

**V. P. Kozyreva,**  
PhD, Associate Professor

**O. Yu. Myniuk,**  
PhD, Associate Professor

## ECONOMIC CONTRACTS: NOTIONS, SIGNS AND CONDITIONS OF CONCLUSION

National Aviation University  
Kosmonavta Komarova Avenue, 1, 03680, Kyiv, Ukraine  
University of State Fiscal Service of Ukraine  
Universitetskaya str., 31, 08205, Irpin, Kyiv region, Ukraine  
E-mails: kozurevav@ukr.net, mou12@ukr.net

**Purpose:** the article deals with the theoretical and legal concepts of economic contracts, determination of their legal nature, special features and conditions of their conclusion. **Methods:** the study was conducted using scientific and classical knowledge methods. Using the method of generalization, an analytical study was carried out and the concept of «economic contract» was defined by scientists. Using the comparative method, the peculiarities of the conclusion of an agreement and features of economic contracts have been considered. **Results:** the own concept of an economic contract is provided. Different concepts of scientists have been analyzed; a subject, contents and essential conditions of economic contracts' conclusion have been defined. **Discussion:** the issue of the lack of definition of the concept of «an economic contract» at the legislative level and in the Economic Code of Ukraine.

**Keywords:** economic contract; economic activity; agreement; signs of economic contract; form of the contract.

**Problem statement and its relevance.** An economic contract in the conditions of a market economy is the main means of organizing relations between actors and other participants in economic relations. One of the characteristics of an economic contract is its content, which is aimed at ensuring the economic needs of its parties.

The treaty is considered to be a universal regulator of quite diverse social relations, content, character, and trends in the development of which constantly changes exist. Over time, the composition of the subjects, participants in the contract, along with individuals, in contractual relations, began to participate in economic education (organization). All this led to the emergence in the legal literature of the concept of “an economic contract” [1, p. 115].

The urgency of the research topic is due to the lack of definition of the concept of “an economic

contract” and a unanimous opinion among scholars regarding the interpretation of this definition.

**Analysis of research and publications.** The notions, signs and conditions of the conclusion of economic contracts have been studied by such scientists in their works as: M.I. Kovaliov “Economic-legal agreement as a guarantee of fulfillment of obligations by the subject of management”; S.A. Podolyak “Legal bases and consequences of recognition of economic contracts invalid and unsuccessful in Ukraine”; I.I. Bochkova “Concept, signs and significance of economic contract under the legislation of Ukraine”; Yu.O. Serebryakova “Features of concluding economic contracts in a simplified way”; V.N. Cheresnyuk “Ambiguity of the legislative provisions on the form of the economic contract” and others.

**Presenting main material.** It should be noted that at the moment there is no definition of the term

“an economic contract” at the legislative level, but it is widely used in practice and in legal literature.

Since the Economic Code of Ukraine (hereinafter – the Economic Code) does not contain the definition of “an economic contract”, it is necessary to establish it, proceeding from the general notion of “a contract” defined by the Civil Code of Ukraine (hereinafter – the Civil Code). According to S.A. Podolyak, the economic contract as a means of organizing economic-contractual relations is a universal legal structure, based on the agreement of the parties and aimed at achieving the legal goal [2, p. 13].

S.Ya. Vavzhenchuk, considering the scientific approaches to understanding the concept of the contract, notes that in the theory of civil law, the contract can be considered from three points of view: first, as the basis for the emergence of legal relationships; secondly, how is the legal relationship that has arisen from this ground; and thirdly, as a form, which the corresponding legal relationship gets. Separately, as noted, there is a mixed scientific approach, which unites separate features of these points of view [3, p. 43].

Consequently, it should be noted that the definition of “an economic contract” is widely used and interpreted by different scholars. Some scholars suggest the definition of this concept, based on the general provision of the contract specified in the Civil Code, while the second considering the concept of “an economic contract”, indicate that the contract is a legal structure based on the agreement of the parties and aimed at achieving the legal goal [2, p. 14].

In Ukraine during the years of independence, a number of legislative acts have been adopted that regulate economic relations. However, legal regulation of contractual economic relations has certain disadvantages that require the study and development of recommendations for the development of economic contracts.

Economic contracts in Ukraine with the adoption of the Economic Code are regulated by: a) general (on obligations, contract, obligations arising from contracts) and special (purchase and sale, supply, contracting of agricultural products, supply of energy and other resources, leasing, contract, construction contract, execution of re-

search or development and engineering works, transportation, forwarding, warehousing, loan, credit, bank deposit, bank account, factoring, com concession, etc.) by the Civil Code; b) normative legal acts of the economic legislation: the Civil Code, laws of Ukraine on certain types of economic activity (investment, foreign economic, transport, etc.) [4, p. 111-112].

