

Benchmarking of existing national legal e-business practices

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Country report – Czech Republic

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Czech Republic

1.1 General information on the national legal system

Czech Republic is a democratic republic, consisting of Bohemia, Moravia and Silesia. Czech Republic is a Member of the European Union.¹

The most common way to implement an EU Directive regulating a new legislative field in the Czech Republic is to make a specific law containing all regulatory provisions. If a directive concerns an already regulated field, the regulatory provisions are most often implemented through changes in the existing legislation.

The Czech legal system adheres to the Roman civil law tradition. Czech civil law arises from Austrian civil law regulated in the 19th century. However, during the communism era civil law was paralysed by the communist idea. Therefore, it will take time until Czech civil law conforms to the needs of the Czech society at the beginning of the 21st century.

Czech civil law rests on written legislation. Court decisions are also considered important sources of law, but they are not binding except for some decisions of the Constitutional Court. The Czech court system is inspired by the traditions of continental Europe, and especially Austria.

The administration of justice in the Czech Republic is mainly regulated by the Civil Procedure Code.² Most cases are decided by the county courts. Commercial disputes are decided in regional courts if the claim is higher than CZK 100,000 (EUR 4,000). There is a one-instance appeal system in the Czech Republic, i.e., decisions from the county courts may be appealed to the regional courts, and decisions from the regional courts may be appealed to the High Court. Extra-ordinary appeals are solved by the Supreme Court.

In Czech civil procedure, negotiation is the fundamental principle i.e. that means: 1) The parties of the dispute have to prove their statements brought to the court; and 2) the court only analyzes the information and evidence presented by the parties of the dispute.

The parties of a contract are also free to choose arbitration for settlement of a dispute. In the Czech Republic, arbitration is dealt with by institutional arbitration courts such as the Arbitration Court of the Economic Chamber of the Czech Republic, the Agricultural Chamber of the Czech Republic³, or by an ad hoc arbitration court.

¹ Czech Republic has been a member of the European Union since 1 May 2004.

² [Act No. 99/1963](#) Coll., Občanský soudní řád, as amended

³ www.soud.cz

2. Electronic signatures

2.1 National legislation and administrative practices

The Czech Republic has fully implemented Directive 1999/93/EC of a Community framework for electronic signatures by the Act no. 440/2004 Coll., effective as of 26 July 2004, which has amended the Electronic Signature Act.⁴ The Electronic Signature Act entered into force as of 1 October 2000.

The Electronic Signature Act is supplemented by three executive orders, namely the Order no. 366/2001 Coll. explaining some conditions of the Electronic Signature Act, the Order no. 495/2004 Coll., implementing the Electronic Signature Act and the Order no. 496/2004 Coll., on electronic filing rooms.

The Electronic Signature Act governs in accordance with the law of European Union use of electronic signature, electronic mark, provision of certification services and connected services by providers seated on the territory of the Czech Republic, control of obligations stated thereby and penalties for a breach of obligations stated therein.

All requirements of the Electronic Signature Directive are implemented in the Electronic Signature Act.

The Electronic Signature Act, as amended, describes 4 types of signatures: 1) An electronic signature, 2) An advanced electronic signature, 3) An advanced electronic signature based on a qualified certificate, 4) An advanced signature based on a qualified certificate issued by accredited providers of certification services. The electronic signatures under no. 3 and no. 4 are regulated by the Electronic Signature Act in details.

In addition to the requirements of The Electronic Signature Directive, the Electronic Signature Act contains rules and definitions of an "electronic mark" and a "qualified time stamp".

The electronic mark is defined as data in electronic form which are attached to the data message or which are logically connected therewith and which meet the following requirements:

1. they are connected unambiguously with the marking person and enable its identification through qualified system certificate,
2. they were created and connected to the data message through means for creation of electronic marks which marking person can keep under its explicitly control,
3. they are connected to the data message, to which are related, by the method which enables any subsequent change of the data.

Electronic mark shall be used instead of a signature of an individual, e.g. in case of issuance of excerpts from the real estate cadastre.

⁴ Act no. 227/2000 Coll., Zákon o elektronickém podpisu a o změně některých dalších zákonů, as mended

Qualified time stamp is defined as a data message which was issued by a qualified certification service provider and which connect the data in electronic form with a certain time moment in a credible manner and ensures that mentioned data in electronic form existed before the given time moment (e.g. a confirmation of time of issuance of a data message).

