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

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

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# THE ELECTRONIC IDENTIFICATION OF LEGAL PERSONS IN KYRGYZ REPUBLIC CAN HELP TO DEVELOP THE DIGITAL CONTRACTING

DZHUSUPOV AKYLBEK<sup>1</sup>

**ABSZTRAKT** ■ Tengerparttal nem rendelkező országgént a Kirgiz Köztársaság kevésbé vesz részt a globális kereskedelemben. A világgazdaság digitalizálása azonban jó alkalom a lehetőségek kiegyenlítésére. Ebből a célból az olyan országok mint a Kirgiz Köztársaság, megfelelő jogi környezetet teremthetnek a jogi személyek elektronikus azonosításának fejlesztéséhez, és lehetővé tehetik a világ vállalatai számára, hogy kereskedjenek a régió országaival vagy szomszédaikkal (Kína, Oroszország). Az országnak különösen az európai és a világcégek számára ismert szabályokat kellene kialakítania. Ezért a fejlett országok legjobb jogi gyakorlatát a Kirgiz Köztársaság nemzeti jogszabályaiba is be kellene emelni.

**ABSTRACT** ■ As a landlocked country, the Kyrgyz Republic is less involved in global trade. However, the digitalization of the world economy is a good chance to equalize the opportunities. For this purpose, countries like the Kyrgyz Republic can create a legal environment for the development of electronic identification of legal persons and allow world businesses to trade with this region's countries or their neighbors (China, Russia). Especially, the country should establish the rules, which are familiar to European and world companies. Therefore, the best legal practices of developed countries should be introduced in the national legislation of the Kyrgyz Republic.

**KULCSSZAVAK:** digitalizálás, elektronikus azonosítás, jogi személyek, eIDAS, Kirgiz Köztársaság, EU

## 1. INTRODUCTION

Just like Hungary the Kyrgyz Republic (also known as Kyrgyzstan), is a landlocked country in the central part of the continent, with a population of more than 7,0 million people. It has borders with the People's Republic of China to the east,

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Kazakhstan to the north, Uzbekistan to the west and Tajikistan to the southwest. The territory is 199,951 square kilometers and most of it lies on large mountains. About 94% of the country rises over 1 000 m, and 40% at more than 3 000 m above sea level<sup>2</sup>. The som is the currency of Kyrgyz Republic (KGS), and its official languages are Kyrgyz and Russian.

## 2. GENERAL COUNTRY INFORMATION

On 31 August 1991, the Kyrgyz Republic declared its independence after the collapse of the USSR and started its own journey as a state. In my view, since that time the Kyrgyz Republic has been in search of its own brand of economic prosperity. Due to neighboring with the second largest economy in the world (China), a strong relationship with the biggest holder of natural resources (Russia), and landlocked highlands with cheap internet, we can concentrate on providing digital services for the commercial giants of the world. Especially to be a part of the huge trade between the European Union and China/Russia. The military conflict in the East of Europe started by Russia will have long-term negative effects on the direct relationship with two parts of the world. Apart from China and Russia the Kyrgyz Republic has the prospect of being a partner to communicate with economically fast-growing India.

Nowadays, the Kyrgyz Republic is a member of the following international and regional political and economic organizations:

- 1) Shanghai Cooperation Organization (SCO)<sup>3</sup> along with the Republic of India, the Republic of Kazakhstan, the People's Republic of China, the Islamic Republic of Pakistan, the Russian Federation, the Republic of Tajikistan and the Republic of Uzbekistan (The SCO focuses on cooperation with international and regional organizations);
- 2) Eurasian Economic Union (EAEU)<sup>4</sup> along with the Republic of Armenia, the Republic of Belarus and the Republic of Kazakhstan, the Russian Federation (The EAEU provides for free movement of goods, services, capital and labor, pursues coordinated, harmonized and single policy in the sectors determined by the Treaty and international agreements within the Union);

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

<sup>3</sup> Shanghai Cooperation Organization, Member states of the SCO, <https://eng.sectsc.org/20170109/192193.html>.

<sup>4</sup> Eurasian Economic Union, Member states of the EAEU, <https://eec.eaeunion.org/en/commission/about/>.

- 3) Collective Security Treaty Organization<sup>5</sup> along with the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation, and the Republic of Tajikistan, cooperate in the. (The objectives of the CSTO are the strengthening of peace, international and regional security and stability, the protection on a collective basis of the independence, territorial integrity and sovereignty of the member States);
- 4) Commonwealth of Independent States<sup>6</sup> (CIS) along with the Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Moldova, the Russian Federation, the Republic of Turkmenistan, the Republic of Uzbekistan and Ukraine, are the members of (According to the Charter of the CIS the objectives are the cooperation in political, economic, ecological, humanitarian, cultural and other field of development).

