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LEGAL ASPECTS OF ELECTRONIC COMMUNICATION AND ITS PROOF ACCORDING TO THE TAX AND SOCIAL INSURANCE PROCEDURE CODE REGULATIONS

Valentina ALEKSANDROVA

"Neofit Rilski" South-West University, Blagoevgrad, Bulgaria
aleksandrovavalentina@abv.bg

Abstract: *The entry into force of new laws governing electronic communications pose new challenges to electronic communication with the judiciary authorities and arise practical issues with its proof. The following article aims to summarize the results of theoretical and practical analysis of the current legal framework on the proof of electronic communications in our country and its regulation in the Tax and Social Insurance Procedure Code. In legal theory, there is a common understanding about the document and its essence, as a means of proof and it is that the document is a thing on which with the written or electronic symbol it is a materialized statement. The electronic document is a means of proof which, by virtue of law, has the same (equal) evidentiary effect, as the written document. The evidentiary effect of the document does not depend on whether the document is written or electronic, but whether it is accompanied by the signature of its author and, above all, the capacity of the publisher compiling the document.*

Key words: electronic communication, proof, evidentiary means, document, evidentiary effect, electronic document, electronic signature.

With the entry into force of the Electronic Document and Electronic Signature Act, electronic documents are recognized as equivalent to paper and may be signed with a simple, sophisticated or qualified electronic signature which has the legal meaning of a handwritten signature. The E-Governance Act regulates the activity of the administrative bodies in working with electronic documents, the provision of electronic administrative services and the exchange of electronic documents between the administrative bodies. The act also applies to the activities of public officials and public service organizations, insofar as otherwise provided by law - the act does not apply to electronic documents, automated information systems or networks that contain or are used for handling classified information. The E-Governance Act does not repeal the rules for working with paper documents where an act provides for a special form or a special order for performing certain actions. The new legislation is a "breakthrough in the existing, unified and stable, centuries-old system of evidence and evidence tool"[1].
The Electronic Document and Electronic Signature Act regulates the legal consequences of electronic statements and their transmission as electronic messages in their "e-mail" variety is governed by the Electronic Communications Act. Under § 1, item 11 of the additional provisions of the Electronic Document and Electronic Signature Act, "e-mail" is a message in the form of text sent through a public electronic communications network which

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can be stored in it or received in the terminal equipment of the recipient. The e-mail, when sent over the Internet and contains a statement of civil law importance, constitutes an electronic document within the meaning of Art. 3, para. 1 of the Electronic Document and Electronic Signature Act, and the question is whether this document can be designated as signed or not. Pursuant to Art. 10, para. 1 of the Electronic Document and Electronic Signature Act, e-mail shall be deemed to have been received at the earliest upon receipt by the addressee's information system and at the latest by its downloading by the addressee from the system in which it has been received.

The electronic correspondence, submitted in paper form, meeting the requirements of Art. 2 and Art. 3 of the Electronic Document and Electronic Signature Act, certified by the order of Art. 32 of the Bar Act or certified by the country according to Art. 184 of the Code of Civil Procedure has a formal probative value and objectifies relevant facts for the dispute. The submitted printouts are a written document, and on the authorship according to the provision of Art. 4 of the Electronic Document and Electronic Signature Act, it is assumed that the author of the statement is the perpetrator indicated therein and the refutation of this presumption is done under the conditions of full and counter-proving in the civil proceedings.

In the case of address statements made by a written document, the moment of receipt of the document is relevant - it is believed that the related consequences at that time (in this sense is the the practice of the Supreme Court of Cassation (Art. 290 of the Code of Civil Procedure) – e.g. Decision No 35 of 7 May 2012 of the Supreme Court of Cassation under Civil Case No. 1877/2010, IV C. D., Decision No. 48 of 28.02.2013 of the Supreme Court of Cassation of the Republic of Bulgaria No. 265/2012, IV C. D.). The provision of Art. 3, para. 2 of the the Electronic Document and Electronic Signature Act equals the electronic document of the written one, therefore, the authorization given in the Supreme Court of Cassation's binding practice on the service of written statements should also apply to electronic documents. Specifically for e-mail, this means that the relevant moment to assess the implications of a statement is to receive the mail - that is to say by entering it in the information system indicated by the addressee, if it does not specify a specific information system - by entering it in any information system of the addressee, and if the addressee does not have an information system - with its download from the addressee. No matter when the message is opened, its contents are deemed to be known by the addressee from the date of receipt or download of the electronic document.

