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PREGLEDNI RAD

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Elektronska trgovina: pravni okvir elektronskog ugovaranja u Republici Srpskoj

Electronic trading: legal framework of electronic contracting in Republic of Srpska

Rezime

Ugovori su postali toliko uobičajeni u svakodnevnom životu da većinu vremena nismo ni svjesni da smo iste zaključili. Kod tradicionalnih ugovora postoje određeni zahtjevi u pogledu pravosnažnosti, kao što su sporazum, naknada, ugovorna sposobnost i zakonit predmet ugovora. U modernom, brzom životu više nije moguće ograničiti posao samo na tradicionalne ugovore, tj. na papir koji su ugovorne strane potpisale rukom. Ako pogledamo prošlu deceniju, moramo imati na umu da je novi način komunikacije učinio neophodnim nove vrste elektronskih sporazuma. Sasvim je tačno da je danas moguće završiti kompletnu transakciju u sekundi, u kojoj će obe strane jednostavno staviti svoj digitalni potpis na elektronski primjerak ugovora. U uslovima sve veće upotrebe elektronskih ugovora, kao mnogo bržeg načina poslovanja, potrebno je iste pravno regulisati. Naravno, između tradicionalnih i elektronskih ugovora postoji jedna bitna razlika: elektronski ugovori moraju biti zaključeni u elektronskom obliku i ne postoji papirni primjerak ugovora niti svojeručni potpis. Zahvaljujući postojanju pravnog okvira za elektronske ugovore, nema sumnje da su elektronski ugovori pravno izvršni i pravosnažni isto kao i tradicionalni ugovori. Ovaj rad razmatra opša pravila o elektronskom ugovaranju (e-ugovaranju) i predlaže tumačenje o tome kako Republika Srpska reguliše elektronsko ugovaranje ili pokušava da reguliše elektronsko ugovaranje.

Ključne riječi: *ugovor - elektronski ugovor – online tržište - entitet Republike Srpske - Zakon o elektronskom poslovanju Republike Srpske - Zakon o elektronskom potpisu - Zakon o trgovini*

Abstract

Contracts have become so common in daily life that most of the time we do not even realize that we have entered one. For traditional contracts, there are some required elements for validity, such as an agreement, consideration, contractual capacity and lawful object. In the modern fast life, it is not possible anymore to limit a business only to traditional contracts, which means to a piece of paper signed between contractual parties by hand. If we look at the past decade, we need to bear in mind that new way of communication made new types of electronic agreements necessary. It is quite true that today it is possible to complete a whole transaction in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. In terms of the increasing use of electronic contracts, as a much faster way of doing business, it became necessary to introduce a legal regulation on it. Surely, between traditional contracts and electronic contracts there is one main difference; electronic contracts must be concluded electronically and there is no hard copy of the contract or papers nor signatures made by hand. Thanks to the existence of a legal framework of electronic contracts, there is no doubt that electronic contracts are as legally enforceable and valid as traditional contracts. This work considers general rules on electronic contracting (e-contracting) and proposes an interpretation on how the Republic of Srpska regulate electronic contracting or attempt to regulate electronic contracting.

Keywords: *contract, electronic contract, online market place, entity of Republic of Srpska, Act on electronic business Republic of Srpska, Act on electronic Signature, Act on Trade.*

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UVOD

Bosna i Hercegovina je, kao i druge zemlje u svijetu, pogođena digitalnom i tehnološkom revolucijom 21. vijeka. Zasigurno, moderne i brze promjene društva predstavljaju povod za izmjenu i usklađivanje zakona, pa i u našoj zemlji. Stoga, pravne norme koje se odnose na zaključivanje ugovora elektronskim putem (npr. putem interneta), kao i ugovora koji podrazumijevaju kupovinu digitalnih proizvoda i usluge (tzv. neopipljivi proizvodi i usluge, poput elektronske knjige, mobiline aplikacije, download muzike, otvoreni softveri, oblak-platforme i dr.), dolaze zajedno sa tehnološkom revolucijom i predstavljaju centralno pitanje već uveliko prisutne elektronske trgovine na svjetskom tržištu. U procesu kupovine elektronskim putem (npr. korištenjem pametnog telefona, kompjutera, a preko internet mreže), veoma je bitno za korisnike, odnosno potrošače, da razumiju koja prava imaju, ali i obaveze koje nastaju u momentu transakcija koje obavljaju elektronskim putem.

U smislu gorenavedenog, a posmatrajući ugovor kao jedan od osnovnih pravnih instituta, nije teško zaključiti da vrlo često nismo ni svjesni da smo nekim svojim ponašanjem ušli u ugovorni odnos, upravo elektronskim putem. Ono što je pozitivna karakteristika digitalne ere u kojoj se nalazimo jeste činjenica da gotovo svaka transakcija može biti kompletirana u sekundi, zato što elektronskim putem zaista jeste moguće da obje ugovorne strane ili putem pristanka ili putem elektronskog potpisa uđu u obligaciju koja sa sobom nosi prava, ali i obaveze.

Ako posmatramo tradicionalni ugovor na papiru, isti se u pravnoj teoriji shvata kao ugovor dviju volja između dvije ili više ugovornih strana, koji stvara obligaciju, koja je pravno obavezujuća za te ugovorne strane (Antić, 2010). Isto tako, sam termin „ugovor“ može se svesti i na pravno obavezujući dokument, ali i na pravnu vezu koja je nastala između ugovornih strana (Loza, 2004). Posmatrajući pravne sisteme u svijetu, nije sporno da svaki od pravnih sistema ima drugačije uslove za punovažnost ugovora. Ipak, svi uslovi bi se generalno mogli svesti, prvenstveno, na namjeru da dođe do zaključenja, ili manifestaciju volje za zaključenje ugovora, ponudu, prihvat ponude, pravnu formu ugovora, predmet ugovora, poslovnu sposobnost ugovornih strana, kao i kauzu. Takođe, razmjena, kao bitan element ugovora, za razliku od kauze, prisutna je u anglosaksonskom pravnom sistemu i podrazumijeva razmjenu ekvivalentnih vrijednosti između ugovornih strana.

