International Journal of Business Management. Photon 114 (2014) 156-167
https://sites.google.com/site/photonfoundationorganization/home/international-journal-of-business-management
Original Research Article. ISJN: 3256-4304: Impact index: 2.94

International Journal of Business Management Photon

Internationalization of Spanish Olive Oil Sector through the use of a Virtual Store

Gloria Esteban de la Rosa*

University of Jaén, Spain

Authors receive Thomas Edison Award-2014 in Business Management for Inspiration and Knowledge Distribution among young research scholars.

Article history:
Received: 25 February, 2014
Accepted: 02 March, 2014
Available online: 31 March, 2014

Abbreviations:
B2B: Business-to-business, B2C: Business-to-consumer, CAP: Common Agricultural Policy, DEC: Directive on Electronic Commerce, EC: European Community, EU: European Union, HORECA: Hostel/Restaurant/Café, ICT: Information and Communication Technologies, IP: address Internet Protocol address, LISSEC: Law on Information Society Services and Electronic Commerce, SME: Small and Medium Enterprises, US: United States of America, VS: Virtual Store

Keywords:
e-commerce, Spanish olive oil sector, internationalization, Virtual Store, electronic contract, general terms and conditions, active websites, passive websites, time of birth of electronic contracts

Corresponding Author:
de la Rosa G.E.*
Chair Professor of Private International Law
Email: gesteban@ujaen.es
Phone: 0034953212118
Fax No: 0034953212222

Abstract
While it is not common to use the Virtual Store by Spanish firms in the olive oil sector, its use may result in an increase of exports, which requires addressing carefully the characteristics appearing in this particular form of *online* contracting. International electronic contracting of olive oil does not show peculiarities with regard to the general or common scheme established by the current Spanish regulations. Nevertheless, *online* international contracts, specifically, through an *Online* Store, have a set of particularities from the perspective of its legal regime, which are mainly related with the fact that these are contracts with general terms and conditions.

Citation:
de la Rosa G.E., 2014. Internationalization of Spanish Olive Oil Sector through the use of a Virtual Store. International Journal of Business Management. Photon 114, 156-167.

Photon Ignitor: ISJN32564304D665831032014

1. Introduction

The persistent low level of internationalization of the Spanish olive oil sector makes necessary to explain in deep the legal difficulties that persist and also the legal remedies for achieving this goal. It is not possible to justify the useless of the VS by Spanish SME for exporting the product for legal reasons or for the absence of certainty it's needed to identify these kinds of problems to overcome them in the new ICT society.

1.1 Current economic scenario of olive oil sector

The olive oil sector is characterized, in relation to other agri-food sectors, by the combination of a low level of globalization of trade with a high degree of transnationalization of its companies (Moral, Lanzas, 2013). Thus, on the one hand, the degree of international trade interrelationship has been and is still very low, given the low level of exchanges that occur in markets other than those of countries producing olive oils.

However, in recent years, we are witnessing a change in the growth trends of the global supply and demand, constituting an emergent process of globalization in the sector (Mili and Rodríguez, 2005).

Furthermore, the leading business groups of the sector at a global level have gained front-line positions in the olive oil chain of the major producing countries, especially in those that

correspond to more strategic consumer markets. On the other hand, olive oil is considered a high-end product in international markets, which explains that most of the demand comes from countries with a higher per capita income.

This product is, occasionally, marketed in the foreign markets at higher prices than other types of oil, which makes it important to know the purchasing power of consumers in target markets, when choosing this market. Depending on this factor, consumption will be greater or smaller, and therefore also the possibility of market penetration.
As it is known, most EU countries have a medium-high per capita income, which together with the other analysed factors, makes Spanish olive oil producing companies choose to address their efforts to these markets.

1.2 European agricultural policy and nowadays challenges for the olive oil sector
As a third end, it is known that common agricultural policy has been marked by one of the most radical changes of orientation since its inception. In 2003, a new reform arises responding to significant socioeconomic and environmental concerns.

Among its objectives is to increase the competitiveness of European agriculture and to this end, it grants farmers freedom to adapt their production to market demand. Another objective is to promote the development of a sustainable agriculture by strengthening food security.

The above changes affect to a greater extent in the first processing industry, since the oil mills must adapt to the new situation, for which they must use new business strategies that would enable to obtain an added value in marketing of its oil, both in national and international markets.

The scenario and the strategic response of the first processing industry are conditioned by the double oligopoly that occurs in the sector. First, is the relationship between the oil mills and their potential buyers.

And, second, transnational companies suffer in turn a new oligopolistic relation against large retailers. In short, from the three main actors in the olive oil chain: oil mills, the large secondary processing industry and final distributors, the first ones are the ones who find themselves in the worse position, given their weak bargaining power, and therefore, their limited strategic response.

What limits the market growth of this product is the structure of relative prices and the strong competitive pressure from other vegetable oils. On the one side, it is necessary to make a strong capital and human investment to achieve the final internationalization of the sector, to the extent that the difference between supply and olive oil consumption in the national market has become increasingly large as a result of the application of new production techniques which have increased the amount of oil available.

