

Legal regulation of electronic signatures in Lithuania

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Introduction

The Lithuanian Law on Electronic Signatures (LES) entered into force on July 11 2000. It was approved by the Lithuanian Parliament in order to implement the EU Directive on Electronic signatures 99/93/EC¹ into national law and to establish the legal basis for the development of information society services in Lithuania. Before the LES entered into force, the Lithuanian legal environment for information society services was complex and under pressure from the rapidly changing development of electronic commerce.

Electronic commerce has implications for many facets of the Lithuanian economic and social life because it has the potential to fundamentally change the way commercial transactions, the business of government, the delivery of services and a range of other interactions are conducted, raising issues at the heart of policies directed at the regulation of traditional practices and procedures. The growth in sales of goods and services over the internet has meant that even more importance had to be placed on the application of an e-commerce law. Electronic signatures are an important element in supporting the development of on-line financial and government transactions. However, the Lithuanian legal system could not adequately address the new legal situation, the potential problems created by the development of the internet and the increasing use of electronic signatures.

Before the LES came into force, the Lithuanian

government did not envisage the rapid take-up of electronic communications. The Lithuanian law was designed for the physical world: for instance, the traditional way to indicate the acceptance of a binding document was with a manuscript signature. Assessments on legal (especially evidential) validity of electronic documents and electronic (digital) signatures were full of ambiguities. The use of electronic information in legal proceedings was constantly reviewed and the validity of electronic documents created legal uncertainty, which affected the use of electronic instruments in commercial transactions. There were also uncertainties connected with electronic signatures that were not authenticated by means of qualified certificates issued by a certification service provider. Contents and form of documents could easily be altered with the use of certain types of electronic signature unless they met the criteria of integrity, authenticity, confidentiality, and preventing the user from repudiating their action of causing a document to be signed with an electronic signature. The IT sector in Lithuania was a rapidly developing sector, and problems relating to the legal validity of electronic information and electronic signatures became increasingly important, and required an immediate solution in order to create the proper conditions for the development of e-business.

The LES, which was prepared in accordance with the Civil Code and Civil Proceeding Code, regulates the creation, verification and validity of electronic signatures, and the rights, duties and responsibility of signatories. Requirements relating to certification services and certification services providers are also included in the law. The LES incorporated both the provisions of the EU Directive and some provisions from the Directive on Electronic Commerce.² Furthermore, the LES also implemented the basic principles from the

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¹ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures Official Journal L 013, 19/01/2000 p. 0012 – 0020.

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') // Official Journal L 178, 17/07/2000 P. 0001 – 0016.

The use of electronic signatures was still complicated, because various laws required the signature and seal of the natural person, especially in relation to company law

UNCITRAL Model Law on Electronic Commerce and Model Law on Electronic Signatures.³

Article 8 of the amended LES formulates the requirements for the legal validity of an electronic signature:

'ARTICLE 8. Force of Signature

1. A secure-electronic-signature, created by a secure-signature-creation-device and based on a qualified-certificate which is valid, shall have the same legal force that a hand-written signature in written documents has and shall be admissible as evidence in court.
2. A signature may not be deemed invalid based on any of the grounds listed below, that it is:
 - i. in electronic form;
 - ii. not based upon a qualified-certificate;
 - iii. not based upon a qualified-certificate issued by an accredited certification-service-provider;
 - iv. not created by a secure signature-creation device.
3. In all cases, the electronic signature shall have the legal power laid down in paragraph one of this Article, provided that the signature users shall reach an agreement among themselves.
4. The power of the electronic signature of a legal person shall be given the same recognition as that signed by a representative of the legal person, confirmed by the stamp of the legal person, appearing in written documents, taking into account the power of the electronic signature in accordance with paragraphs one, two and three of this Article.'

The LES clearly states that secure-electronic-signature, created by a secure-signature-creation-device and based on a valid qualified-certificate, shall have the same legal force as a hand-written signature in written documents. An electronic signature does not lose its legal validity because it is not based on qualified certificate, or is not created by a secure signature-creation device.

An electronic signature, which is based on non-qualified certificate, or created with a signature creation device that is not certified as secure, retains its legal validity, but additional evidence is

required. The LES gave the electronic signature equal status to a manual signature or seal. In other words, an unhappy party to an electronic contract cannot challenge its validity simply because an electronic signature was used to sign it. If a certificate and the service provider as well as the signature product used to sign a document in electronic format meet specific requirements, there will be an automatic assumption that any resulting electronic signatures are as legally valid as a hand-written signature, as provided for by article 8.

Need to amend the law

On June 6, 2002, the Lithuanian Parliament (Seimas) adopted the revised law, amending and supplementing the norms of law on electronic signatures.⁴ The revisions were added to give greater effect to the law. Until the latest amendments, a large number of agreements made by electronic means were duplicated in paper format. The use of electronic signatures was still complicated, because various laws required the signature and seal of the natural person, especially in relation to company law. Only natural persons were recognised as the signatory by the LES, while the status of holder of an electronic signature was assigned to both legal and natural persons.

