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LEGAL REGULATION OF ELECTRONIC IDENTIFICATION AND ELECTRONIC TRUST SERVICES IN UKRAINE: PROSPECTS FOR IMPROVEMENT AND DEVELOPMENT UNDER THE CONDITIONS OF HARMONIZATION WITH THE LAW OF THE EUROPEAN UNION

ABSTRACT

The use and exchange of electronic documents certified by an electronic signature and seal are increasingly used in all spheres of society. In the field of private legal relations, it speeds up the procedure for concluding contracts. Increasing the efficiency of their signing, in turn, allows you to speed up the execution of contractual relations and thereby improve the quality of service to customers, partners, and suppliers. Legal regulation is analyzed in the article on electronic identification and electronic trust services. Emphasis is placed on the importance of harmonizing current legislative norms in Ukraine with the legal norms of the European Union within the indicated scientific limits of the study. Attempts to implement the experience of international standards regarding electronic identification and electronic trust services into national legislation are analyzed. The article examines the concepts of electronic signature and electronic seal and analyzes their types: improved electronic signature and seal, and qualified electronic signature and seal. Attention is also focused on those requirements that are strictly subject to the qualification of an electronic signature and seal. Within the framework of the study of current legislation in general and court practices in particular, the legal consequences in cases of the absence of an electronic signature or seal on electronic documents have been clarified. For example, in cases where there is no electronic signature or seal on electronic documents, it becomes impossible to identify the sender of a particular message. Instead, in such a case, it is appropriate to note the lack of protection of this type of document from the possibility of text correction or editing. Therefore, it was established that in the case of the absence of an electronic signature or seal in an electronic document, such a document cannot be considered in the court process as evidence. The position is supported that, at the national level, a contract signed between the parties without the use of a qualified electronic signature will not mean the invalidity of such a contract, therefore the use of ordinary and improved electronic signatures is completely legal and will create rights and obligations for the parties who signed such a contract.

Keywords: electronic seal, electronic signature, electronic trust service, deed, contract, invalidity, rights and obligations

JEL Classification: M10, O29, O30, O31, R32

INTRODUCTION

With the development of the information society, the field of electronic document management and electronic commerce with the help of information and telecommunication systems is becoming more and more widespread. The COVID-19 pandemic and the war only accelerated this process in Ukraine. Due to hostilities, people are working out of offices, in different cities or even countries. The number of transactions committed in the field of electronic commerce is increasing. It is quite obvious that soon the number of electronic documents will exceed the number of documents on paper media.

At the same time, during the dissemination of information and exchange of electronic documents, it is important to certify their authenticity. This is where an electronic signature and seal come to the rescue. Electronic documents can be certified with an electronic signature and seal and transferred to the destination within seconds. Under such conditions, all participants in the exchange of electronic documents, regardless of distance, have the same opportunities in electronic information exchange. Instead, the procedure of paper document circulation takes time, especially if the document has to be signed by several people. As a rule, each of the signatories in turn must receive the original paper document. Alternatively, the signer must sign and scan the document, then email it to the next signer, who must print, sign, scan the document again, and email it.

Electronic document management is used in all areas of society. In the field of private legal relations, it speeds up the procedure for concluding contracts. Increasing the efficiency of their signing, in turn, allows you to speed up the execution of contractual relations and thereby improve the quality of service to customers, partners, and suppliers. However, the legal regulation of electronic documents and the procedure for certifying them with electronic signatures and seals are in a state of reform. Processes of reformatting international relations in the relevant sphere require constant adaptation of national legislation.

LITERATURE REVIEW

In general, separate issues of legal regulation of electronic identification and electronic trust services were studied: O. Kostenko analyzed the legal regulation of foreign electronic trust services in Ukraine [14, p. 192–197]; On the basis of international legislation, supranational legislation of the EU and legislation of foreign countries, R. Ennan conducted an analysis of the essence and content of electronic document circulation, defined the legal relations that form this concept [11, p. 17–125]; O. Holina analyzed the legal and organizational foundations of trust electronic services, the rights and obligations of providers of this type of services, as well as contracts mediating their provision [8, p. 73–76].