And, in particular, it is necessary to make this investment in the field of the use of ICT for the international marketing of olive oils.

1.3 Recent research results on the internationalization of olive oil sector through ICT
Following the implementation of the research Project "*Implementation of ICT in the Spanish olive oil sector and its importance in international trade*" (2006-2009), financed by the Ministry of Education, it has been found that the use of the VS as a means of electronic marketing presents a number of advantages, but also disadvantages or limitations in the olive oil sector.

An impediment to the implementation of the VS as a marketing channel of olive oil is that there is no parallel *online* olive oil market. 80% of the companies surveyed (200 olive companies established in the country) do not sell any products abroad through the VS, which is due to the demands that this new medium represents for the owner, who has to organize the business plan adapting to New Technologies (Alba et al., 2012).
That is, these are oil-producing companies that do not have to or that do not use the VS for the international marketing of olive oil, because they use the traditional channels. This stresses the fact that relations with the international market are occasional, because the said sales are either made by telephone or by sending an e-mail message or by fax (sometimes it is also indicated that it carried out through direct or personal contacts).

Therefore, these are contacts which may have been made in trade fairs, etc. (this factor leads us to think that these are, mainly throughout Spain SME).

In any case, even companies that have a significant volume of sales abroad, do not use the VS either for the international marketing of olive oil and they state that they do not need the VS because they use traditional channels [53% of companies that do not have VS attribute the weight of the traditional sales channel with a score greater than or equal to 5 (1=slightly relevant, 7=very relevant)].

And secondly, one of the main difficulties that companies that do have VS are finding is logistics. That is, the lack of possibility of taking the olive oil to foreign markets, without increasing the price of the final product, because it is not easy to find a way to proceed in order for this international sale to take place without having transportation as an obstacle to this end.

Also, with reference to olive oil packaging, there are more and more distribution brands (supply chains) that sell their own brand and that are monopolizing the final destinations of the olive oil. For example, in order to export to the U.S. market, you need a distributor to supply olive oil to restaurants (half of the American market is HORECA, *food-service*).

The *gourmet* circuit will not access the net either: those wanting to sell in this circuit will have to be vigilant of this clientele, who does not establish contact with the olive oil exporter online.

Another *handicap* raised at present in the use of the VS to export olive oil is that, unlike wine, oil is not a product to be consumed directly, but cooked, in most cases. As a third end, one must take into account the significant volume of olive oil sold in bulk in foreign markets, where operators are "lifelong". And in this sense, primacy is granted to the personal relationship in this market (traditional). Therefore, there is an inverse relationship between the weight of the bulk oil sales and electronic commerce: if the first is high, the role of electronic commerce is low.

However, although the current sales percentage of olive oil packaged abroad is not significant through the VS, it is of interest to maintain and enhance this form of *online* sales both nationally and internationally, given its low cost of implementation and management. That is to say, underutilization of the electronic medium for marketing olive oil makes it necessary to encourage its use in today's information and communication society.

1.4 Current research

On this issue, the current Excellence Project: "*Strengths and weaknesses in the internationalization of the province of Jaén olive sector: the case of small and medium enterprises*" (code PI10-AGR-5961), awarded to the University of Jaén by the Ministry of Innovation, Science and Enterprise of the Regional Government of Andalusia and funded by the said Ministry, the Ministry of Science and Innovation and the FETYC (2011-2015) aims to analyse still existing factors that hinder or impede the use of the VS for the export of olive oil.

And in this regard, it should be noted that the international electronic contracting of olive oil does not show peculiarities regarding the common systems established by the current Spanish regulation (largely of Community origin, but not only limited thereto).

But if you use VS, reference must carefully be made to this particular form of *online* procurement, which has the distinguishing singularity of the fact that the contract is not negotiated, and the customer must accept the general terms and conditions proposed by the olive entrepreneur on the web site.

2. The Foreign Element in International Electronic Contracts

Internet is not, as it is usually considered, a virtual communications environment or channel, but a transnational communications system which, as a result of common standards and through the usage of telecommunications technologies and networks, enables exchanging and obtaining information through the use of different modalities of communication online.

In this context, the expression electronic commerce is used to refer not only to the electronic contracting, but in a broader sense, to any business or transaction carried out using the net as a means or instrument, in addition to the necessary actions to be advertised on the net, that is to say, to be positioned as an *online* trader.

2.1 Persistent problems in the regulation of international electronic contracts: partial legal responses

This chapter focuses on determined issues related with the trading activity through the net, particularly, electronic contracting (by telematic means). Secondly, one must not forget that one of the main sources of

problems and legal disputes with electronic commerce nowadays (that is to say, the variety of activities that take place through the virtual environment) is related with the existence of partial regulations.

This partial regulations are, not only in respect of material issues included in each specific regulation, but especially, due to the existence of state regulations that only deal with matters arising within its territorial context, and occasionally, they also foresee its application extra-territorially.

