

## THE ELECTRONIC CONTRACT - A MODERN VERSION OF THE CLASSIC CONTRACT

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***Abstract:** The electronic contract is assimilated to the classic contract from the point of view of its validity and the effects produced, being legally qualified as a distance contract, but there is an additional condition regarding the veracity of the existence of this type of contract, namely the electronic signature.*

***Keywords:** electronic, contract, parties, agreement.*

### Introduction

The institution of contract has been of crucial importance in the history of mankind, because from the very beginning, the need for people to enter into agreements, to formulate covenants, to contract has been the evolutionary impulse that has guided them to the present stage of their development. This evolution has been brought about by the fusion of values, knowledge, skills that people have acquired throughout history and, above all, their desire to exchange with each other all this knowledge, customs, beliefs and, not least, goods.

Unbeknownst to them, when these exchanges of information and goods took place, they were in contact with what today is called trade, and at its core is the contract, which shows that the institution of contract is a concept that transcends any cultural, economic or geographical barriers. The speed and complexity of commercial transactions in market economies have necessitated the establishment or standardisation of rules and procedures governing the conclusion of contracts, which is still an expanding field.

We note therefore that the establishment of contracts guided the path of human development, forming the basis of the social engine of evolution, strengthening and diversifying social relations of exchange, governance and even family. The complete rationale of our analytical approach is based on the view that the main feature of human society today is social dependence on electronic means, especially the Internet, and this dependence manifests itself in interpersonal, informational, cultural and ultimately contractual aspects.

### Legal conditions for the conclusion of a civil contract

The issue of electronic contracts and their particular characteristics requires clarification in general law of the basic conditions for their valid conclusion, including when and where they should take place, which are essential elements in achieving the legal effect of a contract.

The establishment of the parties' agreement on the terms of the contract determines the conclusion of the contract, at which point the mutual intentions of the parties involved are embodied in the content of the contract (Stătescu, 2008:19).

The will to contract comprises the two initially distinct sides, offer and acceptance, which by coming together form the contract, coming together in what is called the agreement of will, the quintessence of the contractual agreement (Pop, 2006:25).

However, the positive intention to acquire rights or obligations by contract is not sufficient to prove the validity of the contract, which is why the legislator has laid down certain mandatory conditions for the valid conclusion of any contract, for obvious reasons of public policy. Thus, according to Article 1179 of the Civil Code, the essential conditions are the capacity to contract, the consent of the parties, a specific and lawful object and a lawful and moral cause. This general concept of the capacity to contract takes into account both meanings of capacity to use, which implies the capacity of a person to hold rights and obligations, and capacity to exercise, which is the capacity to conclude civil legal acts.

Therefore, from the point of view of the validity of a contract, it is important that the agreement of will is expressed by a natural or legal person who has the legal capacity to conclude legal acts.

Consent is of particular interest in the case of parties where one or more obligations arise, as opposed to synallagmatic contracts where obligations arise for both contracting parties. It is important to note that it is not enough for a legal person to take the decision to accept the binding nature of a contract, this internal decision must be made explicit externally in order to create legal effects.

Moreover, this contractual expression of will must correspond to the internal will, the two being inextricably linked, and if they differ, a defect of consent may arise. The conclusion of a contract must not be arbitrary and must express the will of the parties to achieve certain objectives agreed in advance, being "that element of the civil legal act which consists in the objective pursued in concluding such an act" (Beleiu, 2007:173). This purpose must be within the limits of the law and must not violate the general moral rules of social coexistence.

On the other hand, the subject-matter is the conduct of the parties established by the contract, representing the nucleus of actions or inactions to which the parties are entitled or to which they are bound, and like the cause, the subject-matter must be lawful, moral and also determined in the sense that its content must be clearly specified and/or quantified.

The time and place of the conclusion of the contract are also of particular importance, because the time of conclusion determines the possibility of revocation, the lapse of the offer, the existence of grounds for nullity or voidability, the determination of the current price on the day of the contract, the calculation of limitation periods, and the place of conclusion of the contract helps to determine the law applicable in the event of conflict of laws in the area and to determine, from a territorial point of view, the jurisdiction of the court.

According to the legal provisions of Article 1186 of the Civil Code, the moment of conclusion of the contract is the moment when the acceptance meets the offer, but this moment is influenced by the location of the offeror and the acceptor, which in the case of electronic contracting can raise a number of problems arising from the spatial and temporal freedom offered by the online environment and have a particular impact on the time and place where contracts are awarded.

