

Legal Aspects of Operating E-shops in the Slovak Republic

Štefan Žák¹ – Mária Hasprová²

ORCID: 0000-0002-6056-4727¹, 0000-0003-1726-8719²

stefan.zak@euba.sk, maria.hasprova@euba.sk,

University of Economics in Bratislava, Faculty of Commerce, Department of
Marketing, Bratislava, Slovakia

Abstract: The main goal of the paper is to define the legal framework for the operation of e-shops and their mandatory documentation and to identify the limitations associated with the legislative regulation of the operation of e-shops in the conditions of the Slovak Republic. The theoretical framework of the article deals with the issue of e-business and e-commerce, the principle of operation of e-shops and especially the legal framework of e-shop operation in Slovakia. The empirical part of the paper is focused on the presentation of selected results of the author's research study examining the legislative restrictions on the construction and operation of e-shops. The paper results in a discussion on the application of selected problem areas in the practice of Slovak e-shops.

Keywords: E-shop, Personal data protection, GDPR, E-commerce

JEL Classification codes: K22, M20, M30

INTRODUCTION

E-commerce has become a phenomenon in the recent decades. It has helped bridge the boundaries of time and space, changed traditional business structures, improved the flow of goods, capital and information, and helped companies gain a competitive advantage by effectively reducing costs. However, the impact of e-commerce has gone beyond business itself and has had a significant impact on every aspect of human activity, such as manufacturing, employment, education, legal and governmental systems, and many others. At the same time, it increased productivity, the efficiency of economic operations, reduced the costs of the economy and affected people's lifestyles. It offers consumers the opportunity to make purchases almost everywhere, while watching TV, streaming videos and movies on the Internet and when searching with smartphones. Today, it offers a wide range of home electronic assistants, not only facilitating the operation of the household but also enabling immediate purchase. The global COVID-19 pandemic has only accelerated the expansion of e-commerce to new companies, customers and product types. Today, there is almost no product that cannot be bought online. In addition to classic product groups such as clothing, household appliances, pharmaceuticals, footwear and sports and leisure products, food is now one of the best-selling goods online. In 2020, a total of 14,300 e-shops operated in Slovakia (Heureka, 2021). Even with this number, it is quite obvious that the area of electronic commerce must be strictly regulated. Not only the creation and operation of e-shops, but also the consumers rights in online business are governed by several laws. E-shop operators perceive some of the legal regulations as restrictions, also due to the fact that non-compliance with them results in the possibility of financial sanctions by the control authorities. Other legal regulations, which define the scope of mandatory information, on the other hand, are perceived as an aid for e-shops themselves in reaching their customers and implementing marketing activities. The scientific contribution is based on the above facts, the aim of which is to define the legal framework for the operation of e-shops and their mandatory documentation and to identify

the limitations associated with the legislative regulation of the operation of e-shops in the Slovak Republic.

1. LITERATURE REVIEW

The concept of electronic commerce, or e-commerce, is closely connected with electronic business, i.e. e-business. The meaning and understanding of these terms have often been debated. According to Gála (2015, p. 45), these concepts already differ considerably: *"while in the past e-business corresponded to e-commerce and was understood as e-shops or reservation systems, today the field of e-business is much more extensive and aims to increase efficiency internal and external processes in the company, and this term includes activities of marketing, sales, customer relationship management, but also, for example, technology development and management"*. The basic premise is the use of information and communication technologies to support and manage the company's activities (Solomon, 2019). Today, online stores and reservation systems are referred to as e-commerce. E-commerce can be considered a subset of e-business. According to Suchánek (2012, p. 10): *"e-business is perceived in terms of all business and production activities, which include all operational and technological-administrative activities and e-commerce as activities focused on the exchange of goods or services"*.