Partial responses determine a high level of legal uncertainty, both to the entrepreneur who wishes to offer his/her products or services through the net, and to the client (either if it is an entrepreneur or consumer), as he/she does not know what can be the response to a behaviour such as the reply to a message sent by a specific service provider to his/her email.

2.2 Identification of the foreign element: difficulties

Additionally, indexes that are most commonly used to identify the existence of a foreign element in an international business relationship (international contract) may raise certain doubts if used in the context of electronic contracting. The criteria of address of the parties, nationality, place of execution formalization or fulfilment of the contract are not, in the majority of cases, sufficiently expressive of the internationality of a contract, which, given the means used, is by definition, worldwide, as internet is accessible from every part of the world, provided that there is an Internet connection.

Although it could be said that by the mere fact of a company's advertisement page being accessible from different geographic points worldwide, one is not in the presence of an international electronic contract. The means used shows other singularities that raise doubts on whether it could be considered a specific internal or international business, with the consequences derived from the qualification given with reference to the establishment of a legal regime.

Think about an example where a Spanish gentleman resident in Spain, registers a specific domain name abroad, but the server (that is to say, the organisation where the page is hosted) is located in Spain and the commercial establishment (physically) is also located in this territory (Case *barcelona.com*) (Esteban, 2004).

The single fact of a domain name being registered abroad does not seem to justify the specific system of rules of private international law to apply to electronic contracts formalised under such circumstances.

Nevertheless, this same element is relevant (that is to say, it does justify the application of the rules of private international law) in case of litigation derived from the registration of the aforesaid domain abroad. These concerns underline that identifying the internationality of a specific electronic commerce transaction creates additional problems to those already existent in non virtual trade.

This situation proves that determining the internationality of an electronic transaction through the elements that have traditionally been used to distinguish private internal situations from international ones, is starting to raise certain doubts; and it is not recommendable to add even more uncertainty to a type of commerce which is in itself, crossed out as uncertain.

On the other side, electronic contracts have also raised some doubts, given that their nature is preferably international, it fits in extremely badly with the lack of an appropriate regulation to give a satisfactory response to the new needs presented.

In this sense, it has been pointed that the traditional indexes used by the classical conflict rules do not respond appropriately to the new demands of electronic traffic, as it uses criteria which localise the relationship in a physical territory, whist the virtual space does not have geographic boundaries (De Miguel, 2011).

2.3 Proposition

At the present moment in time, it can be said that a large amount of the doubts and problems arising upon electronic contracting does not only refer to the existence of responses that are territorially localised as a phenomenon of an intrinsic international nature, but also to the uncertainty that surrounds establishing whether it is an internal or external traffic relationship, in order to apply, consequently, a specific regime to each one of them.

For all these reasons, there appears to be sufficient justification for a proposal in virtue of which the regime for electronic contracting would be regulated in a unique way, both for

private internal situations and for private international situations.

This does not mean that it should be a standard regulation or of a worldwide nature, but that in each legal system (and in attention to the place where the plaintiff shall decide to address him/herself) there should exist the same regulation for these two situations.

3. Active Websites and Passive Websites

One of the most relevant functions of the Internet is related with the business environment, and more specifically, with contracts between companies (B2B) or with consumers (B2C). On the other hand, one usually makes a distinction between the contracts that take place on Internet on an exclusive basis, and those who take place on Internet, but are executed through the usual means of fulfilment of the contract.

In both cases it is imperative to state which the requirements are of the type of contract relating to the formalization, birth, execution or fulfilment of the contract.

In order to analyse these aspects, it is important to mention the type of relationships aforesaid, as fulfilment of a contract that is only created through Internet, but is fulfilled pursuant to any well known modality, will raise specific issues with respect to the first of the aspects only. In any case, electronic contracts have their own features given the peculiarities of the used means (delocation, virtuality, lack of privacy, quickness, etc.).

While it is true that the advantages for businesses of the use of the electronic environment have been underlined (reduction of costs, substitution of the agent or commercial distributor, amongst others), one can also observe the lack of trust raised by the net, both to consumers and to companies, upon a business transaction.

Lack of physical contact with the person with whom one is contracting, in addition to the technical complexity of the electronic environment (and the speed), makes potential clients retract, when faced with making a business deal following different screens popping up on the computer as the client requires more information. However, companies do not miss the opportunity to make business, and therefore use a large variety of possibilities and ways to reach the target person.

3.1 Binding effect of the information made public in the Website?

Once the service provider is situated on the net, formalization of a contract in a virtual environment raises the first issue with reference to advertising or information which the said provider publishes through its web site or page to which one accesses through the domain name (or IP address).

On the other hand, under the name of commercial communications, the Directive 2000/31/EC of the European Parliament and of the Council, of 8 June (DEC), with relation to certain legal aspects of the information society services, appoints all forms of advertising that appears on the company's page or that are sent to the client, offering or publicising the products or services it offers.

