

# Benchmarking of existing national legal e-business practices

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Country report - Cyprus

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## Table of Contents

<b>CYPRUS</b>	<b>1</b>
<b>1. General Information on the National Legal System</b>	<b>1</b>
<b>2. Electronic Signatures</b>	<b>2</b>
2.1 National Legislation and Administrative Practices	2
2.2 Cross Border Regulatory Issues	3
<b>3. General Elements of Electronic Contract Law</b>	<b>4</b>
3.1 National Legislation and Administrative Practices	5
3.1.1 Electronic Invitation to Make an Offer and Submission of an Offer	6
3.1.2 Electronic Acceptance	7
3.1.3 Information Obligations in Relation to Electronic Contract Conclusion	7
3.1.4 Standard Terms and Unfair Clauses	8
3.1.5 Choice of Law and Forum	9
3.2 Cross Border Regulatory Issues	10
<b>4. Electronic Invoicing, Payment and Other Matters Related to Execution of Electronic Contracts</b>	<b>11</b>
4.1 National Legislation and Administrative Practices	11
4.1.1 Electronic Invoicing	11
4.1.2 Electronic Payment	11
4.1.3 Withdrawal Period	11
4.1.4 Non Performance	12
4.1.5 Delivery of a good not in conformity with the contract	12
4.2 Cross Border Regulatory Issues	12
<b>5. General Assessment</b>	<b>13</b>
5.1 Main Legal and Administrative Barriers to E – Business	13
<b>Annex: National Legislation on E – Business</b>	<b>15</b>

## **CYPRUS**

### **1. General Information on the National Legal System**

Cyprus is a unitary state. There is a central government comprised of the two communities of the island, namely the Greek and the Turkish community. Cyprus' system of government is a presidential democracy. There is a strong division of the executive, legislative and judicial powers, based on checks and balances. The judiciary is completely independent. Cyprus is a representative democracy, a unitary state, a republic and is based on the rule of law. Rule of law has a decisive impact. All state actions impairing the rights of the people must have a basis in parliamentary law. As a result of the Turkish occupation of the Northern part of Cyprus of 1974, the Republic of Cyprus is prevented from exercising its powers over the occupied territory. The Republic of Cyprus became a member of the European Union in 1 May 2004, but the application of the *acquis communautaire* in the occupied territory has been suspended.

The normal method to implement an EU Directive in Cyprus, regulating a new legislative field, is to make a specific law containing all regulatory provisions. However, if a Directive concerns an already regulated field, the regulatory provisions are often implemented through modification of the existing legislation. All laws are passed by the House of Representatives, with a simple majority vote of the representatives present and voting. Laws come into operation on their publication in the Official Gazette of the Republic.

The judiciary is independent from the executive and legislative organs and is a powerful factor both in legal and social life. The highest Cypriot court is the Supreme Court of Cyprus, which functions both as the supreme constitutional court and as the supreme appellate court of the Republic. Commercial and civil disputes are dealt with by the district courts, but may be subject to an appeal before the Supreme Court. The legal system of the Republic of Cyprus adheres to the common law tradition. Therefore, previous judgments of the Supreme Court are binding for lower courts. Although the most important legal source is written legislation, case – law is of great significance with regard to the interpretation of legal provisions.

In civil and commercial court cases, the parties choose the evidence they wish to bring before the court, but the court will only consider such evidence, if it is relevant and admissible in law. The court has a wide discretion with respect to the assessment of the material that is brought before it, so long as it follows the rules of evidence. Courts have the power to issue interim injunction in those cases where there is a serious matter to be tried, there is some probability that the plaintiff may be entitled to remedies, and there is a danger that unless the interim injunction is issued, the plaintiff may suffer

irreparable damage. The parties of a contract are also free to choose arbitration as an alternative method for the resolution of a dispute.

