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on electronic commerce

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It must be specified that the only text which shall produce legal effects is the text in the Romanian language.

The text updated by the legislative software LEX EXPERT on the basis of the modifying statutory instruments, published in the Official Gazette of Romania, Part I, until 10 May 2006:

- the Law No. 161/2003;
- the Law No. 121/2006.

CHAPTER I

General provisions

ART. 1

Definitions

For the purpose of this law, the following terms are defined as follows:

1. information society service - any service that is provided by electronic means and that shows the following characteristics:

- a) it is performed considering a patrimony interest provided to the supplier usually by the recipient;
- b) it is not enough that the supplier and the recipient be physically present simultaneously at the same place;

c) it is carried out by transmitting the information at the individual request of the recipient;

2. electronic means - electronic equipment and cable networks, optic fibre, radio, satellite and others, used to process, store or retransmit information;

3. service provider - any natural or legal person providing to a determined or undetermined number of people, an information society service;

4. service provider established in a state - a service provider with stable headquarters on the territory of a state and that carries on an economic activity using that stable headquarters on the territory of that state, for an indefinite period of time; the settling of a service provider in a state is not necessarily determined by the location where the technical and technological means necessary to provide the service are placed;

5. domain - an area of an information system owned as such by a natural or legal person or by a group of natural or legal persons in view of data processing, storing or transfer;

6. recipient of the service or recipient - any natural or legal person using, for commercial, professional or any other purposes, an information society service, primarily in order to find information or providing access to it;

7. consumer - any natural person acting for purposes outside his or her commercial or professional activity;

8. commercial communication - any form of communication meant to promote, directly or indirectly, the goods, services, image, name or denomination, company or logo of a trader or a member of a liberal profession; the following do not themselves constitute commercial communications: information allowing direct access to the activity of a natural or legal person, especially a domain name or an electronic mail address, communications related to the products, services, image, name or brand of a natural or legal person made by a third party, independent of the respective person, especially when they are made free of charge;

9. co-ordinated legislation - provisions in force of the national laws applicable to the activities making the object of the information society services or of service providers, regarding:

- a) the requirements the service providers have to meet in order to take up these activities, as those concerning necessary qualifications, authorisations or notifications;
- b) the requirements the service providers have to meet to carry out these activities, as regarding their conduct, the quality and content of their services, including those applicable to advertising and contacts or those regarding the liability of the service providers;

9¹. The following shall not be subject to the coordinated legislation:

- a) the request applicable to the goods as such and to their delivery;
- b) the request applicable to the services that are not provided by electronic means;

10. electronic payment instrument - an instrument allowing the owner to carry out the following types of operations:

- a) fund transfers others than the ones ordered and performed by financial institutions;
- b) cash withdrawal, as well as charging and discharging of an electronic money instrument;

11. remote access payment instrument - electronic payment instrument whereby its owner can access the funds from an account within a financial institution and to authorise payments by using his (her) personal identification code or a similar identification means;

12. electronic payment instrument - rechargeable electronic payment instrument other than the remote access payment instrument on which the value units are stored electronically and allow the owner to carry out the types of operations mentioned at point 10;

13. owner - person owning an electronic payment instrument on the basis of a contract signed with an issuer, under the conditions of the law;

14. identification data - any information allowing or facilitating the types of operations mentioned at point 10, as well as an identification code, name and denomination, residence or headquarters, telephone, fax numbers, electronic mail address, registration number or similar identification means, fiscal registration code, personal code number and others similar.

15. professional liberal profession - the professional activity for which access or exercise in Romania is conditioned, directly or indirectly, in compliance with the Romanian legislation in force, by holding a document attesting the professional training level.

ART. 2

Scope and application field

(1) The present law shall have as purpose to establish the conditions of supplying information society services, as well as to establish as infringements certain deeds regarding the safety of the domains used for electronic commerce, the issuing and use of electronic payment instruments, as well as the use of identification data to carry out financial operations, in order to provide a favourable framework for the free movement of these services and the development of safety conditions for them.