The Kyrgyz Republic is a member of more than 100 international organizations, including the OSCE, the Antiterrorist Center of the CIS Member States, the World Bank and others. In 2004, Kyrgyzstan became one of the founding states of the Eurasian group (EAG is an associate member of the Financial Action Task Force).

The Kyrgyz Republic has joined a number of treaties under which an interested party may address a claim to a court of the Kyrgyz Republic on recognition and enforcement of a decision issued by a court or arbitration court of another country<sup>7</sup>. The principal treaties are:

- UN Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, joined by the Kyrgyz Republic in 1995;
- Convention on Legal Support and Legal Relations between the CIS Countries on Civil, Matrimonial, and Criminal cases of 22 January 1993, ratified by the Kyrgyz Republic in 1995.
- In 2004 the Kyrgyz Republic also ratified the Convention on Legal Support and Legal Relations on Civil, Matrimonial and Criminal Cases of 7 October 2002;

<sup>5</sup> Collective Security Treaty Organization, The Charter of CSTO, <https://en.odkb-csto.org/structure/#:~:text=In%20accordance%20with%20Article%203,sovereignty%20of%20the%20member%20states.>

<sup>6</sup> CIS, The historical information of the CIS in Russian language, <https://e-cis.info/page/3509/80648/>.

<sup>7</sup> Kalikova & Associates, Business in the Kyrgyz Republic. Legal Aspects. The information and reference guide (2009). [http://www.k-a.kg/sites/default/files/business\\_in\\_the\\_kyrgyz\\_republic\\_2009\\_eng.pdf](http://www.k-a.kg/sites/default/files/business_in_the_kyrgyz_republic_2009_eng.pdf).

- A number of bilateral agreements on mutual legal support with European Union, Azerbaijan, Iran, India, China, Latvia, Mongolia, Russia, Tajikistan, Turkey, Kazakhstan, United Arab Emirates, Uzbekistan, and other nations. In 2009, the Kyrgyz Republic recognized and enforced<sup>8</sup>:
  - Decisions of other countries' arbitration courts established under the arbitration rules of the UN Commission for International Trade Law (UNCITRAL);
  - Decisions of the courts of Armenia, Belarus, Kazakhstan, Latvia, Moldova, Russia, Tajikistan, Turkey, Turkmenistan, Ukraine, United Arab Emirates, and Uzbekistan on civil, matrimonial, and criminal cases;
- Decisions of the arbitration, economic and business courts of Azerbaijan, Moldova, Kazakhstan, Russia, and Tajikistan. However, now the Kyrgyz Republic recognizes and enforces the decisions of more countries, and this is a huge step towards legal and economic integration to the global market.

GDPs at PPP of Kyrgyzstan in 2009 – 14.7 bln, 2010 – 14.893 bln, 2011 – 16.106 bln, 2012 – 16.38 bln, 2013 – 18.439 bln, 2014 – 19.382 bln, 2015 – 20.58 bln, 2016 – 21.7 bln, 2017 – 23.15 bln, 2018 – 24.54 bln, 2019 – 26.08 bln, 2022 - 22.2 bln. Financial institutions include mortgage companies (organizations), commercial banks, credit unions, leasing companies (organizations), pawnshops, microfinance organizations (microcredit agencies, microcredit companies, microfinance companies, specialized financial institutions), savings pension funds, exchange bureaus, operators of e-money payment systems, reinsurance organizations and brokers, payment organizations, postal service enterprises, professional participants of the securities market, building and loan associations, insurance organizations (insurers), insurance brokers, commodity exchanges, e-money issuers and agents (distributors) of electronic money<sup>9</sup>.

According to the National Development programme of the Kyrgyz Republic until 2026 the Government is planning to attract investment to create national digital infrastructure, which should be able to support new demands of digital relationship. The national digital infrastructure will include networks, data centers, cloud technologies, information and service access centers, digital platforms, including broadband and broadcasting. The digital infrastructure must be able to support the rapid growth of traffic, provide coverage with sufficient

<sup>8</sup> Ibid.

<sup>9</sup> The Eurasian group on combating money laundering and financing of terrorism (EAG) is a FATF-style regional body: Information on Kyrgyz Republic <https://eurasiangroup.org/en/kyrgyzskaya-respublika>.

bandwidth to meet new needs<sup>10</sup>. In this regard, it should be essential to develop different forms of electronic identification of persons which are expected to be a participant of all business relationships. The electronic identification of natural persons is quite developed in Kyrgyz Republic and now it is time to create an environment for online identification of legal persons as well.

