
THE E-COMMERCE IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract:

The Internet revolution is expanding in the field of the commerce. Instead of traditional commerce, more and more companies are offering their goods and services over the Internet, and more and more consumers are choosing to purchase the necessary goods and services online. The e-commerce, eliminates the geographical limitations, enables the consumers from their home to buy goods and services from anywhere in the world more easily, and allows merchants to do their business without special conditions. This paper will analyze the legal framework of the electronic commerce in the Republic of North Macedonia, the compliance with European Union acts (acquis Communautaire), the application of electronic commerce in the Republic of North Macedonia, the disadvantages and the obstacles of the legal framework for the functioning of electronic commerce. Finally, we will propose measures that will contribute to improvement and bring down the barriers that limit the development of this sector.

Key words: *e-commerce, legal framework, obstacles, measures.*

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Intruduction

1. Definition and development of e-commerce

E-commerce is a commercial activity conducted with the help of the electronic technology. E-commerce primarily consists of distributing, buying, selling, marketing and servicing products and services through electronic systems, such as Internet or other computer networks. E-commerce as a multidisciplinary concept is increasingly revolutionizing the habits of the consumers and the global way of trading. The development of the e-commerce is an inverse dynamic and unpredictable process whose beginnings relate to the 70's of the 20th century in which the e-commerce was reduced to ordinary electronic data exchange or web page exchange (electronic brochures) with different content for certain types of products among the companies. Things had changed dramatically after the creation of the global computer network - the World Wide Web (www) in 1992 and the emergence of Amazon.com when the world first strictly started to speak about the development of the e-commerce. This happened because people all over the world started to have easy access to computers and to the World Wide Web. The expansion of the e-commerce was also aided by the creation of the first web global browser NCSA Mosaic in 1993, the creation of the first Internet payment rules in 1995, the establishment of the Digital Subscriber Line in 1997 which sped up the Internet connection for 50 times compared to the standard modem and dial up access which had been available at that moment, as well as the emergence of Pizza Hut with the implementation and enforcement of online orders for its products. Due to the rapid development of the Internet, the electronic commerce is gaining a new development dimension. The real proof of this is the ability to create marketing strategies and do business in anywhere in the world via internet as well as the emergence of the smartphone which allows users to buy any product regardless of where they are located. The fact that the e-commerce is on the rise is also illustrated by the fact that in 2017 two billion people made online transactions via smartphone, as well as NUA Internet Surveys data, which currently says that there are half a billion internet users. E-commerce in the 21st century is getting a whole new face with the help of the social networks: Facebook, Instagram, Youtube, PhotoBucket that attract over 30 million visitors per month and as such are the ideal place for retailers to connect with consumers.

2. International legal regulation of the electronic commerce

The revolution in technology that has triggered the e-commerce has inevitably opened up the need to create a legal framework that will regulate the regime of the business transactions - the legal framework of e-commerce. This is because the e-commerce, due to the globalization and the breakdown of trade barriers, increasingly distorts the traditional ways of doing business. It is for this reason that in June 1996 the United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on Electronic Commerce with Guide to Enactment. E-commerce and lately in 1998 adopted the additional article 5 bis⁴.

The decision of the United Nations Commission on International Trade Law to regulate the matter of the electronic commerce in a Model Law rather than in a Convention was fully expected and proper, because e-commerce is a "modern matter" that yet have to be regulated in the national legal systems.

⁴https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf

The Model Law on Electronic Commerce with Guide to Enactment, are a soft law instruments (have no binding force), but they are solid basis for regulating e-commerce globally. This is because they are an example for the national legislators in countries where e-commerce is not regulated at all, i.e they are an inspiration for the legal reform of the national legislation where e-commerce has been regulated inappropriately with outdated methods⁵. Undeniably, the UNCITRAL rules on e-commerce are invaluable because they offer any national legislator a set of rules on e-commerce that any national legislator can hardly reach in quality alone. It is for this reason that the UNCITRAL rules on electronic commerce are also an inspiration to the European legislator. This is proven by the fact that the EU e-commerce directives are not new rules on e-commerce but an attempt of the European legislator to transpose the international rules on e-commerce into European law and as such to facilitate the free movement of goods, services, capital and people in the single European market. In the EU the most important legal acts regulating electronic commerce are: 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 ('Directive on electronic commerce')⁶, the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts⁷, the Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures⁸ and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)⁹. As can be seen, mostly the European legislature does not impose the e-commerce matter as binding, but rather opens up the national legislators of EU Member States and EU aspirant states to self-regulate e-commerce whilst following basic European legal normative practices as harmonization tools. This is done on one hand in order to stimulate e-commerce in the EU, but on the other hand for the sake of predictability and legal certainty in e-commerce in the single European market.

