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ELECTRONIC SIGNING OF SALE AGREEMENT - THE CASE OF REPUBLIC OF MACEDONIA

*Orgio emendi vendetique a permutationibus coepit,
olim Enim non ita erat nummus -Paulus****

Abstract

The paper focuses on e-commerce and electronic signature of agreements generally, and specifically in Republic of Macedonia. It goes through the main legal framework, approaching this question more theoretically, but also this paper gives insights from the practical implication by presenting results from a survey done in Macedonia with small, medium and large companies operating in the country. In the introductory part, the paper gives an overview of the historical development of the sales agreements in Republic of Macedonia. The paper pays a particular attention to the legal framework of sales agreements in Macedonia, by citing important legal acts and explaining their significance. Electronic signing and electronic contracting are presented in separate sections in the paper, for the purpose of clear distinction between these two questions. The empirical study conducted in the paper plays a major part where a survey and the results of the survey of the business through Macedonia are presented. As a conclusion, the paper findings clearly state that a large number of Macedo-

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*** Borkovski, E. Plesis, P., Roman law- Oxford university press, 2005 pg.261 - *Purchase and sale originated from the exchange, because once there was no money.*

nian citizens and legal entities can benefit from the century of Internet technology and there is a necessity for a change, modernization and adaptation of the legal provisions, ranging from the domestic legislation, and consequently the introduction and the adaptation of the international legislation.

Keywords: Trade; e-commerce; electronic signature; Republic of Macedonia; sale agreement.

JEL Classification: K. Law and Economics, K12 Contract Law

Introduction

The sales agreement (*emptio venditio*) from its appearance, which is directly linked with the appearance of the commodity production, to today is a central and most important agreement in the supply of goods. The historical development of the sales agreement is based on the Roman law. In the past, the Law on obligations enacted in 2001¹ with changes and amendments was a basic legal regulator of signing of the sales agreement. With country's European Union (EU) candidate status and the requirements of implementation of certain rules and regulations, the law was amended several times in accordance with the recommendations from the EU. According to those recommendations in country's legal system a lot of changes and were adopted new laws, consequently the current legal framework is composed of the Law on Consumer Protection², Law on Electronic Commerce³, followed by formation of certain agencies for their implementation, monitoring and sanctioning of their use. As a country that tends to have a bigger economic development we are parties to several international conventions⁴ that serve as legal regulation of those international agreements, whether they are concluded by electronic way or not⁵.

¹ Official Gazette of RM no. 18/2001, 4/2002, 5/003, 161/09

² Official Gazette of RM no 38/2004,77/07; 103/08; 148/2011

³ Official Gazette of RM no 133/2007; 17/2011;

⁴ Bendevski, T. Characteristics and specific solutions of the Convention on Contracts for the International Sale of Goods, Legal journal "Lawyer", 2007, Skopje.

⁵ Convention on the International Sale of Goods of the United Nations, United nations publication, New York, 2010

1. SALES AGREEMENTS IN THE REPUBLIC OF MACEDONIA

The Law on Obligations, entered into force on 13.01.2001, was adopted based on the Obligations Law, which was enacted in the former SFRY in 1978 and in the territory of Macedonia was applied for more than 22 years.⁶ In terms of the topic of this work special importance has the second part of the law entitled “Agreements” that regulates the typical and the most common agreements that arise in the legal practice, and among them is also the principal agreement for sale. The art. 444 paragraph 1 and 2 states that “With the sales agreement the seller is obligated to deliver to the buyer the subject of sale so that the customer acquires the right of ownership and the buyer agrees to pay the seller’s price.” and “The seller of some right is obliged to transfer the rights sold to the buyer and when performing this right, the buyer has the right to keep the subject of the agreement and its handing.” According to this article this law suggests that a formulation of an agreement is obligatory - a legal agreement, whereby only basic essential rights and obligations of the seller and buyer are provided. Under this formulation, sales agreement is a “consensus, mutual - binding, causal, and generally informal agreement and also, generally concluded as the main agreement. Rarely occurs that it can be concluded as accessory agreement to another agreement.”⁷

The provisions of the Law on Obligations are mainly formulated for sale of movable subjects, and only a small number of provisions are related to the trade of real-estate. The performed research concludes that the electronic signing of the sales agreement under national regulations is possible only for mobile subjects. Electronic signing is generally defined in the Law on obligations appears as *lex generalis* and the laws that are regulating in more detail the material for electronic signing of the sales agreement are *lex specialis*.

