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The following issue is dedicated to the bright memory of the prominent representative of Georgian legal science, Professor Emeritus Guram Nachkebia



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## The Importance of Regulating Contracts Concluded Through Electronic Means in Georgia's Legislative Framework

*The respective article is related to the essence of the contracts concluded through electronic means, as well as parties and their rights and obligations. The article will also review those similarities and differences, which are common for the respective type of contracts. The definitions will also be provided from those international acts, which specifically relate to the meaning, essence, parties and other matters of the abovementioned contracts.*

*Determination of contract's parties, as well as featuring and marking boundaries of their rights and obligations is an important aspect of any contract. Due to the fact that the parties do not meet in person upon concluding a contract through electronic means (distance contracts), there may arise certain type of obstacles. Hence, taking the respective circumstances into consideration, it is twice as important to determine the parties' rights and obligations, whereas special emphasis shall be made on a supplier's obligation to provide information to a consumer, hence form, amount and scope of such information is also important. The article will also touch upon a slightly specific, but very important aspect of such contract – time and location of conclusion and a law applicable for resolving any argument, which may arise.*

**Key words:** *electronic means, contract, parties, providing information, consumers' rights, law applicable, directives, convention.*

### 1. Introduction

The rapid development of technologies throughout the recent decades has become an integral part of public life. People do timely catch up and familiarize with novelties of technologies and make a good use of it. Development of electronic technologies has significantly changed and even eased daily life of each one of us in many ways. The 21st century is regarded as a century of technologies, thus it has become almost impossible to exist without wide range of electronic devices. Computers and various technical appliances have enabled to search for and process data, exchange desired information between humans in the shortest period of time. Digital technologies have become assisting tools and as one of the best means for people in any field when it comes to their work, interests, research and even leisure.

In the contemporary world and through internet, millions of matters are solved daily, which did require big amount of time and human resources years ago. One of these eased matters is concluding contracts through utilizing electronic means. Based on the statistics, 80% of the population, which has access to internet – concludes such contracts through computer, phone and other electronic means. One shall mention that throughout the world and only in 2013, the amount spent on internet trade was 1, 2 trillion USD, while in 2016 it equalled to 1, 9 trillion USD.<sup>1</sup>

The primary good of concluding a contract through electronic means is that it supports saving time, strengthening trade linkages and growth of effectiveness of commercial business. The latter and not limited to are the causes of worldwide popularity and demand to conclude contracts through electronic means throughout

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<sup>1</sup> The Statistics Portal "Statistics", Statistics and Market Data about E-commerce', <<https://www.statista.com/markets/413/e-commerce/>>, [25/07/2017].

the recent decades. Despite of the fact that both, world's and Georgia's consumer markets have witnessed significant growth of concluding contracts through electronic means, Georgia has not regulated this matter through legislative framework up to this moment.

The Directive 97/7/EC of the European Parliament and of the Council of 20 May, 1997 on the protection of consumers has launched the beginning of legislative regulation of contracts concluded through electronic means.<sup>2</sup>

Absence of legislative norms in Georgia may be an obstacle for a proper development of contractual relationship that are formed through using electronic means.

In order to make it clear for a customer on what does it imply to conclude a contract through electronic means, the following shall be explained: what is the main precondition that shall be observed prior to entering into contractual relationships, and what are the rights and obligations of the parties. The respective article will discuss on what is an essence, time and location of concluding a contract, as well as errors and challenges, which have arisen from such contractual relationships for Georgian customers. The article will also feature other countries' practices, as well as definitions from those international acts, which are specifically related to such type and essence of a contract. A separate chapter will be dedicated to a more or less specific topic – the issue of choosing a law applicable in case arguments arise between the parties.

## **2. The Essence of a Contract Concluded Through Electronic Means**

A contract concluded through electronic means is different from contracts formed in other ways since it is performed without physical presence of the parties in the same place neither before nor after signing it. Instead of physical presence and handling negotiations in a traditional manner – a consumer can utilize electronic means for concluding a desired contract. In such circumstances, the parties might even be in different countries while concluding a contract through electronic means. Due to physical absence, consumers do not have a possibility to fully assess their desired product or service.

