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# Contracting in the Digital Society – Certain Issues of Significance in Regards to Regulation of Offers and Acceptance of Offers in E-contracts

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## Abstract

Digital economy introduces digitization into contract law and contracting practice, creating preconditions for redefining traditional postulates of contract law, through different forms of offering goods and services, electronically and with the usage of new economic and legal terminology, as well as different contracting processes. The paper is focused on special segments of the contractual cycle - the offer and acceptance of the offer, as key elements in the contractual cycle of concluding electronic contracts, and the analysis of their regulation in the context of contracting in a digital society. The offer and acceptance of the offer, as well as the broader context of contracting in the digital society, are presented through a phenomenological analysis, the aim of which is to point out the elements and consequences of the impact of the use of digital technology in contracting. Furthermore, the legal aspects of the offer and the acceptance of offers during the creation of electronic contracts were analyzed and compared with traditional contractual principles using a comparative method, in order to assess the scope of their applicability in modern business conditions, i.e. to indicate the degree of the need for the redefinition of the traditional principles of contract law.

*Key words:* electronic contract, offer, acceptance of the offer, contracting, digital economy .

## **Contracting in the Digital Society – Certain Issues of Significance in Regards to Regulation of Offers and Acceptance of Offers in E-contracts**

### **Introductory remarks**

Modern economy is defined as digital economy, and is based on electronic commerce (e-commerce), which relies on contracting that increasingly relies on the usage of digital technology. The contract is the basis of legal obligation, the basis of the validity and legitimacy of legal rules, starting from the theories of the social contract, all the way to modern business conditions within the digital society. The functioning of the digital society and the digital economy introduced the process of digitization into contract law and contracting practice, moving it away from the traditional postulates of contract law. The new reality today includes different forms of offering goods and services, electronically and using new economic and legal terminology, as well as different contracting processes. As a result, the courts appear as creators of standards of fairness for consumers in the case of contracts concluded via the Internet, and different forms of online, i.e. electronic trading introduce new ways and standards of evaluating obtaining the consent of the buyer, i.e. the consumer to the transaction. Payment for goods and services in various cryptocurrencies is accepted. Thus, today a trend is being created for digital technology to change the basic postulates of traditional branches of law, including contract law, and two regulatory processes are taking place in parallel - the revision of traditional postulates of contract and other branches of law, on the one hand, and the creation of new, innovative normative solutions on the other side. Especially in terms of adapting legal rules to the new reality of using digital technology, there is a visible reliance on European legal rules, since the European Union has proven to be a pioneer of regulation that monitors and implements digitalization processes in member countries.

Electronic contract is the most significant and fundamental institute of electronic commercial transactions in the wider framework of electronic commerce. In national law, the terms electronic contract, contract in electronic form, digital contract, etc. are usually used. The electronic contract is a novelty in the legal regulation of contractual relations, although it is based on the principles of general, traditional contract law. It includes a contract that legal and natural persons conclude, send, receive, terminate, cancel, access and display electronically, i.e. with the use of electronic means. What is shown to be the specificity of electronic contracts is the legal treatment of their dematerialization, ways of determining the identity of the parties to the contract, verification and authentication of the contract in digital, i.e. electronic form, as well as other security aspects that are conditioned by the digital form of communication during the conclusion of the contract (Grundman, Hacker, 2017, p. 276).

The subject of research in the paper is focused on special segments of the contract cycle - the offer and acceptance of the offer, as key elements in the contract cycle of concluding electronic contracts, and the analysis of their regulation in the context of contracting in a digital society. The offer and acceptance of the offer, as well as the broader context of contracting in the digital society, are presented through a phenomenological analysis, the aim of which is to point out the elements and consequences of the impact of the use of digital technology in contracting. Furthermore, the legal aspects of the offer and the acceptance of offers during the creation of electronic contracts were analyzed and put on a par with traditional contractual principles using a comparative method, in order to assess the scope of their applicability in modern business conditions, i.e. to indicate the degree of need to redefine the traditional principles of contract law.

