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APPLICATION OF CONCLUSIVE ACTIONS IN COMMERCIAL RELATIONS (CHALLENGES AND PRACTICE)

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Abstract. Cooperation between business partners, customers, and other market participants often depends not only on words, but is sometimes expressed through behaviour or silence. A conclusive action is the action that is associated with an unspoken willingness to conclude, continue, change or terminate a contract. The use of conclusive actions is an integral part of modern business. From an economic perspective, conclusive actions are an important legal instrument in commercial relations, as they allow entrepreneurs to conduct transactions without the need to formalize each act. This type of transaction is most often chosen when it is the best way for various reasons.

The authors of the article paid attention to the concept of conclusive actions, their legal basis and the features of their practical application. Inaccurate interpretation of conclusive actions can lead to errors made by business people, non-compliance with contracts, and economic losses. The specification of relevant actions makes it possible to create a set of general principles, including various types of legal situations that arise during the organization and implementation of commercial actions.

Key words: conclusive actions, commercial actions, written contract, oral contract, business partners, legal basis.

Introduction. The purpose of this article is to examine the concept and types of conclusive action, the way it affects the effectiveness of commercial relations, and specific features of its use in the execution of commercial transactions. The interaction between business partners, clients, and other market participants often depends not only on verbal offers but also on their behaviour or even silence. Conclusive action refers to actions that demonstrate a non-verbal readiness to conclude, continue, modify, or terminate a contract. These actions are widely used in various industries, such as sales, services, rentals, construction, finance, and e-commerce. Their use is an integral part of modern business, as they allow for the identification and interpretation of legal relations even in the absence of a formal agreement (Graustīņš 2020). From an economic perspective, conclusive actions conduct is an important legal tool in commercial relations, as it enables entrepreneurs to carry out transactions without the need to formalize their action (How to conclude... 2023). It is assumed that the contract exists, but no written or verbal confirmation is required (Will 2024). For example, if an employee consistently performs their work duties and receives compensation for their performance, this is considered a conclusive action which confirms continuation of the employment relations (Men, Verčič 2021). The application of such action relates to situations where the parties act or behave as if a written or verbal contract had been concluded between them, and its application implies that the contract or agreement can be considered established not only in written or verbal form but also through the context of the actions or behaviour of the parties. In particular, regarding a loan agreement, regulatory acts do not specifically define the form it must take. Therefore, it can be concluded in a written form, verbally, or through conclusive actions. As a result, such a contract, established in a free form between two parties, will be legally binding in the event of a dispute (Briede 2024). This type of contract is often chosen when, for various reasons, it is the best option. However, a conclusive form for the contract is sometimes also used by unscrupulous entrepreneurs (Fridrihsone, 2017). In the event of a dispute, such actions are significant as they can serve as evidence of the conclusion of the con-

tract and the acceptance of its terms, even if there was no explicit formal agreement (oral or written). In the case of one party refusing to fulfil its contractual obligations, the actions taken can serve as evidence of the contract's conclusion and compel the party to fulfil its obligations under that contract.

In ancient Greece and Rome, it was supposed that contracts could be concluded not only in oral or written forms but also through a silent consent or action: “*manu datio*” – the transfer of an object, and “*stipulation*” – through unilateral actions, such as an oath or handshake (Apsitis 2015, p. 32). In the Middle Ages, with the society development, conclusive actions became more widely used when numerous trade transactions were conducted, including the exchange of goods. In cities and at trade fairs, it was common practice in trade to conclude contracts using symbolic actions and various gestures, such as handshakes, which meant “Agreed!”. Merchants who did not speak the same language used facial expressions and gestures to conclude a deal. The deal was considered concluded in case when one party offered their goods, and the other showed their agreement. Such an agreement had legal effect.