If the submitted electronic correspondence was not signed with an electronic signature on the part of the person from whom it originated, it is the responsibility of the other party to establish the authorship and authenticity of the content of the e-mails thus presented. The contestation of the electronic document is based on the assertion that the information is not presented in digital form, that there is no common standard (or agreement between the parties) for transformation, reading and visual presentation or that the verbally presented statement lacks a verbal part – an argument from Art. 2, para. 2 of the Electronic Document and Electronic Signature Act [2]. Normally, this is evidenced by the appointment of the forensic technology expertise. From the conclusion of the letter it can be ascertained whether the letters attached to the case are actually sent from the person's mailbox, whether they are to the date of the trial and are there electronically, whether they have been opened or read, judged by electronic messages from the server that they used, whether the author of the prints is precisely that person, and so on. The expert can answer the question whether the content presented in the paper case is the actual content that is sent and found on the server at the time.

According to Art. 184 of the Code of Civil Procedure, the court may accept an electronic document as prima facie evidence in the process, but only if several conditions are met:

• electronic document to be presented on a magnetic, optical or other medium that enables the electronic statement recorded on it to be reproduced;

• the electronic document may also be reproduced on a hard copy as a copy, but in this case it should be authenticated by the party or its legal representative in order to have a formal evidential value.

Otherwise, the court will not take it into account when discussing the evidence in the case. If the electronic document is presented on paper, the party is obliged to submit the document electronically upon request. If the generated electronic documents for the process period, reproduced on paper and presented in a certified by the party copy of the case, are not contested and are not required to be presented in electronic form, they have the meaning of a medium, objectifying private, signed by the party documents.

If the court does not have technical means and specialists enabling the reproduction of the electronic document and the due checking of the electronic signature to be done in the courtroom in the presence of the parties, electronic copies of the document shall also be provided to each of the parties to the case. In this case, the authenticity of the electronic document may be challenged at the next court hearing. In the case that the copies of electronic documents are not disputed in paper form as certified by the party, they are evidence of the purposes of the process.

The regulation of e-communication in the Code of Administrative Procedure is very scarce. According to Art. 137 of the Code of Administrative Procedure, the subpoena may be handed over to the party and to an e-mail address indicated by it. They shall be deemed to have been served on the indicated information system and shall be certified by a copy of the electronic record for that purpose. As long as the provisions of the Code of Administrative Procedure are not settled, the provisions of the Code of Civil Procedure have to be applied. For the unsettled issues in the Code of Administrative Procedure there should apply designated texts from the Code of Civil Procedure. As regards administrative proceedings, there is a mandatory requirement regarding the form - the written and the requisites of the acts issued in those proceedings [3].

What is the regulation of e-communication in the Tax and Social Insurance Procedure Code?

The provision of Art. 29 para. 4 of the the Tax and Social Insurance Procedure Code provides that the messages may be served by sending them by telefax or by e-mail using a qualified electronic signature of the revenue authority. Pursuant to Art. 30, para. 6 of the the Tax and Social Insurance Procedure Code, an electronic message shall be deemed to have been served when the addressee sends a confirmation of receiving it by means of a reverse electronic message, activating an electronic link or downloading it from the information system of the competent administration. Violation of procedural rules is, for example, the sending of an email to serve a notice of removal of irregularities in the complaint without a message being sent to the correspondence address. Everyone has the right to indicate to the revenue authorities an electronic mailing address and, in the absence of more than 30 days from the correspondence address, the representatives of the legal persons authorize a person to serve the messages and other acts. Where there is no explicitly expressed desire under Art. 28, para. 2 of the Tax and Social Insurance Procedure Code by the applicant company to make the correspondence by receiving emails, the sending of the communication is thus unlawful. The Tax and Social Insurance

Procedure Code introduces deadlines for electronic storage of information (Art. 38 and Art. 39 of the Tax and Social Insurance Procedure Code). The storage of electronically generated information by obligated persons is regulated, regardless of printouts and bookkeeping, as well as access to this type of information.

Revised or inspected persons are required to provide revenue authorities with access to their automated information systems, products or archives when collecting, storing and processing information under Art. 38 of the the Tax and Social Insurance Procedure Code is done in this way. Art. 171 of the Tax and Social Insurance Procedure Code is inapplicable to the terms of the obligation to keep documents of significance for the taxation which are regulated in the norm of Art. 38, para. 1 of the Tax and Social Insurance Procedure Code.