## **2. Electronic Signatures**

### **2.1 National Legislation and Administrative Practices**

The Republic of Cyprus has implemented Directive 1999/93/EC on a Community framework for electronic signatures by the Law 188(I)/2004 providing for a legal framework for electronic signatures and related issues, which was published in the Official Gazette on 30.4.2004<sup>1</sup>. The aforementioned Law also refers to the Decision of the European Commission 2000/709/EC of 6.11.2000. In general, Cyprus has carried out a very stringent implementation of Directive 1999/93/EC, and has no regulation concerning the contractual relationship between parties who use digital signatures. It should be noted at the outset, however, that there has been no real administrative implementation of the Directive until today. The government is expected to proceed with substantial administrative implementation of the Directive within 2007.

The Cypriot Law describes three types of signatures, namely a) an electronic signature, b) an advanced electronic signature and c) an advanced signature based on a qualified certificate. Only advanced signatures based on qualified certificates are, however, regulated by Law 188(I)/2004.

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Article 4 (1) of Law 188(I)/2004 provides that an advanced electronic signature based on a qualified certificate, is legally equivalent to a written signature, both with respect to substantial law, as well as with respect to procedural law. It is therefore, provided that advanced electronic signatures based on a qualified certificate should be admissible as evidence in legal proceedings in Cyprus. Furthermore, article 4 (2) of Law 188 (1)/2004 provides that even if the electronic signature is not based on a qualified certificate, it may still be considered as admissible evidence in legal proceedings in Cyprus. However, it would seem that in the latter cases, the court must exercise its discretion on whether to accept such electronic signatures as admissible. However, the court may not consider an electronic signature as inadmissible for the sole reason that such signature is in the form of electronic data, or is not based on a qualified certificate, or is not based on a qualified certificate which was issued by a service provider issuing qualified certificates.

The Minister of Commerce<sup>2</sup> is the competent authority, which has the authority for the correct implementation of Law 188(I)/2004,

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<sup>1</sup> 188(I)/2004, Νόμος Πλαίσιο που Προνοεί για το Νομικό Πλαίσιο για τις Ηλεκτρονικές Υπογραφές και για Συναφή Θέματα.

<sup>2</sup> See [www.mcit.gov.cy](http://www.mcit.gov.cy) and [www.cyprus.gov.cy](http://www.cyprus.gov.cy)

including the monitoring and control of all service providers in the Republic of Cyprus issuing qualified certificates, the control that electronic signatures comply with the requirements of the law, which correspond to the requirements provided in Decision 2000/709/EC, the nomination of public or private bodies responsible for compliance with the requirements of the law and Decision 2000/709/EC, as well as the nomination of public or private bodies who have voluntarily applied to act as service providers issuing qualified certificates.

It should, however, be observed that there have been no court judgments so far with respect to the application of Law 188(I)/2004. Therefore, there is not yet legal certainty as to the manner in which the courts will apply the relevant legal provisions, or how electronic signatures will be treated by the courts. Furthermore, there are at present no Certification Authorities which issue qualified certificates in Cyprus. It would therefore, seem that Law 188(I)/2004 has so far been of limited application or practical use, which of course is quite reasonable in view of the fact that the very idea of electronic signatures is an entirely new idea for Cyprus and most enterprises, as well as authorities are not yet accustomed to such electronic signatures. There have not been so far any identity cards with electronic signature issued in Cyprus, nor are such identity cards expected in the very near future.

The Cypriot government has not so far, issued any Executive Orders or Regulations on the basis of Law 188(I)/2004. Nor has the aforementioned Law been widely discussed, or considered by enterprises or authorities. A possible reason for this reluctance of enterprises and authorities to engage in signature technology is the fact that e- governance is still not fully developed in Cyprus, while traditional methods of concluding contracts are well developed. Further, the market in Cyprus is not so large as to justify investment in technologies and institutions that have not been yet well - established in other European countries. It is probable that the idea of electronic signatures needs time to grow in Cyprus, before it is widely used in everyday business.