In modern times, this tradition is preserved in the form of conclusive actions. In the civil law of most countries, they are recognized as one of the ways to conclude contracts and express the parties' intentions. International legal norms and conventions, such as the Vienna Convention (1980) on the Law of Treaties, recognize that a contract can also be concluded through conclusive actions if they clearly reflect the will and intention of the parties (Lunenburg 2010). According to paragraph 3 of Article 18 of this convention, acceptance of an offer can be expressed through actions that indicate consent (Apvienoto Nāciju ... 1980). The Roman law also influences Latvian legislation. Thus, the Labor Law stipulates that employment relations can be terminated based on the actual actions of the employee and the employer, rather than solely on the basis of a written agreement (Darba Likums 2002, Article 115 Paragraph 5). The Civil Law allows for the expression of a person's will in a legal transaction through actions that are considered silent declarations of intent. These actions must be such that one can reliably infer the existence of intent and its characteristic features: features bearing the same meaning as words (Civillikums 1937, Article 1428).

The need for a separate examination of this type of entrepreneurs' actions is prompted by the following reasons:

- 1) the presence of numerous shortcomings in the application of conclusive actions: both psychological and legal
- 2) specific requirements for the regulatory framework
- 3) errors made by legislators in defining the types of conclusive actions
- 4) existing difficulties for business people in determining the situational nature of conclusive actions
- 5) peculiarities of the types, content, conclusion, modification, and termination of conclusive actions
- 6) errors made by business people in using conclusive actions regarding whether their partners' actions are truly conclusive
- 7) peculiarities of interaction between conclusive contractual relations with “traditional” (written and oral) contracts.

The Concept of Conclusive Actions. Scientists and dictionaries use the terms “conclusive actions”, “conclusive evidence of an agreement” or “conclusive conduct”. These terms are essentially synonymous and do not differ in the legal domain. The term “conclusive actions” is used in civil law as a characteristic feature of one of the forms of concluding transactions (Pakhomov, 2011). A contract is typically concluded by providing explicit consent, such as through signing it. However, a contract can also be concluded or performed without words, through actions or silence, and such actions are considered one of the ways of concluding a contract. This means that a contract is considered concluded or performed based on the behaviour of the parties, even if no verbal or written agreements were used (Implied contract 2021). According to the definition given in the explanatory

dictionary “Thesaurus”, “A conclusive action is an action that results in the conclusion of a contract; it is manifested through an unspoken willingness to conclude a contract” (Tezaurs. Konkludenta ... 2024). Other dictionaries provide the following definition: “Conclusive actions – in civil law, actions of a person expressing their will to establish legal relations (for example, to make a transaction), but not in the form of an oral or written expression of will, rather through behaviour that clearly indicates such intent” (Slovar ... 2023). It is also possible to say about an unspoken willingness to conclude a contract and the indirect expression of the will of the parties to the transaction (Kas ir konkludentu ... 2023), or that it refers to “actions without words or other direct means of expression, which prove the existence of the will to conclude a contract” (Milberga 2020). Therefore, in certain situations, work should begin before the client and the supplier conclude a written contract (Immediate ... 2022).

Conclusive actions (from the Latin for conclusion, to conclude) are actions (and inactions) of persons in which their behaviour reveals a desire and intention to enter into certain legal relations, but not by expressing their will verbally or in writing. However, such intent can be inferred from that behaviour. This concept, considered by E. Černova and D. Malinovskis, refers to the most complex part of transaction regulation – the stage prior to the conclusion of the contract (Černova, Malinovskis 2018). The complexity of this stage involves not only its uncertainty but also the constantly changing conditions of the environment.

Such behaviour can have the same binding force as a written agreement. Such researchers as G.Hadson, G.Mārtiņš, J.Smith, V.Belovs, M.Pahomovs, M.Johnson, and S.Brown share this viewpoint.

The physical and physiological basis for conclusive actions includes the following elements:

- gestures (e.g. a handshake)
- facial expressions (e.g. a smile)
- body language
- tone of voice
- gaze
- appearance
- other non-verbal forms of communication – indirect actions (signals or commands) or “verbal”

actions that have legal significance, such as silence.

In G. Lobanov’s opinion, silence is considered a conclusive action if it is provided for by law, business practice, or arises from previous business relations between the parties (Lobanov 2024). According to the Civil Law, will is expressed silently when it is conveyed without the immediate intention of expressing will in that sense. An action considered a silent expression of will should be such that it allows for a reliable conclusion about the existence of that will (Civillikums 1937, Article 1428). Silence is one of the most complex forms of conclusive actions. In Latvia, it is no coincidence that the Cabinet of Ministers adopted a resolution on an action plan for the implementation and application of the “silence-consent” principle in the administrative practices of responsible institutions (Ministru kabineta rīkojums ... 2012), since under the Civil Law, silence is not, in itself, consent or dissent (Civillikums 1937, Article 1430), or as they say in France: “ça dépend”.

