



**TECHNIUM**  
SOCIAL SCIENCES JOURNAL

[www.techniumscience.com](http://www.techniumscience.com)



**Vol. 69/2025**  
**A New Decade for Social Changes**

**PLUS**  
**COMMUNICATION P**



**International**  
Communication & PR

## **Electronic sales on an international level - The provisions within the framework of the Rome I Regulation**

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**Abstract.** The key and fundamental characteristics of electronic sales on an international level include the remote conclusion of electronic sales contracts, the use of electronic means, the existence of General Terms and Conditions (GTC) of electronic sales contracts, as well as the accession to contracts. The issues arising from these characteristics are addressed by legal science. Electronic sales at the international level are mainly regulated by the Rome I Regulation, which explicitly ensures the unobstructed realization of electronic commerce concerning contracts between consumers as well as between consumers and professionals. The lack of provisions for procedural issues related to electronic sales within the framework of Regulation Rome I is a significant concern, while the coexistence of Regulation Rome I with legislative texts for consumer protection is crucial. Finally, of major importance are the issues surrounding mandatory law rules as directly applicable within the framework of Regulation Rome I, as well as the balancing role of Regulation Rome I between consumer protection and the facilitation of electronic sales contracts.

**Keywords.** Electronic sales, Rome I Regulation, Consumer Protection

### **1. Introduction**

As the practical application in this category of contracts has shown, there is no differentiation between contracts concluded at European level and those where the parties are from many states, as common features are evident in electronic sales contracts on a global scale. It is important to note in this regard that the characteristics, that will be recorded in the context of this essay have significantly concerned scholars around the world especially with regard to the specific aspect of consumer protection, that is, the weaker party in the sales transaction (Varka-Adami, 2010) [1]. As one can easily perceive and understand by thoroughly studying the contracts concluded in the context of electronic sales, it is possible to observe that they possess certain inherent characteristics that appear repeatedly in such agreements.

### **2. The Remote Conclusion of the Electronic Sales Contract**

The first and most fundamental characteristic of electronic sales is the significant distance between the contracting parties. In other words, when an electronic sales contract is concluded, there is no simultaneous physical presence of both parties—the seller and the buyer—in the same location. This element constitutes



& Papasteriou, 2008) [2]. This defining feature of electronic sales contracts fundamentally alters the way this contractual form operates.

### **3. The Use of Electronic Means**

One of the most critical elements of an electronic sales contract is the use of various electronic means, as well as the broader utilization of information society technologies for its conclusion. Specifically, given the lack of simultaneous physical presence of both parties—seller and buyer—in the same location, electronic means play a crucial role in bridging this gap. They facilitate both the transmission of the offer to conclude the contract between the parties and the expression of intent for its final conclusion (Klavanidou & Papasteriou, 2008) [3].

### **4. General Terms and Conditions (GTC) of Electronic Sales Contracts**

A critical aspect of Electronics Sales Contracts concerns the General Terms and Conditions (GTC). Indeed, even a preliminary observation of an electronically concluded sales contract makes it easy to identify that it primarily consists of a set of terms unilaterally drafted by the seller. These terms are accepted by the buyer without any opportunity for negotiation, modification, or adjustment, thus constituting the General Terms and Conditions (GTC) (Meixian, 2015) [4]. Furthermore, in relation to the concept of GTC, it should be noted that these terms have been formulated in a way that allows them to regulate an unlimited number of transactions without being adapted to any specific case (Grabner-Kräuter, 2010) [5]. It is important to mention at this point, that the unfair nature of GTC, particularly in relation to consumers, has been a significant concern for international legal systems (Stanescu, 2014) [6]. This is because consumers frequently enter into electronic contracts by agreeing to GTC without fully understanding them, simply because acceptance is presented as a prerequisite for concluding the contract (Dellios, 2013) [7]. As a result, consumers often accept highly unfavorable terms, which are not tolerated by international law. Due to the imbalance recorded between the contracting parties, the preferred solution is that both parties should be in an equal position to discuss and negotiate the terms of their agreement, otherwise, if one party is at a significant disadvantage, the principle of freedom of contract is directly undermined, making it impossible to speak of a truly free contractual agreement.

