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Secção I

Investigação Científica*

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Self-regulatory practices of electronic trade and transnational public order in the context of ensuring the economic security of the state

Práticas de autorregulação do comércio eletrónico e ordem pública transnacional no contexto da garantia da segurança económica do estado

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ABSTRACT: The purpose of the article is to provide a legal assessment of the strengths and weaknesses, as well as opportunities and threats associated with self-regulation practices in electronic trade, particularly in their interaction with the requirements of compliance with transnational public order, that generally affects ensuring the economic security of the state. In this article dialectical, analysis and synthesis, systemic, legal and dogmatic, interpretation of norms, comparative and legal, SWOT-Analysis were used as the main research methods. There are considered factors, that can be used to determine the advisability of self-regulation in electronic commerce, that may include the legislative framework (state policy, legal norms), the organization of electronic trade control means (both by the state and by consumer organizations and self-regulatory organizations), the practice of traders in a particular market, the honesty of sellers, the ethics of carrying out electronic trade, consumer considerations (vision, interests), and martial law conditions. Special attention is drawn to the fact, in the context of war, self-regulation of electronic trade requires its implementation on the ethical basis of preserving human life and prohibiting cooperation with counterparties from the aggressor state. It has been concluded that the level of national economic security can be measured both by compliance with the mandatory provisions of transnational and national public order as well as by the benefits of self-regulatory practices of electronic commerce.

KEYWORDS: electronic trade; self-regulation; transnational public order; economic security of the state; ethical codes; martial law; legal regulation; human rights

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RESUMO: O objetivo do artigo é o de avaliar juridicamente os pontos fortes e fracos, bem como as oportunidades e ameaças associadas às práticas de autorregulação no comércio eletrônico, em particular na sua interação com as exigências de cumprimento da ordem pública transnacional, que em geral afectam a garantia da segurança económica do estado. Neste artigo foram utilizados como principais métodos de investigação a análise dialética, análise e síntese, sistémica, jurídica e dogmática, interpretação de normas, comparativa e jurídica, análise SWOT. São considerados factores que podem ser utilizados para determinar a conveniência da autorregulação no comércio eletrônico, que podem incluir: o quadro legislativo (política estatal, normas jurídicas), a organização dos meios de controlo do comércio eletrônico (tanto pelo estado como por organizações de consumidores e organizações de autorregulação), a prática dos comerciantes num determinado mercado, a honestidade dos vendedores, a ética da realização do comércio eletrônico, considerações dos consumidores (visão, interesses) e condições da lei marcial. É dada especial atenção ao facto de que, no contexto da guerra, a autorregulação do comércio eletrônico exige a sua implementação com base na ética da preservação da vida humana e na proibição da cooperação com contrapartes do estado agressor. Concluiu-se que o nível de segurança económica nacional pode ser medido tanto pelo cumprimento das disposições obrigatórias de ordem pública transnacional e nacional como pelos benefícios das práticas de autorregulação do comércio eletrônico.

PALAVRAS-CHAVE: comércio eletrônico; autorregulação; ordem pública transnacional; segurança económica do estado; códigos de ética; lei marcial; regulamentação jurídica; direitos humanos.

Introduction

Modern economic activity is difficult to carry out without the use of electronic means, including digital technologies. Business entities use these means to varying degrees, depending on the specifics of their business. Digital transformation has already occurred, and changes in doing business through electronic technologies will continue, given their advantages in efficiency, convenience, optimization, simplification and improvement of operations. Therefore, electronic trade is about ensuring greater efficiency in business management, its production process, and increasing competitiveness. The digital transformation of trade is rapidly taking place with the help of blockchain technologies, artificial intelligence, data analysis, and other means that automate business operations (processes), increase productivity, and reduce costs. Artificial intelligence uses different approaches to ensure business efficiency: neural networks, evolutionary modeling, natural language processing, machine learning, etc. These features make businesses more flexible and ready to meet the challenges that are constantly occurring. Electronic trade began to function thanks to self-regulation as the primary method of legal regulation, when business

entities are allowed to do everything that is not prohibited by law. At the same time, given the peculiarities of electronic trade, it is necessary to talk about positive and negative self-regulation practices, since the lack of regulation of many business processes and the use of certain means can lead to both violations of consumer rights and improvements in the quality of goods and services. Whether the positive or negative aspects of self-regulation in electronic trade will prevail depends on many factors, which may include: the legislative framework (state policy, legal norms), the organization of electronic trade control means (both by the state and by consumer organizations and self-regulatory organizations), the practice of traders in a particular market, the honesty of sellers, the ethics of carrying out electronic trade, consumer considerations (vision, interests).

At the same time, the benefits of self-regulatory practices of electronic trade, particularly in the interaction with the compliance with the mandatory provisions of transnational and national public order have a positive impact on the economic security of the state, helping to create a stable, predictable and secure electronic trading space for businesses and consumers. Due to the active development of the digital economy the means of self-regulation of electronic trade are constantly being updated and progressively changing, but there is a lag in state regulation of electronic trade in connection with the absence or inconsistency of new technical standards and provisions of the current legislation. Improving state regulation proactively and increased it create a certain framework for the functioning of electronic trade, but cannot fully replace private regulation and self-regulation.

The issue of self-regulation of electronic trade is under constant attention of scientists. A.H. Barkatullah warns “Consumers are subject to greater risks in e-commerce transactions. Consumer security and legal protection are necessary for e-commerce growth. A combination of self-regulation and legislation may be the best model”⁵. L. Dalipi and A. Zuzaku mention that “However, alongside its advantages come inherent risks, including cybersecurity threats, privacy

⁵ BARKATULLAH, A.H. & DJUMADI. Does self-regulation provide legal protection and security to ecommerce consumers? *Electronic Commerce Research and Applications*, 2018, July–August, pp. 94-101. <https://doi.org/10.1016/j.elerap.2018.05.008>.

concerns, and the widening digital divide”⁶. In his article, Z. Cheng also talks about the misuse of self-regulation: “Digital technology is neutral, but can be abused to gain undue advantage”⁷. Graf-Peter Calliess notes that “When it comes to the protection of weaker contract parties like consumers, self-regulation is not held to be a viable option”⁸.

Ethical issues also remain an important aspect of the discussion of self-regulation of electronic trade. In particular, ethical concerns, especially regarding autonomous decisions of systems and emerging technologies, constitute another layer of regulatory challenges”⁹. Ethical issues, especially in relation to autonomous system solutions and new technologies, pose another level of regulatory challenges. In addition, the issue of self-regulation of electronic trade under martial law has not been sufficiently studied.

Therefore, the aspects of positive and negative self-regulatory practices of electronic trade require a detailed study for the purpose of proper legal support. In this study, these aspects will be disclosed through the means of self-regulation of electronic trade.