## **2.2 Cross Border Regulatory Issues**

According to article 10 of Law 188(I)/2004, electronic signatures originating in other Member States have the same legal validity and legal recognition, irrespective of their country of origin, and as a result qualified signatures have the same legal effects as qualified signatures originating from the Republic of Cyprus. The same is also true with regard to bodies which have been nominated to provide qualified certificates. In principle, companies which are not registered in Cyprus, but are registered in other Member States may obtain an electronic signature. However, such situations have not really occurred yet, so there is no practical experience.

In addition to the above, qualified certificates which derive from a service provider in a third country, are considered to be equivalent to

qualified certificates which derive from a service provider in a Member State, so long as:

- a) the service provider complies with the legal requirements and has been nominated according to a procedure established in a Member State, or
- b) a service provider from a Member State has guaranteed for the particular qualified certificate, or
- c) the qualified certificate is recognized on the basis of an agreement between the European Union and the third country, or an international organization.

### **3. General Elements of Electronic Contract Law**

Directive 97/7/EC on the Protection of Consumers in respect of Distance Contracts has been implemented through Law 14(I)/2000, providing for the rights and obligations of parties with respect to consumer distance contracts and related issues, which was published in the Official Gazette on 28.1.2000<sup>3</sup>.

Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees has been implemented through Law 7(I)/2000, providing for the protection of consumer with respect to certain aspects of the sale of consumer goods and associated guarantees, which was published in the Official Gazette on 28.1.2000<sup>4</sup>.

Directive 1998/6/EC on consumer protection in the indication of the prices of products offered to consumers, has been implemented through Law 112(I)/2000, providing for the indications of price of sale and the price per item which are offered by the salespersons to the consumers, in order to facilitate the information of the consumers and the comparison of prices, which was published in the Official Gazette on 14.7.2000<sup>5</sup>.

Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce in the Internal Market, has been implemented through Law 156(I)/2004, providing for certain aspects of the information society services and in particular

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<sup>4</sup>. 14(I)/2000, Νόμος που ρυθμίζει τα δικαιώματα και τις υποχρεώσεις των μερών σε καταναλωτικές συμβάσεις που συνάπτονται εξ αποστάσεως και που προνοεί για συναφή θέματα.

<sup>5</sup>. 7(I)/2000, Νόμος που προνοεί για την προστασία των καταναλωτών σχετικά με ορισμένες πτυχές της πώλησης καταναλωτικών αγαθών και των συναφών εγγυήσεων.

<sup>6</sup>. 112(I)/2000, Νόμος που προνοεί για την αναγραφή της τιμής πώλησης και της τιμής ανά μονάδα μέτρησης των προϊόντων τα οποία προσφέρονται από τους εμπόρους στους καταναλωτές προκειμένου να βελτιωθεί η ενημέρωση των καταναλωτών και να διευκολυνθεί η σύγκριση των τιμών.

electronic commerce and for related issues, which was published in the Official Gazette on 30.4.2004<sup>6</sup>.

Directive 1993/13/EC on unfair terms in consumer contracts, has been implemented through Law 93(I)/1996, which introduces restrictive clauses with respect to certain unfair terms in consumer contracts, which was published in the Official Gazette on 8.11.1996<sup>7</sup>.

Directive 2002/65/EC concerning the distance marketing of consumer financial services, has been implemented through Law 242(I)/2004, regulating the distance marketing of consumer financial services and related issues, which was published in the Official Gazette on 5.11.2004<sup>8</sup>. Directive 2005/29/EC concerning unfair business to consumer commercial practices in the internal market has not yet been implemented.

It should be noted at the outset, that the implementation of all of the aforementioned Directives at an administrative level is far from complete. Administrative implementation is expected to proceed more substantially within 2007.

