
STUDIA IURIS

JOGTUDOMÁNYI TANULMÁNYOK / JOURNAL OF LEGAL STUDIES

2024. I. ÉVFOLYAM 4. SZÁM



Károli Gáspár Református Egyetem
Állam- és Jogtudományi Doktori Iskola

A folyóirat a Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskolájának a közleménye. A szerkesztőség célja, hogy fiatal kutatók számára színvonalas tanulmányaik megjelentetése céljából méltó fórumot biztosítson.

A folyóirat közlésre befogad tanulmányokat hazai és külföldi szerzőktől – magyar, angol és német nyelven. A tudományos tanulmányok mellett kritikus, önálló véleményeket is tartalmazó könyvismertetések és beszámolók is helyet kapnak a lapban.

A beérkezett tanulmányokat két bíráló lektorálja szakmailag. Az idegen nyelvű tanulmányokat anyanyelvi lektor is javítja, nyelvtani és stilisztikai szempontból.

A folyóirat online verziója szabadon letölthető (open access).

ALAPÍTÓ TAGOK

BODZÁSI BALÁZS, JAKAB ÉVA, TÓTH J. ZOLTÁN, TRÓCSÁNYI LÁSZLÓ

FŐSZERKESZTŐ

JAKAB ÉVA ÉS BODZÁSI BALÁZS

OLVASÓSZERKESZTŐ

GIOVANNINI MÁTÉ

SZERKESZTŐBIZOTTSÁG TAGJAI

BOÓC ÁDÁM (KRE), FINKENAUER, THOMAS (TÜBINGEN), GAGLIARDI, LORENZO (MILANO), JAKAB ANDRÁS DSc (SALZBURG), SZABÓ MARCEL (PPKE), MARTENS, SEBASTIAN (PASSAU), THÜR, GERHARD (AKADÉMIKUS, BÉCS), PAPP TEKLA (NKE), TÓTH J. ZOLTÁN (KRE), VERESS EMŐD DSc (KOLOZSVÁR)

Kiadó: Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskola

Székhely: 1042 Budapest, Viola utca 2-4

Felelős Kiadó: TÓTH J. ZOLTÁN

A tipográfia és a nyomdai előkészítés CSERNÁK KRISZTINA (L'Harmattan) munkája

A nyomdai munkákat a Robinco Kft. végezte, felelős vezető GEMBELA ZSOLT

Honlap: <https://ajk.kre.hu/index.php/jdi-kezdolap.html>

E-mail: doktori.ajk@kre.hu

ISSN 3057-9058 (Print)

ISSN 3057-9392 (Online)

URL: KRE ÁJK - Studia Iuris

<https://ajk.kre.hu/index.php/kiadvanyok/studia-iuris.html>

DIGITAL CONTRACTING IN THE KYRGYZ REPUBLIC.

EU LAW AS A ROLE MODEL FOR DEVELOPMENT

AKYLBEK DZHUSUPOV¹

ABSZTRAKT ■ A digitális szerződési jog a Kirgiz Köztársaságban: az EU jog mint fejlesztési modell” című cikk a digitális szerződési környezetet mutatja be Kirgizisztánban, hangsúlyozva különböző jogi keretrendszerek alkalmasságát. Az összehasonlítás és elemzés alapjául a következőket választottam: az Egyesült Államok joga, mely vezető szerepet tölt be a gazdaság és technológia területén, az Európai Unió joga erős gazdasági fejlettségű régióként hatalmas történelmi és jogi háttérrel rendelkezik a szabályozásban, a nemzetközi jog pedig, mint a világ gazdaság minden kapcsolatának általános szabályozója, a legjobb világgyakorlatokat gyűjti össze. Ez az összehasonlító nézőpont kiemelheti bizonyos jogi keretrendszerek erősségeit, gyengeségeit és egyedi jellemzőit, értékes betekintést nyújtva az olvasók számára. Ezen kívül a cikk tartalmazza a kirgiz jogszabályok szerződésekre vonatkozó rendelkezéseit és azok digitális eszközökkel történő végrehajtásának lehetőségeit. Az utóbbi években Kirgizisztán jelentős előrelépéseket tapasztalt a technológia és a digitális infrastruktúra terén. Az internetes szolgáltatások széles körű elérhetősége és a digitális technológiák egyre szélesebb körű elfogadása kedvező környezetet teremt a digitális szerződések lebonyolításához. Mint fejlődő gazdaság, a Kirgiz Köztársaság szorgalmazza a gazdasági növekedést és fejlődést. A digitális szerződések elfogadása elősegítheti az üzleti folyamatok egyszerűsítését, a tranzakciós költségek csökkentését és külföldi befektetéseket vonzhat, ezáltal hozzájárulva a gazdasági jóléthez.

Az Egyesült Államok és az Európai Unió jogi rendelkezéseinek, valamint a nemzetközi szervezetek modelljogának összehasonlító elemzése mellett a cikk hangsúlyozza az EU jogának előnyeit, mint amely a legalkalmasabb minta a Kirgiz Köztársaság jogalkotásához. Az EU jogot általában átfogónak, jól kifejlesztettnek és a demokrácia, az emberi jogok és a fogyasztóvédelem elveire épülőnek tartják. Erős keretrendszert biztosít különféle jogi területeken, beleértve a kereskedelmet, a környezetvédelmet és a fogyasztói jogokat. Emellett az EU jogot évtizedek óta átfogó vizsgálatnak, finomításnak és igazításnak vetik alá, ami egy fejlett jogrendszerhez vezet, és számos napi kihívást képes kezelni.