### **Time and place of conclusion of electronic contracts**

Law No 365/2002 on electronic commerce addresses for the first time the situation of the conclusion of the contract by electronic means, which only applies the classical theory, namely that of information, given the moment when the acceptance of the offer to contract has reached the knowledge of the offeror. The same law also provides for the situation in which the conclusion of the contract requires immediate performance, for which reason the debtor of the obligation must begin performance, unless the tenderer has requested prior communication of acceptance, in accordance with Article 9(9)(a). 2 of Law No 365/2002.

An essential element in the conclusion of contracts by electronic means is the acknowledgement of receipt of the offer or, where appropriate, of acceptance of the offer, and according to the provisions of Art. 9 para. (4) of the same act, they are deemed to have been received when the parties to whom they are addressed are able to access them.

The technical procedure known as the time stamp is also relevant for determining the moment of conclusion of an electronic contract, in order to show the precise moment of receipt or dispatch of the acceptance of the offer (Bleoanca, 2010:110).

A timestamp is an irreversible, digitally signed confirmation from a timestamping service provider, including the fingerprint of a document or transaction data and an electronic timestamp, using an officially recognised trusted source providing accurate details of the date and time that the transaction was made.

Act 451/2004 defines a time stamp as: 'a collection of data in electronic form, uniquely attached to an electronic document; it certifies that certain data in electronic form was presented at a specified point in time to the time stamp service provider'.

So anyone interested in obtaining a legal means of proving when a document was written or sent electronically can put a timestamp on it through service providers. A certificate is granted by the provider for the timestamp, demonstrating that its information can be presented in an easy-to-understand format that includes the time, the timestamp provider and the sequence numbers in the timestamp provider's register.

As we can see, depending on the moment of the conclusion of the contract, we can also identify the place of its conclusion, which will determine the law applicable to the legal relationship arising from the contract, which we will discuss later in this paper.

According to the common law provisions of Article 1186 of the Civil Code, the place of conclusion of the contract is the place where the acceptance of the offer meets the offer, i.e. the place where the offeror is located, and by exception, the place of conclusion of the contract is the place where the acceptor is located when the contract can be concluded without the acceptor's notification of the offeror, through the latter's performance of a conclusive act or fact, if acceptance in this manner is possible according to the content of the offer, the practices established between the parties, custom or the nature of the business.

Giving effect to the traditional rules by applying the common law provisions expressed above, we can conclude that in the case of contracts concluded by electronic mail, in the case of contracting from a website or when the choice of place of conclusion of the contract has not been determined, the place of conclusion of the contract in these circumstances is the place where the tenderer is located (Tudorache, 2013:70).

In the case of the instantaneous means of communication which are so relevant today, we can no longer speak of the conclusion of a contract at a distance, since this operation is

regarded as having taken place in the presence of the parties, so the place of conclusion will be the place where the offeror is located, but only in exceptional cases will it be the place where the acceptor is located.

### **Electronic signature**

Electronic contracts, as outlined above, are distance contracts concluded by computer, and as far as its effects are concerned, electronic contracts will create the same recognised effects as validly signed traditional contracts.

We can therefore conclude that from the point of view of the legal regime, electronic contracts do not have any new characteristics, but the fundamental differences are revealed precisely by the current legislation.

Starting again from the subject matter of electronic contracts, which is contained in Law No 365 of 7 June 2002 on electronic commerce, we point out that the provisions of this law state in paragraph 1(a) that the law on electronic commerce is not applicable to contracts concluded by electronic means. (3) of Art. 7 that: "Proof of the conclusion of contracts by electronic means and of the obligations arising from these contracts is subject to the provisions of common law on evidence and the provisions of Law No 455/2001 on electronic signature".

The novelty element that actually outlines the difference in the matter of evidence in the case of electronic contracts is given by the existence of the electronic signature, in the sense explained by Law 455/2001, which regulates its legal-technical regime.

In the event of a dispute, at first sight it may appear difficult to prove such a contract due to the absence of paper as a durable medium, but they can be used as evidence in court, in compliance with the general rules on the matter, but also taking into account the provisions of the special law on electronic signatures.

From a legal point of view, the electronic signature is defined in the law which is also the subject matter of this new legal instrument, Law No 455/2001.

In the 2nd section, which is devoted to definitions, in Art. 4 para. (3), electronic signature is defined as a set of "data in electronic form, which are attached to or logically associated with other data in electronic form and which serve as a method of identification".

It is necessary to explain certain terms used in the definition mentioned above, in order to remove the obvious ambiguity of the legislator, namely the notion of "data in electronic form" which are nothing more than representations of information in a conventional form suitable for creating, processing, sending, receiving or storing it by electronic means, and as regards the 'electronic form' of the record, this refers to a collection of data between which there are logical and functional relationships and which represent letters, figures or any other characters with an intelligible meaning intended to be read by means of a computer program or other similar process.