In the online environment, e-shops are a substitute for the "brick and mortar" shops of the real, physical world. They work on a similar principle, where the customer in a certain specialized store, e-shop chooses goods and pays for them using various payment methods. Unlike the "brick and mortar" shop, the goods are not sold directly to his hands, but are then sent to the logistics service used by the e-shop. Another way to use online shopping is through research (Khurana, 2019). The customer comes to a "brick and mortar" shop with a certain product focus in order to see the product, test the quality of workmanship, materials and the like. Then he searches for the product online and orders the product at a lower price through e-shops. The situation is also the opposite when "brick and mortar" shops provide discounts on a large number of goods, from which the customer chooses online and comes to the "brick and mortar" shop to buy the product (Plunkett, 2018).

E-shop is the most common form of e-commerce in which all business activities are transferred from the "brick and mortar" shop to its electronic form. To use the e-shop, it is necessary to use internet technologies and convert the business model of the "brick and mortar" shop into an electronic form (Havlíček et al., 2008). According to the economic lexicon, Kollman (2016) defines an e-shop as *"e-shop that offers opportunities to initiate and support transactions and process them electronically in full. It is a platform on which providers present their goods or services and the interested party has the opportunity to obtain information about the products"*. In both "brick and mortar" stores and e-shops, customers are offered a comprehensive range of goods, which reduces search costs on the demand side. The e-shop in its narrower sense, typically perceived by the general public, is very easy to understand. It represents everything that has been possible in "brick and mortar" stores until now and replaces services that require the physical presence of customers and employees.

In addition to the actual sale of products or services, virtual online stores also replace a wide range of services that have been provided to customers by employees of companies and resellers. When a customer needs advice, e-shop operators often integrate a chatbot or online consultant into their systems and websites to respond to the customer's requests in real time (Hanuláková, 2021). A necessary part of every e-shop is a detailed description of the products that are sold to customers. On the one hand, the customer receives a guarantee for the goods he buys and certainty about the information he receives and on which he can rely in the event of a complaint, on the other hand, there is no need for staff training as is necessary in the

case of stone shops. According to Gburová and Fedorko (2018), *"e-commerce has become the standard and is a very good alternative for carrying out business activities between different types of entities"*.

Doing business through the e-shop has been a very popular form of trade for a relatively long time, and its popularity is constantly growing, even with regard to the current situation due to the COVID-19 pandemic and restrictions on the physical market. The operation of the e-shop has its specifics. The first is that the seller does not physically meet the buyer, who in most cases is a consumer. The e-shop must therefore contain clear, concise and well-arranged information about the seller's products and services, which it provides in order to replace personal contact enabling the provision of additional questions. The e-shop must therefore contain answers to all common questions that the buyer might otherwise ask before buying in the store.

In the Slovak online environment, the operation of the e-shop is specially regulated. A natural or legal person may establish and operate an e-shop, and the legal basis is regulated in particular by the following regulations:

- Act No. 22/2004 Coll. on electronic commerce, as amended,
- Act No. 102/2014 Coll. on consumer protection in the sale of goods or provision of services under a distance or off-premises contract, as amended,
- Act No. 18/2018 Coll. on the protection of personal data, as amended.

In addition to the obligations arising from these legislative norms, the business activity itself is regulated by other regulations concerning the establishment of the company or trade that will operate the e-shop, or concerning accounting and taxation.

Of course, although the above-mentioned legal regulations regulate special rules that must be observed when operating an e-shop, this does not mean that other basic standards arising from the Civil Code, the Commercial Code, the Trade Licensing Act or the Consumer Protection Act apply to e-shops. do not apply. If the above-mentioned, so-called special legal regulation does not provide answers to some questions, it is necessary to draw on general rules, such as for limitation, debt collection, general requirements of the purchase contract, etc.

The manner and requisites of concluding contracts as well as the right to withdraw from the contract in the environment of e-shops are regulated in particular by Act No. 22/2004 Coll. on Electronic Commerce and Act No. 102/2014 Coll. on consumer protection in the sale of goods or provision of services under a distance or off-premises contract. According to them, the seller is obliged to create a basic information framework concerning the technical side of concluding the contract. Not only because of the rules of personal data protection, but also, for example, to facilitate the recovery of the claim, it is essential that the contract always contains the correct data of all parties.