2. ELECTRONIC SIGNING OF AN AGREEMENT AND E-COMMERCE

The development of the information technology enabled rapid expansion of the business around the world, thus also enabling no trade barriers or boundaries. The market of products and services, as well as the opportunities

⁶ Chavdar, K. Commentary on the law of Obligation Relations – „Akademik,, Skopje 2010, p.36

⁷ Chavdar, K.: Trade Law, University American College Skopje, Skopje, 2011, p. 279

for fast obtaining usable information allows manufacturers and all other business to expand their business worldwide.

Electronic commerce (e-commerce /e-business) allows a completely new, revolutionary approach to conducting business. The best and the most effective way that managers can improve performance and improve the performance of the company is through the implementation of new technologies and engage in electronic commerce.⁸ Electronic commerce is an expression that contains two terms. The first term “electronic” refers to asset (medium) through which the action is executed. An e-commerce trading would go through any of these means (media): phone, fax, telex, internet, intranet, ect. Unlike this broad understanding of the term “electronic”, the second, includes only transactions that are conducted online, or through the use of the Internet as a medium.⁹ An indirect electronic commerce involves electronic ordering (purchase) of goods that have a material form, must be physically delivered and that depend on numerous external factors, such as the transport system and postal services.¹⁰ Direct e-commerce means electronic ordering, payment and delivery of intangible (untouchable, digital) goods and services, such as for example computer programs or entertainment (music, movies, books). From the above, we can draw a definition as follows: *The term e-commerce refers to transactions that are conducted online, and exclusively through the web-based applications for trade (transactions through electronic mail are excluded) and who accept goods and services in the material and the immaterial form.*¹¹

The essence of e-commerce is based on the use of the Internet as a channel. In order to make the order web-based software applications are used. In the e-commerce are included more parties: 1) vendor (online merchant); 2) buyer (customer, client); 3) banks (bank card issuer), and 4) payment processor as an institution that has served portal for payment.

A generally accepted definition of electronic signature is that ... “*Electronic signature is a string of data in electronic form contained or logically associated with other data in electronic form and is intended to determine the authenticity of the data and the identity of the signatory.*” The electronic sig-

⁸ Electronic trading: Electronic business in international trade - Institute for International Political System Beograd, 2007

⁹ Mihajlovski,S.: Virtual e-commerce ,e-business and e- banking is more than reality - Novi Sad, 2010, p.93

¹⁰ ibid

¹¹ Trnavci, G: Zaključenje, punovažnost i dokazivanje elektronskih ugovora: komparativna analiza, Zbornik Pravnog fakulteta Sveučilišta. Rijeka, 2008 v. 30, br. 1, p. 461

nature is a technology whose application in the system of electronic things is possible to verify the authenticity of the signer, to protect the integrity of the transmitted data and the irrevocability of the electronic signature of the date of the message or the document.

3. ELECTRONIC CONTRACTING IN MACEDONIA

Macedonia relatively late adopted the Law on Electronic Commerce.¹² This is due to the fact that Macedonia is getting through a process of harmonization of laws with the EU *acquis communautaire* and the EU Directive on e-commerce adopted in 2000. Partial reason for the delay lies in the fact that there was a negative conflict of jurisdiction over which ministry is responsible to preparing the law. The need to bring this law was even greater, considering that in practice there was e-commerce which included several Macedonian companies, banks, ISPs, and customers whose number increased by day. Working in low-regulation of transactions could easily lead to negative consequences on the actual and potential participants in the e-commerce and general development of e-commerce in the country.

The goal with this law was set to introduce a legal framework for the development of the electronic commerce by providing legal certainty in the business relations. At the same time, the law was supposed to allow the definition of the conditions for security and safety in performing services of the information society (including e-commerce) and the protection of consumers who use such services. The law regulates the basic principles for providing information society services, in particular related to electronic commerce, the responsibilities of providers of information society services, commercial communication and rules concerning the conclusion of contracts in electronic form. The rationale of the law states that it is fully compliant with the EU Directive on e-commerce. The Law does not contain substantive provisions beyond those contained in the Directive. The E-Commerce in Macedonia is regulated by a single legal act. In Macedonia there are other applicable regulations relevant to electronic commerce, such as: 1.) The Law on Electronic Data and Electronic Signature.¹³, 2.) The Law on electronic communications¹⁴, 3.) The Trade Law¹⁵, 4.) The Law

¹² Official Gazette of RM no 133/2007; 17/2011;

¹³ Official Gazette of RM – no 98/08: 34/2001 ; 148/2011

¹⁴ Official Gazette of RM – no 13/2005;14/2007; 55/2007; 98/2008; 83/10; 13/12; 59/12 ;23/13

¹⁵ Official Gazette of RM – no 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015,

on Consumer Protection ¹⁶, 5.) Payment Operations Law and 6.) The Penalty code. Some of these Provisions complement or overlap with the provisions of the Law on Electronic Commerce.

