

## ■ BULGARIA

### Draft Law on Electronic Documents and Electronic Signatures in Bulgaria

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The Council of Ministers, by its Decision 679 of October 29, 1999, adopted a Strategy for the Development of the Information Society and a National Programme for the Information Society. One of the most important measures in this strategy is the development of electronic signatures and the security of information exchange and data protection. In the light of that fact, a draft Law on Electronic Documents and Electronic Signatures has been prepared and submitted for adoption by the National Assembly (hereinafter referred to as "the draft law").

#### Scope of Applicability

The draft law is similar to the EU's Directive 1999/93/EC (hereunder referred to as "the Directive") and the UNCITRAL's Model Law for Electronic Commerce, in that its area of applicability covers the legal regulation of electronic documents, electronic signatures and the rules and conditions for providing certification services. Outside the scope of the draft law will remain those contracts for which other laws require qualified written form, as well as the cases in which holding the document or a copy of it has specific legal significance. Such documents are bills of exchange, bills of lading, consignment notes, etc.

#### Electronic Documents, Electronic Messages

Several explanatory clauses at the beginning of the draft law give the legal definition of the general terms necessary for the proper implementation of the law's provisions. The draft law provides many new terms for Bulgarian law, following the exact English translation from the Directive. Such new terms are "electronic signature", "electronic document", and "electronic message", instead of the commonly used "digital signature", "digital document", and "digital message".

An **electronic message** is defined as a verbal statement, or a statement containing non-verbal information, presented in digital form through a generally accepted standard for transformation, decipherment and visualization of the information.

Of substantial importance for the entire Bulgarian legal framework will be the introduction of the principle of equalization of the electronic form with the written

one as regards the preparation of electronic documents (the latter defined as electronic messages, saved magnetically, optically or in any other manner, that are capable of being reproduced).

With regard to clarifying the future application of the draft law regarding the authenticity of an electronic statement, the draft law provides that the author (signatory) of the document shall be considered to be the natural person who is described in the statement as its creator, and the signature holder of the electronic message is the person in whose name the electronic message is created.

In its first chapter the draft law also defines who is the addressee of the electronic statement, who the intermediary in completing the statement could be, what obligations he has, and the possible consequences resulting from mistakes in transmission of the electronic statement. Legal regulation is given to the rules relating to the acceptance of the electronic statement, the exact place and time of its sending, receipt and comprehension of its contents. It is necessary to emphasize the fact that regarding this material (sending and acceptance of written or other statements) the rules of the draft law differ significantly from the general provisions of the Bulgarian Law on Obligations and Contracts.

#### Electronic Signatures

The draft law regulates two types of electronic signature—regular and advanced. As regards their legal consequences they are both equated to an autograph signature, except for the cases when the signatory or addressee of the electronic statement is the state, a state body or a local government body.

It should be stressed that the legal configurations of regular and advanced electronic signatures do not fully comply with those as defined by the Directive.

**Regular electronic signatures** (defined by the law simply as an "electronic signature") according to the draft law means any information relating to the electronic statement in a manner consented to between the signatory and the addressee, secure enough with a view to the needs of the market exchange, which reveals the identity of the signatory, the consent of the signatory to the electronic statement and which protects the contents of the electronic statement from further changes. In comparison with the Directive, the Bulgarian draft law adopts a stricter treatment of electronic signatures: such a signature shall protect the contents of the elec-

tronic statement from subsequent changes and the connection between the electronic signature and the electronic statement shall be consented to in advance as between the signatory and the addressee. The definition of a regular electronic signature also includes a subjective element—the electronic signature shall reveal the consent of the signatory to the electronic statement made.

An **advanced electronic signature** is defined by the draft law as a transformed electronic statement, included, added, or logically related to that electronic statement. The transformation is accomplished through algorithms, including the use of a private key of asymmetric cryptosystem. The definition of an advanced electronic signature is also different from the one in the Directive, but on the whole the same result has been achieved. The Directive defines the advanced electronic signature as an electronic signature which complies with the following requirements:

- it shall be related in a unique manner to the signatory;
- it shall be capable of authenticating the signatory;
- it shall be created by using means in the sole control of the signatory; and
- it shall be related to the information in such a manner that any subsequent change in it could be detected.

The draft law provides for the possibility of opposing the authenticity of the electronic signature. A detailed mechanism for generating and checking of the advanced electronic signature is established by means of creating and using a private key and a public key. The secrecy of the private key is guaranteed.

### Certification Service Providers (CSPs)

Chapter II of the draft law regulates in detail the requirements, activities, rights and obligations of the providers of certification services for issuing certificates, providing access to the published certificates to any third person and the provision of services for the creation of private and public keys for advanced electronic signatures.

As regards the possibility of recognizing in Bulgaria the legality of certificates issued by foreign CSPs, significantly the draft law establishes, on the basis of Article 1(13) of the Directive, the legal opportunity for the establishment of an organization for voluntary accreditation.

The draft law provides that the Council of Ministers shall adopt Regulations with respect to further and more detailed concretization of the requirements for the activities of the CSPs, regarding the following:

- maintenance of sufficient funds for securing their activities in compliance with the requirements of the draft law;
- their insurance for liability, arising from non-performance of their obligations under the draft law; and
- providing themselves with the necessary technical and technological equipment.

