

E-Banking in Albania: The Legal Framework, Its Practices and Challenges in Today's Reality

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Abstract

In the modern society based on the free market and private property, an important place has the banking system and banking operations and those on line, therefore the study and knowledge of this legal field in theoretical and practical terms is of particular interest in the Albanian reality. Today, when the Internet and the endless possibilities it offers constitute a considerable part of the civil and legal operations, the analysis of these relations about banking system and in particular the role of banks in the online contracts, serves the recognition and further development of reality itself. Using the Internet as an alternative to transmit customer instructions at the customers' desk, to perform electronic funds transfers, it is one of the most visible aspects of internet banking. In this scientific paper they are addressed the key aspects that accompany the e-banking services, focusing in particular on the typical e-banking contracts and security in online banking operations. There have been provided in a summarized way, through a chronological and historical analysis, the main aspects of this relationship, its development and approach to judicial practice, as well as several theoretical and practical recommendations.

Keywords: e-banking, Albanian legal framework, internet banking etc.

1. Introduction

1.1 Theoretical definition and understanding of e-banking nowadays

The majority of banks are present on the Internet with an introductory page, which offers general information on the services it provides. However, internet banking is a step above, as this service allows customers to have access to their accounts 24 hours a day, 7 days a week, directly, regardless of their location, at home, while traveling, at office etc, choosing financial operations that wish to perform. In other words, internet banking can be defined as one of the distance services, by which, through electronic access, the customer may engage in financial activities. Referring to the definition in the Oxford dictionary that states "*E-banking includes all banking operations carried out via the Internet*"¹, it is noted that the definition is comprehensive, because as it can be imagined, the future of this service is borderless. The concept of electronic banking or e-banking, although generally relates with modern information technology, in technical terms e-banking precedes the internet era by several decades. The beginning of its use dates back to the late nineteenth century when the telegraph was used for the transfer of financial funds. Although it does not respond to the modern profile of e-banking this way of funds transfer represented innovation for the time. Legal problems posed by this service are similar to the modern ones. Despite early use, the concept of banking via the Internet has evolved spontaneously proportionally to the development of world wide web. The Internet was a new way for the distribution of banking services. Initial form of these online services, which needed a computer, modem and software, were presented at the end of 1980 (Mahmood Shah and Steve Clarke 2009). This initial form did not have a huge expansion and many similar initiatives were suspended. In 1983, Nottingham Building Society², it launched the first service of Internet banking in the UK. This service formed the basis of subsequent services of the same type. Although quite innovative for the time when the service was provided, it was not sufficiently developed and limited the number of transactions and functions that account holders could perform. Major technological development during the 1980s and 1990s and the growing importance of information and communication increased competition by strengthening the technological development in the banking sector as a result of e-banking. With the development and dissemination of tools and other electronic services in the mid-1990s, banks renewed their interest in methods of distribution via the Internet. In subsequent years, the last 30 years mainly, the

¹<http://www.oxforddictionaries.com/definition/english/e-banking>. Last seen on May 5, 2015.

²One of the largest banks of the second level in the UK.

online banking service received huge expansion development. Development and mass dissemination of the Internet in early 2000 raised speculation that the opportunities for Internet services firms were missing since the offer was comparatively greater than the demand for them (Mahmood Shah and Steve Clarke 2009).

Although e-banking is widely used nowadays, in the European area is missing a separate legal definition or even the regulation of the legal framework through a special directive. However, this is because European Union regulates this service within the commercial services through e-commerce directives and directives on the functioning of the banking system. Authors Mahmood Shah (2009) and Steven Clarke (2009) define e-banking as: *"Providing information about a bank and its services via a world wide web site (WWW). More sophisticated banking services provide consumers access to their accounts, the ability to move their money among different accounts, make payments or to apply for loans through electronic channels"*. Another author Apostolos Gkoutzinis in his book "Internet banking and the law in Europe" defines e-banking as: *"Provision of banking services, startup and transfers of payments through the banking system through electronic systems and other advanced technologies of information"*. E-banking, by its very nature is seen as a financial or banking activity which is carried out electronically and includes only some of the financial operations above mentioned. By the very nature of e-banking, but also of the action itself, the services that e-banking electronically enables users mainly include: send and receive personal and general information; reflection of the account and / or flow in the account; bank data recording of the client beneficiaries; delivering national and international payment orders; fund transfer between accounts of the same client and / or in favor of other customer accounts of the bank; utility payments; direct-debit; standing order; payroll-list of payments; overview of exchange rate, credit cards, etc.