The agreements may be made electronically, or in electronic form. The offer and the acceptance of the offer may be provided electronically or in electronic form. When the validity and the conclusion of the agreement requires the signature of the person and this is met by an electronic message signed with an electronic signature in accordance with appropriate regulations. The providers are obliged to deliver service before the conclusion of the contract, in a clear, understandable and straightforward way providing information in relations to contacting procedures, content and other technical issues.

The service provider should give all relevant codes of good practice and the information on how these codes can be used electronically. The provisions contained in the agreements in electronic form must be available to the users of the service in a way that it will allow to store and reproduce them. The recipient of the service when placing an order electronically shall ask the service provider to submit a confirmation for the order in a separate e-mail without delay and electronically. The order and the confirmation shall be deemed as received when they are accessible for the parties. The offer and the acceptance shall be deemed received when they become accessible for the parties.

The provisions of the trade and electronic signing of agreement are not valid and the conclusion of electronic agreements is not permitted if they are governed by the regulations for family and inheritance; create or transfer rights of real property, except the rental rights; subject to law which requires the involvement of courts, notaries or similar institutions; are aimed at giving guarantee and for further security, taken by persons that are acting for purposes outside their trade, business or profession.¹⁷

4. RESULTS FROM EMPIRICAL RESEARCH

A survey of the businesses throughout the country, of different sizes or of any kind of enterprise, small, medium and big as conducted in order to receive more empirical and practical insights. Responses has been received from a total of 51 business entities and we consider that we can obtain relevant data.

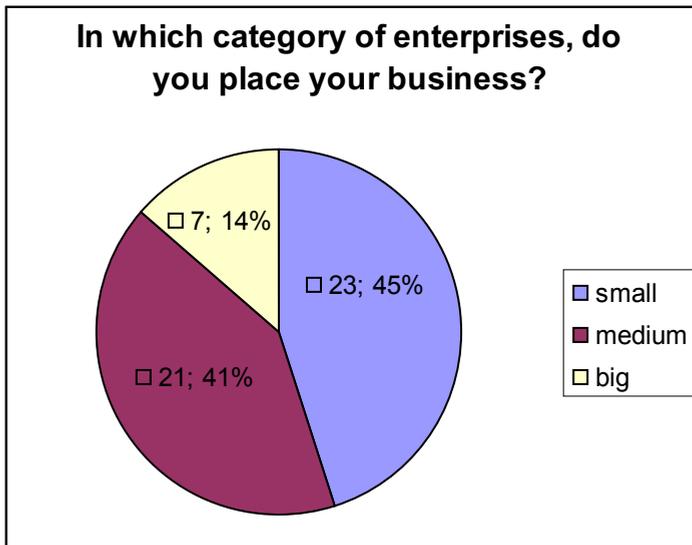
192/2015 ; 6/2016

¹⁶ Official Gazette of RM – no 38/3004; 77/07; 103/08; 148/2011

¹⁷ Mihajlovski,S.: Virtual e-commerce ,e-business and e- banking is more than reality - Novi Sad, 2010, p.75

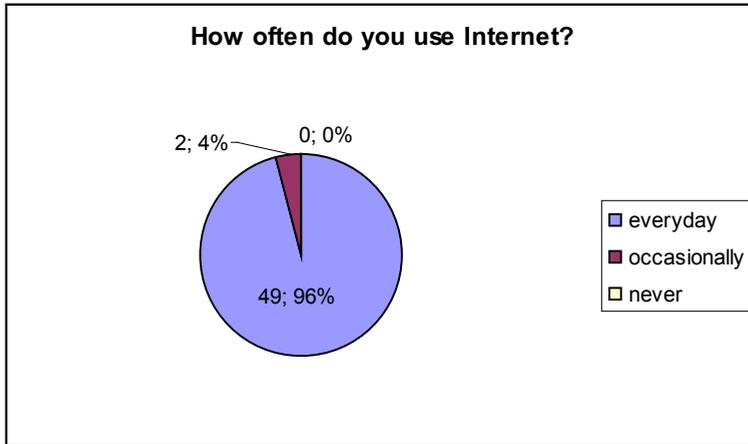
The first question revealed that 23 small companies, 21 medium-sized companies and 7 large companies responded to the survey (see Table 1).

Table 1: Question – In which category of enterprises do you place your business?