The relationship between the supplier of certification services and the signatory shall be regulated by a written contract or by a contract concluded in electronic form.

### Certificates

The draft law regulates the legal procedure for the issuing, suspension, continuation and termination of Certificates issued by the CSPs.

It provides that the Certificate shall be considered an electronic document, issued and signed by the CSP, which contains certain data for the CSP, the signatory of the advanced electronic signature, the authority from the signatory holder/natural person (author) to make electronic statements, the public key, the identifiers of the algorithms, the term of issue, suspension and termination, term of validity, restrictions, identification code of the Certificate, the liability and guarantees of the supplier of the certification services, etc.

Strict requirements are laid down in respect of the organization and maintenance of the Registers of Issued Certificates by the suppliers of the certification services.

### Liabilities

Concerning public security and the legal order protection, the draft law provides in detail for the liability of the CSP to the signature holder and to all third parties for damages for non-fulfilment of the statutory requirements for its activities and duties, caused by:

- untrue data or lack of such in the Certificate;
- where the signatory mentioned in the Certificate does not possess the private key corresponding to the public key; and
- damage caused by incompatibility of the data for determination of the use of the private key with the data made available to the user of the public key.

The law has provided for the responsibility of the signatory to bona fide third parties when for the generation of the public and private keys has used an algorithm that does not conform to the statutory requirements, and provided he has not assigned the request for issuance of the certificate.

The signature holder incurs liability to bona fide third parties in cases where:

- the signatory does not follow strictly the security requirements defined by the CSP;
- he failed to request the CSP to terminate the Certificate when he became aware that the private key had been used unlawfully or that there is a risk of its being so used;
- the signatory is not authorized to hold the private key corresponding to the one identified in the Certificate public key, and
- he has made untrue statements before the CSP relating to the contents of the Certificate.

The signature holder and the signatory shall be always responsible to the CSP when untrue data has been provided or they have failed to provide data required.

## Regulation and Control

The state authority authorized to exercise control and to regulate the activity of the CSPs in the Republic of Bulgaria shall be the State Telecommunication Commission (hereinafter referred to as "the STC"). The STC shall draft, co-ordinate and propose to the Council of Ministers adoption of secondary legislation regulating the activity of CSPs, the form of the Certificates to be issued, the preservation of information on the services provided by the CSPs, etc. The powers of the STC are particularized.

## Universal Electronic Signature

In accordance with the Directive, the draft law provides for the possibility of a universal electronic signature being issued. Under the draft law that would mean a special type of advanced electronic signature, certified by a CSP registered in the respective register and under a special procedure in the STC. This kind of advanced electronic signature is required for the public services and consequent relations. Such a signature shall be held by the STC, the registered CSPs, all state authorities, etc.

## Use of Electronic Documents by the State and Municipalities

Under the draft law several state and municipal authorities shall be obliged to accept and issue electronic documents. The exact state authorities shall be determined either by the Council of Ministers, provided they are subordinate to it, or by the law, as regards the judicial authorities. The obligations of the municipal authorities and the other state authorities shall be regulated by their own by-laws. The procedure and the manner in which electronic documents shall be recorded shall be provided for by internal rules.

## Protection of Personal Data

The draft law guarantees the protection of the personal data collected by the CSPs and disallows its use apart from the need for registry-keeping, unless explicitly agreed to by the individual involved or if allowed under special statutory order. It should be taken into consideration that a new Law on the Protection of Personal Data is expected to be adopted. Therefore at present it is not possible to analyze its future regulations

concerning the other possible cases for use of personal data.

## Recognition of Certificates Issued by Foreign CSPs

Under the law, all Certificates issued by foreign CSPs in accordance with their own country's legislation shall be recognized as fully effective on the territory of Republic of Bulgaria, provided one of the following requirements is met:

- The obligations of the CSP that issued the Certificate and the requirements for its activity correspond to the requirements envisaged by the law, and the CSP has been recognized in its own country;
- A local CSP, accredited by the respective accreditation organization or a duly registered CSP, has undertaken the obligation to be responsible for the acts and the omissions of a foreign CSP; and
- The Certificate or the CSP which issued the Certificate are recognized in accordance with an International Contract in force.

The first two requirements shall be certified by the STC, which has to enter in a special electronic register data for the foreign CSPs regarding the Certificates for the public keys and for their own electronic signature, as well as for all Bulgarian CSPs that have undertaken responsibility for the foreign CSPs.

## Administrative Responsibility

To ensure observance of the regulations of the draft Act by its addressees, certain fines are introduced. For natural persons they amount from BGN 100 to BGN 10,000 provided the act does not constitute a crime. Legal entities shall be subject to fines amounting from BGN 500 to BGN 50,000.

## Conclusion

As a final conclusion it could be stated that it is possible that the draft law will be radically altered during the process of its adoption by the National Assembly. In general it complies with the main principles of the Directive as well as with a number of legislative solutions successfully applied in other European countries. The adoption of the law will result in the implementation of legal reform in the sphere of e-commerce and harmonization with European law.

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