

# THE ROLE OF THE INTERNATIONAL AND REGIONAL ORGANISATIONS IN REGULATION OF THE LEGAL ISSUES IN THE ELECTRONIC COMMERCE

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## Abstract

*The increasingly emphasized need for global communication in the business has led to the emergence of the Electronic Data Interchange - EDI. This phenomenon begins to develop at the time when computers were first used in everyday life. For the significance of the modern electronic trades can best testify those subjects from the highly developed countries that are using them for complete execution of all transactions.*

*When we talk about the legal issues in the e-commerce, especially we are referring to the legal issues center around the digital signature, the place and the time of conclusion of the contract, the transfer of funds, stand-by letters of credit, international arbitration over the Internet etc. For easier understanding of these terms, it is essential the uniformed rules of international and regional organizations that regulate the aforementioned issues to be taken as a basis.*

*As in the international also and in the domestic regulations that are applicable to electronic commerce, there are many significant obstacles, so from there comes and the justification of the caution with which certain rules are formulated. Doing this it is especially important to take care not to violate the norms of the domicile law (with special emphasis on those of a peremptory nature). In this section is particularly important that the process of unification of the rules for electronic commerce it was conducted and is still conducting quite favorable because after its occurrence this area in neither country was thoroughly regulated, so that why there was no need to change some established domestic practices and adopted regulations.*

*The above stated proves that the non-provision of uniform standards in the commercial communications is leading to uncertainty for the businesses that are going out on the electronic market. Therefore, by the international and regional organizations are taken a series of actions to bring order to this area by using the means of the legislation, which would allow the proper working of the participants in this market.*

**Keywords:** electronic, trade, law, regulation organizations.

# 1. Introduction

For the term e-commerce today's in the literature can be found more definitions that although in some degree are different, but in essence they define that represents conducting the things electronically or paperless (paperless commerce). For example, under the Model Law of the United Nations Commission on International Trade Law - UNCITRAL in 1996, the electronic commerce is used for transmission of messages relating to commercial activities (UNCITRAL, 1996). Furthermore, the Model Law provides an explanation that to the term "commercial" should be given a broader interpretation, as in the term would be covered matters arising from all relationships of a commercial nature<sup>1</sup>, whether it is contractual or non-contractual relations.

Outstanding contribution to the international development of the electronic commerce in particular is given by the business world by recognizing the importance of better, faster and safer conducting of the commercial activities. Electronic Data Interchange (EDI) led to a significant reduction of the costs associated with the huge volumes of paper, large number of employees, speed of communication etc. However, with the rapid development of the system of electronic commerce, which was adopted not only by the big businesses but also by the smaller businesses, led to the emergence of hitherto unknown problems that inevitably imposed the need for engagement by the international organizations that are concerned with the unification of the legal rules in this area, to develop and adopt rules with which some basic legal issues would be regulated. That plan is active in numerous international and regional organizations of which as more significant would mention:

- United Nations Commissions on International Trade Law – UNCITRAL.
- International Chamber of Commerce - ICC.
- Committee maritime International – CMI.
- Economic Commission of the United Nations for Europe - Working Party 4 (WP.4), or CEFAC.
- European Union – EU.

Besides these, their own contribution in the field of unification of the rules on electronic commerce have made and other international organizations (ISO, UNCTAD, WTO, OECD, WIPO, EAN, etc.).

All of these organizations in the field of unification of the regulations in international e-trade have given their vital contribution in a broader sense. With their activities primarily is being done unification or harmonization of the legal systems of Common<sup>2</sup> and Civil Law<sup>3</sup>, with which is building a global system of world trade.

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<sup>1</sup> According to the Model Law the relations of a commercial nature include, though not limited only to them, the following transactions: any trade transaction for delivery and exchange of goods or services; distribution agreements; performing the above operations; consulting; engineering; agreements granting of licenses; investments; finance; banking; insurance; contracts for the use or concession; joint venture in other industrial forms or business cooperation; transport of goods or passengers by road, sea, rail or other traffic.

<sup>2</sup> Common law system, in principle, is a system of unwritten common law which is based on justice and fairness (equity). The main source of this right is judicial decisions (hence this right is called "right comprised of judges" (judge made law). This system originated in England, and then is accepted in the United States as in all former colonies of England (now a community of states - Commonwealth). However, these countries have adopted a number of regulations - especially in the area of administrative law so that the common law is primary, but more increasingly they are using effective ways to regulate in certain areas of society.

With extremely importance in the business world for involving in the commercial activities is the liberation of caring for the complicated national rules, which would apply in the event of any dispute. In this section especially the misunderstandings arise regarding the use of the Applicable Law, an institution that will decide the dispute. In order to avoid these misunderstandings, for the contracting parties would be the best at the time of conclusion of the contract to determine how the resolution of the possible disputes and competent law will be applied to the dispute. This right of the parties is undoubtedly, starting from one of the guiding principles of the contract law in all jurisdictions, and it is the principle of the "autonomy of the will of the parties."