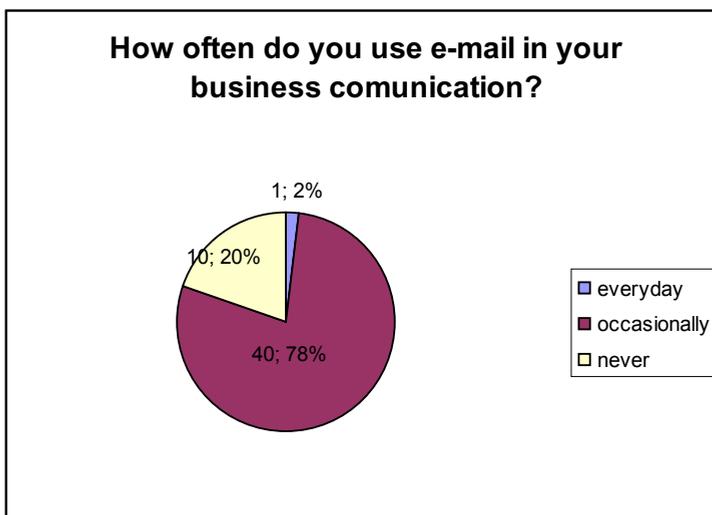
Respondents were asked to indicate how often do they use internet for daily work and regarding this issue, and shown below in table and graph, 49 companies responded that during the execution of the daily activities they are using the Internet or it would represent 96%, there are no business entity that are not using internet, and only 2 business subjects said that they occasionally use the internet in the realization of their daily activities. Given the fact that the surveyed in this research are using the Internet during the execution of the daily activities, is showing the “dependence” of the Internet to all companies.

Table 2: Question - How often do you use internet?



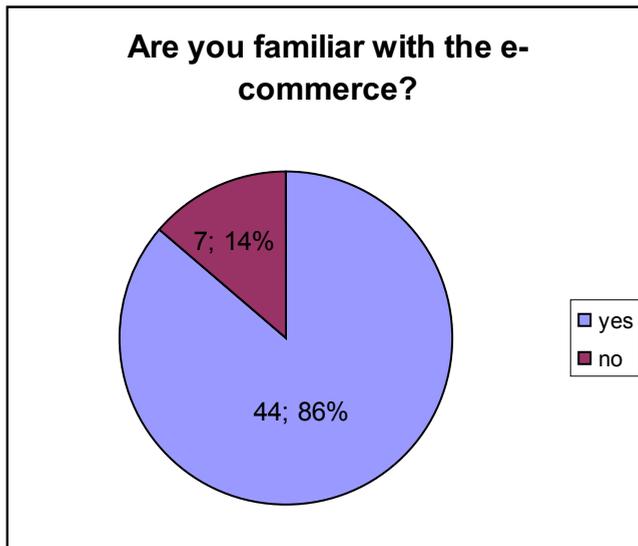
When asked whether in the business correspondence they are using e-mail, 40 business subjects responded that in their business correspondence they are using e-mail, which represents 78% and 10 business subjects responded that they use email occasionally or it would represent 20% of the total respondents while only one business entity replied that does not use e-mail.

Table 3: Question – How often do you use e-mail in your business communication?



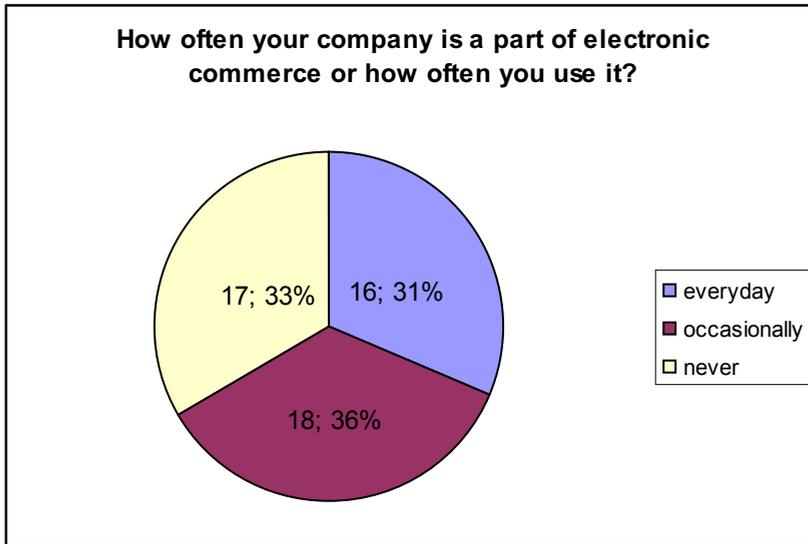
To the question on whether the businesses are familiar with the e-commerce there is a high percentage or 86% or 44 respondents said yes. Only 7 respondents or 14% responded negatively. According to the responses we can realize that the electronic commerce is no longer an unknown term, which is very different from the results observed from the studies done several years ago.