### **5. Accession as an Element of Electronic Sales Contracts**

In addition to the above, special mention should be made regarding another element that characterizes electronic sales contracts. Specifically, this pertains to the concept of accession, which was briefly referenced earlier in relation to General Terms and Conditions (GTC). Indeed, under current practice, GTC and accession contracts are concepts closely related, given that accession contracts largely consist of these terms (United Nations, 2002) [8].

However, the very concept of the accession contract requires further specialized analysis. Specifically, it is a process by which a party concludes a contract without being able to negotiate its specific terms, as a result of which the content of the contract is not the result of mutual agreement between the parties. This form of contract is considered an integral part of modern transactions. It reflects the "take it or leave it" logic that characterizes sales made electronically, where the weaker party, i.e. the consumer, can either accept or reject the offer to conclude a contract without the possibility of modifying its terms.



As can be easily understood, Regulation Rome I, given its position and nature as a legislative text governing contractual obligations between contracting parties from different countries, directly and clearly addresses the field of electronic commerce. This is because it is widely accepted that electronic means and the overall utilization of technology are the primary and most fundamental pathways for the effective realization of international trade (Pitt, n.d.) [9]. Given that the European legislator is aware of the above, it took care to explicitly mention this in the preamble of Regulation Rome I. Specifically, recital (40) of the introductory text of this Regulation states that the majority of the articles contained in this Regulation and the provisions set forth therein should not, under any circumstances, create obstacles or impose restrictions on the free movement of goods and services between states. Furthermore, the European legislator makes a specific reference to electronic commerce, also categorizing it as one of the international activities that should not be obstructed in any way by Regulation Rome I (Official Journal of the European Union, 2008) [10]. From this explicit and careful reference to ensuring the free conduct of electronic commerce, it becomes clear that Regulation Rome I is directly and closely linked to this specific form of commerce and contractual relationships. In light of this, the extension of the provisions contained within Regulation Rome I to electronic sales is justified (Whittaker, 2012) [11].

#### **7. Lack of Provisions for Procedural Issues in Electronic Sales under the Rome I Regulation**

Despite the aforementioned points, specifically the regulation of this particular type of contractual relationship, namely contracts between consumers and businesses, it becomes evident that this regulation does not resolve the various procedural issues related to the choice of applicable law. Indeed significant practical issues arise, which hinder consumers willingness to conclude electronic contracts, which can in no way be considered the objective of the European legislator, who explicitly supports the free movement of goods and services (Fountoulakis, 2006) [12]. Zaprianos (2014) regarding the lack of specification of the specific elements that would allow the application of Rome I to electronic sales proposed certain methods and approaches through which the regulation could potentially be applied, such as the introduction of an electronic option in each sales contract that would allow the contracting parties to choose the law they wish to govern their contractual relationship (Zaprianos, 2014) [13]. However, the purely theoretical reference to potential ways of applying the Rome I Regulation becomes practically meaningless if it is not linked to their actual implementation, so that the functionality and effectiveness of these solutions can be clearly established (European Commission, n.d.) [14].

#### **8. The Coexistence of the Rome I Regulation with Legislation for Consumer Protection**

As can easily be understood with a simple reading of the Rome I Regulation, there is a strong emphasis from the European legislator on consumer protection, to the extent that even agreements between the parties are not accepted if they undermine or reduce the protection of consumers. After all, the consumer is the party in the weaker negotiating position and, therefore, requires increased legal protection. This is because, on the one hand, the consumer is at a disadvantage in terms of information and knowledge compared to the other party, who engages in commercial activities professionally, and on the other hand, the entire electronic and procedural framework in which the electronic



### **9. Mandatory Rules as Directly Applicable Rules under the Rome I Regulation**

In light of the preceding reference within the context of electronic sales under the Rome I Regulation, it is necessary to specifically mention and address what is provided in Article 9 of the Regulation. This provision is of major significance, as it is once again designed with the aim of protecting the party that is weaker in negotiations. Specifically, this article refers to the mandatory application of mandatory rules, even in cases where there is an agreement between the parties (Official Journal of the European Union, 2008) [16]. For a full understanding of the European legislator's intent in establishing this article, it is essential to examine the term and conceptual content of "mandatory rules."

