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## TYPES OF INTERNATIONAL ELECTRONIC CONTRACTS AND AREAS OF THEIR APPLICATION

**Abstract.** The *purpose* of this scientific work is a general study of the main features of international electronic agreements and areas of their application.

**Research methods.** The work is performed using general and special methods of scientific knowledge.

**Results.** Some of the main features of international and electronic agreements are analysed, singled out and characterized. As a result, conclusions about the features of international electronic agreements are made. Some of the main areas of application of international electronic agreements with examples of their actual use are indicated.

**Conclusions.** It is established that although international electronic contracts are a variety of ordinary civil or commercial contracts, they have specific features, including a special procedure for concluding a contract, the need to correctly determine the time of the contract, special requirements for the law applicable to legal relations, features of the content of the agreement, the need for an arbitration clause, the special scope of international (or foreign economic) agreements, and the special composition of their subjects. It is also stated that given the relentless development of everything around us, contracts are gradually evolving into electronic form. This greatly simplifies the interaction between legal entities, “erases” the borders between countries in the commercial sphere, promotes the development of export-import operations in countries. Currently, the most popular areas of application of international electronic contracts are: trade (commercial) sphere, where the most common international agreements concluded in electronic form are contracts of sale, supply, lease; service industry; banking, where the most common contracts are contracts for banking services, for opening and maintaining a bank account, credit and loan agreements, mortgage agreements.

**Key words:** international agreement, electronic agreement, types of international electronic agreements.

### 1. Introduction

Taking into account the rapid development of e-commerce due to the relentless integration of digital technologies in the field of trade, commercial contracts concluded through information and telecommunications systems, i. e., so-called electronic contracts, are becoming increasingly popular. Electronic contracts have gained popularity due to their versatility, non-attachment to place and time, ease of conclusion and the fact that the conclusion of such contracts instead of paper form significantly expands the horizons of cooperation between contractors, even from different places the world.

The use of electronic contracts and information technology in general has led to a significant transformation of business models and the emergence of its virtually new type – e-business. Information technology is not only a way of exchange-

ing information but also a way of interaction between producers and consumers for the further purchase and sale of goods or, for example, the provision of services.

Such contracts are gaining popularity in the field of foreign economic activity because concluding an electronic contract is much easier than concluding a standard paper one, especially when it comes to situations where the counterparties are hundreds or even thousands of kilometres apart. Speaking about the features of international electronic contracts, for a more detailed and specific study, we should consider the features of international contracts and the features of electronic contracts separately, because the combination of their traits actually forms the essence of “international electronic contracts”. Thus, the purpose of this article is to conduct general study of the main features of interna-

tional electronic agreements and areas of their application.

## 2. Main features of the conclusion procedure for the electronic contracts

Ukrainian law interprets an electronic agreement as an agreement between two or more parties aimed at establishing, changing, or terminating civil rights and obligations and is executed in electronic form (Law of Ukraine “On e-commerce” of September 3, 2015 № 675-VIII (Verkhovna Rada of Ukraine, 2015)). Thus, the form of such transactions is electronic, and this leads to many features of such agreements and factors that should be taken into account when concluding them.

Among the features of electronic contracts are usually distinguished:

1. *Special procedure for concluding a contract.* Since electronic contracts are by their nature one of the types of civil contracts, the procedure for concluding them, like any other contract, takes place in several stages. Traditionally, in the science of civil law and, as a consequence, in the legislation of Ukraine, there are two stages of concluding a civil contract – offer and acceptance. Moreover, the place and moment of concluding the contract largely depend on how the offer was made and the acceptance was done, which are also peculiar features that characterize electronic contracts (Filatova, 2017, pp. 65–66).

However, the procedure for concluding an electronic contract still has some particularities compared to the standard procedure. In general, an offer is a proposal to enter into a contract. However, the offer to conclude a contract will not always be considered an offer, it depends primarily on the requirements set out in the legislation of a state. Usually, the offer to conclude a contract should contain everything that will contain the future contract, i. e., it should establish its main features, and, in addition, the offer should reflect the intention to conclude the contract. The term “offer” in the Civil Code of Ukraine (hereinafter – CCU) means a proposal to enter into an agreement that can be made by each party to the agreement (Verkhovna Rada of Ukraine, 2003). The legislator in the CCU immediately provided for the possibility of sending an offer via the Internet, noting in particular that the proposals to enter into a contract are, in particular, documents (information) posted on the Internet, which contain essential terms of the contract and the proposal to enter into a contract with everyone who applies, regardless of the presence in such documents (information) of an electronic signature (Verkhovna Rada of Ukraine, 2003).