Internet banking provides customers the ability to access their accounts practically at any time and perform any type of banking service in any place and at any time. From an economic perspective, the tools of information technology and computer networks have increased automation, speed and standardization in communication and internal management, enhancing customer convenience and functionality and reducing back-office and front desk costs (Allen Berger, 2003).

2. Albanian and European Legal Basis

The banking system in Albania, namely the activity of commercial banks, is regulated by Law No. 9662, dated 18.12.2006 "On banks in the Republic of Albania". The persons exercising banking and financial activities are Subject to this law, as defined in Articles 4 and 54³. However we note that this law does not provide any definition of e-banking neither does regulate the service. Indirectly, Article 129 speaks of electronic payment systems and their equality by sending a written order. Article 4⁴ and 21⁵ are important in this respect, as in support of these articles, the Bank of Albania, with the decision of the Supervisory Council approved the Regulation No. 28, dated 30.03.2005 *"For supervision of electronic banking transactions"*. This regulation constitutes the main legal framework of regulating e-banking in Albania. In reference to Article 4 of this regulation, we find Albanian definition for e-banking, "E-banking is a distance service through electronic channels of distribution and communication, of products as well as of new and traditional banking services within the permitted activities for second level banks". Given the weight that occupies European legislation in Albanian legislation, but also the aspirations of our state to become part of the European Union, I think it is essential the study of the European legal framework regarding e-banking. Influence of Community legislation is significantly felt in our domestic legislation, this also due to the demands of the Stabilization and Association Agreement (SAA). European legislation on the contractual aspects of e-banking is a fusion of contract law, the law of relationship banker - customer and, depending on the specific aspects of the law which regulates banking contracts and services. This legal arrangement is usually found in common law countries respectively in England but also in civil or commercial encodings of civil law. (For example France, Germany) (Ross Cranston, C. Gavalda J. StouZet 2002). Electronic transfers of funds carried out via the Internet, are members of the extended family of electronic banking applications and electronic funds transfer (EFT), which include any kind of payment transaction, conducted through an electronic device, telephone instrument or computer or magnetic tape in order to command, instruct or authorize a financial institution to conduct banking activities. Electronic transmission of customer mandate is the first step of a more standardized process of determining the mutual

³Article 2 of the law.

⁴Article 4 of the Law on the Bank of Albania states: Bank of Albania is entitled to: a) enter into contracts; b) issue normative acts; c) possess, enjoy, dispose as well as acquire movable or immovable assets that serve its activities; ç) deal in securities, distribute securities on behalf of the Government of the Republic of Albania and issue securities for its own account.

⁵Article 21 of the law states: "The Bank of Albania, in cooperation with other banks, is entitled to establish regulations and procedures for performing payments through instruments used as means of payment as well as for electronic and telegraphic funds transfer services".

position of the bank debit and credit of the debtor and the beneficiaries and the transfer of the value from the debtor's bank to the beneficiary's bank to the final settlement of the debt that the first owes to the latter. The Internet is used as transmission intermediary of mandate and communication of the significant information about the transaction, digitally, among the bank and its customer. From a contractual perspective, the bank must carry out the customer mandate with reasonable care and skill.

