

# **E-commerce and its limits in the context of the consumer protection: the case of the Slovak Republic**

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## **Abstract**

*The COVID-19 pandemic and lockdowns resulted in an unusual increase in electronic commerce not only in the conditions of the Slovak Republic. This fact also causes many unanswered questions in business practice, which bother entrepreneurs in e-commerce, especially in the context of consumer protection. The main goal of the article is to examine the current possibilities of electronic commerce in the conditions of the Slovak Republic and especially its limits in the context of consumer protection as a weaker part. Determining the goal of a scientific study conceived in this way responds to the current practical problems in the business practice. Due to the nature of the researched topic, we have applied analysis, synthesis as well as comparison of legal regulations in the processing of this issue. However, in addition to the mentioned scientific methods of research, we also used scientific literature, case law and analogy of the law. In our scientific article, we strive for qualified answers to the needs of business practice. In conclusion, we critically point out the application problems we have identified and we proposed legislation.*

**Keywords:** *business, consumer, e-commerce, limits, protection.*

**JEL Classification:** K12, K15, K22

DOI: 10.24818/TBJ/2022/12/1.03

## **1. Introduction**

Trade as one of the basic pillars of every economy has found its hidden potential in the current 4<sup>th</sup> Industrial Revolution. Current digital connectivity options does not only improve overall trading efficiency, but also accelerate innovation by introducing new business models that can be implemented much faster. The result of such action is also e-commerce providing several benefits. On the one hand, they enable entrepreneurs to establish themselves faster in a certain market at lower costs, on the other hand, they allow customers to buy goods and services in a „non-stone“ store from the comfort of their offices and households. The change in the social establishment in 1989 caused the transition to a market economy, and the gradual, albeit very slow, onset of the digitalization of society made it possible to start e-commerce itself.

The main benefits of e-commerce for human society are lower costs, increased interaction. We explored great opportunities in every area of life as well as infrastructure support and individual benefits for organizations, individuals and

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society. According to Benda - Prokeínová et al., e-commerce expands the market to national and international markets.<sup>2</sup> With minimal costs, the entrepreneur can easily and quickly find the necessary business partners. Kozelová et al. adds that it also simplifies administration and reduces the need to keep information in paper form.<sup>3</sup> Furthermore, it is the improvement of good reputation, flexible improvement of customer service or increase of productivity. However, the main advantage of e-commerce is the ability to purchase at any time from anywhere.

In recent years, information and communication technologies (ICT) have become widespread and integral in the relationship between public authorities and economic actors, as a result of the transition of public entities to the standards of the 4.0 economy<sup>4</sup>.

In the nineties of the 20th century, there was no social need to regulate such a legal relationship by special legal regulations. Only the valid and effective legislation was used. It was a Act No. 40/1964 Coll. The Civil Code, as amended (hereinafter referred to as the Civil Code), which in the provisions of Sections 588 to 627 regulated in some detail the institute of the purchase contract. The second, more frequently applied legal regulation after the year 1992 was Act No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the Commercial Code). Due to its flexibility and possibility of abuse, it was used disproportionately more often. The subsequent rapid development of digital technologies, as well as the accumulating problems at the beginning of the new millennium, required a major intervention by the legislator in the legislation dealing with the commerce.

The aim of the study is to examine selected aspects of the electronic commerce with a focus on the current legislative anchoring and related problems of electronic commerce in the Slovak Republic. The setting of this goal is based directly on current needs and emerging practical problems in business and consumer practice. In addition to the main goal, we have also chosen sub-goals, which are:

- identify the biggest legislative pitfalls of e-commerce,
- analyze consumer protection,
- critically assess the current e-commerce legislation and, if necessary, provide proposals „*de lege ferenda*” it means legislative proposals for improvement.

We want to achieve the goals mainly thorough study of relevant legislation, professional as well as scientific literature. Due to the nature of the scientific article, we use several scientific methods of knowledge suitable for cognition of law. In particular, the use of the critical analysis method to examine the legal situation and

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<sup>2</sup> Benda-Prokeínová, R., Dobeš, K., Mura, L. & Buleca, J. (2017). Engel's approach as a tool for estimating consumer behaviour. *E & M: Ekonomie a Management*, 20(2), pp. 15-29, doi: 10.15240/tul/001/2017-2-002.

