

## COMMERCIAL TRANSACTION – NATURE, SCOPE, BASIC DOCUMENTS

**Abstract:** Documentation accompanies commercial transactions as soon as they occur. The emergence of exchange relations between people, their transformation and their formation into permanent commercial relations (initially between individuals and then between individual nations) are at the core of the emergence and confirmation of the recording (scheduling, documentation) of the ongoing commercial processes that are directly bound with the realization of commercial transactions. The document is the material carrier of information, written testimony, evidence between traders for establishment of commercial transactions.

The study presents the essential characteristics of the commercial transactions, their scope and the requirements for their documentation on the basis of the applicable legal framework.

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### Author information:

**Slavena Stoyanova**

Assoc. Prof. PhD

Faculty of Mathematics and Computer Science

Department "Economics and

Mathematical Modelling"

"Konstantin Preslavsky" University of Shumen,

✉ [slavena.stoyanova@shu.bg](mailto:slavena.stoyanova@shu.bg)

🌐 Bulgaria

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### 1. Commercial transaction - nature and scope

Following the presented in various sources of information definitions of a commercial transaction [1, 2, 3, 4, 6, 9, 10, 11, 12], we can identify certain similarities. Researchers and lawmakers are united around the understanding that commercial is every transaction of the trader which relates to the pursuit and sustainment of their commercial activity. The legislator states that **commercial is the transaction concluded by a trader, which is related to his occupation.**

In regards with the presented definition, the following clarifications should be made:

- "trader" means the legal subject under whose legal form the respective entity is organised and being properly managed by the trader, it operates through the conclusion and execution of the necessary commercial transactions as a consequence of the management decisions;
- commercial profession or only profession is what can be determined only on the basis of the performed activity;
- the practised by the trader profession is the occupation, work activity which the trader is mainly engaged with;
- transactions must be carried out systematically, permanently with the main motive being the profit;
- this should be the prevailing type of transactions that the trader concludes.

The commercial transaction is a type of transaction. The transaction is a legal fact with its main element being the declaration of intention, respectively the consent of one or several individuals, which is directed towards certain legal consequences. What makes the transactions commercial is their specificity.

Presently, in accordance with the functioning regulatory framework in Bulgaria [10], the following transactions are being defined as commercial:

- purchase of goods or other objects for resale in original, remade or processed form;
- sale of goods from own production;
- purchase of securities for resale;

- commercial representation and mediation;
- commissions, forwarding and transportation transactions;
- insurance transactions;
- bank and currency transactions;
- bills of exchange, promissory notes and checks;
- warehouse transactions;
- licensing transactions;
- commodity control;
- intellectual property transactions;
- hotel, tourist, advertising, information, programming, impresario or other services;
- purchase, construction or furnishing of real estate for sale;
- leasing.

In order all listed business transactions to be considered commercial, they should be reliably documented.

## **2. Basic documents for the verification of the conclusion of a commercial transaction - requirements and regulations**

The most commonly used document for the verification of the conclusion of a commercial transaction in practice is the contract. It is used in different varieties, depending on the type of the trade transaction. The conclusion of commercial contracts is carried out in accordance with the general legal framework contained in Art. 12 - 14 of the Obligations and Contracts Act [8]. In some cases, the contract and its conclusion are preceded by negotiations, making and accepting a proposal. Proposal (offer) may be withdrawn. In any case, those actions have certain consequences and are bound by fixed deadlines. The contract is deemed to have been concluded at the moment when acceptance reaches the offerer and the place where the offer is made[8].

For purposes of verifying and proving the commercial transaction, other documents apart from the document "contract" are also applicable. The documents used can be grouped into separate groups, depending on their intended purpose. The groups are as follows:

- commercial documents - contract documents /inquiries, offers, contracts, orders, confirmations of orders and others/, invoice, other documents - wrapping sheet, specification, certificate - quality, veterinary, phytosanitary, origin;
- transport documents - consignment note and bill of lading;
- insurance documents - contract, policy, certificate.

Each of the groups cover separate types of documents characterized by specific composition and applicability. The specificity and characteristics of the legal framework of commercial transactions undoubtedly reflect on the manner of their conclusion as well as the form of commercial transactions, which in turn affect their documentation. There is a form of validity and a form of proof. The two forms of the transaction differ in their legal significance and practical value. The form of validity, as its name indicates, points that its compliance is a condition for the recognition of the transaction as genuine. In cases where the law requires the application of a certain form of validity, we usually speak of a written form. The requirement imposes the production of a document certifying the will of the parties. Frequently, the regulation framework requires that the declaration has a certain content bound by the minimum mandatory information that must be contained in the specific document (mandatory requisites of the transaction). In connection with this, it should be noted that an e-invoicing standard is foreseen to be initiated (Directive 2014/55 / EU) [5]. The European e-invoicing standard should be suitable for usage except in public procurement and in commercial transactions between enterprises, i.e. the Commission should ensure that the standard is developed in a way that makes it suitable for usage in areas other than public procurement. Invoices issued in different business sectors may require the inclusion of information specific to these sectors. However, all invoices should contain a limited number of common standard items which to allow the verification that the invoice correctly reflects

