The Law of the Digital Economy a Reality for Legal Relations in the Future - New International Investment Protection

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Abstract

Trade through information and communication technology, production of goods, services made with the help of programs and computers are certainties and normality's of social behavior. Services assisted by artificial intelligence no longer surprise users, individuals, and representatives of private and public law persons, becoming social and economic normality. We believe that legal relations in the digital economy must be reconsidered. The legal subjects are, in this case, software producers, traders, users of robots and/or bots, as well as beneficiaries of virtual services. The law of the digital economy is a reality in legal relations. Authorities must regulate these complex legal relationships based on legal rights and responsibilities. Digitization sometimes makes the economy work without knowing the physical location, the fiscal domicile of the operators, having only an address on the website that is or is not under national or interstate authorities. Also, parallel monetary flows are created that benefit only from the protection of "confidence in the system" and do not benefit from accredited public monetary authorities. In this whole process, the new regulations have an increased potential to bring specific protections to international investments. The research methods used are scientific documentation, observation of the phenomenon and the differences between the subjects and the object of law in the classical economy compared to the digital economy. The results of the study will constitute a basis for reflection for the authorities, for the business environment and researchers in the field of law. Starting from this study, proposals can be created to amend the current legislation. The implications of the study are a completion and revision of civil law, commercial law, criminal law and tax law with the elements determined by digital technologies that serve the acts and facts that generate liabilities. The persons who handle the digitized instructions can also be held responsible for the execution of acts and facts in the digital economy.

Keywords*: artificial intelligence law, the law of the digital economy, civil law.*

JEL Classification*:* K13, K24, K33

1. Introduction

Society is naturally transitioning with the economy from the classic model based on human-to-human interaction and transactions marked and written on paper to a new economy based on information and telecommunications technology that we will define as the "digital economy". Contributing to this digital economy are several elements based on the digitization of production or business processes, the transfer of data in portable digital format, and financial transactions based on electronic banking applications.

We can say that the systems in the economy now are hybrid and operate based on legal relations of civil law, commercial law, competition law or investment law unanimously accepted by legal subjects (individuals, legal entities under private law, legal entities under public law). Basically, the society uses the digital economy which

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has components: commerce, services, and online monetary transactions. This social phenomenon is perceived as ease and speed in making a purchase or sale on the Internet with instant payment of the service and product. The Covid-19 pandemic has accelerated these digitization processes in the economy and in administration[2]. The rapid evolution of the digital economy has brought numerous challenges and opportunities, requiring the establishment of an appropriate legal framework to govern the dynamic and complex nature of digital transactions. Will investment treaties support some changes in the architecture of treatment and protection standards? This challenge requires exploring the emerging field of digital economy law and its implications for legal relationships in the future[3]. The question may arise: will digital investment law take root as a sub-branch of international investment law? Are the principles and standards of investment treatment that we currently have complete?[4]

2. The law of the digital economy - a reality for legal relations in the future

The digital economy, characterised by the use of advanced technologies, data-driven innovation and online platforms, has transformed the way businesses operate and interact globally. But this digital transformation has also generated unique legal issues, including data protection, cyber security, intellectual property rights and cross-border transactions, requiring a more tailored legal framework to address them effectively[5].

In the face of these challenges, this article sets out the main ground for justifying the need for new international investment protection measures to facilitate and protect investment in the digital economy. Traditional investment protection mechanisms, designed primarily for physical assets, may not adequately address the unique risks and concerns associated with digital investment. We therefore support the development of innovative legal instruments that adapt to the complexities of the digital economy and provide adequate safeguards for both investors and host states[6].

Clearly, there is an ever-changing landscape of international investment law which highlights the need for harmonisation and standardisation in the regulation of digital investment. Also, within this landscape, the role of international organisations, such as the World Trade Organisation (WTO) and the International Centre for Settlement of Investment Disputes (ICSID), in shaping the legal framework for digital investment and ensuring a balanced approach that promotes investment while protecting public interests needs to be explored in terms of new technologies.

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[2] See specific considerations in Cristina Elena Popa Tache, *Defense or cooperation between states and international investors in times of crisis?,* „Juridical Tribune-Tribuna Juridica" Volume 11, Special Issue, October 2021, pp. 380-394.

[3] Rodrigo Polanco, *The Impact of Digitalization on International Investment Law: Are Investment Treaties Analogue or Digital?*, in „German Law Journal", 24(3), 574-588, 2023, doi:10.1017/glj.2023.30.