(2) For the purpose of this law, the activities that do not meet the elements of definition provided for in Article 1, point 1 shall not be considered information society services, especially the following:

- a) the service offer requiring the physical presence of the provider and of the recipient, even if the respective services involve the use of electronic equipment;
- b) the service offer implying handling of tangible assets by the recipient even if the respective services imply the use of electronic equipment;
- c) goods or services offer that is not presented to the recipient by sending the information at individual request and that is meant for simultaneous reception by an unlimited number of people (point-multipoint);
- d) activities performed by means of vocal telephonic services, tele-fax, telex, radio broadcasting and television services, including tele-text services;
- e) vocal telephony, tele-fax or telex services;
- f) information exchange by means of electronic mail or other equivalent individual communication means between people acting in other purposes than their commercial or professional activities;
- g) contractual relationship between an employee and his/her employer.

(3) The present law does not apply to the following activities:

a) the activities of public notaries as much as this implies a direct and specific participation in exercising the prerogatives of the public authority;

b) legal representing activities before criminal courts and bodies;

c) games of chance with money winnings, lotteries and betting transactions.

(4) The provisions of this law shall be supplemented by:

a) fiscal legal provisions;

b) legal provisions regulating the protection of people regarding personal data protection and free movement of these data, as well as those regulating personal data processing and protection of private life in the telecommunication field;

c) the provisions of the Law on competition No. 21/1996, republished.

(5) In case it does not include derogatory provisions, the present law shall be supplemented by the legal provisions regarding the conclusion, validity and effects of legal acts, with the other legal provisions meant to protect consumers and public health.

ART. 3

Application of the Romanian law in case of information society services

(1) The present law shall be applied to the service providers established in Romania and to the services offered by them.

(2) From the date this law enters into force, the information society services shall be subject:

a) exclusively to the provisions in force of the Romanian laws belonging to the co-ordinated legislation, in case they are offered by service providers established in Romania;

b) exclusively to the provisions in force of the laws of the respective state belonging to the co-ordinated legislation, in case they are offered by service providers established in member states of European Union.

(3) The free movement of the information society services offered by a provider established in a member state of European Union cannot be restricted in Romania by the application of certain legal provisions belonging to the co-ordinated legislation.

(4) Paragraphs (2) and (3) shall not apply to the following domains:

a) right to intellectual property and right to industrial property;

b) electronic money issuing under the conditions provided by the methodological norms for the application of the present law;

c) advertising for collective investment bodies in transferable securities;

d) insurance activities under the conditions provided by the methodological norms for the application of the present law;

e) the freedom of parties to choose the law applicable to the contract, when the parties have this right;

f) obligations resulting from the contracts concluded with the consumers;

g) the formal requirements provided for the validation of the legal acts by means of which real rights over real estates located in Romania's territory are created, modified, terminated or transmitted;

h) *** Repealed

i) *** Repealed

(5) The public authorities can take derogatory measures from the provisions of paragraph (3) only under the following conditions:

(a) the measure is necessary for public order reasons, criminal instruction, minors' protection, fight against any form of stirring to hatred out of race, religion or nationality, prejudices to human dignity, public health protection, national protection and safety, consumers' protection, including investors;

(b) the measure has in view a service of the information society that brings any prejudices to one of the values mentioned at point a) or shows a serious risk to these values;

(c) the measure is proportional with the purpose;

(d) the collaboration, consulting or informing procedures provided by the methodological norms for the application of the present law are complied with.

CHAPTER II

Provision of information society services

ART. 4

Principles of provision of information society services

(1) The provision of information society services by natural or legal persons shall not be subject to any previous authorisation and shall be performed under the conditions of free and loyal competition, by observing the legal provisions in force.

(2) The provisions of paragraph (1) shall not affect the legal provisions imposing the previous authorisation for the development of activities by natural or legal persons, unless the respective provisions are specifically and exclusively targeted to the information society services or the service providers, within the meaning of the present law.

(3) Information society services shall be provided by service providers established in member states of European Union, by the time of Romanian's accession to the European Union, under the conditions of the European Agreement creating an association between Romania, on the one side, and the European Communities and their member states, on the other.

