

# Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:  
29 June 2020

Electronic documents

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## Content of this issue:

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### → Use and circulation of electronic documents

- Legally binding electronic document
- Compliance requirements for E-documents
- Use of E-documents for company's internal processes
- Use of E-documents in external communication

## → Use and circulation of electronic documents

Taking into account the current situation in the world, when not only companies in the private sector but also state and municipality institutions, to the best of their ability, are organizing work remotely using electronic means, we have prepared a short summary on electronic documents, the use of electronic documents for internal purposes and communication, as well as for communicating with state and municipality institutions and business partners.

### LEGALLY BINDING ELECTRONIC DOCUMENT

The definition of the term “electronic document” can be found in point 3 of article 1 of the Electronic Documents Law of the Republic of Latvia (hereinafter – Electronic Documents Law) and point 35 of article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (hereinafter – eIDAS Regulation). An Electronic document, hereinafter also – E document, means any content stored in electronic form, in particular text or sound, visual or audiovisual recording. Accordingly, any content that has been made or converted into electronic format, including scanned documents, are also considered to be E-documents.

According to the guidelines for preparation and formatting electronic documents published by the Ministry of Justice of the Republic of Latvia, the main difference between a document and simple information, data and the contents thereof is that a document serves as proof of action and it adds value to an organization’s or natural person’s activity, by giving a document legal weight. On the other hand, the use of information and data is not primarily subordinated to legal formalization or validity. Due to the aforementioned considerations, in this article, herein E-documents of purely informative nature, such as brochures, leaflets, will not be specifically reviewed, as they do not require compliance with the requirements of laws and regulations on preparation, formatting and circulation of E-documents.

Stemming from the above a conclusion can also be drawn that not all E-documents automatically have legal force according to the Electronic Documents Law and, for such a document to be legally binding, one must follow the requirements for preparing and formatting, including observance of signing E-documents. For

example, for a scanned document to possess the same legal force as the original hard copy document, a person, who is authorized to produce copies of the original document must electronically certify that the scan is correct and matches the original.

### COMPLIANCE REQUIREMENTS FOR E-DOCUMENTS

For a company or a natural person to use E-documents for their lawful interests, they must be aware that in preparing any E-document, not only must they observe all the same requirements as for preparing paper documents, but also a number of additional requirements regards to formatting E-documents must also be observed.

The most appropriate way of guaranteeing legal force of the E-document is, of course, to follow the requirements of the Law on Legal Force of Documents, the Electronic Documents Law and the Cabinet Regulation No.473 “Procedures for the Preparation, Drawing Up, Storage and Circulation of Electronic Documents in State and Local Government Institutions, and the Procedures by which Electronic Documents are Circulated between State and Local Government Institutions, or Between These Institutions and Natural Persons and Legal Persons” (hereinafter – the Regulation) and to sign E-documents with a secure electronic signature. The aforementioned regulatory acts contain the most important instructions for preparing documents, including E-documents, as well as instructions regarding the formatting and details that must be included in the document for it to possess a legal force.

Details which according to article 4 of the Law on Legal Force of Documents, ensure the legal force of a document are:

- the names of the authors of the document;
- the date of the document;

- signature (except for cases mentioned in the law, including electronic signatures for E-documents).

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In addition to the above mentioned, to ensure the legal force of organizational documents in some cases as set out in the law, the document must also contain:

- the name of the place the document was issued;
- a stamp imprint (for E-documents this requirement is met if the document has been signed with a secure electronic signature containing a time stamp or with an electronic signature if the parties have agreed to such terms beforehand);
- an inscription of acceptance of the document or a remark certifying the document;
- the registration number of the document;
- the recipient of the document (if necessary);
- the signatures of all respective people (if the document requires the signatures of several people).

As regards the signing of E-documents, it is important to emphasize the difference between an electronic signature and a secure electronic signature. According to point 10 of article 3 of the eIDAS Regulation, electronic signature means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign. According to point 12 of article 3 of the eIDAS Regulation and point 2 of article 1 of the Electronic Documents Law, a secure or qualified electronic signature means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures. In other words, a secure electronic signature contains a unique certification of identity, which is added to the document prepared on the signing device, indicating the identity of the signatory of the E-document and ensuring the legal force of the document.

For example, a scanned document gains legal force once it, together with a separate file containing a remark certifying the document, has been signed with a secure electronic signature containing a time stamp as one single file. In practice, the most common and safe way to ensure the legal force of an E-document is to prepare and sign the document in the EDOC format.