The Electronic Signature Act does not regulate a "qualified electronic signature" based on a chip card. Therefore, these chips cards are only issued by one accredited service provider in the Czech Republic. Thus, opportunities to use a qualified electronic signature based on a chip card are limited due to these restrictions.

Article 5.1 of Directive 1999/93/EC has been transposed into the Civil Code.⁵ It ensures a written form is preserved if the legal act is made by electronic means and signed by an electronic signature as specified in the Electronic Signature Act. The Electronic Signature Act stipulates that an electronic message is deemed to be signed if provided by an electronic signature.

Article 5.1 letter b) and Article 5.2 of Directive 1999/93/EC (concerning legal effectiveness and recognition in legal proceedings) have not been expressly implemented in the Czech Republic. No current case law has been issued in this respect.

Section 11 of the Electronic Signature Act regulates that in the area of public authority only advanced electronic signatures/electronic marks both based on qualified certificates issued by accredited providers of certified services (this type of electronic signature is called "recognized electronic signature") may be used. Therefore, a paper issued by a public authority by electronic means and signed by recognized electronic signature/electronic mark based on qualified certificate issued by accredited providers of certified services is deemed to be an official document, which can be used in proceedings lead by public authorities. This is supposed to be used for excerpts from the Commercial Registers and Land Registers in the future.

The advanced electronic signatures based on qualified certificates and qualified certificates issued by accredited providers of certification services are also used in C2G and B2G relations. However, not all administrative actions towards public authorities may be done electronically. For example, tax returns may be filed electronically if they are signed by electronic signature based on a qualified certificate or by recognized electronic signature. Therefore, the tax advisors usually apply for such electronic signature.

Documents of the court or administrative authority may be delivered to the addressees electronically. Such delivery is only effective if the addressee confirms its receipt within 3 days electronically with an advanced electronic signature. It is important to note that a contradiction exists between the Electronic Signature Act and the law regulating administrative and civil procedure. The Electronic Signature Act requires an advanced electronic signature based on a qualified certificate or a recognized electronic signature, while the law regulating administrative and civil procedure requires only an advanced electronic signature. There is not a unique opinion whether advanced electronic signature is suffice. This problem will hopefully be solved through case law in the near future.

⁵ Act no. 40/1964 Coll., Občanský zákoník, as amended

There are three accredited service providers in the Czech Republic. However, none provide the advanced electronic signatures based on a qualified certificate who were not granted the accreditation by the Ministry of Informatics. Thus, no advanced electronic signatures based on a qualified certificate are issued in the Czech Republic.

National identity cards with electronic signatures have not been issued in the Czech Republic. One reason is due to the high cost of issuing roughly 10 million identity cards containing an electric signature. Although the Czech Republic has not planned to issue identity cards with an electronic signature, this may change after the parliamentary elections in June 2006.

The Ministry of Informatics has been trying to promote the use of electronic signatures. Under the "E-Signatures for Municipalities" project, the Czech Ministry of Informatics provided free electronic signatures to over 1850 municipal authorities in an effort to promote the use of electronic signatures within the administrative work of authorities. In 2006, the Ministry of Informatics has been preparing an application making electronic signatures easier for the authorities and for the people of the Czech Republic. The electronic signature will be used by the people via the Public Administration Portal and local authorities will be able to implement it in their own systems without any fee.

2.2 Cross border regulatory issues

Section 16 of the Electronic Signature Act stipulates that qualified certificates issued by a certified service provider seated in one of the EU countries shall be considered as a qualified certificate regulated by the electronic Signature Act. Therefore, qualified signatures from other membership countries should be treated in the same way as qualified signatures originating from the Czech Republic.

However, there are some exceptions to this rule. For example, electronic tax returns may only be signed by the recognized electronic signature issued by Czech service provider. As a result, there is no standard for recognizing whether the certified service provider seated in one of the EU countries is qualified to issue qualified certificates. The Ministry of Informatics is trying to formulate a solution of this problem.

Also, access to the foreign public authorities is still very difficult as many EU countries are using qualified signature based on a chip card, which is not regulated by the Electronic Signature Act (please see above).

Therefore, in cross-border transactions, electronic signatures are used mainly in private transactions.

Companies registered in a foreign country may obtain an electronic signature in the Czech Republic under the same circumstances as Czech companies.