## **2. United Nations Commissions on International Trade Law – UNCITRAL**

The United Nations Commissions on International Trade Law - UNCITRAL was established with the General Assembly resolution of December 17, 1966 where were 29 countries represented, taking into account the geographical representation, as well as the adequate representation of the representatives of the Common Law and Civil Law systems (UNCITRAL, 1986). In its work is collaborating with a number of regional and international organizations in many areas, and the subject of this paper is its activity in the field of unification of the rules for e-commerce. Thus, since the early 80's some activities are undertaken in the area of electronic data transmission, and in 1987 is published a "legal guide" for electronic transfer of funds.

But, its vital contribution in the field of unification of the rules for electronic commerce is given by the Commission's 1996 adoption of the Model Law on Electronic Commerce (UNCITRAL, 1996). The adoption of the Model Law was intended to serve the same national legislation during the development of the domestic regulations that would govern the conclusion of the contracts by electronic commerce, with which are replaced the previously used paper documents. This committee continued to work on making the rules relating to electronic signature, because this issue is a key for the validity of the contracts concluded by electronic means. These activities are of particular importance because of the adoption of these rules depended the relevance in terms of assessing whether a transaction concluded by electronic means has legal validity or not.

The Commission has undertaken and other activities and adopted other important documents aimed at the development of the electronic commerce, and particularly relevant is the Model law on international transfers of funds from 1992 (UNCITRAL, 1992) and the UN Convention on independent guarantees and stand-by letters of credit from in 1995 (UN, 1995), that due to the limited space we are unable to give further elaboration.

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<sup>3</sup> Civil law system or civil law is a system of written law originating from the Roman law. The basis of this right is constituted by major codifications of civil law committed in the late XIX and early XX century. In this area best known European codes are: the French Civil Code (Code civil), Austrian Civil Code (AGB), German Civil Code (BGB). Following the example of these later were adopted the civil codes in Switzerland, Belgium, Turkey, Japan and the countries of the former Yugoslavia. After The World War II Yugoslavia long time had not had only one Civil Code, so the first codification appeared only in 1978 with the Law on Obligations.

### **3. International Chamber of Commerce - ICC**

The International - ICC was established in 1919 as an international NGO and is a union of trade and businesses organizations, with base in Paris. On the plan for unification of the rules on electronic commerce are undertaken a number of activities, and as significant, given the subject matter of this work, would mention the legal and legislative issues, safety, the protection of the parties, electronic transmission, documents etc. (ICC)

On this plan the International Chamber of Commerce - ICC in 1988 drafted the rules which are governing the procedures concerning the transmissions of the messages by telecommunication (Uniform Rules of Conduct for Interchange of Trade Date by Teletransmission - UNCID), that later served as the basis for development and improvement of the new rules that were following the development of the electronic commerce, that conditioned the adoption of a number of other rules by other international organizations.

The Working Group of the International Chamber of Commerce - ICC, primarily deals with issues of information protection and has produced several guidelines to foster opportunities in the international business world in conducting secure digital transaction. In this section the most significant is the guide which is known under a code name General Usage for International Digitally Ensured Commerce<sup>4</sup> (GUIDES, 2000). The purpose of the adoption of this guide is to design a common framework to ensure secure digital messages that are based on existing law and regulations in different social systems.

And this association has adopted rules for stand-by letters of credit in 1998 named E-Terms and Conditions, inspired by the exceptional success reached by the INCOTERMS - rules and thanks to the business world which wholeheartedly accepted them.

### **4. Committee maritime International – CMI**

The Committee Maritime International - CMI was founded in Antwerp in 1896 as an international nongovernment organization that mainly protects commercial interests in the field of maritime transport (<http://www.comitemaritime.org/>)

Particularly important documents of the association are the rules for the board bill of lading adopted by the Brussels Convention in 1924 in Stockholm supplemented in 1963 and certain provisions of the board bill of lading contain the Hamburg Rules in 1978 on the electronic board bill of lading.

The Hague rules define the board bill of lading as a document of maritime law that the skipper confirms the receipt of the cargo at the ship and undertakes that after shipping the goods will pass them on a certain person. This document has the status of security and can be passed like any other such document. This document is significant in the international trade of goods, because de facto it represents the trade of goods.

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<sup>4</sup> As the new technologies mostly use the English language, it should be emphasized that in view of the additional provision of digital signature and its verification (authentication) are used various expressions out of which two are most used, those are: ensured (GUIDEC) and enhanced (UNCITRAL). These procedures are used to provide evidence that the sender is connected to the message and the message remained intact from the moment when was further assured.

The rules on electronic board bill of lading this association has made them in 1990 and with them regulates a number of issues of which in the context of this paper would especially mention the Applicable Law, the right of possession and transfer the right of receipt of the written document. Regarding the obligation of the form of the document is especially important that this document stipulates that the claim in respect of the written form of the document is filled even then when the work is done using one or more messages (CMI, 1999)<sup>5</sup>.