Nowadays, concluding a contract through electronic means is one of the most well-known and convenient ways for various types of contracts. It includes sale, exchange, loan, insurance, delivery, task and other type of contracts. However, the vast majority of the contracts formed electronically are ones on sale, financial service and delivery.

Contracts concluded through electronic means refer to this practice in various terms, such as “electronic contracts”, which is widely used within the legislations of the United States of America and France<sup>3</sup>, the German Civil Code (later – GCC) regards it as distance contracts<sup>4</sup>. In the vast majority of international norms, such as the European Union's directives, United Nations' conventions and other agreements refer to the contracts concluded in the abovementioned manner as - electronic commerce.

The first international legal act, which relates to a contract concluded through electronic means is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce<sup>5</sup>, which was adopted in 1996. The latter was followed with the Directive 97/7/EC of the European Parliament and of the Council of 20 May, 1997 on the protection of consumers in respect of distance contracts;<sup>6</sup> in 2001, the Model Law on “Electronic Signatures” of the UNCITRAL was enforced.<sup>7</sup>

<sup>2</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in Respect of Distance Contracts, <<http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A31997L0007>>.

<sup>3</sup> *Thurlow W.*, Electronic Contracts in the United States and the European Union: Varying Approaches to the Elimination of Paper and Pen, Halifax, Nova Scotia, 2001, 12, <<http://www.ejcl.org/53/art53-1.html>>, [27.07.2017].

<sup>4</sup> See paragraph 312(c) of the GCC amendment 13.06.2014).

<sup>5</sup> United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, <[http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce/1996Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html)>.

<sup>6</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, <<http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A31997L0007>>.

<sup>7</sup> The Model Law on “Electronic Signatures” of the UNCITRAL <[http://www.uncitral.org/uncitral/en/uncitral\\_texts/elec](http://www.uncitral.org/uncitral/en/uncitral_texts/elec)

In October 2011, a new directive was adopted by the European Parliament and the Council on consumer rights,<sup>8</sup> ordering that every Member State (28) shall harmonize national legislation with the directive by December 2013. The article 2 (7) of the respective directive determines the definition of the distance contract, which means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the parties, with the exclusive use of one or more means of distance communication.<sup>9</sup>

Means of electronic communication for concluding a contract can be tools for exchanging information, such as internet, phone, fax, telegram, telescope and any other similar electronic, magnetic or alike appliances.

Offering various services and products to consumers through electronic means started in Georgia few years ago. Numerous companies utilize their personal internet pages for providing consumers with an offer to enter into contractual relationships. Despite of the fact that Georgia's legislation does not set forth anything in regard to the contracts concluded through the respective means, it still does not pose any obstacle to consumers, who want to procure a desired service. The vast majority of consumers hold either none or very limited information about their rights and obligations while concluding a contract through electronic means.

On a way to create solid investment environment and develop economy, Georgia faces serious challenge when it comes to concluding contractual relationships through electronic means, both with foreign companies, as well as supporting business within the country. Thus, improving legislation in this regard is not just desirable for Georgia, but also mandatory, as it has taken an obligation upon signing the European Union (EU) Association Agreement (AA) in June 2013 to comply its legislation with the European Union's legislation and international legal instruments. The latter agreement implies creation of the Deep and Comprehensive Free Trade Area (DCFTA). The sub-section 1 of the section 6 of the AA is related to electronic commerce and based on the article # 127 – the parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them. Based on the article # 128 of the same agreement, Georgia has taken an obligation that it shall maintain a dialogue on regulatory issues raised by electronic commerce, including the protection of consumers in the ambit of electronic commerce. For fulfilling the latter and other numerous obligations as set forth by the agreement, Georgia was given a period of five years from the moment of enforcing the AA.<sup>10</sup>

Large number of consumers conclude contracts through electronic means instead of traditional ones due to numerous reasons. Entering such contractual relationships has a benefit for both, consumers and providers; one of the main gains is saving time, while parties and subject of the contract may be present in different countries and populated areas, therefore, assessment of the contract's subject and handling negotiations requires big amount of time and financial expenditure. Concluding contracts through electronic means does not require physical interaction, however it offers an opportunity to consumers to compare a desired service of product's price and quality to other goods, without leaving home. Such circumstances make the whole process quite convenient and effective.<sup>11</sup> It shall also be highlighted that online shops are accessible anytime during day or night, thus supplier can gain benefit even when he/she is asleep.