Therefore, it should be noted about the essence of the economic contract. Initially, in independent Ukraine, this concept was mentioned only in the Economic Procedural Code of Ukraine. After codification of the economic legislation in 2003, its content was clarified.

Considering the concept and essence of a commercial contract, it is necessary to highlight the following main features:

- 1) an agreement between two or more entities;
- 2) is a legal fact, which is aimed at the emergence, change or termination of economic relations;
- 3) establishes economic obligations and rules for its implementation;
- 4) may be the reason for the occurrence of property – economic obligations. The subject of the latter is the results of the economic activities of their participants – products, work, services of value nature;
- 5) limited by the economic legislation of the circle of subjects. Subjects of property and economic obligations, respectively, are economic entities and non-economic entities – legal entities;
- 6) always comes with a commercial (commercial) purpose to achieve the necessary parties’ economic and commercial results. This is the production and sale for payment of products, performance of works and payment of their results, the provision of paid services;
- 7) they are subject to separate rules on the grounds for their conclusion and content;
- 8) the form of the contract is established by law [5, p. 286].

If, to generalize the above-mentioned signs, one can support the following definition: an economic agreement – they are fixed in a special legal document on the basis of the agreement, the property-organizational obligations of the participants of economic relations (parties), aimed at servicing (providing) their economic activities (economic needs) taking into account general (public) interests [6, p. 26].

Consider the conditions for the conclusion of a commercial contract. This contract can be concluded in three ways:

- general – in the form of a single document, signed by the parties and stamped;
- simplified – by the exchange of letters, phonograms, telegrams, telegrams;
- confirmation of acceptance for the execution of orders [7, p. 181].

In accordance with Part 1 of Art. 181 the Civil Code, the economic contract is generally concluded in the form of a single document, signed by the parties and sealed. It is allowed to conclude economic contracts in a simplified way, that is, by exchanging letters, fax grams, telegrams, etc., as well as by confirming the acceptance of orders, unless the law specifies specific requirements for the form and order of conclusion of this type of contracts.

In our opinion, a more detailed simplified way of concluding an economic contract should be considered. After all, in this case, there are some problems that are not regulated by the economic legislation and require a more detailed elaboration of the conclusion of such an agreement.

The Economic Code does not stipulate the conditions to be met so that the economic contract is considered concluded in writing. Proceeding from the provisions of Article 207 of the Civil Code, the essence of the written form of the agreement is to fix the agreements between the parties on a certain material carrier (document). In this case, if the contract is entered into by legal entities, it must be signed and sealed in order to provide it in writing.

That is, if the contract is concluded in a simplified form, then the documents exchanged between the parties to this agreement must contain all the essential conditions of this type.

Another problem in the economic contract is the conclusion by confirmation of acceptance. As Y.O. Serebryakov notes, such an interpretation is not indisputable, since Part 1 of Article 181 of the Civil Code indicates not for execution, but for confirmation of acceptance for execution [8, p. 820].

Today, the issue of using facsimile signature reproduction by means of mechanical or other

copying, electronic signature or other analog of a handwritten signature is controversial. The use of facsimile reproduction of a signature in the execution of transactions is permitted in cases established by law or with the written consent of the parties, which must contain samples of the corresponding analogue of their handwritten signatures (Part 3 of Article 207 of the Civil Code).

Similar provisions are contained in the Law of Ukraine “On E-Commerce”, which states that an electronic transaction can be signed by using an analog of his/her own signature (facsimile reproduction of the signature by means of mechanical or other copying) with the written consent of the parties, which must contain samples of the corresponding analogues handwritten signatures if the possibility of such signing is provided by an act of civil legislation or by agreement of the parties (Article 12 of the Law of Ukraine “On E-commerce”).

Consequently, the law provides for facsimile signature reproduction only when the parties to the agreement agree that such signature is valid, such an agreement contains specimens of the corresponding analogue of their handwritten signatures, or if the right to use such signature is expressly established by law.

If the contract is not properly signed, it is considered that the contract is not concluded in writing.

It should be noted that non-compliance with the written contract does not automatically invalidate it. First, not all contracts have a mandatory written form. A contract for which no written form is required by law is considered to have been made if the parties’ conduct attests to their will to the occurrence of the relevant legal consequences, which can be confirmed by written evidence (electronic and paper letters) and explanations of the parties (Part 2 of Article 205 of the Civil Code of Ukraine). Secondly, if the contract, for which the law establishes its invalidity in the event of failure to comply with the written request, is concluded verbally and one of the parties has acted, and the other party has confirmed its performance, in particular by acceptance, such a transaction in the event of a dispute can be recognized by a valid court (Part 2 of Article 218 of the Civil Code of Ukraine). For example, if the parties did not enter into a written contract with the contractor but the contractor performed the work, invoiced the custom-

er and the customer paid for the work, then such contract may be declared valid even though it was not concluded in writing.