[4] See August Reinisch, *Advanced Introduction to International Investment Law*, Edward Elgar ed., 2020, p. 107 and Rudolf Dolzer, Ursula Kriebaum & Christoph Schreuer, *Principles of International Investment Law*, 3rd ed., 2022, Oxford University Press, p. 16.

[5] Matthew Stephenson, Mohammed Faiz Shaul Hamid, Augustine Peter, Karl P. Sauvant, Adnan Seric & Lucia Tajoli, *More and Better Investment Now! How Unlocking Sustainable and Digital Investment Flows Can Help Achieve the SDGs*, „Journal of International Business Policy", vol. 4 (1), 2021, p. 152, 158.

[6] Julien Chaisse & Cristen Bauer, *Cybersecurity and the Protection of Digital Assets: Assessing the Role of International Investment Law and Arbitration*, „Vanderbilt journal of entertainment and technology law", vol. 21 (3), 2019, p. 549, 559.

The solutions are almost unanimous and revolve around improving international investment protection in the digital economy, including the establishment of specialised dispute resolution mechanisms, the development of model investment agreements tailored to digital investment, and the promotion of international cooperation in effectively managing emerging legal challenges[7]. The overall economic context I present highlights the urgent need to adapt the existing legal framework to the realities of the digital economy and underlines the importance of proactive measures to improve international investment protection and promote legal certainty in an increasingly digitised world, so as to stimulate economic growth and innovation while respecting the rule of law. From an overall administrative point of view, the solution seems to fit into reforms with these destinations[8].

The reality is very different from the regulatory system of states or unions of states[9]. Regarding the use of artificial intelligence in production processes, services or works through augmented reality, some smaller states assume the right of artificial intelligence through legislation, going so far as to recognize the robot as an electronic person from a legal point of view. The European Union refrains from marking legal relations in the field of digitization through European regulation, and it does well.

The technical aspects of digitization in the economy are known or anticipated in scientific circles. Society's reaction, however, cannot be known. There are 2 plans: a plan of legal subjects and the population using information technology. Legal subjects access social media platforms through which they communicate and receive information, news, or advertisements. A fraction of these citizens buys and sell products, services and works through the Internet. The second category is that of the population that does not have access to the Internet, does not know this electronic medium for the manifestation of the economy or does not want to introduce digitization in the personal and family daily life. Cyber risks are unknown. This is a real reason why digitization is delayed by state administrations, as it takes time and resources until everyone has access to the Internet[10].

The state or union of states has a constitutional obligation (or by the treaty of operation of the union) to provide active and passive guarantees to citizens. In the situation where the subject of law acts from the territory of the state, the union of states or third states with which the state of residence has an agreement and collaboration treaty, things can enter a legal normality of civil responsibilities and criminal responsibilities. The problem arises when the commercial fact, as an object of law,

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[7] Katarina Foss-Solbrekk, *Three Routes to Protecting AI Systems and Their Algorithms under IP Law: The Good, the Bad and the Ugly,* „Journal of Intellectual Property Law & Practice", vol. 16(3), 2021, p. 247; Cristina Elena Popa Tache, *The EU-China road to the Comprehensive Agreement on Investment*, „Juridical Tribune - Tribuna Juridica", volume 12, issue 4, December 2022, pp. 476-494 and Julian Davis Mortenson, *The Meaning of Investment: ICSID's Travaux and the Domain of International Investment Law*, „Harvard International Law Journal", vol. 51(1), 2010, p. 257, 270, 301.

[8] Cristina Elena Popa Tache, *Administrative Review and Reform Movements from the Perspective of International Investment Law*, in Julien Cazala, Velimir Zivkovic (editors), *Administrative Law and Public Administration in the Global Social System, (Contributions to the 3rd International Conference. Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective, October 9, 2020)*, ADJURIS – International Academic Publisher, 2020, pp. 212-217.

[9] Gabriela Teodoru, *Restrictions on the Sale of Agricultural Land. Controversies National Law - Union Law,* in „Perspectives of Law and Public Administration", Volume 11, Issue 1, March 2022, p. 146, 149.

[10] Felicia Bejan, *Cybersecurity and Cybercrime: Challenges of an Invisible Space*, in „Perspectives of Law and Public Administration", Volume 11, Issue 1, March 2022, p. 5, 8.

manifests itself from an area where the state of the resident does not have collaboration agreements, exchange of information, mutual recognition of justice mechanisms. Many crimes in the online environment have an origin and an imprint of the perpetrators that is lost in the multitude of networks and servers that make up the Internet. The citizens and the investors also need protection more than yesterday[11].