Table 4: Question – Are you familiar with the e-commerce?



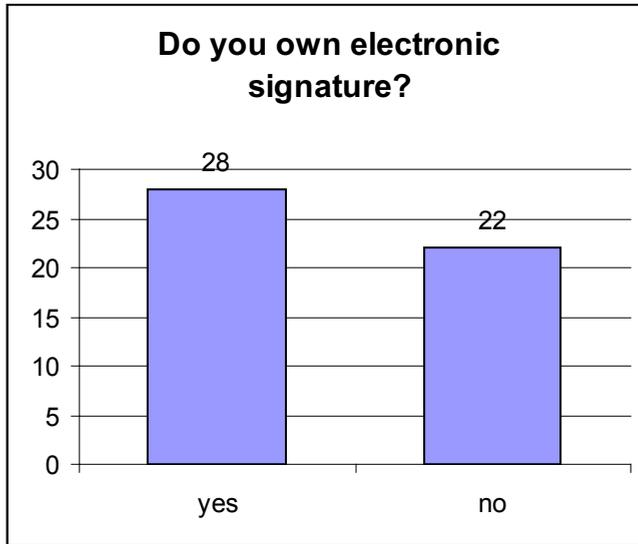
Following the previous question which clearly indicates that the term e-commerce is not something unknown, but in terms of how it is applied in the survey we have inserted the question “How often your company is a part of the electronic commerce, or how often you use it?” The result is that 32% of the respondents use the e-commerce on daily basis, 18 businesses or 35% said that they occasionally use the electronic commerce, and 17 respondents or 33% of the subjects answered that they don’t use the e-commerce. Seeing the answer to this question we can conclude that although the e-commerce is not an unknown for the Macedonian companies, they still do not have 100% direct application as is the case with the use of the email in the business correspondence.

Table 5: Question – How often your company is a part of electronic commerce or how often you use it?



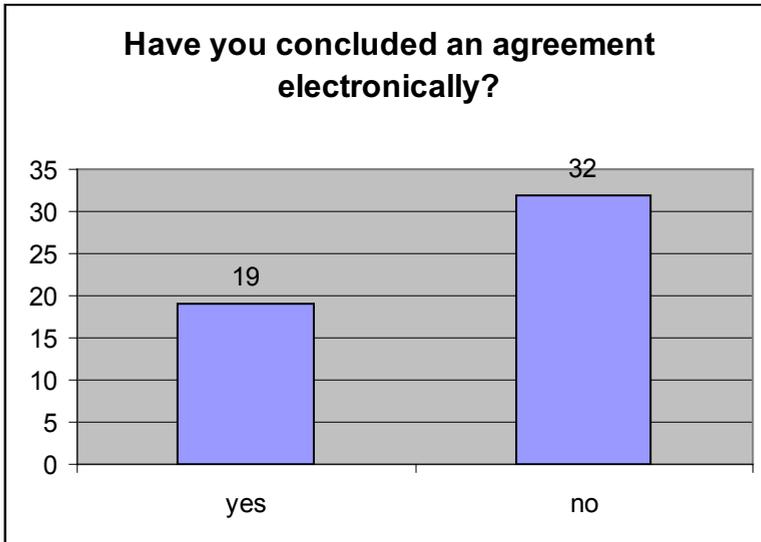
When discussing the topic of electronic business in a company, the question of whether these companies have an electronic signature should be posed. To this question 28 business subjects responded they have own electronic signature and 22 of the respondents said they do not have an electronic signature. The summarized data of the answer to this question suggests that the business subjects in the Macedonia are still in the process of introducing the electronic communication and e-banking.

Table 6: Question – Do you own electronic signature?



