Discussion paper for the 3rd Plenary of the High-Level Forum on Justice for Growth

16 October 2025

Topic: Automated Contracting

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As new use cases of AI and smart contracts[1] on a blockchain evolve, automated contracting takes on new dimensions by increasingly enabling autonomous conclusion and performance of contracts without human intervention. For example, an AI agent can conclude renewable energy purchases and factor in price fluctuations at advantageous moments in time. Autonomous AI agents can manage operations in supply chains, factories and warehouses by adapting to dynamic market developments. Innovative business models are developing in various sectors. For instance, a number of providers are developing agentic AI for e-commerce, for both B2C and B2B, which would enable customers to delegate shopping decisions to AI agents acting for them.[2]

The growing relevance of innovative forms of contracting via automated systems, especially through AI, has been recognised at UN level. In July 2024, UNCITRAL adopted a Model Law on Automated Contracting, which the UN General Assembly endorsed in December 2024.[3] The UN Model Law facilitates such innovative business models by providing the necessary legal certainty for core issues. It also leaves parties the freedom to agree on different solutions in their contracts. The UN General Assembly recommended implementing the UN Model Law as part of the legal framework on e-commerce.

1. Legal Issues in Automated Contracting

The growing use of automated systems in contracting raises questions as to how to apply human-centric contract laws to transactions with or between AI. As algorithms can take decisions which are not pre-determined or foreseeable by humans, legal uncertainty arises in several areas. These include: (i) the validity of contracts (to what extent courts will uphold contracts with or between AI depending on whether they consider that they fulfil fundamental criteria for contract validity[4]); (ii) the attribution of actions of automated systems and how to identify the natural or legal person who is legally responsible; (iii) dealing with unintended outcomes – where an automated contractual action deviates significantly from user intentions

[1] According to Art 2(39) of the Data Act, 'Smart contract' means a computer program used for the automated execution of an agreement or part thereof, using a sequence of electronic data records and ensuring their integrity and the accuracy of their chronological ordering.

[2] For instance initiatives to develop AI agents by Salesforce, Amazon, Google, OpenAI, Alibaba. See Bernard Marr, Forget ChatGPT, Why Agentic AI Is The Next Big Retail Disruption, Forbes, 2025.

[3] Available here: UNCITRAL Model Law on Automated Contracting

[4] Contract laws across all EU Member States rely on two fundamental criteria for the validity of a contract: a willingness to be legally bound and an agreement on the fundamental points of the contract.

and/or expectations; and (iv) control over automated contracting systems, dealing with asymmetries of power and information concerning users of automated systems. The issues are particularly relevant for AI systems that can conclude contracts and act autonomously.

New areas of uncertainty arise when using dynamic information in contracting, in particular the validity of terms that change continuously/periodically based on external dynamic information sources (e.g. price or temperature fluctuations, location of deliveries).[5] There is also legal uncertainty about the validity of contract terms expressed in computer language (code), particularly relevant for smart legal contracts.[6] Contractual imbalances may affect users of automated systems where they are not able to freely customise, control and audit key parameters of the system, which takes actions on their behalf.

All these points of legal uncertainty, taken together, translate into risks that may discourage the uptake of innovative AI contracting. While companies can easily trade cross-border via automated systems, legal uncertainty is greater in a cross-border context because different national laws may approach these issues differently.

2. Policy Options

One approach would implement the UN Model Law by means of a legal instrument at EU level. This targeted intervention could only deal with core points of legal uncertainty: 1) validity of contracts, including dynamic information and terms in code (Art 5 and 6); 2) attribution of automated actions (Art 7); 3) unexpected actions (Art 8)[7]. An alternative is implementation at national level.

Another approach is to implement the UN Model Law to the extent possible by soft law. Notably, voluntary model contract terms could help stakeholders to mitigate some uncertainties.

The scope of these approaches could either cover all contracts involving these technologies and/or specific sectors.

3. Feedback from the preparatory meeting

During the preparatory meeting on 15 September 2025 where these issues were raised, there was a general recognition of the relevance of the topic for competitiveness, growth and innovation. More specifically, the need to promote legal certainty and avoid cross-border fragmentation, in order to enable innovation was noted. Another view pointed to the need to confirm the issues faced by companies in practice, while acknowledging rapid technological developments. Regulatory fatigue and the need to implement recently adopted legislation first

[5] European Commission, JRC – Study on novel forms of contracting in the digital economy, AI-enabled autonomous contracting, Final report, p. 89 and 142.

[6] European Commission – Study on civil law rules applicable to smart contracts, Final report, p.92. For example smart legal contracts formulated entirely in computer code raise doubts about their conformity with legal requirements, such as written form in a human-readable language, provision of specific information, or where relevant, the intervention of a notary or whether code or natural language should prevail (in case of contradictions).

[7] The referenced Articles with commentary can be found in the Model Law on Automated Contracting, available here: UNCITRAL Model Law on Automated Contracting

was also pointed out. If something is to be done, some participants saw value in a horizontal action for all sectors. There was broader support for EU level rather than national level action, if needed. Overall, there was large support for an incremental approach: to first see results of studies, to confirm results from real companies in practice, to have more technical input from experts and to have further discussion process in the light of these results. While one view supported a legislative approach, there was larger support, even among those more sceptical, for a soft law approach.

The Commission adopted the Apply AI Strategy on 8 October 2025,[8] which includes a non-binding action on automated contracting. The Commission will 'establish a discussion forum with interested stakeholders on reducing risks in AI contracting for SMEs (including startups), providing legal guidance, notably in the form of model contract terms for AI contracts and on the choice of AI contracting systems.'[9] The action is part of the cross-cutting initiatives enhancing opportunities for European startups and SMEs and should be completed by the end 2027.

Questions:

1) Would you like to be part of future discussions on automated contracting?
2) Which elements would you consider useful for legal guidance, notably in the form of model contract terms for AI contracts and on the choice of AI contracting systems?

[8] Communication from the Commission to the European Parliament and the Council, Apply AI Strategy, Brussels, 8.10.2025, COM(2025) 723 final, available at: Apply AI Strategy | Shaping Europe's digital future

[9] Apply AI Strategy, Annex 3, page 8.