or artistic research. Digital goods therefore represent that category of goods which are stored, archived, delivered and/or used in electronic format and which are delivered to the electronic consumer by email or which are downloaded from the Internet. The category of digital goods/products includes books in electronic format (e-books), music files, software, digital images, manuals in electronic format as well as any article that can be stored and archived in one or more electronic files. A product is made available on the market when it is supplied for the purpose of distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge ([European Parliament and Council 2008](#)).

Another important issue in the pattern of organizing e-commerce is the institutional infrastructure created for efficient market surveillance, aiming to ensure that products comply with applicable requirements, thus providing a high level of protection of public interest, in response to the need to protect general health and safety, consumer protection and the free movement of products. Obviously, in this context, the issue of environmental protection is also taken into account ([Bostan et al. 2009](#); [Bostan 2016](#)).

Market surveillance ensures that citizens have an equivalent level of protection throughout the single market, regardless of the origin of the product, and it is important for the interests of economic operators, as it helps eliminate unfair competition ([European Commission 2016b](#)). It is our opinion that the existence of harmonized rules on digital products would reduce costs for traders and encourage them to expand across borders, as they would no longer have to deal with differences in each EU country's regulation when they want to expand the territorial area of their sales operations. Still, as far as digital goods are concerned, there are no EU-wide applicable rules for inappropriate digital content.

The consumers' need to know what to expect when buying digital content online and that they have specific rights in case of prejudice was considered when formulating the Proposal for a Directive of the European Parliament and of the Council on certain aspects of contracts for the supply of digital content; establishing harmonized rules for the marketing of digital goods and the bodies supervising those rules is being debated at the EU level. The directive does not include specific provisions for e-commerce in particular but for different categories of economic operators, while it describes the various important types of activities, the proposal addresses the security/safety requirements and conformity to the internal marketed products standards.

The Directive defines specific e-commerce concepts, i.e.:

1. "Simple transmission activities", which include the transmission of information provided by the beneficiary of the service or the provision of access to a communications network (e.g., internet service providers);
2. "Caching activities", which include the transmission of information in a more efficient manner, e.g., duplicating a database that copies the contents of the original server to ensure global coverage.

Service providers acting as intermediary when carrying out the above described activities are entitled to an exemption of liability for damages or criminal penalties related to the content provided by third parties using their networks. Still, the disclaimer is not complete. With regard to storage activities that are important for security/safety and compliance of products, the exemption shall apply only when the following conditions are met:

1. The service provider is not informed about the illicit nature of the hosted information;
2. When the service provider is informed of the illegal content of the information (for example, by a notification that is "sufficiently precise and duly justified"), he/she acts promptly to remove or block access.

In accordance with Article 15 of the Electronic Commerce Directive, Member States are not allowed to impose on such providers any general obligation to monitor content, nor to establish the general obligation to actively seek facts or circumstances which indicate that the activities are unlawful. This means that national authorities cannot impose a general obligation on intermediaries to actively monitor all their internet traffic and to look for elements that indicate illicit activities, such as unsafe products. Not only the regulatory framework at the EU level was influenced by the development of the e-commerce, but also the jurisprudence had to give an interpretation of the legislation in force, solving particular disputes in this area. In case C-324/09, *L'Oréal v. eBay*, the [European Court of Justice \(2011\)](#) clarified that the relevant question regarding the conditions necessary for an exemption of liability was whether eBay was aware of facts or circumstances which showed that the illicit activity was obvious (see points 120–123). If they do not meet these criteria, they cannot be exempted and can therefore be held responsible for the content they host.

However, the regulation analyses carried out prove that the prohibition on general monitoring does not restrict the right of public authorities to establish specific monitoring requirements, and it is our belief that the scope of these provisions needs to be defined. As an example of a separate domain, but with some similarities, it is the role of the courts of law to establish when service providers should take the appropriate measures that certain websites, which contain copyrighted or counterfeit content, are blocked for users in the domain by a given Member State.

In real activity management, the national authorities are able to monitor storage and hosting service providers that, consequently of the notification on the illegal activity, remove or block that content, which means that EU consumers are prohibited from accessing the unsafe or non-compliant products through their services. Yet, domestic market surveillance authorities are obliged to organize their activities in accordance with the relevant provisions of Regulation (EC) No. 882/2004 and No. 765/2008 and on the specific Union

harmonization legislation and therefore, they must monitor, first and with the most efficient methods, responsible economic operators.