The Tax and Social Insurance Procedure Code regulates the evidential value of documents issued by automated devices or systems. According to Art. 52 of the Tax and Social Insurance Procedure Code documents issued by automated devices or systems under terms and conditions specified in a normative act shall be considered as a private document issued by the person in whose name the device or system is registered and in the case where the device or system is not registered by the person in whose place they are located. Such are, for example, cash receipts issued by an Electronic Cash Register with Fiscal Memory and ATMs. Although, by their nature, documents issued by automatic devices or systems are not signed by the persons, Art. 52 of the Tax and Social Insurance Procedure Code introduces the assumption of authorship of the documents issued as private documents by giving them the power of documents issued: - by the person in whose name the device or system is registered, or - by the person in whose place they are located - in case that the device or system is not registered. The consequence is that the sales recorded through the cash receipt, respectively the reported revolutions of the automatic devices and systems are considered to be the revolutions of the inspected person if they meet the above conditions.

According to Art. 53 of the Tax and Social Insurance Procedure Code at the request of the revenue authority, the entities, as well as the persons representing them, shall prepare and submit signed by them statements on facts and circumstances of significance for the outcome of the proceedings. The reports, prepared by the order of Art. 53 of the Tax and Social Insurance Procedure Code are admissible evidence. They constitute evidence that the statements contained therein are made by the signatories. Consequently, unsigned reports can not serve as evidence in the sense of Art. 53 of the Tax and Social Insurance Procedure Code. The signature verifies the statement and, in the absence of such a statement, there is no evidentiary value.

With respect to data from technical media - proofs are validated printouts of data obtained from technical means or electronically. A condition for their probative force is:

With respect to data from technical media - proofs are validated printouts of data obtained from technical means or electronically. A condition for their probative force is:

- the data are to be filed by the liable person, on the basis of the law, according to the established procedure and certified by a revenue authority (Art. 54, para. 1 of the Tax and Social Insurance Procedure Code) - these are, for example, printouts of references, purchase and sales diaries;
- printouts are to be authenticated by the subject or by a third party - for example, a contractor of the inspected person - for printouts of data from technical media; (Art. 54, para. 2 of the Tax and Social Insurance Procedure Code);
- the data should be obtained by other persons, state and municipal authorities on technical media or electronically, based on a request by a revenue authority or a procedure for the collection and provision

of information established by a normative act, the printouts being certified by the revenue authority (Art. 54, para. 5 of the Tax and Social Insurance Procedure Code). The refusal of the person or their representative to certify a printout from the technical medium shall be certified by a protocol, the copy of which shall be provided to them, in which case the missing certification by the person shall be replaced by a certificate from the revenue authority. Electronic submission and acceptance of documents shall be done by the entity or its representative with a qualified electronic signature or with a personal identification code issued by the National Revenue Agency (NRA). Upon receipt of declarations, documents or data submitted electronically, an incoming number and date are automatically issued, which are sent to the sender by e-mail. Declarations, documents or data that do not contain a single civilian number of an insured person, the period to which the information relates or do not meet the requirements for the format of the record and completion of the relevant document type are not accepted and the sender is sent a refusal within three days of their receipt. The sender is required within 7 days of receipt of the refusal to file a declaration, document or data that complies with the requirements.

The terms and procedure for issuing and using a personal identification code, as well as the types of declarations, documents or data that may be submitted through its use, shall be determined by an order of the Executive Director of the National Revenue Agency. The order is published on the NRA website.

Where discrepancies are found between the content of the declaration submitted and the requirements for its filing, or inconsistencies between the data in the declaration and the data received by the revenue authorities from third parties or administrations in accordance with the requirements of the tax and insurance legislation for filing declarations or information, except for the cases under Art. 101, para. 4 and Art. 102, para. 4 of the Tax and Social Insurance Procedure Code, the sender is invited to remedy the discrepancies within 14 days of receipt of the message. Remedying the inconsistencies is done by submitting a new declaration. The filing of the new declaration made within the term under para. 1, is used by the sender, regardless of art. 104, para. 3. In cases where the discrepancies refer to data contained in the register under Art. 81, para. 1 of the Tax and Social Insurance Procedure Code, they shall be removed by an employee of the respective territorial directorate for which the person shall be notified in a 14-day term after the non-compliance has been remedied. These rules also apply to Tax Declarations submitted electronically.

In conclusion, it should be pointed out that the analyzed question causes difficulties and different interpretations in theory and practice. Questions about the evidential value of an electronic document are debatable as long as the practice goes beyond the legal framework, and this necessitates the adoption of a legislative change that clearly establishes the rules of evidence with electronic documents.

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