When operating an e-shop, personal data is inevitably processed. Therefore, each operator must also ensure compliance with the rules of personal data protection, the so-called GDPR. In 2018, a new Act No. 18/2018 Coll. was adopted in the Slovak Republic. on the protection of personal data, which has changed many established standards. Today, for example, it is no longer the case that personal data is processed only when it comes to at least three different personal data. According to the said Act, the processing of personal data means their acquisition, storage, retrieval, recording, use, provision, dissemination, etc. This means that it is about any handling of personal data. Personal data is identification data that allows you to specify a person. In practice, it is necessary to imagine such information on the basis of which it is possible to clearly identify who it concerns. E-shop operators mainly process the personal data they obtain when registering their customers, resp. when concluding distance contracts, such as name, surname, date of birth, address, personal telephone number, private e-mail,

etc. As the e-mail address is also considered personal data, the operator must work with the information only in accordance with GDPR rules.

2. METHODOLOGY

In the process of elaborating the scientific contribution, various methods of scientific research were used, which enabled the fulfillment of the primary goal by solving the partial goals. Of the methods used, the following can be mentioned in particular. The *content analysis* of available theoretical sources of domestic and foreign origin and the comparison of these findings contributed to the creation of a knowledge base in the field of e-commerce and e-shop operation. *Comparison* of theoretical knowledge with practical experience in building e-shops. The basic basis for this comparison was the implementation of *empirical research*. The authors carried out the research study "*Legislation of e-shops SK - LESK 2021*" during the months of June to August 2021. The aim of the research study was to identify legislative restrictions in building and operating an e-shop in Slovakia. The intention was not only to point out the problematic areas that are regulated by legislation, but also to find out how e-shops prepare basic mandatory documents related to their operation. The research study also offered a general view of real sanctions for non-compliance with legal guidelines. The data for the needs of the research study were collected through a standardized online survey on a sample of 114 e-shops based in the Slovak Republic. *Synthesis* of knowledge from the realized empirical research and subsequent use of the *induction method* in the identification of legislative restrictions and the *deduction method* in the design of recommendations for the elimination of the identified restrictions for e-shop operators.

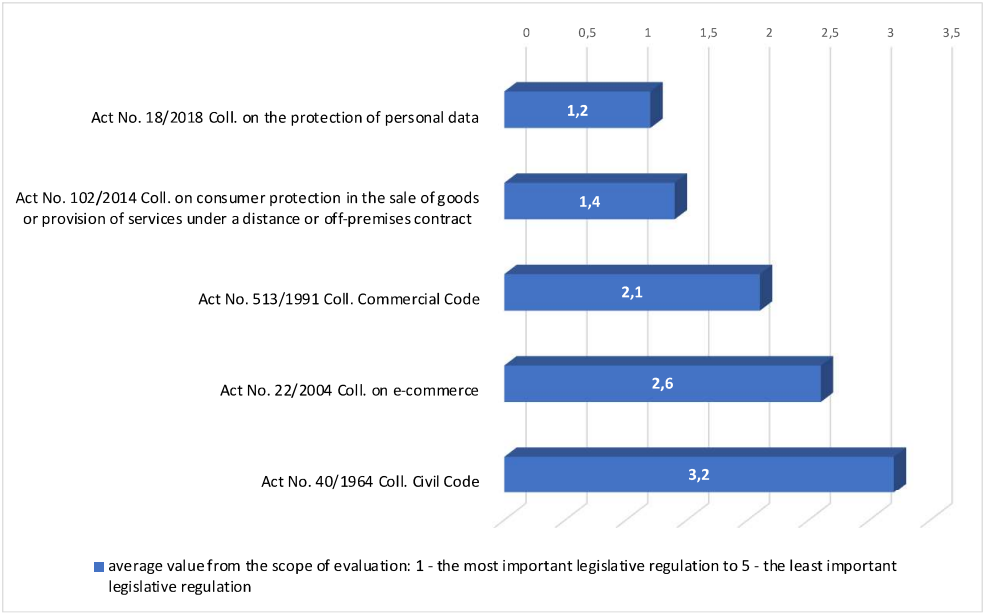
3. RESULTS AND DISCUSSION

This section of the article "Results and Discussion" is divided into two parts. In the first part, the authors present the results of a research study, which was a prerequisite for the subsequent determination of restrictions in the operation of e-shops in Slovakia. The authors focused on comparing theoretical knowledge with real experiences of Slovak e-shops. The results of the research study led to a discussion of how legislative restrictions are perceived in practice and how e-shop operators can deal with them. The research study was larger than can be mentioned in the article. The authors therefore offer selected results in the form of graphs as well as selected problem areas from the discussion.

