

297/2016 Coll.

ACT

of August 24, 2016

on trust services for electronic transactions

The Parliament of the Czech Republic has resolved on the below Act:

Section 1

Subject of the Law

This Act shall guide, in respect of the directly applicable EU regulation¹⁾, the following

- a) selected proceedings of trust services providers,
- b) selected requirements for trust services,
- c) competences of the Ministry of the Interior (hereinafter only the 'Ministry') in respect of trust services, and
- d) sanctions for violations of duties in respect of trust services.

Proceedings of Qualified Trust Services Providers

Section 2

A qualified trust service provider shall provide qualified trust services based on a written contract.

Section 3

(1) A qualified trust service provider shall keep, for the period of 10 years, documents related to the issuance of

- a) qualified certificates for electronic signatures or electronic seals,
- b) qualified certificates for website authentication, and
- c) qualified electronic time stamps.

(2) After the expiration of the period stipulated by Subsection 1, a qualified trust service provider shall keep, for a period of 15 subsequent years, data based on which the provider had verified identity of the applicant for the qualified certificate for electronic signatures or electronic seals or identity of a natural person authorised to act on behalf of the natural person which applied for the qualified certificate for electronic seal.

(3) Unless the regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (hereinafter only the "Regulation") or this Act stipulate

otherwise, handling of documents in storage shall be guided by provisions of the Act on Archives and Record Services.

Section 4

(1) A qualified trust service provider, which cannot, after termination of its activities, comply with its duties and keep and provide access to the records pursuant to Article 24(2)h) of the Regulation, shall, immediately after termination of its activities, transfer the records to another qualified trust service provider.

(2) Should a qualified trust service provider not be able to transfer the records to another provider in line with Subsection 1 above, the records shall be transferred, without any undue delay, to the Ministry.

Signing of Document

Section 5

To attach an electronic signature, a qualified electronic signature shall be used to sign electronic document used to perform legal acts by the following:

- a) the state, a regional self-governing unit, a legal person established by law or a legal person established or founded by the state, a regional self-governing unit or a legal person established by law (hereinafter only "public law signatories"), or
- b) a person not listed in letter a) above when performing acts within the scope of their competences.

Section 6

(1) To attach an electronic signature, a recognized electronic signature shall be used to sign electronic document used to perform legal acts in respect of a public law signatory or another person when performing acts within the scope of their competences.

(2) A recognized electronic signature shall mean an advanced electronic signature based on a qualified certificate for an electronic signature or a qualified electronic signature.

Section 7

To sign with an electronic signature, subjects may use a qualified electronic signature, an advanced electronic signature, or any other type of an electronic signature should they be signing an electronic document which is used to perform a legal act in a manner different from that stipulated in Section 5 or Section 6(1).

Sealing of Document

Section 8

Unless a signature is stipulated by another legal norm as a compulsory element of the legal process guided by the document or unless this requirement derived from the nature of the legal process, a public law signatories or other person when performing acts within the scope of their competences shall seal the document in an electronic form by a qualified electronic seal.

Section 9

(1) To attach an electronic seal, a recognized electronic seal shall be used to seal electronic document used to perform legal acts in respect of a public law signatory or another person when performing acts within the scope of their competences.

(2) A recognized electronic seal shall mean an advanced electronic seal based on a qualified certificate for electronic seal or a qualified electronic seal.

Section 10

To seal with an electronic seal, subjects may use a qualified electronic seal, an advanced electronic seal, or any other type of an electronic seal should they be sealing an electronic document which is used to perform a legal act in a manner different from that stipulated by Section 8 or Section 9(1).

Section 11

Use of a Qualified Electronic Time Stamp

(1) A public law signatories which signed an electronic document used to perform a legal act by ways in line with Section 5 and a person who signed an electronic document by means of which they act when performing their duties in line with Section 5, shall attach a qualified electronic time stamp to the respective signed electronic document.

(2) A public law signatories which sealed an electronic document used to perform a legal act by ways in line with Section 8 and a person who sealed an electronic document by means of which they act when performing their duties in line with Section 8, shall attach a qualified electronic time stamp to the respective sealed electronic document.

Section 12

Validation of an Advanced Electronic Signature and Advanced Electronic Seal

Provisions of Article 32 (1) a) to e), g) and h) of the Regulation shall be used accordingly to the validation of an advanced electronic signature based on a qualified certificate for electronic signature and the validation of an advanced electronic seal based on a qualified certificate for electronic seal.

Section 13

Competencies of the Ministry

(1) Pursuant to the Regulation and this Act, the Ministry shall fulfil tasks as a supervisory body.

(2) The Ministry may order the qualified trust service provider to revoke an issued qualified certificate should there exists a reasonable suspicion that the qualified certificate was forged or

should be issued based on incorrect data. The ministry may also order revocation of a qualified certificate should it determines that the signing or sealing person is using a signature or sealing creation device with security gaps which may enable forgery of electronic signatures or electronic seals or modification of data to be signed or sealed.

(3) The Ministry shall publish, by means allowing for a remote access, trusted lists containing information concerning qualified trust service providers together with information related to the qualified trust services provided by them.

