



## **Regeneration: Electronic contracting and communication with public authorities**

Do you need to enter into a contract remotely or communicate with the authorities without a physical presence? If you are moving your business into a digital environment, this material provides an overview of the most important points related to electronic contracting and remote communication.

## Various options for concluding a distance contract

In Czech law, the principle of informality of legal action applies according to which everyone can choose any form for legal action unless prescribed by law (for example, for transfers of real estate or renting an apartment) or a prior agreement of the parties. Most contracts can be validly concluded orally (by phone). However, for better probative value, the parties often prefer a written form.

A written action may also be validly performed by electronic means and any data associated with the content and used for signing by the acting person may be used for signature. For example, this can include a simple typing of your last name at the end of an email, ticking the box in the online environment, or sending a handwritten signature scan. However, none of these methods can generally be recommended for more significant contracts since in practice, it is almost impossible to prove who actually carried out such an act and whether the document was interfered with in the meantime. For less significant contracts, this legal risk can be reduced by appropriate business setting of the transaction (e.g. advance payments or ongoing payment for services).

Guaranteed, recognised and qualified signatures, or the conclusion of a contract by means of data boxes, provide the form of electronic contracting which makes the evidence more reliable.

Services meeting at least the guaranteed signature level are commercially available.

To obtain a recognised or qualified signature, you must obtain signing certificates with limited time validity from one of the certification authorities. Part of the process is (usually a physical) verification of the identity of the requestor.

## Electronic communication with authorities or courts

In case you need to communicate electronically with the state administration, local government

or courts, you can use an e-mail signed at least by a recognised electronic signature or send a submission via a data box. As for the submission to the public administration which is done via your data box, there is no need to attach an electronic signature and the submission is delivered immediately.

Submissions can also be served to the courts via the website of the Ministry of Justice ePodatelna or by directly filling in the relevant electronic form (e.g. applications in public registers, applications for the issue of an electronic payment order, selected submissions for insolvency proceedings).

## Use of a data box between private entities

Private entities can also communicate with each other through a data box. Data boxes act as a means of electronic delivery with sender authentication (similar to sending a registered mail). However, in contrast to communication with public authorities, you cannot rely on the exact delivery date (the message is delivered only when the addressee logs into the data box interface).

Several conditions need to be met for communication between private entities. First, you must have a data box set up. You must then allow private messages to be received in the section Settings > Credit and Supplementary Services > Receive Mail Data Messages section. Since many business persons did not have private mail receiving activated in the past, this was a significant obstacle for the wider expansion of contracting through data boxes. The situation has recently improved significantly, however, it is not a rule. Nevertheless, there is nothing to prevent the parties from agreeing on a two-sided activation in advance.

While receiving private mail is free of charge, sending it is subject to a fee. For data boxes, you must also pay attention to the fact that the data box is not used by default to store received documents and all incoming messages are automatically deleted after 90 days from delivery. If the data boxes are to be used for electronic

contracting, then it is very convenient to activate a paid service called a data safe, which will keep messages stored in the data mailbox interface for an extended period of time.

### **Receipt of a contract signed by a recognised or qualified electronic signature**

If your business partner sends you a contract signed electronically, it is necessary to take the following steps. First, it is necessary to verify whether it is a recognised or qualified electronic signature or a lower level signature. Standard computer programs (e.g. for reading PDFs) allow you to view the details of the signature, including whether it is a signature based on a qualified certificate and whether it is an electronic signing certificate and whether the signature has been verified. If this information is included in the document, it is a contract signed in the most credible way. You no longer need to print such a contract or request a handwritten signature.

Please note, however, that if the contract is concluded for a longer period, usually several years, then it is necessary to remember the declining possibility of verifying the validity of the signature over time due to the time-limited validity of the signing certificates. If you need to have a contract archived, we recommend that you attach a so-called „qualified time stamp“ to the document before the certificate expires to ensure the integrity of the document, in particular for any potential dispute over the content of the contract. You must always repeat the process before the validity of the stamp certificate expires.

### **Electronic signing in relation to foreign countries**

Electronic signing is now, to a large extent, uniformly regulated in the European Union under the so-called eIDAS Regulation. A qualified electronic signature from one member state is

expressly recognised as a qualified electronic signature in all other EU countries under the eIDAS Regulation. However, even lower forms of electronic signatures from one member state generally meet the conditions for the relevant form in other states since they are subject to the same rules.

### **Electronic labour law documents**

Labour law documents can be formally signed electronically but the Labour Code imposes additional conditions that may present a significant obstacle in the expansion of electronic contracting in labour law relationships. It is worth mentioning, in particular, the relatively strict rules on electronic service, according to which an employee has to give written consent to this method, the document has to be signed with a recognised electronic signature and the employee has to confirm the receipt within three days through a message signed with his/her recognised electronic signature.

### **What documents cannot be signed electronically**

At present, it is not possible to sign documents for which official verification of signature under the Verification Act is necessary or which require the form of notarial record. You will not sign electronically e.g. certain actions relating to the establishment, transformations and dissolution of commercial corporations, the adjustment of your property regimes and, where appropriate, maintenance for the period after the divorce, or the application for setting up a data box and a qualified electronic signature.

Furthermore, documents which require paper form or are, by their own nature, deeds, cannot be signed electronically, in particular securities such as bills of exchange or cheques.

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