U Bosni i Hercegovini, uslovi za punovažnost ugovora na papiru su regulisani Zakonom o obligacionim odnosima, i to na entitetskom nivou (Zakon o obligacionim odnosima FBiH i RS). Uzimajući u obzir odredbe Zakona o obligacionim odnosima Republike Srpske, iako je negativno data definicija uslova za punovažnost ugovora (članovi 4. i 5. Zakona o obligacionim odnosima RS), može se zaključiti da su saglasnost volja, zakonit predmet ugovora, zakonita osnova ugovora, poslovna sposobnost ugovornih strana i forma (u slučaju zakonski formalnih ugovora) neophodni da bi ugovor bio pravno valjan. Konačno, sa aspekta ispunjenosti uslova za zaključenje punovažnog ugovora, odnosno nemogućnosti ugovora da proizvede pravne posljedice, ugovori mogu biti rušljivi ili ništavi. Prema važećem zakonodavstvu Republike Srpske, ugovor je zaključen kada su se stranke saglasile o ugovornim klauzulama i, ukoliko zakonom nije predviđena forma ugovora, ugovor može nastati samo na osnovu saglasnosti volja ugovornih strana. Iako postoje različite pravne teorije o momentu kada je nastao ugovor (Antić, 2010), najčešća je kombinacija teorije „izjave ponude“ i teorija „pristanka na ponudu“ (Antić, 2010).

Ukoliko se uzme u obzir naprijed pomenuti koncept ugovora na papiru, koji je prisutan u pozitivnom zakonodavstvu Republike Srpske, postavlja se pitanje u kojoj je mjeri moguće isti koncept primijeniti na ugovore koji su zaključeni elektronskim putem na tržištu Republike Srpske, kao i da li pozitivno zakonodavstvo Republike Srpske pravi razliku između tradicionalnih ugovora i elektronskih ugovora. Ono što je sigurno jeste da danas, a uzimajući u obzir pravne sisteme u svijetu, elektronski ugovori proizvode pravno dejstvo. Ovo nije za čudo, a zbog pukog shvatanja ugovora kao saglasnosti dviju volja. Prema tome, ugovor zaključen upotrebom pametnog telefona, telegrafa, teletajpa, kao i upotrebom kompjuterskih mreža, može proizvesti pravno dejstvo, odnosno stvoriti prava i obaveze za ugovorne strane.

Ovaj članak ima za cilj da obuhvati generalna pravila elektronskog ugovaranja u Republici Srpskoj, osvrćući se na najvažnije pozitivne propise vezane za elektronsko ugovaranje. Dodatno, ovaj članak, uzimajući u obzir koncept ugovora na papiru, kao i uslove za punovažnost ugovora, ima za cilj da pokaže da ne postoji razlika između tradicionalnog i elektronskog ugovora, s obzirom na pozitivno zakonodavstvo Republike Srpske.

Autor je ovaj članak podijelio u četiri dijela, od kojih se prvi dio odnosi na uvod, drugi dio članka obrazlaže generalno značenje elektronskog ugovora, kao i njegove osnovne vrste, treći posebno obrađuje pozitivno zakonodavstvo Republike Srpske. Posljednji dio predstavlja zaključak autora.

1. PREGLED LITERATURE

1.1. Elektronski ugovori

Brzi načini komunikacije su od velikog značaja u poslovnom svijetu današnjice. Ovo zato što omogućavaju lakši i brži način obavljanja poslovnih operacija.

Naime, u vrijeme digitalne ere u kojoj se nalazimo, prisutne su nove vrste komunikacije koje se svakodnevno koriste. Nove vrste komunikacije dolaze zajedno sa razvojem kompjuterskih mreža, a najpoznatija globalna svjetska mreža je internet. Uopšteno, sve nove komunikacije koje su danas u upotrebi sa ciljem obavljanja poslovnih operacija, mogu se podijeliti na EDI,[1] elektronski mejl, komunikacijski čet (communication chat), komunikacije bazirane na veb-stranici ili veb-bordu. Generalno, sve komunikacije mogu se klasifikovati kao komunikacije „realnog vremena“ ili „nerealnog vremena“, u zavisnosti od toga kada se obavljaju (Sung-Ho Park 2007).

Otkako je internet postao krucijalan za komunikaciju današnjice, međunarodne trgovinske transakcije putem elektronskih sredstava dovele su do raznih olakšica i pogodnosti za multinacionalne korporacije, za mala i srednja preduzeća, ali i za pojedince. Naime, nove vrste komunikacije omogućavaju brži način ugovaranja, odnosno nastanak obligacije za dvije ili više ugovornih strana elektronskim putem.

Danas gotovo da ne postoji osoba koja ne posjeduje mobilni telefon, kompjuter i kojoj je nepoznat pojam interneta ili koja nije koristila

[1] EDI (Electronic Data Interchange) jeste standard za komunikaciju između informacionih sistema. Kao što imejl omogućava razmjenu informacija među ljudima, tako EDI prenosi informacije koje razumiju informacioni sistemi. Njegovim uvođenjem eliminiše se potreba za slanjem dokumenata faksom ili poštom i njihovim prekucavanjem, čime nestaje jedna cijela kategorija problema i nesporazuma i štedi se na troškovima. Suština je jednostavna: ako jedna firma u svom sistemu kreira, recimo, porudžbinu za drugu firmu, ta porudžbina će se pojaviti u sistemu druge firme.

INTRODUCTION

Bosnia and Herzegovina, like other countries in the world, has been hit by the digital and technological revolution of the 21st century. Certainly, modern and rapid changes of society represent a reason for changing and harmonizing laws, even in our country. Thus, legal norms relating to the conclusion of an electronic contract (eg via the Internet), as well as contracts that support the purchase of digital products and services (so-called intangible products and services, such as e-books, mobile applications, music downloads, open software , cloud-platforms, etc.), come together with the technological revolution and represent the central issue, but the large-scale electronic commerce on the world market is largely present. In the process of electronically purchasing (for example, using a smartphone, a computer, and through an Internet network), it is very important for users or consumers to understand what rights they have, but also the obligations that arise at the moment of transactions that they perform electronically.

In the light of the above, and while observing the contract as one of the basic legal institutes, it is not difficult to conclude that we are very often not aware that we have entered into a contractual relationship with some of our behavior, and precisely by electronic means. What is a positive feature of the digital era in which we are right now is the fact that almost every and whole transaction can be completed in seconds. This is because, by electronic means, it is indeed possible for both contracting parties, either by consent or by electronic signature, to enter into an obligation that carries the rights and obligations.