The Nature of Conclusive Actions. Psychologically, these actions are based on the principles of trust and expectation, and essentially, conclusive actions can be viewed as:

- a silent declaration of intent or expression of will that leads to an agreement
- one of the forms of concluding a contract, a way of creating or altering legal obligations between parties even without the use of words or written agreements, where one party acts as if they have already agreed to a certain action or contract, regardless of whether they intended to do so or not
- behaviour of the parties from which an intention to conclude a contract or assume certain obligations is clearly inferred
- a legal tool in the commercial field that ensures the fulfilment and protection of the parties’ obligations even without formal contracts

- a situation where a contract or legal relationship is created or altered based on the actions of both parties, but the parties acted as if the contract had already been concluded. Thus, the written form of the contract is considered to be complied with, including when amendments are made, if the written offer to conclude the contract is accepted in accordance with Articles 39 and 41 of the Labor Law of the Republic of Latvia. Or, for example, according to Paragraph 3 of Article 408 of the Civil Law of the Republic of Belarus, which states that this is considered an acceptance if a person who receives the offer performs actions to fulfil the conditions of the contract specified in it (such as shipping goods, providing services, performing work, making the corresponding payment, etc.) within the period established for its acceptance, unless otherwise provided by law or specified in the offer (Kasir “konkludentu darbības” ... 2024).

- the silent consent principle, which allows for the determination of the existence of contractual obligations based on the actual behaviour of the parties rather than on words or written documents. This principle is based on the assumption that the parties act as if they have agreed to a certain course of action or the proposed terms.

- a legal category that refers to the conclusion of contracts and, hence, the creation of obligations between two or more parties

- a legal concept that denotes situations where a person's actions or silence may be considered as a consent to an action or offer, or to the conclusion of a contract

- a legal fact, which, like any legal phenomenon, is characterized by a system of various functions through which the corresponding effect is achieved by using the relevant category. These functions include informational functions, time-saving functions, management functions, and competency functions.

As one of the legal concepts, conclusive actions are interpreted and applied differently across various legal systems, regions, and situations.

Conclusive actions can be taken not only by individuals, but also by legal entities. Specifically, if one company regularly delivers certain goods or products to another company. Despite the fact that there is no official written contract between these companies, the second company consistently accepts the goods and pays the invoices.

Types of Conclusive Actions. The following conclusive actions can be identified:

- by forms of expression: there are visual and auditory actions: gestures, signals, and actions. A smile, a handshake, a nod, and respectful behaviour can play an important role in communication with clients. Gestures of a stockbroker. The “thumbs up” gesture is used not only in the electronic environment but also as a sign of approval in real life (Budkēviča 2023). In general, fingers and hands can be used for a wide variety of professional gestures, which are often very characteristic and unambiguous in their positive or negative connotations.

- by their role in the mechanism of legal regulation: for the purposes of concluding, extending, altering, and terminating a contract.

- by the method of consolidation within the existing legal system:

- 1) obligatory conclusive actions stipulated by legal acts. For example, if an employer allows an employee to continue working after their shift has ended, the employer cannot later claim that they do not wish to pay the employee because the hours worked exceeded the agreed shift (Darba Likums 2002, Article 68). Or, according to the Civil Law, a silently accepted compensation for the custodian occurs if, under the circumstances, free storage was not intended (Civillikums 1937, Article 1969).

- 2) conclusive actions carried out in accordance with legal customs. Thus, in the rental business, actions can occur without signing a lease agreement, but by accepting the keys to the rented premises or making the first rent payment. Or the broker's commission rate that is “standard” in the area. However, the broker's right to such a reward appears at the moment the transaction is concluded, even without any mention of it (Lobanov 2022, Article 70, Paragraph 1).