## 2.1. The concept of digitalization of the Kyrgyz Republic

The main obstacles to the investment climate in the Kyrgyz Republic include poor infrastructure, political instability and a small market size. The European Bank for Reconstruction and Development highlights the market size as a critical issue, and I agree with their conclusion. The Kyrgyz Republic should focus on attracting investment and offering services to economically developed countries like China and Russia. I believe that in the near future the war in Ukraine will stop and the world will restore global trade with Russia. Then, buying natural resources from Russia will again be a good deal both for buyers and sellers. Additionally, serving as a retail trading platform for European consumers purchasing goods from China is a viable option. Digital contracting and electronic identification of legal entities are key strategies for landlocked countries to integrate into the global market and offer a unique instrument for communication. In the Kyrgyz Republic, digital contracting has the potential to play a significant role in the country's economic development. By enabling businesses to enter into contracts more efficiently and securely, digital contracting can reduce transaction costs and facilitate trade and investment. This, in turn, can lead to increased productivity, job creation and economic growth.

However, in order to develop digital contracting the Kyrgyz Republic must establish a new law on electronic identification of legal persons. The new rules will eliminate the sidesteps situations, in which legal persons give up due to a complex process and the need to verify themselves in a commercial office, store or branch of the company they want to become clients or partners of, and, on the other hand, give the government the necessary tools to improve their digital

<sup>10</sup> The National development programme of the Kyrgyz Republic until 2026: Article 4.2., paragraph 2. <http://cbd.minjust.gov.kg/act/view/ru-ru/430700>. Original text as follows: *"Uluttuk sanariptik infratüzümgö tarmaktar, maalymattardy ishtep chyguu borborloru, bulut tekhnologii, maalymattarga zhana kyzmat körsötüülörgö zhetüü borborloru, sanariptilar, anyn ichinen keñiri tilkellu ü baylanysh zhana radio berüü kiret. Sanariptik infratüzüm trafiktin tez ösüşhün karmap turuuga, zhañy kerektoölördü kanaattandyruu üçhün zhetishtüü ötkörüü zhöndömdüülügü menen kamsyz kyluuga zhöndö mdüü abalda boluuga tiyish".*

processes in favor of the companies, creating better and smoother relationships, reducing waiting, workload, and, overall, frustration. The electronic identification will help to enhance utilizing the electronic signature for the business entities.

Moreover, the pandemic in 2020 highlighted the importance of electronic identification in enabling businesses to operate remotely and maintain continuity in times of crisis. The Kyrgyz Republic has already revealed a strong trend in digitalising its government, as captured by the e-Government Development Index, which measures the readiness and capacity of national institutions to use ICTs to provide public services<sup>11</sup>. Kyrgyzstan was ranked amongst the top 10 reforming countries in 2018, along with Uzbekistan and Kazakhstan. This upward trend was largely carried by a higher e-participation index, with enhanced access to information and increased citizen's involvement in the decision making process. Electronic identification and digital signature can help businesses in the Kyrgyz Republic to adapt to the new normal and continue to operate in a safe and efficient manner.

The idea of the new Law on electronic identification of legal persons in the Kyrgyz Republic is to create a certain legal environment, where legal persons could be identified by the private or governmental digital platforms and verified by state authorities which have the database of all legal persons. After electronic identification all legal entities could join any relationship through utilizing the electronic signatures.

## 2.2. Comparing and contrasting the Kyrgyz Republic's legal framework with the existing legal framework in the EU

In my previous research I have identified the following similarities and differences in legal frameworks of the Kyrgyz Republic and European Union. Let me start with similarities which are common for both of them:

- 1) Recognition of electronic means of concluding a contract;
- 2) Electronic commerce is legally allowed on their territories;
- 3) Electronic signature is available both for natural or legal persons;
- 4) Personal data is a vital part in digital contracting;

<sup>11</sup> OECD, Supporting Firm Creation and Growth through Business Development Services in Kyrgyzstan, Paris, 2020. <https://www.oecd.org/eurasia/competitiveness-programme/central-asia/Supporting-Firm-Creation-and-Growth-through-Business-Development-Services-in-Kyrgyzstan-ENG.pdf>.