Each member state's market surveillance authorities are challenged to use the most suitable measures, designed on a case-by-case basis and in accordance with the requirements of the principle of proportionality, considering the specific level of risk, the identity of the economic operator, the degree of safety threat, whether measures have been already taken against a particular product, etc. The notion of "content" describes the online product offering (for instance, a photo or a descriptive text) while the notion of "illicit activity" refers to activities under the scope of the criminal and/or administrative law. The directive seeks to strike a balance between all the interests at stake. The legal basis for the notification and obligation of storage service providers to remove or block access to illegal content is contained in the national transposition of the E-Commerce Directive ([European Commission 2016b](#)).

The manufacturer's definition comprises two conditions to be respected simultaneously: the person should make a product (or have it made by others) and should make it available on the specific market of the product, using his name or trademark. Therefore, if the product is available on the market using the name or brand of another person, the latter is the actual manufacturer. To this end, the economic agent who makes the product available on the market using his name or trademark shall automatically become a manufacturer. Consequently, he assumes full liability for issuing the conformity certificate (regarding both design and production of the good), even if this procedure was actually accomplished before by a third party.

In addition, he must possess all the documents and certificates to prove the conformity of the product, whereas they were issued in his name or in the name of a third party. European legislation does not require the manufacturer to be established in the European Union. Therefore, when a product is placed on the European market, the responsibilities of the producer are the same, whether it is established outside the European Union or in a Member State. It is important to note that any person who delivers products within the European internal market has to assume the role of the producer, even if the goods are actually produced in a third country or the product is neither designed nor manufactured for the Union market. The importer who has the online environment as his sales channel has the same obligations as the importer who sells the products in the traditional way. A distributor is a natural or legal person, other than the manufacturer or the importer, who is part of the supply chain and who makes a product available on the market. A distributor purchases products for subsequent distribution from a manufacturer, importer or other distributor.

Under Directive 2001/31/EC, Member States should not impose on providers a general obligation to monitor the information they transmit or store when providing hosting services, nor the general obligation to actively seek facts or information circumstances which show that the activities are illegal ([European Parliament and Council 1995](#)). However, Member States may impose an obligation on information society service providers to inform immediately the public authorities empowered for monitoring the security/safety of the market of any unlawful activities by the beneficiary of their services or of alleged unlawful information which they would provide, or the obligation to disclose to the authorities competent, at their request, information to identify the recipients of the services with which they have concluded a storage-hosting agreement.

The e-commerce Directive ([European Parliament and Council 1995](#)) states the principle that internet service providers should not be responsible for the content they use, make available or store, in all the situations when they act in a strictly passive manner which has been supportive for facilitating the access to the Internet in Europe. Simultaneously, in all the cases in which illegal content is spotted out, regardless of the fact that it is related to illegal activities such as terrorism/child pornography or information that infringes on the property rights of others (e.g., copyright), the intermediary information providers are obliged to use any effective methods to make it unavailable/to eliminate it.

At present, blocking access to or deleting illegal content by hosting providers might be slow and complicated, with legal factual content risks being mistakenly removed. The Digital Single Market Strategy for Europe shows that 52.7% of stakeholders declare that measures taken against the use of illegal content are often ineffective and lacking in transparency. The gaps among national regulation and practices can hinder compliance, which has a bad influence on the efficiency of the fight against online crime and lowers the general public trust in using the online environment. The digital content available on the Internet increases continuously, so the current provisions are likely to be constantly tested.

Thus, it is not always easy to define the limits of the actions that intermediaries can take in relation to the content they transmit, store or host, without losing the protection created while benefiting from the liability derogations established in the Electronic Commerce Directive. When the seller sends a request for authorization to the buyer, it includes the payment instructions received from the buyer and the summary of the order information (European Commission 2006, 2010b). The purchaser uses the summary received from the seller and calculates the summary of payment instructions to verify the double signature (Cunningham 2001). The e-commerce regulation has affected the regulation concerning the right to be informed (Birkinshaw 2006; European Commission 2016b) and, in opposition, the protection of data (European Commission 2006; European Parliament and Council 1995, 1996).

In line with the right to have access to certain information, in accordance with art. 5 of Directive 2000/31/EC on electronic commerce (European Parliament and Council 1995), the person managing activities within the scope of e-commerce (e.g., online store) must enable easy, direct and permanent access for recipients of the provided service and public authorities with prerogatives in the field, at least on the following aspects: the identity of the service provider; the geographical address used by the service provider as his permanent establishment; the contact details, including the e-mail address provided for directly and effectively contacting them; the registration location of the service provider and the particular trade register or similar public register; the registration number or equivalent means of identification from that register; if his specific activity is subject to an authorization scheme, the contact details of the relevant supervisory authority should also be provided.

