

Electronic Trade In The Acts Of The European Union

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Abstract: Electronic commerce is on permanent rise. It suppresses conventional trading methods, between companies and between consumers-individuals also.

The growth of electronic commerce is in all areas of social life. The reasons for this lie in the fact that it has proven to be an effective way of performing work responsibilities in the public administration, judiciary, education, health, etc. Today, there is almost no area in which electronic commerce has shown its advantages. That's why it is so much accepted by the business world.

The steady increase in the use of electronic commerce in everyday life imposes the need to create rules on the basis of which electronic transactions will be realized.

Of course, national states are the first to try to build their own rules and standards through their national legislation. In practice, however, domestic law has proved to be insufficient or even an obstacle to the realization of electronic transactions, because transactions are taking place between companies and other users of these services outside the national borders, that is, around the world. In other words, electronic commerce does not know national boundaries. Precisely because of this, there is a need for international rules and standards on the basis of which these activities will be realized.

Keywords: electronic, trade, market, transactions.

1. Introduction

The most important reason leading to the development of electronic commerce in the international arena is the fact that through electronic commerce companies have seen the opportunity for better and faster realization of their business activities. Although initially electronic commerce, as a way of doing business, was accepted only by large companies and banks, very soon it became a field of interest and an inevitable part of everyday activities of small and medium-sized companies. Computers become an indispensable part of everyday operations in trade and banking, as well as in other areas, administration, health, transportation, services, etc. This incredibly fast and global development of electronic commerce has led to the occurrence of many problems in everyday work for which the business world has never even thought that it can emerge. Until then, companies had not met before. That is why there is the emergence of legal rules that would regulate this area, not only on the

national level, but also internationally. Many international organizations that have identified this problem have tried and are still trying to create unified rules for electronic commerce. Some of the international organizations, more than others, will address these issues with more attention that requires the further development of electronic commerce. There are number of international organizations that have contributed to the regulation of the rules for electronic commerce for which we have previously written, but the subject of interest in this paper is the European Union and the acts through which it has made its contribution to the regulation of electronic commerce.

2. European Union and Electronic Commerce

The European Union, like many other international and regional organizations, as well as national states, is interested in the existence of rules for the electronic commerce. This is particularly because it ensures the efficiency of the single European market, more secure cross-border trade between EU Member States, and in addition provides better

protection for consumers, especially when selling from a distance¹.

The rules that the European Union has developed to regulate electronic commerce can come in the form of directives, recommendations, decisions, suggestions, opinions or working materials.

In 1987, the European Economic Community (as the forerunner of the European Union) decided to adopt the rules governing electronic data transmission (EDI-Electronic Data Interchange) using the telecommunications services network. To this end, a separate (TEDIS) system was created within the European Economic Community (Trade Electronic Data Interchange Systems - TEDIS). TEDIS is conceived as a program that should cover: automotive, chemical industry, electronics and data processing industry, distribution and retail, reinsurance and transportation.

Since 1990 to date, a number of rules have been adopted by the Commission, the Council, the Parliament and other institutions of the European Union. It should be noted that at the beginning of the application of these rules, the development of the Internet as a closed network is followed in the best possible way, towards the Internet as an open communication network, in which EDI represents one of the most important ways of electronic communication².

Taking into account the rapid development of new technologies and the speed with which they conquer space in the field of trade, and the growing use of electronic commerce in everyday trading activities also the need for rules for regulating the relations and processes in electronic commerce, the Council of Europe in 1997 will develop a Long-Term Action Plan for the Advancement of Internet Safety³, and a year later, the Directive for establishing Procedures for Adopting Rules for Information in the field of technical standards and rules⁴.

Below in this paper we will look at some of the EU documents that regulate numerous issues in the field of electronic commerce.

¹ Directive 97/7 from 20 Maj 1997 for Customer protection in a relation to the contract for distance; Official journal No.L 144/19

² Jelena Vilus, Electronic trade law, European center for peace and development (ECPD) University for peace United Nations, page 60.