Research Method

When studying the issues of positive and negative self-regulatory practices, various methods were used, in particular: dialectical, analysis and synthesis, systemic, legal and dogmatic, interpretation of norms, comparative and legal methods. In addition, this research applied the methodological principles of *synergy* to define the concept of self-regulation of electronic trade and its means. To study the practices of self-regulation in electronic trade, the author used the

⁶ DALIPI, L. & ZUZAKU, A. Navigating Legal Frontiers: Addressing Challenges in Regulating Digital Economy. *Access to Justice in Eastern Europe*, 2024, Vol. 7, n° 2, pp. 1-26. <https://doi.org/10.33327/AJEE-18-7.2-a000205>.

⁷ CHENG, Z. Antitrust Concerns Over Digital Self-regulation of Chinese E-Commerce Platform. *China Law Review*, 2022, Vol.19, n° 3, pp. 99-113. <https://doi.org/10.17265/1548-6605/2022.03.001>.

⁸ CALLIESS, Graf-Peter. Transnational Consumer Law: Co-Regulation of B2C-E-Commerce. *Responsible business: self-governance in transnational economic transaction*, 2007. O Dilling, M Herberg & G Winter, eds., Oxford: *Hart Publishing*, 2008. *CLPE Research Paper*, pp. 225-258. <https://ssrn.com/abstract=988612> or <http://dx.doi.org/10.2139/ssrn.988612>.

⁹ DALIPI, L. & ZUZAKU, A. Navigating Legal Frontiers: Addressing Challenges in Regulating Digital Economy. *Access to Justice in Eastern Europe*, 2024, Vol. 7, n° 2, pp. 1-26. <https://doi.org/10.33327/AJEE-18-7.2-a000205>.

⁹ CHENG, Z. Antitrust Concerns Over Digital Self-regulation of Chinese E-Commerce Platform. *China Law Review*, 2022, Vol.19, n° 3, pp. 99-113. <https://doi.org/10.17265/1548-6605/2022.03.001>.

method of analysis and synthesis. The comparative method was used as one of the basic methods for studying the peculiarities of legislative consolidation of self-regulation of electronic trade in the acts of the European Union, Ukraine and other states. The systemic method helped to study the issue of trust in electronic trade. The legal and dogmatic method was used to study the subject matter in connection with various social phenomena and to analyze the provisions of legislation and its application. The method of legal interpretation was used to clarify the specifics of ethical aspects in wartime.

The purpose of the article is to provide a legal assessment of the strengths and weaknesses, as well as opportunities and threats associated with self-regulation practices in electronic trade, particularly in their interaction with the requirements of compliance with transnational public order, that generally affects ensuring the economic security of the state. To achieve this goal, the SWOT-Analysis method was used to determine what strengths of self-regulation of electronic trade should be used to realize its opportunities and prevent threats, as well as what opportunities should be used to minimize the weaknesses of self-regulation of electronic trade and prevent threats, which will help to create trusting relationships between electronic trade and consumer protection entities, as well as to implement effective investment and innovation policies. By predicting threats, they can be detected in advance, what can significantly reduce their likelihood or avoid them altogether.

Table 1. SWOT-Analysis of self-regulation of electronic trade

Strengths	Weaknesses
1) business entities are able to organize electronic trade at their own discretion, which is the result of the continuous development of innovations and the introduction of new technologies	1) heterogeneity of standards, internal policies, rules, and practices may make it harder to comply with common requirements and reduce the effectiveness of self-regulation
2) effective self-organization and interaction of electronic trade participants reduces administrative costs for the implementation of state control procedures	2) legal support for self-regulation of electronic trade is fragmented, in particular, the concepts of self-regulation and co-regulation are not defined at the level of national laws (for example, in Ukraine)
3) self-regulation is a quick, efficient way to settle relations, and in some cases, in fact, it is the only one, and at the same time, it cannot contradict the imperative norms of the state or transnational public order	3) lack of legislative regulation of the activities of self-regulatory organizations in electronic trade (for example, in Ukraine)
	4) improper determination by the state of the limits of self-regulation, i.e. non-

<p>4) means of self-regulation of electronic trade are constantly changing and updated, which enables quick adaptation to current changes</p> <p>5) preservation of human life and prohibition of cooperation with counterparties from the aggressor state are crucial ethical principles of self-regulation of electronic trade in wartime</p>	<p>compliance with the function of balancing the interests of business entities and consumers, compliance with mandatory provisions of transnational and national public policy</p> <p>5) unfair use of a self-regulatory means, such as digital platforms like TikTok and Instagram, to conduct unregistered entrepreneurial activities that are prohibited (for example, in Ukraine), resulting in tax evasion and fraudulent activities</p>
Opportunities	Threats
<p>1) transformation of the content of means of self-regulation of electronic trade in accordance with the use of information and communication technologies, including the use of artificial intelligence technologies</p> <p>2) development of codes of practice, ethical codes, detailed internal policies and trust marks with appropriate implementation mechanisms (ways of fulfilling) of certain provisions)</p> <p>3) a high level of technological solutions as self-regulatory means that improve electronic trade will help increase consumer trust</p> <p>4) establishing effective restrictions on self-regulation by the state to comply with mandatory provisions of transnational and national public order</p> <p>5) introduction of effective monitoring of compliance with internal policies, rules, codes of practice, ethical codes and, in case of violations, effective sanctions, which will enhance the security of electronic trade</p>	<p>1) martial law conditions</p> <p>2) non-compliance with sustainable development during military aggression</p> <p>3) climate change</p> <p>4) cyber threats</p> <p>5) corruption risks</p> <p>6) inadequate protection of consumer rights, personal data of consumers in electronic trade</p> <p>7) violation of established standards, internal policies, rules, practices of self-regulation and self-organization of electronic trade</p>

Source: Author's personal documentation

Results and Discussion

In this section, the discussion focuses on several substantive matters including: (1) The concept of self-regulation of electronic trade; (2) Means of self-regulation of electronic trade; (3) Examples of self-regulatory practices in electronic trade; (4) Trust and self-regulatory practices in electronic trade; (5) Electronic trade, ethics and war. In the context of ensuring economic security of the state, studying the aspects of positive and negative self-regulatory practices of electronic trade is important to promote the growth of electronic trade.

The concept of self-regulation of electronic trade

In different periods of functioning of the society, whether pre-industrial, industrial or post-industrial, different means were used to regulate the business community, which strengthen or slow down the use of certain means, and the "new" ones appear, whereas "old" methods and means of legal regulation of the economy disappear or are modernized. For the post-industrial society, which is represented by the "green", "sharing", "digital" economy, the innovation sector is important, which includes changes in the use of electronic means of communication. Scientists note that "At the same time, digital transformation requires a quick response because the organization risks losing its place in the market in the shortest possible time and becoming uncompetitive"¹⁰.

The development of the innovation sector is connected with self-regulation and self-organization of processes. The digital economy as a product of innovation is the most important consequence of self-regulation and self-organization in both technological and regulatory aspects. It can be stated that the issue of self-regulation of the digital economy has become more relevant in the late XX and early XXI centuries. In the current context of global transformation of approaches to legal regulation, a synergistic approach helps to solve problems with the effectiveness of regulation without harming the public order of the state or transborder relations.