These premises have many unknowns and do not currently allow for active, timely legislation to regulate complex activities in the digital economy and e-commerce. To understand better, we present you a real situation: *a user, a natural person, accesses a web page on the .com or .io domain and buys an electronic product. Pay through the website for the value of the product and indicate the physical address where the courier is waiting with the purchased goods. The financial flow of the payment of money is diverted through several accounts, after which its detection by law enforcement bodies is extremely difficult, almost impossible, especially if the value is converted into cryptocurrencies. He does not receive the product and goes to the authorities, where he makes a complaint. Most of the time, the judicial bodies find that the act is produced from areas where there are no collaboration agreements and not even a writ of mandate can be made.* It is a trivial case, which is multiplied thousands of times. The authorities are hindered in solving the case by the lack of territorial competence.

We do not want to take the discourse into an exclusive area of digital information, where specialists have more to say as engineers and cyber security technicians. However, we would like to point out that the legal relationships in the digital economy must be reconsidered. In the digitalization equation, which helps us but also affects us, man is behind the acts and deeds. What is seen is a transformation of objects from their physical, natural, known state to a digital state, which creates added value, sometimes unjustified, but unanimously accepted by society. Here we mean a newly created market of NFTs (non-fungible token) and a financial-banking market created outside of state authorities through the use of digital "currencies", which have a degree of trust induced in the population without any guarantee of realized value (spectacular increase in value is equivalent to high risk)[12].

The specialized literature is scarce in the field of digital economy law. There is in-depth research in the field of the digital economy and separately in the field of artificial intelligence law. Some researchers[13] focus their research on the legal relationships that appear in cryptocurrency transactions (cryptocurrencies – bitcoin, Ethereum, etc.). Of course, these digital economy transactions handle very high values and create discomfort for investors because these digital assets are extremely volatile.

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[11] Qianwen Zhang & Andrew Mitchell, *Data Localization and the National Treatment Obligation in International Investment Treaties*, „World Trade Review", vol. 21(4), 2022, p. 392. See also Federica Cristani, *Economic Cyber-Espionage in the (Post)COVID-19 Era in Europe: Which (new) Challenges?*, in Modern Law in the Era of Social Change: [Proceedings of the XI International Scientific and Practical Conference, Kyiv, National Aviation University, February 26, 2021] Vol. 2. - Ternopil: Vector, 2021, p. 39-41.

[12] See Cristina Elena Popa Tache, *O corelare a cripto-activelor cu dreptul internațional al comunicațiilor și al noilor tehnologii /A Correlation of Crypto-assets with International Law of Communications and New Technologies*, in „Revista de Drept Bancar și Financiar", nr. 1/2023 (January - June), Ed. Rosetti online.

[13] Juliya Kharitonova, Larissa Sannikova, *Digital Economy and Law: Russian Experience*, Proceedings of the 1st International Scientific Conference „Legal Regulation of the Digital Economy and Digital relation: problems and prospects of development" (Larder, 2020), Advances in Economics, Business and Management Research, Volume 171, p. 103, 104.

The mentioned research defines in a broader sense the concept of crypto assets (in a letter signed under the pseudonym Satoshi Nakamoto the system of electronic transactions was proposed to be based on the power of cryptography and not on the trust of intermediaries with the role of financial institutions). Volatility is currently known, and we can see that financial transactions through cryptocurrency generate extremely complex legal relationships on which the law will have to provide explicitly how and under what conditions digital assets can be created and how they can be applied as digital rights. Some countries equate digital currency transactions with securities market transactions. Some countries have seen fit to actively participate in the cryptocurrency market, and this market will be regulated by the intervention of the respective state. The state is a regulator of monetary flows.

Another theme entering the academic world debate with the same profile is related to human rights in the digital paradigm[14]. The researchers conclude that human rights come first, and the legal aspects of artificial intelligence come second.

Research into the digital economy[15] began timidly in the last 20 years, as scientists sensed that artificial intelligence would have an ever-increasing impact on everyday life. The perception of economists was that the new technological wave creates consequences in society, either positive or negative. Much later, legal research comes and raises a series of questions and subjects to debate the modification of legal relationships of commercial law, civil law, and finally constitutional law. The debates are still at the level of some ideas. Conclusions, even if anticipatory, are too early to emerge. Cases and routine will generate imbalances between civil society, the private economy, and the state authority, so that the state authority must regulate legal relations to prevent financial and economic crises at the state and regional level, but also situations of insolvency and bankruptcy at the level of economic operators.