At the same time, with the development of e-commerce, there is a problem with situa-

tions where the offer is addressed to an indefinite number of people, such as via the Internet. In this case, the legislator made a reservation in Article 641(2) of the CCU, that “advertising or other proposals addressed to an indefinite number of persons are an invitation to make proposals to conclude a contract, unless otherwise stated in advertising or other proposals” (Verkhovna Rada of Ukraine, 2003). However, even when concluding a contract on the Internet, there are exceptions to the offer. In particular, Article 699 of the CCU, which regulates the specifics of retail contracts, tells us that the offer of goods in advertising, catalogues, and other descriptions of goods addressed to an indefinite number of persons, is a public offer to enter into an agreement, if it contains all the essential terms of the contract. Also, the proposal to enter into a contract (offer) includes the display of the product, display of its samples or providing information about the product (descriptions, catalogues, photos, etc.) at the point of sale, regardless of price and other essential terms of the contract of sale, except when the seller has clearly determined that the product is not intended for sale (Verkhovna Rada of Ukraine, 2003).

As for the relevant legislation of Ukraine on electronic contracts, it should be noted that the Law of Ukraine “On e-commerce” has a slightly different interpretation and understanding of the offer and invitation to make an offer. Pursuant to Article 11(4) of this Law, an offer to enter into an electronic contract (offer) may be made by sending a commercial electronic message, posting an offer on the Internet or other information and communication systems, which actually means that the offer may be placed on any website and addressed to an indefinite circle of people (Verkhovna Rada of Ukraine, 2015).

Thus, in the process of concluding electronic contracts, in fact, there is another possible element – a proposal (or invitation) to make proposals to conclude a contract. This concept significantly affects the definition of another feature of electronic contracts, namely the time of conclusion of the contract.

As for the second component of the procedure for concluding a contract – acceptance, it should generally have two components. The first one – acceptance must be complete, i. e., consent must be given to all proposed terms of the offer. The second is that it must be unconditional, i. e., it must not change the offer and set new conditions. However, given the specifics of electronic contracts, along with the content of the acceptance, it is important to highlight the requirements for its form of expression. As modern technology allows you to sign contracts

with a few “clicks”, there is a lot of controversy about the requirements to the form of acceptance. In addition, if the contract is concluded using information and telecommunication systems, it is important to make it clear to the contractor that the offer or acceptance was sent by a competent person, for example from an official e-mail address, official means of communication or using document exchange services such as “Medok” or “Vchasno”.

2. *The moment of concluding the contract.* As for the moment of concluding the contract, it depends entirely on the successful exchange of messages containing the offer and acceptance. Everything is more or less clear with paper contracts – they are usually considered concluded from the moment of their physical signing by the parties, or from the date specified in the contract itself. But the main problem, that arises when determining the time of conclusion of an electronic contract – determining the time of the exchange of messages. This means determining the time of acceptance of the offer. With the development of new technologies, this issue is becoming important, because a timely offer may not be accepted by the recipient for reasons beyond his control, such as technical problems with the service to which such messages are transmitted. In such cases, as a general rule, the message is considered received, but it is not possible to physically read it. Different theories of determining the moment of the conclusion of the contract lead to disputes between scholars, and require detailed study (Filatova, 2017, pp. 73–74). Domestic legislation in the Article 16 of the Law of Ukraine “On e-commerce” indicates that unless otherwise provided by law or contract, electronic document (notice) is considered sent by the subject of electronic commerce at the time when such document (notice) is transmitted outside of the information system of the entity or the person authorized to send it. Unless otherwise provided by law or contract, an electronic document (notice) is considered received by the subject of electronic commerce at the time when such document (notice) is received by the information and communication system of the subject (Verkhovna Rada of Ukraine, 2015).

As one can see, according to the Ukrainian law, an electronic document (message) is considered to be received even when the document was sent to the recipient’s email address, while it can be sent by the system to the “Spam” folder, which will make it difficult to find him, or will not allow you to get acquainted with him at all.

