

Is Appropriate Course of Action Followed If You Enter into Contract With Your Partners Via E-mail?

Some people believe that there is no contract unless the parties' agreement is made in writing while others consider a mere exchange of e-mails a contract, the expert of Kovács Réti Attorneys at Law calls the attention of origo. The question may arise, whether the right course of action is followed if you contract your partners via e-mail, dr. Arvid Hauck pointed out. The new Civil Code devotes a distinct chapter to the particular rules governing contracting via e-mail.

Contrary to popular belief, a contract shall be entered into by the mutual and concurring expression of the parties' intentions rather than by rendering them in written form. Such an intention may be expressed in writing, orally or impliedly.

A purchase and sale agreement is made impliedly for instance when, having done the shopping, you place the goods on the conveyor belt and pay, anticipated the expert of Kovács Réti Szegheő Attorneys at Law.

In numerous cases it is a statutory requirement that a particular type of contract fall within the Statue of Frauds (e.g. real estate purchase and sale) but predominantly, the parties may freely decide in what form they wish to enter into contract.

According to dr. Arvid Hauck, it is important to emphasise that contrarily to popular belief, under the currently effective legal provisions, conclusion of contract via a mere exchange of e-mails – as opposed to those concluded through facsimile or an e-mail bearing qualified electronic signature – shall not be deemed made in writing.

New Code Civil Acknowledges Its Significance

Codifiers of the new Civil Code have realised that management of affairs and communication via electronic means have become increasingly widespread and accordingly a distinct chapter has been devoted to the rules governing conclusion of contract through such means.

The traditional elements of conclusion of contract, especially making and acceptance of an offer and other legal declarations are well-interpretable and applicable even in case of conclusion of a contract electronically. Nevertheless, the new Civil Code deems it necessary to regulate the information-provision obligation of the party providing for electronic mode of contracting through particular rules.

Obligation of the Party Providing For Electronic Mode of Contracting

Pursuant to the provisions of the code to take effect from 15 March, 2014, the party providing for electronic mode of contracting shall, prior to issuing his declaration on the conclusion of contract inform the other party of the followings, highlights the expert of Kovács Réti Szegheő Attorneys at Law.



Hence he shall inform the other party of the technical steps of conclusion of a contract; whether the contract to be concluded shall be deemed to have been made in writing, or the party providing for the electronic mode shall record the contract furthermore, whether the contract will be accessible afterwards.

He shall inform the other party of such tools that assure the detection and elimination of mistakes occurring during the electric recording of data prior to the issuing of contractual declaration; of the language of the contract; and if such exists, the code of conduct and the electronic accessibility thereof whose stipulations the party providing for electronic mode admits to be bound by.

Further Rules and Requirements

Dr. Arvid Hauck emphasised: according to the rules, a contractual declaration made via electronic means shall become effective upon its being made accessible to the other party, which means, as soon as the offer arrives at the mailbox of the addressee.

The party providing for electronic means shall promptly confirm the arrival of the other party's contractual declaration through electronic means. The party shall be discharged from the effects of the binding offer and performance of the contract cannot be demanded from him unless such confirmation arrives promptly.

Moreover, the party providing for electronic way shall render the general conditions of contract accessible in such a way as to enable the other party to store and reproduce these.

Is a Declaration Made Electronically Deemed To Have Been Made In Writing

The new Civil Code – contrary to that currently in effect – provides whether a legal declaration issued through electronic means shall be deemed to have been made in writing. According to the statutory provision, a legal declaration shall be deemed to have been made in writing provided that it has been made in a form enabling reconstruction of the contents laid down therein in an unaltered form furthermore, in a form enabling identification of the person having issued such declaration and the date thereof.

No practice aligned with such rule is currently known nevertheless, a simple e-mail is not expected to meet the aforementioned conditions being that the sender of such message is not identifiable, merely the e-mail where it originates from, the expert of Kovács Réti Szegheő Attorneys at Law pointed out.