In the European Union there is still no specific directive to summarize the regulatory framework for e-banking, but despite this, the legal basis for the regulation of the service is shared among several directives and regulations. The main directive, which constitutes the foundation stone in terms of European law in the field of banking systems, is the Codified Banking Directive which summed up a large number of EU Directives. This codification aimed at creating a single legal text to ensure clarity, simplification, and practicality of this legal framework. Codified Banking Directive was redesigned in 2006 at the so-called Directive regarding the establishment and monitoring of the business of credit institution 2006/48 / EC due to the numerous amendments made to it; *Directive 97/5 / EC of January 27, 1997 on cross-border credit transfers, regulates transfers of credits to natural persons or businesses from one EU country to another, rapidly, efficiently and safely*; E-money Directive, Directive 2000/46 / EC of September 18, 2000 regulating, monitoring, prudential supervision of the business of electronic money institutions, aims at promoting the single market of financial services with the introduction of a minimum number of maturity rules, harmonized for the issuance of electronic money and applying measures for the mutual recognition of supervision provided for in Directive 2000/12 / EC², of electronic money institutions. The amendment introduced by Directive 2000/28 / EC of September 18, 2000 on the definition of credit institution in Article 1, paragraph 1, first subparagraph of Directive 2000/12 / EC of March 20, 2000 in connection with the initiation and pursuit of the business of credit institutions obliging institutions which do not intend to enter the full range of banking operations to issue electronic money in accordance with the basic rules governing all credit institutions. Directive 2005/60 / EC of the European Parliament and of the Council of October 26, 2005 "On the prevention of the use of the financial system for money laundering and financing of terrorism"; *EU Directive "On data retention"* (2006/24 / EC) provides an obligation for providers of public electronic communications services and public communications networks to carry data location for six months to two years for purpose of the investigation, detection, and prosecution of serious crime. *Directive 2000/31 / EC "On electronic commerce"*, *Directive 94/19 / EC* of the European Parliament and of the Council dated May 30, 1994 "On deposit guarantee schemes"; *Directive 2002/65 / EC* of the European Parliament and of the Council dated September 23, 2002 relating to "distance marketing of consumer financial services" which amends Council Directive 90/619 / EEC and Directive 97/7 / EC and 98 / 27 / EC. This Directive should be implemented in accordance with the EU Treaty and Directive 2000/31 / EC "On electronic commerce", the second one applicable only to transactions it covers.

Undoubtedly the legal framework needs to be summarized in a single directive or regulation which would broadly regulate e-banking service.

3. The Development of E-Banking in the Albanian Reality

Traditionally the services offered by second level banks in Albania are deposits, current accounts and bank transfers. Deposits have been the most famous and most used product, but government interference in economic policies through efforts to minimize cash transactions forcing state institutions to perform payment through the banking system, consequently brought recognition and rapid development of other services, among the most common mentioning loans, overdrafts, credit cards / debit etc. Obviously being traditionally unknown services, some users were skeptical, but gradually, with the increase of information and the advantages that these services provide, their use is found huge expansion. In this process, we can say that the banks have the major role in educating the public concerning new services. In view of this aim, regulatory requirements have been tightened for transparency of bank operations with the public as the publication of working conditions clearly and easily accessible to enable their comparison between banks⁶. The first bank that has provided the "Internet banking" service is the American Bank of Albania in 2002. Obviously, with the new developments, the other banks have not remained behind. Raiffeisen Bank through MultiCash, provides the transfers service. Also, the National Bank and Credins Bank provide services online. The above facts ⁷talk about Internet banking in its beginnings, in Albania. Although in the Albanian market there are banks that have the support of the powerful foreign bank groups, this service is not yet developed. The main reason is the cost - benefit report. If there is no

⁶ "Banks in the era of the Internet" electronic edition of the Bank Albania, www.bankofalbania.org, last seen on April 18, 2015.

⁷The above facts are taken from the bulletin of the Bank of Albania "Banks in the era of the Internet", www.bankofalbania.org, last seen on June 18, 2014.

significant number of clients that will use this service, the costs associated with the provision of the service, would bring loss to banks. On the other hand, if a certain service is not provided it is difficult to be determined the number of its potential users; the telecommunications infrastructure remains foremost, since its development brings positive effects in e-banking service as well. Obviously in the development of e-banking, the Bank of Albania plays a significant role, by adopting regulations which form the legal basis for this service. The existence of a solid legal basis over recent years has contributed significantly to the spread and development of e-banking. Given the progress of products of cards and credits, internet banking possibly will have an even more rapid development in the future in Albania. However, this will depend first and foremost on the security that banks will provide regarding this service and secondly, on the transparency with customers.