## **5. Economic Commission of the United Nations for Europe - Working Party 4 (WP.4) – CEFACT**

The Economic Commission of the United Nations for Europe - Working Party 4 (WP.4) – CEFACT is one of the four regional commissions of the United Nations established in order to raise the level of business activity in their regions and strengthening the economic relations on intra and inter regional plan (Vilnus, J., 2000, p.53).

This committee was established in 1947 and it has a major contribution, in terms of economic cooperation between countries of Europe, and on the plan for the preparation of legal rules that will make the cooperation more effectively accomplished. On legal plan the commission greatest contribution is that it has given to preparation typical contracts and general conditions of work, and the drafting of the rules for arbitration. In its work cooperates closely with a number of other international organizations in order the standards that are adopted to make be most equalized which will remove all the obstacles to the development of the international trade. As important documents of this group are the drafting of the UN / EDIFACT standards for electronic commerce, UN / EDIFACT standards for documentary credits and other documents.

In this section the focus is extensively on international arbitration over the Internet, as it incorporates a larger number of legal issues.

As a separate legal issue into resolving the disputes over the internet is the place of arbitration, because it is a point of tying in terms of validity and enforcement of the arbitral resolution has a very important role. Unlike the business seat of the parties which is fixed and the rules for service of process are quite clear, in cases where the parties each other commence computer connection, it is difficult to determine their place. Moreover, a series of legal issues are emerging on which the validity of this arbitration is conducted.

Taking into account the UNCITRAL Model Law on International Commercial Arbitration of 1985 (UNCITRAL, 2006) will be seen that the arbitration agreement must be in writing. Furthermore, the Model Law explains what is meant by writing method and states that the written agreement includes "and telex, telegram or other means of communication which provide written proof of the agreement." This provision clarifies the other acts of regional and international organizations and in national legislation (including the Macedonian), which clarifies that the parties should ensure that "the electronic message should be safely stored and if is required to be made in visible form and presented to the interested parties." With the interpretation of these provisions we may conclude that the sent messages through a computer

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<sup>5</sup> In the sense of Art. 2 of the Model Law of UNCITRAL the term "message" means "information generated, sent, received or stored electronically, optically or with similar means and includes, but is not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or fax".

that can be deciphered and present to those who want to know their content is considered valid arbitration agreement to the form.

Regarding the place where the arbitration is held, or how this will be determined in theory we could meet more suggestions. And so according to some it is the place of the arbitral tribunal or the President of the same, while others say it should be the place of the server through which the arbitration is commenced. But both theories have flaws, because according to the first parties would not know where the arbitration decision is made, and according to the second deficiency is that in one transaction can participate more service providers from various places. One part of the lawyers thinks that this arbitration should not be tied to one place, while others would object to such a solution. The dilemma that casts doubt on such solutions is resulting from practical aspects that are important in the execution of the arbitration decision in the light of New York's Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Sll. 11/81).

However, despite the reservations of lawyers about this matter, with the engagement of international organizations and the development of information technology there are great opportunities for resolving disputes in this way, especially if we know that the adopted regulations indicate that to the agreement arbitration concluded using information technology it is recognized the validity to it in terms of shape, so it means that it meets the requirement as for a settlement in writing.

## **6. European Union – EU**

The European Union - EU shows exceptional interest rules for electronic commerce because it ensures the effectiveness of the single European market, a security of cross-border traffic, better consumer protection and use of electronic money. EU to date has delivered numerous papers in the field of electronic commerce, and we would mention only the European E-Commerce Directive of 2000 (EU Directive, 2001) in which on a very detailed manner are processed a number of legal issues related to electronic commerce, but they will not be elaborated in this paper, because of their volume certainly they need special attention and a special effort.

## **7. Conclusion**

With the development of the information technology and its application in commercial purposes (e-commerce) in the practice emerged hitherto seemingly intractable problems. The transactions began to unfold at an incredible speed of all places in the world without knowing the site of the partner from whom it was sent the message that it was received. There were problems that classical obligation law has them very effectively resolved, specifically concerning the time and place of sending the messages, receipt, authenticity of messages, and authentication of the persons that send them. One of the most important issues besides offsetting the validity of the electronic signature in hand and was providing the probative force of messages sent electronically.

Therefore, a number of international and regional organizations and associations have taken a series of activities for the adoption of the rules to ensure safe and secure digital trading with high degree of confidence of the parties in each electronic message that you send.

Besides the conventions whose provisions have imperative role in the regulation of the relations between the parties that signed with them or acceded to them, a good part of the acts of these organizations (legal guides, legal regulations, model laws, model agreements, etc.) act as support acts that will continue to serve the national legislators and business entities to regulate these issues in an appropriate manner.

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