3.1 The main findings from the research study

The standardized online questionnaire used in the research study offered respondents a set of questions, the answers to which brought interesting and inspiring findings. The introductory question focused on evaluating the importance of legislative regulations for the operation of the e-shop. The answers showed that e-shops consider Act No. 18/2018 Coll. on the protection of personal data (so called GDPR Act) and Act No. 102/2014 Coll. on consumer protection in the sale of goods or provision of services under a distance or off-premises contract to be the most important legal regulation affecting their business. The results are understandable from a practical point of view, because these two regulations significantly regulate the conditions that e-shops must ensure in their business. The distribution of answers to the first question is shown in the Figure 1.

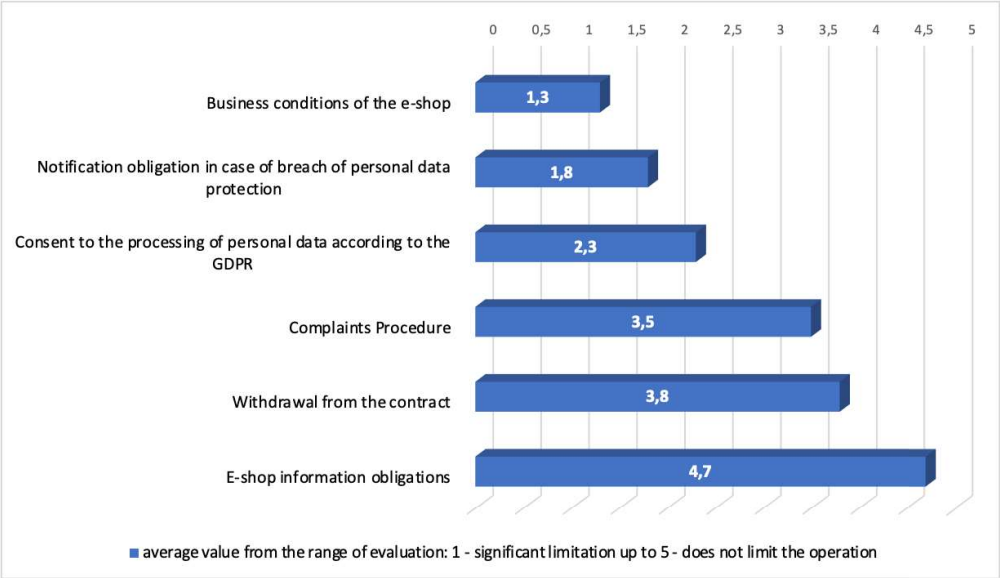
Fig. 1 Distribution of answers to the question "Assess how important the legislative regulations are for the operation of your e-shop" (n = 114, average value)



Source: results of the research study carried out by the authors

As indicated in the literature review, e-shop operators are bound by several legal obligations. The second question in the questionnaire was aimed at finding out how e-shop operators perceive these obligations. Respondents were asked to assess the limitations of these obligations. In particular, they perceive the e-shop's business conditions, the notification obligation in the event of a personal data breach and the consent to the processing of personal data in accordance with the GDPR in a very restrictive manner. The least limiting for them are the information obligations, which are already a kind of standard, the fulfillment of which actually helps in presenting the offer and the e-shop operator himself. The distribution of answers to the second question is shown in the Figure 2.