Consequently, the use of facsimile reproduction of a signature by means of mechanical or other copying, electronic signature or other analogue of a handwritten signature is permitted in the cases prescribed by law, other acts of civil law, or with the written consent of the parties, in which the specimen of their respective counterpart must contain handwritten signatures (Order of the Supreme Economic Court of Ukraine dated 08.06.2016 in case No. 904/5218/15).

However, there is a settled practice that, between the parties to a facsimile agreement, without complying with the requirements of part three of Article 207 of the Civil Code of Ukraine, it does not affect the decision on the lawfulness of its use in cases where the other party disputes the validity of the document thus signed. For example, the Supreme Court considered case No. 910/4050/17 on debt collection under a service contract. In the instant case, the court considered the case where most of the documents between the parties were signed by affixing a facsimile, which, as noted by one of the parties to the dispute, is an established practice that has been negotiated between the parties to a service agreement. But the Supreme Court noted that the use of facsimile signatures for transactions, other business transactions requires the written consent of the parties, which may be expressed, in particular, in the written agreement between the parties, which agrees the use of facsimile and specimens of true and facsimile signatures or representatives of the parties to the agreement or other document. It is in this way that the legal force of the facsimile as a personal signature is affixed and the documents certified by it will be considered concluded in accordance with the requirements of the law [9].

V.N. Cheresnyuk disagrees with scholars who believe that an economic contract must be concluded in writing. Since, in his opinion, the conclusion of economic contracts in oral form is contrary to the rules of law: if the parties to the economic agreement have reached agreement on all the prescribed essential conditions orally, the con-

tract should be considered as not occurring, that is, not concluded [10, p. 83].

We believe that for the conclusion of an economic contract the only form should be written because, on this basis, the economic contract is different from civil law.

Considering the content of Art. 180 Economic Code, we can conclude that the essential conditions of the contract are: 1) the subject of the contract; 2) the price of the contract; 3) the term of validity.

Under the subject of the treaty, scientists understand a) the actions of the parties; b) the material good for which the contract is concluded; c) actions and material goods in the complex. As Y. O. Sukhanov notes, the condition of the subject of the contract individualizes the subject of execution, and often also determines the nature of the contract [11, p. 234].

The next essential condition of law is the price of the contract. The price in the economic contract is determined in accordance with the procedure established by the Civil Code. According to Articles 189-191 of the Economic Code, the following types of prices may be applied in economic obligations: a) free prices (established by agreement of the parties and reflect the principle of freedom of contract stipulated in Article 627 of Civil Code); b) government prices, including fixed (fixed in fixed amount) and regulated (with the establishment of the marginal price level or the marginal deviation from government fixed prices); c) communal prices, including fixed (fixed in fixed amount) and regulated (with the establishment of the marginal price level or the marginal deviation from fixed prices); are applied, in particular, in relations between utility companies (Part 4-6 of Article 191 of the Economic Code).

In paragraph 32 of the Informational Letter of the Supreme Economic Court of Ukraine "On certain issues of the practice of applying the norms of the Civil and Economic Codes of Ukraine" of April 7, 2008, No. 01-8/211, the term of the contract, which the parties are obliged to agree, is not limited to any maximum the term. Therefore, the parties may determine that the contract is in force until termination of the rights and obligations arising therefrom [12].

It should be noted that economic contracts are inherent in the public character, and therefore there is a repeated restriction of freedom of contract. But this

does not mean a complete restriction of the contract, but only a certain narrowing of the rights of economic entities, which are established by law [13, p. 541-542].

**Conclusions.** In our opinion, an economic contract is a basis for the emergence of property and organizational obligations between economic entities and economic entities that are recorded in a special legal document on the basis of an agreement aimed at changing, terminating and establishing the rights and obligations of economic operators.

Consequently, after analyzing the concepts, features and conditions of the conclusion of an economic contract, the following should be noted:

– there is no consolidation of the concept of “an economic contract” at the legislative level, but it has a wide range of uses among scholars and in legal literature.

– at the present time, the economic contract began to combine the discretionary and imperative principles of legal regulation.

– economic contracts in Ukraine with the acceptance of the Civil Code are regulated: a) by general and special articles of Civil Code; b) normative legal acts of the economic legislation.