3.1 Licensing for performing e-banking operation

According to the law "On the Bank of Albania" the only authority responsible for issuing licenses and supervision of all banks in the Republic of Albania is the Bank of Albania. In Law no. 9662, dated 18.12.2006 "On banks in the Republic of Albania" and in the bylaws issued by the Bank of Albania there have been defined criteria and requirements to obtain a license for conducting banking and financial activities by banks and non-bank financial entities. In implementing their strategies, banks continually require additional activities, products and services that they provide. Requirements for approval of additional activities and other banking products are made in support of the legal provisions and the normative acts of the Bank of Albania. Referring to Article 6 of Regulation No. 28, dated 30.03.2005 "On supervision of electronic banking transactions", the bank can perform e-banking activities only after verification of the fulfillment of the conditions by the Bank of Albania. After performing the required actions, the commercial bank notifies the Bank of Albania to conduct the verification.

Banks should meet the following requirements:

- i) Board of Directors must make a decision on the conduct of e-banking activity;
- ii) assessing the effects of the use of e-banking in the outcome of the bank through the financial statements for the next three years;
- iii) the commercial bank submit to the Bank of Albania the list of banking transactions that they will perform along with communication channels to be used, the procedures of e-banking functioning and internal control program for this purpose, information on technical requirements, the agreement on electronic support, etc..

In addition to its supervisory function, the Bank of Albania may order the bank to partially or fully suspend e-banking service, if during the supervisory process it is noted that the bank did not comply with the requirements of Regulation⁸. A part of international banks offer e-banking services regardless of location, through interactive online pages as well as licensed branches or banking subsidiaries. International banking activity is an expansion of electronic banking business in foreign markets. So we have an expansion of communication channels. Naturally the question arises, whose legislation would e-banking be subject to when the banking operation is performed in a different location than the head office? In response to the question, we can say that e-banking transactions are subject to the law and jurisdiction of the country where performed. In a modern economy that is characterized by mutual cooperation, the question arises whether a bank can expand the channels of communication and as a result the market as well with its existing license or is it necessary to obtain a license in the country of service delivery? The Basel Committee recognizes that under local rules in many jurisdictions, a foreign bank that falls under local licensing banking requirements, should establish a physical presence in the country and to use a seat to conduct transactions with local residents. However, according to the rules in some jurisdictions, local supervisors may allow a foreign bank to receive a license when it offers e-banking products and services in the domestic market without necessarily imposing physical presence. In reference to the Regulation "On supervision of electronic banking transactions", Article 3: "Subject to this regulation are all banks and branches of foreign banks (hereinafter, banks) conducting banking transactions in the Republic of Albania and aiming to perform electronic banking transactions". In a *contrario* interpretation we see that foreign banking entities seeking to provide their e-banking service in the Albanian market, without branches in the Republic of Albania, cannot perform this function with the existing license of the country where they have their bank headquarter. According to Article 3 of the Law on Banks, the bank has the right to open branches, banking agencies, within or outside the territory of the Republic of Albania, as well as to provide cross-border services and to open representative offices outside the territory of the Republic of Albania. The Bank of Albania defines the conditions and criteria for the opening of a branch, banking agency, representative office or providing banking and / or cross-border financial services outside the territory of the Republic of Albania. Given the above

⁸Article 7, point b of Regulation No. 28, dated 30.03.2005 "On supervision of electronic banking transactions".