3. General elements of electronic contract law

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through the Act no. 367/2000 Coll., amending the Civil Code (effective date 1.1.2001).

Directive 99/44/EC on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees has been implemented in national law through Civil Code (effective date 1.1.2001)., Act on Common Safety of Products⁶ (effective date 22.2.2001). and Act on Technical Requirements of Products (effective date 3.4.2000).⁷

Directive 1998/6/EC on Price Indications has been implemented through amendments to the Act on Prices (effective date 1.5.2004).⁸

Directive 2000/31/EC on Information Society Services, in particular electronic commerce has been implemented into Certain Information Society Services Act⁹ (effective date 29.7.2004) Art. 5 and 6 of the Directive 2000/31/EC concerning information to be given prior to the completion of a contract has been correctly and fully implemented.

3.1 National legal and administrative practices

The regulatory framework for all contracts including electronic ones is based on the Czech Civil Code, which contains the basic principles of Czech contract law. The Commercial Code¹⁰ stipulates divergences of contract law valid for B2B contracts including civil B2G contracts.

It can be derived from the Civil Code that conclusion of contracts is not subject to formal requirements unless expressly stated in a legal provision. This principle has been recognised and accepted in numerous court decisions. Therefore, a contract must be written only if stipulated by the law and written form is kept if the legal act, e.g. contract, is created electronically.

A contract must include offer and acceptance. The offer is considered valid and binding for the submitting party if it "manifests" a will to be bound in accordance with the content of the manifestation for the case it will be accepted. Both offer and acceptance are legal acts which have to be carried out freely and seriously, certainly and understandably, otherwise they are not valid. However, neither the offer nor the acceptance may contravene the law, evade the law or contravene the good manners.

Oral contracts are difficult to prove in a court or arbitration proceeding. It is highly recommended that contracts are in written form. A contract is deemed valid if both the offer and acceptance are written, but they are not on one paper. On the other hand, the law may stipulate exemptions, e.g. agreement on transfer of real estates.

⁵ Act no. 102/2001 Coll., o obecné bezpečnosti výrobků, as amended

⁷ Act no. 22/1997 Coll., o technických požadavcích na výrobky, as amended

⁸ Act no. 526/1990 Coll., o cenách, as amended

⁹ Act no. 480/2004 Coll., o některých službách informační společnosti, as amended

¹⁰ Act no. 513/1991 Coll., obchodní zákoník, as amended

There have been no specific transposition of Art 9 (2) of Directive 2000/31/EC that excludes specific types of contracts to be concluded electronically. However, some of the specific types of contracts which may be excluded from conclusion by electronic means according to Art 9 (2) remain excluded under the Czech law, e.g. agreement on transfer of real estates.

3.1.1 *Electronic invitation to make an offer and submission of an offer*

The Civil Code stipulates that the offer has to be specific enough and has to express the will to be bound in order to be accepted. In the event the offer is provided by electronic means, the main inquiry is whether the website itself is already the offer or just an invitation to make an offer which is not binding.

Most of the legal authors are of the opinion that the website is only an invitation to make an offer which is not binding. This opinion is supported by the fact that when advertising on a website, the e-seller can not ensure that all the goods/services offered on the website will be available for all potential purchasers as the website may visit unlimited number of people.

On the other hand if the performance arising from the contract may be provided on-line, then, thanks to digital copying the performance will be available for all costumers. Therefore, in this case the website may be viewed as an offer for uncertain number of persons, and in B2B relations as public proposal for conclusion of a contract.

However, there have not been any crucial court decisions in this respect. Therefore, the step of the buyer clicking the "order" button is considered a binding offer.

The offer sent to the other party is binding. However, such offer may be cancelled if the cancellation is received by the other party earlier then the offer or at least at the same moment as the offer. If the offer is made by electronic means it is not very probable that the cancellation is received earlier than or at the same moment as the order.

The offer may be also recalled if the recall is received by the other party before the other party sent the acceptance. The recall may be used if the e-contract is concluded per e-mail. In case of conclusion of contract per website it is usual that the acceptance is sent automatically; therefore there is no time for sending the recall.

Regarding delivery of the offer, the electronic offer is delivered to the other party when the other party has access to the good or service.¹¹ When the offer is sent electronically to the other party who is an entrepreneur, the business hours of the other side should be taken into the account.

¹¹ Section 53/5 of the Civil Code; however, this section regulates only consumer contracts.

