"Functional Equivalence: A Comparative Study under International Law with reference to Azerbaijan"

Tural Hasanov

Author is a third year LLB student at Baku State University in english section.

Abstract

This article explores the principle of functional equivalence in the context of e-commerce regulation. It begins by highlighting the significance of e-commerce in the modern digital era and the need for robust legal frameworks to govern electronic transactions. The international community's efforts to establish mechanisms for regulating the legal aspects of e-commerce are examined, with a focus on the concept of functional equivalence. The United Nations and the European Union have played key roles in shaping this principle through the adoption of model laws, conventions, and directives. The article then delves into the implementation of functional equivalence in Azerbaijani law, considering the challenges and achievements in aligning national legislation with international best practices. By analyzing the similarities, differences, and limitations in addressing functional equivalence within the framework of the United Nations and the European Union, as well as Azerbaijani legislation, the article emphasizes the importance of continued efforts to bridge gaps and enhance the practical application of this principle. For the purpose of this, the article examines the legal instruments that include the functional equivalence principle and notes the contributions each makes to this approach.

Overall, functional equivalence serves as a foundation for creating a secure and equitable environment for e-commerce, promoting trust, confidence, and legal certainty in the digital marketplace.

Introduction.

In the modern era of digitalization, e-commerce has become a prominent force propelling global trade and economic growth.[1] The ability to conduct business transactions online has revolutionized the way companies operate and interact with customers worldwide. However, as the reliance on electronic transactions grows, it has never been more important for these transactions to be governed and protected by strong legal frameworks.[2] Due to the paramount significance of this matter, the international community has initiated efforts to establish mechanisms for regulating the legal aspects arising from electronic transactions. One of the primary objectives of such regulations was to address and mitigate the challenges pertaining to the enforcement of these transactions. Therefore, it was necessary to introduce a concept known as functional equivalence, which asserts that the regulations governing the physical realm should also extend to the digital world.[3] This idea holds significant power as the authority of the rules that exist in the physical world can be efficiently transmitted to the online world.[4]

The principle of functional equivalence is one of the key principles that underpin the effective regulation of e-commerce.

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[1] Irina Albastroiu, 'Contribution of the e-commerce to the economic development' (2007) 6(5) International Conference on Business Excellence, Review of Management and Economical Engineering 3, 3.

[2] Gboyega Phillip Ogundele, 'Developing Legal Framework for Electronic Commerce in Nigeria: Some Lessons from U.K and Singapore' (2018), http://dx.doi.org/10.2139/ssrn.3182325 (accessed 12 July 2023).

[3] Chris Reed, Making Laws for Cyberspace (Oxford University Press 2012), p. 106.

[4] Andrej Savin, 'Rule Making in the Digital Economy: Overcoming Functional Equivalence as a Regulatory Principle in the EU' (2019) 22(8) Journal of Internet Law 1, 14.

For the first time, the United Nations Commission on International Trade Law (hereinafter "UNCITRAL") made discussions in its sessions and formally adopted the functional-equivalent approach to legislation with the creation of the Model Law on Electronic Commerce in 1996.[5] The European Union (hereinafter "EU") also took significant measures to include the principle of functional equivalence in its legislation, aiming to ensure the effectiveness of electronic communications among its member states. Inspired by the international legal framework, the Republic of Azerbaijan, acting as a developing country, also followed suit by taking necessary steps to incorporate the relevant international norms related to this principle into its legislation. This move aimed to prevent Azerbaijan from lagging behind the international community in the rapidly evolving issues of electronic commerce.

The functional-equivalent approach ensures that electronic transactions are treated with the same legal recognition and effect as their traditional paper-based counterparts performing the same function.[6] In other words, it aims to remove any legal obstacles or distinctions between digital and physical transactions, providing consumers and businesses in the digital market with assurance and confidence.

By embracing the principle of functional equivalence, legal systems around the world seek to ensure that electronic transactions are subject to the same rights, obligations, and legal consequences as their traditional counterparts. This approach eliminates uncertainties and discrepancies, providing a level playing field for all parties involved in e-commerce. Moreover, it promotes trust, reliability, and consistency in electronic transactions, bolstering the overall integrity of the digital marketplace.