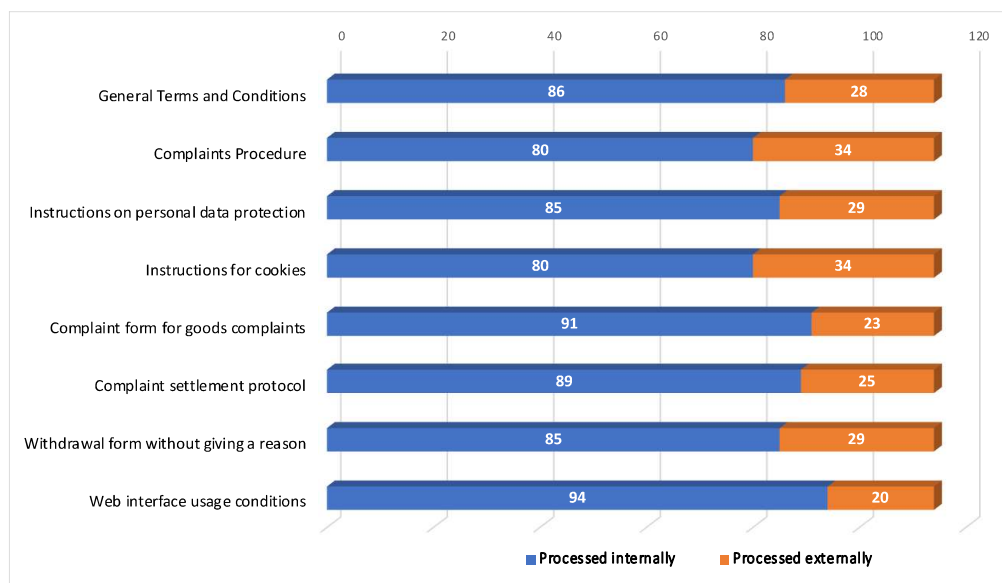
Fig. 2 Distribution of answers to the question "Assess what significant restrictions on the operation of your e-shop are these obligations" (n = 114, average value)



Source: results of the research study carried out by the authors

Legislation related to the business of e-shops implies the need to prepare mandatory documents. It goes without saying that these mandatory documents must comply with the requirements set by law, and therefore it was assumed that e-shops left their elaboration to external companies. Well, the results do not indicate that. It is clear from the answers that most e-shops have prepared the required documents themselves. The results showed that e-shops, which had a mandatory documentation prepared by an external company, are characteristic that they were created only recently, a maximum of 5 years ago. An overview of mandatory documents and the method of their preparation is shown in the Figure 3.

Fig. 3 Distribution of answers to the question "Indicate how you created the following mandatory documents of your e-shop" (n = 114, number of answers)



Source: results of the research study carried out by the authors

The answers to the previous questions could be marked by a subjective perception of the limitations that come with the legislative regulations of e-shop business. Failure to comply with the obligations also entails sanctions arising from the law. Therefore, the final questions concerned whether the respondents were affected by sanctions during the operation of the e-shop and whether sanctions were imposed on them. The amount of the sanction was not determined, but the e-shops were subsequently required to determine which statutory obligation the sanction applied to. Almost 70% of e-shops did not meet with penalties for non-compliance, 19.3% of e-shops met with penalties and 12.4% of e-shops were also provided with sanctions for non-compliance with legal obligations. E-shops, which have been penalized for non-compliance with legal obligations, commented on the reasons for the sanction in the last question. The sanction most often concerned irregularities in the general terms and conditions (40,3%), the instruction on personal data protection (24,2%) and the complaints procedure (16,1%).

3.2 Discussion

The basic findings from the respondents' answers created a suitable basis for the subsequent analysis of problem areas and the preparation of recommendations for the effective elimination

of their negative impact on the business of e-shops and to avoid inconsistencies in the creation of mandatory documents. Therefore, the next text deals with a closer description of those areas that e-shops perceive as problematic and restrictive - terms and conditions of business, notification obligation in case of breach of personal data protection and consent to the processing of personal data under the GDPR.