article, especially the phrase "provision of banking services" we understand that for the provision of a service outside the territory of the Republic of Albania it is the Bank of Albania that considers the right to provide this service depending on the fulfillment of criteria. In addition, referring to the banking law, specifically Article 5, it is provided: "Banking operations in Albania is exercised by: a) banks with headquarters in the Republic of Albania and licensed by the Bank of Albania; b) branch of a foreign bank licensed by the Bank of Albania " and Article 6, paragraph 2, " No subject shall conduct banking activities in the Republic of Albania without a license by the Bank of Albania ", we conclude that: *Although the law is not explicitly stated, by spirit of the law and interpretation of specific provisions, e-banking is a banking activity which cannot be exercised in the territory of the Republic of Albania without a license from the Bank of Albania.* We can understand that the goal of legislators to set this condition has been precisely the customer protection. If a foreign bank would exercise banking activities in Albania with a foreign license without its physical presence, it would be able to avoid the control that exercises the Bank of Albania as well ⁹. This would not only be contrary to the law on banks, but also harms the interests of the consumer / client and the economy in general. Despite the intentions of the legislators are understandable, with the rapid technological development, the establishment of barriers to the expansion of e-banking may bring negative consequences for the economy and investments in our country. Recent developments in the jurisdictional law or international agreements are thought to allow greater convergence in licensing and practice in the future. In this regard, the European Union in the framework of the programs of "European passport" to citizens within the Union, on the basis of mutual recognition has been enhanced in the framework of cross-border services of e-banking anticipating their provision through a simplified licensing procedure. Basically, foreign economic entity is authorized to operate in the foreign jurisdiction, because both countries are members of the EU. Their licensing requirements are considered to be equivalent, by all EU countries.

3.2 The applicable law and jurisdiction in cross-border e-banking contracts

E-banking contract to establish the bank - customer relationship connected within the territory of Albania, is a contract which does not present a problem in terms of jurisdiction. For this contract, in case of disputes, the norms of the Code of Civil Procedure on the jurisdiction of courts are applied¹⁰. The Bank of Albania states that for the provision of e-banking, the foreign bank must be licensed under Albanian law. This can be done by opening a branch within the territorial borders of the Albanian state, but even in this case the jurisdiction problem will be solved under domestic law. Another problem is the case when both parties to the e-banking contract have different settlements. For example: Let us suppose that a customer in country A or otherwise in Albania (the country of destination of services) opens a bank account in a bank that offers e-banking service which operates (is based) on a site B (the country of the origin of services). The customer can use the internet service and account and pay for goods and services in the country B (where the account is opened), or in the country A (where the customer lives, Albania) or in a third country C. It can be seen that although the bank and the client are located in different places, the electronic transfer of funds from the customer's account in country B to the account of a beneficiary in country B would be a domestic credit transfer that does not constitute cross-border transfers. On the other hand, a transfer of funds to the account of a beneficiary in the country A will constitute an international transfer of credit from a bank account in the country B to the bank account in the country A, although the originator and the beneficiary will be residents in the Country A. Moreover, an electronic transfer of funds through Internet service to the bank account of a third country C will also constitute an international credit transfer. If the parties have predicted with agreement, the law which will solve a misunderstanding the conflict of laws does not exist. The problem is when the parties are not expressed in terms of the applicable law. In the European Union the legal and institutional principles of mutual recognition and national control established in the field of financial services by measures such as the Banking Consolidation Directive, the E-commerce Directive and the Markets in Financial Instruments Directive (MiFID), harmonize key aspects of economic regulatory law without affecting national laws conflict in contractual issues. But the contractual aspect of cross-border electronic banking activities, in terms of the law governing jurisdiction, remains unaffected by EU policies in the field of financial services and electronic commerce and subject to the general law on the conflict of laws and jurisdiction, mainly the Rome Convention concerning the law applicable against contractual obligations¹¹ and the

⁹Law No. 8269, dated 23.12.1997 "On the Bank of Albania" amended Article 3, paragraph 4 / c.

¹⁰Article 36-40 of the Code of Civil Procedure.

¹¹Convention on the Law Applicable to Contractual Obligations (Rome, 19 June 1980) consolidated version at OJ 1998, No. C27/34, 26 January 1998;