### 3. Manifestations of the international nature of electronic contracts

As for the features of the “international” component of the concept of “international

electronic agreements”, among the features that characterize international agreements are usually distinguished:

1. *Special requirements for the law to be applied to the legal relationship.* As a general rule, when concluding and determining the content of the agreement, the parties are guided by the law of the country of their choice or subsequent agreement. Problems arise only when the law applicable to the specific legal relationship of the parties is not defined by them. National law on the procedure for choosing the law applicable to legal relations in the absence of agreement of such law by the parties is defined in Article 32 of the Law of Ukraine “On private international law”, which provides that in the absence of a choice of law, the law that is most closely connected to the transaction applies to the content of the transaction. Unless otherwise provided for or arising from the terms, substance or circumstances of the case, the transaction is more closely connected to the law of the State in which the party, who must do the performance, which is crucial for the content of the transaction, has its place of residence or location (Verkhovna Rada of Ukraine, 2005).

The concepts of “closest connection with the transaction” and “the party, who must perform the execution, which is crucial for the content of the transaction” is specified by the legislator in Article 44 of the same Law, which actually states which party is considered a party of such performance, crucial for the content of the transaction and the criteria for determining the law that has the closest connection with the transaction (Verkhovna Rada of Ukraine, 2005).

2. *Features of the content of the contract.* Along with the usual components of the contract, such as: name, contract number, date and place of its conclusion, name of the parties, subject of the contract (and its quantitative and qualitative characteristics), term of the contract, price and total contract amount, payment terms, the order of acceptance-transfer of works, services or goods, the procedure for filing complaints, liability of the parties, force majeure, legal addresses of the parties, their payment and postal details, an extremely important component of such agreements is the arbitration clause, where the parties must choose an arbitration institution which will resolve the dispute, the legislation that will govern the dispute, venue, composition, language of arbitration procedure. The arbitration clause must be binding and not contrary to other terms of the contract.

3. *The special scope* of international (or foreign economic) agreements and the special

composition of their subjects (Saksonov, 2012, pp. 254–259).

Thus, analysing some of the main features of international and electronic agreements, we can conclude that the main features of international electronic agreements are a special procedure for concluding a contract, the need to correctly determine the time of the contract, special requirements for the law applicable to the relationship, the presence of an arbitration clause, the special scope of international (or foreign economic) agreements and the special composition of their subjects.

#### **4. The current state of distribution of electronic forms of transactions in the world economy**

After describing the features of international electronic contracts, it is worth noting the main areas of the application of the latter. Today it is difficult to imagine the sphere of human life, which would not be transformed under the influence of general scientific and technological progress, in particular the commercial sphere, banking, services, insurance, and others.

In our opinion, the most popular field of application of electronic international agreements is the commercial sphere. World trade is constantly evolving because there will be no growth without its development. Moreover, a significant part of the economy of any country is export-import operations, and with the development of information and telecommunications systems, the implementation of export-import operations on the basis of relevant agreements becomes easier and, consequently, more popular. Obviously, it is quite convenient to be able to buy French perfume, Italian wine, or an American car while physically you are in front of a laptop or smartphone screen in Ukraine. In the commercial sphere, the most popular types of international electronic contracts, as always, are contracts of sale and supply. At the same time, international electronic contracts in the commercial sphere are mostly made in the form of acceptance of a public offer by the other party to the contract, but business entities are increasingly using the electronic form of the contract to conduct foreign economic activity.

In addition, given the increase in demand and the promotion of virtual assets and currency, it is becoming increasingly common to enter into sales contracts, the subject of which are virtual assets or currency. And given the specifics of the subject of the agreement, such agreements are mostly concluded in electronic form and are international in nature. Moreover, in demand are sales contracts subject of which is specific intellectual property, such as websites, commercial profiles on social networks, etc.

Such a phenomenon as the lease of equipment, which may be in the nature of an international agreement and is mostly concluded in electronic form, is also gaining momentum in the commercial sphere. This means renting equipment for hosting the site, or renting equipment for hosting a server, which in one way or another is needed to large enterprises, and for one reason or another (availability, capacity, cost) cannot be rented in Ukraine.

International electronic contracts are also widely used in the field of service provision. It is quite convenient when looking for a specialist to perform certain works and provide services, you are free from limits of your country of residence. However, this only applies to those services or works that can actually be performed without being tied to a specific location. Currently, the IT sphere is actively developing in this direction, where specialists, being territorially in Ukraine, can perform work for customers from anywhere in the world. Graphic designers, copywriters, consulting specialists, lawyers, advertising specialists, and many other professionals who can provide services or perform work without being tied to a specific location can also work this way.

