

ELECTRONIC MOTION IN THE SLOVAK REPUBLIC

by

MIROSLAV CHLIPALA*

The analysis contains description of legal frame for electronic motion in the Slovak Republic underlining approach of public authorities to citizens through use of electronic means of communication. The analysis contains description of contemporary situation with regards to use of electronic motion in the area of commercial/company's register, tax administration, social and health insurance. The analysis contains practical issues on use of electronic motion within commercial/company's register.

KEYWORDS

Electronic motion, electronic signature, advanced/qualified electronic signature, electronic delivery, electronic registry, electronic application, commercial register/company's register

1. BASIS FOR ELECTRONIC MOTION IN THE SLOVAK REPUBLIC

A new option for delivering motions between a citizen and a state¹ has been established by a legal framework provided by the Act No. 215/2002 Coll. on Electronic Signature (the „Electronic Signature Act“). In professional sphere such relationships are labeled as *Citizen-to-Administration*, C2A in short. The Electronic Signature Act is effective as of 1 May 2002. This date shall be regarded as a first and important, certainly not perfect, step out for electronic means' usage in the law of the Slovak Republic.

Under the primary version of the Electronic Signature Act the electronic motion consisted of three basic pillars:

* Department of Economic Sciences and Information and Communication Technology Law, Faculty of Law, Comenius University, Bratislava. E-mail: Miroslav.Chlipala@flaw.uniba.sk

¹ For purposes of this analysis we shall not specify elements/subjects, which shall be subsumed in the term the 'state' and its component powers. From electronic delivery's viewpoint in Slovakia such division is unimportant.

1. The Electronic Signature Act presumed that the communication between the citizen and the state would be only provided in the form of a qualified electronic signature, as a 'higher', more reliable form of the electronic signature;²
2. The Electronic Signature Act construed a framework for electronic motions in the form of an electronic registry³ for realization of electronic motions. Subsequently, the Slovak National Security Authority issued its decree,⁴ which specified detail means of creation and requirements for a public authority's electronic registry and filing of an electronic document;
3. Articles III to VI of the Electronic Signature Act amended fundamental legal procedural rules;⁵ core amendments of such rules related to unambiguously emphasize the situation, when a motion signed by the qualified electronic signature is regarded to be equivalent to a written motion or a motion provided verbally in a form of minutes.⁶ A motion signed by the qualified electronic signature shall not need to be necessary confirmed in writing or verbally in a form of minutes, as it is required for motions performed by fax, telegraphically or teletypewriter.

2. SUBSEQUENT DEVELOPMENTS (FACTUAL AND LEGISLATIVE) IN ELECTRONIC SIGNATURE AREA IN THE SLOVAK REPUBLIC

The introduced legal frame has not brought expected legal status consisting of intensive growth of electronic motions on 'traditional' motions' detriment. Such electronic motion legal frame was regarded as too general, no experiences with the electronic motion's application existed, no financial means were reserved by the state for more aggressive implementation of

² Section 5 (1) of the Electronic Signature Act in its original wording: 'If it is possible to use the electronic signature in contact with a public authority, such electronic signature shall be the qualified electronic signature.'

³ Section 2 (y) of the Electronic Signature Act: 'Electronic Registry' shall mean a technical device determined especially for accepting, sending and confirmation of electronic documents, electronic documents signed by the electronic signature and electronic documents signed by the qualified electronic signature.'

⁴ Decree of the National Security Authority No. 542/2002 Coll. on the Manner and Procedure of Electronic Signature Usage in Commercial and Administrative Intercourse.

⁵ The following legal procedural rules were amended: Civil Procedural Code, Taxes and Fees Administration Act, Administrative Procedural Code.

⁶ The professionals do not have united their views on the necessity of supplementing legal procedural rules with a provision regarding equalization of the motion signed by the qualified electronic signature with the written motion. The Electronic Signature Act amended and supplemented the section 40 (4) of the Civil Code with a new sentence with the following wording: 'A requirement of a written form shall be satisfied, if a legal act performed by electronic means is signed by the qualified electronic signature.' A response for this issue shall not be the object of this analysis. In our point of view, procedural rules' amendments have been redundant with respect to the provision specified herein.

system solutions, and not least, human characters such as distrust, fear and unreasoning respect played its crucial role.