<sup>3</sup> Kozelová, D., Fikselová, M., Dodoková, S., Mura, L., Mendelová, A. & Vietoris, V. (2012). Analysis of consumer preferences focused on food additives. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 60(6), pp. 197–204. doi: 10.11118/actaun201260060197.

<sup>4</sup> Chodakowska, A., Kańduła, S. & Przybylska, J. (2022), Cybersecurity in the Local Government Sector in Poland: More Work Needs to be Done, *Lex Localis - Journal of Local Self-Government*, 20(1), p. 162; [https://doi.org/10.4335/20.1.161-192\(2022\)](https://doi.org/10.4335/20.1.161-192(2022)).

regulation as well as abstraction. Using the comparative method, we make available the different opinions of economists and lawyers not only on the appropriateness of legislation but also on the interpretation of individual legal institutes. In this way, we try not only for a legal but also for an economic view of the researched issues. Due to our many years of experience in the practice of law in the field of civil and commercial law, we also use a doctrinal interpretation. Selected legal regulations of European and Slovak law are a necessary source of knowledge necessary to achieve the main goal.

## 2. Literature review

There are several definitions for the term e-commerce. Most of them represent buying and selling goods and services via the Internet. At first glance, it follows from the above that e-commerce takes place only in a virtual - Internet environment. However, as Polák et al. points out, this is not entirely true and points to the European e-commerce initiative.<sup>5</sup> According to this fact, but also according to Mucha, e-commerce is considered to be the trade carried out by electronic means as well as the marketing, sale or purchase of goods or services and the transmission of relevant information via electronic networks.<sup>6</sup> Electronic commerce is thus a traditional trade, but carried out by electronic means. However, some authors such as Jančíková & Pásztorová have a different opinion on this concept and point to the OECD definition. According to them, e-commerce can be characterized as all forms of electronic transactions between organizations and individuals, which are based on the creation and transmission of electronic data, including text, sound and visual presentations.<sup>7</sup> It is called it, resp. associated with it, as well as the effect where the exchange of the electronic data can cause the necessary responses in the field of institutions and processes.

Other theorists like Fauska et al. understand e-commerce as an expression of will between two or more entities, carried out by electronic means in connection with a particular trade procedure, this trade being partially or completely transmitted through electronic communications that allow these entities to communicate with each other.<sup>8</sup> Klímek & Funtá also agrees with this view and adds that it is necessary to take into account the meaning of the applicable law, which must be applied and

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<sup>5</sup> Pollák, F., Dorčák, P., Markovič, P., Világi, R. & Konečný, M. (2021). Analysis of selected characteristics of e-consumer behavior of Slovaks during the first wave of the Covid-19 pandemic. *IDIMT 2021 - Pandemics: Impacts, Strategies and Responses, 29th Interdisciplinary Information Management Talks*, pp. 299-306.

<sup>6</sup> Mucha, B. (2021). Evaluation of the State of Implementation of the European Structural and Investment Funds: Case Study of the Slovak Republic. *Online Journal Modelling the New Europe*, 35, 4-24, doi: 10.24193/OJMNE.2021.35.0.

<sup>7</sup> Jančíková, E. & Pásztorová, J. (2021). Promoting eu values in international agreements. *Juridical Tribune – Tribuna Juridica*, 11(2) pp. 203-218, doi: 10.24818/TBJ/2021/11/2.04.

<sup>8</sup> Fauska, P., Kryvinska, N. & Strauss, C. (2013). E-commerce and B2B services enterprises. *Proceedings - 27th International Conference on Advanced Information Networking and Applications Workshops*, WAINA 2013, pp. 1141-1146, 6550549.

used in assessing the specifics of the business transactions and other activities on the Internet.<sup>9</sup>

The main essence as well as the advantage of e-commerce is that there are no borders for it and therefore it is necessary to harmonize the methods that are acceptable in both the country of the seller and the buyer. According to Čajka et al., the European Union is also focusing on legislative support for e-commerce in order to support the economic activities of the Member States.<sup>10</sup>

The legislation of the Slovak Republic does not differentiate between stone and electronic commerce. The same legislation applies to legal relationships that arise in e-commerce and traditional commerce. However, because e-commerce is based on „borderless trading”, this means, according to Wefersová & Nováčková that it is not limited by the distance between the seller and the buyer, is international and thus differs from traditional trade, and therefore e-commerce also uses other legislation that is specific to this type of trading.<sup>11</sup>

