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**E-COMMERCE RULES IN EUROPEAN UNION AND CHINA: A COMPARATIVE
ANALYSIS**

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Abstract

E-commerce is a significant aspect of the digital economy, and it has steadily grown to include all transactions carried out through information networks. Due to the extensive use of e-commerce, the noticeable trend of “platformization” in the digital economy, and the increased vulnerability of online consumers who require stronger protection, it is necessary to take proactive measures to enhance e-commerce law, enabling it to effectively address the intricate issues ranging from online transactions to their external environments.

The European Union and China are prominent global economic entities and significant commercial partners. Both the EU and China have well-developed e-commerce sectors, and there is a relatively abundant regulatory experience in this field as well. Conducting comparative research on the two distinct regulatory frameworks for e-commerce can contribute to a better understanding of both supervision models and offer an opportunity to learn from each other’s innovative approaches in legal design.

This thesis aims to explore and compare the regulatory frameworks established by the EU and China for e-commerce. The objective is to identify the issues covered by e-commerce regulation and examine the proposed solutions within the two major regulatory frameworks. Through systematic analysis and critique of the e-commerce regulatory framework, this thesis will contribute to the development of a comprehensive understanding and a more cohesive approach towards the various values that are significant in modern digital society, including protection for individuals as consumers and digital citizens, coordination between corporate economic interests and innovation motivation, maintenance of the national economic order and digital sovereignty, as well as the progress and development of the digital economy.

This thesis is structured into three parts. The first part systematically examines the normative systems established by the EU and China for e-commerce. It presents

the fragmented characteristics of these systems while also demonstrating their all-encompassing nature, which allows for an intuitive understanding of the differences between the EU and China in terms of the content and focus of e-commerce regulation. The second part specifically focuses on the regulations adopted by the EU and China for e-commerce transactions. By comparing the specific rules within the two frameworks for different elements and stages of e-commerce transactions, the differences in regulatory details and the preferences of legislators between the two frameworks will be highlighted. The third part discusses the regulatory frameworks established by the EU and China for the market environment and legal environment of e-commerce transactions. The regulatory innovations achieved by these frameworks in these auxiliaries, but fundamental aspects will be demonstrated and analyzed.

Index

Introduction	1
I. The emerging digital economy with e-commerce being one of its crucial pillars	1
II. Regulatory situation: Unsatisfactory fragmented legislation on e-commerce	7
III. Conceptual basis: Reconsidering the definition of e-commerce	11
IV. Research scope: The comprehensive yet delimited range of e-commerce law	22
V. Methodology: Comparative research	24
VI. Structure of the dissertation	29
Chapter 1 Overview of E-Commerce Regulatory Frameworks in the EU and China	30
1.1 E-commerce regulatory framework in the European Union	31
1.1.1 Digital Single Market Strategy	31
1.1.2 Legislation on e-commerce in the EU	39
1.2 E-commerce regulatory framework in China	62
1.2.1 Sources of effective rules in China	62
1.2.2 Policies promoting the development of e-commerce in China	68
1.2.3 Legislations on e-commerce in China	73
Summary of Chapter 1	123
Chapter 2 Comparative Research on Regulation of E-Commerce Transactions	126
2.1 Regulation on subjects of e-commerce	127
2.1.1 E-commerce sellers	127
2.1.2 Cyber-consumers	141
2.2 Regulation on special objects of e-commerce	151
2.2.1 Limitations on special products	151
2.2.2 Limitations on special services	155
2.2.3 Limitations on the transaction of digital contents	160
2.3 Pre-contract stage in e-commerce	165
2.3.1 Advertisement in e-commerce	165
2.3.2 Pre-contractual information obligation	174
2.4 Formation of e-commerce contract	182
2.4.1 The nature of contract in electronic form	182
2.4.2 The capacity of e-commerce participants	183
2.4.3 The arrival time of an electronic declaration of intent and the conclusion time of e-commerce contract	184
2.4.4 Regulation on standard e-commerce contract	188
2.5 Performance of e-commerce contract	191
2.5.1 Performance time of e-commerce sellers	191
2.5.2 Parcel delivery in e-commerce	194

2.6 E-Commerce Dispute Resolution	201
2.6.1 Partially digitalized dispute resolution mechanisms in the EU	201
2.6.2 Fairly digitalized dispute resolution channels in China.....	203
Summary of Chapter 2	206
Chapter 3 Comparative Research on Regulation of External Environment of E-Commerce	210
3.1 Market environment of e-commerce	211
3.1.1 Regulation on unfair commercial activities.....	211
3.1.2 Regulation on platform economy	215
3.1.3 Regulation on cross-border e-commerce	228
3.2 Legal environment of e-commerce.....	236
3.2.1 Special intellectual property protection rules	236
3.2.2 Personal data protection	244
3.2.3 Data governance.....	253
Summary of Chapter 3	260
Conclusion	263
Bibliography.....	268
Part I. Books and articles.....	268
Part II. Legislations and official documents.....	291

Introduction

I. The emerging digital economy with e-commerce being one of its crucial pillars

The rapid development of digitalization is a trend that affects almost every aspect of daily life, as well as every sector of the economy.¹ Digitalization also has become an essential aspect of social progress. The concept of *homo numericus*² is now widely accepted, indicating that the digital transformation is an irreversible and unstoppable trend in every field. In essence, digitalization represents a revolution in productive forces,³ requiring all elements related to the relations of production to adapt to this significant transformation. As a result, the digital economy has emerged as one of the most important drivers of economic development, both domestically and internationally. There are no obstacles that can hinder the growth of the digital economy, even the COVID-19 pandemic “has accelerated the process of digital transformation”.⁴ In China, e-commerce is particularly seen as a crucial tool to help individual merchants overcome the challenges of the pandemic.⁵

¹ See Coutinet N., *Les technologies numériques et leur impact sur l'économie*, Paris : Cahier Français, n. 372, 2013, pp. 24-25.

² See Lian Y. M., *Droit des données 2.0. Construction du système de droits*, Oxford : Peter Lang, 2021, pp. 18-19.

³ See a report from Organization for Economic Co-operation and Development (OECD), *Digitalisation and productivity: a story of complementarities*, <https://www.oecd.org/economy/growth/digitalisation-productivity-and-inclusiveness/>. Also see a working paper of European Central Bank (ECB). Anderton R., Botelho V., Reimers P., *Digitalisation and productivity: gamechanger or sideshow?*, accessed July 7, 2024, <https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2794-6911beec80.en.pdf>.

⁴ UNCTAD, *Digital Economy Report 2021*, accessed November 10, 2023, https://unctad.org/system/files/official-document/der2021_en.pdf.

⁵ See *Guiding Opinions on Responding to the COVID-19 Outbreak and Increasing Support for Individual Industrial and Commercial Households* (关于应对疫情影响加大对个体工商户扶持力度的指导意见, Guanyu yingdui yiqing yingxiang jiada dui geti gongshanghu fuchi lidu de zhidao yijian), archived February 28, 2020, at http://xzzf.mof.gov.cn/zcfbyjd/202002/t20200228_3476042.htm. This is a Chinese policy document published jointly by six departments with competency of economy in February 2020, just after the first wave of pandemic, which released many positive policy tools related to digital economy for the economic recovery.

Commerce and merchants have consistently been at the forefront, acting as pioneers of significant social and economic transformation. Through their efforts, e-commerce has emerged as the third wave of the commercial revolution, specifically related to consumers.⁶ In the 1960s, prior to the widespread use of the Internet in business applications, Electronic Data Interchange (EDI) was widely utilized in the business-to-business (B2B) commerce field and can be considered one of the most important precursors to the electronic commerce system. Even today, commerce conducted through EDI is still considered a form of e-commerce.⁷ In the 1990s, as the Internet transitioned from laboratories to everyday life, the first e-commerce transactions rapidly emerged in the United States in 1994, marking the “the first retail transaction on the Internet”.⁸ During the same year, Amazon.com, one of the present-day Internet giants, was established, followed by the founding of eBay in 1995. Subsequently, the widespread adoption of devices such as Minitel in France and Videotel in Italy, as well as the global popularization of the Internet, propelled the rapid development of e-commerce, both among merchants and in serving consumers.⁹

With the trend of digitalization, e-commerce enterprises have experienced a rapid growth. Although there were initial challenges, the widespread use of personal computers, advancements in internet technology, and the emergence of smartphones have significantly expanded the e-commerce market. In 2001, Amazon had a market capitalization of only \$6.18 billion, while Alibaba had just been founded in China and the popular online e-commerce platform Taobao did not exist. By 2007, Apple had

⁶ See Ferrier D., Ferrier N., *Droit de la distribution*, Paris : LexisNexis, 2023, p. 293.

⁷ That's a definition provided by the Institut national de la statistique et des études économiques (INSEE), a statistical institute in France. According to INSEE, *Commerce électronique* (e-commerce in France) means *transactions commerciales utilisant l'internet ou d'autres réseaux informatiques comme l'échange de données informatisé et impliquant un changement de propriété du bien ou du service commandé*. Accessed October 21, 2023, <https://www.insee.fr/fr/metadonnees/definition/c1769>.

⁸ Lewis P.H., *Attention Shoppers: Internet Is Open*, The New York Times, Aug. 12, 1994. Archived August 12, 1994, at <https://www.nytimes.com/1994/08/12/business/attention-shoppers-internet-is-open.html>.

⁹ See Lucas A., Devèze J., Frayssinet J., *Droit de l'informatique et de l'Internet*, Paris : Presses Universitaires de France, 2001, p. 574.

initiated the smartphone revolution, and Amazon's market capitalization had reached nearly \$39 billion. Alibaba was listed on the Hong Kong Stock Exchange with a financing amount of \$11.6 billion. Ten years later, in 2017, Amazon and Alibaba had become giants with market capitalizations of approximately \$700 billion and \$500 billion, respectively. In 2020-2021, Alibaba reached a market capitalization of \$837 billion, while Amazon reached \$1.88 trillion.¹⁰ In the same year, Alibaba held a 24% share of the global e-commerce market, while Amazon held a 13% share.¹¹ The accumulated wealth of these two companies demonstrates the immense power of e-commerce, proves that e-commerce has become one of the most critical models of the digital economy.¹²

Not only have companies made a significant amount of fortune, but the domestic and worldwide economy has also greatly benefited from the flourishing of e-commerce. The process of digitalization is simultaneously transforming the structure of the global economy.¹³ Statistics never deceive. In 2014, the global e-commerce sales reached \$1.33 trillion, and by 2021, this amount had risen to approximately \$5.2 trillion, experiencing a growth of about three times. It is forecasted that this figure will continue to grow by another 56 percent in the coming years, reaching approximately \$8.1 trillion by 2026.¹⁴ The revenue generated by e-commerce is also substantial, with total retail e-commerce revenue worldwide estimated to be around \$3.3 trillion in

¹⁰ Statistics source: <https://companiesmarketcap.com/>, accessed September 15, 2023.

¹¹ E-commerce market share of leading e-retailers worldwide in 2021, based on GMV [Graph]. In *Statista*. Accessed September 15, 2023, <https://www-statista-com.ezscd.univ-lyon3.fr/statistics/664814/global-e-commerce-market-share/>.

¹² See De Laurentiis R., *Economia digitale: una regolamentazione da innovare*, Torino, 2021, p. 22.

¹³ See Ahi, A.A., Sinkovics, N. & Sinkovics, R.R. E-commerce Policy and the Global Economy: A Path to More Inclusive Development?. *Manag Int Rev* 63, 27-56 (2023).

¹⁴ eMarketer. (July 29, 2022). Retail e-commerce sales worldwide from 2014 to 2026 (in billion U.S. dollars) [Graph]. In *Statista*. Accessed September 15, 2023, <https://www-statista-com.ezscd.univ-lyon3.fr/statistics/379046/worldwide-retail-e-commerce-sales/>.

2022.¹⁵ During the same period, in China, the volume of e-commerce transactions grew from 21.79 trillion yuan to 43.83 trillion yuan between 2015 and 2022, with the growth rate in 2015 even exceeding 30 percent.¹⁶ However, in recent years, the pace has slowed down, and the growth of e-commerce has reached its periodic peak. For instance, the growth of gross e-commerce transaction volume in China was only 4.5 percent in 2020 and 3.5 percent in 2022.¹⁷ The era of “savage growth”¹⁸ in e-commerce has ended.

The percentage of e-commerce in overall retail sales is also remarkable. In 2015, e-commerce accounted for only 7.4% of global retail sales, whereas by 2022, this percentage had already increased to 18.9%.¹⁹ In China, the percentage is even higher: in the first half of 2023, online retail sales represented 26.6% of total retail sales of consumer goods. Despite the saturation of China’s e-commerce market, the growth rate of online retail sales (13.1%) surpasses that of total retail sales (8.2%),²⁰ indicating that e-commerce continues to drive consumption. One of the key mechanisms through which e-commerce stimulates consumption is by reducing the distance between production and consumption through online channels. This allows

¹⁵ Statista. (July 28, 2023). Total retail e-commerce revenue worldwide in 2022, by region (in billion U.S. dollars) [Graph]. In *Statista*. Accessed September 15, 2023, <https://www-statista-com.ezscd.univ-lyon3.fr/forecasts/1117851/worldwide-e-commerce-revenue-by-region>.

¹⁶ Statistics source: National Bureau of Statistics of China, archived September 15, 2023, <https://data.stats.gov.cn/easyquery.htm?cn=C01&zb=A0G1008&sj=2022>.

¹⁷ Statistics source: Ministry of Commerce of China, archived September 16, 2023, <https://dzswgf.mofcom.gov.cn/ecps/sjcx.html>.

¹⁸ “Savage growth” (野蛮生长, Yeman shengzhang) is a frequently used phrase to describe the state of e-commerce in China, which was widely believed to have been curtailed with the introduction of the *E-Commerce Law of China*. See Cai Chang, Wu Qi, *E-commerce Law: Major Breakthroughs, Industry Impacts and Implementation Requirements* (电子商务法:重大突破、行业影响及实施要求, Dianzi shangwufa: Zhongda tupu hangye yingxiang ji shishi yaoqiu), in *People-Rule of Law*, 2019, n. 5, pp. 10-12.

¹⁹ eMarketer (@eMarketer). (August 11, 2023). E-commerce as percentage of total retail sales worldwide from 2015 to 2027 [Graph]. In *Statista*. Accessed September 15, 2023, <https://www-statista-com.ezscd.univ-lyon3.fr/statistics/534123/e-commerce-share-of-retail-sales-worldwide>.

²⁰ Statistics source: National Bureau of Statistics of China, archived July 15, 2023, at http://www.stats.gov.cn/sj/zxfb/202307/t20230715_1941269.html.

producers to directly engage with consumers and facilitate transactions with greater ease.²¹ As a result, both the costs of selling and purchasing are reduced, leading to increased transaction efficiency.

E-commerce has also a significant impact on a large number of people. By 2022, the number of online shopping users in China had reached 845 million, accounting for 79.2% of the total Internet users.²² This means that eight out of ten Chinese citizens use the Internet, and eight out of ten of them occasionally or even frequently make online purchases. The statistics in Europe are equally impressive. Among the 27 European Union countries, in 2022, 67.98% of European citizens had bought or ordered items for private use online in the past year. In Norway, this percentage even reached 91.97%.²³ E-commerce is not only profitable but also widely popular.

E-commerce even has a positive influence on the job market. For example, in France, between 1995 and 2011, over 700,000 jobs were created in the e-commerce sector, accounting for nearly 25% of all newly created jobs.²⁴ Similarly, in China, the number of e-commerce professionals reached 69.37 million by 2022, and this number continues to grow. Furthermore, e-commerce professionals engage in a wide range of industries, including agriculture, manufacturing, international trade, finance, transportation, and consulting services, demonstrating the interconnectedness of e-commerce with various sectors.²⁵

However, the growth of e-commerce also presents a series of significant problems

²¹ See Larrieu J., *Droit de l'Internet*, Paris : Ellipses, 2010, pp. 185-186.

²² See China Internet Network Information Center (CNNIC), *The 50th Statistical Report on China's Internet Development*, p. 35. Archived September 26, 2022, at <https://www.cnnic.net.cn/NMediaFile/2022/0926/MAIN1664183425619U2MS433V3V.pdf>.

²³ Statistic source: Eurostat, Individuals using the internet for buying goods or services (online data code: TIN00096), accessed September 15, 2023, <https://ec.europa.eu/eurostat/databrowser/view/TIN00096/default/table?lang=en>.

²⁴ See Manara, C., *Droit du commerce électronique*, Paris : LGDJ -Lextenso, 2013, p. 9.

²⁵ See Ministry of Commerce of China, *E-Commerce in China (2022)* [中国电子商务报告（2022）], Zhongguo dianzi shangwu baogao (2022)], pp. 104-105, archived June 3, 2023, at <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

that need to be addressed by legal researchers.

Firstly, e-commerce has gained significant importance in the field of commerce. Therefore, it is not appropriate to consider e-commerce as a mere modification or variation of traditional commerce. E-commerce is a distinct research field that should be recognized and reserved as such.²⁶ It should be treated and evaluated separately, with jurists studying it using an independent approach. Additionally, legislations pertaining to e-commerce should not be seen as mere additions or amendments to existing civil or commercial laws.²⁷

Secondly, the rapid expansion of e-commerce is attributed to significant scientific and technological advancements. However, during this time, the practice of e-commerce has also become increasingly complex. The evolution of e-commerce legislation has struggled to keep up with the pace of e-commerce practice. Researchers in e-commerce law have found it challenging to understand the latest technology and information.²⁸ Fortunately, the growth of e-commerce has slowed down in the last two years, providing a relatively calm period for legislators and researchers to review, analyse, and address the situation.

Thirdly, e-commerce has become more complex compared to two decades ago. A complex ecosystem has been generated in the digital business field.²⁹ The objects of e-commerce have become more diversified, and the scenes involving e-commerce have increased. The arrangements in a single e-commerce transaction have become more complicated. E-commerce is no longer just about transactions; it now combines

²⁶ See Gao Fuping, *From Electronic Commercial Law to Cyber Commercial Law: Thoughts on Legislative Positioning of China's Electronic Commerce* (从电子商务法到网络商务法——关于我国电子商务立法定位的思考, *Cong dianzi shangwufa dao wangluo shangwufa: Guanyu woguo dianzi shangwu lifa dingwei de sikao*), in *Law Science*, 2014, n. 10, pp. 138-148.

²⁷ See Zhao Xudong (Edit), *Interpretation and Principles of E-Commerce Law of China* (中华人民共和国电子商务法释义与原理, *Zhonghua renmin gongheguo dianzi shangwufa shiyi yu yuanli*), Beijing: China Legal Publishing House, 2018, pp. 5-7.

²⁸ See Manara, C., *Droit du commerce électronique*, Paris : LGDJ -Lextenso, 2013, p. 9.

²⁹ See Baumann S. (edit), *Handbook on digital business ecosystems: strategies, platforms, technologies, governance and societal challenges*, Cheltenham: Edward Elgar, 2022, pp. 24-28.

with other factors in the digital world. In addition, e-commerce even the whole digital economy has become “platformized”, as platforms have become the major marketplace for e-commerce and other online affairs.³⁰ Therefore, it is necessary to not only focus on e-commerce itself but also integrate more phenomena and norms into the legal study on e-commerce.

Lastly, in the present day, e-commerce is no longer an exclusive business practice for professional merchants, but rather a form of commerce accessible to the general public. The majority of individuals now participate in e-commerce, resulting in two outcomes. On the one hand, most people benefit from e-commerce by receiving improved services and goods at affordable prices. On the other hand, they are also at risk, as they are not on an equal footing with e-commerce operators, particularly the large e-commerce platforms, which brings to mind Michel Foucault’s metaphor of a *society of control* (*société de contrôle*).³¹ Therefore, it is necessary to analyze e-commerce law from a broader perspective. If we only focus on the transaction aspect of e-commerce, other critical issues might be overlooked.³²

II. Regulatory situation: Unsatisfactory fragmented legislation on e-commerce

The above figures strongly demonstrate the essential role of e-commerce in the economy and society. Therefore, every state must enhance regulations for governing e-commerce, must actively regulate e-commerce with legislation, must positively adapt to social reality and address emerging social demands. While legislators have made efforts towards these goals, the consequences should still be examined.

³⁰ See Raymond G., Bernheim-Desvaux S., *Droit de la consommation*, Paris : LexisNexis, 2022, p. 291.

³¹ See Sénéchal J., « L’opérateur de plateforme en ligne et le droit économique », in Sénéchal J., Stalla-Bourdillon S. (dir.), *Rôle et responsabilité des opérateurs de plateforme en ligne : approche(s) transversale(s) ou approches sectorielles ? : actes du colloque du 24 novembre 2016*, Paris : IRJS éditions, 2018, p. 9.

³² Several forward-thinking researchers have recognized the significance of including more relevant topics within the realm of e-commerce law. See Gao Fuping, *From Electronic Commercial Law to Cyber Commercial Law: Thoughts on Legislative Positioning of China’s Electronic Commerce* (从电子商务法到网络商务法——关于我国电子商务立法定位的思考, Cong dianzi shangwufa dao wangluo shangwufa: Guanyu woguo dianzi shangwulifa dingwei de sikao), in *Law Science*, 2014, n. 10, pp. 138-148.

The current state of e-commerce norm formulation is not satisfactory. Global legislators have enacted a series of thematic legislations regarding e-commerce. Some of these legislations were leaders at that time, such as the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market [referred to as *Directive on Electronic Commerce (2000)*]. Others are more recent, such as the *E-Commerce Law of China* (中华人民共和国电子商务法, *Zhonghua renmin gongheguo dianzi shangwu fa*), which came into effect in 2019.

However, these legislations only focus on certain aspects of e-commerce, and the regulation of each aspect is not integrated,³³ since e-commerce actually encompasses more areas than those regulated by these topics, such as digital payments, online product delivery, and intellectual property protection. For example, *E-Commerce Law of China* only addresses isolated topics such as e-commerce operators, the conclusion and performance of e-commerce contracts, dispute resolution in e-commerce, and e-commerce promotion policies, without a systematic structure. The same issue exists in the *Directive on Electronic Commerce*. From today's perspective, it can even be considered more of a legislation of e-commerce contract.³⁴

Given the imperfections of existing special legislation e-commerce, the development of additional norms is undoubtedly crucial. These norms, regardless of their hierarchical legal force, form an integral part of e-commerce regulations. They encompass laws, administrative regulations, policies, and even standards. These norms fill in gaps and regulate a wide range of issues in detail, including e-commerce platforms, digital signatures, digital payments, digital currency, and more. However, unfortunately, these specific and detailed norms have resulted in an extensive, complex, and disorganized e-commerce normative system. In the European Union, there are

³³ See Liu Ying, *The Scope of Social Relations Adjusted by the Electronic Commerce Law of China* (我国电子商务法调整的社会关系范围, *Woguo dianzi shangwufa tiaozheng de shehui guanxi fanwei*), in *China Legal Science*, 2018, pp. 195-216.

³⁴ That *Directive* is usually located at a chapter analyzing special and new contract practice. See Finocchiaro G.D., *Diritto di Internet*, Bologna, 2008, pp. 7-8.

over 20 regulations and directives related to e-commerce.³⁵ In China, new laws, regulations, measures promulgated by ministries, and standards are constantly emerging, consisting of dozens of documents with varying degrees of legal binding force.³⁶ Therefore, all e-commerce law researchers must organize and establish a framework for these norms before conducting comprehensive research. Otherwise, they are likely to become lost in the vast array of e-commerce norms. That phenomenon might be valid not only in the EU or China, but also worldwide.³⁷

Based on a previous brief analysis, it is possible to draw certain preliminary conclusions regarding the current e-commerce legislation.

Firstly, e-commerce legislation is intricately connected to traditional legal areas, particularly contract law. While certain regulations may be specific to e-commerce, the conceptual framework for e-commerce should be revised. It is important to address the unique challenges posed by e-commerce through innovative approaches, rather than viewing it as a distinct component of private law or trying to adapt private law to the digital age.³⁸

Secondly, despite abundant e-commerce legislation, unnoticed and unsolved problems persist. The existing legislation is excessively fragmented, creating at least

³⁵ The *Table of legislation* in the following work demonstrated that complexity. Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. xxxi-xl.

³⁶ Ministry of Commerce of China, *E-Commerce in China (2022)*, pp. 86-103, archived June 3, 2023, at <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

³⁷ Fragmentation is not a singular phenomenon limited to the field of e-commerce but rather extends to all legislation in the digital era. This is because the social risks in the digital age have progressively acquired territorial, complex, and cross-cutting characteristics. Meanwhile, the traditional approach to providing legal resources continues to adhere to a departmental legislative model, which fails to address the aforementioned issue. See Zhou Youyong, *From Departmental Legislation to Domain Legislation: The New Trend of National Legislation in Digital Age* (从部门立法到领域立法:数字时代国家立法新趋势, *Cong bumen lifa dao lingyu lifa: Shuzi shidai guojia lifa xin qushi*), in *Modern Law Sciences*, 2024, n. 5, pp. 1-16.

³⁸ At the same time, numerous legal experts are currently endeavoring to digitize or modernize contract law in accordance with the process of digital transformation. See Stoffel-Munck Ph., *La réforme des contrats du commerce électronique*, JCP E, 2004, n° 38, 1341 ; Huet J., *Encore une modification du Code civil pour adapter le droit des contrats à l'électronique Loi LCEN n° 2004-575 du 21 juin 2004*, JCP G, 2004, n° 47, 178.

a potential contradiction in e-commerce regulation. While there is a significant amount of legislation, it is still insufficient to address all questions that arise in e-commerce practices. Therefore, ongoing e-commerce research should focus on simplification, supplementation, and exploring the logic behind e-commerce regulation.³⁹

Thirdly, the focus of e-commerce legislation should not solely be on the transaction itself. E-commerce involves activities beyond clicking the button of *submit the order* and extends beyond the receipt of services or goods, it also encompasses various areas. Considering all these aspects comprehensively is necessary for satisfactory e-commerce regulation in our commercialized society.⁴⁰

In summary, the ideal law of electronic commerce should encompass “a cross-sectional matter with wide-ranging civil, competition, conflict of law, trademark, copyright, telecommunications, tax and data protection aspects.”⁴¹ In other words, it is not accurate to simply define e-commerce as a branch of civil law, commercial law, consumer protection law, or even Internet law.⁴² From an administrative perspective, it is also necessary to have cross-departmental cooperation in order to achieve both

³⁹ See Liu Ying, *The Scope of Social Relations Adjusted by the Electronic Commerce Law of China* (我国电子商务法调整的社会关系范围, Woguo dianzi shangwufa tiaozheng de shehui guanxi fanwei), in *China Legal Science*, 2018, pp. 195-216.

⁴⁰ See Cui Congcong, *On the Regulation Objects and Scope of Application of Electronic Commerce Law* (论电子商务法的调整对象与适用范围, Lun dianzi shangwufa de tiaozheng duixiang yu shiyong fanwei), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2019, n. 1, pp. 79-85.

⁴¹ According to the Handwörterbuch des Europäischen Privatrechts (Encyclopedia of European Private Law) compiled by the Max Planck Institute, entry “*Elektronischer Geschäftsverkehr - E-Commerce*”. The most valuable description is *cross-sectional matter* (Querschnittsmaterie). Accessed September 22, 2023, https://hwb-eup2009.mpipriv.de/index.php/Elektronischer_Gesch%C3%A4ftsverkehr_%E2%80%93_E%E2%80%91Commercer#a.29_C3.9Cberblick.

⁴² See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, pp. 164-165.

macro and micro regulatory objectives.⁴³ Therefore, it is important to consider both the unique aspects of e-commerce regulations and the overlap with other legal departments when researching the normative framework of e-commerce.

The comprehensive examination of current regulations shall not commence until a concise review of the concept of *e-commerce* in the legal context.

III. Conceptual basis: Reconsidering the definition of e-commerce

Jurists conducting a study on *e-commerce law* must establish a precise definition of the term *e-commerce* to ensure a comprehensive and unambiguous understanding of all matters and relationships subject to legal regulation. This is particularly important because different jurisdictions have provided various definitions of e-commerce in their legislation.⁴⁴ Although legal research and legislation in the field of e-commerce often lag behind actual business operations, resulting in legal definitions that may not accurately reflect reality, these definitions have also evolved over time in line with the advancement of e-commerce practices. Therefore, it is significant to commence with a concise analysis of the legislative concepts associated with e-commerce (Part i), followed by a summary encompassing the redefinition of e-commerce (Part ii).

⁴³ A Chinese policy document could be used as evidence, the *Notice on the Division of Tasks to Accelerate the Development of E-Commerce by the Information Office of State Council of China* (国务院信息化工作办公室关于加快电子商务发展工作任务分工的通知, Guowuyuan xinxihua gongzuo bangongshi guanyu jiakuai dianzi shangwu fazhan gongzuo renwu fengong de tongzhi), published in 2006, much earlier than the legalization of e-commerce regulation, dividing e-commerce related legal issues into twenty-three sub-topics, citing almost all the ministries of China, coordinating them to resolve problems in their respective competences. Accessed October 20, 2023, https://www.miit.gov.cn/ztzl/lszt/tjlrhzzgtsxxgyhdl/zccs/art/2020/art_d3a8611805a64095a72c50019063f313.html.

⁴⁴ See Sheng Bin, Chen Lixue, *Digital Rules under the Multilateral Trade Framework: Progress, Consensus and Disagreement* (多边贸易框架下的数字规则：进展、共识与分歧, Duobian maoyi kuangjia xiade shuzi guize: Jinzhan gongshi yu fenqi), in *Social Sciences International*, 2022, n. 4, pp. 93-110.

i. Review of essential legislative definitions on e-commerce

(1) *Model Law on Electronic Commerce* of UNCITRAL

Within the global context, the United Nations Commission on International Trade Law (UNCITRAL) was one of among the first pioneering organizations to recognize and acknowledge the potential of regulating e-commerce. In 1996, UNCITRAL introduced a *Model Law on Electronic Commerce*.⁴⁵

With a grand vision and a title that embraces the term *electronic commerce*, surprisingly, the *Model Law* chooses to intentionally omit and decline to offer a definition of *electronic commerce*. This deliberate omission does not impose any initial limitations on the scope of *e-commerce* by providing a specific definition, especially by refraining from restricting the interpretation of *electronic*.⁴⁶

Based on this acknowledgement, the scope of application for the model law was defined quite broadly, encompassing “any type of information in the form of a data message used in the context of commercial activities” (Art. 1). Both the terms *data message* and *commercial activities* encompass a fairly wide range of matters. In this regard, the early adoption of the concept of *e-commerce* may indicate a shift from traditional communication methods to various emerging electronic methods, such as the now outdated electronic data interchange. In other words, the term *electronic commerce* in the *Model Law* typically encompasses *commerce conducted using*

⁴⁵ The primary objective of the *Model Law* was “enabling and facilitating commerce conducted using electronic means by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce”, highlighting for the first time the fundamental necessity to regulate e-commerce. Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996), point 6, from United Nations Digital Library, accessed November 15, 2023, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf.

⁴⁶ The reason for the omission, according to the rule makers was “it would have in mind a broad notion of EDI, covering a variety of trade-related uses of EDI that might be referred to broadly under the rubric of electronic commerce”. *Ibid.*, point 7.

electronic methods, which captured the essence of e-commerce.⁴⁷

(2) *Work Programme on Electronic Commerce of WTO*

In 1998, following the adoption of the *Declaration on Global Electronic Commerce* at ministerial conference,⁴⁸ the General Council of the World Trade Organization (WTO) published the *Work Programme on Electronic Commerce*, in aim of promoting the implementation of related policies and examine all trade-related issues pertaining to global electronic commerce. The term *electronic commerce* is defined in a narrower manner compared to that of UNCITRAL, specifically referring to “the production, distribution, marketing, sale, or delivery of goods and services by electronic means.”⁴⁹

This definition represents a significant step towards the detailed regulation of e-commerce. The concept of *commerce* is no longer excessively broad, as it is now limited to goods and services, and the forms of transactions are also restricted. Additionally, the term *electronic* encompasses more than just *electronic telecommunication*. It includes all the electronic links involved in a transaction, from

⁴⁷ Nevertheless, it must be acknowledged that the United Nations, through the *Model Law* and other conventions (both preceding and subsequent), has made significant contributions to the regulation of e-commerce, including *United Nations Convention on Contracts for the International Sale of Goods* (CISG, Vienna, 1980), *UNCITRAL Model Law on Electronic Signatures* (2001), *Convention on the Use of Electronic Communications in International Contracts* (2005) the regulatory framework on e-commerce was beginning to take its shape, which deeply impressed the understanding of scholars.

⁴⁸ The main objective of such *Declaration* was to establish a work programme on global electronic commerce at the next special session of General Council, to examine all trade-related issues. Accessed November 23, 2023, https://www.wto.org/english/tratop_e/ecom_e/mindec1_e.htm.

⁴⁹ Accessed November 23, 2023, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/274.pdf&Open=True>.

production to sale and delivery.⁵⁰

The framework established by the *Work Programme* is also noteworthy, as it calls for cooperation among various commissions of the WTO to address the challenges faced by e-commerce. These challenges pertain to goods trade under the GATT framework, services trade under the GATS framework, and intellectual property protection under the TRIPs framework (Para. 2-4). Additionally, there is a particular emphasis on promoting equal development for developing countries (Para. 5). By combining these elements, a global unified regulatory framework, albeit still rudimentary, began to form.

(3) Legislative focus on e-commerce in the European Union

The European Union has demonstrated a specific focus on e-commerce since 1997, as indicated by the publication of the document *A European Initiative in Electronic Commerce* [COM (97) 157 final] issued by the commission. In this document, e-commerce is not explicitly defined, but rather described in a metaphorical manner, such as stating that “electronic commerce is about doing business electronically.”⁵¹ One notable contribution of this document is the categorization of e-commerce into *indirect e-commerce* and *direct e-commerce* depending on whether

⁵⁰ The efforts of WTO highlight the need to discuss e-commerce in a more concrete and efficient manner. This involves limiting the focus of discussion to goods and services transactions, which are two fundamental components of almost all forms of transactions, regardless of whether they are facilitated by electronic means. See *WTO Work Programme on E-Commerce: Strategy for Further Negotiations*, in *Economic & Political Weekly*, 2001, Vol. 36, n. 39, pp. 3665-3668; Li Mosi, *WTO Negotiations on E-Commerce Rules: Progress, Divergence and the Way Forward* (WTO 电子商务规则谈判: 进展、分歧与进路, WTO dianzi shangwu guize tanpan: Jinzhan fenqi yu jinlu), in *Wuhan University International Law Review*, 2020, n. 6, pp. 55-77.

⁵¹ Para. 5 of the *A European Initiative in Electronic Commerce*. The description that follows the aforementioned definition is also quite representative, making it a valuable reference: “It (e-commerce) is based on the electronic processing and transmission of data, including text, sound, and video. It encompasses many diverse activities including electronic trading of goods and services, on-line delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, on-line sourcing, public procurement, direct consumer marketing and after-sales service. It involves both products (e.g. consumer goods, specialised medical equipment) and services (e.g. information services, financial and legal services); traditional activities (e.g. healthcare, education) and new activities (e.g. virtual malls).”

the goods being traded are tangible and require physical delivery.⁵²

Regarding the *Directive on certain legal aspects of information society services, specifically electronic commerce, in the Internal Market* (Directive 2000/31/EC), commonly known as the *Directive on electronic commerce*, it is noteworthy that the term *electronic commerce* is mentioned in the title but lacks an explicit definition. Instead, the *Directive* relies on the established concept of *Information Society services* as defined by *Directive 98/34/EC* (amended by *Directive 98/48/EC*) to determine the extent of its provisions. These provisions encompass specific elements such as *provided for remuneration, at a distance and at the individual request of a recipient*.⁵³

In the implementation of the Directive, Member States adopt different approaches. For example, Italy incorporated the term *Information Society services* with a reference to *Directive 98/34/EC* through *Decreto legislativo n. 70 del 9 aprile 2003*.⁵⁴

In contrast, France provided a comprehensive definition “with some civil law

⁵² Para. 7 of *A European Initiative in Electronic Commerce*, which defined indirect e-commerce as “the electronic ordering of tangible goods, which still must be physically delivered using traditional channels such as postal services or commercial couriers” and direct e-commerce as “the on-line ordering, payment and delivery of intangible goods and services such as computer software, entertainment content, or information services on a global scale”. Although this classification is not universally adopted, it establishes a baseline for identifying e-commerce transactions: Even if the objects are physical, the delivery must be conducted electronically, and the contract generating the transaction must be concluded using an electronic method. This requirement for electronic conclusion of contracts is both the most fundamental requirement and the most crucial aspect of e-commerce. See Rowe H., *Electronic Commerce - European Union Developments*, in *Computer Law & Security Review*, Vol. 15, n. 2, 1999, pp. 113-114.

⁵³ According to Art. 1 of the *Directive 98/48/EC*, *Information Society service* refers to “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.”

⁵⁴ The *Decree* only mentioned the *Directive 98/34/EC* once in its introductory section. The definition of *Information Society services*, however, is broader in scope compared to the modified *Directive 98/34/EC*, particularly without the inclusion of those three specific elements. According to Art. 2 of that *Decree*, the term *Information Society services* refers to “economic activities carried out online as well as the services defined by Art. 1, Para. 1, Letter b, of *Law 21 June 1986, n. 317*, and subsequent amendments.” (Le attività economiche svolte in linea -on line- nonché i servizi definiti dall’articolo 1, comma 1, lettera b), della legge 21 giugno 1986, n. 317, e successive modificazioni.)

features”⁵⁵ through the so-called LCEN (*Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l’économie numérique*). Article 14 of the LCEN defines *electronic commerce* as “the business activity by which a person offers or ensures the supply of goods or services remotely and electronically.”⁵⁶ While the primary focus of the definition is on the “supply of goods or services”, the second section expands the scope of e-commerce to include “services such as those consisting of providing online information, commercial communications and search tools, access and retrieval of data, access to a communications network or hosting of information.”⁵⁷ Therefore, any commercial activities carried out in the digital realm or via electronic means are regarded as *e-commerce*, necessitating a comprehensive overhaul in contract law.⁵⁸

This definition includes the elements of subjects and objects of the activity conducted in e-commerce and takes them as the major factors in the definition. Additionally, Section 2 contains an expansionary clause, which reflects a considerably contemporary thinking in the definition of e-commerce: Through the use of illustrations, this clause recognizes the tension and elasticity of the scope of e-commerce, allowing for any future unpredictable changes and developments.⁵⁹

(4) *E-commerce Law of China*

The *E-Commerce Law of China (2018)* was enacted several years after previous international legislation and the European Directive. It introduces a new definition of e-commerce, which follows the typical approach of Chinese legislators to include a

⁵⁵ Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L’Harmattan, 2021, p. 105.

⁵⁶ Art. 14, Section 1 of the LCEN : « Le commerce électronique est l’activité économique par laquelle une personne propose ou assure à distance et par voie électronique la fourniture de biens ou de services. »

⁵⁷ Art. 14, Section 2 of the LCEN : « Entrent également dans le champ du commerce électronique les services tels que ceux consistant à fournir des informations en ligne, des communications commerciales et des outils de recherche, d’accès et de récupération de données, d’accès à un réseau de communication ou d’hébergement d’informations, y compris lorsqu’ils ne sont pas rémunérés par ceux qui les reçoivent. »

⁵⁸ See Stoffel-Munck Ph., *La réforme des contrats du commerce électronique*, JCP E, 2004, n° 38, 1341 ; Huet J., *Encore une modification du Code civil pour adapter le droit des contrats à l’électronique Loi LCEN n° 2004-575 du 21 juin 2004*, JCP G, 2004, n° 47, 178.

⁵⁹ See Rojinsky C., Teissonniere G., *L’encadrement du commerce électronique par la loi n° 2004 -575 du 21 juin 2004 pour la confiance dans l’économie numérique. Principes généraux*, JCP G, 2004, n° 37, 414.

preliminary definitional chapter in the beginning of laws.

The definition proposed by the Chinese legislator is concise, defining *e-commerce* as “business activities of selling goods or providing services through Internet and other information networks.”⁶⁰ Simultaneously, the legislator explicitly excluded financial products and services, news, audio and video programs, publishing, cultural products, and other content services provided through information networks from the realm of e-commerce.⁶¹

This definition is similar to the LCEN, as *e-commerce* is classified as *business activities* that involve the transaction of goods or services. The inclusion of such clause implies that the scope of *goods and services* in Chinese legislation is broad, encompassing all objects that can be traded through *information networks*. That point ensures the flexibility of the e-commerce law.⁶²

Another innovative aspect of the definition of e-commerce is the inclusion of the expression *Internet and other information networks*. While e-commerce is currently predominantly conducted through the Internet, the existence and potential emergence of other media should not be disregarded. Therefore, while emphasizing the

⁶⁰ Art. 2, Section 2 of the *E-Commerce Law of China* provides an official explanation that highlights three fundamental elements of e-commerce: (1) Utilizing the Internet and other information networks; (2) Engaging in the sale of goods or provision of services; (3) Conducting business activities. See *E-commerce Law of China* Drafting Commission, *Interpretation of the Provisions of the Electronic Commerce Law of China* (中华人民共和国电子商务法条文释义, Zhonghua renmin gongheguo dianzi shangwufa tiaowen shiyi), Beijing: China Law Press, 2018, pp. 19-20.

⁶¹ Art. 2, Section 3 of *E-Commerce Law of China*. In the aforementioned field, there is a strong need for specific regulation that excludes the application of e-commerce law. However, the selection of the legislator is not without controversy. See *E-commerce Law of China* Drafting Commission, *Interpretation of the Electronic Commerce Law of China* (中华人民共和国电子商务法解读, Zhonghua renmin gongheguo dianzi shangwufa jiedu), Beijing: China Legal Publishing House, 2018, pp. 22-26.

⁶² The legislator stated that the *E-Commerce Law of China* “aims to encompass a wide range of practical areas within the field of e-commerce” with its definition. See Lyu Zushan, *Explanation on the “Electronic Commerce Law of China (Draft)”* [关于《中华人民共和国电子商务法（草案）》的说明, Guanyu zhonghua renmin gongheguo dianzi shangwu fa (cao'an) de shuoming], at the 25th Session of the Standing Committee of the 12th National People’s Congress on December 19, 2016, archived August 31, 2018, at http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-08/31/content_2060826.htm.

importance of the Internet, it is necessary to maintain the inclusiveness of the key element of e-commerce, namely the *electronic means*.⁶³ This requirement is reiterated in the Art. 512 of the *Civil Code of China (2020)* (中华人民共和国民法典, *Zhonghua renmin gongheguo minfadian*), specifically in relation to the definition of an electronic contract,⁶⁴ demonstrating the consistent understanding of legislators regarding the significance of the electronic aspect in the field of contracts.

ii. The redefinition of e-commerce: From Sale by Internet to Transaction in Internet

The scope of e-commerce is ever expanding. It could be considered synonymous with *selling via the Internet* in the past two decades. However, in today's commercial society, the concise definition of e-commerce could be *selling in Internet*⁶⁵ or more accurately, *conducting transactions on the Internet*. This definition encompasses all types of transactions that occur in the virtual world created by the Internet, not just the simple sale of goods.

Based on this revised description of e-commerce, we can further elaborate on the essential components that are vital to the legal research of e-commerce: (1) E-commerce is a transaction that possesses the characteristics of a contract; (2) E-commerce is conducted through electronic means.⁶⁶

(1) E-commerce is a transaction based on contract

⁶³ See *E-commerce Law of China* Drafting Commission, *Interpretation of the Provisions of the Electronic Commerce Law of China* (中华人民共和国电子商务法条文释义, *Zhonghua renmin gongheguo dianzi shangwufa tiaowen shiyi*), Beijing: China Law Press, 2018, p. 20.

⁶⁴ Art. 512 of the *Civil Code of China* begins with "Where the object of an electronic contract concluded through internet or other information network....."

⁶⁵ See Ferrier D., Ferrier N., *Droit de la distribution*, Paris : LexisNexis, 2023, p. 293.

⁶⁶ A similar viewpoint can also be observed in the context of e-commerce companies. For instance, Amazon, in their guidance for prospective sellers, defines *e-commerce* as "the trading of goods and services on the internet," while *e-commerce business* refers to "a company that generates revenue from selling products or services online." This definition, although straightforward, also highlights three essential elements of e-commerce: a transaction, goods or services as the focal point, and operation primarily conducted on the internet. Accessed March 8, 2024, <https://sell.amazon.com/learn/what-is-ecommerce>.

The term *transaction* is a similar expression to *business activities*, with the emphasis on the exchange nature. Additionally, from a semantic perspective, the term *commerce* is synonymous with exchange, referring to the reciprocal transfer of objects between parties.⁶⁷

In the context of civil law, a contract is always necessary for all transactions. As a result, on one hand, the application of contract law in the field of e-commerce is inevitable; on the other hand, the primary focus of e-commerce law should be on the regulations governing contracts in e-commerce, particularly in relation to digital contracts or remote contracts.⁶⁸

Simultaneously, it is imperative to consider the sub-categorization of e-commerce. This is because the term *transaction* encompasses a wide range of activities. In fact, e-commerce encompasses distinct types, including B2B, B2C, B2P, C2C, and others. B2B, B2C, and C2C are the three types that receive particular attention from researchers and analysts,⁶⁹ while the dichotomy between B2B and B2C e-commerce is quite common.⁷⁰

Between B2B and B2C e-commerce, while B2B e-commerce made a substantial contribution to the overall transaction volume of e-commerce and has been the

⁶⁷ See Huet F., *La fiscalité du commerce électronique*, Paris : Litec, 2000, p. 4.

⁶⁸ See Stoffel-Munck Ph., *La réforme des contrats du commerce électronique*, JCP E, 2004, n° 38, 1341.

⁶⁹ See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, p. 192.

⁷⁰ In terms of statistics, the measurement of e-commerce even only includes both B2B and B2C e-commerce. For instance, according to the *Statistical Classification of the Digital Economy and its Core Industries 2021 of China* [数字经济及其核心产业统计分类（2021）, Shuzi jingji jiqi hexin chanye Tongji fenlei (2021)], published by the National Bureau of Statistics of China, internet e-commerce platforms can facilitate both retail and wholesale transactions (Art. 6, Code 0402). Accessed October 13, 2023, https://www.gov.cn/gongbao/content/2021/content_5625996.htm.

According to Alibaba's self-categorization of its business, a distinction can also be observed between B2B and B2C e-commerce. Alibaba divides its business into two main segments: The digital retail business (Taobao, Tmall) and the online wholesale business (1688.com). See *Financial report of Alibaba Group in 2023 fiscal year*, pp. 16-18, accessed March 9, 2024, <https://www.alibabagroup.com/ir-financial-reports-financial-results>.

prevailing mode of e-commerce,⁷¹ B2C continues to garner more attention. On the one hand, legal scholars tend to pay relatively more attention to B2C commerce. This is evident in the significant focus on e-commerce in consumer law textbooks.⁷² Numerous monographs on e-commerce exclusively concentrate on research pertaining to B2C e-commerce as well.⁷³ On the other hand, there is a distinct and significant contrast between B2B and B2C e-commerce in the realm of legislation, as a significant portion of these laws only pertain to online retail and consistently involve online consumers. In other words, the legislation surrounding e-commerce primarily focuses on consumer protection laws or restrictions on e-commerce operators but rarely pays attention to online business users or online professional buyers.⁷⁴

Contrasted to C2C e-commerce, B2C e-commerce is still more popular and extensive.⁷⁵ For instance, the portion of B2C e-commerce in the overall turnover is quite remarkable: In China, during the first three quarters of 2023, B2C e-commerce constitutes 80.5% of the total online retail amount,⁷⁶ with a clear overwhelming advantage over C2C e-commerce.

As a result, it is important to emphasize the distinctions between B2B, B2C and

⁷¹ This is because, until the early years of the 21st century, e-commerce and Internet usage were primarily confined to commercial activities within enterprises. See Lucas A., Devèze J., Frayssinet J., *Droit de l'informatique et de l'Internet*, Paris : Presses Universitaires de France, 2001, p. 574.

⁷² See Raymond G., Bernheim-Desvaux S., *Droit de la consommation*, Paris : LexisNexis, 2022, pp. 289-297 and pp. 631 ss. In this French textbook, “sous-section” is only about the e-commerce, and an independent part is devoted for the discussion about “consumer relationships linked to modern technologies”.

⁷³ See Gola R.V., *Droit du e-commerce et du marketing digital : sécurisez et développez votre e-business*, Paris : Gualino, 2019, p. 23.

⁷⁴ There are few laws specifically tailored for e-commerce merchants, such as the *Regulation on promoting fairness and transparency for business users of online intermediation services* [Regulation (EU) 2019/1150].

⁷⁵ See Julien J., *Droit de la consommation*, Paris : LGDJ, 2022, p. 241.

⁷⁶ Statistics source: *China e-commerce development report for the first three quarters of 2023*, published by E-commerce and informatization division of Ministry of Commerce of China, accessed April 3, 2024, https://dzswgf.mofcom.gov.cn/news_attachments/8c838acc35d4bf354c3935ba0c35eb820d23ac33.pdf.

C2C e-commerce with a particular focus on B2B e-commerce.⁷⁷ In other words, while not comprehensive, *e-commerce law* can primarily be considered as a law that governs B2C e-commerce, serving as a means of consumer protection. Therefore, it is necessary to incorporate a substantial number of consumer protection rules within the framework of e-commerce law to ensure the protection of consumer rights and interests.⁷⁸

(2) E-commerce is facilitated through electronic means

Although certain transactions may involve the exchange of tangible goods, as long as their essential aspects are virtualized, they could be identified as e-commerce transactions. The element *through electronic means* signifies that the transactions must take place via a virtual medium, such as online platforms or websites. Additionally, while it is not mandatory to utilize this medium for the entire transaction process, it must be utilized in the most crucial stage of the transaction. The digitalization of other links in the transaction does not affect the identification of e-commerce.⁷⁹

The conclusion of a transaction or the formulation of an order is considered the most significant stage. For instance, in China, the definition in the field of statistics describes *e-commerce* as the “transaction of goods or services based on orders received via networks,” while the networks used for sending or receiving orders are further

⁷⁷ The distinction between B2B and B2C e-commerce also affects the application of certain legislations. For instance, the application of specific rules depends on this distinction, such as whether to adopt pricing that includes tax, the factors that need to be displayed on the invoice, whether to include an arbitration clause, and, most notably, whether to allow for arbitrary withdrawal from the buyer’s side. See Hollande A., Linant de Bellefonds X., *Pratique du droit de l’informatique et de l’Internet*, Paris : Delmas, 2008, p. 230.

⁷⁸ See Bai Li, He Yan, *Legal Protection of E-Commerce Consumers Rights and Interests under the background of One Belt and One Road Initiative* (“一带一路”倡议背景下电子商务中消费者权益的法律保护, Yidai yilu changyi beijingxia dianzi shangwu zhong xiaofeizhe quanyi de falyu baohu), in *Social Sciences in Xinjiang*, 2017, n. 5, pp. 115-120.

⁷⁹ Several situations, even if facilitated by the Internet, may not be considered part of the e-commerce category if they only involve a digitalized link. For instance, *Statistical Classification of the Digital Economy and its Core Industries 2021* excludes “activities that solely involve online payment, and activities that solely involve the establishment or provision of online trading platforms and access” from the scope of *Internet retail* (Art. 6, code 040202).

distinguished as websites and mobile apps and EDI.⁸⁰ Apparently, instead of the payment or the delivery, the sending or receiving of an order or the conclusion of a contract is chosen as the standard to recognize e-commerce.⁸¹ Therefore, the essence of e-commerce could be considered as an online-concluded contract, or a digital contract.⁸²

The virtualization of transactions, when considered, not only introduces new specific regulations regarding *electronic transactions* but also activates the enforcement of cyberspace supervision laws in such field, thereby broadening the scope of e-commerce law beyond the mere online transaction.

IV. Research scope: The comprehensive yet delimited range of e-commerce law

While the definition of *e-commerce* is relatively easy to determine, the definition of *e-commerce law* is not so simple. Based on previous analysis, *e-commerce* refers to online transaction, while *e-commerce law* can definitely not merely regulate transaction.⁸³ Only with a correct mainline, could a systematic examination of e-commerce legislation be conducted.

⁸⁰ National Bureau of Statistics of China, *China statistical yearbook 2023* (中国统计年鉴 2023, Zhongguo Tongji nianjian 2023), *Explanation on major statistical indicators of Chapter 16*, p. 562. Accessed March 9, 2024, <https://www.stats.gov.cn/sj/ndsj/2023/indexch.htm>.

⁸¹ The Chinese Customs shares the same viewpoint. According to their definition, a cross-border transaction could be classified as *e-commerce* if it is conducted “based on an online order and delivered through cross-border logistics”. It is evident that the key factor in identifying e-commerce is the presence of an *online order*. According to Art. 1 (2) of the *Notice of Issuing the Statistical Survey Rules for Cross-Border E-commerce by the general Administration of Customs of China (2023)* (海关总署关于印发《跨境电子商务统计调查制度》的通知, Haiguan zongshu guanyu yinfa kuajing dianzi shangwu Tongji diaocha zhidu de tongzhi). Accessed October 20, 2023, from <http://www.customs.gov.cn/customs/302249/zfxgk/zfxgkml34/5150686/index.html>.

⁸² Certain research on e-commerce in the context of digital contracts has been observed. See Xue Jun, *Analysis of the Conclusion of Digital Contract*, in *Journal of Law Application* (电子合同成立问题探析, Dianzi hetong chengli wenti tanxi), 2021, n. 3, pp. 25-33.

⁸³ See Cui Congcong, *On the Regulation Objects and Scope of Application of Electronic Commerce Law* (论电子商务法的调整对象与适用范围, Lun dianzi shangwufa de tiaozheng duixiang yu shiyong fanwei), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2019, n. 1, pp. 79-85.

In this thesis, the author aims to propose the following standards for determining the scope of e-commerce law: The legal relationship that should be encompassed by e-commerce law, in addition to the necessity of involving online transactions, must (a) involve the e-commerce operators and consumers, and (b) not primarily involve any third party outside the e-commerce transaction.

The standard (a) firstly excluded rules that have no direct connection with either party of e-commerce, such as almost all the rules about AI,⁸⁴ blockchain⁸⁵ and other rules mainly about information technology.

The standard (a) also excludes rules and legal relationships that are only relevant to one party in an e-commerce transaction, particularly the operator side. For instance, e-commerce distribution is an important aspect of e-commerce selling, but it is specifically the phase that occurs after production and before consumption,⁸⁶ which is only connected to the operators and thus will not be discussed in this thesis.

Similarly, the competition among e-commerce operators, particularly the platforms, as long as not closely related to the consumer side, may not be considered in the overall discussion of e-commerce law in this thesis. For instance, the competition regarding the control, processing, and utilization of data among e-commerce operators, despite of reflecting the current trend in the digital market and deserving of a comprehensive analysis,⁸⁷ is still a topic that diverges from the central focus of this thesis.

⁸⁴ However, it is important to note that AI is widely embraced in the field of e-commerce, particularly in relation to the core aspect of e-commerce, which is the contract. One of the earliest examples of AI application in e-commerce is the client service chatbot, which has also been observed in e-commerce practices. See Bensamoun A., Loiseau G., *Droit de l'intelligence artificielle*, Paris : LGDJ, 2022, pp. 157-159.

⁸⁵ Additionally, since blockchain is on the periphery of the legal system and has the characteristic of *heterotopia* in relation to the legal order it is evidently inappropriate to include it within the scope of e-commerce law, even though the smart contract based on blockchain technology may facilitate automation in e-commerce contract execution. See Legeais D., *Blockchain et actifs numériques*, Paris : LexisNexis, 2021, p. 50 ; Conseil d'État, *Droit comparé et territorialité du droit : un cycle de conférences du Conseil d'État (section du rapport et des études et section du contentieux)*, Tome 2, La documentation Française, 2017, p. 162.

⁸⁶ See Ferrier D., Ferrier N., *Droit de la distribution*, Paris : LexisNexis, 2023, p. 1.

⁸⁷ See Decocq A., Decocq, G., *Droit de la concurrence*, Paris : LGDJ, 2021, n° 84.

The standard (b) further excludes relationships involving both e-commerce operators and consumers, where the main obligor is actually a third party. A prime example of this is digital payment. In such cases, it is the third-party payment service institutions that receive payment from the consumer and transfer it to the merchant. The third-party institutions are the main actors in this relationship, rather than the two parties involved in the e-commerce transaction. As a result, the major rules regarding this issue are designed for the third-party institutions and are less relevant to e-commerce itself. Similarly, the delivery service should be excluded from the scope of e-commerce law. Although they are all service providers in the e-commerce industry, they are not the main characters in e-commerce. It is more appropriate to place them in the field where they truly play the leading role.⁸⁸

What falls outside the scope of e-commerce law but is still related to e-commerce, from the perspective of the author, could be reclassified under the new scope of *e-commerce market law* or *digital market law*. This is a broader concept than *e-commerce law* that should comprehensively address and manage the complex relationships within the general e-commerce field, balancing market order and the growth of the digital economy, also corresponding to the fashionable concept *digital market*.

Based on the above two standards, the domain of *e-commerce law* can be categorized into two distinct parts: the regulations concerning the e-commerce contract itself, and the regulations that have a direct influence on the e-commerce transaction.

V. Methodology: Comparative research

What is true for legal comparison is what is true for any and all sciences, and we will state it as the first thesis: The task of legal comparison, without which legal comparison would not be a science, is the acquisition of a better knowledge of the law,

⁸⁸ However, the aforementioned topics cannot be completely disregarded. It is important to note that there are several Regulations in the EU and specific provisions in the *E-Commerce Law of China* that pertain to these areas. Therefore, these subjects will only be briefly introduced in the overview section (Chapter 1) of the e-commerce regulatory framework, without further extensive analysis.

*just as the task of all comparative sciences in general is the acquisition of a better knowledge of the data belonging to the area to which it applies.*⁸⁹

Keeping in mind this statement this study aims at reconstructing, in a comparative perspective, the evolution of e-commerce practices and regulation in the EU and China, in order to highlight similarities and divergences and analyse them in the perspective of the relations between the two regulatory frameworks.

These relations, from a comparative point of view have several points of interest. Firstly, China joined the civil law legal family at the beginning of last century, which means that statutory law has a prominent role in the hierarchy of the sources of law, also in the Chinese legal system. In the last few decades, a wide and complex process of legal transplants from the Western Legal Tradition to China has been developing, thus establishing new channels of communications between European and Chinese law, as the numerous studies conducted in this perspective clearly demonstrates.⁹⁰

Secondly, any domestic e-commerce legislation will inevitably encounter others, due to the lack of national boundaries on the Internet and the inherent tendency of e-commerce to transcend these boundaries.⁹¹ Understanding and respecting e-commerce regulations in another legal system are crucial issues to ensure the smooth

⁸⁹ Gambaro A., Monateri P.G., Sacco R., *Comparazione giuridica*, in *Digesto delle discipline privatistiche – Sezione civile*, Torino, 1988.

⁹⁰ For a general overview of the legal transplant literature, with a focus on the Chinese legal modernization process, see Peerenboom R., *What Have We Learned about Law and Development? Describing, Predicting and Assessing Legal Reforms in China*, in *Michigan Journal of International Law*, Vol. 27, Spring 2006, pp. 823-871. Chen Tsung-Fu, *Transplant of Civil Code in Japan, Taiwan, and China: With the Focus of Legal Evolution*, in *National Taiwan University Law Review*, Vol. 6, n. 1, 2011, pp. 389-432; Timoteo M., *China codifies. The First Book of the Civil Code between Western Models and Chinese Characteristics*, in *Opinio Juris in Comparatione*, 2019, Vol. 1, pp. 23-44. On the evolution of Chinese legal reforms in relation to e-commerce and in comparison with European law see Finocchiaro G., Balestra L., Timoteo M. (edit), *Major legal trends in the digital economy: the approach of the EU, the US, and China*, Bologna, 2022; Wang Faye Fangfei, *Law of electronic commercial transactions: contemporary issues in the EU, US and China*, London: Routledge, 2010.

⁹¹ See Ndokuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, p. 28.

operation of e-commerce.⁹² In this regard, conducting comparative legal research, which provides a better understanding of the similarities and differences among various legislations, could be beneficial in establishing an ideal, consistent, and even unified common regulatory framework on e-commerce.

Thirdly, and most importantly, the favourable cooperation over e-commerce between the EU and China has increased the significance of conducting comparative research between the two. As early as 2013, Article 16 of *EU-China 2020 Strategic Agenda for Cooperation* already mentioned “exchange best practices in the area of e-commerce, in particular with regard to its regulatory aspects from different angles.”⁹³ In 2016, during the first China-EU legal affairs dialogue, the issue of e-commerce was discussed. The Chinese representative, who was then the director of the Legislative Affairs Office of the State Council, emphasized the necessity of using EU e-commerce legislation as a reference for the ongoing e-commerce law draft project at that time.⁹⁴ Shortly after the promulgation of the *E-Commerce Law of China*, a seminar was organized by IP Key China, an organization directed by the European Commission and implemented by the European Union Intellectual Property Office (EUIPO). The seminar discussed the impact of this new legislation and put forward several

⁹² The conflict among legislations especially impacts cross-border e-commerce, which has already become a so important part of e-commerce that cannot be ignored. From China’s perspective, considering the Belt and Road Initiative, such topic is frequently discussed. See Zhang Naigen, *Reconstruction of International Economic and Trade Rules under the Belt and Road Initiative* (“一带一路” 倡议下的国际经贸规则之重构, Yidai yilu changyi xiade guoji jingmao guize zhi chonggou), in *Legal Science*, 2016, n. 5, pp. 93-103; Yu Hewei, *The Construction of Cross-border E-commerce Rules under the Background of Belt and Road: Based on FTAs* (“一带一路” 背景下跨境电子商务规则之构建——以 FTAs 为载体, Yidai yilu beijing xia kuajing dianzi shangwu guize zhi goujian: Yi FTAs wei zaiti), in *Social Sciences in Xinjiang*, 2017, n. 5, pp. 106-114.

⁹³ English version is available at https://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf. Chinese version is available at https://www.gov.cn/govweb/jrzg/2013-11/23/content_2533293.htm.

⁹⁴ See Mission of the People’s Republic of China to the European Union, *China-EU Legal Affairs Dialogue Mechanism Officially Launched in Beijing*, archived June 23, 2016, at http://eu.china-mission.gov.cn/gdxw/201606/t20160623_8191656.htm. Also see the report of EU, *First China-EU Legal Affairs Dialogue*, accessed September 17, 2023, <https://ec.europa.eu/newsroom/just/items/34106>.

noteworthy suggestions and opinions.⁹⁵

Although the current relationship between the EU and China is facing significant challenges, it is important not to overlook or disregard the collaboration in the legal field. The most recent high-level digital dialogue between the EU and China, held in September 2023, addressed various issues including platform regulation, artificial intelligence, and the digital political and regulatory developments within the EU.⁹⁶ During the dialogue, a consensus was emphasized:

*“Both sides believe that China and the EU have extensive common interests and strong complementarity in the digital field, and are willing to work together to strengthen communication, promote practical cooperation in the digital field to continuously achieve new results, accelerate and create an open, inclusive, fair, just and non-discriminatory environment for the development of digital economy, and contribute to promoting global digital transformation and economic recovery and development.”*⁹⁷

Therefore, a comparison between the EU and China on e-commerce regulation is achievable and substantial, which will be the fundamental methodology of this dissertation.⁹⁸

To achieve comprehensive research on e-commerce legislation, it is crucial to carefully select the materials for analysis. The principal materials under comparison undoubtedly include all the rules formulated by the legislature and the administrative organs in the EU and China. This includes the regulations, directives, and decisions in

⁹⁵ See the site of IP Key China, accessed September 17, 2023, <https://ipkey.eu/zh/china/activities/guanyu2019zhongguodianzishangwufayingxiangdezhonggouzaixianyantaohui>.

⁹⁶ See *EU-China: Commission and China hold second High-level Digital Dialogue*. Accessed September 23, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4488.

⁹⁷ *The second China-EU high-level digital dialogue was held, co-hosted by Zhang Guoqing and Jourova*. Archived September 9, 2023, at Communist Party of China News Net, <http://cpc.people.com.cn/n1/2023/0919/c64094-40080633.html>.

⁹⁸ It should be noted that there are already several notable comparative works that compare the legislation of the EU with that of another country. For instance, Van Overmeire X., Wéry É., Bernier Ch., *Commerce électronique Canada-Union européenne*, Bruxelles : Larcier, 2018.

the EU, as well as the laws, regulations, and administrative measures in China. However, a legal system is not solely comprised of legal documents, and the importance of judicial decisions should not be overlooked. When faced with incidents in the digital economy, the judiciary is almost always at the forefront. Furthermore, the Court of Justice of the European Union (CJEU) and the Supreme People's Court of China (SPC) play a crucial role in the process of formulating rules regarding e-commerce. More specifically, the CJEU has a unique function that ensures the uniform interpretation and application of EU law across all member states. In this context, the CJEU possesses the authority to conduct judicial reviews of EU law. Another significant judicial-legislative role of the CJEU is its power to issue preliminary rulings according to Art. 267 of the *Treaty on the Functioning of the European Union* (TFEU) upon the request of national courts of EU member states. Furthermore, any decisions rendered by the CJEU possess binding authority, which can shape EU law beyond the specific cases they address, including even legislative activities. In contrast, the SPC functions predominantly as a judicial organ; however, it has a crucial impact on shaping China's legal system through the issuance of "judicial interpretations" and "guiding cases", which serve as binding guidelines for lower courts to varying degrees. Although these interpretations and guiding cases are not strictly binding in the manner of precedents in common law systems, they can still be considered quasi-legislative activities within China's judicial practice.⁹⁹ Therefore, the significance of judicial activities should never be regarded as inferior to statutory regulations, even in the

⁹⁹ According to a senior official of the Supreme People's Court, both the "judicial interpretations" and "guiding cases" are generating judicial legal rules based on the political power of the SPC, rather than the intrinsic authority of the interpretations and the cases, which is somewhat dissatisfying. See Liu Shude, *The Supply Model of Judicial Rules of the Supreme People's Court: Also on the Improvement of Case Guidance System* (最高人民法院司法规则的供给模式——兼论案例指导制度的完善, *Zuigao renmin fayuan sifa guize de gongji moshi: Jianlun anli zhidao zhidu de wanshan*), in *Tsinghua Law Journal*, 2015, n. 4, pp. 81-93. Instead, the CJEU relies relatively more on the intrinsic authority of its activities, which could be taken as a mirror for China's judicial system reform, especially in the context of guiding cases.

context of discussions surrounding e-commerce.¹⁰⁰

VI. Structure of the dissertation

Despite the lack of a clear rationale or guiding principle in the legislation, the research has the potential to supplement the work of legislators and engage in more thoughtful analysis, particularly in the context of reorganization.

Chapter 1 will conduct a comprehensive review of legislation, specifically by organizing a list of existing legal documents related to e-commerce in the EU and China in a logical sequence. In this chapter, the author will aim to include all legally binding documents, which will serve as the legal foundation for the study of the regulatory framework on e-commerce in this dissertation.

Chapter 2 will focus on e-commerce transactions, examining not only e-commerce contracts but also the preceding and subsequent steps involved in the EU and China, in order to uncover the commercial chain that surrounds e-commerce universally. In other words, because e-commerce is not only linked to contract law but also encompasses a wider range of regulations for transactions, the study of e-commerce law should certainly encompass these areas.

Chapter 3 will examine the management of the external environment of e-commerce, specifically focusing on its economic and legal aspects. This will involve discussing diverse topics such as competition regulations, cross-border e-commerce, intellectual property protection, and data governance. By considering relevant regulations, judicial decisions and practices in the EU and China, it is possible to create a conducive environment for the progress of e-commerce, ultimately influencing all e-commerce transactions.

¹⁰⁰ As Professor Gino Gorla has taught us, a comprehensive approach that includes comparative, casuistry, and historical methodologies is essential for legal studies. See Gorla, G., *Diritto comparato e diritto comune europeo*, Milano, 1981, pp. 5-6.

Chapter 1 Overview of E-Commerce Regulatory Frameworks in the EU and China

For the sake of grasping the current situation of e-commerce legislation in EU and China, which is the textual basis of our research, a chronological and logical organization will make several contributions. The author will try to exhaust the existing legislations, selecting their essential parts and provisions, revealing all the items already taken into consideration by the legislators, demonstrating the legal-related affairs in e-commerce field. Anyway, it should be noted that e-commerce law is *recomposed* (recomposé) field,¹⁰¹ with no single code or comprehensive law covering all necessary rules. Therefore, the research will take a different approach, analysing the components of the overall structure and assembling a distinct recomposed framework for this thesis.

To systematically organize the existing rules on e-commerce in the EU and China, a guide outlining the research itinerary is necessary. This chapter will present the composition of the regulatory framework for e-commerce in the EU (1.1) and China (1.2), serving as an index of current e-commerce norms categorized by their respective sources.

¹⁰¹ See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, p. 31.

1.1 E-commerce regulatory framework in the European Union

The European Union has implemented several instruments to regulate the field of e-commerce, including legislation and judgments. However, before delving into these instruments, it is crucial to first analyse the Digital Single Market Strategy (DSM), which currently serves as the central policy for regulating the digital market in the EU (1.1.1). The legislations (1.1.2), primarily based on directives and regulations pertaining to e-commerce, still demonstrate some level of fragmentation.

1.1.1 Digital Single Market Strategy

The Digital Single Market Strategy of the European Union is an initiative aiming at fostering growth of the digital economy in Europe, which encompasses various measures to eliminate obstacles to digital transactions and ensure convenient access to online goods, services, and information. The strategy, which was introduced by the Juncker Commission in May 2015,¹⁰² strives to enhance the digital advantages for all citizens of the European Union in every Member State, to “ensure that Europe’s economy, industry and society take full advantage of the new digital era.”¹⁰³ It encompasses a variety of action plans that have been developed to establish a unified digital market environment. The objective is to enhance accessibility to online markets, reinforce digital networks, provide assistance to small and medium-sized enterprises,

¹⁰² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A Digital Single Market Strategy for Europe” [COM (2015) 192 final].

¹⁰³ According to an official explanation of such communication document of European Council, *Digital single market for Europe*, accessed May 31, 2024, <https://www.consilium.europa.eu/en/policies/digital-single-market/>.

and encourage digital transformation in the European economy and society.¹⁰⁴ This strategy also serves as a valuable model for lawmakers in other nations.¹⁰⁵

By promoting the Digital Single Market Strategy, all sectors in the digital market will be impacted. Firstly, this will provide greater opportunities for all businesses, not just limited to online ones, which can contribute to expanding their market reach. This is especially true in terms of reducing costs through digitalization and innovation in products and services.¹⁰⁶ Secondly, stricter compliance and regulation requirements will be imposed on digital market operators to protect the normal order of the digital market and ensure fair competition. Among these operators, global tech giants will face major regulatory challenges, as they intensify the asymmetry in bargaining power in their relationships with smaller digital enterprises, potentially threatening the future of the European digital market.¹⁰⁷ Thirdly, and most importantly, similar to other legislation and policies in the field of digital economy, cyber-consumers are expected to be the primary beneficiaries. They are expected to gain advantages such as increased

¹⁰⁴ General reviews on the implementation of Digital Single Market strategy and its relevance for European Market economy include Communication from the Commission on the Mid-Term Review on the implementation of the Digital Single Market Strategy a Connected Digital Single Market for All [COM (2017) 228 final]; Rutkowski, A. (2018). The realized and unrealized benefits of the EU Single Market: current views. *ICE, Revista de Economía*, 902(902), 11-23; Dąbrowski, Ł. D., & Suska, M. (2022). *The European Union digital single market Europe's digital transformation*. London: Routledge; Marcus, J. S., Petropoulos, G. and Yeung T., *Contribution to Growth: The European Digital Single Market Delivering economic benefits for citizens and businesses*, Study requested by the IMCO Committee, CEPS Special Report 2019, accessed September 28, 2023, https://www.bruegel.org/sites/default/files/wp-content/uploads/2019/02/IPOL_STU2019631044_EN.pdf.

¹⁰⁵ For instance, several Chinese scholars noticed such ambitious document as soon as its publication, asserting that it could be fairly significant not only for the integration in European Union, but also for the governance of digital world in other countries, including China. See Dong Yifan, Li Chao, *Explanation on Digital Single Market Strategy of European Union* (欧盟《数字单一市场战略》解读, Oumeng shuzi danyi shichang zhanlyue jiedu), in *International Research Reference*, 2016, n. 3, pp. 5-9.

¹⁰⁶ In the expectation, as the potential development of digital economy and the emerging of new digital business models, even reducing the marginal costs “close to zero”, according to the Commission Staff Working Document [SWD (2015) 100 final] accompanying the communication document which issued Digital Single Market Strategy, *A Digital Single Market Strategy for Europe - Analysis and Evidence*, pp. 4-5.

¹⁰⁷ See EU Commission Staff Working Document [SWD (2015) 100 final], *A Digital Single Market Strategy for Europe - Analysis and Evidence*, pp. 10, 55.

choice, lower prices, a wider range of products and information, and improved convenience in accessing goods and services sold by both domestic e-commerce operators and those from other Member States.¹⁰⁸ Additionally, as consumer rights are enhanced, the level of data security, particularly for personal data, will also be elevated. This will provide greater trust and confidence for online transactions, which is another crucial step in unlocking the market potential from the consumer's perspective.¹⁰⁹

The Digital Single Market Strategy plays a crucial role in enhancing “digital sovereignty”¹¹⁰ within the EU, which is a key objective in pursuing strategic autonomy. This principle guides the EU's participation in the global digital competition, where it is at a relative disadvantage. According to the 2030 Digital Compass report, the majority of major digital technologies are developed outside of the EU, with US companies managing 90% of EU data. Additionally, less than 4% of mainstream online platforms originate from the EU, and EU-manufactured chips only account for 10% of the EU market.¹¹¹ These statistics are not optimistic for European leaders. Therefore, emphasizing “digital sovereignty” is essential to ensure that the EU

¹⁰⁸ “Consumer” is actually the key word of the introduction part of the Communication document “A Digital Single Market Strategy for Europe” [COM (2015) 192 final] (p. 2), where cited several paragraphs of Jean-Claude Juncker from his report *Political Guidelines for the next European Commission - A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*.

¹⁰⁹ See Mărcuț M., *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*, Cham: Springer, 2017, pp. 50-54.

¹¹⁰ See Von der Leyen U., *State of the Union Address by President von der Leyen at the European Parliament Plenary*, speech at European Commission, September 16, 2020, accessed September 30, 2024, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655. General analysis about digital sovereignty concept in the EU, see Zinovieva, E., & Bulva, V. (2021). EU Digital Sovereignty. *Contemporary Europe*, 102(2), 40-49; Flonk, D., Jachtenfuchs, M., & Obendiek, A. (2024). Controlling internet content in the EU: towards digital sovereignty. *Journal of European Public Policy*, 31(8), 2316-2342.

Besides, a viewpoint based on subtle deconstruction of this concept, denying the simple application of a simplified digital sovereignty concept, would be valuable for better understanding. See Braun M., Hummel, P, *Is digital sovereignty normatively desirable?*, in *Information, Communication & Society*, 2024, pp. 1-14..

¹¹¹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2030 Digital Compass: the European way for the Digital Decade* [COM (2021) 118 final], p. 3.

maintains a position in the global digital competition. This requires implementing a series of significant legislative and policy measures in the areas of digital infrastructure, digital technology, and digital rules, particularly in terms of digital supervision, even when viewed from an external perspective.¹¹²

The primary objective of the DSM is to eliminate regulatory barriers and create a unified digital marketplace within the EU.¹¹³ It aims to facilitate cross-border e-commerce, improve access to digital goods and services, promote innovation and entrepreneurship, and enhance digital infrastructure and skills.

To achieve such objective, there are six principal fields that need to be considered, which demonstrates a systematic thinking in digital governance.

Firstly, the e-commerce sector is a key focus of the DSM strategy,¹¹⁴ which aims to modernize e-commerce regulations, simplify VAT rules for online businesses,¹¹⁵ and enhance consumer protection in online transactions.

Secondly, intellectual property rights, particularly copyright, play a vital role in this strategy.¹¹⁶ Efforts have been made to update copyright laws to adapt to the digital age while considering the interests of creators, consumers, and intermediaries. The Directive on Copyright in the Digital Single Market, with a specific emphasis on the

¹¹² See Gong Yunmu, *The Return of Sovereignty Concept in Digital Era and the EU's Digital Governance* (数字时代主权概念的回归与欧盟数字治理, Shuzi shidai zhuquan gainian de huigui yu oumeng shuzi zhili), in *Chinese Journal of European Studies*, 2022, n. 3, pp. 18-48.

¹¹³ By realizing such objective, even European Union itself could be at the meantime enforced. See Denemark J., *Strengthening the European Union by Regulating the Digital Single Market*, in *Acta Universitatis Carolinae. Iuridica*, 2023, Vol. 69, n. 2, pp. 107-123.

¹¹⁴ Point 2.1 (Cross-border e-commerce rules that consumers and business can trust) of COM (2015) 192 final, with particular attention to cross-border e-commerce within the territory of European Union.

¹¹⁵ Reducing VAT related burdens and obstacles is actually one of the key points of DSM, which is individually listed as Point 2.5 of COM (2015) 192 final.