Végül az EU jog fejlesztési modellként történő elfogadása elősegítheti a digitális szerződéskötés fejlődését, valamint összehangolhatja azt a globális szabványokkal, ezzel lehetővé téve a Kirgiz Köztársaság számára a globális gazdaságba való jobb integrációt.

¹ PhD student, Doctoral School of Law and Political Sciences, Károli Gáspár University of the Reformed Church in Hungary.

ABSTRACT ■ The article “Digital Contracting in the Kyrgyz Republic: EU Law as a Role Model for Development” explores the landscape of digital contracting in Kyrgyz Republic, focusing on the suitability of legal frameworks from various jurisdictions. I chose the following as the basis for comparison and analysis: The United States’ Law as a leading country in economy and technology, European Union Law as a strong economically developed region with a huge historical legal background in regulation and international law as a general ruler of all relationships of the world economy which gathers best world practices. This comparative perspective can highlight strengths, weaknesses and unique features of certain legal frameworks, providing valuable insights for readers.

Also, this article contains the provisions of the Kyrgyz legislation regarding the contracts and opportunities enforcing them by digital means. In recent years, Kyrgyzstan has experienced notable progress in technology and digital infrastructure. The widespread accessibility of internet services and the increasing adoption of digital technologies have established a favorable environment conducive to the implementation of digital contracts. As a developing economy, the Kyrgyz Republic is keen on fostering economic growth and development. Embracing digital contracts can streamline business processes, reduce transaction costs, and attract foreign investment, thereby contributing to economic prosperity.

Through a comparative analysis of legal provisions from US and EU Law, as well as the model law of international organizations, the article underscores the advantages of adopting EU Law as the most fitting model for legislation in the Kyrgyz Republic.

EU law is often considered comprehensive, well-developed, and grounded in principles of democracy, human rights, and consumer protection. It provides a robust framework for various legal aspects, including trade, environmental protection, and consumer rights. Additionally, EU law has been the subject to extensive scrutiny, refinement, and adaptation over decades, resulting in a sophisticated legal system that addresses many contemporary challenges.

Ultimately, adopting EU Law as a model for development could facilitate the growth of digital contracting and align with global standards, positioning the Kyrgyz Republic for enhanced integration into the global economy.

KULCSSZAVAK: digitalizálás, digitális szerződés, Kirgiz Köztársaság, EU jog, elektronikus aláírás

1. INTRODUCTION

As an experienced lawyer in the business sector, who is interested in the integration of the Kyrgyz Republic to the global market, I decided to research all of the legal environment in digital contracting of the advanced countries and unions.

I believe that the study will address the existing gap in knowledge regarding the legal aspects of digital contracting in the Kyrgyz Republic and the potential benefits of aligning with leading legislation. It will contribute to the understanding of the legal requirements and implications for the Kyrgyz Republic's economic integration. By recommending legal reforms and adaptations based on advanced rules, the study aims to facilitate the Kyrgyz Republic's economic integration into the global market. Aligning legislation with EU or US standards can create a more favorable environment for cross-border business transactions and attract foreign investments.

A well-defined legal framework for digital contracting can remove barriers and provide legal certainty to businesses engaged in international trade. The study's recommendations will help the Kyrgyz Republic create an enabling environment for businesses to participate in the global market and foster international trade relationships. Also, the study's findings and recommendations will contribute to strengthening the rule of law in the Kyrgyz Republic by promoting transparency, fairness, and legal certainty in digital commercial relationships. It will help create a predictable legal environment that protects the rights and legitimate interests of businesses and consumers. Additionally, the study will provide an alternative opinion to the government of the Kyrgyz Republic in its efforts to enhance the legislative framework for digital contracting.

2. THE RESEARCH QUESTION AND OBJECTIVES OF THE ARTICLE

I put the research question as follows:

“What legal reforms and adaptations are necessary in the Kyrgyz Republic to align its legislation with global trend laws and regulations on digital contracting, and how can this alignment enhance economic integration and participation of the Kyrgyz Republic in the global market?”

For the purpose of finding an answer for my research questions I have identified several objectives and analyzed the current legal framework for digital contracting in the Kyrgyz Republic, including relevant laws, regulations, and policies. Additionally, there was a need to examine International, US and EU laws and regulations pertaining to digital contracting and identify key provisions that can serve as a benchmark for the Kyrgyz Republic and I compared and assessed the similarities and differences between the legal frameworks of them regarding digital contracting in order to find best law which will help my country to be part of world business.

Moreover, I tried to identify areas where the legislation of the Kyrgyz Republic needs to be amended or adapted to align with world standards and best practices. Providing recommendations to the government of the Kyrgyz Republic on necessary legal reforms and adaptations to enhance the legal framework for digital contracting, drawing consequences from the rules and experiences of the leading economies, was another challenge for me.

3. LEGAL ANALYSIS OF REGULATIONS IN DIGITAL CONTRACTING

Numerous regulations worldwide govern digital contracts, but determining the most suitable one for the Kyrgyz Republic remains a crucial question.