(4) Information society services shall be provided by service providers established in other states under the conditions of bilateral agreements between the respective states, to which Romania is a party.

ART. 5

General information

(1) The service provider shall be bound to put at the recipients' and public authorities' disposal the means to allow easy, direct, permanent and free access to at least the following information:

- a) the name and denomination of the service provider;
- b) the residence and headquarters of the service provider;
- c) the telephone, fax number, electronic mail address or any data necessary to contact the service provider directly and effectively;
- d) the registration number or any other identification means in case the service supplier is registered in the Trade Register or any other similar public register;
- e) the fiscal registration code;
- f) the identification data of the competent authority in case the service provider's activity is subject to authorisation;
- g) the professional title and the state where it has been granted, the professional body or any similar body to which the service provider belongs, the indication of the regulations applicable to the respective profession in the state where the service provider is established, as well as the means of access to them in case the service provider is carrying on a liberal profession;
- h) the tariffs for the related services provided which must be indicated by observing the standards regarding trading of goods and market services, indicating the exception, inclusion or non-inclusion of value-added tax, as well as its value;
- i) the inclusion or non-inclusion in the price of the supply expenses as well as their value, if applicable;
- j) any other information the service provider is bound to put at the recipients' disposal, in compliance with the legal provisions in force.

(2) The obligation provided by paragraph (1) shall be considered fulfilled in case the provider of a service displays this information clearly, visibly and permanently on the web-site by means of which the respective service is offered, under the conditions mentioned at paragraph (1).

ART. 6

Commercial communications

(1) Commercial communications through the electronic mail are forbidden, except for the case when the recipient expressed his/her agreement to receive such communications.

(2) The commercial communications which constitute or are part of an information society service, as much as they are allowed, have to comply with at least the following conditions:

- a) to be clearly identifiable as such;
- b) the natural or legal person on whose behalf they are made shall be clearly identified;
- c) promotional offers, such as discounts, premiums or gifts, shall be clearly identifiable, and the

conditions to be fulfilled in order to obtain them shall be easily and clearly presented;

d) promotional competitions or games shall be clearly identifiable as such, and the participation conditions shall be accessibly and clearly presented;

e) any other conditions imposed by the legal provisions in force.

(3) Commercial communications that constitute or are part of an information society service, when this service is provided by a member of a freelance profession, shall be permitted subject to compliance with the legal provisions and the regulations applicable to the respective profession especially regarding the independence, dignity and honour of the profession, professional secrecy and fairness towards the clients and the other members of the profession.

(4) The providers of the information society services carrying out commercial communications shall be bound to comply with the provisions of paragraphs (1) - (3).

CHAPTER III

Contracts concluded by electronic means

ART. 7

The validity, legal effects and evidence of contracts concluded by electronic means

(1) The contracts concluded by electronic means cause all the effects the law recognises for contracts when the conditions required by the law for their validity are met.

(2) For the validity of the contracts concluded by electronic means the previous consent of the parties to use electronic means shall not be required.

(3) The evidence of contract conclusion by electronic means and of the obligations derived from these contracts shall be subject to common law provisions regarding evidence and to the provisions of Law No. 455/2001 on electronic signature.

ART. 8

Informing the recipients

(1) The service provider shall be bound to put to the recipient's disposal, before the recipient sends the offer to contract or the acceptance of the firm offer made by the service provider, at least the following information that has to be clearly, unambiguously and accessibly expressed:

b) the technical steps to be followed in order to conclude the contract;

c) whether the contract, once signed, is stored or not by the service provider and whether it is accessible or not;

d) the technical means that the service provider puts at the recipient's disposal to identify and correct the errors occurred on the occasion of data input;

e) the language of the contract;

f) the relevant codes of conduct to which the service provider subscribes, as well as information on the way in which these codes can be consulted by electronic means;

g) any other conditions imposed by the legal provisions in force.

(2) The service provider shall have the obligation to offer the recipient the possibility to use a proper, efficient and accessible technical procedure to allow for the identification and correction of errors occurred during inputting data, prior to sending the offer or accepting it.