Through the principle of functional equivalence, legal frameworks have evolved to address the unique challenges posed by electronic transactions. The goal is to create a harmonized and equitable environment in which electronic commerce can thrive. By recognizing the authority and effectiveness of electronic transactions, functional equivalence plays a vital role in fostering the growth and development of e-commerce on a global scale.

1. Addressing Functional Equivalence in International Legal Frameworks

When contemplating the advancement of the principle of equivalence, one may observe that the governance of this approach predominantly rests upon the implementation efforts of the United Nations (hereinafter "UN") and the EU. The UN has been instrumental in shaping the international legal landscape surrounding functional equivalence in e-commerce. Recognizing the need for harmonized approaches to electronic transactions, the UN has actively worked to develop conventions, guidelines, and model laws that promote functional equivalence and facilitate cross-border trade.

This section delves into the concept of functional equivalence and explores how international laws and frameworks address this principle. By examining the efforts made at the international level, it is possible to obtain insights into the initiatives and measures aimed at establishing a cohesive legal environment for electronic transactions.

1.1. The Work of the United Nations Commission on International Trade Law (UNCITRAL)
It is important to highlight that UNCITRAL plays a significant role in establishing and advancing the legal recognition of electronic communications,

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[5] Lyu Guomin & Zhou Shengmian, 'Functional-Equivalent Approach in UNCITRAL Electronic Commerce Legislation' (2018) 176 Advances in Social Science, Education and Humanities Research 1542, 1542.
[6] UNCITRAL, Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce, para. 18 (1999).

giving them the same legal effect as paper-based documents, by means of its model laws. The UNCITRAL was established by the United Nations General Assembly in order to improve the international trade cooperation among states, and reduce divergencies arising from different state laws in matters relating to international trade.[7]

The model laws serve as a suitable vehicle for modernizing and harmonizing national laws, especially when states intend to make changes to the model's text to accommodate local requirements that differ from system to system or where strict uniformity is not required or desired.[8] Although the model laws focus on the domestic legislation of states, the United Nations Convention on the Use of Electronic Communications in International Contracts provide practical solutions for matters concerning the utilization of electronic communication methods in the context of international agreements.[9]

1.1.1. Model Law on Electronic Commerce by the UNCITRAL in 1996

One of the landmark contributions of the UN in this field is the adoption of the Model Law on Electronic Commerce by the UNCITRAL in 1996, which entails the usage of the functional-equivalent approach to solve the three problems of "writing", "signature" and "original".[10] These problems arose with the advent of electronic commerce, questioning whether the usual legal consequences associated with familiar concepts such as written communications,

expressing intentions through signed documents, and distinguishing between originals and copies still apply when information is transmitted in a form that lacks a stable support like paper.[11] To address and resolve these concerns, the Model Law incorporates specific provisions. One of them is indicated in Article 6 which envisages that any legal requirements that information be in writing will be met by a data message if the information contained therein is accessible so as to be usable for subsequent reference. [12] However, Article 6 does not intend to mandate that data messages must serve every conceivable function of a written document in all instances.[13] It represents the most fundamental layer in a sequence of form requirements and allows states to impose more stringent requirements in accordance with their national laws.

Another issue is related to the acknowledgment of the functions performed by a signature in a paper-based environment. The Model Law envisions that any legal requirements for signatures may be fulfilled by data messages, allowing the use of methods to identify a person's approval and to assess the reliability of that method.[14] It sets out the general conditions by which data messages can be considered authenticated with enough reliability and can be legally binding despite the current obstacles presented by signature requirements, which hinder electronic commerce.[15] Consequently, Article 7 takes a comprehensive approach in determining the methods that can be used to satisfy a legal necessity for a handwritten signature.

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[7] UNGA Res 2205 (XXI) (17 December 1966)

[8] The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, Vienna: United Nations, p. 14 (2013).