### **3.1 National Legislation and Administrative Practices**

Cypriot contract law derives from the Indian contract Act, 1872, as amended by the Indian Contract Act, 1889, and is also modelled on the English contract law. Cypriot contract law is primarily based on Cap. 149, as well as Law 10(1)/1994 on the sale of goods which was published in the Official Gazette on 11.3.1994<sup>9</sup>. In principle, the conclusion of contracts is not subject to formal requirements, unless otherwise stated in a specific legal instrument. Therefore, a paper document is not required as such, to form a contract, and thus, electronic contracts may be considered to be just as valid as the traditional paper contracts. However, documentation may prove to be of supreme significance in order to prove before a court that a contract has indeed been concluded, as a matter of evidence, and therefore, a signed electronic contract may be needed in order to convince the court of the existence of the contract.

To demonstrate that a contract has come into existence, it is vital to establish that there has been an agreement between the parties. It must be shown that an offer was made by one party and was accepted by the other. Thus, the essential elements of a valid contract are the following: an offer and an acceptance which are in agreement, an intention to create legal relations, consideration, capacity to make a contract and genuineness of consent by the

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<sup>7</sup> 156(I)/2004, Νόμος που προνοεί για ορισμένες πτυχές των υπηρεσιών της κοινωνίας της πληροφορίας και ειδικά του ηλεκτρονικού εμπορίου και για συναφή θέματα.

<sup>8</sup> 93(1)/1996, Νόμος που εισάγει περιοριστικές διατάξεις αναφορικά με ορισμένες καταχρηστικές ρήτρες σε συμβάσεις που συνάπτονται με καταναλωτές.

<sup>9</sup> 242(I)/2004, Νόμος που ρυθμίζει την εξ αποστάσεως εμπορία χρηματοοικονομικών υπηρεσιών προς τους καταναλωτές και προνοεί για συναφή θέματα.

<sup>10</sup> 10(I)/1994, περί πωλήσεων αγαθών νόμος.

parties to the terms of the contract. The contract must not be contrary to public policy.

### *3.1.1 Electronic Invitation to Make an Offer and Submission of an Offer*

According to article 12 of Law 156 (I)/2004, any contract can be concluded by the use of electronic means, with the exception of contracts which establish or confer rights upon immovable property, contracts which must follow specific formal requirements due to the existence of a law, contracts concerning family law or law of succession, and contracts of guarantees and related securities by persons who pursue aims out of the ambit of their commercial or professional activities. Thus, it is accepted that all other contracts for the conclusion of which no formal requirements are needed, may be concluded by electronic means. There is no legal requirement that such contracts must also contain electronic signatures, although it is evident that the existence of such electronic signatures would prove to be an extra security mechanism to prove that the contract has been accepted before a court.

To demonstrate that a contract has come into existence, it is necessary to establish that there has been an agreement between the parties. It must, therefore, be shown that an offer was made by one party and was accepted by the other party. An offer is, according to Cypriot law, an undertaking by the person who makes the offer that he/she will be bound in contract by the offer, so long as the other party accepts it. An offer may be made to a specific person, or to any member of a group of persons. It is therefore, accepted that contractual obligations arise from the manifestation of a will to be bound. An offer does not continue indefinitely, and it can come to an end if the person who makes the offer revokes or withdraws his/her offer prior to acceptance, or fixes a time limit for accepting the offer and such time passes, if a party dies before accepting the offer, if a counter offer is made, or if there is a failure to meet the conditions of an offer.

In regard to electronic offers to supply goods or services, there are some additional requirements which are provided for in article 6 of Law 14(1)/2000. It is provided that in due time, during the execution of the contract and at the latest at the time of delivery of those goods, which shall not be delivered to a third party, the consumer should receive a written confirmation of the information of the contract in the same language which was originally used when making the offer. In the case of goods which are to be delivered to a third party, the aforementioned confirmation may be given to the consumer, the soonest possible following the delivery of the goods. Such written confirmation is not required according to the provisions of Law 242(I)/2004 with respect to the distance marketing of financial services (for which Law 14 (1)/2000 does not apply).