Observing the traditional contract on paper, it is in the legal theory understood as a contract of two wills between two or more contracting parties, which creates an obligation, which is legally binding for those contracting parties (O. Antić 2010). Likewise, the term „contract" itself can be reduced to a legally binding document, but also to a legal relationship that was created between the contracting parties. (B. Loza 2004). Observing the legal systems in the world, it is not disputed that each of the legal systems has different conditions for the validity of the contract. However, all conditions could generally be reduced to the intention to come to a conclusion, or a manifestation of the will to conclude a contract, bid, acceptance of a bid, legal form of contract, object of contract, business capacity of contracting parties, as well as a cause. Also, the exchange as an essential element of the contract, unlike the cause, is present in the Anglo-Saxon legal system and implies the exchange of equivalent values between the contracting parties.

In Bosnia and Herzegovina, the conditions for the validity of the contract on paper are regulated by the Law of Contract and Torts, at the Entity Level (Law of Contract and Torts of FBiH and RS). Taking into account the provisions of the Law of Contract and Torts of the Republic of Srpska, although the negative definition of the conditions for the validity of the contract (Articles 4 and 5 of the Law of Contract and Torts of the Republic of Srpska), to conclude that the consent of the will, the legal subject of the contract, the legal basis of the contract, the business capacity of the contracting parties and the form (in the case of legal formal contracts) is necessary for the contract to be legally valid . Finally, from the aspect of meeting the conditions for concluding a valid contract, or the impossibility of a contract to produce legal consequences, contracts can be defective or null and void. According to the legislation in force in the Republic of Srpska, the contract is concluded when the parties agreed on the contractual clauses and if the form of the contract is not stipulated by law, the contract may only be based on the agreement of the will of the contracting parties. Although there are different legal theories about the moment when the contract was created (O. Antić 2010), the most common is the combination of the theory of „bid statement" and the theory of „acceptance of the offer" (O. Antić 2010).

Considering the aforementioned concept of the contract on paper which is present in the positive legislation of the Republic of Srpska, the question arises as to which extent the same concept can be applied to contracts concluded electronically on the Republic of Srpska market, and whether the positive legislation of the Republic of Srpska makes a distinction between traditional contracts and electronic contracts. It is certain that today, and taking into account the legal systems in the world, electrical contracts produce a legal effect. This is not surprising, and because of the mere understanding of the agreement as the consent of the two wills. Therefore, a contract concluded using a smartphone, telegraph, teletext, as well as the use of computer networks, can produce a legal effect, or create rights and obligations for the contracting parties.

Ovaj članak ima za cilj da obuhvati generalna pravila elektronskog ugovaranja u entitetu Republike Srpske, osvrćući se na najvažnije pozitivne propise vezane za elektronsko ugovoranje. This article aims to cover the general rules of electronic contracting in the Republic of Srpska entity, referring to the most important positive regulations related to electronic contracting. In addition, this article, taking into account the concept of the contract on paper, as well as the conditions for the validity of the contract, aims to show that there is no difference between the traditional and the electronic contract, and taking into account the positive legislation of the Republic of Srpska.

The author divided this article into four parts of which the first part refers to the introduction, the second part of the article explains the general meaning of the electronic contract, as well as its basic types, the third one deals, in particular, with the positive legislation of the Republic of Srpska. The last part is about the author's conclusion.

1. LITERATURE REVIEW

1.1. Electronic contracts

Rapid modes of communication are of great importance in the business world of today. This is because they enable easier and faster way of doing business operations.

Namely, at the time of the digital era in which we are located, there are new types of communication that are being used on a daily basis. New types of communication come along with the development of computer networks, and the world's most famous global network is the Internet. In general, all new communications that are used today for the purpose of doing business operations can be subdivided into EDI[1], electronic mail, communication chat, website-based communications, or a web board. Generally, all communications can be classified as „real time" or „non-real time" communications depending on when they are performed (Sung-Ho Park 2007).

Since the internet has become crucial to today's communication, international trade transactions through electronic means have led to various benefits for multinational corporations, for small

[1] EDI (Electronic Data Interchange) is a standard for communication between information systems. As email allows information to be exchanged among people, EDI also transfers information exchanged by information systems. By introducing it, the need to send documents by fax or mail and by typing them is eliminated, which eliminates an entire category of problems and misunderstandings and saves on costs. The essence is simple: if a company in its system creates, for example, an order for another firm, this order will appear in the system of the other company.

globalnu mrežu (World Wide Web) za pretraživanje (npr. Google pretraživač i sl.), pa čak i otvorila veb-stranicu na internetu, a sa ciljem da pregleda ponudu proizvoda ili usluga i iste kupi putem interneta. Međutim, ono što jeste osnovni problem korištenja brzih načina komunikacije jeste pitanje o postojanju svijesti potrošača o tome koja prava i obaveze imaju u vezi sa obavljanjem transakcije elektronskim putem.

Sa druge strane, digitalizacija u kojoj se nalazimo dovela je i do stvaranja tzv. onlajn tržišta, koje u realnom vremenu postoji pored tradicionalnog tržišta, i na kojem se trgovinske transakcije obavljaju elektronskim putem.[2] Ono što predstavlja osnovnu prednost onlajn tržišta jeste nepostojanje granica tržišta. Stoga, danas je realno moguće da sklopimo ugovor sa osobom koja ne živi u istom gradu, pa čak ni istoj državi ili kontinentu. Sa aspekta razvoja novih formi tržišta, ne treba zaboraviti uticaj socijalno-društvenih platformi, poput Facebooka, Instagrama, Twittera i sl., putem kojih se takođe obavljaju trgovinske transakcije, ili iznose ponude različitih proizvoda i usluga.

Uzimajući u obzir gorenavedeno, dolazi se do zaključka da je elektronsko ugovaranje logična posljedica digitalizacije, koja prati moderno društvo. Ono što predstavlja ključno pitanje jeste da li elektronski ugovor ima istu pravnu snagu kao tradicionalni ugovor ispisan na papiru?

U užem smislu, elektronski ugovor bi se mogao shvatiti kao ugovor koji sadrži pozitivan pristanak na ponudu, datu elektronskim putem, ali i kao ugovor koji je kreiran i potpisan elektronskim putem. Generalno, elektronski ugovori su svi oni ugovori koji su nastali kao posljedica poslovne transakcije između dva ili više pojedinaca, a zbog upotrebe elektronskih sredstava (Trnavci, 2009).

U pravnoj teoriji već je prihvaćeno mišljenje da se tradicionalni koncept ugovora podudara sa konceptom elektronskog ugovora, kao i da elektronski ugovor nije ništa manje ugovor samo zato što je nastao elektronskim putem (G. Trnavci 2009). Ovo iz razloga što elektronski ugovor, takođe, zahtijeva ispunjenost uslova za punovažnost i nastanak pravnih posljedica. Naime, punovažan elektronski ugovor zahtijeva postojanje ponude, prihvat ponude, kao i razmjenu ekvivalentnih vrijednosti (Zottola, Walker, Springer i Crincoli, 2012).