In general, self-regulation of economic activity is understood as the independent organization and coordination of business activities by business entities. Electronic trade can be viewed as a self-regulatory system that is constantly improving and developing. In particular, new platforms are developing online, becoming more specialized and relevant.

At the same time, inadequate protection of consumer rights and personal data in electronic trade has led to increased government regulation. The establishment of restrictions on self-regulation by the state has become important. Some sources even talk about the "end of the era of self-regulation of electronic trade". In particular, it is stated that "the pandemic giving rise to more

¹⁰ ZOLKOVER, A., PETRUNENKO, I., IASTREMSKA, O., STASHKEVYCH, O., & MEHDIZADE, M. M. Benefits and risks of digital business transformation: the example of eastern europe countries. *Journal of Eastern European and Central Asian Research*. 2022. Vol.9, n° 2, pp 344-356.

consumers using these platforms to shop, date, and connect in a socially distanced world, the opportunity for fraudulent, harmful, and upsetting content has also risen. As a result, the era of self-regulation – and specifically the ability to use degrees of content moderation – is coming to an end”¹¹. However, this conclusion is unlikely to be accepted, as the means of self-regulation of electronic trade are constantly changing and being updated, but state regulation may not be able to keep up the active development of new digital economy instruments, that will create problematic situations due to the absence or inconsistency of norms of current legislation. So, only state regulation is not sufficient to ensure the effectiveness of regulation of the digital economy.

At the same time, Mifsud Bonnici Jeanne concludes that “Private regulation fills substantive or procedural gaps where no state regulation exists or where it is incomplete or ineffective, thus complementing the reach of state regulation. Simultaneously, states supply legal (and financial) frameworks that enable or complement self-regulation”¹².

First of all, it should be noted that self-regulation is a quick, efficient way to settle relations, and in some cases, it is actually the only way. Based on the established provisions, self-regulation of the digital economy cannot contradict the imperative norms of the state or transnational public order. The general principles and priorities of the welfare state should be preserved in the regulation and restrictions of economic activity and continue to function as basic imperatives, such as compliance with competition law, consumer protection, etc¹³.

State regulation determines the limits, means, and institutions of self-regulation of economic activity, thus including it in the sphere of influence. The activities of non-state courts, self-regulatory organizations, alternative substantive regulation, conclusion of contracts with wide freedom of action, but with reservations regarding non-infringement of mandatory state norms are

¹¹ ZEUTHEN, S. The Era of Self-Regulation is Coming to An End. 2024. [Accessed 20 April 2024]. <https://besedo.com/knowledge-hub/blog/the-era-of-self-regulation-is-coming-to-an-end-now-is-the-time-for-online-communities-to-prepare/>.

¹² BONNICI, J. Self-regulation in cyberspace. The Hague: 2008. TMC Asser Press.

¹³ VINNYK, O.M., ZADYKHAYLO, D.V., HONCHARENKO, O.M., SHAPOVALOVA O.V., & PATSURIIA, N.B. Economic and Legal Policy of the State in the Field of Digital Economy. *The International Journal of Criminology and Sociology*, 2021, Vol. 10 (Special Issue), pp. 383-392. <https://www.lifescienceglobal.com/pms/index.php/ijcs/article/view/7087>.

allowed¹⁴. Increased state regulation creates a certain framework for the functioning of electronic trade, but cannot fully replace private regulation and self-regulation.

Jane Winn notes that “Direct regulation, co-regulation and self-regulation represent different points on a continuous spectrum of organizational possibilities, and some examples of regulatory institutions may not fit neatly into any of the categories, or may fit into more than one”¹⁵. At the same time, I. (Albastroiu) Maruntelu studies “auto-regulation of e-commerce as a tool that could be used to prevent and diminish the frauds within the virtual world”¹⁶.

An important conclusion was made by D. Restrepo-Amariles and G. Lewkowicz on the need for structural cooperation between lawyers and engineers to manage the inevitable hybridization of the rule of law and its technological integration (on the necessity for a structural collaboration between lawyers and engineers in order to manage the inevitable hybridization of the rule of law and its technological integration)¹⁷. Cyberspace...requires the development of a new branch of Law – Cyberlaw – with the special purpose to protect citizens and organisations against more powerful threats, obliging the improve of legislation in order to better face them¹⁸. Notably, AI is a formidable driving force behind the development and success of e-commerce. In e-commerce, AI systems allow for network marketing, electronic payments, and management of the logistics involved in availing products to the customers¹⁹.

Global challenges (the Covid-19 pandemic, wars, such as Russia's military aggression against Ukraine, and climate change) have led to the strengthening

¹⁴ GONCHARENKO, O. Aktualizatsiya pitannya samoregulyuvannya gospodarskoyi diyalnosti na pochatku XXI stolittya. Metodologichni pitannya privatnogo prava: monografiya / Za red. OD Krupchana ta ZV Romovskoyi, 2021, Kyiv, Ch. 1. pp. 182-191.

¹⁵ WINN, J.K. Electronic Commerce Law: Direct Regulation, Co-Regulation and Self-Regulation. Cahiers du CRID, 2010. <https://ssrn.com/abstract=1634832>.

¹⁶ MARUNTELU, I. (Albastroiu). Self-Regulation of the E-Commerce in Romania—Possible Solution for the Limitation of E-Frauds. The Amfiteatru Economic Journal, *Academy of Economic Studies-Bucharest*, 2008, Vol. 10, n° 23, pp. 142-148. https://www.researchgate.net/publication/265684350_Self-Regulation_of_E-Commerce_in_Romania_-_Possible_Solution_for_the_Limitation_of_E-Frauds/.

¹⁷ RESTREPO-AMARILES, D., LEWKOWICZ, G. Unpacking Smart Law: How Mathematics and Algorithms are Reshaping the Legal Code in the Financial Sector. *Lex Electronica*, 2020, Vol. 25, n° 3, pp. 171-185. <https://ssrn.com/abstract=3754007>.

¹⁸ GOUVEIA, J. B. CyberLaw and CyberSecurity. *Revista Jurídica Portucalense*, 2021, p. 59. [https://doi.org/10.34625/issn.2183-2705\(29\)2021.ic-04](https://doi.org/10.34625/issn.2183-2705(29)2021.ic-04).

¹⁹ KHRAIS, L.T. Role of Artificial Intelligence in Shaping Consumer Demand in E-Commerce. *Future Internet*, 2020, Vol. 12, n° 226. <https://doi.org/10.3390/fi12120226>.

of sustainable development and human rights policies in business, and have also become areas of change in the permitted self-regulatory practices of electronic trade. However, it is also necessary to identify the current shortcomings (risks) of the use of self-regulatory elements, which are not immediately obvious.

Thus, electronic trade is a consequence of self-organization and self-regulation of economic activity using information technology as a complex system. We can talk about state regulation, private regulation, self-regulation and co-regulation of electronic trade, i.e. the relevance of the ratio of these methods of regulation. Self-regulation of electronic trade means that business entities are able to regulate this type of economic activity at their own discretion, which is also the result of the development of the innovation sector and constant technological changes. At the same time, self-regulation of electronic trade can be seen as an important tool for ensuring competitiveness, security and trust in e-commerce.