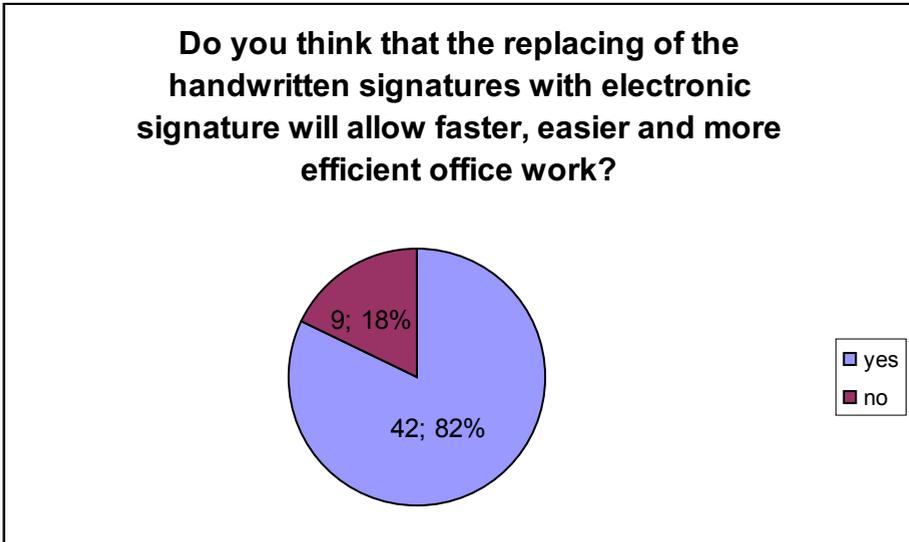
To the question “Have you concluded an agreement electronically” 19 business subjects answered that they concluded agreement electronically, and 32 companies had not yet contracted electronically so the conclusion of this result is that the inclusion of agreement in the electronic business communication is still at the beginning of its development.

Table 7: Question – Have you concluded an agreement electronically?



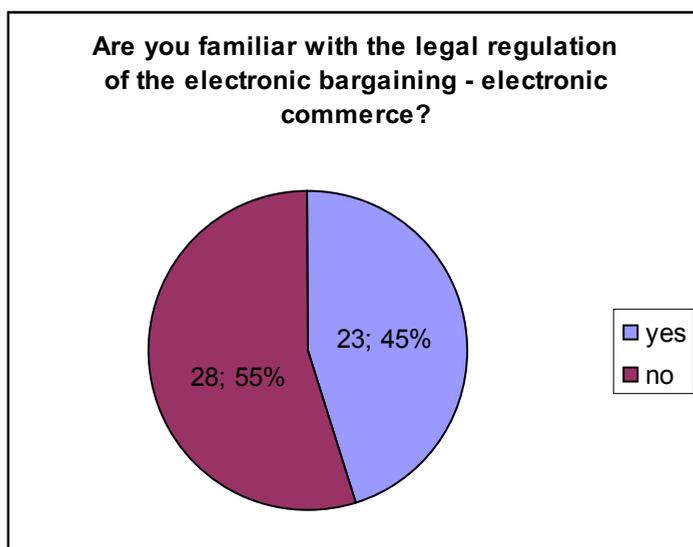
When asked if the replacement of the handwritten signatures with electronic ones is faster, easier and more efficient, 82% or 42 businesses answered affirmatively that they thought that replacing the handwritten signature with electronic signature will enable positive and effective change in the business, but only 9 of the surveyed entities or 18% responded negative. Summing up these data we can infer that the business subjects are not skeptical of the use of the electronic communications and they tend to daily mass introduction and believe in the advantages that are provided by the electronic communication.

Table 8: Question – Do you think that the replacing of the handwritten signatures with electronic signature will allow faster, easier and more efficient office work?



The respondents were also asked whether they are familiar with the legal regulation of the electronic bargaining – electronic commerce. To this question 23 respondents or 45% of the business subjects said yes, while 28 respondents or 55% responded negatively or that are not familiar with the legislation of the e-contracting or e-commerce. The answer to this question leads us to the conclude that the lack of legal regulations, and also the fear of having gaps may be one reason why we are still a step back in terms of the full implementation of the electronic business communication.

Table 9: Question – Are you familiar with the legal regulation of the electronic bargaining – electronic commerce?