2.1. Europe EDI contract model

The European model EDI agreement of 1994 is essentially the Recommendation of the Commission of the European Economic Community on the legal provisions and conditions on which the parties perform their activities using electronic transmission-EDI. The legal basis of this agreement stems from the already accepted rule within the boundary of the law known to all systems - the freedom of bargaining (autonomy of the will of the contracting parties), and based on that principle a model-type contract was prepared, regulating the rights and the obligations of the contracting parties in the event that the mutual trade activities are carried out through a computer.

Under this model agreement EDI electronic data interchange is electronic transfer from computer to computer, trade and administrative data using agreed standards in which the EDI message is structured.

The implementation of the Model Agreement will greatly contribute to gaining confidence in new technologies. However, in this case it should be known that this Model Agreement has legal effect only if participants in the EDI transaction invoke it, and therefore it is often given the treatment of private codification. Also, the application of the Model Agreement between the buyer and the seller does not create an obligation for third parties that are not parties to the contract, such as service providers. Based on the foregoing, it can be concluded that the EDI Model Agreement is a good way to regulate electronic commerce between well-known partners (intranet), but in situations in an open environment (Internet), this Model Agreement is not applicable.

2.2. Directive on certain legal aspects of electronic commerce for the internal market⁵

The European Union has often stressed the need to adopt e-commerce rules globally. But the adoption of such rules requires a lot of time, which is not in line with the needs of the single economic market,

³ COM (97) 582 final, Official journal C 48/8

⁴ Directive 98/34 laying down a procedure for the provision of information in the field of technical standards and regulations, Official Journal L 204/37, 21.07.1998

⁵ <http://www.ispo.cec.be/ecommerce/legal.html>

as some aspects of electronic commerce between EU member states require a quick solution. Within the institutions of the European Union, an opinion has been built that a well-conceived e-commerce rule can provide:

- Citizens, especially consumers in the EU, increase access to products and services, better quality, point out prices and quality, within the EU framework to provide better quality of life,
- Electronic commerce rules within the EU for small and medium-sized enterprises (SMEs) imply an incentive for development, given that they are given insights into the modes and conditions in new technologies and in the source of investments,
- opening new jobs as well as conditions for obtaining jobs from all profiles, especially the experts in the field of computer science⁶.

Precisely because of the aforementioned goals, as well as for the efficient connection of the Member States' markets, the European Commission of Parliament and the Council will propose certain issues related to electronic commerce to be regulated at EU level, without waiting for them to be regulated at world-wide.

The Directive on Certain Legal Aspects of Electronic Commerce for the Internal Market of 1998 covers five core areas: the establishment of an information company, the definition of the term commercial communication, the conclusion of on-line transactions, the responsibility of intermediaries and the application. Beyond these five areas, the issue of resolving disputes that arise when trade activities and agreements are concluded on the Internet is of particular importance.

The main purpose of this Directive is to create a legal framework to ensure the free movement of services. The Directive should enable the creation of an information society for service providers and eliminate legal uncertainty in the establishment of service operators.

In developing the legal aspects of electronic commerce for the internal market, the EU will also cooperate with other international organizations such as the World Trade Organization (WTO), the

World Intellectual Property Organization (WIPO), UNCITRAL and the OECD.

2.3. Directive of the European Parliament and of the Council within the Community Electronic Signature⁷

Directive 1999 / 93EC on electronic signatures within the European Community, is adopted in 1999 by the European Parliament and the Council. The adoption of this Directive creates a legal framework for the electronic signature and certain services in issuing certificates in order to ensure the functioning in the internal market of the European Union. The purpose of this Directive is to facilitate the application of the electronic signature and to regulate the conditions of its legal recognition between the Member States. The provisions of this Directive relate to the fact that the electronic signature should fulfill all legal requirements as well as the handwritten signature and be recognized in the legal proceedings before the competent authorities.