There are also differences between the Kyrgyz Republic and the European Union. They are as follows:

- 1) Contrary to the European Union, the electronic seal and electronic time stamp are not introduced as a separate business tool to the national legislation of the Kyrgyz Republic. However, the using of enhanced electronic signature on the territory of the Kyrgyz Republic includes the seal of the legal entity;
- 2) The national legislation of the Kyrgyz Republic does not provide standardized contracts for digital relationships. However, the EU Law has certain provisions for digital content and services, as well as for digital sales of goods.
- 3) In contrast to EU Law, the Kyrgyz Republic's legislation does not allow parties to choose as governing law the non-state law. According to Article 1198(1) of Civil Code of the Kyrgyz Republic: *"The contract is governed by the law of the country chosen by agreement of the parties, unless otherwise provided by law"*<sup>12</sup>. However, pursuant to Rome-I regulation, parties can identify a non-state law or international convention in their contracts.
- 4) European Union Law allows the electronic identification of legal persons, however the Kyrgyz Republic doesn't guarantee the same permission.

In this article I would like to research the legal possibility of electronic identification of the legal persons in the Kyrgyz Republic and what we can do to boost it. Especially, if businesses can start providing their services on a remote base for legal persons without concluding contracts on hard copies. Of course, as usual, I would like to use EU Law as a model law.

### 2.3. Identifying potential legal reforms or amendments

First, in order to be competitive with the world countries and attract investors or customers to purchase through Kyrgyz platforms, the legislators of the country should develop the system of identification of all business participants. This system should allow to identify foreign citizens and legal entities registered in Kyrgyz Republic (at first stage), and all legal persons at next stages.

Second, currently the Kyrgyz Republic, as well as other Central Asian countries, does not permit accepting trust services of other states, including those of neighboring countries. There is also no permission for that within the

<sup>12</sup> The original version of Civil Code of the Kyrgyz Republic as of 05.01.1998 #1, <http://cbd.minjust.gov.kg/act/view/ru-ru/5?cl=ru-ru>.

framework of the economic integration organization. The Shanghai Cooperation Organization nor Eurasian Economic Union did not adopt a legal act recognizing the trust services, including electronic signatures of partner countries. However, in order to contribute to their general cross-border use, the European Union made it possible to use trust services as an evidence in legal proceedings in all Member States.<sup>13</sup> Therefore, the qualified electronic signature, qualified electronic seal and qualified electronic time stamp issued in one EU Member State shall be recognized as a qualified electronic time stamp in all Member States (Articles 25(3), 35(3), 41(3)).

From 2015 there is a strong recommendation from the UNECE on promoting a wider use of electronic documents by traders. Particularly, they ask to ensure the implementation of the law “On Electronic Document and Digital Signature”<sup>14</sup>. Immediate steps, as suggested by some State officials, include amending the laws governing the procedures and activities of individual State agencies, with a view to provide clear guidelines for implementing digital signatures. State agencies should also receive advanced training in this area, and equipped with the required tools and management information systems to ensure data storage security<sup>15</sup>. Therefore, the legal reforms must be directed to provide easy use of electronic signatures in every sphere of the business and none-business as well.

For the European authorities the objective was to establish a digital single market by 2015, focusing on key aspects of the digital economy and promoting seamless cross-border utilization of online services. Special emphasis is placed on facilitating secure electronic identification and authentication to achieve a fully integrated digital single market<sup>16</sup>. Therefore, the same goal should be achieved also by the Central Asian countries, including the Kyrgyz Republic.

## 2.4. The essential findings and arguments of the previous research

One of the reasons for barriers to trade in the Kyrgyz Republic is lack of using electronic tools. Therefore, even in the report of the United Nations Economic Commissions for Europe seven years ago there was the following recommendation:

<sup>13</sup> Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. OJ L 257, 28.8.2014, 73–114.

<sup>14</sup> This Law was abolished after the adoption of the Law on Electronic Signature.

<sup>15</sup> United Nations Economic Commission for Europe, Regulatory and Procedural Barriers to Trade in Kyrgyzstan Needs Assessment (21).

<sup>16</sup> eIDAS Regulation, 73–114.

*“Ensure the implementation of the law “On Electronic Document and Digital Signature”. Immediate steps, as suggested by some State officials, include amending the laws governing the procedures and activities of individual State agencies, with a view to provide clear guidelines for implementing digital signatures. State agencies should also receive advanced training in this area, and equipped with the required tools and management information systems to ensure data storage security”<sup>17</sup>.*

In most European cases before 2014, citizens of one Member State could not use their electronic identification to authenticate themselves in another Member State, because the national electronic identification schemes in their country are not recognized in other Member States. That electronic barrier excluded service providers from enjoying the full benefits of the internal market. Therefore, the lawmakers of Kyrgyz Republic should allow the use of electronic identification of legal persons and foreign citizens. Mutually recognized electronic identification means will facilitate cross-border provision of numerous services in the internal market and enable businesses to operate on a cross-border basis without facing many obstacles in interactions with public authorities.