### 3.1.2 *Electronic Acceptance*

Acceptance of an offer concludes the contract and brings the offer to an end. Such an acceptance must be unqualified and absolute. Silence cannot amount to acceptance, unless there is a prior consent of the person who receives the offer. The person who makes the offer may provide for a specific method of acceptance, in which case, the contract will only arise so long as such method is followed by the person who receives the offer. An offer may, as a rule, be revoked at any time before it is accepted, but once the offer has been accepted, it may not be withdrawn.

The main practical problem with respect to both the notion of an electronic offer and acceptance of an offer, is the fact that there is a complete lack of case – law, and a rarity of practical use of such methods of concluding a contract. Thus, it is not known how courts will interpret in practice the provisions of the relevant legal instruments, and how they will treat such material when it is submitted as evidence in court proceedings.

### 3.1.3 *Information Obligations in Relation to Electronic Contract Conclusion*

In regard to electronic offers to supply goods or services, article 5 of Law 14(1)/2000 provides that in order for such a contract to be of an executory nature the person who makes the offer must inform the consumer about the identification of the supplier, the main characteristics of the goods, or services offered, the price of such goods or services, the address of the nearest store, the possible delivery fees, the method of payment and/or delivery, the time limit for accepting the offer and the right to withdraw from the contract.

Further, according to Law 242(I)/2004, the consumer should be informed about the identification, main activities and address of the supplier, the identification and address of the supplier who is resident of the Republic, or of any representative, the registration number of the supplier in the Office of the Registrar of Companies, the main characteristics of the financial service, the fee to be paid to the supplier by the consumer with respect to the financial service provided, including tax, the time limits, as well as any extra costs, fees, or taxes, the right to withdraw from the contract, the minimum duration of the contract, the applicable law and competent court, any contract clauses with respect guarantees, rights of the parties, practical instructions for exercising the right to withdraw, the existence of any out of court procedures for submitting objections. Such information should be provided for, in a clear and understandable manner.

In addition to the above, article 8 of Law 156(I)/2004 stipulates that the supplier of the services should provide the persons who receive an offer with continuous, direct and easy access to necessary information and in particular: the supplier of the services' business name, the geographical address of the supplier, such information as to allow for fast and direct contact with the supplier, including phone and fax number and e – mail address, the registration number of the

supplier, and with respect to legally established professions: the professional association or similar organ to which the supplier is a member, the professional title of the supplier and the Member State that provided the supplier with such professional title, the professional rules of such Member State, as well as the VAT number. It is further provided that commercial communication, the person on behalf of which such communication is made, as well as any offers, special prizes, gifts, advertising contests, or discounts should be easy to recognize and easy to understand.

It is also provided in article 13 of Law 156(I)/2004 that during the stage where a contract has not been signed, the supplier should specify the various stages up to the conclusion of the contract, the technical means allowing for the correction of errors, whether the supplier intends to keep a record of the contract after its conclusion, and whether such record may be accessed, as well as any ethics code, the languages of the contract, and the applicable law of the contract.

The Law contains no differentiation from general rules of Cypriot private international law with respect to the applicable law, which may therefore, well be that of another Member State; nor is it stipulated that the language of the information provided to the consumer should necessarily be in Greek, or Turkish, which are the official languages of the island.

It is observed that in practice many enterprises do not comply with the aforementioned legislative provisions. This is supported by a recent study on E – Commerce in Cyprus from consumer perspective, published in the journal “Cyprus Review”, Vol. 17, No. 2, Fall 2005 (Christophorou and Katsioloudes, *The Present and Future Prospects of E – Commerce in Cyprus*, p. 127 – 144). In addition to the fact that such legislation is relatively new in the Republic of Cyprus, it is further argued that in view of the fact that most companies are medium – sized, the requirements may prove to be too many and too expensive for the service providers, who are therefore, not eager to comply with such legislation.