These parallel monetary value flows can fuel criminal activities such as terrorism, human trafficking, drug trafficking and others. Also, the digital money economy can be used extremely easily to undermine the economies of third states by private interest groups or the interests of other states. At this point I want to draw attention to the fact that digital information manipulates society both civilly and commercially, quickly, well and on a large scale of the population. Fake news is not only used by the "bad guys" who have visible goals but is used in the online environment to determine a blurred picture at the level of states from which a "capability" can emerge.

These parallel societies, human and digital society, create great dangers for society as a whole and the constitutional order. Cybercrime has no territorial limits and no state borders. We believe that the main method of correcting the negative influence of digitization in society and the economy is the method of teaching the population about cyber risks. In this sense, I noticed that Northern European countries have academic programs developed by universities with addressability to individuals and entrepreneurs. Courses developed in academic settings teach the public how to protect themselves from cybercrime and how to broadly distinguish good information from harmful information.

In the digital economy, legal liabilities are not properly personalized. In the

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[14] Gaia Marcus, *Human Rights and the new(ish) digital paradigm*, p. 35-43, www.sas-space.sas.ac.uk/6205/1/06marcus.pdf, accessed in 25.03.2023.

[15] Fillippo Bertani, Linda Ponta, Marco Raberto, Andrea Teglio, Silvano Cincotti, *An economy under digital transformation*, 2019, www.mpra.ub.uni-munchen.de/94205, accessed in 25.03.2023.

digital economy we can have: machine (hard); the program (software); communication networks (networking); archives and servers for information storage, and even processing, both physical and online (cloud). For all these elements we have civil and criminal liability in case of damage. Liability from a legal point of view can be individualized when the cause of the damage can be proven and demonstrated, but we can also be in a situation where we do not distinguish the real cause. The crime can be generated by a combination of circumstances, just like the civil liability. In an event, the cause can be from the car manufacturer, software creator, seller, or commercial intermediary to the disruption of the accuracy of the information, which flows through the data network. Another cause can be data compromise in the big database (Big Data). All these elements, analyzed independently, generate legal relationships and commercial or criminal civil liabilities that are easy to solve. The complexity of the case, from a legal point of view, appears when the litigation has several legal subjects and each one believes that he is right, being a professional in the field niche in which he is active. We cannot imagine a robot without electricity and software with instructions. In this context, the law of artificial intelligence appears with derivatives towards the law of the digital economy, where the legislation must cover the responsibilities for the mistakes of the electronic machine or the software that acts independently of the physical machine (chat bot).

Although the planetary enthusiasm is to transfer activities into the digital sphere, the human factor cannot be replaced. A software with too high a security level of digital processes is very difficult to modify to remove the effects of errors. A reduced human involvement in socio-economic activities generates a form of autism, leaving creativity beyond the reach of the algorithms on which software programs are based. The takeover of human activities, both social, communication, administrative, but also economic, must be well analyzed, since the digital society, even economic, significantly reduces the attribute of the classic society, based on human intelligence, human labor, and creativity, in same time. It is well known the situation in which computer platforms generate profitable human activities, but they are not commercial companies with economic activities in the field. Some researchers[16] identify that IT platforms that digitally collect the price of services are in other regions or countries, and workers perform in a certain country and receive only the price of the work performed, not the service. The difference between the price of the service and the cost of the work is a profit that is aggregated and settled in another state. In this situation, a series of legal relationships in fiscal law intervene where the state authorities have direct interests because their public budgets are affected.

The theme constitutes a serious basis for multidisciplinary activation of the scientific and academic factor to find premises for solutions. I start from a legal and economic vision in these mixed reports with artificial intelligence influences, ubiquitous in everyday life and in all administrative fields, private economy, macroeconomics, sociology, psychology, law[17]. Scientific research must find the middle line of influence

[16] Nicolas Van Damme, *Law Evasion in the Platform Economy: The Uber case*, 2019, Faculty of Law, Institute for Contract Law, KU LEVEN, https://www.law.kuleuven.be/rechtsmethodiek/en/platform-economy/3.%20Nicolas%20Van%20Damme.pdf.