One of the challenges is lack of the legal base for providing proofs. The court of the Kyrgyz Republic still accepts paper-based proofs during the cases. They do not accept electronic files because their trial case files include only documents in paper format. At the same time, the parties cannot just print necessary documents by using a stamp. Therefore, it is essential to develop the civil procedural legislation including certain regulations on collecting files not only in paper-based format, but in electronic way too.

Another important part of the contacts is payment issues. In that regard, European authorities pay high attention to the electronic payment (e-payment), which is a process of paying for transactions without using cash by using an e-payment system or medium instead. It is too hard to imagine that someone will use cash during the concluding of a contract through electronic means. The use of e-payment has expanded as the use of internet-based banking and e-commerce has grown. In modest international commercial transactions, e-payment frequently replaces using a credit or debit card<sup>18</sup>.

I would like to notice that not all legal introductions will have success. New digital rules should be accepted by the market, and especially by the big tech players around the world, particularly by European ones. In his article “The Rise and Fall of Common European Sales Law”, MIKLÓS KIRÁLY, Head of Department and Professor of Private International Law and European Economic Law and

<sup>17</sup> United Nations Economic Commission for Europe, Regulatory and Procedural Barriers to Trade in Kyrgyzstan Needs Assessment (21).

<sup>18</sup> NARMIN MIRIYEVA: European Payments in the Digital Age. *ELTE Law Journal*, 2/2022.

former Dean of ELTE University Faculty of Law, Member of Expert Group on a Common Frame of Reference in the area of European Contract Law shared with his predictions. *“Despite all these uncertainties, one day the project of European contract law may come back to the legislative agenda. The idea is not completely forgotten; the CESL remains one of the reference texts for European contract law. The forty year long history of the preparation of the Statute of the European Company (SE), which quite suddenly brought results, may console those who supported and still support the development of CESL. However, in order to achieve this goal, political and institutional support and clear and visionary guidance are needed. The fate of European contract law depends on the institutional dynamics and future of the EU, too”*<sup>19</sup>.

So, it is feasible to develop a new law on electronic identification of legal persons based on the eIDAS regulation in the Kyrgyz Republic, with necessary amendments to suit the local context. If there are concerns about potential risks for the parties involved, the use of the new law can be optional. Parties and entities would have the discretion to activate their rights and assume responsibility accordingly. Nonetheless, it is essential to provide them with advanced electronic tools to facilitate business relationships electronically.

### 3. LEGAL ANALYSIS OF THE DIFFERENT LAWS

#### 3.1. A comprehensive legal analysis of Kyrgyz Law

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

The electronic signature is vital for electronic identification because we could not even imagine applying for something or concluding a contract without using the remote tools of acknowledging the issue by the parties. In paper-based documents you usually use the handwritten signature, so in digital documents you can use the electronic signature. The Law of the Kyrgyz Republic on Electronic Signature № 128 as of July 19, 2017 (Law on Electronic Signature) governs the relations on use of digital signatures when making civil transactions, rendering the state and municipal services, execution of the state and municipal functions, and also when making legally significant actions.

<sup>19</sup> MIKLÓS KIRÁLY: The Rise and Fall of Common European Sales Law. *ELTE Law Journal*, 2/2015.

As it described in Article 2 of the Law on Electronic Signature *the digital (electronic) signature (ES) - information electronically which is attached to other information electronically and (or) is logically connected with it and which is used for determination of person on behalf of which information is signed*<sup>20</sup>.

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

- 1) Simple electronic signature;
- 2) Enhanced electronic signature (qualified, unqualified).

In accordance with the Law on Electronic signature natural persons are entitled to use the simple ES, because it can be presented in form of codes, chiffres and this is equal to signing a document in a handwritten form. On the other hand, the enhanced ES is equal to signing a document in a handwritten form and putting a seal on it. Therefore, this kind of electronic signature is more suitable for legal entities.

The usage of the electronic signature for natural persons is widespread in Kyrgyz Republic and most of the business sectors have been providing services since the end of the pandemic. However, for legal persons there are still a lot of challenges.

On the “Law” level we have less opportunities for electronic identification of persons. However, the next level of lower legal acts includes appropriate acts, which establish the rules for remote legal relationships. For instance, law-making bodies like the Cabinet of Ministers and National Bank of the Kyrgyz Republic issued decrees addressed to welcome the usage of electronic signatures and provide online services. The Decree of the Cabinet of Ministers “On approval of the Procedure for state registration (re-registration) and registration of termination of activities of legal entities, branches (representative offices) in electronic form”<sup>21</sup> allows the identification of legal persons (including foreign ones) while signing a certain decision for opening a company. Also, the National Bank issued a Decree “On the Procedure for Identification and Verification of Clients Remotely”<sup>22</sup>. This Procedure allows banks to provide services and products through online platforms or mobile applications, but only for natural persons - citizens of the Kyrgyz Republic.

