



# Legal Environment of IT Outsourcing in the Czech Republic

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## Czech Law and European Union

Legal environment of information technology (IT) outsourcing in the Czech Republic at the same level or even above the average, compared with other member states of the European Union.

This situation results from the fact that the newest European regulation (*acquis communautaire*) was adopted in the framework of the Czech Republic accession process. In older member states, similar legislation has been incorporated already earlier and *acquis communautaire* is implemented nowadays.

Since 2000 many statutes have been incorporated into Czech law, regulating some of IT aspects. Moreover, many other acts newly contained regulation of automation data processing in the form of registers and

other evidences kept exclusively in electronic form or regulation of using Internet (especially e-mail and remote server access, etc). There is also legal regulation of different relative areas, e.g. telecommunications or areas where the electronic form appeared as an alternative to the classical paper form of data processing (electronic signature or customer contracts).

The structure of regulation related to IT is in the Czech Republic similar to that in other European countries. It is because of both unitary implementation of *acquis communautaire* and common historic roots other than European Union or European Economic Community, e.g. international treaties in the area of intellectual property law. In connection with the Czech Republic's accession to the European Union, there

was a natural shift to much greater unification of legislation, including IT legislation. These changes were not only positive, nevertheless alternative approaches beside *acquis communautaire* are probably not possible.

## Current Legislation

Similarly to other European countries, there are traditional statutes which significantly influence IT law. Here is a list of them:

1. Act No. 121/2000 Coll. Copyright Act
2. Act No. 101/2000 Coll. Personal Data Protection Act
3. Act No. 151/2000 Coll. Telecommunications Act

The acts regulating contractual relationships can be applied in case of unlawful

conduct, which may arise in the IT environment. Main examples:

4. Act No. 40/1964 Coll. Civil Code
5. Act No. 513/1991 Coll. Commercial Code

If tort is committed, illegal act may be punished according to:

6. Act No. 140/1961 Coll. Criminal Code
7. Act No. 200/1990 Coll. Act on Transgressions

And there are also special acts dealing with specific issues in IT:

8. Act No. 227/2000 Coll. Electronic Signatures Act
9. Act No. 365/2000 Coll. Public Administration Information Systems Act;
10. Act No. 480/2004 Coll. Certain Information Society Services Act („Anti-Spam Act“)

Electronic Signatures Act is one of the most elaborated acts in Europe or even in the world and contains new elements extending requirements of Directive No. 1999/93/EC. Except for time stamp which is already used in the world, there are new important innovations which might be related especially to activity of the state authorities. It is so called electronic mark and electronic public deed.

Nowadays a new electronic communications act is prepared. This act shall be in compliance with a new EU regulative framework for electronic communications which is a next step to the full liberalization of telecommunications market.

### Legal aspects of IT outsourcing

The most used contracts in IT outsourcing are contract for work and innominate contract. Contract for work is regulated by Commercial Code. Under a „contract for work“, the „contractor“ undertakes to carry out specific work and the „employer“ undertakes to pay him a price for its performance. With respect to the fact that IT outsourcing is usually provision of services concerning copyright and other intellectual property rights, protecting personal data and usually also performance of other activities for the benefit of employer, the most common contract is innominate contract, concluded according to Section 269 Par. 3 of Commercial Code. This contract might contain elements of contract for work, mandate contract, future contract, contract of purchase or licensing contract.

With respect to high level of contractual freedom in the area of contractual relationships (among enterprises) and in the area of intellectual property law, it is possible to adjust contract to practically every sort of IT service so that the contract could comply with interests of both sides. After accession of the Czech Republic to the European Union, the barriers in the area of personal data transfer between EU member states disappeared and outsourcing involving cross border personal data processing (banks, insurance companies) is possible to provide easily without any restrictions.

The only issue to be dealt within cross-border relationships is the decisive law and jurisdiction. Generally, in accordance with

international private law, if parties do not choose decisive law, their contractual relationships are governed by law order application of which corresponds to the reasonable framework of such relationship. With respect to this fact, contracts of purchase and contracts for work are governed by law determined according to the seat of seller or contractor (i.e. outsourcing provider) in time of contract conclusion. It is possible for parties to agree on another rule of law – either according to seat of outsourcing client or just choose another neutral law and jurisdiction.

### Conclusion

Service providing in the area of IT including outsourcing is limited by no legal regulations neither in the Czech Republic nor outside the Czech Republic. Conclusion of contracts regarding outsourcing brings no troubles in the framework of current Czech legislation, only if the parties and their legal advisors know exactly what they want.

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