As such, *terms and conditions of business* are in fact not mandatory by law, but there are a number of information obligations towards consumers, which e-shop operators fulfil with the help of them. In addition to mandatory information for consumers, the terms and conditions of business may also regulate various rights and obligations between the e-shop operator and the customer, rules for participation in consumer competitions, rules on personal data protection, etc. In practice, e-shop operators often draw inspiration from competitors, conditions on other websites or use various model documents when formulating terms and conditions of business. The results may be incorrect formulations and subsequent sanctions imposed by the Slovak Trade Inspection Authority. It is important not to underestimate the preparation of terms and conditions of business and to use consultations with experts and specialized companies in particular, which can often be a faster and ultimately cheaper solution. The research study showed that e-shops most often create terms and conditions themselves, without consulting experts, which is not an appropriate solution in terms of possible sanctions. Mandatory requirements of the e-shop terms and conditions of business represent information that the e-shop operator must notify the consumer before concluding the contract (before accepting a binding order).

As for another problem area, *the obligation to report personal data breaches*, this is evaluated in practice depending on the specific circumstances and seriousness of the case. As a rule, it comes into consideration only in the more serious cases, where such a violation may lead to a risk to the rights of a natural person. When notifying the Office for Personal Data Protection, only the probability of a risk to the rights of individuals is sufficient. The operator of the e-shop must assess the level of risk to the rights of individuals in order to take effective action to remedy the personal data breach and also to assess whether and to whom the breach is to be reported. In practice, the e-shop operator can assess the level of risk according to the type of personal data breach (e.g. disclosure of sensitive personal data has other consequences such as data loss), type of personal data processed (e.g. whether the information stored by him does not contain special categories of personal data such as health condition of the data subject), the volume of personal data processed, the severity of the consequences for the data subjects (property damage, loss of reputation, physical injury) and, for example, according to the number of data subjects and the possibility of their identification. Each case of personal data breach must be documented by the operator, including the facts related to the personal data breach, its consequences and the corrective measures taken. The operator is obliged to report personal data breaches in addition to the Office and the person concerned, if the breach may lead to a high risk to the rights of individuals. It is clear that in practice the application of these guidelines is a concern. The risk assessment is up to the e-shop operator itself and no precise procedure is specified. For each, a particular risk has a different weight and a different danger or degree of damage. In case of doubt about the occurrence of a notification obligation, the operator should take the opportunity to report the breach preventively. The Office for Personal Data Protection often issues methodologies or recommendations in order to guide the procedure of liable persons in practice, and this is also the case when fulfilling the notification obligation. Therefore, it is appropriate for operators to regularly monitor the Office's website.

Another problem area was *the provision of consent to the processing of personal data*. Act No. 18/2018 Coll. on the protection of personal data does not stipulate any prescribed form for this consent. However, in § 14 (2), it states that consent must be distinguished from other facts (in order to prevent the person concerned from being overlooked) and must be expressed

in a clear, comprehensible and easily accessible form. At the same time, according to § 14 (1), the operator is obliged to prove the consent obtained by the person concerned, and therefore it is not sufficient in practice to obtain consent only in oral form (thus, the written form of consent (paper or electronic) comes into consideration. In the case of so-called electronic consent, the consent to the processing of personal data must be provided by a deliberate act of the person concerned. This is most often done in practice by clicking on the box with the appropriate text: "I agree to the processing of personal data" (when registering on the e-shop website). In the event of a legal dispute, the burden of proof to prove the valid consent of the person concerned and also the fulfilment of the information obligation before obtaining the consent always lies with the e-shop operator. In practice, procedures such as a pre-checked box in electronic form or the inclusion of consent in the contract or e-shop terms and conditions should be avoided. In practice, there are also facts where the operator can process personal data without the consent of the person concerned. This is the case, for example, when fulfilling the legal obligation of the operator, i.e. personal data are processed on the basis of a special law (e.g. Labour Code, Social Insurance Act) or an international agreement by which the Slovak Republic is bound. Another case is the purpose of the contract to which the person concerned is a party or the purpose of the legitimate interest pursued by the operator or a third party (a legitimate interest exists if there is already a relationship between the operator and the person concerned, such as an employment contract).

