



Is it possible to conclude a written contract via e-mail?

Under the new Civil Code, one can legally act in any form, unless the law or a contractual arrangement between the parties state otherwise. Therefore, even a communication via electronic mail (e-mail) can, theoretically, be considered a form of legal acting.

Nonetheless, the law prescribes a mandatory written form for certain legal acting. The written form is also required in cases where the contracting parties have agreed on it. Can, in such case, a written legal acting be made via e-mail (e.g., a written contract or agreement to make or confirm a legally binding written order, etc.)? In general, it can be assumed that this is possible, as a written legal acting does not necessarily need to be made only on paper or other tangible medium. The written form is retained in case of any message, text, or communication made by electronic or technical means, which, at the same time, allow (i) to capture their contents and (ii) to identify the person who is acting. In doing so, e-mail is capable to capture the contents of a text, message, or communication. Is it also capable of identifying a person who is acting?

A person is identified through signature. How is it necessary to attach a signature to an e-mail message so that such an e-mail message becomes a valid written legal acting? The answer to this question varies depending on whether a written form of legal acting is required (i) by law or (ii) merely by agreement between the parties.

A written form required by law

If the law requires a written form, e-mail message must be signed electronically.

The particulars of electronic signature are governed by the Act on Electronic Signatures, which distinguishes between a simple and advanced electronic signature. The difference between these two types of electronic signatures can be compared to the difference between a simple and notarized handwritten signature.

According to this act, a simple electronic signature shall mean a data in electronic form attached to (or logically associated with) an actual text message, which is used to identify the signatory in relation to the text message. According to the explanatory note to the Act on Electronic Signatures, a faxed form of an acting person's handwritten signature (i.e., a scanned handwritten signature) or a special code or PIN, which the acting person

disposes of, for example, may serve as a simple electronic signature. The explanatory note, unfortunately, does not specify what is meant by a special code or PIN and who assigns it.

An advanced electronic signature is a signature uniquely linked to the signatory, is capable of identifying the signatory, and has been created and attached to the text message using means that the signatory can maintain under his exclusive control. The qualified certificate that enables signing by means of an advanced electronic signature may be obtained from each branch of the Czech Postal Service that provides the Czech POINT service.

As regards a simple electronic signature, there is a risk that it will be abused by a person who is not its owner, or the other party may doubt whether a person owning a simple electronic signature has, in fact, sent the particular e-mail. Therefore, if the parties wish to enter into written legal acts via e-mail and want to eliminate the stated risks, they should use exclusively an advanced electronic signature for their legal acting.

In practice, e-mails are mostly “signed” by simply stating the name and surname of the sender (or more precisely also stating a title and corporation, on the behalf of which a person is acting) below an e-mail text. With regard to the above mentioned, such a signature will, in our opinion, not constitute a simple (let alone advanced) electronic signature and e-mail signed in such a way will not constitute valid and legally binding form of legal acting in cases where the law requires a written form for such a legal acting.

A written form agreed between the parties

A somewhat different situation arises in cases where the law does not require a written form for certain legal acting but the contracting parties have agreed on a written form as a required form of legal acting. For example, they can stipulate that their contract may be validly amended only by written amendments or that certain acts in the course of the contract performance must be made only in writing.

In this regard, the contracting parties may also agree that such written acts will be made in writing via e-mail, using specific e-mail addresses of the parties. We are of the opinion that if, for example, an order is then received from the e-mail address specified in the contract, it is binding for the sender and if the other party accepts it via e-mail delivered from his/her e-mail address that is also specified in the contract, an individual contract for a respective performance is thereby concluded.

In this way, the contracting parties may make other written legal acts or even enter into written amendments to a contract (again only in situations where the written form is required by agreement of the parties and not by the law). Therefore, if it is so agreed in the contract, merely stating the name and surname below an e-mail message text, in our opinion, fulfils the requirement of a due signature and a written form of acting.

As in the case of a simple electronic signature, the above-described risks of abuse or challenge to a signature are real. So, even in this case we can only recommend that with respect to more important legal acting the contracting parties stipulate an obligation to sign e-mails by an advanced electronic signature (or

even rule out the electronic form of legal acting by agreement and for such an important legal acting require a classic “paper” form, possibly also with a notarized signature).

The absence of statutory or contractual requirement for a written form

If the law does not require a written form for a certain legal acting and the contracting parties have not explicitly agreed thereon, we believe that a mere e-mail communication between them can establish legal acting that is legally binding, if a person that is acting can, in a given case, be uniquely identified and the contents of such acting can be captured.

Such effects of e-mail communication may, under certain circumstances, be undesirable and constitute a source of legal uncertainty. If the parties want to exclude the risk of binding legal acting concluded via e-mail, it is suitable to exclude an e-mail communication in their contractual relations by an express agreement or to stipulate a compulsory written form associated with the requirement for an electronic signature.

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Legislative news

We would like to draw your attention to the following selected legislative news from the first quarter of 2015.

The amendment to the Act on Public Contracts

As of 6 March 2015, an amendment to the Act on Public Contracts came into effect. The amendment, among others, increased the limit for contracting additional works from one supplier from the existing 20% of the price of the original public contract to 30% and extended the partial evaluation criteria. It is newly possible to evaluate the organization, qualification, and experience of the persons involved in the implementation of the public contract. The contractor is also newly entitled to open even a single received tender bid without having to annul the tendering procedure. Other significant news concerns the proceedings to review the practices of the contracting authority with the aim to accelerate the proceedings and prevent its abuse.

Less paperwork for independent traders

As of 1 January 2015, independent traders that already submitted the excerpt from criminal register, evidence of a professional competence, or document for the registration of registered office/organizational unit along with some trade notification, request for a state authorization to carry on a trade (concession license), or a notice of change and the circumstances proved by these documents remain unchanged, need not submit such documents again when notifying additional trade or applying for another state authorization to carry on a trade

(concession license). The Trade Licensing Office itself may make copies of these documents. Another significant change is that the data on the place of residence will not be published in the Trade Registry. After four years following the expiry of the last trade license of an entrepreneur other data will not be made public.

Protection of private property by security cameras

On 25 February 2015, the Supreme Administrative Court in the case of Mr. Ryneš annulled the decision of the Office for Personal Data Protection. After unknown offenders repeatedly attacked him and his family house, Mr. Ryneš had security cameras installed in his house, which monitored events on the street in front of his house. The Office for Personal Data Protection fined him for the violation of the Act on the Protection of Personal Data. The Supreme Administrative Court ruled that imposing fine upon Mr. Ryneš was unconstitutional because until the end of 2014, when the issue of the exceptions to the applicability of the Act on the Protection of Personal Data was finally resolved by the Supreme Administrative Court, it had not been and could not even have been clear to him whether and when the Act on the Protection of Personal Data should be applied to installing cameras to the family home in order to protect the property and health, including the obligation to notify the competent authority. Therefore, it is not possible to punish people who had installed cameras (that also monitor public spaces) on their houses by the end of 2014 for doing so. (The full text of the judgment of the Supreme Administrative Court can be found on the website www.nssoud.cz)

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