### **Contracting in digital society – legal aspects**

The specificity of contracts that can be defined as electronic is reflected in the use of digital, i.e., information and communication technology when concluding contracts, in the contract certification

procedure, contract amendments, methods of accepting offers, methods of identification of contractual parties, methods of subsequent modification of acceptances, etc. (Radovanović, 2008, 279–291). Various forms of digital technology (digital platforms, Big Data Analyses, artificial intelligence, blockchain) are used in the contracting phases such as screening of potential contracting parties, formulating contracts, defining contractual obligations and changes, automated application, i.e. execution and interpretation of contracts (Gisler et al., 2000). Drafting and further development of contracts can take place in digital form - via email, internet auction, digital platform, or algorithmically triggered transactions. The content of the contract can be digital, e.g. software or cloud services agreement. Practically, a contract as an instrument for regulating relations, can have a digital form and, at the same time, a digital content, that is, an object. The execution of the contract may be entrusted, in whole or in part, to various forms of digital technology (Grundman, Hacker, 2017, p. 264).

The specificity of the construction of the legal framework concerning the use of digital technology in contracting and electronic commerce is that there is a disproportion in the dynamics of the construction of the legal framework and the actual development of the use of digital technology in everyday life and business. The law, that is, the procedures for creating, adopting and entering into force regulations in internal legal systems cannot follow changes in the modalities and ways of using digital technology. Technological progress is happening much faster than the law can keep up with it. In this sense, in the field of normative regulation, a trend is taking place that is somewhat uncharacteristic for continental European legal systems, namely that judicial practice is becoming a pioneer of normative solutions regarding the use of digital technology (Stojšić Dabetić, Mirković, 2023, p. 37). When a dispute arises, the parties to the dispute have an interest in resolving it as soon as possible, they cannot wait for the construction of a legal framework to protect their interests. In the context of the use of digital technology in contracting, courts, especially in the USA, have had, and continue to have, a significant role, and exert a great influence on other legal systems, in terms of

innovative solutions that can be applied in case of disputes regarding the use of digital technology in contracting.

It is in the interest of the state, society and economic subjects to protect the validity of contracts concluded electronically, that is, that the validity of such concluded contracts cannot be disputed, and this is a basic prerequisite for the development of electronic commerce. Electronic communication during the conclusion of the contract must not be an obstacle to its validity. In other words, electronic communication during the conclusion of the contract cannot be taken as a basis for legal invalidity. This approach is based on the principle of technological neutrality and the prohibition of discrimination, which represent the basic principles of normative regulation in most national laws. Contracts must have the same legal treatment regardless of the technology or media used in their creation or realization, that is, favoring contracts created in a certain way must be prevented (Dukić Mijatović, Mirković, 2022, p.55). It is legally legitimized and recognized that the offer and acceptance of the offer can be made in electronic form. However, the principle of legal recognition of electronic contracts is not absolute. In most national legal systems, contracts concluded with the participation of public authorities or mandatory written form are defined by law. In this sense, if in terms of its quality and legal status the electronic form is not equal to the written form, which is the case in most internal laws, it cannot replace the written form, whether it is provided for by law or by the will of the parties, but exists as a separate, new, form of contract, in accordance with the principle of consensualism. Also, in most national legal systems, the corresponding application of the rules on obligation relations to contracts in electronic form is foreseen. For example, in the case of an electronic contract, the mandatory data and information that the service provider must provide when concluding the contract must be made available in a clear and unambiguous manner. Also, the moment of concluding an electronic contract is considered to be the moment, that is, the time when the offeror receives an electronic message containing the offeree's statement that he accepts the offer. Bearing in mind the specifics of communication via the Internet, the bidder is considered

to have received the message when he can access it, not when he has actually read it (e.g. he is considered to have received the message if it is in his electronic inbox and has not yet been read ).