[9] UNCITRAL Secretariat, Explanatory Note on the United Nations Convention on the Use of Electronic Communications in International Contracts, para. 3 (2006).

[10] Supra note 5.

[11] Renaud Sorieul, Jennifer R. Clift, José Angelo Estrella-Faria, 'Establishing a Legal Framework for Electronic Commerce: The Work of the United Nations Commission on International Trade Law (UNCITRAL)' (2001) 35(1) The International Law 107, 111

[12] UNCITRAL, Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998, art. 6.

[13] Supra note 6, para. 50.

[14] Supra note 12, art. 7.

[15] Supra note 6, para. 56.

An additional concern addressed by the Model Law is the distinction between an original and a copy, stating that the legal requirements for "original" documents may be met by data messages which have a reliable assurance regarding the preservation of the information's integrity from its initial generation until its final form is attained.[16] It is evident that Article 8 primarily centers on ensuring the integrity of information and its capability to be presented as required, thereby constituting the essence of the concept of originality. Furthermore, Article 8 requires assessing the reliability of the integrity, which involves considering factors such as the systematic recording of information, the absence of gaps or errors in the recording, and the measures taken to safeguard the information from any unauthorized changes.[17] The Model Law also briefly discusses the legal effect of data messages in specific substantive areas, in addition to aiming for parity between data messages and traditional paper-based communications where the functional-equivalent approach implies such parity.[18] As an example to this, it provides that the expression of an offer and its acceptance within the realm of contract formation can be communicated through data messages, and the validity or enforceability of a contract formed using such means cannot be denied solely based on the utilization of a data message.[19]

When discussing the Model Law on Electronic Commerce, it should also be noted that there are two main limitations in its application. The first is related to the protection of consumers, as the Model Law does not specifically address these issues and give them special attention.[20]

The second limitation is that the Model Law is applied in the context of commercial activities[21]. The indication provided suggests that the primary emphasis of the Model Law was directed towards addressing situations and issues commonly encountered within the commercial domain. The development and preparation of the Model Law took into account the context of trade relationships, signifying that its provisions and regulations were tailored to suit the needs and complexities prevalent in commercial activities and transactions.

1.1.2. UNCITRAL Model Law on Electronic Signatures

Another notable advancement in advocating functional equivalence has been the implementation of the UNCITRAL Model Law on Electronic Signatures. It provides a framework for the legal recognition and acceptance of electronic signatures, ensuring that they possess the same validity and legal effect as handwritten signatures, provided that the electronic signatures used are of a reliability appropriate for the purpose for which the data message was generated or communicated.[22] However, while the Model Law on Electronic Commerce recognizes any 'method' that can be employed to fulfill a legal requirement for a handwritten signature, the Model Law on Electronic Signatures incorporates a more specific framework that envisions the recognition of electronic signature methods meeting the criteria of technical reliability by a State authority, a private accredited entity, or the parties involved.[23]

[16] Supra note 12, art. 8.
[17] Supra note 11, 113.
[18] A. Brooke Overby, Will Cyberlaw Be Uniform? An Introduction to the UNCITRAL Model Law on Electronic Commerce (1999) 7 Tulane Journal of International and Comparative Law 219, 224.
[19] Supra note 12, art. 11.
[20] Supra note 6, para. 27.
[21] Supra note 12, art. 1.
[22] UNCITRAL, Model Law on Electronic Signatures, art. 6(1) (2001).
[23] UNCITRAL, Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001, para. 76 (2002).

For that purpose, the new Model Law establishes several criteria for assessing the technical reliability of an electronic signature in paragraph 3 of Article 6. However, we can observe that no such provision is envisaged in the Model Law on Electronic Commerce. Upon examining the criteria outlined in paragraph 3, it becomes evident that subparagraphs (a) and (b) focus on the signature creation data, whereas the remaining subparagraphs address the matters concerning the integrity of the electronic signature and the information being signed electronically. Accordingly, the signature creation data must be possessed solely by the signatory[24] and must remain under the signatory's control during the signing process.[25] Furthermore, any modification made to the electronic signature and the information that is assured by the electronic signature after the signing time can be identified.[26]

Therefore, in contrast to the Model Law on Electronic Commerce, the Model Law on Electronic Signature defines the scope of reliable types of electronic signatures by introducing paragraph 3. The main benefit is that it creates more certainty in the application of electronic signatures, which can lead to a reduction in abuses in this sphere.