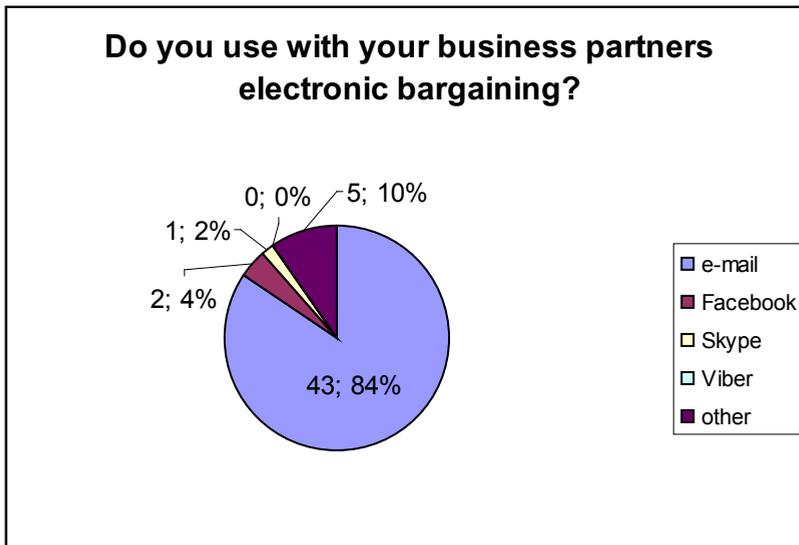


To the question on the frequency of sales agreements conclusion outside the country few answers were offered, and 12 respondents or 24% said they rarely enter into agreements with business partners outside the R. Of Macedonia, 18 respondents or 35% of the subjects responded that they occasionally sign this type of agreements, and 5 respondents or 10% responded that they daily conclude agreements with international business partners and 16 business entities or 31% answered that they haven't contracted with business partners outside Macedonia. The results of the answers to this question suggest that this survey was conducted on companies that still keep their business in a closed circle that is only within the Republic of Macedonia, so maybe that's why they still not apply or did not apply in high volume the electronic communication. We think, and we found out that those companies that have their business spread beyond the borders of R. Of Macedonia significantly are using the electronic contracting and electronic commerce.

The question "Do you use with your business partners electronic bargaining?" was included in order to have insights on the way how the fostering of the electronic agreements i.e. their creation is done. To this question we got almost the same responses from the second question that was set or 43 respondents said that the electronic business communication is conducted through

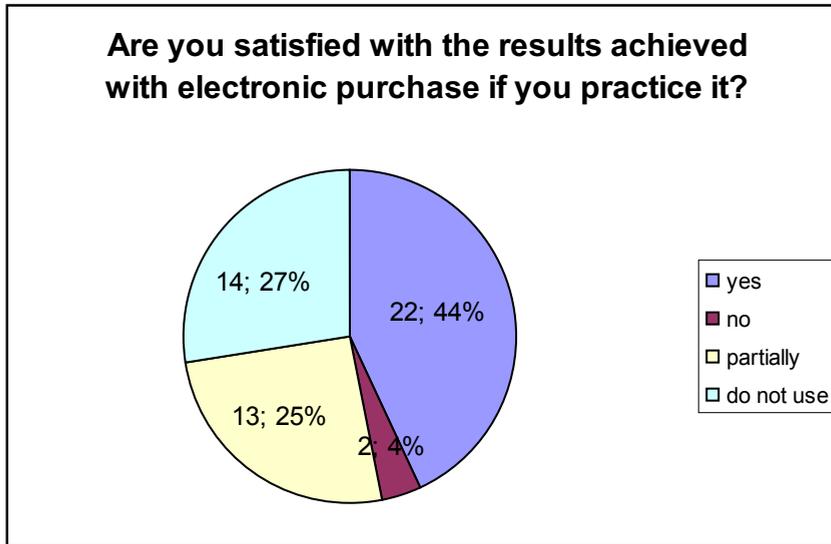
the use of email, and the remaining small percentage use the social networks, Skype, Viber, Facebook or other electronic communication.

Table 10: Question – Do you use with your business partners electronic bargaining?



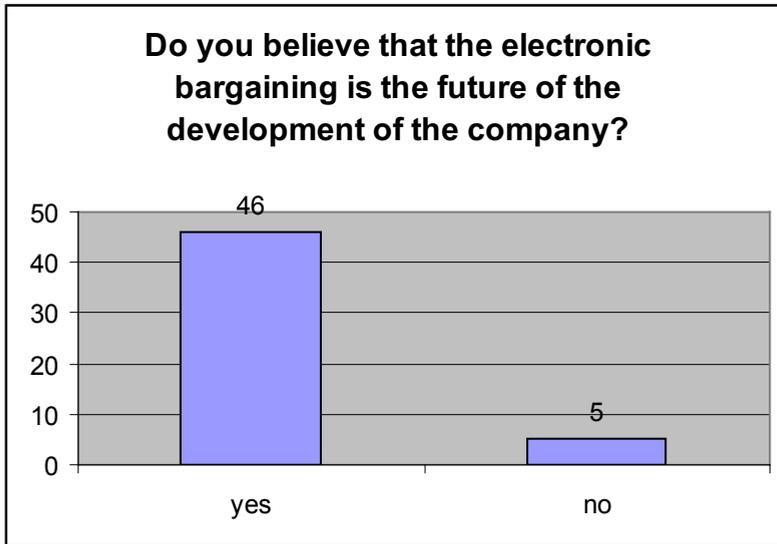
To this question on the satisfaction with the results achieved with electronic purchase if practiced, 22 or 43% of the surveyed business subjects said yes, a very small percentage that is 4% or 2 business entities are not satisfied, 13 or 26% of the respondents are partially satisfied, while 14 respondents or 27% still don't use electronic purchase. We have perceived that the percentage of companies that entered in the electronic purchase are satisfied with the results they have achieved on this kind of purchase, and in direct conversation with some of them we got the information that if earlier they were concluding 5 to 10 agreements per day in this way in one day they may conclude up to 50 agreements, with which also dramatically grows their profit, and they gain efficient and effective business.