¹¹⁶ Point 2.4 stressed “better access to digital content” and the necessity of a “modern, more European copyright framework”, which implies that in digital market copyright might be the most significant but also complex right in the system of intellectual property rights.

“Digital Single Market”, is a notable achievement in this area.¹¹⁷

Thirdly, the EU is actively working on frameworks to facilitate the free flow of data across borders, promote data sharing, and strengthen data protection rules, such as the GDPR, which has the potential to drive economic growth.¹¹⁸

Fourthly, initiatives are in place to promote digital literacy, skills development, and training to ensure that citizens are equipped to participate in the digital economy.¹¹⁹

Fifthly, investments are being made to improve broadband infrastructure, expand high-speed internet access, and encourage the deployment of 5G networks.¹²⁰

Lastly, the EU is prioritizing cybersecurity measures to safeguard digital infrastructure, critical services, and personal data.¹²¹

Thus far, the DSM has accomplished the following achievements. From the perspective of this thesis, the DSM especially contributes to the formulation of regulatory framework on e-commerce.¹²²

Firstly, the DSM has facilitated an increase in cross-border trade within the EU by harmonizing e-commerce regulations and reducing regulatory obstacles. In fact, the

¹¹⁷ However, in the text of such Directive on copyright, hardly could be found the interaction with “Digital Single Market”.

¹¹⁸ With acknowledgement on “Big data, cloud services and the Internet of Things are central to the EU’s competitiveness”, “building a data economy” (Point 4.1) has been listed as a pillar maximizing the growth of the digital economy of Europe in COM (2015) 192 final.

¹¹⁹ Point 4.3 on “An inclusive e-society” of COM (2015) 192 final, which is also important to remove the “social barrier” against the development of a digitalized society and economy, see Mărcuț M., *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*, Cham: Springer, 2017, pp. 96-98.

¹²⁰ Though not listed as an individual point in COM (2015) 192 final, strengthening the construction and modernization of digital infrastructure has been mentioned for several times in that document. In any sense, the development of digital economy shall necessarily be based on a developed and advanced digital infrastructure. See Mărcuț M., *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*, Cham: Springer, 2017, pp. 32-38.

¹²¹ See Bertarini B., *European Union Digital Single Market: Legal Framework and Challenges*, Milano, 2023, pp. 39-47.

¹²² However, as stated by a review, whilst the DSM gains have already somewhat materialized, significant benefits are still to be reaped, which expects more national level reform effort. See Rutkowski, A. (2018). The realised and unrealised benefits of the EU Single Market: current views. *ICE, Revista de Economia*, 902(902), 11-23.

majority of the DSM legislative initiatives are focused on promoting cross-border e-commerce, enabling businesses to expand their customer base across member states and consequently leading to higher sales and market prospects.¹²³

Secondly, the rules for Value-Added Tax have been simplified for online businesses. This simplification has made it easier for these businesses to comply with tax regulations when selling goods and services across borders. As a result, administrative burdens and compliance costs have been reduced, especially for small and medium-sized enterprises. Additionally, this has helped to promote fair competition in the digital marketplace.¹²⁴

Thirdly, the efforts to modernize consumer protection laws, particularly in light of the digital market, have bolstered trust and confidence in online transactions. Consumers now enjoy clearer rights and remedies when making purchases of goods and services online, resulting in heightened consumer satisfaction and loyalty. As a result of the implementation of the Digital Single Market, consumers have even achieved a “triple win”.¹²⁵

Fourthly, copyright laws were promptly updated following the establishment of the DSM through the aforementioned *Directive on Copyright in the Digital Single Market*. This was done to effectively respond to the challenges posed by the digital era and to find a middle ground that considers the interests of creators, consumers, and intermediaries. These updates have facilitated increased availability of digital content, while also ensuring that creators receive fair compensation and promoting cultural

¹²³ See Marcus, J. S., Petropoulos, G. and Yeung T., *Contribution to Growth: The European Digital Single Market Delivering economic benefits for citizens and businesses*, pp. 24-26.

¹²⁴ With the contribution of the *Directive (EU) 2017/2455*, the *Directive (EU) 2019/1995*, the *Implementing Regulation (EU) 2019/2026* and Explanatory Notes on VAT e-commerce rules (2021, accessed March 23, 2024, https://vat-one-stop-shop.ec.europa.eu/document/download/3372e2f2-d5ec-46ea-a2ac-97bc4f5ec634_en?filename=vatecommerceexplanatory_notes_28102020_en.pdf), the above-mentioned objectives are realized.

¹²⁵ Communication on the Mid-Term Review on the implementation of the Digital Single Market Strategy [COM (2017) 228 final], p. 3.

diversity.¹²⁶

Fifthly, efforts to enhance the unrestricted movement of data and reinforce regulations for data protection, such as the GDPR, have significantly enhanced consumer confidence in digital services and fostered innovation in the data economy. Clearer regulations and standards for data processing have resulted in improved data management practices and increased possibilities for innovation driven by data.¹²⁷

Lastly, investments in digital infrastructure and connectivity have enhanced broadband access and network quality throughout the EU, establishing the groundwork for future growth and innovation in the digital economy. The implementation of 5G networks and other advanced technologies has additionally expedited the digital transformation of industries and services.¹²⁸

However, at the same time, we should acknowledge several existing shortcomings that still need to be addressed.

The first challenge is the fragmentation in the field of regulation. Historically, the digital market in the European Union has been fragmented due to varying regulations, language barriers, and differences in consumer preferences. The DSM aims to address these challenges by harmonizing rules and promoting interoperability, but its

¹²⁶ The promulgation of such Regulation on copyright was considered as a primary crucial step forward of DSM, promoting the Digital Single Market to “function better”. European Parliament: Directorate-General for Parliamentary Research Services, Meurens, N., Reynolds, S., Mazziotti, G., Renda, A. et al., *Review of the EU copyright framework – The implementation, application and effects of the “InfoSoc” Directive (2001/29/EC) and of its related instruments – European implementation assessment*, European Parliament, 2015, accessed September 27, 2024, <https://data.europa.eu/doi/10.2861/872636>, p. 28.

¹²⁷ Both positive and negative feedback about the implementation of GDPR from entities in various EU Member States could be found on the website of European Commission, accessed October 1, 2024, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12322-Data-protection-report-on-the-General-Data-Protection-Regulation_en.

¹²⁸ See Dąbrowski L.D., Suska M. (edit), *European Union Digital Single Market: Europe’s Digital Transformation*, London: Routledge, 2022, pp. 150-157.

effectiveness is yet to be verified.¹²⁹

The second challenge is the dominance of power in the digital market. The DSM seeks to promote fair competition and prevent the dominance of large tech companies by implementing antitrust measures, ensuring a level playing field for all businesses. Although several powerful measures have been taken, the overall competitive landscape has not undergone fundamental changes.¹³⁰

The third challenge, which concerns European citizens, is privacy, particularly personal data protection. While initiatives like GDPR enhance data protection for EU citizens, they also impose compliance burdens on businesses.¹³¹ Additionally, with the introduction of new regulations on data, such as the *Data Act*, into the data governance framework, friction among them is inevitable.¹³² The final challenge is the ubiquitous digital divide in reality.¹³³ Disparities in digital infrastructure, skills, and access persist across EU member states, posing significant challenges to achieving digital inclusion and equal opportunities for all European citizens, which may prove difficult to resolve even within a decade.

¹²⁹ See Mărcuț M., *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*, Cham: Springer, 2017, pp. 52-54. However, there is still standpoint believing that the “single” digital market does not exist. See Bauer M., *What is Wrong with Europe’s Shattered Single Market?*, ECIPE (European Center for International Political Economy) Occasional paper No. 02/2023, accessed August 3, 2024, https://ecipe.org/wp-content/uploads/2023/04/ECI_23_OccasionalPaper_02-2023_LY04.pdf.

¹³⁰ Even “the DMA’s rules are not as rigid as they may appear at first sight” after theoretical analysis. See Witt A.C., *The Digital Markets Act: Regulating the Wild West*, in *Common Market Law Review*, 2023, Vol. 60, n. 3, pp. 625-666.

¹³¹ According to the report *A privacy reset - from compliance to trust-building* of PWC, “eighty-eight percent of global companies say that GDPR compliance alone costs their organization more than \$1 million annually, while 40% spend more than \$10 million.” Accessed October 2, 2024, <https://www.pwc.com/us/en/services/consulting/cybersecurity-risk-regulatory/library/privacy-reset.html>.

¹³² See Ericson B., Di Felice A., *The GDPR six years in: from harmonisation to alignment*, accessed October 2, 2024, <https://www.digitaleurope.org/resources/the-gdpr-six-years-in-from-harmonisation-to-alignment/>.

¹³³ See Uljas Lutz S., *The European digital single market strategy: Local indicators of spatial association 2011–2016*, *Telecommunications Policy*, Vol. 43 (5), 2019, pp. 393-410.

1.1.2 Legislation on e-commerce in the EU

The European Union initially used directives to regulate e-commerce, but recently regulations have become the preferred form of legislation.¹³⁴ These regulations can be categorized based on their relevance to e-commerce regulation.

Currently, there is only one specific legislation directly related to e-commerce, which is the well-known but older *Directive on Electronic Commerce* (2000/31/EC). However, the focus of EU legislation in this field has shifted from solely regulating e-commerce to a broader area, namely the regulation of the single digital market.¹³⁵ As a result, e-commerce is no longer treated as a separate issue for legislative regulation but is now encompassed within the governance of the entire digital market in Europe. Recently, two key pieces of legislation on the digital market, the *Digital Services Act* [Regulation (EU) 2022/2065] (DSA) and the *Digital Markets Act* [Regulation (EU) 2022/1925] (DMA), have come into effect, providing a higher-level legislative regulation for entities engaged in e-commerce and activities that can be considered as *e-commerce*. These three aforementioned directives and regulations constitute the primary legislation on e-commerce in the EU, although they have distinct focuses.¹³⁶

In addition to these three legislations, there are numerous other legislations that regulate various aspects related to the field of e-commerce, even if they may not be

¹³⁴ Perhaps it is a result of the gradually increased euroscepticism, “indicating that instead of granting dissenting member states more room to manoeuvre, the Commission prefers to keep them on a short leash”. Hurka S., Steinebach, Y, *Legal Instrument Choice in the European Union*, in *JCMS: Journal of Common Market Studies*, 2021, Vol. 59, pp. 278-296.

¹³⁵ E-commerce, in reality, is relatively closer to domestic digital market, which somehow encourages the formation of several digital markets in Europe. Instead, only when stressing Digital Single Market, the unification could be really achieved. Mărcuț M., *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*, Cham: Springer, 2017, p. 80.

¹³⁶ However, from the official perspective of European Commission, the major legislative works achieved by EU on e-commerce is organized according to a different logic, including (1) the revised Payment Services Directive and new rules on cross-border parcel delivery services that are already in force; (2) New rules to stop unjustified geo-blocking; (3) Revised consumer protection rules; (4) New VAT rules for the online sale of goods and services. See E-Commerce rules in the EU, from the website introducing Shaping Europe’s digital future, archived October 5, 2024, <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-rules-eu>.

directly associated with e-commerce. Some of these legislations explicitly or indirectly mention considerations about e-commerce from the perspective of legislators, while many others are universally applicable and valuable in the e-commerce field. Examples of these legislations include the *Directive on consumer rights* [Directive 2011/83/EU], the *Directive on alternative dispute resolution for consumer disputes* (Directive on consumer ADR) [Directive 2013/11/EU], the *General Data Protection Regulation* [GDPR, Regulation (EU) 2016/679], and the *Regulation on cross-border parcel delivery services* [Regulation (EU) 2018/644].

Thus, the EU has been establishing a complex framework of rules affecting e-commerce which has to be fully analysed in the details of each piece of regulation and reconstructed also in the several connecting point between them. The starting point of the current Section will be two of the three pillars of e-commerce regulation: the *Directive on Electronic Commerce* (1.1.2.1) and the *Digital Services Act* (1.1.2.2). Subsequently, in scenarios where general consumer protection law (1.1.2.3) is applicable, all norms in this field will be discussed in the context of e-commerce regulation. To complete a comprehensive examination of all relevant legislations, analysis targeting both elements of online transactions (1.1.2.4) and cross-relationships between e-commerce and other fields (1.1.2.5) will be separately conducted.¹³⁷

1.1.2.1 Directive on Electronic Commerce

The *Directive on Electronic Commerce* was implemented during a time when both e-commerce and the Internet were not yet widely developed. Although this *Directive* had some level of foresight, it did not provide comprehensive legislation on

¹³⁷ In the interim, it is crucial to acknowledge the influence of EU legislation on the domestic legislation of Member States. The former can be regarded as a model or even a blueprint. Hence, in order to provide a comprehensive description of the regulatory framework in the EU, it may be advantageous and essential to refer to legislations in Member States. In the subsequent discourse, when deemed necessary, a concise citation and comparison of such regulations will be incorporated.

e-commerce, as can be seen from its content.¹³⁸ The main objective of this *Directive* was to “proper functioning of the internal market by ensuring the free movement of information society services between the Member States.”¹³⁹ Essentially, the *Directive* aimed to remove barriers to the exchange of information within the European Union, instead of establishing a completed regulatory framework on e-commerce.

After the establishment of free *entry into the digital market* principle in Art. 4,¹⁴⁰ substantial provisions commence from Art. 5. The *Directive* initially introduces various requirements for e-commerce operators to provide certain information.¹⁴¹ Then in Section 3, the *Directive* specifically governs *contracts concluded by electronic means*, which serves as the foundation of electronic contract legislation. However, only Art. 11 provides an actual detailed rule on the conclusion of e-commerce contracts,

¹³⁸ General comments on the content and scope of the Directive on Electronic Commerce, see Delfini F., *Il commercio elettronico*, Padova, 2004, pp. 141-153; Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 18-63. The most relevant critique, see Fauchoux V., Deprez P., Dumont F., *Le droit de l'Internet*, Paris : LexisNexis, 2017, p. 195.

¹³⁹ Art. 1.1 of the *Directive on Electronic Commerce*.

¹⁴⁰ Or the principle excluding prior authorization, which require Member States to “ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorization or any other requirement having equivalent effect.” See Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, p. 16.

¹⁴¹ See Art. 5 (*General information to be provided*), Art. 6 (*Information to be provided in the Section Commercial communications*), and Art.10 (*Information to be provided in the Section Contracts concluded by electronic means*) of the *Directive on Electronic Commerce*.

in which the term *order* substitutes *contract*.¹⁴²

The *Directive* also addresses intermediary service providers and imposes certain liabilities on them.¹⁴³ The category of intermediary service providers invented by the *Directive*, which is based on the distinction between the communication of data and the hosting of data,¹⁴⁴ was valuable thus was preserved in later EU legislation, while these provisions of *Directive on Electronic Commerce* have been partially updated and replaced by the recent *Digital Services Act*.¹⁴⁵

The *Directive on Electronic Commerce* regulates several crucial aspects of e-commerce, which undoubtedly have played a significant role in fostering the positive development of e-commerce.¹⁴⁶ However, it is also evident that these points alone are inadequate and incomplete to realize a complete regulation on e-commerce.¹⁴⁷

¹⁴² Only three questions are actually solved in this article: The receipt and conclusion of order; Technical means allowing the correction of mere input error; The exclusion of e-mail from the scope of *electronic means*. To be noticed, the standards determining the moment of conclusion has been simplified. There were three necessary acts to conclude an e-commerce contract, which were fairly complicated: (1) The recipient of the service indicates to accept the service; (2) The service provider acknowledges the receipt of the acceptance; (3) The recipient of the service confirms the receipt of the acknowledgement of receipt. See Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 27-29.

¹⁴³ Art. 12-15 in Section *Liability of intermediary service providers* of the *Directive on Electronic Commerce*. The intermediary services providers were categorized into three groups: Mere conduit, caching and hosting.

¹⁴⁴ See Manara, C., *Droit du commerce électronique*, Paris : LGDJ -Lextenso, 2013, p. 62.

¹⁴⁵ DSA admitted the “legal certainty” provided by the Directive on E-Commerce for the establishment of a “horizontal framework of conditional exemptions from liability for providers of intermediary services”, thus the framework was preserved and incorporated in DSA. See Preamble (16) of *Digital Services Act*.

¹⁴⁶ According to an assessment, the Directive on E-Commerce is commented as the “cornerstone” which apparently contributed to the development of digital economy, although it still has room for many improvements. See De Streel, A, Husovec, M, *The e-commerce Directive as the cornerstone of the Internal Market*, Study for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

¹⁴⁷ For example, its lack of protection regarding the liability regime for technical intermediaries, which leads to a lack of protection of fundamental human rights. That shortcoming has been criticized. See *Public consultation on the future of e-Commerce*, statement of the European Digital Rights Association, 5 November 2010, accessed October 5, 2024, https://www.edri.org/files/EDRi_ecommerceresponse_101105.pdf, pp. 2-5.

As a directive, the contents of the *Directive on Electronic Commerce* must be incorporated into the legal framework of Member States. This has prompted the development of domestic legislation in several Member States to govern e-commerce and the digital market. Member States are not obligated to adopt the precise wording of this *Directive*; they simply need to ensure that the legal consequences are equivalent. Consequently, various legislative approaches can be observed.

Italy enacted *Decreto Legislativo 9 aprile 2003, n. 70* to implement the aforementioned *Directive*.¹⁴⁸ This *Decree* closely followed the structure of the *Directive*, although with some modifications. Notably, it adopted a more stringent approach by incorporating supplementary requirements aimed at limiting the activities of e-commerce operators and better safeguarding the interests of e-commerce consumers. Firstly, the *Decree* introduced more specific requirements for information provision, including the obligation to update general information¹⁴⁹ and the duty to disclose the method of resolving disputes when entering into an e-commerce contract.¹⁵⁰ Secondly, the *Decree* raised the threshold for commercial communication, almost requiring that all necessary information be clear and unambiguous (*chiaro ed inequivocabile*),¹⁵¹ no matter the situation is, whereas the *Directive* merely imposed these requirements on limited fields.¹⁵² Thirdly, the *Decree* introduced new regulations, such as shifting the burden of proof regarding the solicited nature of

¹⁴⁸ General introduction and comprehensive comments on the *Decreto Legislativo 9 aprile 2003, n. 70*, see Delfini F., *Il commercio elettronico*, Padova, 2004, pp. 153-163; Rossello C., *Commercio elettronico: la governance di internet tra diritto statuale, autodisciplina, soft law e lex mercatoria*, Milano, 2006, pp. 63-83.

¹⁴⁹ Art. 7.2 of the *Decreto Legislativo 9 aprile 2003, n. 70*: “The provider must update the information referred to in paragraph 1.” While in Art. 7.1, the general information demanded is basically the same as the *Directive*.

¹⁵⁰ According to Art. 12.1 f) of the *Decreto Legislativo 9 aprile 2003, n. 70*, the provider must provide information including “the indication of the dispute resolution tools” in a clear, comprehensible and unequivocal manner, before the order is forwarded by the recipient of the service.

¹⁵¹ Art. 8.1 of the *Decreto Legislativo 9 aprile 2003, n. 70*.

¹⁵² These situations in particular include price (Art. 5.2), promotional offers [Art. 6 (c)], promotional competitions [Art. 6 (d)] and identifiability of unsolicited commercial communication (Art. 7.1), according to the *Directive on E-Commerce*.

commercial communication towards the providers,¹⁵³ which was not present in the *Directive*.

France enacted the *Directive on electronic commerce* with *Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique*, usually abbreviated as LCEN.¹⁵⁴ The LCEN even included more provisions than the *Directive*, acting as a primary systematic legislation on digital economy.¹⁵⁵ In the section pertaining to e-commerce, the French legislator also made greater efforts compared to the *Directive*. On the one hand, while the *Directive* used a cautious and conservative approach, adopting the broad and neutral term *information society service*,¹⁵⁶ the LCEN explicitly defined the term *e-commerce*. On the other hand, the LCEN neither use the neutral term *recipient* as the *Directive* did but focused on the *consumer* as the central figure.¹⁵⁷ Additionally, the LCEN also incorporated certain civil law rules, such as those regarding the performance of e-commerce contracts,¹⁵⁸ which is rarely observed in domestic legislation from other Member States. It is worth noting that the LCEN is

¹⁵³ Art. 9.2 of the *Decreto Legislativo 9 aprile 2003, n. 70*: “The burden of proof of the solicited nature of commercial communications lies with the provider.”

¹⁵⁴ General introduction and comments on the LCEN, see Linant de Bellefond X., *Le droit du commerce électronique*, Paris : Presses Universitaires de France, 2005 ; relevant academic opinions could also be found in Clavier J.-P., Mendoza-Caminade A., *Droit du commerce électronique. Sites web, blockchains, publicité digitale, contrats électroniques et données personnelles*, Bruxelles : Bruylant, 2023.

¹⁵⁵ The major purpose of the LCEN is clearly demonstrated in its title: To increase the *confidence* towards digital economy. For this purpose, the LCEN was settled to “create the conditions for trust, through the establishment of clear rules of the game for Internet service providers and the implementation of effective protection for users”, which certainly incorporates e-commerce but not is not merely limited to e-commerce. Communiqué de presse du Conseil des ministres du 15 janvier 2003, accessed October 19, 2023, from http://archives.gouvernement.fr/raffarin_version1/fr/ie4/contenu/37882.htm#1.

¹⁵⁶ Relevant comments from French scholar, see Rabagny-Lagoa A., *Droit du commerce électronique*, Paris : Ellipses, 2011, p. 67.

¹⁵⁷ See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, pp. 150-153.

¹⁵⁸ For instance, according to Art. 15.1, providers shall be “liable to the buyer for the proper performance of the obligations resulting from the contract, whether these obligations are to be performed by itself or by other service providers, without prejudice to its right of recourse against them.” Although these rules were essentially a reiteration of fundamental principles of civil law, it is still important to incorporate emerging situations in the digital realm with traditional principles of general civil law.

not an absolutely isolated special legislation. It simultaneously consisted of an amendment towards the *Civil Code of France* and the *Code of Consumption (Code de la consommation)*, achieving a better integration between existing and newly introduced rules.¹⁵⁹

German legislators further fragmented the *Directive*. With the notable project of modernizing obligation law (Schuldrechtsmodernisierung) in 2002, *Civil Code of Germany* (Bürgerliches Gesetzbuch, BGB) was revised.¹⁶⁰ Through the revision, Art. 10, Art. 11, and Art. 18 of the *Directive on Electronic Commerce* were integrated into the section on consumer protection (Art. 312-312f) in BGB.¹⁶¹ The remaining provisions of the *Directive* were dispersed across various laws, such as the *Law on injunctions in the event of consumer rights and other violations*.¹⁶² Other legislations, such as the *Telemedia Law* (Telemediengesetz, or TMG) and the *Law to improve law enforcement in social networks*¹⁶³ are also partially associated with the *Directive*. This passive approach might introduce uncertainty in the process of incorporating the rules outlined by the *Directive* and led to variations or even divergences among different Member States' legal systems.¹⁶⁴

¹⁵⁹ General comments related to the LCEN see Verbiest Th., *Commerce électronique : le nouveau cadre juridique : publicite - contrats – contentieux*, Bruxelles : Bruylant, 2004.

¹⁶⁰ A general introduction to the contents related to e-commerce in the German obligation law modernization reform, see Huber/Faust, *Schuldrechtsmodernisierung*, München: C.H. Beck, 2002, p. 477-482.

¹⁶¹ Bekanntmachung der Neufassung des Bürgerlichen Gesetzbuchs, BGBl. 2002 I, S. 42.

¹⁶² Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen (Unterlassungsklagengesetz - UKlaG), archived November 23, 2023, <https://www.gesetze-im-internet.de/uklag/BJNR317300001.html>. This law incorporates Art. 5, Art. 10, and Art. 11 of the *Directive*.

¹⁶³ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG).

¹⁶⁴ See Schulte-Nölke, H. et al., *The legal framework for e-commerce in the Internal Market*, Study for the committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, p. 14.

1.1.2.2 Directive and regulation that restrict e-commerce intermediary service providers

The e-commerce sector is no longer the primary concern of EU legislators, as the shift “from a liability framework to a more robust regulation of digital platforms”.¹⁶⁵ The most favourable topic nowadays is a comprehensive regulation that applies to the entire digital market, The *Digital Services Act* (DSA) [Regulation (EU) 2022/2065], with the aims at creating “a safer and more open digital space for all users and ensure a level playing field for businesses.”¹⁶⁶

The primary focus of the DSA is the regulation of Internet intermediary service providers,¹⁶⁷ and it has replaced and expanded upon Art. 12-15 of the *Directive on Electronic Commerce* to modernize the regulation mode. DSA also follows the classification of intermediary service providers proposed by *Directive on Electronic Commerce*, determining the obligations and liabilities assumed by diverse types of intermediary service providers according to their category.

On this basis, the DSA represents a notable change to the regulations regarding online intermediary liability, setting a precedent for legislative innovation on a global scale.¹⁶⁸ For instance, the DSA included the third clause in its Art. 6 *Hosting* in reference to Art. 14 of the *Directive on Electronic Commerce*. This clause eliminated the exemption for hosting service providers in situations where the online platform enabled consumers to engage in distance contracts with traders, actively encouraged the formation of such contracts, and created the impression that the traders were

¹⁶⁵ Frosio G., *From the E-Commerce Directive to the Digital Services Act*. in Twigg-Flesner C. and Woods L. (eds), *Digital Services Act Commentary*, Edward Elgar, forthcoming 2025, Available at SSRN: <https://ssrn.com/abstract=4914816>.

¹⁶⁶ *E-Commerce rules in the EU*, from the website introducing Shaping Europe’s digital future, archived October 5, 2024, <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-rules-eu>.

¹⁶⁷ According to Art. 2.3 and Art. 89, Art. 4-6 and Art. 8 of the DSA replaced Art. 12-15 of the *Directive on Electronic Commerce*, then eliminated the latter four articles, without any impact on other provisions of the *Directive*.

¹⁶⁸ See Church P., Pehlivan C.N., *The Digital Services Act (DSA): A New Era for Online Harms and Intermediary Liability*, in *Global Privacy Law Review*, 2023, Vol. 4, n. 1, pp. 53-59.

subject to the platform's authority or control.¹⁶⁹

The regulation on Internet intermediary service providers is actually measures against digital platforms,¹⁷⁰ they are playing a significant role as intermediaries in facilitating transactions.¹⁷¹ In such context, the DSA can be seen as legislation that regulates the widespread use of e-commerce platforms, regardless of whether they directly engage in e-commerce activities with their users (consumers), regardless of the types of services and transactions facilitated by these platforms.

With the direct regulation on Internet intermediary service providers, especially the platforms, the DSA could therefore have influence on most of the e-commerce operators, regardless of their size, since e-commerce overlaps with the concept *Internet intermediary service*.¹⁷² By restricting Internet intermediary service providers, a protected environment on the Internet is established, the counterparty of providers, with their special identity as cyber-consumer, could thus enjoy obvious reflective interests.¹⁷³ In this regard, the EU legislator further differentiates the counterparty of Internet intermediary service providers between two categories: the *recipient of the*

¹⁶⁹ It is worth noting that the aforementioned exemption served as a convenient legal tool for platforms to avoid accountability. See Conseil d'État, *La France dans la transformation numérique : quelle protection des droits fondamentaux ? Un colloque organisé par le Conseil d'État le 6 février 2015*, La documentation Française, 2016, pp. 75-76.

¹⁷⁰ See Wilman F., *The Digital Services Act (DSA) - An Overview* (December 16, 2022), available at SSRN: <https://ssrn.com/abstract=4304586>.

¹⁷¹ See Martinelli S., *I contratti della Platform Economy. Ruoli e responsabilità delle piattaforme*, Torino, pp. 22-24.

¹⁷² However, the term *Information society services* adopted by *Directive on Electronic Commerce* is broader than *Internet intermediary service*. Therefore, the *Directive on Electronic Commerce* and the DSA will still be applied in parallel in certain situations, which is not ideal for reversing the fragmentation trend in the field of e-commerce. See Wilman F., *The Digital Services Act (DSA) - An Overview* (December 16, 2022), available at SSRN: <https://ssrn.com/abstract=4304586>.

¹⁷³ See V. Raymond G., Bernheim-Desvaux S., *Droit de la consommation*, Paris : LexisNexis, 2022, p. 290.

service and the consumer.¹⁷⁴

Other provisions of the DSA are also relevant to the regulation on e-commerce.

Firstly, to enhance communication between service providers and recipients, Art. 12 necessitates providers to designate a point of contact for recipients; Art. 20 mandates that online platform providers establish an internal complaint-handling system; Art. 21 stipulates that providers must implement measures to ensure the clarity and user-friendliness of out-of-court dispute settlement processes.

Secondly, in order to reduce the possibility of providers taking advantage of general terms to limit the rights of recipients, Art. 14 establishes various criteria for the terms and conditions of service.

Thirdly, to protect the right of recipients to access information, Art. 17 requires providers to promptly provide statements to recipients explaining any restrictions related to illegal or term-violating information; Art. 25 prohibits providers from organizing or operating their online interfaces in a way that could significantly distort or impair recipients' ability to make decisions freely and with full knowledge; Art. 27 mandates providers to maintain transparency in their recommender systems.

Lastly, additional provisions are outlined for online platform providers that facilitate consumers in entering distance contracts with traders. The emphasis of these provisions is on the information requirements. According to Art. 30, the platforms are obligated to ensure that traders can be identified by obtaining specific necessary information prior to commencing their operations, and to uphold the integrity of this traceability throughout their entire presence on the platform; According to Art. 31, the platforms should adopt specific designs to ensure that essential information can be easily and conveniently accessed by consumers. According to Art. 32, it is imperative for the platforms to ensure that consumers are provided with precise and reliable information regarding the legality of the products or services they have acquired. In

¹⁷⁴ The regulations pertaining to the recipient of the service are generally applicable to e-commerce, while those specifically related to the consumer only apply to e-commerce. Unfortunately, the level of attention given to consumer protection in the DSA is considered inadequate. See Busch C., Mak V., *Putting the Digital Services Act in Context*, in *Journal of European Consumer and Market Law*, 2021, Vol. 10, n. 3, pp. 109-114.

this regard, the DSA has transferred specific responsibilities from e-commerce traders to the platform.¹⁷⁵

In conclusion, the DSA effectively regulates different intermediary service providers engaged in e-commerce, particularly the platforms where e-commerce transactions occur. This is achieved by imposing obligations on these platforms and holding them accountable for managing specific issues within their platforms. The enactment of the DSA signifies the formation of a novel relationship between online platforms, users, and regulators both within and outside the EU.¹⁷⁶ This new relationship also modifies the conventional operational approaches of technology giants in Europe and the development environment of EU Internet platforms, along with their interaction with all stakeholders.¹⁷⁷

1.1.2.3 Directives regarding consumer protection in the context of e-commerce

Before the promulgation of the *Directive on Electronic Commerce*, the European Parliament had already established a *Directive on the Protection of Consumers in Relation to Distance Contracts* (Directive 97/7/EC). However, as the latter *Directive* was formulated during the preliminary stages of Internet development, the *means of distance communication* considered and regulated did not actually encompass the

¹⁷⁵ As a result, the platforms have been given regulatory power within their own platforms. This approach enables the platforms to uphold a certain level of order in the e-commerce market, while also sharing regulatory authority with e-commerce traders. This method demonstrates an intelligent and effective approach to regulating the e-commerce market. Therefore, the P2B (Platform to Business) mode might also exist in the context of the DSA. Relevant analysis, see Busch C., *Platform regulation beyond DSA and DMA: Which role for the P2B Regulation?*, in *Journal of Antitrust Enforcement*, 2024, Vol. 12, n. 2, pp. 201-206.

¹⁷⁶ However, in any sense, the relationship between users and platforms has always a contractual nature. See Cauffman C., Goanta C., *A New Order: The Digital Services Act and Consumer Protection*, in *European Journal of Risk Regulation*, 2021, Vol. 12, n. 4, pp. 758-774.

¹⁷⁷ See Turillazzi, A., Taddeo, M., Floridi, L., & Casolari, F., *The digital services act: an analysis of its ethical, legal, and social implications*, in *Law, Innovation and Technology*, 2023, Vol. 15, n. 1, pp. 83-106.

Internet.¹⁷⁸ The most electronic means mentioned in the Directive 97/7/EC was electronic mail. However, the *Directive on Electronic Commerce* explicitly excluded its applicability to contracts that are exclusively concluded through the exchange of electronic mail.¹⁷⁹

However, the concept of *distance contracts* certainly includes *e-commerce contracts*; only *distance contracts* concluded with *electronic means* can be classified as *electronic contracts*.¹⁸⁰ Therefore, several important rules introduced into the field of consumer protection by the *Directive 97/7/EC* subsequently influenced the legislation on e-commerce consumer protection. Firstly, the *Directive 97/7/EC* required *suppliers* to provide pre-contractual information,¹⁸¹ that duty was further developed in the *Directive on Electronic Commerce*. Secondly, this *Directive* introduced right of withdrawal, the most significant rule, which granted consumers a minimum of seven working days to cancel a distance transaction “without penalty and without giving any reason.”¹⁸² Thirdly, this *Directive* also included detailed regulations on contract performance, such as a 30-day performance period and provisions for non-performance, protection against fraudulent use of card payments, and protection against inertia selling.¹⁸³

The *Directive 2005/29/EC*, also known as the *Unfair Commercial Practices*

¹⁷⁸ According to Art. 2, the crucial term chosen by the *Directive 97/7/EC* to define *distance contract* is *means of distance communication*, which referred to “any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties.” In its Annex I, the list of means of distance communication only includes those traditional means such as radio, fax, television. Internet was never mentioned.

¹⁷⁹ Art. 10 Para. 4 of the *Directive on Electronic Commerce*: “Paragraphs 1 and 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.”

¹⁸⁰ See Raymond G., Bernheim-Desvaux S., *Droit de la consommation*, Paris : LexisNexis, 2022, pp. 289-290.

¹⁸¹ Art. 4 of the *Directive 97/7/EC Prior information* listed nine fundamental information to be provided prior to the conclusion of any distance contract. In Art. 5 *Written confirmation of information* several information about after-sales procedures was further required.

¹⁸² Art. 6 *Right of withdrawal* of the *Directive 97/7/EC*. This rule greatly improved the position of consumers and has become the most representative rule in the EU’s consumer protection framework.

¹⁸³ Art. 7 *Performance*, Art. 8 *Payment by card* and Art. 9 *Inertia selling* of the *Directive 97/7/EC*.

Directive, provides special protection in business-to-consumer commercial practices. Its main objective is to prohibit unfair commercial practices that are “contrary to the requirements of professional diligence” and “distort the economic behaviour with regard to the product”.¹⁸⁴ These unfair practices can be categorized into two types: those with misleading features and those with aggressive features,¹⁸⁵ restricting e-commerce operators from two distinct perspectives.

More than a decade later, Directive 2011/83/EU, also known as the *Directive on Consumer Rights*, repealed Directive 97/7/EC.¹⁸⁶ This *Directive*, as indicated by its title, generally governs the field of consumer protection, which is apparently beyond the realm of distance consumption. Compared to Directive 97/7/EC, the *Directive on Consumer Rights* regulates distance contracts with significantly more specific aspects. It obligates traders to provide more precontractual information¹⁸⁷ and includes several formal requirements about distance contract.¹⁸⁸ Additionally, it extends the period in which consumers can exercise their right of withdrawal to 14 days and further refines the group of norms related to the exercise, effect, sanction, and exceptions associated with the consumer right of withdrawal.¹⁸⁹

Certainly, all the rules in this *Directive* appear to be applicable to e-commerce transactions. Besides, it is thought-provoking to discover that although the fundamental structure of the *Directive on Consumer Rights* is based on the dichotomy of *distance and off-premises contracts*¹⁹⁰ and contracts other than the aforementioned

¹⁸⁴ Art. 5 *Prohibition of unfair commercial practices* of the *Unfair Commercial Practices Directive*.

¹⁸⁵ Misleading commercial practices are under control of Art. 6 and Art. 7 of *Unfair Commercial Practices Directive*, while aggressive commercial practices are under the regulation of Art. 8 and Art. 9.

¹⁸⁶ According to Annex II of the *Directive 2011/83/EU*, the *Directive 97/7/EC* was fully incorporated into its “successor”, with a few noticeable amendments but numerous additions.

¹⁸⁷ Art. 6 *Information requirements for distance and off-premises contracts* of the *Directive on Consumer Rights*.

¹⁸⁸ Art. 8 *Formal requirements for distance contracts* of the *Directive on Consumer Rights*. It is worth noticing that, in this Chapter, only Art. 7 *Formal requirements for off-premises contracts* is completely designed for the off-premises contracts, which reflects the particular status of distance contracts.

¹⁸⁹ Art. 9-16 of the *Directive on Consumer Rights*.

¹⁹⁰ The *Directive 2011/83/EU* further paid attention to the common aspects of those two categories of contracts and tried to realize the harmonization between them (Whereas 2 and 3).

circumstances, the emphasis actually falls on the distance and off-premises contracts.¹⁹¹ In addition, there are only a few provisions that apply to all consumer contracts, which are also less specific than those designed for distance contracts.¹⁹² Therefore, it could be suggested that the *Directive on Consumer Rights* does have a textual and essential importance in the field of e-commerce law, that the *Directive* consists of the fundamental consumer protection rules in the EU regulatory framework on e-commerce.¹⁹³

The *Directive on consumer rights* provided an opportunity to reform European consumer protection law. Italy, France, and Germany adopted several domestic legislations to incorporate EU level legislation on consumer protection.

Italy published *Decreto legislativo 21 febbraio 2014*, n. 21,¹⁹⁴ which replaced several provisions under the title *Consumer rights in contracts* (Dei diritti dei consumatori nei contratti) in the *Code of Consumption* of Italy (Codice del consumo). This *Decree* essentially incorporated the provisions and language of the *Directive on Consumer Rights*.¹⁹⁵

France enacted *Loi n° 2014-344 du 17 mars 2014*,¹⁹⁶ commonly referred to as “Loi Hamon”. This legislation includes a more extensive set of regulations than those

¹⁹¹ Chapter III, which consists of eleven articles, is dedicated to distance and off-premises contracts. In contrast, Chapter II, which pertains to ordinary consumer contracts, only includes one article regarding precontractual information duty.

¹⁹² Chapter IV *Other consumer rights* includes Art. 18 *Delivery*, Art. 19 *Fees for the use of means of payment*, Art. 20 *Passing of risk*, Art. 21 *Passing of risk* and Art. 22 *Additional payments*, sketching the contour of certain consumer rights. However, the total words of these five provisions are less than those of Art. 8 *Formal requirements for distance contracts*.

¹⁹³ See Markou C., *Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 151-220.

¹⁹⁴ Accessed September 22, 2023, <https://www.gazzettaufficiale.it/eli/id/2014/03/11/14G00033/sg>.

¹⁹⁵ General introduction to recent Italian consumption law under the vision of EU legislation, see Cassano G., Dona M., Torino R. (a cura di), *Il diritto dei consumatori*, Milano, 2021; Barengi A., *Diritto dei consumatori*, Padova, 2024.

¹⁹⁶ Initial version in 2014, accessed September 29, 2023, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028738036>.

established by the *Directive on Consumer Rights*, resulting in a comprehensive revision of the *Code of Consumption of France*. However, not all the issues addressed by the *Directive* were covered by this law. As a result, the Prime Minister of France issued *Décret n° 2014-1061 du 17 septembre 2014*¹⁹⁷ to further regulate the precontractual and contractual information obligations of consumers and the right of withdrawal, thereby amending the *Code of Consumption of France* for another time.¹⁹⁸

Germany enacted the *Law Implementing the Consumer Rights Directive and amending the Act regulating housing provision*.¹⁹⁹ This act also included an amendment to the *Civil Code of Germany* (BGB), specifically revising two fundamental articles in the general part: Art. 13 on *Consumer* and Art. 126b on *Text form*. The section on consumption, namely Art. 312 hereinafter and Art. 355 hereinafter, underwent a comprehensive revision as well. Additionally, Art. 246-248 of the *Introductory Act to the Civil Code*²⁰⁰ were simultaneously revised to establish regulations regarding precontractual information duty.²⁰¹

The most recent legislation about consumer protection in the EU is the *Directive (EU) 2019/2161*, commonly known as an “omnibus directive”.²⁰² This directive aims

¹⁹⁷ Initial version in 2014, accessed September 29, 2023, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000029470741>.

¹⁹⁸ General introduction to recent French consumption law, see Calais-Auloy J., Temple H., Depincé M., *Droit de la consommation*, Paris : Dalloz, 2020 ; Pellier, J.-D., *Droit de la consommation*, Paris : Dalloz, 2021 ; Picod Y., Picod N., *Droit de la consommation*, Paris : Sirey, 2023.

¹⁹⁹ Gesetz zur Umsetzung der Verbraucherrechtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung. Gesetz vom 20.09.2013 – BGBl. I 2013, Nr. 58 vom 27.09.2013, S. 3642. General introduction to recent German consumption law, see Schmidt-Kessel/Kramme, *Handbuch Verbraucherrecht*, Köln: Carl Heymanns Verlag, 2023.

²⁰⁰ Einführungsgesetz zum Bürgerlichen Gesetzbuche (EGBGB). BGBl. I S. 2494; 1997 I S. 1061.

²⁰¹ A brief comparison of consumer protection laws in Italy, France, and Germany suggests that they should be separate from civil law. Consumer protection is a distinct topic that is often marginalized within the civil law system. It is necessary to establish a separate legal document focused solely on consumer protection matters, regardless of whether it is called a “code” or not. This would provide an independent and open space for the rules, allowing for regular updates. A single law or code specifically for consumer protection, with only a few articles connecting it to general civil law rules, could resolve this issue.

²⁰² See Raymond G., Bernheim-Desvaux S., *Droit de la consommation*, Paris : LexisNexis, 2022, p. 639.

to enhance the enforcement and modernization of consumer protection rules within the EU. The directive focuses on various common key issues in consumer protection, such as compensating consumers for unfair commercial practices (Art. 3). Additionally, it addresses several emerging concerns specific to e-commerce, including increased transparency requirements for online marketplaces,²⁰³ the ranking of offers,²⁰⁴ the personalized pricing,²⁰⁵ the regulation of non-genuine consumer reviews,²⁰⁶ and consumer rights in relation to free digital services.²⁰⁷ The aforementioned revisions indicate a growing trend in which online consumer protection is being recognized as a distinct task that requires specific attention.

1.1.2.4 EU legislations on the elements of e-commerce

In addition to the aforementioned directives and regulations of the European Union, there are several other EU legislations that pertain to the transaction of e-commerce, although to a lesser extent. The main elements to be considered are the subjects (1.1.2.4.1), the objects (1.1.2.4.2), and the rules that govern the various stages

²⁰³ Art. 4 of the *Omnibus Directive* inserted Art. 6a *Additional specific information requirements for contracts concluded on online marketplaces* into the *Directive on Consumer Rights*, with special concern on disclosing whether the provider of the online marketplace is a trader.

²⁰⁴ Ranking is defined as *relative prominence* (Art. 3 of the *Omnibus Directive* amending the *Directive 2005/29/EC*), and the main parameters determining ranking are listed as general information to be provided to consumers (Art. 4 of the *Omnibus Directive* amending Art. 7 of the *Directive on Consumer Rights*). It is imperative for them to clearly indicate when the ranking of the search results is influenced by payments received from the listed traders (Art. 3 of the *Omnibus Directive* amending the Annex I of the *Directive 2005/29/EC*).

²⁰⁵ If the price was personalized on the basis of automated decision-making, relevant information shall be displayed for consumers (Art. 4 of the *Omnibus Directive* amending Art. 6 of the *Directive on Consumer Rights*).

²⁰⁶ Two acts will be considered as unfair to better guarantee the authenticity of reviews: (1) Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers; (2) Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products. (Art. 3 of the *Omnibus Directive* amending Annex I of the *Directive 2005/29/EC*).

²⁰⁷ Art. 4 of the *Omnibus Directive* inserted the statement that “The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format” into Art. 13 of the *Directive on Consumer Rights*.

of a transaction in e-commerce (1.1.2.4.3).

1.1.2.4.1 About the subjects

The diverse subjects involved in e-commerce can be categorized into three parties: the sellers, the intermediaries, and the consumers.²⁰⁸ There is no more detail to be integrated to EU regulatory framework.

Regarding the sellers, it is worth noting that there is no specific EU legislation that solely focuses on their identity. This phenomenon could be attributed to the presence of an open entry into the digital market, which does not necessitate additional specific regulations. They are controlled mainly due to their commercial activities.

Regarding intermediaries, they play a visible and invisible role in almost all e-commerce transactions, they connect, communicate, and even exploit both sellers and consumers, and therefore require serious regulation under the framework of e-commerce law. Certainly, they are the focal point of EU legislation in the field of digital market governance, the representative regulatory legislation is the DSA.

Regarding consumers, their protection is evidently the most fundamental concern in e-commerce, as previously mentioned.

1.1.2.4.2 About the objects

E-commerce serves as both a substitute for and a supplement to traditional offline trades. In other words, e-commerce enables the trading of both the same objects as offline transactions and those that cannot be traded without the use of the Internet.

No legislative requirement regarding specific restrictions for e-commerce on certain objects could be found in the EU.

As for the special objects traded online, digital content and digital services cannot be ignored, which are specifically addressed in Directive (EU) 2019/770, the *Directive on certain aspects concerning contracts for the supply of digital content and digital services*. Although e-commerce is merely mentioned in its whereas part, it is not

²⁰⁸ See Zheng Jianing, *The Definition and Regulation of the Subjects of the E-Commerce Market* (电子商务市场主体的认定与规范, Dianzi shangwu shichang zhuti de rending yu guifan), in *Oriental Law*, 2023, n. 2, pp. 46-60.

deniable that the transaction of digital content and digital services basically consist of online transactions.²⁰⁹

1.1.2.4.3 About the transaction

Not differing from other transactions, e-commerce also encompasses various stages, including attracting consumer attention, determining transaction content, executing agreed-upon matters, and resolving potential disputes that may arise at any stage of the transaction.

Advertising is the most common tool adopted by e-commerce sellers and intermediaries for marketing. The regulation of advertising sometimes overlaps with consumer protection, but most of the time it can be considered as a separate legal topic. The current effective specific EU legislation on advertising is the *Directive concerning misleading and comparative advertising* (Directive 2006/114/EC).²¹⁰ Additionally, annoying and aggressive advertising activities can be classified as misconduct in the commercial sector, which is under the control of the *Directive concerning unfair business-to-consumer commercial practices in the internal market* (Directive 2005/29/EC), also known as the *Unfair Commercial Practices Directive*. In the specific domain of e-commerce, the *Directive on Electronic Commerce* initially adopted a broad concept and definition of *commercial communication* instead of advertising, indicating the legislators' intention to expand the regulation of advertising in the digital realm. They formed the main structure of online advertising regulation.

The stage of negotiation and agreement conclusion is primarily governed by the rules pertaining to e-commerce digital contracts, which is a critical aspect of the *Directive on Economic Commerce*.

The stage of performance can be divided into two parts: the performance of consumers and the performance of sellers. On the side of consumers, they shall pay

²⁰⁹ The better access to digital content and digital services is expected to be able to accelerate the exploration of the growth potential of e-commerce (Whereas 1 of the *Directive*).

²¹⁰ This *Directive* has repealed and replaced a previous legislation on advertising, substituting the old regulatory framework, namely the *Directive relating to the approximation of laws, regulations, and administrative provisions of Member States concerning misleading advertising* (Directive 84/450/EEC).

the price. In a digitalized market, traditional payment is updated by **electronic payment methods**, thus, issues including digital payment, electronic money, and virtual currency must be taken into account. As early as the *Directive 97/7/EC*, which focuses on consumer protection in distance contracts, payment by card was being considered.²¹¹ Then the *Directive 2007/64/EC*, also known as the *Payment Services Directive I* (PSD I), was the first EU legislation to address these issues.²¹² Eight years later, Directive (EU) 2015/2366, known as the *Payment Services Directive II* (PSD II), completely replaced PSD I.²¹³ The *Directive 2009/110/EC* is the current comprehensive legislation on electronic money.²¹⁴ Furthermore, in response to the emergence of cryptocurrencies, the EU recently enacted *Regulation on markets in crypto-assets* [Regulation (EU) 2023/1114]. In addition to the aforementioned issues, consumers may utilize certain financial tools, particularly consumer credit, which is more common and easier to access when shopping in a virtual market. To regulate this phenomenon, the EU introduced the *Directive on Credit Agreements for Consumers* (Directive 2008/48/EC).

On the side of sellers, except for orders involving virtual goods or services, a real-world performance is definitely necessary, in particular the **delivery** of goods. In the European Union, the most important issue in this field is to reduce geo-blocking and accelerate the circulation of goods sold through e-commerce.²¹⁵ European legislators have made significant efforts in this regard, as evidenced by the *Directive on common rules for the development of the internal market of Community postal services and the improvement of service quality* (Directive 97/67/EC) and the *Regulation on cross-border parcel delivery services* [Regulation (EU) 2018/644].

²¹¹ Art. 8 *Payment by card* of the *Directive 97/7/EC*.

²¹² PSD I comprehensively regulated all payment services in Europe, with a focus on the obligations of payment service providers and specific requirements in the payment process.

²¹³ PSD II updated some provisions and introduced new rules for the supervision of payment services, establishing a regulatory framework for payment services.

²¹⁴ The *Directive 2000/46/EC* initially regulated such area, but it was later repealed by the *Directive 2009/110/EC*.

²¹⁵ See Van Cleynenbreugel P., *The European Commission's Geo-Blocking Proposals and the Future of EU E-Commerce Regulation*, in *Masaryk University journal of law and technology*, 2017, Vol. 11, n. 1, pp. 39-62.

When a dispute arises among consumers, sellers, and occasionally intermediaries, which are generally situated in various places. A more efficient method of **dispute resolution** is needed to replace traditional court proceedings. In 2013, the *Regulation on online dispute resolution for consumer disputes*, also known as the *Regulation on Consumer ODR* [Regulation (EU) No 524/2013], was introduced to address this dilemma. Alongside this *Regulation*, the *Directive on alternative dispute resolution for consumer disputes*, the *Directive on Consumer ADR* (Directive 2013/11/EU) was also introduced on the same day, with more specific requirements.²¹⁶

1.1.2.5 EU legislations on the environment of e-commerce

Continuing the discussion in the previous subsection, the remaining exhaustive enumeration work will focus on the norms pertaining to the external relationship between e-commerce and other fields, which contributes to the creation of a more favourable environment for the long-term and sustainable development of e-commerce. The external factors that support and regulate e-commerce can be divided into three categories, namely the technical environment (Point 1), the market environment (Point 2), and the legal environment (Point 3). In this sub-section, only legislations that have not been reviewed will be discussed.

(1) The technical environment

E-commerce is dependent on a technical foundation, particularly information technology.

Firstly, to conduct secure e-commerce transactions, it is essential to verify the identity of the parties involved and ensure the integrity of the documents. Electronic signatures and similar tools are used for this purpose. They also serve as a valuable means of identifying and expressing the will of both parties in the context of e-commerce.²¹⁷ In 1999, the forward-looking *Directive on a Community framework for*

²¹⁶ See Cortés P., *Directive 2013/11 /EU on Alternative Dispute Resolution for Consumers and Regulation (EC) 524/2013 on Online Dispute Resolution*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 222-246.

²¹⁷ See Caprioli É.A., *Signature électronique et dématérialisation : droit et pratiques*, Paris : LexisNexis, 2014, p. 99.

electronic signatures (Directive 1999/93/EC) primarily settled regulation particularly regarding electronic signatures,²¹⁸ establishing “a platform of trust that would have allowed for the market to take off” and did promote the development of the market for electronic certificates.²¹⁹ This *Directive* was replaced and repealed by the latest *Regulation on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market* [Regulation (EU) No 910/2014], the *eIDAS Regulation*, which has significantly expanded the range of tools available for providing trust services in online trading.²²⁰ Nowadays, electronic signatures are classified as a type of trust service, alongside electronic seals, electronic time stamps, electronic registered delivery services, and website authentication.²²¹

Secondly, electronic communication serves as the foundation for all actions in e-commerce and therefore is an essential infrastructure for its operation.²²² The current statutory basis of regulation on electronic communication in the EU is the updated *European Electronic Communications Code* established by the *Directive (EU) 2018/1972*,²²³ which is a comprehensive set of new or revised rules for the telecoms

²¹⁸ These regulations were later revised by *Regulation (EC) No 1137/2008*, which adapted several instruments in accordance with the procedure outlined in Art. 251 of the *Council Decision 1999/468/EC*.

²¹⁹ See *Report on the Operation of Directive 1999/93/EC on a Community framework for electronic signatures* (COM/2006/0120 final), pp. 5-6.

²²⁰ Though the *eIDAS Regulation* “successfully established legal certainty on liability, burden of proof, legal effect and international aspects of trust services”, it is still not sufficient to adapt all demands in the market, since the focus has been shifted to “provision and reliance on specific attributes related to those identities”. A continuous revolution in this field is needed. See *Report on the Evaluation of Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS)* [COM (2021) 290 final], pp. 3, 7.

²²¹ See Donnat F., *Droit européen de l'internet : réseaux, données, services*, Paris : LGDJ, 2018, pp. 132-133.

²²² However, electronic communication does not have a direct connection with e-commerce transactions or the e-commerce market. In order to simplify the discussion, this thesis will merely enumerate relevant EU legislations in this section without further research.

²²³ More exhausted analysis, see Dumortier J., *Regulation (EU) No 910/2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS Regulation)*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 247-280.

sector as part of a package of telecom laws.²²⁴

(2) The market environment

To uphold the digital market environment, it is necessary to impose restrictions on the operators, to regulate competition, especially the big platforms. The primary legislations pertaining to this topic are playing a fundamental role in e-commerce regulation and are already reviewed before, namely the DSA and the DMA.

(3) The legal environment

Several legal issues are involved in the field of e-commerce. They might pertain to the products being sold or the activities conducted during virtual transactions.

Intellectual property rights infringement occurs frequently in e-commerce. In addition to fundamental international conventions, the *Directive on Electronic Commerce* established safe harbour rules in Art. 12-14.²²⁵ Then the *Directive on the Enforcement of Intellectual Property Rights* (Directive 2004/48/EC) addresses the protection of intellectual property rights in Internet environments. Recently, the *Directive on copyright and related rights in the Digital Single Market* [Directive (EU) 2019/790], in the context of digital single market, stipulates several more specific provisions related to copyright protection in digital society.²²⁶

Data is another ubiquitous issue in e-commerce even any activities online. Every link in which cyber-consumers participate is associated with the collection, utilization, transmission, or overall processing of data, especially those fairly personal. As a result, e-commerce operators, whether sellers or intermediaries, are primarily responsible for data governance. Personal data is the most sensitive object in data governance. The notable EU legislation, the *General Data Protection Regulation* (GDPR) [Regulation

²²⁴ Regarding this issue, the EU initially promulgated *Directive 2002/21/EC* to establish a regulatory framework and *Directive 2002/22/EC* to outline the rights of users in electronic communication, which were replaced by the *European Electronic Communications Code* according to the *Directive (EU) 2018/1972*.

²²⁵ See Rosati E. (edit), *London: Routledge handbook of EU copyright law*, London: Routledge, 2021, p. 369.

²²⁶ See McDonagh L., *Directive 2019/790/EU (Directive on Copyright and Related Rights in the Digital Single Market)*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 312-320.

(EU) 2016/679], although not explicitly focused on e-commerce, is also a fundamental legal document for e-commerce regulatory framework. Regarding other data involved in e-commerce, other regulations generally about data shall be applied, in particular the *Data Governance Act (Regulation on European Data Governance)* [Regulation (EU) 2022/868 and the *Data Act* [Regulation (EU) 2023/2854].²²⁷

²²⁷ The relevance between data and e-commerce is usually neglected.

Regarding the *Data Governance Act*, since there is an overlapping between data sharing service providers and intermediary service providers regulated by the *Directive on Electronic Commerce*, the connection between data governance and e-commerce was discussed from a pure technical perspective. See Baloup J., Bayamlioğlu E., Benmayor A. and etc., *White Paper on the Data Governance Act* (June 23, 2021), CiTiP Working Paper 2021, Available at SSRN: <https://ssrn.com/abstract=3872703>.

Regarding the *Data Act*, for instance, Marc Lolivier, the General Director of FEVAD (French Federation of e-commerce) only ambiguously admitted the positive influence of the *Data Act* on e-commerce, without detailed analysis. See Lone, S., & Weltevreden, J.W.J., *2023 European E-commerce Report*, Amsterdam/Brussels: Amsterdam University of Applied Sciences & Ecommerce Europe, accessed February 23, 2024, <https://www.eurocommerce.eu/european-e-commerce-report/>.

1.2 E-commerce regulatory framework in China

Before entering the specific issue of ecommerce regulation in China a brief presentation of the Chinese legal normative system (1.2.1) will be made, which will facilitate the search for relevant regulations pertaining to e-commerce. Following this introduction, the e-commerce regulatory rules will be divided into two categories: the policies that drive the development of the e-commerce industry (1.2.2) and the legislations that govern e-commerce (1.2.3).

1.2.1 Sources of effective rules in China

As a country that follows and has achieved success in the tradition of the civil law system, the national-level statutory law (Point 1) holds immense importance in the Chinese legal system. The legal system in China does not solely rely on statutes, the judicial judgments (Point 2) also make significant contribution. Despite being a unitary state, the local legislative practice (Point 3) in China is usually more exploratory and creative than central legislation. Finally, policy documents (Point 4) created by various levels of party or government organizations could also influence legislation, supplement legislation, and even serve as legislation.

(1) Central legislation and quasi-legislation

The legislation holds a central position within the entire normative system, displaying a clear hierarchical characteristic that is universally regulated by the *Legislation Law of China* (中华人民共和国立法法, *Zhonghua renmin gongheguo lifa fa*).²²⁸ Following a top-down sequence, the nationwide legislations in China consist

²²⁸ Accessed October 2, 2023, <https://flk.npc.gov.cn/detail.html?ZmY4MDgxODE4NjVIZGMxNDAXODZkOWQ2ZjFjYjI1MDM>. English translation is under the reference of the official translation of previous version of Legislation law of China (archived December 11, 2007, from http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383554.htm) and another unofficial but timely translation (accessed October 2, 2023, https://npcobserver.com/wp-content/uploads/2023/03/Legislation-Law_Amendment_Comparison-Chart_OrgAmended.pdf).

of (A) Laws, (B) Regulations and Rules,²²⁹ and (C) Judicial interpretation.

A. Laws. In the hierarchy of legal binding force, laws exclusively pertain to the legal documents promulgated by the National People's Congress (NPC) and its Standing Committee (NPCSC). The NPC is responsible for establishing laws with fundamental characteristics, while the NPCSC serves as the regular legislature in China, responsible for a considerable portion of legislative tasks. The laws stipulated by either the NPC or the NPCSC hold equal legal force.²³⁰ Nevertheless, unlike certain Western legislatures, Chinese legal system does not rely on *laws*. Despite their supreme legal binding force and authority, some of provisions may not be effectively implemented due to their abstractness. As a result, the most detailed laws generally do not have the name as *laws*.²³¹

B. Administrative regulations and rules. Administrative legislation plays a vital role within the Chinese legislative framework by providing detailed regulations to complement existing laws.²³² Besides the NPC and the NPCSC, at national level, the State Council is also endowed the authority of legislation.²³³ Other central

²²⁹ Although *Regulations* and *Rules* vary in terms of their effectiveness of hierarchy, since they are both created by administrative bodies and share the characteristic of regulating a specific field, in this dissertation, they will be classified and discussed together to avoid unnecessary repetition.

²³⁰ See Art. 10 of the *Legislation Law of China*.

²³¹ Based on this fact, some Chinese scholars suggested that the hierarchy of legal norms might not be valid for China's legal system. See Xu Shuhao, *Why Stufenbau Theory of Legal System is Impossible?* (法律体系阶层构造论为什么难以成立? , Falyu tixi jiecheng gouzao lun weishenme nanyi chengli?), in *Legal-Based Society*, 2024, n. 3, pp. 76-89.

²³² See Jiang Bixin, *The Practical Development and Systematic Construction of China's Administrative Legislation* (中国行政立法的实践发展及体系化建设, Zhongguo xingzheng lifa de shijian fazhan ji tixihua jianshe), in *Chinese Rule of Law*, 2023, n. 2, pp. 4-8.

²³³ The legislation formulated by State Council is categorized as *Administrative Regulation* (行政条例, xingzheng tiaoli), referred to as *Regulation*. (Art. 72 of the *Legislation Law of China*)

government administrative entities²³⁴ are also entitled to formulate rules with legal binding force, although under much more restriction.²³⁵

C. Judicial interpretation. As another category of central-level legal document, the judicial interpretation is promulgated by the Supreme People's Court of China.²³⁶ The *Legislation Law of China* only recognizes its interpretive nature.²³⁷ However, in judicial practice, judicial interpretation generally serves as an important supplement to legislations. It provides detailed explanations of certain provisions and even introduces new rules that are not found in laws, particularly in the field of private law.²³⁸ For these reasons, most scholars acknowledge the status of judicial interpretation as an essential source of legal rules, or a *de facto* legislation.²³⁹

(2) Judgments

The judicial system in China, known as the People's Court, consists of four levels. Each level has the authority to make judgments, with higher-level courts having the power to correct judgments made by lower-level courts. The judgments made by any level of court, however, do not have binding force on other courts, including the

²³⁴ Including (1) The ministries and commissions of the State Council; (2) The People's Bank of China; (3) The State Audit Administration; (4) The other organs endowed with administrative functions directly under the State Council, as well as the bodies prescribed by law. The rules formulated by them shall be in accordance with the laws and the administrative regulations, decisions and orders of the State Council and be within the limits of their power. (Art. 91 Section 1 of the *Legislation Law of China*)

²³⁵ The legislation formulated by central government administrative entities is categorized as *Departmental Rules* (部门规章, *bumen guizhang*), referred to as *Rule*. These *rules* occasionally use other titles, such as *Measures* (办法, *banfa*) and *Provisions* (规定, *guiding*).

²³⁶ In Chinese character, *judicial interpretation* refers to 司法解释 (*sifa jieshi*).

²³⁷ Art. 129, first sentence of the *Legislation Law of China*: "Interpretations on the specific application of laws in adjudicatory or procuratorial work that are issued by the Supreme People's Court or Supreme People's Procuratorate shall primarily target specific provisions of laws and be consistent with their legislative purpose, principles, and original meaning."

²³⁸ Even the promulgation of the *Civil Code of China* did not terminate the life of judicial interpretation. See Huang Zhong, *On the Fate of Judicial Interpretation after the Civil Code* (论民法典后司法解释之命运, *Lun minfadian hou sifa jieshi zhi mingyun*), in *China Legal Science*, 2020, n. 6, pp. 44-63.

²³⁹ See Miao Yan, *On the Nature and Hierarchy of Effectiveness of Judicial Interpretation*, in *Peking University Law Journal* (论司法解释的性质和效力位阶, *Lun sifa jieshi de xingzhi he xiaoli weijie*), 2023, n. 2, pp. 425-444.

Supreme People's Court.²⁴⁰ Despite this, in practical terms, lawyers, scholars, and judges themselves attach significant importance to previous judgments that involve similar circumstances, since these judgments are considered indispensable references when deciding new cases.²⁴¹

Several existing institutions could better harness the suggestive force of previous judgments. One notable example is the compilation of *guiding cases* by the Supreme People's Court. This is particularly valuable in new areas where statutory rules are not yet well-established.²⁴² Additionally, due to the limited number of *guiding cases*, courts at various levels often choose specific representative cases from recent years to provide guidance on the application of the law, commonly referred to as *typical cases*.²⁴³

For instance, the Supreme People's Court released ten *guiding cases* in 2023 that provide specific judicial opinions on issues related to online consumption.²⁴⁴ Local People's Courts, such as Hangzhou Internet Court, even earlier, published their ten

²⁴⁰ See Art. 9, 10, 12, and 13 of the *Organic Law of the People's Courts of the People's Republic of China* (中华人民共和国人民法院组织法, *Zhonghua renmin gongheguo renmin fayuan zuzhi fa*). Accessed March 16, 2024, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxYzVkYmMwZjEwNmQ%3D>.

²⁴¹ Chinese scholars started to adopt the case analysis methodology more than a decade ago, which has been matured nowadays. See Zhou Jianghong, *Case Study Approach as Civil Law Methodology*, in *Chinese Journal of Law* (作为民法学方法的案例研究进路, *Zuowei minfaxue fangfa de anli yanjiu jinlu*), 2013, n. 6, pp. 19-23. Some scholars even consider it as an important chance to create "great cases", following the path of the United States. See Yang Lixin, *Jurisprudence as the Supplementary Legal Source of Civil Trial: How to Make a Great Judgment* (论法理作为民事审判之补充法源——以如何创造伟大判决为视角, *Lun fali zuowei minshi shenpan zhi buchong fayuan: Yi ruhe chuangzao weida panjue wei shijiao*), in *China Law Review*, 2022, n. 4, pp. 24-36.

²⁴² See Cao Jianjun, *An Empirical Study on the Operation of Guiding Case System* (指导性案例制度运行的实证研究, *Zhidaoxing anli zhidu yunxing de shizheng yanjiu*), in *Social Sciences in Yunnan*, 2024, n. 2, pp. 14-25.

²⁴³ Compiling several typical cases as supplement to legislation reflects Chinese legal tradition, which could preserve the simplicity and flexibility of legislation. See Zhang Sheng, *The Tradition of Unified Compilation of Chinese Laws and Cases and the Guiding Cases in Modern Civil Law System*, in *China Legal Science* (中国律例统编的传统与现代民法体系中的指导性案例, *Zhongguo lyuli tongbian de chuantong yu xiandai minfa tixi zhongde zhidaoxing anli*), 2020, n. 3, pp. 29-48.

²⁴⁴ See *Ten Typical Cases about Online Consumption*, accessed February 5, 2024, <https://www.court.gov.cn/xinshidai-xiangqing-393481.html>.

typical cases related to e-commerce platforms.²⁴⁵ Even several local administrations issued their *regulation typical cases*.²⁴⁶

With guiding cases and typical cases, China's judicial system demonstrates its viewpoint about questions that are not yet proceeded by existing formal legal documents, which has almost become another source of law in China.²⁴⁷

(3) Local legislations

Local legislations are rather limited to specific public entities.²⁴⁸ Local legislation might be promulgated by local People's Congress and its standing committee,²⁴⁹ as well as provincial-level and certain municipal-level local governments.²⁵⁰

Local legislation plays a significant role in the legal development in China. On the one hand, it serves as a pioneer by examining and piloting various central-level

²⁴⁵ See *Hangzhou Internet Court Released Ten Typical Cases Involving E-Commerce Platforms* (杭州互联网法院发布涉电子商务平台十大典型案例, Hangzhou hulianwang fayuan fabu she dianzi shangwu pingtai shida dianxing anli), archived December 8, 2023, from www.pkulaw.cn, reference ID: CLI.14.4079099.

²⁴⁶ See *Regulation typical cases about Online Transaction 2023* (湖州市 2023 年度网络交易监管典型案例, Huzhoushi 2023 niandu wangluo jiaoyi jianguan dianxing anli), issued by Huzhou Municipality Administration for Market Regulation, archived February 6, 2024, at https://scjgj.huzhou.gov.cn/art/2024/2/6/art_1229209813_58938728.html.

²⁴⁷ See Li Xuecheng, *The Effect of Source of Law and Recognition Path to Guiding Cases: A Study on Guiding Cases of Private Law Issued by the Supreme People's Court* (指导性案例的法源意义与确认路径——以最高人民法院公布的私法性指导性案例为研究对象, Zhidaoxing anli de fayuan yiyi yu queren lujing: Yi zuigao renmin fayuan gongbu de sifaxing zhidaoxing anli wei yanjiu duixiang), in *Northern Legal Science*, 2014, n. 6, pp. 19-32.

²⁴⁸ Only provincial level entities (provinces, autonomous regions, direct-administered municipalities) and some special municipalities with the identity of special economic zones could formulate local legislation. (Art. 80 and Art. 81 of the *Legislation Law of China*) In this thesis, the author will not distinguish local legislation according to their types and levels.

²⁴⁹ The legislation formulated by local People's Congress is categorized as *Local Regulation* (地方法规, *defang fagui*), including three sub-categories corresponding to the nature of the provincial promulgation authority: Local regulations, autonomous regulations, and separate regulations. (Art. 80 and Art. 81 of the *Legislation Law of China*)

²⁵⁰ The legislation formulated by local People's Congress is categorized as *Local Government Rules* (地方政府规章, *difang zhengfu guizhang*). (Art. 93 of the *Legislation Law of China*)

decisions in a limited area, ensuring their future implementation nationwide.²⁵¹ On the other hand, it refines national legislation by proposing detailed and executable measures that are tailored to different regions. This guarantees the consistency and feasibility of legislation in a country with such a vast territory and large population.²⁵² The substantial number of local legislations further demonstrates its vitality and significance, which could be observed in research on e-commerce.²⁵³

(4) Political documents

Within the governance culture of China, from a perspective of realism, political documents should definitely be regarded as a source of effective rules.²⁵⁴ The government always exerts a strong influence on the market through their autoreactive and flexible policies. Therefore, the role of political documents can be summarized as “profoundly influencing the economy, society, and legal framework,” thereby “directly or indirectly affecting public interest.”²⁵⁵

When discussing the Chinese legal system, analysing relevant policies is not usually necessary. However, in emerging areas like e-commerce, their rapid development relies on corresponding policies. Additionally, some effective rules could

²⁵¹ See Ding Zunian, Yujun, *The Important Role of Local Legislation in the Progress of Promoting the Reform and Opening-up: An Interview with Ding Zunian* (地方立法在推进改革开放进程中的作用——丁祖年访谈录, Difang lifa zai tuijin gaige kaifang jincheng zhongde zuoyong: Ding Zunian fangtanlu), in *Local Legislation Journal*, 2024, n. 5, pp. 120-134.

²⁵² See Shen Qiaolin, *An Interpretive Analysis of Local Legislation in China's Central-Local Relations* (我国央地关系的地方立法诠释——以《宪法》第三条第四款为中心展开, Woguo yangdi guanxi de defang lifa quanshi: Yi xianfa disantiao disikuan wei zhongxin zhankai), in *Henan Social Sciences*, 2024, n. 6, pp. 32-42.

²⁵³ In 2023, a total of 233 provincial-level legislative documents were newly promulgated, while 324 others were modified. At the municipal level, the number of new legislations even reached 665. See Yan Ran, *Report on Analysis and Statistics of Local Legislation: Year 2023* (地方立法统计分析报告: 2023 年度, Difang lifa Tongji fenxi baogao: 2023 niandu), in *Local Legislation Journal*, 2024, n. 1, pp. 125-140.

²⁵⁴ They are commonly referred to as *Documents with red-coloured titles* (红头文件, Hongtou wenjian). In their titles, the term *Opinions* (意见, Yijian) is commonly used.

²⁵⁵ Peng Zhongli, *The Concept of National Policy in the Context of Chinese Law* (中国法律语境中的国家政策概念, Zhongguo falyu yujing zhongde guojia zhengce gainian), in *Chinese Journal of Law*, 2023, n. 6, pp. 19-36.

merely be found in policy documents rather than legislative documents.²⁵⁶ Therefore, a comprehensive analysis of the e-commerce regulatory framework in China also requires a careful examination of critical policies.

1.2.2 Policies promoting the development of e-commerce in China

E-commerce, a significant issue in the digital era, has received national-level attention, primarily driven by a series of high-level guideline policies (1.2.2.1). Additionally, in certain emerging areas such as data property rights, and in important topics related to e-commerce or digital market governance, such as antitrust actions against major platforms and regulations on online live marketing, the policies are more advanced than the current legislative framework on these issues in China (1.2.2.2). Through analysis, the importance of these non-legislative but essential rules can be adequately highlighted.

1.2.2.1 Overall guidelines on e-commerce

As early as 2005, the *Opinions of the General Office of the State Council on Accelerating the Development of Electronic Commerce* (国务院办公厅关于加快电子商务发展的若干意见, Guowuyuan bangongting guanyu jiakuai dianzi shangwu fazhan de ruogan yijian) was published.²⁵⁷ This document marked the initial response of the Chinese government to the emergence and potential for growth in e-commerce

²⁵⁶ The above two points are fairly typical in the field of cross-border e-commerce, which is a territory driven by policy support. See Zhao Xiaohan, Pan Yong, *The Analysis of Chinese Cross-Border E-Commerce Policy: 2012-2020* (我国跨境电子商务政策分析:2012-2020, Woguo kuajing dianzi shangwu zhengce fenxi: 2012-2020), in *China Business and Market*, 2021, n. 1, pp. 47-59; Shi Hanxiao, Mao Yuxin, *Quantitative Research on China Cross-Border E-commerce Policies Based on Text Mining* (基于文本挖掘的中国跨境电商政策量化研究, Jiyu wenben wajue de zhongguo kuajing dianshang zhengce lianghua yanjiu), in *Journal of Business Economics*, 2022, n. 11, pp. 5-17.

²⁵⁷ Accessed October 14, 2023, https://www.gov.cn/gongbao/content/2005/content_63341.htm.

and can even be considered a vital moment in the history of Chinese e-commerce.²⁵⁸

The policymakers correctly indicated that e-commerce would promote the circulation of merchandise and lower trading costs. (Point 3) Objectives regarding related legislation were also proposed in this document, including the development of laws and regulations concerning electronic transactions, online payment, privacy protection. (Point 7) The policymakers had a comprehensive consideration, addressing nearly all aspects related to e-commerce, such as financial and tax policies (Point 8), security certification tools (Point 11), online payment methods (Point 13), and logistic systems (Point 14). The document also emphasized that the government is responsible for creating a favorable environment for e-commerce, while the digital market should be left to the enterprises who are the true leaders.²⁵⁹

In response to the significant political directive, the Ministry of Commerce of China (MOFCOM), the principal department responsible for e-commerce in China, released a series of documents. In 2007, the *Guiding Opinions on Online Trading (for Interim Implementation)* [关于网上交易的指导意见(暂行), Guanyu wangshang jiaoyi de zhidao yijian (zanxing)] were published.²⁶⁰ The *Opinions* was actually the first national regulatory rules regarding e-commerce in China. The *Opinions* defined *online trading* as “the buying and selling of goods or services between a buyer and a seller using the Internet” (Art. 1.1). Additionally, the *Opinions* outlined the participants

²⁵⁸ From the perspective of future observers, in this year, along with the promulgation of such epoch-making policy specifically supporting e-commerce, Alipay entered in market and express delivery enterprises started to collaborate with e-commerce platforms such as Taobao on a large scale. See Ju Xuenan, Ouyang Rihui, *Twenty Years' Development of E-Commerce in China: Stage Division, Typical Characteristics and Analysis of Trend* (中国电子商务发展二十年: 阶段划分、典型特征与趋势研判, Zhongguo dianzi shangwu fazhan ershi nian: Jieduan huafen dianxing tezheng yu qushi yanpan), in *New Economy Leader*, 2019, n. 3, pp. 26-33.

²⁵⁹ Explained by an important expert and official, A Lamusi, who deeply participated in the drafting of this document. See Bai Li, *E-Commerce with Chinese Characteristics: Explanation of Opinions of the General Office of the State Council on Accelerating the development of Electronic Commerce* (中国特色的电子商务——解读《国务院办公厅关于加快电子商务发展的若干意见》), *Zhongguo tese de dianzi shangwu: Jiedu guowuyuan bangongting guanyu jiakuai dianzi shangwu fazhan de ruogan yijian*, in *E-Commerce*, 2005, n. 3, pp. 7-9.

²⁶⁰ Archived March 29, 2007, at https://www.gov.cn/zwgk/2007-03/29/content_565020.htm.

of e-commerce, including online trading parties and online trading service providers (Art. 1.2), the three-party structure in e-commerce is noticed.²⁶¹ At the end of the same year, the MOFCOM published another informative policy document,²⁶² continuing to propose general requirements regarding e-commerce information dissemination, e-commerce trading, electronic payment, and delivery services. Afterwards, the MOFCOM consistently published a general policy document almost every year on e-commerce.²⁶³ These policy documents have effectively filled in the gaps prior to the promulgation of the *E-Commerce Law of China* and have served as the basis for experience and regulation in the latter.

Simultaneously, the MOFCOM was also establishing a standard system in the field of e-commerce. In 2009, the *Norms on Modes of E-Commerce* (SB/T 10518-2009) (电子商务模式规范, Dianzi shangwu moshi guifan) and the *Norms on Network Trading Services* (SB/T 10519-2009) (网络交易服务规范, Wangluo jiaoyi fuwu

²⁶¹ However, in terms of e-commerce trading rules, this *Opinions* did not make any contribution. It only emphasized the unique nature of e-commerce and caution the parties involved in e-commerce to be vigilant. (Art. 2 and Art. 3 of the *Opinions*)

²⁶² Namely the *Opinions on Enhancing the Regularized Development of Electronic Commerce* (关于促进电子商务规范发展的意见, Guanyu cujin dianzi shangwu guifan fazhan de yijian). Archived December 2, 2007, at <http://www.mofcom.gov.cn/article/fgsjk/200712/20071202649302.shtml>.