### 3. Legal aspects of electronic commerce

From the point of view of the theory of law, the right to do business belongs according to Jankelová et al. (2018) to the second generation of human rights.<sup>12</sup> However, this right is also one of the basic human rights contained in the fifth section of the Constitutional Act of the Slovak National Council no. 460/1992 Coll. The Constitution of the Slovak Republic as amended (hereinafter referred to as the "Constitution of the Slovak Republic"). Article 35 paragraph 1 of the Constitution of the Slovak Republic guarantees everyone, ie not only citizens of the Slovak Republic, the right to freely choose a profession and training for it, as well as the right to do business and carry out other gainful activity. As follows from the judgment of the Constitutional Court of the Slovak Republic no. Pl. ÚS 7/1996 is the right to conduct business as a constitutional guarantee of freedom to perform economic activities at the discretion granted to each person. This right guarantees it the possibility to pursue an economic activity where there is no economic competition. However, the Constitutional Court of the Slovak Republic emphasized that part of the guarantee provided in this way is not the protection of the entrepreneur against the entry of a competitor into the chosen economic activity. In this connection, Ľalík refers to the provision of § 41 of the Commercial Code guaranteeing natural persons and legal entities that participate in competition, even

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<sup>9</sup> Klimek, L. & Funta, R. (2021). Data and E-commerce: An Economic Relationship. *Danube*, 12(1), pp. 33-44, doi: 10.2478/danb-2021-0003.

<sup>10</sup> Čajka, P. & Abrahám, J. (2019). Regional aspects of V4 countries' economic development over a membership period of 15 years in the European Union. *Slovak Journal of Political Sciences*, 19(1) pp. 89-105, doi: 10.34135/sjps.190105.

<sup>11</sup> Wefersová, J. & Nováčková, D. (2021). Use of Digital Technologies in Business in Slovakia. *Studies in Systems, Decision and Control*, 376, pp. 335-355, doi: 10.1007/978-3-030-76632-0\_12.

<sup>12</sup> Jankelová, N., Jankurová, A., Beňová, M. & Skorková, Z. (2018). Security of the business organizations as a result of the economic crisis. *Entrepreneurship and Sustainability Issues*, 5(3), pp. 659-671, doi: 10.9770/jesi.2018.5.3(18).

if entrepreneurs are not free to develop their competitive activity in order to achieve economic benefits and associate for performance. This activity. However, it emphasizes their obligation to comply with legally binding competition rules and the impossibility of abusing participation in competition.<sup>13</sup>

In the case of electronic commerce, from the point of view of the right to conclude, there are also consumer contracts, which are primarily subject to the regime of the Civil Code, but in some cases also the Commercial Code. Last but not least, the provisions of Act no. 102/2014 Coll. on consumer protection in the sale of goods or provision of services on the basis of a contract concluded at a distance or a contract concluded outside the premises of the seller and on the amendment of certain laws (hereinafter the Consumer Protection Act). However, we see a problem in the fact that the legal order of the Slovak Republic does not contain a comprehensive legal regulation of electronically concluded consumer contracts. This is the reason for the application of the general and special provisions of the Civil Code, which in essence constitutes a „lex generalis“ of private law.

As we have already mentioned, the primary legal basis for not only e-commerce is contained in the Civil Code. It is mainly about the regulation of civil law relations and their protection, the requisites of legal acts, including the conditions of their validity, consumer contracts, or the limitation of claims under contracts. Equally important is the commitment part addressing e.g. issues of liability for damage and finally in the provisions of § 588 to 627 the purchase contract itself. For the purposes of electronic commerce, it is necessary to refer to the Special Provisions on the Sale of Goods in Commerce (Consumer Purchase Contracts) contained in § 612 to § 627.

The Commercial Code as a „lex generalis“ of commercial law focuses on the general regulation of business, competition, the legal status of companies. In the penultimate third part, entitled obligations in the provisions of Sections 409 to 475, it draws attention to its regulation of the purchase contract.