Means of self-regulation of electronic trade

Self-regulatory means of electronic trade can traditionally be divided into two broad blocks: those that help ensure normative self-regulation (regulations, technical standards, codes of practice, ethical codes, contracts, trade customs, etc.) and institutional self-regulation (self-regulatory organizations of digital economy entities or other associations). These means of self-regulation are, generally speaking, traditional for trade, but their content is transformed in accordance with the use of information and communication technologies.

In addition, electronic trade is based on clearly defined standards for the implementation of certain technological schemes, which are mostly developed by self-regulatory institutions, by business entities themselves. Of course, the state's task is to create a legal framework for the activities of such entities. In particular, this thesis can be illustrated by the use of artificial intelligence technologies. This technology has evolved from scientific implementation and virtually free use to the establishment of clear regulations on its use in certain countries. In particular, on March 13, 2024, the European Parliament adopted the Act on the Regulation of Artificial Intelligence in the European Union (the "Act")²⁰. The regulated self-

²⁰ PROPOSAL FOR A REGULATION of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts. COM/2021/206. [Accessed 11 April 2024] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>.

regulation in this Act is presented in Title IX “Providers of non-high-risk AI systems may create and implement the codes of conduct themselves. Those codes may also include voluntary commitments related, for example, to environmental sustainability, accessibility for persons with disability, stakeholders’ participation in the design and development of AI systems, and diversity of development teams”. The Act also provides an Assessment List for Trustworthy AI (ALTAI) for self-assessment.

We can agree with the opinion of David López Jiménez, Antonio j. Monroy Antón, James Crichlow “...the various agents interacting in electronic commerce discipline, by consensus, various issues related to electronic commerce, through the adoption of tools derived from self-regulation. This aspect is possible by virtue of the principle of autonomy”²¹. Self-regulation primarily determines the use of certain technologies, which also affects consumers, so technologies that were created for internal business activities are not always exclusively self-regulated, they are more private law.

E-commerce technology includes: Mobile commerce; Internet marketing; Online transaction processing; Electronic funds transfer; Inventory management systems; Automated data gathering systems. An e-commerce threat is the use of the internet for unfair purposes such as stealing, fraud, and security breaches²². To the main trends of e-commerce and m-commerce in the field of international trade it is expedient to carry: big data, personalization, e-mail marketing, transition e-commerce in m-commerce, with reservation of services on the Internet and the transition of retail to online, e-procurement, omnichannel and multichannel, with socially oriented commerce, improved work with the community and the need for efficient logistics²³. The use of these technologies and processes is primarily through self-regulation, in fact, the internal organizational activities of electronic trade entities that affect consumers.

²¹ JIMENEZ, D.L., MONROY-ANTON, A.J., CRICHLLOW, J.. Self-regulation of electronic commerce: issues in the context of Chilean law. *Revista Chilena de Derecho*, 2017, Vol. 44, n° 2, pp. 347-369.

²² VINOTH, S., VEMULA, H. & HARALAYYA, B. Application of cloud computing in banking and e-commerce and related security threats, *Materials Today: Proceeding*, 2022, Vol. 51, n° 8, pp. 2172-2175. <https://doi.org/10.1016/j.matpr.2021.11.121>.

²³ DUMANSKA, I., HRYTSYNA, L., KHARUN, O. & MATVIIETS, O. E-commerce and M-commerce as Global Trends of International Trade Caused by the Covid-19 Pandemic. *Wseas transactions on environment and development*, 2021, Vol. 17, pp. 386-397. <https://doi.org/10.37394/232015.2021.17.38>.

The e-platforms and social networks have adopted self-regulation of content and standards in their terms and conditions that reflect their own opinion but not necessarily internationally recognized rules²⁴. With the powerful technical capabilities of data collection, storage, and integration, specific data information can surpass the data itself and form data analysis results²⁵. The foregoing implies that digital platforms can have objectives that transcend the profit motive and can develop their activities considering social values that would be summarized in the general interest²⁶. In electronic trade, artificial intelligence systems enable network marketing, electronic payments, and logistics management related to the provision of products to customers.

Therefore, the mentioned examples of the use of various technical solutions (tools, means) in electronic trade are determined on the basis of self-regulation, which may be further limited by state regulation or co-regulation. Various means of normative self-regulation are also used, such as codes of practice, ethical codes, which are created as a result of combating negative self-regulation. Most researchers agree that artificial intelligence cannot function as a person, while others believe that a machine should have the same rights as a person²⁷.

The practice of regulating self-regulation of the digital economy varies from country to country. The primary legal texts for the Digital Markets Act (DMA) are Regulation (EU) 2022/1925 of the European Parliament and the Council, dated 14 September 2022, regarding contestable and fair markets in the digital sector and the Procedural Implementing Regulation²⁸. In particular, p. 16 of this Act states that “In order to ensure the effective application of this Regulation to undertakings providing core platform services which are most likely to satisfy

²⁴VALENZUELA, D.P. Lex electronica and disruptive technologies, 2021. [Accessed 12 April 2024]. <https://dernegocios.uexternado.edu.co/lex-electronica-and-disruptive-technologies/>.

²⁵ AKTER, S. & WAMBA, S.F. Big data analytics in e-commerce: A systematic review and agenda for future research. *Electron Markets*, 2016, Vol. 26, pp. 173-194. <https://doi.org/10.1007/s12525-016-0219-0>.

²⁶ CANALES GUTIÉRREZ, S. The virtual platforms of the social economy and the collaborative economy: one more possibility of access to housing and development of SDGs 8, 11 and 12 intimes of COVID-19. *Revista Jurídica Portucalense*, 2022, Especial, Vol. III., p.135. [https://doi.org/10.34625/issn.2183-2705\(ne2v3\)2022.ic-08](https://doi.org/10.34625/issn.2183-2705(ne2v3)2022.ic-08).

²⁷ ZOZULIAK, O., ZELISKO, A.V., BASHURYN, N. Y. & ALBU A.A. Artificial intelligence as an object of civil law regulation. *Revista Jurídica Portucalense*, 2023, Vol.34, pp. 283–299. [https://doi.org/10.34625/issn.2183-2705\(34\)2023.ic-14](https://doi.org/10.34625/issn.2183-2705(34)2023.ic-14).

²⁸ REGULATION (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 On Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). OB L 265/1. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925>.

those objective requirements, and where unfair practices weakening contestability are most prevalent and have the most impact, the Commission should be able to directly designate as gatekeepers those undertakings providing core platform services which meet certain quantitative thresholds”²⁹. In other words, the EU focuses on combating unfair practices, which are negative self-regulation. Point 88 of Regulation (EU) 2022/2065 of the European Parliament and of the Council, dated October 19, 2022, states that «Providers of very large online platforms and of very large online search engines should also be diligent in the measures they take to test and, where necessary, adapt their algorithmic systems, not least their recommender systems. In particular, where risks are shared across different online platforms or online search engines, they should cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. They should also consider awareness-raising actions, in particular where risks relate to disinformation campaigns»³⁰. In this example, we see the direction of EU legislation to promote positive self-regulation.