<sup>20</sup> The unofficial translation of the Law of the Kyrgyz Republic on Electronic Signature № 128 as of July 19, 2017 <https://cis-legislation.com/document.fwx?rgn=99019>.

<sup>21</sup> The Cabinet of Ministers of the Kyrgyz Republic, Decree “On approval of the Procedure for state registration (re-registration) and registration of termination of activities of legal entities, branches (representative offices) in electronic form”, <https://cbd.minjust.gov.kg/7-23622/edition/3067/ru>.

<sup>22</sup> The National Bank of the Kyrgyz Republic, Decree “On the Procedure for Identification and Verification of Clients Remotely”, <https://nbkr.kg/contout.jsp?item=103&lang=RUS&material=106190>.

### 3.2. A comprehensive legal analysis of EU laws and regulations

The European Parliament and the Council of the European Union have adopted the Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC<sup>23</sup> (eIDAS Regulation), which establishes a framework for electronic identification and trust services for electronic transactions in the internal market. According to Article 1, the eIDAS Regulation:

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

The essential element for enforceability of the contract is identification of the parties which are going to be Parties. According to eIDAS Regulation: The objective is to bolster confidence in electronic transactions within the internal market. It aims to establish a shared basis for secure electronic interactions among citizens, businesses, and public authorities. This, in turn, will enhance the efficiency of both public and private online services, electronic business, and electronic commerce across the European Union. However, this Regulation does not affect national, or EU law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.

The eIDAS certification sets the standards and criteria for simple electronic signature, advanced electronic signature, qualified electronic signature, qualified certificates and online trust services. Furthermore, it rules electronic transactions and their management<sup>24</sup>. However, what we need the most from this Regulation is that it has essential principles for identification of legal persons. Particularly, it says that “electronic identification’ means the process of using person identification data in electronic form uniquely representing either a natural or legal person, or a natural person representing a legal person”. So, European legislators suggest that every legal entity might be identified through a natural person (for instance Chief Executive Officer or Authorized Lawyer).

<sup>23</sup> eIDAS Regulation, 73-114.

<sup>24</sup> ALBA ZARAGOZA: eIDAS. The Digital Identification Regulation for Europe. The Signicat Blog, 17.07.2023, <https://www.electronicid.eu/en/blog/post/eidas-regulation-electronic-signature/en>.

### 3.3. Legal analysis of US laws and regulations

In the United States, the Uniform Electronic Transactions Act (UETA)<sup>25</sup> and the Electronic Signatures in Global and National Commerce Act (ESIGN)<sup>26</sup> define and govern digital interactions.

The ESIGN does not explicitly address the identification of legal persons. Its primary focus is on ensuring that electronic signatures are treated as equivalent to handwritten signatures for the purposes of federal law.

While ESIGN doesn't directly regulate the identification of legal persons, it does have provisions that could indirectly impact this area:

- **Electronic Signatures:** The Act defines electronic signatures and establishes their legal validity. This can be relevant to the identification of legal persons in certain contexts, as electronic signatures can be used to authenticate and verify the identity of parties to a transaction.
- **Electronic Records:** ESIGN also provides a legal framework for electronic records, which can be used to document the identity and actions of parties involved in a transaction.

The UETA primarily focuses on facilitating electronic transactions and signatures, but it also does not explicitly address the identification of legal persons in a detailed manner like the e-IDAS Regulation does. UETA establishes the validity of electronic records and signatures in business transactions, but it treats parties in general without specifying distinct regulations for legal persons versus natural persons.

UETA provides uniform rules governing electronic commerce transactions. It sets a legal foundation for the use of electronic communications in business transactions where the parties have agreed to deal electronically. UETA validates and supports the use of electronic communications and records and places electronic commerce and paper-based commerce on the same legal footing. According to UETA, the term “Electronic” has the same meaning as in ESIGN<sup>27</sup>. Therefore, we can consider that a digital contract is “an agreement created and

<sup>25</sup> Federal Deposit Insurance Corporation FDIC, *Consumer Compliance Examination Manual*, January 2014. <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/10/x-3-1.pdf>.

<sup>26</sup> Section 106, ESIGN.

<sup>27</sup> United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf).

signed by electronic means". The act is designed to facilitate and promote commerce and governmental transactions by validating and authorizing the use of electronic records and signatures and to promote uniform electronic transaction laws among the states. It is also designed to be consistent with other applicable laws<sup>28</sup>.