#### *3.1.4 Standard Terms and Unfair Clauses*

According to general Cypriot contract law, a statement will be treated as a term, so long as it constitutes a promise which forms part of the contract and if it was made closely in time to the conclusion of the contract. Terms could be either express, in the sense that they have been stated by either party as terms of the agreement, or implied; however, courts are in general, reluctant to imply terms. Pre – contractual statements may be treated as contractual terms, depending upon the imbalance of skill and knowledge between the contracting parties. It is further observed that terms of a contract, which are clear and understandable, are binding upon the parties, if they concern the determination of the main object of the contract, or the price or consideration for the supplied, or sold goods. Thus, consumers are as a principle bound by standard terms of a contract provided that the above requisites are fulfilled. In general, the

consumer should have the chance to read the terms prior to the conclusion of the contract, and thus, standard terms sent with an invoice or order confirmation, or just made generally available on the webpage of the seller with direct connection to the actual sale will not, as a general rule, be considered to be part of the contractual agreement, unless the party being bound by such terms knows that the terms will be applied.

If an electronic contract contains unfair clauses, then such clause is not binding upon the consumer, despite the general provisions of Cypriot contract law. Burdensome clauses are not specifically dealt with, but many burdensome clauses are considered by the law as "unfair clauses" within the meaning of article 5 of Law 93(I)/1996. The contract shall then continue to be binding upon the parties of the contract, unless such contract may not continue to exist without such restrictive clause. A court may not re – balance the contractual rights and obligations of the parties, but has the power only to declare that the unfair clause is invalid, and/or that the contract is also invalid in case that it may not continue to exist without such restrictive clause. The Director of the Competition and Protection of Consumer Service may examine, on the basis of a complaint, or by his/her own motion, whether any contractual clause of general use is unfair. If the Director decides that such clause is unfair, he/she may then apply to a court for a temporary, or permanent injunction.

The Director does not have the power to solve the problem himself/herself, but must apply to the court in those cases he/she considers that a term is unfair. It should be observed that contracts relating to law of succession, family law, labour law, registration of companies or partnerships, or terms which were included in any contracts in order to comply with legal or regulatory provisions of the Republic of Cyprus or principles of international contracts to which the Republic of Cyprus is a party, do not fall within the ambit of Law 93(I)/1996.

The aforementioned principles also apply with respect to standard terms accepted by a point - and - click acceptance. Thus, such terms are generally considered to be agreed between the parties of an electronic contract, unless it can be shown that such terms are unfair within the meaning of article 5 of Law 93(I)/1996. There is no specific legislation dealing with point - and - click acceptance.

There has been little, if any practical application so far, of Law 93(I)/1996 which provides for unfair clauses, with respect to electronic contracts. This is due to the fact that, as mentioned before, electronic clauses are not yet frequently used in Cyprus.

### *3.1.5 Choice of Law and Forum*

The Republic of Cyprus has ratified the Rome Convention on the law applicable to contractual obligations by Laws 31(III)/2002 and 15(III)/2006. It has also ratified the Brussels Convention on

Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

The law by which a contract is governed depends on which law is considered to be the proper law of the contract, or the *lex causae*. The court may thus examine whether the parties have expressly chosen the law by which they wish their contract to be governed, in which case such law will be the proper law, and in case there is no such express choice, the court may examine whether there is an implied choice, and in case there is no such choice, the court may then examine to which law the transaction has its closest and most real connection. The proper law governs issues such as formation of the contract, validity and performance; however, issues of procedure are generally governed by the *lex fori*, namely the law of the country in which the action is brought.

With respect to unfair clauses, article 8 of Law 93(I)/1996 provides that the applicable law with respect of all contract clauses which intend to apply the law of another territory than that of a Member State of the European Union, shall be Law 93(I)/96, so long as such contract clause legally provides for less protection than the protection provided by Law 93(I)/1996, or so long as the consumer is habitually resident in the Republic of Cyprus, or another Member State of the European Union and the necessary measures for the implementation of the contract were taken within the Republic of Cyprus, or another Member State of the European Union. The same provisions may be found in article 25 of Law 14(I)/2000.

