

BŘÍZA & TRUBAČ

Sloneek Europe, s.r.o.

to the hands of Milan Rataj,

Táborská 8
Košice – city district South
040 01

By registered mail and e-mail

In Prague on March 15, 2021

Dear Mr. Rataj,

on behalf of the company Sloneek Europe s.r.o., ID number 53319737, with registered office at Táborská 8, Košice - city district South, 040 01, Slovak Republic ("**client**"), you, as a partner, Bříza & Trubač, s.r.o., law firm, ID number: 037 15 566, with registered office at Klimentská 1216/46, Nové Město, 110 00 Prague 1, requested an assessment of the nature of the electronic signature attached to the document in accordance with the manual "Document signature security in the Sloneek application" that was presented to me (hereinafter referred to as the "**Manual**"). I present this assessment to you below.

I. SUBJECT AND PURPOSE OF THE ASSESSMENT

The subject of legal assessment are exclusively the aspects listed below relating to the nature of the electronic signature according to the Manual:

- (a) Whether the signature attached in accordance with the Manual can be considered a simple electronic signature within the meaning of Article 3 point 10 of Regulation of the European Parliament and of the Council (EU) no. 910/2014 of 23 July 2014 on electronic identification and trust-building services for electronic transactions in the internal market and on the repeal of Directive 1999/93/EC (hereinafter referred to as "eIDAS").
- (b) Whether the attachment of a signature in accordance with the Manual can be considered a signature in the sense of the last sentence of § 561, paragraph 1 of Act No. 89/2012 Coll., Civil Code (hereinafter referred to as "**OZ**").

II. THE NATURE OF THE ELECTRONIC SIGNATURE ATTACHED BY THE PROCEDURE ACCORDING TO THE MANUAL

1. In order to answer the client's first question, it is first of all necessary to define the so-called simple electronic signature in the sense of the eIDAS regulation, and then proceed to evaluate the completion of the specified characters by the signature attached according to the Manual. In the event that the signature attached in accordance with the Manual fulfills the definition of a so-called simple electronic signature according to Article 3 point 10 of eIDAS and the answer to the first question is therefore positive, an analysis of the position that the so-called simple electronic signature occupies from the point of view of the OZ is sufficient to answer the second question, i.e. whether it can be considered a signature in the sense of the last sentence of § 561 paragraph 1 of the Civil Code. The answer to both of the client's questions is therefore logically linked.
2. The eIDAS regulation defines several levels of electronic signature. One of them is a so-called simple electronic signature in the sense of Article 3 point 10 of eIDAS, the second is a guaranteed electronic signature meeting the requirements of Article 26 of eIDAS and the last is a qualified electronic signature. The so-called According to Article 3 point 10 of eIDAS, a simple electronic signature means "data in electronic form, which are 2 connected

to other data in electronic form or are logically connected with them and which the signatory uses to sign".

3. From the Manual that was submitted for assessment, it follows that the signature is attached by the user by clicking on the "Sign" button, while the user is then either prompted to write the signature (with a computer mouse, stylus or finger) on the screen or to confirm the action by selecting the confirmation buttons. Following this procedure, a user signature page is added to the open PDF document. At the same time, the signature page contains a time stamp, identification data about the document and the user, and a cryptographic hash of the user's signature. If the user signed with a written signature (with a computer mouse, stylus or finger) on the screen, the signature page also contains this signature. At the same time, a record is kept in the so-called audit log of the fact that the user logged into the application, viewed the document and signed the document with a written signature or confirmed with a button.
4. **In our opinion, the method of attaching a signature according to the procedure specified in the Manual meets the requirements of the eIDAS regulation imposed on the so-called simple electronic signature**, since it is undoubtedly data in electronic form attached to other data in electronic form that the signer uses to sign.
5. As concluded above, the signature attached in accordance with the manual is a so-called simple electronic signature within the meaning of Article 3 point 10 of the eIDAS Regulation. As part of answering the client's second question, it is therefore necessary to assess whether a simple electronic signature in the sense of eIDAS fulfills the signature requirements according to the last sentence of § 561, paragraph 1 of the Civil Code, or whether it fulfills the requirement for sufficient determination of the acting person.¹
6. Although one can come across opinions in the professional literature that a simple electronic signature does not meet the requirements for identification of the person,² we do not agree with this conclusion. It clearly follows from § 7 of Act No. 297/2016 Coll., on trust-creating services for electronic transactions (hereinafter referred to as "ZSVD") that a so-called simple electronic signature has the same effects as a handwritten signature, which is also confirmed by the wording of the explanatory report to the ZSVD.³
7. In this context, the eIDAS Regulation stipulates that "an electronic signature may not be denied legal effects and may not be rejected as evidence in judicial and administrative proceedings solely on the grounds that it is in electronic form or that it does not meet the requirements for qualified electronic signatures" (Art. 25 paragraph 1 eIDAS). At the same time, a qualified electronic signature already has legal effects equivalent to a handwritten signature from Article 25, paragraph 2 of the eIDAS Regulation. § 7 ZSVD then further extends the equivalence of handwritten and electronic signatures beyond the scope of regulation in eIDAS to the so-called simple electronic signature.