Especially for a layman, however, not only in business practice can an incomprehensible problem arise with duplication of legislation. This is a situation where certain legal institutes such as purchase contract regulated both in the Civil Code and in the Commercial Code. The decisive fact for this complicated situation, even in the case of electronic commerce, will be whether it is a relationship of commercial law or civil law. In this context, we consider it necessary to refer to the provision of § 261 paragraph 1 of the Commercial Code. It subordinates to the regime of the Commercial Code all relations between entrepreneurs, if at their origin it is obvious, taking into account all the circumstances, that they relate to their business activities. In this case, these are relationships where entrepreneurs act on both sides as entities and the relationships between them must relate to their business activities. According to Chochia & Kerikmae as follows from the Commercial Code, it is necessary that the connection with the business activity lasts at the time

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<sup>13</sup> Ealík, T. (2020). The Slovak constitutional court on unconstitutional constitutional amendment (pl. ÚS 21/2014). *European Constitutional Law Review*, 16(2), pp. 328-343. doi: 10.1017/S1574019620000140.

of the establishment of the business relationship.<sup>14</sup> If this happened later, it would not be possible to apply the provisions of the Commercial Code to such a relationship, but the provisions of the Civil Code.

The following provision of § 261 paragraph 2 of the Commercial Code no longer requires the participation of entrepreneurs on both sides. It states that the provisions of the Commercial Code also govern the contractual relations between a subject of public law, insofar as they relate to the provision of public needs or their own operations and entrepreneurs in the course of their business activities. The subject of public law in this case means a state body, municipality, higher territorial unit, special type of legal entity, association of legal entities, whose member is at least one of the subjects of public law referred to in § 261 paragraph 3 letters a) to d) of the Commercial Code.

There is also a third possibility for contracting parties in electronic commerce to submit their contractual relationship to the Commercial Code, even if it does not fall under its provisions § 261. This is made possible by the following provision § 1 of the Commercial Code. This will be the case when it is more advantageous for the contracting parties, or only one of them, to follow this code. It should be noted, however, that even an agreement on the choice of the Commercial Code, which must be in writing under penalty of invalidity, does not deprive the consumer of legal protection. The consumer is given special protection by Act no. 250/2007 Coll. on Consumer Protection, as amended, and the Civil Code. This Code, in its provisions § 52 to § 54, regulates consumer contracts in detail and protects the consumer from the actions of the other party, which could harm him.

According to Korcsmaros et al., the main difference lies in the fact that commercial relations in most cases arise between entrepreneurs, especially in connection with their business activities, or from the expression of the will of the participants in the contractual relationship.<sup>15</sup> It follows from the following that the Commercial Code will apply to obligations arising from electronic commerce if the conditions for the application of the provisions of § 261 or § 262 of the Commercial Code are met. In other cases, the application of the Commercial Code is excluded and the obligations arising from electronic commerce are governed without exception by the provisions of the Civil Code.

When concluding purchase contracts with the use of electronic devices, the provisions of other legal regulations also apply, e.g. Act no. 258/2001 Coll. on consumer loans, Act on Consumer Protection, Act no. 215/2002 Coll. on electronic signatures and on amendments to certain laws and others. If a written legal act is required to be presented or kept in the original, the electronic document meets this requirement if the conditions for its immutability and reliability have been created since its first presentation in its final form and can be always present in this form to the person for whom it is intended.

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<sup>14</sup> Chochia, A. & Kerikmae, T. (2018). Digital Single Market as an Element in EU-Georgian Cooperation. *Baltic journal of european studies*. 8(2), pp. 3-6, doi: DOI10.1515/bjes-2018-0012.

<sup>15</sup> Korcsmaros, E., Mura, L. & Hevesi, A. (2016). Selected aspects of business networks. *Actual Problems of Economics*, 186(12), pp. 147-156.

The legal regulation of the electronic commerce process was enshrined in the legal order of the Slovak Republic by Act no. 22/2004 Coll. on Electronic Commerce and on Amendments to Act No. 128/2002 Coll. on state control of the internal market in matters of consumer protection and on amendments to certain laws as amended by Act no. 284/2002 Coll. (hereinafter referred to as the “Electronic Commerce Act”). It entered into force on 1 February 2004. Its main purpose was to regulate the relationship between the information society service provider and their recipient. These arise during their communication at a distance during the connection of electronic devices by an electronic communication network. The law enshrined several new concepts in the Slovak legal system, which were at least confusing for a potential recipient from the beginning. The stated aim was in particular to ensure the protection of the consumer as a recipient of services, based on the general obligations of the service provider.

The Act on Electronic Commerce also brought a new definition of terms into our legal system, which have not yet been defined. These were terms such as information society service, provider and recipient of information society services. However, the key provision is § 5, which regulates in particular the technical side of contracts concluded by means of electronic devices. In essence, this legislation focuses only on the procedural side of the communication relations between the information society service provider and their recipient. The condition is that they arise during their communication at a distance, during the connection of electronic devices by an electronic communication network and rely on electronic processing, transmission, storage, retrieval or collection of data, including text, sound and images. In addition, it pays special attention to compliance with this law as well as international cooperation in this area.