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tronic\_commerce/2001Model\_signatures.htm>.

<sup>8</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/ECC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/ECC and Directive 97/7/EC of the European Parliament on the Council, <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1>>.

<sup>9</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and Repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;

<sup>10</sup> The EU and Georgia signed an Association Agreement, articles 127 and 128.

<sup>11</sup> Pricing and Payments, <[http://europa.eu/youreurope/citizens/consumers/shopping/pricing-payments/index\\_en.htm](http://europa.eu/youreurope/citizens/consumers/shopping/pricing-payments/index_en.htm)>, [13/06/2107].

Concluding contract through electronic means also enables supplier to expand business and make it more accessible for wider audiences. Having a shop or even a chain of shops cannot be as large-scale as performing electronic trade from any part of the world.

### **3. Parties of the Contract and Their Rights and Responsibilities**

The articles 1 and 2 of the directive of the European Parliament and of the Council on the protection of consumers in respect of distance contracts determines that parties of a contract are a supplier and a consumer.<sup>12</sup> As set forth in the directive, supplier means any natural or legal person who, is acting in his commercial, business, entrepreneurial or professional capacity; consumer means any natural person who, in contracts covered by this directive, is acting for purposes which are outside his trade, business or profession.<sup>13</sup>

As set forth in the GCC's article 312, paragraph c, parties of a contract is a trader and a consumer. An entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.<sup>14</sup>

According to the fact that upon concluding a contract through electronic means the parties do not meet in person, thus a consumer is deprived with a possibility to preview or check subject of contract. It shall also be highlighted that engaging into such contractual relationships does not have a regular business pattern for consumers and it puts them into a non-beneficial condition.

Exhaustive and trustworthy fulfilment of the responsibilities set forth in contract is one of the most important principles of the Civil Code of Georgia, hence, comprehensive fulfilment of these it a primary obligation for parties of any contract.

One of the main obligations of a supplies in regard to a contract concluded through electronic means is providing consumers with information.

As set forth in the article 1 of the directive of the European Parliament and of the Council "on consumer rights", a trader should give a consumer clear and comprehensible information before the consumer is bound by a contract concluded through electronic means. The information to be provided is the following:

- The main characteristics of the goods or services;
- The identity of the trader, such as trading name, address and telephone number;
- The total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional charges;
- The arrangements for payment and delivery;
- The duration of the contract and the conditions for terminating the contract.<sup>15</sup>

The Principles, Definitions and Model Rules of European Private Law developed by the Study Group on a European Civil Code discusses the obligation of disclosing information, which is an integral part of concluding a contract. The Study Group believes that before the conclusion of a contract, the business has a duty to disclose to the other person information concerning the goods, such as quality and characteristics. In general, parties of a

<sup>12</sup> <<http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A31997L0007>>.

<sup>13</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/ECC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/ECC and Directive 97/7/EC of the European Parliament on the Council, art. 2.

<sup>14</sup> See GCC, paragraph 14, (18/08/1896).

<sup>15</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/ECC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/ECC and Directive 97/7/EC of the European Parliament on the Council, art. 1.

contract shall be able to obtain factual and legal information on a good or service they wish to procure.