Nevertheless, the variety of contents comprised under the generic denomination of commercial communication makes it necessary to define the expression more specifically, taking into account that occasionally, following a data message or the advertising that appears on the computer screen, there may be real contract offers lying underneath (Illescas, 2003).

Jointly with this modality of advertising, the aforesaid Directive also prohibits non-desired commercial communications that saturate electronic mailboxes of the receivers (Spam), to which it is impossible to refer more specifically in the present study.

On the other side, if the electronic contract is preceded by an offer, even more doubts arise, and it is frequent, in response to the type of information that is published on Internet, to distinguish between active Websites and passive Websites, which can be differentiated from each other by the type of advertising used on the net with the purpose of drawing the attention of potential clients (Gómez, 2011).

In the first case, the site would contain all the offer's necessary requirements, in such a way that when the client clicks on the mouse accepting the terms and conditions of the offer, the contract is deemed concluded. In the second case, the site would simply be an advertising one, not specifically inviting to contracting.

However, the legal definition or consideration of the contents of the page does not

exclusively depend on the entrepreneur's desired objective, but on the fact that the existence of the contractual offer will depend on the page gathering the mandatory requirements by a specific regulation.

In such case, a first litigious issue can be considered insofar as not all legal systems consider the contract offer the same way; some differentiate between this and the invitation to contract (Swiss and German systems), also called "invitation to receive offers" (Lara, 2013).

There will exist *invitatio ad offerendum* if the declaration is addressed to a plurality of persons, in such a way that there is no doubt that it is not the provider's intention to establish in his/her declaration a contract in relation to a product or service, without it being binding to the delivery of the product or the provision of the service.

On the other hand, the clearest example of binding public offer in the Anglo-Saxon law is the case of Carlil vs. Carbonic Smoke Ball C. Ltd (1893) (Esteban, 2004).

3.2 Position of the Spanish Doctrine
The Spanish Doctrine has pointed out that, in such cases, failure to comply with the conditions of the general offer may determine a non-fulfilment of the pre-contractual obligation, thus being held responsible of the data and damages caused to the client upon negotiation of the contract, but the entrepreneur will not be contractually compelled to deliver the product or to provide the service.

3.3 Proposition
In any case, it will be compulsory to identify the regulation that prosecutes if a specific information is to be qualified as contractual, thus binding the provider or offering party.
To solve this kind of questions that normally arises when using internet for making business abroad, specially through a VS, is it important to consider the inclusion of a choice of law clause in the contract general terms and conditions, as it is explained in section 5.1.

4. Execution and conclusion of the international electronic contract

4.1. Place of execution of the international electronic contract
The place of the execution of the contract is mainly used to determine jurisdiction before which a possible legal action should be filled, both in purely internal situations and in private international relations. So far, such cases have occurred, particularly in situations in which a letter is sent, the telephone is used or a fax is sent to the person who is the addressee.

In all cases, not only are the subjects involved in the business not present, but also they may be located in different territorial States.

4.1.1 Present or absent parties?
Given that the position followed by doctrine or by jurisprudence concerning whether the best known forms of procurement by telephone or by fax taking place between present or absent parties is not unanimous, doubts are even more significant when it comes to indicate this circumstance in the case of procurement through electronic means, notably, by sending an e-mail or by consulting the page of a company that advertises on the net.

There is no peaceful position when considering that it is a type of contract between present or absent parties. It has been noted, in some cases, that it resembles the type of contract between absent parties, and therefore the rules established under the different legal systems for such purposes will be applied (Vattier, 1999).

At other times, however, it is understood that the medium used is so fast that, in fact, cannot be said that we are facing a type of contract between absent parties, but among present parties, given the fact that the contract can be executed immediately (De Miguel, 2011). As a third end, it has been said that one or another type of contract will apply depending on the criterion (spatial or temporal) that is used (Madrid, 2002).

Finally, it has been noted that different solutions can be differentiated in response to the specific type of electronic contract in question. For example, it will be held between present parties if the interactive relationship between the subjects (offerer and acceptor) is allowed, in such a way that the time of acceptance can take place almost simultaneously, with a lapse of time (which may be seconds) averaging between the emission and reception of the message by the computers of the subjects involved.

It has also been considered that although it is a form of electronic contracting, then it occurs by reply e-mail sent by a service provider or by a supplier, it cannot be strictly considered in this regard as a form of electronic procurement

that requires criteria for specific solutions, to the extent that it resembles any other form of contract between absent parties (which is carried out by letter or by sending a fax or a telegram). In this sense, the German law transposing the DEC does not include in its scope this type of contract.

4.1.2 Solution given by Spanish Law

As for the case of the Spanish law, art. 29 of Law 34/2002 of 11 July, the Information Society and Electronic Commerce Services (LISSEC) has provided two criteria for locating the place of execution of an electronic contract in response to it being performed by a consumer or by an entrepreneur. In the first case, the presumption is that the contract is held in the place of the habitual residence of the consumer. In contrast, in the second case, in the absence of express agreement, the presumption is that it is held at the place where the establishment of the service provider is located.

