

PROBLEM ASPECTS OF DETERMINING THE LEGAL NATURE OF ELECTRONIC CONTRACTS

In the modern world, more and more spheres of social relations are covered by the Internet. Ukraine is no exception. In connection with this, the legislation undergoes appropriate changes, as there is an urgent need for legal regulation of social relations related to activities on the Internet, in particular, this applies to contracts concluded on the Internet. Let's consider the legal nature of such electronic contracts in more detail.

The current Civil Code of Ukraine [1] defines two forms in which a transaction can be agreement: orally or in written (electronic) form (Article 205 of the Civil Code of Ukraine). According to Part 1 of Article 207 of the Civil Code of Ukraine, a transaction (agreement) is considered to have been made in writing if its content is recorded in one or more documents (including electronic ones), in letters, telegrams exchanged between the parties. A transaction (agreement) is considered to have been made in writing, if the will of the parties is expressed by teletypewriter, electronic or other technical means of communication.

The same provisions are specified in Part 2 of Article 639 of the Civil Code of Ukraine regarding the form of the contract, namely: if the parties agreed to conclude the contract using information and telecommunication systems, it is considered concluded in writing. Since the contract is essentially a transaction (agreement), in accordance with Part 2 of Article 202 of the Civil Code of Ukraine, we will further use the terms "transaction (agreement)" and "contract" as equivalent terms.

Along with this, Article 5 of the Law of Ukraine "On Electronic Commerce" [2] declares the principle of the same legal force of electronic transactions and transactions concluded in another form provided for by law.

An electronic contract concluded by exchanging electronic messages is considered to be equivalent in legal terms to a contract concluded in writing (Part 12 of Article 11 of the Law of Ukraine "On Electronic Commerce") [2].

Also, in accordance with Article 6 of the Law of Ukraine "On Foreign Economic Activity" [3], a foreign economic agreement (contract) is concluded by a subject of foreign economic activity or its representative in a simple written or electronic form, unless otherwise provided by an international agreement of Ukraine or the law. Thus, in this Law, the electronic form is understood as a separate type of deed form, which is not consistent with the norms of the Civil Code of Ukraine.

Today, in the legal science of Ukraine, there are different points of view regarding the legal nature of transactions (contracts) concluded on the Internet.

According to the first approach, the electronic form of the contract is a separate (independent) form of the contract. According to this approach, “written” and “electronic” forms are species in relation to the generic concept, which should be considered a “record”, that is, the recording of the content of the contract on a material or electronic medium, which provides the opportunity to store information about the content of the transaction for a long time and reproduce it on the first requirement in a form understandable to a person.

Representatives of the second approach believe that a transaction made using electronic means of communication is a type of written form. Thus, classifying transactions made using electronic means of communication as written ones should be understood as the presentation of information (the content of the transaction) on other media than paper, but with the recording of the will (thoughts, intentions) of the parties through logically arranged signs. The physical medium will be a computer disk from which relevant information is read through its perception on a monitor or after printing on paper. Therefore, the electronic and digital form is a type of written form taking into account the specifics of the Internet.

The electronic contract is concluded and executed in the manner prescribed by the Civil Code of Ukraine and the Economic Code of Ukraine, as well as other legal acts, depending on the type of goods or services.

Peculiarities of concluding transactions remotely on the Internet are the need to identify the parties to the contract, establish real consent to conclude such transactions and confirm such consent and the fact of conclusion.

The transactions in written form can be concluded in the following ways: 1) by drawing up one document signed by the parties; 2) by exchanging documents by means of postal, telegraphic, teletype, telephone, electronic or other communication, which makes it possible to accurately establish that the document originates from a specific party to the contract.

Execution of the transactions 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 that it is concluded in the form of a data message.

This principle is fundamental, according to it, discrimination with regard to data messages is inadmissible, that is, the same treatment should be provided for data messages and paper documents. 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

(Part 1, Article 8 of the United Nations Convention on the Use of Electronic Messages in International Treaties) [5] and in accordance with Part 1 of Article 8 of the Law of Ukraine “On Electronic Documents and Electronic Document Management” [6], according to which the legal force of an electronic document cannot be denied solely because it has an electronic form. Nor can the admissibility of an electronic document as evidence be challenged solely on the basis that it is in electronic form.

Here it will be appropriate to consider the experience of European countries in relation to the researched issue.

As evidenced by the results of a comparative legal study of the legislation of the countries of the European Union (EU), conducted in connection with the development of the European Civil Code, the written form of the transactions requires not only the textual expression of the information, but also the signature of the party (parties) in countries such as Germany, Estonia, Greece, Great Britain and some others. However, in the most recent studies of foreign scholars, which were embodied in the Principles, definitions and model rules of European private law (hereinafter – DCFR) [7], the strengthened requirements for the written form of transactions are considered as a certain rudiment of the law, “sharpened” under pre-electronic means of communication.

Therefore, in § I.–1:106 DCFR, the written form is defined as the form of the execution of the transactions embodied in textual form and fixed with the help of devices that allow its reproduction on a paper medium or on any other material means that guarantees its durability preservation in an unchanged form [7].

As can be seen from this definition and as noted by the developers of the codification themselves, the signature is not a mandatory requisite of the written form, but is an independent additional requirement that can be established for the registration of certain types of transactions.

Summarizing the above, we can conclude that today not only in legal science there is no single concept regarding the definition of the legal nature of an electronic contract, but also in the current legislation of Ukraine there are different approaches to the normative definition of its legal nature.

Therefore, it is seen that the national legislation needs to improve certain legislative norms that regulate the institution of electronic contracts in order to comply with the doctrinal principles of rulemaking and law enforcement, such as the principle of certainty, optimality, systematicity and hierarchy. At the same time, it is expedient to take into account and apply the experience of European countries regarding this issue.

References

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TO THE PROBLEM OF LEGAL REGULATION OF THE ASSEMBLY OF SEMICONDUCTOR PRODUCTS

Legal relations in the field of intellectual property law for the composition of semiconductor products are regulated by the norms of international and national legislation, which generally provide a wide range of legal rights and obligations of the subjects of legal relations. However, there are many directions of legal relations in this area, which are actually carried out by subjects, but they are not regulated or insufficiently regulated by legal norms. Thus, today the state system of legal protection of intellectual property does not regulate the procedures of cross-border movement of semiconductor products and the use of layout registered according to international rules on the territory of Ukraine. Social relations arising during these procedures and processes are