Brussels Regulation 12. In the hypothetical case above, the parties have different nationalities or have headquarters in one of the member states of the European Union, and therefore the citizen A (not a citizen of the European Union) can not refer directly to the above directives, although they play a primary role in creation of modern legislation. Contractual agreements between parties in different jurisdictions raise the question of which law applies to the contract and which courts would be competent to hear potential disputes. Private International Law by way of a multilateral treaty or convention or, in the case of the European Union, by means of EU Directive or Regulation, aims to ensure that cross-border contracts are governed by the same law. The unification of the conflict of national laws in Europe in the form of the Rome Convention is justified by the benefits of having a contract governed by the same rules in any Convention country, where it might be litigated¹³. The underlying principle of multilateralism in the conflict of laws is the equality of the conflicting legal orders before the judge and the determination of the applicable law on the basis of objective and abstract factors. The *lex fori* is not precluded from being the proper law of the contract but, in principle, it does not enjoy special treatment from the judge, who is instructed to apply the law of a foreign legal system and disregard the national law if so compelled by the choice of the parties or the operation of the objective factors presented by the Convention. In the above hypothetical case, for the conflict resolution, being that between the states involved in this conflict, there is no bilateral agreement (hypothetically we suppose), we refer to Law No. 10 428, dated 02.06.2011 "On private international law". Under this law, the contract is governed by the law chosen by the parties. The parties may choose the applicable law to all or to a particular part of the contract on their own volition. If certain parties have determined the jurisdiction to resolve disputes arising from the contract it is presumed to have chosen the law of that State for the regulation of contract 14. To the extent that the applicable law to the contract has not been chosen, in accordance with Article 45 of this law, "the law governing the contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence¹⁵". Given that e-banking contract is quite similar to a service contract where the bank provides the client with the service constantly then the solution is precisely Article 45.

4. Conclusions and Recommendations

Rapid developments in information and communication technology during the last decades have transformed the way businesses operate, and have resulted in changes in the patterns of global trade for goods and services. Various types of economic operations and financial transactions, from online reservations to financial services, downloads, education, professional services and medical advice, consist of a large extent of digital data. Use of information technology makes these services more accessible, immediate and independent of the location of the recipient or content providers. In this global economic landscape, financial institutions and markets are tried to increase their productivity, reduce costs, increase customer convenience and the development of new products and services. Financial markets have been reformed, funding sources and investment opportunities are already carried out through the internet making the merchants or owners of securities, not to depend on the distance, the lack of personal contact or national boundaries. In the Internet era, the mass use of e-banking is natural. E-banking represents a fairly broad term which concisely means the performance of financial transactions electronically. This service provides convenience, low cost, availability and efficiency in less time. In Albania there exists a legal framework for determining how to operate this service as well as its delivery conditions but we think that the legal framework has room for improvement.

It is the competence of the latter, by simply adjusting the necessity and the variety of civil and legal relations; adopt rules and instructions which, according to technological developments, will update the legislative framework of this service. Through various interpretations, we conclude that e-banking contract is a consensual, formal (for the purposes of validity), negotiable and mutual contract. E-banking contract may be key or accessory contract. To avoid controversy or problems by practice, it should be made a clear definition in the law for the form of this contract, since its formalization practically is seen as a separate guarantee. As a mutual contract, the parties to the e-banking contract are charged with mutual rights and obligations. Some of these rights and obligations are defined in law, such as the supply of uninterrupted service, network security, the right to information etc., while other aspects are in the will of the parties. The parties themselves may decide the term of the contract, the range of services it shall include, the users, etc. Although as

¹²Council Regulation 44/2001 EC of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2000, No. L12/1, 16 January 2001

¹³See Giuliano and Lagarde, *Official Report in: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1980:282:0001:0050:EN:PDF>* Last seen on June 17, 2014.

¹⁴Article 45/1 No. 10 428, dated 02.06.2011 "On private international law".

¹⁵Article 46 (b).

discussed in this paper, it is understood that e-banking contract is a negotiable contract, the practical reality speaks otherwise. After the interest in the main commercial banks in Albania it results that e-banking contract is a standard and little negotiable contract. In other words banks provide customer an adhesion contract and the latter has nothing to do with sign. By e-banking contracts obtained from several banks, it turns out that the conditions are almost identical, with minor fluctuations in commission rates. We think that in this regard necessary measures should be taken.

Firstly we think that the legislation should provide a negotiating framework of this contract, anticipating besides the fundamental rights further details, because in this way it avoids the abusive practice and it remains only the aspect of the customer signature on his will. In this way not only is guaranteed the necessary protection of the customer as the weak party in this contract, but is also avoided the unfair competition in the market and is promoted the freedom of choice.

Secondly changes should be made not only in legislative terms but also in practical terms. Thus, the Bank of Albania must effectively exercise its authority through repeated inspections of this activity.