Negative definition of the law consisting in the fact that it does not apply to information service services, the subject of which are taxes and fees, lotteries and other similar games, except consumer games and competitions aimed at promoting the sale of goods or provision of services, protected personal data in information systems, notary services to the extent of the exercise of their public authority, the services of lawyers in representing the client in court proceedings, the actions of bailiffs, agreements and proceedings to which special rules on the protection of competition apply. In the final provision, § 9 exhaustively lists the directives of the European Union, which it transposes into the legal order of the Slovak Republic.

#### **4. Consumer protection**

Legal protection of the consumer is mainly the regulation of social relations, through which the creation of consumer contracts is carried out. Consumer protection is implemented in both private and public law. Public protection is implemented through the activities of administrative bodies. Only they have the legal power to supervise the market as well as the conduct of all entities actively involved in consumer relations. The legislator entrusted this power primarily to the Slovak Trade Inspection Authority. It imposed on the National Bank of Slovakia the

obligation of supervision in the area of financial consumer protection. In practice, private consumer protection is manifested in the possibility of bringing an action before a general court with substantive, territorial and functional jurisdiction, which, on the basis of the facts presented, will provide the consumer with judicial protection in the event of a breach of consumer rights. Private consumer protection provides a reparative function operating at the time of the violation of his rights, while public consumer protection, in the words of Plavčan & Funta, provides a preventive function with sanctions at the time of real threat of violation of consumer rights.<sup>16</sup>

The content of consumer legal protection is therefore the rights and obligations of the entities concerned involved in consumer relations. Consumer relations also have the nature of synalagmatic t. j. bilateral legal relations. In practice, this means that a given obligation must also correspond to each right granted. This is understood by Štefko et al. as the performance of the contracting parties in the position of creditor and debtor, when the entitled subject - consumer requires from the obligated subject - supplier the fulfillment of a specific obligation, e.g. proper and timely delivery of goods.<sup>17</sup> At the same time, however, the liable entity has the status of an authorized entity and therefore has the right to demand the fulfillment of the corresponding obligation, in particular the payment of the purchase price or the taking over of the goods.

In the legal order of the Slovak Republic, consumer protection and its provision are addressed not only by the Consumer Protection Act but also by the Civil Code and other legal regulations. This means that consumer protection is also ensured by many generally binding legal regulations of various legal powers as well as systemic hierarchies.

The introductory provision of § 52 of the Civil Code characterizes a consumer contract as any contract regardless of its legal form, which is concluded by the supplier with the consumer. The following paragraph 2 protects and favors the consumer in the event of any problems. The provisions on consumer contracts, as well as all other provisions governing legal relations to which the consumer is a party, shall apply whenever this is to the benefit of the contracting party who is the consumer. Different contractual arrangements or agreements, the content or purpose of which is to circumvent the provisions of § 52 of the Civil Code, are punishable by a defect of absolute invalidity of a legal act without the possibility of any convalidation. However, it should be emphasized that this would not invalidate the whole contract, but only the part of it which would be contrary to legal consumer protection. As further emphasized by Vačok et al., the provisions of the Civil Code always apply as a matter of priority to all legal relationships involving the consumer,

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<sup>16</sup> Plavčan, P. & Funta, R. (2020). Some Economic Characteristics of Internet Platforms. *Danube*, 11(2), 156-167, doi: 10.2478/danb-2020-0009.

<sup>17</sup> Štefko, R., Bačík, R., Fedorko, R., Oleárová, M. & Rigelský, M. (2019). Analysis of consumer preferences related to the use of digital devices in the e-commerce dimension. *Entrepreneurship and Sustainability Issues*. 7(1), pp. 25-33, doi: 10.9770/jesi.2019.7.1(2).



although otherwise the rules of commercial law should apply.<sup>18</sup> In this context, however, the definition of key terms is essential. According to the Civil Code, a supplier is a person who acts within the scope of his business or other entrepreneurial activity when concluding and fulfilling a consumer contract. A consumer is a natural person (ie a person) who, when concluding and performing a consumer contract, does not act within the scope of his business or other entrepreneurial activity. This means that special protection is also granted to a natural person - entrepreneur, but only if he does not use the purchased things in his business.<sup>19</sup>

Consumer contracts may not contain provisions causing a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. This legal restriction does not only apply when determining the amount of the purchase price. In this area, the legislator does not interfere in free pricing, which should be based on the current market situation.