Situated in the heart of Central Asia, Kyrgyzstan is a landlocked country with a population exceeding 7 million. It shares borders with the People's Republic of China to the east, Kazakhstan to the north, Uzbekistan to the west, and Tajikistan to the southwest. Spanning 199,951 square kilometers, its terrain is primarily mountainous, with approximately 94% of the country lying above 1,000 meters and 40% above 3,000 meters. The currency is the som (KGS), and Kyrgyz and Russian serve as the official languages². As a newly independent nation, Kyrgyzstan is poised to embrace various challenges, prompting a comprehensive exploration of European Union law, United States law, and international law to identify the most suitable regulatory framework.

3.1. EU legislation on digital contracting

The evolution of regulations pertaining to digital contracting commenced with the enactment of Directive 1999/93/EC by the EU Parliament and Council on December 13, 1999. The aim of this directive is to streamline the adoption of electronic signatures and enhance their legal validity. It lays down a regulatory framework for electronic signatures and specific certification services to uphold the effective operation of the internal market³. This directive introduces new terminology such as “electronic signature”, “signature-creation data”, “signature-verification device”, “certificate”, and “electronic-signature product”.

² National Investments Agency under the President of the Kyrgyz Republic: General information about Kyrgyz Republic. <https://invest.gov.kg/about-kyrgyz-republic/general-information/>.

³ Directive 1999/93/EC of the EU Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures. OJ L 13, 19.1.2000,12-20.

Member States were tasked with ensuring that advanced electronic signatures, employing a qualified certificate and produced by a secure signature creation device, meet the legal criteria for electronic data signatures, mirroring the validity of handwritten signatures for paper-based data. Additionally, these electronic signatures should be recognized as permissible evidence in legal proceedings.

The European Parliament's resolution of 21 September 2010⁴ on completing the internal market for e-commerce, stressed the importance of the security of electronic services, especially of electronic signatures and of the need to create a public key infrastructure at pan-European level and invited the Commission to set up a European validation authorities gateway to ensure the cross-border interoperability of electronic signatures and to increase the security of transactions carried out using the internet.

Next, it was the European Council's turn. Through its conclusions on February 4, 2011, and October 23, 2011, the Council urged the Commission to establish a digital single market by 2015, advance swiftly in key digital economy areas and foster a fully integrated digital single market by easing cross-border utilization of online services. Special emphasis was placed on facilitating secure electronic identification and authentication.

In numerous cases, EU citizens faced obstacles in using their electronic identification for authentication across different Member States due to the lack of recognition of national electronic identification schemes. This electronic barrier not only impedes service providers from fully leveraging the internal market's benefits but also complicates cross-border operations for businesses dealing with public authorities. The endorsement of mutually acknowledged electronic identification methods will facilitate seamless cross-border service provision within the internal market and streamline business operations across borders.

In accordance with the provisions of Directive 1999/93/EC, measures were proposed by the Commission to promote cross-border certification services and legal acknowledgment of advanced electronic signatures from third countries. The Commission was advised to ensure effective implementation of relevant standards and international agreements for certification services. Additionally, where necessary, the Commission was encouraged to present proposals to the Council, seeking mandates for negotiations of agreements with third countries and international organizations.

Following the proposal from the European Commission, the European Parliament and the Council of the European Union adopted the Regulation

⁴ Completing the internal market for e-commerce European Parliament resolution of 21 September 2010 on completing the internal market for e-commerce (2010/2012(INI)). OJ C 50E, 21.2.2012, 1-15.

(EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC⁵ (eIDAS Regulation), which establishes a framework for electronic identification and trust services for electronic transactions in the internal market. This Regulation enhances and expands the *acquis* of the Directive 1999/93/EC. According to Article 1, eIDAS Regulation:

- a) lays down the conditions under which Member States recognise electronic identification means of natural and legal persons falling under a notified electronic identification scheme of another Member State;
- b) lays down rules for trust services, in particular for electronic transactions; and
- c) establishes a legal framework for electronic signatures, electronic seals, electronic time stamps, electronic documents, electronic registered delivery services and certificate services for website authentication.

The second crucial aspect for the contract's enforceability involves identifying the parties involved. As per the eIDAS Regulation, the aim is to strengthen trust in electronic transactions within the internal market, establishing a common foundation for secure electronic interactions among individuals, businesses, and governmental bodies. This endeavor is anticipated to boost the effectiveness of both public and private online services, electronic business, and e-commerce throughout the European Union. However, it's noteworthy that this Regulation does not alter national or Union laws concerning the conclusion and validity of contracts, or other legal or procedural requirements related to their form. The eIDAS certification delineates standards and criteria for various electronic signature types, qualified certificates, and online trust services. Furthermore, it rules electronic transactions and their management⁶.

The third essential part of the digital contracting is ensuring parties to protect personal data. The contract of B2C type means that one party is always a natural person. For the purpose of protecting personal data the EU adopted General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with

⁵ Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. OJ L 257, 28.8.2014, 73-114.

⁶ ALBA ZARAGOZA: eIDAS. The Digital Identification Regulation for Europe. The Signicat Blog, 17.07.2023, <https://www.electronicid.eu/en/blog/post/eidas-regulation-electronic-signature/en>.

regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC)⁷.

Processing shall be lawful only if it is necessary for the performance of a contract to which the natural person is party or in order to take steps at the request of the natural person prior to entering into a contract⁸. Naturally, obtaining the consent of the data subject for processing their personal data for specific purposes is a mandatory requirement. In this context, digital contracts offer distinct advantages over other contract types, as they allow consumers to simultaneously provide consent for personal data processing when signing. When assessing the voluntary nature of consent, special attention should be paid to whether agreeing to process personal data, which isn't integral to fulfilling a contract, it is a prerequisite to execute the contract or receive a service.

