Uliana Yarymovych, PhD in Law
Ivan Franko National University of Lviv, Ukraine

HARMONIZATION OF PROVISIONS ON CONTRACT CONCLUSION IN LAW OF UKRAINE WITH LAW OF THE EU

Provisions of the Principles of International Commercial Contracts (the UNIDROIT Principles) and the Principles of European Contract Law on the general procedure of contract conclusion are analyzed in the article. Comparison of these norms with the appropriate provisions of the civil legislation of Ukraine is made. There is drawn a conclusion that the freedom of contract is much wider in the law of the EU in comparison with the legislation of Ukraine. In conditions of harmonization of Ukrainian law with the law of the European Union, it is necessary to revise the provisions of the Civil Code of Ukraine on form and general procedure of contract conclusion and to bring them into compliance with general fundamentals of European contract law, in particular by broadening the limits of contract freedom. To achieve this aim the appropriate amendments to the Civil Code of Ukraine are suggested.
Keywords: freedom of contract, form of contract, procedure of contract conclusion, offer, acceptance.

Formulation of the problem. Improvement of contract law of Ukraine has considerable meaning in the process of harmonization of the legislation of Ukraine with law of the European Union. Contract is the most important source of private legal relations regulation in the European Union, and freedom of contract is the main fundamental of the European contract law. Most researchers find this principle to be the main in international contract law in general. That is why in the article most attention is paid to study of the order of contract conclusion in Ukrainian and in European law, particularly elements of contract freedom in it, and to comparative analysis of the appropriate legislative provisions.

State of the study. General order of contract conclusion and application of the principle of contract freedom in particular has become a study object for such researchers as: S. O. Borodovskyi, M. I. Brahinskyi, V. V. Vitrianskyi, I. Horodetska, V. V. Denysiuk, O. V. Dzera, V. M. Kossak, A. N. Kucher, R. Y. Khanyk-Pospolitak, etc. However, in the conditions of integration of Ukraine to the European Union this theme preserves its actuality.

The aim of this study is to find out common and distinctive features in order of contract conclusion under law of the EU in comparison with law of Ukraine and an attempt to improve the appropriate legislative provisions of Ukraine, particularly in the direction of broadening the limits of contract freedom.

The main material. Article 1.1 of the Principles of International Commercial Contracts (The UNIDROIT Principles) fixes the principle of freedom of contract as the main one in the sphere of contractual relations[1]. It is also fixed in Article 1:102 of the Principles of European Contract Law (the PECL, the Principles): "Parties are free to enter into a contract and to determine its contents, subject to the requirements of good faith and fair dealing, and the mandatory rules established by these Principles" [2]. At the same time part 2 of this Article allows parties exclude the application of any of these Principles or vary their effects, except as otherwise provided by these Principles[3].

As it is stated by R. Y. Khanyk-Pospolitak, "As for limitations of the freedom of contract European Principles of Contract Law take into consideration, first of all, business practice, usages and traditions, business needs, and therefore first place is devoted to the requirement of good faith and fair dealing, and

[1] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*. <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> (2019, July, 30).
[2] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[3] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

only then there are taken into account mandatory rules of the Principles of European Contract Law"[1]. And this statement is worth of attention. If compare European approach with the Ukrainian one it should be noticed that article 627 of the Civil Code of Ukraine (the CC of Ukraine), which is devoted to the freedom of contract, fixes acts of civil legislation at the first place among the limits of the contract freedom[2]. At the same time Article 1:102 of the PECL fixes legal norms at the last place in this list. Moreover, part 2 of Article 1:102 allows contract parties to ignore these norms[3].

Freedom of contract is seen very clearly in those provisions of the Principles, which regulate form of contract and contract conclusion.

Thus, according to articles 2:101 – 2:103 of the PECL in order for the contract to be concluded there are two necessary and enough requirements: 1) the parties intend to be legally bound (the intention of a party to be legally bound by contract is to be determined from the party's statements or conduct as they were reasonably understood by the other party); 2) they reach a sufficient agreement, without any further requirements (for example, notary form – *the author*). There is the sufficient agreement in two cases: 1) if the terms have been sufficiently defined by the parties so that the contract can be enforced; 2) if the terms can be determined under the PECL[4].