In certain cases the law permits parties to agree on using other electronic signatures, which the parties agree to be binding in each separate case. Firstly, the parties must agree on whether to sign the documents on paper or electronically. Although it is not directly forbidden to agree on a mixed format – one party signs the

document on paper, but the other electronically – actually this form is not possible. Electronic signature is not printable simultaneously maintaining its legal force, so the paper document would have to be signed by hand and then scanned so it can be signed electronically. According to paragraph 2 of article 5 of the Electronic Documents Law, to ensure the legal force of such scanned document, it must be signed electronically by a person who is authorized to certify copies, true copies and extracts of the original document. Thereby the party which was planning to sign the document by hand, on paper will nevertheless be forced to sign the document electronically as well – therefore agreeing on a mixed format of signing becomes useless.

As a number of different formats may be used for signing E-documents, here are the most popular ones:

- eDoc;
- PDF;
- ASIC-E.

In Latvia the only secure or certified software for signing E-documents is “eParaksts”, which is managed by the state joint stock company Latvia State radio and television centre (in Latvian - Latvijas Valsts radio un televīzijas centrs). However, E-documents signed with secure electronic signatures issued in other countries are also legally binding in Latvia. Therefore, for example, Latvian state and local government institutions accept E-documents that have been signed with a secure electronic signature issued in another European Union state, if the electronic signature of the respective country has received certification according to the requirements set forth in the eIDAS Regulation. A list of trusted electronic signature providers in the European Union, whose services conform to the requirements of the eIDAS Regulation, is available on the internet site of the European Commission.

Taking the aforementioned into account, a legally binding E-documents can be described as electronically prepared and formatted content, that conforms to the requirements of the Electronic Documents Law and this E-document has been signed with a secure electronic signature containing a time stamp or it is signed using the certified software of one of the service providers that are recognized in the European Union.

## USE OF E-DOCUMENTS FOR COMPANY'S INTERNAL PROCESSES

A company can use E-documents as an alternative to paper documents for all internal purposes, for example, internal work regulations and other

employment matters, orders, statements, instructions, deeds, decisions, minutes of meetings, registers, etc.

By replacing paper documents with E-documents the circulation of documents and internal communication would become considerably faster. One of the biggest advantages is the ability to sign a document at any time and place by using an electronic signature application either on a computer or a smart device. This makes signing documents considerably faster and more convenient because the document must not physically be brought to the person who must sign it or who must receive it. Also the storage of E-documents is much simpler and more transparent when compared to paper documents. E-documents can be stored, for example, on servers or any smaller storage devices, therefore making E-documents physically take up considerably less space in the office and also the stored documents are easier to navigate and if necessary it is much easier to find certain documents by using search tools incorporated into computer software. By reducing the amount of paper documents used within a company or replacing paper documents with E-documents completely, the company ensures that its operations become more environmentally friendly and it also allows the company to reduce expenses on stationary and office supplies.

However, when beginning to use E-documents, some of the document related habits must also be changed. Namely much more thought and attention must be directed at the safety of E-documents and greater caution should be taken because, in regards to E-documents, there are more potential safety threats than for paper documents. If, for example, a company could store confidential paper documents in a safe and no one could access them without a key, then for E-documents it is not that simple, as the company should very carefully evaluate, whether they have in place adequate safety and protection measures, so that no third or other unwanted persons could not access any confidential information.

An electronic signature provides safety to the content of the E-document, because after the document is electronically signed the content thereof is "fixed" and no further changes can be made. In addition, it must be kept in mind that the internal processes of a company, for example, how employees certify or acknowledge that they have been introduced to internal documents (orders, internal regulations, work safety rules, etc.), have to be adjusted for the use of E-documents, too. Adjustment of internal processes is not only important for the internal purposes and to ensure effective maintenance of the company's operations, but also is instrumental to conform to requirements of the law, mainly in connection to

employment related matters – the use of E-documents for internal purposes would have to be agreed upon with each employee in the employment contract.

## USE OF E-DOCUMENTS IN EXTERNAL COMMUNICATION

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Nowadays, many state and local municipality institutions have introduced appropriate technological solutions to provide individuals and companies with the possibility to communicate with state electronically, including submitting E-documents that have been signed with a secure electronic signature. It should be noted that recently the Law on the Official Electronic Address came into force, the goal of which is to ensure safe, effective and high quality electronic communication and circulation of electronic documents among state institutions and private persons. By ensuring the availability to exchange the information through electronic means, such communication channel makes it easier for private persons who use this opportunity on a daily basis to sign, submit and receive E-documents faster.

The communication with state and municipality institutions by using electronic means of communication are governed by Cabinet Regulations, which state the procedure of how these institutions accept E-documents from natural persons and legal entities as well as how these institutions send E-documents to them.