[17] See for a comprehensive analize, Cristina Elena Popa Tache, *Elemente de dinamică transdisciplinară în dreptul internațional public (Elements of transdisciplinary dynamics in public international law)*, Ed. Pro Universitaria, Bucharest, 2023, p. 5-75.

of digitization in everyone's social and professional life. A software and machine or even a database corrupted by cybercrime affects millions of citizens. Digital technology can create a million fake accounts on social networks, manipulated by a small team of specialists in IT, social psychology, to generate false moods among users. These fake accounts can be deleted and annihilated by cyber security structures in a much longer time than the time required to create this invisible army through digital fake accounts. In this context, we believe that the field of artificial intelligence law, the law of the digital economy must be the subject of special legislation, also created through the contribution of information protection structures, external defense protection and internal public order protection[18].

Rapid technological change and the development of digital technologies have led to significant transformations in the business environment and in the way international transactions are conducted. International investment law needs to adapt to the challenges and opportunities created by the digital economy. New technologies, such as blockchain, artificial intelligence and the Internet of Things, have created new types of investments and generated new types of investment disputes. Protecting investments in the digital age requires a more innovative approach than ever before. States and international organisations need to develop a legal framework that responds to the specific needs and challenges of investing in the digital economy, and we cannot exclude updating existing international agreements on investment protection and developing new legal instruments that respond to the specific problems of digital investment, including when it comes to data protection and privacy (local data storage requirements and specific international data transfer requirements)[19]. By adopting appropriate policies and regulations, we can create a favourable legal environment for investment in the digital economy, thereby promoting innovation and the sustainable development of international trade relations[20].

3. Conclusions

The issue of artificial intelligence is of interest to all of society, both civil and military, but also in relation to the structure of the public and private sectors.

As I stated, artificial intelligence is ubiquitous in society and implicitly in the economy. There is a classic economy, which relies on digital technologies, and in parallel, digital economies are developing, which create definite added value, even in the absence of the use of labor. The European Union encourages and allocates financial funds for the digitized development of economic processes, implicitly resulting in a digitization of the economy. It is not a singular case in which the authorities invest in digitization. All the states of the world started in this competition. The question is how far from digitization and artificial intelligence will go and how the legislation will be

[18] See Raphael Auer, Codruta Boar, Giulio Cornelli, Jon Frost, Henry Holden & Andreas Wehrli, *CBDCs beyond Borders: Results from a Survey of Central Banks*, 116 bis papers 22 (2021).

[19] Toan Huu Bui & Van Phuoc Nguyen, *The Impact of Artificial Intelligence and Digital Economy on Vietnam's Legal System,* in „International Journal for the Semiotics of Law" 36, 2023, p. 969–989. https://doi.org/10.1007/s11196-022-09927-0.

[20] Binder, Christina and others (eds.), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer*, Oxford, 2009; online edn., Oxford Academic, 1 Sept. 2009, https://doi.org/10.1093/acprof:oso/9780199571345.001.0001, accessed 11 July 2023.

updated so that human rights, intellectual property rights and the right to classified information are not violated.

There are several recommendations at UNESCO level from which we note the recommendation "Member States and public authorities should carry out a transparent self-assessment of existing and proposed artificial intelligence systems, which, in particular, should include whether by adopting artificial intelligence systems is adequate. Member States should encourage public entities, private sector companies and civil society organizations to also involve AI by considering "adding the role of an independent AI ethics officer" or through another mechanism that can oversee the ethical impact of artificial intelligence. Member States with the support of UNESCO are encouraged to create a network of independent ethics officers in artificial intelligence.

In the area of data policies, efforts should be made to develop data governance strategies that ensure continuous assessment of the quality of training data for AI systems. We refer here to data collection and selection processes, data protection and security measures, but also procedures to know good practices and mistakes among all actors using artificial intelligence. There is a need for a clear and coherent legislative framework that allows guarantees regarding the processing of sensitive data, transparency, but also the possibility for individuals to access and delete their personal data remaining in artificial intelligence systems.

The new generation of legal scholars must be active in legal relations in the field of digitization, artificial intelligence, digital economy, and augmented reality. At this moment, questions are raised with few answers on some theses from which to obtain a challenging answer to society and implicitly to the constitutional authorities "if the computer-soft-network-robot/bot complex defined as artificial intelligence can or cannot be designated a person in the legal sense". We are of the opinion that it cannot be, since any machine based on digitization does not have reason, does not have the competence to do, except within the limits of the software instruction, and cannot be held responsible for damages, since it does not have emotions, feelings, and the absence of energy reduces the whole to a bunch of plastic and metal components.

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