

CASE NOTE: GERMANY

CASE CITATION:
FG Münster 11 K 990/05 F
(Electronically signed
statement of claim – On the
interpretation of the term
monetary limitation)

NAME AND LEVEL OF COURT:
Finance Court of Münster,
Westphalia

DATE OF DECISION:
12 March 2002

DATE OF VERDICT:
23 March 2006

Summary of the decision

The material question at issue concerned the legality of certain measures taken by the fiscal administration. The plaintiffs' counsel filed a statement of claim along with other documents via e-mail inside a "container" with a qualified electronic signature pursuant to the German Signature Act ("Signaturgesetz"). The corresponding signature certificate, however, contained a monetary limitation of 100 euros.

The court dismissed the case, judging that, contrary to applicable procedural rules, the claim had not been filed in writing or in an equivalent form, and had, in particular, not been signed with a valid qualified electronic signature.

Whereas the court accepted the inclusion of several unsigned documents in one signed "container" file transmitted via e-mail, it ruled that an electronic signature containing an attribute of monetary limitation was not a qualified electronic signature under the signature act that was capable of replacing a manual signature on a written statement of claim.

Rejecting the plaintiffs' line of argument that the monetary limitation in the signature certificate only applies to the conclusion of contracts and not to other declarations signed with the corresponding qualified electronic signature, the court held that the term "monetary limitation" implies a mechanism designed to protect the signature user against any financial consequences, and not just the conclusion of contracts exceeding the registered amount. Consequently, since the minimum legal court fees before the financial courts exceed 100 euros, a qualified electronic signature limited to 100 euros cannot be used to file a statement of claim via e-mail in the court's opinion.

The court also dismissed the argument that the plaintiffs' counsel does not personally owe the court fees, and that his signature on a statement of claim therefore does not cause him any direct financial consequences. In fact, the judges found that the monetary limitation is meant to be effective not only for a lawyer, but also for the client on behalf of whom a

statement of claim is filed.

Leading records of the court

1. The rule resulting from article 77 a, para. 1, phrase 2 FGO (*Finanzgerichtsordnung*; statutes of the German finance courts), under which any person responsible for an electronically transmitted document as defined in article 77 a, para. 1, phrase 1 FGO "should" furnish the document with a qualified electronic signature as defined in the signature act is not a mere procedural rule, but an imperative formality, i.e. the word "should" is to be understood as "must".
2. The monetary limitation registered for a given signature key, designed to limit the costs resulting from misuse of that signature key, can only be understood in such a way that the signature generated with that key shall only be valid, i.e. replace an otherwise required (manual) signature, if the declaration signed in such a way that does not trigger financial consequences exceeding the registered amount.
3. A signature on a statement of claim is not a signature under the signature act, if a monetary limitation of 100 euros is registered for the related signature key, since filing a lawsuit with the Financial Court, by virtue of the legal minimum value of claim, causes financial consequences exceeding that sum.
4. On the interpretation of the term "monetary limitation".
5. An appeal has been filed with the Federal Finance Court ("*Bundesfinanzhof*" - BFH; case no.: BFH XI R 22/06).

Commentary

This decision may not only cause confusion and uncertainty for lawyers using qualified electronic signatures with monetary limitations, but may also increase scepticism towards electronic signatures with the public. The opinion of the members of the Financial Court may not convince the members of the Appeal Court, because the court disregarded two persuasive

and systematic arguments:

First, the purpose of the signature is to ensure the originator's identity and the integrity of the signed and submitted document. A monetary limitation is not necessary to put this characteristic of the signature into question. Even though the signature contains a monetary limitation, this does not have any effect on the integrity and authenticity, as both can still be verified by the recipient.

Secondly, the monetary limitation has to be legally qualified as a declaration of will of the originator. As such it has to be interpreted by the recipient – the court – like every other declaration of will. The court has to examine in good faith the objective intention of the originator pursuant to the general principles emanating from sections 133 and 157 of the German Civil Code ("*Bürgerliches Gesetzbuch*" – *BGB*). According to these principles, the court should have come to the conclusion that a monetary limitation only applies to financial transactions, and not to the transmission of a statement of claim to a court. The transmission of a statement of claim is not a financial transaction and the plaintiff's lawyer does not intend to conclude any contract with the court. Therefore any monetary limitation should not have been taken into consideration by the court.

However, the decision is not final and absolute. The Financial Court admitted the plaintiff's appeal on questions of law ("*Revision*") to the Supreme Tax Court. A decision of the Supreme Tax Court can be expected in mid-2007 at the earliest, pursuant to the average duration of proceedings. Meanwhile it is suggested that lawyers should use signatures without monetary limitation or – as encouraged by the Financial Court in its decision - signatures with double-limitation, clearly stating that a monetary limitation only applies to financial transactions and not to statement of claims or communications between the lawyer and the court.

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