(4) The Ministry shall keep a list of certificates based on which the qualified trust service providers sign, with an advanced electronic signature or seal with an advanced electronic seal, the qualified certificates or qualified electronic time stamps issued by them. The list of certificates shall be published by the Ministry by means allowing for a remote access.

(5) The Ministry shall perform its duty pursuant to Article 24(2)h) of the Regulation in case of transfer of a records pursuant to Section 4(2).

(6) The Ministry shall inform, without any undue delay, the Office for Personal Data Protection on its findings made in the context of its performance of duties related to its role of supervisory body pursuant to Section 1, should these concern competencies of this office

Provision of Trust Services by the National Registers Authority

Section 14

The National Registers Authority may provide trust services, also as a business activity.

Section 15

(1) Should the National Registers Authority provide trust services such as a certificate which is neither a certificate for electronic signature, nor a certificate for electronic seal or a certificate for web authentication, the National Registers Authority shall keep records of certificates and persons or their parts to which a certificate has been issued to.

(2) The record shall contain the following:

a) data of the natural person to whom a certificate has been issued, in the following extent:

1. name/names and surname/surnames
2. date and place of birth, as regards persons born abroad – a date, place and country of birth
3. date of death
4. address, potentially also a mailing address

b) data of the legal person to whom a certificate has been issued, in the following extent:

1. name of the company
2. registered address of the company seat
3. identification number of the person

c) data related to the certificate:

1. identifier
2. beginning and end of the certificate's period of validity
3. date and time of activation
4. date and time of revocation

d) other data

1. identifier of the carrier which the certificate has been stored to
2. agenda identifier of the natural person for the certificate issuance agenda

(3) Data pursuant to Section 2c) shall be publicly accessible by remote access.

(4) Data pursuant to Section 2 shall be kept for the duration of validity of the respective certificate and for the subsequent 15 years since the end of validity of the certificate.

Violations and Administrative Offenses Committed by Legal Persons and Entrepreneurs

Section 16

(1) The use of the EU trust mark ²⁾ by a natural person in breach of Article 23(1) of the Regulation shall constitute a misdemeanour.

(2) A misdemeanour under Subsection (1) shall be punished by a fine up to CZK 2 million.

Section 17

(1) A legal person or an entrepreneur shall commit an administrative offense should they:

- a) use the EU trust mark EU²⁾ in breach of Article 23(1) of the Regulation, or
- b) fail to record or enable access to, in violation of Article 24(2)h) of the Regulation, all relevant information after the termination of activities of the qualified trust service provider or fail to transfer the records to the Ministry as per Section 4(2).

(2) A trust service provider shall commit an administrative offense should they:

- a) fail to adopt relevant technical and organisational measures to manage the risks posed to the security of the trust services they provide pursuant to Article 19(1) of the Regulation,
- b) fail to inform, in breach of Article 19(2) of the Regulation, without any undue delay, the respective supervisory body as stipulated by this Act or any other body which may be negatively impacted by the breach of security or loss of integrity of any respective breach of security or loss of integrity, or
- c) provide, in breach of Article 21(3) of the Regulation, trust services presented as qualified before qualified status has been indicated in the trusted lists.

(3) A qualified trust service provider shall commit an administrative offense should they:

- a) in breach of Article 20(1) of the Regulation
 1. fail to undergo an audit performed by a conformity assessment body at least once in 24 months, or
 2. fail to submit the resulting conformity assessment report,
- b) fail to undergo an audit performed by a respective supervisory body as stipulated by this Act or by a conformity assessment body pursuant to Article 20(2) of the Regulation,
- c) fail to provide a link to the relevant trusted list on their website pursuant to Article 23(2) of the

Regulation,

d) fail to report potential changes in the provision of its qualified trust services and an intention to cease those activities pursuant to Article 24(2)a) of the Regulation,

e) employ staff or use subcontractors in violation of Article 24(2) b) of the Regulation,

f) in violation of Article 24(2)c) of the Regulation

1. fail to maintain sufficient financial resources, or
2. fail to obtain appropriate liability insurance,

g) fail to meet their information requirement pursuant to Article 24(2)d) of the Regulation,

h) fail to use trustworthy systems and products pursuant to Article 24(2)e) of the Regulation,

i) fail to use trustworthy systems to store data pursuant to Article 24(2)f) of the Regulation,

j) fail to take appropriate measures against forgery and theft of data pursuant to Article 24(2)g) of the Regulation,

k) fail to, in breach of Article 24(2)h) of the Regulation, record and keep accessible all relevant information,

l) fail to have an up-to-date termination plan to ensure continuity of service pursuant to Article 24(2)i) of the Regulation,

m) fail to provide qualified trust services based on a written agreement pursuant to Section 2,

n) fail to store documents pursuant to Section 3(1), or

o) fail to keep a record of data pursuant to Section 3(2).