Starting 25 May 2018, when the General Data Protection Regulation entered into force within the EU, all companies operating on the internal market became subject to the same set of data protection rules, wherever they are based. In this context, online merchants are obliged to inform customers in advance about the processing of personal data. At the request of the person concerned, the trader is obliged to inform if there are personal data used and processed, related to him and, if so, what is their purpose, what are the categories of data processed and who are the recipients of the data (European Parliament and Council 2016).

If the person in question requests the application of the right of deletion or the right to be forgotten, then the online store has the obligation to do so. In the event of a privacy incident, the online store is required to report to the supervisory authority within 72 h of receiving this information, as well as to keep a record of privacy incidents. If the incident poses a high risk to the rights and freedoms of the individual concerned, the data controller shall inform that individual without delay. It is also necessary to insert the access path (link) to the SOL platform—Online Dispute Resolution, on the first page of the site. This obligation is incidental from 15 February 2016 for all online commerce sites, in accordance with the provisions of Regulation (EU) No. 524/2013 on the online resolution of consumer disputes (European Parliament and Council 2013a).

Our analysis also takes into account the proposal for a Directive of the European Parliament and of the Council on certain aspects of online sales contracts and other types of distance selling of goods, an act relevant to B2C e-commerce (European Commission 2011). Among the main obligations set out in the proposal for a directive, there are:

- The seller's obligation to ensure that the goods respect quantity, quality and the description provided in the contract, which means that if the seller presents a sample or model to the consumer, the goods possess the quality of the sample or model and correspond to his description; the goods correspond to the special purpose for which the consumer requests them, which the consumer brought to the seller's notice at the conclusion of the contract and which the seller accepted; the goods have the qualities and operating capacities indicated in any precontractual declaration, an integral part of the contract.
- The obligation of the seller to make available to the consumer a guarantee certificate on a durable medium and written in a simple and intelligible language.

This certificate must contain a clear statement of consumer rights, as set out in the proposal for a directive, a precise declaration that consumers rights are not diminished by the commercial guarantee and the conditions of the commercial guarantee which go beyond the consumer's legal rights, information on the guarantee period, possibility to use a transfer of the liability, territorial area of applicability and existence of any cost that the consumer may be subject to. In order to use the commercial guarantee, the identification credentials of the person insuring the guarantee and, in the case of a third party, other than the guarantor, the person to whom the consumer should address a complaint and the procedure by which the complaint is to be addressed.

As shown above, this proposal for a directive introduces a number of rights and obligations for participants in e-commerce and the right time for better organization of e-commerce activity. Although the Proposal for a Directive of the European Parliament and of the Council on certain aspects of digital content supply contracts does not directly concern the field of electronic commerce, given its regulatory specificity, we consider that this normative act will have a significant impact in this area, particularly in the field of B2C e-commerce, because most of the contracts belong to the e-commerce sphere. Thus, the proposal in question sets out certain requirements regarding contracts for the supply of digital content to consumers, in particular the rules on the compliance of digital content with the contract, remedial action in case of noncompliance and how to exercise such remedial measures and obtain the termination of such contracts.

This proposal for a directive introduces a number of concepts, such as digital content (Table 4) and digital environment.

Table 4. Digital content (European Commission 2011).

Order No.	Significant Elements
1.	Data produced and provided in digital format, e.g., video, audio, applications, digital games and any other software
2.	A service that allows the creation, processing or storage of data in digital format, where this data is provided by the consumer
3.	A service that allows the exchange of digitally informed data, which are offered by other users of the service and any other interaction with this data

The digital environment, when defined as including hardware equipment, digital content and any network connection, is under the control of the user. It is specified that the directive in question would apply to all contracts in which a provider offers digital content to a consumer or undertakes to do so, and in return the consumer pays a price or actively offers a non-pecuniary consideration, including any type of data.

At the same time, the provisions of this proposal for a directive regulate a number of requirements regarding the conformity of digital content, as well as the conditions of supplier liability. In this regard, it is shown that the supplier will be responsible for:

- Any non-provision of digital content requirements;
- Any non-compliance existing at the time when the content is provided digitally;

- (c) If, according to the contractual provisions, the digital content is provided during a period of time, for any non-compliance that occurs during that period.

The remedial measures provided in the content of this normative act are different depending on the conditions under which the supplier's liability arises.