A.Barkatullah notes that “The United States focuses on a model of self-regulation, while the European Union places more emphasis on the United State’s role through legislation that provides legal protection for e-commerce consumers, and Indonesia has not yet specifically regulated the protection of data privacy or used self-regulation in e-commerce transactions”³¹. The application of mechanisms for regulating personal data protection may have significant differences: in some countries, an entrepreneur creates a model of self-regulation for personal data protection and thus relies on the trust of consumers and the state (the United States); in others, the state plays a more active role and legislates (even under the threat of significant fines) the obligation of a business entity to implement protective mechanisms for personal data protection (the

²⁹ REGULATION (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 On Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). OB L 265/1. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925>.

³⁰ REGULATION (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 On a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act) OJ L 277/1. <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>.

³¹ BARKATULLAH, A.H. & DJUMADI. Does self-regulation provide legal protection and security to e-commerce consumers? *Electronic Commerce Research and Applications*, 2018, July–August, pp. 94-101. <https://doi.org/10.1016/j.elerap.2018.05.008>.

European Union), in other countries, there may be no appropriate mechanism in place to protect personal data both with the help of state regulation and self-regulation (co-regulation).

Ukraine aims to create and support co-regulatory and self-regulatory systems, including self-regulation of electronic trade. However, the legal framework for self-regulation is currently not sufficiently ensured, as the main reason for this is Russia's military aggression against Ukraine. Ukraine has officially fulfilled its obligations under the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, to implement Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) by adopting the Law of Ukraine "On Electronic Commerce". As part of the legislative implementation of electronic trade, Ukraine also adopted the Laws "On Mediation", "On Payment Services", "On Cloud Services", and "On Virtual Assets" (not yet in force). However, they do not address the issues of self-regulation and co-regulation.

As for the Ukrainian legislation that includes provisions on self-regulation, the Law of Ukraine "On Consumer Protection" (adopted but not enacted), Article 37 of which states that consumer protection in a certain area of economic activity may be carried out by economic self-regulatory organizations or professional self-government organizations established and operating in accordance with the law. According to Article 27 of the Law of Ukraine "On Personal Data Protection", professional, self-governing and other public associations or legal entities may develop codes of conduct to ensure effective protection of the rights of personal data subjects, compliance with personal data protection legislation, taking into account the specifics of personal data processing in various areas³². The Law of Ukraine "On Advertising" sets forth provisions for co-regulation and self-regulation in the field of advertising.

The Report published on the website of the Ministry of Economy of Ukraine states that "The model of self-regulation that would be effective in Ukraine is to

³² LAW OF UKRAINE «On the protection of personal data» 2010 № 2297-VI. [Accessed 17 April 2024]. <https://zakon.rada.gov.ua/rada/show/2297-17#Text>.

support: 1) regulated self-regulation through the development of codes of practice, trust marks; 2) organizational self-regulation through the development of relevant self-regulatory organizations"³³. Currently, this model of self-regulation is being implemented through the development of codes of practice, ethical codes and trust marks. However, in most cases, the use of these self-regulatory means depends on the business entities themselves, rather than on the state's support or encouragement policy, as Russia's military aggression continues in Ukraine, which is a factor in slowing down the development of self-regulation.

Thus, the legal framework for self-regulation of electronic trade in Ukraine is fragmented, unlike the legislation of the European Union, where considerable attention is paid to self-regulation. The activities of self-regulatory organizations in electronic trade in Ukraine are not regulated by law. However, electronic trade is primarily a sphere that emerged due to self-regulation, so the development of regulated self-regulation should be linked to the consolidation of self-regulation means at the level of law, which is gradually happening in Ukraine due to European integration processes.

Examples of self-regulatory practices in electronic trade

Self-regulation in electronic trade can be characterized by both positive and negative practices. Conscientious sellers try to ensure the best quality of goods and services in their activities, even when there is no clear legislative regulation. In addition, such sellers create additional services to attract buyers and ensure maximum trust. In particular, the speed of informing about the quality of goods or services provided, providing a system of feedback on goods, and the security of payment for goods.

The main security issues faced by both consumers and providers transactional security, privacy, system security, and cyber crime³⁴. At the same

³³ Elektronna komertsiya. Zvit. Ministerstvo rozvitku torgiviy, ekonomiki ta silskogo gospodarstva Ukraini [Accessed 15 April 2024]. <https://www.me.gov.ua/Documents/List?lang=uk-UA&id=1aa3589c-d1a5-430a-bf49-4deba3b57301&tag=ElektronnaKomertsia2>.

³⁴ KURUWITAARACHCHI N., ABEYGUNAWARDENA P.K.W., RUPASINGHA L. & UDARA SWI. A. Systematic Review of Security in Electronic Commerce Threats and Frameworks. *Global Journal of Computer Science and Technology: E Network, Web & Security*, 2019, Vol. 19, n° 1. [Accessed 15 April 2024]. https://globaljournals.org/GJCST_Volume19/4-A-Systematic-Review-of-Security.pdf.

time, negative practices will include the use of digital platforms such as TikTok or Instagram to conduct unregistered business activities that are prohibited in Ukraine and, accordingly, tax evasion and fraud. Negative self-regulatory practices may be criminalized in the future³⁵. It is essential to collaborate on the point of consensus to address the growing challenges of international infosec³⁶.

Negative self-regulation can be illustrated by practices of abuse by sellers in the case of insufficient or no regulation by the state. Given that electronic trade is developing rapidly, especially thanks to artificial intelligence, it is impossible to determine all the negative aspects of the use of a particular self-regulatory mechanism in advance, and this is what unscrupulous sellers take advantage of. Safeguarding consumer privacy is a key challenge for the growth of e-commerce. S. Rungsrissawat, T. Sriyakul, K. Jermisittiparsert note that "...e-organisations ought to create procedures to secure their resources against potential dangers by giving security. Safety efforts are connected to control, validation frameworks, alternative and easy payment method systems"³⁷.

Junghyun Kim, Robert LaRose point to another problem with online shopping "For example, an online consumer might enter Amazon.com with a specific book purchase in mind, but might be prompted to make further, unplanned purchases by the suggestions offered at the website. Such distracted self-regulation is called deficient self-regulation, which is defined as a state in which conscious self-control is relatively diminished"³⁸.

One example of negative practices is the GetContact application. Mobile phone owners were offered the opportunity to find out how their number was recorded in other people's contacts. Users of the GetContact service could see

³⁵ USTRYTSKA, N., SKREKLIA, L., KOCHYNA, O., KOPOTUN, I. & HONCHARENKO, O. Practical aspects of criminal and law characteristics of cyber crimes in Ukraine. *Journal of Legal, Ethical and Regulatory Issues*, 2020, Vol, 23, n° 2. <https://www.abacademies.org/articles/practical-aspects-of-criminal-and-law-characteristics-of-cyber-crimes-in-ukraine-9138.html>.