The following authors devoted their works to the issue of legal regulation of certain aspects of concluding an electronic contract: N. Kuchakovska conducted an analysis of the legislation of Ukraine regarding the conclusion of business contracts in written and electronic form [16, p. 62–74]; V. Zaborovskyi and O. Zmykalo studied the formation and development of legal regulation of electronic transactions in the civil law of Ukraine [13, p. 466–472]; N. Milischuk examines the procedure for concluding electronic sales contracts under civil law [17].

The issue of legal regulation of the electronic signature as a means of electronic identification and authorization was also the subject of research by domestic scientists. In particular, I. Veres analyzed the legal regulation of the use of electronic signatures when concluding contracts in electronic form [6, p. 11–15]. The legal consequences of the absence or falsification of an electronic signature are defined. I. Krykavska and L. Tkachuk considered the definition of the concept of "electronic signature" in international legal acts, national legislation, and science [15, p. 447–449]. We studied the procedure for obtaining a digital signature at the Accredited Key Certification Center and using Bank ID. Using the example of the Privat24 application, which is a service for providing online services of the Joint-Stock Company of the commercial bank "Privatbank", the procedure for providing an electronic signature by the bank is considered. Novosad R. studied the legal status and the way of introduction of electronic signatures in Ukraine, namely the history of its creation, legislative regulation, and practical application in various spheres of activity. He paid special attention to the impact of electronic signatures on business activity, public administration, international integration, and the social sector [19, p. 112–116]. U. Vata-manyuk-Zelinska and V. Sushko studied the advantages of the practical use of electronic signatures in the public and private sectors of the state economy. The rates of growth in the number of cases of use of electronic signatures and the value of contracts certified by them were predicted based on the generalization of data from the analytical agency Markets and Markets [5]. N. Novytska considers the issue of the application of electronic document circulation and electronic signature in electronic commerce as one of the conditions for the formation of the information culture of society [18, p. 76–81]. K. Drogozyuk analyzes the legal regulation of electronic signatures in civil proceedings in Ukraine and the European Union, in particular, France. Considered the features of the definition and use of an electronic signature as a method of confirming the authenticity of electronic evidence in the civil proceedings of Ukraine and France, and also identified the advantages of using an electronic signature in Ukraine and France [10, p. 45–51]. Oways Kinsara examines the electronic signature regime of the Saudi Electronic Transactions Law 2007 and its implementing regulations. At the same time, the evolution of the European regime of electronic signatures from Directive 1999/93/EC to Regulation (EU) No. 910/2014 [3, p. 1–11] is considered. John Ubena examines the successes, challenges, and prospects of the implementation of the electronic signature law in Tanzania [4, pp. 102–116]. Avukat Özgür Eralp reviews an update on Turkey's e-signature laws, providing a full history of e-signature legislation and recent changes in the law [1, pp. 120–122]. David Santiago and Israel Nery explore digital signature as a method to strengthen enterprise risk management practices in the US government [2].

AIMS AND OBJECTIVES

The purpose of this article is to study the international and national legislation of Ukraine, which regulates the sphere of electronic identification and electronic trust services, and to determine the prospects for improving the regulation of these relations in the conditions of harmonization of the legislation of Ukraine with the law of the European Union. In order to achieve this goal, the analysis of regulations in Ukraine and abroad was carried out, the peculiarities of concluding electronic contracts were determined, the legal regime for the use of electronic digital signatures and electronic seals was characterized, and relevant conclusions were drawn.

METHODS

Analytical analysis of current legal acts, recommendations, and clarifications, as well as scientific works in order to develop proposals for improving the effectiveness of legal regulation of electronic identification and electronic trust services in Ukraine.

RESULTS

The emergence of electronic versions of documents led to the need for an electronic signature that would have legal force for their certification. For this purpose, on December 13, 1999, the European Parliament and the Council of the EU adopted Directive No. 1999/93/EC "On the system of electronic signatures used within the Community", which legalized electronic document circulation and introduced the concept of "electronic signature" into legal circulation for the first time [9]. This Directive established general rules for the use of electronic signatures on the territory of the European Union countries and obliged all European Union member states to adopt relevant national laws by mid-2001. Directive No. 1999/93/EU was implemented by the Verkhovna Rada of Ukraine on January 19, 2000, and became a fundamental act on the basis of which the legal framework of Ukraine in the field of electronic signature was created for many years [14, p. 193].