(3) The service provider can derogate from the provisions of paragraph (1) and (2) only when it was thus agreed with the recipient, on condition that none of the parties is a consumer.

(4) The general terms and conditions of the proposed contract must be made available to the recipient so that it may allow this one to store and reproduce them.

(5) The provisions of paragraphs (1) - (3) shall not apply for the contracts concluded exclusively by electronic mail or other equivalent individual communication means.

ART. 9

Contract conclusion by electronic means

(1) Unless agreed otherwise by the parties, the contract shall be considered concluded the time the acceptance of the offer has reached the offering party.

(2) The contract which, by its nature or at the beneficiary's request, requires an immediate execution of the characteristic service, shall be considered as concluded the moment when debtor started the execution, unless the offering party has asked that the acceptance be communicated to him/her beforehand. In this case the provisions of paragraph (1) are applied.

(3) In case the recipient sends by electronic means the offer to contract or the acceptance of the firm offer made by the service provider, the service provider shall have the obligation to confirm having received the offer, or, as appropriate, its acceptance, in one of the following ways:

a) by sending a receipt proof by electronic mail or any equivalent individual communication means at the address indicated by the recipient, without delay;

b) by confirming the receipt of the offer or the acceptance of the offer by an equivalent means as the one used to send the offer or accept the offer, as soon as the offer or acceptance was received by the service supplier, on condition this confirmation may be stored and reproduced by the recipient.

(4) The offer or acceptance of the offer as well as the confirmation of the offer receipt or acceptance, made as mentioned in paragraph (3) shall be considered as received when the parties to which they address can access them.

(5) The provisions of paragraph (3) shall not apply to the contracts concluded exclusively by electronic mail or other equivalent individual communication means.

ART. 10

Conditions regarding information storage and presentation

(1) When the law imposes the information to be presented or stored in its genuine form, this requirement shall be met if the following conditions are fulfilled cumulatively:

a) the information integrity is secured by complying with the national standards in the field, from the moment it was generated;

b) the message was signed by using the extensive electronic signature of the issuer;

c) the information can be supplied immediately and presented at request.

(2) The commercial recipient shall act at his/her own risk if he/she knew or should have known, in agreement with the current international practices or as a result of using the procedures agreed upon specifically with the issuer, that the information of an electronic message has been altered during transmission or processing.

CHAPTER IV

Service providers' liability

ART. 11

General principles

(1) The service providers shall be subject to the legal provisions regarding the civil, criminal or contraventional liability as long as the law does not provide otherwise.

(2) The service providers shall be responsible for the information they provide or about them.

(3) The service providers shall not be liable for the information that is sent, stored or to which they facilitate the access under the conditions provided by Articles 12 - 15.

ART. 12

Intermediary by simple transmission

(1) If an information society service is that of transmitting through a communication network the information provided by a recipient of the respective service or of providing access to a communication network, the provider of that service shall not be liable for the information sent if the following conditions are met:

a) the transmission was not initiated by the service provider;

b) the choice of the person receiving the information did not belong to the service provider;

c) the content of the information sent was in no way influenced by the service provider in the sense that neither the selection nor an eventual modification of the information can be attributed to him/her.

(2) The acts of transmission and provision of access, mentioned at paragraph (1) shall include the

automatic, intermediate and temporary storage of the information transmitted as long as the operation takes place for the sole purpose of carrying out the transmission in the communication network and provided that the information is not stored for a period that unjustifiably exceeds the duration necessary for its transmission.

ART. 13

Temporary storage of information, caching

When an information society service consists of transmitting within a communication network information provided by a recipient of the respective service, the provider of that service shall not be liable for the automatic, intermediate and temporary storage of the information transmitted as long as this operation takes place to the sole purpose of making the information transmission more efficient to other recipients, at their request, if all the conditions below are met:

- a) the service provider does not modify the information;
- b) the service provider complies with the legal conditions regarding the access to the respective information;
- c) the service provider complies with the rules and practices regarding the updating of information, as they are widely recognised and applied in the industry;
- d) the service provider does not interfere with the lawful use by any person of the widely-recognised industrially-applied technologies in order to obtain data on the nature or use of the information;
- e) the service provider acts rapidly to remove the information it has stored or to disable access to it upon knowing that the initial information sent was removed from the communication network or the access to it was disabled or the fact that a public authority has ordered such a removal or access disablement.