Regulation (EU) 2016/679, commonly known as the GDPR, or any other relevant Union law on data protection, should fully apply to the processing of personal data in relation to contracts in Europe. It is important to note that the further mentioned Directives do not undermine the rights, obligations and non-contractual remedies established by GDPR.

Failure to adhere to the stipulations outlined in Regulation (EU) 2016/679, which encompass fundamental principles such as data minimization, data protection by design, and data protection by default, may, depending on the circumstances, also result in noncompliance with the subjective or objective conformity requirements specified in other legislative acts. For instance, if a trader explicitly undertakes an obligation within a contract, or if such an obligation can be inferred from the contract's terms, relating to the trader's responsibilities under the GDPR, this contractual commitment may constitute part of the subjective conformity requirements. Similarly, noncompliance with GDPR obligations that renders digital content or services unsuitable for their intended purpose can also lead to a lack of conformity with the objective requirement for compliance. This objective requirement mandates that digital content or services be fit for their typical usage purposes when compared to other digital content or services of a similar nature.

In essence, the application of data protection regulations to the processing of personal data within relevant contracts is obligatory. Noncompliance with GDPR obligations can impact the assessment of conformity for digital content

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) OJ L 119, 4.5.2016, 1-88.

⁸ Article 6(1) GDPR.

or services, considering both subjective contractual commitments and objective suitability for purpose requirements.

To solve the problems of protecting consumer rights, harmonising national contract law and improving cross-border trade, the European Parliament and the Council by the proposal of the European Commission on 20 May 2019 adopted Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services⁹ and Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods¹⁰.

The application of Directive (EU) 2019/770, which pertains to contracts for the supply of digital content and digital services, and Directive (EU) 2019/771, which focuses on contracts for the sale of goods, commenced on 1 January 2022. These directives aim to harmonize crucial rules governing consumer contracts throughout the European Union, resulting in a robust level of consumer protection and enhanced legal certainty for both consumers and traders engaged in countless everyday transactions involving goods, smart goods, digital content, and digital services.

The freedom of choice. According to Article 3(1) Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (80/934/EEC) (Rome Convention): *“A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract”*. The parties’ freedom to choose the applicable law considered one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations according to the European Parliament and the Council of European Union. Therefore, in Rome I¹¹ regulation there is an article (#3) with the same text. Thus, digital contracts are in harmony with private international law.

Moreover, the aforementioned Regulation should not impede the implementation of other mechanisms that contribute to the effective operation of the EU internal market. If these mechanisms cannot coexist with the law designated by the provisions of the Rome-I regulation, they should still be respected. The application of the designated applicable law should not obstruct the free movement of goods

⁹ Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services. OJ L 136/1, 22.5.2019.

¹⁰ Directive (EU) 2019/770 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC. OJ L 136/28, 22.5.2019.

¹¹ Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). OJ L 177, 4.7.2008, 6-16.

and services as governed by Union instruments, such as Directive 2000/31/EC concerning legal aspects of information society services, including electronic commerce, within the Internal Market. Additionally, this regulation does not prohibit parties from incorporating nondomestic laws or international conventions into their contract through referencing. Therefore, it is a favorable condition for the parties to choose for instance: the International Institute for the Unification of Private Law (UNIDROIT)¹², HCCH (Hague Conference on Private International Law – Conférence de La Haye de droit international privé)¹³ or United Nations Convention on Contracts for the International Sale of Goods (CISG). Principles as the rules of law governing their contract or, in case of a dispute, as the rules of law applicable to the substance of the dispute. According to ISTVÁN ERDŐS, Assistant professor and Lecturer the Department of International Private Law and European Economic Law at Eötvös Loránd University: *“It means in the present case that choosing directly the CISG would be considered as a choice of rules of law under the Rome I regulation...”*¹⁴.

3.2. Legal analysis of US laws and regulations relevant to digital contracting

In the United States, the Uniform Electronic Transactions Act (UETA)¹⁵ and the Electronic Signatures in Global and National Commerce Act (ESIGN)¹⁶ define and govern digital contracts. UETA has been adopted almost by all states, and ESIGN is a federal law that applies to interstate and foreign commerce.

¹² “The UNIDROIT Principles provide a balanced set of rules covering virtually all the most important topics of general contract law, such as formation, interpretation, validity including illegality, performance, non-performance and remedies, assignment, set-off, plurality of obligors and of obligees, as well as the authority of agents and limitation periods”. UPICC Model Clauses for the use of the UNIDROIT Principles of international commercial contracts. <https://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses/#:~:text=The%20UNIDROIT%20Principles%20provide%20a,obligees%2C%20as%20well%20as%20the>.

¹³ “The HCCH’s mission is to resolve these questions by providing internationally agreed solutions, developed through the negotiation, adoption, and operation of international treaties, the HCCH Conventions, to which States may become Contracting Parties, and soft law instruments, which may guide States in developing their own legislative solutions”. <https://www.hcch.net/en/about>.

¹⁴ ISTVÁN ERDŐS: *Private International Law in Business Transactions. Contracts Non-contractual obligations*. Budapest, 2016 (<https://edit.elte.hu/xmlui/handle/10831/30613>).

¹⁵ Uniform Electronic Transaction Act (UETA) of the United States of America. <https://www.uniformlaws.org/viewdocument/final-act-21?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments>.

