

ONLINE PLATFORMS – SUBJECTS OF THE E-CONTRACTS OR INTERMEDIARIES?

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Abstract

The article will analyse the legal framework and trends of online platforms. There will be presented new directions of online platforms that have the role to connect and to facilitate the dialog between the sellers and consumers. The importance and usage of the platforms have accelerated at an unprecedented rate since the global pandemic started. Online platforms are gates to the new business stage for young companies. Taking into account the fact that online platforms include engines, social media, online financial services and more their status is still unclear, whether they are considered partners/subjects in e-contracts or intermediaries. Additionally, online platforms include specific risks and issues to the users as: dissemination of illegal content, products and service online, such as incitement to terrorism, infringements of IP rights, manipulation of platform's system to amplify certain violence or self-harm messages, unfair business conditions for business users, unfair commercial practices, consumer protection rules ill-suited to digital world, tax avoidance, ineffective supervision of services, thus the Platform-to-Business Regulation, the Digital Services Act and the Digital Markets Act aim to address some of these gaps and form three key legislative initiatives in the field of online platform regulation. Finally, the authors will compare the trends of the online platforms and will come up with solutions of the legal status of online platforms.

Keywords: *online platforms; online intermediaries; digital contract; legal status; DSA; DMA.*

JEL Classification: P37.

1. INTRODUCTION

The aim of this contribution is to ‘unpack’ the status of the legal relationship within platform services – to provide a basis for discussion of the question whether the platform role which plays a role of the subject or intermediary in the online service market and whether the legal regulation of platform services is needed.

The structure of this research is as follows: after a brief description of the communication in e-markets (section 1), the legal framework in Europe (section 2), the legal framework in US and China (section 3), legal status of the platforms (section 4), the final part of this paper will consider new trends of developments of the platforms taking into account the new technologies and the inside world the platforms create. E-Platforms impose own 'rules', 'laws', 'arbitration' etc. that makes them play as separate subject in line with natural persons and legal entities (by status platform might belong too).

Lately there have been enormous changes in information technology, the most visible of which is the spread of the Internet as a basis for electronic business transactions. Reactions from United States of America (US) and European legislators as well as emerging international model laws had to be included in the inquiry. The value of such a study is not limited to the attempt to integrate the new forms of communication into the existing legal framework. On the contrary, it can result in a perspective from the extrajudicial developments of law, which can also be used to rethink and re-evaluate the structure and principles of contract law.

2. COMMUNICATION IN E-MARKETS

The market is the place where goods and services are exchanged, and the contract is the instrument for coordinating market participants. In this sense, markets can also be understood as communication networks. After starting with individual systems such as electronic exchanges, computerized reservation systems, logistics systems, the development has also taken place through the Internet and the electronic commerce ("e-Commerce") that takes place through it, is given a new quality.

The subjects of the electronic contract are individuals or legal persons who conclude a contract using electronic means, these can be two or more people who agree to establish mutual rights and obligations through electronic means of communication.

In general, the subjects of the electronic contract can be any natural or legal persons who have access to the electronic means of communication and can be identified through them. This includes, but is not limited to, persons using the Internet, mobile telephony or other electronic means of communication to enter into contracts.

Natural persons are individuals who enter into contracts for personal use, while legal entities enter into contracts on behalf of companies or other commercial entities. Both natural and legal persons can conclude electronic contracts. It is important to note that with regard to electronic contracts, the subjects are not limited to the same geographical location or the same country. Electronic contracts may be entered between persons anywhere in the world and may be governed by different laws and regulations depending on where the subjects of the contract are located and the laws of their home countries.

In addition, the subjects of the electronic contract must be able to understand and accept the terms and conditions of the contract, as well as agree on the way to use electronic means of communication to conclude the contract. They must be able to digitally sign the document containing the electronic contract to confirm their agreement to its terms and conditions.

It is important to note that the subjects of the electronic contract must have access to the electronic means of communication, as well as to the technological devices necessary to conclude and sign the contract, as well as to receive and send information related to that contract.

In addition to individual and/or legal persons, electronic contracts can also be concluded between other entities, such as governmental or non-governmental organizations and other institutions (which might also be considered as legal entities). Also, the subjects of the electronic contract may include suppliers and customers, companies and employees, as well as any other parties who wish to establish contractual relations using electronic means of communication.