Negotiating, submitting an offer and concluding a contract can be done using the services of the information society, e.g. email. The practice is to use automated software on websites that are used for sales, in which the parameters for receiving orders are pre-set, that is, programmed, and this enables orders to be placed without the seller's knowledge. In such cases, the sale is made through classic adhesion contracts concluded through the website, where the software acts as an electronic representative of the seller. Contracts where declarations of will are made by electronic means can be labeled as reactive in the sense that they require additional communication actions from the contracting parties in order to complete the contract (Stojšić Dabetić, 2023, p.87). It can be a click on a specific field on the web page (clickwrap contracts) which means completing the contracting process or by accessing the web page itself (browsewrap contracts). The acceptance of the offer is at the same time the moment of concluding the contract. Acceptance of an offer can have several modalities in a digital context: by clicking on a specific field on the web page (with an additional step of confirmation with the next click), by filling out a form on the web page or by email.

Electronic contracts, as a legally standardized and new law institute, are usually classified in the area of contract law. Most national legal systems start from the fact that an electronic contract is also an obligation by its legal nature, and obligation law is the natural normative environment for this form of contract. The regulation of electronic contracts also often takes place within the framework of commercial law regulations, that is, regulations dedicated to e-commerce, but still only the normative determination of this type of contract takes place on the basis of traditional principles of contract law. In the context of considering contracting in the digital society, and in connection with the phenomenology of contracting presented earlier, there is a need to consider the level of compliance of contracting practice in the digital society with traditional institutions of contract

law, observed through the key points of a contract cycle. It is clear that digital technology, which is at the very root of electronic contracts and contracting practices in general in a digital society, functions as a very dynamic phenomenon, while law does not have that feature. In other areas that require legal regulation, it has been shown that the law cannot keep up with the speed of development of new forms of digital technology use due to the established procedures from which the legal force and legitimacy of the regulation is drawn. Jurisprudence, as previously pointed out, can to some extent follow the speed of development of digital technology and its impact on law, but it does not have a uniform status as a source of law and its reach is limited. By delving into the scope of the application of traditional institutes and principles of contract law to the practice of contracting in a digital society, the general relationship between law and digital technology is also closely examined, which is of extreme importance because it is quite certain that digital technology is the factor that has the greatest influence on social, and thus legal and economic changes and development. In this context, the peculiarities that electronic contracts show in the modern digital society will be presented in the context of the key points of the contract cycle - offer and acceptance of offers.

### **Declaration of will – offer and acceptance of the offer in the digital context**

Traditional contract law implies that both parties declare their intention to conclude a contract, in the form of an offer and acceptance of offers. Consent of wills regarding the essential elements of the contract is one of the general conditions for the conclusion of the contract. Consent of the wills occurs in such a way that one party takes the initiative and proposes to the other party to conclude a contract, and the other party accepts that proposal. The digital environment also implies the expression of will in interactions, only that online circumstances indicate certain specificities. In the context of electronic transactions, the will can be expressed orally (phoning via the application), with signs (putting an item in the virtual basket), in

writing (replying to an SMS message), with the fact that there is a problem of face identification, that is, the need for face authentication. And such declarations of will could not be compared to written declarations of will from the aspect of legal certainty, except in the case of foreseeing certain degrees of verification. The use of digital technology in the contract cycle implies the legal equating of the declaration of will made through electronic means with written declarations of will (Klasiček, 2021, 173-194). It must be borne in mind that through digital technology, that is, electronic devices, the will can be expressed in a number of different ways and in different forms.

For example, one person can publish their smart contract (say for the purpose of raising funding) and this is considered a general offer because it contains all the essential elements of the future contract. By accepting the offer, it turns into a contract, by sending a fee in cryptocurrency or another digital asset in the form of an upload. Upload is the objective acceptance of the offer and the simultaneous fulfillment of the contractual obligation. When the smart contract, i.e. its code, verifies the receipt, the exchange between the contracting parties takes place.