1.1.3. The UNCITRAL Model Law on Electronic Transferable Records

The principle of functional equivalence in the context of e-commerce regulation extends its reach to various domains, including the realm of electronic transferable records. One significant development in this area is the UNCITRAL Model Law on Electronic Transferable Records (hereinafter "MLETR"), which was adopted in 2017.

The MLETR represents a critical milestone in the efforts to address the challenges and opportunities posed by electronic transferable records in international trade. It aims to create a legal framework that ensures electronic transferable records are treated on par with their traditional paper-based counterparts, thereby promoting the principle of functional equivalence.

The MLETR devotes an entire chapter, titled "Provisions of Functional Equivalence," to the functional-equivalent approach.[27] Apart from addressing the issues of writing and signature, it also expands the application of the functional-equivalent approach to new domains such as "transferable records or instruments" and "control," thereby significantly enriching the theory and practice of functional equivalence.[28]

The definition of "electronic transferable record" adopts the functional equivalent approach and pertains to electronic records that are equivalent in function to transferable documents or instruments. [29] While Article 10 determines conditions for considering an electronic record as "electronic transferable record", Article 11 establishes a functional equivalence principle under the title of "control" concerning the possession of a transferable document or instrument.[30]

1.1.4. The UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services

The UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (hereinafter "the Model Law on Identity Management") is an essential legal instrument that addresses the challenges of identity management and trust services in electronic transactions.

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[24] Supra note 22, art. 6(3)(a).
[25] Id., art. 6(3)(b).
[26] Id., art. 6(3)(c) and 6(3)(d).
[27] UNCITRAL, Model Law on Electronic Transferable Records, articles 8-11 (2017).
[28] Supra note 5, 1543.
[29] UNCITRAL, Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, para. 86 (2018).
[30] Functional equivalence of possession is attained when a reliable method is utilized to establish control of the record by a person and to identify that person in control.

It plays a crucial role in promoting the functional equivalence approach within the realm of digital identity and authentication. To achieve this objective, the Model Law includes a provision that establishes functional equivalence between offline identification and identification carried out using identity management, stipulating the requirement to utilize a reliable method.[31]

In addition to the aforementioned aspects, the Model Law on Identity Management further broadens the scope of this framework by encompassing not only electronic signatures but also emerging concepts such as "electronic seals", "electronic timestamps", "electronic archiving", "electronic registered delivery services", and "website authentication".[32]

1.1.5. United Nations Convention on the Use of Electronic Communications in International Contracts

The UN made another significant contribution to the principle of functional equivalence through the United Nations Convention on the Use of Electronic Communications in International Contracts, which consolidates the fundamental rules outlined in Articles 6, 7, and 8 of the UNCITRAL Model Law on Electronic Commerce into a single provision that establishes criteria for achieving functional equivalence between electronic communications and paper documents through a title- form requirements.[33] The Convention addresses potential barriers to using electronic commerce that are caused by domestic or international form requirements by extending the definitions of terms like

"writing," "signature," and "original" in order to include computer-based techniques.[34] It is important to emphasize that the adoption of this convention brought about significant advancements in the realm of electronic commerce. It could add to the legislative arsenal of strategies for enhancing legal certainty or commercial predictability in electronic business transactions.[35] The primary rationale behind this lies in the fact that while model laws lay a robust groundwork for aspiring harmonization and the development of national legislation, international conventions establish definitive rules that the participating states explicitly acknowledge and are obliged to follow.