Another important topic of discussion regarding e-contracts is the issue of using e-signatures to sign contractual documents by individuals and/or legal entities. Electronic signature is a method of authenticating a person who signs a document using electronic means of communication.

People using the electronic signature must meet certain technical and security requirements for it to be considered valid. In addition, the laws and regulations of different countries set specific criteria and standards for electronic signatures, so it is important to consult the applicable law before using the electronic signature in a contract.

Moreover, the subjects of the electronic contract are extremely diverse, they can be any natural or legal persons who can use electronic means of communication to conclude a contract. It is important to comply with the legal and technical requirements for an electronic contract to be considered valid and binding for all subjects involved.

Another important issue to discuss is presented by providers and intermediaries that offer intermediary services or online trading platforms for the conclusion of electronic contracts between subjects. In this research we aim to analyse the platform as subjects or intermediaries of the legal deeds concluded in online medium.

In Republic of Moldova according to art. 1013 of the Civil code preview the notion and norms on distant contracts (Civil Code, 2018). Distant contracts can also be concluded outside of decentralized systems such as the blockchain, usually being concluded directly between the professional (seller) and the consumer (buyer) or through platforms that allow the sale of goods and their procurement, on the world market there are examples such as Amazon, Ebay, Alibaba a.o. on the Simpals local market (2023). E-commerce and off-premises sales offer many advantages, but also involve compliance with rules that must be followed within

the limits of the European Union rules. Although the scope of contracts in the online environment is increasingly greater in the online environment, the rules on e-commerce and distance and off-premises sales do not cover transactions concluded in the following areas: social and health services, gambling, financial, insurance and investment products, the sale and rental of housing (for residential purposes), travel packages, services involving the right to use real estate for a limited period of time (timeshare) and certain holiday services subject to specific rules, passenger transport (with the exception of certain specific rules), signing of contracts by certain public office holders such as notaries, regular delivery of food and beverages to customers' homes or workplaces, products sold at vending machines, in some EU countries, the following off-premises rules do not apply if the value of the contracts is less than EUR 50 (European Commission, 2023).

Electronic platforms became very popular since the pandemic period and it shifted the consumer interests to the online market as it consumes less time, in some cases less money being targeted on specific product(s) which might cost less online, the returning period is also bigger compare to non-online market and other benefits offered by electronic platforms.

3. LEGAL FRAMEWORK OF ONLINE (ELECTRONIC) PLATFORMS IN EUROPE

Within the single market, it should be simple to buy goods, digital content and digital services from any EU nation. Consumers often do not know their rights when products are viced. Due to variations in national contract law, many businesses are hesitant to market their products to overseas customers. The European Commission presented two directives in 2015 to address these issues: one on contracts for the sale of goods (such as the purchase of a camera or a smart watch) and one on contracts for the provision of digital content and digital services (such as be media accounts or music streaming services).

On 20 May 2019, the European Parliament and the Council approved Directives (Directive (EU) 2019/771 and Directive (EU) 2019/770). Member States had until July 1st, 2021 to transpose them into national law after they were published in the Official Journal.

The directives harmonize important provisions of EU legislation on consumer contracts. In the millions of daily transactions involving products, smart products, digital content and digital services, this will ensure a high level of consumer protection and increase legal certainty for both consumers and traders.

Both Directive (EU) 2019/771 on certain aspects of contracts for the sale of goods and Directive (EU) 2019/770 on certain aspects of contracts for the supply of digital content and digital services entered into force on January 1st, 2021.

Videos, music files, software, live streaming events, chat programs and social networks are just a few examples of the wide variety of products that fall under the category of digital content and services.

Consumers may experience the following issues with these products:

1. the device might not play the downloaded music;
2. the purchased software suddenly stopped working.

With the new regulations, consumers will be protected against faulty digital products and services and have access to redress:

- a) asking the trader to solve the problem;
- b) if the problem persists, requesting a price reduction or terminating the contract and receiving a refund.