ART. 14

Permanent storage of information, hosting-storage

(1) If an information society service consists of storing the information provided by a recipient of the respective service, the provider of that service shall not be liable for the information stored at the request of the recipient, if any of the following conditions is met:

- (a) the service provider does not have actual knowledge of the fact that the activity or the stored information is illegal and, as regards claims for damages, is not aware of facts or circumstances from which there appears that the respective activity or information could prejudice the rights of a third party;
- (b) having knowledge about the fact that the respective activity or information is illegal or about facts or circumstances from which it appears that the respective activity or information might prejudice the rights of a third party, the service provider acts rapidly to cancel it or disable the access to it.

(2) *** Repealed

(3) The provisions of paragraph (1) do not apply when the recipient acts under the authority or control of the service provider.

(4) The provisions of this article shall not affect the possibility of the judicial or administrative authority to ask the service supplier to cease or prevent the data breaking and, likewise, they may not affect the possibility to set new government procedures for limitation or interruption of access to information.

ART. 15

Information searching tools and other links with other web sites

(1) The information society service provider facilitating the access to the information supplied by other service providers or by the recipients of the services offered by other suppliers, by making available for the recipients of his service some information searching tools or links to other web sites, shall not be liable for the respective information, if any of the following conditions is met:

- a) the provider is not aware of the fact that the activity or information to which is granted access is illegal and, as concerning the actions for damages, he is not aware of any facts or circumstances showing that the respective activity or information could prejudice the rights of a third party;
- b) being aware of the fact that the respective activity or information is illegal or of facts showing that the respective activity or information might prejudice the rights of a third party, the provider acts rapidly

to eliminate the access possibilities offered or to block its use.

(2) The service provider shall be responsible for the respective information when its illegal character has been found by a decision of a public authority.

(3) The provisions of paragraph (1) shall not apply in the situation when the recipient acts under the order or command of the service provider.

CHAPTER V

Monitoring and control

ART. 16

The service provider obligations

(1) The service providers shall be bound to notify the competent public authorities right away, about activities that seem illegal carried out by the recipients of their services or about information supplied by these ones that seem illegal.

(2) The service providers shall be bound to communicate the authorities mentioned at paragraph (1) right away, at their request, information that may allow the identification of the recipients of their services with whom these providers have concluded contracts regarding the permanent information storage.

(3) The service providers shall be bound to interrupt, temporarily or permanently, the transmission into a communication network or the storage information supplied by a recipient of the respective service, especially by eliminating the information or by blocking the access to it, the access to a communication network or the supply of any other information society service, if these measures were required by the public authority defined in Article 17 (2); this authority may act ex officio or as a result at the receipt of a complaint or intimation from a person concerned.

(4) The claim mentioned at paragraph (3) can be made by any person who considers himself/herself prejudiced by the contents of the respective information. The complaint or notification is made in writing, showing the reasons that substantiate it and shall compulsorily be dated and signed. The complaint cannot be forwarded if a trial has already been initiated with the same subject-matter and with the same parties.

(5) The decision of the authority must be motivated and shall be notified to the involved parties within 30 days from the date the claim or complaint has been received or, if the authority acted ex officio, within 15 days from the date it has been issued.

(6) The person concerned may appeal against a decision made according to the provisions of paragraph (3), within 15 days from the notification, under the sanction of loss, before the administrative disputed claims court. The claim shall be tried in emergency procedure by summoning the parties. The sentence is final.

ART. 17

Competent authorities

(1) The regulating authority for communications and information technology, hereinafter called the Authority, shall be competent to monitor and control the compliance of the service providers with the provisions of the present law and of its methodological norms, to ascertain the contraventions and to apply the sanctions provided for in Article 22.