As a consequence of such situation a new legal solution for active usage of the electronic signature in daily relationships between the citizen and the state became necessary to find. The outcome of such efforts was the indirect amendment⁷ of the Electronic Signature Act, effective as of 1 June 2006. In comparison with the Electronic Signature Act's original wording, the amendment has introduced the possibility of communication between the citizen and the state, besides motions signed by the qualified electronic signature, also via motions signed by a 'simple' electronic signature.⁸

The amended section 5 (1) of the Electronic Signature Act also included one inconspicuous change, but crucial with respect to its importance. Section 5 (1) in its original wording ambiguously specified (not clearly) a possibility of the qualified signature's usage in contact with a public authority. The amendment clearly and unconditionally established the usage of the electronic signature/qualified electronic signature in contact with a public authority.⁹

Considerable development, in respect of trust to the electronic motion of both professionals and public, has been caused by the Slovak Constitutional Court Ruling No. III. ÚS 7/07-97. The Slovak Constitutional Court on its public hearing dated 20 December 2007 ruled in favor of the petitioner in the matter of non-acceptance of the delivered petitioner's electronic motion by the District Court Čadca.¹⁰

The Slovak Constitutional Court stated, that non-acceptance of the motion specified above constituted the breach of the petitioner's fundamental right, guaranteed under section 46 (1) of the Slovak Constitution and section 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Moreover, the Slovak Constitutional Court ordered the District Court Čadca to act in the case of the electronic motion signed by the qualified electronic signature under provisions of the Civil Procedural Code.

⁷ Act No. 275/2006 Coll. on Information Systems in Public Administration and on Amendment and Supplement of Other Acts.

⁸ New wording of Sec. 5 (1) of the Electronic Signature Act, effective as of 1 June 2006: 'An electronic signature or a qualified electronic signature shall be used in contact with public authorities. ...'

⁹ Compare: 'If it is possible to use an electronic signature in contact with a public authority, such electronic signature shall be a qualified electronic signature.' (the wording of section 5 (1) of the Electronic Signature Act valid until 31 May 2006), and: 'An Electronic signature or a qualified electronic signature shall be used in contact with public authorities. ...' (the wording of the section 5 (1) of the Electronic Signature Act valid as of 1 June 2006).

¹⁰ See: http://www.concourt.sk/rozhod.do?urlpage=dokument&id_spisu=113010.

3. REAL STEPS ORIENTED TO THE ELECTRONIC MOTION'S USAGE IN THE SLOVAK REPUBLIC

In effort to adequately react to arisen situation, specified in previous part, some public authorities have admitted or have transposed admitting of changes in respective legal acts in order to provide for usage of the electronic motion in practice.

From the citizen's point of view the biggest progress in the electronic signature's usage is the possibility of electronic motions' usage in connection with the registration of companies with the Commercial Register. The other attempts of the electronic signature's usage are the deliveries of electronic motions by tax subjects to a tax administrator (and conversely), the delivery of electronic motions to the Social Insurer and health insurance companies.

3.1. ELECTRONIC MOTIONS UNDER THE COMMERCIAL REGISTER ACT

Realization of the motions for registration of companies with the Commercial Register and motions providing changes in the Commercial Register's registration under the Commercial Register Act, shall be regarded as one of the first attempts for the Central Public Administration Portal's usage (the 'CPAP') as the central electronic register.

The Commercial Register Act does not take the advantage of the electronic motion signed by the simple electronic signature as it is usual in other legal acts governing electronic motions, e.g. in the sphere of taxes, health insurance and social insurance.