³⁶ SARGANA, T.H., SARGANA, M.H. & ANNS M. Approaches to international information security and the discourse of cyberspace. *Masyarakat, Kebudayaan dan Politik*. 2020, Vol. 33, n° 4, pp. 331–338. <https://doi.org/10.20473/mkp.V33I42020.331-338>.

³⁷ RUNGSRISAWAT, S. , SRIYAKUL, T. & JERMSITTIPARSERT, K. The era of e-commerce & online marketing: risks associated with online shopping. *International Journal of Innovation, Creativity and Change*, 2019, Vol. 8, n° 8, pp. 201-221.

³⁸ KIM, J-H. & LAROSE, R. Interactive E-Commerce: Promoting Consumer Efficiency or Impulsivity? *Journal of Computer-Mediated Communication*, 2004, Vol. 10, n° 1. <https://doi.org/10.1111/j.1083-6101.2004.tb00234.x>.

their phone number in the records of their friends and acquaintances. If a person did not want their number to be checked by others, they could hide the information by registering on the site and deleting their account from the database. However, many people did not know about this application and their data was being used, which violated the right to privacy. Today, the approach to the provision of services by this application has been changed, in particular, the page states that “Thanks to the Caller ID function, you can immediately see who is calling you, even if the caller is not saved in your contacts”³⁹.

And one example of positive practices is the use of the Zenly app. This is a map where you can see what your friends or family are doing without asking for their address. In this case, you should turn on the approximate or fixed location mode⁴⁰. This application asks for consent to the invitation and only then can it be used. Thus, it should be noted that the developers comply with the provisions on obtaining consent from all parties of the relationship.

Another example of positive self-regulatory practices is that “platforms establish their credit evaluation mechanisms, which take the sellers’ service attitude, logistics speed, and the degree of conformity of commodity description as evaluation indicators when classifying the stores”⁴¹. The increased use of the internet and information technology to enable online transactions, distribute information and customer reviews through e-commerce and social networking sites, online advertising, and data mining is both creating efficiencies and challenging our privacy⁴². Currently, businesses have started to put especial emphasis on the establishment of self-regulatory regimes, in order to ascertain the integrity of their client’s data⁴³.

Given the global trends in the development of electronic trade, the issues of ensuring security in the collection, storage, use and destruction of private

³⁹ Caller ID GetContact [Accessed 11 April 2024]. <https://getcontact.com/features>.

⁴⁰ ZENLY. [Accessed 17 April 2024]. <https://zenly.com/>.

⁴¹ CHENG, Z. Antitrust Concerns Over Digital Self-regulation of Chinese E-Commerce Platform. *China Law Review*, 2022, Vol.19, n° 3, pp. 99-113. <https://doi.org/10.17265/1548-6605/2022.03.001>.

⁴² WALSH, D., PARISI, J. M. & PASSERINI, K. Privacy as a right or as a commodity in the online world: the limits of regulatory reform and self-regulation. *Electronic Commerce Research*, 2017, Vol. 17, n° 2, pp:185-203.

⁴³ ALHARBI, I. M. & ALYOUBI, B. A. Importance of self-regulation in electronic transactions: safeguarding customer information and privacy. *Int'l Conf. e-Learning, e-Bus, EIS, and e-Gov*, 2016, pp. 100-105. <https://worldcomp-proceedings.com/proc/p2016/EEE3100.pdf>. DOI: 10.26512/Istr.v12i1.24805.

information provided by consumers of goods and services remain relevant. It should be noted that despite the development of general rules and principles for processing private information in electronic trade, business entities continue to use self-regulatory technologies to streamline both their internal organizational activities and their interaction with consumers. Therefore, the study of best practices in the context of multinational corporations operating in electronic trade points to the development of detailed internal policies and rules of economic entities, as well as rules that relate directly to consumers of goods and services and to which consumers often give their consent.

If we look at the practice of electronic trade in Ukraine, we can state that there are different approaches of business entities to its regulation. Some business entities are quite responsible for developing self-regulatory mechanisms that would increase consumer confidence. In particular, the best practices are reflected in the organization's policies and ethical codes, which may include the processing of consumers' personal data. Others do not try to implement positive self-regulatory practices, but rather, in the absence of clear legislative regulation, abuse martial law and violate consumer rights. For example, they do not provide information on the conduct of their activities as a business; on the quality of goods or services; on the procedure for resolving disputes in case of their occurrence; on the reasonableness of price setting, etc. Determining the legal status of the seller and their rights to conduct online trade will help prevent potential risks.

Trust and self-regulatory practices in electronic trade

An important issue in any type of trade will remain the issue of customer trust. That is, trust is an important factor that has not changed for thousands of years, and with the help of electronic trade, it can be both strengthened (ensured) and undermined. Patricia Beatty, Ian K. Reay, Scott Howard Dick, James A. Miller mention that “Trust is at once an elusive, imprecise concept, and a critical attribute that must be engineered into e-commerce systems. Trust conveys a vast

number of meanings, and is deep ly dependent upon context”⁴⁴. Therefore, it is important to focus on how self-regulatory means will contribute to increasing trust.

Online feedback mechanisms introduced by electronic market places have led to an increasing formalisation of the reputation mechanism⁴⁵. The reputation of the company, structural assurance, and trusting stance, and initial trust beliefs affect consumer attitude to shopping online⁴⁶. Technical solutions for electronic trade ensure the security of sending goods, providing services and paying for them, and making transactions quickly. All of these technical solutions were innovations that did not have proper legal regulation at their inception, so they were basically used as self-regulatory means. Over time, each innovation acquires legal support. In this aspect, it is important to determine the level, degree, and completeness of legal regulation, i.e. how much they should be covered by state regulation and what should be left to self-regulation or when to apply co-regulation. An important aspect is also trust marks.

Trust can also affect when a consumer sees what marketing strategies a seller uses. In particular, R. Anantharaman, S. Prashar . and T.Vijay say that “social bonding and bandwagon effect have a strong influence on trust and purchase intention, respectively”⁴⁷.

Brian Corbitt , Theerasak Thanasankit , Han Yi claim that “Customer’s trust levels are likely to be influenced by the level of perceived market orientation, site quality, technical trustworthiness, and user’s web experience”⁴⁸.

The following example can be given. In particular, Google has been working intensively to create the Google Shopping Actions e-sales channel, which combines Google Search with the Google Shopping product ad promotion tool

⁴⁴ BEATTY, P., REAY, I., DICK, S. & MILLER, J. Consumer trust in e-commerce web sites: A meta-study. *ACM Computing Surveys*, 2011, Vol. 43, n° 3, pp. 1–46. <https://doi.org/10.1145/1922649.1922651>.

⁴⁵ DELLAROCAS, C. The Digitization of Word-of-Mouth: Promise and Challenges of Online Reputation Systems. *Management Science*, 2003, Vol. 49, n° 10, pp. 1407-1424.