(2) Notwithstanding the provisions of paragraph (1), the public authorities, within the meaning of Article 3 (5), Articles 5, 13, 14 (2), 15 (2), 16 (1) and (3), 23 (2) and Article 30 (1), means those authorities of the public administration or, where applicable, a court, the competence of which in the matter is established by the legal provisions in force, applicable in each case.

(3) The Authority can require from the service providers any information necessary to exercise its attributions, by mentioning the legal grounds and the purpose of the request and can establish terms until when this information must be supplied, under the sanction provided by the present law.

(4) In view of discovering and investigating the infringements of the provisions of the present law and its norms of application, the Authority shall act through its control personnel empowered for this.

(5) In exercising the investigation attributions, the control personnel empowered for this purpose by the Authority or by a legal person as according to paragraph (12) can require from the service providers the

necessary information, with mentioning the legal grounds and the purpose of the request and can establish terms until when this information has to be supplied under the sanction provided by the present law.

(6) The Authority shall order the investigation to be performed, under the conditions of the present law, ex officio or at the receipt of a complaint or notification from any person.

(7) The control personnel empowered for this purpose by the Authority or by a legal person as according to paragraph (12) can request declarations or any documents necessary to fulfil the mission, seal, take any registers, financial-accounting and commercial acts or any other documents, issuing copies from the originals to the investigated person or getting copies of them leaving the originals to the latter; they are also authorised to carry out unexpected inspections the results of which being recorded into fact-finding official report and to receive information and justification, at summoning or on the spot.

(8) The central and local public administration bodies, as well as any other institutions and public authorities shall be bound to allow the access to the documents, data and information they have, for control personnel empowered for this purpose by the Authority, and, as appropriate, for the legal person according to paragraph (12), as long as they are necessary in order to fulfil the legal mission of the Authority, without opposing to that the state secret or office secret character of such documents, data and information.

(9) The control personnel empowered for this purpose, when receiving access to the documents, data and information mentioned at paragraph (8) shall be bound to strictly observe the state or office secret character legally attributed to the respective documents, data and information.

(10) The Authority shall notify the criminal law bodies when it notices infringements of the criminal law.

(11) The Authority shall notifies the service providers, the European Union member states and the European Commission on all the legal aspects related to the application of the present law and co-operates with the competent authorities in other states for an efficient monitoring and control of the service providers activity.

(12) The Authority may delegate the exercise of its attributions provided by the present article to another legal person of public law, with monitoring and control attributions in the telecommunication sector.

(13) For the purposes of applying the present law, until the setting-up of the Authority, its attributions shall be fulfilled by the Ministry of Communications and Information Technology.

ART. 18

Codes of conduct

(1) The associations and non-governmental organisations with professional or trade character or those created for the protection of customers, minors or disabled persons, can elaborate their own codes of conduct or common codes in collaboration with the Authority and the Ministry of Justice, for a proper application of the provisions of the present law.

(2) The Authority and the Ministry of Justice shall have in view the introduction into the codes of conduct mentioned by paragraph (1) of provisions especially regarding:

a) the settlement of disputes out of the court;

b) the temporary or permanent interruption of the transmission into a communication network or of the storage of information supplied by a service provider especially by eliminating the information or blocking the access to it, the access to a communication network or the provision of any other information society service;

c) the protection of the recipients regarding commercial communications;

d) the protection of minors and human dignity.

(3) The Authority and the Ministry of Justice shall support:

a) the translation of the codes of conduct into languages of international circulation;

b) the facilitation of the access to the codes of conduct by electronic means;

c) the awareness of the codes of conduct at national level and their transmission, as well as of assessment on their application and practical impact to the member states of the European Union and to the European Communities.

CHAPTER VI

Dispute settlement

ART. 19

Court actions

(1) The entities qualified to bring an action, according to the provisions of paragraph (2), may request to the court the obligation for the defendant to stop any action or abstention contrary to the provisions of the present law, the interdiction for the defendant to resume the action in the future and the obligation of the defendant to pay damages for the prejudice caused.