4.4. E-Commerce and Fiscal Effects: Payments and VAT Regulation

As a component of the e-commerce process, the payment of products ordered by the consumer generate effects on VAT payments. The EU has established common rules for payments by adopting legislation on payment services, throughout the European Economic Area, including all electronic and cashless payments. The regulation includes specific rules on the information that service providers for the payment option should make available to the consumers and on the rights and obligations related to the use of payment services.

In accordance with art. 5 of Directive 2000/31/EC on electronic commerce ([European Parliament and Council 1995](#)), the person managing e-commerce activity where the supplier carries out operations under the scope of VAT must inform about the VAT number, respectively the number of identification referred to in Article 22 (1) of the Sixth Council Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes—Common system of value-added tax. This number is also important in connection to the payment of e-commerce transactions.

When the recipient of the services launches the order by electronic means, the trader must apply the following principles:

- The trader must confirm receipt of the order without undue delay and by electronic means;
- The order and the confirmation of receipt are considered received when the parties to whom they are addressed can have access to them.

In accordance with the general requirements of the single European market and in line with the specific provisions of the Regulation (EU) 2017/1128 on the portability of online content services throughout the EU ([European Parliament and Council 2017a](#)), the online content service provider must allow its visiting subscribers in another EU country to access its available service in the same way as in their country of residence. If there is a fee, it should respect the non-discrimination principle ([European Parliament and Council 2001](#)). The EU adopted a second Payment Services Directive in 2015 (PSD 2), in order to enhance the existing regulation and to expand its scope to the new types of digital payment services and to simplify and make more secure the use of Internet payment services. Indirect objectives were addressed too, such as better protection for the consumers against fraudulent operation and abusive trade and payment, but also to strengthen consumers trust ([European Parliament and Council 2015b](#)).

An electronic payment system is the entire process by which a customer chooses the desired products or service and the online merchant accepts card payments, including by using a website with shopping pages and a page or form of payment, through other connected devices or systems connected to the merchant's bank (also called a payment service provider or payment portal). In line with the regulation in force, the concept of "payment page" designates the web page or form used to gain customer payment card data, willingly provided after they have decided to purchase the product or service.

The processing of card data can be:

- Managed exclusively by the merchant using a shopping cart or a payment request;
- Partially managed by the merchant with the help of a third party using a variety of methods;
- Outsourced entirely to a third party.

Depending on the online merchant's payment method, an electronic payment system may be outsourced entirely to a third party, partly managed by the merchant with the support of a third party or managed exclusively by the merchant. The most commonly used methods/tools for the payment of products or services for online purchases are internationally recognized debit/credit cards (e.g., Visa, Mastercard, American Express,

etc.). The degree of use of this payment method varies significantly from country to country and there are also nationally recognized debit/credit cards, with a lower degree of frequency of use. The merchant accepting an electronic payment instrument is obliged to accept for payment all the instruments in respect to which it has concluded contracts.

The EU Directive 2015/2366 on payment services in the internal market (PSD2) entered into force on 13 January 2018, the date until when the Member States were required to transpose PSD 2 into national law ([European Parliament and Council 2015b](#)). We note that Romania has not transposed PSD2 into domestic law and there is no legislative initiative so far. The new European directive is meant to revolutionize the banking industry through two measures that will encourage the entry into the banking market of new payment service players, the so-called “third party payment service providers” (TPPs), which will be able to offer “payment initiation services” and “account information services” (AIS). The entry of new players into the banking market, including new financial technology companies (fintech), stores, service providers or online giants such as Google and Facebook, is performed through new applications that banks will be required to provide to new players, so they have access to customer accounts, which will lead to the emergence of a new concept: open banking. As part of the concept of “open banking”, PSD2 will fundamentally change the way of conducting payment transactions and accessing information on accounts by opening the market for payment services to new actors generically called “TPP” or third-party providers.

TPPs can be non-banking institutions, FinTech companies or merchants who may authorize payment service institutions. PSD2 is a recognition of the “FinTech” revolution in the payment services market and eliminates the banks “monopoly on customers” banking data ([de Rosnay and Janssen 2014](#)).

According to PSD2, PISP (Payment Initiation Service Providers) are payment institutions that can initiate payment transactions. The introduction of PISP is a major change in the payments industry, as bank transfers (SEPA) and payment cards are currently used, but both are offered only by the bank which opened the bank account or by issuers of e-money. Thus, there are not many payment options through which funds can be transferred from a payment account. Being authorized as a PISP, merchants (i.e., large retailers such as Amazon) will be able to gain access to account data with the customer’s consent. In this way, online purchases will be made directly by the merchant, as a PISP, based on the permission given by the customer, without the need to use a card and without using another payment service provider (such as PayPal) ([European Parliament and Council 2017b](#)).