3. Legal regulation of the electronic commerce in the Republic of North Macedonia

The need for legal regulation of the electronic commerce in the Republic of Macedonia raised because the electronic commerce matter was at the crossroads of contract law, intellectual property law, international private law, consumer law, personal data protection law, the rules of the regulation of electronic signatures, the rules for domain registration and the use, taxation and other regulatory areas. Due to this and under the influence of the UNCITRAL Model Law, but also for the purpose of the harmonization with the EU legislation (primarily the Directive 2000/31/EC, 'Directive on electronic commerce'), the Republic of Macedonia as a country aspiring to EU membership in the early years of the 21st century adopted the Law on Electronic Commerce. The Macedonian legislator adopted the

⁵As the The General Assembly Recommends that all States give favourable consideration to the Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information; UNCITRAL Model Law on Electronic Commerce

with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, p.2.

⁶Official Journal of the European Communities, L 178, 17 July 2000, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN>

⁷Official Journal of the European Communities, L 144, 4 June 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997L0007&from=en>

⁸Official Journal of the European Communities, L 13, 19 January 2000, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0093&from=EN>

⁹Official Journal of the European Union, L 119, 4 May 2016, <https://publications.europa.eu/en/publication-detail/-/publication/3e485e15-11bd-11e6-ba9a-01aa75ed71a1/language-en>

Law on Electronic Commerce relatively late due to the initial negative conflict of the competences over which ministry was competent to draft the Law. Thus, after the disagreements was resolved, and after the Ministry of Economy drafted the Law on Electronic Commerce and took the responsibility to supervise the implementation of the law. The Law on Electronic Commerce was published in the Official Gazette of the Republic of Macedonia on 02.11.2007 and entered into force on 10.11.2007. This was the first time when the Republic of Macedonia regulated the electronic commerce in accordance with international (The UNCITRAL Model Law) and European standards for electronic commerce ('Directive on electronic commerce'). The Law on Electronic Commerce of the Republic of Macedonia is based on the Directive on electronic commerce and it was introduced with the aim to develop the electronic commerce by providing legal certainty in the business relations. The Law on Electronic Commerce regulates the information society services related to electronic commerce, the liabilities of the information society service providers, the commercial communication and the rules related to conclusion of contracts in an electronic format. From the subject of the regulation it can be concluded that the Law on Electronic Commerce is not the only law that regulates the electronic commerce in the Republic of North Macedonia. Other relevant regulations on electronic commerce that supplement the Law on Electronic Commerce as a *lex generalis* are: Law on Data in Electronic Form and Electronic Signature, Law on Electronic Telecommunications, Law on Trade, Law on Consumer Protection, Law on Payment Operations and the Criminal Code. The Law on Electronic Commerce of the Republic of Macedonia was also changed and completed in 2011 and 2015¹⁰.

4. Application of the electronic commerce in the Republic of North Macedonia

The trend of e-commerce, purchasing of products via Internet, is becoming more and more present in our country. According to the data of the Eurostat and the State Statistical Office presented by the Association of E-commerce of Macedonia (AETM) in its analysis of the state of e-commerce in the country, the online commerce is dominated by natural persons. Of the total transactions in 2017 made through e-commerce, the largest share is of natural persons, accounting for 79% of total transactions. The average value of a transaction of natural persons is 1538 denars and it is decreased, compared to the previous year, while for legal entities this value is increased to an average of 2271 denars. On a year-over-year basis, in 2017 Macedonian citizens abroad achieved 70% of the value of online transactions and spent approximately 73 million euros to purchase products and services online. The increase compared to 2016 is 18%, while for legal entities it is 24% and for natural persons it is 16.5%¹¹. In the Republic of North Macedonia, according to data for 2018, approximately 1,841,000 payment cards have been issued, there are approximately 870 online shops and e-commerce has achieved an annual turnover of € 139 millions of Euros¹².

In the first quarter of 2017, 79% of people aged 15-74 who shopped online had one to two online orders for private use, and only 2.7% of them have made orders more than 10 times. Mostly, 66.8% of on-line purchases are valued at less than 50 euros, or 92.1% of on-line purchases are valued at up to 100 euros and at least only 0.4% of on-line purchases are valued at over € 1,000. Also, 64.1% of the products and services ordered online were related to clothing and sports equipment, 19.5% to electronic equipment (and cameras), 10.2% to hotel and other accommodation, 6.7% event tickets (cinema, theater, etc.), and 5.8% books, magazines, newspapers, e-books¹³. It shows that the average

¹⁰ Official Gazette of the Republic of Macedonia No.17/2011, 104/2015 and 192/2015.

