

ELECTRONIC SIGNATURE

International Law Office Internet Publication
October, 2000

Authors: Dr. Judit Budai, Dr. András Szecskay

On August 29, 2000, the Hungarian Government has passed Decision No. 1075/2000 (IX.13.) laying down the principles which shall govern a contemplated legislative progress on enacting the regulation of recognition and certification of electronic signatures and documents and the measures to be taken to introduce electronic signatures into public services. According to the Decision the Electronic Signature Act shall be drafted by October, 31 2000.

Although several countries of the European Union have not yet implemented the Directive 3/1993 into their national laws, the Hungarian legislator, with view to the enlargement of the European Union, intends to regulate electronic signatures in conformity with the Directive which established July 19, 2001 as the deadline for national implementation.

The primary goal of the regulation is to have electronic signatures deemed equivalent to handwritten signatures in order to acknowledge their conclusive effect in several areas of law. However, some areas of law are excluded from the scope of the contemplated act. e.g., family law, law of succession.

The act shall determine the definition, legal effect, validity and the recognition of electronic signatures, the conditions of establishment and operation of certificate and qualified certificate authorities; and the supervision of the certificate authorities.

Pursuant to the Government Decision, an electronic signature shall have to ensure that the signatory is identifiable, that the signature is undeniable and that the content of the document has not been altered since the time and date of the signature.

In order to evidence the authenticity of the signatures, a third party shall be required to issue a certificate of the date, time and content of the signature. A qualified certificate shall have the effect of a private document providing full evidence, or if the issuer of the certificate will comply with the mandatory conditions of special qualification the document will deem to be a public document. The third party which will issue a certificate will have to be an independent certificate authority. The certification shall not necessarily be carried out by public authorities. According to the intention of the legislator, certification may be private, market driven activity supervised by the Hungarian Communication Authority (HCA). (Website of the authority may be visited under www.hif.hu.) The certificate authority will be allowed to provide its services without prior authorization of the HCA, however, prior reporting of the commencement of such activity shall be required. Different rules are planned to apply to qualified and non-qualified certificate authorities. However, it will be up to the certificate authority to comply with the requirements of a qualified certificate authority in order to be accredited by the State. All conditions related to the qualification of the certificate authority must be objective, transparent, proportionate and non-discriminatory.

The state may not limit the number of accredited certificate authorities. It is the duty of the State to supervise and keep record of the qualified certificate authorities.

Considering the international nature of electronic commerce, the legislator intends to provide access for foreign certificate authorities on the Hungarian market. Foreign qualified certificate authorities may provide services with an equivalent legal effect as Hungarian service providers, provided, however, that either a Hungarian certificate authority accredited in Hungary bears responsibility for the foreign certificate authority's activities in a manner regulated by the law or an international treaty sets forth the acknowledgement of the certificate issued by a foreign certificate authority.

According to the Government Decision, the two most relevant areas of law profiting from the regulation of electronic signature will be commercial and administrative law. Business transactions will be expected to be performed in a much faster but at the same time effective and data safe manner. Novelties might also be brought by the regulation of electronic signature in administrative and civil procedure laws. Citizens in certain administrative and court procedures might gain access to information and proceed in a less time-consuming manner, for instance in the course of submitting declarations and documents to the authorities and obtain official certificates. In spite of the advantages provided by electronic signatures, the legislator shall not make a mandatory requirement for parties to use electronic signature. Nevertheless, in the course of promoting the development of the information society it is the goal of the Government that administrative authorities (as well as courts on a longer run) be prepared to receive documents in electronic form which bear electronic signature.

For further information on this topic, please contact Dr. Judit Budai or Dr. András Szecskay at Szecskay - Attorneys at Law by telephone (+36 (1) 472 3000) by fax (+36 (1) 472 3001) or by e-mail (info@szecskay.com).