3.1.2 *Electronic acceptance*

According to Czech law, the acceptance is binding at the moment of its delivery to the person who made the offer. However, the offer has to be accepted in full; otherwise, it is not an acceptance but a new offer. The acceptance must be also sent within the acceptance period.

The moment of delivery of the electronic acceptance is the same as mentioned above for offer. The contract is concluded at the moment of delivery of the acceptance.

3.1.2.1 Information obligations in relation to electronic contract conclusion

The legislation in the Czech Republic complies with the requirements set forth in Article 5 of Directive 2000/31/EC on Electronic Commerce, Articles 4 and 5 of Directive 97/7/EC on Distance Contracts, and Arts. 3, 4 and 5 of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services, regarding the information that must be given to the consumer before and after the order is placed. Czech legislation does not specify stricter rules.

The Association for Protection of Consumers¹² has in the year 2005 tested 100 e-shops whether they comply with the information obligations arising from the above mentioned Directives implemented into Czech law. The results were as follows:

- only 6 % of e-shops had deficiencies regarding provision of its business name and seat;
- 14 % of e-shops did not publish their identification number;
- 59 % of e-shops did not inform the consumers on their right to withdraw from the contract concluded by electronic means or did not instruct them at all;
- 7 % of e-shops shortened the legal guaranty period;
- 15 % of e-shops expressly excluded the right of consumer to withdraw from the e-contract if the consumer handed over the goods personally.
- Only **29 %** of the tested e-shops met the above mentioned researched criterions.

The test conducted by the Association for Protection of Consumers found that enterprises are having problems complying with the information requirements, although such a test is made every year and the tested e-shops have been advised about the inconsistencies.

On the other side, the Association for electronic commerce (APEK) is of the opinion that the majority of the largest e-shops comply with the legal provisions regarding consumers' protection.

¹² Sdružení pro ochranu spotřebitelů, www.spotrebitele.cz

3.1.2.2 Standard terms and unfair clauses

Under Czech law, standard terms are only considered a part of the contractual agreement, when the party accepting the standard term has a knowledge of the standard terms or had a chance to become familiar with the terms prior to the conclusion of the contract.

In the Czech Republic the consumer protection applies to SMEs in case that legal entity purchases goods or uses services with other than business purpose.

Standard terms sent with an invoice or order confirmation or just made generally available on the webpage of the seller without any direct connection to the actual sale will, as a general rule, not be considered part of the contractual agreement regardless of whether the contract is a business or a consumer contract.

The technical solution of this issue is that the contracting party must work through the terms of the contract in order to proceed on the conclusion of the contract. This can be done by the contracting party "passing" and "confirming" a page with contract terms before the contract is concluded, possible by the terms appearing in full text on the page and the contracting party confirming having seen it by scrolling down over the page and clicking on a confirmation button. This party should not be able to execute the contract, i.e. send its offer or acceptance, without reading the terms.

The standard terms must be provided to the consumer in a form which enables archiving and reproduction.

In compliance with the Civil Code a seller has a legal duty to inform a consumer clearly about individual technical steps required for a contract conclusion. This should include information regarding a point and click acceptance of standard terms such as in which part of the process of conclusion of a contract the standard terms are accepted and the way by which is done so. The standard terms should be distinguished from a normal environment of a web page so that a consumer is clearly aware of the action of accepting the standard terms. In other case a consumer's claim of his mistake caused by a seller might be lodged which can result in a nullity of the concluded contract.

In compliance with the Directive 97/7/EC on Distance Contracts, consumer contracts must not contain any provisions which are unfair for the consumer. The unfair clauses which are forbidden in the consumer contracts are described in Section 56 of the Civil Code.

Unfair provisions contained in a consumer contract are considered to be valid until the consumer effectively claims their invalidity. If the unfair provisions are not separable from the other parts of the contract the whole contract may be claimed invalid.

Regarding B2B contracts, the Commercial Code stipulates that contractual provisions in contradiction to the principles of the honest commercial relations are not protected and therefore invalid. If such contractual provision is severable of the other parts of the contract than only this provision is invalid.

The court may not change the rights and obligations arising either from the B2C or B2B contract except for some exemption, such as decrease of contractual penalty in B2b contracts or decrease of damages in B2C contracts.

Disputes arising from B2B and B2C contracts regarding the standard terms and unfair provisions may be decided either by an arbitration body or by the respective court.