Even though at present Consumer Law can be identified as an autonomous discipline, and, therefore, it has in itself its own guiding principles and guidelines for action, when referred to the electronic commerce there is also the particularity of consumer protection, as end users of the products and services offered in the virtual space. The DEC itself provides for the application of Community rules on consumer protection.

Reference is usually made to this type of contract by the acronym B2C (*business-to-consumer*), in which one of the parties, specifically, the party demanding the goods or services and not a company or a person engaged professionally in a commercial activity. In such cases it is necessary to take into account the disadvantaged position in respect of information and technical knowledge available to the consumer, and therefore, special protection should be granted in the current cyberspace procurements.

While the rule laid down in Art. 29 of the LISSEC (Law on Information Society Services and Electronic Commerce) may be laudable, indicating a presumption to understand that the contract has been executed, in the case that it has been concluded by a consumer, in the place in which he has his habitual residence, telematic procurement is essentially virtual and therefore it seems fictitious to indicate a physical place, which on the other hand, has no further relevance in order to determine other aspects of the electronic procurement.

On the other hand, the said art. 29 of the LISSEC has shifted in the case of telematic procurement (internal) to the arts. 1262 of the Civil Code and 54 the Commercial Code, as the former is a special rule, with the understanding that it refers only to purely internal situations, that is, those in which all the elements of electronic contracting are located in the same legal system, in our case, for "Spanish" electronic contracts.

In any case, the new art. 29 of the LISSEC has not set out a rule of jurisdiction for intra-Community international situations (i.e. related to the internal market) additionally to that set out in the Council Regulation 44/2001/EC of 22 December 2000, concerning jurisdiction, recognition and enforcement of court orders in civil and commercial matters, as the DEC itself has expressly declared (art. 1, 4) that it will not have any effect on the rules of private international law or on the jurisdiction of the courts of Justice (of Member States).

However, the doctrine considers that the place (in both cases provided by the norm) determines not only the competent jurisdiction but the law applicable to the contract (Jiménez de Parga, 2000).

4.1.3 Proposition

In spite of the protective purpose of art. 29 of the LISSEC, conducting business through the net is virtual, that is to say, that it takes place through the exchange between, on the one hand, the supplier with terms and conditions suggesting that the natural or legal person uploading information to the net, and customer, consumer or user acceptance by clicking with the computer mouse.

Therefore, the birthplace of these contracts is essentially virtual, so that it makes no sense to refer to a physical territory (corresponding to the place where it is held) (Maria di Giovanni, 1993).

Rather than locating a physical space, there must be established both for the modality of electronic procurement business-to-business (B2B) and business-to-consumer (B2C), a general principle under which a larger share of the responsibility is shifter for most of the different elements and phases that the telematic procurement is structured in the person using the net for carrying out the business, regardless of whether the subject of

the contract through this media is a consumer or an entrepreneur.
Therefore, a rule could be deduced in the following sense: whoever advertises through the Internet assumes the risk that can be implied from an electronic procurement, operating under the general presumption to determine the different aspects related to this type of contract.

In this regard, it has been noted that the subject accessing a market through the net must face up to the demands of responsibility in these markets and to the additional costs associated with this virtual resource, in such a way that the subject assumes the risk of being involved in a lawsuit abroad, provided that the defendant specifically directs its activities to this country (Flower, 1997).

4.2 When is an international electronic contract concluded?
The crucial question raised by the use of electronic media refers to the moment from which the contract may be considered to be born and therefore is binding on the parties. That is, it will be necessary to identify when the coincidence between offer and acceptance, on a certain object, a lawful cause and a specified price, takes place. To do so, it must be considered, first, whether it is a national or international contract, as the latter raises a further question of the determination of the legal system that determines when the contract is born or concluded.

Consider, for example, a contract between a consumer purchasing a specific product through the net from a company that has its own portal or website. When you receive it at home, you realise that it does not match the features set forth in the advertising specifications listed on the website of the company, which causes you to file a complaint in order to claim the amount, given that the site of the company requires you to incorporate credit card data at the time of procurement.

The consumer (or entrepreneur if it is a case of B2B procurement modality) should know which is the legal system that determines at which moment, he is bound by the contract and what are the consequences, if any, and the accountability that may be demanded to the company with whom he came into electronic contact.

If the case of an international agreement, the rule provided for in the Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), indicates that the contract is governed by the chosen law (art. 3, 1). But this regulation does not necessarily solve the issue of the moment from which it can be considered that there is a contract in the case of contracts concluded by electronic means.
The mentioned Regulation results from the existence of a presumption in favour of the existence of a contract, indicating which regulation determines the grounds for invalidity (if any) and the legal system that would be called to check for such contract, especially when doubts arise in the means of consent of the contracting parties. In this case, the legal system corresponding to the habitual residence of the contractor, who claims that it cannot be deducted from his attitude that there was consent, should be consulted.