The study also highlights that the vocabulary used shall be clear and understandable; usage of technical terminology shall be avoided at a maximal extent, however even if using these – they shall be explained adequately.<sup>16</sup>

According to the directive of the European Parliament and of the Council on the protection of consumers in respect of distance contracts obliges supplier to provide with even more information. Similarly to the wording of an introductory act of the GCC<sup>17</sup>, the directive obliges a supplier to provide consumer with the following information concerning: business of the supplier, location, as well as identity of the representative of the supplier established in consumer's Member State of residence, registration number, financial service, total price to be paid by the consumer (including all related fees, charges and expenses), notice of the possibility that other costs may exist that are not paid via the supplier or imposed by the latter, arrangements for payment and for performance, as well as duration of the contract. Besides, the party shall receive information on any rights and terms the parties may have to terminate the contract.<sup>18</sup>

The abovementioned norm makes it obvious that upon conclusion of a contract through electronic means, a supplier has an obligation to provide much more information, which opens a floor for an idea that on an international level there is a strict approach to the latter topic.

In regards to the respective topic, Georgia's recent experience with so called "online loans" is an interesting practice to review. Due to the fact that the latter loans are concluded through distance contracts, such relationship is a typical contract concluded through electronic means. As numerous noted in the article, there are no legislative norms in Georgia, which could regulate conclusion of such contracts or rights and obligations of the parties afterwards. However, such circumstances do not pose any challenges to suppliers.

In the process of development of the article, web-pages of five "online loans" operating in Georgia were studied. It shall be highlighted that the situation in this regard is quite alarming. A consumer shall mobilize as much as one can to simply receive information on key terms of a contract, let aside additional ones; a consumer shall also be aware of technical and financial terminology, as well as he/she shall visit other links to acquire crucial information. None of the web-pages studied provide consumers with a clear and understandable information on future financial obligations, let aside total sum of the amount to be paid, fines or interest rate imposed. Despite of the fact that every web-pages' front site does provide information that during the first month of getting a loan, interest won't be imposed on the original sum, however, it is either impossible to get comprehensive information on financial liabilities to be expected in the upcoming months, or a customer shall have enough competence in these matters. Such reality exists in an environment where large number of consumers of these "online loans" are persons close to retirement age, students or persons who do not possess skills needed for going through the respective procedures easily.

Instead of creating additional obstacles for consumers to get familiar with the key terms of contracts, a democratic state shall aim at establishing a practice which is focused on consumers.

For achieving the respective goal, ensuring the respective legislative amendments is obligatory and shall be timely. Despite of the fact that the initiative group has already produced the Draft Law on "Consumers' Rights Protection"<sup>19</sup>, however, it has been years after development of the latter and it didn't make it to being discussed or adopted within the Parliamentary hearings. The draft law was developed based on the directive 2011/83/EU of

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<sup>16</sup> *Bar Ch., Clive E., Schulte-Nölke H.*, Principles, Definitions and Model Rules of European Private Law - Study Group on a European Civil Code and the Research Group on EC private Law Munich, 2009, 245, <[http://ec.europa.eu/justice/contract/files/european-private-law\\_en.pdf](http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf)>, [23.07.2017].

<sup>17</sup> Introductory act of the GCC, paragraph 240.

<sup>18</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

<sup>19</sup> See <[http://www.momxmarebeli.ge/images/file\\_771576.pdf](http://www.momxmarebeli.ge/images/file_771576.pdf)>.

the European Parliament and of the Council on consumer rights.<sup>20</sup> The draft law relates to all the peculiarities of long distance (distance) sales, as well as contracts concluded in streets; there is a separate chapter on obligation of disclosing information, the scope and form of the latter. Development of the draft law is a very positive sign, however completion and timely adoption of it will be a strong leverage enacted in response to these abovementioned “online loans”, which will also create grounds for effective resolution of disputes through litigation or mediation; hence, the final outcome all of these will ensure protection of consumers’ rights.

## **4. Peculiarities Related to Determination of Time and Location of Conclusion of Distance Contract**

### **4.1 Time of a Contract**

Accurate determination of a moment and location of a contract concluded is one of the most important matters, which requires special attention not just in distance contracts, but also in those ones that are concluded in physical presence of the parties.