¹⁶ Electronic Signatures in Global and National Commerce Act (ESIGN) of the United States of America. <https://www.govinfo.gov/content/pkg/PLAW-106publ229/html/PLAW-106publ229.htm>.

ESIGN signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent¹⁷.

The ESIGN Act affirms that electronic signatures carry equivalent legal weight to traditional ink-on-paper signatures. This law offers significant cost savings for businesses by minimizing expenses related to mailing and processing physical copies of contracts and associated documents. Additionally, the ESIGN Act confirms the legitimacy of electronic records and signatures in transactions spanning interstate and international commerce. According to this legislation, electronic signatures are subject to the same standards and legal scrutiny for authenticity as their paper-based counterparts.

According to ESIGN, “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and the term “Contract” included as a part of the definition for “Electronic record”. Particularly, it says that the term “electronic record” means a contract or other record created, generated, sent, communicated, received, or stored by electronic means¹⁸. Thus, we can say that a contract created by technology capabilities may be considered as “a digital contract”.

UETA provides uniform rules governing electronic commerce transactions. It sets a legal foundation for the use of electronic communications in business transactions where the parties have agreed to deal electronically. UETA validates and supports the use of electronic communications and records and places electronic commerce and paper-based commerce on the same legal footing. According to UETA, the term “Electronic” has the same meaning as in ESIGN and “contract” means the total legal obligation resulting from the parties’ agreement¹⁹. Therefore, we can consider that a digital contract is “an agreement created and signed by electronic means”. The act is designed to facilitate and promote commerce and governmental transactions by validating and authorizing the use of electronic records and signatures and to promote uniform electronic

¹⁷ Federal Deposit Insurance Corporation FDIC: Consumer Compliance Examination Manual – January 2014. <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/10/x-3-1.pdf>.

¹⁸ Section 106, ESIGN.

¹⁹ Section 2, UETA.

transaction laws among the states. It is also designed to be consistent with other applicable laws²⁰.

The fundamental messages of the UETA are:

- a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
- a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
- an electronic record satisfies a law that requires a record to be in writing;
- an electronic signature satisfies a law that requires a signature.

3.3. Legal analysis of international laws and regulations relevant to digital contracting

As one of the fundamental laws for all countries including the Kyrgyz Republic and Member states of European Union is certainly the Model Law of United Nations Commission on International Trade Law (UNCITRAL).

It started in 1996 when UNCITRAL adopted the Model Law on Electronic Commerce (MLEC)²¹ that aims to enhance and simplify electronic commerce by offering a standardized set of rules that can be adopted by national legislators. These rules are designed to eliminate legal barriers and enhance legal predictability in electronic commerce transactions. One of the key objectives of the MLEC is to address challenges arising from statutory provisions that cannot be altered through contractual agreements. By providing equal treatment to both paper-based and electronic information, the MLEC promotes the use of paperless communication, which in turn fosters efficiency in international trade. By establishing a consistent legal framework, the MLEC facilitates electronic commerce and promotes harmonization across jurisdictions.

Then on 5 July 2001 UNCITRAL adopted the Model Law on Electronic Signatures (MLES)²². The growing reliance on electronic authentication methods as alternatives to traditional handwritten signatures and other authentication

²⁰ SANDRA NORMAN-EADY: Uniform Electronic Transaction Act. *Old Research Report*, 2000-R-1076. <https://www.cga.ct.gov/2000/rpt/2000-R-1076.htm>.

²¹ United Nations Commission on International Trade Law: *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998*. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf.

²² United Nations Commission on International Trade Law, *UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001*. <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-elecsig-e.pdf>.

procedures has highlighted the necessity for a dedicated legal framework that addresses the legal implications of using electronic means. In response to these requirements, the MLES builds upon the fundamental principle outlined in the MLEC. This principle pertains to the fulfillment of the signature function in an electronic environment and adopts a technology-neutral approach. By avoiding favoritism towards any specific technology or process, the MLES enables legislation based on this Model Law to recognize various types of electronic signatures, including digital signatures based on cryptography as well as electronic signatures utilizing alternative technologies. This approach ensures that the legal framework remains adaptable to different authentication methods and promotes flexibility in the use of electronic signatures.

Therefore, the aim of the MLES was to enable and facilitate the use of electronic signatures by establishing criteria of technical reliability for the equivalence between electronic and hand-written signatures. Thus, the MLES may assist States in establishing a modern, harmonized and fair legislative framework to address effectively the legal treatment of electronic signatures and give certainty to their status.

The MLES is grounded in the fundamental principles shared by all UNCITRAL texts concerning electronic commerce. These principles include nondiscrimination, technological neutrality, and functional equivalence. The MLES sets out criteria for assessing the technical reliability necessary to equate electronic signatures with handwritten signatures. It also establishes fundamental rules of conduct that can serve as guidance when determining the obligations and liabilities of signatories, relying parties, and trusted third parties involved in the signature process. Additionally, the MLES includes provisions that promote the recognition of foreign certificates and electronic signatures, following a principle of substantive equivalence that disregards the origin of the signature. This approach facilitates cross-border transactions and fosters international cooperation in recognizing the legal validity of electronic signatures.