- silence regarding an offer or acceptance of an offer: if someone proposes a deal or makes an offer, and the other person remains silent and does not protest, this can often be interpreted as a silent acceptance of that offer. For example, unsuitable goods or substandard services: if a person receives such goods or services and does not react to their poor quality, this can be interpreted as a silent consent and the conclusion of a contract for those goods and services (Patērētāju tiesību ... 1999, Article 4). Silence can be considered consent if a person's actions indicate that they understand and agree to the proposed terms (Austen-Baker, Qi Zhou 2023).

- operations on the Internet, especially in the field of e-commerce. For example, orders placed when a user purchases a product or service on such platforms as eBay or Amazon and makes a payment. It serves as compelling evidence that they agree to the seller's terms and are willing to receive the product or service at the specified price (Zainutdynova, 2020). When a buyer receives a product or service and does not file a complaint with the seller, it can be regarded as undisputed consent and confirmation that the product has been received and matches the description (Ministru kabineta Noteikumi ... 2024, Article 19). Before making a purchase, the buyer may need to agree to the terms proposed by the platform or the seller (Patērētāja ... 2016). If the buyer proceeds with the purchase and does not object to the current terms, it can be considered as a final acceptance and the conclusion of the contract.

- it is also possible to engage in conclusive actions, conclusive behaviour and conclusive deception, where someone can be deliberately misled without verbal statements. Conclusive behaviour is such behaviour that can lead to the conclusion of an employment contract or another agreement. In cases of convincing deceit, a person does not lie literally or verbally, but through actions and indirect expressions of deception. It is often used by professional fraudsters who are experienced psychologists (they dress in uniforms, bring children or a bag of food with them, involve attractive women or respectable elderly people in their actions). If it is an essential deception (Civillikums 1937, Article 1444), it cancels the entire transaction, as it should be assumed that the person who was deceived did not give their consent to the deal at all, and thus the transaction never actually took place (Civillikums 1937, Article 1444).

- conclusive actions are often encountered in mobile and computer programmes, where users, by using the application or platform functions, perform actions that indicate their agreement with the terms or contracts with the application developer or operator. When a user downloads an application and creates an account, it typically involves accepting the application terms and conditions, as well as its privacy policy (Mobilo ... 2017). The user's subsequent actions, such as logging in or regular use of the application, further confirm this consent. If a user makes a purchase or subscribes within the application, it signifies their agreement to the terms of the contract related to those purchases.

- receiving regular services. If a company regularly receives services and does not protest against them, it may indicate that the company considers these services accepted and its obligations fulfilled. According to Miller: "Regular delivery and acceptance of goods can constitute a final contract if it indicates the agreement of both parties to the sale and purchase of the goods" (Miller 2020, p. 56).

- activities for arranging the premises and preparing good projects. For example, the desire to buy something in a store that is nicely designed and well-organized is stronger as there are conditions such as convenient product placement in well-lit areas that foster positive emotions. Thus, in a grocery shop, this might include the smell of bread, vegetables covered with droplets of water to create a sense of freshness, and a soft, pleasant music playing – all these elements implicitly contribute to the positive impression of the shop. Offices and office equipment bear a similar effect on clients.

- a proper dress code can also be very significant, as it demonstrates the attitude towards potential clients: a willingness to engage and enter into a contract. As it has already been mentioned above, criminals can use the dress code, too. For example, a fraudster may wear the uniform of a specific profession (such as a sailor or a police officer) to enter into a house, while a thief may impersonate a mailman or a plumber.

- payment of a fine by the offender (for example, a motorist), which indicates their agreement with the penalty imposed. These actions mean that the actions of law enforcement agencies are not appealable. Or the payment of interest by the debtor in case of a delay, even if the specific terms of the contract do not mention any interest (Ellis 2019). In addition, there are not only contractually specified interest rates but also statutory interest rates (Civillikums 1937, Article 1765) that do not require special documentation or mention in the contract.

- a designated place for storing clothes (such as a coat rack located in a hallway or reception area, etc.) constitutes a public offer, while leaving clothes in the designated area represents acceptance of this offer

- acceptance or rejection of an inheritance: the intention to accept an inheritance can be expressed either explicitly, orally, or in writing, or through silent actions that, under the appropriate circumstances, can only be interpreted as the fact that the individual acknowledges themselves as an heir (Civillikums 1937, Article 691). In Latvia, an heir should express their intention to accept the inheritance within one year (Civillikums 1937, Article 693). If they do not do so, it also signifies the use of a conclusive action in the form of silence.