(2) The quality to bring to an action according to paragraph (1) belongs to the following:

a) the natural and legal persons that pretend to be owners of a subjective right provided by the present law or of an interest that cannot be achieved otherwise than through court;

b) the associations and non-governmental organisations mentioned at Article 18 (1);

c) the national Authority for the Protection of Consumers, the county consumer protection offices and the protection consumer office of Bucharest Municipality;

d) the entities created with the purpose to protect consumers in the member states of the European Union, under the conditions provided by the application methodological norms of this law.

(3) The action mentioned at paragraph (1) shall be lost by prescription within a year from the date of the infringement having justified the action.

(4) The persons qualified to bring to an action, according to the provisions of paragraph (2), may request to the court, by means of presidential ordinance, to stop any action or abstention contrary to the provisions of the present law, under the conditions of the Civil Procedure Code.

ART. 20

Out-of-court dispute settlement

(1) The service providers and the recipients can submit the disputes between them to arbitration, under the conditions provided by the law, as well as other out-of-court means to settle disputes, provided by the conduct codes elaborated according to Article 18.

(2) The use of electronic means for out-of-court dispute settlement is possible under the conditions of the law.

CHAPTER VII

Sanctions

ART. 21

Relative nullity of contracts regarding information society services

Any contract regarding the provision of information society services can be annulled at the recipient's request if it has been concluded with a service supplier that:

a) has not put at the recipient's disposal, under the conditions provided by the law, the information mentioned at Article 5 a) - i) or has not supplied all this information or has supplied inaccurate information;

b) has not put at the recipient's disposal, under the conditions provided by the law, the information mentioned at Article 8 (1) a) - e) or has not supplied all this information or has supplied inaccurate information, if the provisions of Article 8 (3) or (5) are not applicable;

c) has infringed the obligation provided by Article 8 (2), if the provisions of Article 8 (3) or (5) are not applicable;

d) has infringed the obligation provided by Article 8 (4).

ART. 22

Contraventions

It shall be regarded as contravention, unless committed under such conditions that, according to the criminal law, it is regarded as an offence, and sanctioned by a fine ranging from ROL 10 000 000 to ROL

500 million, the deed of a service supplier that:

- a) makes trade communications by infringing the conditions established by Article 6 (1) and (2) a) - d);
- b) does not put at the disposal of recipients and public authorities, under the conditions provided by the law, the information mentioned in Article 5 a) - i) or does not supply all this information or supplies inaccurate information;
- c) does not put at the disposal of recipients, under the conditions provided by the law, the information mentioned in Article 8 (1) a) - e) or does not supply all this information or supplies inaccurate information, unless the provisions of Article 8 (3) or (5) are not applicable;
- d) infringes the obligation provided by Article 8 (2), if the provisions of Article 8 (3) or (5) are not applicable;
- e) infringes the obligation provided by Article 8 (4);
- f) infringes the obligation provided by Article 9 (3);
- g) infringes the obligation provided by Article 16 (1) - (3);
- h) does not supply the information required by Article 17 (3) or (5) or does not supply all this information or supplies inaccurate information.

ART. 23

Establishing contraventions and applying sanctions

(1) The contravention provided in Article 22 a) shall be established and the appropriate sanctions shall be imposed following a notification from any person or ex officio, by the empowered representatives of the National Regulatory Authority for Communications or of the monitoring authority provided by Law No. 677/2001 on the protection of people regarding the processing of personal data and their free circulation.

(2) The contravention shall be established and the sanctions provided in Article 22 b) - h) shall be imposed by the empowered representatives of ANRC or of the other competent public authorities, following a notification of any person or ex officio.

(3) The contraventions can also be established, in all cases, by the police officers and non-commissioned officers.

(4) The provisions of Government Ordinance No. 2/2001 on the legal regime of contraventions, with subsequent amendments shall apply to the contraventions mentioned in Article 22.

CHAPTER VIII

Infringements related to the issuing and use of electronic payment means and the use of identity data for financial operations

ART. 24

Forgery of electronic payment instruments

(1) The forgery of electronic payment instruments shall be punished with imprisonment from 3 to 12 years and the banning of rights.