the corresponding business transaction and to ensure that the invoice is legally valid. The possibility for the sender of the electronic invoice to guarantee the authenticity of the origin and the credibility of the invoice content is realized in a different way, including through an electronic signature. The form of proof is primarily of procedural significance - it is related to the process of proving to a judicial authority in the event of a legal dispute between the parties involved in the transaction in connection with its conclusion and/or execution. Regarding the form of proof, it should be noted that the subjective rights in a commercial transaction are demonstrated by a document (a written record of a process or event). In the era of technology, the electronic document is increasingly replacing the written one. In civil law, the written form is considered to be observed when the document is signed by the author of the will. According to Art. 293, para.4 of the Commercial Code [10], the written form is considered to be complied with if the statement is written technically in a way that allows reproduction. Regarding the document and its probative force, in addition to the provisions of the Commercial and Civil law, the requirements of the Accountancy Act, the Electronic Document and Electronic Signature Act [7], the Electronic Commerce Act also comes into force. As written declarations of intention are also considered, those made by telex or telefax, but only if the reproduction of the statement is excluded from the books and documents that reflect the work of these apparatuses [10]. The review of the applicable legal framework found that an electronic document could not replace a loan contract with interest or a preliminary sale contract but is rather applicable to contracts for which the written form of validity is not required, such as consensual contracts - these are concluded when there is a certain degree of consent, as the one in commercial transactions, commission transactions, consignment and forwarding transactions. The electronic document is not applicable to transactions for which the legislator requires qualified written form, as well as when the document or a copy of the document has legal significance (securities, bill of lading, etc.).

For documenting commercial transactions, their scope is essential. Undoubtedly, the scope of the commercial transactions is determined by the agreement reached and it is reflected in the contract. The scope of the commercial transactions mainly boils down to determination of the subject of the transaction and its price. The subject of a commercial transaction may be: property, rights, materials, goods, services, and other or generally said - tangible and intangible assets, receivables and/or liabilities. The subject is specified during the conclusion of the commercial transaction. The choice of type of contract is also objectified by the subject of the commercial transaction. In connection with the determination of the subject of a commercial transaction, a number of elements are defined which give a more complete picture of the subject's characterization. For example, if the subject of the transaction is a commodity, additional features may be included in the contract, such as: determining the quality according to specific criteria (by standard, by technical description, by samples, etc.); setting a deadline for the delivery of the commodity; setting criteria for receipt of the commodity by the customer; determining the place of receipt; defining criteria for refusal of receipt; setting a cost allocation order (for transit sales) and others. When entering into a contract, the second major element of the scope of the commercial transaction is its price. In addition to the determination of the price which is specific, the contract concluded between the parties involved in the commercial transaction also determines the ways of payment of the price, the terms of execution of the transaction as well as the terms according to which the cash payment should be made. Opportunities for payment of the price vary depending on the subject of the transaction. Widely applicable in practice are the following types of payments: cash, on account on the day of the transaction, prepayment, on deferred payment, transfer of securities and others. In regards to the terms - in the provisions of the Commercial Law, Art. 303, the legislator pointed the following: "Where the contract does not specify the term for fulfillment of the obligation, unless the nature of the transaction or the commercial custom require otherwise, the execution may be requested and carried out at any time during the working hours at the place of execution" [10]. In regards to the time limits for monetary liabilities and in relation to the actions taken against the delay of payments, deadlines have been introduced and explained in details in Art. 303a of the Commercial Law [10]. In addition to determining the subject and the price of the commercial transaction, penalties and damages are also defined (Art. 309 of the Commercial Law).

### 3. Conclusion

Based on the overview so far, taking into account the applicable regulations (without claiming thoroughness), the following summary on the documentation of commercial transactions can be made, namely: documentation is an important, concomitant, normative-regulated process, characteristic of each commercial transaction. The specific rules for the conclusion of a commercial transaction are stipulated in the Commercial Law. The following are also applicable to the transaction and its documentation: the Law on Obligations and Contracts, the Accountancy Act, the Value Added Tax Act and other laws depending on the type of the transaction. The main accompanying document of the commercial transaction is the contract and for certain types of contracts, the legislator provides for compulsory use of the written form. A wide application in the documentation of the commercial transaction has the invoice as well as other accompanying documents - commercial, transport, insurance and customs. The form of proof and the form of validity are essential for documenting commercial transactions. When documenting commercial transactions, the subject and price must be determined and indicated. Each of the documents used in commercial transactions is characterized by a specific composition and applicability. The availability of mandatory requisites (mandatory minimum information) is a guarantee of credibility and probative force of the document. The expansion of the scope of the commercial transactions and the development of technology allow the wider use of the electronic document. The introduction of standardization in the field of e-invoicing ensures that there is a limited number of common (standard) items whose aim is to verify the correctness of the corresponding business transaction and its validity from legal perspective. The guaranteeing of the authenticity, origin and credibility of the invoice content as well as of other documents related to the commercial transaction is realized in a different way, including through electronic signature. In the future, the applicability of the electronic document and the electronic signature will be expanded.

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