Consumer contracts shall not contain provisions that cause a significant imbalance in the parties' rights and obligations to the detriment of the consumer. However, that prohibition is not an absolute. The exception is the situation in the case of contractual terms relating to the main subject matter of the service and the reasonableness of the price. But only if those terms are expressed in a clear and intelligible manner or where unfair terms have been individually negotiated. However, in respect of individually negotiated contractual provisions, they shall be subject to Horvat et al., they do not consider those which the consumer has had the opportunity to become acquainted with before signing the contract if he could not have influenced the content of the contract.<sup>20</sup> Unless the supplier proves otherwise, contractual clauses agreed between the supplier and the consumer shall not be considered as individually negotiated. As stated Srebalová & Vojtech unfair terms contained in a consumer contract shall in particular be deemed to be clauses which:

- impose on the consumer an obligation to perform and which he has not been able to become acquainted with before the conclusion of the contract;
- allow the supplier to transfer rights and obligations under the contract to another supplier without the consumer's consent if the transfer would impair the enforceability or security of the consumer's claim;
- exclude or limit the liability of the supplier for an act or omission that caused the consumer to die or harm;
- exclude or limit the consumer's rights in claiming liability for defects or liability;

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<sup>18</sup> Vacok J., Srebalova, M., Horvath, M., Vojtech F. & Filip, S. (2020). Legal obstacles to freedom to conduct a business: experience of the Slovak Republic. *Entrepreneurship and Sustainability Issues*, 7(4), pp. 3385-3394, doi: 10.9770/jesi.2020.7.4(53).

<sup>19</sup> Mura, L. & Mazák, M. (2018). Innovative activities of family SMEs: case study of the Slovak regions. *Online Journal Modelling the New Europe*, 27, 132-147.

<sup>20</sup> Horvat, M., Magurová, H. & Srebalová, M. (2017). Protection of consumers' rights in railway in the Slovak Republic. *Yearbook of Antitrust and Regulatory Studies*, 10 (16), pp. 177-190, doi: 10.7172/1689-9024.YARS.2017.10.16.9.

- allow the supplier not to deliver to the consumer the performance provided by him, even if the consumer does not conclude or withdraw from the contract with the supplier;
- they allow the supplier to withdraw from the contract without a contractual or statutory reason and do not allow the consumer to do so;
- authorise the contractor to terminate a contract concluded for an indefinite period without reasonable notice, without any reason to give special consideration;
- require the consumer to fulfil all obligations even if the supplier has failed to fulfil the obligations arising;
- allow the supplier to unilaterally modify the contract terms without a reason agreed in the contract;
- determine that the price of the goods or services will be determined at the time of performance or authorise the supplier to increase the price of the goods or services without the consumer having the right to withdraw from the contract if the price agreed at the time of conclusion of the contract is substantially exceeded at the time of performance;
- require a consumer who has failed to fulfil his obligation to pay a disproportionately high amount as a penalty linked to the non-performance of his obligation;
- restrict access to evidence or impose obligations on the consumer to bear the burden of proof that the law governing the contractual relationship should have on another party;
- in the event of the supplier's failure to fulfil its obligation in whole or in part, unduly restrict or exclude the possibility for the consumer to assert his rights against the supplier, including the consumer's right to set off the claim against the supplier;
- cause a fixed-term contract to be extended after the end of the period for which the contract was concluded, granting the consumer an excessively short period of time for giving consent to the renewal of the contract;
- entitle the contractor to decide that his performance is in conformity with the contract or which confers the right to interpret the contract only on the contractor;
- limit the contractor's liability if the contract has been concluded by the intermediary or require the conclusion of the contract through the intermediary in a specific form;
- allow a dispute between the parties to be resolved in arbitration proceedings without fulfilling the conditions laid down by a special law;
- require the consumer to provide security for the performance of his obligation at a value disproportionately higher than the amount of his obligation under the consumer contract at the time of the conclusion of the agreement to ensure the performance of the consumer's obligation;
- require the consumer to perform for a service the supply of which by the supplier does not largely pursue the consumer's interests;