After that in 2017 UNCITRAL decided to adopt Model Law on Electronic Transferable Records (MLETR)²³. This step was done in order to enable the legal use of electronic transferable records both domestically and across borders. The MLETR applies to electronic transferable records that are functionally equivalent to transferable documents or instruments. Transferable documents or instruments are paper-based documents or instruments that entitle the holder to claim the performance of the obligation indicated therein and that allow the transfer of

²³ United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Transferable Records. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr_ebook_e.pdf.

the claim to that performance by transferring possession of the document or instrument. Transferable documents or instruments typically include bills of lading, bills of exchange, promissory notes and warehouse receipts.

Finally, on 7 July 2022 UNCITRAL adopted the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (MLIT)²⁴. The purpose of this Law is to provide a standardized set of legislative provisions that enable the legal use of identity management services for online identification of individuals and entities, as well as the use of trust services to ensure the quality of electronic data. Additionally, the MLIT establishes mechanisms for facilitating the cross-border recognition of identity management and trust services. Digital trade requires trust in the identity of commercial partners and the quality of electronic data. Identity management services verify the online identification of individuals and entities, while trust services certify the quality of data. These services are typically provided by specialized third parties. The MLIT sets a uniform legislative standard to promote trust in digital transactions and documents. As the first global legislative text of its kind, it serves as a legal foundation for digital trade worldwide, complementing other UNCITRAL legislative texts related to electronic commerce.

Chapter I defines relevant terms, outlines the scope of application, and establishes general provisions regarding the voluntary use of identity management and trust services, as well as their relationship with other laws.

Chapter II establishes the fundamental elements of the legal framework applicable to identity management. It outlines core obligations for identity management service providers and subscribers and sets rules regarding the liability of identity management service providers. Notably, Article 9 introduces a key provision on functional equivalence, which states that offline identification and identification conducted through identity management must be functionally equivalent and rely on a reliable method. The reliability of the method is assessed either retrospectively based on the circumstances or prospectively through designation.

Chapter III establishes the foundational elements of the legal framework for trust services, including provisions regarding the liability of trust service providers. Articles 16 to 21 specify the functions of certain trust services (e.g., electronic signatures, electronic seals, electronic timestamps, electronic archiving, electronic registered delivery services, and website authentication) and the associated requirements. Similar to identity management, the reliability

²⁴ United Nations Commission on International Trade Law, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlit_advance_copy.pdf.

of the method used for trust services is assessed retrospectively based on the circumstances outlined in Article 22 or prospectively through designation as per Article 23.

Chapter IV focuses on enabling the cross-border recognition of identity management and trust services, a key objective of the Model Law. It employs a decentralized approach and utilizes both retrospective and prospective mechanisms for assessing the reliability of the methods employed.

The United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to contracts of sale of goods between parties whose places of business are in different States. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

The CISG is also complemented, with respect to the use of electronic communications, by the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (the Electronic Communications Convention). The Electronic Communications Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents²⁵.

3.4. The Kyrgyz Republic's legislation on digital contracting

Contracts: Article 395 (1) of the Civil code of the Kyrgyz Republic²⁶ prescribes: *"A contract may be entered into in any form provided for making transactions, unless the law establishes a specific form for such type of a contract. If the parties agree to enter into a contract in a certain form, it shall be deemed as entered into from the time it was structured in such form, even though such form is not required by law for such type of a contract"*. These rules ensure the different participants of civil relationship to use any kind of form of the contract, unless such kind of contracts are obligatory by the law. For instance, when it comes to a purchase agreement for real estate, it must be formalized in writing and undergo state registration with specific agencies. This requirement is a mandatory rule that everyone must adhere to.

²⁵ United Nations Convention on Contracts for the International Sale of Goods. New York 2010. (31) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf.

²⁶ Europäisches Institut GmbH (European Institute), The unofficial translation of the Civil code of the Kyrgyz Republic. <https://www.libertas-institut.com/de/Mittel-Osteuropa/Civil%20Code%20part%20I.pdf>.

However, in other types of relationships, you have the flexibility to choose the format you prefer, hence digital contracts are permissible.

Moreover, a contract in a written form may be entered into by drawing a single document signed by the parties, and by exchanging letters, telegrams, teletypes, telephoned telegrams, through fax or electronic or other communication or by other means which allow to establish authentically that the document derives from the contracting parties (Art. 395 (2))²⁷. Through these provisions, the legislators of the Kyrgyz Republic have granted permission for both legal entities and individuals to utilize not only traditional paper-based written contracts but also to create a single electronic document that can be signed by both parties. The crucial aspect is ensuring clarity regarding the identity of the signatories to the contract.

“A transaction shall be made in written form by creation of a document which expresses the substance of the transaction and is signed by the person or persons making the transaction, or by persons properly authorized by them. Bilateral transactions may be made by exchanging of documents, each signed by the party which originates it (paragraph 2 of Article 395)”.

Electronic signature: The Civil code of KR also provides a regulation on enforcing a contract which signed by the electronic signature. Pursuant to Art. 176 (2): *“A facsimile reproduction of a signature by means of mechanical or other copying, electronic signature or any other analogue of a personal signature is permitted if provided for by law or by agreement of the parties”.*

The electronic signature plays a crucial role in digital contracting, as it is essential for finalizing contracts using remote acknowledgment tools. Just as handwritten signatures are commonly used in paper-based contracts, electronic signatures serve the same purpose in digital contracts. According to the Law of the Kyrgyz Republic on Electronic Signature № 128 as of July 19, 2017 (Law on Electronic Signature) this Law governs the relations on use of digital signatures when making civil transactions, rendering the state and municipal services, execution of the state and municipal functions, and also when making legally significant actions.