CONCLUSION

Innovations in information and communication technologies have created a digital revolution that has changed the way the world works, communicates and trades. New technologies, a growing number of Internet users and new characteristics of the online consumer behaviour have a significant impact on e-commerce. In recent years, e-commerce has become part of the daily lives of people who increasingly prefer to order goods from home before visiting a stone shop. The main attraction for consumers are increased convenience, greater choice and lower prices. Therefore, e-commerce is constantly growing strongly and is affecting the social and economic growth of countries. On the one hand, e-commerce technologies have helped countries accelerate their economic growth and provide more opportunities for business growth, but they have also created many challenges and effects in many areas of society. These problems include, among other things, the area of legislative regulations for doing business in the online environment and the operation of e-shops.

A practical view of possible problem areas perceived by e-shop operators in the Slovak Republic pointed to the fact that legislative regulations related to their business in the online environment primarily protect consumers and thus their customers. However, it must not be forgotten that practical compliance with obligations protects companies themselves in particular. In conclusion, it can be stated that the Slovak legislation in the form of laws focused on e-commerce itself, consumer protection in the online environment and personal data protection does not deviate from the framework of comparable legislation related to traditional forms of business. Given the real impact of the laws in question, the perceived limitation can be understood more as a subjective perception of the potential threat, which in practice can be eliminated by vigorous compliance with the established obligations.

The article pointed out the perception of problem areas by Slovak e-shops. But the future will bring another problem in 2023, when we say goodbye to 3rd party cookies. These identify users on the Internet and, by tracking the web activity of these users, allow e-shops to target ads on the Internet more accurately. This information is stored directly by the user's web browser and is collected and shared across domains. From a data point of view, their abolition will be critical in the field of data marketplace, especially in the case of programmatic

purchasing and data management, ie the way in which individual platforms exchange user information and use it for ad targeting, retargeting, frequency determination and ad intervention . This will create space in the future to investigate the impact of e-shops.

ACKNOWLEDGEMENT

This article is an output of research project VEGA No. 1/0505/22 Implementation of innovative research methods and techniques in the consumer behaviour research in the conditions of the Slovak market of research suppliers and research buyers.

REFERENCES

Gála, L. et al. (2015). Podniková informatika: počítačové aplikácie v podnikové a mezipodnikové praxi. Praha: Grada Publishing.

Gbuřová, J. – Fedorko, R. (2018). Online Shops And Online Shopping From The Point Of View Of The Slovak Consumer. Retrieved 17 January 2022, from <https://search.proquest.com/conference-papers-proceedings/onlineshops-shopping-point-view-slovak-consumer/docview/2176206404/se-2?accountid=17203>

Hanuláková, E. et al. (2021). Marketing. Nástroje, stratégie, ľudia a trendy. Bratislava: Wolters Kluwer.

Havlíček, Z. et al. (2008). E-business solutions and OSS for the SMEs. *Agricultural Economics*, 54(3), s. 102-107.

Heureka. (2021). Obrat e-commerce 2020. Retrieved 19 January 2022, from <https://onas.heureka.cz/upload/593-infografika-obrat-e-commerce-2020-sk.png>

Khurana, A. (2019). Advantages and Disadvantages of E-Commerce. *The Balance Small Business*. Retrieved 18 January 2022, from <https://www.thebalancesmb.com/ecommercepros-and-cons-1141609>

Kollman, T. (2016). Electronic Shop: Definition. Retrieved 18 January 2022, from <https://wirtschaftslexikon.gabler.de/definition/electronic-shop-36299>

Plunkett, J. W. (2018). *E-Commerce & Internet Business Industry Market Research, Statistics, Trends & Leading Companies*. New Jersey: Plunkett Research, Ltd.

Solomon, M. R. et al. (2019). *Marketing: Real People, Real Decisions*. Harlow: Pearson Education Ltd.

Suchánek, P. (2012). *E-commerce elektronické podnikání a koncepce elektronického obchodování*. Praha: Ekopress.

Zákon č. 22/2004 Z. z. Zákon o elektronickom obchode a o zmene a doplnení zákona č. 128/2002 Z. z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení zákona č. 284/2002 Z. z.

Zákon č. 102/2014 Z. z. Zákon o ochrane spotrebiteľa pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaľku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho a o zmene a doplnení niektorých zákonov

Zákon č. 18/2018 Z. z. Zákon o ochrane osobných údajov a o zmene a doplnení niektorých zákonov