- require the consumer to be bound by the contract for an unreasonably long time, even if, at the time of conclusion of the contract, it was clear that the subject-matter of the contract could be achieved within a significantly shorter period of time;
- require the consumer to pay for services of which the consumer has not been demonstrably informed prior to the conclusion of the contract, the payment of which was not provided for in the contract or for which the consumer does not receive the agreed consideration;
- they shall require the consumer to perform or render to or for the benefit of a third party any performance arising from or in connection with a consumer contract which does not predominantly pursue his interests, or that he performs any obligations in connection with that performance to a third party.<sup>21</sup>

Such unfair terms provided for in consumer contracts are vitiated by a defect in absolute nullity without the possibility of subsequent revalidation or ratification. However, the unfairness of contract terms shall be in accordance with Dan it shall evaluate, taking into account the nature of the goods or services for which the contract was concluded and all the circumstances surrounding the conclusion of the contract at the time of conclusion of the contract, and all other terms of the contract or other contract on which it depends.<sup>22</sup>

If the subject matter of the consumer contract is the provision of funds, the consumer is protected by a cap on the amount of remuneration. This may not exceed the maximum permissible remuneration that may be claimed from the consumer when the funds are provided. Details such as the determination of the remuneration and the criteria for determining whether the maximum permissible amount of remuneration is mandatory is regulated by the Slovak Government's regulation. As he points out Pollak et al. the focus on consumer protection is reinforced by the inadmissibility of ensuring the fulfilment of a consumer contract obligation through a very often criticised and abused backstop.<sup>23</sup>

A specific feature of Slovak law is, in the opinion of several professionals, the provision according to which, if the supplier provides the consumer with a service which the consumer has not ordered, the consumer is not obliged to return or store the service. At the same time, other claims of the supplier against the consumer are also excluded. For reasons of legal certainty according to Žofčinová et al. the legislator enshrines the definition of unsolicited performance in the Civil Code.<sup>24</sup> This is another recurring service provided to the consumer under a contract

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<sup>21</sup> Srebalová, M. & Vojtech, F. (2021). SME Development in the Visegrad Area. *Eurasian Studies in Business and Economics*, 17, pp. 269-281, doi: 10.1007/978-3-030-65147-3\_19.

<sup>22</sup> Dan, H. (2014). The euro zone – between fiscal heterogeneity and monetary unity. *Transylvanian review of administrative sciences*, (43E), pp. 68-84.

<sup>23</sup> Pollák, F., Dorčák, P., Markovič, P., Világi, R. & Konečný, M. (2021). Analysis of selected characteristics of e-consumer behavior of Slovaks during the first wave of the Covid-19 pandemic. *IDIMT 2021 - Pandemics: Impacts, Strategies and Responses, 29th Interdisciplinary Information Management Talks*, 299-306.

<sup>24</sup> Žofčinová, V., Horváthová, Z. & Čajková, A. (2018). Selected social policy instruments in relation to tax policy. *Social Sciences*, 7 (11), 241, doi: 10.3390/socsci7110241.

concluded by means of distance communication, where the consumer has not expressly requested such performance. The burden of proof has been imposed on the supplier by the legislature, who, unless he proves otherwise, has a legal irrebuttable presumption that the recurring performance is always deemed to be unsolicited.

Even in the context of the resale of products, additional measures are being applied significantly to the supplier. In the case of performance under a consumer contract to be effected in instalments, the Contractor may exercise the right to reimbursement of the full amount at the earliest three months after the delay of the instalment. At the same time, however, it must alert the consumer to exercise that right at least 15 days in advance.

However, we consider it necessary to point out that such strict consumer protection is reduced in the case of trade in transferable securities, financial instruments and other products or services, where the price is dependent on the movement of rates and indices on a regulated market or on a market rate beyond the supplier's control. The same applies to the purchase or sale of a foreign currency, travellers' cheques or international money orders issued in a foreign currency.

In the context of the court's decision-making process, where a court has declared a term in a consumer contract null and void because of the unfairness of such a term, or has refused performance by reason of such a term, the supplier shall be obliged to refrain from using such a term or term having the same meaning in contracts with all consumers. We agree with the opinion Urikova et al. that the supplier has the same obligation even if, on the basis of such a term, the court has ordered him to give the consumer unjust enrichment, to make good the damage or to pay adequate financial satisfaction. The contractor's legal successor has the same obligation.<sup>25</sup>

In practice, situations arise in which the consumer has terminated the contract or has withdrawn from the contract on the ground that the supplier has changed the contract terms and the consumer has thus been obliged to repay one-off funds. In such a case, the supplier shall, on a mandatory basis, offer the consumer the performance in appropriate instalments, unless otherwise provided for by specific law. If the conditions for payment of the performance are not agreed, either the supplier or the consumer shall decide, on the application of either the supplier or the consumer, the decision-making of the arbitration tribunals.