In order to bring Ukrainian legislation closer to European legislation, on May 22, 2003, Ukraine adopted the laws "On electronic documents and electronic document management" [27] and "On electronic digital signature" [26]. The latter defined the legal status of an electronic digital signature and regulated the relations arising from the use of an electronic digital signature, but it has expired today.

However, neither the EU nor national legislation at that time regulated in any way where and how the electronic signature should be stored. That is, in fact, the electronic signature could be kept anywhere, which accordingly made it accessible to criminals. So, for example, in Ukraine, the judicial practice has recorded cases of fraudulent actions in banks using electronic signatures of responsible cashiers, when considerable sums of money were transferred to the accounts of third parties. As a result of such actions, banks suffered losses of hundreds of thousands of hryvnias [12].

On July 23, 2014, the European Parliament and the EU Council adopted Regulation (EU) No. 910/2014 "On electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC" to replace Directive No. 1999/93/EC, which entered into force on July 1, 2016 [31]. The purpose of adopting this Regulation is to increase the level of trust in electronic transactions in the domestic market by creating a common basis for safe electronic interaction between citizens, business entities, and public authorities, thus improving the effectiveness of public and private online services, electronic business and of electronic commerce in the Union.

This act establishes three types of electronic signatures: simple electronic signature (electronic signature), advanced electronic signature (advanced electronic signature), and qualified electronic signature (qualified electronic signature). Part 2 of Art. 25 of the Regulation specifies that only a qualified electronic signature (QES) has the force of a conventional written signature. In other words, only the use of QES allows you to confirm the authenticity of the information contained in the document. At the same time, part 1 of Art. 25 of the Regulation indicates that the legal force of a simple electronic signature cannot be denied only on the grounds that such a signature is displayed in electronic form, or that such a signature does not have the characteristics of a QES. It is believed that this provision gives the entities that exchange documents dispositive rights to confirm the authenticity of information [32].

Along with this, with the adoption of the Regulation, the concept of "electronic seal" was introduced into the legal field for the first time, which means data in electronic form that is added to other data in electronic form or logically linked to them to ensure the origin and integrity of the latter. The electronic seal can be improved and qualified. A qualified electronic seal enjoys a presumption of data integrity and the correctness of the origin of such data with which it is associated. At

most, there is a valid rule according to which a qualified electronic seal based on a qualified certificate obtained in one of the member states is considered valid in all other member states.

On September 3, 2015, the Law of Ukraine "On Electronic Commerce" [29] was adopted, in which for the first time at the legislative level such concepts as electronic commerce, electronic trade, electronic contract, electronic transaction, electronic form for submitting information, the procedure for carrying out electronic transactions using information and telecommunication systems, as well as defined the rights and obligations of participants in relations in the field of electronic commerce. The law also made changes to a number of normative legal acts, one of which was the Central Committee of Ukraine. Thus, in particular, amendments were made to Part 1 of Art. 205 of the Civil Code of Ukraine, in which the word "electronic" was added to the article after the word "written". Thus, for the first time in civil legislation, the concept of an electronic form of deed was defined as a type of deed [13, p. 469].

However, one of the most important steps towards the integration of our state into the global electronic information space is the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine "On Electronic Trust Services", which entered into force on November 7, 2018. This Law was developed in order to harmonize Ukrainian legislation with the legislation of the European Union, namely with the Regulation of the European Parliament and the Council (EU) No. 910/2014 of July 23, 2014. It is devoted to the regulation of relations that arise between legal entities, natural persons, subjects of authority in the process of providing and receiving electronic trust services, the procedure for providing these services, supervision (control) of compliance with the requirements of legislation in the field of electronic trust services, as well as the main organizational - legal basis of electronic identification. This Law introduced an updated conceptual and categorical apparatus, which consists of 44 new or updated terms, of which 20 new ones were introduced for the first time, and 18 definitions were imported from Regulation (EU) No. 910/2014. According to the legislators, such legal convergence of terminology in the field of electronic signature will contribute to the formation of joint interstate regulatory acts in the future [14, p. 194].

At the same time, the rapid development of information technologies, the introduction of new digital tools aimed at simplifying the access of individuals and legal entities to electronic services, including cross-border services, as well as new challenges related to the adoption of measures aimed at preventing the spread of acute respiratory disease on the territory of Ukraine COVID-19, caused by the SARS-CoV-2 coronavirus, required the improvement of regulatory and legal regulation, in particular in the field of electronic identification and electronic trust services.