From the moment of concluding a contract, the parties are bound and without the respective ground, they are deprived with a possibility to reject or terminate it.<sup>21</sup> Agreement on terms of a contract among the parties is a ground for creating contractual rights and responsibilities, however a moment of conclusion is quite crucial. As set forth in the article 327 of the Civil Code of Georgia, a contract shall be considered entered if the parties have agreed on all of its essential terms in the form provided for such agreement.<sup>22</sup>

As already mentioned, while physical presence of the parties, the moment of conclusion of a contract is a moment when parties make an agreement. Due to the fact that in cases of distance contracts, there is absence of not just physical presence, but in many cases there is no verbal (via phone) negotiation, therefore, determination of a contract’s conclusion moment is performed differently. Agreement on contract’s terms between the parties takes place upon exchanging information through electronic communication channels. After exchanging information, a party confirms engagement into contractual relationship upon agreeing to the rules set forth by the respective supplier. In case of physical absence of the parties, an expression of willingness to contract is regarded, on one hand, an invitation for an offer and later on receiving and accepting the latter offer. Determination of contract’s conclusion moment has an essential meaning also because it is the moment from when one party transfers to another one ownership and risks. Determination of exact time becomes especially crucial when we have two or more simultaneous (competitive) offers.<sup>23</sup>

As set forth in the article 10 of the “United Nations Convention on the Use of Electronic Communications in International Contracts”, the time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator.

The time of receipt of an information is the time when addressee is capable of retrieving information sent to the address he/she has indicated. An electronic communication is regarded as received, when it has reached the addressee’s electronic address.

Following exchange of information, which equals to negotiations on contractual terms held upon physical presence of parties, results into an offer and acceptance being carried out. Hence, making acceptance by a con-

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<sup>20</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/ECC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/ECC and Directive 97/7/EC of the European Parliament on the Council.

<sup>21</sup> *Bar Ch., Clive E., Schulte-Nölke H.*, Principles, Definitions and Model Rules of European Private Law - Study Group on a European Civil Code and the Research Group on EC private Law, Munich, 2009, 347, <[http://ec.europa.eu/justice/contract/files/european-private-law\\_en.pdf](http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf)>, [23.07.2017].

<sup>22</sup> See article 327 of the Civil Code of Georgia.

<sup>23</sup> *Kierkegaard M.S.*, E-Contract Formation: U.S. and EU Perspectives, Washington, 2007, 10.



sumer and receiving the latter by a supplier is regarded as the moment of conclusion of a contract. Due to specifics of distance contract conclusion, time of sending and accepting does not coincide. Sending and receiving offer through electronic means requires more time than making an offer while holding negotiation upon physical presence of the parties. From a technical point of view, it shall be highlighted that it only takes few minutes to send and receive an e-mail by an addressee, however it does not imply that the latter addressee has indicated assent of an offer. For example, if parties are performing offer and accept through an e-mail, an addressee may only check his/her e-mail few hours later due to being present in a different time zone. Therefore, this is a sole reason why it was mentioned that information is regarded as received when it was sent, but when an addressee was capable of retrieving information send to that address, which he/she had indicated.

Based on the abovementioned, a moment of contract's conclusion through electronic means is not when a party indicates assent of an offer, but when supplier receives the latter. The respective fact is also strengthened by the article 18 (2) of the "United Nations Convention on Contracts for the International Sale of Goods", which sets forth that an acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror.<sup>24</sup>

## **4.2 Location of a Contract's Conclusion**

As mentioned earlier, the main characteristic of contract's distant conclusion is that there is absence of physical interaction of parties. On one hand the latter aims at saving time, however the essence of such contract is that location of parties in a moment of conclusion does not coincide.

Therefore, any personal computer can be utilized through internet access to visit internet shops and hold negotiations with an offeror and in case of willingness – indicate assent; however, it is crucial to accurately determine location of conclusion of a contract.

It becomes easy to determine location of conclusion of a contract, as well as laws applicable when a contract is concluded within a country and through electronic means. For example, if a person in Germany is purchasing a good from an internet shop, whose Internet Protocol address (IP address) is in Germany, hence, location of conclusion of a contract will be Germany and any conflicts between parties will be regulated through the relevant articles of GCC.