²⁶³ These political documents include:

(1) *Opinions on Accelerating the Development of E-Commerce in the Circulation Field* (2009) (关于加快流通领域电子商务发展的意见, Guanyu jiakuai liutong lingyu dianzi shangwu fazhan de yijian), archived January 6, 2020, at <http://www.mofcom.gov.cn/aarticle/b/g/201001/20100106734908.html>;

(2) *Guiding Opinions of the Ministry of Commerce on Promoting Healthy Growth of Online Shopping* (2010) (关于促进网络购物健康发展的指导意见, Guanyu cujin wangluo gouwu jiankang fazhan de zhidao yijian), archived July 7, 2010, at <http://www.mofcom.gov.cn/aarticle/b/g/201007/20100707044659.html>;

(3) *Guiding Opinions on E-Commerce Development during the "Twelfth Five-Year Plan" (2011)* (“十二五” 电子商务发展指导意见, Shierwu dianzi shangwu fazhan zhidao yijian), archived October 7, 2011, at <http://www.mofcom.gov.cn/aarticle/b/d/201110/20111007788024.html>;

(4) *Implementation Opinions of the Ministry of Commerce on Promoting the Application of E-Commerce* (2013) (关于促进电子商务应用的实施意见, Guanyu cujin dianzi shangwu yingyong de shishi yijian), archived November 3, 2013, at <http://www.mofcom.gov.cn/article/b/fwzl/201311/20131100398515.shtml>.

guifan) were issued.²⁶⁴ It is important to emphasize that the second standard explicitly recognizes three principal modes of e-commerce: B2B, B2C, and C2C.²⁶⁵ The e-commerce standard system has become more comprehensive. Currently, there are already 130 valid national standards related to e-commerce.²⁶⁶ They are safeguarding in secret the smooth operation of e-commerce in China.

1.2.2.2 Policies regarding specific matters pertaining to e-commerce

The “policy goes first” strategy is more evident in the process of constructing a digital China. Among all the matters related to e-commerce, data, platform governance, and online live marketing are three typical examples that are highly relevant to e-commerce and frequently discussed in the past three years.

In December 2022, a significant document titled *Opinions of the CPC Central Committee and the State Council on Establishing a Data Infrastructure System to Better Play the Role of Data Factor* (中共中央 国务院关于构建数据基础制度更好发挥数据要素作用的意见, Zhonggong zhongyang guowuyuan guanyu goujian shuju jichu zhidu genghao fahui shuju yaosu zuoyong de yijian) was published in China.²⁶⁷ This policy document, with the most authoritative title, is intended to establish a fundamental property rights system in the field of data and is expected to have a far-

²⁶⁴ The announcement that published the above three *Norms*, archived September 4, 2020, at <http://www.mofcom.gov.cn/article/fgsjk/200904/20090402649317.shtml>.

²⁶⁵ Art. 2, first sentence of the *Norms on Network Trading Services*: “Online transactions refer to transactions that occur between businesses (Business to Business, B2B for short), between businesses and consumers (Business to Consumer, B2C for short), and between individuals (Consumer to Consumer, C2C for short) in information networks through network communication.”

²⁶⁶ All the national standards could be inquired on National Standards Full Text Publicity System, operated by Standardization Administration of China. The above-mentioned statistics, last archived April 10, 2024, <https://openstd.samr.gov.cn/bzgk/gb/index>.

²⁶⁷ Archived December 19, 2022, at https://www.gov.cn/zhengce/2022-12/19/content_5732695.htm.

reaching impact on data governance.²⁶⁸ it will also impact the regulation of e-commerce, as cyber-operators, particularly large e-commerce platforms, possess, process, and utilize extensive quantities of data for marketing, advertising, and the creation of data products for sales purposes. The forming regulatory framework on data factor will inevitably impact e-commerce, as online operators, particularly large e-commerce platforms, possess, process, and utilize extensive quantities of data for marketing and advertising.²⁶⁹

In order to address the increasing centralization of the digital market caused by “platformization” and to protect consumers, the Anti-Trust Committee of the State Council of China has published the *Guidebook on Anti-Trust in the Platform Economy Field* (国务院反垄断委员会关于平台经济领域的反垄断指南, Guowuyuan fanlongduan weiyuanhui guanyu pingtai jingji lingyu de fanlongduan zhinan).²⁷⁰ This guidebook provides instructions on the specific factors that should be considered when reviewing potential monopoly activities carried out by internet platforms, thereby making the relevant anti-trust laws more practical. The guidebook not only imposes constraints on the operations of the Anti-Trust Committee, but also establishes boundaries for platforms, urging them to conduct self-compliance examinations in order to avoid rigorous anti-trust investigations and costly fines.²⁷¹

In order to address the chaos in the online live marketing sector, the Cyberspace

²⁶⁸ The most significant impact is the establishment of a data property right system, including the right to hold data, the right to process and use data and the right to manage data product. Based on this property right system, data could be better circulated, in order to release the potential of data as a factor of production. See Xiong Bingwan, He Juan, *The System of Basic Legal Requirements for Data Market* (论数据要素市场的基础制度体系, Lun shuju yaosu shichang de jichu zhidu tixi), in *Academic Monthly*, 2024, n. 1, pp. 102-114.

²⁶⁹ See Ouyang Rihui, *The New Momentum and New Paradigm of Economic Growth in the Digital Economy* (数字经济中经济增长的新动力与新范式, Shuzi jingji zhong jingji zengzhang de xindongli yu xinfanshi), in *Social Sciences in Guangdong*, 2024, n. 1, pp. 15-26.

²⁷⁰ Archived February 7, 2021, at https://www.gov.cn/xinwen/2021-02/07/content_5585758.htm.

²⁷¹ See Wang Xiaoye, *Theory and Practice of Anti-monopoly Supervision in China's Digital Economy* (中国数字经济领域反垄断监管的理论与实践, Zhongguo shuzi jingji lingyu fanlongduan jianguan de lilun yu shijian), in *Journal of University of Chinese Academy of Social Sciences*, 2022, n. 5, pp. 31-48.

Administration of China, the leading authority in China's cyberspace, along with six other government departments, released the *Measures on Regulating Online Live Marketing (For Trial) (2021)* [网络直播营销管理办法（试行）, Wangluo zhibo yingxiao guanli banfa].²⁷² Online live marketing is currently the most common method of marketing for e-commerce in China, but it also has resulted in various problems and risks, including the erosion of trust, diminished autonomy, the fragmentation of accountable institutions.²⁷³ All of them are challenging the regulatory system and authorities. The aforementioned policy effectively serves as legislation, essentially refraining from unfair activities in this field.²⁷⁴

1.2.3 Legislations on e-commerce in China

The enumeration of Chinese e-commerce legislations in this section will follow a sequential order, starting from the laws (1.2.3.1) and progressing to legislations with administrative nature (1.2.3.2), local legislations (1.2.3.3), and finally, the judicial interpretation (1.2.3.4).

It is worth mentioning that Chinese legislators have a preference for formulating programmatic legal documents, which also exhibit a hierarchical characteristic. In other words, at each level of legislation on e-commerce in China, there is a “general regulatory document on e-commerce” along with other documents that focus on various specific topics. At the level of laws, the *E-Commerce Law of China (2018)* is

²⁷² Archived April 23, 2021, at https://www.gov.cn/zhengce/zhengceku/2021-04/23/content_5601682.htm.

²⁷³ See Han Xinyuan, *Theoretical Review and Governance Research on Online Streaming E-Commerce* (直播带货的学理审视与治理研究, Zhibo daihuo de xueli shenshi yu zhili yanjiu), in *Science Technology and Law*, 2022, n. 1, pp. 62-68.

²⁷⁴ Current legal study, administrative enforcement and platform self-discipline are all conducted according to the *Measures* about online live marketing. See Liu Ke, Huang Bochen, *The Legal Responsibilities and Regulatory Logic of E-Commerce Live-Streaming Activities* (电商直播带货行为主体的法律责任及规制逻辑, Dianshang zhibo daihuo zhuti de falyu zeren ji guizhi luoji), in *Jiangnan Tribune*, 2023, n. 10, pp. 139-144.

undoubtedly the representative.²⁷⁵ At the level of departmental rules, there is the *Measures on Supervision and Administration of Online Trading (2021)* (网络交易监督管理办法, Wangluo jiaoyi jiandu guanli banfa).²⁷⁶ Among judicial interpretations, the *Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) (2022)* [关于审理网络消费纠纷案件适用法律若干问题的规定 (一)], Guanyu shenli wangluo xiaofei jiufen anjian shiyong falyu ruogan wenti de guiding (yi)]²⁷⁷, published by the Supreme People's Court, is also a general and almost all-inclusive document. At the local level, for example, both Shanghai and Zhejiang have promulgated their own general legislations regarding e-commerce.²⁷⁸ The subsequent discussion of legislations on each level will undoubtedly commence with these “guidelines”.

1.2.3.1 Laws on e-commerce

The rules related to e-commerce that were outlined in laws could be grouped from general rules to specific rules, including the general civil law rules (1.2.3.1.1), the specific law on e-commerce (*E-Commerce Law of China*) (1.2.3.1.2), laws pertaining to elements of e-commerce transaction (1.2.3.1.3), and laws concerning the external environment of e-commerce (1.2.3.1.4).

²⁷⁵ Chinese official version, passed on August 31, 2018, entered into effect on January 1, 2019. Archived October 2, 2023, from http://www.npc.gov.cn/zgrdw/npc/lftz/rlyw/2018-08/31/content_2060827.htm. Reference version of English translation is that provided by IP Key, accessed October 2, 2023, https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf.

²⁷⁶ Promulgated by the State Administration for Market Regulation of China, archived March 16, 2021, at https://www.gov.cn/zhengce/zhengceku/2021-03/16/content_5593226.htm.

²⁷⁷ Accessed October 20, 2023, <http://gongbao.court.gov.cn/Details/1f8888b3afdf77181ca8cf257dd361.html?sw=>.

²⁷⁸ Two local special legislations on e-commerce are worthy of mention.

(1) *Provisions on Promoting the Development of E-Commerce of Shanghai Municipality (2008)* (上海市促进电子商务发展规定, Shanghaishi cujin dianzi shangwu fazhan guiding), accessed November 29, 2023, <https://flk.npc.gov.cn/detail2.html?NDAyOGFiY2M2MTI3Nzc5MzAxNjEyN2ZlNjhhMzNmOGU%3D>.

(2) *Regulation on E-Commerce of Zhejiang Province (2021)* (浙江省电子商务条例, Zhejiangsheng dianzi shangwu tiaoli), accessed November 29, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3YzkyZTBiNDAXN2NhMWUwMzdiNzA1YmQ%3D>.

1.2.3.1.1 Civil law

As early as 1999, when the process of informatization and the development of e-commerce in China were just beginning, the *Contract Law of China* (中华人民共和国合同法, *Zhonghua renmin gongheguo hetong fa*) already acknowledged the use of electronic means in contract formation. This was done by defining a *data message* as a written form of contract.²⁷⁹ The significant *Civil Code of China (2020)*²⁸⁰ coincided with the era of e-commerce and brought about the replacement and modernization of the aforementioned clause.

The primary significance of these general civil law rules lies in their ability to establish a basic structure for digital contracts, with Art. 512 of the *Civil Code of China* serving as a representative example. According to the statements made by legislative leaders, the above article specifically addresses “the need for specific norms to regulate electronic contracts,” taking into account “the emergence of new e-commerce transaction models resulting from the rapid development of information and network technology.”²⁸¹

From a theoretical perspective, the above provision should be considered the fundamental rule regarding e-commerce in China. It is also included in the fundamental legislation in the private law field; therefore, as a part of private law, e-

²⁷⁹ The *Contract Law of China*, passed on March 15, 1999, taken into effect on October 1, 1999, repealed in the meantime of the enacting of *Civil Code of China* on January 1, 2021. Archived December 6, 2000, http://www.npc.gov.cn/zgrdw/wxzl/wxzl/2000-12/06/content_4732.htm. The English translation could be found on the website of WIPO (World Intellectual Property Organization), accessed October 2, 2023, <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cn/cn137en.pdf>.

²⁸⁰ Accessed October 3, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3MjlkMWVmZTAxNzI5ZDUwYjVjNTAwYmY%3D>.

²⁸¹ Zhang Mingqi, *The Compilation of Special Parts of Civil Code of China* (民法典分编的编纂, *Minfadian fenbian de bianzuan*), in *China Legal Science*, 2020, n. 3, pp. 5-28.

commerce transaction shall naturally be adjusted by these rules.²⁸²

1.2.3.1.2 The E-Commerce Law of China

The proposal to establish an e-commerce law in China can be traced back to as early as 2000, when e-commerce was just beginning in Western countries and the internet was just starting to become popular.²⁸³ It is clear that this proposal was overly eager, reflecting the blind enthusiasm for chasing trends in modern legal studies.

The formal legislation project for the e-commerce law, however, was launched 13 years after the above initial proposal and lasted for five years.²⁸⁴ This reflects the intricate nature of e-commerce legislation, the significant conflicts of interest among multiple parties, and the cautious approach taken by the legislators.²⁸⁵

The main points of the law will be summarized, including the characteristic of the law (Point 1), the principles and policies enumerated about e-commerce (Point 2), certain theoretical innovations in specific provisions (Point 2), and the regrets and defects (Point 3).

(1) The characteristics

Contrary to its title, the *E-Commerce Law of China* (referred to as ECL) does not encompass all aspects of the e-commerce field. Instead, it focuses on specific areas. It

²⁸² Civil law rules in China focus on the contract aspect of e-commerce and incorporate various innovative rules that align with Chinese commercial practices. While their efforts have been commendable, they are not without flaws as the specific regulations pertaining to e-commerce contracts are still insufficient, leaving significant room for market autonomy. While this legislative outcome may symbolize freedom, it is more likely to pose risks for consumers, as the power in the e-commerce market predominantly favors traders rather than consumers.

²⁸³ Extracted from an interview with a person in charge of legislation in financial and economic field of NPC, Lyu Zushan. See *Deputy Chairman of the Financial and Economic Committee of the NPC responds the hotspots in e-commerce legislation* (全国人大财经委副主任委员吕祖善回应电商立法热点, Quanguo renda caijingwei fuzhuren weiyuan Lyu Zushan huiying dianshang lifa redian), archived December 21, 2016, at https://www.gov.cn/xinwen/2016-12/21/content_5151193.htm#1.

²⁸⁴ The *E-Commerce Law of China* is the only Chinese law that has been promulgated after undergoing four rounds of discussions in the Standing Committee of the National People's Congress.

²⁸⁵ *It is worth reflecting the five-year process of e-commerce legislation* (电子商务法立法历时五年 过程值得总结, Dianzi shangwufa lifa lishi wunian guocheng zhide zongjie), in *Legal Daily*, archived September 4, 2018, at http://www.npc.gov.cn/zgrdw/npc/cwhhy/13jcw/2018-09/04/content_2060643.htm.

primarily regulates three key areas: e-commerce traders, the formation and performance of e-commerce contracts, and dispute resolution in e-commerce.

It appears that the ECL was somewhat incomplete. However, as long as we consider it as a programmatic law, which sets forth principally fundamental requirements that will be further developed through future national or local legislation. For instance, Art. 10 of the ECL mentions the *registration of market entities* for e-commerce operators, but the detailed registration procedures are completely outlined in another separate administrative regulation²⁸⁶ rather than within the text of the law itself. Similarly, Art. 11 of the ECL refers to the tax benefits provided to e-commerce operators, but the specific details of these benefits and how they are provided can be found in another relevant ulteriorly formulated law.²⁸⁷ Following the same logic, many other provisions lacking details could be supplemented by other legislations outside the text of the ECL.²⁸⁸ From this perspective, the ECL could be evaluated as a concise but comprehensive legislation about e-commerce.²⁸⁹ Through these condensed articles, numerous legal issues are encompassed within the realm of e-commerce law, providing a certain legislative foundation for the judiciary and future

²⁸⁶ There is another Regulation fully administering the issue of market subject registration in China, the *Regulation on the Administration of the Registration of Market Entities of China*. The ECL did not cite it, since it was promulgated three years after the ECL.

²⁸⁷ Art. 12, Section 1 (8) of the *Stamp Tax Law of China* (中华人民共和国印花税法, *Zhonghua renmin gongheguo yinhuashui fa*), which was enacted in 2021 and exempts the stamp tax for “electronic orders formed between individuals and e-commerce businesses”. Archived June 10, 2021, at http://www.npc.gov.cn/npc/c2/c30834/202106/t20210610_311898.html.

²⁸⁸ The following provisions, which address various specific aspects of e-commerce, may have connections with other legislations: Art. 13 (regarding administrative licenses), Art. 14 (regarding e-commerce invoices), Art. 18 (regarding e-commerce advertising), Art. 23 (regarding personal information protection in e-commerce), Art. 26 (regarding cross-border e-commerce), Art. 52 (regarding parcel delivery services), and Art. 53 (regarding electronic payment). The above list might not be considered as complete.

²⁸⁹ See Internet Supervision Office of Beijing Municipal Bureau of Market Regulation, *Understanding and Application of E-Commerce Law of China*, in *Research on China Market Regulation* (电子商务法的理解与适用, *Dianzi shangwufa de lijie yu shiyong*), 2019, n. 1, pp. 32-35.

lawmakers.²⁹⁰

However, the negative aspect of this legislative strategy is the tendency to overlook crucial details regarding certain core issues in e-commerce. For example, while EU legislation includes numerous articles with extensive content about the obligation of e-commerce to provide information, Art. 50 of the ECL only briefly outlines that the information should be “clearly, fully, and expressly” provided in relation to “steps, important cautions, download methods, and other matters of the conclusion of a contract.” Although brevity and conciseness are typical features of Chinese legislation, the aforementioned article is actually too abbreviated and incomplete to adequately regulate such a crucial issue.²⁹¹

(2) The principles and policies

The principles and policies introduced by the ECL are deserving of careful consideration, which demonstrate the unique perspectives of Chinese legislators and reflects the specific conditions in China during the development of e-commerce.

Firstly, the ECL encourages the merging development between the digital economy and the real economy.²⁹² As e-commerce continues to expand, it is easy to overlook its negative impact on offline business, whose living space is severely

²⁹⁰ The above characteristic of the ECL could be more clearly observed from an outsider’s perspective, such as an intellectual property right law scholar. See Xu Zhuobin, *The Impact of the E-Commerce Law on Intellectual Property Law* (《电子商务法》对知识产权法的影响, *Dianzi shangwufa dui zhishi chanquanfa de yingxiang*), in *Intellectual Property*, 2019, n. 3, pp. 31-40.

²⁹¹ From a positive viewpoint, Chinese legislator also left open space for legal academic innovation about this theme. Relevant more thorough discussion on the Art. 50 of the ECL, see Jiang Fengge, Yu Haifang, *On the Alienation and Regulation of Network Format Contracting: Based on the Integrated Regulation of Data Collection and Standardized Agreement in E-Commerce as the Background* (论网络格式缔约的异化与规制——以数据收集与电子商务中标准化同意的一体规制为背景, *Lun wangluo geshi diyue de yihua yu guizhi: Yi shuju shouji yu dianzi shangwu zhong biao zhunhua togyi de yi guize wei bei jing*), in *Seeking Truth*, 2023, n. 5, pp. 123-135.

²⁹² Art. 4 of the ECL: “The State shall provide equal treatment to online and offline commercial activities and promote their integrated development.”

squeezed.²⁹³ Therefore, it is necessary for the government to take responsibility for preventing e-commerce from exploiting its advantages, such as low rental costs and minimal assets, to gain an unfair advantage over offline commerce. At the same time, the government shall not overly suppress e-commerce, since the only correct objective ought to be the harmonized development between digital and real economies.²⁹⁴

Secondly, the ECL emphasizes the principle of environmental protection in the development of e-commerce, especially regarding the parcel delivery stage.²⁹⁵ Though e-commerce brought convenience to consumers, reducing their time costs, it also has negative impacts on the environment, such as the increasement of packaging waste and fuel consumption for delivery purposes. Legislators must take action to restrict resource consumption and environment pollution at every stage of e-commerce to realize the balance between economic and environmental outcome brought by e-

²⁹³ See Wang Wenhua, Zhang Aoshuang, *Review and Outlook after Five Anniversary of the Implementation of E-Commerce Law of China: Effectively Promoting the Fusion Development between Digital Economy and Real Economy* (《电子商务法》实施五周年回顾与展望: 有效促进数字经济与实体经济融合发展, Dianzi shangwufa shishi wuzhounian huigu yu zhanwang: Youxiao cujin shuzi jingji yu shiti jingji ronghe fazhan), in *Research on China Market Regulation*, 2024, n. 1, pp. 15-19.

²⁹⁴ The ideal fusion of digital economy and real economy is also the key to realize the major task in China, the “high-quality economic development”. See Xia Jiechang, Li Luanhao, *Integration of Digital and Real Economies Driving High-Quality Economic Development: Driving Mechanisms and Optimization Paths* (数实融合驱动经济高质量发展: 驱动机制与优化路径, Shushi ronghe qudong jingji gaozhiliang fazhan: Qudong jizhi yu youhua lujing), in *Exploration and Free Views*, 2024, n. 9, pp. 102-114.

²⁹⁵ Art. 5 of the ECL stated that “E-commerce operators in their engagement in business activities, shall...perform duties related to environment protection”. This principle is reaffirmed in Art. 65 of the ECL. In addition, Art. 52, Section 3 of the ECL provides a more detailed explanation of this principle in the context of parcel delivery services: “Express logistics service providers shall use environmentally friendly packaging materials in accordance with regulations to achieve the reduction and reuse of packaging materials.” Finally, Art. 68 and Art. 69 of the *Prevention and Control of Environment Pollution Caused by Solid Wastes Law of China* (中华人民共和国固体废物污染环境防治法, Zhonghua renmin gongheguo guti feiwu wuran huanjing fangzhi fa) echo the requirements in the ECL. Archived April 30, 2020, at http://www.npc.gov.cn/npc/c2/c30834/202004/t20200430_305758.html.

commerce.²⁹⁶

Thirdly, the ECL paid sufficient attention to individual merchants with small business scales.²⁹⁷ These small-scale merchants primarily conduct offline business and lack the economic and technical resources to compete with large enterprises and online platforms. For this reason, the ECL offers several conveniences for them.²⁹⁸

According to other documents, the government will also provide support for them in terms of digitalization to eliminate digital divide.²⁹⁹

Fourthly, Chapter 5 of the ECL (*The promotion of e-commerce*) is specially dedicated to the policies promoting the development of e-commerce, which is considered by several scholars ought to be expelled from e-commerce legislation.³⁰⁰ These articles are not enforceable, but they do serve to consolidate the standpoint and strategies of the Chinese government in the ongoing development of e-commerce, thereby providing clarity and certainty for the digital market.³⁰¹ Additionally, they can

²⁹⁶ One proposed solution is to impose social responsibility on e-commerce enterprises, which could be highly effective. See Zhu Xiaojuan, Li Ming, *Legitimacy and Content Analysis of Enterprise Social Responsibility of E-Commerce Platforms* (电子商务平台企业社会责任的正当性及内容分析, *Dianzi shangwu pingtai qiye shehui zeren de zhengdangxing ji neirong fenxi*), in *Social Sciences Research*, 2020, n. 1, pp. 28-36.

²⁹⁷ In China, these individual merchants are commonly referred to as “individual industrial and commercial households” (个体工商户, *Geti gongshang hu*), which are particularly vulnerable.

²⁹⁸ The example is Art. 10 of the ECL, which exempts the obligation of market subject registration for certain types of individual merchants conducting specific affairs. Besides, according to an associated administrative legislation, natural person e-commerce operators on platforms could use the online business premise provided by the e-commerce platform as their own business residence (Art. 11, Section 2 of the *Regulation on the Administration of the Registration of Market Entities*).

²⁹⁹ This people-friendly standpoint could be particularly observed in the *Regulation on the Promotion of the Development of Individual Industrial and Commercial Households (2022)* (促进个体工商户发展条例, *Cujin geti gongshanghu fazhan tiaoli*), the specific legislation solely for individual merchants. Archived October 25, 2022, at https://www.gov.cn/zhengce/content/2022-10/25/content_5721592.htm.

³⁰⁰ See Xue Jun, *New Arguments in the Implementation of E-Commerce Law* (电子商务法实施中的新课题, *Dianzi shangwufa shishi zhongde xinketi*), in *People-Rule of Law*, 2019, n. 5, p. 1.

³⁰¹ See *E-commerce Law of China* Drafting Commission, *Interpretation of the Provisions of the Electronic Commerce Law of China* (中华人民共和国电子商务法条文释义, *Zhonghua renmin gongheguo dianzi shangwufa tiaowen shiyi*), Beijing: China Law Press, 2018, pp. 213-214.

also serve as a link between e-commerce law and other legislations pertaining to specific issues in e-commerce.³⁰²

Finally, a special provision in Chapter 5 of the ECL to be emphasized is that promotes the integration of e-commerce and agriculture, the Art. 68.³⁰³ Although e-commerce is generally associated with urban residents, rural e-commerce is particularly encouraged in China, as it is expected to increase the income of rural residents and help them escape poverty.³⁰⁴ Given the situation in China where agriculture serves as the foundation of the domestic economy but generates less profit, and a large portion of the population living in poverty is engaged in agriculture, e-commerce presents a significant opportunity for them. The Art. 68 of the ECL also leads several rules in other laws, consisting of a normative group about the rural e-

³⁰² For instance, detailed requirements about environmental protection (Art. 65) and cross-border e-commerce (Art. 71-73) are merely provided in this Chapter. Additionally, matters such as e-commerce statistics and standards system (Art. 66), data in e-commerce (Art. 69) and credit system for e-commerce (Art. 70) are only mentioned in this Chapter. It reveals the art of “leaving the blank space” of Chinese legislator.

³⁰³ Art. 68 of the ECL: “The state promotes the application of Internet technology in agricultural production, processing, circulation and other links, encourages various social resources to strengthen cooperation, promotes the development of rural e-commerce, and gives play to the role of e-commerce in targeted poverty alleviation.”

³⁰⁴ The agriculture e-commerce is currently an independent crucial topic with the aim of “targeted poverty alleviation” (精准扶贫, Jingzhun fupin, a majestic action against poverty taken by the CPC) for agricultural economists. E-commerce has made obvious contribution for rural revitalization. See Yang Ying, *Research on the Effectiveness of Government Supporting Rural E-Commerce* (政府扶持农村电商发展的有效性研究, Zhengfu fuchi nongcun dianshang fazhan de youxiaoxing yanjiu), in *Social Scientist*, 2021, n. 1, pp. 79-89. Recent research revealed that e-commerce has played a significant role in increasing income and employment in rural areas, thus confirming the effectiveness of these legal institutional designs. See Chen Jianlei, Wang Chun, *Development of E-Commerce and the Increase of Rural Non-Agricultural Employment: An Analysis Based on CFPS Data* (电子商务发展与农村非农就业增长——基于 CFPS 数据的分析, Dianzi shangwu fazhan yu nongcun feinong jiuye zengzhang: Jiyu CFPS shuju de fenxi), in *Journal of Shanxi University of Finance and Economics*, 2023, n. 12, pp. 57-71.

commerce.³⁰⁵

(3) Theoretical innovations

Firstly, the ECL has undergone significant changes in e-commerce contracts, particularly in relation to the presumption of capacity of the consumer party (Art. 48) and the acknowledgement of offers in e-commerce contracts and the corresponding time of contract conclusion (Art. 49). While these rules did not completely overturn traditional contract law principles, Chinese legislators focused on these fundamental yet sometimes overlooked issues and made several theoretical advancements. The former article proposed a mode about the legal effect of an automatic contract information system,³⁰⁶ even inspired research on the legal mechanism of smart contract.³⁰⁷

³⁰⁵ Relevant provisions are as follows:

(1) Art. 40 of the *Agricultural Product Quality and Safety Law of China* (中华人民共和国农产品质量安全法, *Zhonghua renmin gongheguo nongchanpin zhiliang anquan fa*), regulating the sale of agricultural products by producers and operators through online platforms, listing the platform's administrative responsibility for these operators. Accessed October 5, 2023, http://www.npc.gov.cn/npc/c2/c30834/202209/t20220902_319195.html.

(2) Art. 19 and Art. 21 of the *Promotion of Revitalization of Rural Areas Law of China* (中华人民共和国乡村振兴促进法, *Zhonghua renmin gongheguo xiangcun zhenxing cujin fa*), emphasizing the government's support for the development of e-commerce in rural areas, which plays a significant role in the mission to eradicate poverty. Accessed October 5, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3OGVMztM2MjAxNzkyMDZkNDIxNDI4Y2U%3D>.

(3) *Norms of Rural E-Commerce Service (For Trial) (2016)* [农村电子商务服务规范（试行），*Nongcun dianzi shangwu fuwu guifan (shixing)*] and the *Working Guidance of Rural E-Commerce (For Trial) (2016)* [农村电子商务工作指引（试行），*Nongcun dianzi shangwu gongzuo zhiyin (shixing)*], released by Ministry of Commerce, aimed at promoting e-commerce in rural areas. Archived April 2, 2017, at http://www.mofcom.gov.cn/article/zt_dzswjnc/lanmuone/201704/20170402557778.shtml. These two policies have facilitated the provision of public services, ranging from e-commerce training to the establishment and administration of supply chains, as well as the organization and operation of logistic systems. They also have enabled the online marketing of agricultural products, thereby effectively promoting the development of rural e-commerce throughout China.

³⁰⁶ See Xue Hong, *On the Legal Effect of Automatic Information Systems in E-Commerce Contracts* (论电子商务合同自动信息系统的法律效力, *Lun dianzi shangwu hetong zidong xinxi xitong de falyu xiaoli*), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2019, n. 1, pp. 70-78.

³⁰⁷ See Xia Qingfeng, *Smart Contract and its Application* (区块链智能合同的适用主张, *Qukuailian zhineng hetong de shiyong zhuzhang*), in *Oriental Law*, 2019, n. 3, pp. 30-43.

Secondly, the articles in the ECL concerning intellectual property rights (Art. 42-45) have introduced a new mechanism and procedure for IP protection, which serves as a valuable addition to the existing IP law framework. One of the most significant rules is the *notice and takedown* rule, along with its accompanying “counter-notice and selection” rule. These rules distinguish Chinese online IP protection regulations from other conventional models.³⁰⁸

Thirdly, the ECL simultaneously established two main lines for regulating e-commerce. These lines focus on the market subjects of e-commerce and the activities of e-commerce transactions. On the one hand, Chinese legislators place more emphasis on regulating the subjects compared to foreign legislators. This approach allows for the imposition of specific regulations on operators and the provision of special preferential measures for consumers in a more convenient manner. On the other hand, by paying special attention to specific activities in e-commerce, the division of regulatory responsibilities among different supervision authorities can be better achieved, which facilitates both the operators and the supervisors.³⁰⁹

(4) The shortcomings

Firstly, it is unfortunate that the ECL does not give sufficient attention to consumer protection, despite the repeated use of the term *consumer*. In fact, the cyber-consumer is not considered one of the main actors in e-commerce according to the text of the law. E-commerce operators more attracted the focus of Chinese legislators. As a result, they only protect e-commerce consumers by imposing restrictions on operators, but the interests of e-commerce consumers are not given central

³⁰⁸ See Liu Xiaochun, *Reflection on and Improvement of the Notice and Take-Down System of Intellectual Property Rights in China's E-Commerce Law* (《电子商务法》知识产权通知删除制度的反思与完善, Dianzi shangwufa zhishi chanquan tongzhi shanchu zhidu de fansi yu wanshan), in *Journal of Graduate School of Chinese Academy of Social Sciences*, 2019, n. 2, pp. 124-136.

³⁰⁹ See Xue Jun, *Review and Outlook after Five Anniversary of the Implementation of E-Commerce Law of China: Characteristics in Legislation and Thoughts about its Perfection* (《电子商务法》实施五周年回顾与展望: 立法特点与完善思路, Dianzi shangwufa shishi wuzhounian huigu yu zhanwang: Lifa tedian yu wanshan), in *Research on China Market Regulation*, 2024, n. 1, pp. 8-11.

importance.³¹⁰ When further combined with the imperfect consumer protection laws in China, it could be finally deduced that e-commerce consumers in China are not adequately and comprehensively protected.

Secondly, provision about cross-border e-commerce in the ECL is indeed inadequate,³¹¹ which is fiercely criticized by scholars.³¹² Alibaba is currently the leading global cross-border e-commerce platform, while the country where its headquarters is located does not have sufficient legal regulations on cross-border e-commerce, which is a confusing phenomenon. The abnormal neglect may be a result of lobbying from cross-border e-commerce operators, with the purpose of lax regulation, or an undefined attitude of the Chinese government towards cross-border e-commerce. The absence of legal regulations at the national level hinders

³¹⁰ The economic law obligations assumed by e-commerce operators (in particular the e-commerce platforms) in consumer relationships are therefore more prominent than those of consumer protection. Affected by these points, the proportion of e-commerce consumers receiving compensation in judicial cases is extremely low. See Xiao Feng, *Improvement of E-Commerce Platform Responsibility Legislation for Consumer Protection from the Perspective of Informational Interests* (信息利益视野下电商平台消费者保护责任立法的完善, Xinxiliyi shiye xia dianshang pingtai xiaofeizhe baohu zeren lifa de wanshan), in *Journal of Shanghai University of Finance and Economics*, 2022, n. 1, pp. 137-152.

³¹¹ There are only four provisions in the ECL mentioned cross-border e-commerce. Art. 26 merely states that cross-border e-commerce operators assume the obligation of complying with relevant rules. Art. 71-73 even do not concern any specific aspects but rather emphasize the importance of the State promoting the development of cross-border e-commerce, improving the efficiency of customs administration for import and export activities conducted through cross-border e-commerce, and fostering collaboration with other countries or regions on cross-border e-commerce.

Among other laws, only Art. 20 of the *Export Control Law of China (2020)* (中华人民共和国出口管制法, Zhonghua renmin gongheguo chukou guanzhi fa) mentioned this topic, albeit also in a rather indirect manner: “No organization or individual may provide agency, freight, delivery, customs declaration, third-party e-commerce trading platform, financial, or other services to any export business conducting violations of law in export control.” Accessed October 6, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NTI2NWRkNDxNzUzMlZlNDhjZTEyNjY%3D>.

³¹² See Liu Yideng, *Legal Issues and Normative Guidance for the Development of Cross-Border E-Commerce*, in *People's Tribune* (跨境电子商务发展的法律问题及规范引导, Kuajing dianzi shangwu fazhan de falyu wenti ji guifan yindao), 2020, n. 26, pp. 100-102.

transparency and certainty, demonstrating that the ECL still “lacks maturity,”³¹³ potentially impeding the further growth of cross-border e-commerce in China. While there are numerous national policies and local practices addressing this issue,³¹⁴ they cannot fully substitute the need for comprehensive nationwide legal regulations.

1.2.3.1.3 Laws pertaining to the elements of e-commerce transactions

Except for the rules regarding digital contracts contained in the *E-Commerce Law of China*, only consumer protection rules (Point 1) and advertising regulation rules (Point 2) is directly related to e-commerce transaction, although most of them were formulated in the pre-internet era.

(1) Consumer protection

The *Consumer Rights and Interests Protection Law of China* (中华人民共和国消费者权益保护法, Zhonghua renmin gongheguo xiaofeizhe quanyi baohu fa) (referred to as CRIPL) was formulated as early as 1993.³¹⁵ As a fundamental framework regarding consumer protection, the CRIPL establishes various rights for consumers and corresponding obligations for operators, mainly including: (a) the right to safety and security, (b) the right to information, (c) the right to autonomous choice, (d) the right to fair transactions, and (e) the right to compensation.³¹⁶

However, it is unfortunate that the most recent revision of the legislation occurred

³¹³ See Zhao Xudong, *Review and Outlook after Five Anniversary of the Implementation of E-Commerce Law of China: Great Achievements and Advices for Perfection* (《电子商务法》实施五周年回顾与展望：斐然成就与完善建议, Dianzi shangwufa shishi wuzhounian huigu yu zhanwang: Feiran chengjiu yu wanshan jianyi), in *Research on China Market Regulation*, 2024, n. 1, pp. 6-8.

³¹⁴ In recent decade, cross-border e-commerce in China is always a field driven by policies. See Zhao Xiaohan, Pan Yong, *The Analysis of Chinese Cross-Border E-Commerce Policy: 2012-2020* (我国跨境电子商务政策分析:2012-2020, Woguo kuajing dianzi shangwu zhengce fenxi: 2012-2020), in *China Business and Market*, 2021, n. 1, pp. 47-59.

³¹⁵ Archived May 21, 2019, at http://www.npc.gov.cn/npc/c1773/c1848/c21114/c21170/c21174/201905/t20190521_210511.html.

³¹⁶ Art. 7-11 of the CRIPL. In Art. 12-15 of the CRIPL, other rights and interests of consumers are further stipulated, such as right of association and right of supervision. However, they are less connected with e-commerce, thus are not listed.

in 2013, a time when the practice of e-commerce was significantly less developed compared to the present day. Besides, the CRIPL is also somewhat abstract as it is quite broad and lacks modernization.³¹⁷ Furthermore, other laws that directly pertain to this field, such as the *Price Law of China* (中华人民共和国价格法, *Zhonghua renmin gongheguo jiage fa*) specifically concerning price formation and price setting,³¹⁸ are also outdated to some extent. As a result, a revision of China's consumer protection law system with the CRIPL as its core is definitely urgent.³¹⁹ However, the recent five-year legislative project of the Standing Committee of National People's Congress only includes the amendment of the *Price Law of China*.³²⁰ The revision of the CRIPL has not yet been considered by the central decision makers.

Since no additional specific protection is provided and will be provided in brief time by legislators at the level of the laws, e-commerce consumers are essentially afforded the same protection as ordinary consumers. Although the *E-Commerce Law*

³¹⁷ See Yang Lixin, *Subjects and Types of Legal Relations in E-Commerce Transactions under the E-Commerce Law* (电子商务法规定的电子商务交易法律关系主体及类型, *Dianzi shangwufa guiding de dianzi shangwu jiaoyi falyu guanxi zhuti ji leixing*), in *Journal of Shandong University (Philosophy and Social Sciences)*, 2019, n. 2, pp. 110-120.

³¹⁸ The *Price Law of China* was established in 1997 and has not undergone any revisions since then, has not been updated by other supplementary administrative legislation neither any forms of interpretation, even though China's economy has undergone significant marketization since its implementation. Many motions were proposed, its revision was just put on the agenda of the NPC. See Guo Zongjie, *Research on Several Issues of the Revision of the Price Law of China under the Background of Deepening Reform* (深化改革背景下价格法修订的若干问题研究, *Shenhua gaige beijingxia jiagefa xiuding de ruogan wenti yanjiu*), in *Political Science and Law*, 2015, n. 8, pp. 75-86.

³¹⁹ Consequently, the China Consumers Association has proposed revising the CRIPL to ensure its alignment with the current trend of online consumption. See China Consumers Association, *Consumer Rights Protection Report in the Field of Personal Information Protection 2022* (2022 年个人信息保护领域消费者权益保护报告, 2022 nian geren xinxi baohu lingyu xiaofeizhe quanyi baohu baogao), published on March 8, 2023, accessed October 5, 2023, <https://www.cca.cn/xxgz/detail/30617.html>.

³²⁰ See *Legislative project of the 14th National People's Congress Standing Committee* (十四届全国人大常委会立法规划, *Shisijie quanguo renda changweihui lifa guihua*), where no project about the field of consumer protection could be witnessed. Archived September 8, 2023, at http://www.npc.gov.cn/npc/c2/c30834/202309/t20230908_431613.html.

of China has introduced several provisions pertaining to e-commerce consumers,³²¹ these measures are still insufficient to achieve the aforementioned objective.

At least, it is satisfying to note that the State Council of China recently published the *Implementation Regulations of the Consumer Rights and Interests Protection Law of China (2024)* (中华人民共和国消费者权益保护法实施条例, Zhonghua renmin gongheguo xiaofeizhe quanyi baohu fa shishi tiaoli).³²² These regulations specifically address online consumption and help to address any gaps that may have been present in the CRIPL.

(2) Advertising regulation

The *Advertising Law of China* (中华人民共和国广告法, Zhonghua renmin gongheguo guanggao fa), which was enacted in 1994, is also an antiquated law similar to the CRIPL. However, it was recently revised in 2021³²³ and has now been partially digitalized.

As a law that governs all advertising activities, most of the provisions in the *Advertising Law of China* are naturally applicable in a general sense, online advertising activities are apparently not exempt from its regulation.³²⁴

1.2.3.1.4 Laws pertaining to the external environment of e-commerce

A number of laws promulgated contribute to the development of the external environment of e-commerce. Some laws provide crucial technical support for e-commerce, such as the use of digital signatures (Point 1). There are also laws aiming to maintain competitive order in all markets including the digital market (Point 2), to

³²¹ As analyzed in previous section, these articles, though adopting the term *consumer*, actually limit commercial activities of e-commerce operators, instead of establishing rights or interests for consumers. Sometimes, according to the *E-Commerce Law of China*, cyber-consumers could only enjoy a reflective and indirect interests.

³²² Accessed March 21, 2024, https://www.gov.cn/zhengce/content/202403/content_6940158.htm.

³²³ Accessed October 5, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3YWlyMzFiYjAxN2FiZDZiZDg2MDA1MmQ%3D>.

³²⁴ The recently revised Art. 44, Section 1 of the *Advertising Law of China* directly mentioned *Internet advertising*. However, it is merely a declarative provision restating that all advertising activities must comply with the current *Advertising Law*, no matter they are conducted through Internet. Thus, it does not have independent significance.

facilitate the collection of tariffs in cross-border e-commerce (Point 3), and to regulate data (Point 4).

(1) Digital signature

The *Electronic Signature Law of China* (中华人民共和国电子签名法, *Zhonghua renmin gongheguo dianzi qianming fa*)³²⁵ was promulgated in 2004 and underwent a recent revision in 2019.³²⁶ As a legislation pertaining to information technology, this Law does not possess any Chinese characteristics. It acknowledges the legal validity of data messages, as long as they can be presented in a tangible form and can be accessed and utilized at any time (Art. 4). Consequently, such data messages can be considered as evidence (Art. 8). Additionally, this Law regulates the validity and effectiveness of digital signatures (Chapter 3). It is worth noting that this Law defines *data message* as “information created, sent, received, or stored through electronic, optical, magnetic, or similar means” (Art. 2, Section 2), which modifies the previous definition in the *Contract Law of China* and fills the void in the definition within the *Civil Code of China*.

(2) Competition law in relation to e-commerce

In China, the primary legal regulations governing competition are stipulated by *Anti-Unfair Competition Law of China* (中华人民共和国反不正当竞争法, *Zhonghua renmin gongheguo fan buzhengdang jingzheng fa*)³²⁷ and *Anti-Monopoly Law of China* (中华人民共和国反垄断法, *Zhonghua renmin gongheguo fanlongduan*

³²⁵ Archived May 7, 2019, at http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-05/07/content_2086835.htm.

³²⁶ It is thought-provoking to mention that while early-stage discussions on e-commerce emphasized the significance of digital signatures, recent research, particularly on trust mechanisms in e-commerce, has not placed as much emphasis on this aspect. See Liu Mingqing, *On the Perfection of Legal Mechanism of Trust in E-Commerce* (论电子商务信用法律机制之完善, *Lun dianzi shangwu xinyong falyu jizhi zhi wanshan*), in *Oriental Law*, 2019, n. 2, pp. 151-160.

³²⁷ Archived May 7, 2019, at http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-05/07/content_2086834.htm. English translation could be found on the website of WIPO, accessed October 6, 2023, <https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/en/cn/cn409en.pdf>.

fa)³²⁸. The two legislations emphasize different aspects of competitive order. The former legislation regulates activities that undermine fair competition and violate the lawful interests of consumers and other market participants. The latter legislation specifically deals with monopolies, which limit or even eradicate competition.³²⁹

All the fundamental categories of unfair competition activities, as outlined in Art. 6-11 of the *Anti-Unfair Competition Law of China*, are prevalent in the field of e-commerce, particularly confusion (Art. 6) and fraudulent or misleading advertising (Art. 8). Additionally, Art. 12, Section 2 emphasizes other three unfair commercial activities more commonly associated with e-commerce, as they involve the use of technical methods that interfere with or sabotage the normal operation of internet products or services provided by other online merchants.³³⁰ This special article is inspired by a well-known commercial case in China involving the unfair competition

³²⁸ Accessed October 16, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4MjM0Y2NiNTAxODI5ZjQ2YzZhYzJhNWE%3D>.

³²⁹ The separation between regulation on unfair competitive activities and anti-monopoly measures is derived from a historical legislative choice, which is challenged for decades. See Li Shengli, *The Relationship between Anti-Unfair Competition Law and Anti-Monopoly Law: Realistic Situation and Ideal Choice* (反不正当竞争法与反垄断法的关系: 突然现状与应然选择, Fan buzhengdang jingzheng fa yu fanlongduan fa de guanxi: Turan xianzhuang yu yingran xuanze), in *Social Science Journal*, 2019, n. 3, pp. 164-169. The integration of these two laws is ever more emphasized in terms of digital governance. See Feng Bo, Zhang Jiachen, *The Economic Logic and Judicial Connection between the Anti-Monopoly Law and the Anti Unfair Competition Law in the Field of Digital Platforms* (数字平台领域《反垄断法》与《反不正当竞争法》的经济逻辑和司法衔接, Shuzi pingtai lingyu fan longduan fa yu fan buzhengdang jingzheng fa de jingji luoji he sifa xianjie), in *Research on Rule of Law*, 2023, n. 3, pp. 83-94.

³³⁰ Section 1 of Art. 12 merely stressed all business conducted online shall also comply with the regulations about anti-unfair competition, which means the online and offline market competition orders are tightly connected. The three technical activities forbidden include: (1) Inserting a link or forcing a URL redirection in an online product or service legally provided by another business without its consent; (2) Misleading, defrauding, or forcing users into altering, shutting down, or uninstalling an online product or service legally provided by another business; (3) Causing in bad faith incompatibility with an online product or service legally provided by another business.

activities between 360 and Tencent.³³¹

The *Anti-Monopoly Law of China* was enacted in 2007, its first revision took place in 2022, the issue of competition in the digital market has therefore been given significant consideration. The regulation against e-commerce platforms and algorithms is incorporated in the *Anti-Monopoly Law of China*, though few provisions are introduced regarding these emerging topics. Chinese legislator firstly established a new principle that the misuse of technical, economic and status advantage might also constitute a monopoly,³³² then reiterated that operators that conducted commercial activities violating the aforementioned principle are abusing their dominant position in the market,³³³ which is one of the four recognized types of monopoly in China.

The approach to regulating monopoly in the digital market in China is to integrate online monopolies into existing forms of monopolies, with the premise of *utilizing the advantages of data and algorithms, technology and capital, as well as platform rules*. In this regard, Chinese legislators have actually acknowledged that certain operators may enjoy advantages due to their control over abundant data, the use of algorithms, technological leadership, substantial capital, and the ability to establish platform rules, but these advantages cannot be employed to harm competition.³³⁴ That principle is consistently emphasized when the disparity becomes more pronounced, such as in

³³¹ Analysis from the perspective of competition law, see Zhang Jiangli, *Antimonopoly Regulation of Internet Platform Competition: Analysis from the Angle of 360-Tencent Antimonopoly Litigation* (互联网平台竞争与反垄断规制: 以 3Q 反垄断诉讼为视角, Hulianwang pingtai jingzheng yu fanlongduan guizhi: Yi 3Q fanlongduan susong wei shijiao), in *Peking University Law Journal*, 2015, n. 1, pp. 264-279.

³³² Art. 9 of the *Anti-Monopoly Law of China*: “An undertaking shall not engage in any monopolistic conduct prohibited by this Law by utilizing data and algorithm, technology, capital advantage, or platform rules, among others.”

³³³ Art. 22 of the *Anti-Monopoly Law of China*: “An undertaking with a dominant market position shall not engage in any conduct of abusing a dominant market position specified in the preceding paragraph by utilizing data and algorithm, technology, and platform rules, among others.” It is obvious that Art. 22 almost repeats Art. 9.

³³⁴ See Wang Xiaoye, *Theory and Practice of Anti-monopoly Supervision in China's Digital Economy* (中国数字经济领域反垄断监管的理论与实践, Zhongguo shuzi jingji lingyu fanlongduan jianguan de lilun yu shijian), in *Journal of University of Chinese Academy of Social Sciences*, 2022, n. 5, pp. 31-48.

front of individual small-scale merchants.³³⁵

(3) Tariff in cross-border e-commerce

According to a relevant policy document in 2016, cross-border e-commerce retail imported goods need to be levied with tariffs, import VAT, and consumption tax based on the actual transaction price of the goods. Besides, they could enjoy a preferential policy of zero tariff, import VAT, and consumption tax at a 30% discount within the limit.³³⁶ The growth of cross-border e-commerce has been accelerated due to the implementation of preferential policies. However, the legal basis of cross-border e-commerce and related favorable treatments are merely based on low-level rules, which reduced the certainty of expectation.

The recently published the *Tariff Law of China (2024)* (中华人民共和国关税法, Zhonghua renmin gongheguo guanshui fa)³³⁷ proceeds with one of the crucial issues in cross-border e-commerce, answering which of the multiple entities involved in cross-border e-commerce is the withholding agent,³³⁸ which is considered pragmatic and reasonable, facilitating tax payments.

(4) Data governance

When discussing data in e-commerce, the most significant topic is personal data, which firstly refers to data containing personal information, subsequently data in

³³⁵ The State further prohibits any unfair treatment towards individual industrial and commercial households through various means, including users' service agreements, platform rules, data algorithms, and technologies. See Art. 25, section 2 of the *Regulation on the Promotion of the Development of Individual Industrial and Commercial Households*.

³³⁶ See *Notice on Cross-Border E-Commerce Retail Import Tax Policy* (关于跨境电子商务零售进口税收政策的通知, Guanyu kuajing dianzi shangwu lingshou jinkou shuishou zhengce de tongzhi), jointly released by Ministry of Finance, General Administration of Customs, State Administration of Taxation in 2016, archived March 24, 2016, at https://gss.mof.gov.cn/gzdt/zhengcefabu/201603/t20160324_1922968.htm.

³³⁷ Published on April 26, 2024, effective date December 1st, 2024. Accessed May 13, 2024, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4ZjE5N2NmMDAxOGYxYTcyYjJjODAxZTA=>.

³³⁸ Art. 3, Section 1 of the *Tariff Law of China (2024)* stipulates that the individuals or entities receiving imported goods, the individuals or entities sending out exported goods, and the carriers or recipients of entry articles are responsible for paying the tariffs. In the Section 2, the law additionally acknowledges the specific withholding agents responsible for collecting and remitting tariffs.

general. In China, the laws pertaining to data governance follow a similar trajectory, with two laws being closely associated: the *Personal Information Protection Law of China* (中华人民共和国个人信息保护法, *Zhonghua renmin gongheguo geren xinxi baohu fa*) (referred to as PIPL)³³⁹ and the *Data Security Law of China* (referred to as DSL) (中华人民共和国数据安全法, *Zhonghua renmin gongheguo shuju anquan fa*)³⁴⁰. Both were enacted in 2021.

Before discussing the aforementioned two significant laws, it is important to briefly mention the real-name system of Chinese Internet users. This system can be seen as a prerequisite for consumers to engage in online transactions. In order to prevent fraud in Internet information services, Chinese netizens who wish to use online trading services are required to provide their real identity information.³⁴¹ This measure ensures the authenticity of Internet service users, but it also leads to increased pressure on online traders to protect data and the corresponding risk of personal information leakage.³⁴²

The issue of personal data protection is a concern that was not adequately

³³⁹ Archived August 20, 2021, at http://www.npc.gov.cn/npc/c2/c30834/202108/t20210820_313088.html.

³⁴⁰ Accessed October 5, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3OWY1ZTA4MDAxNzlmODg1YzdlNzAzOTI%3D>.

³⁴¹ As stated in Art. 21 (4) of the *Combating Telecom and Online Fraud Law of China (2022)* (中华人民共和国反电信网络诈骗法, *Zhonghua renmin gongheguo fan dianxin wangluo zhaphan fa*). “Telecom and online fraud” (电信诈骗, *Dianxin zhaphan*) is a widely discussed phenomenon in China in recent years. Accessed October 20, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4MmNmNWMyMjAxODJmZDU0NDxMDIzZDY%3D>.

³⁴² See Li Aijun, *Special Supervision on Important Personal Information Processors: Also on Article 58 of Personal Information Protection Law of China* (重要个人信息处理者的特别监管——兼论《中华人民共和国个人信息保护法》第 58 条, *Zhongyao geren xinxi chulizhe de tebie jianguan: Jianlun zhonghua renmin gongheguo geren xinxi baohufa di wushiba tiao*), in *Journal of Chinese University of Political Science and Law*, 2023, n. 4, pp. 56-67.

addressed by the *E-Commerce Law of China*, according to the legislators,³⁴³ the PIPL was formulated to resolve this remaining issue. It is also worth noting that, like the GDPR, the PIPL are not specifically designed for e-commerce operators.

Two months prior to the promulgation of the PIPL, the DSL was enacted. Though the DSL is characterized by its public law nature, it is still usually discussed under the general regulatory framework of digital market, since the security problem is actually an intrinsic issue of the economic aspect of Internet governance.³⁴⁴ Additionally, e-commerce operators not only process data containing personal information, but also handle various other types of data. As a result, they are unequivocally subject to the provisions of the DSL. Similar to the PIPL, there are no specific provisions exclusively for e-commerce operators. However, all e-commerce operators, regardless of their specific activities, are required to comply with the relevant regulations as long as they handle data. In this regard, e-commerce operators bear a significant responsibility for ensuring data security and are therefore obligated to implement measures that meet the compliance requirements of the State, which brings additional costs for e-commerce operators.³⁴⁵

With the combination of the PIPL and the DSL, the outbound data transfer, particularly those containing personal information, becomes a burdensome process under stringent regulations. Stricter rules are formulated by the Cyberspace Administration of China (国家互联网信息办公室, Guojia hulianwang xinxi

³⁴³ The fourth draft of the *E-commerce Law* clearly stipulates that this law shall apply to cross-border e-commerce activities (电子商务法草案四审稿明确规定跨境电子商务活动适用本法, Dianzi shangwufa cao'an sishen gao mingque guiding kuajing dianzi shangwu huodong shiyong benfa), in *Legal Daily*, archived August 28, 2018, at http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-08/28/content_2059562.htm.

³⁴⁴ See Zhang Shouwen, *On Cyber-Security, Economic Development and Regulations by Economic Law* (经济发展、网络安全及其经济法规制, Jingji fazhan wangluo anquan jiqi jingjifa guizhi), in *Journal of CUPL*, 2022, n. 2, pp. 44-55.

³⁴⁵ See Liu Jin, *Dilemmas and Solutions for E-Commerce Platforms to Undertake Information Review Obligations* (电商平台承担信息审查义务的困境与出路, Dianshang pingtai chengdan xinxi shencha yiwu de kunjing yu chulu), in *Journal of Dalian University of Technology (Social Sciences)*, 2023, n. 5, pp. 95-102.

bangongshi) (referred to as CAC) to limit that activity.³⁴⁶ For this reason, cross-border e-commerce might suffer from such restrictions.³⁴⁷

1.2.3.2 Administrative legislation on e-commerce

In the field of e-commerce, the importance of administrative legislation is even greater than that of laws.³⁴⁸ Due to the programmatic nature of the *E-Commerce Law of China* (referred to as ECL), numerous provisions within it need to be further specified through subordinate legislation. There are two administrative regulations and more than ten departmental rules that explicitly reference the ECL as their legal foundation. Additionally, there are several other administrative legislations that are closely related to e-commerce. They might be formulated either prior to or posterior to the promulgation of the ECL, but neither of them explicitly cited that law.

Each Chinese administrative legislation focuses only on one specific theme, which reflects the limited authority of the corresponding administrative body. Overall, there are only two administrative legislations with a general nature, one that pertains to Internet information services as a macro regulatory argument (1.2.3.2.1), and

³⁴⁶ Major departmental legislations on outbound data transfer include:

(1) *Guidelines for the Application for Security Assessment for Outbound Data Transfer* (2022), archived July 8, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm.

(2) *Guideline for Outbound Data Transfer Security Assessment Declaration* (2022).

(3) *Guidelines for Filing Standard Contracts for the Outbound Transfer of Personal Information* (2022). Documents (2) and (3) are released at the same time, also renewed simultaneously in March 2024. Archived March 22, 2024, at https://www.cac.gov.cn/2024-03/22/c_1712783131692707.htm.

(4) *Measures on Promoting and Standardizing Cross-Border Data Flow* (2024), archived March 22, 2024, at https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm. This recent released document demonstrates the shift of the official attitude towards outbound data transfer, which prefers the deregulation.

³⁴⁷ See Zhu Xiaojuan, *On the System Construction and Improvement of Personal Information Protection in Cross-border E-commerce* (论跨境电商中个人信息保护的制度构建与完善, Lun kuajing dianshang zhong geren xinxi baohu de zhidu goujian yu wanshan), in *Law Science Magazine*, 2021, n. 2, pp. 87-96.

³⁴⁸ The significance of regulating e-commerce through administrative legislation was recognized during the initial phase of e-commerce in China. See Gao Jiawei, *On the Scope and Measures of Administrative Law Regulation on E-Commerce* (论电子商务与行政法的范围和手段, Lun dianzi shangwu yu xingzhengfa de fanwei he shouduan), in *Administrative Law Review*, 2002, n. 2, pp. 20-27.

another that pertains to online trading (1.2.3.2.2). In terms of the elements of e-commerce transaction (1.2.3.2.3), the administrative legislators have comprehensively covered the subjects, objects, and various stages involved in online trading. As authorities with diverse supervisory powers, matters related to the external environment of e-commerce (1.2.3.2.4) are also naturally comprehensively regulated.

1.2.3.2.1 General regulation on Internet information service

Focusing on Internet information services, which involve the provision of various types of online content, the State Council of China introduced the *Measures on Administration of Internet Information Services* (互联网信息服务管理办法, Hulianwang xinxi fuwu guanli banfa) in 2000,³⁴⁹ which was only minimally revised in 2011. Although this *Measures* is considered outdated and lacks a modern perspective on the Internet, it continues to be a significant foundation for current Internet legislation.³⁵⁰

From the perspective of the regulated object, this *Measures* might be seen as the Chinese version of the *Digital Services Act*.³⁵¹ However, it reflects a mindset of control and restriction. Firstly, the definition of *Internet information service* is so broad that it grants this *Measures* a rather extensive jurisdiction over all Internet activities,

³⁴⁹ Accessed October 12, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0MTE4ZTQ3NjE2ZjE%3D>.

³⁵⁰ The *Measures* is still an unavoidable legislation when discussing Internet governance in China, even in the field of e-commerce. See Hou Weipeng, Xu Jinghong, *Internet Content Governance: Concept Definition, Hierarchical Division and Coordinate Spectrum* (互联网内容治理: 概念界定、层级划分与坐标谱系, Hulianwang neirong zhili: Ginian jieding cengji huafen yu zuobiao puxi), in *Journal of Zhengzhou University (Philosophy and Social Sciences Edition)*, 2024, n. 1, pp. 133-137; Meng Dahua, Liu Peifeng, *The Role and Function of Online Platforms in Online Content Governance* (网络平台在网络内容治理中的角色与功能, Wangluo pingtai zai wangluo neirong zhili zhongde juese yu gongneng), in *Shandong Social Science*, 2024, n. 7, pp. 185-192.

³⁵¹ See Li Jian, Yin Yuhuan, *The Digital Gatekeeper Theory: Retrospect, Misunderstanding and Construction* (数字守门人理论: 溯源、误读与构建, Shuzi shoumenren lilun: Suyuan wudu yu goujian), in *Social Science Research*, 2024, n. 3, pp. 11-24.

whether commercial or not.³⁵² Secondly, all Internet information service providers in China must obtain a license or complete the necessary filing, which puts the providers under a strict *ex ante* regulation.³⁵³ Thirdly, the business scope of Internet information service providers is strictly limited, they could do nothing beyond authorization.³⁵⁴

While this *Measures* may have been useful in addressing security concerns two decades ago, it is clearly no longer suitable for the present time. However, unfortunately, this *Measure* has not been repealed neither substantially modified. On the contrary, it has led to the creation of more departmental legislation in the same

³⁵² Art. 2, Section 2 of the *Measures*: “Internet information service in this Regulation refer to the provision of information through Internet to web users.”

³⁵³ Art. 4 of the *Measures*: “(1) The State establishes a licensing system for profitable Internet information service and a filing system for non-profitable Internet information service. (2) Anyone who does not obtain a license for profitable Internet information service or file for record its non-profitable Internet information service shall not be engaged in such activities.” Apparently, there is no free entry for providing Internet information service.

³⁵⁴ Art. 11, Section 1 of the *Measures*: “Internet information service providers shall provide services which have been clarified in their Service Licenses or filed for record; they shall not provide services not contained in their Service Licenses or not filed for record.” Besides, non-profit providers are additionally not permitted to offer paid services, according to Art. 11, Section 2 of the *Measures*. The distinction between profitable and non-profit Internet information services and the strict separation between these two types may be absurd in today’s context.

context.³⁵⁵

In this regard, we can finally understand that the concept *Internet information service* in China is substantially synonymous with *Internet affairs*. Therefore, all the legislation mentioned in this part is not solely directed at Internet intermediary services, but at all entities providing any type of service online. E-commerce operators, whether individuals or professionals, platforms or independent merchants, are primarily providers of Internet information. As such, they are obligated to adhere to all of these

³⁵⁵ Among the list, we could find some of them related to e-commerce.

(1) *Provisions on Ecological Governance of Network Information Content (2019)* (网络信息内容生态治理规定, Wangluo xinxi neirong shengtai zhili guiding), Archived December 20, 2019, at http://www.cac.gov.cn/2019-12/20/c_1578375159509309.htm.

(2) *Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Service (2021)* (互联网信息服务算法推荐管理规定, Hulianwang xinxi fuwu suanfa tuijian guanli guiding), archived January 4, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-01/04/content_5666429.htm.

(3) *Provisions on the Administration of Information Services of Mobile Internet Apps (2022)* (移动互联网应用程序信息服务管理规定, Yidong hulianwang yingyong chengxu xinxi fuwu guanli guiding), archived June 14, 2022, at https://www.gov.cn/xinwen/2022-06/14/content_5695690.htm. To clarify, this *Provisions* is not a legislation per se, but it shares similar linguistic expression, structure, and contents with an actual departmental legislation. As a result, it can be considered as part of the regulatory framework for the Internet in China.

(4) *Provisions on the Administration of Internet Users' Account Information (2022)* (互联网用户账号信息管理规定, Hulianwang yonghu zhanghao xinxi guanli guiding), archived June 28, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-06/28/content_5698179.htm.

(5) *Provisions on the Administration of Internet Pop-up Information Push Services (2022)* (互联网弹窗信息推送服务管理规定, Hulianwang tanchuang xinxi tuisong fuwu guanli guiding), archived September 9, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-09/09/content_5709179.htm. This *Provisions* is in a situation the same as *Provisions on the Administration of Information Services of Mobile Internet Apps (2022)*.

(6) *Provisions on the Administration of Deep Synthesis of Internet-based Information Services (2022)* (互联网信息服务深度合成管理规定, Hulianwang xinxi fuwu shendu hecheng guanli guiding), archived December 12, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-12/12/content_5731431.htm.

fundamental general rules governing the Internet information service.³⁵⁶

1.2.3.2.2 General regulation on online transaction

Chinese legislators may have completed the task of establishing a basic statutory framework for e-commerce with the ECL, but the structure is still rudimentary and lacks thorough development and comprehensive content. The *Measures on Supervision and Administration of Online Trading* formulated by the State Administration for Market Regulation of China in 2021 further address numerous specific issues in e-commerce transactions.³⁵⁷ This *Measures* even includes more details than the ECL.

The terms used by the *Measures* and the ECL are somewhat different. The ECL targets *e-commerce operators* while the *Measures* regulates *online trading operators*. This non-substantial divergence only reflects the difference in word usage in law and

³⁵⁶ From another perspective, e-commerce can only be conducted through websites or mobile apps, which essentially involve the provision of information and communication via the Internet. Through this mechanism, the overall regulation of cyberspace extends to the realm of e-commerce, particularly in terms of platform governance. See Zhang Xinping, *Reflection and Perfection of Online Platform Governance Legislation* (网络平台治理立法的反思与完善, Wangluo pingtai zhili lifa de fansi yu wanshan), in *China Legal Science*, 2023, n. 3, pp. 122-141.

³⁵⁷ The origin of this *Measures* can be traced back to 2010, when the former State Administration for Industry and Commerce of China implemented the *Interim Measures on the Trading of Commodities and Services through the Internet* (网络商品交易及有关服务行为管理暂行办法, Wangluo shangpin jiaoyi ji youguan fuwu xingwei guanli zanxing banfa), accessed October 13, 2023, https://www.gov.cn/gongbao/content/2010/content_1724815.htm. This was the first national-level legislation in China that regulated e-commerce and served as the foundational rules in this field for several years.

As a transitional and experimental legislative attempt, the *Interim Measures* were replaced by another formal legal document in 2014. This change occurred as the practice and regulation of e-commerce became more mature. The new document on e-commerce is titled *Measures on the Administration of Online Trading* (网络交易管理办法, Wangluo jiaoyi guanli banfa), accessed October 13, 2023, https://www.gov.cn/gongbao/content/2014/content_2671526.htm. After the promulgation of the *E-Commerce Law of China*, this previous “e-commerce law in essence” has completed its mission, then was repealed and replaced.

administrative legislation.³⁵⁸ *Online trading* is actually synonymous with *e-commerce* since both terms refer to the act of selling products or providing services through the internet. Therefore, despite on different legislation hierarchies, the *Measures* and the ECL regulate commercial relationships within the same scope. We could assume that they encompass all the fundamental rules pertaining to e-commerce in China.³⁵⁹

The *Measures* focus more on regulating e-commerce operators. The classification of e-commerce operators in *Measures* remains the same as the ECL, distinguishing between platform operators and operators within platforms. The most notable innovation is that the *Measures* expands the scope of e-commerce operators by denying the neutrality of certain intermediary service providers.³⁶⁰ As long as providing service for online transaction, they will be regarded as quasi e-commerce platform operators.³⁶¹

Since the *Measures* is a “minor” e-commerce law and it was promulgated after the ECL, it mainly concentrates on the details not yet mentioned by the ECL. The *Measures* refines rules based on the ECL in various fields, including commercial

³⁵⁸ Using the term *online transaction* instead of *e-commerce* might be a tradition of Chinese administrative legislation. In an early Chinese legislation promulgated in 2014, the *Provisions on the Procedures for Developing the Transaction Rules of Third-Party Online Retail Platforms (For Trial)*, four years before the stipulation of the ECL, the term *online retail* is used instead of *e-commerce*, which is defined as “activities of selling goods or providing for-profit services to consumers using the Internet as a medium” (Art. 3, Section 2).

³⁵⁹ It is somewhat challenging to understand the rationale behind Chinese legislators dividing rules on the same topic into two legislations from different levels. This kind of practice is whatsoever quite prevalent in Chinese legislation activity. Consequently, it is necessary to consolidate all the rules from different levels about identical theme in order to establish a comprehensive regulatory framework. See Zheng Jianing, *The Definition and Regulation of the Subjects of the E-Commerce Market* (电子商务市场主体的认定与规范, Dianzi shangwu shichang zhuti de rending yu guifan), in *Oriental Law*, 2023, n. 2, pp. 46-60.

³⁶⁰ Art. 7, Section 4, Sentence 1 of the *Measures*: “Providers of network services such as social networking and live streaming that provide businesses with online trading platform services such as online business premises, commodity browsing, order generation and online payments shall fulfill the obligations of online trading platform businesses in accordance with the law.”

³⁶¹ See Xue Jun, *The Connotation and Application Mode of Platform Liability in Electronic Commerce Law* (《电子商务法》平台责任的内涵及其适用模式, Dianzi shangwufa pingtai zeren de neihan jiqi shiyong moshi), in *Science of Law*, 2023, n. 1, pp. 57-68.

registration (Art. 8-10), the publicity of necessary pre-contractual information (Art. 12, 20, 23), limitations on the collection of consumers' personal information (Art. 13), prohibition of certain unfair online competition activities (Art. 14), the "opt-in" mode of commercial communication (Art. 16), special articles on consumer contracts (Art. 17-19), the obligation of e-commerce platforms to archive online streaming service data (Art. 20, Section 2), regulation on standard contracts in e-commerce (Art. 21), restrictions on platform rules (Art. 28), etc.

1.2.3.2.3 Regulation on elements of online transaction

The administrative authorities regulate nearly all aspects of online transactions. In terms of subjects in e-commerce, there are regulations on the registration of e-commerce operators (Point 1) and more specific protection for cyber-consumers (Point 2). Regarding the objects in e-commerce (Point 3), there is a list of merchandise and services traded online to be specially regulated. In relation to the different stages of online transactions (Point 4), there are detailed rules on topics that have already been partially regulated by law, such as Internet advertising and express delivery services, as well as certain topics that are not covered by laws, including online invoices and digital payment.

(1) Registration of e-commerce operators

According to the *Regulation on the Administration of the Registration of Market Entities of China (2021)* (中华人民共和国市场主体登记管理条例, Zhonghua renmin gongheguo shichang zhuti dengji guanli tiaoli),³⁶² as well as its *Detailed Rules (2022)* (中华人民共和国市场主体登记管理条例实施细则, Zhonghua renmin gongheguo shichang zhuti dengji guanli tiaoli shishi xize),³⁶³ all market entities in the territory of China, no matter their categories, are required to undergo registration. However, an exemption is recorded in the *E-Commerce Law of China*, which applies

³⁶² Promulgated by the State Council of China, archived August 24, 2021, at https://www.gov.cn/zhengce/content/2021-08/24/content_5632964.htm.

³⁶³ Promulgated by the State Administration for Market Regulation of China, archived March 2, 2022, at https://www.gov.cn/zhengce/zhengceku/2022-03/02/content_5676403.htm.

to certain online individual operators, but not generally applicable.³⁶⁴ Thus, the effectiveness of this exemption is not as expected in practice,³⁶⁵ and it can be concluded that e-commerce operators in China are in fact generally required to complete registration.³⁶⁶

In addition to registration, enterprises involved in e-commerce must disclose the website and name of their online stores in their annual report.³⁶⁷ This requirement aims to meet the State's regulations on promoting the integrity and self-discipline of enterprises and strengthening credit control on enterprises from a societal perspective.³⁶⁸

³⁶⁴ Art. 10 of the *E-Commerce Law of China* provides an exemption from registration duty for who engage in e-commerce by selling their own self-produced products or providing services using their own skills, as long as these activities have features of public convenience, occasionality, and low value. Art. 8 of the *Measures on Supervision and Administration of Online Trading* provides further details. The exemption primarily applies to individual e-commerce operators, including those who offer community convenience services that do not require a license, such as cleaning, clothes washing, and haircut services. It also applies to those with a low annual transaction volume across all their virtual shops, which should not exceed 100,000 RMB.

³⁶⁵ This favor exclusively benefits genuine small cyber-merchants. Its purpose is to ensure that ordinary citizens can earn additional profits by engaging in occasional business activities, without disrupting the regular market order. However, that exemption may not effectively facilitate the individuals or adequately protect the consumers. Therefore, implementing stricter standards for applying such exemption might not be an inferior option. See Ma Gengxin, Wang Huanwu, *Reflection and Reconstruction of the Registration Exemption System for E-Commerce Operators* (电子商务经营者登记豁免制度的反思与重构, Dianzi shangwu jingyingzhe dengji huomian zhidu de fansi yu chonggou), in *Journal of Beijing Union University (Humanities and Social Sciences)*, 2022, n. 3, pp. 80-89.

³⁶⁶ However, the legislative model centered on administrative legislation and the wide scope of compulsory registration still pose obstacles to the realization of autonomy of will and business freedom. See Huang Xiaolin, *The Game between Private Law and Public Law in the Reform of Commercial Registration System in China* (我国商事登记制度改革中私法与公法秩序的博弈, Woguo shangshi dengji zhidu gaige zhong sifa yu gongfa zhixu de boyi), in *Theory Monthly*, 2022, No. 6, pp. 98-106.

³⁶⁷ These regulations are outlined in Art. 1 and Art. 9 of the *Interim Regulation on Enterprise Information Disclosure (2014)* (企业信息公示暂行条例, Qiye xinxi gongshi zanxing tiaoli), stipulated by the State Council of China, archived August 23, 2014, at https://www.gov.cn/zhengce/content/2014-08/23/content_9038.htm.

³⁶⁸ This was an early step to cultivate market confidence in e-commerce. See Qian Yuwen, *On the Pluralistic Regulation of Internet Consumption Safety* (论网络消费安全的多元规制, Lun wangluo xiaofei anquan de duoyuan guizhi), in *Contemporary Law Review*, 2015, n. 6, pp. 121-130.

(2) Specific protection for cyber-consumers

The issue of the return right of cyber-consumers is regulated by the *Interim Measures on the Return without Reasons of Commodities Purchased Online within Seven Days* (网络购买商品七日无理由退货暂行办法, Wangluo goumai shangpin qiri wuliyou tuihuo zanxing banfa).³⁶⁹ The most typical maxim in Chinese consumer protection law is *Return without reasons within seven days*, which is also one of the most important rules for consumers in e-commerce practice in China. This rule is particularly relevant to low-priced and convenient express delivery services, making online purchases from professional operators a common choice among Chinese consumers.³⁷⁰

In addition to the unrestricted right of return, other measures are implemented to safeguard the interests of consumers. In terms of promoting e-commerce operators, the *Interim Provisions on the Regulation of Sales Promotion (2020)* (规范促销行为暂行规定, Guifan cuxiao xingwei zanxing guiding) impose an obligation to ensure transparency in promotion policies (Art. 7).³⁷¹ Art. 16-20 of the *Provisions on Clearly Marking Prices and Prohibiting Price Frauds (2022)* (明码标价和禁止价格欺诈规定, Mingma biaoja he jinzhi jiage qizha guiding), aim to further restrict various deceptive tactics employed by e-commerce operators in their promotional activities.³⁷²

The punishment measures for violations of price-related rules are stipulated by

³⁶⁹ Promulgated in 2017 and lastly revised in 2020 by the Administration for Market Regulation of China, archived November 3, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-11/03/content_5557118.htm.

³⁷⁰ The combination of the right to return, free delivery service, and a hospitable attitude from customer service creates a unique online commercial mechanism in China. This mechanism also plays a role in shaping consumers' preference for e-commerce. See Qian Linliang, *Digital Hospitality: Interactive Relationships and Practices in Chinese Online Business* (好客之道: 中国网络销售活动中的互动关系及实践, Haoke zhidao: Zhongguo wangluo xiaoshou huodong zhongde hudong guanxi ji shijian), in *Zhejiang Academic Journal*, 2024, n. 5, pp. 78-89.

³⁷¹ Promulgated by the State Administration for Market Regulation, archived November 6, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-11/06/content_5557730.htm.

³⁷² Promulgated by the State Administration for Market Regulation, accessed October 14, 2023, https://www.gov.cn/gongbao/content/2022/content_5699926.htm.

the *Provisions on the Administrative Punishment of Price-related Violations* (价格违法行为行政处罚规定, Jiage weifa xingwei xingzheng chufa guiding).³⁷³ In its ongoing revision process since July 2021, the issue of abusing algorithmic power by e-commerce platforms to realize unfairly differentiated pricing was noticed for the first time.³⁷⁴

(3) Special objects in e-commerce

Numerous objects can be exchanged through e-commerce; however, certain goods and services, owing to their specific characteristics, require differentiation from their offline transaction.

In accordance with Chinese administrative legislation, a catalogue could be compiled to specify these exceptional goods.

(a) Cosmetics: *Measures on the Supervision and Administration of Cosmetics (2021)* (化妆品生产经营监督管理办法, Huazhuangpin shengchan jingying jiandu guanli banfa)³⁷⁵; *Measures on the Supervision and Administration of Online Distribution of Cosmetics (2023)* (化妆品网络经营监督管理办法, Huazhuangpin wangluo jingying jiandu guanli banfa)³⁷⁶.

(b) Medical products and devices: *Measures on the Supervision and*

³⁷³ This legislation was enacted by the State Council of China in 1999 and was recently revised in 2010, archived June 28, 2021, at https://www.gov.cn/zhengce/2021-06/28/content_5723572.htm. National Development and Reform Commission also published a detailed administrative legislation to enact the above *Provisions*, namely the *Implementation Measures on the Administrative Punishment of Price-related Violations (2004)* (价格违法行为行政处罚实施办法, Jiage weifa xingwei xingzheng chufa shishi banfa), accessed December 10, 2023, https://www.gov.cn/zhengce/2021-06/28/content_5723572.htm.

³⁷⁴ Art. 13 of the *Provisions on the Administrative Punishment of Price-related Violation (Revision draft for comments)* [价格违法行为行政处罚规定 (修订征求意见稿), Jiage weifa xingwei xingzheng chufa guiding (xiuding zhengqiu yijian gao)]. Published by State Administration for Market Regulation, accessed December 10, 2023, https://www.samr.gov.cn/hd/zjdc/art/2023/art_3daad79555b3457ba520d6303b1132b2.html.