1.2. European Union: Empowering Equivalence and Cross-Border Trade in E-commerce

The EU has been at the forefront of establishing comprehensive legal frameworks to address the challenges of functional equivalence in e-commerce. With the aim of creating a unified approach to electronic transactions within its member states, the EU has developed a comprehensive legal framework for e-commerce, including directives, regulations, and initiatives that promote functional equivalence and foster cross-border trade.[36] One of the key legislative measures in this regard is the EU Directive on Electronic Commerce, which harmonizes the legal framework for online services and electronic commerce across EU member states.[37]

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[31] UNCITRAL, Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, art. 9 (2022). Reliability requirements for identity management services are indicated in Article 10.

[32] Id., articles 16-21.

[33] United Nations Convention on the Use of Electronic Communications in International Contracts, art. 9 (2005).

[34] Supra note 9, para. 50.

[35] John D. Gregory, 'The Proposed UNCITRAL Convention on Electronic Contracts' (2003) 59(1) The Business Lawyer 313, 317.

[36] Graham Pearce, Nicholas Platten, 'Promoting the Information Society: The EU Directive on Electronic Commerce' (2000) 6(4) European Law Journal 363, 363.

[37] Directive of the European Parliament and of the Council on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce, in Internal Market, 2000/31/EC.

It ensures that contracts made through electronic means in member states meet the legal requirements applicable to the contractual process, without hindering the use of electronic contracts or causing them to lose their legal force and validity.[38] However, it excludes certain categories of contracts from this obligation, including 'contracts that create or transfer rights in real estate, except for rental rights; contracts requiring by law the involvement of courts, public authorities or professions exercising public authority; contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession; contracts governed by family law or by the law of succession.'[39] The directive empowers the members to regulate the aforementioned issues based on their specific requirements, considering that the legal procedures for those matters may vary from state to state.

Moving on to the electronic signatures, the EU formulated the EU Directive on Electronic Signatures to ensure the legal recognition of electronic signatures and the accreditation of certification-service providers across its member states.[40] The main contribution of this Directive was to acknowledge the equal treatment of a handwritten signature and an electronic signature, and to accept electronic signatures as evidence in legal proceedings.[41] However, the Directive on Electronic Signatures was not sufficient to meet the evolving demands of the rapidly developing technology. Consumers, businesses, and public authorities were reluctant to conduct transactions electronically and to adopt new services

because of a lack of confidence, particularly due to a perceived lack of legal certainty. In order to increase the effectiveness of public and private online services, electronic business, and electronic commerce in the Union, the Regulation on Electronic Identification and Trust Servicesfor Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC (hereinafter "eIDAS Regulation") was adopted, which aims to increase trust in electronic transactions in the internal market by providing a common framework for secure electronic interaction between citizens, businesses, and public authorities.[42] Upon the adoption of this regulation, Directive 1999/93/EC of the European Parliament and the Council was repealed.[43]The reason for the repeal was that the directive addressed electronic signatures but failed to provide a comprehensive framework for secure, trustworthy, and user-friendly electronic transactions across borders and sectors.[44] The eIDAS Regulation not only improved those factors but also expanded the range of electronic means to which the functional equivalent approach is applied. As a result of this, the eIDAS Regulation has not only been implemented among EU member states but also many of its provisions have been incorporated into the legal systems of numerous countries worldwide.

2. Implementation of Functional Equivalence in Azerbaijani Legislation: Local Adoption and Implications.

Azerbaijan, as a rapidly developing state in the field of e-commerce, has recognized the importance of aligning its laws with international best practices to promote functional equivalence. By embracing functional equivalence, the Republic of Azerbaijan aims to eliminate any legal barriers or distinctions

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[38] Id., art. 9(1).
[39] Id., art. 9(2).
[40] Directive of the European Parliament and of the Council on Community Framework for Electronic Signatures, 1999/93/EC, preamble 4.
[41] Id., art. 5.
[42] 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, Preamble 2.
[43] Id., art. 50.
[44] Id., preamble 3.

between electronic and physical transactions, fostering a secure and enabling environment for e-commerce growth within the country. It has made efforts to harmonize its legislation with international developments to tackle the challenges related to equitable treatment between paper-based documents and electronic communications. However, despite these efforts, several difficulties have arisen in attaining this desired parity. These can be originated from both the gaps in the law and its enforcement.