Table 11: Question – Are you satisfied with the results achieved with electronic purchase if you practice it?



Respondents were asked whether they believe that the electronic bargaining is the future of the development of the company, 46 of the respondents answered affirmatively that they believe that the development of their business is perceived in the daily use of the electronic bargaining. Only 5 business subjects responded negatively or in my opinion they are still skeptical or have not yet used the electronic contracting.

Table 12: Question – Do you believe that the electronic bargaining is the future of the development of the company?



Conclusion

The everyday development of the society and the increasing of the application of the technology in every sphere of the human life caused modernization and increasing of the technological development. The sales agreement is one of the most important contracts in the daily trading, so over time with the development of the technology it is up to date with the changes and the needs of the new Internet era. So the sales agreement through the electronic commerce, electronic contracting and the electronic signature, follows the modern trends of development of the business.

The electronic commerce (e-commerce/e-business) allows a completely new, revolutionary approach to conducting of the business. The best and most effective way in which the managers can improve the performance of the company is through the implementation of new technologies and engage in the electronic commerce. The implementation and the introduction of new rules and principles in the business since the introduction of the same until today is subject of daily changes, criticism and skepticism when introducing them. But following the statistics and research related to this issue the implementation of

electronic commerce we came across a very positive attitude. This affirmed the thesis that the modern way of trade and sales agreement have seen through the introduction of e-commerce, a large number of Macedonian citizens and legal entities can benefit from the century of Internet technology.

Consequently, this changes the way of doing business, inserting the electronic communication in every segment. So indisputable is the fact that the large corporations need to cut the high cost of contracting “Face to Face” and the introduction of e-contracts certified with the electronic signatures.

All of this is news to the country and has a number of small companies that are skeptical in the introduction of full electronic communication in the daily business operations. In the preparation of work of a great benefit was the survey entitled “Representation of the electronic contracting and sales through Internet in the daily trading in Republic of Macedonia” as well as interviews and discussions with people that are executing their trade strictly through Internet. The overall conclusion is that the Internet brought a new revolution in every aspect of the human life, but mostly in the business. Consciously or sub-consciously as we need amortization, modernization and regular maintenance of the objects, materials and office supplies, it is also necessary a change, modernization and adaptation of the legal provisions, ranging from the domestic legislation, and consequently the introduction and the adaptation of the international legislation. As a country with candidate member status in the European Union over the past years we have adopted and embraced many directives, instructions and prepared new laws, organizations, councils and etc.

References:

1. Bendeovski, T., Characteristics and specific solutions of the Convention on Contracts for the International Sale of Goods - Legal journal “Lawyer, Skopje, 2017
2. Borkovski, E., Plesis, P., Roman law- Oxford university press, 2005
3. Chavdar, K., Trade law, University American College Skopje, Skopje, 2011
4. Chavdar, K. Commentary on the law of Obligation Relations, Akademik Skopje, 2012
5. Convention on the International Sale of Goods of the United Nations (2010) – United nations publication New York

6. Electronic trading : Electronic business in international trade, Institute for International Political System Beograd, 2007
7. <http://e-biznisi.net>
8. http://www.mio.gov.mk/files/pdf/dokumenti/Analiza_e-trgovija_29.11.10.pdf
9. http://www.mio.gov.mk/files/pdf/dokumenti/Analiza_e-trgovija_29.11.10.pdf
10. Mihajlovski, S., Virtual e-commerce, e-business and e-banking is more than reality, Novi Sad, 2010
11. Douglas, J.W., Problems and Materials on Commercial Law, eight edition, Aspen publishers, USA, 2005
12. Official Gazette of RM – no 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015 ; 6/2016
13. Official Gazette of RM – no 38/3004; 77/07; 103/08; 148/2011
14. Official Gazette of RM no 133/2007; 17/2011;
15. Official Gazette of RM no 38/2004,77/07; 103/08; 148/2011
16. Official Gazette of RM no. 18/2001, 4/2002, 5/003, 161/09
17. Trnavci,G. Zaključenje, punovažnost i dokazivanje elektronskih ugovora: komparativna analiza, Zbornik Pravnog fakulteta Sveučilišta, Rijeka, 2008