A contract need not be concluded or evidenced in writing nor is it subject to any other requirement as to form. The contract may be proved by any means, including witnesses. Article 1.2 of the UNIDROIT Principles has fixed the same approach[5].

It is obvious that parties' freedom as for choosing the form of contract, as a rule, is not limited with any mandatory norms of the European law. At the same time Ukrainian legislation fixes such limits, in particular in articles 208-210 of the CC of Ukraine[6]. Article 208 of the Ukrainian Civil Code sets those cases in which written form of contract is compulsory. Article 218 in its part 1 fixes negative legal consequences which take place if contract parties do not endow their contract with such form (written) if it is directly required by law, "If one of the contract parties regrets the fact of contract conclusion or disputes its separate parts he/she may use written proofs, means of audio or video and other proofs in order to prove his/her position. But the court decision cannot be grounded on witnesses"[7]. Moreover, this norm is interpreted even wider. According to the court practice, "Not only regret of the fact of contract conclusion cannot be proved with the witnesses, but also stating the fact of contract conclusion, as well as the contract performance" (point 12 of the Regulation of the Plenum of the Supreme Court of Ukraine "On the Judicial Practice of Resolving Civil Law Disputes on Acknowledgement of Contracts as Invalid" of November 06, 2009 № 9)[8]. Next, article 209 of the Civil Code of Ukraine fixes the obligation of notarization of contract in cases fixed by law, and article 210 still preserves the provision about the state registration of contracts[9]. In addition to that, Business Code of Ukraine requires that all the business contracts are to be concluded in written form.

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[1] Ханик-Посполітак, Р. Ю. (2006). Принцип свободи договору в Європейському праві. *Наукові записки*, *53,* 129.

[2] *Цивільний кодекс України, ст. 627. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

[3] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[4] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[5] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT.* <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> (2019, July, 30).

[6] *Цивільний кодекс України, ст. 208-210. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

[7] *Цивільний кодекс України, ст. 218. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

[8] *Про судову практику розгляду цивільних справ про визнання правочинів недійсними: Постанова Пленуму Верховного суду України 2009* (Верховний суд України). *Офіційний веб-сайт Верховної Ради України.* <http://zakon5.rada.gov.ua/laws/show/v0009700-09?nreg=v0009700-09&find=1&text=%EF%E8%F1%FC%EC%EE%E2&x=7&y=7> (2019, July, 30).

[9] *Цивільний кодекс України, ст. 209, 210. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

A bright example of the freedom of contract form in law of the EU, as well as in international contract law in general, is the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna in 1980. In its article 11 the Convention fixes a provision which is the same in its content as the abovementioned norm of the Principles on the form of contract, "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses"[1]. Ukraine, having ratified this Convention, has made an exception from this norm. Thus, the Regulation on Form of Foreign Economic Contracts of 06.09.2001 № 201, which was signed into act with the Order of the Ministry of Economic and on Issues of European Integration of Ukraine, fixes that the foreign economic contract is to be concluded in written form[2]. Until recent time such an approach was fixed in the Law of Ukraine "On Foreign Economic Activity" as well[3]. But the Law of Ukraine adopted on 2016 November, 03 has made appropriate amendments[4]. Thus, part 2 of the Article 6 of the Law "On Foreign Economic Activity" now allows the electronic form together with the written form of foreign economic contract. But still the Civil Code of Ukraine names it to be a type of written form (Art. 205)[5]. Besides that, in case of export of services (except transport ones) foreign economic contract may be concluded by means of acceptance of the public offer or by means of exchange of the electronic messages, or in other way, in particular by drawing an account (invoice), in particular in electronic form for the services[6]. Such a legislative trend seems to be positive in the process of harmonization of the legislation of Ukraine with law of the EU. However, although these amendments attempt to soften requirements to form of foreign economic contracts, they still preserve the imperative character of the appropriate legal norms and the priority of written form of contract.