However, as we speak about international trade, we do imply contractual relationships among parties, who are present in different countries. In such circumstances one shall take the following matters into consideration:

- Which country's legislation shall be applied upon conclusion of a contract;
- Does a legislation of consumer's or supplier's country of residence regard a contract in force;

As set forth in the "Convention on the Law Applicable to Contractual Obligations 1980", or the "Rome Convention", the parties are free in their choice to which country's legislation shall be applied for governing legal relationship between them. This choice may be directly expressed or derive from the respective circumstances. Upon electronic conclusion of a contract, either offeror shall indicate which country's legislation is used, or a consumer shall be given a possibility to choose. The respective matter becomes hard to govern in case the parties have not agreed on the respective matter; the latter situation is further discussed in the article 4 of the Rome Convention, which outlines that to the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected;<sup>25</sup> The second paragraph of the same article also explains what does the "most closely connected" implies – it is a party, which is obliged to perform an action (for example: pay bills) and has a permanent residence in the country upon conclusion of a contract.

<sup>24</sup> United Nations Convention for the International Sale of Goods, art. 18.

<sup>25</sup> Convention on the Law Applicable to Contractual Obligations, Rome 1980.

### 4.3 Choice of a Law Applicable

As easy and convenient it is to shop through internet, as difficult and complex it is to choose a law, which shall be applicable while resolving arguments between the parties.

Jurisdiction requires to determine which court shall discuss a conflict. Choosing court and applicable law is a crucial issue in international trade relations, especially when it comes to contracts concluded through electronic means.

In case of contracts concluded through electronic means and when goods are delivered to residential address of a client – it is relatively easy to select court and applicable law; however, if a contract is concluded in absence of physical interaction (for example: downloading a book purchased electronically), than this matter becomes difficult to resolve.<sup>26</sup>

Nowadays, there are neither model laws, nor conventions, which are exclusively related to internet jurisdiction. Neither United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce and nor the “United Nations Convention on the Use of Electronic Communications in International Contracts” set forth anything about jurisdiction, however it does provide information on location of parties, which may be used while determining choice of jurisdiction and law applicable.

“The Hague Convention of 30 June, 2005 on Choice of Court” is a multilateral agreement, which is related to choice of court. As set forth in the article 3 of the convention, exclusive choice of court agreement means an agreement concluded by two or more parties, for the purpose of deciding disputes at courts of one of the contracting state.<sup>27</sup>

The choice of court, which shall discuss a dispute is related to those disputes, which have either already arisen or may arise in the future. Obviously, choice of a court by parties does not imply that a dispute will definitely be resolved by this very court. There are certain circumstances, when a court may exercise a right to refuse to resolve a dispute. Firstly, a court shall be in a capacity to discuss a dispute, moreover, parties shall have legal rights to have a dispute resolved through courts; subject matter of a dispute shall not be clearly unjust or against public order.<sup>28</sup>

After deciding on issue of choosing a court, court comes across yet another and quite important matter, which is to decide on which country's legislation shall be applicable while dispute resolution. Since, contracts concluded through electronic means are performed between residents of different countries (companies), it may become needed to apply legislations of even two countries. Naturally, every party would like to see a dispute being resolved through national legislation, which is more familiar to him/her/it, thus it becomes crucial to balance their interests; for avoiding the latter difficulties, it is desirable to ensure that parties have agreed in advance on which court and which country's legislation shall be utilized for resolving a dispute. However, if there is no pre-agreement as such, a court itself shall decide on the most applicable law.

According to the article 7 of the Hague Convention 1986, a contract shall be governed by the law chosen by the parties. The parties' agreement on this choice must be expressed clearly demonstrated by the terms of the contract and the conduct of the parties, viewed in their entirety. The parties may also, after concluding a contract to partly or fully change their indication of a law applicable.

The article 8 of the same convention governs situations when the law applicable has not been chosen by the parties. The article also sets forth that in such situations a contract is governed by the law of the State where the seller (trader) has his place of business at the time of conclusion of the contract.<sup>29</sup>

<sup>26</sup> Wang F.F., *Internet Jurisdiction and Choice of Law*, Cambridge, 2010, 8.