3.1.3 *Choice of law and forum*

The Czech Republic has not ratified the Rome Convention on the Law Applicable to Contractual Obligations¹³ opened for signature in Rome on 19 June 1980. Ratification of the Rome Convention is under preparation. After its ratification, the Czech Republic will have special principles for B2C contracts.

On 5 March 1990, the Czech Republic ratified the United Nations Convention on the International Sale of Goods (CISG). The Czech Republic has made an exception regarding Section 1/1(b) thereof, which means the CISG is applicable only in cases where the contractual agreement for the purchase of goods is concluded between parties seated in the countries that ratified the CISG. CISG can not be used for B2C contracts.

Pursuant to the Czech International Private Law¹⁴, choice of law is the basic principle for the contractual law. This principle applies also for B2B and for B2C contracts. In the case where choice of law was not carried out, International Private Law stipulates subsidiary principles for determination of a foreign law. In case of electronic contracts, there is a subsidiary principle for contracts concluded between not present parties-these contracts shall be governed by the law of the state where the offer receiver has the seat.

There is also a subsidiary principle for contracts concluded between present parties; these contracts are regulated by the law of the place of conclusion of the contract. However, there is a question of whether the parties are present if both are on-line on the same time. If this is the case it will be also difficult to determine the place where the contract was concluded.

Most of the Czech legal authors are of the opinion that the law of the seat of the receiver of the offer shall be used for e-contracts without express choice of law.¹⁵

There is no special principle for consumer contracts. In the case where no express choice of law was selected in the B2C e-contract and the offer was sent by the consumer, the law of the seat of the entrepreneur will be used as governing law. This may be inconvenient for the consumer. For this case Czech International Private Law contains a principle that law of foreign country can not be used if it is contrary to the legal order of the Czech Republic including protection of consumers.

Directive 2000/31/EC on Electronic Commerce is based on a country of origin principle, which provides that information society services are only required to comply with the requirements of the Member State in which the service provider is located.

¹³ 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

¹⁴ Act no. 97/1963 Coll., o mezinárodním právu soukromém a procesním, as amended

¹⁵ www.ipravo.cz

Council Regulation (EC) No 44/2001¹⁶ that replaces the Brussels and Lugano Conventions is applicable to the Czech Republic.

Regarding the forum, the Czech courts are competent for B2B and B2C cross border contracts if they are competent for these issues pursuant to the Civil Procedure Code. However, after joining the EU the Council Regulation no. 44/2001 prevails.

3.2 Cross border regulatory issues

During the research, neither specific court rulings on the use of electronic contracts in cross-border trade between enterprises nor any cross-border regulatory barriers related to electronic invitation to make an offer, submission of an offer and acceptance of an offer have been identified.

4. Electronic invoicing, payment and other matters related to execution of electronic contracts

4.1 National legislation and administrative practices

The obligation to pay for goods and services in B2B and B2C transactions does not differ from the obligation to pay in traditional off-line business relationships. Section 560 of the Civil Code stipulates that if both parties have to make a performance, only that party which has already fulfilled its obligation or is ready to fulfil its obligation can claim fulfilment of other party's obligation.

Electronic invoicing

Directive 2001/115/EC was implemented through the Act on VAT (effective date 1.5.2004).¹⁷ The Act on VAT stipulates what the invoice shall comprise. In compliance with Article 2 para 2b) of the Directive 2001/115/EC the invoice does not need to be signed. No additional requirements going beyond those of Directive 2001/115/EC have been introduced.

The Invoice may be, subject to the approval of the person for whom the performance is provided, issued also in an electronic form if it is signed by advanced electronic signature or electronic mark each of them based on qualified certificate or if the credibility is kept by using EDI. The Act on VAT provides for similar legal status of the paper and electronic invoice.

As the usage of electronic invoices is conditioned by prior approval of the person for whom the performance is provided, the electronic invoicing is not working very well in practise. APEK takes part in many projects to find the best solution of this issue.

¹⁶ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

¹⁷ Act no. 235/2004 Coll., o dani z přidané hodnoty, as amended

Means of payment and the obligation of the parties regarding the use of certain payment instruments

Act on Transfer of Funds, Electronic Payment Instruments and Payment Systems (the "Electronic Payment Act")¹⁸ implements Directive 2002/65/EC concerning payment.

The Electronic Payment Act regulates electronic payment means and electronic money.