In German law, the electronic form of the declaration of will is expressly recognized by law, in the sense of signing the text of the declaration of will with or without a qualified electronic signature if the person to whom it refers is clearly specified in the text itself. The conclusion of a contract in electronic form implies that each contracting party signs the same document with their electronic signature. The electronic signature must include the entire text of the contract. To a large extent, German legal solutions rely on traditional principles of contract law, but with the exception of legal regulations dedicated to electronic signatures. The most significant specificity and difference compared to the offline declaration of will is the fact that individuals are often not aware that they have given a declaration of will by which they enter into a contractual relationship. Understanding and correctly determining the moment of conclusion of the contract is important because of the application of rights and obligations to the contracting

parties, i.e. the effect of the contract that begins from that moment (Vinayak, 2019).

## **Offer**

The general understanding of contract law is that the contract is considered concluded when the offer is accepted. An offer is defined as a unilateral expression of will directed to a specific person for the purpose of concluding a contract. In the context of electronic contracting, the offer can be placed electronically: by e-mail or via website. Regardless of how the offer is placed, it must meet the traditional requirements stipulated by the contract law - it must be precise in terms of its essential elements and addressed to a specific person or persons. The recipient of the offer is bound by the given offer from the moment it is delivered, communicated or otherwise made available, that is, from the moment when, under normal circumstances, he can familiarize himself with it in an adequate way. And this rule seems general enough that it is also applicable to the circumstances of concluding electronic contracts, in the sense that it includes situations when the offer has arrived in the electronic inbox and has not yet been read, when it arrives outside working hours or via networks that do not have constant, i.e. continuous transmission for technical or other reasons.

Making an offer for the conclusion of a contract electronically implies the use of e-mail or a website, the offer can be a commercial advertising message with which the consumer, that is, the buyer, agrees. The offer must be precise, addressed to a specific (not undefined or undeterminable) person or group of persons. The offer binds the recipient from the moment it becomes available to him, that is, if he can get acquainted with it under normal circumstances (for example, it is in his electronic inbox, even if it has not been read). Most national laws accept the theory of acceptance of the offer, ie. the contract is considered concluded when the offer is accepted. It is considered that at the moment when the customer places an online order on the merchant's website, the merchant must immediately, i.e.

without undue delay, accept or reject the order and inform the customer electronically (which is also in accordance with Article 11 of the EU Directive on e-commerce). Usually, on these occasions, automated software with pre-set parameters is used (so in practice this is an adhesion contract), so that the trader has no contact and no knowledge of the concluded contract. In order to prevent misunderstandings, fraud and to warn the inattention of customers, the legislator set as a matter of public interest the regulation of the mandatory content of the advertising message, by prescribing the conditions for its legality, and that at the moment of receipt of the marketing message by the customer, it can be clearly concluded from it its commercial character, that the sender of the commercial offer can be clearly identified, i.e. the entity whose goods or services are being advertised, that every promotional invitation to send an offer from a commercial message must be recognized in that way, even in the case of offering free goods or services, as well as that the conditions under which an offer is made based on a commercial message must be transparent. A commercial message generally does not have the characteristics of an offer, but the buyer sends an offer to the service provider with his request for a specific purchase (selection of goods, services, quantity, etc.) and the statement that he agrees with the content of the contract, which he accepts by sending an electronic message. In order for a commercial message to have the character of an offer, according to the rules of the contract law, it must have the property of a proposal for the conclusion of a contract made to a specific person, which contains all the essential elements of the contract so that the contract could be concluded by accepting it. However, the sending of catalogs, price lists, tariffs and other notices, as well as advertisements made through the press, leaflets, radio, television or in any other way, do not constitute an offer to conclude a contract, but only an invitation to make an offer under the published conditions, as well as commercial offer made through the website. Therefore, both the service provider and the user can be in the capacity of the offeror, depending on the way the invitation to conclude a contract is worded, as well as whether the invitation has all the

essential elements of the contract that is concluded on that occasion. It is usual that marked goods or services on the website, together with the price and conditions, do not mean an offer, because the buyer himself, by choosing the type of goods, services, quantity and method of collection, actually sends the offer to the service provider, who accepts it by electronic message, which formally becomes the contract. binding on the contracting parties.

