

FEATURES OF CONCLUSION OF ELECTRONIC CONTRACTS

The modern world cannot be imagined without the Internet. Since national legislation is constantly being improved along with the rapid development of Ukraine, as of today, many special legislative acts regulate contracts concluded on the Internet. This institution of law is relatively new, in connection with which domestic legislation on this issue is somewhat imperfect and requires certain changes for more effective protection of the rights and interests of the citizens of our country.

Let's consider the essential conditions of the electronic contract. The electronic contract is concluded and executed in the manner prescribed by the Civil Code of Ukraine [1] and the Economic Code of Ukraine, as well as other legal acts, depending on the type of goods or services.

An electronic contract, in addition to the essential conditions defined by the Civil Code of Ukraine for the corresponding type of contract, may contain information about:

- technology (procedure) of conclusion of the contract;
- the procedure for creating and imposing electronic signatures by the parties to the contract;
- the possibility and procedure of making changes to the terms of the contract;
- the method and procedure for accepting an offer to conclude an electronic contract (acceptance);
- the procedure for exchanging electronic messages and information between the parties during their performance of their obligations;
- the method of storing and presenting electronic documents, messages, other information in electronic form and the conditions for accessing them;
- the possibility of choosing the language used during the conclusion and execution of the contract;
- other information.

Participants in relations in the field of electronic commerce, according to the definition of article 6 of the Law of Ukraine “On Electronic Commerce”, are the main and auxiliary participants [2].

The former include subjects of electronic commerce: seller (contractor, supplier) and buyer (customer, consumer) of goods, works, and services. In turn, the second should include providers of intermediate services in the information field, bodies of state power and local self-government (in terms of their performance of state or local self-government functions).

Execution of the deed by means of electronic means of communication in itself should not affect its validity.

In this regard, the doctrine distinguishes the so-called principle of legal force of an electronic document, electronic transactions and an electronic contract, which consists in the fact that a transaction, regardless of the form and method of its execution, cannot be deprived of legal force, validity or legal protection only on the basis of on the basis that it is concluded in the form of a data report.

The principle of legal force of an electronic document, electronic transactions and an electronic contract should have general application. Its scope should not be limited to issues of evidence [3].

Consider the distinction between an offer and an invitation to an offer when concluding electronic contracts.

The offer must contain all the essential terms of the future contract, and that it must express the intention of the offeror to be bound by its terms in case of acceptance.

At the same time, there is a "problem of public offer" in the legal doctrine, which directly concerns the issues of concluding contracts using electronic means of communication. According to which the offer must be addressed to a specific person (or persons), and not addressed to an indefinite circle of persons. Otherwise, the offer to conclude a contract will not be considered an offer, but an invitation to an offer, which significantly affects the determination of the moment of conclusion of the contract.

The problem of introducing a special rule for the ratio of offers and invitations to offers when concluding electronic contracts was resolved in article 641 of the Civil Code of Ukraine. According to the provisions of this article, an unaddressed offer to conclude a contract is not an offer. The Civil Code of Ukraine provides for two exceptions to this rule: the first exception is that an offer addressed to an unspecified circle of persons is considered an offer if it explicitly states this (part 2 of article 641 of the Civil Code of Ukraine).

The offer of goods in advertising, catalogs and other product descriptions addressed to an unspecified circle of persons, if it contains all the essential terms of the contract, is considered an offer (Article 699 of the Civil Code of Ukraine).

A public offer is also considered to be the display of the goods, the demonstration of its samples or the provision of information about it in the places of its sale, except in cases where the seller has clearly determined that the goods are not intended for sale.

However, the Law of Ukraine "On Electronic Commerce" fundamentally changed the rule on the ratio of offers and invitations to make an offer in the context of concluding electronic contracts.

According to Part 4 of Article 11 of the Law of Ukraine “On Electronic Commerce”, an offer to conclude an electronic contract can be made by sending a commercial electronic message, placing an offer (offer) on the Internet or in other information and telecommunication systems, from which it follows that the offer can be exposed for review by any Internet user.

According to Part 2 of Article 8 of the Law of Ukraine “On Electronic Commerce”, the buyer (customer, consumer) of goods, works, services in the field of electronic commerce is called a person who accepts (accepts) another party’s offer to conclude a contract. Therefore, a person who is a seller (performer) of goods (works, services) and who places an ad on a certain website is an offerer.

Acceptance can be given in the following forms: e-mail transfer to the offeror; filling out the offer acceptance form; performing actions that are considered acceptance if the content of such actions is clearly explained in the information system in which such an offer is located and these explanations are logically related to it.

According to the general rule, the acceptance must meet two main requirements: be complete (contain agreement with all the terms of the contract proposed in the offer) and unconditional (not contain new terms and not change the proposed ones).

However, in addition to the content of the acceptance, the form and methods of its expression are also important, especially in countries of continental law, in which special attention is paid to formal requirements, and their non-compliance can sometimes cause the deed to be invalid.

The first and second of the specified forms of acceptance must be signed in accordance with the requirements of the Law.

The popular opinion that an electronic contract can be signed exclusively with an electronic digital signature is not true, since an electronic digital signature (EDS) is only one of the types of electronic signatures.

According to Article 12 of the Law of Ukraine “On Electronic Commerce”, you can sign an electronic transaction using:

- electronic signature (can be displayed as a click on the virtual button “I agree”, “I confirm”, “Yes”, etc.);
- electronic digital signature (the Law of Ukraine “On Electronic Digital Signature” became invalid in connection with the adoption of the Law of Ukraine “On Electronic Trust Services”) [4];
- electronic signature with a one-time identifier (a combination of letters and numbers sent to a mobile phone number or e-mail, which must be entered in the corresponding virtual field later);
- an analogue of a handwritten signature (a facsimile reproduction of a signature using mechanical or other means of copying, another analogue of a handwritten signature) with the written consent of the parties, which must

contain samples of relevant analogues of handwritten signatures (the definition of these signatures is contained in article 3 of the Law of Ukraine “On Electronic Commerce”).

Regarding the third of the specified forms of acceptance, it is worth saying that electronic contracts concluded using this form are the most common type of contracts.

Summarizing the above, it should be noted that, as of today, the main requirements for electronic contracts are legally established, but they require more detail. Different forms of offer and acceptance are considered. It was emphasized that clear and unambiguous requirements regarding the form of the offer and acceptance are of decisive importance for the validity of the electronic transaction.

Therefore, electronic contracts are used in various spheres of legal relations and are regulated by a number of special legislative acts. The considered effective legislative mechanisms are aimed at protecting the rights and legitimate interests of the parties to electronic transactions, but they need to be improved for more effective functioning of this institution of law.

References

1. Civil Code of Ukraine: Law of Ukraine. Code of January 16, 2003 N 435-IV. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

2. On electronic commerce: Law of Ukraine dated September 3, 2015 N 675-VIII. URL: <https://zakon.rada.gov.ua/laws/show/675-19#Text>.

3. United Nations Convention on the Use of Electronic Communications in International Treaties: Convention, International Document dated November 23, 2005. URL: https://zakon.rada.gov.ua/laws/show/995_e71#Text.

4. On electronic trust services: Law of Ukraine dated October 5, 2017 N 2155-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

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LEGAL PROTECTION OF SEMICONDUCTOR PRODUCT ASSEMBLY: PROBLEM ISSUES

In the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [1], norms aimed at the protection of intellectual property rights are fixed. In particular, chapter 9 of subsection IV, which covers 96 of the 486 norms of the Agreement (Articles 157–252), among which subsection 6 of Article 224–227 is separately assigned to such an object of