In addition, PSD2 introduces increased requirements on security policy, security control and risk mitigation measures to protect customers against fraud and the illegal use of sensitive and personal data, in addition to management procedures, management risks and accounting procedures, as well as internal control mechanisms. “Free” or flexible and convenient deliveries are also important criteria (mentioned by 85–90% of online shoppers, 2017, Copenhagen economics, e-shopper survey). The results of the online shoppers’ preferences for delivery methods are based on an online survey among 3000 online shoppers from Estonia, Germany, Ireland, Poland, Spain and Sweden (online merchant survey conducted by Copenhagen Economics). Regulatory acts in the field of taxation related to the field of electronic commerce are in Council Directive (EU) 2017/2455 amending Directive 2006/112/EC on the common system of value-added tax and Directive 2009/132/EC, as regards certain value-added tax obligations for the provision of services and the sale of goods at distance, implementing Regulation (EU) Council Regulation (EC) No. 282/2011 laying down measures for the implementation of Directive 2006/112/EC on the common system of value-added tax ([European Commission 2009](#)).

Not only the payment in e-commerce raises the issue of VAT, but also the cost of delivery of the products and/or services. The current rules on user access to postal services, service quality standards and price levels are intended to ensure a cost-effective ratio for citizens and companies, while providing universal postal service providers with a stable environment and the opportunity to invest in products and new services.

The operation of delivery of products purchased online designates a whole and complex business, organized in various business models and combining the action of four main stakeholder groups (Table 5).

Table 5. The delivery of products purchased online (Kovač et al. 2017).

Order No.	Stakeholder Groups and Different Combinations and Business Models
1.	Online shoppers, when purchasing products/delivery services from online merchants
2.	Online merchants, when purchasing services from logistics companies and logistics intermediaries
3.	Companies that offer logistics services and that can purchase part of the services from other companies or are able to provide them independently
4.	Logistics intermediaries that act as a common bridge between online shoppers, online merchants and companies that offer logistics services

The VAT included in the cost of transportation could be addressed only in the context of analyzing the relevant EU rules for general delivery services. Postal Services Directive—Directive 97/67/EC requires EU Member States to set quality standards governing access to postal services and delivery schedules. The Directive also imposes quality standards for cross-border delivery and states that users of postal services should have a simple and inexpensive but efficient and responsible compensation system for resolving complaints about access to or quality of services (European Parliament and Council 1997). In order to promote e-commerce, to facilitate the use of online trade and to develop the European digital market, the EU policy actors have identified as a priority of the EU policy the necessity to improve the quality and accessibility of cross-border delivery.

In contrast to the declining postal letter segment, the volume of parcels and express services increased by 13% annually. There was a trend of increasing the volume of parcels and express services between 2013 and 2016, which became more evident in 2016. The different offer of products and services of postal operators changed—the number of deliveries of parcels and express services increasing from 7% to 11% of the total volume of postal flow in the period 2013–2016 (Janssen 2011). Moreover, in the context of the global COVID-19 pandemic crisis, the volumes of delivery services increased dramatically.

As expected, the delivery service increase evolved simultaneously with the increase in the number of complaints for various aspects of the delivery process. According to a study published by the European Commission in 2018, between 2013 and 2016, most countries saw an increase in user complaints about deliveries (Okholm et al. 2018). Eastern European countries recorded, on average, a 170% increase in user complaints between 2013 and 2016. The main cause behind the increase in the volume of complaints is the rapid increase in the volume of deliveries of parcels and packages from e-commerce. The increase in the volume of complaints is associated with products not offered by the universal service and in particular e-commerce shipments. There may be different reasons for a relatively larger number of complaints arising from the delivery of parcels versus letters, such as higher customer expectations regarding the delivery of parcels and more difficult logistics activities for their delivery.

The EU VAT Directive stipulates the services provided by “public postal services” and the sale of stamps should be exempt from value-added tax (VAT). The reason for the VAT exemption for certain postal services was for the benefit of the consumer’s protection, given that the burden of VAT, which is a consumption tax, fell on the person at the end of the distribution chain. The current system of exemptions for “public postal services” has its beginnings in a period when competition in the postal sector did not exist. At present, increased competition in the postal sector has created the need to align the VAT system with the competitive dynamics of the market. In this regard, the CJEU stated (Case C-357/07) that the VAT exemption for postal services should be provided to any “universal service

provider”, regardless of whether the provider is a public or private operator. However, it must be limited to “universal service”. Service providers for whom the terms have been individually negotiated cannot benefit from the VAT exemption.