Different national laws treat the display of products on a website differently - either as an invitation to conclude a contract (English law) or as a public, general offer (Dutch law). In this sense, Dutch law treats an order for a product on a website as an acceptance of an offer and the conclusion of a contract, while English law treats it as an offer to purchase that requires the seller's acceptance of the offer and subsequent conclusion of the contract. By announcing the offer, the offeror expresses his intention to be contractually bound under certain conditions, which, if accepted by the other party, become legally binding. In the context of electronic offers, primacy is placed on the appearance of the offer rather than on the intention of the offeror - the offer depends on how a reasonable individual would interpret it, whether it is contained on a website or in the text of an email. Something that can reasonably be interpreted as an offer does not necessarily have behind it the intention of the person placing it to commit, but the action of the other party can make it part of a legal obligation (Kambovski, 2021, p.44). In any case, a separate issue is the distinction between an offer and an invitation to make an offer. An invitation to make an offer is treated as an advertisement, while accepting an offer always means entering into a contract. Jurisprudence has treated the display of products with indicated prices as an invitation to make an offer, and the customer who approaches the cash register with the items is considered to have made an offer. In this sense, the display of goods on the website can be considered only as an invitation to make an offer, or it can be clearly indicated on the page itself. If a specific product or service is ordered through the website, then the customer selects the product or service by viewing the page, and fills out a form with personal data and payment card

data, in the form of data verification. Verified data is being sent. Sending verified data can be considered the conclusion of the contract, that is, the place and time of the conclusion of the contract. This moment is interpreted differently in different laws - either when the offeror receives a message about accepting the offer or the moment of sending the acceptance of the offer. In any case, the recipient of the offer must be notified of the order received without delay, and is deemed to have been notified when he can access them from his locations and devices.

The contracting phase in which the offer is formulated is the phase in which acts are created on the basis of which legal obligations are created. Offers that are formulated for marketing in the digital environment must contain data on products, technical characteristics, prices, payment methods and other information important for accepting the offer and creating a contract. Transactions are based on the freely expressed will of the parties doing business, and this implies that the parties are aware of the content and conditions of the contract in advance, which must be clearly and precisely, visibly indicated, on the website used for trade. In the context of electronic contracting, the contract will be considered concluded, that is, the offer accepted when the service provider accepts it by electronic message. The service provider is obliged to send consumers an electronic message confirming the acceptance of the offer.

### **Acceptance of the offer**

The conclusion of a valid contract requires an agreement between two or more parties, where each party expresses an objective intention to be legally bound. In theory, this is called the objective theory of consent, and it is assessed against the reasonable party test, i.e. the requirement that in the event of a dispute that the court determines whether it was reasonable for the seller to conclude that the buyer intended to enter into the contract. The contract can also be defined as an "accepted offer", in the sense that two unilateral declarations of will by their meeting and matching create a contract on

the basis of which rights and obligations arise for the bearers of the declarations. Since the acceptance of the offer means the creation of a contract, it is a question that is resolved by proving the existence of the contract and the moment of its legal obligation. And in the digital context, the basic principle is the autonomy of the will, and the influence of the use of technology affects only the manifestation of the offer and the acceptance of offers. The consent and wishes of the contracting parties must be expressed freely, without any defect of will, by email or by accessing the website. An offer made over the Internet implies a unilateral declaration of will, and from the moment it is published, it binds the offerer regardless of when and if it will be accepted at all. Acceptance of an offer is an essential element of the agreement between the parties.

Willingness to conclude a contract implies being informed about the content and conditions of the contract, including the technical steps for concluding the contract. The service provider must inform the potential other party about the terms and content of the contract, which must be publicly available before reaching an agreement of will. Also, codes of conduct and general terms of business must be publicly available, since they represent a certain type of self-regulation. The availability of general data on which the consent of the other party depends, either through available links or in another way, is a form of consumer protection.