The principle of freedom of contract form in law of the EU is also seen in case of contract modification and ending. Thus, according to Article 2:106 of the Principles, "A clause in a written contract requiring any modification or ending by agreement to be made in writing establishes only a presumption that an agreement to modify or end the contract is not intended to be legally binding unless it is in writing"[7]. This provision leads to the opposite conclusion – if a written contract does not fix such a clause, then parties' agreement to modify or end the contract may exist in oral form.

Unlike European law, article 654 of the Civil Code of Ukraine fixes general imperative rule, according to which contract modification and ending should be made in the same form as its conclusion[8].

Particular differences also exist in the procedure of contract conclusion. European law is characterized with the traditional order of concluding contracts by means of an offer and an acceptance. The requirements to an offer are stated in Article 2.201 of the PECL (as well as in the Article 2.1.2 of the UNIDROIT Principles), and they are the same as the requirements fixed in p. 1 of the Art. 641 of the CC of Ukraine. A proposal is considered to be an offer if:

1) it is intended to result in a contract if the other party accepts it (by its content this requirement is the same as the appropriate requirement of the Civil Code of Ukraine according to which the offer is to express an intention of a person who made it to consider herself obliged in case of acceptance of the offer by the second party (paragraph 2 part 1 of Art. 641 of the CC of Ukraine)); the same requirement is fixed in Art. 2.1.2 of the UNIDROIT Principles;

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[1] *United Nations Convention on Contracts for the International Sale of Goods, art 11. 1980* (United Nations Organization). <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> (2019, July, 30).

[2] *Наказ про затвердження Положення про форму зовнішньоекономічних договорів (контрактів) 2001* (Міністерство економіки та з питань європейської інтеграції). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/z0833-01> (2019, July, 30).

[3] *Закон про зовнішньоекономічну діяльність, ст. 6. 1991* (Верховна Рада УРСР). *Відомості Верховної Ради,* 29, 377.

[4] *Закон про внесення змін до деяких законів України щодо усунення адміністративних бар'єрів для експорту послуг 2016* (Верховна Рада України). *Відомості Верховної Ради*, *52,* 860.

[5] *Цивільний кодекс України, ст. 205. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

[6] *Закон про зовнішньоекономічну діяльність, ст. 6. 1991* (Верховна Рада УРСР). *Відомості Верховної Ради, 29,* 377.

[7] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[8] *Цивільний кодекс України, ст. 654. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

2) it contains sufficiently definite terms to form a contract.

An offer can be made to one or more definite persons or publicly[1].

The same as in Ukrainian law, European contract law singles out the revocable and the irrevocable types of offer. According to the CC of Ukraine an offer becomes irrevocable at the moment of receiving it by the offeree (p. 3 of the Art. 641)[2].

In law of the EU there exists a bit different rule – different is the moment until which the offer can be revoked. Thus, according to part 1 of Article 2:202 of the PECL (as well as part 1 of Article 2.1.4 of the International UNIDROIT Principles) an offer may be revoked if the revocation reaches the offeree before he has dispatched his acceptance. An offer may also be revoked in cases of acceptance by conduct, before the contract has been concluded (in such case the contract is considered concluded at the moment when notice of the conduct reaches the offeror). An offer made to the public can be revoked by the same means as were used to make the offer[3].

However, a revocation of an offer is ineffective if: 1) the offer indicates that it is irrevocable; or 2) it states a fixed time for its acceptance; or 3) it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer (part 3 Art. 2:202 of the PECL[4], part 2 of the Article 2.1.4 of the UNIDROIT Principles[5]). The PECL do not fix the moment since which these three exceptions according to which a revocation of an offer is ineffective can be applied. But it seems that they can be applied (the same as in Ukraine) only since the moment of receiving the offer by the offeree. Unlike the PECL, The UNIDROIT Principles do fix the appropriate provision: "An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer" (p. 2 Art. 2.1.3)[6]. By that time an offeree who has not yet received an offer, cannot demand its performance at least because he is not aware of its existence. According to p. 1 of Art. 2.1.3 of the UNIDROIT Principles, an offer is not even valid by the moment of its being received by the offeree[7]. So, we can stand, that there are quite substantiated provisions of the Civil Code of Ukraine according to which *by* the moment and *at* the moment of receiving the offer by the offeror this offer can be revoked anyway. And thus we come to a conclusion that these provisions are the same in law of Ukraine and in law of the EU. There is the only difference and it consists in following – since the moment of receiving the offer legislation of Ukraine fixes a presumption of irrevocability of an offer, and in law of the EU presumption of revocability preserves its force. But since that moment it becomes destroyable and discontinues in three cases: 1) the offer indicates that it is irrevocable; 2) it states a fixed time for its acceptance; 3) it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