In addition to that, when referring to cross-border trade, we have to take into consideration that small and low-value goods subject to import/export operation have a value under the minimum VAT threshold, which will be eliminated by the end of 2021. Some major service providers have started already collecting the handling fee for all non-EU items (e.g., Germany and Sweden), action which is relevant for e-commerce elements, affecting the free competition of actors inside and outside the EU. The VAT exemption might have distortive effects on competition, leading to a negative effect on new postal operators and users in the postal market. A distortion of competition occurs if some companies are required to charge VAT, while others are exempt.

As the rules in force are not in line with the momentum of e-commerce in the internal market, Council Directive (EU) 2019/1995 on a common system of taxation of digital services for revenues from the provision of certain digital services is amended by Directive 2006/112/EC regarding the provisions relating to the distance sales of goods and certain internal supplies of goods (European Parliament and Council 2019). To avoid this risk, delivery from the supplier who sells goods using an electronic mechanism should be exempt from the liability or pay VAT, keeping the right that the supplier deducts the VAT paid upstream for the purchase or import of the delivered goods. To that end, it is reasonable that the supplier is always registered in the Member State in which he purchased or imported the goods involved in that particular transaction.

In addition, non-Community suppliers using the electronic interfaces to trade goods could have stocks in several Member States and could, as a result of the possibility to opt for intra-Community distance sales of goods, deliver goods from those stocks to customers in any European Union Member State. Our analysis proves that, presently, these supplies are not subject to the special arrangements for intra-Community distance sales of goods and services provided by taxable persons established in the Community but not in the Member State of consumption. The directive states that, by way of derogation from the common regime for VAT, the chargeable event for the supply of goods by a taxable person who is deemed to have received and delivered the goods in accordance with e-commerce regulation and the supply of goods to that taxable person shall take place; the VAT becomes chargeable when the payment has been accepted (Saguna and Tofan 2010).

When products are delivered or transported from another Member State than the Member State of identification, the VAT return shall also include the total amount excluding VAT, the applicable VAT rates, the total amount of the corresponding VAT subdivided into quotas and the total VAT. The regulation includes detailed description of the administrative requirements for the VAT return form, for the state of supply and the state of consumption equally. In the case of supplies under the scope of regulation, the VAT return shall also include the individual VAT identification number or tax registration code assigned by each Member State to which such goods are dispatched or transported. The VAT return shall include this information provided by the Member State of consumption.

In order to ensure consistency as regards the payment of VAT and import duty at the time of importation of goods, special mechanisms are used for declaring and paying VAT on importation, aligned with that laid down for customs duties in Article 111 of Regulation (EU) No. 182/2011, 952/2013 of the European Parliament and of the Council. In accordance with the Joint Political Declaration of the Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken one or more transposition measures in justified cases, for respecting the time limit for payment of import VAT to the customs authorities.

Member States shall allow the following taxable persons to use this special scheme (Table 6).

Table 6. Taxable persons who can use the special taxation system (de Rosnay and Janssen 2014; European Parliament and Council 2017a; European Commission 2009).

Order No.	Types of Taxable Persons
1.	A taxable person carrying out intra-Community sales of goods at distance
2.	The taxable person who facilitates the delivery of the goods in accordance with Article 14 (2), when the dispatch or transport of the delivered goods begins and ends in the same Member State
3.	A taxable person not established in the Member State of consumption who provides services to a non-taxable person

The VAT return shall contain the VAT identification number and, for each Member State of consumption in which the VAT is due, the total amount, excluding VAT, the applicable VAT rates, the total amount of VAT corresponding to the quotas and the total VAT due in respect of the following supplies of goods or services covered by this special scheme, made during the tax period:

- Intra-Community sales of goods at distance;
- Supplies of goods, when the dispatch or transport of those goods begins and ends in the same Member State;
- The provision of services.

The special regime for the VAT due in the e-commerce operation in Directive 2019/1995 was meant to be transposed in national regulation by 31 December 2020 at the latest. Many of the Member States have adopted the laws, regulations and administrative provisions necessary to comply with this Directive, but the Council adopted the Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic.