The initial step in this direction was the enactment of the Law of the Republic of Azerbaijan on Electronic Signature and Electronic Document which establishes the organizational and legal foundations for utilizing electronic signatures and electronic documents, their implementation in electronic document circulation, the rights of relevant entities, and the regulation of their relationships.[45] This law defines an electronic signature as information suitable for processing by means of information technologies, which allows for the identification of the signatory,[46] and electronic document as a document submitted in electronic form for use in an information system and confirmed with an electronic signature.[47] The primary objective of the law was to align Azerbaijani legislation with international norms, leading to the adoption of terminology and implementation methods found in international legislation. Therefore, the effect of the principle of functional equivalence can be clearly observed in both the electronic signature[48]and electronic document.[49] However, certain types of documents are required to be submitted only in written form as per the legislation. In such cases, the Law on Electronic Signature and Electronic Document

mandates the use of a qualified electronic signature to sign those documents in order to meet the written form requirement.[50] It is possible to observe that the content of this provision implies that not all electronic documents fulfill the same functions as traditional paper-based documents. Therefore, the extent of the principle of functional equivalence is constrained by this law.

Subsequently, the Law of the Republic of Azerbaijan on Electronic Commerce was adopted to define the legal framework for organizing and conducting electronic commerce, specifying the rights, responsibilities, and consequences for violations of the legislation in this field.[51] Although the functional-equivalent approach is not explicitly stated in this law, it can be indirectly inferred that the implementation of electronic commerce is based on this principle. This can be understood from the fact that the law requires the use of electronic documents for the conclusion of contracts between buyers and sellers in electronic commerce.[52] It can be inferred that one of the foundations for the successful implementation of electronic commerce relies on electronic communications. Thus, the reliance of participants in electronic commerce on electronic communication means can broaden the scope of users in electronic commerce.

Additionally, the requirements regarding the forms of contracts, which are one type of document, are primarily outlined in the Civil Code of the Republic of Azerbaijan (hereinafter "Civil Code"), allowing for the conclusion of contracts in either oral or written form.[53] Furthermore, the Civil Code entails the conclusion of a written contract 'through the preparation of a document signed by the person or persons representing and binding the content of the

[45] Law of the Republic of Azerbaijan on Electronic Signature and Electronic Document (2004).

[46] Id., art. 1.1.4. Article 1.1.5 of this law also defines the qualified electronic signature, as referenced in Article 25(2) of the eIDAS Regulation: 'an electronic signature created by means of electronic signatures under the control of the signatory and which identifies the signatory only and allows to determine the integrity, immutability, distortion and falsification of the information notification to which it is related.'

[47] Id., art. 1.1.15.

[48] Id., art. 3.1: 'An electronic signature cannot be considered invalid due to the fact that it is in electronic form or is uncertified, created by means of uncertified signatures.'

[49] Id., art. 3.5: '… an electronic document is considered equivalent to a document on a paper carrier and has the same legal force as it.'

[50] Id., art. 3.4.

[51] Law of the Republic of Azerbaijan on Electronic Commerce (2005).

[52] Id., art. 7.1.

[53] The Civil Code of The Republic of Azerbaijan, art. 329.2 (1999). This article also classifies the written form into two categories: simple written form and notarized form.