Not only in the conditions of the Slovak Republic are possible to meet with insidious unfair trade consisting of font size. The Civil Code seeks to eliminate this problem by means of a specific provision. According to that court, where a consumer contract is drawn up in writing, the subject matter and price may not be indicated in smaller letters than another part of such a contract, except for the title of the contract and the designation of its parts. The provisions of the consumer contract, as well as those contained in the general terms and conditions or in any other contractual

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<sup>25</sup> Urikova, O., Ivanochko, I., Kryvinska, N., Strauss, C. & Zinterhof, P. (2013). Consideration of aspects affecting the evolvement of collaborative e-business in service organisations. *International Journal of Services, Economics and Management*, 5(1-2), pp. 72-92. doi: 10.1504/IJSEM.2013.051863.

documents relating to the consumer contract, shall not be put in illegible and inferior characters to the consumer than those laid down in the implementing regulation. A contract concluded in breach of this provision shall be null and void. However, the legislature was also required to define not only the minimum font size but also the font type, e.g. 'Times New Roman, font size 12'.

A consumer contract containing an unfair contract term, as set out in the operative part of the court's decision, and its conclusion having been obtained using an unfair commercial practice or usury, is also void. In any event, contract terms governed by a consumer contract may not derogate from the provisions of the Civil Code to the detriment of the consumer. As pointed out in this regard Garia-Fodor & Csiszárík-Kocsír in particular, the consumer cannot waive in advance the rights conferred on him by Slovak and European law or otherwise impair his contractual status through his actions. In doubt about the content of consumer contracts, the interpretation is more favourable to the consumer.<sup>26</sup> The contractual freedom of the parties to determine reciprocal rights and obligations is also limited by the impossibility of enforcing or securing the time-barred law of a consumer contract. However, it is not an absolute ban. The derogation can be applied, which means changing the content of the law which is time-barred from a consumer contract, replacing it with a new right or restoring its enforceability, but only on the basis of a legal act of the debtor who has been demonstrably aware of the limitation period.

## 5. Conclusion

Given the stated goal of our scientific study, we analyzed the scientific and professional literature, legislation and case law of the Constitutional Court of the Slovak Republic using the Institute of Legal Logic to conclude that the Slovak legal system contains comprehensive legal regulation of the electronic commerce. Relatively extensive legislation fulfills its purpose and regulates electronic commerce from both a substantive and a procedural point of view. At the same time it provides the consumer, as a rule, to the consumer, as a weaker party to the contract, with the necessary and effective protection. At the same time within the principle of dispositionality and the contractual freedom, on which the Civil Code and the Commercial Code are based, it is possible to grant the consumer more rights by agreement than these codes guarantee.

However, the added value of our research is several important findings. We critically assess the legislator's lack of interest in codifying and thus also unifying the legal regulation of electronic commerce, which is literally atomized. As an experienced lawyers working in this field, we also had difficulty in a number of legal regulations relating to electronic commerce, such as the Civil Code, the Commercial Code, the Electronic Commerce Act, the Consumer Protection Act, the Electronic Signature Act, the Consumer Credit Act and others. Thus, for a layman, the amount of legislation that is often incomprehensible to them must literally be

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<sup>26</sup> Garia-Fodor, M. & Csiszárík-Kocsír, Á. (2018). The validity of value-based consumer behavioral models in the financial consciousness of the Z generation. *Online Journal Modelling the New Europe*, (27), pp. 107-131.

terrifying. We have also examined the pitfalls in the duplication of the legal regulation of the institutes such as the purchase contract or concepts such as the consumer contained in the several regulations with different meanings. In today's age of information, the codification of e-commerce into a separate code would remove many barriers, obstacles and especially the concerns of potential entrepreneurs. In our opinion, such a positive intervention by the legislator would clearly have a positive impact on job creation at present.

### Acknowledgement

This scientific study was created within the project National Infrastructure Transfer Support Infrastructure in Slovakia - NITT SK II (national project), Operational Program: Integrated Infrastructure, Project co-financed by: European Regional Development Fund.

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