Section 16 of the Electronic Payment Act stipulates the duty of the Czech National Bank to issue the samples of commercial terms for issuance and using of electronic payment means in order to increase consumers' protection. These sample commercial terms were issued at the end of the year 2002 and include principles contained in the Recommendation 97/489/EC.

Section 18 of the Act on Payment Relation correctly implements provision of the Article 8 of Directive 97/7/EC for case of distance contracts relating to the misuse of the electronic payment means including the payment card. Protection of the card holder is crucial.

In case of payment by electronic payment means without its physical presentation or without identification of the holder of the electronic payment means, the holder is allowed to declare not to have used the electronic payment means for payment and demand from the issuer of the electronic payment means the money which was used for payment. The issuer is obliged to give back this money to the holder. That means the issuer is responsible that the electronic payment means will not be misused.

Regarding protection against misuse of other types of payment e.g. direct bank transfer, there is no legal provision regulating this matter in the Czech Republic as it is rather an issue stipulated directly in the contract between the respective financial institution and its customer.

4.1.1 *Delivery of the good or provision of services ordered electronically and withdrawal period*

In the Czech Republic, compliance with the contractual and consumer rights in cross-border B2B and B2C transactions is ensured by Czech courts. Associations of consumers try to warn off non compliance with the Czech law in order to protect consumers.

The above mentioned means of protection are not very effective because the judicial proceedings are rather slow and consumer associations do not have enough power to ensure the protection.

4.1.1.1 Non-performance of the obligation to deliver and late delivery

The general non-performance and late delivery rules are contained in the Civil Code for B2C transactions and in the Commercial Code for B2B transaction.

¹⁸ Act no. 124/2002 Coll., o převodech peněžních prostředků, elektronických platebních prostředcích a platebních systémech, as amended.

In B2B transactions, the purchaser of goods or of services is granted the following remedies in case of non-delivery:

The purchaser can insist on the performance or can withdraw from the contract if delay with the delivery is material. The delay is considered to be material if the seller in the time of execution of the contract knew that the purchaser will not be interested in delayed performance. The right to withdraw has to be announced to the other party without undue delay.

In the event delay with the delivery is not material, the purchaser may withdraw from the contract only if it has provided an additional adequate time period for performance to the seller and the seller did not performed within this period.

In both cases the contract is terminated by withdrawal as of the day the announcement of withdrawal was delivered to the seller. By withdrawal all rights and obligations arising from the contract cease to exist.

In addition to the above, in B2B transactions, the purchaser is entitled to demand damages if the goods are not delivered at the agreed time.

In case of non-delivery in the B2C transactions, the purchaser of goods or of services has the same remedies as the B2B purchaser. However, the contract is terminated only after expiry of additional adequate time period provided by the purchaser. In case it arises from the contract that the purchaser is not interested in delayed performance, the contract is cancelled from the beginning, unless the purchaser announces to the seller without undue delay that he/she insists on the performance.

4.1.1.2 Right of withdrawal from the contract in B2C transactions and return of the good

In case of contracts governed by Directive 97/7/EC on the protection of consumers in respect of distance contracts, the right to withdrawal is 14 days. In case the information obligation of the seller was not fulfilled the right to withdrawal is prolonged to 3 months.

In case of insurance the time period for withdrawal is stipulated in the Act on Insurance Contract¹⁹ which implements the Directive 2002/65/EC. The time period for withdrawal from insurance is 14 days, except for life insurance where the time period for withdrawal is 30 days.

4.1.1.3 Delivery of a good not in conformity with the contract

In accordance with the Civil Code which has implemented Directive 1999/44/EC, the seller must deliver goods to the consumer which is in conformity with the purchase contract.

In the lack of conformity the consumer is entitled to have the goods brought without undue delay into conformity free of charge by its replacement or repair. If the foregoing is not possible, the purchaser may demand an appropriate reduction in the price or withdraw from the contract.

The consumer's rights as described above must be asserted within a 2-year period.

¹⁹ Act no. 37/2004 Coll., o pojistné smlouvě, as amended.

There are some civil associations to protect consumers in the Czech Republic. The civil associations try to protect consumers through a number of objectives, which include among other things organizing seminars, advising consumers of their rights, and advising consumers on hold to file a complaint.

4.2 Cross border regulatory issues

There are no court rulings on electronic invoicing or payment related to execution of cross-border electronic contracts.