Under the amended section 5a of the Commercial Register Act,¹¹ effective as of 1 August 2007, the electronic motion shall be signed by the qualified electronic signature. The submitter of the Commercial Register Act's amendment has not considered the identification of the person, signing the electronic motion with the qualified signature, as sufficient. Beyond the terms of the effective Electronic Signature Act, the person interested in filing electronic motions to the Commercial Register shall be required to get through a specific identification procedure required by the Commercial Registry Act.¹²

¹¹ Section 5a of the Act No. 530/2003 Coll. on Commercial Register and on Amendment and Supplement of Other Acts, as amended (the 'Commercial Register Act'), was amended by the section I (15) of the Act No. 24/2007 Coll. Amending and Supplementing the Commercial Register Act.

¹² Compare section 5a (2) of the Commercial Registry Act: 'A person signing a motion for registration by the electronic signature, shall be obliged to secure a verification of her/his personal data for the purpose of the electronic procedure.'

The person, intending to file electronic motions with the Commercial Register, shall be the qualified electronic signature's user,¹³ which means that such person is a private key holder and her/his public key is accessible in the public key's qualified certificate. Subsequently, the person shall register itself with the CPAP. The CPAP's provider, the Government Office of the Slovak Republic, calls upon the person to present a notary confirmation, proving that the person registered within the CPAP is a real user of the particular qualified electronic signature. Such confirmation's hard copy shall be only delivered to the Government Office of the Slovak Republic personally or via post. Any motion signed by the qualified electronic signature shall not be accepted in this case. Following the notary confirmation's reception, the Government Office of the Slovak Republic shall inform the registered user via CPAP that the registered user shall use the CPAP for filing electronic motions regarding the Commercial Register.

Except the qualified electronic signature certified by the procedure specified above, the Commercial Register electronic motion shall meet the following requirements:

1. The electronic motion shall be realized only via CPAP; the CPAP's communication interface is in an improvement process by now, as the communication environment is being clumsy and unclear for a daily user;
2. The electronic motion shall be realized in electronic forms published on the CPAP's web pages;
3. The electronic motion shall include the motion for registration, its annexes shall be filed electronically together with the electronic motion for registration or in paper;
4. The electronic motion shall be delivered:
 - a) the day, on which a register court has been informed on a court fee's payment, if all annexes are filed electronically together with the motion for registration;
 - b) the day, on which both all annexes in paper has been delivered to a register court, and a register court has been informed on a court fee's payment.

The practical problem of the Commercial Register electronic motion is the moment of the electronic motion's delivery. A moment of a classic printed motion's delivery is influenced by circumstances on a submitter's side. Unlike a classic printed motion, the electronic motion's delivery is also influenced by other than the motion's submitter acts (e.g. failure of the CPAP

¹³ The subject matter of this analysis is not the description how to become the qualified electronic signature's user. However, it is a relatively time-consuming procedure (e. g. choice of an accredited certification authority, choice of a proper equipment and a software for the qualified electronic signature, personal activation of the qualified electronic signature by an accredited certification authority, PC installation of the qualified electronic signature, time for one's acquaintance with the qualified electronic signature's usage) and requires quite high expenses (a software license fee for the electronic signature's usage, a fee for equipment for the electronic signature's usage, an annual fee for the qualified electronic signature).

system, late information on the court fee's payment, which is delivered by the CPAP to the motion's submitter, time required for inter-bank transfer of a court fee, cooperation between a court's accounting section and competent registry court's office, which has been assigned to handle with a file).

A court fee payment is provided by a common payment system between the motion submitter's bank and the register court's account maintained by the state's treasury, as the CPAP's payment portal does not work nowadays. This causes a time delay approximately 3-5 days, comparing to a classic printed motion delivered to the registry court personally with enclosed fee stamps. As a result, the time period for providing the Commercial Register's registration is in average two times longer, if considering the fact that under a valid law the registry court shall decide on any motion in 5 days. This fact substantially handicaps the electronic motion mainly in urgent cases of registration of commercial register's data.