As part of the agreements reached during the 22nd Ukraine-EU Summit, the Ukrainian Party and the Party of the European Union developed (and in January 2021 - agreed) a joint work plan for cooperation between the European Union and Ukraine regarding electronic trust services with the prospect of concluding a possible agreement, which should be based on approximation to the legislation and standards of the European Union (letter of the Representation of the European Union in Ukraine dated January 20, 2021). Clause 9 of the specified joint work plan provides for the adoption of amendments to the Law of Ukraine "On Electronic Trust Services" by January 1, 2022. In turn, on December 1, 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Conclusion of an Agreement between Ukraine and the European Union on Mutual Recognition of Qualified Electronic Trust Services and Implementation of European Union Legislation in the Field of Electronic Identification" [25] was adopted, which the title of the Law of Ukraine "On electronic trust services" was changed to the Law of Ukraine "On electronic identification and electronic trust services", and its content is set out in a new edition.

Along with this, the legislative base of Ukraine in the field of electronic identification and electronic trust services is quite saturated with normative and legal acts issued by the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine (regulator), and the State Service for Special Communications and Information Protection of Ukraine (controlling body) according to with the distribution of spheres of activity of executive authorities [14, p. 193].

It should be noted that the most common basis for the emergence of civil rights and obligations is a contract. At the same time, it was the contract that was most affected by the rapid spread of various electronic means of communication. The increasing use of electronic means of communication in everyday life has had an impact primarily on binding relationships, which are one of the forms of civil relationships [13, p. 466].

The Civil Code of Ukraine, the Commercial Code of Ukraine, and the laws of Ukraine "On electronic commerce", "On electronic identification and electronic trust services", and "On electronic documents and electronic document management" are devoted to the legal regulation of electronic contracts.

According to the provisions of Art. 3 of the Law of Ukraine "On Electronic Commerce", "an electronic contract is an agreement between two or more parties aimed at establishing, changing or terminating civil rights and obligations and executed in electronic form" [29]. Instead, according to Art. 5 of the Law of Ukraine "On Electronic Documents and Electronic

Document Management", an electronic document is a document in which information is recorded in the form of electronic data, including mandatory details of the document. "An electronic document can be created, transferred, stored, and transformed by electronic means into a visual form. The visual form of presentation of an electronic document is the display of the data it contains by electronic means or on paper in a form suitable for the acceptance of its content by a person" [27].

In scientific sources, such legal categories as "electronic form" of the contract, "electronic document" and "electronic contract" are distinguished. The Central Committee of Ukraine does not operate with the concept of an electronic contract, limiting itself to the indication that the contract can be concluded in electronic form, which, given the content of the main act of the civil legislation of Ukraine, is a type of written form. Instead, the Law of Ukraine "On Electronic Commerce" defines the concept of "electronic contract" through the prism of the fact that the agreement must be reached "in electronic form". The concept of "electronic document" is broader in meaning and includes "electronic contract". Accordingly, the contract is qualified as electronic if it is provided in electronic form, which is a type of written [17, p. 104].

The procedure for concluding an electronic contract is regulated by Art. 11 of the Law of Ukraine "On Electronic Commerce". In particular, an offer to enter into an electronic contract (offer) must contain the essential conditions stipulated by law for the relevant contract, and express the intention of the person who made it to consider himself bound in case of its acceptance. An offer can be made by sending a commercial electronic message or placing an offer (offer) on the Internet or other information and telecommunication systems. The offer may include terms contained in another electronic document by redirecting (referring) to it. The person to whom the offer is addressed must be given unhindered access to electronic documents that include the terms of the contract by redirecting (referring) to them. The inclusion in an electronic contract of terms contained in another electronic document by redirecting (referring) to such a document, if the parties to the electronic contract had the opportunity to familiarize themselves with it, cannot be grounds for declaring the transaction null and void. Accordingly, in order for a person to respond to an offer for an example of concluding an electronic contract, it is necessary to: send an electronic message to the sender of the offer to conclude an electronic contract, signed in the manner provided for in Art. 12 of this Law; filling out the application form (form) on the acceptance of such an offer in electronic form, which is signed in accordance with the procedure provided for in Art. 12 of this Law; taking actions that are "considered acceptance of an offer to conclude an electronic contract, if the content of such actions is clearly explained in the information system in which such an offer is placed, and these explanations are logically related to it" [29].