U zaključku, opšti proces elektronskog ugovaranja obuhvata dvije faze: stvaranje ugovora i izvršenje ugovora. Takođe, prva faza elektronskog ugovaranja, odnosno stvaranje ugovora, uključuje identifikaciju, provjeru i validaciju ugovornih strana, pregovaranje, sa ciljem njegovog zaključenja. Druga faza, izvršenje ugovora, može se podijeliti na dvije faze, i to: konačno ispunjenje i postugovorne aktivnosti koje mogu nastati između ugovornih strana (De Vrieze i Xu, 2009).

1.2. Vrste elektronskih ugovora

Sa aspekta upotrebe elektronskih ugovora, pravna teorija kod nas, a i u svijetu, elektronske ugovore dijeli u četiri osnovne grupe, i to na klikvrap ugovore (click-wrap), šrinkvrap ugovore (shrink-wrap), ugovore nastale razmjenom elektronskog mejla, i brauservrap (browser-wrap) ugovore (Trnavci, 2009).

Najčešća forma elektronskog ugovora koju korisnici sreću, najčešće pri korištenju onlajn usluga koje se nude na internetu, jeste klirkvrap ugovor. Suština ovog ugovora ogleda se u manifestaciji pristanka na ugovorne uslove, i to pritiskom na „I agree“ prozor, pri posjeti veb-stranici. Sudska praksa, prisutna u Sjedinjenim Američkim Državama, neformalno ovakve ugovore smatra kao punovažne, pri čemu propust korisnika da pročita ugovorne uslove prije izjave njegovog pristanka, nije od značaja.Međutim, uslovi ovakvih ugovora moraju biti nedvosmisleni i jasni za korisnika, odnosno posjetioca veb-stranice. S obzirom na to da ovakvi ugovori znače preuzimanje (sa pritiskom na „I agree“) ili odbijanje, danas se u teoriji shvataju kao „ugovor o pridruživanju“ (Obar i Oeldorf-Hirsch, 2018). Ovo iz razloga što ovim ugovorima nedostaje pregovaračka moć, jer postoji jasno prisiljavanje jedne ugovorne strane da bude favorizovana nad drugom ugovornom stranom. Jedan od najboljih primjera ovakvog ugovora jesu „Uslovi korištenja“ na socijalnim mrežama, poput Facebooka. Pritiskom na „I agree“, korisnici pristaju na uslove korištenja ove socijalne mreže, odnosno pristaju na ugovorni odnos. U suprotnom, sa odbijanjem davanja pristanka, nije moguće koristiti ponuđene usluge Facebooka (Nicol, 2013). Pored klikvrap ugovora, u čestoj upotrebi su šrinkvrap ugovori. Ovim ugovorima korisniku se, prije zaključenja ugovora, nudi samo dio standardizovanih uslova, dok ostali uslovi korisniku postaju poznati tek po zaključenju. Najbolji primjer za ove ugovore jesu kupovina otvorenog softvera ili onlajn igara i sl. (Doctorow, 2007). Konačno, iako neuobičajen u upotrebi, jeste brauservrap ugovor. Ovaj oblik elektronskog ugovora, u kojem korisnik ima obavezu da prihvati opšte uslove korišćenja veb-sajta, postoji pri samoj posjeti, odnosno korištenju određenih sadržaja na takvom veb-sajtu.[3] Najzad, elektronsko ugovoranje može nastati i putem razmjene elektronskog imejla. Naime, kod ovih ugovora, do momenta zaključenja dolazi razmjenom elektronskog imejla. Sa stanovištva vrste komunikacije, ovi ugovori spadaju u kategoriju komunikacija „nerealnog vremena“, jer nastaju kada druga ugovorna strana odgovori na elektronski imejl. Dodatno, štampane kopije elektronskih imejlova, koje sadrže ugovorne odredbe, imaju isto pravno dejstvo kao i tradicionalni ugovori, ali pod uslovom da takav ugovor sadrži elektronske potpise obje ugovorne strane.

2. REZULTATI ISTRAŽIVANJA

2.1. Elektronsko ugovaranje u Republici Srpskoj

Narodna skupština Republike Srpske usvojila je nekoliko zakonskih akata koji direktno pogađaju uslove elektronskog ugovaranja na teritoriji Republike Srpske. Ono što još uvijek predstavlja ključno pitanje u Republici Srpskoj jeste u kojoj mjeri su zaživjeli takvi zakonski akti, iako su stupili na snagu. Od najvažnijeg značaja za elektronsko ugovaranje na tržištu Republike Srpske jesu Zakon o elektronskom poslovanju, Zakon o elektronskom potpisu, kao i Zakon o trgovini.

U 2009. godini, usvojen je Zakon o elektronskom poslovanju Republike Srpske. Tim zakonom uređena su pravila u vezi sa zaključivanjem ugovora u elektronskom obliku, način na koji se zaključuju, ali isto tako i pružanje usluga informacionog društva i odgovornost davalaca usluga informacionog društva. Definicija usluga informacionog društva veoma je široka i pokriva gotovo svaku ekonomsku aktivnost koja se može odvijati elektronskim putem, uključujući čak i prodaju robe putem interneta (član 3, tačka v). Prema pomenutom zakonu, ugovori u elektronskom obliku su ugovori

[2] Onlajn tržište može da predstavlja ili veb-stranicu ili onlajn platformu i sl., na kojoj su proizvodi ponuđeni direktno od proizvođača ili od trećih strana, a transakcije koje se dešavaju na onlajn tržištu procesuirane su od strane operatera tržišta. Onlajn tržišta postala su glavni pokretač rasta poslovanja za poslovne subjekte koji koriste internet kao kanal za povećanje prodaje. Onlajn tržište je primarni tip višekanalne elektronske trgovine. Najpoznatija onlajn tržišta u svijetu su Amazon.com i eBay. U Bosni i Hercegovini postoji, npr., Ekupi.ba ili Pik.ba.

[3] Primjeri ovog ugovora su EULA (Ugovor o licenciranju krajnjeg korisnika) i Ugovor o korišćenju softvera (Licenca), koji obično sadrže klauzulu o obavezama koje se preuzimaju pomoću određenog softverskog paketa.

and medium-sized enterprises, but also for individuals. Namely, new types of communication enable faster way of contracting, at the same time creating an obligation for two or more contracting parties electronically.