The trend of modernization of contractual relations has not escaped the banking sector. The possibility of concluding electronic contracts in the banking sector, although not everywhere in full scope, but exists. It is understood that a large number of banks are gradually considering the possibility of moving to the electronic sphere, but now it is common when a customer is offered to leave an online application to open an account, and only then, after reviewing the application, the bank still requires you to physically come to the nearest branch to continue cooperation with bank and the final opening of accounts and signing the necessary agreements.

Moreover, many foreign banks allow you to open accounts online without the need for a physical presence in the bank. For example, the UK Bank HSBC, which also operates in the US, Hong Kong and a number of other countries, offers to open an online account for UK or European Union citizens by sending the necessary photos of documents and providing complete and comprehensive information about yourself (HSBC UK, 2022). WELLS FARGO, USA (WELLS FARGO bank, 2022), and DISCOVER, USA (Discover Online Banking, 2022) also provide the opportunity to open a savings or checking account online, apply for a loan or credit online.

Switzerland is the most loyal country to open online accounts without physically contacting a bank. For example, UBS bank has

repeatedly been named the best asset management bank at the Euromoney Awards for Excellence. According to the information posted on the site, all you need to do to open an account is: 1) select the banking package of your choice online and enter your personal details; 2) download the “UBS Welcome” app from the App Store / Google Play and have your passport / ID ready for online verification. You can sign the contract directly online in the app. It is also possible to sign all the necessary agreements in the application, i. e., in electronic form, of course, after the authentication procedure (UBS me – the individual banking package, 2022).

Thus, in fact, the most common contracts concluded in the banking sector in electronic form are contracts for banking services, for opening and maintaining a bank account, credit and loan agreements, mortgage agreements.

### 5. Conclusions

Summarizing the above, one can state that although international electronic contracts are a variety of ordinary civil or commercial contracts, they have some particularities, includ-

ing a special procedure for concluding a contract, the need to correctly determine the time of the contract, special requirements for the law applicable to legal relations, features of the content of the agreement, the need for an arbitration clause, the special scope of international (or foreign economic) agreements and the special composition of their subjects. Given the relentless development of everything around us, contracts are gradually moving into electronic form. This greatly simplifies the interaction between legal entities, “erases” the borders between countries in the commercial sphere, promotes the development of export-import operations in countries. Currently, the most popular areas of application of international electronic contracts are: trade (commercial) sphere, where the most common international agreements concluded in electronic form are contracts of sale, supply, lease; service industry; banking, where the most common contracts are contracts for banking services, for opening and maintaining a bank account, credit and loan agreements, mortgage agreements.

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## ВИДИ МІЖНАРОДНИХ ЕЛЕКТРОННИХ КОНТРАКТІВ ТА СФЕРИ ЇХ ЗАСТОСУВАННЯ

**Анотація.** *Метою роботи* є загальне дослідження основних ознак міжнародних електронних договорів та сфер їх застосування.

**Методи дослідження.** Роботу виконано з використанням загальнонаукових і спеціальних методів наукового пізнання.

**Результати.** Виокремлено, охарактеризовано й проаналізовано деякі з основних ознак міжнародних та електронних договорів, на основі чого зроблено висновки про ознаки міжнародних електронних договорів. Зазначено одні з основних сфер застосування міжнародних електронних договорів із прикладами їх реального використання.

**Висновки.** Встановлено, що хоча міжнародні електронні договори фактично є різновидом звичайних цивільних чи господарських договорів, проте вони мають низку особливостей, зокрема: особливу процедуру укладення договору, необхідність правильного визначення моменту укладення договору, особливі вимоги до права, що буде застосовуватися до правовідносин, особливості змісту договору, необхідність наявності в ньому арбітражного застереження, особливу сферу дії міжнародних (або зовнішньоекономічних) договорів та особливий склад їх суб'єктів. Також стверджується, що з огляду на невідпинний розвиток усього, що нас оточує, договори поступово переходять в електронну форму. Це значно спрощує взаємодію суб'єктів господарської діяльності, «стирає» кордони між країнами в комерційній сфері, сприяє розвитку експортно-імпорتنих операцій у країнах. Наразі найпопулярнішими сферами застосування міжнародних електронних контрактів є такі: торгова (комерційна) сфера, де найпоширенішими міжнародними договорами, що укладаються в електронній формі, є договори купівлі-продажу, поставки, оренди; сфера послуг; банківська сфера, де найпоширенішими договорами є договори на банківське обслуговування, на відкриття та обслуговування банківського рахунку, договори кредиту й позики, іпотечні договори.

**Ключові слова:** міжнародний договір, електронний договір, види міжнародних електронних договорів.

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