According to the Law of Ukraine "On Electronic Documents and Electronic Document Management", the creation of an electronic document, including an electronic contract, is completed by applying an electronic signature and/or an electronic seal. In the case of the creation of an electronic document using more than one electronic signature and/or more than one electronic seal, its creation is completed by the imposition of an electronic signature or electronic seal by the last signatory or creator of the electronic seal in accordance with the technology for creating such an electronic document (Article 6). An electronic copy of a document with mandatory details, including an electronic signature of the author or a signature equivalent to a handwritten signature in accordance with the Law of Ukraine "On Electronic Identification and Electronic Trust Services", is considered the original of an electronic document. In the case of sending an "electronic document to several recipients or storing it on several electronic media, each of the electronic copies is considered the original of the electronic document. If the author creates an electronic document and a paper document identical in terms of documentary information and details, each of the documents is an original and has the same legal force" [27].

In accordance with Part 1 of Art. 12 of the Law of Ukraine "On Electronic Commerce", the moment of signing an electronic legal agreement is the use of 1) an electronic signature in accordance with the requirements of the laws of Ukraine "On Electronic Documents and Electronic Document Management" and "On Electronic Identification and Electronic Trust Services"; 2) electronic signature with a one-time identifier; 3) "an analog of a handwritten signature (a facsimile reproduction of a signature using mechanical or other copying means, another analog of a handwritten signature) by written agreement of the parties, which must contain samples of relevant analogs of handwritten signatures" [29].

The Law of Ukraine "On Electronic Identification and Electronic Trust Services" defines an electronic signature as electronic data added to other electronic data or logically linked to them and used by the signatory as a signature. Instead, an electronic seal is electronic data that is added to or logically linked to other electronic data and is used to ensure the authenticity of the origin of the related electronic data, to certify the electronic signatures of signatories on electronic documents, or to certify the conformity of copies of documents to the originals and integrity violation detection.

Electronic signatures and electronic seals can be improved and qualified. An improved electronic signature or seal must meet the following requirements: 1) be uniquely related (related) to the signer or creator of the electronic seal; 2) provide an opportunity to identify the signatory or creator of the electronic seal; 3) created using a personal key, which the signer or creator of the electronic seal can use with a high level of reliability under his own sole control; 4) to be associated

(associated) with electronic data on which an improved electronic signature or seal has been applied, in such a way that any subsequent change of such data can be detected.

A qualified electronic signature and seal must be based on a qualified electronic signature certificate. The use of advanced electronic signatures and seals, which are based on qualified public key certificates, provides a medium level of trust in means and schemes of electronic identification, and qualified electronic signatures and seals - a high level of trust in means and schemes of electronic identification. At the same time, the average level of trust in means of electronic identification refers to a means of electronic identification within the framework of the step-by-step structure of electronic identification, which in its content affects the determination of the degree of trust in declared or asserted personal identification data; is described with reference to the relevant technical specifications, standards, and procedures, including means of monitoring this or that technical means with their purpose, which is to reduce the risk of using or sharing personally identifiable data. "A high level of confidence in an electronic identification means refers to an electronic identification means in the context of an electronic identification scheme that provides a higher degree of confidence in the declared or asserted identification data of a person than an electronic identification means with a medium level of confidence and is described by reference to the associated technical specifications, standards, and procedures, including technical means of control, the purpose of which is to prevent improper use or substitution of identification data" [28].

The Law of Ukraine "On Electronic Identification and Electronic Trust Services" in the version of Law No. 2801-IX dated 01.12.2022 removed restrictions on the use of electronic seals exclusively by legal entities. At one time, legal literature argued in favor of the fact that the legal provision on the use of an electronic seal only by legal entities limits the rights of natural persons - entrepreneurs. In particular, it was noted that the subject of electronic commerce is a business entity of any organizational and legal form that sells goods, performs work, provides services using information and telecommunication systems, or a person who purchases orders, uses the specified goods, works, services by making an electronic transaction. Business entities are 1) "economic organizations – legal entities created in accordance with the Civil Code of Ukraine, state, communal and other enterprises created in accordance with the Economic Code of Ukraine, as well as other legal entities that carry out economic activities and are registered in the established law order; 2) citizens of Ukraine, foreigners and stateless persons who carry out economic activities and are registered in accordance with the law as entrepreneurs. At the same time, both legal entities and natural persons - entrepreneurs have the right to use seals in their activities" [7, p. 30].