– signs of a commercial contract are treated differently by scientists-scientists. Among the main features, will distinguish: a) the definition of mutual rights and obligations of the parties; b) mandatory prediction of certain behavior; c) focus on the achievement of a specific goal; d) an equivalent character; e) universality.

– concerning the terms of conclusion, an economic contract may be concluded in three ways: the general one – in the form of a single document, which shall be signed by the parties and stamped; simplified – by the exchange of letters, phonograms, telegrams, telegrams; confirmation of acceptance for the execution of orders.

– a simplified way of concluding economic contracts requires a more detailed elaboration at the legislative level.

### References

1. Малишко В. М., Бородін Є. В. Поняття господарського договору: доктринальні аспекти. *Юридичний вісник. Повітряне і космічне*

*право*. 2014. № 2. С. 115-118. URL: [http://nbuv.gov.ua/UJRN/Npnau\\_2014\\_2\\_24](http://nbuv.gov.ua/UJRN/Npnau_2014_2_24).

2. Подоляк С. А. Правові підстави та наслідки визнання господарських договорів недійсними та неукладеними в Україні: дис. ... канд. юрид. наук: спец. 12.00.04. Київ, 2010. 215 с.

3. Вавженчук С. Я. Договірне право: навчальний посібник. Київ: КНЕУ, 2011. 585 с.

4. Бочкова І. І. Концепція, ознаки та значення господарського договору за законодавством України. *Форум права*. 2011. № 2. С. 111-115. URL: [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index).

5. Господарське право України: підруч. для студ. вищ. навч. закл. / М.К. Галянтич, С.М. Грудницька, О.М. Міхатуліна та ін. Київ: МАУП, 2005. 424 с. Бібліогр.: с. 417-419.

6. Вінник О. М. Господарське право: навч. посіб. 2-ге вид., змін, та доп. Київ: Всеукраїнська асоціація видавців «Правова єдність», 2008. 766 с.

7. Науково-практичний коментар Господарського кодексу України / кол. авт.: Х.Л. Знаменський, В.В. Хахулін, Б.Ц. Щербина та ін.; за заг. ред. В.К. Мамотова. Київ: Юрінком Інтер, 2004. 688 с.

8. Серебрякова Ю. О. Особливості укладення господарських договорів у спрощений спосіб. *Форум права*. 2010. № 4. С. 819-824. URL: [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index).

9. Постанова Верховного суду України від 19 квіт. 2018 р. по справі № 910/4050/17. URL: <http://Lihazakon.net>.

10. Черешнюк В. Н. Неоднозначність законодавчих положень щодо форми господарського договору. *Юридична Україна*. 2007. № 1. С. 81–84.

11. Гражданское право: в 2 т. Том II. Полупом 1: учебник / отв. ред. проф. Е.А. Суханов. 2-е изд., перераб. и доп. Москва: Издательство БЕК, 2000. 704 с.

12. Про деякі питання практики застосування Господарського процесуального кодексу України судами першої інстанції: постанова Пленуму Вищого господарського суду України. 2011. URL: <http://zakon.rada.gov.ua/laws/show/v0018600-11>. <https://doi.org/10.33498/louu-2018-02-170>

13. Правова доктрина України: у 5-ти т. / [Ю.С. Шемшученко, А.П. Гетьман, В.І. Андрейцев та ін.]; за заг. ред. Ю.С. Шемшученка. Харків: Право, 2013. Т. 4: Доктринальні проблеми екологічного, аграрного та господарського права. 848 с. <https://doi.org/10.33498/louu-2018-04-147>

### References

1. Malyshko V. M., Borodin Ye. V. Poniattia hospodarskoho dohovoru: doktrynalnyi aspekt. *Yurydychnyi visnyk. Povitriane i kosmichne pravo*. 2014. № 2. S. 115-118. URL: [http://nbuv.gov.ua/UJRN/Npnau\\_2014\\_2\\_24](http://nbuv.gov.ua/UJRN/Npnau_2014_2_24).

2. Podoliak S. A. Pravovi pidstavy ta naslidky vyznannia hospodarskykh dohovoriv nediiisnymi ta neukladenymi v Ukraini: dys. kand. yuryd. nauk: spets. 12.00.04. Kyiv, 2010. 215 s.

3. Vavzhenchuk S. Ya. Dohovirne pravo: navchalnyi posibnyk. Kyiv: KNEU, 2011. 585 s.

4. Bochkova I. I. Kontsepsiia, oznaky ta zachennia hospodarskoho dohovoru za zakonodavstvom Ukrainy. *Forum prava*. 2011. № 2. S. 111-115. URL: [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index).