³⁷⁵ Promulgated by State Administration for Market Regulation, archived August 6, 2021, at https://www.gov.cn/zhengce/2021-08/06/content_5723520.htm.

³⁷⁶ Promulgated by National Medical Products Administration, archived April 4, 2023, at https://www.gov.cn/zhe ngce/zhengceku/2023-04/04/content_5750049.htm.

Administration of Online Sale of Medical Devices (2017) (医疗器械网络销售监督管理办法, Yiliao qixie wangluo xiaoshou jiandu guanli banfa)³⁷⁷; *Measures on the Supervision and Administration of Online Sale of Medicinal Products (2022)* (药品网络销售监督管理办法, Yaopin wangluo xiaoshou jiandu guanli banfa)³⁷⁸.

(c) Foods, including catering services: *Measures on the Investigation and Punishment of Illegal Acts Related to Online Food Safety (2016)* (网络食品安全违法行为查处办法, Wangluo shipin anquan weifa xingwei chachu banfa)³⁷⁹; *Measures on the Supervision and Administration of Food Safety in Online Catering Services (2017)* (网络餐饮服务食品安全监督管理办法, Wangluo canyin fuwu shipin anquan jiandu guanli banfa)³⁸⁰.

(d) Tobacco: *Measures on the Administration of Tobacco Monopoly Licenses (2016)* (烟草专卖许可证管理办法, Yanco zhuanmai xukezheng guanli banfa).³⁸¹

(e) Publications: *Regulation on the Administration of Publication (2020)* (出版管理条例, Chuban guanli tiaoli)³⁸²; *Provisions on the Administration of the*

³⁷⁷ Promulgated by former China Food and Drug Administration, accessed October 14, 2023, https://www.gov.cn/gongbao/content/2018/content_5277700.htm.

³⁷⁸ Promulgated by issued by State Administration for Market Regulation, accessed October 14, 2023, https://www.gov.cn/gongbao/content/2022/content_5717002.htm.

³⁷⁹ Promulgated by former China Food and Drug Administration, accessed October 20, 2023, https://www.gov.cn/gongbao/content/2017/content_5174527.htm.

³⁸⁰ Promulgated by former China Food and Drug Administration, accessed October 20, 2023, https://www.gov.cn/gongbao/content/2018/content_5268787.htm.

³⁸¹ Promulgated by Ministry of Industry and Information Technology, accessed October 19, 2023, https://www.gov.cn/gongbao/content/2016/content_5106194.htm. The sale of tobacco in China is strictly regulated under the monopoly licensing system, which also applies to the digital market. According to Art. 40, Section 2 of the *Measures*, only those who have obtained monopoly licenses are permitted to sell tobacco online.

³⁸² Promulgated by State Council of China. This *Regulation* was published in 2001, and was respectively revised in 2011, 2013, 2014, 2016 and 2020. Accessed October 20, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzdkMDdjNTAxNzdiOGNlMmFIMDM4N2Y>. According to Art. 36, Section 2 of this *Regulation*, the responsibility of verifying the legal licensing of an online publication business operator is assumed by online trading platforms. This article on platform responsibility was inserted in 2011, which was rather forward-looking at that time.

Publication Market (2016) (出版物市场管理规定, Chubanwu shichang guanli guiding)³⁸³.

Certain services provided through electronic means should also be subject to special regulation. Another catalogue could be compiled to specify these services.

(a) Online traveling service: *Interim Measures on the Administration of Online Tourism Business Services (2020)* (在线旅游经营服务管理暂行规定, Zaixian lyuyou jingying fuwu guanli zanxing guiding)³⁸⁴; *Provisions on the Administration of Passenger Services in Public Air Transport (2021)* (公共航空运输旅客服务管理规定, Gonggong hangkong yunshu lyuke fuwu guanli guiding)³⁸⁵.

(b) Automobile rental: *Measures on the Administration of Small and Micro Automobile Rental Business Services (2021)* (小微型客车租赁经营服务管理办法, Xiaoweixing keche zulin jingying fuwu guanli banfa)³⁸⁶; *Provisions on the Administration of Road Passenger Transport and Passenger Stations (2022)* (道路旅客运输及客运站管理规定, Daolu lyuke yunshu ji keyunzhan guanli guiding)³⁸⁷.

(c) Online taxi business: *Interim Measures on the Administration for the Business of Online Taxi Booking Services (2022)* (网络预约出租汽车经营服务管理

³⁸³ Promulgated jointly by former State Administration of Press, Publication, Radio, Film and Television and Ministry of Commerce, archived November 17, 2022, at https://www.gov.cn/zhengce/2022-11/17/content_5724636.htm. According to Art. 26 of this *Provisions*, due to the sensitivity of publication, the relevant online platforms are required to retain the trading records of dealers involved in the distribution of publications for a period of two years for future inspection. The platforms are also obligated to impede and report any illegal publication activities.

³⁸⁴ Promulgated by Ministry of Culture and Tourism of the People's Republic of China, archived September 1, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-09/01/content_5538951.htm.

³⁸⁵ Promulgated by Ministry of Transport of China, archived March 15, 2021, at https://www.gov.cn/zhengce/zhengceku/2021-03/15/content_5593193.htm.

³⁸⁶ Promulgated by Ministry of Transport of China, archived December 31, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-12/31/content_5575818.htm.

³⁸⁷ Promulgated by Ministry of Transport of China in 2020, revised in 2022, archived July 16, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-07/16/content_5527227.htm.

暂行办法, Wangluo yuyue chuzu qiche jingying fuwu guanli zanxing banfa).³⁸⁸

(d) Financial services: *Interim Provisions on the Administration of the Business Operations of Securities Investment Fund Distributors through Third-Party E-Commerce Platforms (2013)* (证券投资基金销售机构通过第三方电子商务平台开展业务管理暂行规定, Zhengquan touzi jijin xiaoshou jigou tongguo disanfang dianzi shangwu pingtai kaizhan yewu guanli zanxing guiding)³⁸⁹; *Measures on the Implementation for Protecting Financial Consumers' Rights and Interests (2020)* (金融消费者权益保护实施办法, Jinrong xiaofeizhe quanyi baohu shishi banfa)³⁹⁰.

(e) Online recruitment services: *Provisions on the Administration of Online Recruitment Services (2020)* (网络招聘服务管理规定, Wangluo zhaopin fuwu guanli guiding).³⁹¹

(f) Patent commissioning: *Measures on the Administration of Patent Commissioning (2019)* (专利代理管理办法, Zhuanli daily guanli banfa).³⁹²

The commonality among the aforementioned provisions is that they simply reference the *E-Commerce Law of China* and other relevant legislations. They reiterate existing obligations and responsibilities without introducing new legal restrictions. The significance of these provisions lies in their indication of a potential or significant connection with e-commerce, thereby allowing the application of e-commerce legal rules in these scenarios. In essence, these provisions further elucidate the meaning and

³⁸⁸ Jointly promulgated by Ministry of Transport, Ministry of Industry and Information Technology, Ministry of Public Security, Ministry of Commerce, State Administration for Industry and Commerce, General Administration of Quality Supervision, Inspection and Quarantine, Cyberspace Administration of China in 2016 and revised in 2022, archived December 6, 2022, at https://www.gov.cn/zhengce/2022-12/06/content_5730384.htm.

³⁸⁹ Promulgated by China Securities Regulatory Commission, accessed October 14, 2023, from <http://www.csrc.gov.cn/csrc/c101883/c1030295/content.shtml>.

³⁹⁰ Promulgated by People's Bank of China, accessed October 14, 2023, https://www.gov.cn/gongbao/content/2020/content_5567753.htm.

³⁹¹ Promulgated by Ministry of Human Resources and Social Security of China, archived December 25, 2020, at https://www.gov.cn/zhengce/zhengceku/2020-12/25/content_5573141.htm.

³⁹² Promulgated by China National Intellectual Property Administration, archived October 21, 2019, at https://www.gov.cn/zhengce/zhengceku/2019-10/21/content_5442904.htm.

scope of e-commerce, while also expanding the reach of e-commerce related regulations.

(4) Regulation on specific phases of online transactions

(a) Internet advertising. The *Advertising Law of China*, although revised during the era of digitalization, did not adequately address sufficient new phenomena. Recently, a lower-level legislation, the *Measures on the Administration of Internet Advertising (2023)* (互联网广告管理办法, Hulianwang guanggao guanli banfa) was introduced specifically regarding online advertising activities,³⁹³ which references both the *Advertising Law of China* and the *E-Commerce Law of China* as its legislative basis.

(b) Digital payment. Although the digital payment industry is well-established in China, a comprehensive legislation to regulate it at a higher level is still missing. The initial legislation that addresses the interaction between financial institutions and e-commerce is the *Measures on the Administration of Electronic Banking (2006)* (电子银行业务管理办法, Dianzi yinhang yewu guanli banfa),³⁹⁴ which grants financial institutions the authority to offer online payment platforms to e-commerce operators.³⁹⁵ In response to the emergence of digital payment institutions,³⁹⁶ the

³⁹³ Promulgated by the State Administration for Market Regulation of China, accessed October 12, 2023, https://www.gov.cn/gongbao/2023/issue_10506/202306/content_6885261.html.

³⁹⁴ This *Measures* was introduced by the former China Banking Regulatory Commission in 2005. Now that institution is merged into National Administration of Financial Regulation, in accordance with a reform in 2023. Archived February 6, 2006, at https://www.gov.cn/flfg/2006-02/06/content_179492.htm.

³⁹⁵ However, the authorization shall be subject to thorough scrutiny of the counterparty and the establishment of a written cooperation agreement, which is excessively prudent, according to Art. 59 of this *Measures*.

³⁹⁶ It is worth noting a judicial interpretation pertaining to this matter, which refers to *online fraudulent transactions* and treats non-bank payment institutions in a similar manner to commercial banks. This interpretation strengthens consumer protection in the realm of digital payments. See *Provisions on Several Issues Concerning the Trial of Cases Regarding Civil Disputes over Bank Cards* (关于审理银行卡民事纠纷案件若干问题的规定, Guanyu Shenli yinhangka minshi jiufen anjian ruogan wenti de guiding), promulgated in 2019. Accessed October 20, 2023, https://www.pkulaw.com/en_law/7a523975fa89fcfabdfb.html.

People's Bank of China issued a series of regulatory documents,³⁹⁷ especially the most relevant *Measures on the Deposit of Pending Payments of Clients of Non-bank Payment Institutions (2021)* (非银行支付机构客户备付金存管办法, Feiyinhang zhifu jigou kehu beifujin cungan banfa),³⁹⁸ forming a fundamental regulatory system on non-bank payment institutions. In addition, the non-bank payment institutions are also regulated by an industry self-regulatory organization known as the Payment & Clearing Association of China. This association has released two significant documents to provide guidance on the compliance of these institutions, the *Standard System for Non-Bank Payment Institutions (2016)* (非银行支付机构标准体系, Feiyinhang zhifu jigou biao zhun ti xi)³⁹⁹ and the *Self-Discipline Guidelines for Business Compliance Development of Non-Bank Payment Institutions (2023)* (非银行支付机构业务合规发展自律指引, Feiyinhang zhifu jigou yewu hegui fazhan zilyu zhiyin).⁴⁰⁰

(c) Digital invoices. Invoices serve as the primary evidence in e-commerce

³⁹⁷ These legislations are as follows.

(1) *Measures on Administration of the Online Payment Business of Non-Banking Payment Institutions (2015)* (非银行支付机构网络支付业务管理办法, Feiyinhang zhifu jigou wangluo zhifu yewu guanli banfa), accessed October 21, 2023, https://www.gov.cn/gongbao/content/2016/content_5061699.htm.

(2) *Indicators for the Categorization and Rating of Non-bank Payment Institutions (2016, revised in 2017)* (非银行支付机构分类评级管理办法, Feiyinhang zhifu jigou fenlei pingji guanli banfa), archived July 27, 2018, at <http://www.pbc.gov.cn/tiaofasi/144941/3581332/3589036/2018072716551080872.pdf>.

(3) *Measures for the Administration of Reporting of Major Events by Non-bank Payment Institutions (2021)* (非银行支付机构重大事项报告管理办法, Feiyinhang zhifu jigou zhongda shixiang baogao guanli banfa), accessed October 21, 2023, https://www.gov.cn/gongbao/content/2021/content_5641354.htm.

³⁹⁸ Archived January 23, 2021, at https://www.gov.cn/zhengce/zhengceku/2021-01/23/content_5582141.htm. This *Measures* restricts the deposit and management activities of pending payments received by digital payment institutions from clients. It can be seen as a significant measure targeting the digital payment giants, Alipay and WeChat Pay.

³⁹⁹ Accessed October 21, 2023, <https://www.pcac.org.cn/eportal/ui?pageId=598261&articleKey=604656&columnId=595085>.

⁴⁰⁰ Accessed October 21, 2023, <https://www.pcac.org.cn/eportal/ui?pageId=598041&articleKey=618815&columnId=595027>.

transactions. *Measures on the Management of Online Invoices (2013)* (网络发票管理办法, Wangluo fapiao guanli banfa) is the most crucial legislation on this issue.⁴⁰¹ However, there are not many substantial regulations in this *Measures*. In Chinese e-commerce practice, consumers often overlook invoices, even when a dispute arises between consumers and merchants. Instead, consumers more frequently rely on receipts. Therefore, online invoices principally hold a taxation value in Chinese e-commerce practice.⁴⁰²

(d) Express delivery service. The express delivery service in China is closely associated with e-commerce, both in terms of operations, which receive strong support and guidance from the Chinese government,⁴⁰³ and in terms of shareholding.⁴⁰⁴ The highest-level legislation targeting express delivery service in China is promulgated by the State Council, titled the *Interim Regulation on Express Delivery* (快递暂行条例, Kuaidi zanxing tiaoli),⁴⁰⁵ reflecting the importance the State attaches to it. However, this *Interim Regulation* only stipulates a few general articles, still without sufficient

⁴⁰¹ Promulgated by State Taxation Administration of China in 2013, subsequently revised in 2018, accessed October 12, 2023, <https://fgk.chinatax.gov.cn/zcfgk/c100011/c5195226/content.html>.

⁴⁰² Besides, electronic invoices are not typically automatically sent to e-commerce consumers, and they are used to not request them, despite Art. 14 of the *E-Commerce Law of China* requiring e-commerce operators to issue them.

⁴⁰³ General Office of State Council of China published a document about this issue in 2018, *Guiding Opinions on Advancing the Collaborative Development of E-commerce and Express Delivery Logistics* (关于推进电子商务与快递物流协同发展的意见, Guanyu tuijin dianzi shangwu yu kuaidi wuliu xietong fazhan de yijian). Archived January 23, 2018, at https://www.gov.cn/zhengce/content/2018-01/23/content_5259695.htm.

More precisely and crucially, the departments in charge of delivery and e-commerce, State Post Bureau of China and Ministry of Commerce of China published another document *Guiding Opinions on Standardizing the Intercommunication and Sharing of Express Delivery and E-Commerce Data (2019)* (关于规范快递与电子商务数据互联共享的指导意见, Guanyu guifan kuaidi yu dianzi shangwu shuju hulian gongxiang de zhidao yijian). Archived September 4, 2019, at https://www.gov.cn/zhengce/zhengceku/2019-09/04/content_5427244.htm.

⁴⁰⁴ For instance, Alibaba is a major shareholder in four prominent express delivery companies, and it operates an express delivery business platform and network called Cainiao. See *Alibaba Financial Annual Report 2024*, archived May 23, 2024, at https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0523/2024052301570_c.pdf.

⁴⁰⁵ Promulgated in 2018 and then revised in 2019, archived March 27, 2018, at https://www.gov.cn/zhengce/content/2018-03/27/content_5277801.htm.

enforceability. The truly detailed legislation on the express delivery industry is actually the *Measures on Administration of Express Delivery Market (2023)* (快递市场管理办法, Kuaidi shichang guanli banfa).⁴⁰⁶

1.2.3.2.4 Regulation on external environment of online transaction

At the level of administrative legislation, the development of the external environment of e-commerce is further enhanced, involving the formulation of internal platform rules (Point 1), competition in e-commerce (Point 2), intellectual property protection in e-commerce (Point 3), and distinct environmental protection requirements for e-commerce participants (Point 4).

(1) Formulation of Internal platform rules

Internet platforms are new entities that organize productivity and bear the public function of maintaining the order of the Internet market and protecting the rights and interests of users in the digital economy era. Internet platforms have strong control and influence over their users, both consumers and especially the operators within the platform. This kind of platform power is a typical private power. Therefore, the rules formulated by platforms might be regarded as a quasi-legislation, which certainly needs to be regulated by the real state power.⁴⁰⁷ Regarding this issue, the Ministry of Commerce of China introduced a unique and innovative legal document titled *Provisions on the Procedures for Developing the Transaction Rules of Third-Party Online Retail Platforms (For Trial)* [网络零售第三方平台交易规则制定程序规定 (试行), Wangluo lingshou disanfang pingtai jiaoyi guize zhiding chengxu guiding (shixing)] in 2014,⁴⁰⁸ which controls the legitimacy of platform rules from its

⁴⁰⁶ Archived January 4, 2024, at https://xxgk.mot.gov.cn/2020/jigou/fgs/202401/t20240104_3980683.html.

⁴⁰⁷ See Liu Quan, *The Publicness of Network Platforms and Their Realization: From the Perspective of Legal Regulations of E-Commerce Platforms* (网络平台的公共性及其实现——以电商平台的法律规制为视角, Wangluo pingtai de gonggongxing jiqi shixian: Yi dianshang pingtai de falyu guizhi wei shijiao), in *Chinese Journal of Law*, 2020, n. 2, pp. 42-56.

⁴⁰⁸ Promulgated by the Ministry of Transport of China in 2013 and recently revised in the end of 2023, archived December 8, 2014, at <http://www.mofcom.gov.cn/article/zcfb/zcblgg/201412/20141200850329.shtml>.

source.⁴⁰⁹

(2) Competition in e-commerce

The State Administration for Market Regulation of China (SAMR) is responsible for establishing the regulatory framework on market competition. According to *Provisions on Prohibiting Abuse of Dominant Market Positions (2023)* (禁止滥用市场支配地位行为规定, Jinzhi lanyong shichang zhipai diwei xingwei guiding),⁴¹⁰ both offline and online monopolistic behaviors are within the scope of supervisory authority of the SAMR. Additionally, the SAMR recently published the *Interim Measures on Online Anti-Unfair Competition (2024)* (网络反不正当竞争暂行规定, Wangluo fan buzhengdang jingzheng zanxing guiding),⁴¹¹ with special concentration on regulating competition in digital market.⁴¹²

(3) Detailed intellectual property protection in e-commerce

The China National Intellectual Property Administration (CNIPA) has demonstrated its commitment to enforcing patent laws in e-commerce through the implementation of the *Measures on Patent Administrative Law Enforcement (2010)* (专利行政执法办法, Zhuanli xingzheng zhifa banfa), which were revised in 2015 to include provisions related to e-commerce.⁴¹³ This *Measures* establishes the principle of *rapid mediation and handling* for online patent infringement disputes.⁴¹⁴ Competent authorities further have responsibility to timely inform platform operators

⁴⁰⁹ See Huang Shaokun, *Legality Control of Platform Rules* (平台规则的合法性控制, Pingtai guize de hefaxing kongzhi), in *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 2023, n. 5, pp. 140-148.

⁴¹⁰ Accessed December 5, 2023, https://www.gov.cn/gongbao/content/2023/content_5754539.htm.

⁴¹¹ Accessed May 13, 2024, https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2024/art_80019fe59e464196bef173dc56678a42.html.

⁴¹² Based on these two documents, it can be reaffirmed that competition governance in e-commerce in China follows the traditional Chinese-style approach, namely the dichotomy of restricting unfair competitive behaviors and prohibiting monopolies (with particular attention to the abuse of dominant market positions).

⁴¹³ Accessed October 14, 2023, https://www.gov.cn/gongbao/content/2015/content_2973163.htm.

⁴¹⁴ Art. 8 of the *Measures* calls for the authorities responsible for patents to enhance enforcement in exhibitions and e-commerce, while adhering to efficiency requirements.

about the existing patent infringement occurring on their platforms.⁴¹⁵

It should be noted that the *Measures* only pertain to patents but not all intellectual property rights. Unfortunately, the CNIPA has not yet implemented any general measures to address violations of intellectual property rights. It is the Art. 42, Art. 43, and Art. 45 of *E-Commerce Law of China* that have outlined several regulations to generally deal with this critical problem. The CNIPA shall further make these provisions more practical as soon as possible.

(4) Environmental protection requirements for e-commerce

Over-packaging is a longstanding conundrum in Chinese commerce, and e-commerce exacerbates this issue due to the rise in volume of express delivery parcels. In response to this problem, a policy document titled *Notice of Further Strengthening the Control of Over-packaging of Commodities (2022)* (关于进一步加强商品过度包装治理的通知, Guanyu jinyibu jiaqiang shangpin guodu baozhuang zhili de tongzhi)⁴¹⁶ was formulated.

Based on several instructions pertain to e-commerce outlined in the aforementioned policy document, *Measures on the Administration of the Use and Reporting of Single-Use Plastics by Businesses in the Commercial Field (2023)* (商务领域经营者使用、报告一次性塑料制品管理办法, Shangwu lingyu jingyingzhe shiyong baogao yicixing suliao zhipin guanli banfa) was promulgated.⁴¹⁷ This *Measures*, in accordance with the *Prevention and Control of Environment Pollution Caused by Solid Wastes Law of China*, sets an additional duty for e-commerce platforms, namely the duty of reporting the usage and recycling of single-use plastic

⁴¹⁵ Art. 43, Section 2 and Art. 45, Section 2 of the *Measures* separately requires competent authorities to inform platforms as soon as they decide the constitution of patent infringement or patent counterfeiting, while the platforms shall take measures such as delete, block, or disconnect the link.

⁴¹⁶ Issued by General Office of the State Council of China, which means this policy document is of a fairly high level, archived September 8, 2022, at https://www.gov.cn/zhengce/content/2022-09/08/content_5708858.htm.

⁴¹⁷ Jointly stipulated by the Ministry of Commerce of China and the National Development and Reform Commission of China, archived May 3, 2023, at <http://tfs.mofcom.gov.cn/article/ba/bh/202305/20230503410088.shtml>.

products upon inspection by local competent authorities.⁴¹⁸

It is important to focus on certain advocacy provisions. Firstly, the government encourages e-commerce platforms not only to adopt reusable and easily recyclable packaging materials, but also to collaborate with product manufacturers and express delivery service providers in order to design and utilize environmentally friendly packaging. Secondly, e-commerce platforms are encouraged to work with sanitation entities, recycling companies, and even consumers to enhance the recycling of single-use plastic products. Thirdly, the government also encourages e-commerce platforms to utilize their authority as rule-makers and supervisors to establish platform regulations that promote the reduction of single-use plastics in express packaging and take-out services. Fourthly, platforms are urged to compel the operators within their platforms to make commitments about self-regulating the use of single-use plastics.⁴¹⁹

1.2.3.3 Local legislation on e-commerce

Although e-commerce is a widely distributed phenomenon, several local legislations can still play a significant role as a supplement to national level legislation, such as Zhejiang and Guangdong, the leading pioneers in Reform and Opening, as well as in the implementation of e-commerce.

The practice of e-commerce is not equally developed in all regions of China. The southeastern coastal areas, where the economy and industrial production are more developed, have promulgated relatively more legislation or normative documents regarding e-commerce.⁴²⁰ Certain cities in this region, which prioritize the

⁴¹⁸ According to Art. 5, 16, 18, 23, and 26 of this *Measures*. If e-commerce operators fail to perform such duty, they will face a fine.

⁴¹⁹ The above framework on reducing the usage of single-use plastics products is established by the Art. 11-13 of the *Measures*.

⁴²⁰ In the field of e-commerce, the cluster effect could also be observed. Zhejiang Province is the most typical case, even not only in terms of e-commerce. See Du Ping, Pan Zheqi, *The Evolution and Enrichment of "Mode of Zhejiang"* (“浙江模式” 的演进与丰富, Zhejiang moshi de yanjin yu fengfu), in *Governance Studies*, 2019, n. 5, pp. 68-77.

development of foreign trade and have the advantage of convenient ports, such as Shantou in Guangdong Province, particularly emphasize the significance of cross-border e-commerce by formulating specific legislation,⁴²¹ unlike many other municipalities. Several inland cities are also actively seeking to establish a competitive advantage in e-commerce due to their favorable location conditions. One notable example is Zhengzhou in Henan Province, which is situated at the geographical center of the eastern part of China, serves as a crucial railway hub, is also home to one of the busiest cargo airports in China. Consequently, a large-scale warehouse has been constructed there, attracting numerous e-commerce companies to choose it as a crucial logistics base.⁴²² The municipal government of Zhengzhou, seizing the opportunity, has issued a specific local regulation, titled *Measures on Promoting and Regulating E-Commerce of Zhengzhou Municipality (2020)* (郑州市电子商务促进与管理办法, Zhengzhou shi dianzi shangwu cujin yu guanli banfa),⁴²³ which focuses on further promoting local e-commerce development.⁴²⁴

However, only two provincial administrative regions have formed a relatively complete local regulatory system on e-commerce, namely Shanghai (1.2.3.3.1) and Zhejiang (1.2.3.3.2).

⁴²¹ Shantou is the first municipality, also as an economic special zone, that have formulated a special local legislation on cross-border e-commerce, the *Measures on the Promotion of E-Commerce of Shantou Special Economic Zone* (汕头经济特区电子商务促进办法, Shantou jingji tequ dianzi shangwu cujin banfa) in 2012. At that time, even there is no central-level legislation or high-level policy about this issue.

⁴²² A think-provoking geographic analysis about this fact, see Zhao Rui, Ding Zhiwei, *Analysis of Logistics Network Structure and Its Influencing Factors in Central Plains Urban Agglomeration from the Perspective of Flow Space* (基于流空间视角的中原城市群物流网络结构及其影响因素分析, Jiyu liukongjian shijiao de zhongyuan chengshiqun wuli wangluo jiegou jiqi yingxiang yinsu fenxi), in *Areal Research and Development*, 2022, n. 4, pp. 71-77.

⁴²³ Archived September 22, 2020, at http://www.moj.gov.cn/pub/sfbgw/flfggz/flfggzdfzwgz/202009/t20200922_143142.html.

⁴²⁴ This *Measures* emphasizes the construction of warehousing centers and logistic hub centers, as well as the attraction of large-scale domestic and international e-commerce enterprises. Art. 15 of the *Measures* also outlines several stimulus measures aimed at enhancing the local e-commerce industry.

1.2.3.3.1 The first sample: Shanghai

The *Provisions on Promoting the Development of E-Commerce of Shanghai Municipality*⁴²⁵ is actually the first comprehensive legislation on e-commerce in China.⁴²⁶ The *Provisions* are considered a successful local legislation that motivates and encourages the private economy.⁴²⁷

This *Provisions*, being in its early stage of legislation, primarily focuses on political aspects rather than regulatory requirements.⁴²⁸ The local legislator also mentioned several crucial points regarding the regulation of e-commerce, demonstrating a preliminary regulatory thinking: (a) The requirement for e-commerce operators to publish their identity, qualifications, related licenses, and contact information (Art. 14); (b) The obligation to archive transaction records (Art. 15); (c) The limitation on the collection of personal information, with the principle of informing the purpose and scope of collection (Art. 16); (d) The inclusion of promises about quality, price, and after-sales guarantee made by online commercial advertising into contracts concluded with consumers (Art. 17); (e) The responsibility of e-commerce platforms to maintain information security, to inspect the qualifications of inner-platform e-commerce operators, and to prevent illegal activities (Art. 18); (f) The provision of electronic receipts (Art. 19).

1.2.3.3.2 The second sample: Zhejiang

Another significant local general legislation on e-commerce was introduced much

⁴²⁵ Accessed November 29, 2023, <https://flk.npc.gov.cn/detail2.html?NDAyOGFiY2M2MTI3Nzc5MzAxNjEyN2ZlNjhhMzNmOGU%3D>.

⁴²⁶ It was promulgated in 2008 and came into effect in 2009, nearly two years earlier than the first national-level legislation on e-commerce, the *Interim Measures on the Trading of Commodities and Services through the Internet* published by the former State Administration for Industry and Commerce of China in 2010. While there is no concrete evidence to suggest that the *Provisions* served as a precursor to national-level legislation on e-commerce, there are still notable similarities between it and subsequent legislations.

⁴²⁷ See Zhang Lin, *On Motivational Legislation for the Private Economy* (论民营经济的激励型立法, Lun minying jingji de jilixing lifa), in *Oriental Law*, 2022, n. 3, pp. 185-200.

⁴²⁸ It outlines the responsibilities of various authorities of Shanghai government in terms of supporting and facilitating the development of e-commerce. (Art. 5-13, Art. 19)

later, following the promulgation of the *E-Commerce Law of China*, which is the *Regulation on E-Commerce of Zhejiang Province (2021)*.⁴²⁹ However, the real significant local legislation is not the above *Regulation*. Prior to its promulgation, there was already another document in effect in Hangzhou, the provincial capital of Zhejiang Province, whose title is *Interim Measures on the Regulation of Internet Transaction of Hangzhou Municipality (2015)* (杭州市网络交易管理暂行办法, Hangzhoushi wangluo jiaoyi guanli zanxing banfa)⁴³⁰.

The structure of the *Interim Measures* is quite similar to the current e-commerce regulatory system, which could be divided into diverse parts including general provisions, special provisions for third-party platforms,⁴³¹ consumer protection, the establishment of a credible transaction environment, and related administrative supervision measures. At the meantime, the *Interim Measure* also covers almost all the necessary topics in the field of e-commerce, specifically addressing issues such as registration and identity disclosure of digital market entities, prevention of unfair competition, online payment, online promotion, platform responsibility, and online e-commerce dispute resolution.

Hangzhou Municipality, with the recent *Measures on Supervision and Regulation of Online Food Takeaway Delivery of Hangzhou Municipality (2023)* (杭州市网络餐饮外卖配送监督管理办法, Hangzhoushi wangluo canyin waimai peisong jiandu guanli banfa)⁴³², provided another noteworthy illustration of local legislation pertaining to e-commerce services.

The Zhejiang Provincial Government is not to be outdone. It has additionally

⁴²⁹ Accessed November 29, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3YzkyZTBiNDAxN2NhMWUwMzdiNzA1YmQ%3D>.

⁴³⁰ Archived April 29, 2015, at https://www.hangzhou.gov.cn/art/2015/4/29/art_807136_1022.html.

⁴³¹ This *Interim Measures* paid considerable attention to third-party platforms. Firstly, it expands the definition of *online transaction*, so as to incorporate the activity that provides third-party online trading platform services for the sale of merchandise or provision of services (Art. 2, Section 2). Secondly, a dedicated chapter (Chapter 3) is included to define the responsibilities of third-party platforms and their ability to supervise activities within their platforms.

⁴³² Archived February 28, 2023, at https://www.hangzhou.gov.cn/art/2023/2/28/art_1229610717_1830008.html.

established local legislation pertaining to e-commerce, formulating more specific and consumer-friendly rules, such as *Regulation on Promoting the Industry of Express Delivery of Zhejiang Province (2021)* (浙江省快递业促进条例, Zhejiangsheng kuaidiye cujin tiaoli)⁴³³ and *Regulation on Anti-Unfair Competition of Zhejiang Province (2011, revised in 2022)* (浙江省反不正当竞争条例, Zhejiangsheng fan buzhengdang jingzheng tiaoli)⁴³⁴, “competing” with Hangzhou Municipality. A notable attempt is that, in order to streamline the process of gaining access to the digital market, the digitization of business licenses and administrative licenses related to e-commerce for registration is widely promoted.⁴³⁵

In summary, Zhejiang Province has developed a rather complete regulatory system on e-commerce, including several innovative measures aimed at facilitating convenience for both e-commerce operators and consumers. Whether the local legislators’ intention is to conduct experiments or gain a competitive edge over other provinces, these efforts are indeed advantageous for acquiring valuable experience in e-commerce regulation.

1.2.3.4 Judicial interpretation about e-commerce

The Supreme People’s Court of China has also issued documents that address online consumption disputes (1.2.3.4.1) and online intellectual property protection (1.2.3.4.2). These documents reflect the challenges faced in judicial practices and deserve appreciation for their value in complementing existing legislation. Additionally, there are other judicial interpretations that include provisions outlining the responsibilities of certain e-commerce platforms (1.2.3.4.3).

1.2.3.4.1 Online consumption dispute

⁴³³ Archived October 13, 2022, at https://www.zj.gov.cn/art/2022/10/13/art_1229610718_2435906.html.

⁴³⁴ Accessed December 6, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3YzkyZGRhYzAxN2NhMWQ1YTJmNjc5MjU%3D>.

⁴³⁵ Art. 7, Section 1-2 of *Regulation on E-Commerce of Zhejiang Province*. This initiative has not yet been implemented at the national level.

In 2022, four years after the promulgation of the *E-Commerce Law of China*, the Supreme People's Court of China issued its own general document on e-commerce, the *Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I)*,⁴³⁶ abbreviated as *Judicial Interpretation on Online Consumption (2022)* in the rest part of this thesis, incorporating various scattered issues in e-commerce.

This judicial interpretation firstly addresses certain questions that arise in traditional consumer protection law,⁴³⁷ which reappear in the context of e-commerce, including the use of standard clauses (Art. 1), the strict adherence to promises about better treatment towards consumers (Art. 2 and Art. 10), the conditions for exercising the right to return in e-commerce (Art. 3), and the potential harm caused by prizes or gifts offered in e-commerce promotions (Art. 8).

The second major topic is to prevent e-commerce platforms from evading responsibility through special arrangements involving trademarks or payment methods (Art. 4 and Art. 5). In this regard, as long as the platform actually acts as or is believed to be the counterparty of cyber-consumers, it will always assume the consequences of related online transactions.⁴³⁸

Thirdly, this judicial interpretation is the only legal document in China addressing C2C e-commerce transactions, proceeding with the most notable example, the

⁴³⁶ As indicated by the title, this judicial interpretation is the first one of its kind, while other judicial interpretations on e-commerce are currently being developed. Thus, we have enough reason to anticipate future regulatory efforts by the Supreme People's Court, also as it is the national institution that is most intricately connected to the challenges arising from e-commerce practices.

⁴³⁷ See Zheng Xuelin, Liu Min, Gao Yanzhu, *Understanding and Application of Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I)* (《最高人民法院关于审理网络消费纠纷案件适用法律若干问题的规定(一)》的理解与适用, Zuigao renmin fayuan guanyu Shenli wangluo xiaofei jiufen anjian shiyong falyu ruogan wenti de guiding yi de lijie yu shiyong), in *China Journal of Applied Jurisprudence*, 2022, n. 3, pp. 19-29.

⁴³⁸ In this regard, the contract formalism is somehow negated. See Gao Qingkai, *Evolution of Contract Formalism and Its Influence* (合同形式主义的演进及其影响, Hetong xingshi zhuyi de yanjin jiqi yingxiang), in *Chinese Journal of Law*, 2022, n. 5, pp. 101-119.

transaction of second-hand products.⁴³⁹ In Chinese business practice, many merchants disguise themselves as amateur sellers on second-hand e-commerce platforms, hoping to avoid the responsibilities as professional operators. This illusion is explicitly refuted by Art. 7 of the judicial interpretation.

The fourth critical issue addressed is the prevalence of fake transactions, inflated click counts and manipulated user reviews (Art. 9). Such activities are often difficult to be classified as unfair competition or fictitious advertising, but they undeniably mislead consumers and potentially provide an advantage in competition. The result of such delinquent activities stated by the judicial interpretation, however, is not particularly powerful and severe, since only the related contracts will be declared void.⁴⁴⁰

The remaining focus of this judicial interpretation is on the regulation of the popular online live broadcast e-commerce, resolving the questions including “who is the counterparty”, “who could be regarded as platform” and “what responsibility will be assumed by platform”,⁴⁴¹ establishing a preliminary framework for regulating such issue.⁴⁴²

⁴³⁹ See Zheng Xuelin, Liu Min, Gao Yanzhu, *Understanding and Application of Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I)* (《最高人民法院关于审理网络消费纠纷案件适用法律若干问题的规定(一)》的理解与适用, Zuigao renmin fayuan guanyu Shenli wangluo xiaofei jiufen anjian shiyong falyu ruogan wenti de guiding yi de lijie yu shiyong), in *China Journal of Applied Jurisprudence*, 2022, n. 3, pp. 19-29.

⁴⁴⁰ See Hu Fangqiong, *Research on Civil Responsibility in Online Consumption Deceit*, in *Journal of Law Application* (网络消费欺诈的民事责任研究, Wangluo xiaofei qizha de minshi zeren yanjiu), 2023, n. 8, pp. 91-100.

⁴⁴¹ Sometimes, e-commerce platforms establish internal-platform broadcast studios, in which case the platform must take responsibility for any false advertising (Art. 11). However, disputes mainly arise with online transactions conducted solely through “pure” online live broadcast platforms, such as TikTok. The Supreme People’s Court tends to consider both online live broadcast marketing platforms and studio operators as e-commerce platforms, thereby imposing all the duties and obligations that apply to e-commerce platforms, particularly in the field of food and catering services (Art. 12-17).

⁴⁴² See Liu Ke, Huang Bochen, *The Legal Responsibilities and Regulatory Logic of E-Commerce Live-Streaming Activities* (电商直播带货行为主体的法律责任及规制逻辑, Dianshang zhibo daihuo zhuti de falyu zeren ji guizhi luoji), in *Jiangnan Tribune*, 2023, n. 10, pp. 139-144.

1.2.3.4.2 Online Intellectual property protection

The focus of the judicial system on the protection of intellectual property in e-commerce emerged quite early. The first legal document addressing this issue was published by the Beijing High People's Court in 2013, titled *Answers to Several Questions Regarding the Trial of Cases concerning E-commerce Infringement of Intellectual Property Rights* (北京市高级人民法院关于审理电子商务侵害知识产权纠纷案件若干问题的解答, Beijingshi gaoji renmin fayuan guanyu shenli dianzi shangwu qinhai zhishi chanquan jiufen anjian ruogan wenti de jieda).⁴⁴³ However, it was only an internal working document.

Subsequently, in addition to two judicial interpretations concerning trademark infringement or infringement of well-known trademarks in relation to e-commerce domain names,⁴⁴⁴ the Supreme People's Court issued two additional documents in 2020, the *Official Reply on Several Issues Concerning the Application of Law to Disputes over Internet-related Intellectual Property Right Infringement* (关于涉网络知识产权侵权纠纷几个法律适用问题的批复, Guanyu she wangluo zhishichanquan qinquan jiufen jige falyu shiyong wenti de pifu)⁴⁴⁵ and the *Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-Commerce Platforms* (关于审理涉电子商务平台知识产权民事案件的指导意见, Guanyu Shenli she dianzi

⁴⁴³ Accessed November 16, 2023, <https://www.bjcourt.gov.cn/ssfw/spzdwj/detail.htm?NId=25000066&channel=100014003>.

⁴⁴⁴ Art. 1 (3) of *Interpretation of Several Issues concerning the Law Application in the Trial of Civil Trademark Dispute Cases* (关于审理商标民事纠纷案件适用法律若干问题的解释, Guanyu shenli shangbiao minshi jiufen anjian shiyong falyu ruogan wenti de jieshi), promulgated in 2002, revised in 2020. Accessed October 21, 2023, from <http://gongbao.court.gov.cn/Details/93ca0d509275338b498e7bef849830.html>.

Art. 3, section 2 of *Interpretation on Several Issues concerning the Law Application in the Trial of Civil Disputes Cases Involving the Protection of Well-known Trademarks* (关于审理涉及驰名商标保护的民事纠纷案件应用法律若干问题的解释, Guanyu Shenli sheji chiming shangbiao baohu de minshi jiufen anjian yingyong falyu ruogan wenti de jieshi), promulgated in 2009 and recently revised in 2020. Accessed October 21, 2023, <http://gongbao.court.gov.cn/Details/d88e5b89c015de4e86bd56a3d0f163.html>.

⁴⁴⁵ Accessed October 21, 2023, <http://gongbao.court.gov.cn/Details/1e25d4d7107b8c691497c1ed531adb.html>.

shangwu pingtai zhishi chanquan minshi anjian de zhidao yijian).⁴⁴⁶ Although the above two documents are not judicial interpretations, the issuance of them within a short period of time served to highlight the Chinese judicial system's strong stance against intellectual property infringement on e-commerce platforms, enhanced the practicality and clarity of Art. 42-45 of the *E-Commerce Law of China*, also addressed the absence of administrative norms related to intellectual property protection.⁴⁴⁷

The aforementioned *Guiding Opinions* played a commendable role even beyond the judiciary system. Several local governments, including Shanghai, have incorporated relevant content in local legislation.⁴⁴⁸

In summary, the documents formulated by the Supreme People's Court are typically advantageous for enhancing the predictability and certainty of the interpreted rules, which were somehow ambiguous or non-applicable before interpretation. In

⁴⁴⁶ Accessed October 21, 2023, <https://www.court.gov.cn/zixun/xiangqing/254931.html>.

⁴⁴⁷ See Bi Wenxuan, *The Dilemma and Alleviation of E-Commerce Platforms in Dealing with Intellectual Property Rights Infringement Governance: An Empirical Analysis Based on Judicial Judgments* (电商平台涉知识产权侵权治理的困境与纾解——基于司法裁判的实证分析, Dianshang pingtai she zhishi chanquan qinquan zhili de kunjing yu shujie: Jiyu sifa caipan de shizheng fenxi), in *Journal of Nankai University (Philosophy, Literature and Social)*, 2024, n. 1, pp. 67-80.

⁴⁴⁸ Shanghai Municipality government published a detailed and explicit document, titled *Opinions on the Task of Protecting Intellectual Property Rights in E-Commerce of Shanghai Municipality (Interim) (2021)* (上海市电子商务知识产权保护工作若干意见(试行), Shanghaishi dianzi shangwu zhishi chanquan baohu gongzuo ruogan yijian shixing), which assists e-commerce platforms in Shanghai in effectively implementing the requirements for intellectual property rights protection in their commercial operations. Archived June 30, 2021, at <https://sipa.sh.gov.cn/tzgg/20210630/ab189a2b48634c8898ce4b19b4145dae.html>.

After a two-year probation period, an assessment conducted by relevant government departments in Shanghai concluded that the aforementioned *Opinions* “essentially achieved the goal of guiding e-commerce platforms in fulfilling their obligations for intellectual property protection”. *Statement on Extending the Valid Period of Opinions on the Task of Protecting Intellectual Property Right in E-Commerce of Shanghai Municipality (Interim)* [关于延长《上海市电子商务知识产权保护工作若干意见(试行)》有效期的通知的说明, Guanyu yanchang shanghaishi dianzi shangwu zhishi chanquan baohu gongzuo ruogan yijian shixing youxiaqi de tongzhi de shuoming]. Archived June 28, 2023, at <https://sipa.sh.gov.cn/gfxwj/20230628/518361b6fe964e1bb9ce16064a50af1f.html>.

As a result, the probation period has been extended until 2023, demonstrating the effectiveness of local adaptation of central legislation for a specific practical issue and the practical influence of judiciary documents in the Chinese normative system.

terms of intellectual property protection, despite the inadequate intensity of administrative law enforcement, the judicial system does provide an effective and practical alternative.⁴⁴⁹

1.2.3.4.3 Judicial interpretations about the responsibility of platforms

In addition to the aforementioned judicial interpretations, there are certain articles that primarily address other issues related to e-commerce, discussing the legal responsibility of platforms that sell food or drugs. Examples of these articles include the *Provisions on Several Issues concerning the Application of Law in the Trial of Cases Involving Food and Drug* (2013, revised in 2020 and 2021) (关于审理食品药品纠纷案件适用法律若干问题的规定, Guanyu Shenli shipin yaopin jiufen anjian shiyong falyu ruogan wenti de guiding)⁴⁵⁰, as well as the *Interpretation on Several Issues concerning the Application of Law in the Trial of Civil Dispute Cases involving Food Safety (I)* (2020) [关于审理食品安全民事纠纷案件适用法律若干问题的解释（一）, Guanyu Shenli shipin anquan minshi jiufen anjian shiyong falyu ruogan wenti de jieshi (yi)]⁴⁵¹. These articles emphasize the special supervisory power of certain e-commerce platforms and contribute to the enforcement of the regulatory framework on the e-commerce platform.

⁴⁴⁹ The efforts made by the Supreme People's Court are positively affirmed, which provides more certainty than administrative enforcement. However, the connection between judgment and administrative enforcement is still needed to be coordinated. See Li Weimin, *Research on the Connection Mechanism between Administrative Law Enforcement and Judicial Judgement for Intellectual Property* (知识产权行政执法与司法裁判衔接机制研究, Zhishi chanquan xingzheng zhifa yu sifa caipan xiejie jinzhi yanjiu), in *China Journal of Applied Jurisprudence*, 2021, n. 2, pp. 100-123.

⁴⁵⁰ Accessed October 20, 2023, <http://gongbao.court.gov.cn/Details/8d9db1e11d4675ee0b4e0a7104d5a8.html?sw=%e9%a3%9f%e5%93%81%e8%8d%af%e5%93%81%e7%ba%a0%e7%ba%b7%e6%a1%88%e4%bb%b6>.

⁴⁵¹ Accessed October 20, 2023, <http://gongbao.court.gov.cn/Details/8928f1999a4b07f4b00395fda25598.html>.

Summary of Chapter 1

A preliminary comparison of the regulatory frameworks governing e-commerce in the EU and China reveals striking differences in the density and concreteness of the legal rules established by these two entities. This disparity stems from the fundamentally different nature of legislation in the EU and China. EU law represents a supranational legal framework designed to foster consistency among the domestic laws of EU member states; however, this consistency is often elusive in the form of specific regulations. Additionally, the EU regulations that are directly applicable and relatively precise frequently prioritize other subjects over e-commerce, further diminishing the number of EU-level rules relevant to this thesis. In contrast, Chinese law functions as a domestic legal framework, where specific rules governing e-commerce are largely developed by various central administrative departments. As a result, the level of detail and enforceability of Chinese regulations is significantly greater than that of EU law and is marked by a more pronounced fragmentation. Thus, it becomes clear that China has integrated a substantial amount of detail into its regulation of e-commerce, addressing specific issues such as the online sale of drugs, the registration of e-commerce operators and their exemption criteria, and the regulation of certain inappropriate marketing and pricing practices, all dispersed across various administrative legislations. Such topics are predominantly absent or even impractical within EU e-commerce legislation.

In terms of overall structure, there is no discernible difference between the e-commerce regulatory frameworks of the EU and China. Both aim to implement a strategy that extends beyond mere e-commerce. Both frameworks encompass an extensive but not sufficiently systematic general regulation, as well as multiple fragmented legislation. Both are currently undergoing a transition towards the development of more macro-level digital market regulatory legislation.

In the first place, e-commerce serves as a significant sub-topic within a broader context in both the EU and China. Within the EU, e-commerce is a critical component of the digital single market strategy. The promotion of e-commerce holds substantial

importance in advancing EU integration, developing and enhancing the EU internal market, and facilitating the digital transformation of EU member states. In China, e-commerce is inherently linked to the construction of Digital China, the Internet Plus initiative, and the five-year economic plan in recent decades. Recently, it has also taken on considerable significance in the establishment of a unified national market and in promoting the internal circulation of the national economy. The advancement of e-commerce in both the EU and China has been driven by a broader aspiration to enhance society and the economy.

In addition, in order to establish a comprehensive regulatory framework, it is necessary to have general legislation pertaining to e-commerce. However, due to the inherent characteristics of e-commerce, such general legislation is often lacking in comprehensiveness and systematicity. It is nearly impossible to define the boundaries of e-commerce or establish a complete internal structure for it. As a result, the general legislation on e-commerce, namely the *Directive on E-Commerce* of the EU and the *E-Commerce Law of China* in this thesis, focus on regulating only certain crucial aspects while expressing mere concerns about others. The finer details are left to more specific or lower-level legislation (and national legislation in the EU). Consequently, the specific legislation concerning e-commerce is never fully comprehensive or perfect, and other legislation related to e-commerce does not specifically regulate the field of e-commerce. This is a common, yet unsolvable dilemma faced by both the EU and China in their e-commerce regulatory frameworks.

In the current development stage of e-commerce, regulations governing e-commerce are encountering new challenges, as e-commerce has progressively evolved from a specific method of substituting offline transactions to an integral component of the market. Consequently, the concept of the *digital market* can be increasingly delineated from *e-commerce*, leading to the assertion that the emerging term *digital market* has gained prominence and value compared to the traditional and somewhat outdated term *e-commerce*.

Such diversion is evident in the regulatory frameworks of both the EU and China. The EU emphasizes digital market regulation over e-commerce transactions

themselves. It is notable that since the introduction of the *Directive on E-Commerce* in 2000, the EU has not specifically issued any additional systematic legal provisions dedicated to e-commerce. Furthermore, there have been limited targeted updates and supplements to the regulations and rules regarding e-commerce, such as those related to consumer protection, advertising regulation, and online dispute resolution, prior to the implementation of the *Digital Markets Act* and the *Digital Services Act*. Although the aforementioned two significant regulations do govern e-commerce platforms, they do not exclusively concentrate on the issue of e-commerce. Consequently, contemporary digital market regulation in the EU has, to a certain extent, superseded and enclosed the regulation regarding e-commerce.

In contrast, in China, despite the widespread popularity of the internet and the large scale of e-commerce, the e-commerce industry has still undergone extensive and even “savage” growth with limited supervision during its initial development. It is crucial for the sustainable and healthy growth of e-commerce to address and rectify any identified loopholes through administrative legislation. Consequently, there are several regulatory rules for various aspects of e-commerce in China that are not present in EU law. Although these regulations may not be comprehensive and systematic, they fulfill the requirements for China’s e-commerce development and provide valuable insights for regulators in other jurisdictions when formulating and implementing rules. As China’s e-commerce continues to integrate into the internet and various aspects of people’s lives, regulators have gradually begun to recognize the concept of the digital market. While there is no specific and systematic regulation dedicated to the digital market like the DMA and DSA, antitrust measures are being employed to comprehensively regulate the internet industry. The foreseeable trend is to enhance systematic oversight of major Internet companies while also addressing any regulatory loopholes. This will involve filling the gaps in e-commerce regulations and concurrently formulating broader legislation for the supervision of the digital market.

Chapter 2 Comparative Research on Regulation of E-Commerce Transactions

As concluded in the Introduction, e-commerce could be defined as the exchange of goods or services between two parties that takes place in cyberspace. Both the subjects and the objects in e-commerce have their own particularity. Thus, this Chapter will start from the analysis of subjects (2.1) and objects (2.2) in e-commerce.

Regarding the transaction itself, the contract is the fundamental form of e-commerce. With the increasing popularity of e-commerce, online contracts are no longer exceptional, but rather a distinct type of contract with a series of their own regulations.⁴⁵² Therefore, it is necessary to thoroughly examine e-commerce contracts, dividing this concept according to different stages, which would allow for a clear distinction of the complex rules involved.⁴⁵³ With this approach, four categories of rules can be identified that encompass the “full life cycle” of a digitalized contract:⁴⁵⁴ (1) Rules governing communication during the pre-contractual stage (2.3); (2) Rules concerning the conclusion of e-commerce contracts (2.4); (3) Rules pertaining the performance of e-commerce contracts (2.5); (4) Rules concentrating on post-contractual dispute resolution (2.6).

⁴⁵² Especially under the perspective of consumption law. See Paisant G., *Droit de la consommation*, Paris : Presses Universitaires de France, 2019, p. 372.

⁴⁵³ Similar methodology is adopted in existing research. See Ndukuma Adjayi K. (Dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, pp. 219-230.

⁴⁵⁴ Similar division, see Grundmann S., *European contract law in the digital age*, Bruxelles: Intersentia, 2018, p. 26.

2.1 Regulation on subjects of e-commerce

2.1.1 E-commerce sellers

The ontological problems about e-commerce sellers, specifically the definition (2.1.1.1), the identification (2.1.1.2), their taxonomy (2.1.1.3), should be considered as a prerequisite for the discussion on their basic duty of registration and publicity (2.1.1.4) imposed due to their professionalism and economic advantage. Besides, a relatively independent topic on the unique legal treatment towards platforms as a special subject in e-commerce (2.1.1.5) will be discussed separately.⁴⁵⁵

2.1.1.1 Definition

In China's legal system, e-commerce sellers are described with the term *e-commerce operators*, which refers to “natural persons, legal persons, and unincorporated organizations engaged in business activities of selling goods or providing services through the Internet and other information networks.”⁴⁵⁶

The factors defining an e-commerce operator are relatively simple: the type of subjects in the civil law sense (any recognizable subjects in civil law can conduct online business), the activity they engage in (primarily exchange for remuneration), the objects being exchanged (goods or services), and in the virtual marketplace

⁴⁵⁵ It is important to note that the framework for e-commerce operators is primarily based on Chinese regulations, which have been recognized by Chinese scholars as a pioneering legislative development in the global context. This is particularly evident in the regulations pertaining to platforms. See Xue Jun, *Review and Outlook after Five Anniversary of the Implementation of E-Commerce Law of China: Characteristics in Legislation and Thoughts about its Perfection* (《电子商务法》实施五周年回顾与展望：立法特点与完善思路, Dianzi shangwufa shishi wuzhounian huigu yu zhanwang: Lifa tedian yu wanshan silu), in *Research on China Market Regulation*, 2024, n. 1, pp. 8-11. On the contrary, EU legislation did not give similarly significant emphasis to the oversight of operators. Even the *Digital Market Act*, which focuses on digital platforms, primarily addresses competition governance rather than operator regulation.

⁴⁵⁶ Art. 9, Section 1 of the *E-Commerce Law of China*.

(typically the Internet).⁴⁵⁷ This straightforward yet broad definition encompasses a wide range of actors, interpreting *e-commerce operator* in Chinese law as any seller online.⁴⁵⁸

Within the EU framework, the concept generally referring to e-commerce seller is *service provider* in the *Directive on E-Commerce*.⁴⁵⁹ The service provider always provides “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.” The scope of *service* is apparently broader than *selling goods or providing services*. In order to delimit its range, the crucial element is believed to be *on demand*.⁴⁶⁰ By any means, though defined with different paths, the term *e-commerce operator* in China is indeed more precise and more specific than (*information society*) *service provider* in the EU, which also reveals the business nature of e-commerce. For these reasons, for the rest part of this thesis, only the term *e-commerce operator* will be used as a replacement for *e-commerce seller*.

⁴⁵⁷ See E-commerce Law of China Drafting Commission, *Interpretation of the Provisions of the Electronic Commerce Law of China* (中华人民共和国电子商务法条文释义, Zhonghua renmin gongheguo dianzi shangwufa tiaowen shiyi), Beijing: China Law Press, 2018, pp. 46-51.

⁴⁵⁸ In this regard, not only traditional large-scale Internet e-commerce platform companies like Taobao and Jingdong but also companies that conduct business transactions through the Internet, whether they establish their own websites for e-commerce transactions or sell goods or provide services through social media platforms such as WeChat, forum communities, and live broadcasts, could be included in the category of e-commerce operator. See Zheng Jianing, *Private Law Regulation of E-commerce Platform Operators* (电子商务平台经营者的私法規制, Dianzi shangwu pingtai jingyingzhe de sifa guizhi), in *Modern Law Science*, 2020, n. 3, pp. 166-179.

⁴⁵⁹ Art. 2 (b) (*Definitions*) of the *Directive on E-Commerce*: “Service provider: Any natural or legal person providing an information society service.”

⁴⁶⁰ According to the *Directive (EU) 2015/1535*, which replaces the *Directive 98/34/EC*, the key factor in defining a *service provider* is *on demand*. This additional factor is included to specifically exclude providers of traditional media such as TV and radio, which are also provided remotely and virtually, but in a continuous and initiative-taking manner, from falling within the scope of e-commerce. See Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 28-29.

2.1.1.2 Identification

The definition remains theoretical, whereas the practices of identifying e-commerce operators may offer us more insights. Three specific scenarios from the EU and China will be analysed individually to illustrate the process of recognizing an operator in e-commerce: Online intermediation service (2.1.1.2.1); Sellers in B2C and C2C e-commerce (2.1.1.2.2); Operators in online streaming e-commerce (2.1.1.2.3).

2.1.1.2.1 Intermediation service providers

The applicability of e-commerce law to online intermediation services was debated in the EU. Initially, it was believed that online intermediation services, particularly those involving transportation services, were considered to be “an integral part of an overall service”. Therefore, they should not be independently recognized as information society services to which the *Directive on Electronic Commerce* could be applied.⁴⁶¹ The case C-320/16 further solidified the inherent link between intermediation services and the principal service (which in this case is transportation), considering that without the application developed for intermediation services, neither drivers nor consumers would be directed towards the agreement of a transportation service.⁴⁶²

While a service provider not only offers online intermediation services but also provides additional services, it should be considered relatively independent from the principal intermediation service in order to avoid being regarded as part of the overall service provision procedure. Thus, in this case, the service provider cannot be integrated into the scope of principal intermediation service and cannot be exempt

⁴⁶¹ See C-434/15 - *Asociación Profesional Elite Taxi*, ECLI:EU:C:2017:981, para. 40-42.

⁴⁶² Additionally, the Uber platform exercises significant control over the provision of transportation services, which strengthened the reason for defining intermediary service providers as service providers. See C-320/16 - *Uber France*, ECLI:EU:C:2018:221, para. 21.

from the specific regulations of e-commerce law.⁴⁶³ In other words, on the one hand, only pure intermediation service cannot be considered as an object qualified under the regulatory framework of e-commerce. On the other hand, as long as an intermediation service provider provides other independent services beyond the scope of intermediation, it should be regulated by e-commerce law.

Nevertheless, in China, there is no doubt that intermediation service providers can be directly identified as e-commerce operators in theory, even if the intermediation service is relatively pure.⁴⁶⁴ Judicial practice also confirms this opinion. For instance, in a case where the plaintiff sought compensation for damages caused by a goods transportation service provided through a third-party platform, the court ruled that the platform, acting as a mediator and an e-commerce operator, is solely responsible for the intermediation service and is obligated to fulfill the duties imposed on e-commerce operators. However, since the damage occurred during the transportation process, while the platform has fulfilled its duties, it should not be held liable in this particular case.⁴⁶⁵

2.1.1.2.2 Distinction between professional and amateur online sellers

It is not a challenging task to identify the seller in an online transaction, but distinguishing a professional seller from an amateur one might not be as

⁴⁶³ See C-390/18 - Airbnb Ireland, ECLI:EU:C:2019:1112, para. 51-64. Some scholars believe the attitude of Court of Justice lacking consistency. See Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, p. 29. As stated by the court: “an intermediation service which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation services, **while also providing a certain number of services ancillary to that intermediation service**, must be classified as an ‘information society service’ under Directive 2000/31.” C-390/18 - Airbnb Ireland, ECLI:EU:C:2019:1112, para. 69.

⁴⁶⁴ See Liu Ying, *The Scope of Social Relations Adjusted by the Electronic Commerce Law of China* (我国电子商务法调整的社会关系范围, Woguo dianzi shangwufa tiaozheng de shehui guanxi fanwei), in *China Legal Science*, 2018, pp. 195-216.

⁴⁶⁵ See *Shanghai Liyan Co. v. Xu Yonglong*, People’s Court of Jinshan District, Shanghai, 2022, Civil Judgement n. 9166.

straightforward. From a theoretical perspective, the boundary between B2C and C2C e-commerce is rather clear. However, in legal practice, differentiating B2C transaction from C2C transaction can be challenging, especially when it involves transactions on second-hand trading platforms. In such cases, professional and enterprise sellers often masquerade as amateur or personal sellers in order to evade the regulations of e-commerce law.⁴⁶⁶ A typical case perfectly reflected this phenomenon and demonstrated the firm stance of Chinese justice: anyone who continuously sells second-hand goods for profit online, regardless of the form it takes, shall be identified as an e-commerce operator.⁴⁶⁷

Even the Supreme People's Court of China cannot propose an absolute standard. Instead, it has only listed several factors as references for judging whether the seller is a professional businessperson.⁴⁶⁸ Once the seller is identified as an e-commerce operator, the buyer can enjoy consumer rights. Otherwise, the buyer can only be protected by general contract law rules.⁴⁶⁹

⁴⁶⁶ On the situation about this problem in China's judicial practice, see Zheng Xuelin, Liu Min, Gao Yanzhu, *Understanding and Application of Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I)* (《最高人民法院关于审理网络消费纠纷案件适用法律若干问题的规定(一)》的理解与适用, *Zuigao renmin fayuan guanyu Shenli wangluo xiaofei jiufen anjian shiyong falyu ruogan wenti de guiding yi de lijie yu shiyong*), in *China Journal of Applied Jurisprudence*, 2022, n. 3, pp. 19-29.

⁴⁶⁷ *Wang Xuejing v. Chen Huyi*, Court of Internet, Beijing, 2020, Civil Judgement n. 12226. This is a typical case selected by the Supreme People's Court and trailed by the Beijing Internet Court in 2020. This case is also included in another ten typical cases of online consumption selected by Supreme People's Court published in 2023, accessed March 23, 2024, <https://www.court.gov.cn/zixun/xiangqing/393481.html>.

⁴⁶⁸ These factors include the nature, source, quantity, price, frequency of the goods sold, and whether there are other sales channels and income for the sellers. [Art. 7 of the *Judicial Interpretation on Online Consumption (2022)*]

⁴⁶⁹ The attention on the distinction between B2C and C2C e-commerce serves as an ideal starting point for reflecting on the emphasis of e-commerce law, particularly on the type of e-commerce that deserves special attention. In fact, only B2C e-commerce is both universal and distinctive. When discussing e-commerce law, the focus is naturally and primarily on this issue, rather than B2B or C2C e-commerce. See Yang Lixin, *Subjects and Types of Legal Relations in E-Commerce Transactions under the E-Commerce Law* (电子商务法规定的电子商务交易法律关系主体及类型, *Dianzi shangwufa guiding de dianzi shangwu jiaoyi falyu guanxi zhuti ji leixing*), in *Journal of Shandong University (Philosophy and Social Sciences)*, 2019, n. 2, pp. 110-120.

2.1.1.2.3 Emerging unorthodox e-commerce operators

In recent years, online streaming marketing and related e-commerce transactions have become a trend. Hundreds of millions of cyber-consumers access e-commerce through online streaming platforms, which accounts for nearly two-thirds of the e-commerce volume in China.⁴⁷⁰ Online streaming not only facilitates promotion and offers discounts, but also includes purchase links, making it easier for the audience to make transactions directly. This makes online streaming not only a medium for advertising, but also the substantial e-commerce transaction itself.⁴⁷¹ Regarding this phenomenon, special regulations have been introduced in recent years.

Fundamentally, transactions that take place in online streaming marketing are considered “online business conducted via information network.”⁴⁷² Therefore, they inherently fall under the category of e-commerce.

The subjects conducting online living e-commerce, no matter its identity, shall perform duty of consumer protection.⁴⁷³ Although this requirement does not definitively resolve the question of who should be considered the e-commerce operator in online streaming e-commerce, it at least settled the bottom line regarding this field: Consumer protection shall always be prioritized, regardless of whether other issues have been resolved.

As for determining who is the actual e-commerce operator among the subjects

⁴⁷⁰ Until the end of 2022, the amount of e-commerce users arrived 845 million, among which the scale of e-commerce users reached 515 million. The proportion of the latter ought to increase in 2023. Statistics resource: *E-Commerce in China (2022)*, archived June 3, 2023, at <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

⁴⁷¹ Online streaming e-commerce has a dual nature, encompassing both marketing and e-commerce. See Han Xinyuan, *Theoretical Review and Governance Research on Online Streaming E-Commerce* (直播带货的学理审视与治理研究, Zhibo daihuo de xueli shenshi yu zhili yanjiu), in *Science Technology and Law*, 2022, n. 1, pp. 62-68. Therefore, the regulation pertaining to this subject and the pre-contractual stage of e-commerce should be applied concurrently. This topic will be further discussed in another section of this thesis (2.3.1.2).

⁴⁷² According to Art. 2, Section 2 of the *Measures on Supervision and Administration of Online Trading*.

⁴⁷³ Art. 14, Section 1 of the *Implementation Regulation of the Consumer Rights and Interests Protection Law*: “If an operator provides goods or services through online live streaming or other means, it shall perform relevant obligations on consumer rights protection in accordance with the law.”

involved in online living e-commerce, it may be not appropriate to propose a universal standard, as the actual role played by anchors, their organizers, the online streaming platform and the actual sellers of goods are always varying. For this reason, conducting a case-by-case review might be the most accurate solution.⁴⁷⁴

However, in accordance with existing legislation, the operators of online streaming studios are generally responsible for all transactions conducted within their studios. This is because they are neither too closely involved nor too distant from the transactions, and they serve as the organizers of online live e-commerce activities.⁴⁷⁵ In this regard, when interacting with consumers, the statements made by the anchors represent the commitments made by the studio operator, even if they intentionally engage in false promotion, the studio operator is always responsible for the consequences.⁴⁷⁶ Furthermore, when the studio operators do not directly sell products or provide services themselves, unless they clearly indicate to consumers that they explicitly sever any commercial connection with the real seller, they are still always

⁴⁷⁴ The application of this method in research, see Liu Ke, Huang Bochen, *The Legal Responsibilities and Regulatory Logic of E-Commerce Live-Streaming Activities* (电商直播带货行为主体的法律责任及规制逻辑, Dianshang zhibo daihuo zhuti de falyu zeren ji guizhi luoji), in *Jiangnan Tribune*, 2023, n. 10, pp. 139-144. Therefore, the responsibility as an e-commerce operator should not always fall solely on the actual seller in online living e-commerce. See Zhou Shuo, *Legal Responsibility of Online Living Platforms in Online Streaming E-Commerce* (网络直播带货中直播平台的法律责任, Wangluo zhibo daihuo zhong zhibo pingtai de falyu zeren), in *Journal of Law Application*, 2022, n. 7, pp. 133-144.

⁴⁷⁵ See Han Xinyuan, *Theoretical Review and Governance Research on Online Streaming E-Commerce* (直播带货的学理审视与治理研究, Zhibo daihuo de xueli shenshi yu zhili yanjiu), in *Science Technology and Law*, 2022, n. 1, pp. 62-68.

⁴⁷⁶ Art. 11 of *Judicial Interpretation on Online Consumption (2022)*: “Where an operator on a platform opens an online live broadcast studio to sell commodities, and its staff members cause damage to consumers due to false publicity during the live broadcast, and the consumer claims that the operator on the platform should assume liability for compensation, the people’s court shall uphold such a claim.”

accountable for the products sold within their studios.⁴⁷⁷

2.1.1.3 Taxonomy

EU legislators did not differentiate between diverse groups of e-commerce operators, whereas the Chinese regulatory framework is indeed based on the distinction between platforms and other operators, which has resulted in several regulatory innovations and could be advantageous for more effective e-commerce regulation.

Under Chinese regulatory framework, e-commerce operators are categorized into three groups: e-commerce platform operators, operators inside the platform, and other e-commerce operators who use self-built websites or other web services.⁴⁷⁸ This classification is influenced by the dominant presence of platform economy in the Chinese e-commerce industry and accurately reflects the current situation of Chinese e-commerce.⁴⁷⁹ When considering Internet social network e-commerce and online streaming e-commerce, if they offer services to operators that actually facilitate online business, such as providing a marketplace, generating orders, and enabling online payment, they should also be recognized as e-commerce platform operators.⁴⁸⁰

The above categorization reflects the unequal relationship among e-commerce operators, especially between e-commerce platform operators and operators inside the

⁴⁷⁷ Art. 12, Section 1 of *Judicial Interpretation on Online Consumption (2022)*: “Where a consumer suffers damage to his or her lawful rights and interests by clicking on the online live broadcast studio to purchase a commodity, and the live broadcast studio operator cannot prove that it has marked that it is not the seller and has marked the actual seller in a way sufficient for consumers to identify, and the consumer claims that the operator of the live broadcast studio should assume the liability as commodity seller, the people’s court shall uphold such a claim.”

⁴⁷⁸ According to Art. 9 of the *E-Commerce Law of China* and Art. 7 Section 1 of the *Measures on Supervision and Administration of Online Trading*. They adopted similar definition paths.

⁴⁷⁹ See Yuan Kang, Liu Hanguang, *Legal Dilemmas and Solutions to the Protection of the Rights and Interests of Operators within the Platform: From the Perspective of Returning to the Theory of Relative Advantageous Position* (平台内经营者权益保护的法律困境与破解——回归相对优势地位理论的视角, Pingtainei jingyingzhe quanyi baohu de falyu kunjing yu pojie: Huigui xiangdui youshi diwei lilun de shijiao), in *Study and Exploration*, 2022, n. 10, pp. 80-89.

⁴⁸⁰ According to Art. 7 Section 4 of the *Measures on Supervision and Administration of Online Trading*.

platform. Chinese legislator has established rules to rebalance it, aiming to limit the advantageous position of platform operators and prevent exploitation from the platform towards operators within it.⁴⁸¹

The existing imbalance and the “private power” of platforms are also recognized within certain limits, which could be fully observed in the *E-Commerce Law of China*.⁴⁸² Of course, the power of online platforms, especially that regarding platform admission inspection, are widely spread in Chinese legal system.⁴⁸³ In addition, that power is not neither introduced for the first time by the *E-Commerce Law of China*.⁴⁸⁴

With certain regulatory authorities against operators within platform granted,

⁴⁸¹ For instance, according to Art. 34 of the *E-Commerce Law of China*, e-commerce operators cannot modify platform rules in an absolutely unilateral way. According to Art. 35 of the *E-Commerce Law of China*, they shall not use any measure to undermine fair competition within platform, such as setting unreasonable conditions against transactions and charging unreasonable transaction fees.

⁴⁸² For instance, according to Art. 28 of the *E-Commerce Law of China*, platforms could supervise information disclosure and registration of operators within the platform. According to Art. 36 of the *E-Commerce Law of China*, platforms have ability to issue timely warnings and suspend illegal or platform-rules-violating activities of operators within the platform.

⁴⁸³ Other laws enacted after the *E-Commerce Law of China* have adopted a similar approach, enhanced the internal control authority of online trading platforms, and concurrently increased their corresponding obligations. For example, Art. 62, Section 2-3 of the *Medicinal Product Administration Law of China* (中华人民共和国药品管理法, *Zhonghua renmin gongheguo yaopin guanli fa*), incorporated through the most recent revision in 2019, authorize and require third-party online trading platforms involving medicinal products sale to assess the qualifications of operators seeking to distribute on the platform, oversee their medical distribution activities, as well as stop their illegal behaviours. Accessed October 19, 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0NjI0MmQ2MTI3ZWQ%3D>.

⁴⁸⁴ As early as 2015, during the first revision of the *Food Safety Law of China*, third-party online platforms selling food were required to register the names of operators within the platforms, examine their licenses, and supervise their illegal activities. The supervision responsibility is further concretized by Art. 10 of *Measures on Administration on Food Recalls (2015)* (食品召回管理办法, *Shipin Zhaohui guanli banfa*), promulgated by former China Food and Drug Administration, which demands the platforms to immediately cease the online platform services to assure that the sale of unsafe foods is ceased. Archived October 20, 2023, https://www.gov.cn/gongbao/content/2015/content_2937326.htm. The responsibility of platforms was enforced through the imposition of fines, suspension of business, and revocation of licenses (Art. 62 and Art. 131, Section 1 of the *Food Safety Law of China*).

platforms are sharing a portion of regulatory power on e-commerce with the State.⁴⁸⁵ Thus, nowadays e-commerce platforms have multiple roles: when dealing with the government, they act as co-governors of the market and are jointly responsible for certain illegal behaviours; when interacting with platform operators, they function as counterparties in contractual agreements and also act as supervisors when the platform is equipped with administrative authorizations.⁴⁸⁶

2.1.1.4 Publicity duty

In the field of commercial law, merchants are always subject to special duties and responsibilities. In the case of e-commerce operators, this thesis will focus solely on their most typical duty of publicity. As mentioned earlier, the registration of e-commerce operators is typically mandatory only in China, while the requirement of publicity is common in all jurisdictions.

Publicity is an essential necessity for e-commerce operators, as it serves as a continuous reminder to consumers about the identity of the sellers. The key information that needs to be made public is the basic business details, which enable consumers to gain a general understanding of the other party involved.⁴⁸⁷ This information should be easily accessible to all potential counterparts. In the context of e-commerce, the most common virtual platform for publicity is the homepage of the website or virtual store. Besides, as e-commerce models continue to expand, the

⁴⁸⁵ In this regard, scholars have proposed the meta-regulation theory, which not only respects the primary and dominant position of Internet platform self-regulation but also advocates the use of government re-regulation to make up for or eliminate the defects of Internet platform self-regulation, providing a feasible institutional paradigm and operational plan for solving the governance problems of Internet platforms. See Huang Wenyi, Sun Zheyue, *On the Meta-Regulatory Approach to Internet Platform Governance* (论互联网平台治理的元规制进路, Lun hulianwang pingtai zhili de yuanguizhi jinlu), in *Law Review*, 2024, n. 3, pp. 111-122.

⁴⁸⁶ A summary of the above situation in China could be observed in several legal works, including Liu Quan, *The Publicness of Network Platforms and Their Realization: From the Perspective of Legal Regulations of E-Commerce Platforms* (网络平台的公共性及其实现——以电商平台的法律规制为视角, Wangluo pingtai de gonggongxing jiqi shixian: Yi dianshang pingtai de falyu guizhi wei shijiao), in *Chinese Journal of Law*, 2020, n. 2, pp. 42-56.

⁴⁸⁷ A detailed comparison between China and the EU will be conducted later in the sub-section about pre-contract information duty (2.3.2).

avenues for publicity should also be expanded.⁴⁸⁸

In China, the method of disseminating information differs somewhat. Information that is recorded after the registration of market subjects is typically only accessible to competent authorities and is not available to the general public. The only means by which the public can access this information is through the business license issued by the registration authority.⁴⁸⁹ Therefore, all market subjects are required to continuously make their business license public, and e-commerce operators are no exception.⁴⁹⁰ Even if exempt from registration, it is still necessary to publicize basic information.⁴⁹¹ Additionally, Chinese legislators have taken note of situations where e-commerce operators transfer or suspend their virtual business and have implemented specific requirements regarding the public disclosure of relevant information.⁴⁹²

2.1.1.5 Special subject: Platforms

E-commerce is increasingly conducted through platforms, which has become an independent important target of regulation. The concept of “platformization” is a

⁴⁸⁸ For example, according to Art. 13 Section 2 of *Implementation Regulation of Consumer Rights and Interests Protection Law*, in any case, the real name and trademark of the e-commerce operators should be provided on the streaming page, in promotional materials, or in the product catalogue.

⁴⁸⁹ This license includes information such as the name, legal representative, business form, capital, domicile, business scope, registration authority, establishment date, and unified social credit code (Art. 23, Section 1 of the *Detailed Rules for the Implementation of the Regulation on the Administration of the Registration of Market Entities*).

⁴⁹⁰ They should publicize their license with special technical methods, such as a hyperlink to their business license, in a prominent position on their homepage (Art. 36 of the *Regulation on the Administration of the Registration of Market Entities*).

⁴⁹¹ However, there is an evident reduction for the items to be publicized, including a self-declaration of their individual business nature, the scope of their business, business address, and contact information. (Art. 12 section 3 of *Measures on Supervision and Administration of Online Trading*).

⁴⁹² If an online business is transferred without sufficient information dissemination, both the former and current e-commerce operators are mutually responsible for compensating consumers. [Art. 6 of the *Judicial Interpretation on Online Consumption (2022)*].

When terminating online business, a minimum of 30 days’ advance notice for the closure or relocation of a business is required, which must include contact information for unresolved consumer issues. (Art. 21 of *Implementation Regulation of Consumer Rights and Interests Protection Law*)

component of the “re-intermediation” of the economy, which aligns with the evolution of e-commerce.⁴⁹³ Platforms are considered to be an ideal marketplace in contemporary society, and the governance of digital platforms has emerged as a significant aspect of market governance, encompassing issues such as market monopoly, information control, and digital ethics, which thus necessitates a differentiated regulation on general e-commerce operators and e-commerce platforms.⁴⁹⁴

Different countries and regions have developed distinct governance models based on their unique historical contexts and institutional traditions. Platforms entered the vision of Chinese legislators since 2013.⁴⁹⁵ The representative legislative definition about platforms in China, however, exists in a legal document that is not directly associated with e-commerce, where *e-commerce platform* is defined as the enterprise that offers online business premises, transaction matching, information release, and other services to enable independent trading activities for multiple parties involved in e-commerce.⁴⁹⁶ While in the EU, with the DSA, online platform is described as “a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and

⁴⁹³ See Cassar B., *La transformation numérique du droit : les enjeux autour des LegalTech*, Bruxelles : Bruylant, 2021, pp. 83-84.

⁴⁹⁴ This can be seen as a significant innovation of *E-Commerce Law of China*, as it divides competitive clauses into two parts: Art. 22 for general e-commerce operators and Art. 35 for e-commerce platforms. See Dai Long, *Studies on the Application of Competition Regulation Clauses in the E-commerce Law* (论我国《电子商务法》竞争规制条款的适用, Lun woguo dianzi shangwufa jingzheng guizhi tiaokuan de shiyong), in *Research on Rule of Law*, 2021, n. 2, pp. 149-160.