Law 156(I)/2004 provides that information society services are as a general principle only required to comply with the requirements of the Member State in which the service provider is located. However, restrictive measures may be taken against information society services which originate from a different Member State, so long as such measures are necessary on grounds of public order, public health, security, protection of consumers, so long as the measures are proportionate to the purpose for which they are taken, and so long as it has been asked from the Member State of origin to take such measures and the latter has not, or has taken ineffective measures and such intention has been notified to the Commission.

As a general rule, no problems seem to arise with respect to this part of the project.

### **3.2 Cross Border Regulatory Issues**

No specific differentiations seem to exist with respect to electronic contracts in cross border trade between enterprises, a fact which may be due to the lack of such electronic contracts.

## **4. Electronic Invoicing, Payment and Other Matters Related to Execution of Electronic Contracts**

### **4.1 National Legislation and Administrative Practices**

#### *4.1.1 Electronic Invoicing*

Directive 2001/115/EC amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax has been implemented through Regulations 314/2001, which were enacted by virtue of Article 144 of the Value Added Tax Law 95(I)/2000. According to Article 11 of such Regulations, when a taxable person issues an electronic invoice of value added tax, with respect to delivery of goods or supply of services, such invoice will be accepted as valid, so long as the accuracy of its contents and its true origin, may be established by an advanced electronic signature, or by EDI, and so long as the taxable person informs the VAT Commissioner within 30 days.

When an electronic invoice is transmitted, the Commissioner may allow the taxable person to prove the accuracy of the contents of the invoice, as well as its true origin by other methods which may be approved by the Commissioner. If the electronic invoice is not written in an official language of the Republic, the Commissioner may request for the translation of the invoice within a period of 30 days. The electronic invoice should contain all the necessary elements of a paper VAT invoice.

#### *4.1.2 Electronic Payment*

There do not seem to be any particular problems with respect to the transposition of Directive 97/7/EC and Directive 2002/65/EC. Article 8 of Directive 97/7/EC has been implemented correctly. Article 9 of Law 14(I)/2000 provides that any consumer may, in cases that his/her payment card has been fraudulently used, request cancellation of the payment where fraudulent use has been made of his/her payment card in connection with distance contracts covered by the Law, or request to be recredited with the sums paid, or have such sums returned to him/her. The same is provided by article 16 of Law 242(I)/2004.

Consumers have a right to compensation with respect to on – line payments, such as payment by direct bank transfer, or via electronic money systems. Banks are obliged by the law to establish guarantees for the compensation of consumers, while the Competition and Protection of Consumer Service is responsible for the proper application of Law 242(1)/2004 and may impose significant fines to banks which do not comply with the provisions of the law.

#### *4.1.3 Withdrawal Period*

According to article 7 of Law 14(I)/2000, any consumer of a distance contract may withdraw from his/her contractual obligations without

damage, within fourteen days from the day he/she received the goods from the supplier, or from the following day of the execution of the obligations of the supplier of goods, or from the day a contract to supply services was concluded, or from the following day of the execution of the obligations of the supplier of services, The fourteen day period also applies, according to article 10 of Law 242(I)/2004.

#### *4.1.4 Non Performance*

In case that the supplier is unable to perform the contract, he/she should inform the consumer at once and return as soon as possible, and in any event within fourteen days, any amounts he/she had received with respect to the supply he/she was unable to perform. With respect to financial services within the ambit of Law 242(I)/2004, the period within which the supplier should return the amounts he/she had received is up to thirty days.