4.2.1 Solutions given by the DEC
However, the exact time of birth of the electronic contract still needs to be determined under the rules of each legal system. It does not seem that the EU Directive has wanted to change this situation and identify a single criterion that requires the Member States to vary the criteria used in their respective legal systems.

On the contrary, art. 11 only provides for a reporting obligation by the entrepreneur, which consists in the delivery to the contractor of a receipt of the transaction. Its main purpose is to ensure that national laws do not hinder the conclusion of contracts by electronic means (art. 9, 1).

It is a standard that fits perfectly in the guideline of law policy followed by the EU at present, consisting in allowing the freedom to the states to choose their own methods of regulation within an increasingly minor common coordinates (principle of subsidiarity) (De Miguel, 2001).

Therefore, the question as to knowing when the (internal and international) electronic contract is born remains open, but another one no less significant is also pending, as it will be necessary to determine previously whether all forms of electronic procurements are considered as a contract between absent parties or, conversely, some types of contracts can be understood to be contracts held between present parties.

While the EU directive on electronic commerce makes no indication of this, the laws of the Member States are recognizing these differences in the various laws of transposition, as in the case of German law, which does not include within its scope the contract made through email, as it considers (as noted *above*) that is not a form of distance contracts (but an electronic one).

Therefore, the answer to the question on whether the electronic contract has been executed may differ in response to the mode of telematic procurement concerned (pressing the icon on the computer screen or sending email), to be taken under diverse consideration in each legislative system (between present or absent parties), in addition to the various legal responses issued for each regulation.

This combination of circumstances allows us to portend a plurality of conflicts which although have
not yet been raised, will do so in the future.

4.2.2 Spanish Regulation
The Spanish legislator has taken the opportunity to amend in the law transposing the DEC, the arts. 1262 of the Civil Code and 54 of the Commercial Code, changing the criteria by which the conclusion of the contract is understood. Such provisions provide a new presumption relating to the place of birth of the contract concluded at a distance, which coexists with the established under art. 29 of the LISSEC (previously discussed).

The inclusion of these provisions in the LISSEC raises questions about the compatibility on both rules, given that, in accordance with the former, the contract is presumed to be held at the place where the offer was made. However, the presumption of art. 29 must prevail under the *lex specialis derogat generalis* principle.

The doctrine has criticized the new provisions, which complicate the determination of the time of birth of the contract and, in particular, in the case of the use of electronic devices, devolve on the person of the offerer of the product or service responsibility for receiving the message, in addition to technical issues from the time of sending to that of receipt.

On the other hand, this approach does not match the one used in other legal systems around us, more specifically, in the German system, in which declarations of intent require communication.

5. General Conditions in Online International Contracts

5.1 Presentation
The general terms and conditions of a contract express a rationalisation phenomenon of the contract in economic terms (reduction of costs in the negotiation, speed in the provision of services, etc.) that is present in all sectors of activity (Albiez, 2013).

Electronic contracts through an *Online* Store is carried out under the general terms and conditions, given that the entrepreneur or service provider publishes on the Website any necessary information for the Client (company or consumer) knows the terms under which the specific offer is made.

This way, clicking on the corresponding Website icon (Ok or Accept) expresses, in principle, acceptance by the Client. This modality of electronic contract through an *Online* Store is the one where most problems of irreflexive contracting can arise (Pardo, 2013), and therefore, it is the one we are especially interested in the present study.

On the other hand, while it is true that all of the General Terms and Conditions are set by the company that is selling its products online, this does not mean that their nature is necessarily unfair.

This environment entails specific horizontal projection regulations (of application to any type of contract), in virtue of which consumers and clients are warned of the existence of these provisions, allowing them to cancel the contract, if they are abusive as well as pre-set. Thus, regulations act against abusive conditions used by the party who attempts to use its strongest negotiating position through the imposition of certain conditions to the other party.

Both the Directive 93/13/EEC of the Council, of 5 April, and the transposition laws in each Member State of the EU, have articulated a procedure by which unfair terms under a contract may be cancelled, as well as a register of those who have been considered as such (Albiez, 2013).

5.2 Legal regime of the General Terms and Conditions of international contracts

As stated above, general terms and conditions which have not been negotiated by the parties, have their own regulations, and their purpose is to prevent a higher negotiating position of one of the parties, thus resulting abusive or damaging to the interests of the accepting party.

Therefore, independently from the legal regime applicable to a specific international contract, which in most of the cases, will be ruled under Regulation 593/2008 of the European Parliament and of the Council, of 17 June 2008, the unfair nature of the pre-set terms must be verified, subject to the established in a specific ruling on general contracting conditions of application in a specific case.

Henceforth, one must question the regulation to be applied to the control of the contract's general terms and conditions, so that it may be, in principle, the same as the one applied to the contract, without detriment of the established in the regulation on general terms and conditions in its own scope of application.

This is the solution given, specifically, for the case of Spanish regulations, by the Law 7/1998, of 13 April 1998, on General Terms and Conditions of Business, of application to the provisions of the general terms and conditions that are part of a contract subject to the Spanish legislation.

