РОЗДІЛ 4
ВІЗІЯ НАЦІОНАЛЬНОГО ПРИВАТНОГО ПРАВА У ПОВОЄННИЙ ЧАС

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Batozhska Oleksandra,
PhD (Law), Associate Professor, lawyer,
Berlin, Germany,
Kmetyk Khrystyna,
PhD (Law), Associate Professor,
National Aviation University, Kyiv, Ukraine

A PRELIMINARY CONTRACT: THE PECULIARITIES OF LEGAL REGULATION

The financial crisis forced many business subjects to reconsider their attitude to the search for buyers, which led to the use of legal structures that make it possible to plan not only the quantity of the purchased goods (including the imported goods), but also the volume of its following sale. In this regard, the practice of concluding the preliminary contracts for the supply of products and goods has become somewhat widespread.

The main features of a preliminary contract are defined in Part 1 of Article 635 of the Civil Code of Ukraine, in particular: 1) a preliminary contract is a contract, the parties of which undertake to enter into a contract in future (a main contract) within a certain period of time (at a certain time) on the terms determined by such preliminary contract; 2) the law could determine a limitation on the period (deadline) in which a main contract should be concluded on the basis of a preliminary contract; 3) the essential terms of a main contract, which are not determined by a preliminary contract, are agreed upon in the order determined by the parties in a preliminary contract, if such order is not determined by the acts of civil legislation; 4) a preliminary contract is concluded in the form determined for a main contract, and if the form of a main contract is not determined – in writing.

The consequence of concluding the preliminary contract is only the obligation to conclude a main contract within the period set by the parties and on the conditions and procedure already agreed upon. Such an obligation is terminated if one of the parties does not propose a draft of such main contract to another party before the end of the period in which the parties have to conclude a main contract (Part 3 of Article 635 of the Civil Code of Ukraine). The party

that unreasonably evades the conclusion of a main contract provided for in a preliminary contract should compensate the other party for damages caused by the delay, unless otherwise is established by a preliminary contract or acts of civil legislation (Part 2 of Article 635 of the Civil Code of Ukraine).

Relations with regard to the conclusion of a preliminary contract are regulated by the Civil Code of Ukraine, taking into account the features determined by the Civil Code of Ukraine. So, for example, in Part 1 of Article 182 of the Civil Code of Ukraine states that under a preliminary contract, the business entity undertakes to conclude a main economic contract on the terms stipulated by a preliminary contract within a certain period, but no later than one year after the conclusion of a preliminary contract. However, in our opinion, the parties of a preliminary contract could deviate from this rule if the circumstances of concluding the main contract require more time (in particular, this applies to the contract on purchase and sale of real estate, contract on manufacturing the products, etc.).

Taking into account the practice of concluding the preliminary contracts, let us emphasize that the legislation does not establish the restrictions on which the contract (on the transfer of property, on performance of works, on provision of services or on delivery of goods) could be preceded by a preliminary contract. But, unlike an ordinary economic contract (the one that will be concluded in the future – the main contract), taking into account a preliminary contract, the parties do not have the right to demand the actual fulfillment of the obligation that will arise from a main one – to transfer work, to provide service or to pay for it.

A term “preliminary” in relation to a contract does not mean the incompleteness of the expression of the will of the parties, but only indicates that a contract that has taken place should be followed by another – a main (more specific, detailed) contract.

Therefore, two contracts should be distinguished: one (has already concluded) determines the obligation for the both parties to conclude a main one in the future, by which the parties will determine a main economic obligations to each other.

There is one more rule, without which a preliminary contract could not be recognized as concluded – it shoud contain all the essential terms of a main contract (a subject matter, the conditions defined by the law as essential or necessary for such type of a contract, as well as all those conditions on which a contract should be reached at the request of at least one of the parties).

A preliminary contract becomes an invalid if the parties do not conclude a main contract within the stipulated period. But, a lot will depend on whether or not the parties will take certain legal actions before concluding the main contract (pay for the goods, make a partial or full delivery, etc.). In this case, it

will be difficult for a business entity to hope on a positive resolution of the dispute, including in the case of going to the court.

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Diduk Alla, PhD (Law), Associate Professor,
National Aviation University, Kyiv, Ukraine
Lytvyn Stepan, PhD (Law), Associate Professor,
Institute of Educational and Professional Development,
Budapest, Hungary

THE PROBLEM ISSUE OF UNDERSTANDING INFORMATION AS AN OBJECT OF CIVIL LAW

The science of civil law, both national and foreign, has not sufficiently explored information as an object of law. The very term «information» is also atypical for the science of civil law, which may be why it remains insufficiently studied. There is no generally accepted concept of information in civil law.

In the current Civil Code of Ukraine, the term «information» is found in many articles (201, 202, 278, 279, 286, 303, 304, 507, 508, 509, 510 and others).

The term «information» (from the Latin «informatio» – explanation, representation, presentation, concept of something) means some information, a collection of any data, knowledge. It can usually be interpreted as a variety of information about events, facts, processes that are transmitted by some people to other people, verbally, in writing or in any other way, as well as the process of transmitting or receiving this information.

In Ukraine, public relations in the field of information are regulated by the Law of Ukraine «On Information», the Law of Ukraine «On Scientific and Technical Information», the Law of Ukraine «On Protection of Information in Information and Communication Systems».

The Law of Ukraine «On Information» dated October 2, 1992 defines information as any information and/or data that can be stored on physical media or displayed electronically (Article 1). The identical definition of information is fixed in Article 200 of the Civil Code of Ukraine.

We cannot agree with this definition of information, as it does not fully reveal the essence of the information itself. In addition, the legislator did not take into account that information has many inherent natural qualities, but two of them are of particular importance for determining the legal regime of information. On the one hand, information is «information» (which has content), and on the other hand, information is «information» (which has no content). In the future, the thesis that «information» is always only a «message»