5. Hospodarske pravo Ukrainy: pidruch. dlia stud. vyshch. navch. zakl. / M.K. Haliantych, S.M. Hrudnytska, O.M. Mikhatulina ta in. Kyiv: MAUP, 2005. 424 s. Bibliohr.: s. 417-419.

6. Vinnyk O. M. Hospodarske pravo: navchalnyi posibnyk. 2-he vyd., zmin, ta dop. Kyiv: Vseukrainska asotsiatsiia vydavtsiv «Pravova yednist», 2008. 766 s.

7. Naukovo-praktychnyi komentar Hospodarskoho kodeksu Ukrainy / kol. avt.: H.L. Znamenskyi, V.V. Khakhulin, B.C. Shcherbina ta in.; za zah. red. V.K. Mamutova. Kyiv: Yurinkom Inter, 2004. 688 s.

8. Serebriakova Yu. O. Osoblyvosti ukladennia hospodarskykh dohovoriv u sproshchenii sposib. *Forum prava*. 2010. № 4. S. 819-824. URL: [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index).

9. Postanova Verkhovnoho sudu Ukrainy vid 19 kvit. 2018 r. po spravi № 910/4050/17 URL: <http://Lihazakon.net>.

10. Cheresniuk V. N. Neodnoznachnist zakonodavchykh polozhen shchodo formy hospodarskoho dohovoru. *Yurydychna Ukraina*. 2007. № 1. S. 81–84.

11. Hrazhdanskoe pravo: v 2 t. Tom II. Polutom 1: uchebnyk / otv. red. prof. E.A. Sukhanov. 2-e izd., pererab. i dop. Moskva: Izdatelstvo BEK, 2000. 704 s.

12. Pro deiaki pytannia praktyky zastosuvannia Hospodarskoho protsesualnogo kodeksu Ukrainy sudamy pershoi instantsii: postanova Plenumu Vysshchoho hospodarskoho sudu Ukrainy. 2011 r. URL: <http://zakon.rada.gov.ua/laws/show/v0018600-11>.

13. Pravova doktryna Ukrainy: u 5-ty t. / [Yu.S. Shemshuchenko, A.P. Hetman, V.I. Andreitsev ta in.]; za zah. red. Yu.S. Shemshuchenka. Kharkiv: Pravo, 2013. Т. 4: Doktrynalni problemy ekolohichnoho, aharnoho ta hospodarskoho prava. 848 s.

**ГОСПОДАРСЬКІ ДОГОВОРИ: ПОНЯТТЯ,  
ОЗНАКИ ТА УМОВИ УКЛАДЕННЯ**

Національний авіаційний університет  
проспект Космонавта Комарова, 1, 03680, Київ, Україна  
Університет державної фіскальної служби  
вул. Університетська, 31, 08200, Ірпінь, Київська обл., Україна  
E-mails: kozurevav@ukr.net, mou12@ukr.net

**Мета:** у статті розглядаються теоретичні та правові поняття господарських договорів, визначення їх правової природи, особливих ознак та умови укладення господарських договорів. **Методи дослідження:** дослідження проведено з використанням методів наукового і класичного пізнання. За допомогою методу узагальнення було проведено аналітичне дослідження та визначення науковцями поняття «господарський договір». За допомогою порівняльного методу розглянуто особливості укладення та ознаки господарських договорів. **Результати:** надано власне поняття господарського договору. Проаналізовано різні поняття науковців, визначено предмет, зміст та істотні умови його укладення. **Обговорення:** проблеми відсутності визначення поняття «господарський договір» на законодавчому рівні та в Господарському кодексі України.

Актуальність теми дослідження обумовлена відсутністю визначення поняття «господарський договір» та єдиної думки серед науковців щодо тлумачення цього поняття. Проте правове регулювання договірних господарських відносин має певні недоліки, які потребують дослідження та розроблення рекомендацій.

У статті проаналізовано поняття, ознаки, особливості та умови укладання господарського договору, розглядається спірність використання при вчиненні правочинів факсимільного відтворення підпису за допомогою засобів механічного або іншого копіювання, електронного підпису або іншого аналога власноручного підпису.

Дано визначення, що господарський договір – це підстава виникнення між суб'єктами господарювання та учасниками господарювання майново-організаційні зобов'язання, які зафіксовані в спеціальному правовому документі на підставі угоди, яка спрямована на зміну, припинення та встановлення прав та обов'язків учасників господарювання.

**Ключові слова:** господарський договір; господарська діяльність; угода; ознаки господарського договору; форма договору.