As it described in Article 2 of the Law on Electronic Signature the digital (electronic) signature (ES) - information electronically, which is attached to other information electronically and (or) is logically connected with it and which is used for determination of person on behalf of which information is signed²⁸.

²⁷ The original version of the Civil code of the Kyrgyz Republic is available on website <http://cbd.minjust.gov.kg/act/view/ru-ru/4/730?cl=ky-kg&mode=tekst>.

²⁸ The unofficial translation of the Law of the Kyrgyz Republic on Electronic Signature № 128 as of July 19, 2017. <https://cis-legislation.com/document.fwx?rgn=99019>.

This Law allows the usage of two types of the electronic signature:

- Simple electronic signature;
- Advanced electronic signature (qualified, unqualified).

As per the Electronic Signature Law, individuals are authorized to utilize the basic ES, as it can be represented in the form of codes or encryption, thereby holding the same legal weight as signing a document by hand. Conversely, the advanced ES holds equivalent legal validity to handwritten signatures coupled with official stamps, making it more appropriate for use by legal entities.

Court procedures: The Civil Procedural Code of the Kyrgyz Republic recognizes electronic document and contract as a written proof by allocating that *“acts, documents, agreements, invoices, business correspondence and materials received through fax, electronic or any other communication device, the authenticity of which is proven, will be accepted as a written proof”*²⁹. Besides this, the legal act of the Cabinet of Ministers allows the parties to verify the websites by a notary in order to prove the existing file on a certain time and date. Particularly, a testimony of a copy of Internet pages is allowed. For this purpose, the notary examines the information posted on the Internet. The Internet page shall be completely printed on paper and it is mandatory to indicate the date of printing and the link of the webpage, set in automatic mode. After printing, the written version shall be compared with the electronic version³⁰ (Art. 156 Instruction for performing notarial acts by notaries of the Kyrgyz Republic).

According to Article 428: *“In the Kyrgyz Republic, foreign court decisions, including those related to the approval of amicable agreements, are acknowledged and enforced if they are in accordance with the laws or international agreements that have been duly ratified and accepted by the Kyrgyz Republic or based on the principle of reciprocity”*³¹.

²⁹ Civil Procedural Code of the Kyrgyz Republic, Article 80(1).

³⁰ The original version of Article 156 of the Instruction for performing notarial acts by notaries of the Kyrgyz Republic: *“Veb-sayttın köçürmösün kübölöndürüügö uruksat berilet. Oşol ele uçurda notarius İnternette jayğastırılğan maalımattı tekşeret: İnternet barakçası basılğan küñün jana fayldın daregin mildettüü türdö körsötüü menen avtomattık türdö kagazga toluğu menen basılıp çıgat. Basma versiyası çıkkandan kiyin elektronduk versiyası menen salıştırılát. Kübölöndürüü jazuusunda notarius İnternettegi barakçanın daregin, dokumenttin daregin, zarıl bolgon uçurda maalımattın atalışın, teksttik je grafikalık maalımattın, anın İnternet barakçasında jayğaskan jerin körsötöt”*. (<http://cbd.minjust.gov.kg/act/view/ru-ru/95038/65?cl=ky-kg&mode=tekst>).

³¹ Civil Procedural Code of the Kyrgyz Republic. The original version is available on official website <http://cbd.minjust.gov.kg/act/view/ru-ru/111521?cl=ru-ru>.

4. MAIN FINDINGS AND ARGUMENTS PRESENTED IN THE ARTICLE

One of the barriers to trade in the Kyrgyz Republic is the lack of using electronic tools. Therefore, even in the report of the United Nations Economic Commissions for Europe seven years ago there was the following recommendation: Ensure the implementation of the law “On Electronic Document and Digital Signature”. Immediate steps, as suggested by some State officials, include amending the laws governing the procedures and activities of individual State agencies, with a view to provide clear guidelines for implementing digital signatures. State agencies should also receive advanced training in this area, and equipped with the required tools and management information systems to ensure data storage security³².

Before 2014, in many instances across the European Union, individuals from one Member State were unable to utilize their electronic identification to authenticate themselves in another Member State due to the lack of recognition of their national electronic identification schemes. This electronic barrier prevented service providers from fully leveraging the advantages of the internal market. Given the substantial similarities between European Union Law and the legal system of the Kyrgyz Republic, it is advisable to draw insights from leading countries’ experiences. Consequently, it is recommended that the lawmakers of the Kyrgyz Republic permit the use of electronic identification from foreign countries. The mutual recognition of electronic identification means will streamline the cross-border provision of various services within the internal market and facilitate businesses’ cross-border operations by minimizing hurdles in interactions with public authorities.

“The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention” (Article 3(2) Rome Convention 19 June 1980). This is the most useful advantage in digital contracts, because when you have access to internet you can make amendments to a contract any time. It is applicable even when you want to change the governing law.

One of the challenges we face is the absence of a legal framework for presenting evidence. Currently, the courts in the Kyrgyz Republic only recognize paper-based evidence during legal proceedings. Electronic files are not accepted because trial case files consist solely of documents in paper format. Moreover, parties are unable to simply print the required documents and authenticate them with

³² United Nations Economic Commission for Europe, Regulatory and Procedural Barriers to Trade in Kyrgyzstan Needs Assessment. United Nations, New York and Geneva, 2015. 21. https://unece.org/DAM/trade/Publications/ECE_TRADE_412E-Kyrgyzstan.pdf.

a stamp. Hence, it is imperative to enhance the civil procedural legislation by incorporating regulations for collecting files not only in paper format but also electronically.