⁴⁶ RUNGSRISAWAT, S., SRIYAKUL, T. & JERMSITTIPARSERT, K. The era of e-commerce & online marketing: risks associated with online shopping. *International Journal of Innovation, Creativity and Change*, 2019, Vol. 8, n° 8, pp. 201-221.

⁴⁷ ANANTHARAMAN, R., PRASHAR, S. & VIJAY, T. Uncovering the role of consumer trust and bandwagon effect influencing purchase intention: an empirical investigation in social commerce platforms. *Journal of Strategic Marketing*, 2022, Vol. 31, n° 6, pp. 1-21. [https://doi.org/10.1080/0965254X.2022.2070526.31:6.\(1199-1219\)](https://doi.org/10.1080/0965254X.2022.2070526.31:6.(1199-1219)).

⁴⁸ CORBITT, B.J., THANASANKIT, T. & HAN, Y. Privacy concerns in E-commerce: A taxonomy and a future research agenda. Trust and e-commerce: a study of consumer perceptions. *Electronic Commerce Research and Applications*, 2003, Vol. 2, n° 3, pp. 203-215.

and virtual voice Google Assistant. Facebook and the social network Instagram have developed tools to show products to the target audience, offer advertising, and the Facebook Pay service. Amazon is actively engaging in logistics services, expanding its fleet of airplanes, trucks, and drones"⁴⁹.

In order to convince consumers to enter the borderless global retail-market, businesses have to invest in building consumer confidence in electronic commerce by employing various consumer protecting governance mechanisms⁵⁰. The Recommendation №. 32 (2001) notes that "Ultimately self-regulation in combination with legislation can create an effective level of trust"⁵¹. In other words, there is a need for substantive as well as procedural minimum standards regarding the private provision of consumer protecting services, i.e. «law-consumer protection» (Calliess 2007)⁵².

Therefore, better self-regulatory means that improve electronic trade, i.e. positive self-regulation, will help to increase trust, as a conscious consumer will always look at the level of technological solutions provided when making a purchase or sale of goods.

Electronic trade, transnational public order, ethics and war

Like any other economic activity, electronic trade should be conducted on the basis of ethical principles. The issue of ethical electronic trade in times of war is being actively studied, especially considering the issue of circumventing sanctions.

The war requires a strict attitude to the choice of goods, taking into account the criterion of their country of origin. The choice of counterparties is also

⁴⁹ CHERVONA, O.Y. Tendentsiyi rozvitku elektronnoyi komertsyi. *Visnik HDU. Seriya Ekonomichni nauki*, 2020, Vol. 39, pp. 65-70. DOI: <https://doi.org/10.32999/ksu2307-8030/2020-39-12>.

⁵⁰ CALLIESS, G.-P. *Transnational Consumer Law: Co-Regulation of B2C-E-Commerce. Responsible business: self-governance in transnational economic transaction*, 2007. O Dilling, M Herberg & G Winter, eds., Oxford: *Hart Publishing*, 2008. *CLPE Research Paper*, pp. 225-258. <https://ssrn.com/abstract=988612> or <http://dx.doi.org/10.2139/ssrn.988612>.

⁵¹ RECOMMENDATION № 32 (2001) first edition, adopted by seventh session of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), Geneva ECE/TRADE/277.

https://unece.org/fileadmin/DAM/cefact/recommendations/rec32/rec32_ecetrd277.pdf.

⁵² CALLIESS, G.-P. *Transnational Consumer Law: Co-Regulation of B2C-E-Commerce. Responsible business: self-governance in transnational economic transaction*, 2007. O Dilling, M Herberg & G Winter, eds., Oxford: *Hart Publishing*, 2008. *CLPE Research Paper*, pp. 225-258. <https://ssrn.com/abstract=988612> or <http://dx.doi.org/10.2139/ssrn.988612>.

relevant, depending on many criteria and may include the criterion of the ultimate beneficial owner, the country of registration of the person, the place of business or the location of the control center. The undisputed imperative is to terminate any cooperation with residents of the aggressor state, including contractual activities (prohibition of electronic trade in goods and services). At the same time, electronic trade with auxiliary states and their residents is also prohibited. However, despite such clear imperatives and the direction of most states to strengthen the regulation of electronic trade, negative self-regulation in electronic trade will still play a significant role. In particular, this applies to the lack of transparency of business entities and the absence of ethical buffers regarding counterparties and goods and services, especially in those states where there are no direct prohibitions on trade with residents of the aggressor state.

The ethicality of goods and services should remain an important component of electronic trade. In particular, M. Alzola notes that “Noncombatants who bear significant responsibility for initiating, sustaining, or making contributions to an unjust war might be responsible to a greater degree than combatants, and therefore, might become legitimate targets to defensive force”⁵³. Without business entities financing the regime of the aggressor state (paying taxes, continuing economic activity), the war would not be able to continue. Therefore, business entities must understand their responsibility in this regard, and not disassociate themselves by saying that donations are enough and that the issue of ethics should be closed. It is not how companies should distribute their profits that is important, but how they make their profits in the first place, and moreover, companies are now considered political actors⁵⁴.

Since there is no uncertainty about the status of a state that is waging a war of aggression, the position of choosing between civilization and Russia, between ethical work and sanctions, is quite obvious for business. The companies that truly respect democratic values have an unequivocal choice: choose to stop operating in a terrorist state and any cooperation with it and its residents⁵⁵.

⁵³ ALZOLA, M. A. The Ethics of Business in Wartime. *Journal of Business Ethics*, Vol. 99, n° 1, pp. 61-71. <https://doi.org/10.1007/s10551-011-1167-4>.

⁵⁴ PALAZZO, G., SCHOLZ, M., SEELE, P., BESCHORNER, T. No business can be right in a war that's wrong. 2022. [Accessed 08 April 2024]. <https://www.swissinfo.ch/eng/no-business-can-be-right-in-a-war-that-swrong/47512178>.

⁵⁵ HONCHARENKO, O., NESKORODZHENA, L., IEFREMOVA, I., LOMAKINA, I., MALYSHKO I. Development of the Concept of Corporate Social Responsibility: Practice in Ukraine.