⁴⁹⁵ It was a newly introduced provision, Art. 44 of the *Consumer Rights and Interests Protection Law of China*. This provision addresses situations where consumers purchase products or services through online transaction platforms and subsequently seek compensation. Art. 44 determines the party responsible for providing compensation between the platforms and the actual sellers or service providers. Although this provision is included in a legislation about consumer protection, it did start the regulation on e-commerce platform in China.

⁴⁹⁶ Art. 5, Section 3 of the *Measures on the Administration of the Use and Reporting of Single-Use Plastics by Businesses in the Commercial Field*, which apparently does not primarily concentrate on e-commerce.

technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this *Regulation*.”

The above two legislative definitions mainly concentrate on the businesses conducted by the platforms. While the French legislators noticed the essence of platform. As they defined, platform should (a) provide an “online public communication service based on ranking or referencing” and (b) its technical support should be “using computer algorithms”.⁴⁹⁷ In this way, the fundamental attribute of a platform could be described as “intermediary of information” (infomédiation).⁴⁹⁸ These elements encapsulate the inherent feature of platforms, namely that they consistently deliver information after it has undergone filtration within an obscure black box. The algorithm, devised by the developers of the respective platforms, functions as the facilitator in establishing and upholding this black box, which becomes even more influential when considering the attention economy hypothesis.⁴⁹⁹ Inspired by the French legislation on platforms, we could assume that the contemporary online platforms have already evolved into a complex amalgamation of capital and algorithm.⁵⁰⁰

From the legal perspective, the most challenging issue about platform regulation in e-commerce transactions, perhaps, is determining the precise role played by e-commerce platforms. There are two types of e-commerce platforms: the “collaborative”

⁴⁹⁷ Art. 49 of Loi n° 2016-1321 (*Loi pour une République numérique*), referred to as the LPN, modifying Art. L. 111-7 of the *Code of Consumption of France*.

⁴⁹⁸ See Sénéchal J., « L’opérateur de plateforme en ligne et le droit économique », in Sénéchal J., Stalla-Bourdillon S. (dir.), *Rôle et responsabilité des opérateurs de plateforme en ligne : approche(s) transversale(s) ou approches sectorielles ? : actes du colloque du 24 novembre 2016*, Paris : IRJS éditions, 2018, p. 5.

⁴⁹⁹ See Piedelièvre S., *Droit de la consommation*, Paris : Economica, 2020, p. 105.

⁵⁰⁰ We also need to understand the significance of algorithm. For example, according to ISO/IEC 2382:2015, a standard promulgated by ISO, an algorithm is defined as a “finite ordered set of well-defined rules for the solution of a problem”. Accessed November 2, 2023, <https://www.iso.org/obp/ui/en/#iso:std:iso-iec:2382:ed-1:v2:en>.

platform and the “marketplace” platform.⁵⁰¹ Therefore, it is necessary to distinguish the e-commerce conducted by platforms themselves and by other operators within platforms, namely the distinction between platforms’ functions as seller and marketplace. As consumers are easily confused by the actual role played by the platforms thus they are vulnerable to be misled, it should be the platform that take the responsibility for ensuring clarity and bear the negative result when consumers are confused.⁵⁰² Especially, once certain crucial factors demonstrates that the platforms might be the actual counterparty in e-commerce transaction,⁵⁰³ they shall take corresponding liability without any doubt.

Even if as an intermediary that mainly publish commercial information instead of engaging in e-commerce transactions, the platforms shall still perform certain duties (regarding the regulatory entities).⁵⁰⁴ If the platforms fail to meet these requirements, they cannot evade the responsibility arising from the illegal activities carried out by

⁵⁰¹ See Gola R.V., *Droit du e-commerce et du marketing digital : sécurisez et développez votre e-business*, Paris : Gualino, 2019, p. 42.

⁵⁰² In China’s practice, as per Art. 4 of the *Judicial Interpretation of Online Consumption (2022)*, platforms are required to clearly label their self-operated products or services to avoid any potential confusion. Whether a platform engages in self-operated business without proper labeling or if a third-party operator is the actual seller, but the labeling misleads consumers into believing that the platform is the operator, the platform will always bear responsibility for any resulting issues.

⁵⁰³ According to Art. 2, Section 2 of the *Notice Regarding Issuing Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-Commerce Platforms* of the Supreme People’s Court of China valid factors useful for making such determination include the presence of the *self-operated* mark on the sales page, the information of the seller indicated on the product, and the seller indicated on the invoice or other transaction certificate.

⁵⁰⁴ For example, even the online live streaming platforms that merely provide a channel for information publication have a duty to ensure consumer protection, including recording, preserving, and providing basic information about the online streaming e-commerce operators, restoring live video, and especially implementing an internal platform e-commerce dispute resolution mechanism. [Art. 14 Section 1 of *Implementation Regulation of Consumer Rights and Interests Protection Law (2024)*]

operators within the platforms.⁵⁰⁵ In this regard, the platform cannot simply consider itself as a marketplace and distance itself from all the transactions that occur within the platform.⁵⁰⁶

2.1.2 Cyber-consumers

Purchasers in the e-commerce landscape are more vulnerable, as they have less information and technology compared to the sellers.⁵⁰⁷ Therefore, one of the most challenging issues in e-commerce is providing equal protection to cyber-consumers.⁵⁰⁸ The achievement of such objective may be constrained by various factors, particularly technological limitations and the virtual nature of online transactions. Therefore, it is insufficient to solely apply existing consumer protection rules in the e-commerce field. Instead, specific cyber-consumer protection rules addressing unique online issues

⁵⁰⁵ A fairly appropriate example is the responsibility of online living platforms for improper commercial behavior of anchors who broadcast live on the platform, as long as the platforms fail to fulfill their obligations of recording, supervising, and restraining content. [Art. 14-16 of the *Judicial Interpretation of Online Consumption (2022)*] Similar analysis could be found in Ece Baş Süzel, *Responsibility of Online Platforms Towards Consumers*, in *Journal of European Consumer and Market Law*, 2023, n. 6, pp. 226-232.

⁵⁰⁶ In the current Chapter, we will only discuss the role of platforms in e-commerce transactions. The other responsibilities of platforms with a public law nature, as mandated by the general regulatory framework on platforms, will be examined in Chapter 3.

⁵⁰⁷ In order to ensure the protection of cyber-consumers, it is important to acknowledge that these purchasers cannot be solely defined as *online buyers*, which neglects their weak position. In this regard, only (online) consumers could be entitled to special protection under the e-commerce legal framework. On the necessity of protecting online consumers, see D'Elia P., *Commercio elettronico e nuove frontiere dell'autonomia privata. Contrattazione online e tutele dell'utente nelle esperienze europea e statunitense*, Torino, 2022, p. 6; Yang Lixin, *Subjects and Types of Legal Relations in E-Commerce Transactions under the E-Commerce Law* (电子商务法规定的电子商务交易法律关系主体及类型, Dianzi shangwufa guiding de dianzi shangwu jiaoyi falyu guanxi zhuti ji leixing), in *Journal of Shandong University (Philosophy and Social Sciences)*, 2019, n. 2, pp. 110-120.

⁵⁰⁸ For example, treating online consumers in the same way as offline consumers might be an achievable objective. See Paisant G., *Droit de la consommation*, Paris : Presses Universitaires de France, 2019, p. 370.

should be developed.⁵⁰⁹

The legal protections designed for online consumers can be categorized into two groups. The first group pertains to measures that prevent unfair treatment from e-commerce operators through the use of technical methods (2.1.2.1). The second group involves the expansion of existing consumer protection rights,⁵¹⁰ including the right to make autonomous choices (2.1.2.2) and the right of withdrawal and right to return (2.1.2.3), which need to be adapted with digital features. However, there is still a risk of the misuse or abuse of consumers' rights, which is also ought to be deterred (2.1.2.4).

2.1.2.1 Fair trade in e-commerce

Both the information and expertise in information technology between e-commerce traders and consumers are in an asymmetrical situation.⁵¹¹ Based on big data and a specific algorithm, it is effortless to discriminate against diverse groups of consumers. This discrimination significantly reduces fairness in e-commerce transactions and increases the overall cost for consumers. The most common target group for this discrimination is frequent clients of e-commerce platforms, who may sometimes be offered higher prices compared to unfamiliar and new clients.

To address this issue, Chinese legislators are in a leading position.⁵¹² They have

⁵⁰⁹ In this regard, a work investigated the characteristics of the digital consumer, highlighting the differences between the latter and the traditional one under the EU law framework, describing the evolution from traditional to digital consumer with concern to some material sectors such as electronic commerce, electronic contracts, electronic communications, the protection of personal and non-personal data, see Battaglia F., *Il consumatore digitale nel diritto dell'Unione europea*, Napoli, 2023.

⁵¹⁰ In this regard, it should be noticed that the rights of consumers under EU regulatory framework have not been sufficiently "digitalized". Of course, from the other aspect, we could consider that the EU legislator has provided equal protection to offline consumers and online consumers. In any sense, due to the above fact, the system of "digitalized" consumer rights is organized according to Chinese corresponding regulatory framework.

⁵¹¹ See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris : L'Harmattan, 2021, p. 158.

⁵¹² The algorithmic consumer price discrimination is not generally recognized as illegal, while whether and how to restrict it is still in discussion. To address this issue, Art. 101 (Antitrust and cartels) and Art. 102 (abuse of a dominant position) of the *Treaty on the Functioning of the European Union* are usually cited as legal basis, though somewhat far from the consumer protection. See Townley, C., Morrison, E., & Yeung, K. (2017). Big Data and Personalised Price Discrimination in EU Competition Law. *Yearbook of European Law*, 36, 683–748.

implemented a provision generally forbidding activities that “refrain from setting different prices or charging standards for the same goods or services under the same transaction conditions without informing consumers”.⁵¹³ Now, the scope of protection has been expanded to “any unreasonably different transaction conditions provided to counterparties with the same conditions”.⁵¹⁴ The punishment assuring the enforcement of the above rules is heavy fines.⁵¹⁵

Chinese legislators further specify two types of activities with technical discrimination nature,⁵¹⁶ including (1) Using big data analysis, algorithms and other technical means, based on the preferences, trading habits and other characteristics of consumers or other operators, and based on factors other than cost or legitimate marketing strategies, to set different prices for the same goods or services under the same trading conditions and (2) in order to squeeze out competitors or monopolize the market, e-commerce platform operators that do not yet have a dominant market position use subsidies and other forms to dump prices below cost, so that disrupting the normal production and operation order and harming national interests or the legitimate rights and interests of other operators.⁵¹⁷

These two activities are commonly observed in current Chinese e-commerce

⁵¹³ Art. 9 Section 2 of the *Implementation Regulation of Consumer Rights and Interests Protection Law*.

⁵¹⁴ Art. 20 Section 1 of the *Interim Measures on Online Anti-Unfair Competition*.

⁵¹⁵ In certain regions, like Shenzhen, price discrimination based on big data analysis may result in a significant fine of up to 5% of the previous year’s turnover, according to Art. 69 and Art. 95 of the *Data Regulation of Shenzhen Special Economic Zone (2021)* (深圳经济特区数据条例, Shenzhen jingji tequ shuju tiaoli). Accessed April 2, 2024, <https://www.sz.gov.cn/attachment/0/980/980196/9835431.pdf>.

⁵¹⁶ According to Art. 13 of the revision draft for comments of *Provisions on the Administrative Punishment of Price-related Violation (2021)*. Accessed October 25, 2023, https://www.samr.gov.cn/hd/zjdc/art/2023/art_3daad79555b3457ba520d6303b1132b2.html.

⁵¹⁷ There are also justifiable reasons. The disparate treatments towards consumers with the same conditions could be considered as regular commercial promotion in following situations: (a) Promotional activities for new users within a reasonable timeframe; (b) Random transactions carried out according to fair, reasonable, and non-discriminatory rules; (c) Any other varying transaction conditions based on the actual requirements of the transaction counterparty and in accordance with legitimate transaction customs and industry practices. (Art. 20 section 2 of *Interim Measures on Online Anti-Unfair Competition*)

practices. The former is occasionally encountered by cyber-consumers on large retail e-commerce platforms, such as Jingdong and Taobao, through specific operations in what is known as the algorithm black box.⁵¹⁸ The latter is a popular marketing “strategy” employed by established and emerging e-commerce platforms, such as Didi (an online ride-hailing platform), Meituan (an online takeaway platform), and Pinduoduo (an online retail platform).⁵¹⁹ Unfortunately, perhaps due to resistance from various aspects, the revision draft has not yet been approved.⁵²⁰

However, effectively addressing this dilemma might be exceedingly challenging, since it is arduous to prevent platform operators from excessively acquiring consumer information, to regulate the differentiated pricing behavior of platform operators, to guarantee the restitution requirements of discriminated consumers, and even to quantify the harm suffered by consumers who have experienced discrimination.⁵²¹

⁵¹⁸ In China the phenomenon *big data price discrimination* is usually described as 大数据杀熟 (Dashuju shashu, discriminating the loyal customers). It reflects an economic logic that (1) Monopoly power is the source of big data price discrimination; (2) the essence of big data price discrimination is unfair high-price discrimination. See Xiong Hao, Zhao Xiaolan, Yan Huili, Xu Yumiao, *The Price Discrimination Mechanism of Big Data Price Discrimination from the Perspective of Monopoly Power* (垄断势力视角下平台大数据杀熟的价格歧视机理, Longduan shili shijiao xia pingtai dashuju shashu de jiage qishi jili), in *Journal of Hainan University (Humanities & Social Sciences)*, 2023, n. 6.

⁵¹⁹ Price subsidy is the most common form, which further consists of price dumping or predatory pricing, creating serious externalities, severely damaging normal competitive competition. See Qu Zhentao, Zhou Zheng, Zhou Fangzhao, *Competition and Regulation of E-commerce Platforms under Network Externalities: A Study Based on Two-Sided Market Theory* (网络外部性下的电子商务平台竞争与规制——基于双边市场理论的研究, Wangluo waibuxing xiade dianzi shangwu pingtai jingzheng yu guizhi: Jiyu shuangbian shichang lilun de yanjiu), in *China Industrial Economics*, 2010, n. 4, pp. 120-140.

⁵²⁰ Since these activities involve price law, competition law, platform economy regulation and other fields, a reasonable and balanced regulation might be difficult merely based on current legislations. A new legislation directly regarding this issue is urgently in need. See Feng Hui, Ma Ruiyang, *Legal Regulation of Platform Price Subsidy Behavior* (平台价格补贴行为的法律规制, Pingtai jiage butie xingwei de falyu guizhi), in *Social Scientist*, 2023, n. 9, pp. 98-105.

⁵²¹ See Zheng Xiang, Wei Shuyuan, *Consumer Rights Protection under Algorithmic Pricing Mode* (算法定价模式下的消费者权益保护, Suanfa dingjia moshi xiade xiaofeizhe quanli baohu), in *Journal of Northeast Normal University (Philosophy and Social Sciences)*, 2022, n. 4, pp. 83-90. Therefore, the current regulation may serve as a minimal yet effective deterrent for platforms that possess algorithmic power.

2.1.2.2 Right to make autonomous choices

Autonomous choice among sellers and goods or services is an inherent right of consumers recognized by Chinese legislators.⁵²² However, this right may be restricted or even eliminated by e-commerce platforms or operators through the use of technical methods. These methods exploit the limited rationality and cognitive biases of consumers, potentially leading them to make consumption decisions that do not align with their true preferences.⁵²³ In order to safeguard consumers' freedom of choice, any restrictions imposed through technical means should be prohibited and subject to punishment.

Consumers may unknowingly be influenced to select a specific item. For instance, the search results may be filtered, and only the sponsored items are shown to consumers. Consumers may also be covertly introduced or overtly compelled to select a combination of items that includes something they do not require. For instance, on air ticket reservation websites, the least expensive tickets are typically offered together with an unnecessary hotel reservation or an insurance policy. These improper combinations shall also be restricted. Firstly, it should be accompanied by a method that clearly attracts the attention of consumers.⁵²⁴ Secondly, e-commerce operators should not set the combination as the default choice for both the first transaction and

⁵²² See Qian Yuwen, *Legal Interpretation of Consumer Rights: Based on Cases and Legal Perspectives* (消费者权益的法律解释——基于判例与法理视角, Xiaofeizhe quan de falyu jieshi: Jiyu panli yu fali shijiao), in *Legal Science*, 2008, n. 8, pp. 101-112.

⁵²³ See Yang Fei, *Legal Regulation of Abuse of the "Dark Pattern" in E-commerce* (电子商务中滥用黑暗模式行为的法律规制, Dianzi shangwu zhong lanyong hei'an moshi xingwei de falyu guizhi), in *China Business And Market*, 2022, n. 8, pp. 40-50.

⁵²⁴ Art. 11, Sentence 3 of *Implementation Regulation of Consumer Rights and Interests Protection Law*: "If business operators provide goods or services through collocation, combination, etc., they must draw the attention of consumers in a prominent manner."

subsequent transactions.⁵²⁵

Any choices of cyber-consumers shall be protected. One of the other notable issues is the automatic extension of subscriptions. Consumers may unknowingly choose the automatic extension option due to the deliberate webpage design, resulting in charges without prior confirmation or communication. This practice deceives consumers, damages their autonomous selection, and violates the information provision duty of e-commerce operators.⁵²⁶ This dishonest behaviour is currently regulated by a requirement that e-commerce operators shall clearly inform consumers about the acceptance, renewal, or auto-extension of a specific subscription method. Failure to do so may result in a fine.⁵²⁷ Additionally, operators must ensure that customers could easily cancel or modify services at any time without incurring unreasonable charges.⁵²⁸

2.1.2.3 Right of withdrawal and right to return

Return is another fundamental right for consumers, which provides the most practical protection for them. In China, the right to return without providing reasons within seven days is regarded as the most crucial institution strengthening consumer protection.⁵²⁹ This right is even specifically regulated by a single legislative document,

⁵²⁵ Art. 17 of *Measures on Supervision and Administration of Online Trading*: “If an online trading operator sells goods or services to consumers by bundling directly or by providing multiple options, it shall remind consumers in a prominent manner. If multiple options are provided, any option of the bundled goods or services shall not be set as the consumer’s default consent, and the option selected by the consumer in the previous transaction shall not be set as the consumer’s default choice in subsequent independent transactions.”

⁵²⁶ See Hu Fangqiong, *Research on Civil Responsibility in Online Consumption Deceit* (网络消费欺诈的民事责任研究, Wangluo xiaofei qizha de minshi zeren yanjiu), in *Journal of Law Application*, 2023, n. 8, pp. 91-100.

⁵²⁷ Art. 10, Section 2 and Art. 50 Section 1 of the *Implementation Regulation of Consumer Rights and Interests Protection Law*.

⁵²⁸ Art. 18 of *Measures on Supervision and Administration of Online Trading*.

⁵²⁹ Though significant, the right to return (or to withdraw) also cause negative impacts on both online consumers and e-commerce operators, even lacking legitimacy basis. See Xu Wei, *Re-Evaluating Consumers’ Right of Withdrawal in Online Shopping* (重估网络购物中的消费者撤回权, Chonggu wangluo gouwu zhong de xiaofeizhe chehuiquan), in *Law Science*, 2016, n. 3, pp. 84-96.

the *Interim Measures on the Return without Reasons of Commodities Purchased Online within Seven Days*.

Online consumers in China are not given special treatment compared to other consumers, as all consumers have the right to request a return within seven days. It is worth noting that this period is shorter than the fourteen-day return period in the European Union.⁵³⁰

According to the *Interim Measures*, the main criterion for a return is the *intactness* of the goods, which is not limited to its narrow literal meaning.⁵³¹ The entire process of exercising this right is subject to detailed provisions related. (Art. 8-19)⁵³²

Some specific goods, due to their unique characteristics, are excluded from the scope of return without valid reasons. This scope is strictly defined by law⁵³³ and should not be expanded arbitrarily by the operators themselves. If the operators make a promise to accept the return of these goods, they must fulfill this promise accordingly.⁵³⁴ Furthermore, it is imperative for the operators to clearly label and notify customers about goods that are not eligible for return without providing any

⁵³⁰ Art. 9 (1) of the *Directive on Consumer Rights*: “Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.” This provision is considered to be designed to resolve the information asymmetry, however, it could be still further modified to better play such role according to law and economics analysis, see Karampatzos, A. & Ilić, N. (2023). Law and Economics of the Withdrawal Right in EU Consumer Law. *Review of Law & Economics*, 19(3), 435-452. <https://doi.org/10.1515/rle-2022-0076>.

⁵³¹ The concept of *intactness* actually includes goods that have been unpacked and reasonably tested, as long as they are not damaged. [Art. 19 Section 3 of the *Implementation Regulation of Consumer Rights and Interests Protection Law*; Art. 3 of the *Judicial Interpretation on Online Consumption (2022)*]

⁵³² Various aspects of e-commerce transactions are being considered by the *Interim Measures on the Return without Reasons of Commodities Purchased Online within Seven Days*, such as (a) different forms of gifts in online transaction and their return (Art. 12), (b) the alignment between the payment method and the refund method, particularly in cases where the consumer used multiple payment methods (Art. 14-15), and (c) the refund amount, which is determined by the actual amount paid and its specific calculation method in the context of promotional packages or discount offers (Art. 17).

⁵³³ Art. 25 of the *Consumer Rights and Interests Protection Law*.

⁵³⁴ Art. 2 of the *Judicial Interpretation on Online Consumption (2022)*.

reasons. In order to ensure that consumers are well-informed about the goods that have specific limitations on returns, a dual notification and confirmation process for consumers should be technically implemented.⁵³⁵

Regarding the burden of shipping costs in return, in principle, the consumer shall bear it.⁵³⁶ In Chinese e-commerce practice, it is common for consumers to purchase assurance of refunding shipping costs, sometimes even sellers provide it as a gift, which allows online consumers to return merchandise without actually bearing any costs. While this practice enhances the consumer experience in e-commerce, it also poses moral risks and increases costs for the operators. Ultimately, it might still be the consumers who bear all the costs.⁵³⁷

2.1.2.4 Preventing the abuse of consumers' rights

As consumer protection greatly benefits consumers, some individuals may attempt to exploit these protections for personal gain, leading to dishonest and unfair practices that require limitation.

In the field of e-commerce, where cyber-consumers are granted greater protective rights, there is a noticeable tendency to abuse these rights. The most frequently abused

⁵³⁵ Art. 19 Section 1-2 of the *Implementation Regulation of Consumer Rights and Interests Protection Law*.

⁵³⁶ Art. 18 of the *Interim Measures on the Return without Reasons of Commodities Purchased Online within Seven Days*: "The freight incurred by returning goods shall be borne by the consumer in accordance with the law. If the operator and the consumer have other agreements, they shall be followed."

⁵³⁷ Online retailers can pass on or spread the increased costs of return shipping insurance by raising pricing, but the more lenient the return policy is settled, the higher the return rate would arise. However, generally, it could be proven that offering return shipping insurance can improve profitability of e-commerce operators. See Shan Miyuan, Jiang Huangshan, Liu Xiaohong, *A Study on Profitability and Return Strategies of Online Retailers* (在线零售商盈利能力及其退货策略研究, *Zaixian lingshoushang Yingli nengli jiqi tuihuo celyue yanjiu*), in *East China Economic Management*, 2016, n. 11, pp. 123-128.

right is the right to return goods.⁵³⁸ It is important to acknowledge that it is difficult to completely prevent such behaviors, as any preventive measures may potentially restrict the legitimate rights of honest consumers. The only viable solution, therefore, may be to implement *ex post facto* corrections that ask consumers to abuse their right to compensate the damages for the affected operators.

While Chinese legislators have recognized the importance of preventing the misuse of consumers' rights in e-commerce, they have ultimately established a rather broad and weak provision.⁵³⁹ Abusers can only be punished by other laws when their behaviors are excessively unreasonable.⁵⁴⁰

In addition, certain consumers may exploit technical loopholes or operational errors of operators.⁵⁴¹ In these cases, the balance is completely broken, making the e-commerce operator the party really deserves protection. In judicial practice, judges often question the validity of e-commerce contracts, either by declaring the contract inconclusive in disputes, granting the right of withdrawal to the operator, or rejecting the fake consumer's request for contract performance.⁵⁴² In this regard, the dilemma

⁵³⁸ A significant number of fake consumers engage in the practice of using the goods for nearly seven days before returning them to the operators. Additionally, some other fake consumers intentionally order goods with the sole purpose of returning them upon receipt, thereby increasing the costs for the operators. These phenomena are generally noticed but are not yet discussed in legal study. See Wen Yuanhao, *Who Will Pay for the Abuse of the "Seven-Day No-Reason Return" Rule?* (滥用“七天无理由退货”规则, 谁为不诚信买单?), Lanyong qitian wuliyong tuihuo guize, shuiwei buchengxin maidan?), in *Legal Daily*, July 16, 2014, p. 4.

⁵³⁹ Art. 19 Section 4 of *Implementation Regulation of Consumer Rights and Interests Protection Law*: “Consumers should follow the principle of honesty and trustworthiness when returning goods without reason and should not use the no-reason return rules to damage the legitimate rights and interests of operators and other consumers.”

⁵⁴⁰ These punishable behaviors are with an extortionate nature and violate other prohibitive rules, such as substituting goods sold by operators with counterfeit goods that they purchased themselves, tampering with production dates, and fabricating nonexistent facts, according to Art. 49 Section 2 of *Implementation Regulation of Consumer Rights and Interests Protection Law*.

⁵⁴¹ For instance, e-commerce operators accidentally set an unreasonably low price, then consumers immediately submit orders with malevolence, asking the operators to fulfill the orders as per normal.

⁵⁴² See Cai Lidong, Guan Yue, *Judicial Response to the Malicious Contracting of Online Consumers* (网络消费者恶意缔约的司法应对), Wangluo xiaofeizhe eyi diyue de sifa yingdui), in *Jilin University Journal Social Sciences Edition*, 2020, n. 5, pp. 92-102.

could be resolved through the application of contract law, without the need for additional specific regulations.⁵⁴³

⁵⁴³ There is even an opinion advocating the criminal law regulation on this issue. See Peng Xinlin, *Criminal Regulation of the Econnoisseur* (网络“薅羊毛”行为的刑事规制, Wangluo haoyangmao xingwei de xingshi guizhi), in *Criminal Science*, 2024, n. 3, pp. 126-141.

2.2 Regulation on special objects of e-commerce

The products and services traded through e-commerce are always various, the development of e-commerce also leads to an increasing diversification of the products or services traded online. In this regard, the characteristic of e-commerce's objects could be described as "plasticity".⁵⁴⁴

However, certain characteristics of online transactions, such as anonymity and lack of supervision and age control, may require special regulations for certain goods or services.⁵⁴⁵ While the negative list may vary by region, there should be universally regulated items. A comprehensive analysis of restrictions on special goods (2.2.1) and services (2.2.2) can provide a basic research framework. Additionally, this thesis will include an investigation into intangible assets like digital content (2.2.3) in the final sub-section.

2.2.1 Limitations on special products

The major items subject to stricter regulations include cosmetics (2.2.1.1), drugs (2.2.1.2), foods (2.2.1.3).

2.2.1.1 Cosmetics

The online cosmetics operator should assume a greater responsibility because the products sold online directly affect the health of consumers.⁵⁴⁶

⁵⁴⁴ Rabagny-Lagoa A., *Droit du commerce électronique*, Paris : Ellipses, 2011, p. 68.

⁵⁴⁵ This is evident in the official guidance on e-commerce published on the webpage of administrative information and procedures for businesses by the French government, which states that: "Online commerce is open to all kinds of activities, ranging from the sale of products (new or used) to the sale of services (catering, transport, accommodation, leisure, etc.). However, the online sale of the following products is regulated..." *Faire du commerce en ligne (e-commerce): règles à respecter*, accessed March 8, 2024, <https://entreprendre.service-public.fr/vosdroits/F23455>.

⁵⁴⁶ See Ma Gengxin, *Determining Standards and Concreteness of "Corresponding Responsibilities" of Platform Operators: Analysis of Art. Para. 2 of E-Commerce Law* (平台经营者“相应的责任”认定标准及具体化——对电子商务法第38条第2款的分析, Pingtai jingyingzhe xiangyingde zeren rending biao zhun ji juti hua: Dui dianzi shangwu fa di sanshiba tiao dier kuan de fenxi), in *Oriental Law*, 2021, n. 2, pp. 86-97.

The *Measures on the Supervision and Administration of Cosmetics (2021)* primarily focuses on the overall administration of cosmetics, but it frequently makes references to e-commerce. Major regulatory objectives about online cosmetics sale introduced by this *Measures* include (a) More comprehensive information disclosure for e-commerce cosmetic operators (Art. 44); (b) Increasing the responsibility of e-commerce platforms in terms of registration and identity information archiving (Art. 45); (c) Establishing a quality supervision institution or specialist within platforms (Art. 46), (d) Prompt response to complaints (Art. 47); (e) Timely suspension of providing services to sellers engaged in severe illegal activities (Art. 48).

In line with this *Measures (2021)*, another administrative legislation, the *Measures on the Supervision and Administration of Online Distribution of Cosmetics (2023)*, specifically addresses the issue of cosmetic e-commerce. The major contribution of latter *Measures (2023)* is to urge cosmetic e-commerce platforms to establish a routine inspection mechanism and strengthen the quality control of cosmetic products sold on their platforms (Art. 11).

2.2.1.2 Medical products and devices

The online sale of medical products and devices is subject to specific regulations. The growth of e-commerce has made online transactions for medical products and devices a convenient avenue, thereby increasing their availability. On the one hand, the emergence of online drug circulation led to reduced transaction costs and improved efficiency in circulation. On the other hand, issues such as the absence of qualifications for online drug sales, illegal sales of prescription drugs, and inadequate security in logistics and distribution are meanwhile emerging.⁵⁴⁷

Firstly, all third-party platforms involved in the online sale of medical products

⁵⁴⁷ See Liu Lin, Jin Wenhui, *The Dilemma and Outlet of Drug Online Trading Governance under the Background of "Internet plus"* ("互联网+" 背景下药品网络交易治理的困境及其出路, Hulianwang jia Beijing xia yaopin wangluo jiaoyi zhili de kunjing jiqi chulu), in *Reform*, 2019, n. 10, pp. 149-159.

are required to undergo a recordation process.⁵⁴⁸

The *Measures on the Supervision and Administration of Online Sale of Medical Devices (2017)* and the *Measures on the Supervision and Administration of Online Sale of Medicinal Products by the State Administration for Market Regulation (2022)* should also be noted. Although these two *Measures* do not explicitly reference e-commerce, they are essentially documents pertaining to e-commerce, since they outline specific requirements for online sales of medicine or medical devices, imposing obligations and responsibilities on operators and third-party medicine sale platforms.⁵⁴⁹

Furthermore, providers of mere medicinal product information services are strictly prohibited from displaying any content related to e-commerce on their websites, which would be useful to prevent confusion among their service recipients.⁵⁵⁰

2.2.1.3 Foods

Chinese consumers are accustomed to purchasing prepackaged and easily storable foods from online retailers, as well as ordering meals from takeaway platforms,

⁵⁴⁸ According to Art. 62, Section 1 of the *Medicinal Product Administration Law of China*. It is worth noting that this *Law* implicitly repealed the absolute prohibition about the online sale of drugs proposed by *Interim Provisions on the Circulation Management of Prescription Drugs and Over-the-Counter Drugs* (处方药与非处方药流通管理暂行规定, Chufangyao yu fei chufangyao liutong guanli zanxing guiding), a somehow obsolete legislation promulgated in 1999 by old National Medical Products Administration (once abolished in 2003, reconstructed in 2018), but still in effect. Chinese official text of such *Measures*, archived December 28, 1999, at <https://www.nmpa.gov.cn/xxgk/fgwj/gzwj/gzwjyp/19991228010101969.html?type=pc&m=>.

⁵⁴⁹ In this regard, the responsibility of the platform should be considered as universal, but its boundaries should be determined based on specific circumstances, such as the specific actions taken, the business model adopted, the technical characteristics of the platform's operation, and the platform's control over the information on the platform, see Xue Jun, *The Connotation and Application Mode of Platform Liability in Electronic Commerce Law* (《电子商务法》平台责任的内涵及其适用模式, Dianzi shangwufa pingtai zeren de neihan jiqi shiyong moshi), in *Science of Law*, 2023, n. 1, pp. 57-68.

⁵⁵⁰ Article 13 (2) of *Measures on the Administration of Drug Information Service over the Internet* (互联网药品信息服务管理办法, Hulianwang yaopin xinxi fuwu guanli banfa), published in 2004, recently revised in 2017, promulgated by former State Food and Drug Administration. Archived November 21, 2017, at <https://www.nmpa.gov.cn/yaopin/ypfgwj/ypfgbmgzh/20171121171301775.html?type=pc&m=>.

which facilitates their lives but also increases the risk of food safety.

The regulatory framework for this field consists of two departmental rules: the *Measures on the Investigation and Punishment of Illegal Acts Related to Online Food Safety (2016)* and the *Measures on the Supervision and Administration of Food Safety in Online Catering Services (2017)*.⁵⁵¹ The second *Measures* focuses solely on catering services, specifically the online takeaway service, while the first *Measures* covers a wider range of illegal activities including not only takeaway services but also prepackaged foods. However, the subjects regulated by these two *Measures* are the same: third-party platforms and the actual suppliers of food.

The regulation pertaining to third-party platforms is essentially in line with the *Food Safety Law of China* (中华人民共和国食品安全法, *Zhonghua renmin gongheguo shipin anquan fa*).⁵⁵² The platforms have both the power and responsibility to review the qualifications of operators upon entering the platform, as well as to supervise, prevent, and report any illegal activities conducted by them. If the platforms fail to fulfil any of the above duties and as a result cause harm to consumers, the platforms should share civil liability with the catering service providers.⁵⁵³ Other ordinary obligations of these platforms include record keeping, transaction record archiving, establishment of an internal food safety control system, and publication of operators' essential information.

In addition to the above obligations and responsibilities, there is another special rule regarding the allocation of civil responsibility when food sold on platforms causes harm to cyber-consumers. This rule allows consumers to choose whether to hold the

⁵⁵¹ Both of them were promulgated by the former China Food and Drug Administration.

⁵⁵² In fact, online food third-party platforms are the first platforms to be regulated by the State. This signifies an institutional innovation and a significant step taken by Chinese legislators in the regulation of platforms. See Liu Jinrui, *Understanding, Application and Institutional Innovation of the Responsibilities of Third-Party Platforms in Online Food Transactions* (网络食品交易第三方平台责任的理解适用与制度创新, *Wangluo shipin jiaoyi disanfang pingtai zeren de lijie shiyong yu zhidu chuangxin*), in *Oriental Law*, 2017, n. 4, pp. 84-92.

⁵⁵³ In accordance with Art. 3 of the *Interpretation on Several Issues concerning the Application of Law in the Trial of Civil Dispute Cases involving Food Safety (I)* and Art. 18 of the *Judicial Interpretation on Online Consumption (2022)*. These two provisions are basically identical.

operator or the platform accountable for compensation. If the platform is unable to provide specific information about the identity of the operator, it will be liable for compensation.⁵⁵⁴

Other special regulatory rules are stipulated for online food operators. Firstly, they are required to obtain a food operation license.⁵⁵⁵ Secondly, a mandatory special mark requirement is imposed on their food distribution licenses,⁵⁵⁶ which helps consumers identify their business scope. Thirdly, they must adhere to all requirements and standards regarding food production, storage, and transportation. Fourthly, for online catering service providers, who often operate without sufficient supervision, they are obligated to have a physical retail store, publicly display their license and other essential information, and disclose the names of their dishes and raw materials. Fifthly, about the responsibility attribution in case that food processing is entrusted to another subject, even the damage is actually caused by food processors, the nominal catering service providers are still responsible.⁵⁵⁷

2.2.2 Limitations on special services

More provisions focus on the services offered by e-commerce platforms. China has more legislation in this field, which reflects its thriving e-commerce market. The specifically regulated important online services include financial service (2.2.2.1), catering services (2.2.2.2), online travel services (2.2.2.3), automobile rental services

⁵⁵⁴ In accordance with Art. 9 Section 1 of the *Provisions on Several Issues concerning the Application of Law in the Trial of Cases Involving Food and Drug Disputes*.

⁵⁵⁵ For further regulations, see *Measures on the Administration of Food Trade Licensing and Recordation* (食品经营许可和备案管理办法, Shipin jingying xuke he bei'an guanli banfa), promulgated by State Administration for Market Regulation in 2023. Accessed October 20, 2023, https://www.gov.cn/gongbao/2023/issue_10606/202307/content_6894763.html.

⁵⁵⁶ Art. 10, section 2 of former *Measures on Administration on Food Distribution Licensing* (食品经营许可证管理办法, Shipin jingying xuke guanli banfa) states that the license of food distributors engaged in online business shall be noted in brackets, which was also promulgated by former China Food and Drug Administration in 2015. Accessed October 20, 2023, https://www.gov.cn/gongbao/content/2015/content_2978272.htm.

⁵⁵⁷ Art. 19 of the *Judicial Interpretation on Online Consumption* (2022).

(2.2.2.4), and online taxi services (2.2.2.5).

2.2.2.1 Financial service

Financial services should naturally be considered an important and innovative aspect of e-commerce. This is particularly relevant when considering the growing trend of financialization in the economy and consumption sector, as well as the commercialization of financial products. In certain situations, legislators even refer to the recipients of financial services as *financial consumers*. Of course, financial services have their own characteristics that distinguish them from other types of services traded in the e-commerce market, thus should be treated differently.⁵⁵⁸

In the EU, regarding financial services, initially, they were not included in the scope of distance contracts according to the *Directive 97/7/EC*. However, the *Directive 2002/65/EC* subsequently allowed for the conclusion of financial service contracts through distance means. The regulations established by the latter *Directive* are quite similar to those governing regular distance contracts.⁵⁵⁹ Currently, financial services are becoming more accessible to the general public due to the widespread use of mobile apps and websites operated by financial service providers. Therefore, including financial services within the framework of distance contracts might be appropriate, which has become reality with the *Directive 2023/2673*.⁵⁶⁰

In China, the online provision of financial services has also been regulated by

⁵⁵⁸ Chinese scholars mostly stand by the view incorporating online financial services into the scope of e-commerce. See Liu Ying, *The Scope of Social Relations Adjusted by the Electronic Commerce Law of China* (我国电子商务法调整的社会关系范围, Woguo dianzi shangwufa tiaozheng de shehui guanxi fanwei), in *China Legal Science*, 2018, pp. 195-216.

⁵⁵⁹ Art.3.1 and Annex II of the *Directive 97/7/EC* and Art. 18 of the *Directive 2002/65/EC*. Also see Castets-Renard C., *Droit de l'internet : droit français et européen*, Paris : Montchrestien-Lextenso, 2012, pp. 172-174.

⁵⁶⁰ With this Directive, consumers in the single market will receive enhanced protection when accessing novel financial products and services through their mobile devices or personal computers. Other supporting rules are at the meantime formulated, such as “safety net-feature” for financial services, modernized pre-contractual information obligations in this field, and facilitated right of withdrawal. See Coggiola, N. (2024). Directive 23/2673/EU Addresses Risks from Mobile Investment Applications. *European Review of Private Law*, 32(Issue 4), 653–678. <https://doi.org/10.54648/ERPL2024031>.

legislators, albeit with some controversy. Art. 3 of the *E-Commerce Law of China*, in principle, explicitly excludes the transaction of financial products and services from its scope of application. Another previous revision in 2017 already removed securities transactions from the category of e-commerce, which reflects the consistent position among legislators in different sectors.⁵⁶¹ However, a financial sector administrative legislation issued after the promulgation of the *E-Commerce Law of China* still addresses the circumstances of purchasing or using financial products or services through e-commerce,⁵⁶² complicating the situation. It is evident that a systematic organization of legislation in the realm of online finance services needs to be conducted. Failure to do so may impede the future development of this industry.

2.2.2.2 Catering services

Though catering services exist both in the EU and China, merely the latter formulates a relatively mature regulatory framework.

The responsibility borne by platforms in this field is relatively rigorous, as food security is closely linked to personal health. The platforms need to make every effort to fulfil their obligations, such as recording basic information of inner-platform operators and examining their licenses and promptly suspending services when they seriously violate food security rules. If failing to fulfil these duties effectively, they have to share liability with the operators within platform.⁵⁶³

⁵⁶¹ China Securities Regulatory Commission repealed the *Interim Provisions on the Administration of the Business Operations of Securities Investment Fund Distributors through Third-Party E-Commerce Platforms (2013)* through a purely technological document, Art. 64 of the *Measures on the Administration of Information Technology of Securities Fund Business Institutions* (证券投资基金经营机构信息技术管理办法, Zhengquan jijin jingying jigou xinxi jishu guanli banfa). Archived December 31, 2018, at https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5440955.htm.

⁵⁶² Art. 40, Section 2 of the *Measures on Implementation for Protecting Financial Consumers' Rights and Interests (2020)*, promulgated by the People's Bank of China: "Where financial products or services are purchased or used through **e-commerce or online trading**, the financial consumer may file a complaint with the PBC branch office at the place of domicile of the bank or payment institution." Though no substantial rule exists, the inconsistency in terminology is actually evident.

⁵⁶³ According to Art. 18 of the *Judicial Interpretation of Online Consumption (2022)*.

Additional regulatory requirements can be found at the local level. For instance, in Zhejiang province, all e-commerce catering service operators are obligated to disclose the real-time food processing and production site through live streaming and seal the food to be delivered.⁵⁶⁴ Furthermore, policymakers have also taken into account laborer protection by imposing specific limitations on algorithms related to distribution catering services.⁵⁶⁵

2.2.2.3 Online traveling services

The first category of online services regulated by legislation pertains to online traveling services. The primary regulatory requirement for such services is outlined in Art. 48 of the *Tourism Law of China (2018)* (中华人民共和国旅游法, *Zhonghua renmin gongheguo lyuyou fa*).⁵⁶⁶ The obligation for travel agencies to publicize their business license existed prior to the introduction of the corresponding requirement in the *E-Commerce Law of China*. Additionally, all websites that publish tourism business information are required to ensure the authenticity and accuracy of the information provided.

Another legislation has been recently enacted to regulate both package travel services and individual travel services, which is the *Interim Measures on the Administration of Online Tourism Business Services (2020)*. According to this *Interim Measures*, online tourism platforms are required to comply with the regulations set for e-commerce platforms, including fulfilling inner-platform supervision responsibilities, registering with the appropriate authorities, promptly taking action against illegal

⁵⁶⁴ According to Art. 16 of the *Regulation on E-Commerce of Zhejiang Province*.

⁵⁶⁵ According to Art. 17 of the *Regulation on E-Commerce of Zhejiang Province*.

⁵⁶⁶ The *Tourism Law of China* was promulgated in 2013 and subsequently revised in both 2016 and 2018. Archived November 5, 2018, at http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065666.htm.

activities, and maintaining an archive of relevant information.⁵⁶⁷ Similarly, another departmental legislation specifically targeting online aviation sales platforms, titled *Provisions on the Administration of Passenger Services in Public Air Transport (2021)*, also emphasizes the platforms' responsibility to verify the qualifications of aviation sales agents before allowing them to conduct business on the platform.⁵⁶⁸

2.2.2.4 Automobile rental

The automobile rental service is regulated by the *Measures on the Administration of Small and Micro Automobile Rental Business Services (2021)*. In China, ordinary automobile rental businesses are usually operated through online platforms, where consumers only need to go to the designated pickup point to complete the rental process. In response to this situation, this *Measures* subject these platforms to the same supervision as other general e-commerce platforms, particularly in terms of personal information protection and data security.⁵⁶⁹

Furthermore, platforms that offer customized passenger transport services are also classified as e-commerce platforms under the *Provisions on the Administration of Road Passenger Transport and Passenger Stations*,⁵⁷⁰ which demonstrates the deep integration between e-commerce and transportation and the diversity of online services.

2.2.2.5 Online taxi business

The online taxi business is a significant transportation service provided by e-

⁵⁶⁷ According to Art. 33 of the *Interim Measures*, if online tourism platforms fail to (a) fulfil the obligations of verification and registration, (b) take necessary measures for handling violations of laws, or (c) perform the obligation of preserving product and service information or transaction information, they will be sanctioned according to the Art. 80 of the *E-Commerce Law of China*. This provision established a connection between specific and general platform regulation rules with the consistency in obligations assumed by the platforms.

⁵⁶⁸ Art. 10 and Art. 60 of the *Provisions on the Administration of Passenger Services in Public Air Transport (2021)*.

⁵⁶⁹ Art. 10 and Art. 26 of the *Measures on the Administration of Small and Micro Automobile Rental Business Services (2021)*.

⁵⁷⁰ Art. 59 and Art. 61 of the *Provisions on the Administration of Road Passenger Transport and Passenger Stations*. According to Art. 61, these e-commerce platforms shall also go through relevant procedures such as market entity registration, Internet information service license or filing.

commerce in China. Unfortunately, the administrative legislation concerning this issue, the *Interim Measures on the Administration for the Business of Online Taxi Booking Services*, has little connection with e-commerce.⁵⁷¹

The reality in this field concerning the perspective of transaction is quite complex. Based on the observations of Chinese scholars, online taxi platforms offer their services through various models. As a result, the legal relationship between platforms, drivers, and consumers can vary significantly.⁵⁷² These models clearly cannot be adequately simplified as the traditional operational model of companies like Uber or Didi. Although the analysis based on the existing rules incorporated in the *Civil Code of China*, consumer protection law, e-commerce law, and related administrative regulations could make contribution,⁵⁷³ the enactment of a specific and comprehensive legislation on this matter, like that regulating other online services, would undoubtedly be advantageous.

2.2.3 Limitations on the transaction of digital contents

Digital content is not considered goods in the traditional sense, nor is it classified as a service. Due to its virtual and digital nature, digital content and digital services are difficult to trade outside of the realm of e-commerce. In other words, contracts for

⁵⁷¹ It seems that legislators prioritize and consider the administration of online taxi platforms and transportation orders to be more important and urgent than its e-commerce aspect, see Huang Qingyu, *Regulatory Model of Online Ride hailing: From the Perspective of Public Operators* (网约车的监管模式——基于公共运营商的视角, Wangyueche de jianguan moshi: Jiyu gonggong yunyingshang de shijiao), in *Lanzhou Academic Journal*, 2020, n. 5, pp. 47-59.

⁵⁷² These models include “drivers who are directly employed by the platforms and use their own vehicles,” “platforms that rent vehicles to drivers and entrust them to drive,” and “drivers who operate with their own vehicles and are franchised by platforms.” See Yang Lixin, Li Yiwen, *Duty of Care and Tort Liabilities for Operators of Aggregated On-line Ride-hailing Platforms* (网约车聚合平台经营者的注意义务与侵权责任, Wangyueche juhe pingtai jingyingzhe de zhuyi yiwu yu qinquan zeren), in *Journal of Law Application*, 2022, n. 6, pp. 3-15.

⁵⁷³ Attempts applying existing rules to resolve this question, see Ying Fan, *On the Legal Application of Tort Liability of Online Car-Hailing Platforms under “Social Vehicle Franchise Mode”* (“社会车辆加盟模式”下网约车平台侵权责任的法律适用, Shehui cheliang jiameng moshi xia wangyueche pingtai qinquan zeren de falyu shiyong), in *Journal of Northeastern University (Social Science)*, 2023, n. 1, pp. 115-123.

the supply of digital content and digital services are essentially e-commerce contracts, and all transactions involving digital content and digital services should be recognized as e-commerce. This sub-section will introduce the primary regulatory frameworks for digital content in the EU (2.2.3.1) and China (2.2.3.2).

2.2.3.1 Digital contents regulation in the EU

The information society not only modernized the form of contracts but also expanded the scope of transactions. E-commerce is not limited to the exchange of physical goods. The *Directive (EU) 2019/770*, in the first paragraph of its preface, astutely highlights that:

“The growth potential of e-commerce in the Union has not yet been fully exploited. The Digital Single Market Strategy for Europe tackles in a holistic manner the major obstacles to the development of cross-border e-commerce in the Union in order to unleash this potential. Ensuring better access for consumers to digital content and digital services and making it easier for businesses to supply digital content and digital services, can contribute to boosting the Union’s digital economy and stimulating overall growth.”

The *Directive (EU) 2019/770* is part of the framework of the European Common Sales Law and serves as an extension of it, which also enhances the *Directive 1999/44/EC* by adapting it to the digital era, addressing the novel challenges that digital transactions pose to contract law.

Art. 3 (1) of the *Directive (EU) 2019/770* limits its own scope to any contract in which the trader provides or agrees to provide digital content or a digital service to the consumer and the consumer pays or agrees to pay a price, as well as the exchange of digital content or a digital service and personal data.⁵⁷⁴ Therefore, it is unquestionable that this issue should be considered as a sub-topic within the research on e-

⁵⁷⁴ See Rosati E., *Article 3 - Text and Data Mining for the Purposes of Scientific Research*, in *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790*, Oxford, 2021, pp. 25-59.

commerce.⁵⁷⁵

This *Directive* primarily focuses on the conclusion, performance, and remedies of contracts for the supply of digital content and digital services. Its purpose is to ensure that digital content or a digital service conforms to the contract, in order to provide a high level of protection to digital consumers. The central aspect of these rules is the interpretation of conformity.⁵⁷⁶ Three provisions are dedicated to explaining the specific requirements of conformity, both from a subjective and objective perspective.⁵⁷⁷ Subsequently, remedies such as price reduction and contract termination are provided to digital consumers as a means to defend themselves and achieve conformity or adjust the relationship between the two parties.⁵⁷⁸

The regulation on contracts for the supply of digital content and digital services is based on a preinstalled model, which involves a transaction between a professional trader and a non-professional buyer. While the *Directive* may appear to refine rules against general civil law norms, particularly regarding contract performance and remedies, it should not be considered a distinct part of civil law. Instead, it clearly falls under consumer protection law, governing business-to-consumer transactions.⁵⁷⁹

Furthermore, the regulation also focuses on certain related matters, such as intellectual property. This is especially important considering the inevitable overlap between the expanding digital property and the more traditional concept of intellectual property rights. However, it also presents certain theoretical and practical challenges, such as the potential reinforcement of network effects and the dominant position of

⁵⁷⁵ See Grundmann S., *European contract law in the digital age*, Bruxelles: Intersentia, 2018, pp. 286-292.

⁵⁷⁶ See Farinha, M. (2021). Modifications on the digital content or digital service by the trader in the Directive (EU) 2019/770. *Revista Electrónica de Direito*, 25(2), 84–111. https://doi.org/10.24840/2182-9845_2021-0002_0004.

⁵⁷⁷ Namely Art. 6-8 of the *Directive (EU) 2019/770*.

⁵⁷⁸ Art. 11-18 of the *Directive (EU) 2019/770*.

⁵⁷⁹ See Carvalho J.M., *Directive (EU) 2019/770 on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 334-363.

established players in the market.⁵⁸⁰

2.2.3.2 Incomplete digital contents regulation in China

In recent years, disputes related to digital content or digital products have become increasingly complex. During this process, the vulnerable position of consumers has become more prominent. However, the existing legal framework is insufficient to effectively protect these consumers, as digital content products are a unique product model in the digital economy era, and traditional legal concepts and rights are not designed to be applied to them.⁵⁸¹

Although the *Consumer Rights and Interests Protection Law* and related regulations have attempted to cover online disputes as much as possible in response to the new requirements of the Internet economy's development, they still fail to adequately address the challenges that have emerged in the digital era. In other words, the actual demand for digital commodity consumption has resulted in the problem that the supply of rules cannot keep pace with the speed of technological innovation and the pace of consumption development. Considering the disadvantages in information technology faced by consumers, we could assert that the consumer protection legal system in China needs to be further digitalized.⁵⁸²

For this reason, it is quite common for scholars to propose learning from the EU regulatory framework on digital content. They often consider the *Directive (EU) 2019/770* as an ideal template for future legislation updates, encompassing the basic

⁵⁸⁰ See Oprysk L., *Digital Consumer Contract Law without Prejudice to Copyright: EU Digital Content Directive, Reasonable Consumer Expectations and Competition*, *GRUR International: Journal of European & International IP Law*, 2021, Vol. 70 (10), pp. 943-957.

⁵⁸¹ See Wu Yiyue, *On the Digital Products and their Performance Rules: Centered around distinguishing between digital content and digital services* (论数字产品及其给付规则——以数字内容与数字服务区分为中心, Lun shuzi chanpin jiqi jifu guize: Yi shuzi neirong yu shuzi fuwu qufen wei zhongxin), in *Law and Economy*, 2024, n. 5, p. 78-93.

⁵⁸² See Yun Weixiao, *Research on the Protection of Consumer Rights and Interests of Digital Content Products in China* (我国数字内容产品消费者权益保护研究, Woguo shuzi neirong chanpin xiaofeizhe quanyi baohu yanjiu), in *Lanzhou Academic Journal*, 2022, n. 4, pp. 95-107.

structure and specific institutions like defect guarantee.⁵⁸³

⁵⁸³ Related initiatives can be observed in the following papers. See Wu Guide, *The Warranty against Defect of Digital Content from the Perspective of the Civil Code of China: An Analysis based on a Comparative Review of German Law in the Context of the European Union* (我国民法典视野下的数字内容瑕疵担保责任——基于欧盟背景下德国法的比较法考察, Woguo minfadian shiye xiade shuzi neirong xiaci danbao zeren: Jiyu oumeng beijing xia deguofa de bijiaofa kaocha), in *Political Science and Law*, 2020, n. 1, pp. 139-150; Jin Jing, *The EU's Approach to and the German Model of Digital Transactions: A "Patchy" Update of the Obligation Law by the German Civil Code's "Digital Product Contract" Rules* (数字交易的欧盟路径与德国模式——《德国民法典》数字产品合同规则对债法的“补丁式”更新, Shuzi jiaoyi de oumeng lujing yu deguo moshi: Deguo minfadian shuzi chanpin hetong guize dui zhaifa de budingshi gengxin), in *Chinese Journal of European Studies*, 2023, n. 3, pp. 99-134.

2.3 Pre-contract stage in e-commerce

The online transaction process is fairly rapid and simple, reducing the need for complicated negotiations,⁵⁸⁴ which has made the pre-contract stage more important especially in the field of e-commerce. As for consumers, they spend the most time in this stage, comparing merchants and products and obtaining information and promotions. As for operators, they have to provide information to consumers to increase the probability of a deal.

As a result, information becomes the key factor in this stage. Operators usually positively provide information to potential clients, which might be considered as advertising (2.3.1); they might also be obliged to provide certain information, namely the information obligation (2.3.2).

2.3.1 Advertisement in e-commerce

Advertisement is a prevalent and significant phenomenon in modern commercial society, E-commerce has become a significant driving force in the competitive advertising landscape, and the internet is increasingly becoming the most crucial medium for advertising.⁵⁸⁵ However, due to the self-interest tendencies of merchants, they might desire to provide recipients with as much information as possible, even exaggerating or concealing the truth, making the advertising aggressive and bothersome. They might also proactively provide incomplete or even false information

⁵⁸⁴ The transaction process in e-commerce, such as “one-click” order submission, is rapid and straightforward, eliminating the need for complex and lengthy negotiations or consultations before entering into a contract, whose cost, however, is the decline of contract freedom and private autonomy. See Yang Biao, *The Cost of Negotiation: Cognitive Interpretation and Algorithm Implementation of Contract Freedom in Digital Society* (协商的代价: 数字社会合同自由的认知解释与算法实现, Xieshang de daijia: Shuzi shehui hetong ziyou de renzhi jieshi yu suanfa shixian), in *Peking University Law Journal*, 2022, n. 2, pp. 385-403.

⁵⁸⁵ For instance, in France, as early as 2017, the internet surpassed television as the advertising medium with the largest audience. Autorité de la concurrence (ADLC), *Rapport annuel 2017*, pp. 1-2. Accessed November 16, 2023, https://www.autoritedelaconcurrence.fr/sites/default/files/2019-05/rapport_autorite_2017_faibledef.pdf.

to deceive consumers.⁵⁸⁶ For these reasons, advertising is a commonly crucial focus under regulation, especially in the context of e-commerce.⁵⁸⁷ Both the EU (2.3.1.1) and China (2.3.1.2) have their respective comprehensive regulatory frameworks on advertising, and they are facing respective challenges in this regard.

2.3.1.1 EU regulatory framework on advertising

The *Directive on Electronic Commerce* has adopted the concept *commercial communication*, which is evidently broader than the *advertisement*. The choice of words reveals European legislator's ambition to regulate all the communication that involves promotional characteristics and is conducted through electronic means.⁵⁸⁸ Under this definition, advertising could be regarded as a form of commercial information transmission.

To correctly and integrally transmit commercial information, especially in the context of e-commerce, related activities need to be identifiable, authentic, based on the consent of recipients, and not harassing. These points could be summarized from EU regulation on advertising.

The first focus of advertising regulation is to ensure the identifiability of advertisements and distinguish them from other ordinary information, since there are

⁵⁸⁶ Therefore, the purpose of regulating online advertisements should include maintaining order in three aspects: the order within e-commerce contracts, the order of the digital market, and the order of society from online to offline. See Demoulin M. (dir.), *Les pratiques du commerce électroniques*, Bruxelles : Bruylant, 2007, p. 13.

⁵⁸⁷ For example, the LCEN, the most important French legislation on digital economy, established supervision of online advertising as one of its three focal points. See Castets-Renard C., *Droit de l'internet : droit français et européen*, Paris : Montchrestien-Lextenso, 2012, p. 117.

⁵⁸⁸ See Manara, C., *Droit du commerce électronique*, Paris : LGDJ -Lextenso, 2013, p. 109 ; Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (Eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 41-46.

numerous alternative methods to achieve the same effect as advertising.⁵⁸⁹ Among them, online advertising may most possibly appear in a disguised form. For instance, nowadays comments can also serve as a form of advertisement. The *Code of Consumption of France* recognizes this and proposes several requirements regarding transparency in online comments with Art. L111-7-2,⁵⁹⁰ treating comments as substantive information that falls under the control of misleading advertising regulations with Art. L121-3.⁵⁹¹ Another example is that, at times, it can be challenging to differentiate between native advertising and sponsored content, especially when it involves online content posted by celebrities.⁵⁹²

Secondly, the authenticity of the content of advertisements ought to be

⁵⁸⁹ This kind of advertising has its own story. For example, one rather “traditional” approach is through paying for web indexing. With the decline of Internet yellow pages and the increasing concentration of large search engines, pay-per-click has become one of the most popular forms of indirect advertising. See Rabagny-Lagoa A., *Droit du commerce électronique*, Paris : Ellipses, 2011, pp. 65-66.

⁵⁹⁰ Art. L111-7-2: “(1) Without prejudice to the information obligations provided for in Article 19 of Law No. 2004-575 of 21 June 2004 on confidence in the digital economy and Article L. 111-7 of this Code, any natural or legal person whose activity consists, as a principal or secondary activity, in collecting, moderating or distributing online opinions from consumers is required to provide users with fair, clear and transparent information on the methods of publication and processing of opinions posted online. (2) It specifies whether or not these opinions are subject to control and, if so, it indicates the main characteristics of the control implemented. (3) It displays the date of the opinion and any updates. (4) It indicates to consumers whose online opinion has not been published the reasons justifying its rejection. (5) It sets up a free feature that allows those responsible for products or services that are the subject of an online review to report any doubts about the authenticity of this review, provided that this report is justified. (6) A decree, issued after consulting the National Commission for Information Technology and Civil Liberties, sets out the terms and content of this information.”

⁵⁹¹ Art. L121-3 Section 1: “A commercial practice is also misleading if, taking into account the limitations of the means of communication used and the circumstances surrounding it, it omits, conceals or provides in an unintelligible, ambiguous or untimely manner substantial information or when it does not indicate its true commercial intention when this is not already apparent from the context.” More detailed analysis, see Vogel L., Vogel J., *Droit de la consommation*, Bruxelles : Bruylant, 2020, pp. 900-910.

⁵⁹² For example, the general requirement stated in Art.20 of the LCEN, which mandates the clear identification of the individual or entity behind the marketing, will also be applicable in this situation: “Any advertising, in whatever form, accessible by an online public communication service, must be clearly identifiable as such. It must make the natural or legal person on whose behalf it is produced clearly identifiable.” See Gola R.V., *Droit du e-commerce et du marketing digital : sécurisez et développez votre e-business*, Paris : Gualino, 2019, p. 270.

guaranteed.⁵⁹³ In this regard, the *Directive 2006/114/EC* has implemented various measures, establishing a definition for misleading advertising and providing indicators that can assist in identifying this practice.⁵⁹⁴ In general, the *Directive* also imposes an objective for Member States to “ensure that adequate and effective means exist to combat misleading advertising.” This *Directive* is proven to have a fundamental function, since subsequent EU legislations frequently reference it.⁵⁹⁵

Thirdly, the predominant characteristics of online advertising in the present day include interactivity and personalization. Interactivity signifies that information is no longer conveyed in one direction only, but through a process of interaction. Personalization means that advertising is not always the same for everyone but is specifically produced and conveyed based on data collected during online browsing and consumption.⁵⁹⁶ The above characteristics are achieved through specific algorithms with the application of big data, which might be not in accordance with consumers’ will. The *Digital Market Act* thus requires gatekeepers not to utilize personal data for the purpose of online advertising, unless end users independently choose to authorize and consent.⁵⁹⁷ Due to the new regulatory requirement, major internet companies have begun to alter their business consent models to evade EU

⁵⁹³ Regulation on misleading advertising is especially beneficial for consumer protection of specific products, including cosmetic products, biocidal products, and agricultural products, which also contributes to trademark protection.

⁵⁹⁴ Articles against misleading advertising are Art. 2 (b), Art. 3 and Art. 5 of the *Directive 2006/114/EC*.

⁵⁹⁵ Regulations and directives that quoted *Directive 2006/114/EC* include Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products, Regulation (EU) No 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products, Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and Regulation (EU) 2017/1001 on the European Union trademark.

⁵⁹⁶ See Castets-Renard C., *Droit de l'internet : droit français et européen*, Paris : Montchrestien-Lextenso, 2012, p. 118.

⁵⁹⁷ According to Art. 5.2 (a) *Obligations for gatekeepers* of the *Digital Market Act*, they are also prohibited from processing personal data of end users who use third-party services that rely on the gatekeeper’s core platform services for online advertising, but with purpose of preventing them from using advertising to hinder fair competition in the digital market.

sanctions.⁵⁹⁸

Fourthly, online advertising presents an inherent tendency to harassment that poses a significant trouble to consumers,⁵⁹⁹ such as spamming and pop-up advertising.⁶⁰⁰ To mitigate harassment, the *Directive 2005/29/EC* has already made a significant contribution. According to this *Directive*, excessive advertisements can be classified as aggressive commercial activities, thereby holding traders liable for their actions.⁶⁰¹

Apart from these four points, another important question to note in EU advertising regulation is that the *Directive 2006/114/EC* abolished the prohibition on comparative advertising and allowed for comparative advertising activities under certain conditions that do not harm fair competition.⁶⁰² In any sense, any advertisements that unjustifiably create an advantage in competition by exaggerating their claims, offering excessively low prices, disparaging other competitors, or engaging in irrational comparisons should be restricted.

⁵⁹⁸ As an illustration, Google declared its measures for compliance rectification in 2024, which measures necessitate advertisers on the Google platform to implement the *Google Consent Mode* on their websites or apps, adhering to Google's stipulations. Additionally, Google offers users of its search engine services the opportunity to share data on various platforms such as YouTube and Google Play. Accessed May 25, 2024, <https://support.google.com/google-ads/answer/10000067?hl=en-GB&sjid=908856331977201918-EU>. Similarly, Amazon has updated its advertising management strategy by requesting customers who visit its EU app store and other business platforms to consent to the collection of personal data for personalized advertising. This adjustment applies to Amazon Prime Video, IMDb, Twitch, and Kindle e-readers. The aforementioned necessary consent of customers may pose challenges for Amazon in displaying personalized ads to their EU users.

⁵⁹⁹ See Piedelièvre S., *Droit de la consommation*, Paris : Economica, 2020, p. 164.

⁶⁰⁰ See Demoulin M., *Les pratiques du commerce électroniques*, Bruxelles : Bruylant, 2007, p. 37.

⁶⁰¹ See Lodder A.R., *Directive 2003/31/EC on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce in the Internal Market*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 41-46.

⁶⁰² Within this framework, websites that offer price comparison services, which the French legislators believe to be a valuable tool for e-commerce, can be considered as forms of comparative advertising. See Castets-Renard C., *Droit de l'internet : droit français et européen*, Paris : Montchrestien-Lextenso, 2012, pp. 130-131.

2.3.1.2 China regulatory framework on advertising

Due to the prevalence of e-commerce operators using Internet technology to promote intangible goods and services, a specialized legislation that regulates advertising activity in cyberspace would be necessary. For this purpose, Chinese legislators promulgated the *Measures on Regulation about Internet Advertising*.

The *Measures* firmly reiterates the principle of identifiability of Internet advertising.⁶⁰³ Based on this principle, two specific rules are proposed to restrict several common online advertising practices.⁶⁰⁴ However, it is regrettable that the legislators have not stipulated any punishment related to this article, whether administrative or civil. Therefore, the cost of breaking the law remains low, and merchants can still employ more obscure and indirect methods to conduct advertising.⁶⁰⁵ Besides, this *Measures* is not perfect. Firstly, although many specific topics are discussed in this *Measures*, few detailed rules are indeed formulated.

⁶⁰³ Art. 9, Section 1 of the *Measures on Regulation about Internet Advertising*: “An Internet advertisement shall be identifiable so that it can be clearly identified by consumers as an advertisement.” That clause was considered to be the cornerstone for the regulation on Internet advertising in China. See Zhao Peng, *The Legal Implications of the “Ethicalization” of Science and Technology Governance* (科技治理“伦理化”的法律意涵, Keji zhili lunlihua de falyu neihan), in *Peking University Law Journal*, 2022, n. 5, pp. 1201-1220.

⁶⁰⁴ Over a lengthy period, Chinese consumers have struggled to easily distinguish whether an article or a video constitutes an advertisement, which has implicitly harmed fair competition and consumer interests. These rules require the label of “advertising” in certain situations, which could address the above dilemma to some extent.

Art. 9, Section 2-3 of the *Measures on Regulation about Internet Advertising*: “(2) For goods or services that appear resulting from advertisement auction, an advertisement publisher shall clearly indicate *advertisement* to clearly distinguish them from organic search results. (3) Except under circumstances where laws and administrative regulations prohibit publishing advertisements directly or in disguise, when promoting goods or services in the form of knowledge imparting, experience sharing, or consumption evaluation, among others, accompanied by a shopping link or any other purchase method, the advertisement publisher shall clearly indicate *advertisement*.”

⁶⁰⁵ For this reason, the rules in this *Measures* are considered as an “institutional ethical rule”, which regulates Internet advertising not according to their binding force, but with their responsiveness and inclusivity, opposite to a “strong regulation” attitude, see Qin Xuebing, *Institutional Ethical Regulations: A Study of Essential Traits and Implementation of Credit Supervision for Live Streaming E-Commerce Advertising* (制度伦理规制: 直播电商广告信用监管的本质及其实现, Zhidu lunli guizhi: Zhibo dianshang guanggao xinyong jianguan de benzhi jiqi shixian), in *Journal of Hubei University (Philosophy and Social Science)*, 2024, n. 5, pp. 167-175.

Secondly, this *Measures* took somewhat conservative approach and compromised towards certain forms of Internet advertising, which are popularized and bothersome to consumers. However, perhaps since they are fairly common and widely adopted by large e-commerce companies, effective regulatory measures are yet to be formulated.⁶⁰⁶

The prevention of fraud in online advertising is another focal point. The authenticity requirement towards advertising concerns any elements that can influence consumer choice and interfere with judgment, as long as they are from merchants' *introduction*.⁶⁰⁷ For instance, historical and recent transaction volumes and user reviews are important for online consumers.⁶⁰⁸ The e-commerce operators often resort to fabricating, hiding, or deleting information in order to create a false favourable impression and conceal unfavourable information. These activities are now considered deceptive and are strictly prohibited.⁶⁰⁹ Furthermore, from the perspective of civil law, any contracts containing convention on fabricating sales volumes or reviews will be declared invalid, thus neither party involved will be protected.⁶¹⁰

⁶⁰⁶ For example, advertising that appears when starting a mobile app or powering on an electronic device, and advertising that appears when users shake their smartphones. The regulatory practice against this practice is now only implemented through a relatively low-level normative document with weak binding force. See Art. 1-4 of the *Notice on Further Enhance Mobile Internet Application Service Capabilities (2023)* (工业和信息化部关于进一步提升移动互联网应用服务能力的通知, Gongye he xinxihua bu guanyu jinyibu tisheng yidong hulianwang yingyong fuwu nengli de tongzhi).

However, given the nature of contemporary legislation as a process of compromise among various parties with interconnected interests, the current provisions are evidently acceptable. Consumers could observe the upcoming developments involving government, large-scale enterprises, scholars, and consumer representatives.

⁶⁰⁷ According to Art. 2, Section 1 of the *Advertising Law of China*, all activities "directly or indirectly introducing the goods or services that promote by themselves through certain media and forms" can be identified as advertising.

⁶⁰⁸ More specific deceptive commercial promotion activities are identified by Zhejiang provincial legislation, which is worth referencing for ulterior regulation. These activities include fabricating transaction volumes, purchase reservations, market share, collections, likes, votes, attention, forwarding, and views, as well as providing false consumer evaluations. [Art. 11 of the *Regulation on Anti-Unfair Competition of Zhejiang Province (2022)*]

⁶⁰⁹ According to Art. 9, Section 1 of the recently promulgated *Regulation on the Implementation of the Consumer Rights and Interests Law (2024)*.

⁶¹⁰ According to Art. 9 of *Judicial Interpretation on Online Consumption (2022)*.

The third focus in advertising regulation is the control of annoying commercial communication, which is also a classical issue. In order to address aggressive promotion activities, Chinese legislators choose *opt-in* as the default standard, requiring operators to refrain from sending commercial messages without the consent or request of the consumer.⁶¹¹ When sending such messages, the senders must disclose their identity and contact information, and also include a clear, easy, free, and immediate *opt-out* option for consumers. Once the consumer chooses to opt out, e-commerce operators are prohibited from sending any further similar messages, even if they assume new identities.⁶¹² In addition, to prohibit bothersome webpage advertising, Chinese legislator requires that “In an advertisement published on the Internet in the form of pop-ups or other formats, a conspicuous close button must be provided, ensuring that the advertisement can be closed with a single click.”

Fourthly, to deter exaggerated or even false claims and promises in advertising, Chinese legislators have employed various legal techniques to accomplish the same goal. With the civil law path, the legal validity of advertising will be affirmed, but incorporating the information provided in advertisements regarding the products or services, the terms and conditions of purchase, as essential components of the contract.⁶¹³ With the administrative approach, operators are obliged to fulfill all the promises made in their advertisements, with a significant penalty serving as a

⁶¹¹ However, in practice, the option to “consent to the sending of commercial messages” is often presented in a covert manner, which undermines the effectiveness of the opt-in requirement.

⁶¹² According to Art. 43 of the *Advertising Law of China*, as well as Art. 24 of the *Implementation Regulation of Consumer Rights and Interests Protection Law (2024)*.

⁶¹³ In this path, commitments made in advertising will be treated as an offer, as long as it satisfies the criteria of an offer, according to Art. 473, Section 2 of the *Civil Code of China*. See Xue Jun, *Definition of the Scope of Contracting Parties' Agreement and the Merge Clause: An Interpretation of the Related Clauses in Chinese Civil Code* (论合同当事人合意范围的界定与内容合并条款——以中国《民法典》为中心的解釋論构造, Lun hetong dangshiren heyi fanwei de jieding yu neirong hebing tiaokuan: Yi zhongguo minfadian wei zhongxin de jieshilun gouzao), in *Social Science Journal*, 2022, n. 2, pp. 66-75.

deterrent.⁶¹⁴

A recently emerging issue in online advertising regulation is undoubtedly online live marketing, which serves as both the e-commerce transaction itself and the promotion of online business.⁶¹⁵ Along with its rapid growth, various problems become increasingly apparent, including lack of effective legal supervision, network traffic fraud, false advertising and exaggerated publicity, lack of guarantee of product quality, and even excessive vulgar and undesirable content.⁶¹⁶ The Chinese legislators have made several minor attempts to address this issue.⁶¹⁷ Firstly, they have adopted

⁶¹⁴ Art. 12 of the *Implementation Regulation of the Consumer Rights and Interests Protection Law*: “Where an operator provides commodities or services in the form of commercial publicity, product recommendation, physical display or notice, declaration, shop notice, etc., and makes a commitment to the quantity, quality, price, after-sales service and liability assumption of commodities or services, it shall fulfill its commitments to consumers who purchase commodities or receive services.” It is obvious that the above provision covers numerous scenarios in order to provide inclusive measures against disloyal advertising.

⁶¹⁵ See Han Xinyuan, *Theoretical Review and Governance Research on Online Streaming E-Commerce* (直播带货的学理审视与治理研究, Zhibo daihuo de xueli shenshi yu zhili yanjiu), in *Science Technology and Law*, 2022, n. 1, pp. 62-68.

⁶¹⁶ The above fact reflects the negative side of “Internet traffic economy”, which usually ignores the unification of economic and social interests, see Feng Hua, *Problems and Governance Strategies in the Live E-commerce Industry* (直播电商产业存在的问题和治理对策, Zhibo dianshang chanye cunzai de wenti he zhili duice), in *People’s Tribune*, 2023, n. 6, p. 104-106. This also can be seen as an alienation brought about by consumerism, which is apparently worth criticizing. See Feng Jinru, Li Jian, *Regulation of Live Streaming Marketing under Advertising Law* (网络直播营销的广告法规制, Wangluo zhibo yingxiao de guanggaofa guizhi), in *Nanjing Journal of Social Sciences*, 2023, n. 11, pp. 111-122.

⁶¹⁷ The already made efforts are far from sufficient. To establish a healthy and orderly online live broadcast market and optimize the business and consumption environment of the online live e-commerce market, a more collaborative regulation should be carried out. This includes e-commerce industry law, digital market law, advertising law, contract law, and consumer protection law. Specifically, regulation should be strengthened for sales activities not directly traded through the platform, making it easier to protect consumer rights. Market supervision and management agencies should also have stronger online law enforcement jurisdiction over live streaming of goods to investigate and deal with illegal and counterfeit goods promptly. Contracts for online live broadcasts and goods should be improved to clarify the responsibilities of all parties involved, and a code of conduct should be published to standardize live marketing behavior. Lastly, consumer rights, especially the right of withdrawal, need to be strengthened. See Su Haiyu, *Legal Regulation on Online Living E-Commerce* (网络直播带货的法律规制, Wangluo zhibo daihuo de falyu guizhi), in *China Business and Market*, 2021, n. 1, pp. 97-104.

a classical paternalistic approach to control the widespread occurrence of this phenomenon, in particular keeping minors at a distance from it.⁶¹⁸ Secondly, legislators declared that the operator of the live studio could be considered the advertiser, while the anchors should be considered spokespersons, thus all corresponding responsibilities derived from traditional advertising law can be imposed on them.⁶¹⁹

In the end, we have to admit that the innovative feature is evident anywhere in the current regulatory framework about online advertising. Firstly, Chinese legislators observed several unfair practices and kept the legislation progressing over time, purposing their opinions targeting intrusive pop-up advertisements, deceptive notifications or signs in advertising, recommendation algorithms, and advertising through online streaming.⁶²⁰ Secondly, Chinese e-commerce platforms are encouraged to take on the responsibility of promoting *social positive energy*, which reflects contemporary characteristics of China.⁶²¹

2.3.2 Pre-contractual information obligation

To conduct a comprehensive analysis of the obligation to provide pre-contractual information, it would be beneficial to sequentially examine its justification (2.3.2.1), scope (2.3.2.2), and the corresponding liability (2.3.2.3).

⁶¹⁸ According to Art. 38 (4) of *Provisions on the Protection of Minors by Schools* (未成年人学校保护规定, Weichengnianren xuexiao baohu guiding) issued by Ministry of Education of China in 2021, all the schools and their staff shall absolutely not “induce, arrange for, or require students and their parents to log in to a specific commercial website to participate in activities such as live video broadcast, online shopping, online voting, and false voting.” Archived June 1, 2021, at http://www.moe.gov.cn/srcsite/A02/s5911/moe_621/202106/t20210601_534640.html.

⁶¹⁹ Ar. 14 Section 3 of *Implementation Regulation of Consumer Rights and Interests Protection Law*.

⁶²⁰ Art. 10, Art. 11, Art. 15 and Art. 19 of the *Measures on Regulation about Internet Advertising*.

⁶²¹ Art. 11 (10) of *Provisions on Ecological Governance of Network Information Content*: “Network information content platforms shall be encouraged to adhere to the mainstream value orientation, optimize the information recommendation mechanism, strengthen the ecological governance of pages, and actively present the information prescribed in Art.5 of these Provisions in terms of the following key links...The home page, first screen, and recommended sections of e-commerce platform.”