Such protection was previously limited to tangible assets in the EU. The consumer frequently provides the merchant with personal data in exchange for access to digital goods or services without having to pay money. Consumers now have the right to compensation for faulty digital content or services, regardless of whether they paid for it or just provided personal data, under the new Digital Content and Services Directive (EU) 2019/770.

The author Vanessa Mak (2018) in the research *Regulating online platforms – the case of AIRBNB* mentioned, the platform services such as Airbnb, Uber, eBay, Amazon, TaskRabbit and many more have rapidly increased and occupied the existing markets and services. Airbnb's peer-to-peer accommodation rental platform competes with hotels in many cities, whereas Uber invaded taxi market services. These platforms are very operative, not expensive and efficient by using people's facilities as apartments and/or cars and/or works through the fees the participants of the platform are paying, so in general it is a win-win case for both parties.

With regard to the opinion of author Vanessa Mak (2018), she highlighted 'platforms' as separate subjects in her research as follows: 'this chapter discusses the private law relationships that arise between the three parties involved in a home rental through the website: the online platform (Airbnb), the host and the guest' (Mak, 2018). In general, the structure of the contractual relationship is quite simple - a platform where individuals or legal persons as host or guests are registered (including via Google or Facebook), and agree commonly on terms and conditions of the future relations that usually are set by the platforms and with some requirements of the hosts taking into account the clients (guests) desire and disputes.

Another author Przemyslaw Jacek Palka (2018) has a contrary opinion regarding the online platform, as online platforms are seen as proprietary spaces. Mr. Palka sustains that '*terms of online services are not contracts for service in the traditional sense, since they often do not contain any obligations or promises on the side of the providers*', additional argument invoked is that it always contains some contractual elements like licensing of software and/or content, but firstly set the rules specifying what users are (not) allowed to do, favour more an exercise of property rights than contracts. Moreover, the relations between online service providers and their users should be analyzed through public/private

relations, as service providers might be *de jure* as private service providers but benefit as public in nature. Finally, the author invokes that in order to mitigate the unequal position that exists between the online service providers who unilaterally control the code and algorithms behind their platforms it should modify the consumer law in the way that consumers would benefit through constraining the power of online service providers (Palka, 2018).

There were presented by two opinions of authors that are opposite, however, the second one invokes more arguments in favour of property relations of the online service providers via controlling the code and algorithm, with regards to the first opinion we are supporting it since the relations are established by the voluntary will of the client that access platforms in order to benefit of services.

4. LEGAL FRAMEWORK OF ONLINE (ELECTRONIC) PLATFORMS IN UNITES STATES OF AMERICA (US) AND CHINA

The American and Chinese economies are interdependent, nevertheless the increasing competition and confrontation starting intellectual property rights and trade to foreign aid and technological mastery. The US-China tensions in the past few years have been experienced a battle between the two actors, big nations for tech supremacy (Khapral, 2023). Platforms have become increasingly important to the US-China rivalry and it is discussed that they should be at the focus of analyses of the ‘new state capitalism’. Platforms that generate a very high income for owners are becoming one of the main targets for business owners. For example, China is one of the largest e-commerce markets globally, generating almost 50% of the world’s transactions. According to E-Marketer data, the online transactions of China reached 2.29 trillion USD in 2020 and is forecasted to get 3.56 trillion USD by 2024 with a number of 710 million digital buyers. China is placed ahead of the US for e-commerce with a revenue of 1.5 trillion USD (International Trade Administration, 2023).

Rolf and Schindler (2023) have researched in their paper the influence of two big actors US and China on the development of platforms and conceptualized the notion of ‘state platform capitalism’ in which these actors instrumentalize and mobilise domestic platform firms in pursuit of geopolitical-economic objectives, while platforms become increasingly interdependent with their home state institutions. It is worth mentioning that the comparative issues researched by authors are quite relevant and it describes the inter influence of big players of online market. The author invokes that platforms are organizations that combine digital and physical infrastructure to intermediate and facilitate commercial social and informational exchange. The authors invoke that ‘*the platforms have boomed in the context of global economic growth due to their low start-up costs, scalability and limited assets and liabilities beyond intellectual property and a small pool of full-times workers*’ (Rolf and Schindler, 2023). According to recent data the largest