### 3.4. Legal analysis of international laws and regulations

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

It started in 1996 with adoption of the Model Law on Electronic Commerce (MLEC)<sup>29</sup> by UNCITRAL. These rules are designed to eliminate legal barriers and enhance legal predictability in electronic commerce transactions. One of the main goals of the MLEC is to tackle challenges posed by legal requirements that cannot be modified by contracts. By ensuring equal treatment for both paper and electronic information, the MLEC encourages paperless communication, enhancing efficiency in global trade. It establishes a unified legal framework that supports electronic commerce and fosters harmonization across different legal systems.

Then on 5 July 2001 UNCITRAL adopted the Model Law on Electronic Signatures (MLES)<sup>30</sup>. The increasing reliance on electronic authentication methods, replacing traditional handwritten signatures, has underscored the need for a legal framework addressing their use. The Model Law on Electronic Signatures (MLES) builds on the principles of the MLEC, ensuring that electronic signatures fulfill their legal function in a technology-neutral way. By not favoring any specific technology, such as cryptographic digital signatures, the MLES enables various types of electronic signatures to be legally recognized. This adaptability promotes flexibility in authentication methods within the legal framework.

<sup>28</sup> United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-elecsig-e.pdf>.

<sup>29</sup> United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Transferable Records, [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr\\_ebook\\_e.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr_ebook_e.pdf).

<sup>30</sup> United Nations Commission on International Trade Law, UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlit\\_advance\\_copy.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlit_advance_copy.pdf).



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

The MLES is founded on the core principles found in all UNCITRAL texts related to electronic commerce: non-discrimination, technological neutrality, and functional equivalence. It defines criteria to assess the reliability needed to equate electronic signatures with handwritten ones. The MLES also outlines key rules of conduct for signatories, relying parties, and trusted third parties. Additionally, it promotes the recognition of foreign certificates and electronic signatures, following substantial equivalence, thereby facilitating cross-border transactions and enhancing international cooperation on electronic signature validity.

After that in 2017 UNCITRAL decided to adopt Model Law on Electronic Transferable Records (MLETR)<sup>31</sup>. This step was taken to facilitate the legal use of electronic transferable records domestically and internationally. The MLETR applies to electronic transferable records that offer functional equivalence to paper-based transferable documents or instruments. These include documents that give the holder the right to claim performance of an obligation and allow a transfer by changing possession of the document. Common examples include bills of lading, bills of exchange, promissory notes and warehouse receipts. The framework supports the legal recognition and usage of these instruments in an electronic form.

Finally, on 7 July 2022 UNCITRAL adopted the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (MLIT)<sup>32</sup>. This law aims to establish a unified legal framework that supports the use of identity management services for the online identification of individuals and legal entities. It also governs the use of trust services to guarantee the integrity and reliability of electronic data. Furthermore, the MLIT introduces mechanisms to promote the cross-border recognition of both identity management and trust services, ensuring seamless electronic interactions across different jurisdictions.

<sup>31</sup> United Nations Convention on Contracts for the International Sale of Goods, New York, 2010, (31). [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf).

<sup>32</sup> The unofficial translation of the Civil code of the Kyrgyz Republic: <https://www.libertas-institut.com/de/Mittel-Osteuropa/Civil%20Code%20part%20I.pdf>.

Digital trade relies on trust in the identities of business partners and the accuracy of electronic data exchanged. The MLIT sets a uniform legislative standard to promote trust in digital transactions and documents. As the first global legislative text of its kind, it serves as a legal foundation for digital trade worldwide, complementing other UNCITRAL legislative texts related to electronic commerce.

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

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

The third part establishes the foundational elements of the legal framework for trust services, including provisions regarding the liability of trust service providers. Articles 16 to 21 specify the functions of certain trust services (e.g., electronic signatures, electronic seals, electronic timestamps, electronic archiving, electronic registered delivery services, and website authentication) and the associated requirements. Similar to identity management, the reliability of the method used for trust services is assessed retrospectively based on the circumstances outlined in Article 22 or prospectively through designation as per Article 23.

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

Since the MLIT sets rules for identity management services which ensure the online verification of individuals and legal entities and trust services confirm the authenticity and reliability of digital data. These essential services are generally provided by specialized third-party entities, fostering secure transactions and safeguarding the integrity of digital interactions. Therefore, these UNCITRAL standards should also, along with e-IDAS regulation, be the Model law for the Kyrgyz Republic in establishing a legal environment for legal persons' identification.