Our experiences have proved that in case of the CPAP's failure is necessary to act by the submitter's own initiative via the CPAP's help line or new electronic motion. In the process of the electronic motion's filling, a confirmation generated by the CPAP may help, as such confirmation shall be delivered without undue delay following the control of the public key's qualified certificate. In case the confirmation is not delivered in a reasonable time period, the submitter should control the correctness of the electronic motion's delivery. After the confirmation's delivery, the sender of the electronic motion shall be notified in a particular time interval. Such notification contains information regarding the court fee's amount and other identification data necessary for providing payment of the court fee and its proper and quick combination with the filed electronic motion.

A necessary condition for making Commercial Register electronic motions more attractive shall be the CPAP's activation for providing instant payments of the court fee together with filing of the electronic motion.

3.2. ELECTRONIC MOTION ACCORDING TO OTHER LEGAL ACTS

The purpose of this analysis' part is to point out the application of existing legal framework for electronic motions in other legal acts. Filing of electronic motions is possible under conditions set by the following Slovak legal acts:

1. Act No. 511/1992 Coll. on Taxes and Fees Administration and on Amendment in System of Territorial Finance Authorities, as amended (the 'Tax Administration Act');
2. Act No. 222/2004 Coll. on Value Added Tax, as amended (the 'VAT Act');

3. Act No. 461/2003 Coll. *on Social Insurance*, as amended (the 'Social Insurance Act');
4. Act No. 580/2004 Coll. *on Health Insurance and on Amendment and Supplement of the Act No. 95/2002 Coll. on Insurance and on Amendment and Supplement of Other Acts*, as amended (the 'Health Insurance Act').

In principle, each of the acts specified above provides the citizen with the possibility of delivering electronic motions signed by the qualified electronic signature in compliance with section 40 (4), last sentence of the Civil Code. The Social Insurance Act specifies two exceptions from such rule:¹⁴

1. regulation in favor of the citizen: the electronic motion may be signed by the simple electronic signature; such motion shall be confirmed in writing within 3 days;¹⁵
2. regulation restricting the citizen: the electronic motion signed by the qualified electronic signature shall be inadmissible in case of filing the Social Insurer's official forms.

From our point of view, it is necessary to amend the Social Insurance Act in such way, that Social Insurer's official forms may be filed as the electronic motion signed by the qualified electronic signature. The regulation set by the Commercial Register Act may be a template for the Social Insurance Act's amendment.

The acts mentioned above, except the qualified electronic signature motions, also specify the 'consensual electronic motion.'¹⁶ In case the citizen wants to deliver the electronic motion without the qualified electronic signature to the competent public authority, he/she shall act as follows:

1. the citizen provides the competent public authority in writing with data necessary for documents' deliveries, using a form's template published on the competent public authority's web page;
2. the competent public authority enters with the citizen into a written agreement on electronic motion without qualified electronic signature; the agreement specifies mainly requirements for electronic delivery, means of the electronic motion's verification and a proof of the delivery.

¹⁴ Section 186 (1) of the Social Insurance Act: 'A motion may be performed in writing, verbally, telegraphically, by fax or by electronic means signed by the qualified electronic signature..., in case its filing shall not be required in the form prescribed by the Social Insurer. ... A motion performed by electronic means, which is not signed by the qualified electronic signature ..., shall be required to be confirmed in writing within 3 days. ...'

¹⁵ According to Section 20 (4) of the Tax Administration Act, the similar provision is valid: 'A motion provided... by electronic means, which is not signed by the qualified electronic signature... it shall be delivered in writing within 5 working days following its posting, otherwise it shall not be regarded as delivered.'

¹⁶ For example section 20 (8) of the Tax Administration Act; section 80 (8) of the VAT Act; section 186 of the Social Insurance Act; section 19 (23) of the Health Insurance Act..

The most complex regulation in the area of electronic motions and electronic communication between the citizen and the state is set by the Tax Administration Act. Tax Administration Act also specifies the possibility of official delivery, which means a procedure and requirements for a reverse delivery of electronic motions by the tax administrator to the tax subject.

