

# **Written form of legal transaction in e-commerce**

## **Abstract**

This thesis focuses on the written form of a legal transaction in the context of e-commerce. Every day, a number of contracts is concluded electronically on the internet and the need to deepen digital legal transactions is therefore growing every day. It is no exaggeration to conclude that we can no longer imagine life without electronic legal transactions.

The aim of this thesis is to analyse the legal regulation of electronic legal transactions in written form and to assess under which circumstances the requirements for such legal transactions will be met. The submitted thesis aims to answer and analyse whether the legal provisions and requirements for electronic legal transactions in written form are in compliance with the technical reality and technical possibilities of electronic legal transactions. Furthermore, this thesis addresses the question why the technologies on which electronic legal transactions (in written form) are based are becoming obsolete, how our legal system deals with this fact and how it faces these challenges. Finally, it critically inquires whether the current law sufficiently reflects the realities of electronic legal transactions and e-commerce to provide sufficient legal certainty for the parties whose rights and obligations are affected.

In the first and second part of the thesis, the author tries to introduce the reader to the topic of electronic legal transactions in written form by analysing the legal requirements for written form and the relevant legal regulations at the Czech and European level. In order to exhaust the topic sufficiently, the chapter is not limited to our territory, but also looks into the applicable law and doctrine of the Federal Republic of Germany. The author of the thesis also seeks answers to the set questions through the comparative interpretation method.

In the third part of the submitted thesis, the signature as one of the requirements for the written form is discussed. A great emphasis is placed here on the description of the functions of a signature that every signature, including an electronic signature, is supposed to fulfil. A thorough analysis of the functions of the signature is essential for the interpretation in the following chapters in which the functions of the signature are referred to. The functions of the signature permeate the whole thesis. In this part of the thesis, the electronic signature is further discussed, starting from the very base, i.e. from the lowest level of electronic signature - the simple electronic signature. The author of the thesis discusses in detail the application

of the different types of electronic signature and their advantages and disadvantages in the context of electronic legal transactions.

In the fourth part, the thesis touches upon a topic that raises a number of questions not only in the Czech legal environment, which is the simple electronic signature in e-mail and its legal effects. In this part, the author interprets and analyses the relevant legal provisions in the light of which the (simple) electronic signature must be interpreted. The author of the thesis does not neglect to take into account the established case law of the courts concerning the interpretation of electronic legal transactions in written form. It offers us several conservative answers regarding the interpretation of the relevant legal provisions regulating the (electronic) written form using predominantly linguistic and systematic interpretation methods.

The evidentiary function of the (electronic) signature is an important function, if not the most important function. In order to evaluate any electronic legal transaction, we must have evidence that it exists and has been validly concluded. For this reason, a separate fifth part of the thesis is dedicated to this issue.

In the sixth part of the thesis part of the thesis, the author of the thesis does not fail to take into account the development of electronic communication and electronic legal transactions in the Czech legal environment and tries to reflect new issues and challenges that are directly related to the development and expansion of electronic legal transactions. Therefore, in this part of the thesis the author deals with the online incorporation of companies, bank identity and other legal instruments that are new in the Czech Republic. In this way, the legislator tries to respond to this technological development and reflect it in the legal system. Banking identity is a fundamental novelty that represents a new and effective means of electronic identification, fulfilling the identification function of electronic signature, and is able to contribute to the development of e-commerce.

The author of the thesis is aware that international trade and transactions crossing the borders of the Czech Republic represent a great impetus for the progress of e-commerce. This argument is not ignored by the submitted thesis. On the contrary, it is emphasized in the *de lege ferenda* questions, which are addressed by the author at the end. In the full conclusion, the author of this thesis summarises the main points of the submitted thesis and draws conclusions based on the analysis of both Czech and European and German applicable law.

**Klíčová slova: electronic signatures, electronic legal transactions, eIDAS  
Regulation, written form, electronic identity**