An "electronic signature with a one-time identifier is data in electronic form in the form of an alphanumeric sequence, added to other electronic data by the person who accepted the proposal (offer) to conclude an electronic contract and sent to the other party to this contract" [29].

Jurisprudence assumes that it is a combination of numbers and letters, or only numbers, or only letters, which can be obtained by e-mail in the form of a password, sometimes in a "login-password" pair, or an SMS code sent to a phone, or in another way. When placing an order under a login and password, an electronic document is created, in which the person who created the order is indicated using the information system (website) [20; 21].

Such a one-time identifier is sent by the person offering to conclude the contract to the other party by means of communication. Accordingly, in case of acceptance of the offer to conclude a contract, the person adds the identifier to the electronic message [6, p. 13].

The absence of an electronic signature indicates that the electronic document was not created, and therefore cannot be considered by the court as evidence. A similar position is expressed by the Cassation Economic Court of the Supreme Court. Yes, in their resolutions: dated June 11, 2019 (case No. 904/2882/18), dated September 24, 2019 (case No. 922/1151/18), and dated December 28, 2019 (case No. 922/788/19) he investigated the possibility of using a printout of an electronic correspondence without an electronic signature as evidence in a case. The rulings of the Cassation Economic Court of the Supreme Court indicate that an electronic signature is a mandatory requisite of an electronic document. The absence of such details in an electronic document excludes grounds for considering it an original. Therefore, a printout of an electronic correspondence cannot be used as evidence in the case, as it does not meet the requirements of the Law of Ukraine "On Electronic Documents and Electronic Document Management", does not contain an electronic signature, which is a mandatory requisite of an electronic document, which makes it impossible to identify the sender of the message and the content of such the document is not protected from amendments and corrections [22; 23; 24].

Regarding the legal consequences of the absence of an electronic seal on an electronic document, the following should be noted. On December 1, 2022, Art. 6 of the Law of Ukraine "On Electronic Documents and Electronic Document Management" is set forth in the new version, in particular, it is stipulated that an electronic seal is also a mandatory requisite of an electronic document. Therefore, its presence or absence on an electronic document indicates that it was not created.

DISCUSSION

In the prescriptions of Part 6 of Art. 18 of the Law of Ukraine "On Electronic Identification and Electronic Trust Services" state that only a qualified electronic signature has the legal force of a handwritten signature [28]. Therefore, it can be concluded that only with the use of a qualified electronic signature, the parties can exchange information in electronic documents.

However, it is noted in the legal literature that according to Art. 215 of the Civil Code of Ukraine, there are no grounds for invalidating a contract signed not in the form of a qualified electronic signature [32]. After all, Part 1 of Art. 7 of the Law of Ukraine "On Electronic Documents and Electronic Document Management" establishes that the original of an electronic document is an electronic copy of the document with mandatory details, including the author's electronic signature or a signature equivalent to a handwritten one. In turn, Part 4 of Art. 6 of this Law empowers persons with dispositive powers regarding whether to give legal force to a regular or improved electronic signature [27]. Moreover, Part 5 of Art. 18 of the Law "On Electronic Identification and Electronic Trust Services" establishes the rule that an electronic signature that is not in the form of a qualified electronic signature cannot be invalidated only on the grounds that it does not meet the requirements of a qualified electronic signature [28]. Therefore, we agree that the contract between the parties was not signed using a qualified electronic signature, which will not mean the invalidity of such a contract, therefore the use of ordinary and advanced electronic signatures is completely legal and will create rights and obligations for the parties who signed such a contract [32].

Also Art. 12 of the Law of Ukraine "On Electronic Commerce" specifies that for the purposes of concluding agreements in the field of electronic commerce, the parties may choose any method of signing the agreement between them [29]. For example, when purchasing a product in an online store, the consumer will be asked to sign a purchase agreement using a virtual display of his signature on the screen of the device from which the consumer purchases the product. Such a signature will be sufficient for the electronic transaction to be considered concluded, and the parties will have mutual rights and obligations.