digital platforms are concentrated in US and China, so-called ‘super digital platforms’ – Apple, Amazon, Microsoft, Alphabet, Meta, Alibaba and Tencent, capitalised at US\$8.3tn at the end of 2020 (Kenney, Bearson and Zysman, 2021). However Chinese platforms are rapidly growing they are not so powerful as their Silicon Valley counterparts and remain dependent of their domestic economy. Nevertheless, the Chinese platforms are rapidly modernizing and economically growing, becoming competitive in the international market. Tencent, a communications platform and owner of WeChat alongside a large video gaming portfolio, has profits of US\$23.3bn on sales of US\$70bn in 2021, compared to those on Facebook (now Meta) which earned US\$29.1bn of profits on \$86bn on sales, the commercial platforms as Alibaba Group achieved a net income (profit) of US\$23.3bn on smaller volume of sales US\$93.8bn than Amazon generated a profit of US\$21.3bn on US\$386.1bn.

The European plans for platform extension are seen more on a local (domestic) level, and the extent to which smaller countries can succeed in obtaining key roles in the international market and hedge between US and China is still puzzling (Rolf and Schindler, 2023).

5. LEGAL STATUS OF THE ONLINE PLATFORMS, NEW TRENDS AND DEVELOPMENTS

Platform ‘users’ – individuals or legal entities enter in a variety of online medium relations contractual or extracontractual (e.g. market, social networks, media production and/or communications) from which are extracted a mass of data, codified, analysed and used in marketing (Rolf and Schindler, 2023). The platform became not only a source of commercial activities and a source of cross border accessibility of the services and / or products for clients (consumers) but also a source of data. The data become one of the main competitors for the currency, it is a more valuable one taking into account the new trends and evolutions of the markets and the desires of the clients. The giant companies work closely with online platforms or use them through collecting and processing clients’ data for future marketing and companies’ strategies, ever by reorienting companies’ business activities of by offering new products and services to fit the clients’ requirements and trends. Taking this into account and the abovementioned we strongly support the opinion of granting a ‘special statuses to online platforms. Firstly, the platforms offer possibility to meet the offer and acceptance of the offer of the consumers and hosts/owners (hosts and guests) in a secured and professional area, as for example Airbnb, Booking, Uber, Amazon and other online platforms. Secondly, usually the online platforms are offering own rules for setting the minimum requirements that offer consumers a security to sing the contracts, for example Airbnb offer legal obligations that for example arise in the relation to privacy protection also known as Host Guarantee, there are set the ‘rules of hospitality’ (e.g. accuracy, communication, availability, commitment)

(Mak, 2018). Thirdly, online platforms started to have even online preliminary solving centres of disputes as for example Airbnb's resolution centre (Mak, 2018), arbitration or mediation courts that settle the disputes that arise in online sphere, a really great experience has China in this domain.

6. CONCLUSIONS

In conclusion, it was observed that electronic platforms obtained a place in the contractual relationships. The opinions vary in this domain, some authors consider that platforms which offer as precondition of pre accession terms of reference (that are not considered contracts) are not subject of the contractual relation on the other hand others are placing platforms as key actors and subjects. In this research, we support the idea as platforms having a separate status in the contract as contractual party taking into account the role that play in the contractual relations in the online environment. Indeed, as we have demonstrated, despite the critical comments put forward in this research platform services or online commercial platforms, via innovative business models, are rapidly getting their role and place in international world economy, the famous 'sharing economy' – is a boost given to the society to consider methods of cooperation that encourage sharing.

It creates new possibilities for people to access services from many countries across the whole world, and this should encourage creating new platforms to bring new actors on the international and national online market places which will offer new and improved services and products for clients. The pandemic accelerated development of online platforms and increased their quantity, some businesses moved exclusively in the online medium, nevertheless the law should not create obstacles for such development and on the contrary to support them. By offering and delimitating the special status of the platforms would improve their legal position as subject of contractual relation and would fortify their role in intermediating contractual relations between hosts and guest, sellers and buyers and other third parties.

Finally, by mitigating the unequal position that exist between the online service providers who unilaterally control internally the code and algorithms that stay behind the main scene (desktop) of the platform and the clients consumers/clients) it will help improve the consumer framework.

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