In business practice, where the positions of the contracting parties are more equal, a certain degree of flexibility is needed in terms of electronic contracts, which includes the conclusion of the contract by e-mail or another form of more direct communication. Acceptance of an offer can be in the form of an electronic message, filling in a standardized form or an implicit action.

An electronic contract is concluded by making an offer for conclusion by one party and its acceptance by the other party. Contracts concluded by exchanging declarations of will electronically, e.g. by email, require knowledge of all information, that is, each party is obliged to dispose of all necessary information, in accordance with the capabilities of the technique used to exchange information,

especially information related to the identity of the other party, the subject of the contract and the content of the contract. Contracts can also be concluded through digital platforms, where not only declarations of will are exchanged through the platform, but future contracting parties meet on them, and the content of the contract is stored on them. In this way, the platforms store a significant body of personal data, and thus enable the scoring process in the contract cycle. An additional way of concluding contracts in the digital context is through the use of artificial intelligence. The acceptance of the offer as well as the formulation of the counteroffer can be entrusted to forms of artificial intelligence (AI agents/VI agents) that can act depending on the level of autonomy granted, even on behalf of their principal (McCullagh, 2013). In relation to platforms, which enable the conclusion of contracts, VI agents can independently take steps to conclude a contract. Practically, digital agents can act as representatives of contracting parties, which is certainly an area that requires legal regulation.

An electronic contract is considered concluded when the offeror receives an electronic message containing the offeree's statement that he accepts the offer. An offer and acceptance of an offer, as well as other declarations of will made electronically, are considered received when the person to whom they are addressed can access them, not when they are actually accessed. By accepting the offer, a contract is created, but in circumstances where electronic means are used, the question arises as to in what exact moment and place the contract is considered to have been created, which further has an impact on the choice of applicable law and competent court. In theory, there are two basic approaches – the theory of sending, according to which the contract is considered to have been created at the moment when the acceptance of the offer was sent, regardless of when the offeror will actually get to know the answer, and the theory of acceptance, according to which the contract was created when the offeror actually familiarize with the acceptance of the offer. In the context of using email to offer and accept an offer, it is problematic which theory is applicable. In practice, the sender of an e-mail in which an offer is

accepted usually does not receive a notification that it has been delivered, and when it is sent, he has no control over it and the potential damages that may occur during the "travel" of the message through the Internet. In this context, reception theory seems to have more practical validity in the case of email communication. If messages are exchanged within a closed communication network in which the moment of reception, or even reading of the message can be determined, the choice between these theories is certainly in favor of the reception theory. In any case, the offer should contain information on how the offeror will value the moment of the creation of the contract, because the offeror and the buyer may be from different law orders where different theories are applied, and it may happen that for the buyer, by applying his law, the contract was created, and it is not for the seller, that is, the bidder.

In the context of concluding electronic contracts, the legal validity of online transactions must be achieved, from the very beginning of the legal regulation of contracting in the digital society. On the other hand, the use of profiling, scoring and personalization techniques requires a legal treatment of special challenges and a clear differentiation, in this sense, between electronic and traditional contracts.

## **Concluding remarks**

Digital technology brings challenges and consequences for contract law, because the impact of different technologies on contract law is very evident. The digital sphere has its own specific character, due to which it is impossible to automatically apply existing norms and legal rules and institutes to relations that fall into the sphere of digital relations. The issue of adapting existing legal regulations to the digital environment inevitably arises. Contemporary social relations are hybrid in nature, in the sense that they take place on both the physical and digital ground. The digital ground complements the physical one, creating a kind of "interreality". Digital law develops together with the entire legal system, without opposing it, but at the same time, the lack

of judicial practice and precedents makes it impossible to take strong positions and draw concrete conclusions. The law governing electronic contracts is constantly and rapidly changing and being redefined. Standards related to notices and expressions of consent still apply, but are applied in a different way compared to electronic contracts, especially the so-called wrap, i.e. electronic contracts by access. The legal validity of the notice of consequences is evaluated in relation to the perspective of the users of the page and the way in which their creator decided to present them. Instead of asking the question why the user did not read the terms of use, the increasingly asked question is why the provider did not present the terms in a sufficiently visible way - website owners must make the terms they want to oblige their users sufficiently visible. In the event of a dispute, the creator of the page must show how he made the terms of use available and that the user was actually on the website when the terms were presented.