As a conclusion, we can say that law of the EU and international law in general broadens the freedom of contract in comparison with the legislation of Ukraine, giving an offeror the right to decide whether conclude contract or not by the moment when the offeree has dispatched his acceptance. At the same time the Civil Code of Ukraine limits this right by shorter period of its realization – *by* the moment or *at* the moment of receiving the offer by the offeror.

European law includes softer requirements to acceptance than Ukrainian law. In particular, according to p. 1 of Art. 642 of the CC of Ukraine, acceptance is to be full and unconditional, and Art. 646 states that

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[1] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[2] *Цивільний кодекс України, ст. 641. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.*
<https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

[3] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[4] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).

[5] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*.
<http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>
(2019, July, 30).

[6] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*.
<http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>
(2019, July, 30).

[7] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*.
<http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>
(2019, July, 30).

answer including the agreement to conclude contract on terms that differ from the offered ones, is the rejection of the received offer and a new offer at the same time[1]. Article 2.208 of the PECL admits in p. 2 that, "A reply which gives a definite assent to an offer is still an acceptance even if it states or implies additional or different terms, provided these do not materially alter the terms of the offer. The additional or different terms then become part of the contract"[2]. However, according to p. 3 of Art. 2.208 of the PECL, such a reply will be treated as a rejection of the offer if: 1) the offer expressly limits acceptance to the terms of the offer; 2) the offeror objects to the additional or different terms without delay; 3) the offeree makes its acceptance conditional upon the offeror's assent to the additional or different terms, and the assent does not reach the offeree within a reasonable time[3].

In this context I. Horodetska states that, "…adopted in Ukrainian practice protocol of disagreements can be considered a kind of acceptance with "a clause""[4]. Thus, p. 4 of Art. 181 of the Business Code of Ukraine states that in case of rejection of particular contract terms a party having received the draft contract compiles a protocol of disagreements and sends two copies of it together with the signed contract to the other party in the twenty-days term[5]. The author considers that "this norm has common provisions with point (c) of p. 3 of Art. 2:208 of the PECL according to which acceptance of additional or different terms is possible only after the offeror's assent to these terms"[6] (in case if the offeree makes its acceptance conditional upon such assent, and the assent reaches the offeree within a reasonable time). This position is worth of attention in particular considering that the party compiling a protocol of disagreements signs the draft contract. But still, it is not directly named as acceptance in the Business Code of Ukraine. And according to provisions of the Civil Code, an answer accepting the offer with some modified terms is a rejection of the offer and a new offer at the same time.

Ukrainian legislation also does not include the following rule, "If professionals have concluded a contract but have not embodied it in a final document, and one without delay sends the other a writing which purports to be a confirmation of the contract but which contains additional or different terms, such terms will become part of the contract unless: 1) the terms materially alter the terms of the contract, or 2) the addressee objects to them without delay" (Art. 2.210 of the PECL, Art. 2.1.12 of the UNIDROIT Principles)[7;8]. This norm differs from acceptance with a clause because it is applied to contracts which are already concluded and which are the business contracts in their legal nature. However, the same as acceptance with a clause, it demonstrates broadened freedom of contract in European law.

Rules about late acceptance do not differ in their content in law of the EU from those set by the legislation of Ukraine. According to Art. 2.207 of the PECL, a late acceptance is nonetheless effective as an acceptance if without delay the offeror informs the offeree that he treats it as such. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree that it considers its offer as having lapsed[9]. The same rules are fixed in the Art. 645 of the CC of Ukraine[10].