5. Discussion and Conclusions

Our perspective on the research activity to identify legal constraints for the development, improvement and optimization of e-commerce activity is that there are no identifiable institutional or legislative barriers likely to impede the adoption of future regulation for the proper functioning and further development of e-commerce. The regulatory elements we have examined, mainly targeting areas related to e-commerce, proved to be characterized by an optimal level of transposition of the provisions included in the European Union uniform legislation. Where appropriate, the level of coherence between the national normative act corresponding to the identified areas has also been addressed and the research results show a sufficient level of conformity and consistency of national regulation with the European rule of law for the purpose pursued.

On the other hand, our research has revealed a large number of on-going proposals for legislative changes in the case of regulatory areas related to e-commerce. The requirements of the national and European legislation for the implementation of the e-commerce service have been identified, proving the dynamics of this area of regulation, in line with the rapidity of the e-commerce development. A relevant example for the efficiency of the process of adopting new regulation is the recent entry into force of Regulation (EU) 2018/302 of the European Parliament and of the Council on the prevention of unjustified geo-blocking and other forms of discrimination based on citizenship or nationality, domicile or seat of customers in the internal market, amending Regulations (EC) No. 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC including those related to ensuring the cross-border development of e-commerce. It is our research results that the regulatory priorities at the European level include the proposal for a Directive of the European Parliament and of the Council on certain aspects of online sales contracts and other types of distance selling of goods, an act relevant to B2C e-commerce.

In the context of the recent boosting of online transaction in the COVID-19 global pandemic crisis, the proposal in question is not only justified but needed for setting out

certain requirements for distance selling contracts concluded between the seller and the consumer, in particular the rules on conformity of goods, remedial measures in the event of non-compliance and the arrangements for exercising such remedial measures.

In the current form of the proposal, our research has emphasized the limits of the provisions of this Directive, as it addresses just the e-sale of goods and not the provision of e-services. At the European level, issues related to knowledge of legal obligations towards consumers, knowledge and compliance with consumer protection legislation, as well as views on product safety, consumer complaints and awareness of alternative dispute resolution have been the subject of comprehensive studies by the European Commission, and the legal framework reflects the results of this extended research. The legislative reform needs to respond to the identified challenges of digital activities, further reinforcements being under evaluation and negotiation for uniform European adoption.

The process of regulation in response to the reality of e-commerce development was noted and should conform with the relevant jurisprudence of the Court of Justice of the European Union (“CJEU”). The court established that the imposition by Member States of more restrictive national measures than those provided by the EU directives constitutes a violation of EU law, so the Member States shall not restrict the freedom to provide services, nor shall they restrict the free movement of goods for reasons falling within the scope of regulating e-commerce.

Synthesizing, in summary, some ideas, we show that our approach, based on the study of the current European regulatory system correlated with the scope of e-commerce, highlights the fact that the new principles and legal norms bring advantages on several levels: firstly on the level of fiscal control (i.e., VAT regime), secondly on that of remote payments and thirdly on obtaining favorable effects in terms of ensuring consumer protection or protection of personal data. We emphasize that the paper considers the recently established European legal framework, but also the manifestation of the effects of the COVID-19 pandemic crisis that has had a major impact on the European economy and society—obviously, including e-commerce, in the sense of its unexpected expansion; we note that this kind of approach is less common in the works of other authors.

Although we believe that we have added value by including here the challenges for the VAT regime, as they were seen in connection with the jurisprudence of the CJEU, we must still mention some limitations of our research. Among them, the fact that it assesses a narrow historical framework, targeting the European Union and a specific Member State (Romania), and, in addition, the domination of the descriptive character of the presentation.

For these reasons, we intend to have as future lines of research, in a following paper, approaches based on the collection and processing of data from the reality of e-commerce, as they have evolved over a longer period of time (3–5 years), in accordance with the specific regulatory framework, but also with the officially registered results.

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Appendix A. The E-Commerce Industry—Types of Transactions