2.3.2.1 Justification

During the pre-contract stage, the parties involved in the transaction only communicate and consult with each other, and they are only bound by the principle of good faith and certain general duties that stem from it. If the contract fails to materialize, the party who exploits the other party's trust and causes them to suffer a loss will be held responsible based on *culpa in contrahendo*.⁶²² However, the obligation to provide pre-contractual information is intended to have the following effect: Regardless of whether an offer is made, all potential consumers must be provided with the requested information.⁶²³ It is clear that this obligation cannot be included in either of the above rules, as neither of them can actually impose a positive obligation.

The justification for a pre-contractual information obligation in the field of e-commerce and its mechanism are nearly self-evident in modern commercial society. When it comes to cyber-consumers, the inability to physically see or experience the merchandise or service offered by the virtual counterparty due to their remote location, coupled with the lack of effective means to convey all the physical attributes of e-commerce products, further exacerbates the existing information asymmetry within each seller-consumer relationship.

In order to enhance confidence and facilitate transactions in the digital market, it is necessary to correct such inequivalent status.⁶²⁴ In order to accomplish this objective, the unreliability of market spontaneity necessitates a strong legal intervention. This can be achieved by implementing a set of default rules during the pre-contract stage of every online transaction, known as the pre-contractual

⁶²² See Shang Lianjie, *Reconstructing Relationship between Fault in Contracting and Fraud: On the Auxiliary Line of Function Intervention of Mistake Theory* (缔约过失与欺诈的关系再造——以错误理论的功能介入为辅助线, Diyue guoshi yu qizha de guanxi zaizao: Yi cuowu lilun de gongneng jieru wei fuxian), in *The Jurists*, 2017, n. 4, pp. 131-144.

⁶²³ See Piedelièvre S., *Droit de la consommation*, Paris : Economica, 2020, p. 105.

⁶²⁴ See Gola R.V., *Droit du e-commerce et du marketing digital : sécurisez et développez votre e-business*, Paris : Gualino, 2019, p. 24.

information obligation.

In order to promote the development of e-commerce, such obligations play a fundamental and crucial role. It is evident that almost all initial legislations regarding e-commerce in various legal systems incorporate several rules pertaining to this subject. Within the main jurisdiction discussed in this dissertation, the aforementioned legislations include Art. 5, 6, and 10 of the *Directive on Electronic Commerce*, all of which are titled *information to be provided*. Additionally, Art. 10 and 13 of the *Interim Measures on the Trading of Commodities and Services through the Internet (2010)*, as well as the corresponding articles of its more authoritative successor, the *E-Commerce Law of China*, are included.

2.3.2.2 Scope

After addressing the issue of necessity and significance, the next crucial matter to consider is the extent of information that should be disclosed to consumers in advance. Subjective judgments or case-by-case assessments regarding the sufficiency of such information from the consumer's perspective are not as valuable, as this topic should be determined solely by legislators, who are bound by the objective need for certainty and stability in the legal system. However, consumers are likely to expect that more information, even if somewhat irrelevant, will provide them with better protection under the law. This would obviously place an excessive burden on e-commerce operators. Furthermore, if a large amount of information is mandatory, it would actually be less consumer-friendly, as consumers would be overwhelmed by an excessive amount of information, making it difficult for them to identify crucial details. This would clearly deviate from the original intention of such obligations.

Considering the above factors, the obligation to provide pre-contractual information may not necessarily improve the treatment of consumers in e-commerce. Instead, it would be more appropriate to entrust this task to e-commerce operators, which would benefit them in terms of gaining a competitive advantage and achieving a mutually beneficial relationship with consumers. Therefore, the pre-contractual information obligation should be seen as a legal mechanism to ensure that cyber-

consumers acquire the minimum but necessary information, preventing e-commerce operators from engaging in opportunistic behaviours and intentionally creating information asymmetry for their own gain.⁶²⁵

(1) The general information of e-commerce operators

The basic information of the e-commerce operator is the fundamental information that should be easily accessible and known to consumers. Although online B2C trading is somewhat anonymous, the identity of consumers is not particularly significant. In the process of online transactions, it is always the consumers who are seeking a seller, rather than the other way around. In order to assist cyber-consumers in making informed decisions before making a purchase, the first question that needs to be answered is “who should be the counterparty”. This is especially important in the context of the Internet, where the concealment of identity and the use of third-party intermediaries can be easily done.

According to Art. 5 of the *Directive on Electronic Commerce*, the following information must be made public:⁶²⁶ a) Name of the service provider; b) Geographic address; c) Contact details, including email, for rapid and direct communication; d) Trade registry entries; e) Professional details; f) VAT details.⁶²⁷

In comparison, Chinese legislation does not provide such detailed guidelines on the matters to be disclosed. Similarly, to the requirement for offline operators to display their license in stores, Article 15, Section 1 of the *E-Commerce Law of China* states that any e-commerce operator must continuously publish the information regarding its business license and, if possible, the relevant administrative license or any circumstances that exempt it from market entity registration, at a prominent location on its homepage. Alternatively, it is also acceptable to publish a link to the aforementioned information. The information on the business license includes a) the name; b) legal representative; c) type or the organization form; d) capital; e) residence;

⁶²⁵ See Di Donna L., *Obblighi informativi precontrattuali. La tutela del consumatore*, Milano, 2008, pp. 1-9.

⁶²⁶ See Wilhelmsson, T. *European rules on pre-contractual information duties?*. ERA Forum 7, 16–25 (2006).

⁶²⁷ These rules are often directly incorporated into domestic legislation, such as Art. L.221-14 of the *Code of Consumption of France*.

f) period of operation; g) scope of operation; h) registration authority; i) data of foundation; j) unified social credit identifier.⁶²⁸ Given that the taxpayer identification number in China does not typically serve as a means to identify a market entity, it can be observed that the general information required to identify an e-commerce operator in the EU and China is essentially the same.

The only distinction lies in the requirement to publish contact information. While in Chinese e-commerce practice, nearly all platforms, internal platform operators, and independent e-commerce websites prominently display the *contact customer service* button, there is still a legal loophole that needs to be addressed.

(2) Other essential information

Regarding the information pertaining to e-commerce transactions, both article 5(2) and article 10 of the *Directive on Electronic Commerce* additionally mandate the disclosure of the following: a) Price, and whether the price includes tax and delivery costs; b) Different technical steps to conclude the contract; c) Whether the concluded contract is filed and accessible; d) Technical means for identifying and correcting input errors; e) Languages offered; f) Relevant codes and how to access them electronically; g) Contract terms and general conditions available and storable.⁶²⁹

Chinese legislators have clearly taken inspiration from European legislators. Art. 50 of the *E-Commerce Law of China* mandates that e-commerce operators must inform users in a clear, comprehensive, and explicit manner about the procedures for forming a contract, the dos and do nots, and the methods for downloading. This requirement aligns with points b) and d) mentioned earlier. Additionally, article 33 states that platform service agreements and transaction rules must be published in a manner that is accessible and downloadable, mirroring a similar requirement in the European Union. Furthermore, article 34 aims to establish a democratic e-commerce platform by demanding that any amendments to platform service agreements and transaction rules

⁶²⁸ Art. 23, Section 1 of the *Detailed Rules of Regulation on the Administration of the Registration of Market Entities of China*.

⁶²⁹ Legislation of Member States, see Art L221-5 of *Code of Consumption of France*.

be published and that platforms ensure stakeholders have the ability to express their opinions. It even allows for the removal of dissenting in-platform operators, although this rule may not be practical. This can be seen as a commendable effort to create a healthy e-commerce ecosystem, but its actual impact remains to be seen due to the significant economic disparities that exist.

Chinese legislators have not overlooked the issue of price, which falls under the purview of both pre-contractual protection and consumer protection. This topic will be further discussed in a later section, as price fraudulence is a prevalent issue in China, particularly on e-commerce platforms. Therefore, mandating e-commerce operators to disclose prices inclusive or exclusive of tax and delivery costs is insufficient.

However, Article 8 and 28 of the *Consumer Rights and Interests Protection Law of China* only mention the types of information that should be provided to consumers, without specifying any requirements for transparency of information. This is evidently less comprehensive than the legislation in the European Union. Although Art. 18-21, Art. 33, and Art. 37 of the *E-Commerce Law of China* do address certain information that e-commerce operators should provide, these additional regulations do not form a complete regulatory system regarding the right to information for e-commerce consumers.

Regarding the codes of conduct followed by e-commerce operators, there have been few related practices observed in China. This is partly due to the tradition of strict administrative regulation and limited guidance on commercial activity from industry associations.

Furthermore, it can be argued that the classification of different groups of crucial information is a consensus among different jurisdictions. This consensus can enhance the clarity of pre-contractual information duties and make it easier for e-commerce operators to comply with relevant regulatory requirements.⁶³⁰

⁶³⁰ See Zhang Xian, *On the Principles of Stipulating the Pre-contractual Duty of Disclosing Information: Based on the Classification of Information* (先合同信息披露义务的设定原则研究——以信息类型化为框架, Xian hetong xinxi pilu yiwu de sheding yuanze yanjiu: Yi xinxi leixinghua wei kuangjia), in *Academic Research*, 2015, n. 7, pp. 56-64.

2.3.2.3 Liability

Since the function of an EU directive is solely to establish a standard to be met, while the method for achieving the objectives outlined in the directive is determined by the legislators of each respective Member State, the responsibility to be assumed by e-commerce operators when they fail to fulfil the aforementioned pre-contractual obligation is not specified in the *Directive on Electronic Commerce*. To address this issue, our attention should be directed towards the legislation of EU Member States.

For example, in France, the obligation to provide pre-contractual information serves as a prerequisite for the conclusion of an e-commerce contract, as certain essential pre-contractual information is considered to be integral to the offer in an e-commerce contract, as stated in Art. 1127-1 of the *Civil Code of France*.⁶³¹ The offer can only be considered valid if the necessary information is provided, allowing consumers to express their agreement.⁶³² Conversely, if there is insufficient pre-contractual information provided, any agreement reached between the two parties will be deemed invalid.

While in China, legislators have opted for an administrative approach. The consequences for failing to comply with the obligation to publish such information are quite clear: fines.⁶³³

The civil law approach fundamentally rejects the idea of e-commerce contracts, in order to prevent harm to consumers and prevent e-commerce operators from gaining unfair advantages in e-commerce transactions. On the other hand, the administrative law approach, while not denying the validity of e-commerce contracts, imposes

⁶³¹ Section 3 of such article listed a) the different steps to conclude the contract, b) technical means to identify errors, c) language for the contract, with the compulsory usage of French, d) terms of archiving the contract and conditions of access it and e) relevant commercial or professional codes complied by the operator and its access.

⁶³² See Clavier J.-P., Mendoza-Caminade A., *Droit du commerce électronique*, Bruxelles : Bruylant, 2023, pp. 310-311.

⁶³³ More specifically, article 76 of *E-Commerce Law of China* states the fines against ordinary e-commerce operators, the penalty would be less than 10,000 yuan. While article 81 stipulates the penalty against e-commerce platforms: Depending on the severity of breach of pre-contractual information obligation, the starting point is 20,000 yuan, while the upper limit is 500,000 yuan.

significant financial penalties on e-commerce operators who fail to fulfil their obligation to provide pre-contractual information. This serves as a deterrent against engaging in illegal practices.

However, regardless of the approach taken, the primary goal of the pre-contractual information duty should always be to address any potential information imbalances.⁶³⁴ As long as both paths are equally effective, there is no need to prioritize one method over the other. Conversely, legislators and policymakers should allocate equal attention to all possible regulatory paths in order to achieve comprehensive governance and attain the most optimal outcome.

Based on previous analysis, the obligation of pre-contractual information expands the system of obligations in contract conclusion, thereby rebalancing the information asymmetry between e-commerce operators and cyber-consumers. This represents the trend towards modernizing contract law in the digital age.⁶³⁵ Both the EU and Chinese regulations require a sufficient level of transparency, and there is a consensus between the two frameworks regarding the mandatory disclosure of critical information. Additionally, both frameworks aim to strike a balance between consumer protection and the operational burdens faced by e-commerce operators, although there are some differences in terms of specific details and enforcement.

⁶³⁴ See Poludniak-Gierz, Katarzyna, *Sanctions for Lack of Fulfilment of Information Duties: Searching for an Adequate Regulatory Model for Personalized Agreements*, *European review of private law*, 28 (2020): 817–839.

⁶³⁵ As the progress of automatization in digital transaction, the performance of pre-contractual information duty is in front of greater challenges. See Markou C. *Advanced Automated Contracting and The Problem with the Pre-Contractual Information Duty of the Consumer Rights Directive*. *Journal of Internet Law*. 2017;20(8):3-23.

2.4 Formation of e-commerce contract

In general, it was believed that contracts made online were considered to be functionally equivalent to contracts made offline. However, there are still specific issues that need to be analysed separately when the contract has been digitized. Firstly, the electronic form itself presents an independent problem (2.4.1). Secondly, the prerequisite for expressing the intention to conclude a contract is capacity, which is difficult to verify (2.4.2). Thirdly, the conclusion of a contract involves the expression of intentions, the arrival time of declarations of intent and the conclusion time of contract (2.4.3) are crucial. Fourthly, B2C e-commerce is highly standardized, thus a special discussion on digital standard contracts would be beneficial (2.4.4).⁶³⁶

2.4.1 The nature of contract in electronic form

In Art. 11 of the *Contract Law of China (1999)*, telegram, telex, facsimile, electronic data exchange (EDI), and electronic mail are collectively acknowledged as forms of data messages. Additionally, data messages are classified as a type of written form. It reflected the prevailing technological trends at that time, but it is now outdated and lacking in comprehensiveness.⁶³⁷

The *Civil Code of China* made some innovations with Art. 469. Firstly, they excluded all data messages from the scope of writing form, as they are not indeed material, despite being able to tangibly represent their contents. However, they are “considered to be” concluded in writing form as long as they can be accessed at any

⁶³⁶ Since the issues regarding the nature of digital contracts primarily pertain to domestic law, this subsection will mainly focus on Chinese legislation.

⁶³⁷ The defects were detected more than one decade ago. Firstly, the contract concluded by EDI could be considered as an e-commerce contract, while telegram, telex, facsimile, and email are explicitly excluded from the scope of modern e-commerce. Secondly, the above definition does not include the Internet, which is an emerging telecommunication method. See Sun Zhanli, *Analysis on Several Legal Issues of Electronic Offers: Based on UECIC* (电子要约若干法律问题探析——以 UECIC 为基础, Dianzi yaoyue ruogan falyu wenti tanxi: Yi UECIC wei jichu), in *ECUPL Journal*, 2008, pp. 29-35.

time.⁶³⁸ Furthermore, in an attempt to avoid being overly specific, the article only mentions EDI and e-mail as two most popular examples of data messages. Finally, it is worth noting that the article actually does not mention the term *Internet*. Nevertheless, it can be assumed that the term *data messages* encompasses the Internet.⁶³⁹

If a contract is concluded using data messages, the place of establishment would be determined in the following order:⁶⁴⁰ (1) The main place of business of the recipient; (2) The residence of the recipient.⁶⁴¹ However, the agreement of the parties is always the most decisive factor. Another important rule about contracts in electronic form is about the arrival time of the communications, which will be discussed in detail in the next sub-section (2.4.3).

2.4.2 The capacity of e-commerce participants

In a face-to-face transaction, it is generally possible to judge the counterparty's capacity, but this judgment might not always be accurate. Therefore, certain presumptions are introduced to protect the participants of transactions and ensure transaction security. In the case of online transactions, the judgement of counterparty's capacity becomes even more difficult due to the widespread accessibility to Internet and e-commerce. In this regard, people without adequate capacity, especially minors, can also conduct online transactions.

⁶³⁸ This is an important innovation in legislation applying the legislative technique of fiction, see Liu Guixiang, *Several Questions on the Conclusion of Contract* (关于合同成立的几个问题, Guanyu hetong chengli de jige wenti), in *Journal of Law Application*, 2022, n. 4, pp. 3-17.

⁶³⁹ According to the general usage of the term *data* in the *Civil Code of China*, even in the whole Chinese legislation system, where data is mentioned, there is an implication to Internet, see Zhang Hong, "Data" in *Chinese Legal Texts: Semantics, Norms and Genealogy* (我国法律文本中的“数据”: 语义、规范及其谱系, Woguo falyu wenben zhongde shuju: Yuyi guifan jiqi puxi), in *Journal of Comparative Law*, 2022, n. 5, pp. 61-74.

⁶⁴⁰ In accordance with Art. 492, Section 2 of the *Civil Code of China*, which slightly modified Art. 34, Section 2 of the *Contract Law of China*.

⁶⁴¹ It was place where the recipient habitually resides according to the *Contract Law of China*, but that rule was less in line with related international private law rules.

Art. 48 Section 2 of the *E-Commerce Law of China* introduced a fairly innovative and inspiring rule in order to address this issue,⁶⁴² stating that: “A party shall, in e-commerce, be presumed to have corresponding capacity for civil conduct, unless contrary evidence is sufficient to rebut the presumption.” This presumption allows most online transactions to proceed smoothly, while special circumstances are handled on a case-by-case basis, initially by platforms and then by judges.⁶⁴³ However, this article has not been fully applied in China’s judicial practice.⁶⁴⁴

2.4.3 The arrival time of an electronic declaration of intent and the conclusion time of e-commerce contract

When it comes to data messages, the rules regarding their arrival time at the recipients are different from the general rules. In the *Contract Law of China*, Art. 16, Section 2 is dedicated to the offer in the form of a data message, while the arrival time of acceptance is determined by Art. 26, Section 2.

“When a contract is concluded by the exchange of data messages, if the recipient of a data message has designated a specific system to receive it, the time when the data message enters into such specific system is deemed its time of arrival; if no specific

⁶⁴² However, it is worth reflecting that with this rule, the actors in online business communication are essentially abstracted, becoming mere subjects in a formal sense, with their real intentions replaced by their actions recorded in the information system. See Li Zhanguo, *Practical Exploration and Prospects of Judicial Governance in Network Society* (网络社会司法治理的实践探索与前景展望, Wangluo shehui sifa zhili de shijian tansuo yu qianjing zhanwang), in *China Legal Science*, 2020, n. 6, pp. 5-23.

⁶⁴³ See Wang Hongliang, *Analysis and Construction of New Rules for the Formation of Electronic Contracts* (电子合同订立新规则的评析与构建, Dianzi hetong dingli xingui de pingxi yu goujian), in *Law Science Magazine*, 2018, n. 4, pp. 32-42.

⁶⁴⁴ With regards to the “reward” given to online streamers, which can be seen as a unique form of e-commerce for purchasing services, the Cyberspace Administration of China has simply prohibited any form of payment from minors, without considering the existing provision in the *E-Commerce Law of China*. See *Opinions on regulating online live streaming rewards and strengthening the protection of minors* (关于规范网络直播打赏 加强未成年人保护的意見, Guanyu guifan wangluo zhibo dashang jiaqiang weichengnianren baohu de yijian), published in 2022, archived May 7, 2022, at https://www.cac.gov.cn/2022-05/07/c_1653537626423773.htm. It is evident that in China, administrative measures are more effective than legal measures.

system has been designated, the time when the data message first enters into any of the recipient's systems is deemed its time of arrival."

The *Civil Code of China*, specifically with Art. 137, Section 2, maintains the previous expression but also consolidates the rules on offer and acceptance into the concept of declaration of intent, which demonstrates a stronger inclination towards German civil law legislation.⁶⁴⁵ In cases where no specific system is designated, the standard for determining the time of arrival varies from the objective perspective of *entering any systems* to the subjective perspective of *the recipient knew or should have known about the entrance into their system*. Additionally, the agreement between the parties regarding the effective time should be respected.

These rules incorporate commercial aspects by considering "entrance" as the time of arrival or the time of entry into force for the declaration of intent. This reflects a supportive stance towards the high efficiency in electronic business. In any case, this article is actually one of the fundamental rules governing digital contracts.⁶⁴⁶

Consensus is the fundamental element of a contract, which decides the conclusion time of e-commerce and poses a significant challenge for this situation.⁶⁴⁷ This is primarily due to the inherent difficulty in determining when exactly a consensus is reached between two parties who are only connected through the internet. However, the core principle remains unchanged in the case of e-commerce: the mutual agreement between the two parties is always the core of a contract.⁶⁴⁸

Art. 49, Section 1 of the *E-Commerce Law of China* and Art. 491, Section 2 of

⁶⁴⁵ See Li Yongjun, *Restatement of Contract Formation Rules: Based on the Integration of the Civil Code and Judicial Interpretations* (合同订立规则重述——基于《民法典》与司法解释的融贯性思考, Hetong dingli guize chongshu: Jiyu minfadian yu sifa jieshi de rongguanxing sikao), in *Northern Legal Science*, 2024, n. 5, pp. 55-66.

⁶⁴⁶ Despite its abstract nature, this rule should still be considered one of the most crucial rules in the e-commerce law system. See Liu Ying, *The Scope of Social Relations Adjusted by the Electronic Commerce Law of China* (我国电子商务法调整的社会关系范围, Woguo dianzi shangwufa tiaozheng de shehui guanxi fanwei), in *China Legal Science*, 2018, pp. 195-216.

⁶⁴⁷ See Guillemard S., *Le droit international privé face au contrat de vente cyberspatial*, Montréal : Yvon Blais, 2006, p. 284.

⁶⁴⁸ See Rabagny-Lagoa A., *Droit du commerce électronique*, Paris : Ellipses, 2011, p. 71.

the *Civil Code of China* share similar provisions on this issue.⁶⁴⁹ The general requirement is that, in relation to any information regarding goods or services published online, as long as it fulfills the criteria to be considered an offer, once the recipient of the information selects the good or service and successfully places an order, the e-commerce contract shall be formed, except in cases where prior agreement has been reached.⁶⁵⁰ In case of B2C e-commerce, operators are prohibited to state that the e-commerce transaction is not concluded even after consumers have made payment.⁶⁵¹ However, they are not allowed to require consumers to make payment before the e-commerce contract is considered unfinished.⁶⁵² This rule is effective in addressing the dominance of e-commerce operators with economic advantages and in protecting consumers by ensuring that both parties fulfill their obligations at an equal level: No contract, no payment.

The above provision could also be interpreted from another perspective: E-commerce operators are allowed to “make concord” with consumers through a standard contract that the e-commerce contract is not concluded even after the submission of an order. E-commerce practice is indeed guided by the above

⁶⁴⁹ However, it is necessary to notice that the rule incorporated in the *E-Commerce Law of China* specifically pertains to B2C e-commerce transactions. In contrast, the rule incorporated in the *Civil Code of China* is applicable to all types of e-commerce cases, including B2C and C2C due to its nature as a general civil law rule.

⁶⁵⁰ See Shi Guanbin, *On the Application of the Rules on the Establishment Time of Online Shopping Contracts in the Civil Code* (论民法典网购合同成立时间规则的适用, Lun minfadian wanggou hetong chengli shijian guize de shiyong), in *Oriental Law*, 2022, n. 3, pp. 160-172.

⁶⁵¹ Art. 49, Section 2 of the *E-Commerce Law of China*: “An e-commerce business may not stipulate by standard form clauses, or any other means, that a contract is not established after the consumer pays the price; and if standard form clauses, among others, contain such a stipulation, the stipulation shall be invalid.”

⁶⁵² See Xue Jun, *Analysis of the Conclusion of Digital Contract* (电子合同成立时间问题探析, Dianzi hetong chengli wenti tanxi), in *Journal of Law Application*, 2021, n. 3, pp. 25-33.

interpretation.⁶⁵³ At the meantime, e-commerce operators usually use vague expressions to introduce goods or services for sale, in order to avoid being identified as an offer, even state in their user agreements that all the information displayed on their pages simply consists of an invitation to make offer.

Objectively speaking, it is indeed impossible to consider any sale information published online as a completed offer, even if it is quite comprehensive. This is because certain crucial information, such as the number of goods or services and the buyer's address, still needs to be provided in order to finalize a contract. In this regard, it is only the consumers who are qualified to make an offer, rather than the operators who publish the sale information.⁶⁵⁴

Another point worth discussing is whether the time of *submitting an order* can be considered as the moment of conclusion. The submission of an order can hardly be significant, since there should be some confirmation work to be finished. For this reason, e-commerce operators, particularly platforms, commonly disregard the validity of order submission and the sending of order receipts. Instead, they typically specify *shipping* as the point of conclusion in their general terms and conditions, without any mention of the payment. This practice does not violate the principle of “no contract, no payment”. In this regard, it could be acknowledged that the further adjustment of the conclusion time of an e-commerce contract is realized, whose bottom line is the rejection against the situation that the contract has not been established even after one

⁶⁵³ The commercial practice is quite common in both the EU and China, as well as in other regions. For instance, in the General Conditions of Use and Sale of Amazon.it, the submission and receipt of an order do not hold any actual significance. Only the communication claiming that the shipping has been completed and indicating the expected delivery date can be considered as the symbol of concluding the e-commerce contract. Regarding payment, it will only be required when the items included in the order are shipped or five days after payment authorization, whichever comes first. Renewed on August 25, 2023, accessed March 20, 2024, <https://www.amazon.it/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM>. Similar requirements could be found in *User service agreements* of Jingdong, renewed on April 28, 2023, accessed March 20, 2024, https://in.m.jd.com/help/app/register_info.html.

⁶⁵⁴ See Wei Liang, *The Establishment Time of Online Shopping Contract: Empirical Investigation, Current Legislation and the Appropriate Position* (网购合同成立时间:实证考察、现行立法及应然立场, Wanggou hetong chengli shijian: Shizheng kaocha xianxing lifa ji yingran lichang), in *Social Sciences*, 2018, n. 12, pp. 90-98.

party has fulfilled the main obligations of the contract.⁶⁵⁵

2.4.4 Regulation on standard e-commerce contract

Standard contracts, such as general conditions, service agreements, or user agreements, are widely used in e-commerce to achieve various objectives, which makes almost all activities in e-commerce are governed by predetermined contracts with complex and lengthy content. It can be concluded that standard contracts actually form another foundation of e-commerce contracts.⁶⁵⁶

The trend of standardizing e-commerce format clauses poses new challenges to the traditional regulatory model, since the entities that formulate standard contracts will seize control over e-commerce transactions. Therefore, in the name of contract justice, a more stringent regulation on e-commerce standard contracts would be highly valued.⁶⁵⁷

In general, the traditional mechanism of restraining standard contracts or clauses is no longer effective in the digital market, due to the radically different communication methods. In order to protect cyber-consumers from potential risks and harm, their true intentions should be included in the standardized contract, such as

⁶⁵⁵ See Luo Kun, *Restriction on the Limitation targeting the Conclusion Time of Contract Agreed by the Parties* (当事人约定合同成立时间的限制, Dangshiren yueding hetong chengli shijian de xianzhi), in *Journal of Law Application*, 2023, n. 5, pp. 32-42.

⁶⁵⁶ See Gola R.V., *Droit du e-commerce et du marketing digital : sécurisez et développez votre e-business*, Paris : Gualino, 2019, p. 29.

⁶⁵⁷ Specifically, the homogenization trend of e-commerce standard terms, intensified information asymmetry in the online environment, the somewhat illegality of commercial innovation, and the abuse of user psychology by e-commerce have brought new challenges to the traditional regulatory model of standard terms, which requires a revolution in the regulation on e-commerce standard terms or contracts, see Wu Shuang, *On the Legal Configuration of Format Clauses in E-Commerce Contracts: Issues, Approaches and Methods* (论电子商务合同格式条款的法律配置: 问题、进路与方法, Lun dianzi shangwu hetong geshi tiaokuan de falyu peizhi: Wenti jinlu yu fangfa), in *Journal of Northeastern University (Social Science)*, 2022, n. 5, pp. 96-103.

through the application of the *informed consent* rule.⁶⁵⁸ Another viable and significant approach is to even challenge the contractual nature of these general terms.⁶⁵⁹

However, in legislative practice, the common choice is to list specific restricted situations in standard contracts.⁶⁶⁰ This method will face the risk of incompleteness.⁶⁶¹ Chinese legislator made efforts to realize the generalization of these prohibitions. In addition to the traditional prohibition on clauses that restrict or exclude the responsibilities of providers or increase the responsibilities of consumers, Chinese legislators have also declared other common clauses in e-commerce to be illegal.⁶⁶²

E-commerce operators may have previously had the unilateral authority to determine the method of dispute resolution, choosing between arbitration and litigation,

⁶⁵⁸ See Jiang Fengge, Yu Haifang, *On the Alienation and Regulation of Network Format Contracting: Based on the Integrated Regulation of Data Collection and Standardized Agreement in E-Commerce as the Background* (论网络格式缔约的异化与规制——以数据收集与电子商务中标准化同意的一体制规为背景, Lun wangluo geshi diyue de yihua yu guizhi: Yi shuju shouji yu dianzi shangwu zhong biao zhunhua tongyi de yiti guizhi wei beijing), in *Seeking Truth*, 2023, n. 5, pp. 123-135.

⁶⁵⁹ See Grundmann S., *European contract law in the digital age*, Bruxelles: Intersentia, 2018, pp. 160-162.

⁶⁶⁰ For instance, Article R212-1 of the *Code of Consumption of France* enumerates twelve clauses that are strictly prohibited in general conditions of sale (Conditions générales de vente), as well as ten ambiguous clauses that require careful consideration in various situations.

⁶⁶¹ The list could never be exhausted, which brings about the need to seek a general rule for judgement. See Wu Shuang, *On the Legal Configuration of Format Clauses in E-Commerce Contracts: Issues, Approaches and Methods* (论电子商务合同格式条款的法律配置: 问题、进路与方法, Lun dianzi shangwu hetong geshi tiaokuan de falyu peizhi: Wenti jinlu yu fangfa), in *Journal of Northeastern University (Social Science)*, 2022, n. 5, pp. 96-103. Another scholar proposed a new plan, which differs from “blacklist” and “grey list” of standard terms, see Li Tao, *Research on Categorization of User Service Agreement Format Terms on Network Platforms* (网络平台用户服务协议格式条款的类型化研究, Wangluo pingtai yonghu fuwu xieyi geshi tiaokuan de leixinghua yanjiu), in *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 2024, n. 5, pp. 108-117.

⁶⁶² Art. 17 of the *Implementation Regulation of the Consumer Rights and Interests Protection Law*: “An operator using standard terms shall comply with the provisions of Art. 26 of the *Consumer Rights and Interests Protection Law*. An operator shall not use the standard terms to unreasonably exempt or reduce its liability, increase the liability of consumers, or restrict the rights of consumers to modify or terminate contracts in accordance with the law, choose litigation or arbitration to resolve consumer disputes, or choose other operators’ commodities or services.”

and even restricting the legitimate rights of parties to seek appropriate remedies.⁶⁶³ All of the aforementioned standard clauses are considered invalid.⁶⁶⁴ However, the effectiveness of selecting jurisdiction through a standard contract is not disregarded, implying that consumers typically have to resort to the court that is the home field of certain prominent e-commerce operators. In this regard, the modification of jurisdiction issue in e-commerce dispute would also be necessary.⁶⁶⁵

⁶⁶³ This kind of standard clauses is frequent in Chinese commercial practice, which should be at least limited, Li Tao, *Research on Categorization of User Service Agreement Format Terms on Network Platforms* (网络平台用户服务协议格式条款的类型化研究, Wangluo pingtai yonghu fuwu xieyi geshi tiaokuan de leixinghua yanjiu), in *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 2024, n. 5, pp. 108-117.

⁶⁶⁴ According to Art. 1 (4) of the *Judicial Interpretation of Online Consumption* (2022).

⁶⁶⁵ There is discussion about the jurisdiction of consumer's place of residence, see Liu Xuezai, Zheng Tao, *Consumer Residence Jurisdiction Rules in Online Shopping Dispute Litigation* (网购纠纷诉讼中的消费者住所地管辖规则, Wanggou jiufen susong zhongde xiaofeizhe zhusuodi guanxia guize), in *Theoretical Exploration Journal*, 2015, n. 5, pp. 104-110. Besides, the adjustment of jurisdiction in Internet Court thus becomes more valuable, see Ye Min, Zhang Ye, *Discussion on the Operating Mechanism of Internet Courts in the Field of E-Commerce* (互联网法院在电子商务领域的运行机制探讨, Hulianwang fayuan zai dianzi shangwu lingyu de yunxing jizhi tantao), in *Journal of Graduate School of Chinese Academy of Social Science*, 2018, n. 6, pp. 128-136.

2.5 Performance of e-commerce contract

Though e-commerce contracts are bilateral, the essence of these contracts is primarily reflected in the performance of the sellers. The time taken for their performance varies depending on the objects involved (2.5.1). Among the various forms of performance, parcel delivery (2.5.2) is the one that has the closest connection with e-commerce.

2.5.1 Performance time of e-commerce sellers

In general, all parties involved in a sales contract should fulfil their contractual obligations promptly and comprehensively. As a principle of civil law, it applies to parties engaged in e-commerce as well.⁶⁶⁶ The aforementioned principle also elucidates that in the event of a deficiency in the execution of an e-commerce contract, it is the e-commerce operators who will undoubtedly bear the associated negative consequences.

EU legislation has limited focus on this issue.⁶⁶⁷ While in China, this issue is now governed by Art. 512 of the *Civil Code of China*, which is a special provision incorporated in civil code that directly addresses matters pertaining to e-commerce.⁶⁶⁸

⁶⁶⁶ For instance, according to French legislation, sellers in e-commerce are automatically and officially (*de plein droit*) responsible for ensuring the proper fulfilment of obligations arising from the e-commerce contract, regardless of who specifically carries them out. (Art. 15, Section 1, Para. 1 of the LCEN) This rule is stressed for another time in Art. L221-15 of *Code of Consumption of France*.

⁶⁶⁷ In the legislation of Member States, such as ex Art. L121-20-3 of the *Code of Consumption of France*, there was a specific emphasis on the issue of performance time in e-commerce contracts, which provided comprehensive measures to address the nonperformance of e-commerce traders. This provision, though abrogated, could be accessed on Legifrance.gov. Accessed October 2, 2023, [https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006292055#:~:text=Article%20L121%2D20%2D3%20\(abrog%C3%A9\)&text=Le%20fournisseur%20doit%20indiquer%2C%20avant,d%C3%A8s%20la%20conclusion%20du%20contrat](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006292055#:~:text=Article%20L121%2D20%2D3%20(abrog%C3%A9)&text=Le%20fournisseur%20doit%20indiquer%2C%20avant,d%C3%A8s%20la%20conclusion%20du%20contrat).

⁶⁶⁸ However, the performance time is only one aspect that deserves attention. The *Civil Code of China* does not address other important aspects of nonperformance in e-commerce, which is clearly one of its disadvantages. See Wen Shiyang, *Review on the Rules about the Performance of Contract in Civil Code of China* (《民法典》合同履行规则检视, Minfadian hetong lyuxing guize jianshi), in *Journal of Zhejiang Gongshang University*, 2020, n. 6, pp. 6-17.

It is also worth noting that such provision is essentially the same as the previously enacted Art. 51 of the *E-Commerce Law of China*, with only minor textual variations.⁶⁶⁹ This provision states that:

“Where the object of an electronic contract concluded through internet or other information network is the delivery of goods and the goods are to be delivered by express delivery services, the time of delivery is the time of acknowledging receipt of the goods by the recipient. Where the object of the said electronic contract is the provision of services, the time for provision of the service is the time stated in the automatic generated electronic certificate or physical certificate. Where there is no time stated in such a certificate or the time stated therein is inconsistent with the actual time for provision of the service, the actual time for provision of the service shall prevail.

Where the subject matter of the said electronic contract is delivered by online transmission, the delivery time is the time when the subject matter of the contract enters the specific system designated by the other party and can be searched and identified.

Where the parties to the said electronic contract agree otherwise on the mode and time of delivery of goods or provision of services, such agreement shall be complied with.”

As is customary, priority is still given to the agreement between two parties. In terms of material goods, the performance will be considered complete once it has been handed over to the sellers, which is an exception to the general rule.⁶⁷⁰ In this case,

⁶⁶⁹ Its only significant modification is to limit the scope of the Art. 512 to “electronic contracts concluded through Internet and other information networks”, in order to avoid the misuse of such provision incorporated in the civil code. See Wen Shiyang, *Review on the Rules about the Performance of Contract in Civil Code of China* (《民法典》合同履行规则检视, Minfadian hetong lyuxing guize jianshi), in *Journal of Zhejiang Gongshang University*, 2020, n. 6, pp. 6-17.

⁶⁷⁰ Art. 511 (3) of the *Civil Code of China*: “where the place of performance is not clearly stipulated, the contract shall be performed at the place of the party receiving money where payment of money is involved... For other subject matters, the contract shall be performed at the place where the party performing the obligation is located.”

the sellers bear the risk of the goods to be delivered, which is advantageous for the consumers.⁶⁷¹ Additionally, the mere delivery does not automatically imply that the consumers have accepted the quality of the goods and confirmed their compliance with the agreement.⁶⁷² Therefore, consumers are not required to inspect the condition of the goods immediately upon receipt.

In the case of services, a certificate is necessary to prove the time of performance. Therefore, it is crucial for sellers to provide a certificate, while buyers also should request one in order to avoid further disputes and protect their own rights and interests. However, the above rule is not sufficient, since it ignored digital service.⁶⁷³

Another category of objects in e-commerce that legislators have identified should be noted, namely objects delivered through online transmission methods. The performance rules about these special objects combine the rules of the delivery of goods and those of provision of services: As long as it enters the designated system and can be searched and identified, it can be delivered. Based on this rule, even data

⁶⁷¹ See Cui Congcong, *On the Regulation Objects and Scope of Application of Electronic Commerce Law* (论电子商务法的调整对象与适用范围, Lun dianzi shangwufa de tiaozheng duixiang yu shiyong fanwei), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2019, n. 1, pp. 79-85.

⁶⁷² If such content is stipulated in a standard contract between e-commerce operators and consumers, the court will declare it invalid, according to Art. 1 (1) of the *Judicial Interpretation of Online Consumption* (2022).

⁶⁷³ Based on the distinction between digital content and digital services, as well as their respective technological characteristics and development trends, a Chinese scholar has reconstructed performance rules for these two digital objects based on Art. 512 of the Civil Code of China. Contracts involving the performance of digital content are essentially closer to the obligation to deliver rather than the obligation to bring. The completion of performance is marked by the trader enabling the consumer to directly access the digital content or obtain the means to access it through other designated facilities. For the provision of digital services, the completion of performance occurs when the digital services are made accessible to the consumer or through other designated facilities by the trader. See Wu Yiyue, *On the Digital Products and their Performance Rules: Centered around distinguishing between digital content and digital services* (论数字产品及其给付规则——以数字内容与数字服务区分为中心, Lun shuzi chanpin jiqi jifu guize: Yi shuzi neirong yu shuzi fuwu qufen wei zhongxin), in *Law and Economy*, 2024, n. 5, p. 78-93.

trading system could be successfully established.⁶⁷⁴

2.5.2 Parcel delivery in e-commerce

Parcel delivery is actually a significant concern within the framework of postal regulations. Although it is not inherently tied to e-commerce, the growth of e-commerce has led to parcel delivery gaining a crucial position in contemporary society.⁶⁷⁵ According to statistics, the progress of the parcel delivery industry is intricately linked to the prosperity of e-commerce. For example, in Europe, the total internet retail sales have been increasing at a rate of 15% per year since 2014 and reached 424 billion euros in 2019. Cross-border delivery accounts for nearly 24% of the total online sales in Europe, resulting in a turnover of 70 billion euros in 2019.⁶⁷⁶ Similarly, in China, during the first decade of the 21st century, the total volume of postal delivery only increased from 23.2 billion yuan to 163.9 billion yuan. However, during the second decade, when e-commerce experienced explosive growth in China, the final volume in 2019 reached a staggering 1622.9 billion yuan.⁶⁷⁷ Apparently, incorporating the regulation on parcel delivery in the regulatory framework on e-

⁶⁷⁴ The attempts to establish a data transaction system are mainly based on this provision, taking a similar stance to determine the transfer time of data on sale, see Liu Yu, *Big Data Transactions from the Perspective of the Civil Code: Process Control, Nature Identification, and Legal Application* (《民法典》视野下的大数据交易:过程控制、性质认定与法律适用, Minfadian shiye xiade dashuju jiaoyi: Guocheng kongzhi xingzhi rending yu falyu shiyong), in *Journal of Gansu University of Political Science and Law*, 2022, n. 3, pp. 96-110; Li Jingjing, *The Construction and Improvement of Data Factor Trading System in China* (我国数据要素交易制度的构建与完善, Woguo shuju yaosu jiaoyi zhidu de goujian yu wanshan), in *Hubei Social Sciences*, 2023, n. 8, pp. 139-147.

⁶⁷⁵ In this regard, there are scholars considering delivery services operators as an important subject within e-commerce market, see Zheng Jianing, *The Definition and Regulation of the Subjects of the E-Commerce Market* (电子商务市场主体的认定与规范, Dianzi shangwu shichang zhuti de rending yu guifan), in *Oriental Law*, 2023, n. 2, pp. 46-60.

⁶⁷⁶ Statistics quoted from *Report on the application and implementation of Regulation (EU) 2018/644 on cross-border parcel delivery services* [COM (2021) 675 final] Point 3, p. 3. Original sources of these statistics are accessed September 29, 2023, <https://ecommercenews.eu/24-of-e-commerce-in-europe-is-cross-border/>; also see Apex Insight, *European Parcels Market Insight Report 2020*.

⁶⁷⁷ National Bureau of Statistics of China, *China statistical yearbook 2022*, entry 16-32 *The volume of post and telecom business*, accessed September 29, 2023, from <http://www.stats.gov.cn/sj/ndsj/2022/indexch.htm>.

commerce would be beneficial.

2.5.2.1 Regulation on parcel delivery in the EU

The connection between cross-border e-commerce and delivery is one of the focuses of EU regulation. The initial EU legislation on delivery, the *Directive 97/67/EC*, merely presented a few general requirements to standardize the delivery service, aiming to enhance the quality of delivery service and strengthen its supervision. The emergence of e-commerce and the information society posed a challenge to this field. The aforementioned outdated *Directive 97/67/EC* was unable to address emerging issues, it was thus replaced by the *Regulation (EU) 2018/644*, with a specific focus on e-commerce.⁶⁷⁸ Nonetheless, this new *Regulation* primarily pertains to cross-border e-commerce within the EU and the associated cross-border delivery, though at a “minimum level”.⁶⁷⁹

This *Regulation* outlines a number of important rules.

Firstly, it provides a clear definition of the term *parcel*, specifying that it refers to a postal item that contains goods, whether they have commercial value, and excludes items of correspondence. Additionally, it sets a maximum weight limit for parcels at 31.5 kg.⁶⁸⁰ The methodology that incorporates weight as a defining factor is highly commendable, as it was proposed after thorough investigation and aligns with e-commerce practices⁶⁸¹

Secondly, the *Regulation* mandates that “all traders concluding sales contracts with consumers that include the sending of cross-border parcels” must furnish certain pre-contractual information, including details about cross-border delivery options,

⁶⁷⁸ Whereas clause (1) of the *Regulation (EU) 2018/644*.

⁶⁷⁹ Lodder A.R., Murray A.D., *The European Union and E-Commerce*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, p. 3.

⁶⁸⁰ Art. 2 (1) of the *Regulation (EU) 2018/644*.

⁶⁸¹ See *Development of Cross-border E-commerce through Parcel Delivery*, Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Final Report, pp. 63-65. Accessed May 24, 2024, https://www.wik.org/fileadmin/Studien/2019/ET0219218ENN_ParcelStudy_Final.pdf.

delivery charges, and procedures for handling complaints.⁶⁸²

Thirdly, in order to enhance transparency and affordability in single-piece tariffs, which is advantageous for the further advancement of cross-border e-commerce in Europe, a requirement has been established for cross-border delivery service providers to submit public lists of tariffs to the competent authority.⁶⁸³ As a result of this new policy, even some very small e-retailers have benefited.⁶⁸⁴

Lastly, the legislators of the EU, recognizing the significant connection between delivery services and e-commerce, have implemented a review mechanism for this *Regulation*. This mechanism mandates the European Commission to submit an evaluation report every three years, specifically addressing the impact of this *Regulation* on e-commerce.⁶⁸⁵ The initial report was published on November 8, 2021. According to this report, the overall impact of this *Regulation* on e-commerce is positive. However, a major limitation of this *Regulation* is that it only addresses the transparency of tariffs for single-piece items, which merely represents a small portion of the overall parcel delivery service market. Therefore, this *Regulation* only addressed certain issues within the retail e-commerce sector.⁶⁸⁶

2.5.2.2 Parcel delivery in China

The *Interim Regulation on Express Delivery* established the foundation of the

⁶⁸² Art. 7 *Information to consumers* of the *Regulation (EU) 2018/644*.

⁶⁸³ Whereas clause (10) and Art. 5 *Transparency of cross-border tariffs* of the *Regulation (EU) 2018/644*.

⁶⁸⁴ The *COM (2021) 675 final*, point 2, p. 3.

⁶⁸⁵ Art. 11 *Review of the Regulation (EU) 2018/644*.

⁶⁸⁶ The *COM (2021) 675 final*, point 6, p. 16.

Chinese express regulatory framework,⁶⁸⁷ which addresses various fundamental aspects including the requirements for operators, the process of handling a parcel from collection to delivery, and the security check of the consignment.

Two noteworthy points highlighted in this *Interim Regulation* are closely related to e-commerce. The first point focuses on the terminal of express delivery services, specifically the distribution and reception of parcels, which highly recommends the installation of intelligent terminal service facilities to cater to recipients.⁶⁸⁸ In this regard, enterprises, public institutions, and residential community management entities are all obligated to resolve the issue of parcel reception for their employees or residents.⁶⁸⁹ Moreover, the legislator has also taken into account the competition regarding the express delivery terminal, encouraging enterprises involved in express

⁶⁸⁷ It is worth noticing that such legislation is a regulation formulated by State Council, which is the highest level in China's administrative legislation. The choice to adopt a regulation instead of a departmental rule may have been motivated by the recognition of the importance of the express delivery service in the Chinese economy and the need to coordinate various bureaucratic departments, including post and communication, customs, as well as industrial and commercial administration. Additionally, the choice also reflects the standpoint of Chinese government to actively promote the further development of the express delivery industry. See Yin Shaocheng, *The Legal Framework for the Regulation of New Express Delivery Formats under the Background of "Internet Plus"* ("互联网+" 背景下快递新业态规制的法律框架, Hulianwang jia beijing xia kuaidi xinyetai guizhi de falyu kuangjia), in *Journal of Beijing Administration Institute*, 2020, n. 4, pp. 101-109.

⁶⁸⁸ Art. 12 of the *Interim Regulation on Express Delivery*: "The state shall encourage and offer guidance to enterprises engaged in express delivery business so that they can adopt advanced technology and boost the promotion and application of automated sorting equipment, mechanized loading and discharge equipment, intelligent terminal service facilities, electronic waybills, and information technology-based parcel management systems, among others."

⁶⁸⁹ This requirement aims to alleviate the concerns of e-commerce consumers regarding the receipt of their purchased merchandise and to facilitate and encourage their online shopping activities. See Zheng Jianing, *Starting from the End: A Review of Legal Issues on the Terminal Delivery of Express Delivery Service* (从结束开始: 快递末端投递法律问题再审视, Cong jieshu kaishi: Kuaidi moduan toudi falyu wenti zaishenshi), in *Journal of Dalian University of Technology (Social Sciences)*, 2016, n. 4, pp. 98-104.

delivery services to share their end-service facilities,⁶⁹⁰ in order to prevent monopoly or unfair competition and provide genuine convenience and benefits for recipients-consumers.

The second point highlights the need to protect personal information. Express delivery services collect and manage a significant amount of sensitive personal information, such as names, mobile numbers, addresses, and package contents. In the past, there was a lack of awareness about personal information in China, and crucial details were printed on the express waybill without any safeguards. Additionally, without regulations, this data was sometimes shared with others and used for promotions or even telecommunications fraud.⁶⁹¹ Taking these concerning realities into consideration, another previous departmental rule stipulates that express delivery enterprises engaged in online services must have a sufficient data processing and archiving capability, which is essential to meet the requirements for data protection.⁶⁹² In addition, the *Interim Regulation* emphasizes the need for enterprises engaged in express delivery services to establish a data management system to effectively store and utilize user information. Furthermore, these enterprises are required to refrain from selling, disclosing, or unlawfully providing user information, and must regularly destroy waybills.⁶⁹³ Combined with other requirements outlined in the *Personal*

⁶⁹⁰ Art. 14 of the *Interim Regulation on Express Delivery*: “Enterprises, public institutions, and residential community management entities shall, in light of the actual circumstances, provide facilitation necessary for express delivery services, by executing contracts with enterprises engaged in express delivery business, setting up earmarked venues for consigning and taking parcels, and other means. Enterprises engaged in express delivery business shall be encouraged to share end-service facilities and provide users with convenient end-express delivery services.”

⁶⁹¹ A summary of the chaos about personal information protection related to delivery services in China and corresponding resolutions, see Wang Qian, *Legal Path for Personal Information Protection of Express Delivery Users* (快递用户个人信息保护的法律路径, Kuaidi yonghu geren xinxin baohu de falyu lujing), in *Jinan Journal (Philosophy & Social Sciences)*, 2017, n. 3, pp. 20-25.

⁶⁹² See Art. 7 (4) of *Measures on the Administration of the Business Permit for Express Business* (快递业务经营许可管理办法, Kuaidi yewu jingying xuke guanli banfa), promulgated by Ministry of Transport of China in 2018. Archived December 31, 2018, at https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5443862.htm.

⁶⁹³ According to Art. 34 of the *Interim Regulation on Express Delivery*.

Information Protection Law of China, this helps to address the main vulnerability through which personal information is leaked.⁶⁹⁴

Beyond the pure regulatory framework on delivery service, it is notable that express delivery actually involves a tripartite legal relationship, where the delivery contract is established between e-commerce sellers and delivery enterprises, and cyber-consumers are considered as the third party,⁶⁹⁵ which probably reflects a long-term collaboration between e-commerce merchants and delivery enterprises, causing concern on issues related to unfair competition.

Typically, e-commerce operators have their own partners for express services, which limits the choices available to consumers.⁶⁹⁶ Currently, Chinese legislation does not protect the freedom of consumers to choose any express service provider, though many e-commerce operators have already allowed consumers to choose a different provider through an additional agreement and payment of any price difference in practice.⁶⁹⁷ At least, consumers do have the right to be informed which

⁶⁹⁴ However, there are currently no requirements regarding anonymized or encrypted processes, and a stronger and more stringent supervision mechanism for the internal data management of express delivery enterprises has not yet been established. As a result, express delivery remains one of the primary sources of illegal personal information in China. See Deng Hui, *Legislative Options for Administrative Supervision of Personal Information Protection in China* (我国个人信息保护行政监管的立法选择, Woguo geren xinxi baohu xingzheng jianguan de lifa xuanze), in *SJTU Law Review*, 2020, n. 2, pp. 140-152.

⁶⁹⁵ These contracts should certainly adhere to rules about shipping contract but also be recognized as an independent type of contract. See Jia Yuping, *On the Legislation of the Express Delivery Service Contract* (快递服务合同的有名化, Kuaidi fuwu hetong de youminghua), in *China Business and Market*, 2019, n. 1, pp. 119-128.

⁶⁹⁶ The selection of an express service provider should be an important consideration in e-commerce transactions, which is purposed at the early stage of e-commerce in China, see Zhou Yang, *The Position of Consumer Rights and Legal Remedies in the Express Delivery Industry* (快递行业消费者权益定位与法律救济, Kuaidi hangye xiaofeizhe quanyi dingwei yu falyu jiuji), in *Chongqing Social Sciences*, 2012, n. 8, pp. 33-38.

⁶⁹⁷ Besides, value-added services on demand are becoming a trend in the text of high-quality online consumption transformation, which still lacks strong-correlated regulation, see Zheng Jianing, *Legislation of Express Value-added Services in the Era of Platform Economy* (平台经济时代快递增值服务的立法规制, Pingtai jingji shidai kuaidi zengzhi fuwu de lifa guizhi), in *Oriental Law*, 2019, n. 4, pp. 14-22.

express service provider is being used.⁶⁹⁸

Regarding all of the above issues, local legislation in China has proposed further measures. For instance, the *Regulation on Promoting the Express Delivery Industry of Zhejiang Province (2021)* encourages e-commerce operators to offer personalized and differentiated options for express delivery services, including service providers, packaging, scheduled delivery, and delivery methods for consumers (Art. 30). It also establishes standards for the final delivery stage, aiming to limit unreasonable behaviors and choices made by couriers in order to protect consumer interests (Art. 31-33). Additionally, the Regulation requires that all personal information on waybills be anonymized (Art. 35) and promotes a cooperative relationship between e-commerce platforms and express delivery enterprises, ensuring necessary information sharing and fostering open competition (Art. 36). At the meanwhile, also with Art. 36, this Regulation also paid attention to unfair competition with excessive low prices, which could benefit the healthy development of delivery industry.⁶⁹⁹

⁶⁹⁸ However, the mechanism guaranteeing consumer's right to be informed is somewhat unusual and even strange. According to Art. 23 of the *Measures on Administration of Express Delivery Market*, it is the express companies who assume responsibility to inform e-commerce operators, requiring them to clearly indicate the courier service brand on the webpage where the product is sold. On the contrary, the e-commerce operators themselves do not have to perform a similar obligation. When considering the pre-contractual duty of e-commerce operators to provide necessary information, the selection of express service provider could be perceived as essential information that ought to be disclosed prior to any e-commerce transaction.

⁶⁹⁹ Art. 36, Section 1: "Express delivery companies shall not provide express delivery services at a price lower than cost without justifiable reasons." Continuous low-price competition and even dumping and plundering below cost have become major issues restricting the healthy development of the e-commerce express delivery industry. The above abnormal competition has multiple harms, causing the e-commerce express delivery industry to fall into the dilemma of internalization, resulting in resource mismatch and even waste, distorting the fair competition mechanism, harming consumer interests, squeezing the labor income of express delivery personnel, exacerbating economic inequality, and deviating from the social and economic goals of inclusive growth. The countermeasure adopted by Zhejiang Province has demonstrative significance. See Hao Junqi, *The Harm, Causes and Legal Prevention of the Continuous Low-price Competition in the E-commerce Express Industry* (电商快递业持续低价竞争的危害、成因与法律防治, Dianshang kuaidiye chixu dijia jingzheng de weihai chengyin yu falyu fangzhi), in *China Business And Market*, 2021, n. 7, pp. 120-128.

2.6 E-Commerce Dispute Resolution

Controversy inevitably arises in every transaction. However, there should be more consideration when dealing with disputes that arise from online transactions. If every e-commerce dispute has to be resolved in a traditional manner, meaning by initiating legal action and engaging in a court debate, it would certainly hinder the enthusiasm of consumers to participate in e-commerce, since the cost of seeking relief does not always correspond to the importance and value of a single e-commerce transaction. Therefore, the establishment of alternative dispute resolution measures and the digitization of court proceedings would be beneficial. Relevant works could be observed in both the EU and China.⁷⁰⁰

2.6.1 Partially digitalized dispute resolution mechanisms in the EU

In 2013, the *Regulation on consumer ODR* [Regulation (EU) No 524/2013] was enacted with the aim of safeguarding digital consumers. It sought to provide a prompt and equitable mechanism for resolving disputes between consumers and online traders.⁷⁰¹ The European Commission has taken on the responsibility of developing and maintaining an online dispute resolution platform. This platform serves as “a single point of entry for consumers and traders seeking the out-of-court resolution of disputes.”⁷⁰² In other words, it was a standardized mechanism as an assistant in resolving any disputes that arise in e-commerce conducted within the EU territory.

Subsequently, this *Regulation* outlines the prescribed procedure for submitting

⁷⁰⁰ Research of Chinese scholar discussed the inspiration from *Regulation on consumer ODR*, which also stressed the necessity of establishing the institution of ODR in the field of e-commerce, especially considering the issue of cross-border e-commerce, see Zheng Weiwei, Gao Chunjie, *Research on the “Belt and Road” Cross-Border E-Commerce Online Dispute Resolution Mechanism: Concentrating on the Enlightenment of Regulation on consumer ODR* (“一带一路” 跨境电子商务在线争议解决机制研究——以欧盟《消费者 ODR 条例》的启示为中心, Yidai yilu kuajing dianzi shangwu zaixian zhengyi jie jue jizhi yanjiu: Yi oumeng xiaofeizhe ODR tiaoli de qishi wei zhongxin), in *Law and Social Development*, 2018, n. 4, pp. 190-204.

⁷⁰¹ Art. 1 *Subject matter* of the *Regulation on consumer ODR*.

⁷⁰² Art. 5 *Establishment of the ODR platform* of the *Regulation on consumer ODR*.

complaints and the process for handling complaints within the ODR platform.⁷⁰³ However, it is important to note that the ODR platform functions solely as an intermediary mechanism and does not possess any jurisdiction. The primary objective of this platform is to facilitate standardized communication between the two parties involved in e-commerce, aiding them in efficiently seeking an alternative method for resolving disputes and ultimately reaching a mutual agreement.⁷⁰⁴ In this regard, the ODR platform should not be considered a dispute resolution platform, but rather an online platform that leads and supports the resolution process, without actually achieving online dispute resolution.⁷⁰⁵

The *Directive on consumer ADR* (Directive 2013/11/EU), which was developed alongside the *Regulation on consumer ODR*, also mandates the digitalization of alternative dispute resolution entities in Member States. This entails replacing certain procedures in the dispute resolution process with digital alternatives,⁷⁰⁶ while also ensuring that their accessibility and transparency are maintained in the digital realm.⁷⁰⁷

In summary, although the two legislations did not actually establish an online dispute resolution mechanism, they did contribute to improving the efficiency of

⁷⁰³ See Cortés P., *Directive 2013/11 /EU on Alternative Dispute Resolution for Consumers and Regulation (EC) 524/2013 on Online Dispute Resolution*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 222-246.

⁷⁰⁴ Art. 8 *Submission of a complaint* and Art. 9 *Processing and transmission of a complaint* of the *Regulation on consumer ODR*, which are the principal part of this *Regulation*.

⁷⁰⁵ A general review on this Regulation, see Vogrinc, N. P. (2017). The Effects of Regulation (EU) No 524/2013. *Economic and Social Development: Book of Proceedings*, 326–336.

⁷⁰⁶ The *Directive on consumer ADR* established a practical framework for an online platform, outlining its fundamental functions including: (1) offering electronic complaint forms; (2) notifying the respondent about the complaint; (3) identifying qualified ADR entities and forwarding the complaint to the mutually agreed ADR institution; (4) providing free electronic case management tools for the parties and ADR entities to resolve disputes online through the ODR platform; (5) offering information translation services required for dispute resolution and facilitating communication through the ODR platform; (6) providing electronic forms for ADR entities to transmit information; (7) implementing a feedback system to allow the parties to express their opinions to the relevant ADR entities through the operation of the online dispute resolution platform; and (8) providing certain public information.

⁷⁰⁷ Art. 5 *Access to ADR entities and ADR procedures*, Art. 7 *Transparency* and Art. 8 *Effectiveness* of the *Directive on consumer ADR*.

resolving disputes that arise in e-commerce to some extent, thereby reducing obstacles to e-commerce.⁷⁰⁸

2.6.2 Fairly digitalized dispute resolution channels in China

The paths through which Chinese cyber-consumers can resolve disputes in e-commerce transactions are quite extensive, including negotiation, mediation, complaints, arbitration, and even litigation.

Firstly, compared with the experience of the EU, both online dispute resolution mechanism and alternative dispute resolution mechanism in e-commerce have also gradually gained attention in Chinese practice in recent years. The China Online Dispute Resolution Center (www.odr.com.cn) and the Online Dispute Resolution Center (www.odr.org.cn) are among the notable representatives of this trend.⁷⁰⁹ However, despite several years of operation, the ODR platform in China has not been widely adopted and has not achieved the expected alternative effect. It still plays a limited role in resolving e-commerce disputes, with few users utilizing these platforms and a lack of recognition for their effectiveness.⁷¹⁰

Secondly, the notable success in this field is the establishment of Internet courts in China. The development of the Internet industry, especially that of e-commerce, has led to the creation of these specialized courts.⁷¹¹ Just a few days after the promulgation of the *E-Commerce Law of China* in 2018, the Supreme People's Court of China

⁷⁰⁸ See Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76–86. <https://doi.org/10.1016/j.icj.2015.10.006>.

⁷⁰⁹ The introduction about the development of ODR platforms in China, see Long Fei, *The Development Status and Future Prospects of Online Dispute Resolution Mechanisms in China* (电子商务领域诉源治理机制的反思与重构, Dianzi shangwu lingyu Suyuan zhili jizhi de fansi yu chonggou), in *Journal of Law Application*, 2016, n. 10, pp. 2-7.

⁷¹⁰ Related evaluation, see Xu Nanxuan, Tao Liqin, *Reflection and Reconstruction of the Litigation Source Governance Mechanism in the Field of E-Commerce* (电子商务领域诉源治理机制的反思与重构, Dianzi shangwu lingyu Suyuan zhili jizhi de fansi yu chonggou), in *Journal of Law Application*, 2021, n. 2, pp. 24-30.

⁷¹¹ Internet Courts were primarily established in three major cities: Hangzhou (2017), Beijing (2018), and Guangzhou (2018). These cities are home to the majority of e-commerce platforms and operators, making them ideal locations for the courts.

immediately issued the first specific provision regarding the jurisdiction of Internet courts.⁷¹² According to the decision of the Supreme People's Court of China, the Internet court is a legitimate court that exclusively trials cases online. The majority of procedural steps are primarily conducted online (Art. 1), especially on the online platform established by these Internet courts (Art. 5). The most common type of case under their jurisdiction is disputes arising from e-commerce transactions, regardless of whether the transaction involves goods or services [Art. 2 (1) and (2)]. The establishment of an Internet court effectively eliminates barriers to resolving e-commerce disputes, allowing consumers to initiate legal proceedings without the need to travel to other cities or even leave their homes.⁷¹³ However, the jurisdiction of Internet courts is limited to disputes that arise from transactions conducted through e-commerce platforms. In addition, in judicial practice, Internet courts may further restrict their own jurisdiction by refusing to hear cases involving small e-commerce platforms or second-hand e-commerce platforms.⁷¹⁴

Thirdly, Chinese legislator emphasizes the dispute resolution within e-commerce platforms, which can be considered as a non-judicial ADR procedure.⁷¹⁵ The *E-Commerce Law of China* includes a dedicated chapter to regulate issues related to

⁷¹² The Standing Committee of the National People's Congress passed the *E-Commerce Law of China* on August 31, 2018, then the Supreme People's Court passed the *Provisions on Several Issues Concerning the Trial of Cases by Internet Courts* (关于互联网法院审理案件若干问题的规定, Guanyu hulianwang fayuan Shenli anjian ruogan wenti de guiding) on September 3, 2018. Accessed October 21, 2023, <http://gongbao.court.gov.cn/Details/7e594961f195254a863d6cc90be5cd.html>.

⁷¹³ Based on Internet courts, another term "Internet judiciary" was created in China, representing the modernization of judiciary, which not only changed the judicial venue, but also changed the supply methods of public judicial resources, see Wang Fuhua, *The Justice System of the Internet Judiciary* (互联网司法的正义体系, Hulianwang sifa de Zhengyi tixi), in *China Legal Science*, 2024, n. 1, pp. 124-144.

⁷¹⁴ See Huang Lei, *On the Reform of the Jurisdiction of Internet Courts* (论互联网法院的受案范围改革, Lun hulianwang fayuan de shou'an fanwei gaige), in *Journal of Law Application*, 2023, n. 3, pp. 139-149.

⁷¹⁵ See Han Xuanyao, *Application and improvement of non-judicial ODR in China: Taking Xianyu court as example* (我国非司法 ODR 的适用与完善——以闲鱼小法庭为例, Woguo feisifa ODR de shiyong yu wanshan: Yi xianyu xiaofating weili), in *Journal of Beijing Technology and Business University (Social Sciences)*, 2020, n. 5, pp. 117-126.

dispute resolution in e-commerce. While the content of these provisions may lack substance, two institutions are particularly noteworthy. (1) E-commerce platform operators shall establish a product and service quality guarantee mechanism that is conducive to the development of e-commerce and the protection of consumer rights.⁷¹⁶ (2) The e-commerce platforms are suggested to establish an inner platform dispute resolution system and relevant dispute resolution rules.⁷¹⁷ These procedures make full use of the involvement of platform users, including both sellers and buyers, and even draw inspiration from the jury system. These measures aim to resolve e-commerce disputes within the platforms based on an approximate public opinion path, without the need to initiate litigation.⁷¹⁸

⁷¹⁶ According to Art. 58 Section 1 of the *E-Commerce Law of China*. Based on that general mechanism within platform, two specific institutions are established, namely consumer rights deposits (Section 2) and e-commerce platform business operators bearing liabilities for compensation beforehand (Section 3), which facilitate the quick resolution of online consumption dispute. See Zhao Xudong (edit), *Interpretation and Principles of E-Commerce Law of China* (中华人民共和国电子商务法释义与原理, Zhonghua renmin gongheguo dianzi shangwufa shiyi yu yuanli), Beijing: China Legal Publishing House, 2018, pp. 448-464.

⁷¹⁷ Art. 63 of the *E-Commerce Law of China*: “E-commerce platform business operators may establish online dispute resolution mechanisms, formulate and display dispute resolution rules, and settle disputes fairly and justly according to the principle of voluntariness.” This is a recently created dispute resolution mechanism with a quasi-arbitration nature, see E-commerce Law of China Drafting Commission, *Interpretation of the Electronic Commerce Law of China* (中华人民共和国电子商务法解读, Zhonghua renmin gongheguo dianzi shangwufa jiedu), Beijing: China Legal Publishing House, 2018, pp. 331-334.

⁷¹⁸ See Zhou Xiang, *Description and Explanation: Taobao Dispute Resolution Mechanism. Observations on Chinese experience in ODR* (描述与解释: 淘宝纠纷解决机制——ODR 的中国经验观察, Miaoshu yu jieshi Taobao jiufen jie jue jizhi: ODR de zhongguo jingyan guancha), in *Journal of SJTU (Philosophy and Social Sciences)*, 2021, n. 4, pp. 97-108.

Summary of Chapter 2

Through the review and analysis of various e-commerce transaction links, it can be concluded that there is actually insufficient comparison between EU and Chinese laws regarding the regulatory rules about such issue. This is also evident in the fact that the structure and content of this chapter primarily rely on China's regulatory framework. This does not imply that there are loopholes in EU regulations but rather stems from China's unique regulatory needs and preferences. China's tradition of a strong government and stringent regulations persists, albeit with some relaxation in the Internet industry. Additionally, the lenient supervision during the initial stages of e-commerce development has resulted in numerous loopholes that detrimentally affect consumer interests and impede the continuous growth of e-commerce. These deficiencies must be addressed through the establishment of rules and administrative enforcement. Therefore, although the *E-commerce Law of China* itself may not be lengthy and the number of legislations directly regulating e-commerce may be limited, the rules within the e-commerce domain are fairly extensive. Therefore, when analysing the regulatory framework of China's e-commerce, it is essential to thoroughly examine numerous complex factors. This thorough examination can serve as a valuable tool for conducting a comparative analysis between the regulatory framework of China and that of the EU in the field of e-commerce.

In the discourse surrounding e-commerce subjects, Chinese lawmakers have made significant contributions to the development of the concept of *e-commerce operators*. In line with the trend towards platformization in e-commerce, they have further distinguished between operators within the platform and platform operators and have imposed distinct regulatory requirements on each. However, EU law has not proposed a specific and unified concept like *e-commerce operators* but has only delineated the concept of *(information society) service provider* through certain cases, with its scope notably extending beyond e-commerce. Objectively speaking, it is worth noting that general supervision of e-commerce sellers may have limited practical value. Even in China, there are few comprehensive general requirements for e-commerce

operators, with only some provisions pertaining to information publicity and registration. These provisions serve as domestic regulations to govern business practices and are not suited for EU-level legislation. Notably, establishing unified requirements for platforms is notably more significant. In this aspect, China's regulatory framework is somewhat lacking, while the EU's legislation, viewed through the lens of the digital market, offers valuable insights for reference. This will be further discussed in the next chapter addressing the external market environment of e-commerce.

Turning to the counterpart of e-commerce sellers, the online consumers, both the EU and China have updated existing consumer protection regulations to adapt to the digital age, although neither has explicitly established a unified concept of cyber-consumers within their legal systems. Specifically, online consumers have received some specific preferential treatment under the existing consumer protection rules, based on the unique characteristics of online transactions, but have not diverged from the overall framework of general consumer protection. In this regard, both the EU and China have the opportunity to take a step further and develop a set of specialized rules exclusively for online consumers. Even if they primarily involve refining existing general rules, such efforts will positively contribute to the advancement of e-commerce law. This is particularly significant given that both the EU and China's current consumer protection rules are not fully digitalized.

The regulation of e-commerce transaction objects primarily remains within Chinese legislation. The Internet ecosystem in China has fostered a highly active online trade of various products and services, necessitating more stringent supervision in related sectors. Chinese lawmakers advocate for robust oversight and have implemented specific regulatory measures for notable, prevalent, and crucial transaction objects, particularly targeting operators involved in relevant products and services. They have outlined distinct legal responsibilities, which can serve as a valuable reference for law enforcement in other jurisdictions. Nevertheless, Chinese legislators have not adequately addressed the unique digital content transactions in the Internet age, unlike the *Directive (EU) 2019/770*, which has established a more

comprehensive framework and has taken the lead in legislation within this domain, although it has few direct connections with e-commerce according to its text.

The pre-contractual stage is comprehensively regulated by both the EU and China's e-commerce laws. Concerning advertising in the context of e-commerce, which is a well-established topic in Internet governance, both the EU and China have accumulated ample regulatory knowledge and practices. Based on the experience of the EU and China, we could conclude that, to maintain order and protect the interests of advertising counterparties, two approaches should be considered: prevention and rectification. Prevention measures aim to avoid creating "bad" advertisements and ensure that the audience can identify them to avoid negative effects. Rectification measures focus on situations where consumers believed claims in advertisements and completed transactions based on those beliefs. If the advertised benefits were not realized, consumers should be compensated; if advertisements were found to be fraudulent, negative consequences should be promptly addressed. Overall, the fundamental principle in advertising regulation is that advertisements should only benefit consumers. Regarding the obligation to provide pre-contract information, which is a common and essential aspect of general e-commerce legislation, both the *Directive on Electronic Commerce* and the *E-Commerce Law of China* have outlined specific requirements that must be met, which are aimed at effectively reducing information asymmetry. In this context, there is little to no significant distinction or divergence, which can be seen as a critical foundation for establishing a cohesive and harmonized global regulatory framework for e-commerce.

The traditional contract theory, specifically in regard to the formation and enforcement of e-commerce contracts, has undergone some changes in e-commerce law. However, the contributions made by Chinese legislators in this area have been primarily theoretical. These innovations are not substantial enough to go beyond adapting the traditional framework to the current digitalized social reality and do not propose any original theories or methodologies. Similarly, the discussions about electronic contracts in the EU have been lacking in depth. Additionally, the contract theory is being challenged in the context of e-commerce, as e-commerce contracts are

no longer solely a matter between parties but are subject to legal intervention. Therefore, a purely analytical approach to studying e-commerce contracts may not hold much value in contemporary legal studies. Nevertheless, certain aspects of the performance of e-commerce contracts warrant independent discussion, such as digital payment and parcel delivery. However, only the latter issue is adequately regulated in both the EU and China, indicating a notable gap in the establishment of a comprehensive normative framework for e-commerce.

Finally, as for the dispute resolution of e-commerce, the EU has provided a series of alternative solutions with electronic features, but the final implementation effect is obviously unsatisfactory. The resolution of e-commerce disputes within the EU legal system cannot be achieved through efficient and convenient electronic channels. China's electronic dispute resolution paths are more abundant, from the establishment of Internet courts to the mediation procedures organized within the platform, providing a variety of instruments for the dispute resolution of Chinese e-consumers. Of course, the most important thing may not be the dispute resolution procedures set by the state, but the internal relief provided by the e-commerce platform, which further changes the power configuration within the e-commerce legal system: not only is the power to formulate rules tilted towards the platform, but the power to resolve disputes is also shifting to the platform.

Chapter 3 Comparative Research on Regulation of External Environment of E-Commerce

The scope of the e-commerce normative framework should not be limited to the narrow realm of commerce and its directly related issues. The regulation of the e-commerce market is an integral part of the legal rules governing e-commerce. Based on a categorization of the legal departments, e-commerce should not be simply categorized as a subsection of *commercial law* (droit commercial) but should be considered as a branch of *law of business* (droit des affaires).⁷¹⁹ In this regard, e-commerce not only means an activity carried out by professional merchants, but also, in a broader sense, a matter within the market, especially the digital market.

In order to regulate e-commerce effectively, legislators should adopt a systematic approach, concentrating on any matters that have the potential to impact e-commerce transactions. Three levels of the external environment of e-commerce thus must be considered: (a) The fundamental and specific technical environment that supports the normal operation of e-commerce;⁷²⁰ (b) The commercial market environment that reveals the nature of e-commerce in a business society; (c) The legal environment that sets the boundaries for activities in e-commerce within cyberspace. Among them, this thesis will primarily pay attention to the market environment (3.1) and the legal environment (3.2).

⁷¹⁹ See Ndukuma Adjayi K. (dir.), *Droit du commerce électronique*, Paris: L'Harmattan, 2021, p. 52.

⁷²⁰ The technical environment is maintained by technical regulations and standards in the field of telecommunications, which are briefly introduced in Chapter 1. This sector is less relevant to legal theory; thus, it will be not discussed in this Chapter.

3.1 Market environment of e-commerce

The digital market is perhaps the most fiercely competitive one in current business society. Therefore, specific measures need to be taken to govern competitive behaviours thus to regulate market order. Drawing from the experiences of both the EU and China, we can observe several special regulations on unfair competitive activities conducted on Internet (3.1.1), with an evident emphasis on platforms (3.1.2). At the same time, when e-commerce expands internationally, cross-border e-commerce (3.1.3) becomes another crucial area, despite not receiving enough attention from the perspective of legislation.

3.1.1 Regulation on unfair commercial activities

The competition regulated by the EU competition legislation primarily pertains to monopolies and behaviors that may result in monopolies, rather than unfair competition activities.⁷²¹ In contrast, in China, competition legislation is divided into two parts: the anti-unfair competition law and the anti-monopoly law, while the former part is under enthusiastic attention of legislators.⁷²²

In May 2024, the State Administration for Market Regulation published a new legislative document titled *Interim Measures on Online Anti-Unfair Competition* to regulate online competitive order. The *Interim Measures*, based on both the *Anti-Unfair Competition Law of China* and the *E-Commerce Law of China*, are intended to

⁷²¹ See Scheinert C. *Competition policy: Fact sheets on the European Union: European Parliament*. European Parliament. Accessed June 17, 2024, <https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy>; Morton F.M.S., *The three pillars of effective European Union Competition policy*. Bruegel. Accessed June 17, 2024, <https://www.bruegel.org/policy-brief/three-pillars-effective-european-union-competition-policy>.

⁷²² However, the above two regulatory fields are not fairly well-connected, especially in the context of digital market. According to a statistic, the number of cases filed and the success rate of unfair competition disputes on digital platforms are significantly higher than those in monopoly disputes. See Feng Bo, Zhang Jiachen, *The Economic Logic and Judicial Connection between the Anti-Monopoly Law and the Anti Unfair Competition Law in the Field of Digital Platforms* (数字平台领域《反垄断法》与《反不正当竞争法》的经济逻辑和司法衔接), in *Research on Rule of Law*, 2023, n. 3, pp. 83-94.

eliminate disorder in the digital market, as well as to standardize and promote further innovation.⁷²³ With China's digital economy rapidly developing and information technology continuously innovating, traditional unfair competition behaviors like counterfeiting, confusion, false propaganda, and commercial slander have evolved with the use of Internet technology. Moreover, new online unfair competition behaviors such as reverse false orders and illegal data acquisition have become more concealed. Thus, the main goal of this *Interim Measures* is to comprehensively categorize and identify unfair competition behaviors on the Internet.⁷²⁴

Firstly, various forms of intentional confusion in commercial activities are employed to mislead individuals into mistakenly believing that the goods being sold are from different providers or have a specific association with others based on Internet technical methods are all prohibited.⁷²⁵

Secondly, quite extensive channels and methods used for false or misleading online business promotion fall under strict regulation.⁷²⁶ Any promotion that provides false, fabricated, or induced information about commodity producers and business entities, commodity sales status, transaction information, business operation data, user evaluation to the public, whether through positive deception or negative concealment,

⁷²³ Though enumerated in a detailed manner, the *Interim Measures* reveals the profound fragmentation in regulation on unfair competition behaviors, since the legislators seem to be lost in specific scenarios. See Jiao Haitao, *The Systematization of Legal Regulation of Unfair Competition* (不正当竞争行为法律规制的体系化, Buzhengdang jingzheng xingwei falyu guizhi de tixihua), in *Journal of Comparative Law*, 2024, n. 2, pp. 176-190.

⁷²⁴ See Zhang Qinyu, *Rule of Law Guarantee for New Quality Productive Forces* (论新质生产力的法治保障, Lun xinzhi shengchanli de fazhi baozhang), in *Administration Reform*, 2023, n. 6, pp. 32-41.