One of the problems encountered in practice, which is underestimated by the majority of the banks is the customer periodic reporting on the state of his account and the rights they enjoy. In this context, the Bank of Albania as regulatory and supervisory of the banking system, should guarantee clients, mainly, for this legal right, by supervising the implementation of this obligation by Commercial Banks.

Greater interest should be shown to licensed entities of this activity. The Bank is an institution of trust, in this context, the adjustment of the legal framework is of special importance. From the study on the market of e-banking contract it results that often, banks avoid responsibility as contractor damage has occurred, or through complicated and contractual unclear conditions which clients sign often without understanding the obligations assumed or rights to which they give up. These cases present a danger not only in terms of unfair commercial practices, but also by the sensitivity that characterizes this service. The measures proposed in connection with the above difficulties are related to the care of subjects licensing. Carefully study of the ability of candidate subjects to provide the user a secure and qualitative e-banking service, providing adequate information and guided by the principle of mutual trust. Of course through the legal framework the Bank of Albania may stop exercising unfair practices, provide further detailed protection to customer and establish appropriate sanctions for infringements, without ignoring any assertion. The periodic publication of bulletins of the Bank of Albania is a kind of derogation as well. Using these bulletins, making them accessible to the public, the banks can substantially increase the overall information on e-banking service as well as make customers aware of their rights or the risks they may encounter using this service.

In cases of practice, there have been numerous abuses by the users of bank accounts, what gave rise to a series of offenses where the bank executives have been collaborators themselves. By broadly interpreting the provisions on this topic the position was held that the bank is not responsible for the extra damage compensation to the user. This is because all the operations performed in the bank account via e-banking service, are considered to be carried out by the client. However, this position is quite controversial because in this way the user is left unprotected. For this reason I think that the legal framework needs to be amended and specified in connection with the user's status. On the practical and the theoretical side as well the determination of rights and duties of the users as well as the guarantee of legal protection for this subject are of great importance. At first glance, the provision of services via the Internet is not considered to be a typical stimulator of controversies, but studying it closely, we are obliged to hold another position. The Internet reduces distances, creating access to markets and can potentially give greater choice to consumers, especially those in smaller states. This perspective has brought this debate to the heart of politics and interests that operate in the financial markets. Given that e-banking is quite different from other models entering the market, the tension between Internet services and traditional concepts of jurisdiction and market control over cross-border activities has been particularly strong. In a model of mutual recognition of national laws' imperfection and incomplete national control, internet services must overcome one or more of the four main issues: the uncertainty of the applicable law, conflicting laws, information costs, mandatory over adjustment and adaptation of the services and products under the law of each national market, which destroy the possibilities for simultaneous entry into the market by a single location and minimum entry and operating costs. The above problems are characteristic not only of the Albanian financial market but also the European one. Rapid developments in the technological field are not associated with rapid legal developments. On the contrary, the legal aspect sets a lot of restrictions on the right to enter the Albanian financial market, e.g. the opening of a branch of a foreign bank. The reason for these restrictions is of course the customer protection from unfair practices, but we can say that this protection can be achieved by unifying the legal practices regarding the licensing conditions and delivery of e-banking service. Thus, a European Union directive would not only unify the legal framework for e-banking but would also reduce the problems and ambiguities about this service. E-banking is a delicate service in terms of safety. Given that all financial transactions are conducted online, ie through information services, the risk of interference in the network is huge. Cybercrime and identity theft through information technology are some of the main issues and negative aspects of

the service. For this reason it was necessary to establish a legal framework to protect customer interests as the "weak" party in this contractual relationship. The Bank of Albania has provided in a detailed way the protection that should be provided to the customer through specific regulations for e-banking service but also generally among the law "On banks in the Republic of Albania". Customer rights include data protection, the right to information, the security of transactions on the network, etc. What is not provided by law is the measure of responsibility of the bank as well as the exhaustive cases in which it is responsible. Given that the Albanian legislation is silent regarding this aspect, we believe that this legislation should be completed by establishing the liability of the bank to pay the damages to the customer if it did not take necessary measures to stop the flow of this damage or did not take the measures that it would normally expect.

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