¹¹I. Petrovski.(2018)The profile of the Macedonian online buyer, Economy.<https://kapital.mk/profil-namakedonskiot-onlajn-kupuvach/> (accessed 20.09.2019)

¹² Data published on the website of the E-commerce Association of Macedonia [26.09.2019]

¹³ State Statistical Office. (2018). Makstat SELECTION 2018 p. 57.

Macedonian consumer mostly buys clothes and sports equipment through e-commerce, usually valued up to 50 euros.

In the first quarter of 2018, of the total population aged 15-74 years, 79.2% used the Internet, and 68.7% used it daily or almost daily. 31.6% of people who have ever used the internet have ordered / purchased goods or services over the last 12 months, and the majority (54.9%) have purchased clothing or sports equipment¹⁴.

The trend of home buying is an inevitable part and the Macedonian economy shows also the figures, analyzed in the past 10 years. So if in 2007 less than 2% of the population ordered or bought a product or service online after 10 years, in 2017 this figure is around 15%¹⁵.

Worldwide, according to the 2014 B2C E-commerce Index, calculated on the basis of the percentage of people using the Internet, the number of credit cards issued, Secure Internet Servers (per 1 million people) and Percentage of population having mail delivered at home The Republic of Macedonia is at 41 places better than Greece (42 places), Bulgaria (49 places), BiH (53 places) and Albania (55th place), worse than Croatia (37th place) and Slovenia (23rd place)¹⁶.

5. Reasons that slow down the functioning of the electronic commerce in the Republic of North Macedonia

Despite the adequate legal framework of the e-commerce that is in compliance with the international (UNCITRAL Model Law on Electronic Commerce) and European (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) standards for e-commerce it can be said that there is lack or very poor control in this area. The fear of fraud, the insufficient knowledge of the functioning of e-commerce and ineffective consumer protection contribute to the low use of e-commerce in our country.

Thus, the State Market Inspectorate, which is the competent body to conduct the inspection supervision of the implementation of the provisions of the Law on Electronic Commerce, in terms of Information to be provided and Information to be provided for the purposes of concluding a contract, in 2018, conducted only 3 inspection supervisions in accordance with the Law on Electronic Commerce¹⁷. Due to the increased number of complaints of the fraudulent consumers about products or services that had bought electronically, as well as the fact that this mode of trade has not yet been legally described in detail, and that the function of the State Market Inspectorate as a state consumer protection body is still limited, this body points for the minimum information online merchants must make publicly available and for information to be provided at the conclusion of an agreement in electronic form are followed.

Often consumers due to insufficient control in this area and lack of education acquire goods and services from persons who are not registered to perform any kind of commerce or individuals who do not make the necessary information publicly available and offer goods or services electronically.

¹⁴ State Statistical Office. MAKSTAT. News release No:8.1.18.29 from 22.10.2018

¹⁵ State Statistical Office. (2018). Makstat SELECTION 2018 p. 59.

¹⁶ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT. (2015). *INFORMATION ECONOMY REPORT 2015 Unlocking the Potential of E-commerce for Developing Countries*.pg.101

¹⁷ State Market Inspectorate. (2004). *Annual work report of the State Market Inspectorate for 2018*. p. 12.

In this way, in the event of any violation of consumer rights, they remain completely unprotected as they have no information about the service provider against which they would exercise their rights through judicial or administrative proceedings.

The Consumers Organization of Macedonia¹⁸ with the aim to make consumer protection effective in Macedonia and fit for the country's new market conditions, carries out its mission through promoting legal regulation that improve consumer protection; inputting in the formulation of national consumer policy; educating, informing and counseling consumers and representing their interests. The Consumers Organization of Macedonia has produced the brochures: "Consumer Rights at Purchasing Distance"¹⁹ and "Top 10 Ways to Be Safe Online as a Consumer"²⁰. The purpose of these brochures is to educate the consumers and prevent or reduce the number of dissatisfied or damaged consumers.

Conclusion

The Republic of North Macedonia, has good legal framework in line with international and European standards for electronic commerce. The statistical indicators show that the number of electronic transactions in Macedonia is also increasing year by year, although there is an area for greater use of the e-commerce by both the business community and customers. Despite the good legal framework, the state control over the application of the e-commerce regulations is lacking, hence there is a high risk for a large number of deceived consumers. The insufficient education and awareness of the consumers about their rights and benefits of purchasing goods and services online, requires another caution and extreme, and this is the minimal use of e-commerce. Also the other link - the business community prefers a more conventional way of trading. In order to make greater use of e-commerce, to follow the world trends and benefits, it is necessary to educate and increase the capacities of e-commerce through various promotional campaigns, educational events, seminars and similar events intended for the business community as well as consumers. However, in any case, increasing the state control over the application of the regulations would increase the legal certainty, which would certainly have a positive impact on the wider and wider application of electronic commerce.

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