⁷²⁵ Such forms of confusion, including domain name, product name, company name, social organization name, name (including pseudonym and translated name), layout, and logo. (According to Art. 7 of the *Interim Measures on Online Anti-Unfair Competition*)

⁷²⁶ These channels and methods include websites, mobile applications, mini programs or public accounts on WeChat, live broadcasts, platform recommendations, online blogs or posts on various websites, popular searches and comments on Weibo, as well as any lists that involve selection or ranking. (According to Art. 8 of the *Interim Measures on Online Anti-Unfair Competition*)

will be uniformly recognized as unfair competition behavior.⁷²⁷

Thirdly, as a recent trend in China, commercial bribery with the purpose of gaining an advantage in any competition will be resolutely struck down.⁷²⁸

Fourthly, the commercial reputation damaged by the online spread of false notices in any form is under protection.⁷²⁹

Fifthly, the utilization of any Internet, big data, algorithms, and other technical means shall not be used to hinder or disrupt the lawful operation of network products or services provided by other operators.⁷³⁰ The most typical restricted technical methods is the insertion of links into network products or services, as well as the forced

⁷²⁷ Specific behaviors include (a) False transactions and false rankings, (b) Fictitious transaction volume, turnover, reservation volume and other data and information related to business operation, (c) False declaration of spot goods, making fictitious reservations, or false panic purchase for purpose of marketing, (d) Fabricating user evaluation, or using misleading display and other means to hide bad reviews, placing positive reviews first and bad reviews later, and not significantly distinguishing reviews of different products, (e) Enticing users to make designated praise, offer “likes”, conduct directional voting and other interactive acts by using cash rebates, red envelopes, card coupons and other methods, (f) Fabricating traffic data such as the number of favorites, clicks, attention, likes, reads, subscriptions, and forwards, (g) Fabricating interactive data such as votes, listening, viewing, playing, box office, and audience rating, (h) Fabricating education and training effects such as enrollment rates, passing rates, and employment rates, (i) Marketing by falsifying public praise, fabricating topics, creating false hot spots of public opinions, and fabricating the income of network employees. (According to Art. 9 Section 1 of the *Interim Measures on Online Anti-Unfair Competition*)

⁷²⁸ Art. 10 of the *Interim Measures on Online Anti-Unfair Competition*: “Business operators shall not use property or other means to bribe platform staff members, entities or individuals that have influence on transactions, to seek transaction opportunities or competitive advantages in terms of traffic, ranking, and follow-up services.”

⁷²⁹ The following behaviors consists of unfair commercial activities, as long as they damage or may damage the commercial reputation and commodity reputation of their competitors: (a) Organizing or instigating others to make malicious evaluations of competitors’ commodities; (b) Utilizing, organizing or instigating others to spread false or misleading information through the Internet; (c) Using the Internet to disseminate risk warnings, letters to customer, warning letters or tip-offs containing false or misleading information. (Art. 11 of the *Interim Measures on Online Anti-Unfair Competition*)

⁷³⁰ This rule of the *Interim Measures on Online Anti-Unfair Competition* applies to their own competitors (Art. 12), third-party operators (Art. 18), as well as any other operators (Art. 21).

redirection to other network products or services,⁷³¹ in order to mislead, deceive, or pressure users into refraining from using alternative network products or services;⁷³² or to generate incompatibility with other products or services.⁷³³

Sixthly, the legislator included a catch-all provision to address any other forms of unfair competition on the Internet that are not specifically listed.⁷³⁴ This provision applies if these activities disrupt market competition, impact fair market transactions, and harm the legitimate rights and interests of other operators or consumers. Through this provision, we can also identify the underlying logic of regulating the digital market: not only will other e-commerce operators be affected by dishonest business practices, but the benefits of consumers will also be diminished.⁷³⁵

⁷³¹ According to Art. 13 of the *Interim Measures on Online Anti-Unfair Competition*. Relatively more detailed analysis on such recently promulgated provision, see Zhu Jianjun, *Data Property Rights Should Be Protected by Anti-Unfair Competition Law* (数据财产权益应采用反不正当竞争法保护模式, Shuju caichan quanyi ying caiyong fan buzhengdang jingzhengfa baohu moshi), in *Intellectual Property*, 2024, n. 6, pp. 80-92.

⁷³² According to Art. 14 of the *Interim Measures on Online Anti-Unfair Competition*.

⁷³³ The fight against these activities reveals a legislative principle of “interconnectivity”, see Zhao Jingwu, Sun Xiaoyu, *Implementation Principles and Normative Expressions of “Interconnectivity and Interoperability” from the Perspective of Antitrust Law* (反垄断法视角下“互联互通”的实施原则与规范表达, Fanlongduan fa shijiao xia hulian hutong de shishi yuanze yu guifan biaoda), in *Journal of Xi'an Jiaotong University (Social Sciences)*, 2024, n. 4, pp. 155-165.

⁷³⁴ Art. 22 of the *Interim Measures on Online Anti-Unfair Competition*: “A business operator shall not carry out other acts of unfair competition on the Internet, disrupt the order of market competition, affect fair trade in the market, or harm the legitimate rights and interests of other business operators or consumers in violation of this Provisions.”

⁷³⁵ After all, unfair competition behavior damages both private interests and public welfare, possessing a binary attribute of infringement and unfair competition. These two attributes coexist and require relief from both infringement law and anti-unfair competition law, in other words, consumer protection measures and competition regulatory tools. See Zhang Zhanjiang, *The New Orientation of Anti-Unfair Competition Law: A Structural Perspective* (反不正当竞争法属性的新定位: 一个结构性的视角, Fan buzhengdang jingzhengfa shuxing de xindingwei: Yige jiegouxing de shijiao), in *Peking University Law Journal*, 2020, n. 1, pp. 183-205.

3.1.2 Regulation on platform economy

Nowadays, platforms themselves have independently become the problem.⁷³⁶ To effectively regulate e-commerce platforms, two key aspects need to be carefully considered. The first aspect involves the platform itself. The platforms hold a position as sovereign in the cyberspace dominated by them, formulating rules to govern transaction. In this regard, Chinese legislators have enacted specific requirements (3.1.2.1), which could serve as a valuable reference for other jurisdictions. The second aspect focuses on the role and significant economic power of platforms within the digital market, which pertains to the issue of anti-monopoly against large digital platforms (3.1.2.2).

3.1.2.1 Regulation on the formulation of inner-platform transaction rules: The Chinese experience

The intervention of national law into platform rule might lack a rightful theoretical basis, since it would be considered as an attempt to impede private autonomy and constitute a hindrance to market freedom. However, these rules can be unjust when established by the party with greater market influence, capital, technology, or dominance in the digital market.⁷³⁷ In these situations, individual e-commerce operators have no alternatives or opportunities for equal negotiations with the platform, and their interests are easily stripped away through the implementation of platform

⁷³⁶ The arising of the market power represented by digital platforms has caused common concern worldwide, see Delpech X. (dir.), *L'émergence d'un droit des plateformes*, Paris : Dalloz, 2021; Stanzione P. (a cura di), *I poteri privati delle piattaforme e le nuove frontiere della privacy*, Torino, 2022; Huang Shaokun, *Reconstruction of the Criteria for Determining the Validity of Platform Rules* (平台规则效力判定标准的重构, Pingtai guize xiaoli panding biao zhun de chonggou), in *Law Review*, 2024, n. 3, pp. 110-120.

⁷³⁷ See Xie Zhiyong, *Regulation of the Power to Formulate Important Rules for Super Platforms* (超级平台重要规则制定权的规制, Chaoji pingtai zhongyao guize zhidingquan de guizhi), in *Tsinghua University Law Journal*, 2024, n. 2, pp. 5-17.

rules.⁷³⁸ The regulation might become possible if we consider the platform rules are located in the transitional zone between contract and law.⁷³⁹ In this regard, it is unquestionably essential to establish a “legislation law” that restricts the “quasi-legislation power” of platforms, preventing their rulemaking authority from becoming tyranny and dictatorship.⁷⁴⁰

The most enforceable provision about platform rule-making is Art. 24 of the *Interim Measures on Online Anti-Unfair Competition*, which establishes several restrictions on the content related to the inner-platform “legislation” that targets inner-platform operators.⁷⁴¹ The platforms are prohibited from imposing unreasonable restrictions or attaching unreasonable conditions to transactions, transaction prices,

⁷³⁸ See Wang Qiaolu, *The Legal Basis and Regulation Rules of the Management Power of E-Commerce Platform Operators to Merchants: Comparative Analysis with Offline Market* (电子商务平台经营者管理权的法理基础与规范进路——基于线上平台与线下市场的对比分析, Dianzi shangwu pingtai jingyingzhe guanliquan de falijichu yu guifan jinlu: Jiyu xianshang pingtai yu xianxia shichang de duibi fenxi), in *Law and Economy*, 2022, n. 4, pp. 99-114.

⁷³⁹ In traditional theoretical paths, strictly following the principles of civil law, the internal rules of the e-commerce platform should have the nature of contract, which is concluded between the platform and every individual e-commerce operator before they commence their operations on the platform, which naturally refuse the intervention from the State. The national legal intervention regarding rulemaking in digital platforms only appears to be rational when they solely provide suggestive or instructional content rather than a regulation or limitation. However, with the aforementioned theoretical evolution, the national regulation on platform rulemaking would be justifiable. See Huang Shaokun, *Legality Control of Platform Rules Reconstruction of the Criteria for Determining the Validity of Platform Rules* (平台规则的合法性控制, Pingtai guize de hefaxing kongzhi), in *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 2023, n. 5, pp. 140-148.

⁷⁴⁰ Even there has been a scholar who attempted to introduce methods for assessing the validity of administrative normative documents in order to evaluate the validity of platform rules, see Huang Shaokun, *Reconstruction of the Criteria for Determining the Validity of Platform Rules* (平台规则效力判定标准的重构, Pingtai guize xiaoli panding biao zhun de chonggou), in *Law Review*, 2024, n. 3, pp. 110-120.

⁷⁴¹ These provisions represent the initial steps towards achieving the ultimate goal of reconciliation between platforms and the participants within them. See Chen Ke, Liu Chunyan, *An Analysis of Regulatory Approaches to Addressing Market Power Abuse by Online Sales Platforms* (网络销售类平台滥用市场力量的监管路径分析, Wangluo xiaoshoulei pingtai lanyong shichang lilian de jianguan lujing fenxi), in *Journal of Tongji University (Social Science Edition)*, 2024, n. 3, pp. 119-128.

and transactions with other operators.⁷⁴² Besides, Chinese legislator requires platforms to establish a fair and reasonable charging standard for inner-platform operators, particularly regarding service fees.⁷⁴³ Another provision, promulgated by the Supreme People's Court, refuses the platforms' unlimited or ultimate right to interpret platform rules, especially when such right is self-granted by standard terms that compel both inner-platform operators and consumers to accept.⁷⁴⁴

Compared to the aforementioned *Interim Measures*, the previous *Provisions on the Procedures for Developing the Transaction Rules of Third-Party Online Retail Platforms (For Trial)*, although with an enticing title, actually lacks strength.⁷⁴⁵ Firstly, it only states the principle regarding the formulation of platform rules, which essentially reiterates some principles of civil law, namely legality and the respect for public order and *bonos mores* (Art. 4). Secondly, it provides only suggestions without binding force regarding the fundamental structure of platform rules, without any restraint requirements.⁷⁴⁶ Thirdly, the authorities responsible for supervising platform

⁷⁴² These restricted clauses, according to Art. 24 of the *Interim Measures on Online Anti-Unfair Competition*, include (a) forcing inner-platform operators to sign exclusive agreements, (b) imposing unreasonable restrictions on the price, sales target, sales area, or sales time of the product, and (c) unreasonably setting deposit deductions, reduction of subsidies, discounts, and network traffic.

⁷⁴³ This fact is also in line with the series of fee reduction policies proposed by the State Council to promote economic recovery after the pandemic COVID-19. See *E-Commerce in China (2022)*, pp. 28-29, archived June 3, 2023, at <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

⁷⁴⁴ Article 1 (2) of *Judicial Interpretation of Online Consumption (2022)*. This kind of manner could be regarded as "self-preferential treatment" in general. The practice of Supreme People's Court launched the exploration of the boundary of the regulation on this phenomenon. See Lan Jianghua, *Big Digital Platforms' Self-Preferential Treatment: Behavioral Mechanism, Economic Effect and Regulation Path* (平台自我优待: 行为机制、经济效果和规制路径, Pingtai ziwo youdai: Xingwei jizhi jingji xiaoguo he guizhi lujing), in *South China Finance*, 2023, n. 7, pp. 69-82.

⁷⁴⁵ A noteworthy testimony that highlights the unsuccess of this *Provisions* is that none of the crucial platform rules of major Chinese e-commerce platforms referenced this document, even if just its title.

⁷⁴⁶ According to Art. 6 of the *Provisions*, a complete platform rule should cover issues such as contract conclusion, responsibility and risk allocation among platforms, operators, and consumers, protection of intellectual property rights, credit evaluation of both operators and consumers, consumer protection, disclosure of information by platform operators, and dispute resolution.

rules only have power to maintain a filing system, which is only a reactive regulatory measure (Art. 5). Fourthly, the punishments outlined in this *Provisions* are merely warnings and public announcements of illegal activities, without other significant consequences (Art. 18 and Art. 20). Even when violating the rules regarding filing, the competent authority can only issue an administrative guidance recommendation suggesting and rectifying their illegal activities.⁷⁴⁷

In any case, the *Provisions* put forth some constructive and substantial requirements that are able to enhance the transparency and predictability of platform rules.⁷⁴⁸ Firstly, the formulation, amendment, and implementation of transaction rules are required to respect principles such as openness, fairness, and justness (Art. 4). Secondly, crucial transaction rules shall be published for public comments and advice and filed (Art. 6-9).⁷⁴⁹ Thirdly, the *Provisions* promote self-regulation (Art. 16), restricting platforms through a code of conduct and soft law rather than national law, which might be more effective.⁷⁵⁰

Local legislation is still worth noticing. For instance, *Operation Guide for E-*

⁷⁴⁷ This point demonstrates the compromise made by Chinese legislators, essentially implying the transfer of regulatory power from the State to the platforms, see Ye Min, *Analysis of the Quasi-public Character of Internet Platform Enterprises Based on their Multiple Identities* (基于互联网平台企业多重身份的准公共性分析, Jiyou hulanwang pingtai qiye duochong shenfen de zhun gonggongxing fenxi), in *Social Sciences in Chinese Higher Education Institutions*, 2023, n. 3, pp. 131-142.

⁷⁴⁸ This *Provisions* demonstrated the conservatism tendency of Chinese legislator in regulating a new field. This kind of initial legislation is usually with flexible form of constraint. See Huang Wenyi, Sun Zheyue, *On the Meta-Regulatory Approach to Internet Platform Governance* (论互联网平台治理的元规制进路, Lun hulanwang pingtai zhili de yuanguizhi jinlu), in *Law Review*, 2024, n. 3, pp. 111-122.

⁷⁴⁹ The filing system might be significant, especially when regulating very large-scale online platforms, which could ensure the platform rules are good and equal, see Wu Yeqian, *Research on the Filing Review System of Autonomous Rules for Super-Large Platforms* (超大型平台自治规则的备案审查制度研究, Chaodaxing pingtai zizhi guize de bei'an shencha zhidu yanjiu), in *Science Technology and Law*, 2023, n. 1, pp. 110-118.

⁷⁵⁰ In this regard, a co-governance between government and platforms is being essentially formed, which might be more inclusive and open for a better digital market regulation, see Liu Wei, *Co-governance of Government and Platform: Logical Development of Unified Legislation of Digital Economy* (政府与平台共治: 数字经济统一立法的逻辑展开, Zhengfu yu pingtai gongzhi: Shuzi jingji tongyi lifa de luoji zhankai), in *Modern Economic Research*, 2022, n. 2, pp. 122-131.

commerce Platform Operators to Modify Platform Service Agreements and Transaction Rules (2023) (电子商务平台经营者修改平台服务协议和交易规则操作指南, Dianzi shangwu pingtai jingyingzhe xiugai pingtai fuwu xieyi he jiaoyi guize caozuo zhinan) of Guangdong Province,⁷⁵¹ though it is not a legislation nor a normative document, provide operable guidance on the formulation of e-commerce platform service agreements and transaction rule. The *Guide* primarily aims to clarify the three phases of platform rules modification, namely drafting, soliciting comments, and publication. It also promotes the adoption of a hearing and collective bargaining procedure and broadens the scope of stakeholders involved in the modification of platform rules (Art. 3), with sufficient respect towards the opinions of all stakeholders.⁷⁵²

From an alternative perspective, it is important to recognize that the global trend is towards diversification in the origins of regulations governing e-commerce. The emergence of platform rules is a prominent example of this trend. While these rules may be perceived as unfair and indicative of the dominance of economic power in the digital market, they are still essential for a more comprehensive regulation of e-commerce. In this context, a co-regulatory approach to e-commerce, supplemented by regulations from multiple sources and collaboration between supervision authorities and platforms, would be highly beneficial.⁷⁵³ In other words, the major players in the digital market should not be seen solely as entities subject to regulation, but rather as

⁷⁵¹ Promulgated by the Administration for Market Regulation of Guangdong Province in November 2023. Accessed December 10, 2023, https://amr.gd.gov.cn/zwgk/tzgg/content/post_4277606.html.

⁷⁵² See Feng Hui, *Functionalism, Transcending Typology and Platform Social Responsibility* (功能主义、超越类型化与平台社会责任, Gongneng zhuyi chaoyue leixinghua yu pingtai shehui zeren), in *Law Review*, 2024, n. 3.

⁷⁵³ See Zolynski C., *La loyauté des plateformes pensée par la loi pour une République numérique*, dans Chatry S., Gobert Th. (Dir.), *Numérique : nouveaux droits, nouveaux usages : actes de colloque*, Paris : Mare & Martin, 2017, pp. 117-127.

partners in governance.⁷⁵⁴

3.1.2.2 Anti-monopoly of e-commerce platforms in the digital market

As the pace of digital economic development accelerates, there are two main concerns regarding large-scale platforms. Firstly, in terms of income distribution, large platforms have contributed to widening the distribution gap in the market due to the “winner takes all” effect, since they capture a larger share of the wealth generated in the digital market.⁷⁵⁵ Secondly, in terms of production efficiency, the continued dominance of large platforms in the digital market has raised widespread concerns that these giant platforms may exploit their dominant position to harm market competition, thereby reducing the overall economic vitality.⁷⁵⁶ There is a growing consensus to implement stringent oversight on major platforms. The EU has introduced the groundbreaking *Digital Market Act*, which marks the beginning of a new era of platform supervision (3.1.2.2.1). In China, although there is a lack of similar legislation, a regulatory framework against platform monopoly has also been primarily established through several administrative regulations (3.1.2.2.2).

3.1.2.2.1 Regulatory framework in the EU: Digital Market Act

The *Digital Markets Act* (DMA) aims to establish clear rights and regulations for

⁷⁵⁴ For a better co-regulation, a more decentralized regulation model, such as regulation through data, which harnesses the enthusiasm of consumers and all stakeholders in e-commerce to gather valuable and meaningful information for regulators, could also be useful, which is an idea proposed by a French administrative authority ARCEP (Autorité de régulation des communications électroniques, des postes et de la distribution de la presse). See ARCEP, *La régulation par la data*. Accessed November 1, 2023, <https://www.arcep.fr/la-regulation/grands-dossiers-thematiques-transverses/la-regulation-par-la-data.html>.

⁷⁵⁵ The justification of antitrust regulation on platform economy is fundamentally based on the aforementioned logic, see Wang Xianlin, *The Legitimacy and Reasonable Limits of Strengthening Antimonopoly in the Field of Platform Economy* (平台经济领域强化反垄断的正当性与合理限度, Pingtai jingji lingyu qianghua fanlongduan de zhengdangxing yu heli xiandu), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2024, n. 2, pp. 73-84.

⁷⁵⁶ A thorough review on the justification of platform regulation, see Fu Xiao, Li Lingfang, Ju Heng, *Competition Issues in Digital Platforms and Prospects for Future Research* (数字平台竞争问题综述和研究展望, Shuzi pingtai jingzheng wenti zongshu he yanjiu zhanwang), in *R&D Management*, 2022, n. 7, pp. 69-82.

major online platforms, commonly referred to as *gatekeepers*, in order to prevent any abuse of their dominant position. The objective of this act is to regulate digital markets at the EU level and foster a fair and competitive digital environment that allows companies and consumers to take advantage of digital opportunities.⁷⁵⁷

Unlike the *Digital Services Act*, which applies to all intermediary service providers and particularly targets nineteen very large intermediaries,⁷⁵⁸ the DMA specifically focuses on the Internet giants, referred to as *gatekeepers*, primarily from non-EU countries. These companies differ from general digital platforms as they are sufficiently large to have a systemic impact and connect a wide range of individual and corporate users. To be recognized as a gatekeeper, the criteria are quite stringent, thus there are currently only six designated gatekeepers.⁷⁵⁹

Another difference between the DSA and the DMA lies in their objectives. The purpose of the DSA is to enhance Internet intermediary services and safeguard service recipients (or consumers), while the DMA aims to mitigate the adverse effects of extreme economies of scale and ensure fair competition within the domestic market,⁷⁶⁰ which is achieved through the implementation of ex ante measures and prohibition practices, aiming to meet regulatory objectives. In this regard, it could be concluded

⁷⁵⁷ See Leistner M., The Commission's vision for Europe's digital future: proposals for the Data Governance Act, the Digital Markets Act and the Digital Services Act-a critical primer. *Journal of Intellectual Property Law & Practice*, 2021, 16(8), 778–784. <https://doi.org/10.1093/jiplp/jpab054>

⁷⁵⁸ European Commission press release, *Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines*, accessed October 1, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413. 17 very large online platforms (VLOPs) designated are Alibaba AliExpress, Amazon Store, Apple AppStore, Booking.com, Facebook, Google Play, Google Maps, Google Shopping, Instagram, LinkedIn, Pinterest, Snapchat, TikTok, Twitter, Wikipedia, YouTube and Zalando. Two very large online search engines (VLOSEs) are Bing and Google Search. Seven of them are pure e-commerce platforms.

⁷⁵⁹ The gatekeepers must be a large entity that offers *core platform services* (such as social networks and search engines), with a market value of at least 75 billion euros or an annual turnover of 7.5 billion euros and must also have a minimum of 45 million end users per month in the EU and 10,000 business users per year. The six designated gatekeepers are Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. See European Commission press release, *Digital Markets Act: Commission designates six gatekeepers*, accessed October 1, 2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4328.

⁷⁶⁰ Whereas clauses (1) and (2) of *Digital Market Act*.

that the DMA introduced a novel approach of regulation.⁷⁶¹

Frankly, the scope of DMA extends beyond e-commerce, and only major e-commerce merchants are impacted by this *Regulation*. Specifically, among the six designated gatekeepers, only Amazon is directly classified as an e-commerce operator, despite its involvement in other businesses. Nonetheless, it is important to note that all digital activities have the potential to result in transactions, which are usually the primary source of profit for Internet enterprises, and the majority of e-commerce platforms also have some form of association with these gatekeepers. Failure to address large-scale platforms adequately will finally result in adverse consequences for e-commerce. For this reason, the DMA are still prevalently applicable in e-commerce.⁷⁶²

DMA established a framework of compliance principles for gatekeepers.⁷⁶³ (a) The principle of access requires that gatekeepers grant third-party data access rights in a direct, open, and free-of-charge manner, which aims to create a positive competitive environment by reducing the barriers to entry for other companies. (b) The principle of fair conditions requires enterprises to be open, objective, reasonable, and easy to implement when formulating relevant definition terms and conditions, with purpose of addressing the power imbalance between gatekeepers and customers. (c) The principle of information should be based on accessibility, transparency, neutrality, and user-friendliness, to prevent gatekeepers from influencing the choices made by users. (d) The principle of choice is based on content authenticity, fairness in selection, and simplicity of information, whose purpose is to prevent users from making mistaken choices due to cognitive biases created by gatekeepers. (e) The principle of flexibility includes requirements such as easy service switching, seamless user changes, and

⁷⁶¹ See Chiarella M.L., Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment. *Athens Journal of Law*, 2022, 9(1), 33–58. <https://doi.org/10.30958/ajl.9-1-2>.

⁷⁶² See Portuese A., *The digital markets act: European precautionary antitrust*. Archived May 24, 2021, at <https://itif.org/publications/2021/05/24/digital-markets-act-european-precautionary-antitrust/>.

⁷⁶³ See Carugati C., *Compliance principles for the Digital Markets Act*, accessed June 13, 2024, <https://www.bruegel.org/policy-brief/compliance-principles-digital-markets-act>.

objective and reasonable pricing, aiming at minimizing the costs associated with switching and to promote effective message delivery.⁷⁶⁴

To implement the aforementioned principles, gatekeepers are assigned a set of duties, which can be categorized as both positive⁷⁶⁵ and negative⁷⁶⁶.

The imposition of severe punishment ensures the implementation of the DMA, which entails a penalty of up to 10% of the global annual turnover.⁷⁶⁷

The DMA highlights the growing trend of stricter regulation on large digital platforms. Despite two years having passed since the promulgation of the DMA, it remains quite challenging to evaluate both its implementation and its potential long-term impact. While the DMA may restrict the growth of gatekeepers, it is actually the gatekeepers themselves who should be responsible for adapting to the changing regulatory environment, rather than relying on administrative power to bring about deregulation. This approach is necessary to ensure fairness and efficiency in the digital

⁷⁶⁴ Overview about the framework established by the DMA, see Ribera Martínez A., The DMA's Ithaca: Contestable and Fair Markets. *World Competition*, 2023 46 (Issue 4), 429-458. <https://doi.org/10.54648/WOCO2023021>; Bolognini L., Pellino E., Scialdone M., *Digital services act e Digital markets act: definizioni e prime applicazioni dei nuovi regolamenti europei*, Milano, 2023.

⁷⁶⁵ These positive obligations include (a) Granting third parties the ability to interoperate with the services offered by gatekeepers under specific circumstances; (b) Allowing business users to access the data they generate while utilizing the gatekeeper's platform; (c) Providing necessary tools and information to companies advertising on their platforms, enabling users to independently verify the advertisements hosted by the gatekeeper; (d) Permitting users to promote their products outside of the gatekeeper's platform.

⁷⁶⁶ These negative obligations include (a) gatekeepers must not give preferential treatment to their own services and products in rankings, (b) consumers must not be prevented from accessing businesses outside of the gatekeeper's platform, (c) users must have the freedom to uninstall any pre-installed software or applications if they choose to do so, and (d) gatekeepers are not allowed to track end users who are not using their core platform services for targeted advertising without obtaining their consent.

⁷⁶⁷ According to Art. 30 (1) *Fines*, which is rather severe. The effectiveness of fines might be evident, though it shall not be the principal approach to guarantee the normal function of the DMA, see Modrich S., DiMolfetta D., *Big fines can scare Big Tech, but enforcing Digital Markets Act is key – experts*. Accessed July 29, 2024, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/big-fines-can-scare-big-tech-but-enforcing-digital-markets-act-is-key-8211-experts-69620415>.

market.⁷⁶⁸

3.1.2.2.2 Regulatory framework in China

Without any comprehensive and systematic national legislation targeting large platforms, and particularly lacking adequate preemptive regulatory measures, China still oversees the issue of monopolies with its traditional competition regulatory tools, especially the prohibition of abuse of dominant market positions.

An auxiliary legislation at the departmental level, *Provisions on Prohibiting Abuse of Dominant Market Positions (2023)*, based on the *Anti-Monopoly Law of China*, further elaborates on the methodology for identifying activities that abuse the dominant market positions of platform operators.

Firstly, fully considered the characteristics of platforms in two-sided or even multi-sided markets, the *Provisions* requires a comprehensive examination when determining the relevant commodity market associated with e-commerce platforms.⁷⁶⁹ Specifically, when determining whether a digital platform operator has obtained a dominant market position, special consideration should be given to the unique factors

⁷⁶⁸ Opposing viewpoint believes that by refusing dynamic competition to continue between platforms, the DMA would reinforce existing market structures with regulation, ossify market boundaries, and therefore stunt innovation in Europe, see Teece D. J., Kahwaty H. J., Is the proposed Digital Markets Act the cure for Europe's Ills? Accessed August 2, 2024, <https://lisboncouncil.net/wp-content/uploads/2021/04/TEECE-AND-KAHWATY-Dynamic-Digital-Markets1.pdf>.

⁷⁶⁹ Art. 5, Section 4: "To define the **relevant commodity markets in the field of platform economy**, relevant commodity markets may be defined on the basis of the commodities on one side of the platform, and the platform may be defined as a relevant commodity market as a whole on the basis of the multilateral commodities involved in the platform, or multiple relevant commodity markets may be defined separately, and the mutual relationship and influence among the relevant commodity markets may be considered."

Art. 14, Section 2 and Section 3: "In the determination of 'unfairly high price' or 'unfairly low price', the following factors may be considered..." "When the field of platform economy is involved, the cost correlation among all relevant markets in the multilateral market involved in the platform and its rationality may also be considered."

Art. 15, Section 2, Sentence 2: "When the field of platform economy is involved, the cost correlation among all relevant markets in the multilateral market involved in the platform and its rationality may also be considered."

of digital platforms and the digital platform market,⁷⁷⁰ as well as their role in the formation, maintenance, and consolidation of the dominant market position of digital platform operators.⁷⁷¹

Secondly, this *Provisions* identifies several types of common activities in Chinese digital market that cause harm to consumers, especially the “tie-in sale of commodities without justified reasons or restricting other unreasonable transaction conditions” (Art. 18) and “differentiated treatments in terms of transaction conditions to transaction counterparties with the same conditions without justified reasons” (Art. 19). The *Provisions* further emphasizes that “operators with dominant market positions should not abuse their power by utilizing data, algorithms, technologies, and platform rules to conduct acts that exploit their dominant market position” (Art. 21).

In addition, since platform enterprises have control over vast amounts of data and facilitate connections among a significant number of entities, they should be a crucial point under a cross-disciplinary collaborative supervision.⁷⁷² To address this concern, Art. 23 of the *Interim Measures on Online Anti-Unfair Competition* stipulates that “platform operators with competitive advantages are prohibited from using technical

⁷⁷⁰ These factors include competition characteristics, business models, transaction amount, transaction volume, number of users, network effects, lock-in effect, technical features, market innovation, capacity of controlling flow, capacity of mastering and handling relevant data, as well as the operator’s market force in affiliated markets. (According to Art. 12 of the *Provisions on Prohibiting Abuse of Dominant Market Positions*)

⁷⁷¹ Therefore, it would not be appropriate to excessively rely on market share as an indicator for the judgement of the dominant market position; it would be even less appropriate to use market share to directly infer market dominance in the digital platform market. See Song Jianbao, *Research on the Application of the System of Prohibiting Abuse of Market Dominance in the Digital Platform Market* (数字平台市场领域禁止滥用市场支配地位制度适用问题研究, Shuzi pingtai shichang lingyu jinzhi lanyong shichang zhipai diwei zhidu shiyong wenti yanjiu), in *Journal of Law Application*, 2024, n. 6, pp. 152-164.

⁷⁷² Official interpretation of *Interim Measures on Online Anti-Unfair Competition*, accessed May 14, 2024, https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/xwxc/art/2024/art_b8580b91cdb841d399538e0c670d7907.html. This point demonstrates the principle fairly valued by Chinese legislators, that is, the interoperability between primary large-scale platforms, see Chen Mei, Xu Heng, *Impact Analysis of Digital Platform Interoperability from the Perspective of Dual Competition Effect* (双重竞争效应视角下的数字平台互操作影响分析, Shuangchong jingzheng xiaoying shijiao xia de shuzi pingtai hucaozuo yingxiang fenxi), in *Journal of CUPL*, 2024, n. 5, pp. 62-76.

means to exploit backend transaction data, network traffic, and other information advantages, as well as technical management rules, without legitimate reasons.”⁷⁷³

Certain local regulations have also made beneficial attempts. For example, the *Regulation on Anti-Unfair Competition of Zhejiang Province (2022)* has also taken into consideration the competitive order in the digital market by incorporating several innovative rules, which urge e-commerce platforms to maintain fair competition within their platforms by clearly defining the rules of fair competition in the platform service agreement and transaction rules.⁷⁷⁴ Additionally, mechanisms for reporting and complaining about unfair competition and resolving disputes have been established, along with the coordination of disputes between operators within the platform in accordance with the platform service agreement and transaction rules (Art. 6).

With reference to the DMA, the main objectives of current platform governance are to ensure fairness and facilitate interoperability among digital platforms. While the DMA has made some progress in this area, there is still room for improvement in China, as there are only a few specific rules governing this field. The more significant issue lies in the macro supervision model. Although the *ex-ante* regulation, as represented by the DMA, offers certain advantages, such as addressing the problems of uncertainty and hysteresis in the *ex-post* regulation of current antitrust law enforcement in China, it also raises concerns about potential investment and substantial competition reduction. Additionally, these unilateral obligations may lead to the government

⁷⁷³ Relevant means include blocking third-party business information and improperly interfering with the display order of products or services.

⁷⁷⁴ The importance of data factor is highlighted in these related provisions, see Yang Dong, Li Zishuo, *On the Reconstruction of Anti-unfair Competition Law: Taking the Data Factor Regulation System as the Core* (论反不正当竞争法的重构:以数据要素规制体系为核心, Lun fan buzhengdang jingzheng fa de chonggou: Yi shuju yaosu guizhi tixi wei hexin), in *Journal of Law Application*, 2022, n. 11, pp. 15-25.

replacing the market as the primary allocator of resources.⁷⁷⁵

In summary, Chinese lawmakers did not directly restrain tech giants like the DMA. They neither follow the *ex-ante* regulation path, though this idea is obtaining increasing attention.⁷⁷⁶ Instead, Chinese legislators control activities that harm fair competition in the digital market. This is done through regulations that address specific informatic techniques and broader principles to prevent the abuse of advantages in resources, information, technology, economy, and platform role. A tripartite co-governance system is emerging, involving government departments, platform companies, and social forces. Regulatory methods like legislation, judicial processes, administrative power, and technical filtering are also becoming more flexible to foster innovation and efficiency.⁷⁷⁷

Combined with the discussion about the DMA, also given the neutral nature of the Internet,⁷⁷⁸ though government intervention regarding digital market is necessary, this intervention should be cautious and allow for sufficient freedom for innovation and competition. It may be more practical to have a relatively self-regulated environment with the transfer of some regulatory power from the government to the digital giants themselves to create a better cyber competition environment. This suggests that the EU mode may not be the only solution to the issue of dominant

⁷⁷⁵ Therefore, Chinese legislators and policymakers should observe the practical effects of the DMA and then make informed decisions regarding the supervision model, but not to directly follow the path chosen by the DMA, see Xiao Mengli, *From Metaphor to Field: Reflection and Reconstruction of the "Digital Gatekeeper"* (从隐喻到场域: “数字守门人”的反思与重构, Cong yinyu dao changyu: Shuzi shoumenren de fansi yu chonggou), in *China Law Review*, 2024, n. 2, pp. 139-156.

⁷⁷⁶ See Cheng Zengwen, *The Construction of Platform's Pre-monitoring Obligation from the Perspective of "Gatekeeper" Responsibility* (“守门人”责任视角下平台私法事前审查义务的构建, Shoumenren Zeren shijiao xia pingtai sifa shiqian shencha yiwu de goujian), in *Nanjing University Law Journal*, 2023, n. 3, pp. 94-111.

⁷⁷⁷ See Zhang Huabing, Lei Jinhao, *The Logical Construction and Paths of Digital Platform Governance in China* (中国数字平台治理的逻辑建构与路径, Zhongguo shuzi pingtai zhili de luoji jiangou yu lujing), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2024, n. 4, pp. 152-161.

⁷⁷⁸ See Donnat F., *Droit européen de l'internet : réseaux, données, services*, Paris : LGDJ, 2018, p. 31.

platforms gradually taking over the cyberspace,⁷⁷⁹ while the Chinese mode, though lacking details, with the control over results, may conserve somewhat freedom. A combination of ex ante and ex post regulation could be more appropriate.

3.1.3 Regulation on cross-border e-commerce

Cross-border e-commerce typically refers to the international trade activity where trading entities in distinct customs territories engage in transactions and settle payments through e-commerce platforms, while goods are delivered to finalize the transactions through cross-border logistics.⁷⁸⁰ This new type of trade relies on the Internet and international logistics, enabling direct connections to terminal customers and facilitating the matching of supply and demand, even when the parties are located in different countries. Cross-border e-commerce has flourished worldwide, particularly between the EU and China, due to its advantages of low entry barriers, minimal intermediaries, low costs, and short cycles. For instance, according to statistics from the Ministry of Commerce of China, the China-Europe Express *Chang'an* launched a total of 198 cross-border e-commerce trains in 2022, which is 1.6 times the volume shipped in 2021. It also achieved a cross-border e-commerce transaction volume of 3.51 billion RMB yuan, representing a year-on-year increase of 40%.⁷⁸¹

General issues regarding cross-border e-commerce, such as jurisdiction and the application of laws, is not significantly different from other situations, thus there are

⁷⁷⁹ See Fernández C., *A New Kid on the Block: How Will Competition Law Get along with the DMA?*, Journal of European Competition Law & Practice, Volume 12, n. 4, April 2021, pp. 271-272.

⁷⁸⁰ See Lai Youwei, Wang Kaiqian, *China's Cross-Border E-Commerce Development Patterns, Obstacles and Next Steps* (中国跨境电子商务发展形态、障碍性因素及其下一步, Zhongguo kuajing dianzi shangwu fazhan xingtai zhangaixing yinsu jiqi xiayibu), in *Reform*, 2014, n. 5, pp. 68-74.

⁷⁸¹ See *E-Commerce in China (2022)*, published by Ministry of Commerce of China, p. 35, archived June 3, 2023, at <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

no regulations generally coordinating cross-border e-commerce.⁷⁸² Other relevant legal issues, particularly those related to consumer protection, are definitely needed to be addressed,⁷⁸³ but due to the fact that both sellers and buyers shall primarily comply with legal requirements of the destination country and the regulatory framework of the seller's country, specific legislations pertaining to substantial issues in cross-border e-commerce are scarce, while the policies that support the growth of cross-border e-commerce are quite common. For these reasons, regretfully, the most frequent legal requirements concerning cross-border e-commerce are merely those governing tariffs, which is most typical in the EU legislation (3.1.3.1). In China's legislation (3.1.3.2), though there are neither abundant substantial content, the policy support is indeed notable.

3.1.3.1 Regulatory requirements on cross-border e-commerce in the EU

The primary EU legislation governing cross-border e-commerce actually pertains to the regulation of value added tax (VAT).⁷⁸⁴ For instance, since July 2021, with the implementation of *Directive (EU) 2017/2455*, VAT exemption for non-EU companies importing goods into the EU with a value of less than 22 euros has been eliminated. Consequently, all goods imported into the EU are now subject to VAT, regardless of their value. Notably, for goods valued below €150, VAT can be collected at the time of sale using the new Import One-Stop-Shop (IOSS) scheme or by a customs declarant from the final customer.

The ongoing revision of the *Union Customs Code* (UCC), which is part of a

⁷⁸² See Liu Yideng, *Legal Issues and Normative Guidance for the Development of Cross-Border E-Commerce* (跨境电商发展的法律问题及规范引导, Kuajing dianzi shangwu fazhan de falyu wenti ji guifan yindao), in *People's Tribute*, 2020, n. 26, pp. 100-102.

⁷⁸³ See Bai Li, He Yan, *Legal Protection of E-Commerce Consumers Rights and Interests under the background of One Belt and One Road Initiative* (“一带一路”倡议背景下电子商务中消费者权益的法律保护, Yidai yilu changyi beijingxia dianzi shangwu Zhong xiaofeizhe quanyi de falyu baohu), in *Social Sciences in Xinjiang*, 2017, n. 5, pp. 115-120.

⁷⁸⁴ See Bashandeh, R. (2022). E-Commerce VAT Concerns. *International VAT Monitor*, 33(3). <https://doi.org/10.59403/3c34bjq>.

comprehensive package of customs regulatory rules revision, is considered the most ambitious reform proposal since the establishment of the EU's customs union in 1968. This revision is likely to impact the future of cross-border e-commerce in the EU, particularly in relation to the potential elimination of the exemption for goods valued below 150 euros from tariffs. Such a change could further affect the collection of VAT associated with these goods.⁷⁸⁵ Cross-border e-commerce operators, particularly the platforms engaged in this type of business, will experience significant repercussions. This situation may not bode well for the future growth of cross-border e-commerce, especially when considering the frequent trade between the EU and China.⁷⁸⁶

3.1.3.2 Regulatory experience on cross-border e-commerce in China

Cross-border e-commerce, as envisioned by the Chinese leadership, has the potential to enhance foreign trade by facilitating optimal import and export processes. It can effectively leverage China's status as a major manufacturing nation, broaden international marketing channels, facilitate a rational increase in imports, and drive the transformation and upgrading of enterprises and foreign trade, and even stimulate domestic consumption.⁷⁸⁷ For these reasons, cross-border e-commerce has received strong support from central government policies, which is also frequently observed in bilateral trade agreements between China and other countries, even considered as an

⁷⁸⁵ If a product is exempt from customs duties or is subject to a lower customs duty rate, the taxable price will be lower when VAT is collected. Conversely, if customs duties increase, the amount of VAT will increase even if the VAT rate remains unchanged. The movement of such reform, see https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13316-Revision-of-the-Union-Customs-Code_en.

⁷⁸⁶ See Truel, C., Maganaris E., Grigorescu D.-R., The Development of EU Customs Law: From the Community Customs Code to the Union Customs Code. *Journal of Legal Studies*, 2015, 16(30), 83–106. <https://doi.org/10.1515/jles-2015-0014>.

⁷⁸⁷ *Guiding Opinions of the General Office of the State Council of China on Promoting the Healthy and Rapid Development of Cross-Border E-Commerce* (国务院办公厅关于促进跨境电子商务健康快速发展的指导意见, Guowuyuan bangongting guanyu cujin kuajing dianzi shangwu jiankang kuaisu fazhan de zhidao yijian), published in 2015. Archived June 20, 2015, at https://www.gov.cn/zhengce/content/2015-06/20/content_9955.htm.

important strategy in diplomacy.⁷⁸⁸

The general supervision requirements are outlined in a normative document that has been jointly published by multiple national-level departments, the *Notice on Improving the Supervision of Cross-Border E-Commerce Retail Imports* (关于完善跨境电子商务零售进口监管有关工作的通知, Guanyu wanshan kuajing dianzi shangwu lingshou jinkou jianguan youguan gongzuo de tongzhi) (referred to as *Notice* in this sub-section).⁷⁸⁹ Additionally, the General Administration of Customs has published a subsequent normative document titled *Announcement on Regulatory Matters Related to Import and Export Retail Commodities in Cross-Border E-Commerce* (关于跨境电子商务零售进出口商品有关监管事宜的公告, Guanyu kuajing dianzi shangwu lingshou jinchukou shangpin youguan jianguan shiyi de gonggao) (referred to as *Notice* in this sub-section).⁷⁹⁰

Under this framework, four subjects that participated in cross-border e-commerce were identified and regulated. These subjects include the cross-border e-commerce retail import operator (the actual seller and owner of the imported goods), the cross-border e-commerce third-party platform operator (located in China and providing marketplace and transaction rules for sellers and buyers), the domestic service provider

⁷⁸⁸ E-commerce diplomacy is a feature of current China's diplomacy strategy, which is promoted by multiple actors: National leaders declare their determination to develop and implement top-level design; The Ministry of Commerce launches "Silk Road E-commerce" (丝路电商, Silu dianshang) cooperation and actively constructs international trade rules in the negotiations of the WTO and various free trade zone agreements; The General Administration of Customs strengthens cooperation in customs clearance supervision; Local governments conduct interactions with foreign countries in their own unique paths; Enterprises also engage in diverse forms of civil diplomacy. See Zhang Rui, Qian Linliang, *E-commerce Diplomacy: Concept Definition and China's Practice* (电商外交:概念界定与中国实践, Dianshang waijiao: Gainian jieding yu zhongguo shijian), in *Journal of International Relations*, 2020, n. 6, pp. 20-40.

⁷⁸⁹ Jointly published by Ministry of Commerce, National Development and Reform Commission, Ministry of Finance, General Administration of Customs, State Administration of Taxation, State Administration for Market Regulation in 2018. Archived November 2, 2018, at <http://www.mofcom.gov.cn/article/b/fwzl/201811/20181102812004.shtml>.

⁷⁹⁰ Announcement No. 194 (2018) of General Administration of Customs of China. Archived December 31, 2018, at https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5447414.htm.

(who accepts the entrustment of the cross-border e-commerce retail import operator to provide customs declaration, payment, logistics, warehousing, and other services), and the consumers (who purchase overseas goods through cross-border e-commerce).⁷⁹¹

The primary responsibility for cross-border e-commerce retail import operators includes ensuring the quality of products and fulfilling consumer protection duties. Additionally, taking into account the unique characteristics of overseas goods, such as different standards, limited labeling, and lack of Chinese manuals, cross-border e-commerce operators must establish an imported goods quality traceability system.⁷⁹²

As e-commerce operators situated in China, cross-border e-commerce platforms must first comply with all the obligations set forth in the *E-Commerce Law of China*. Furthermore, they are required to provide Customs with essential information about orders to facilitate supervision.⁷⁹³ When selling both domestic and overseas goods, it is necessary to design a separation layout to avoid misleading consumers. Additionally, technical measures should be implemented to prevent potential abnormal purchases by consumers, in order to comply with the general restrictions on false transactions and secondary sales in cross-border e-commerce.⁷⁹⁴

In addition to meeting the requirements of conducting online business within China's borders, customs declaration, payment, logistics, warehousing, and other service providers should also share their data with regulatory authorities, particularly by strengthening cooperation with the customs department.⁷⁹⁵

As consumers, individuals should be aware of and willingly accept the risk associated with purchasing imported goods. Additionally, they are responsible for

⁷⁹¹ According to Art. 4.2.1, 4.3.1, 4.4.1 of the *Notice*.

⁷⁹² According to Art. 4.1 of the *Notice*.

⁷⁹³ Required information is mainly about items and payment of the cross-border e-commerce, as well as other necessary transaction information. See Announcement No. 165 (2018) of General Administration of Customs of China, Archived December 2, 2018, at <http://www.mofcom.gov.cn/article/b/g/201812/20181202820887.shtml>.

⁷⁹⁴ According to Art. 4.2.7 of the *Notice*.

⁷⁹⁵ According to Art. 71 of the *E-Commerce Law of China*.

paying all taxes generated from these goods.⁷⁹⁶ Furthermore, consumers must adhere to the prohibition against reselling goods acquired through cross-border e-commerce channels.

As a convenience measure, Customs can accept the return of goods sold in cross-border e-commerce, whether it is for import or export. However, there are certain conditions that must be met for the returned goods to be accepted.⁷⁹⁷

In the meantime, the legislative practice regarding cross-border e-commerce in China has developed in a unique manner through pilot programs implemented in various cities, especially those *Cross-Border E-Commerce Comprehensive Pilot Zones*.

Hangzhou, perhaps due to its status as the headquarters of Alibaba, is the only city in the first group of test areas established in 2015 according to a decision by the State Council of China.⁷⁹⁸ One year later, the *Regulation on the Promotion of Cross-Border E-Commerce of Hangzhou Municipality* (杭州市跨境电子商务促进条例, Hangzhoushi kuajing dianzi shangwu cujin tiaoli) was enacted.⁷⁹⁹ In addition to numerous provisions that address the division of labor among functional departments of Hangzhou Municipality, this regulation also aims to coordinate the fields of logistics and warehousing, finance, foreign exchange, internet information, taxation, and online dispute resolution. This creates a solid business environment for cross-border e-

⁷⁹⁶ Art. 3 of the recently enacted *Tariff Law of China (2024)*: “(1) The consignees of imported goods, the consignors of exported goods, and the carriers or recipients of entry articles are tariff payers. (2) E-commerce platform businesses, logistics companies and customs declaration companies engaging in cross-border e-commerce retail imports, and entities and individuals specified by any law or administrative regulation as having the obligation to withhold and remit or to collect and remit tariffs are withholding agents of tariffs.”

⁷⁹⁷ These conditions include the requirement that the goods must be in their original condition and meet the requirements for re-sales. Additionally, the goods must be transported to the original supervision workplace within 30 days from the date of release by the customs. (According to Art. 24 of the *Announcement*)

⁷⁹⁸ *Reply of the State Council on the Establishment of China (Hangzhou) Cross-border E-commerce Comprehensive Pilot Zone* [国务院关于同意设立中国(杭州)跨境电子商务综合试验区的批复, Guowuyuan guanyu tongyi sheli zhongguo Hangzhou kuajing dianzi shangwu zonghe shiyanqu de pifu]. Archived March 12, 2015, at https://www.gov.cn/zhengce/content/2015-03/12/content_9522.htm.

⁷⁹⁹ Accessed December 8, 2023, <https://flk.npc.gov.cn/detail2.html?NDAyOGFiY2M2MTI3Nzc5MzAxNjEyOD A4OGUyMTRhODg%3D>.

commerce.

The aforementioned *Regulation* in Shanghai has sparked a comprehensive cross-border e-commerce experiment in China. Subsequent local legislations on this matter largely adhere to the subjects outlined in that *Regulation*, albeit with some variations that highlight specific local characteristics in their own cross-border e-commerce legislation. For example, the *Regulation on the Promotion of Cross-Border E-Commerce of Shantou Special Economic Zone (2021)* (汕头经济特区跨境电子商务促进条例, Shantou jingji tequ kuajing dianzi shangwu cujin tiaoli)⁸⁰⁰ places particular emphasis on its unique advantage as the birthplace of overseas Chinese, with the aim of attracting investment and establishing an export e-commerce network.

By the end of 2023, there are already 165 cities in China that have been designated as cross-border e-commerce comprehensive pilot zones. While only Hangzhou and Shantou have implemented legislation to establish special policies for cross-border e-commerce, each pilot zone has its own development plan that reflects local characteristics. For instance, the latest implementation plan for the pilot zone in Hezhou,⁸⁰¹ located in the Zhuang Autonomous Region in Southwestern China, emphasizes its focus on cross-border e-commerce with the Association of Southeast Asian Nations (ASEAN) and integration into the Guangdong-Hong Kong-Macao Greater Bay Area, in order to fully leverage its advantageous location. Given that Hezhou's economy is primarily based on agriculture, the export of agricultural products and the development of supplementary cold chain logistics are particularly valued.

In summary, the central government retains the authority to regulate specific aspects of cross-border e-commerce for provincial-level or municipal-level

⁸⁰⁰ Accessed December 8, 2023, <https://www.shantou.gov.cn/attachment/0/21/21893/1858588.pdf>.

⁸⁰¹ *Implementation Plan on China (Hezhou) Cross-border E-Commerce Comprehensive Pilot Zone* [中国(贺州)跨境电子商务综合试验区实施方案, Zhongguo hezhou kuajing dianzi shangwu zonghe shiyanqu shishi fang'an], promulgated in 2023 by General Office of the People's Government of Guangxi Zhuang Autonomous Region. Accessed December 8, 2023, from <http://swt.gxzf.gov.cn/zfxgk/fdzdgknr/zcyjd/gxzc/t17475280.shtml>.

governments, which acknowledges and encourages the proactive involvement of local governments in this field.

3.2 Legal environment of e-commerce

Legal issues involved in e-commerce extend beyond transactions and competition. This section will focus on several crucial legal perspectives, including the intellectual property rights protection in e-commerce (3.2.1), the protection of online consumers' personal data (3.2.2), as well as data governance and protection (3.2.3).

3.2.1 Special intellectual property protection rules

Intellectual property rights are the most significant and fundamental rights that are strongly associated with e-commerce transactions.⁸⁰² However, the use of electronic communication in business has undoubtedly presented challenges to the overall protection of intellectual property. Intellectual property is generally protected through the framework of international treaties,⁸⁰³ while the regional or domestic legislation provide specific protection related to the e-commerce scenarios. Both the EU (3.2.1.1) and China (3.2.1.2) have developed their own frameworks to address this intricate matter.

3.2.1.1 EU model for online intellectual property right protection

The uniform and comprehensive protection on intellectual property rights starts from the *Directive 2004/48/EC*. As early as in this *Directive*, European legislators have fully acknowledged that “increasing use of the Internet enables pirated products to be distributed instantly around the globe,”⁸⁰⁴ though this *Directive* actually did not include any specific provisions regarding online intellectual property protection.

Until more than a decade later, the *Directive (EU) 2019/790* finally introduced additional regulations on intellectual property protection in Europe, though a massive

⁸⁰² See Rabagny-Lagoa A., *Droit du commerce électronique*, Paris : Ellipses, 2011, pp. 47-49.

⁸⁰³ For instance, major treaties providing protection to intellectual property right include the *Berne Convention for the Protection of Literary and Artistic Works*, the *Paris Convention for the Protection of Industrial Property* and the *Agreement on Trade-Related Aspects of Intellectual Property Rights*

⁸⁰⁴ Whereas clause (9) of the *Directive 2004/48/EC*.

portion of these provisions pertain to non-commercial usage of intellectual property in the digital realm. The provisions that are most relevant to e-commerce are those regulating press publications related to online usage and the utilization of protected content by online content-sharing service providers.⁸⁰⁵

Subsequently, in the *Digital Services Act*, contents that violate intellectual property are classified as illegal contents and digital service providers are required to handle them in a special manner.⁸⁰⁶ Additionally, in order to operate on online platforms, traders must ensure transparency regarding their intellectual property, while the platforms have a regulatory responsibility.⁸⁰⁷

In summary, intellectual property protection rules in EU digital markets are not perfect. It is indeed necessary to implement various instant protection measures with high efficiency to timely respond to activities that infringe intellectual property rights. The legislators have a responsibility to periodically review and update measures against intellectual property infringements.⁸⁰⁸

3.2.1.2 China's online intellectual property right protection model

Previously, the reputation of the Chinese e-commerce market has been severely impacted by the prevalence of counterfeit products. In order to restore the confidence of both producers with intellectual property rights and consumers, many efforts are made by legislators, administrative officers, and e-commerce platforms. Although a

⁸⁰⁵ Art. 15 and Art. 17 of the *Directive (EU) 2019/790*.

⁸⁰⁶ This result is realized with a broad concept of illegal content: “‘illegal content’ means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law.” A comprehensive review and critique of the definition of illegal content adopted in the DSA, see Hoffmann, A., & Gasparotti, A. Liability for illegal content online. Accessed July 18, 2024, https://www.cep.eu/fileadmin/user_upload/hayek-stiftung.de/cepStudy_Liability_for_illegal_content_online.pdf.

⁸⁰⁷ Whereas clauses (53) and (72), as well as other relevant articles, such as article 9 and article 24 of the *Digital Services Act*.

⁸⁰⁸ See McDonagh L., *Directive 2019/790/EU (Directive on Copyright and Related Rights in the Digital Single Market)*, in Lodder A.R., Murray A.D. (eds.), *EU Regulation of E-commerce. A Commentary*, Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022, pp. 312-320.

flawless regulatory framework on intellectual property right protection in the field of e-commerce has not yet been established, the results are actually deserving of recognition. For instance, on Alibaba's platform, as of 2022, over 73 million intellectual property rights have been protected.⁸⁰⁹ However, despite the protection measures are strengthened and the awareness of respecting the intellectual property rights of others is increased, in 2020, 1.08 out of every 10,000 transactions were still suspected to involve counterfeit products.⁸¹⁰ This indicates that the fight against intellectual property infringement remains challenging.

The *E-Commerce Law of China* places significant emphasis on the protection of intellectual property.⁸¹¹

Firstly, Art. 41 of the *E-commerce Law in China* establishes two broad and general obligations for e-commerce operators. These obligations include the requirement to “establish rules for the protection of intellectual property” and to “strengthen cooperation in the protection of intellectual property rights.” These obligations reflect the Chinese legislator's latest efforts to enhance intellectual property protection in e-commerce activities. The aim of the *E-commerce Law* is to encourage and ensure that e-commerce platforms proactively prevent and control intellectual property infringement through self-regulation, without the need for regulatory intervention. These internal platform rules for intellectual property protection should be designed to further refine existing legal provisions, ensuring compliance with statutory requirements and going beyond them by including active

⁸⁰⁹ 2022 Alibaba Annual Report on Intellectual Property Protection, accessed June 9, 2024, <https://cms-platform-prod.cn-hangzhou.oss.aliyuncs.com/uploads/pictures/1686796207989168325434932449922716.pdf>.

⁸¹⁰ 2020 Alibaba Annual Report on Intellectual Property Protection, accessed June 9, 2024, <https://files.alicdn.com/tpsservice/b08f418b3a2849de15bc4680739f74c6.pdf>.

⁸¹¹ See Xue Hong, *Chinese E-Commerce Platform Intellectual Property Protection System: Insightful Analysis and International Comparative Study* (中国电子商务平台知识产权保护制度深度剖析与国际比较, *Zhongguo dianzi shangwu pingtai zhishi chanquan baohu zhidu shendu pouxi yu guoji bijiao*), in *Law Science Magazine*, 2020, n. 9, pp. 13-23.

preventive control measures, thus ensuring their effective implementation.⁸¹² Regarding the obligation of “strengthening cooperation in the protection of intellectual property rights,” platform operators are mandated to facilitate information exchange and mutual recognition of conditions with intellectual property rights holders in order to prevent potential disputes. Furthermore, this obligation necessitates the implementation of exemption measures, wherein the nature of the cooperation between platform operators and rights holders can be used to determine if the operators have fulfilled their obligations and if they can be exempted from liability, which could encourage platforms to proactively enhance their cooperation with intellectual property rights holders.⁸¹³

Secondly, Art. 42-45 of the *E-commerce Law in China* establish the safe harbour rule for e-commerce platforms in relation to activities that infringe upon intellectual property rights, as well as the corresponding liability and methods of dispute resolution.⁸¹⁴

The *Civil Code of China* also gives equally significant attention to this issue. Due to the extensive and constantly changing nature of platform users and information, it is objectively challenging for the platform to conduct a comprehensive review of various behaviors of network users in advance. This indirectly contributes to the

⁸¹² See Lan Hao, *The Connotation and Judgment of “Establishing Intellectual Property Protection Rules” on E-Commerce Platforms* (电商平台“建立知识产权保护规则”的内涵及判定, Dianshang pingtai jianli zhishi chanquan baohu guize de neihan ji panding), in *Journal of Dalian University of Technology (Social Sciences)*, 2024, n. 1, pp. 70-77.

⁸¹³ See Lan Hao, *A Constructive Interpretation on “Strengthening Cooperation in Intellectual Property Rights Protection” in E-Commerce Law of China* (电子商务法中“加强合作保护知识产权”的建构性阐释, Dianzi shangwufa zhong jiaqiang hezuo baohu zhishi chanquan de jiangouxing chanshi), in *Huxiang Forum*, 2022, n. 3, pp. 56-66.

⁸¹⁴ Although these provisions are included within the broader context of regulations concerning e-commerce platforms and are not specifically listed as an independent section, it is evident that the Chinese legislators place significant importance on this matter. See Liu Xiaochun, *Reflection on and Improvement of the Notice and Take-Down System of Intellectual Property Rights in China’s E-Commerce Law* (《电子商务法》知识产权通知删除制度的反思与完善, Dianzi shangwufa zhishi chanquan tongzhi shanchu zhidu de fansi yu wanshan), in *Journal of Graduate School of Chinese Academy of Social Sciences*, 2019, n. 2, pp. 124-136.

increase in network infringements. Consequently, Chinese legislators have adopted the principle of sharing the responsibility created by users on the platform with e-commerce platforms as network service providers.⁸¹⁵

However, the procedures for addressing network infringement against intellectual property right as regulated by the *Civil Code of China* and *E-Commerce Law of China* are not identical. Regarding these conflicts, it is necessary for legislators to provide clarification.

Firstly, Art. 1195 of the *Civil Code of China* explicitly states that the *notice* provided by the holder of rights should not only contain *preliminary evidence of infringement* but also *accurate identification information of the right holder*. This provision enables e-commerce platforms to know the identity of the right holder.

Secondly, Chinese legislator regulates the procedure that network service providers (including e-commerce platform operators) must follow upon receiving a notice from the right holder. Art. 43, Para.2 of the *E-Commerce Law of China* states that e-commerce platform operators must promptly take necessary actions and forward the notice to operators within the platform, while Art. 1195 of the *Civil Code of China* stipulates that network service providers must first promptly forward the notice to relevant network users and then take necessary actions based on preliminary evidence of infringement and the type of service. By adjusting the sequence of “forwarding notices” and “taking necessary actions”, network users, particularly operators within e-commerce platforms who are accused of infringement, have an opportunity to promptly respond to the accuses before network service providers take necessary

⁸¹⁵ These rules are based on Art. 1194-1197 of the *Civil Code of China*, which is rooted in Art. 36 of the previous *Tort Liability Law of China* and integrates Art. 42-43 of the *E-Commerce Law of China*, further balance the interests among all parties and establish a relatively comprehensive network infringement handling mechanism. See Li Xiaocao, *Evolution of the Role of E-Commerce Platform Operators and the Change of Subject Regulation Mode* (电商平台经营者角色演化及主体规范模式嬗变, *Dianshang pingtai jingyingzhe jueise yanhua ji zhuti guifan moshi shanbian*), in *Modern Law Science*, 2022, n. 5, pp. 194-209.

actions.⁸¹⁶

Thirdly, Art. 1195 of the *Civil Code of China* explicitly states that network service providers are required to take appropriate actions⁸¹⁷ based on “preliminary evidence of infringement and service types”, which grants e-commerce platforms the discretion to determine what measures are necessary.

Fourthly, in comparison to the 15-day waiting period that follows the delivery of the forwarding statement to the intellectual property rights holder by the e-commerce platform as stated in Art. 43 of the *E-Commerce Law of China*, Art. 1196 of the *Civil Code of China* replaces the above specific waiting period with a more adaptable “reasonable period”.

In general, e-commerce platforms are required to take on the role of reviewers rather than just messengers when it comes to notice-takedown clauses. This has a direct impact on how notice-takedown rules are applied. When it comes to attribution, the initial evidence provided in the notice should clearly demonstrate the infringement, the necessary actions to be taken should be flexible, and the concept of “timeliness” should be considered from various perspectives. The platform should take responsibility for preventing repeated infringements and should also be liable for any mistakes made in deleting content. The fifteen-day “cooling-off period” should be seen as a standard assumption.⁸¹⁸

The two related judicial “quasi-legislation”, the *Official Reply on Several Issues*

⁸¹⁶ See Wei Ning, *Regulation on the Abuse of Notice-Take Down Rule in E-Commerce: From the Perspective of Platform Autonomy and Law Enforcement* (电子商务中“通知—删除”规则滥用的规制——以平台自治与法律实施为视角, Dianzi shangwu zhong tongzhi shanchu guize lanyong de guizhi: Yi pingtai zizhi yu falyu shishi wei shijiao), in *Nanjing University Law Journal*, 2022, n. 5, pp. 93-107; Ma Gengxin, *Review and Improvement of the “Notice-Takedown” Rule* (“通知—删除” 规则的检视与完善, Tongzhi shanchu guize de jianzhi yu wanshan), in *Political Science and Law*, 2022, n. 10, pp. 147-160.

⁸¹⁷ These actions, which can vary greatly, may include deletion, blocking, disconnection, termination of transactions and services. (According to Art. 1195 of the *Civil Code of China*)

⁸¹⁸ See Wang Jie, *The Definition and Application of the Notice-Takedown Clause in Electronic Commerce Law of China* (《电子商务法》中通知-删除条款之定性及适用, Dianzi shangwufa zhong tongzhi shanchu tiaokuan zhi dingxing yu shiyong), in *Journal of CUPL*, 2021, n. 5, pp. 182-194.

Concerning the Application of Law to Disputes over Internet-related Intellectual Property Right Infringement (referred to as *Official Reply*) and the *Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-Commerce Platforms* (referred to as *Guiding Opinions*), provided more details to make the above institution more practical.⁸¹⁹

Firstly, the right of intellectual property right holders to apply for preservation is acknowledged.⁸²⁰ Similarly, if the temporary measures adopted by platforms are likely to harm the legitimate interests of internal platform operators, their right to apply for preservation could also be recognized.⁸²¹

Secondly, certain details pertaining to the infringement statement and the counter statement denying infringement have been addressed, thereby enhancing Art. 42-43 of the *E-Commerce Law of China*. The necessary information contained in the infringement statement is outlined in Art. 5 of the *Guiding Opinions*,⁸²² while the factors for determining the *malicious intent* in such infringement statements are enumerated in Art. 6 of the *Guiding Opinions*.⁸²³ Regarding the counter statement

⁸¹⁹ See Wang Yingzhou, *On Judicial Intervention in Intellectual Property Protection in the Field of E-commerce* (论电子商务领域知识产权保护的司法介入, Lun dianzi shangwu lingyu zhishi chanquan bao hu de sifa jieru), in *Journal of Law Application*, 2021, n. 4, pp. 53-61.

⁸²⁰ According to Article 1 of the *Official Reply*; Article 9, Section 1 of the *Guiding Opinions*. In contrast, the *E-Commerce Law of China* only permits IPR holders to inform e-commerce platforms to adopt temporary measures.

⁸²¹ Art. 9, Section 2 of the *Guiding Opinions*: “Where, in case of an emergency, the e-commerce platform operator does not immediately restore the product link or the notifier does not immediately withdraw the notification or stop sending the notification, irreparably damaging the legitimate interests of business owners operating on the platform, they may apply to the people’s court for preservation measures in accordance with the provisions prescribed in the preceding paragraph.”

⁸²² (a) Information on the true identity of the intellectual property certificate and the owner; (b) Information on the alleged infringing goods or services that can be accurately located; (c) The prima facie evidence of the tort; and (d) A written guarantee of the authenticity of the notification. Moreover, such notification shall be made in written form.

⁸²³ (a) Submission of falsified or altered property right certificates; (b) Submission of expert opinions on comparison of misrepresentation torts; (c) Making the notification, knowing that the state of rights is unstable; (d) Failure to cancel or correct a notification in a timely manner, knowing that the notification is wrong; and (e) Repeated submission of error notifications.

denying infringement issued by operators, its essential contents are specified in Art. 7 of the *Guiding Opinions*,⁸²⁴ and its malicious intent shall also be taken into account and penalized, as stated in Art. 8 of the *Guiding Opinions*.⁸²⁵ Besides, in the event that a counter statement is submitted and platforms do not receive notice of a complaint or legal action initiated by intellectual property rights holders, they must promptly cease all temporary measures against the operators, within a period not exceeding 20 working days (Art. 3 of the *Official Reply*).

Thirdly, even in the absence of an infringement statement, e-commerce platforms should supervise the products for sale and promptly implement appropriate temporary measures, including the termination of transactions and services. These measures should be carried out in accordance with the principles of rationality and prudence, as stated in Art. 3 of the *Guiding Opinions*. At the meantime, the platforms also assume a general duty of review and care, as stated in Art. 11 of the *Guiding Opinions*.

More provisions could be observed elsewhere, especially in local legislation. For instance, Art. 29 of the *Regulations on Intellectual Property Right Protection of Shenzhen Special Economic Zone* (深圳经济特区知识产权保护条例, Shenzhen jingji tequ zhishi chanquan baohu tiaoli),⁸²⁶ states that e-commerce platform operators must take the same measures in response to a prohibition issued by the intellectual property right administration department of Shenzhen Municipality as they would after receiving an infringement notice from intellectual property right holders. Additionally, Art. 54 of the *Shenzhen Regulations* require e-commerce platforms to establish an

⁸²⁴ (a) The true identity of the business owner; (b) Information on goods or services that accurately locate and require termination of necessary measures; (c) Prima facie evidence for ownership certificates or authorization certificates in which there is no existence of tort; and (d) A written warranty of authenticity of the statement. Similar to the statement from intellectual property right holder, the counterstatement shall also be made in written form.

⁸²⁵ (a) Whether the forged or invalid certificates of rights and authorization have been provided; (b) Whether the statement contains false information or is obviously misleading; (c) Whether a statement is still issued, though an effective judgment or administrative decision on the determination of infringement has been attached to the notification; and (d) Whether the statement is not be canceled or corrected in a timely manner, knowing that it is wrong.

⁸²⁶ Revised in 2020, archived September 30, 2020, at <http://www.sz.gov.cn/attachment/0/930/930224/9453842.pdf>.

internal complaint mechanism to address intellectual property infringement. This demonstrates a more detailed consideration than the legislators of the *E-Commerce Law of China*, indicating local government's stronger preference for stimulating technological innovation to gain a competitive advantage, both domestically and internationally.⁸²⁷

3.2.2 Personal data protection

At the beginning, it must be acknowledged that the issue of personal data protection⁸²⁸ overlaps with e-commerce law. E-commerce is an industry that relies heavily on data. The e-commerce operators actually conduct their operation under different roles related to data depending on the circumstances, such as data processors, data controllers, or data recipients.⁸²⁹ It can be observed that nearly all e-commerce traders strive to obtain access to data (especially “cookies”) generated during the

⁸²⁷ See Xu Ke, Zhang Yafeng, *Local Intellectual Property Policy System Supporting Innovation: An Analysis Based on Innovation System and Institutional Logic* (支持创新的地方知识产权政策体系：基于创新系统与制度逻辑的分析, Zhichi chuangxin de defang zhishi chanquan zhengce tixi: Jiyu chuangxin xitong yu zhidu luoji de fenxi), in *Science Research Management*, 2023, n. 10, pp. 62-70.

⁸²⁸ There are many terms regarding this issue, such as *personal information* used in China and *personal data* used in the EU. Regardless of the diversity of terminology, its fundamental aspect will always be the possibility to identify a specific individual. See Eynard, J., *Les données personnelles : quelle définition pour un régime de protection efficace?*, Paris : Michalon, 2013, p. 185. In this thesis, the author will mainly use *personal data*. When introducing Chinese regulations, *personal information* will be adopted.

⁸²⁹ To effectively target consumers, promote products, provide better service, understand consumer preferences, fulfil e-commerce contracts, deliver packages, offer after-sales support, obtain consumer feedback, retain consumer attention, and encourage repeat purchases, it is undoubtedly crucial for e-commerce operators to collect, process, and analyse data generated by consumers. In this process, personal information, including transaction electronic data, payment, and logistics information, obtained from each transaction, is a crucial component of the closed loop of e-commerce transactions. This information is continuously transferred, circulated, generated, and processed, facilitating interaction among the participants of e-commerce, which also evidently increases the risk of personal information leakage. When it contains sensitive content, the situation will be more serious. The above mechanism is more evident in context of the promotion of artificial intelligence assisted platform decision. See Chen Zihan, *Sensitive Personal Information Protection in Artificial Intelligence Algorithm Decision-Making* (人工智能算法决策中的敏感个人信息保护, Rengong zhineng suanfa juece zhongde mingan geren xinxi baohu), in *Science of Law*, 2024, n. 6, pp. 63-75.

process of visiting and browsing their own websites to the greatest extent possible.⁸³⁰ They also make every effort to exercise the authorities granted by consumers to engage in activities such as sending consumption reminders, promotions, and soliciting after-sales opinions, even generating personalized advertisements.⁸³¹ Besides, throughout the entire life cycle of e-commerce activities, not only e-commerce operators, but also government departments, information service platform operators, and other relevant service providers such as digital payment and delivery companies conduct operations based on data, which definitely results in the exchange and sharing of data among multiple entities.⁸³² In that process, it is inevitable to construct connection with information that is highly personal, “touching the essence of a person”.⁸³³

Therefore, the application of the personal data protection rules in the realm of e-commerce becomes definitely necessary, which cannot only achieve its objective of data protection, but also the goal of consumer protection, privacy protection and even personality right protection. It can be thus concluded that all e-commerce traders, who plan to collect, process, or acquire data from their consumers, are always subject to the requirements about personal data protection, which consist of compliance objectives for e-commerce operators. Similarly, online consumers will also always enjoy the rights related to personal data, as they are both consumers in the context of e-commerce and data subjects in the context of personal data protection.

Both the EU and China have their own legislation models on personal data

⁸³⁰ E-commerce operators are inclined to excessively gather personal data, as a larger amount of data enables more accurate predictions of potential customer characteristics, provided that a scientific algorithm model is in place. See Bensoussan A., Bensoussan J., *Algorithmes et droit*, Paris : Lexing, 2023, p. 53 ; Van de Waerd P.J., Information asymmetries: recognizing the limits of the GDPR on the data-driven market, *Computer Law & Security Review*, Vol. 38, 2020, <https://doi.org/10.1016/j.clsr.2020.105436>.

⁸³¹ See Paisant G., *Droit de la consommation*, Paris : Presses Universitaires de France, 2019, pp. 373-374.

⁸³² See Gao Zhihong, *Theoretical Reflection and Rule Optimization of Personal Information Protection in the Era of Big Data* (大数据时代个人信息保护的理论与规则优化, Dashuju shidai geren xinxi baohu de lilun fansi yu guize youhua), in *Academics*, 2023, n. 7, pp. 122-137.

⁸³³ See Eynard, J., *Les données personnelles : quelle définition pour un régime de protection efficace?*, Paris : Michalon, 2013, p. 187.

protection. The GDPR in Europe (3.2.2.1) is a successful and groundbreaking legislation of global personal data protection legislation. The *Personal Information Protection Law of China*, along with related legislations (3.2.2.2), has also drawn inspiration from the GDPR while also introducing local innovations that enhance the global governance of personal data.⁸³⁴

3.2.2.1 Framework established by the GDPR in the EU

The protection of personal data, personal information, or normative information is not a fully new or innovative topic. In 1995, the *Data Protection Directive* (Directive 95/46/EC) initially introduced regulations on personal data protection.⁸³⁵ With the rapid advancement of information technology, the complexity of data protection naturally grows, leading to an anticipation for new legislation in this area. Consequently, the *Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* [Regulation (EU) 2016/679], commonly known as the *General Data Protection Regulation* (GDPR), was enacted, marking the beginning of a new era of data protection in Europe and globally.⁸³⁶

The GDPR establishes a framework primarily focused on the interplay between the personal data controller, data processor, individuals involved in the collection and processing of personal data, the data subject, and third parties (Art. 3).

⁸³⁴ However, as this thesis does not specifically focus on the protection of data with personal characteristics, and there are no provisions in the GDPR or Chinese related legislations that have a direct, tight and explicit connection with e-commerce, a comprehensive examination of neither legislation on personal data protection will be conducted.

⁸³⁵ During this time, several personal data protection legislations were also established in certain Member States. For instance, in France, *Décret n° 2005-1309 du 20 octobre 2005* was implemented to regulate the handling of data containing personal characteristics. Regarding personal data protection, this *Decree* mandated that data controllers or subcontractors appoint designated data protection delegates. Accessed September 27, 2023, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000241445>. Now this decree has been repealed.

⁸³⁶ General commentaries about the GDPR, see Finocchiaro G., *Il nuovo regolamento europeo sulla privacy e sulla protezione dei dati personali*, Torino, 2017; Desgens-Pasanau G., *La protection des données personnelles : les principales clés de décryptage du RGPD*, Paris : LexisNexis, 2022; Kuner C., and others (eds), *The EU General Data Protection Regulation (GDPR): A Commentary*, New York: Oxford Academic, 2020.

The basis for processing personal data is consent.⁸³⁷ It should be presented in a manner that is easy to understand and accessible, otherwise it will be considered invalid. In addition to granting consent, users should have the right to withdraw their consent at any time, with the same level of ease as giving consent. When it comes to obtaining consent from children under the age of sixteen, the processing of their personal data will only be legal if their guardian provides authorization and consent. Although altruism is an important argument in the field of data, proving the necessity of sharing data rights,⁸³⁸ its application to the issue of personal data is still unacceptable. As mentioned earlier, consent is absolutely necessary before any critical manipulations involving personal data. To address this problem, a consent management platform (CMP) is an effective mechanism that ensures and protects the content of Internet users, and it is widely adopted in practice.⁸³⁹

Individuals are endowed with a series of rights related to data, which include the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, the right to object, and the right not to be subject to a decision based solely on automated processing.⁸⁴⁰ These rights are generally described by the GDPR, but they have been further enriched in subsequent legislation and judicial practices.

For instance, the right to data portability is further clarified by Art. 6 of the *Digital Market Act*, which requires large corporations to provide effective data portability to end users. This includes the provision of tools to facilitate the operation of data

⁸³⁷ According to Art. 7 of the GDPR, if the user's consent is included in a written statement that also addresses other matters, the consent request must be easily identifiable and use clear and straightforward language. See Kosta E., *Article 7 Conditions for consent*, in Kuner C., and others (eds), *The EU General Data Protection Regulation (GDPR): A Commentary*, New York: Oxford Academic, 2020, pp. 345-353.

⁸³⁸ See Lian Y. M., *Droit des données 2.0. Construction du système de droits*, Oxford : Peter Lang, 2021, p. 25.

⁸³⁹ However, the effectiveness of the CMP is also challenged, see Santos, C., Nouwens, M., Toth, M., Bielova, N., & Roca, V. (n.d.). Consent Management Platforms Under the GDPR: Processors and/or Controllers? *Lecture Notes in Computer Science*, 47–69. https://doi.org/10.1007/978-3-030-76663-4_3.