Mandatory law consists of a series of legislative provisions that cannot be overlooked by private will and always prevail over it. In other words, they form the cornerstone of contractual relations, which cannot be altered or undermined (Dimitropoulos, 2004) [17]. Based on the Rome I Regulation, it is easy to understand that the entire transactional relationship that takes place and is realized through the formation of an electronic sales contract can be regulated by the parties based on the principle of contractual freedom. However, it must be subject to specific frameworks. These frameworks are not arbitrary or incidental choices by the legislator, but rather represent well-established regulations and legislative provisions that have been implemented over time and are capable of practically fulfilling the protective goals of the law. This is a radical concept that is directly and clearly connected with the idea of the absence of the law of the strongest, as well as the achievement of equality for all citizens before the law and the legal system (Abbas & Riaz, 2013) [18].

The European legislator, within the context of the Rome I Regulation, emphasizes that all mandatory rules apply in every case and cannot be limited by the provisions of the specific rules of the Regulation. It is even explicitly stated why particular importance is given to mandatory rules by the European legislator. Specifically, as stated in Article 9, paragraph 1 of the Regulation, mandatory rules are those that ensure the observance of the broader and public interests of the Member States and are therefore considered by the legislator as paramount (Official Journal of the European Union, 2008) [19].

Furthermore, special mention should be made regarding the last paragraph of Article 9 of the Rome I Regulation. According to this paragraph, mandatory rules prevail over the agreement of the parties, in cases where, according to the parties' agreement, the non-application of mandatory rules would render the executed contract unlawful. The concept of unlawfulness can be determined based on the interpretation and understanding of the specific nature of the rules, the application of which is controlled in relation to the overriding mandatory rules (Lorenzo, 2010) [20].

### **10. The balancing role of Regulation Rome I between consumer protection and the facilitation of electronic sales contracts**

Based on everything outlined above regarding consumer protection and the precedence of mandatory law rules, one could reasonably argue that a series of issues emerge which hinder the implementation of electronic commerce. This is because various formal requirements are established for both the formation and execution of electronic commerce contracts, which could create the impression that these prerequisites might



using this form of contractual relationship (Sarwar Khan, 2017) [21].

However, upon closer examination of Regulation Rome I, different conclusions can be drawn. The reality is that the European legislator has attempted to strike a balance within the Regulation by identifying the intersection between, on the one hand, facilitating the conclusion of electronic sales contracts and, on the other hand, the need for enhanced protection of the weaker party in the transaction, i.e., the consumer, against the stronger party, the professional, due to their inherent position and role (Lim, 2011) [22].

Indeed, achieving the balance described above becomes exceedingly difficult, especially when considering that the relationship between the two parties is based on their actions in distinct roles. More specifically, one party is the seller/supplier, while the other is the buyer. Furthermore, it is this imbalance in favor of the supplier, who is the stronger party in the transaction, that provides the incentive for the electronic commerce process, as the goal is to achieve the highest possible profit (Schwager & Meyer, 2007) [23].

Therefore, to complement the above, the prevailing legislation must take this observation into account. Otherwise, the situation created by legislative intervention could undermine the functioning and development of electronic commerce. In particular, any potential overprotection of consumers at the expense of suppliers would create a strong disincentive for suppliers to engage, leading to a decline in electronic commerce (Dieke, et. al., 2014) [24]. The entire issue described above, as one can easily understand, would undoubtedly concern case law. Finally, it is important to note here that those applying the law, who are called to decide and enforce it, also consider the purpose of legislative texts, approaching the issue comprehensively (McAleese, 2004) [25].

### **11. Conclusion**

From all that has been said above, it becomes clear that Regulation Rome I was established to address the diverse needs that arose for the regulation of relationships and the resolution of disputes in cases involving contracts made by contracting parties from different countries. As is logical, this Regulation primarily aimed to explicitly provide rules regarding the international jurisdiction of courts, as well as the law that should be applied in each case.

Furthermore, it is worth noting that a key part of Regulation Rome I can be directly and clearly linked to electronic sales. This is because the means and various achievements of technology, as well as the possibilities offered by the internet,

constitute the primary route through which international trade is realized, enabling the creation of transactional relationships on an international level. This is especially true since, in many international transactions, it is not feasible for the parties, the seller and the buyer, to be physically present at the same time.

However, it has reasonably been observed that the text of this Regulation does not contain sufficient and specialized provisions, especially for electronic sales. Instead, everything mentioned in general in its articles is applied analogously. Consequently, it is a fact that the rapid advancement of technology, as well as the complex issues arising from this evolution, urgently require the supplementation of the articles of the Regulation.

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