Within the meaning of Law 455/2001 there are two types of electronic signatures, namely: electronic signature and extended electronic signature. The legal effects of the application of the simple electronic signature can be associated with the legal effects of the classic signature applied on paper, but under the condition that it is recognised by the party to whom it is opposed.

On the other hand, an extended electronic signature generated with the help of a secure electronic signature creation device and based on a qualified certificate which is not suspended or revoked at the time, can be assimilated without any problems to the legal conditions and effects of a privately signed document.

The legal provisions of Law No 455/2001 provide for additional conditions which the extended electronic signature must cumulatively fulfil in order to qualify as an extended signature and not a simple one. Thus, it must be uniquely linked to the signatory, ensure the identification of the signatory, be created by means exclusively controlled by the signatory and be linked to the data in electronic form to which it relates in such a way that any subsequent change to it is identifiable. Therefore, by the power of this law, the attachment of an extended electronic signature to an electronic document confers probative force and contractual legitimacy, and in the event of a dispute, the party called upon to prove such an electronic signature must show that it meets all the legal conditions mentioned above.

### **Contracts which cannot be concluded electronically**

Yes, there are exceptions to the rule that any type of contract can be concluded by computer. These exceptions include contracts for which the law requires a solemn form, i.e. those which must be notarised. These contracts usually include legal acts of great importance or with significant legal implications, where notarial authentication is mandatory to ensure their validity and enforceability against third parties.

Contracts requiring notarial authentication include: contracts for the sale and purchase of immovable property - such as land, buildings and flats, mortgage contracts - required to secure loans by establishing a guarantee on immovable property, wills and partition deeds.

These contracts must be concluded in authentic form, which implies the physical presence of the parties before a notary public to certify the identity of the parties, their consent and the content of the act.

This requirement is intended to provide an additional level of legal certainty and protection, preventing fraud and ensuring that the parties have freely understood and consented to the terms of the contract.

In conclusion, although technology allows many contracts to be concluded by electronic means, there are specific categories of legal acts for which the law requires notarial authentication to ensure their validity.

It should be noted, however, that there are developments in notarial practice which allow notarial activities to be carried out by means of the electronic notary, in accordance with the provisions of Law No 589/2004 on the legal regime of electronic notarial activity. This law regulates the way in which certain notarial acts can also be carried out by electronic means, offering a modern and efficient alternative for carrying out these formalities.

Law 589/2004 allows notaries public to use electronic means to authenticate documents, subject to specific requirements and procedures. These requirements include the use of a qualified electronic signature, which has the same legal value as a holographic signature. The electronic notary must also ensure the secure identification of the parties and maintain an electronic register of notarial acts.

Electronic notarial activities may include: authentication of documents by qualified electronic signature thus ensuring the legal validity of documents in electronic format,

electronic transmission and archiving of notarial documents, a procedure which allows easy storage and access to documents and, last but not least, consultation and use of the electronic notarial register ensuring transparency and access to relevant notarial information.

In the field of commerce, especially in the context of international trade, the use of electronic means to conclude contracts is becoming increasingly common. This is due to several factors, such as: speed and efficiency of processes, cost savings and accessibility.

In international trade, sales contracts, letters of credit, transport contracts and other commercial documents are often concluded and managed electronically. Electronic platforms and blockchain technologies are increasingly used to ensure transparency, security and authenticity of transactions.

In conclusion, although there are certain legal acts which still require notarial authentication in the traditional form, technological developments and specific regulations allow notarial activity to be carried out by electronic means. This brings significant benefits, particularly in the commercial field, where speed and efficiency are essential. Law 589/2004 is an important step in this direction, facilitating adaptation to new technological and economic realities (Derşidan, 2006).

## **Conclusions**

The advent of electronic contracts has brought significant changes in civil law doctrine, similar to when the first contracts were concluded by telephone, but with much wider and more complex implications. This development has made it necessary for the legislator to regulate this new form of contract in order to ensure their validity, legal relevance, probative force and security.

The rules on electronic signatures, time stamps, electronic notarial activity and the legal regime for electronic records have helped to establish a regulatory framework for e-commerce. However, there are still significant challenges in practice, such as legislative confusion, regulatory gaps and users' vulnerabilities to online fraud. These issues continue to raise questions about the legal regime for electronic contracts.

Although significant progress has been made in regulating electronic contracts, there are still significant challenges in practice. To address these challenges, it is essential to harmonise regulations internationally, educate users and implement strict cyber security measures. This is the only way to ensure a robust and effective legal regime for electronic contracts in the digital age.

Electronic contracts are a natural development in the digital age, but they pose complex challenges for legislators. Regulations need to keep pace with technological advances to ensure that these contracts are valid, secure and enforceable. Civil law doctrine must continue to evolve, adequately addressing the new legal and technical issues that arise.

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