Today, virtually, there is no person who does not own a mobile phone, a computer, and who does not know the Internet's term or who has not used the World Wide Web for search (such as Google Search Engine, etc.), and even opened a web page at the Internet, in order to review the offer of products or services and purchase them online. However, what is the basic problem of using fast communication methods is the question of whether there is consumer awareness about what rights and obligations they have while conducting the transaction electronically.

On the other hand, the digitization in which we are located has led to the creation of the so-called. online markets that exist in real time in addition to the traditional market, and where commercial transactions are done electronically[2]. What constitutes an essential advantage of the online market is the lack of market boundaries. Thus, today it is realistic to conclude a contract with a person who does not live in the same city, and even a country or continent, like us. From the aspect of the development of new forms of the market, one should not forget the influence of social platforms, such as Facebook, Instagram, Twitter and others, through which trade transactions are also performed or different products and services are offered.

Taking into account the above, it comes to the conclusion that electronic contracting is a logical consequence of digitization that comes with modern society. The key question is whether an electronic contract has the same legal force as a traditional contract printed on paper?

In a narrower sense, an electronic contract could be understood as a contract that contains a positive consent to the bid electronically delivered, as well as a contract that was created and signed electronically. Generally, electronic contracts are all those contracts that have arisen as a result of a business transaction between two or more individuals due to the use of electronic means (Mr. Trnavci 2009).

In the legal theory, it has already been accepted that the traditional concept of a contract is in line with the concept of an electronic contract, and that an electronic contract is no less a contract only because it was created electronically (Trnavci, 2009). This is because the electronic contract also requires the fulfillment of conditions for validity and the emergence of legal consequences. Namely, a valid electronic contract requires the existence of a bid, the acceptance of a bid, and the exchange of equivalent values (Zottola, Walker, Springer and Crincoli, 2012).

In conclusion, the general process of electronic contracting involves two phases: the creation of a contract and the execution of a contract. Also, the first phase of electronic contracting, ie the creation of a contract, includes the identification, verification and validation of the contracting parties, negotiation, with the aim of concluding it. The second phase, the execution of the contract, can be divided into two phases: the final fulfillment and post-contractual activities that can arise between the contracting parties (De Vrieze i Xu, 2009).

1.2. Types of electronic contracts

From the aspect of the use of electronic contracts, the legal theory in us, and in the world, divides electronic contracts into four basic groups, namely on click-wrap, shrink-wrap contracts, e-mail and browser- wrap contracts (Trnavci, 2009).

The most common form of electronic agreement that users encounter, most often when using online services offered on the Internet, is the click-wrap agreement. The essence of this contract is reflected in the manifestation of agreeing to contract terms by pressing the „I agree" window while visiting the website. The case law of the United States of America informally considers such contracts to be valid, with the failure of the user to read the contractual terms before declaring his consent is not significant. However, the terms of such contracts must be unambiguous and clear to the user or visitor of the website. Given that such contracts mean downloading (by pressing „I agree") or refusing, today they are considered in theory as an „association agreement" (Obar i Oeldorf-Hirsch, 2018). This is because these contracts lack negotiating power, because there is a clear compulsion of one of the contracting parties to be favorable to another contracting party. One of the best examples of such a contract is „Terms of Use" on social networks like Facebook. By pressing „I agree", users agree to the terms of use of this social network, that is, agree to a contractual relationship. In contrast to refusing to grant consent, it is not possible to use the offer of Facebook (Nicol, 2013). In addition to click-warp contracts, shrink-wrap contracts are commonly used. With these contracts, only a part of the standardized conditions is offered to the user before the conclusion of the contract, while the other conditions are known to the user only after the conclusion. The best example of these contracts are the purchase of open source software or online games. (Doctorow, 2007).[3] Finally, although it is unusual in practice, there is the browser wrap contract. This form of electronic contract, in which a user is obligated to accept the general terms of use of the website, and this agreement exists during the visit itself, or the use of certain content on such a website.[3] Finally, electronic contracting can also occur through the exchange of electronic mail. Namely, for these contracts, the moment of conclusion is made by exchange of electronic mail. From the point of view of the types of communication, these contracts fall into the category of "non-real time" communications, as they occur when the other contracting party responds to the electronic mail. In addition, printed copies of electronic emails containing contractual provisions have the same legal effect as traditional contracts, but provided that such contract contains electronic signatures of both parties.

2. RESULTS

2.1. Electronic contracting in the Republic of Srpska

The National Assembly of the Republic of Srpska has adopted several legal acts, which directly affect the conditions of electronic contracting in the territory of the Republic of Srpska. What still represents the key issue in the Republic of Srpska is to what extent these legal acts have come into existence, even though they entered into force. Of great importance for electronic contracting on the Republic of Srpska market are the Law on Electronic Commerce of RS, The Electronic Signature Law of RS and the Law on Trade.

In 2009, the Law on Electronic Commerce of the Republic of Srpska was adopted. The same law regulates the rules regarding the conclu-

[2] The online market can be represented either by a website or online platform where products are offered directly from the manufacturer or from third parties, and transactions on the online market are processed by a market operator. Online markets have become a major driver of business growth for business entities that exploit the Internet as a channel for increasing sales. The online market is the primary type of multi-channel e-commerce. The most famous online markets in the world are Amazon.com and eBay. In Bosnia and Herzegovina, for example, there are Ekupi.ba or Pik.ba.

[3] An example of this agreement is the EULA (End User License Agreement) and the Software Use Agreement (License), and which agreements usually contain a clause on commitments that are downloaded using a specific software package;

koje pravna i fizička lica u potpunosti ili djelimično sklapaju, šalju, primaju, raskidaju, otkazuju, pristupaju i prikazuju elektronskim putem, koristeći elektronska, optička ili slična sredstva, uključujući, ali ne ograničavajući se na prenos internetom (član 3, stav 1, tačka e). Nadalje, član 7. istog zakona detaljnije obrađuje način na koji se može zaključiti elektronski ugovor. Prema pomenutom članu, u Republici Srpskoj je moguće zaključiti ugovor elektronskim putem, kao i dati ponudu i prihvat ponude elektronskim putem. Isto tako, prema pozitivnom zakonodavstvu Republike Srpske, ugovoru se ne može osporiti pravna valjanost zbog činjenice da je sastavljen u elektronskom obliku (član 7, stav 3). Zakonodavstvo Republike Srpske prihvatilo je ideju vodećih svjetskih pravnih sistema u vezi sa izjednačavanjem koncepta tradicionalnog i elektronskog ugovora u pogledu pravnog dejstva koje proizvode. Štaviše, sam Zakon o elektronskom poslovanju Republike Srpske upućuje na primjenu odredbi Zakona o obligacionim odnosima Republike Srpske u slučaju potrebe za dodatnim tumačenjem elektronskog ugovora (član 8). Zakon o elektronskom poslovanju Republike Srpske, kao uslov za punovažnost elektronskog ugovora, najprije zahtijeva nedvosmislenu i jasnu prezentaciju odredbi ugovora, sklopljenih elektronskim putem (član 12). Isto tako, prema ovom zakonu, ugovor je elektronskim putem zaključen u momenutu prijema izjave koja sadrži prihvat ponude, i to elektronskim putem (član 13).