It will also be of application to the contracts that are regulated by a foreign legislation when the adherent (adhering party) has issued its business declaration in the Spanish territory and when Spain is its usual place of residence.

5.3 Incorporation of the General Terms and Conditions and Conclusion of the online international contract

A separate issue from that of the control of the general terms and conditions (adhesion) is that of its incorporation to the *online* international contract, inasmuch as not all regulations rule the norms of incorporation in the same way (Lara, 2013).

Under the Spanish regulation "*in case of telephone or electronic contracting, it is necessary to state (...) acceptance of each and every provision of the contract, without the need for the conventional signature. In this case, the consumer will be sent written justification of the recently made contract immediately, where the terms and conditions will be stated therein.*" (art. 5, 4º of the Law 7/1998).

Therefore, the regulation in accordance with which control of the general terms and conditions is made, also regulates its incorporation (or not) to each specific contract. And in any case, doctrine states that the most relevant elements of confluence between the different Legal systems are the *contra proferentem* motto.

That is, provisions redacted or imposed by only one of the contracting parties will be interpreted, in case of ambiguity or darkness, in the sense that is most favourable to the party who has not intervened in its drawing (Sánchez, 2013).

5.4 Time of birth of the electronic international contract with general terms

On the other hand, a different matter is that of the conclusion of an international contract with general terms and conditions, that is to say, from which moment can it be said that the contract is born? And also, which legal system decides on such birth?

If a provision for the choice of law has been included in the general terms and conditions, it is a requirement to ask the chosen legal system when the international contract has been formalised (created), which on the other hand, has been made remotely (online).

Therefore, once the Client's adherence to the general terms and conditions of the contract formalised through an *Online* Store has taken place, one must verify if they have all been incorporated, pursuant to the actual legal system governing the said terms and conditions.

And subsequently, it must be determined if the international *online* contract has born according to the applicable regulations thereto, and specifically, the criteria set by said legal system with respect to distance contracts, in addition to the requirements for its formalization (Gómez, 2013).

Finally, if the law to apply has not been chosen in the General Terms and Conditions, its incorporation to the electronic contract will depend on a specific regulation, to be applied depending on the criteria (or geographic indicator) established in the governing regulations of the said terms and conditions, existing in a specific national legal system.

Therefore, applicable law of the international *online* contract may differ to that applied to carry out the said control, inasmuch as it will be determined in accordance with art. 4 of the aforesaid Regulation 593/2008 (test of closest connection with a specific regulation).

Research Highlights

The current economic situation of Spanish olive oil sector makes necessary to achieve his final and definitive internationalization through the e-commerce, given its low cost of implementation and management. The use of the Virtual Store could have some difficulties that are related with the absence of one worldwide uniform regulation. Nevertheless, it is possible to specify the legal regulation of the international *online* contract in the General Terms and Conditions.

Limitations

There are some limitations when regulating the international *online* contracts concluded through the VS, because of the domestic law differences of each European country in spite of the existence of the DEC. The Directive makes the reference to the Private International Law of each Member State for deciding the electronic contract's time of birth.

Recommendations

A large amount of the doubts and problems arising upon electronic contracting does not only refer to the existence of responses that are territorially localised as a phenomenon of an intrinsic international nature, but also to the uncertainty that surrounds establishing whether it is an internal or international business relationship, in order to apply, consequently, a specific regime to each one of them.

For this reason, the regime for electronic contracting would be regulated in a unique way, both for private internal situations ad for private international situations.

Funding and Policy Aspects

The birthplace of electronic contracts is essentially virtual, so that it makes no sense to refer to a physical territory (corresponding to the place where it is held) for deciding neither the jurisdiction before which a possible legal action should be filled, nor other kind of legal questions. In spite of this rule, it should be considered a general principle in the case of international electronic contracts under which a larger share of the responsibility is shifter for most of the different element and phases that the telematic procurement is structured in the person using the net for carrying out the business, regardless of whether the subject of the contract through this media is a consumer or an entrepreneur

Justification of Research

European agricultural policy (CAP) has been marked by one of the most radical changes of orientation since its inception. Among its objectives is to increase the competitiveness of European agriculture. For this, it is necessary to make a strong capital and human investment to achieve the final internationalization of the sector, and, in particular, it is necessary to make this investment in the field of the use of ICT for international marketing of olive oil.

Conclusion

Olive oil sector need to be internationalised through the net. This is the nowadays challenge of the Spanish olive oil sector. Traditional channels are already overcome by the new ICT. The use of the VS for exporting olive oil can improve the internationalization level of Spanish olive oil SME.

Author's Contribution and Competing Interests

To identify the internationality of a specific electronic trade transaction creates additional problems to those already existent on non virtual commerce. It is not worthy to maintain two different legal regimes for the regulation of electronic contracts depending on the existence of foreigner elements (or not).