- public transport fare. By becoming a passenger and registering with the validator, a person demonstrates through their actions that they agree to the rules set forth by the traffic management (Sabiedriskā 2007, Article 13, Paragraph 7). The passenger, through such conclusive actions, has entered into an adhesion contract with the traffic management authority.

- the conclusion of a power of attorney can occur silently if someone intentionally allows a third party to manage their affairs (Civillikums 1937, Article 2290). If a person knows that they need to handle another person's affairs but does not object to it, this signifies their consent to enter into a power of attorney agreement.

- the employee's failure to fulfil their work duties and the employer's inability to restore the employment relations may be considered sufficient grounds for terminating the employment relations (Civillikums 1937, Article 2193; 9, Article 101, Paragraph 1).

Challenges of Applying Conclusive Actions. Conclusive actions are not applicable in all cases. Just like written or verbal contracts, conclusive agreements should comply with certain legal requirements, be clearly understood, and provable. If an agreement was concluded through conclusive actions, there are usually no issues as long as both parties fulfil all the terms of the contract.

However, potential challenges may include:

- 1) conclusive actions can be interpreted in different ways. It depends on the specific situation, subjective intentions of both parties, and provisions of the law. Misinterpretation of non-verbal signals can lead to misunderstandings, conflicts, improper execution of the contract, as well as ineffective application of the law, creating difficulties in the legal relations between the contracting parties.

- 2) conclusive actions are often subject to ambiguity. Disputes may arise regarding whether a person truly agreed to the terms or the agreement if their consent was not clearly expressed. For example, gestures or facial expressions that may mean one thing in one culture can be interpreted quite differently in another culture, for instance, a nod of the head in Latvia and Bulgaria (intercultural issues).

- 3) if the conclusive actions were not expressed clearly enough, the court may not recognize the contract as concluded between the parties, and it will not have legal force.

- 4) negative perception. Some non-verbal signals may evoke negative associations for clients, which can adversely affect the company's image. An improperly chosen tone of voice, inappropriate facial expressions, or unsuitable clothing can give the client the impression of the lack of professionalism or even cause dissatisfaction.

- 5) if the law prescribes a specific form of expression of will, then a silent expression of will, even if it is really clear, is insufficient. For example, in real estate transactions that require corroboration, such as the registration of land and buildings in the land registry (Tezaurs. Koroborācija ... 2024; Civillikums 1937, Article 1477)

6) the application of conclusive actions may require additional clarifications, resulting in the conclusion of the contract being delayed or even cancelled. Thus, if a sales contract specifies that at least one party is obligated to fulfil their obligation on a specific day or within a certain period, and there is a clearly expressed intent from the parties, the agreed deadline is an integral part of such a contract (Komerclikums 2002, Article 410, Paragraph 1)

7) conclusive actions can be a basis for disputes when questions arise about whether these actions are sufficient to create a binding contract or to conclude, terminate, or amend a contract.

8) in the event of a dispute, it will be more difficult to prove and consider the validity of transactions made on the basis of conclusive actions.

9) disputes sometimes arise regarding whether such actions are directly evidential or not, and which situations are considered relevant to this concept.

10) if the meaning of the conclusive actions differs from that of a written contract, they may also be a basis for dispute and create the need for a court decision on the interpretation and application of the contract.

11) conclusive actions are not based on clearly defined laws or rules. It can lead to legal uncertainty and instability due to the lack of clear definitions regarding what specific behaviour can be considered the basis for concluding, amending, or terminating a contract.

Methods for Resolving Problems Associated with the Application of Conclusive Actions.

Trust and understanding serve as the basis for the application of this type of actions in commercial activities. They enable specific actions to be taken to create legal obligations. However, in order to prevent or reduce the possible negative effects of applying these activities, there are various methods that can be used in commercial practice. They include:

1) careful validation of the contract terms and use of additional documentation. It can help prove the existence of the contract and its content in the event of confusion, disputes, or court inquiries. For business negotiations to be considered an offer, they should contain sufficiently specific and clearly expressed essential terms of the contract.