agreement, or by individuals duly authorized by them.'[54] As observed, the article does not specify the forms of contracts (either electronic or paper-based), and the concept of the article does not explicitly encompass the principle of functional equivalence. The use of electronic signatures during contract conclusion depends solely on the cases agreed upon by the parties, as specified in Article 331 of the Code,[55] further facilitating the restriction and abuse of this principle. This provision limits the situations in which only one of the parties is willing to conclude a contract using an electronic signature. The ambiguity in such norms made it challenging and unreliable to use electronic communications in the country. Despite the Republic of Azerbaijan's accession to the United Nations Convention on the Use of Electronic Communications,[56] the question of whether electronic documents and electronic signatures are fully equivalent to paper-based documents and handwritten signatures remained relevant. Although the Convention fully recognizes the application of the principle of functional equivalence, its implementation in practice has been challenging due to the lack of experience in this field. Due to uncertainties, an issue on the interpretation of Article 407.2 of the Civil Code of the Republic of Azerbaijan was brought before the Constitutional Court of the Republic of Azerbaijan (hereinafter "Constitutional Court") to establish a unified judicial practice regarding the possibility of contract conclusion through the exchange of electronic documents.[57] The Constitutional Court explained that the written contracts can be concluded in two ways: 1. The first method involves preparing a

document that captures the terms of the contract and is signed by the parties involved; 2. The second method involves exchanging documents using different means of communication such as post, telegraph, teletype, telephone, electronic means, and others. It is essential that these communication methods allow for the reliable identification of the document's source from the contracting party. As a result of this decision, the Constitutional Court officially affirmed the presence of the functional-equivalent approach in the legislation of Azerbaijan, stating that 'the conclusion of a contract through the exchange of electronic documents is legally equivalent to an agreement formed by preparing a document.' With the adoption of the relevant decision, the conflicting opinions among the courts on this issue have been resolved, and the process of concluding electronic contracts has been expedited.

Following the appropriate decision of the Constitutional Court, a new amendment has been made to Article 331, which specifies the following:

'When a contract is concluded using electronic or other technical means that allow for the representation of its content in an unalterable format carried by a material carrier, it is considered to have complied with the written form. In this case, if any method is used to accurately identify the person expressing their intention, the signature requirement is considered fulfilled.'[58]

As evident from the nature of the amendment, there is no necessity for any specific requirement to fulfill the written form requirement for electronic contracts. The primary objective of this amendment is to enhance the effectiveness of the functional-equivalent approach and facilitate quicker and more efficient implementation of transactions in electronic commerce.

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[54] Id., art. 331.1.
[55] Id., art. 331.3.
[56] Law of the Republic of Azerbaijan on the accession to the "United Nations Convention on the Use of Electronic Communications in International Contracts" (2018).
[57] Decision of the Constitutional Court of the Republic of Azerbaijan on the interpretation of Article 407.2 of the Civil Code of the Republic of Azerbaijan (2020).
[58] Law of the Republic of Azerbaijan on the Amendment to the Civil Code of the Republic of Azerbaijan, (31 March 2023).

Conclusion.

In conclusion, the principle of functional equivalence has emerged as a critical concept in the regulation of e-commerce. It ensures that electronic transactions receive the same legal recognition and treatment as their traditional paper-based counterparts. The international community, through organizations like the UN and the EU, has made significant efforts to promote functional equivalence and establish cohesive legal frameworks for electronic transactions.

The UN, particularly through its UNCITRAL Model Laws and Conventions, has played a pivotal role in shaping the concept of functional equivalence, addressing key aspects of electronic commerce such as writing, signatures, and original documents, and ensuring that the legal requirements for these elements are met in the digital realm.

Similarly, the EU has been at the forefront of developing comprehensive legal frameworks to address functional equivalence in e-commerce, with directives and regulations promoting equal treatment of electronic transactions, including the recognition of electronic signatures and the facilitation of cross-border trade.

In Azerbaijan, efforts have been made to align national legislation with international best practices. The enactment of the laws in this field reflects the recognition of the importance of functional equivalence in fostering a secure and enabling environment for e-commerce growth. However, challenges and limitations exist in fully achieving parity between electronic and physical transactions.

The comparative analysis of international laws and Azerbaijani legislation highlights the commonalities, differences, challenges, and achievements in addressing functional equivalence. It underscores the need for continued efforts to bridge gaps and enhance the implementation of functional equivalence principles in practice.

Overall, the principle of functional equivalence serves as a foundation for establishing a cohesive legal environment for electronic transactions. It promotes trust, confidence, and legal certainty in e-commerce, contributing to the growth and development of global trade in the digital age.

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