Another important part of the contacts is payment issue. In that regard, European authorities pay close attention to electronic payment (e-payment), which is a process of paying for transactions without using cash by using an e-payment system or medium instead. It is too hard to imagine that someone will use cash when concluding a contract through electronic means. The use of e-payment has expanded as the use of internet-based banking and e-commerce has grown. In modest international commercial transactions, e-payment frequently replaces using a credit or debit card³³.

I would like to note that not all legal implementations will be successful. New digital rules should be accepted by the market, and especially by the big tech players around the world, particularly by European ones. In his article “The Rise and Fall of Common European Sales Law”, MIKLÓS KIRÁLY, Head of Department and Professor of Private International Law and European Economic Law and former Dean of ELTE University Faculty of Law, Member of Expert Group on a Common Frame of Reference in the area of European Contract Law, shared his predictions. *“Despite all these uncertainties, one day the project of European contract law may come back to the legislative agenda. The idea is not completely forgotten; the CESL remains one of the reference texts for European contract law. The forty year long history of the preparation of the Statute of the European Company (SE), which quite suddenly brought results, may console those who supported and still support the development of CESL. However, in order to achieve this goal, political and institutional support and clear and visionary guidance are needed. The fate of European contract law depends on the institutional dynamics and future of the EU, too”*³⁴.

5. DISCUSSING THE IMPLICATIONS OF THE RESEARCH FOR THE KYRGYZ REPUBLIC’S ECONOMIC INTEGRATION INTO THE GLOBAL MARKET

Recent developments in digital technology illustrate the enormous benefits that can be derived if domestic and international trade and trade finance were to be undertaken digitally, in line with the increasing use of digital communications in commerce around the world. However, a significant barrier to digitalise trade

³³ NARMIN MIRIYEVA: European Payments in the Digital Age. *ELTE Law Journal*, 2/2022..

³⁴ MIKLÓS KIRÁLY: The Rise and Fall of Common European Sales Law. *ELTE Law Journal*, 2/2015.

and trade finance is presented by outdated laws in many countries³⁵. This article presents a compelling argument for embracing digital trade, contrasting some of the legal differences between regions that prevail worldwide with the much faster, simpler, more secure, and environmentally friendly digital trade processes that modern technology offers. It is my personal view that the government of the Kyrgyz Republic can modernize national laws by introducing new tools and approaches to digitalize business operations and eliminate legal barriers to digital trade and trade finance.

The laws mentioned in this article developed different kind of acts and regulations which help the developing countries to adopt the new fundamental rules and principles, which can help them to foster the integration into the global market. However, since EU Law has more balanced legal environment and similarities, the best way for the integration of the Kyrgyz Republic to the global market is to accept the research and model laws of the EU and incorporate them into the national law.

To achieve a genuine digital market and promote consumer protection, it is necessary to harmonize specific aspects of contracts for the supply of digital content or digital services. This harmonization should be based on a high level of consumer protection, aiming to enhance legal certainty and minimize transaction costs, particularly for Central Asia's small and medium-sized enterprises. Consumer rights hold significant importance in both Kyrgyz Law and the legal structure of Europe, as they view consumers as the "weaker party" in transactions. On the other hand, the Kyrgyz Republic's central location within the Eurasian continent, situated between the Western and Eastern economic zones, offers another advantage. This positioning can enhance its potential as a global integration hub by fostering a conducive legal environment for digitalization. These perspectives further support the notion of considering EU Law as a model for the Kyrgyz Republic.

³⁵ THEODORA A. CHRISTOU – JOHN L. TAYLOR: *Blueprint Paper on Digital Trade and the UNCITRAL Model Law on Electronic Transferable Records*, 2023. <https://www.ebrd.com/documents/legal-reform/blueprint-paper-on-digital-trade.pdf>.

BIBLIOGRAPHY

- SANDRA NORMAN-EADY: Uniform Electronic Transaction Act. *Old Research Report*, 2000-R-1076. <https://www.cga.ct.gov/2000/rpt/2000-R-1076.htm>.
- United Nations Economic Commission for Europe, Regulatory and Procedural Barriers to Trade in Kyrgyzstan Needs Assessment. United Nations, New York and Geneva, 2015. https://unece.org/DAM/trade/Publications/ECE_TRADE_412E-Kyrgyzstan.pdf.
- ALBA ZARAGOZA: eIDAS. The Digital Identification Regulation for Europe. The Signicat Blog, 17.07.2023, <https://www.electronicid.eu/en/blog/post/eidas-regulation-electronic-signature/en>.
- NARMIN MIRIYEVA: European Payments in the Digital Age. *ELTE Law Journal*, 2/2022.
- MIKLÓS KIRÁLY: The Rise and Fall of Common European Sales Law. *ELTE Law Journal*, 2/2015.
- THEODORA A. CHRISTOU – JOHN L. TAYLOR: *Blueprint Paper on Digital Trade and the UNCITRAL Model Law on Electronic Transferable Records*, 2023. <https://www.ebrd.com/documents/legal-reform/blueprint-paper-on-digital-trade.pdf>.
- ISTVÁN ERDŐS: Private International Law in Business Transactions. Contracts Non-contractual obligations. Budapest, 2016 (<https://edit.elte.hu/xmlui/handle/10831/30613>).