¹ Srov. Korběl, F., Kovář, D., Potočňák, Š. Elektronická identita při elektronickém (hmotně) právním jednání. Právní rozhledy, 2019, no.18.

² Srov. Kment, V. Elektronické právní jednání. Analýza s důrazem na využití elektronického podpisu a elektronické pečeti podle práva EU, České republiky a Německa. Praha: Wolters Kluwer, 2018, p.114.

³ Korběl, F., Kovář, D., Amler, P. Interpretace elektronického podpisu a související identifikace v soukromém právu. Pravniprostor.cz, 4. 11. 2020. <https://www.pravniprostor.cz/clanky/obcanske-pravo/interpretace-elektronickeho-podpisu-souvisejici-identifikace-v-soukromem-pravu>.

8. It follows from the above that in private law relationships, an electronic document can be signed with all levels of electronic signatures according to eIDAS,⁴ with the effects of a handwritten signature.⁵ This applies when the assumption is fulfilled that such an action is connected with the will to sign, i.e. to confirm the finality and binding nature of the action with one's signature.⁶ It is quite clear from the procedure according to the Manual that the user must confirm the signature of the document not only by a one-time click on the "Sign" button, but also by writing a signature on the screen or confirming the action by selecting the confirmation button. Such a method of de facto two-phase electronic signature cannot cause doubt about the existence of the will of the user to sign the document and thus confirm its finality and bindingness.
9. In such a case, in our opinion, it is clear **that a signature attached in accordance with the Manual, in addition to fulfilling the definition of a so-called simple electronic signature in the sense of Article 3, point 10 of the eIDAS Regulation, also constitutes a signature according to the last sentence of § 561, paragraph 1 of the Code of Civil Procedure.** At the same time, we make the above conclusions with regard to the opinion of the professional public.⁷

III. CONCLUSIONS OF THE ASSESSMENT

- [1] **A signature attached to an electronic document in accordance with the Manual can be considered a so-called simple electronic signature within the meaning of Article 3 point 10 of the eIDAS Regulation.**
- [2] **A signature attached to an electronic document according to the Manual can be considered a signature within the meaning of the last sentence of § 561, paragraph 1 of the Civil Code.**

IV. ASSUMPTIONS AND DISCLAIMER

This opinion was prepared exclusively for the needs of Sloneek s.r.o

The conclusions stated above have been made based on the assessment of the document "Document signature security in the Sloneek application", assuming the truth, correctness, accuracy and completeness of this document. If this assumption has not been fulfilled, the correctness of the above conclusions cannot be guaranteed.

The subject of this assessment is exclusively the questions listed in Part I of this opinion (2 questions in total). This assessment is not a comprehensive legal opinion on the matter. Nor can this assessment be a substitute for legal advice on any specific matter falling within its scope.

⁴ Korběl, F., Kovář, D., Amler, P. Interpretace elektronického podpisu a související identifikace v soukromém právu. Pravniprostor.cz, 4. 11. 2020. <https://www.pravniprostor.cz/clanky/obcanske-pravo/interpretace-elektronickeho-podpisu-souvisejici-identifikace-v-soukromem-pravu>.

⁵ Srov. Beran, V. In: Petrov, J. a kol. Občanský zákoník. Komentář. 2. ed. Praha: C.H. Beck, 2019, p. 622.

⁶ Srov. Rozumné právo. Výkladové stanovisko: Je třeba zjednodušit elektronické právní jednání. <https://www.rozumne-pravo.cz/cz/stanoviska/je-treba-zjednodusit-elektronicke-pravni-jednani/>.

⁷ Srov. Korběl, F., Kovář, D., Amler, P. Interpretace elektronického podpisu a související identifikace v soukromém právu. Pravniprostor.cz, 4. 11. 2020. <https://www.pravniprostor.cz/clanky/obcanske-pravo/interpretace-elektronickeho-podpisu-souvisejici-identifikace-v-soukromem-pravu> a Korběl, F., Kovář, D., Potočňák, Š. Elektronická identita při elektronickém (hmotně) právním jednání. Právní rozhledy, 2019, no. 18.

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If you have any questions or comments regarding the above, you can contact me at any time.

In respect



JUDr. Petr Bříza, LL.M., Ph.D.,

lawyer