<sup>27</sup> Convention on Choice of Court Agreements, art.3.

<sup>28</sup> Wang F.F., *Internet Jurisdiction and Choice of Law*, Cambridge, 2010, 24-25.

<sup>29</sup> Convention on the Law Applicable to Contracts for the International Sale of Goods, art.7-8.

During the last 30 years, Member States of the European Union use the Rome Convention as a guidance of law applicable to contractual obligations, which has resulted into the Rome I Regulation of June 2008;<sup>30</sup>

Both, the Rome Convention, as well as national legislations of the Member States of the European Union and in general, along with all the legal norms operating in the world, is based on the principle of party autonomy. Article 12 of the Convention sets forth that “The parties’ freedom to choose the applicable law should be one of the cornerstones of the system of conflict of law rules in matters of contractual obligations. Parties have the utmost freedom to whatever law they want to be applied. However, parties’ choice is limited to either party’s national law.”<sup>31</sup>

In the process of selection of a law applicable in regard to electronic trade, location of the parties becomes a crucial aspect, both in regard to concluding a contract, as well as prior period; there is no specific international regulation when it comes to a law applicable on contracts concluded between suppliers (B2B) or a supplier and a consumer (B2C). The directive of the European Parliament and of the Council on consumer rights is without a reservation on a law applicable in regard to distance contracts, however there is a well-established principle of “country of origin” in practice, which implies the country of production. This principle might be utilized in those circumstances, when the parties have indication of neither international, nor national legislations.<sup>32</sup>

## **5. Conclusion**

The respective article has reviewed the essence of a contract concluded through electronic means, as well as the parties, their rights and obligations, and the moment of creation of contractual relationships. The article touched upon the well-established principle of contracts concluded through electronic means – an obligation of providing information, amount/ways/methods of providing the latter by a supplier to a consumer, as well as time, location of conclusion and an issue of choosing a law applicable while resolving a conflict arisen between the parties.

Due to an increase of utilizing electronic means for conclusion of contracts and high demand of the latter on a daily bases, it becomes desirable to manage all those matters on a legislative level, which will more or less serve as an exhaustive regulation over the situation, which may arise between the parties.

Aiming at integrating to the European Union, Georgian State has undertaken several crucial obligations, one of them related to reflection of the legal norms of the Directive of the European Parliament and of the Council regarding conclusion of distance contracts through electronic means in national legislation. The latter obligation is reflected in the European Union (EU) Association Agreement’s (AA) 6th chapter, hence during the period of 2018 – 2020, Georgia shall implement the respective norm; for this matter, Georgian State shall undertake the following steps:

50. Legislative regulation of contracts concluded through electronic means; (timely adoption of the law on “Consumers’ Rights Protection”, making corresponding amendments to the civil code);
51. Strict control of widely spread internet shops or so called “online-loans” companies in order to ensure that the risk of these violating consumer rights is diminished to a minimal extent.

It has been numerously mentioned that protection of consumer rights in contractual relationships is a quite crucial matter for the Member States. For ensuring the abovementioned, Georgia shall apply the European countries’ best practices, including the ones of the United Nations and the European Parliament and the Council to a greater extent. Georgia shall also profess interest in reviewing the matters of litigation. After accurate analyses

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<sup>30</sup> *Wang F.F.*, *Internet Jurisdiction and Choice of Law*, Cambridge, 2010, 100-101.

<sup>31</sup> *Behr V.*, *Rome I Regulation A Mostly Unified Private International Law of Contractual Relationships Within Most of the European Union*, *Journal of Law and Commerce*, Vol.29, May 2011, 240, <<http://jlc.law.pitt.edu/ojs/index.php/jlc/article/view/3/3>>.

<sup>32</sup> *Wang F.F.*, *Internet Jurisdiction and Choice of Law*, Cambridge, 2010, 98.

of the respective practice and adjustment to Georgia's reality, the outcome shall be ensuring the reflection of these into national legislation.

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