2) it is important to clearly understand that a party intends to conclude or amend a contract and carefully evaluate each specific situation. For conclusive actions to be considered a form of acceptance, they should be performed under the terms specified in the contract.

3) for the sake of security, it is always important to ensure that all participants are in agreement, have clear arrangements for cooperation, and share mutual understanding.

4) judicial practice and case law are essential elements in the process of legal interpretation of conclusive actions. Court decisions and the creation of precedents help clarify which situations are considered concluded contracts and which criteria establish the existence and use of conclusive actions.

5) business people should be informed about communication techniques to avoid misunderstandings and potential legal disputes. In order to successfully use conclusive actions in business, it is important not only to recognize and interpret non-verbal signals, but also to skilfully adjust communication and interactions according to the situation and the needs of the other party.

6) the court often relies on the past experience of the parties' relations. If their commercial practice continues for a long time, repeatedly, and both parties are satisfied with such developments, the court may consider that both parties have a conclusive agreement to continue such activities.

7) in order to successfully overcome the problems and risks associated with the use of conclusive actions, special attention should be paid to cultural and cross-cultural differences, as well as to regular training for staff on effective non-verbal communication, including professional gestures and communication skills with clients. This may include recognizing non-verbal signals, improving facial expressions and body language, adjusting tone of voice, etc.

8) objective assessment of the specific situations and circumstances in which the actions took place. This includes evaluating the context of the party's behaviour, as well as considering such factors as market rules and norms, commercial customs, judicial practices, and legal precedents.

9) the presence of direct and indirect evidence will be used to resolve the dispute regarding the existence and binding nature of the conclusive action. This may include written contracts, various documents, letters, audio or video recordings of communication, information in emails, and other tangible evidence reflecting the actions and behaviour of both parties.

10) there are legal ways to protect contract participants from potential negative consequences of conclusive actions:

- a preliminary agreement on the use of such actions
- signing and agreeing to contracts that specifically regulate conclusive actions
- studying and applying known information about conclusive actions and the consequences of their application
- legal assistance and consultations from lawyers, social psychologists, and specialists in cross-cultural issues.

In order to implement these methods in practice, it is important to conduct a comprehensive legal review before deciding on actions that can be considered conclusive and to understand the legal consequences and risks associated with such actions.

11) regular communication between the contracting parties should take place in order to avoid ambiguities and misunderstandings

12) conclusive actions in commercial practice depend on the specific circumstances of each case and require careful assessment of their factual and legal aspects, specifically, the situation in which the conclusive actions took place and how they may affect the legal relations

13) the use of artificial intelligence for analysing and interpreting conclusive actions, enhancing their accuracy, and preventing their misuse.

Conclusions.

1) Conclusive actions are a significant element of commercial relations; they provide a flexible mechanism for concluding and interpreting contracts in commercial dealings, allowing for agreements to be made even without words or written documents, which requires additional attention from business people.

2) Through conclusive actions, companies can establish long-term and cost-effective relations with clients and partners. Such actions create obligations as well as contribute to maintaining strong commercial relations which are crucial for secure business connections.

3) Despite the fact that conclusive actions are recognized and used in many countries, their application may vary depending on local legal systems, judicial practices, and traditions. It is also important to consider the cultural nuances and context in which the interaction takes place, as some gestures or statements may be interpreted differently across various cultures and countries. However, regardless of the legal system, conclusive actions are an important tool for simplifying and accelerating business processes.

4) It is reasonable to amend Article 1428 of the Civil Law, which states, “The will may be expressed both explicitly and implicitly”. The word “implicitly” should be removed from this article and replaced with “or through conclusive actions”.

5) The use of conclusive actions has a significant positive effect; however, it is essential to consider the negative consequences and to apply these actions legally and prudently in order to avoid potential disputes in the future. The negative side of the use of conclusive actions is that they can result in legal issues if used beyond legal and cultural norms.

6) Disputes regarding conclusive actions are usually resolved through the courts or another dispute resolution body, taking into account the available evidence and other factors. These actions are significant because they can serve as evidence of the conclusion of a contract and the acceptance or rejection of the contract terms.

7) In order to prevent or reduce the negative consequences of conclusive actions, various methods and techniques can be applied, e.g. supplementary written documentation and enhanced communication between the contracting parties.

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