In compliance with the Regulation 2560/2001, Czech banks are obliged to inform their customers about all possibilities regarding cross-border electronic payment and about the fees for cross-border electronic payment.

The national electronic invoicing is not very effective and there are numerous problems connected with the cross-border electronic invoicing.

5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing

5.1 Main legal and administrative barriers to e-business

The following main legal and administrative barriers to e-business in the Czech Republic have been identified:

1. Inconsistency between particular legislations, impossibility to use some legal provisions in practice and non-existence of case law

As already mentioned above, there are inconsistencies between the Act on Electronic Signature, the Civil Procedure Act, and the Administrative Procedure Act²⁰ regarding what type of electronic signature shall be used when communicating with the public authorities. Further problems applying the Czech legislation in practise are impossibility of usage of foreign advanced electronic signatures based on qualified certificate when communicating with public authorities, electronic invoicing without approval of other party etc. These problematic issues will hopefully be solved by case law. Unfortunately, because e-business is rather anew issue, there are not many crucial decisions in this respect which would interpret the written law.

2. Slowly introducing of electronic means into the communication between public authorities and common public

Although the B2B and B2C types of e-business are on a rather good level the e-government is still behind. However, improvement is already under preparation. The electronic excerpts from Cadastral Register and from Commercial Register which will be signed by advanced electronic signature/electronic mark based on qualified certificate issued by accredited service provider will be used as official ones. Also the communication of the entrepreneurs with the Commercial Register and Cadastral Register should be electronic.

²⁰ Act no. 500/2004 Coll., správní řád, as amended

3. Compliance problems for online shops

The above described survey made by the Association for Protection of Consumers in the year 2005 showed that most of the online shops do not comply with the requirements of Directive 2000/31/EC on Electronic Commerce and Directive 97/7/EC on Distance Contracts.

4. The legislation offers limited protection for smaller businesses in electronic commerce

While consumers are relatively well protected by the Czech legislation, enterprises are offered a very low level of protection by the legislation. Also the enterprises carrying out business with consumers feel an imbalance between the protected rights of the consumers, in relation to the limited rights of enterprises.

5.2 Awareness about national authorities in charge of solving legal problems in e-business

There are few authorities in charge of solving legal problems within the legal field of e-business. The crucial authority is the Ministry of Informatics²¹, which is in charge of supporting and improving e-business. Specifically, e-government and electronic signature. The electronic commerce and protection of consumers is governed by Ministry of Trade and Industry²².

The awareness of national authorities in charge of solving legal problems in e-business among consumers and businesses has not been subject to a particular study.

However, the examinations conducted by the Association for Protection of Consumers²³ have demonstrated a lack of awareness among businesses in relation to the general legislation. This implies, in turn, that there could be a lack of awareness about national authorities in charge of solving legal problems in e-business.

5.3 Legal and administrative best practices in e-business

The most effective legal and administrative practices of e-business in the Czech Republic is mainly carried out by the Ministry of Informatics. These include projects like supporting usage of advanced electronic signatures by municipalities.

²¹ www.micr.cz

²² www.mpo.cz

²³ www.apek.cz

ANNEX 1: Interviews performed

- Lenka Nezdarova, Ministry of Informatics
- Nikola Rafaj, Association for Electronic Commerce

ANNEX 2: E-business national legislation

The regulatory framework for e-business in the Czech Republic is based on the Civil Code²⁴ and Commercial Code²⁵. These laws are supplemented by the Act on Electronic Signature²⁶, Act on Payment Relation²⁷, Act on Insurance Contract²⁸, Act on Protection of Consumer.²⁹ Also the Act on Protection of Personal Data³⁰ has an important role in the regulation on e-business.³¹

²⁴ Act no. 40/1964 Coll., občanský zákoník, as amended

²⁵ Act no. 513/1991 Coll., obchodní zákoník, as amended

²⁶ Act no. 227/2000 Coll., o elektronickém podpisu, as amended

²⁷ Act no. 124/2002 Coll., o platebním styku, as amended

²⁸ Act no. 37/2004 Coll., o pojistné smlouvě, as amended

²⁹ Act no. 634/1992 Coll., o ochraně spotřebitele, as amended

³⁰ Act no. 101/2000 Coll., o ochraně osobních údajů, as amended

³¹ <http://www.mvcr.cz/sbirka/index.html#portal>
http://portal.gov.cz/wps/portal/_s.155/6966/_s.155/699/place