The electronic signature supervisory institution was established on the 23 of April 2002. This function was delegated to the Rysiu Reguliavimo Tarmyba (Communications Regulatory Authority),⁵ which is responsible for preparing the secondary laws on electronic signatures and encouraging the development of an infrastructure for electronic signatures. By being established so late, the development of electronic signatures was hindered. As a result, certificate service providers were late in setting up an efficient technological infrastructure to provide services needed to issue advanced electronic signatures based on qualified certificates and created by a secure signature-creation device.

Although the EU Directive does not affect national rules regarding the unfettered judicial consideration of evidence, the LES issued stricter requirements than the Directive. Annex IV of the EU Directive on Electronic signatures lists the recommendations for secure signature verification. Lithuanian law specifies these recommendations as requirements. The LES limited the selection of

³ Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law 1996; Model Law on Electronic Signatures with Guide to Enactment adopted by the United Nations Commission on International Trade Law 2000. NOTE: This document was in the project phase during preparation of LES.

⁴ Seimas of the Republic of Lithuania, 11 July 2000. No. VIII – 1822; as amended on 6 June 2002. No. IX – 934, available in English translation in electronic format at <http://epp.ivpk.lt/en/actual>.

⁵ Web site at <http://www.rtt.lt>.

technologies used for electronic signatures and only recognized natural persons as the signatory of an electronic signature, while the status of the holder of an electronic signature was assigned to both legal and natural persons.

Under Article 2(3) of the EU Directive, a “signatory” means a person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person or entity he represents. The signatory can thus be a legal person or a natural person. However, the LES recognised only natural persons as the signatory, while the status of holder of an electronic signature was assigned to both legal and natural persons. The signature of a legal person was necessary in order to complete tax declarations in electronic format.

The legal ambiguities and the risks associated with the use of technologies other than the Public Key Infrastructure (PKI) resulted in the slow implementation of electronic signatures. Nevertheless, the demand for the electronic signature in the market increased remarkably.

The members of the Working Group on the Preparation of Amendments of the Law on Electronic Signatures, which prepared the first draft of the LES, did not anticipate that technology would continue to evolve. The members of the working group took the view that no other forms of electronic signature will be used to demonstrate intent, and that the present versions would be standardized and implemented in foreign countries, and did not expect any more changes in this sector. A year after the LES was implemented, more efficient and reliable technical solutions of electronic signing were introduced in the market. This required major amendments to the LES. The working group decided to introduce new amendments which encompassed the different technologies (to implement the principle of technological neutrality) and to enable the users to choose the best solution from the various technologies, including different technological platforms, mobile communications, etc.⁶ The Working Group on the Preparation of Amendments of the Law on Electronic Signatures was established by a decision of Parliament on 24th of June 2002.⁷ The Working group prepared an explanatory letter and the draft of the amendments of the Law on electronic signatures.⁸

Amendments

Article 2 (7) of the amended version of the electronic signature law enforces the right of legal persons. A signatory is now defined in article 2 (5)(7) as “a capable natural person, who holds a signature-creation device and, acting voluntarily either on his own behalf or on behalf of the other person, whom he represents, creates a signature’.

Article 8 (4) further states:

‘The power of the electronic signature of a legal person shall be given the same recognition as that signed by a representative of the legal person, confirmed by the stamp of the legal person, appearing in written documents, taking into account the power of the electronic signature in accordance with paragraphs one, two and three of this Article.’

According to the amended LES, parties can agree on the validity of any form of electronic signature they use. In practice this means that any electronic signature can retain the same legal value as manuscript signature if the parties agree on this. This provision adheres to the freedom of contract principle as set out in article 8(3):

‘In all cases, the electronic signature shall have the legal power laid down in paragraph one of this Article, provided that the signature users shall reach an agreement among themselves.’

Under the recent amendments, all references to PKI technology were eliminated and the legal value of any technology relating to electronic signatures can be recognized. Finally, a natural person, requesting the certification-service-provider to issue a certificate, must submit documents confirming their identity together with the other information that is to be included in the certificate (article 4(2)). This provides added protection to legal persons.

Conclusion

The necessary legal frameworks are now in place for the use of electronic signatures in Lithuania. In the latter part of 2004, a pilot project called “The Pilot Project for Electronic Signature Implementation in Public Institutions” was implemented by the Lithuanian Information Society Development Committee to promote e-

⁶ For the Working Group web site, see <http://epp.ivpk.lt>.

⁷ See <http://www3.lrs.lt/cgi-bin/preps2?Condition1=169720&Condition2=>

⁸ See <http://www3.lrs.lt/cgi-bin/preps2?Condition1=101575&Condition2=>

document exchange in the public sector.⁹ The first phase of the project started in May 2004. During this phase, five public institutions began to exchange documents in electronic format using certified electronic signatures. The second phase started in December 2004, and was extended to 20 public institutions. Digital signatures are used by being included on a smart card, which contains certificates, public and private keys, and a signature creation device. Each head of department was provided with a smart card. It is expected that by the end of 2007 all the public institutions in Lithuania will be exchanging e-documents. Institutions must now deal with technical and operational issues to ensure security and remove barriers to the development of information society in Lithuania. ■

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⁹ Gaudauskite, S. and Peciuira, L. 'Electronic Signature: E Document Exchange in Lithuania's Public Sector,' *Baltic IT and IT Review* No. 34, pp 15-17.