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[1] *Цивільний кодекс України, ст. 642, 646. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).
[2] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[3] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[4] Городецька, І. (2004) Деякі питання укладення угод згідно з європейським правом. *Юридичний журнал*, *4.* doi:http://www.justinian.com.ua/article.php?id=1137.
[5] *Господарський кодекс України, ст. 181. 2003* (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/436-15> (2019, July, 30).
[6] Городецька, І. (2004) Деякі питання укладення угод згідно з європейським правом. *Юридичний журнал*, *4.* doi:http://www.justinian.com.ua/article.php?id=1137.
[7] The Principles Of European Contract Law 2002 (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[8] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) of 2010.
<http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> (2019, July, 30)
[9] *The Principles Of European Contract Law 2002* (Parts I, II, and III).
<http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[10] *Цивільний кодекс України, ст. 645. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

As for legal regulation of the moment since which a contract is considered to be concluded a general rule is identical in the CC of Ukraine (Art. 640) and in the PECL (p. 1 of Art. 2:205) – if an acceptance has been dispatched by the offeree the contract is concluded when the acceptance reaches the offeror[1;2]. The same approach is fixed in p. 2 of Art. 2.1.6 of the UNIDROIT Principles[3]. Such is the general rule in the EU. Legal regulation of the moment, since which a contract is considered to be concluded according to the Civil Code of Ukraine (Art. 640), complies with it completely. However, as for an acceptance by conduct there are some inaccuracies in the legislation of Ukraine. Thus, in law of the EU there exists the norm which fixes a clear rule, that in case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror (p. 2 of Art. 2:205 of the PECL[4]). And only in case if by virtue of the offer, of practices which the parties have established between themselves, or of a usage, the offeree may accept the offer by performing an act without notice to the offeror, the contract is concluded when the performance of the act begins (p. 3 of Art. 2:205 of the PECL[5], or "when the act is performed", – p. 3 of Art. 2.1.6 of the UNIDROIT Principles[6]). In the legislation of Ukraine any norm of similar content is absent.

According to p. 2 of Art. 642 of the Civil Code of Ukraine, "Where a person who received an offer to conclude contract within the time for acceptance has performed an act according to terms of the contract fixed in the offer (has dispatched goods, has provided services, has performed work, has paid an appropriate amount of money etc.), which ascertains her will to conclude the contract, this act is considered the acceptance of the offer, except where different is stated in the offer or is set by law"[7]. Rule of p. 1 of Art. 640 of the Civil Code of Ukraine states that the contract is concluded when the acceptance has reached the offeror. However, p. 2 of Art. 642 of the Civil Code of Ukraine does not foresee a special note to the offeror about performance of acts which are considered the acceptance of the offer. There arises a question, which is the moment, since when such contract is considered concluded: the moment of performance of the appropriate acts or different moment, which is not determined clearly by the Civil Code.

System interpretation of Art. 642 of the Civil Code of Ukraine helps to come to a conclusion that since the moment of performance of acts mentioned in p. 2 of this Article, the contract may not be considered concluded yet. In particular, there is foreseen in p. 2, that acts performed according to terms of the offer are the acceptance. But there is stated in p. 3 that "a person, who has accepted the offer, may revoke her answer about its acceptance having informed the offeror by the moment or at the moment when the answer has reached him/her"[8]. Therefore, the lawmaker points out again that acceptance of an offer is not the moment of contract conclusion, since even after such an acceptance the answer about the acceptance may be revoked. And therefore, fact of informing the offeror about the acceptance is important for the contract conclusion, which corresponds to p. 1 of Art. 640 of the Civil Code of Ukraine. It seems reasonable, that when interpreting p. 3 of Art. 642 of the Civil Code of Ukraine it is necessary to consider that a person, who has made an acceptance by conduct, may also change her decision by the moment or at the moment when the offeror receives the information about performance of such acts, which are

[1] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[2] *Цивільний кодекс України, ст. 640. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).
[3] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*. <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> (2019, July, 30).
[4] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[5] *The Principles Of European Contract Law 2002* (Parts I, II, and III). <http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/> (2019, July, 30).
[6] The Principles of International Commercial Contracts (PICC) (The UNIDROIT Principles) 2010. *UNIDROIT*. <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> (2019, July, 30).
[7] *Цивільний кодекс України, ст. 642. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).
[8] *Цивільний кодекс України, ст. 642. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

considered the acceptance of the offer. And such a moment should be treated as the moment of receiving the answer by the offeror.