Iako je, prema pomenutom zakonu, pravna valjanost elektronskih ugovora nesporna, isti zakon isključuje iz mogućnosti zaključenja elektronskim putem ugovore iz oblasti porodičnog prava ili prava nasljeđivanja, bilo koju vrstu darovnih ugovora, ugovore o opterećenju i otuđenju imovine, za koje je potrebno odobrenje nadležnih organa koji se bave socijalnom zaštitom, ugovore i iskazivanje volje jemaca, ako je jemac lice koje djeluje izvan svoje trgovačke, poslovne ili profesionalne djelatnosti (član 7, stav 4). Ono što je interesantno jeste da pomenuti zakon isključuje mogućnost zaključenja elektronskim putem i ugovore kojima se uređuju stvarna prava na nekretninama, pri čemu je zaključenje ugovora o zakupu nekretnine moguće zaključiti elektronskim putem. Međutim, isti zakon decidno isključuje mogućnost zaključenja elektronskim putem za sve one ugovore za koje je posebnim zakonom propisano da se sastavljaju u obliku notarske isprave (član 7, stav 4).

Zakon o elektronskom poslovanju Republike Srpske, takođe, jasno definiše pojam davaoca usluga, i to kao pravno ili fizičko lice, koje pruža usluge informacionog društva, dok je korisnik usluga definisan kao svako pravno ili fizičko lice koje zbog profesionalnih ili drugih ciljeva koristi usluge informacionog društva (član 3). U skladu sa članom 4. Zakona o elektronskom poslovanju Republike Srpske, određeni opšti podaci moraju biti pruženi od strane davaoca usluga, uključujući: ime i prezime ili firmu davaoca usluga, sjedište ili adresu davaoca usluga, ostale podatke o davaocu usluga na osnovu kojih korisnik može brzo i nesmetano s njim stupiti u vezu, uključujući elektronsku adresu putem koje je moguće ostvariti direktan kontakt, broj sudskog registra u koji je davalac usluga upisan, te podatke iz registra, pojedinosti o nadležnom organu, ako djelatnost davaoca usluga podliježe nadzoru, posebno registrovane djelatnosti ili profesije (npr. profesionalna institucija kod koje je davalac usluga registrovan, profesionalni naziv i zemlja koja ga je odobrila i uputstvo o profesionalnim pravilima u zemlji u kojoj se obavlja djelatnost i mjestu njihove dostupnosti), poreski broj ako je davalac usluga obveznik plaćanja poreza na dodatnu vrijednost (član 4). Nadalje, član 10. Zakona zahtijeva od davaoca usluga da jasno navede različite tehničke korake koje treba preduzeti da bi se zaključio ugovor, kao što su: procedure koje slijede u postupku zaključenja ugovora, ugovorne odredbe, opšti uslovi poslovanja ako su sastavni dio ugovora, jezici ponuđeni za zaključenje ugovora i kodeksi postupanja u skladu sa kojima postupaju davaoci usluga i informacije o tome kako se ti kodeksi mogu pregledati elektronskim putem.

Zakon o elektronskom poslovanju Republike Srpske pravi razliku između pojma korisnika usluga i potrošača. Naime, prema Zakonu o elektronskom poslovanju Republike Srpske, potrošač je svako fizičko lice koje sklapa pravni posao na tržištu u svrhe koje nisu namijenjene njegovom zanimanju ni njegovoj poslovnoj aktivnosti ili preduzetničkoj djelatnosti, a u skladu sa odredbama posebnog zakona (član 3). Ovdje je potrebno napomenuti da Zakon o zaštiti potrošača Republike Srpske pod pojmom potrošača podrazumijeva svako fizičko lice koje kupuje, poručuje, stiče i koristi proizvode, ali i usluge (član 2). Drugim riječima, Zakon o zaštiti potrošača Republike Srpske ne pravi razliku između usluga i proizvoda pri definisanju pojma potrošača. Kako Zakon o elektronskom poslovanju Republike Srpske pravi jasnu razliku između pojma korisnika usluga i pojma potrošača, dolazi se do zaključka da pojam potrošača u Zakonu o elektronskom poslovanju Republike Srpske nije u skladu sa pojmom potrošača u Zakonu o zaštiti potrošača Republike Srpske.

Dalje, u 2015. godini Narodna skupština Republike Srpske usvojila je Zakon o elektronskom potpisu Republike Srspke. Prema pomenutom zakonu, elektronski potpis je skup podataka u elektronskom obliku koji su pridruženi ili su logički povezani sa drugim podacima u elektronskom obliku i koji služe za identifikaciju potpisnika i autentičnost potpisanog elektronskog dokumenta (član 3).

Naime, ovaj zakon je uspostavio pravni okvir za elektronske potpise i određene certifikacione usluge kako bi se osiguralo pravilno funkcionisanje tržišta Republike Srpske. Uzimajući u obzir svrhu ovog zakona, treba napomenuti da on ne pokriva aspekte koji se odnose na zaključivanje i valjanost ugovora zaključenih elektronskim putem, jer je ista materija prepuštena Zakonu o elektronskom poslovanju Republike Srpske. Takođe, član 2. Zakona o elektronskom potpisu Republike Srpske sadrži potpunu listu definicija, koje se opet odnose, strogo, na elektronski potpis. Interesantno je da Zakon o elektronskom potpisu Republike Srpske, a vjerovatno po ugledu na Direktivu Evropske unije (EU Electronic signature Directive), pravi razliku između kvalifikovanog elektronskog potpisa i elektronskog potpisa. Zakon kvalifikovanim elektronskim potpisom smatra onaj elektronski potpis koji je jedinstveno povezan sa potpisnikom, sposoban da identifikuje potpisnika, stvoren korišćenjem sredstava koja potpisnik može da zadrži pod svojom isključivom kontrolom i povezan sa podacima na koje se odnosi na takav način da se svaka naknadna promjena podataka može otkriti (članovi 3. i 4). Konačno, prema Zakonu o elektronskom potpisu Republike Srpske, elektronski potpis se smatra pravno valjanim i dopušteno ga je koristiti u sudskim i drugim postupcima, pa se, prema tome, njegova valjanost ne može osporavavati u sudskim i drugim postupcima isključivo na osnovu toga što je u elektronskom obliku (član 6).