The identification of the foreign element presents several difficulties that may raise certain doubts and add even more uncertainty to a kind of commerce which is in itself crossed out as uncertain. In every case, for reducing the uncertainty level is it recommended to include the choice of law clause in the General terms and conditions of the contract made through the VS.

References

Fernández A., et al., 2012. Uso de la Tienda Virtual por las empresas oleícolas españolas para la comercialización del aceite de oliva: su relación con la internacionalización del sector. Mercacei, 69, 142-152.

Albiez Dohrmann K.J., 2013. Las condiciones generales de la contratación: una lectura de los diferentes modelos de control. S. Sánchez Lorenzo (dir.), Derecho contractual comparado. Una perspectiva europea y transnacional, Cívitas, Madrid, 383-483.

de la Rosa G.E, 2004. Litigios planteados por el comercio electrónico. J.L Collantes (dir.), Temas actuales de Derecho comercial, Normas legales Trujillo (Perú), 731-757.

de Miguel Asensio P., 2001. Directiva sobre el comercio electrónico. Determinación de la normativa aplicable a las actividades transfronterizas. Revista de la contratación electrónica, 5, 3-10.

de Miguel Asensio P., 2011. Derecho privado de internet. 4ª ed., Cívitas, Madrid.

de Parga R.J, 2000. El comercio electrónico (seguridad jurídica?). Derecho de los Negocios, 6-15.

Díaz Fraile J.Mª, 2001. El comercio electrónico: Directiva y Proyecto de ley español de 2000 (Crónica de su contenido, origen, propósito y proceso de elaboración). Actualidad Civil, 1, 44-56.

Flower S.M. 1997. When does internet activity establish the minimum contact necessary to confer personal jurisdiction? Missouri Law Review, 62, 865-880.

Illescas Ortiz R., 2003. Comunicación comercial y oferta contractual electrónica: la propuesta de contrato. Entre la prohibición y las incertezas, Revista de la contratación electrónica, 4, 5-20.

Jiménez Jiménez F. et al., 2006. Factores clave en la internacionalización de las empresas españolas del sector del aceite de oliva. E. Castro Galiano (ed.), Proyectos de investigación 2005-2006, Universidad de Jaén.

Junker A., 1999. Internationales Vertragsrecht im Intenet. Recht der internationalen Wirtschaft, 11, 809-822.

Lara Aguado A., 2012. Cláusulas de aceptación de condiciones generales. S. Sánchez Lorenzo (dir.), Cláusulas en los contratos internacionales. Redacción y análisis, Atelier, Barcelona, 74-101.

Lara Aguado, A., 2013. Formación del contrato electrónico. S. Sánchez Lorenzo (dir.), Derecho contractual comparado. Una perspectiva europea y transnacional, Cívitas Madrid, 485-547.

Llaneza González P., 2000. Internet y comunicaciones digitales. Régimen legal de las tecnologías de la información y de la comunicación, Barcelona, Bosch.

Madrid Parra A., 2002. El negocio jurídico electrónico. Revista de la contratación electrónica, 28, 35-43.

Maria di Giovanni P., 1993. Il contratto conclusso mediante computer alla luce della convenzione di Roma sulla legge applicabile alle obligazioni contracttuali del 19 giugno 1980. Diritto del commerio internazionale, 607-616.

Mateu de Ros R., 2000. El consentimiento y el proceso de contratación electrónica. AAVV, Derecho de internet. Contratación electrónica y firma digital, Aranzadi, Pamplona, 50-75.

Mili S., Rodríguez Zúñiga M., 2005. Capítulo VII. El sector del aceite de oliva español. Transformaciones estructurales recientes y estrategias empresariales. Mili S., Gatti, S. (coords.), Mercados agroalimentarios y globalización. Perspectivas para las producciones mediterráneas, CESIC, Madrid, 93-125.

Moral Pajares E., Lanzas Martín J. R., 2013. La actividad exportadora del sector oleícola jiennense. AAVV, La actividad exportadora en el sector oleícola, Ministerio de Agricultura, 23-51.

Pardo Gato J. R., 2013. Las Páginas Web como Soporte de Condiciones Generales contractuales. Aranzadi, Cizur Menor.

Sánchez Lorenzo S., 2013. La interpretación del contrato. S. Sánchez Lorenzo (dir.), Derecho contractual comparado. Una perspectiva europea y transnacional, Cívitas, Madrid, 1037-1119.

Valenzuela E.G., 2013. Regulation of Electronic Contracts in the European Community: new Challenges. European International Journal of Science and Technology, 2-8, 209-215.

Valenzuela E.G., 2011. Websites activas y pasivas en el Derecho internacional privado. Revista de la contratación electrónica, 116, 25-44.

Vargas Gómez-Urrutia M., 2000. Comercio internacional electrónico y conflicto de leyes y de jurisdicciones en el cyberespacio. Derecho de los negocios, 9-16.

Vattier Fuenzalida, C., 1999. En torno a los contratos electrónicos, Revista General de Legislación y Jurisprudencia, 1, 84-96.