It is obvious that each party's being informed about the expression of the other party's will has important meaning for the contract conclusion, since a contract is an agreement (p. 1 of Art. 626 of the Civil Code of Ukraine[1]). Therefore, reasonable is the norm of p. 2 of Art. 2:205 of the PECL, according to which a contract is concluded when notice of the conduct of the offeree, aimed at performance of terms of the offer, reaches the offeror, and not when appropriate acts are performed, because not always performance of such acts coincides with the moment when the offeror learns about that.

Denysyuk V. V. when researching this issue pays attention to the necessity of taking into account the time for acceptance, "It is unfairly to make the offeror wait for performance after ending of the time for acceptance… If the term within which the offeror learns about the acceptance by conduct without a special note (for example, time of receipt of goods), is under the reasonable time for acceptance, then there is no need in a special note from the acceptant about his acceptance by conduct. In case if the reasonable time for acceptance may end before the offeror learns about contract conclusion by means of acceptance by conduct, he should be informed specially that the acceptance has been made[2]". Such a position is quite reasonable. However, it is worth mentioning that even in case if the offeree has performed an act about which the offeror would have learned within the time for acceptance without a special note, he still may inform the offeror that the acceptance has been made, if he wishes to provide the offeror with such information before the performance reaches the offeror (for example, after handing in the goods to a carrier).

In any case, the contract may be considered concluded only since the moment when the offeror has learned of the acceptance: by means of performance reaching him or by means of informing him about the performance. This seems to be reasonable because if the contract were considered concluded before the offeror learns of this, than there might occur a situation when because of performance of his obligation by the acceptant there would arise a counter obligation of the offeror performance of which might be postponed because of the offeror's being uninformed about the contract's being concluded. As the result, there might attach civil liability of the offeror for wrong performance of the contract or he might suffer damages. And such a situation would violate the fundamentals of fair dealing and reasonableness.

Moreover, if the contract were considered to be concluded since the moment of performance of an act by the acceptant without waiting till the offeror learns of these acts, then such acceptant would be deprived of an opportunity to revoke his answer about the acceptance of the offer. And thus, this would limit the freedom of contract as for making a decision whether to conclude contract or not, since a general rule is, that an acceptant has the right to make such a decision until the moment of his answer's reaching an offeror.

Civil law norms on the moment of contract conclusion in case of acceptance by conduct, fixed in the Civil Code of Ukraine, seem to be imperfect, since they cause their ambiguous interpretation. Considering the above mentioned, it seems to be reasonable to refine in the Civil Code of Ukraine the moment since which a contract is concluded in case of making an acceptance by conduct, and to add part 3 to Article 640 "The Moment of Contract Conclusion" of the Civil Code of Ukraine of the following content, "In case of acceptance by conduct according to p. 2 of Article 642 of the present Code, the contract is concluded when notice of the conduct reaches the offeror". Part 3 appropriately should be considered to be part 4.

Conclusion. The above arguments lead to a conclusion that the freedom of contract is much wider in law of the EU in comparison with the legislation of Ukraine. In conditions of harmonization of Ukrainian law with law of the European Union it is necessary to revise the provisions of the CC of Ukraine on form and general procedure of contract conclusion and to bring them into compliance with general fundamentals of European contract law, in particular by broadening the limits of contract freedom. To achieve this aim, among other amendments, we suggest that:

1) Requirements of the Civil Code of Ukraine to form of contract should be softened.

2) Part 3 should be added to the Article 640 of the CC of Ukraine "Moment of Contract Conclusion" of the following content, "In case of acceptance by conduct according to p. 2 of Article 642 of the present Code, the contract is concluded when notice of the conduct reaches the offeror". Part 3 appropriately should be considered part 4.

[1] *Цивільний кодекс України, ст. 626. 2003* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <https://zakon.rada.gov.ua/laws/show/435-15> (2019, July, 30).

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