There are perceptions that traditional contractual principles are flexible enough to apply in the digital environment. Institutes of traditional contract law, such as changed circumstances, conduct in accordance with the principle of conscientiousness and honesty and obligations of consideration towards the contractor are flexible enough to be interpreted according to each specific situation. However, it is impossible to apply the algorithmic code to open legal standards such as bona fides or force majeure, good business practice, protection of the weaker party, that is, some conditions cannot be evaluated by the algorithm for the purposes of application. The standards of "due care" and "declaration of consent" remain the same in their content and effect, but the manner of application of those standards depends on the circumstances of the specific case. Courts have begun to take into account and appreciate the appearance of the website and how the creator of the page decides to present the terms of use of the page - the burden of proof is transferred to the creator of the page.

Although today it is impossible to live and function in society as a whole without using computers and modern information technology, there is a growing awareness that these useful and necessary tools can be used for illicit and unlawful purposes, primarily for obtaining

unlawful financial gain for an individual or causing harm to others (Bjelajac, Matijašević & Dimitrijević, 2012). Theft of goods, falsification of data and documents, financial theft, fraud and abuse, hacking, vandalism, computer espionage, and sabotage are just some of the abuses in contemporary digital society (Bjelajac & Zirojević, 2014). Therefore, the rapid development of the digital economy requires the creation of a coherent and global legal protection framework, especially in relation to guarantees of legal protection when using digital technology. The goal of legal regulation is to achieve a balance between minimizing the risk of digitalization and legitimizing new assets, especially in digital form, in terms of digital content and digital services, i.e. digital assets. At the level of states, as well as at supranational levels, primarily under the auspices of international organizations, efforts are being made to develop strategies that adapt law to the use of digital technology. And this is the direction established today between law and digital technology - law has to adapt to the new reality of using digital technology.

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## **Ugovaranje u digitalnom društvu – određena pitanja od značaja u pogledu normiranja ponude i prihvata ponude kod e-ugovora**

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### **Sažetak**

Digitalna ekonomija uvodi digitalizaciju u ugovorno pravo i u praksu ugovaranja, stvarajući preduslove za redefinisane tradicionalnih postulata ugovornog prava, kroz drugačije oblike ponude robe i usluga, elektronskim putem i korišćenjem nove ekonomske i pravne terminologije, kao i drugačije procese ugovaranja. Rad je fokusiran na posebne segmente ugovornog ciklusa – ponudu i prihvata ponude, kao ključne elemente u ugovornom ciklusu zaključenja elektronskih ugovora, i analizu njihove regulacije u kontekstu ugovaranja u digitalnom društvu. Ponuda i prihvata ponude su, kao i širi kontekst ugovaranja u digitalnom društvu, predstavljeni kroz fenomenološku analizu, čiji je cilj da ukaže na elemente i posledice uticaja upotrebe digitalne tehnologije u ugovaranju. Nadalje, analizirani su pravni aspekti ponude i prihvata ponude prilikom nastanka elektronskih ugovora i komparativnom metodom postavljeni u ravan sa tradicionalnim ugovornim principima, kako bi se procenio domašaj njihove primenljivosti u savremenim uslovima poslovanja, odnosno ukazalo na stepen potrebe redefinisavanja tradicionalnih principa ugovornog prava.

*Ključne reči:* elektronski ugovor, ponuda, prihvata ponude, ugovaranje, digitalna ekonomija.