As a condition for official electronic motions' delivery by the tax administrator to the tax subject shall be the tax subject's request for such service. In case the tax subject decides on electronic receiving of the tax administrator's motions, the tax subject shall send the tax administrator a filled up request signed by the qualified electronic signature.¹⁷

Regarding consequences of time passing, a definition of a moment of the electronic motion's delivery is inseparably connected to delivery. Active action consisting of delivery's confirmation with the qualified electronic signature provided by the tax subject shall be required in case of deliveries by the tax administrator.¹⁸

The Tax Administration Act specifies a substitutive delivery in case the electronic motion is not possible to deliver to the tax subject. If the tax subject does not confirm the electronic document's delivery within 3 days, the tax administrator shall deliver the document to the tax subject by post.¹⁹

With respect to current Slovak regulation of the teletronic delivery, the solution mentioned above shall be deemed as progressive and additional to a classic post delivery. In this case, it is not a new solution independent from the classic post delivery, which might be able to fully replace the post delivery.

4. EXPECTATIONS AND CHALLENGES

The purpose of this analysis shall not be a complex specification of the electronic motion in the Slovak Republic. Such purpose would not be effective when considering the dynamics of new technological possibilities for electronic motions. In spite of slower legislative procedures comparing to dynamics of technological development, we have to admit that the electronic

¹⁷ Section 17a (2) of the Tax Administration Act: 'If the tax subject requires the delivery of documents by the tax administrator via electronic means, the tax subject shall be required to notify the tax administrator on all data necessary for such delivery, ... Such notification shall be filed in a template form published on the web page..., and shall be signed by the qualified electronic signature.'

¹⁸ Section 17a (3) of the Tax Administration Act: 'A document delivered by the electronic means shall be regarded to be delivered on the day of the tax administrator's acceptance of acknowledgement on the document's reception sent by the tax subject and signed with the qualified electronic signature.' Such delivery shall be regarded as the delivery to the addressee's own hands.'

¹⁹ Section 17a (4) of the Tax Administration Act: 'If the tax subject does not confirm the document's delivery... within 3 days following the document's posting by electronic means, the document shall be regarded as non-delivered. In such case the tax administrator shall send the document to the tax subject's address for post deliveries.'

motions' legal framework is changing and developing unexpectedly fast. The aim of this analysis is to point out the most important parts of the electronic delivery or possible future trends in a process of seeking of complex solution for electronic motions between the citizen and the state.

In principle, we may state that current legal regulation provides for the qualified electronic signature's usage for the electronic motion without any problems. Present legal status (supported by the decision of the Slovak Constitutional Court) forces public authorities to quickly perform all necessary acts for receiving of electronic motions signed by the qualified electronic signature from citizens, and to create an electronic registers.

An outstanding issue relating to electronic motions, which may be necessary to solve (in the immediate future), is the definition of rules decisive for an exact specification of the document's moment of delivery; so at what time shall be the document deemed as delivered to a state authority or to the citizen. With respect to technical differences between the electronic delivery and the post delivery, defining of some fiction shall be necessary. Or shall the delivery be performed via third independent person, who shall act as a guarantor for the moment of delivery?

Other issue shall be the payment portal or new forms of electronic payments of administrative and court fees. Such issue not only corresponds to electronic motions, however it supports successfulness of electronic motions' penetration to a daily business. The actual issue for a proper legal regulation is the possibility of on-line payments, payments via payment cards, pre-paid cards or electronic fee stamps.

We assume that a unified legal solution is decisive for progress in creation of effective electronic motions' legal frame and other corresponding issues. The unified legal solution contributes to easier and quicker choice of this form of communication for wider range of interested parties. Reminding the fast technological development, the unified legal regulation shall be more effective in case of other arisen legislative changes.

The CPAP shall be an instrument for electronic motions' unification (and not only motions). The Act No. 275/2006 Coll. on Information Systems in Public Administration, as amended (the 'ISPA Act') specifies the CPAP's basic terms, such as a common Internet entry point, which secures common evidence functions, verification, authorization and users' support, information flow management, electronic register and electronic fees payment. The ISPA Act's lack of specific regulation of operation of the electronic register, payment portal, or the issues regarding delivery and a delivery fiction for the CPAP, we may consider as a disadvantage.