Order No.	Types of Transactions	Specifications	Other Details	Sources
1.	Business-to-Business (B-2-B or BTB)	Includes all transactions that take place between two or more business partners.	These transactions are usually based on extranet systems, which means that business partners act on the Internet by using names and passwords for their own web pages. In practical terms, in this category of e-commerce can be any company that uses the Internet to order from suppliers, to receive invoices and make payments.	(Kumar and Raheja 2012; Rouibah et al. 2015; Rėklaitis and Pilelienė 2019)
2.	Business-to-Consumer (B-2-C or BTC)	Refers to the relations between the trader and the final consumer, being considered retail e-commerce.	This category has expanded greatly thanks to the World Wide Web; there are now malls all over the Inter-net that offer all kinds of consumer goods.	(Kumar and Raheja 2012; Rouibah et al. 2015; Rėklaitis and Pilelienė 2019)
3.	Business-to-Administration (B-2-A or BTA)	For instance, in order to insure the transparency of the public spending procedures, government auctions are published on the Internet and companies can respond electronically.	At present, this category of e-commerce is going through a rapid expansion, especially in the context in which governments and other authorities use their own methods of promoting e-commerce. This category of e-commerce is used in connection with the fiscal authorities, to pay VAT or corporate taxes.	(Kutz 2016)
4.	Business-to-Employee (B-2-E)	Refers to transactions within a company, intended for the company's staff.	It involves using your own Intranet system.	(Martinez and Esparcia 2008; Kumar and Raheja 2012)
5.	Consumer-to-Administration	A category that is less developed presently, and it involves the possibility to create e-communities.	Where the citizens address the governments' structures, especially in the area of social assistance payments or compensation following global income calculations, but also for the protection of the consumer's rights and monitoring the positive effects of competition.	(Turban et al. 2006, 2018)

Appendix B. The Most Relevant Normative Acts to Electronic Commerce Activity in the European Union

Order No.	The Normative Act	Specifications
1.	Regulation (EU) 2018/302 of the EU Parliament and of the Council on the prevention of unjustified geo-blocking and other forms of discrimination based on the nationality, domicile or seat of customers in the internal market and amending Regulations (EC) 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (European Parliament and Council 2018a)	Contribute to the proper functioning of the internal market by preventing unjustified discrimination based, directly or indirectly, on the nationality, domicile or registered office of customers, including by clearly establishing the situations in which differential treatment cannot be justified under Article 20 (2) of Directive 2006/123/EC. The EU Regulation has established a number of obligations for traders, such as the obligation not to block or restrict, through the use of technological measures or otherwise, customer's access to their online interfaces on grounds of nationality, domicile or registered office. It also provided for the obligation of merchants not to redirect customers, for the same reasons presented above, to other versions of online interfaces, different from the one to which customer's initially tried to access. In certain cases, traders have been required not to apply general conditions of access to their goods or services which differ on grounds relating to the customer's nationality or domicile.
2.	Regulation (EU) 2017/1128 of the EU Parliament and of the Council on cross-border portability of online content services in the internal market (European Parliament and Council 2017a)	Introduces a common Union approach to cross-border portability of online content services by ensuring that subscribers to portable online content services legally provided in their Member State of residence may access and use those services when they are temporarily in the territory of a Member State other than their Member State of residence. The envisaged regulation introduced an obligation on online content service providers to provide money to subscribers who are temporarily in a Member State other than their country of residence, to access and use the online content service under the same conditions as in the Member State of residence, without incurring additional costs for accessing and using the online content service. An obligation has also been introduced for online content service providers to provide, in exchange for sums of money, to verify, at the conclusion of the contract, the subscriber's Member State of residence.
3.	Regulation (EU) No. 910/2014 of the EU Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (European Parliament and Council 2014)	Establishes the conditions under which Member States recognize means of electronic identification of persons' physical and legal information covered by a notified electronic identification system of another Member State. The Regulation lays down rules for trusted services, in particular for electronic transactions and a legal framework for electronic signatures, electronic seals, electronic timestamps, electronic documents, registered electronic distribution services and certification services for the authentication of a website.
4.	Regulation (EU) 2018/644 of the EU Parliament and of the Council on cross-border parcel delivery services (European Parliament and Council 2018b)	Establishes certain specific rules in the field of parcel delivery services, in particular cross-border parcel delivery services.

Order No.	The Normative Act	Specifications
5.	Directive 2009/24/EC of the EU Parliament and of the Council on the legal protection of computer programs (European Parliament and Council 2009)	Establishes a legal regime for the legal protection of authors of computer programs (codified version).
6.	Regulation (EU) No. 524/2013 of the EU Parliament and of the Council on the online settlement of consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (European Parliament and Council 2013a)	It aims to contribute to the proper functioning of the internal market, in particular its digital dimension, by creating a European ODR platform (hereinafter referred to as the SOL) to facilitate the independent, impartial, transparent, effective, prompt and equitable out-of-court settlement of disputes between consumers and online merchants.
7.	Directive 2013/11/EU of the EU Parliament and of the Council on the alternative settlement of consumer disputes and amending Regulation (EC) No. 882/2004, 2006/2004 and Directive 2009/22/EC (European Parliament and Council 2013b)	Regulates an alternative means of resolving national and cross-border disputes concerning contractual obligations under sales or service contracts between a trader established in the Union and a consumer residing in the EU.

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