The TransLex-Principles, a systematic online collection of principles and rules of transnational commercial law with commentaries and references to comparative law used in international legal practice, by scholars and participants in moot court competitions in international arbitration around the world, proposes the following principle: “Invalidity of contract that violates good morals (*boni mores*). A contract that violates good morals («*boni mores*») is void)” (Chapter 7)⁵⁶. The interpretation of the provisions of this principle states: “1. The Principle that a contract violating *boni mores* or «good morals» is void provides the moral underpinning of transnational commercial law. 2. Violation of good morals means much more than that the contract is unreasonable as between the parties or unfair. Rather, the concept of good morals relates to fundamental values of society and is not of a purely legal nature. 3. In international business, these fundamental transnational values are part of transnational public policy. They include the prohibition of crimes against humanity, racial discrimination, child labor, slavery, torture, terrorism, money laundering and drug trafficking”⁵⁷. In the doctrine, scholars Craig W. Laurence (2000) and Jan Paulsson note that: “Contracts are not enforceable if their purpose is contrary to international morality”⁵⁸. One of the decisions of the international commercial arbitration court states: “Finally, it cannot be contested that there exists a general principle of law recognised by civilised nations that contracts which seriously violate *boni mores* or international public policy are invalid or at least unenforceable and that they cannot be sanctioned by courts or arbitrators” (cf. *Oscanyan v. Winchester Arm. Co.*, cited above). This principle is especially apt for use before international arbitration tribunals that lack a «law of the forum» in the ordinary sense of the term (ICC Award №. 1110 of 1963 by Gunnar Lagergren)⁵⁹. *Contracts are*

Comparative Law Review, 2022, Vol. 28, pp. 367-392. <https://doi.org/10.12775/CLR.2022.012.392>.

⁵⁶ INVALIDITY OF CONTRACT that violates good morals (*boni mores*) [Accessed 10 April 2024] https://www.translex.org/937000/_/invalidity-of-contract-that-violates-good-morals-/.

⁵⁷ INVALIDITY OF CONTRACT that violates good morals (*boni mores*) [Accessed 10 April 2024] https://www.translex.org/937000/_/invalidity-of-contract-that-violates-good-morals-/.

⁵⁸ PARK, W.W., CRAIG, W. L., PAULSSON, J. *International Chamber of Commerce Arbitration*, 3rd ed. 2000. Books. p. 109. <https://scholarship.law.bu.edu/books/109>.

⁵⁹ ICC AWARD № 1110 of 1963 by Gunnar Lagergren, YCA 1996, at 47 et seq. (also published in: *Arb.Int'l* 1994, at 282 et seq. https://www.trans-lex.org/201110/mark_937000/icc-award-no1110-of-1963-by-gunnar-lagergren-yca-1996-at-47-et-seq).

unenforceable if their purpose is contrary to international morality⁶⁰. Agreements which are clearly inimical to the interests of the community, whether they are contrary to law or morality, or run counter to social or economic expedience, will accordingly, on the grounds of public policy not be enforced Hutchison⁶¹.

The war started by Russia against Ukraine is an international crime, so the conclusion of contracts, their implementation and any other cooperation with residents of the aggressor state is a violation of not only the national public policy of Ukraine, but also transnational public policy. Termination of already concluded agreements is possible on the grounds of inconsistency with transnational public policy and national public policy. The problem of termination of contracts between the contractors of the aggressor state and other business entities lies in the plane of compliance with transnational public order, which is based on the condemnation and prevention of war (aggressive actions of Russia), public order in accordance with the provisions of the domestic legislation of a particular state, and compliance with mandatory norms.

Before Russia's full-scale invasion of Ukraine, electronic trade entities operating in Ukraine included a number of standard guidelines in their ethical codes: sustainable development policy, respect for human rights, compliance with anti-corruption and tax laws, etc., as well as special ones that reflect specific obligations of a particular company, requirements for employees (Goncharenko Ethical Codes 2021)⁶². Such policies can be called "peaceful ethical codes". Currently, these entities include war-related issues in their codes. In particular, company practices and codes include provisions on assistance to employees and the population in times of war, rules for company behavior in times of hostilities (relocation of business, responsibility of each employee of the relevant level), the company's mandatory refusal to cooperate with business entities of the aggressor state, the state-aided state and with persons who support and cooperate with them, etc. In other words, electronic trade entities cannot remain politically neutral or cooperate with the aggressor state and its residents, as this violates the moral

⁶⁰ PARK, W.W., CRAIG, W. L., PAULSSON, J. International Chamber of Commerce Arbitration, 3rd ed. 2000. Books. p. 109. <https://scholarship.law.bu.edu/books/109..>

⁶¹ HUTCHISON D. (Ed.), PRETORIUS C. (Ed.). The Law of Contract in South Africa, 2018. Oxford University Press Southern Africa.

⁶² GONCHARENKO, O. Etichni kodeksi povedinki subektiv tsifrovoyi ekonomiki: pravoviy aspekt. Zovnishnya torgivlya: ekonomika, finansy, pravo, 2021, Vol. 4, n° 117, pp. 72-84. [https://doi.org/10.31617/zt.knute.2021\(117\)07](https://doi.org/10.31617/zt.knute.2021(117)07).

foundations of society, national and transnational public order. It is also important to note that companies that want to operate in Ukraine should take into account that "peaceful ethical guidelines" in ethical codes are not enough to comply with human rights and sustainable development, and that ethical provisions in martial law should be defined. These priorities are, first and foremost, the preservation of human life and the prohibition of cooperation with contractors from the aggressor state. To ensure that such provisions are not just "facade values," their implementation mechanisms (ways of implementation) should be defined in the codes themselves.

Conclusion

At the appropriate stage of society's development, approaches to regulating relations, including those related to economic activity, change. The means of electronic trade are constantly changing. The current state and its development indicate the emergence of new integrated forms of electronic trade, globalization of means, strengthening of consumer protection and liability for non-compliance.

An important feature of the means of self-regulation of electronic trade is that their use is based on technologies, methods, approaches, tools that are perceived by society as innovative at a certain point, so the level of self-regulation in it is the highest at the beginning of the use of innovations, until all positive and negative practices of application are studied, and state regulation has not been widely implemented in certain business processes.

The flexibility of electronic trade regulation makes it possible to develop standards, codes of practice, ethical codes, detailed internal policies and trust marks with appropriate implementation mechanisms (ways of fulfilling certain provisions) and sanctions for non-compliance. The rapid adaptability of electronic trade to innovative changes and the latest technologies makes it possible to use high-performance technological solutions as self-regulatory means. The effectiveness of self-organization of electronic trade simultaneously helps to reduce administrative costs of state control and introduce effective monitoring of compliance with established standards, internal policies, rules, practices, and ethical codes.

The level of national economic security can be measured both by compliance with mandatory provisions of transnational and national public policy

and by the benefits of self-regulatory practices of electronic trade. Self-regulation of electronic trade may become a threat to human rights in the absence or improper determination by the state of the limits of self-regulation, i.e., failure to balance the interests of business entities and consumers, and to comply with mandatory provisions of transnational and national public policy.

In the context of war, self-regulation of electronic commerce requires its implementation on such ethical principles as preservation of human life and prohibition of cooperation with counterparties whose place of origin is aggressor states and their allies supporting the policy of military aggression. The war and ethical business practices have defined new aspects of responsibility of electronic trade entities. Electronic trade entities should remember that trade with the aggressor state (Russia) and its residents, as well as those who cooperate with them, means support for mass murder, genocide of the Ukrainian people and other peoples, destruction of cities, and irreparable environmental damage. Trade in blood is unacceptable and will never have moral and ethical support. That is why compliance with sustainable development, as defined in many international documents, cannot be ensured when an aggressive war is ongoing.

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