According to this Directive, the electronic signature is an electronic message that is attached or logically linked to other emails and serves as a method for determining the credibility of the message.

Whereas this Directive is intended for Member States, its content prevails in the internal market, access to markets, and the bodies assisting the Commission in monitoring compliance with the provisions of the Directive. For this purpose, within the European Community, an Electronic Signature Committee has been established.

For the purpose of issuing certificates, the existence of a certification body is required by this Directive as a certification service provider (certification-service-provider) which according to this Directive is a legal or natural person issuing certificates and providing other services relating to of the electronic signature. According to Article 6 of the Directive by issuing the certificate, the certification body is liable for damage that would have the legal or natural persons that are users of the certificate.

⁶ Karolina Shukoroska, Determinants for development of e-commerce in Republic of Macedonia, master thesis, Faculty of economics Prilep, 2017, page 41-42

⁷ Official Journal of the European Communities, L13, Vol. 43, 19 January 2000, pp. 12-20.

2.4. The Directive on the Protection of Personal Data⁸

Directive 95/46 / EC on the protection of personal data is based on the observance of the fundamental rights set forth in the Charter of Fundamental Rights of the European Union. The confidentiality of information is guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as with the Statutes of the Member States.

The need for adopting such a document stems from the fact that the development of the information society characterizes the new technologies in the field of communication services, the availability of mobile communication networks to an increasing number of people, hence the requirements for protection of personal data and privacy of users.

The legal regulations adopted by the Member States on the protection of personal data, the privacy, but also the interests of legal entities in the field of electronic communications, should be unified in order to eliminate obstacles to the efficient functioning of the internal market for electronic communications.

Article 1 of this Directive provides for the need for Member States to harmonize provisions to ensure an adequate level of protection of fundamental rights and freedoms, and in particular the right to privacy in the use of personal data in electronic communications, and to ensure the free movement of those data, communication equipment and services within the community.

So the right to privacy in electronic communications, the free movement of data, communication equipment and services is the basis on which this Directive is based.

The Personal Data Protection Directive regulates the issue of service provider security by providing service providers, with an obligation to inform users in the event of a risk of attacks by hackers, viruses, etc. Also, the Directive provides for provisions concerning the confidentiality of information, whereby States Parties should prohibit any form of wiretapping, interception or monitoring of information.

Conclusion

The members of the scientific fela and the business world who are interested in electronic commerce are very well aware that there are numerous international and regional organizations that regulate the relations between the business partners in the electronic trade as a field of interest. This interest is most evident in their attempts to develop unified rules that will facilitate the smooth and continuous development of the electronic trade, both nationally and internationally. Of course, among those numerous international and regional organizations is the European Union. From the analysis of the adopted regulations of the Union for regulation of this area it is concluded that it has made a huge contribution to the regulation of this area, especially in the relations B2C, as one of the most present, and which relations due to the massiveness deserve special elaboration.

We consider it necessary to emphasize that all regulations and acts (directives, recommendations or other documents) adopted by the European Parliament and the Council aim to harmonize or unify the rules on electronic commerce between Member States. Some of these regulations, such as directives, are applied directly by Member States in an unaltered form, and they become an integral part of national legislation in each member state. Member States have an obligation to comply with certain acts in such a way that national legislation favors European dictatorships. All these activities are undertaken in order to facilitate the functioning of the European internal market, which ultimately ensures an increased and free flow of goods, people, capital, ideas, etc.

The introduction of electronic signatures and the recognition of electronic messages as valid evidence before the courts and other authorities enable unity in the functioning of the market. When all this is added to the functioning of the certification bodies and their guaranteed subjectivity based on the principle of country of origin, supported by the principle of minimum harmonization, it appears that the obstacles in the electronic trading of the single European market almost do not exist.

⁸ Official Journal of the European Communities, 33 (6), 1995.

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