#### *4.1.5 Delivery of a good not in conformity with the contract*

Law 7(I)/2000 which provides for certain aspects of the sale of consumer goods and associated guarantees and implements Directive 1999/44/EC provides that suppliers are liable in so far as they provide goods to consumers which do not comply with the terms of the contract between the parties. In such cases, the consumer has the right to request for replacement of the good, or repair of the good for free and within a reasonable time. It is further observed that any breach of a valid contract provides, as a general rule, the innocent party with a right to recover damages, in relation to the loss he/she has suffered as a result of the breach. There is also the possibility of the innocent party to request a decree of specific performance, according to which the other party is instructed to perform its contractual obligations.

## **4.2 Cross Border Regulatory Issues**

Electronic invoicing of payment related to execution of cross – border electronic contracts is a reality, although there are few such cases so far. It would seem that the great majority of enterprises in Cyprus are not aware of the application of Regulation N. 2560/2001.

## **5. General Assessment**

### **5.1 Main Legal and Administrative Barriers to E – Business**

It is difficult and probably premature to reach a firm conclusion with respect to the Cypriot legal and administrative practices in the fields of electronic signature, electronic contract conclusion and electronic invoicing and payment. It would seem that despite enacting the aforementioned laws which implement the relative directives, such laws have not yet been completely implemented at an administrative level. The competent authorities are still not fully aware of their powers under the relevant directives, while the complete lack of competent authorities with respect to the issuing of advanced electronic signatures is not a good sign for the development of electronic contract conclusion.

The fact that the Republic of Cyprus has just recently become a member of the European Union, as well as the fact that the very idea of electronic signature, or electronic contract conclusion is a completely new idea in Cyprus are reasons which justify the evident lack of interest with respect to the administrative implementation of the Directives, as well as their practical use in everyday commerce. Enterprises in Cyprus are mainly small, or medium sized and thus, are mostly unaware of the new and specific legal status regarding electronic contracts. Even more so, enterprises in Cyprus are in general reluctant to change traditional methods of concluding contracts and would feel that there is a low level of protection for them by the legislation. Even consumers, while well protected by the Cypriot legislation have been relatively reluctant to experiment in new technology and electronic contract conclusion. Electronic invoicing and payment seems to be the most advanced part of e – commerce. However, even such practice is still at very early stages.

It is suggested that a firm conclusion with respect to the application of the e – commerce legislation would therefore, be premature and possibly inaccurate. Courts or other authorities have not yet interpreted the provisions of the relevant legislation, nor have there been major electronic transactions.

The legislative background which was based on EU Directives is intended primarily for bigger countries, while Cyprus is a very small country and thus, traditional methods of concluding contracts do not create many problems.

#### **5.2. Awareness about National Authorities in charge of solving legal problems in e- business**

It is therefore, our conclusion that awareness about national authorities in charge of solving legal problems amongst consumers and enterprises, as well as the administrative implementation of the Directives should take place before any firm conclusions may be reached about the legal and administrative barriers to e – business.

As they stand now, most laws concerning e – business are simply written laws without a society actually using them. It is expected that the administrative implementation of most laws regarding e – business within 2007 and 2008 may prove to be the catalyst in order to determine whether e – commerce shall become a mainstay in Cyprus’ business.

## **Annex: National Legislation on E – Business**

The main legislation for contract law in Cyprus is the Contract Law, Cap 149, as well as Law 10(I)/1994. Relevant laws with respect to e – commerce are also: Law 188(I)/2004 providing for a legal framework for electronic signatures and related issues, Law 14(I)/2000, providing for the rights and obligations of parties with respect to consumer distance contracts and related issues, Law 7(I)/2000, providing for the protection of consumer with respect to certain aspects of the sale of consumer goods and associated guarantees, Law 112(I)/2000, providing for the indications of price of sale and the price per item which are offered by the salespersons to the consumers, in order to facilitate the information of the consumers and the comparison of prices, Law 156(I)/2004, providing for certain aspects of the information society services and in particular electronic commerce and for related issues, Law 93(I)/1996, which introduces restrictive clauses with respect to certain unfair terms in consumer contacts, and Law 242(I)/2004, regulating the distance marketing of consumer financial services and related issues.