Za elektronsko ugovaranje u Republici Srpskoj od značaja je i Zakon o trgovini Republike Srpske. Ovaj zakon je usvojen u 2007. godini i istim se, između ostalog, uređuju uslovi za obavljanje trgovine, oblici trgovine, kao i uslovi za obavljanje trgovinskih usluga na teritoriji Republike Srpske (član 1). Pored toga, ovaj zakon poznaje pojam prodaje na daljinu, kao jednu od vrsta trgovine dozvoljene na tržištu Republike Srpske (član 8). Ovaj zakon, takođe, definiše pojam trgovine na daljinu kao isključivu trgovinu robom na malo. Međutim, Zakon o trgovini Republike Srpske smatra trgovinom i pružanje usluga potrošačima, koje trgovac organizuje upotrebom sredstava za komunikaciju između fizički udaljenih lica (član 8). Takođe, kao što je slučaj sa Zakonom o zaštiti potrošača Republike Srpske, ne pravi razliku između usluga i proizvoda, kada je u pitanju trgovinska transakcija, za razliku od Zakona o elektronskom poslovanju Republike Srpske.

sion of contracts in electronic form, the manner in which they are concluded, but also the provision of information society services and the responsibility of providers of information society services. The definition of information society services is very wide and covers almost every economic activity that can be done electronically, including even the sale of goods via the Internet (Article 3, point v). According to the aforementioned law, contracts in electronic form are contracts that legal and physical persons fully or partially conclude, send, receive, terminate, cancel, access and display by electronic means using electronic, optical or similar means, including but not limited to the exchange via the Internet (Article 3, paragraph 1, item e). Furthermore, Article 7 of the same law deals in more detail with the way in which an electronic contract can be concluded. According to the aforementioned article, in the Republic of Srpska it is possible to conclude the contract electronically, as well as to submit the bid and accept the offer electronically. Similarly, according to the positive legislation of the Republic of Srpska, the contract can not be denied legal validity due to the fact that it was compiled in electronic form (Article 7, paragraph 3). The legislation of the Republic of Srpska has accepted the idea of the world's leading legal systems regarding the equalization of the concept of traditional and electronic contracts with regard to the legal effect they produce. Even the Electronic Commerce Law of the Republic of Srpska refers to the application of the provisions of the Law of Contract and Torts of the Republic of Srpska if there is a need for additional interpretation of the electronic contract (Article 8). The Law on Electronic Commerce of the Republic of Srpska, as a condition for the validity of an electronic contract, first requires an unambiguous and clear presentation of the provisions of contracts concluded electronically (Article 12). Similarly, under this Law, the contract is concluded electronically at the time of acceptance of the statement containing the acceptance of the offer, by electronic means (Article 13).

Although, according to the aforementioned law, the validity of electronic contracts is undisputed, the same law excludes the possibility of concluding an electronic contract in the field of family law or inheritance law, any kind of grant contracts, contracts of burdens and alienation of assets, for which the approval of the competent authorities who deal with social protection is needed, then contracts and expressions of the will of the guarantors, if the guarantor is a person acting outside his trade, business or professional activity (Article 7, paragraph 4). It is interesting that the aforementioned law excludes the possibility of concluding contracts electronically which are regulating rights of real property, whereby the conclusion of a lease of real property can be concluded electronically. However, the same law decisively excludes the possibility of electonically concluding all the contracts for which it is prescribed by special law to be made in the form of a notarial document (Article 7, paragraph 4).

The Law on Electronic Commerce of the Republic of Srpska also clearly defines the concept of service provider as a legal or natural person providing information society services while the user of services is defined as any legal or natural person who uses the information society services for professional or other purposes (Article 3). In accordance with Article 4 of the Law on Electronic Commerce of the Republic of Srpska, certain general data must be provided by the service provider, including: name and surname or service provider's firm, headquarters or address of the service provider, other data on the service provider on the basis of which the user can quickly and easily communicate with him, including an electronic address through which direct contact can be obtained, the number of the court register to which the service provider is registered, and the details of the registry, details of the competent authority, if the activity of the service provider is subject to supervision, specific registered activities or professions (eg professional institution where the service provider is registered, professional name and country that has approved it, and instructions on professional rules in the country in which the activity is performed and the place of their availability), tax number if the service provider is subject to the payment of the value added tax (Article 4). Furthermore, Article 10 of the Law requires the service providers to clearly state the various technical steps to be taken in order to conclude the contract, such as: procedures that follow in the contract award procedure, contractual provisions, general business conditions if they are an integral part of the contract, languages on which contracts can be concluded, then codes of conduct according to which service providers must act and information on how these codes can be reviewed electronically.

The Law on Electronic Commerce of the Republic of Srpska makes a distinction between the concept of users of services and consumers. Namely, according to the Law on Electronic Commerce of the Republic of Srpska, the consumer is any natural person who enters a legal business on the market for purposes not intended for his occupation or his business activity or entrepreneurial activity, in accordance with the provisions of a special law (Article 3). It should be noted here that according to the Consumer Protection Law of the Republic of Srpska, the term consumer refers to any natural person who purchases, orders, acquires and uses products, but also services (Article 2). In other words, the Consumer Protection Act of the Republic of Srpska makes no distinction between services and products, when defining the concept of consumers. As the Law on Electronic Commerce of the Republic of Srpska makes a clear distinction between the concept of users of services and the concept of consumers, it is concluded that the concept of consumers in the Law on Electronic Commerce of the Republic of Srpska is not in accordance with the concept of consumers in the Consumer Protection Law of the Republic of Srpska.

Furthermore, in 2015, the National Assembly of the Republic of Srpska adopted the Law on Electronic Signature of the Republic of Srpska. According to the aforementioned law, the electronic signature is a set of data in electronic form that is associated or logically connected to other data in electronic form and which serve to identify the signatories and the authenticity of the signed electronic document (Article 3).