(2) The same punishment shall be applied for issuing on the market, in any way, of forged electronic payment instruments or owning them in order to put them into circulation.

(3) The punishment shall be imprisonment from 5 to 15 years and the prohibition of rights if the facts mentioned on paragraph (1) and (2) are carried out by a person who, by virtue of his/her job:

- a) performs technical operations necessary to issue electronic payments instruments or to perform the types of operations mentioned on Article 1 point 10; or
 - b) has access to the security mechanisms involved in issuing or using electronic payment instruments;
- or
- c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(4) Any attempt shall be punished.

ART. 25

Owning equipment to forge electronic payment instruments

The manufacturing or the owning of equipment, including hardware and software, to be used to forge electronic payment instruments shall be punished by imprisonment from 6 months to 5 years.

ART. 26

False statements in view of issuing or using electronic payment instruments

The inaccurate declaration, made by a bank, credit or financial institution or any other legal person authorised, under the conditions of the law, to issue electronic payment instruments or to accept the types of operations mentioned by Article 1 point 10, in order to issue or use an electronic payment instrument, for himself/herself or another, when, according to the law or the circumstances, the declaration serves to issue or use that instrument, shall be punished with imprisonment from 3 months to 2 years or with a fine.

ART. 27

Performing financial operations fraudulently

(1) The carrying out of one of the operations provided in Article 1, point 10, by using an electronic payment instrument, including the identification data that allow its use, without the consent of the owner of the respective instrument, shall be punished with imprisonment with 1 to 12 years.

(2) The same punishment shall be imposed upon performing one of the operations mentioned in Article 1, point 10, to the unauthorised use of any identification data or by using false identification data.

(3) The same punishment shall be imposed to the unauthorised use, by another person of any identification data in order to carry out any of the operations mentioned in Article 1, point 10.

(4) The punishment shall be imprisonment from 3 to 15 years and the prohibition of the rights if the facts mentioned in paragraphs (1) - (3) shall be carried out by a person who, by virtue of his/her job:

a) performs technical operations necessary to issue electronic payment instruments or to perform the types of operations mentioned on Article 1 point 10; or

b) has access to the security mechanisms involved in issuing or using electronic payment instruments;
or

c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(5) Any attempt shall be punished.

ART. 28

Accepting financial operations performed fraudulently

(1) Accepting any of the operations mentioned in Article 1, point 10, knowing that it is performed by using a forged electronic payment instrument or using an electronic payment instrument without the consent of the owner, shall be punished with imprisonment from 1 to 12 years.

(2) The same punishment shall be given for accepting one of the operations mentioned in Article 1, point 10, knowing that it is performed by the unauthorised use of any identification data or by using unreal identification data.

(3) Any attempt shall be punished.

ART. 29 *** Repealed

ART. 30

Determination and judging of crimes

(1) The crimes mentioned by the present law shall be established by the competent public authorities that submit the fact-finding document to the local criminal investigating body.

(2) The crimes mentioned in Article 24 and 25 shall be judged, in first instance, by the court.

(3) The provisions of the present chapter shall be supplemented with the provisions of the Criminal Code and the Criminal Procedure Code.

CHAPTER IX

Final provisions

ART. 31

Burden of proof in case of disputes on information society service provision

In case of any dispute on the supply of an information society service, occurred between the provider of

the respective service and its recipient, the burden to prove the fulfilment of the obligations mentioned by Article 5, 6, 8 and 9 shall devolve on the service provider if the recipient has the consumer quality.

ART. 32

Repeal of contrary provisions

Letter f) of Article 6 of Government Ordinance No. 130/2000 on the legal regime of remote contracts shall be repealed.

ART. 33

Entry into force and application of the law

(1) Within 3 months from the date the law is published in the Official Monitor of Romania, Part I, the Ministry of Communications and Information Technology shall elaborate the methodological norms for its application, that shall be approved by a Government decision.

(2) The present law shall enter into force at the date of its publication in the Official Gazette of Romania, Part I, and it shall be applied after 3 months from the date of its entry into force.