⁸⁴⁰ According to Art. 15-22 of the GDPR. A systematic analysis, see Vrabec, H. U. (2021). *Data Subject Rights under the GDPR*. Oxford University Press. <https://doi.org/10.1093/oso/9780198868422.001.0001>.

portability, as well as continuous and real-time access to the data. These services must be provided free of charge upon request from end users and their authorized third parties. Currently, the involved large corporations have also made corresponding adjustments.⁸⁴¹

3.2.2.2 Framework established by multiple laws in China

Since personal information protection often takes place within the framework of interactions between service providers (especially platforms) and consumers,⁸⁴² e-commerce operators should naturally bear the corresponding liability, which was generally affirmed by Art. 18⁸⁴³ of the *E-commerce Law of China*.⁸⁴⁴ The most significant provision related to personal information in the *E-commerce Law of China*

⁸⁴¹ For example, Google has announced the launch of a new data portability API. This API will be further developed and improved on Google Takeout by relevant developers to support users' requests to transfer their data out of Google services. Similarly, ByteDance has launched an API on its platform that allows European users to transfer data to other applications that are registered with TikTok. With the user's consent, registered developers can transfer relevant posts, followers, and other related content from TikTok to the corresponding application. Additionally, they are improving the relevant tool to enable individual users to export and download their posts and other information.

⁸⁴² See Shi Jiayou, *The Private Law Dimension of Personal Information Protection: Also on the Relationship between the Civil Code and the Personal Information Protection Law*, in *Journal of Comparative Law* (个人信息保护的私法维度——兼论《民法典》与《个人信息保护法》的关系, *Geren xinxi baohu de sifa weidu: Jianlun minfadian yu geren xinxi baohu de guanxi*), 2021, n. 5, pp. 14-32.

⁸⁴³ Art. 23 of the *E-Commerce Law of China* merely states that e-commerce operators must adhere to the provisions of laws and administrative regulations concerning the protection of personal information when collecting and utilizing personal information of their users, which offers a link with the *Personal Information Protection Law*.

⁸⁴⁴ Recent Chinese legislation highlights such obligation for another time, refraining the operators from excessive collection of personal information and the collection of personal information that is not necessary for transactions through general or default authorization methods. (Art. 23 Section 1 of *Implementation Regulation of Consumer Rights and Interests Protection Law*)

is the Art. 24,⁸⁴⁵ which grants rights to inquire about, correct, and delete user information, as well as the right to cancel account for online consumers.⁸⁴⁶ Furthermore, Art. 18 of the *E-commerce Law of China* restricts the personalized search results in e-commerce,⁸⁴⁷ which is formulated to respond the reality that numerous e-commerce enterprises employ techniques such as big data analysis and user profiling to achieve targeted marketing and personalized product and service recommendations. The abuse of technical method based on personal information probably leads to unfair big data discrimination.⁸⁴⁸ Though personalized suggestion should not be outlawed, the freedom of consumers to choose whether consent to the collection of relevant information and personalized analysis shall be protected.⁸⁴⁹

The PIPL established the complete legal framework about personal information. According to this legislation, the processing of personal information encompasses

⁸⁴⁵ Art. 24 of the *E-Commerce Law of China*: “(1) An e-commerce business shall expressly state the means of and procedures for search, correction or deletion of user information and user deregistration and shall not establish unreasonable conditions for search, correction or deletion of user information and user deregistration. (2) When receiving an application for search, correction or deletion of user information in a timely manner, an e-commerce business shall, upon verification of identity, permit search, correction or deletion of user information in a timely manner. In the case of user deregistration, an e-commerce business shall immediately delete the information of the user; if any law or administrative regulation provides for, or the parties stipulate, the retention, the law, administrative regulation, or stipulation shall prevail.”

⁸⁴⁶ These rights can be seen as fundamental consumer rights in the digital era and should not be limited solely to the realm of personal information protection. See Wang Liming, *On the Right to Delete Personal Information* (论个人信息删除权, Lun geren xinxi shanchu quan), in *Oriental Law*, 2022, n. 1, pp. 38-52.

⁸⁴⁷ Art. 18 of the *E-Commerce Law of China*: “If an e-commerce operator offers search results for goods or services to consumers based on their interests, hobbies, consumption habits, and other characteristics, they must also provide consumers with options that are not tailored to their personal characteristics.”

⁸⁴⁸ See Meng Qinguo, *Key Issues in the Governance of Algorithm Discrimination and Infringement of Consumer Rights: From the Perspective of Big Data Discrimination* (治理算法歧视侵害消费者权益的关键问题——以大数据杀熟为视角, Zhili suanfa qishi qin hai xiaofeizhe quanyi de guanjian wenti: Yi dashuju shashu wei shijiao), in *Journal of Law Application*, 2023, n. 3, pp. 37-47.

⁸⁴⁹ In this regard, the implementation of a contractual mechanism would be absolutely necessary. See Wu Teng, *Type Classification and Contract Construction of Actively Utilizing Personal Information* (个人信息积极利用的类型区分与合同构造, Geren xinxi jiji liyong de leixing qufen yu hetong gouzao), in *Legal Science*, 2023, n. 6, pp. 70-84.

various activities such as collection, storage, use, processing, transmission, provision, disclosure, and deletion. Personal information refers to data that is related to an identified or identifiable natural person and has not been anonymized, which could be categorized into three groups⁸⁵⁰ with different processing requirements based on the principle of informed consent.⁸⁵¹ In relation to these operations, individuals have certain rights, including the right to be informed, the right to make decisions, the right to inquire, the right to obtain copies of their personal information, the right to data portability, the right to request corrections, supplements, or deletions of their personal information, and the right to request an explanation. Additionally, the PIPL also highlights the rights of individuals to withdraw their consent for the processing of personal information, to restrict or refuse the processing of their personal information, and to refuse automated decision-making.

When involving minors under the age of 14, processors must also obtain the consent of their guardian and establish specific rules for handling such personal

⁸⁵⁰ There are three categories of personal information that are distinguished based on their level of sensitivity: ordinary personal information, sensitive personal information, and special sensitive personal information. When processing ordinary personal information, the processors must adhere to commonly accepted principles, which include being “legal, legitimate, necessary, honest, open, and transparent”, providing “explicit notification and explicit consent”, ensuring “minimum collection scope”, and maintaining a “minimum storage period”. In the case of sensitive personal information, which includes biometric data, religious beliefs, specific identities, medical health information, financial accounts, and whereabouts, the processors must comply with the requirements of having a “specific purpose, sufficient and necessary protection measures”, obtaining individual consent, and clearly informing individuals about the necessity and impact on their rights and interests.

⁸⁵¹ The requirement for informed consent in different case shall be various in order to effectively prevent and mitigate potential risks associated with the treatment of each kind of personal information, especially the sensitive personal information. See Yang Weiqin, *Institutional Logic, Normative Interpretation and Reinforcement of the Rules on Notification and Consent of Sensitive Personal Information* (敏感个人信息告知同意规则的制度逻辑、规范解释与补强, Mingan geren xinxì gaozhì tóngyì guīzè de zhìdù luòjī guīfàn jiěshì yǔ bǔqiáng), in *Law and Economy*, 2024, n. 1, pp. 100-115.

information. This requirement is the strictest compliance standard for processors.⁸⁵² Similarly, if the information processor utilizes algorithm-based automated decision-making to distribute short videos containing children's personal information without obtaining separate authorization and consent from the guardians, it will be regarded as illegal. Furthermore, if the information processor creates profiles of child users, enables personalized recommendations by default without the consent of the guardians, and utilizes algorithms to distribute content, it will still be considered illegal.⁸⁵³

Among various types of personal information, biometric information, particularly facial recognition information, is consistently a subject of significant controversy, which is noticed by the *Provisions on Several Issues concerning the Application of Law in the Trial of Civil Cases Relating to Processing of Personal Information by Using the Facial Recognition Technology* (关于审理使用人脸识别技术处理个人信息相关民事案件适用法律若干问题的规定, Guanyu Shenli shiyong renlian shibie jishu chuli geren xinxi xiangguan minshi anjian shiyong falyu ruogan wenti de

⁸⁵² In a typical case, a certain version of a short video app (referred to as anonymous by the court) failed to effectively implement the principle of prioritizing children's interests in the collection, storage, use, sharing, and disclosure of their personal information. This behavior endangered the personal information rights and privacy rights of numerous unidentified children in society. As a result, the app was sued by the local procuratorate in a public interest lawsuit and was ordered to take remedial action, issue a public apology, and provide a certain amount of compensation. See Xiao Wan, *Determination of Infringement of Children's Personal Information Rights by Large Internet Platforms: Comment on a Civil Lawsuit of Public Interest against a Short Video Platform for Infringement of Minors' Personal Information* (大型互联网平台侵害儿童个人信息权益的认定——兼评某短视频平台侵害未成年人个人信息民事公益诉讼案, Daxing hulianwang pingtai qinhai ertong geren xinxi quanyi de rending: Jianping mou duanshipin pingtai qinhai weichengnianren geren xinxi minshi gongyi susong an), in *Journal of Law Application*, 2022, n. 6, pp. 76-82. Based on the aforementioned case, the boundaries of protection for minors' information have been further clarified: If the information processor fails to establish a dedicated protection mechanism for children's personal information and implement encryption storage measures, it will be considered as illegal storage of children's personal information.

⁸⁵³ See Sun Jingzhou, *The Role and Liability of Platforms under the Personal Information Protection Law* (《个人信息保护法》下网络平台的地位和责任构造, Geren xinxi baohufa xia wangluo pingtai de diwei he zeren gouzao), in *Journal of Renmin University of China*, 2023, n. 6, pp. 117-131.

guiding).⁸⁵⁴ As e-commerce platforms in China typically seek to obtain facial recognition authorization, this judicial interpretation cited the *E-Commerce Law of China* as its legislation basis (Art. 1). However, like the PIPL, actually no provision is specifically designed for the application of facial recognition technology in e-commerce.

The PIPL focuses on automated decision-making in the e-commerce industry and aims to define the characteristics of individuals' right to informed consent. It also outlines the legal obligations of personal information processors to protect individuals' right to informed consent. Firstly, the practice of discriminating based on big data is strictly forbidden. Automated decision-making processes must guarantee transparency, fairness, and impartiality in their outcomes. Therefore, they should not subject individuals to unjustifiable differential treatment in terms of transaction prices and other transaction conditions. Secondly, processors must offer alternative convenient options or methods for refusal in order to genuinely safeguard the right to give consent. Thirdly, in the event that automated decision-making leads to a decision that significantly affects personal rights and interests, individuals have the right to request an explanation and even decline a decision that is solely based on automated decision-making.⁸⁵⁵ The aforementioned requirement, however, does not impose a restriction on the implementation of universal personalized pricing activity by platforms, provided that they adhere to the requirements for protecting personal information and

⁸⁵⁴ Promulgated by the Supreme People's Court of China just a few days before the promulgation of the PIPL. Accessed October 21, 2023, <http://gongbao.court.gov.cn/Details/118ff4e615bc74154664ceaf3bf39.html>.

⁸⁵⁵ See Yang Lixin, Zhao Xin, *Informed Consent Rules and Safeguards for Automated Decision-Making Using Personal Information: Interpreting Article 24 of the Personal Information Protection Law from the Perspective of Personalized Advertising* (利用个人信息自动化决策的知情同意规则及保障——以个性化广告为视角解读《个人信息保护法》第24条规定, Liyong geren xinxi zidonghua juece de zhiqing tongyi guize ji baozhang: Yi gexinghua guanggao wei shijiao jiedu geren xinxi baohufa di ershisi tiao guiding), in *Journal of Law Application*, 2021, n. 10, pp. 22-37.

comply with relevant market regulations.⁸⁵⁶

The PIPL has even imposed obligations on the *quasi-gatekeepers*⁸⁵⁷ which are personal information processors that offer important Internet platform services, including complex business types with a large user base. These processors are required to enhance their internal personal information compliance system, establish comprehensive platform rules regarding personal information, promptly cease providing services to platform operators who seriously violate their personal information obligations, and regularly publish reports on their performance in protecting personal information.⁸⁵⁸ Additionally, they are also required to establish an independent organization primarily composed of external members to oversee the protection of personal information and develop platform rules that clarify the standards for handling personal information by product or service providers on the platform and their obligations to protect personal information.⁸⁵⁹

3.2.3 Data governance

Against the backdrop of the global digital economy and digital competition among major powers, each region is striving to advance digital development through data regulatory rules. Data governance is closely connected to e-commerce, as

⁸⁵⁶ See Wang Feng, *Legal Regulation of Personalized Pricing in the Digital Economy* (数字经济中个性化定价的法律规制, Shuzi jingji zhong gexinghua dingjia de falyu guizhi), in *Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition)*, 2023, n. 5, pp. 199-207.

⁸⁵⁷ There are Chinese scholars, inspired by the DMA, comparing Chinese similar regulatory requirements with those in the EU, see Liu Ying, *The “Gatekeeper” Clause in Personal Information Protection Law of China* (我国《个人信息保护法》中的“守门人”条款, Woguo geren xinxi baohufa zhongde shoumenren tiaokuan), in *Northern Legal Science*, 2021, n. 6, pp. 73-83.

⁸⁵⁸ See Cheng Xiao, *Civil Liability of Large Online Platforms for Breach of Gatekeeper Obligations* (大型网络平台违反守门人义务的民事责任, Daxing wangluo pingtai weifan shoumenren yiwu de minshi zeren), in *Science of Law*, 2023, n. 5, pp. 32-41.

⁸⁵⁹ See Wang Lei, *Research on the Boundary of Personal Information Protection Responsibility from the Perspective of Platforms* (平台视角下的个人信息保护责任边界研究, Pingtai shijiao xiade geren xinxi baohu zeren bianjie yanjiu), in *Journal of Law Application*, 2023, n. 2, pp. 25-35.

personal data and data generated in online business activities have special value in the digital market.⁸⁶⁰ Regulations on data should cover collection, utilization, and protection to address its importance in the digital era.⁸⁶¹ The EU has proposed the *Data Act* to establish its data regulatory framework (3.2.3.1), while China has published a policy document to build a data property rights system (3.2.3.2). These frameworks will be integrated into the broader regulatory framework for e-commerce to support its future development.

3.2.3.1 The *Data Act* in EU

The European Data Strategy was adopted in 2020, highlighting the significance of data.⁸⁶² This Strategy aims to establish a unified data market, while also enhancing Europe's data competitiveness.⁸⁶³ Following the promulgation of the *Data Governance Act* [Regulation (EU) 2022/868], which regulates the sharing of public data in Europe, the *Data Act* [Regulation (EU) 2023/2854] serves as another crucial pillar of the European Data Strategy.

The *Data Act* clarifies the regulations regarding data access, sharing, and usage. It specifies the subjects and conditions for obtaining data and establishes broader rules that apply to all data based on the GDPR. While the Data Act primarily focuses on non-personal data or data that does not include personally identifiable information, it does not diminish the effectiveness of the GDPR. Therefore, there are several scenarios

⁸⁶⁰ These data generated from e-commerce are also highly valuable for circulation, which might ulteriorly contribute to the value added of data, see Shang Jiangang, *From Protection to Circulation: Rethinking China's Data Governance Paradigm* (从保护到流通: 我国数据治理范式反思, Cong baohu dao liutong: Woguo shuju zhili fanshi fansi), in *Journal of Soochow University (Philosophy & Social Science Edition)*, 2024, n. 1, pp. 100-110.

⁸⁶¹ See Bourgeois M., *Droit de la donnée*, Paris : LexisNexis, 2017, p. 275.

⁸⁶² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a European Strategy for Data [COM (2020) 66 final].

⁸⁶³ See Walter C.E., Valente T., Polónia D.F., Au-yong-Oliveira M., Veloso C. M., Big Data, European Data Strategy, And Innovation: A Systematic Review of The Literature. *Calitatea*, 2021, 22(184), 16–20. <https://doi.org/10.47750/QAS/22.184.02>

where the simultaneous application of the *Data Act* and GDPR is feasible.⁸⁶⁴

In terms of data providers supplying data to users, the *Data Act* proposes two complementary methods for providing data to users, namely default provision and application-based provision. Additionally, it introduces more specific requirements regarding how data providers should offer users with networked products and related service data.⁸⁶⁵

The *Data Act* also enables users of networked products and related services to share data with third parties. When a user or their representative requests the sharing of such data with a third party, the data holder must promptly provide the third party with any readily available data and the relevant metadata necessary to interpret and utilize the data at the same level of quality as the data holder obtains it. If technically feasible, this data should be provided continuously and in real time.⁸⁶⁶

In order to prevent enterprises from improperly obtaining or using data from others by exploiting the aforementioned rules and to protect the legitimate rights and interests of data holders, the *Data Act* imposes restrictions on data sharing in scenarios involving enterprises. These restrictions pertain to the scope of application, methods of data acquisition, protection of trade secrets, re-providing of data, data usage, data

⁸⁶⁴ The relationship between the GDPR and the *Data Act* could be well explained with the example of vehicle data, which is situated at the junction of the scope covered by these two regulations, see Crepax, T., Gaur, M., & da Rosa Lazarotto B., Measuring data access and re-use in the European Legal Framework for Data, from the General Data Protection Regulation (GDPR) law to the Proposed Data Act: the case of vehicle data. *Open Research Europe*, 2023, 3, 192–192. <https://doi.org/10.12688/openreseurope.16468.1>.

⁸⁶⁵ When data is provided by default, the design and production of networked products, as well as the design and provision of related services, should ensure that users can access them directly, conveniently, securely, and at no cost. When data provision is based on users' application, data providers should promptly and without charge provide users with any readily available data and relevant metadata necessary for interpreting and utilizing the data.

⁸⁶⁶ See *Data act explained*. Accessed September 17, 2024, [https://digital-strategy.ec.europa.eu/en/factpages/data-act-explained#:~:text=If%20the%20user%20wishes%20to,under%20the%20Digital%20Markets%20Act\).](https://digital-strategy.ec.europa.eu/en/factpages/data-act-explained#:~:text=If%20the%20user%20wishes%20to,under%20the%20Digital%20Markets%20Act).)

analysis, and product safety, among other aspects.⁸⁶⁷

The *Data Act* places emphasis on the freedom of users to switch between services and the interoperability of data processing services. This ensures that users are able to effectively switch between different cloud data processing service providers to achieve autonomous data transfer.⁸⁶⁸

In line with the identification standards and obligations outlined in the *Digital Markets Act*, the *Data Act* also introduces the concept of *gatekeepers*. These gatekeepers are strictly prohibited from accessing user data, as they are not qualified third parties. They are also prohibited from obtaining any data shared in accordance with the *Data Act* through any means. This prevents gatekeepers from further strengthening their monopoly power based on their economic and technological strength, and from using data circulation rules that are designed to promote fair data sharing.⁸⁶⁹

The *Data Act* prioritizes the protection of small and medium-sized enterprises (SMEs), providing them with strong protection by exempting them from certain data provision obligations. Additionally, the *Act* establishes a grey list and a list of prohibited contract practices to prevent unfair contracts from being imposed on

⁸⁶⁷ See Abbasi K., A commitment to act on data sharing. *BMJ*, 2023, 382, p1609. <https://doi.org/10.1136/bmj.p1609>. The relevant rules about data sharing incorporated in the Data Governance Act, see Shabani M., The Data Governance Act and the EU's move towards facilitating data sharing. *Molecular Systems Biology*, 2021, 17(3), e10229-n/a. <https://doi.org/10.15252/msb.202110229>.

⁸⁶⁸ See Schneider J.P., Erny J., Enderlein F., Collaborative Governance Structures for Interoperability in the EU's new data acts. *European Journal of Risk Regulation*, 2024, 1–12. <https://doi.org/10.1017/err.2024.46>. It is noteworthy that the concept interoperability has influenced Chinese scholars, see Chen Mei, Xu Heng, *Impact Analysis of Digital Platform Interoperability from the Perspective of Dual Competition Effect* (双重竞争效应视角下的数字平台互操作影响分析, Shuangchong jingzheng xiaoying shijiao xia de shuzi pingtai hucaozuo yingxiang fenxi), in *Journal of CUPL*, 2024, n. 5, pp. 62-76.

⁸⁶⁹ See Hacker P., Cordes J., Rochon J., Regulating Gatekeeper Artificial Intelligence and Data: Transparency, Access and Fairness under the Digital Markets Act, the General Data Protection Regulation and Beyond. *European Journal of Risk Regulation*, 2024 15(1), 49–86. <https://doi.org/10.1017/err.2023.81>.

SMEs.⁸⁷⁰ This enhances their bargaining power in data sharing negotiations. The European Commission is also developing model contract clauses to assist SMEs in ensuring the fairness of data sharing agreements. However, these measures might also increase costs for companies that require cross-border data transfers.

3.2.3.2 Data regulation efforts in China

Apart from personal data, all other types of data are equally important to be protected. The *Personal Information Protection Law of China* (referred to as PIPL), along with the *Cybersecurity Law of China* (中华人民共和国网络安全法, *Zhonghua renmin gongheguo wangluo anquan fa*) (referred to as CSL) and the *Data Security Law of China* (referred to as DSL), has established the basic legal framework for data governance in China from different perspectives: The PIPL safeguards the rights and interests of individuals by implementing a legal security lock; The CSL focuses on comprehensive governance of cyberspace; The DSL concentrates on regulating data processing activities and safeguarding China's digital sovereignty.

The most revolutionary measure taken by the Chinese leadership regarding data is the document titled *Opinions on Establishing a Data Infrastructure System to Better Play the Role of Data Factor*.⁸⁷¹ This document, jointly published by the Central Committee of the Communist Party of China and the State Council of China in 2022, aims to construct a top-level and systematic design of the data legal system. It holds supreme effectiveness in the policy system. The document outlines the comprehensive framework of the fundamental data factor system, encompassing key aspects such as the data ownership system, the market circulation and transaction of data (or, the allocation of data), the distribution system for the profits generated from data factor, and the governance of data factor. It also addresses the legal, economic, and political

⁸⁷⁰ The grey list is an institution worth reflecting in balancing different values related to data, see Karsten L., *Unfair Terms for Data Access and Use between Enterprises* (Art. 13), in Hennemann M., Ebner G.K., Karsten B., Lienemann G., Wienroeder M., *Data Act: An Introduction*, Baden-Baden: Nomos, 2024, pp. 141-150.

⁸⁷¹ Archived December 19, 2022, at https://www.gov.cn/zhengce/2022-12/19/content_5732695.htm.

dimensions simultaneously.⁸⁷²

The system of three separate data property rights provides a legal basis for both the supply side and the demand side. These rights include the right to possess data, the right to process and use data resources, as well as the right to operate data products. For the supply side, the protection of data against illegal access protects the interest of data holders, raising the possibility of putting data into the market, which could further expand the supply in the data market and increases the efficiency in utilizing the large amount of data possessed by different subjects.⁸⁷³ For the demand side, both the middle term of processing and utilization and the sales link of data product are considered. This protection includes not only the mechanism for protecting the processing, utilization, and data products themselves, but also a guaranteed income return.⁸⁷⁴

Another issue is about the protection of data controlled by e-commerce

⁸⁷² See Shi Jianzhong, *Deconstruction of the Concept Data and Construction of the Data Law System on the Content and System of Data Law* (数据概念的解构与数据法律制度的构建, Shuju gainian de jiegou yu shuju falyu zhidu de goujian), in *Peking University Law Journal*, 2023, n. 1, pp. 23-45.

⁸⁷³ The interest mechanism is almost always effective in driving market subjects and leading them in the direction set by the state, which is still useful when admitting data as a factor of production. See Wang Jiesen, Wu Hongluo, *Original Contribution of the Theory of Data Factor Participating in Distribution in the New Era* (新时代数据要素参与分配理论的原创性贡献, Xinsidai shuju yaosu canyu fenpei lilun de yuanchuangxing gongxian), in *Journal of Hebei University of Economics and Business*, 2024, n. 2, pp. 32-40.

⁸⁷⁴ In this regard, with the establishment of data rights system, the positivity of using data resources can be stipulated, which can further lead to the advancement of digital productivity. See Chen Bing, *The Promotion of the Rule of Law in the Market-Oriented Allocation of Data Factors: Also on the Design of Twenty Data Measures* (数据要素市场化配置的法治推进——兼论《数据二十条》相关条款设计, Shuju yaosu shichanghua peizhi de fazhi tuijin: Jianlun shuju ershitiao xiangguan tiaokuan sheji), in *Journal of Shanghai University (Social Sciences Edition)*, 2024, n. 1, pp. 1-13; Wang Weiling, *Research on the Overall Framework and Development Path of China's Data Factor Market System* (中国数据要素市场体系总体框架和发展路径研究, Zhongguo shuju yaosu shichang tixi zongti kuangjia he fazhan lujing yanjiu), in *E-Government*, 2023, n. 7, pp. 2-11.

enterprises, which could be defined as *competitive property rights and interests*.⁸⁷⁵ Art. 19 of the *Interim Measures on Online Anti-Unfair Competition* launched the statutory protection to these data, prohibiting the use of technical means to illegally obtain or use data that is legally held by other operators.⁸⁷⁶ However, the main interests protected by this article are still the normal operation of network products or services and the maintenance of fair competition, rather than the recognition of a data property right itself. Therefore, the concept *data property right* is still in need.

⁸⁷⁵ The related is Taobao v. Meijing (淘宝 v. 美景), which typically involved the matter of data scraping. The court finally decided the Taobao, which possessed abundant open data, has a *competitive property rights and interests*, thus it enjoyed right to refuse unfair data scraping and was able to claim corresponding compensation. See Xu Ke, *The Legitimacy and the Boundary of Data Scraping* (数据爬取的正当性及其边界, Shuju paqu de zhengdangxing jiqi bianjie), in *China Legal Science*, 2021, n. 2, pp. 166-188.

⁸⁷⁶ The adoption of this article thoroughly activated the path of protecting enterprise data property rights with competition law methods. See Zhu Jianjun, *Data Property Rights Should Be Protected by the Anti Unfair Competition Law* (数据财产权益应采用反不正当竞争法保护模式, Shuju caichan quanyi ying caiyong fan buzhengdang jingzhengfa baohu moshi), in *Intellectual Property*, 2024, n. 6, pp. 80-92; Sun Ying, Yu Zhengyuan, *Rethinking Competitive Relationship and Reconsidering the Path of Anti-Unfair Competition Law for Data Rights Confirmation* (竞争关系反思与数据确权路径再思考, Jingzheng guanxi fansi yu shuju quequan lujing zai sikao), in *Science Technology and Law*, 2024, n. 5, pp. 25-36.

Summary of Chapter 3

E-commerce does not operate in isolation. Its external environment significantly influences and restricts it, a factor that is frequently disregarded by e-commerce researchers. Furthermore, as e-commerce law transitions into digital market law, as e-commerce law intersects with various other fields, and as Internet law and data law continue to broaden, e-commerce law has progressively become a subcategory and faces challenges in maintaining its status as a distinct subject.

Despite the general lack of strong and direct links, there does exist a considerable number of regulations, though less than those concern the e-commerce transaction, in the current laws of the EU and China that shape the external environment of e-commerce.

E-commerce refers to a transaction behaviour within market, which specifically pertains to the peculiar field of digital markets. Chinese lawmakers have implemented relatively detailed regulations on unfair competition behaviours conducted on the Internet. These regulations consist of a specific restriction that is influenced by China's unique and unhealthy market conditions. While it may not be a common issue in the field of e-commerce, it does aid regulators in other jurisdictions in identifying potential loopholes and enacting prompt countermeasures.

The regulation of digital platforms is currently a major concern in the digital market. It is important to recognize that digital platforms are not confined solely to e-commerce platforms. However, larger e-commerce platforms are consistently subject to strict supervision, while a considerable percentage of the digital platforms that necessitate regulation are in some way or another related to e-commerce business. The EU has already established a foundational framework for the regulation of large digital platforms through the *Digital Markets Act*, while China has only established systematic regulations that govern the exercise of platform power internally, specifically pertaining to the formulation of platform rules, without delving into comprehensive regulation of digital platforms. The EU's strategy may be driven by concerns about maintaining the integrity of its own digital sovereignty, in contrast to

China, which seems to be unconcerned about such matter. Nevertheless, as the digital market continues to evolve, it is increasingly necessary to establish control regulations for large platforms through legislation. In this regard, China should observe and learn from the EU's pioneering efforts.

Additionally, the systematic oversight of cross-border e-commerce issues is present in both EU and Chinese legislation. Cross-border e-commerce encompasses numerous factors, including customs, taxation, logistics, jurisdiction. It is regrettable that current laws do not offer sufficient legal remedies for this prevalent business activity, as cross-border e-commerce could serve as a crucial path towards further resolving conflicts in e-commerce regulations among different countries.

E-commerce also has significant overlaps with many other important legal fields, and special considerations need to be considered for the unique circumstances of e-commerce. Firstly, e-commerce poses challenges regarding intellectual property violations. The key to addressing this issue is to establish and provide convenient remedies for right holders. Both the EU and China have made useful efforts in this regard, but perhaps still not sufficient. Secondly, e-commerce involves the collection and use of substantial amounts of personal data from online consumers, which highlights the importance of regulations concerning personal data in the e-commerce sector. The *EU's General Data Protection Regulation* has influenced *Personal Information Protection Law of China*. There are certain similarities between them in terms of the framework for protecting personal information. However, neither of them has made extensive provisions specifically for e-commerce. Lastly, the data generated and collected throughout e-commerce generally holds economic value, aligning with the current trend of promoting the commercial use of data. E-commerce companies themselves also need to comply with data protection requirements. The EU has taken the lead in issuing regulations on data governance, while China has also implemented significant policies and attempts to establish a system of data property rights, but these have not yet been fully translated into law. The relationship between e-commerce and the confirmation of data rights, data transactions, and the commercial utilization of data still requires further exploration by both the EU and China.

In summary, the regulation of the external environment of e-commerce is a continuously evolving and dynamic matter that might always remain unresolved. Additionally, there is a significant paradigm shift occurring where regulation of the digital market is gradually superseding regulation of e-commerce. It is imperative for researchers to consider the interconnection between e-commerce and other legal issues, while legislators must also acknowledge the ripple effects that rulemaking and modifications in other domains can have on the field of e-commerce.

Conclusion

1. The overall comparison of e-commerce regulatory frameworks between the EU and China can be analyzed from three perspectives: Comprehensiveness, which is a feature of China's e-commerce regulatory framework and suggests China's relative superiority over the EU; Breadth, which is found in both the EU and China and also signifies the development of e-commerce laws in the past two decades; Fragmentation, which is a common significant challenge confronted by both jurisdictions, but lacks any conclusive and effective solutions.

First and foremost, it is noted from an intuitive observation throughout this thesis that, in terms of comprehensiveness, only China's e-commerce regulatory framework can be considered as all-inclusive and exhaustive. Two reasons contribute to this outcome. The first reason is that the China's framework is primarily based on domestic legislation, which necessitates the inclusion of abundant details. This necessity is not present in EU legislation, as it has to allow Member States to make autonomous decisions. The second reason is the preference and characteristics of China's legislation, particularly administrative legislation, which focuses on summarizing previous experience rather than condensing it into legislation. In contrast, EU legislation tends to be more forward-looking and thus does not require excessive concreteness. Based on these two reasons, it is understandable and reasonable that certain themes regulated in China are either completely or significantly absent in EU legislation, particularly in relation to the regulation of ordinary e-commerce subjects and the transaction rules of e-commerce contracts. In this regard, the legislative experience of China may be more valuable for the domestic legislation of EU Member States than EU legislation itself.

Acknowledging the aforementioned point does not necessarily imply that Chinese regulation on e-commerce is more advanced than that of the EU. Instead, actually, both the EU and China have established remarkably mature regulatory frameworks for e-commerce. In terms of the breadth of the framework, it can be concluded that both the

EU and China have implemented comprehensive regulations, particularly considering the expansion of the concept of e-commerce and the scope of e-commerce law. In today's digital society, e-commerce law should not only encompass e-commerce transactions but also take into account the external factors that affect e-commerce, as it has become a field that intersects with various other issues. It can be observed that both EU and Chinese legislation, in addition to addressing fundamental e-commerce issues such as advertising, online dispute resolution, and parcel delivery, have also given sufficient attention to other crucial matters related to e-commerce, particularly intellectual property protection, regulation of large-scale platforms, personal data protection, and data governance. Although not all of these legislations have a strong and direct connection with e-commerce, from an academic standpoint, the regulatory frameworks for e-commerce have already been expanded in both the EU and China.

However, alongside the efforts to realize the comprehensiveness of e-commerce regulatory framework, both EU and Chinese legislators consistently face the common challenge of fragmentation in e-commerce regulation. The legislation surrounding e-commerce lacks a logical framework, resulting in the existence of scattered and isolated regulatory documents that address specific issues. In the EU, the majority of directives and regulations pertaining to e-commerce are fragmented, making it difficult to establish a coherent connection not only inside them but also among them. In China, not only do various authorities possess administrative power over e-commerce, but local governments also share regulatory authority on this matter with the central government, not to mention the participation of the judiciary system. While it may be possible to systematically organize these legislations in academic research, it is extremely difficult to reverse both the current state and the trend of fragmentation in e-commerce law.

2. Due to disparities in social and economic circumstances and regulatory inclinations, it is apparent that the primary areas of concentration for e-commerce regulation in the EU and China are inherently dissimilar. At the same time, despite these contrasts, both the EU and China are undergoing a similar transition from

exclusively focusing on e-commerce legislation to creating a comprehensive framework for the digital market, which is more evident in EU's legislative practice.

Currently, EU legislators are incorporating e-commerce into the broader framework that governs the digital single market. There are no fully digitalized regulations that specifically address e-commerce contracts after the *Directive on Electronic Commerce* in 2000, nor are there sufficiently updated rules that offer adequate protection to online consumers, nor are there comprehensive online e-commerce dispute resolution mechanisms. Furthermore, the crucial EU legislations pertaining to e-commerce, namely the *Digital Services Act* and the *Digital Market Act*, are not exclusively tailored for e-commerce itself, but rather aim to establish a well-regulated external environment for it. It is evident that e-commerce is no longer considered as a standalone topic, but rather an integral part of digital market order. With the aforementioned two regulations, an *ex-ante* regulatory framework that safeguards freedom in the digital market through strict supervision, particularly targeting the dominant digital players, is established.

Chinese legislation takes a distinct approach by placing considerable emphasis on the specific, at times overly detailed, matters associated with e-commerce transactions. This approach relies on the recently implemented *E-Commerce Law of China*, since it is a newly promulgated and schematic legislation, as well as an extensive collection of administrative legislations. The above choice signifies that the concept *e-commerce* will continue to be an essential topic in the regulation of the digital market in China. Moreover, Chinese legislation demonstrates the characteristic of *ex-post* regulation when it comes to monopolistic practices, while the responsibilities allocated to platforms are determined on a case-by-case basis, highlighting China's continued focus on regulating controlling behaviors in its e-commerce sector. This approach significantly differs from the regulatory methodology followed by the EU. Therefore, it can be concluded that although Chinese legislators have established a comprehensive set of norms for e-commerce transactions and combatting unfair commercial activities in e-commerce, the entire normative framework still lacks systematicity and somewhat foresight.

In general, China currently leads in the administration of specific details in e-commerce transactions but has not yet commenced its overall regulation towards the digital market. In contrast, the EU is ahead in the future-oriented area of inclusive regulation of the digital market, although it has already fallen behind in terms of mere e-commerce regulation. These different situations reflect contrasting philosophies in Internet governance, specifically in how the relationship between government and the digital market is handled. The recent legislative activities in the EU, especially the DMA and the DSA, demonstrate a shift in attitude, as the EU no longer acts solely as a limited government in the traditional sense and has instead apparently enhanced its regulatory strength. China previously adopted a loose regulatory standpoint, but with the increasing problems, regulatory authorities have returned to a traditional preference for strong supervision. During this period of gradually strengthening regulation, there still remains a relatively large amount of free space for Internet enterprises. Therefore, it can still be concluded that the role of China's government in digital market regulation is limited. It will certainly take time to observe which paths could lead to a better future for the digital market.

3. It is both possible and advantageous for the two regulatory frameworks to learn from each other. EU legislators can utilize China's extensive practices and rules as examples for future legislation, particularly in addressing gaps in protecting digital consumers, regulating unfair competition on the Internet, controlling platform rulemaking and establishing real online dispute resolution mechanisms. Chinese legislators can learn from the characteristics of the EU's framework, establishing a stronger foundation particularly in terms of intellectual property protection and personal information protection, and implementing more comprehensive supervision on large digital platforms, particularly by effectively combining *ex ante* regulation with *ex post* regulation. In terms of the overall approach to e-commerce law, it may be significant to adopt the EU's perspective and shift the focus from the narrow e-commerce law to the broader digital market, as the e-commerce sector is increasingly expanding and becoming more interconnected with other issues of the digital market.

Both regulatory frameworks also have common areas that require improvement. Firstly, the regulation of e-commerce is limited to the B2C type, while insufficient attention is given to B2B e-commerce, which is actually larger in scale and more economically significant. Secondly, neither of the regulatory frameworks has adequately promoted digitization in the contract sector. They have only achieved the objective of including several provisions with a digital nature in the current civil legislation, which is apparently insufficient to truly modernize the field of contract law. Thirdly, China and the EU have not fully implemented their support and protection for cross-border e-commerce through legislation, and there is also a risk of further friction in areas such as tariffs. Fourthly, the explanation and understanding of the relationship between personal information protection, data governance, and e-commerce is yet to be strengthened, which makes these issues remain independent and separate.

4. E-commerce is continuously presenting new challenges for legislation, law enforcement, and justice at a rapid pace of development beyond imagination. Regulatory objectives, methods, rules, and perspectives should be adjusted dynamically to adapt to new changes and demands occurring in the digital market. While both China and the EU currently have a formalized e-commerce regulatory framework, some of the contents are slightly outdated, some are overly complex, some conflict with each other, and some are not comprehensive enough. By utilizing comparative methods, focusing on commercial practice, as well as considering ulterior development in a forward-looking manner, a sustainable regulatory approach on e-commerce within the context of the continuous development and innovation of the digital market could be discovered, which will definitely be effective for both the EU and China.

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Part II. Legislations and official documents

1. European Union (including European Economic Community)

1.1 Regulations

Regulation on the law applicable to contractual obligations (Rome I) [Regulation (EC) No 593/2008]

Regulation adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/468/EC [Regulation (EC) No 1137/2008]

Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR) [Regulation (EU) No 524/2013]

Regulation on electronic identification and trust services for electronic transactions in the internal market [Regulation (EU) No 910/2014]

Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (GDPR) [Regulation (EU) 2016/679]

Regulation on cross-border parcel delivery services [Regulation (EU) 2018/644]

Regulation on promoting fairness and transparency for business users of online intermediation services [Regulation (EU) 2019/1150]

Regulation on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) [Regulation (EU) 2022/868]

Regulation on contestable and fair markets in the digital sector (Digital Market Act) (DMA) [Regulation (EU) 2022/1925]

Regulation on a Single Market for Digital Service (Digital Services Act) (DSA) [Regulation (EU) 2022/2065]

Regulation on markets in crypto-assets [Regulation (EU) 2023/1114]

1.2 Directives

Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (Directive 84/450/EEC) (Repealed)

Directive on unfair terms in consumer contracts (Directive 93/13/EEC)

Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/EC) (Repealed)

Directive on the protection of consumers in respect of distance contracts (Directive 97/7/EC) (Repealed)

Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service (Directive 97/67/EC)

Directive on injunctions for the protection of consumers' interests (Directive 98/27/EC) (Repealed)

Directive laying down a procedure for the provision of information in the field of technical standards and regulations (Directive 98/34/EC) (Repealed)

Directive on certain aspects of the sale of consumer goods and associated guarantees (Directive 1999/44/EC)

Directive on a Community framework for electronic signatures (Directive 1999/93/EC) (Repealed)

Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce) (Directive 2000/31/EC)

Directive on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (Directive 2000/46/EC) (Repealed)

Directive on a common regulatory framework for electronic communications networks and services (Framework Directive) (Directive 2002/21/EC) (Repealed)

Directive on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (Directive 2002/22/EC) (Repealed)
 Directive concerning the distance marketing of consumer financial services (Directive 2002/65/EC)
 Directive on the enforcement of intellectual property rights (Directive 2004/48/EC)
 Directive concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive) (Directive 2005/29/EC)
 Directive concerning misleading and comparative advertising (Directive 2006/114/EC)
 Directive on payment services in the internal market (Payment Services Directive) (PSD I) (Directive 2007/64/EC) (Repealed)
 Directive on credit agreements for consumers (Directive 2008/48/EC)
 Directive on the taking up, pursuit and prudential supervision of the business of electronic money institutions (Directive 2009/110/EC)
 Directive on consumer rights (Directive 2011/83/EU)
 Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR) (Directive 2013/11/EU)
 Directive on payment services in the internal market (Payment Services Directive) (PSD II) [Directive (EU) 2015/2366]
 Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods [Directive (EU) 2017/2455]
 Directive establishing the European Electronic Communications Code [Directive (EU) 2018/1972]
 Directive on certain aspects concerning contracts for the supply of digital content and digital services [Directive (EU) 2019/770]
 Directive on certain aspects concerning contracts for the sale of goods [Directive (EU) 2019/771]
 Directive on copyright and related rights in the Digital Single Market [Directive (EU) 2019/790]
 Directive amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernization of Union consumer protection rules [Directive (EU) 2019/2161]

1.3 Commission decisions

Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 [C/2021/3972]

1.4 Proposals for legislation

Proposal for a directive on certain legal aspects of electronic commerce in the internal market [COM (1998) 586 final]
 Proposal for a regulation on a Common European Sales Law [COM (2011) 635 final]
 Proposal for a directive on certain aspects concerning contracts for the online and other distance sales of goods [COM (2015) 635 final]
 Proposal for a regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC [COM (2017) 10 final]
 Amended proposal for a directive on certain aspects concerning contracts for the online and other distance sales of goods [COM (2017) 637 final]
 Proposal for a regulation on contestable and fair markets in the digital sector (Digital Markets Act) [COM (2020) 842 final]
 Proposal for a regulation on harmonised rules on fair access to and use of data (Data Act) [COM/2022/68 final]

1.5 Communication from the European Commission

A European Initiative in Electronic Commerce [COM (97) 157 final]
A Digital Agenda for Europe [COM (2010)245 final]
The open internet and net neutrality in Europe [COM (2011) 222 final]
A coherent framework for building trust in the Digital Single Market for e-commerce and online services [COM (2011) 942 final]
A Digital Single Market Strategy for Europe [COM (2015) 192 final]
Digital contracts for Europe - Unleashing the potential of e-commerce [COM (2015) 633 final]
Online Platforms and the Digital Single Market Opportunities and Challenges for Europe [COM (2016) 288 final]
A comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses [COM (2016) 320 final]
Shaping Europe's digital future [COM (2020) 67 final]
Digital Finance Strategy for the EU [COM (2020) 591 final]
Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market [COM (2021) 288 final]

1.6 Other official documents

Preliminary Report on the E-commerce Sector Inquiry (Commission staff working document) [SWD (2016) 312 final]

2. Chinese legislation and official documents⁸⁷⁷

2.1 Laws (法律, Falyu)

Medicinal Product Administration Law of China (中华人民共和国药品管理法, Zhonghua renmin gongheguo yaopin guanli fa) (1984, revised in 2001, 2013, 2015, 2019)
Consumer Rights and Interests Protection Law of China (中华人民共和国消费者权益保护法, Zhonghua renmin gongheguo xiaofeizhe quanyi bao hu fa) (1993, revised in 2009, 2013)
Anti-Unfair Competition Law of China (中华人民共和国反不正当竞争法, Zhonghua renmin gongheguo fan buzhengdang jingzheng fa) (1993, revised in 2017, 2019)
Advertising Law of China (中华人民共和国广告法, Zhonghua renmin gongheguo guanggao fa) (1994, revised in 2015, 2018, 2021)
Prevention and Control of Environment Pollution Caused by Solid Wastes Law of China (中华人民共和国固体废物污染环境防治法, Zhonghua renmin gongheguo guti fei wu wuran huanjing fangzhi fa) (1995, revised in 2004, 2013, 2015, 2016, 2020)
Price Law of China (中华人民共和国价格法, Zhonghua renmin gongheguo jiage fa) (1997)
Contract Law of China (中华人民共和国合同法, Zhonghua renmin gongheguo hetong fa) (1999) (Repealed)
Legislation Law of China (中华人民共和国立法法, Zhonghua renmin gongheguo lifa fa) (2000, revised in 2015, 2023)
Electronic Signature Law of China (中华人民共和国电子签名法, Zhonghua renmin gongheguo dianzi qianming fa) (2004, revised in 2015, 2019)

⁸⁷⁷ All the Chinese legislations are sorted by the year of promulgation from oldest to newest in corresponding sections. Reference: *Compilation of e-commerce laws, regulations and policies*, in *E-Commerce in China 2022* (中国电子商务报告 2022, Zhongguo dianzi shangwu baogao 2022), published by Ministry of Commerce of China, pp. 130-139, archived June 3, 2023, <http://dzsws.mofcom.gov.cn/article/ztxx/ndbg/202306/20230603415404.shtml>.

Agricultural Product Quality and Safety Law of China (中华人民共和国农产品质量安全法, Zhonghua renmin gongheguo nongchanpin zhiliang anquan fa) (2006, revised in 2018, 2022)

Anti-Monopoly Law of China (中华人民共和国反垄断法, Zhonghua renmin gongheguo fanlongduan fa) (2007, revised in 2022)

Food Safety Law of China (中华人民共和国食品安全法, Zhonghua renmin gongheguo shipin anquan fa) (2009, revised in 2015, 2018, 2021)

Tourism Law of China (中华人民共和国旅游法, Zhonghua renmin gongheguo lyuyou fa) (2013, revised in 2016, 2018)

Cybersecurity Law of China (中华人民共和国网络安全法, Zhonghua renmin gongheguo wangluo anquan fa) (2016)

E-Commerce Law of China (中华人民共和国电子商务法, Zhonghua renmin gongheguo dianzi shangwu fa) (2018)

Civil Code of China (中华人民共和国民法典, Zhonghua renmin gongheguo minfadian) (2020)

Export Control Law of China (中华人民共和国出口管制法, Zhonghua renmin gongheguo chukou guanzhi fa) (2020)

Personal Information Protection Law of China (中华人民共和国个人信息保护法, Zhonghua renmin gongheguo geren xinxi baohu fa) (2021)

Data Security Law of China (中华人民共和国数据安全法, Zhonghua renmin gongheguo shuju anquan fa) (2021)

Stamp Tax Law of China (中华人民共和国印花税法, Zhonghua renmin gongheguo yinhuashui fa) (2021)

Promotion of Revitalization of Rural Areas of China (中华人民共和国乡村振兴促进法, Zhonghua renmin gongheguo xiangcun zhenxing cujin fa) (2021)

Combating Telecom and Online Fraud Law of China (中华人民共和国反电信网络诈骗法, Zhonghua renmin gongheguo fan dianxin wangluo zhaphan fa) (2022)

Tariff Law of China (中华人民共和国关税法, Zhonghua renmin gongheguo guanshui fa) (2024)

2.2 Regulations (行政法规, Xingzheng fagui)

Provisions on the Administrative Punishment of Price-related Violation (价格违法行为行政处罚规定, Jiage weifa xingwei xingzheng chufa guiding) (1999, revised in 2006, 2008, 2010)

Measures on Administration of Internet Information Services (互联网信息服务管理办法, Hulianwang xinxi fuwu guanli banfa) (2000, revised in 2011)

Regulation on the Administration of Publication (出版管理条例, Chuban guanli tiaoli) (2001, revised in 2011, 2013, 2014, 2016, 2020)

Interim Regulation on Enterprise Information Disclosure (企业信息公示暂行条例, Qiye xinxi gongshi zanxing tiaoli) (2014)

Interim Regulation on Express Delivery (快递暂行条例, Kuaidi zanxing tiaoli) (2018)

Regulation on the Administration of the Registration of Market Entities of China (中华人民共和国市场主体登记管理条例, Zhonghua renmin gongheguo shichang zhuti dengji guanli tiaoli) (2021)

Regulation on the Promotion of the Development of Individual Industrial and Commercial Households (促进个体工商户发展条例, Cujin geti gongshanghu fazhan tiaoli) (2022)

Implementation Regulations of Consumer Rights and Interests Protection Law of China (中华人民共和国消费者权益保护法实施条例, Zhonghua renmin gongheguo xiaofeizhe quanyi baohu fa shishi tiaoli) (2024)

2.3 Departmental rules (部门规章, Bumen guizhang)⁸⁷⁸

2.3.1 Departments of the State Council of China (国务院组成部门, Guowuyuan zucheng bumen)

(1) National Development and Reform Commission (国家发展和改革委员会, Guojia fazhan he gaige weiyuanhui)

Implementation Measures on the Administrative Punishment of Price-related Violations (价格违法行为行政处罚实施办法, Jiage weifa xingwei xingzheng chufa shishi banfa) (2004)

(2) Ministry of Education of China (中华人民共和国教育部, Zhonghua renmin gongheguo jiaoyu bu)

Provisions on the Protection of Minors by Schools (未成年人学校保护规定, Weichengnianren xuexiao baohu guiding) (2016)

(3) Ministry of Industry and Information Technology of China (中华人民共和国工业和信息化部, Zhonghua renmin gongheguo gongye he xinxihua bu)

Measures on the Administration of Tobacco Monopoly Licenses (烟草专卖许可证管理办法, Yanco zhuantai xukezheng guanli banfa) (2016)

(4) Ministry of Human Resources and Social Security of China (中华人民共和国人力资源和社会保障部, Zhonghua renmin gongheguo renli ziyuan he shehui baozhang bu)

Provisions on the Administration of Online Recruitment Services (网络招聘服务管理规定, Wangluo zhaopin fuwu guanli guiding) (2020)

(5) Ministry of Transport of China (中华人民共和国交通运输部, Zhonghua renmin gongheguo jiaotong yunshu bu)

Measures on Administration of Express Delivery Market (快递市场管理办法, Kuaidi shichang guanli banfa) (2013, revised in 2023)

Measures on the Administration of the Business Permit for Express Business (快递业务经营许可管理办法, Kuaidi yewu jingying xuke guanli banfa) (2018, revised in 2019)

Provisions on the Administration of Road Passenger Transport and Passenger Stations (道路旅客运输及客运站管理规定, Daolu lyuke yunshu ji keyunzhan guanli guiding) (2020, revised in 2022)

Measures on the Administration of Small and Micro Automobile Rental Business Services (小型客车租赁经营服务管理办法, Xiaoweixing keche zulin jingying fuwu guanli banfa) (2020)

Provisions on the Administration of Passenger Services in Public Air Transport (公共航空运输旅客服务管理规定, Gonggong hangkong yunshu lyuke fuwu guanli guiding) (2021)

(6) Ministry of Commerce of China (中华人民共和国商务部, Zhonghua renmin gongheguo shangwu bu)

Provisions on the Procedures for Developing the Transaction Rules of Third-Party Online Retail Platforms (For Trial) [网络零售第三方平台交易规则制定程序规定(试行), Wangluo lingshou disanfang pingtai jiaoyi guize zhiding chengxu guiding (shixing)] (2014)

(7) Ministry of Culture and Tourism of China (中华人民共和国文化和旅游部, Zhonghua renmin gongheguo wenhua he lyuyou bu)

⁸⁷⁸ The administrative organs of State Council of China is sorted in the following order, which is an official bureaucratic sequence in China: Firstly, departments of the State Council of China, whose abbreviation is 部委 (ministries and commissions), usually only 部 (ministry, Bu); secondly, institutions directly under the State Council of China (国务院直属机构, Guowuyuan zhishu jigou); thirdly, national bureaus administered by ministries and commissions of the State Council of China (国务院部委管理的国家局, Guowuyuan buwei guanli de guojia ju). For more detailed arrangement and information, see <https://www.gov.cn/gwyzjjg/zuzhi/>, archived October 19, 2023.

Interim Measures on the Administration of Online Tourism Business Services (在线旅游经营服务管理暂行规定, Zaixian lyuyou jingying fuwu guanli zanxing guiding) (2020)

(8) People's Bank of China (中国人民银行, Zhongguo renmin yinhang)

Measures on the Administration of Electronic Banking (电子银行业务管理办法, Dianzi yinhang yewu guanli banfa) (2006)

Measures on the Implementation for Protecting Financial Consumers' Rights and Interests (金融消费者权益保护实施办法, Jinrong xiaofeizhe quanyi baohu shishi banfa) (2020)

Measures on the Deposit of Pending Payments of Clients of Non-bank Payment Institutions (非银行支付机构客户备付金存管办法, Feiyinhang zhifu jigou kehu beifujin cungan banfa) (2021)

2.3.2 Institutions directly under the State Council of China (国务院直属机构, Guowuyuan zhishu jigou)

(1) State Taxation Administration (国家税务总局, Guojia shuiwu zongju)

Measures on the Management of Online Invoices (网络发票管理办法, Wangluo fapiao guanli banfa) (2013, revised in 2018)

(2) State Administration for Market Regulation (国家市场监督管理总局, Guojia shichang jian du guan li zong ju) [including former State Administration for Industry and Commerce of China (国家工商行政管理总局, Guojia gongshang xingzheng guan li zong ju)]

Interim Measures on the Trading of Commodities and Services through the Internet (网络商品交易及有关服务行为管理暂行办法, Wangluo shangpin jiaoyi ji youguan fuwu xingwei guan li zanxing banfa) (2010) (Repealed)

Measures on the Administration of Online Trading (网络交易管理办法, Wangluo jiaoyi guan li banfa) (2014) (Repealed)

Interim Measures on the Return without Reasons of Commodities Purchased Online within Seven Days (网络购买商品七日无理由退货暂行办法, Wangluo goumai shangpin qiri wuliyou tuihuo zanxing banfa) (2017, revised in 2020)

Interim Provisions on the Regulation of Sales Promotion (规范促销行为暂行规定, Guifan cuxiao xingwei zanxing guiding) (2020)

Measures on Supervision and Administration of Online Trading (网络交易监督管理办法, Wangluo jiaoyi jian du guan li banfa) (2021)

Measures on the Supervision and Administration of Cosmetics (化妆品生产经营监督管理办法, Huazhuangpin shengchan jingying jian du guan li banfa) (2021)

Detailed Rules of Regulation on the Administration of the Registration of Market Entities of China (中华人民共和国市场主体登记管理条例实施细则, Zhonghua renmin gongheguo shichang zhuti dengji guan li tiaoli shishi xize) (2022)

Provisions on Clearly Marking Prices and Prohibiting Price Frauds (明码标价和禁止价格欺诈规定, Mingma biao jia he jin zhi jia ge qizha guiding) (2022)

Measures on the Supervision and Administration of Online Sale of Medicinal Products (药品网络销售监督管理办法, Yaopin wangluo xiaoshou jian du guan li banfa) (2022)

Measures on the Administration of Internet Advertising (互联网广告管理办法, Hulianwang guanggao guan li banfa) (2023)

Provisions on Prohibiting Abuse of Dominant Market Positions (禁止滥用市场支配地位行为规定, Jin zhi lanyong shichang zhi pei di wei xingwei guiding) (2023)

Measures on the Administration of Food Trade Licensing and Recordation (食品经营许可和备案管理办法 Shipin jingying xuke he bei'an guan li banfa) (2023)

Interim Measures on Online Anti-Unfair Competition (网络反不正当竞争暂行规定, Wangluo fan buzhengdang jingzheng zanxing guiding) (2024)

(3) China Securities Regulatory Commission (中国证券监督管理委员会, Zhongguo zhengquan jian du guan li wei yuan hui)

Interim Provisions on the Administration of the Business Operations of Securities Investment Fund Distributors through Third-Party E-Commerce Platforms (证券投资基金销售机构通过第三方电子商务平台开展业务管理暂行规定, Zhengquan touzi jijin xiaoshou jigou tongguo disanfang dianzi shangwu pingtai kaizhan yewu guan li zanxing guiding) (2013) (Repealed)

Measures on the Administration of Information Technology of Securities Fund Business Institutions (证券基金经营机构信息技术管理办法, Zhengquan jijin jingying jigou xinxi jishu guan li banfa) (2017)

(4) National Bureau of Statistics (国家统计局, Guojia tongjiju)

Statistical Classification of the Digital Economy and its Core Industries 2021 of China [数字经济及其核心产业统计分类 (2021), Shuzi jingji jiqi hexin chanye Tongji fenlei (2021)]

(5) China National Intellectual Property Administration (国家知识产权局, Guojia zhishi chanquan ju)

Measures on Patent Administrative Law Enforcement (专利行政执法办法, Zhuanli xingzheng zhifa banfa) (2010, revised in 2015)

Measures on the Administration of Patent Commissioning (专利代理管理办法, Zhuanli daily guan li banfa) (2019)

2.3.3 National bureaus administered by ministries and commissions of the State Council of China (国务院部委管理的国家局, Guowuyuan buwei guan li de guojia ju) - Administrations on food and drug

Note: Including

- a. National Medical Products Administration (国家药品监督管理局, Guojia yaopin jian du guan li zongju, NMPA) [both previously existed (1998-2003) and current (2018 to date)]
- b. State Food and Drug Administration (国家食品药品监督管理局, Guojia shipin yaopin jian du guan li ju, SFDA) (2003-2013)
- c. China Food and Drug Administration (国家食品药品监督管理局总局, Guojia shipin yaopin jian du guan li zongju, CFDA) (2013-2018)

Interim Provisions on the Circulation Management of Prescription Drugs and Over-the-Counter Drugs (处方药与非处方药流通管理暂行规定, Chufangyao yu fei chufangyao liutong guan li zanxing guiding) (1999) (NMPA)

Measures on the Administration of Drug Information Service over the Internet (互联网药品信息服务管理办法, Hulianwang yaopin xinxi fuwu guan li banfa) (2004, revised in 2017) (SFDA)

Measures on Administration on Food Distribution Licensing (食品经营许可证管理办法, Shipin jingying xuke guan li banfa) (2015, revised in 2017, repealed in 2023) (CFDA)

Measures on the Investigation and Punishment of Illegal Acts Related to Online Food Safety (网络食品安全违法行为查处办法, Wangluo shipin anquan weifa xingwei chachu banfa) (2016, revised in 2021) (CFDA)

Measures on the Supervision and Administration of Food Safety in Online Catering Services (网络餐饮服务食品安全监督管理办法, Wangluo canyin fuwu shipin anquan jian du guan li banfa) (2017, revised in 2020) (CFDA)

Measures on Administration on Food Recalls (食品召回管理办法, Shipin Zhaohui guan li banfa) (2015, revised in 2020) (CFDA)

Measures on the Supervision and Administration of Online Sale of Medical Devices (医疗器械网络销售监督管理办法, Yiliao qixie wangluo xiaoshou jiandu guanli banfa) (2017) (CFDA)

2.3.4 Cyberspace Administration of China (国家互联网信息办公室, Guojia hulianwang xinxi bangongshi)⁸⁷⁹

Provisions on the Administration of Information Services of Mobile Internet Apps (移动互联网应用程序信息服务管理规定, Yidong hulianwang yingyong chengxu xinxi fuwu guanli guiding) (2016, revised in 2022) (Regulatory document)

Provisions on Ecological Governance of Network Information Content (网络信息内容生态治理规定, Wangluo xinxi neirong shengtai zhili guiding) (2019)

Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Service (互联网信息服务算法推荐管理规定, Hulianwang xinxi fuwu suanfa tuijian guanli guiding) (2022)

Provisions on the Administration of Internet Users' Account Information (互联网用户账号信息管理规定, Hulianwang yonghu zhanghao xinxi guanli guiding) (2022)

Provisions on the Administration of Deep Synthesis of Internet-based Information Services (互联网信息服务深度合成管理规定, Hulianwang xinxi fuwu shendu hecheng guanli guiding) (2022)

Provisions on the Administration of Internet Pop-up Information Push Services (互联网弹窗信息推送服务管理规定, Hulianwang tanchuang xinxi tuisong fuwu guanli guiding) (2022)

2.3.5 More than one ministry, administration or commission of State Council of China

Interim Measures on the Administration for the Business of Online Taxi Booking Services (网络预约出租汽车经营服务管理暂行办法, Wangluo yuyue chuzu qiche jingying fuwu guanli zanxing banfa) (2016, revised in 2019, 2022) (By Ministry of Transport, Ministry of Industry and Information Technology, Ministry of Public Security, Ministry of Commerce, former State Administration for Industry and Commerce, General Administration of Quality Supervision, Inspection and Quarantine, and Cyberspace Administration of China)

Provisions on the Administration of the Publication Market (出版物市场管理规定, Chubanshu shichang guanli guiding) (2016) [By former State Administration of Press, Publication, Radio, Film and Television (国家新闻出版广电总局, Guojia xinwen chubanshu guangdian zongju) and Ministry of Commerce]

Measures on the Administration of the Use and Reporting of Single-Use Plastics by Businesses in the Commercial Field (商务领域经营者使用、报告一次性塑料制品管理办法, Shangwu lingyu jingyingzhe shiyong baogao yicixing suliao zhipin guanli banfa) (2023) (By Ministry of Commerce and National Development and Reform Commission)

⁸⁷⁹ The status of Cyberspace Administration of China in Chinese administrative organs is rather special, which has another name *Office of the Central Cyberspace Affairs Commission* (中央网络安全和信息化委员会办公室, Zhongyang wangluo anquan he xinxi hua weiyuanhui bangongshi), actually regarded as an institution directly under the Central Committee of the Communist Party of China (中共中央直属机构, Zhonggong Zhongyang zhishu jigou), while the legal documents issued by whom have the equal effectiveness as departmental rules. For that reason, as well in view of its special significance in cyberspace in China, the rules stipulated by such administration are listed separately. Besides, the regulatory documents issued by such organ, though definitely cannot be regarded as a legislation, are rather different from other policy regulatory documents, therefore, they are all listed in this section with a special remark.

2.4 Judicial documents promulgated by the Supreme People's Court of China

2.4.1 Judicial interpretations (司法解释, Sifa jieshi)

Interpretation of Several Issues concerning the Law Application in the Trial of Civil Trademark Dispute Cases (关于审理商标民事纠纷案件适用法律若干问题的解释, Guanyu shenli shangbiao minshi jiufen anjian shiyong falyu ruogan wenti de jieshi) (2002, revised in 2020)

Interpretation on Several Issues concerning the Law Application in the Trial of Civil Disputes Cases Involving the Protection of Well-known Trademarks (关于审理涉及驰名商标保护的民事纠纷案件适用法律若干问题的解释, Guanyu Shenli sheji chiming shangbiao baohu de minshi jiufen anjian yingyong falyu ruogan wenti de jieshi) (2009, revised in 2020)

Provisions on Several Issues concerning the Application of Law in the Trial of Cases Involving Food and Drug Disputes (关于审理食品药品纠纷案件适用法律若干问题的规定, Guanyu Shenli shipin yaopin jiufen anjian shiyong falyu ruogan wenti de guiding) (2013, revised in 2020, 2021)

Provisions on Several Issues concerning the Application of Law in the Trial of Civil Cases Relating to Processing of Personal Information by Using the Facial Recognition Technology (关于审理使用人脸识别技术处理个人信息相关民事案件适用法律若干问题的规定, Guanyu Shenli shiyong renlian shibie jishu chuli geren xinxi xiangguan minshi anjian shiyong falyu ruogan wenti de guiding) (2018)

Provisions on Several Issues Concerning the Trial of Cases by Internet Courts (关于互联网法院审理案件若干问题的规定, Guanyu hulianwang fayuan Shenli anjian ruogan wenti de guiding) (2018)

Provisions on Several Issues Concerning the Trial of Cases Regarding Civil Disputes over Bank Cards (关于审理银行卡民事纠纷案件适用法律若干问题的规定, Guanyu Shenli yinhangka minshi jiufen anjian ruogan wenti de guiding) (2019)

Interpretation on Several Issues concerning the Application of Law in the Trial of Civil Dispute Cases involving Food Safety (I) [关于审理食品安全民事纠纷案件适用法律若干问题的解释（一）, Guanyu Shenli shipin anquan minshi jiufen anjian shiyong falyu ruogan wenti de jieshi (yi)] (2020)

Provisions on Several Issues Concerning the Application of Law in the Trial of Cases of Disputes over Online Consumption (I) (Referred to as Judicial Interpretation on Online Consumption) [关于审理网络消费纠纷案件适用法律若干问题的规定（一）, Guanyu shenli wangluo xiaofei jiufen anjian shiyong falyu ruogan wenti de guiding (yi)] (2022)

2.4.2 Judicial working documents

Official Reply on Several Issues Concerning the Application of Law to Disputes over Internet-related Intellectual Property Right Infringement (关于涉网络知识产权侵权纠纷几个法律适用问题的批复, Guanyu she wangluo zhishichanquan qinquan jiufen jige falyu shiyong wenti de pifu) (2020)

Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-Commerce Platforms (关于审理涉电子商务平台知识产权民事案件的指导意见, Guanyu Shenli she dianzi shangwu pingtai zhishi chanquan minshi anjian de zhidao yijian) (2020)

2.5 Local legislation

2.5.1 Local regulation (地方性法规, Difangxing fagui)

Regulation on Anti-Unfair Competition of Zhejiang Province (浙江省反不正当竞争条例, Zhejiangsheng fan buzhengdang jingzheng tiaoli) (2000, revised in 2011, 2022)

Provisions on Promoting the Development of E-Commerce of Shanghai Municipality (上海市促进电子商务发展规定, Shanghaishi cujin dianzi shangwu fazhan guiding) (2008)
Regulation on E-Commerce of Zhejiang Province (浙江省电子商务条例, Zhejiangsheng dianzi shangwu tiaoli) (2021)
Regulation on Promoting the Industry of Express Delivery of Zhejiang Province (浙江省快递业促进条例, Zhejiangsheng kuaidiye cujin tiaoli) (2021)
Data Regulation of Shenzhen Special Economic Zone (深圳经济特区数据条例, Shenzhen jingji tequ shuju tiaoli) (2021)

2.5.2 Separate regulation (单行条例, Danxing tiaoli)

Measures on the Promotion of E-Commerce of Shantou Special Economic Zone (汕头经济特区电子商务促进办法, Shantou jingji tequ dianzi shangwu cujin banfa) (2012, revised in 2016)
Regulations on Intellectual Property Right Protection of Shenzhen Special Economic Zone (深圳经济特区知识产权保护条例, Shenzhen jingji tequ zhishi chanquan baohu tiaoli) (2018, revised in 2019, 2020)
Regulation on the Promotion of Cross-Border E-Commerce of Shantou Special Economic Zone (汕头经济特区跨境电子商务促进条例, Shantou jingji tequ kuajing dianzi shangwu cujin tiaoli) (2021)

2.5.3 Local government rules (地方政府规章, Difang zhengfu guizhang)

Interim Measures on the Regulation of Internet Transaction of Hangzhou Municipality (杭州市网络交易管理暂行办法, Hangzhoushi wangluo jiaoyi guanli zanxing banfa) (2015)
Regulation on the Promotion of Cross-Border E-Commerce of Hangzhou Municipality (杭州市跨境电子商务促进条例, Hangzhoushi kuajing dianzi shangwu cujin tiaoli) (2016)
Measures on Promoting and Regulating E-Commerce of Zhengzhou Municipality (郑州市电子商务促进与管理办法, Zhengzhoushi dianzi shangwu cujin yu guanli banfa) (2020)
Measures on Supervision and Regulation of Online Food Takeaway Delivery of Hangzhou Municipality (杭州市网络餐饮外卖配送监督管理办法, Hangzhoushi wangluo canyin waimai peisong jiandu guanli banfa) (2023)

2.6 Regulatory documents (规范性文件, Guifanxing wenjian)

2.6.1 Central Committee of the Communist Party of China (中共中央, Zhonggong zhongyang) and State Council of China

Opinions of the CPC Central Committee and the State Council on Establishing a Data Infrastructure System to Better Play the Role of Data Factor (中共中央 国务院关于构建数据基础制度更好发挥数据要素作用的意见, Zhonggong zhongyang guowuyuan guanyu goujian shuju jichu zhidu genghao fahui shuju yaosu zuoyong de yijian) (2022)

2.6.2 State Council of China

(1) General office of State Council of China (国务院办公厅, Guowuyuan bangongting)

Opinions of the General Office of the State Council on Accelerating the Development of Electronic Commerce (国务院办公厅关于加快电子商务发展的若干意见, Guowuyuan bangongting guanyu jiaokuai dianzi shangwu fazhan de ruogan yijian) (国办发〔2005〕2号)

Guiding Opinions of the General Office of the State Council of China on Promoting the Healthy and Rapid Development of Cross-Border E-Commerce (国务院办公厅关于促进跨境电子商务健康快速发展的指导意见, Guowuyuan bangongting guanyu cujin kuajing dianzi shangwu jiankang kuaisu fazhan de zhidao yijian) (国办发〔2015〕46号)

Guiding Opinions on Advancing the Collaborative Development of E-commerce and Express Delivery Logistics (关于推进电子商务与快递物流协同发展的意见, Guanyu tuijin dianzi shangwu yu kuaidi wuliu xietong fazhan de yijian) (国办发〔2018〕1号)

Notice of Further Strengthening the Control of Over-packaging of Commodities State Council of China (关于进一步加强商品过度包装治理的通知, Guanyu jinyibu jiaqiang shangpin guodu baozhuang zhili de tongzhi) (国办发〔2022〕29号)

(2) Other offices of State Council of China

Notice on the Division of Tasks to Accelerate the Development of E-Commerce by the Information Office of State Council of China (国务院信息化工作办公室关于加快电子商务发展工作任务分工的通知, Guowuyuan xinxihua gongzuo bangongshi guanyu jiakuai dianzi shangwu fazhan gongzuo renwu fengong de tongzhi) (国信办〔2006〕9号)

Guidebook on Anti-Trust in the Platform Economy Field (国务院反垄断委员会关于平台经济领域的反垄断指南, Guowuyuan fanlongduan weiyuanhui guanyu pingtai jingji lingyu de fanlongduan zhinan) (国反垄断发〔2021〕1号)

2.6.3 Documents issued by departmental level administrative organs

Guiding Opinions on Online Trading (for Interim Implementation) [关于网上交易的指导意见(暂行), Guanyu wangshang jiaoyi de zhidao yijian (zanxing)] (By Ministry of Commerce of China) (2007年第19号)

Opinions on Enhancing the Regularized Development of Electronic Commerce (关于促进电子商务规范发展的意见, Guanyu cujin dianzi shangwu guifan fazhan de yijian) (By Ministry of Commerce of China) (商改发〔2007〕490号)

Opinions on accelerating the development of e-commerce in the circulation field (关于加快流通领域电子商务发展的意见, Guanyu jiakuai liutong lingyu dianzi shangwu fazhan de yijian) (By Ministry of Commerce of China) (商商贸发〔2009〕540号)

Guiding Opinions of the Ministry of Commerce on Promoting Healthy Growth of Online Shopping (关于促进网络购物健康发展的指导意见, Guanyu cujin wangluo gouwu jiankang fazhan de zhidao yijian) (By Ministry of Commerce of China) (商商贸发〔2010〕239号)

Guiding Opinions on E-Commerce Development during the “Twelfth Five-Year Plan” (“十二五”电子商务发展指导意见, Shierwu dianzi shangwu fazhan zhidao yijian) (By Ministry of Commerce of China) (商电发〔2011〕第375号)

Implementation Opinions of the Ministry of Commerce on Promoting the Application of E-Commerce (关于促进电子商务应用的实施意见, Guanyu cujin dianzi shangwu yingyong de shishi yijian) (By Ministry of Commerce of China) (商电函〔2013〕911号)

Measures on Administration of the Online Payment Business of Non-Banking Payment Institutions (非银行支付机构网络支付业务管理办法, Feiyinhang zhifu jigou wangluo zhifu yewu guanli banfa) (By People's Bank of China) (〔2015〕第43号)

Indicators for the Categorization and Rating of Non-bank Payment Institutions (非银行支付机构分类评级管理办法, Feiyinhang zhifu jigou fenlei pingji guanli banfa) (By People's Bank of China) (银发〔2016〕106号)

Norms of Rural E-Commerce Service (For Trial) [农村电子商务服务规范（试行），Nongcun dianzi shangwu fuwu guifan (shixing)] (By Ministry of Commerce) (商建字〔2016〕17号)

Working Guidance of Rural E-Commerce (For Trial) [农村电子商务工作指引（试行），Nongcun dianzi shangwu gongzuo zhiyin (shixing)] (By Ministry of Commerce) (商建字〔2016〕17号)

Notice on Cross-Border E-Commerce Retail Import Tax Policy (关于跨境电子商务零售进口税收政策的通知, Guanyu kuajing dianzi shangwu lingshou jinkou shuishou zhengce de tongzhi) (By Ministry of Finance, General Administration of Customs, State Administration of Taxation) (财关税〔2016〕18号)

Notice on improving the supervision of cross-border e-commerce retail imports (关于完善跨境电子商务零售进口监管有关工作的通知, Guanyu wanshan kuajing dianzi shangwu lingshou jinkou jianguan youguan gongzuo de tongzhi) (商财发〔2018〕486号)

Announcement on Regulatory Matters Related to Import and Export Retail Commodities in Cross-Border E-Commerce (关于跨境电子商务零售进出口商品有关监管事宜的公告, Guanyu kuajing dianzi shangwu lingshou jinchukou shangpin youguan jianguan shiyi de gonggao) (海关总署公告〔2018〕194号)

Guiding Opinions on Standardizing the Intercommunication and Sharing of Express Delivery and E-Commerce Data (关于规范快递与电子商务数据互联共享的指导意见, Guanyu guifan kuaidi yu dianzi shangwu shuju hulian gongxiang de zhidao yijian) (By State Post Bureau of China and Ministry of Commerce of China) (国邮发〔2019〕54号)

Guiding Opinions on Responding to the COVID-19 Outbreak and Increasing Support for Individual Industrial and Commercial Households (关于应对疫情影响加大对个体工商户扶持力度的指导意见, Guanyu yingdui yiqing yingxiang jiada dui geti gongshanghu fuchi lidu de zhidao yijian) [By State Administration for Market Regulation, National Development and Reform Commission, Ministry of Finance of China, Ministry of Human Resources and Social Security of China, Ministry of Commerce of China, People's Bank of China] (国市监注〔2020〕38号)

Measures on Regulating Online Live Marketing (For Trial) [网络直播营销管理办法（试行），Wangluo zhibo yingxiao guanli banfa] (国信办发〔2021〕5号)

Measures for the Administration of Reporting of Major Events by Non-bank Payment Institutions (非银行支付机构重大事项报告管理办法, Feiyinhang zhifu jigou zhongda shixiang baogao guanli banfa) (By People's Bank of China) (银发〔2021〕198号)

Measures on the Supervision and Administration of Online Distribution of Cosmetics (化妆品网络经营监督管理办法, Huazhuangpin wangluo jingying jian du guanli banfa) (By National Medical Products Administration) (2023年第36号)

Notice of Issuing the Statistical Survey Rules for Cross-Border E-commerce by the General Administration of Customs of China (海关总署关于印发《跨境电子商务统计调查制度》的通知, Haiguan zongshu guanyu yinfa kuajing dianzi shangwu Tongji diaocha zhidu de tongzhi) (署统发〔2023〕62号)

2.6.4 Other documents issued by local government

Opinions on the Task of Protecting Intellectual Property Right in E-Commerce of Shanghai Municipality (Interim) [上海市电子商务知识产权保护工作若干意见(试行), Shanghaishi dianzi shangwu zhishi chanquan baohu gongzuo ruogan yijian shixing] (2021) (Jointly by Shanghai Intellectual Property Office, Shanghai Copyright Bureau, Shanghai Municipal Commerce Commission)

Operation Guide for E-commerce Platform Operators to Modify Platform Service Agreements and Transaction Rules (电子商务平台经营者修改平台服务协议和交易规则操作指南, Dianzi

shangwu pingtai jingyingzhe xiugai pingtai fuwu xieyi he jiaoyi guize caozuo zhinan) (粤市监网监〔2023〕520号) (By Guangzhou Administration for Market Regulation)

2.7 Other official documents

2.7.1 National standards

Intellectual Property Protection and Management for E-Commerce Platforms (电商平台知识产权保护管理, Dianshang pingtai zhishi chanquan baohu guanli) (GB/T 39550-2020)

Management Specification of Social E-Commerce Platform (社交电子商务平台管理规范, Shejiao dianzi shangwu pingtai guanli guifan) (20220789-T-469) (In progress)

2.7.2 Industrial standards

Norms on Online Shopping (网络购物服务规范, Wangluo gouwu fuwu guifan)

Norms on Modes of E-Commerce (SB/T 10518-2009) (电子商务模式规范, Dianzi shangwu moshi guifan)

Norms on Network Trading Services (SB/T 10519-2009) (网络交易服务规范, Wangluo jiaoyi fuwu guifan)

Specification for Management & Service of Live-Streaming E-Commerce Platform (SB/T 11240-2023) (直播电子商务平台管理与服务规范, Zhibo dianzi shangwu pingtai guanli yu fuwu guifan)

2.7.3 Documents issued by industry association

Standard System for Non-Bank Payment Institutions (非银行支付机构标准体系, Feiyinhang zhifu jigou biao zhun tixi) (2016)

Self-Discipline Guidelines for Business Compliance Development of Non-Bank Payment Institutions (非银行支付机构业务合规发展自律指引, Feiyinhang zhifu jigou yewu hegui fazhan zilyu zhiyin) (2023)