Specifically, this law has established a legal framework for electronic signatures and certain certification services to ensure the proper functioning of the Republic of Srpska market. Taking into account the purpose of this law, it should be noted that it does not cover aspects relating to the conclusion and validity of contracts concluded electronically, since the same material is left to the Law on Electronic Commerce of the Republic of Srpska. Also, Article 2 of the Law on Electronic Signature of the Republic of Srpska contains a complete list of definitions, which again relates strictly to an electronic signature. It is interesting that the Law on Electronic Signature of the Republic of Srpska, and probably by virtue of the EU Electronic Signature Directive, makes a distinction between a qualified electronic signature and an electronic signature. According to the law, a qualified electronic signature is an electronic signature that is uniquely linked to a signatory, capable of identifying the signer, created by the use of means which the signatory can retain under his sole control and linked to the data to which it relates in such a way that any subsequent change of data can be detected (Articles 3 and 4). Finally, according to the Law on Electronic Signature of the Republic of Srpska, electronic signature is considered legally valid and allowed to use it in court and other proceedings, and hence its validity can not be challenged in court and other proceedings solely on the grounds that it is in electronic form (Article 6).

For the electronic contracting in the Republic of Srpska, the Law on Trade of the Republic of Srpska is of importance. This law was adopted in 2007 and it regulates, among other things, the conditions for conducting trade, the forms of trade, as well as the conditions for

ZAKLJUČAK

Imajući u vidu sve gorenavedeno, nije teško zaključiti da pozitivnom zakonodavstvu Republike Srpske nije strano elektronsko ugovaranje unutar tržišta Republike Srpske. Zakon o elektronskom poslovanju Republike Srpske uspostavlja pravni okvir za elektronsko poslovanje i time je omogućena pravna sigurnost i za poslovne subjekte, ali i za potrošače. Naime, istim zakonom su harmonizovana pravila u pitanjima transparentnosti komercijalnih komunikacija i informacija, elektronskih ugovora i sl. Sa druge strane, Zakon o elektronskom potpisu uspostavio je pravni okvir za elektronske potpise i određene certifikacione usluge, a kako bi se osiguralo pravilno funkcionisanje tržišta Republike Srpske. Zajedno, ova dva zakona utvrdila su osnovna pravila koja olakšavaju pružanje i korištenje usluga u elektronskom formatu, ali i elektronskim putem na teritoriji Republike Srpske. Međutim, iako Republika Srpska, sa važećim propisima, predstavlja pozitivno tlo za vrlo aktivno razvijanje elektronskog ugovaranja i elektronske trgovine, čini se da su ovi zakoni samo „slovo na papiru“. Ovo iz razloga što, iako su zakoni usvojeni prije nekoliko godina, još nisu zaživjeli u praksi. Takođe, u Republici Srpskoj još uvijek ne postoji zakon koji eksplicitno reguliše status veb-sajtova ili koji elementi treba da postoje da bi se određena veb-lokacija mogla kvalifikovati kao ponuda za potrošače. Takođe, Zakon o elektronskom poslovanju i Zakon o elektronskom potpisu Republike Srpske propustili su da regulišu pitanje dejstva u odnosu na tržišta van granica Republike Srpske.

U zaključku, digitalizacija Republike Srpske, pa samim tim i realna primjena zakona koji omogućavaju nesmetano elektronsko ugovaranje, od velikog je značaja. Ovo ne samo zbog pravilnog funkcionisanja tržišta Republike Srpske već zato što je današnje moderno društvo uveliko pogođeno razvojem globalnog tržišta. Takođe, za Republiku Srpsku bitno je da prati trendove zemalja iz okruženja. Široko rasprostranjena upotreba elektronske trgovine, može samo da poboljša funkcionisanje tržišta Republike Srpske, ali i unaprijedi njene odnose sa drugim zamljama u svijetu. Stoga, osiguranje da su elektronski ugovori punovažni, kao i da su potrošači sigurni u primjenjivosti takvih ugovora, treba da bude jedan od budućih ciljeva unutar Republike Srpske.

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conducting trade services on the territory of the Republic of Srpska (Article 1). In addition, this law recognizes the concept of distance selling as one of the types of trading allowed on the Republic of Srpska market (Article 8). This law also defines the concept of distance trade as an exclusive retail trade. However, according to the Law on Trade of the Republic of Srpska, the provision of services to consumers organized by the trader using the means of communication between physically distant persons is considered as a trade (Article 8). Also, as is the case with the Consumer Protection Law of the Republic of Srpska, it does not make a distinction between services and products in terms of a trade transaction, unlike the Law on Electronic Commerce of the Republic of Srpska.

CONCLUSION

Taking into account all the above, it is not difficult to conclude that electronic contracting is not unknown to the positive legislation of the Republic of Srpska within the the Republic of Srpska market. The Law on Electronic Commerce of the Republic of Srpska establishes a legal framework for electronic commerce, thus providing legal security for both business entities and consumers. Namely, the same law harmonized the rules of transparency of commercial communications and information, electronic contracts, etc. On the other hand, the Law on Electronic Signature has established a legal framework for electronic signatures and certain certification services, in order to ensure the proper functioning of the Republic of Srpska market.Together these two laws have established the basic rules that facilitate the provision and use of services in electronic format, but also electronically on the territory of the Republic of Srpska. However, although the Republic of Srpska, with the current regulations, represents a positive ground for very active development of electronic contracting and e-commerce, it appears that these laws are only a „letter on paper". This is because, although these laws were adopted a few years ago, they have not yet come to life in practice. Also, in the Republic of Srpska, there is still no law that explicitly regulates the status of websites or which elements should exist in order for a particular website to qualify as a supplier to consumers. Also, the Law on Electronic Commerce and the Law on Electronic Signature of the Republic of Srpska failed to regulate the issue of action in relation to the markets outside the Republic of Srpska borders.

In conclusion, the digitization of the Republic of Srpska, and thus the real implementation of laws that enable easy electronic contracting is of great importance. This is not only because of the proper functioning of the Republic of Srpska market, but because today's modern society is greatly affected by the development of the global market. It is also important for the Republic of Srpska to monitor the trends of the countries in the region. The widespread use of electronic commerce can only improve the functioning of the Republic of Srpska market, but also improve its relations with other countries in the world. Therefore, the goal of ensuring that electronic contracts are valid and that consumers are sure about the applicability of such contracts, should be one of the future goals in the Republic of Srpska.

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