#### 4. A NEW LAW ON ELECTRONIC IDENTIFICATION OF LEGAL PERSONS

The existing legislation of the Kyrgyz Republic provides all opportunities to use electronic signature in business relationships. However, it is hard to implement it, because trust services are undeveloped in the country. There is no big company that can issue technological tools for wider usage of the electronic signature for the majority of legal persons. Moreover, businesses accepting the electronic signatures should have a relationship with the same trust services as their counterparties. Therefore, the digitalization of legal persons is a bit challenging in the Kyrgyz Republic. On the contrary, the usage of the electronic signatures among individuals became a “hot topic” for various sectors, since codes and passwords inserted by a natural person upon receiving SMS or push-notifications to their phone are considered as one type of using electronic signatures.

In this regard, I would like to suggest researching the cheapest way of increasing the electronic identification through legal means of some institutions. For instance, there is no creation of nature such as “legal person”, it is a result of human thinking after the development of the economy. However, every legal person is associated with certain individuals. They are founders, managers and employees. The same opinion was formulated in the research of MICHAEL SONNTAG from Johannes Kepler University: *“There is always the need for a natural person to act for them (legal persons), although the results of them are ascribed to the legal person. The same is true even when the company acts through machines: There is always a natural person, who installed and set up the machine”*<sup>33</sup>.

Therefore, we should create a system of identification of legal persons through natural persons who can act on behalf of them. According to Kyrgyz legislation and international rules the head of the executive body of the company is usually an authorized person (CEO, President, Chairman of the Board, Boss), but this person should be responsible to sign on behalf of the legal person. Therefore, we should identify an entity by electronic means through its manager. In addition to authenticating the document issued by the legal person, electronic seals can be used to authenticate any digital asset of the legal person, such as software code or servers.

Therefore, I believe that the contract signed with an electronic signature designed for natural persons still can be valid. I was inspired by the opinion of Jos DUMORTIER, Professor of Law – K.U.Leuven. He wrote: *“It is a common*

<sup>33</sup> MICHAEL SONNTAG: Electronic Signatures for Legal Persons. In: SUSANNE HOFER – MANFRED BENEDER (ed.): *IDIMT-2000. 8th Interdisciplinary Information Management Talks, Proceedings*. Linz, Universitätsverlag Rudolf Trauner, 2000.

*misunderstanding that, in Europe, in order to have a legally valid electronic signature, you need a “qualified” electronic signature*<sup>34</sup>. The understanding that in Kyrgyz Republic the usage of only “qualified electronic signature” for legal persons should be accepted as incorrect.

As an alternative way, the Ministry of Justice of the Kyrgyz Republic as a state department for registering legal entities might create a strong information and technology platform, which will contain all data on legal persons. Especially, online updating information about the managers of the company with their sample of signatures. There is already a platform in the Kyrgyz Republic under control of this Ministry, however, it contains mostly data from the initial registration. There is no strict requirement of the notification of the replacement of the management board. Still, the majority of the companies have not been updating their managerial information. But the biggest current problem is that the specimen of the manager’s signature is not available, therefore nobody knows how to identify the authorized persons of the legal entities.

This kind of approach has already been created in Hungary, where you can be identified as a legal person just providing information from the database. For instance, banks can open bank accounts using the documents and check the signature from that system. Companies do not need to provide a notarized specimen of signature of their authorized persons as required in the Kyrgyz Republic’s bank legislation. It is too challenging if one company wants to open an account in several banks, because they have to verify the specimen of signatures for each of them by a notary. Additionally, in Hungary the contract signed by the manager without putting a stamp is still valid.

## 5. CONCLUSION

Benefits of Electronic Identification for Digital Contracting in the Kyrgyz Republic.

- Electronic identification can streamline the process of verifying the identity of legal persons, reducing paperwork and administrative costs. This can make digital contracting more efficient and attractive to businesses.
- A robust electronic identification system can enhance the security of digital contracts by reducing the risk of fraud and identity theft. This can foster trust among parties involved in online transactions.

<sup>34</sup> J. DUMORTIER: Legal Status of Qualified Electronic Signatures in Europe. In: S. Paulus – N. Pohlmann – H. Reimer (ed.): *ISSE 2004 – Securing Electronic Business Processes. Highlights of the Information Security Solutions Europe 2004 Conference*. Wiesbaden, Vieweg+Teubner Verlag, 2004. 281-289. ,

- By establishing clear legal frameworks and standards for electronic identification, Kyrgyzstan can provide greater legal certainty for digital contracts. This can encourage businesses to adopt digital technologies and participate in the digital economy.
- Aligning Kyrgyzstan's electronic identification laws with international standards can facilitate cross-border digital transactions and promote economic integration.

By studying and adapting above mentioned European and International laws and standards, the Kyrgyz Republic can create a legal environment that supports the development of digital contracting and promotes economic growth.

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