According to point 22 of these Cabinet Regulations, in case a state or municipality institution sends an E-document to the addressee by electronic mail, it is presumed that the addressee has received the E-document on the second working day after the document was sent. The same presumption is mentioned in part 2 of article 9 of the Law on Notification, whereas a document which has been sent by electronic mail shall be presumed as received on the second working day after the document was sent. Meanwhile, a paper document sent by post as a regular parcel is presumed to be received on the eighth day after it has been registered at the institution as a document to be sent, but if it is sent as a registered parcel – on the seventh day.

Accordingly, by sending documents per mail (not electronically), the term of receiving (and also the term in which a document is presumed to be received) is considerably longer. Although in some cases longer terms may be considered as an advantage, it must be noted that the preparation, signing with a secure electronic signature and sending the E-document to the e-mail address of the state institution is easier and more convenient, and it will also ensure a faster response. The use of these benefits can be seen, for example, when

registering changes with the Register of Enterprises of the Republic of Latvia or in cases when it is necessary to receive a decision, permit or any kind of information from a state or local municipality institution for a company to be able to execute its commercial activities. Another important aspect is that communicating with state institutions using electronic means is cheaper than, for example, sending a recorded parcel, furthermore some state institutions, for example, the Register of Enterprises of the Republic of Latvia offers discounts to their services if documents are submitted electronically. Hence, state is encouraging companies to use the electronically available services more. Another benefit of using E-documents in communication with state and municipality institutions is availability, because when sending an E-document to a state institution, it is not necessary to adhere the opening hours – an E-document can be sent at any time – before, during or after working time, and the institution will receive it. Nonetheless, other applicable regulatory deadlines must be observed.

It is important to remember that in communication with state or municipality institutions, especially courts, E-documents must contain all the necessary details to ensure the legal force of the document. Furthermore it necessary to make sure that the technical requirements and rules regarding the formatting of electronic data of the Cabinet Regulation have been met when signing one or several E-documents.

The use of E-documents in relations with business partners – private persons, of course, is much simpler. Although the parties must nevertheless obey the requirements of laws and regulation to ensure the legal force of E-documents, the parties are free to agree on the circulation, format as well as signing specifics of E-documents. The use of E-documents in business relations includes conclusion of contracts, delivery and acceptance deeds, circulation of reports or notices between the involved parties, etc.

The ASIC-E format is the standard format for E-documents in the European Union. Due to this fact this format would be the recommended one for use when conducting business with foreign business partners, because E-documents that have been signed in this format can be examined for validity through the programs, mobile applications or on the website of the Latvian certified provider of electronic signature services – eParaksts. Of course, parties can agree to use, draft and sign E-documents in other formats, as long as these documents can be

inspected by the respective countries certified provider of electronic signature services. However, it must be noted that this could complicate and make a potential dispute much more difficult, in case relations between parties are governed by Latvian laws and jurisdiction is stated in Latvian courts, as the state institutions of Latvia recognize and accept E-documents that have been signed using eParaksts and are reluctant towards accepting E-documents without a secure electronic signature containing a time stamp.

In business relations with foreign business partners it is possible for the parties to agree on which electronic signatures of variety of services providers could be used for signing documents. According to the eIDAS Regulation, any electronic signature has undisputable legal force, but only a qualified or secure electronic signature is equivalent to a signature by hand. Within the territory of the European Union it is recommended to agree on signing E-documents using electronic signatures provided by companies that the European Commission has deemed to be secure and which are included in the list of trusted electronic signature providers. Therefore, in case of necessity, any court of the member state of the European Union will have to recognize and accept such E-documents.

Any agreement which provides simplified conditions in regards to the format and use of electronic signature for the E-documents may lead to difficulties if any dispute occurs. Namely, due to non-recognition and not meeting of certain formats and standards for electronic signatures, also, part 1 of article 25 of the eIDAS Regulation states that a simple electronic signature may not be, for example, in court proceedings, rejected only because of the format or not meeting the requirements of a qualified or secure electronic signature. However, in this regard it shall be kept in mind that simple electronic signature (not certified) may be questioned and the legal force of it can be challenged, for example, on basis that the E-document was signed by an unidentified person or a completely different person.

In conclusion, it is important to note that in general it is necessary to adapt and observe the restrictions imposed in Latvia and also in Europe, including concerning meetings for signing documents, closing transactions, etc. By introducing or switching to circulation of documents in an electronic environment, the requirements for preparing, formatting and storing E-documents must be taken into account in order to ensure the legal force of E-documents and compliance with applicable laws and regulations.

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