Regarding the conclusion of contracts between residents of different countries, in this case, it is necessary to be guided by the provisions of the Law of Ukraine "On International Private Law". If the parties to contractual relations wish to regulate their own relations according to Ukrainian legislation, they can use ordinary and improved electronic signatures. If they choose to be regulated by the legislation of a third country, it is necessary to analyze the relevant laws in this area of that country [30].

CONCLUSIONS

The introduction of electronic signatures and seals is an important step in the field of electronic identification and electronic trust services. Their legal consolidation and implementation are evidence of the rapid technological development of the country, adaptation to international standards, and ambitions to create an efficient, transparent, and open electronic provision of trust services.

In the absence of an electronic signature or seal on an electronic document it is impossible to identify the sender of this or that message, and therefore there is no need to talk about the protection of such a document from any kind of editing or correction. In this case, it is not appropriate to talk about the importance of such a document without a proper electronic signature or stamp for recognition in court. An electronic contract signed between the parties not using a qualified electronic signature will not mean the invalidity of such a contract, therefore the use of ordinary and advanced electronic signatures is completely legal and will create rights and obligations for the parties who signed such a contract.

Prospects for further research into the legal regulation of electronic identification and electronic trust services in the EU countries, which can be implemented into the domestic legal system, consist in the development of a theoretical and legal basis and arguments for the relevant legislative changes, which will simplify and speed up the electronic document flow. This will contribute to the scientific substantiation of proposals for improving the mechanism of legal regulation of electronic identification and electronic trust services in Ukraine.

ADDITIONAL INFORMATION

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ПРАВОВЕ РЕГУЛЮВАННЯ ЕЛЕКТРОННОЇ ІДЕНТИФІКАЦІЇ ТА ЕЛЕКТРОННИХ ДОВІРЧИХ ПОСЛУГ В УКРАЇНІ: ПЕРСПЕКТИВИ ВДОСКОНАЛЕННЯ Й РОЗВИТКУ В УМОВАХ ГАРМОНІЗАЦІЇ З ПРАВОМ ЄВРОПЕЙСЬКОГО СОЮЗУ

Електронні документи, обмін такими документами, засвідченими електронним підписом і печаткою, все частіше застосують у всіх сферах життя суспільства. У сфері приватно-правових відносин він прискорює процедуру укладання договорів. Підвищення ефективності їх підписання, своєю чергою, дозволяє прискорити виконання договірних відносин і тим самим підвищити якість обслуговування клієнтів, партнерів і постачальників. Стаття присвячена аналізу правового регулювання електронної ідентифікації та електронних довірчих послуг. Автори акцентують увагу на важливості гармонізації українського законодавства з правом Європейського Союзу у відповідній царині. Проаналізовано спроби втілити досвід міжнародних стандартів щодо електронної ідентифікації та електронних довірчих послуг у національне законодавство. Стаття присвячена вивченню змісту термінів «електронний підпис» та «електронна печатка» у межах дослідження видів указаних понять, зокрема: удосконалений електронний підпис та печатка, кваліфікований електронний підпис та печатка. Також акцентовано увагу на тих вимогах, під які суворо підпадає кваліфікація електронного підпису й печатки. У межах дослідження чинного законодавства загалом і судових практик зокрема з'ясовані правові наслідки відсутності на електронних документах електронного підпису або печатки. Для прикладу, у випадках відсутності на електронних документах електронного підпису або печатки неможливі ідентифікація відправника того чи іншого повідомлення. Крім того, у такому випадку доцільно відзначити й незахищеність такого типу документа від можливості корекції тексту чи правки. Відтак констатовано, що у випадку відсутності в електронному документі електронного підпису чи печатки, такий документ не розглядають у судовому процесі як доказ. Підтримано позицію про те, що на національному рівні договір між сторонами, підписаний не з використанням кваліфікованого електронного підпису, не означатиме недійсність такого договору, тому використання звичайного та вдосконаленого електронних підписів є цілком законним і створюватиме права та обов'язки для сторін, котрі підписали такий договір.

Ключові слова: електронна печатка, електронний підпис, електронна довірна послуга, правочин, договір, недійсність, права та обов'язки

JEL Класифікація: M10, O29, O30, O31, R32