(4) A qualified trust service provider issuing qualified certificates shall commit an administrative offense should they:

a) fail to verify the identity and any specific attributes of the natural or legal person to whom the qualified certificate is issued, pursuant to Article 24(1) of the Regulation,

b) fail to make sure that the issued qualified certificate contained exact, true, and complete data,

c) fail to, in violation of Article 24(2)k) of the Regulation, maintain or keep the up-to-date records of qualified certificates issued,

d) fail to publish the revocation status of a revoked certificate pursuant to Article 24(3) of the Regulation,

e) fail to provide information to any relying party on the validity or revocation status of qualified certificates issued by them pursuant to Article 24(4) of the Regulation,

f) in breach of Article 28(4) of the Regulation change the status of the revoked qualified certificate for electronic signatures issued by them,

g) in breach of Article 38(4) of the Regulation change the status of the revoked qualified certificate for electronic seals issued by them, or

h) issue a qualified certificate for electronic signatures, a qualified certificate for electronic seals or a qualified certificate for website authentication, which fail to comply with requirements stipulated by the Regulation,

(5) A qualified trust service provider providing a qualified service of qualified electronic signature validation or qualified electronic seal validation shall commit an administrative offense should they:

a) fail to validate a qualified electronic signature or a qualified electronic seal pursuant to Article 33(1)a) of the Regulation, or

b) provide qualified services of qualified electronic signature validation or qualified electronic seal validation in breach of Article 33(1)b) of the Regulation.

(6) A qualified trust service provider providing a qualified service of qualified electronic signature preservation or qualified electronic seal preservation shall commit an administrative offense should they fail to use processes and technologies pursuant to Article 34(1) of the Regulation.

(7) A qualified trust service provider issuing qualified electronic time stamps shall commit an administrative offense should they fail to secure that the qualified electronic time stamps issued by them meet requirements pursuant to Article 42(1) of the Regulation.

(8) An administrative offense shall be punished by a sanction up to:

a) CZK 500,000 should it concerns an administrative offense pursuant to Subsections 3c) and g),

b) CZK 1,000,000 administrative offense pursuant to Subsection 2b), and Sections 3a), e) and m),

c) CZK 2,000,000 administrative offense pursuant to Subsection 1, Subsection 2a) and c), Subsections 3b), d), f), h) to l), n) and o) and Subsections 4 to 7.

Section 18

(1) A legal person shall not be liable for an administrative offense should it proves to have exerted all its effort that could have been required to prevent such violation.

(2) When imposing the sanction on the legal person, attention shall be paid to the seriousness of the administrative offense, especially to how it was committed and to its impact and circumstances.

(3) Liability for the administrative offense shall cease should the responsible administrative body fails to commence the respective proceedings within one year after becoming aware of it and no longer than three years after the date the offence had been committed.

(4) Liabilities of a natural person doing business or in direct relation to such business shall be guided by provisions of this Act on liabilities and sanctions in respect of legal persons.

(5) Administrative offences under this Act shall be handled at first instance by the Ministry.

(6) Sanctions shall be the public budget income.

Section 19

Transitory Provisions

(1) For a period of two years following the date of force of this Act, a signature may be attached, pursuant to Section 5, also by an advanced electronic signature based on a certificate for qualified electronic signature.

(2) For a period of two years following the date of force of this Act, a seal may be attached, instead by an advanced electronic seal based on a certificate for qualified electronic seal or instead by a qualified electronic seal, by the following:

a) an electronic mark pursuant to Act No. 227/2000 Sb., on electronic signature and on the amendment of selected other Acts (the Electronic Signature Act), as amended prior to the date of force of this Act, based on a system certificate issued by a person who had been, prior to the date of force of this Act, an accredited provider of certification services and which is a qualified trust service provider, or

b) an advanced electronic seal based on a certificate for electronic seal issued by a qualified trust service provider.

(3) Section 11(2) shall be used accordingly for the purposes of Subsection 2 above.

(4) A qualified trust service provider issuing system certificates for the use pursuant to Subsection 2a) shall provide such trust service based on a written agreement. Provisions of Section 3(1)a) and Section 3(2) shall be used accordingly for the purposes of storing of documents related to the issuance of system certificates.

(5) For a period of two years following the date of force of this Act, electronic time stamps issued by a qualified trust service provider may be used instead of qualified electronic time stamps pursuant to Section 11.

(6) A qualified trust service provider issuing electronic time stamps to be used pursuant to Subsection 5 above shall provide such trust service based on a written agreement. Provisions of Section 3(1)c) shall be used accordingly for the purposes of storing of documents related to the issuance of electronic time stamps.

(7) Duties pursuant to Section 6(5) to 8 of Act No. 227/2000 Coll., as amended prior to the date of force of this Act shall remain in force also after the date of force of this Act.

(8) Validity of electronic marks and system certificates shall not be affected by the termination of force of Act 227/2000 Coll.

(9) Should there be, on the date of entry in force of this Act, another legal norm using the term recognized electronic mark, it shall be understood also the electronic mark as stipulated by Act No. 227/2000 Coll., as amended prior to the date of force of this Act, based on a system certificate issued by a person who had been, prior to the date of force of this Act, an accredited provider of certification services and which is a qualified trust service provider.

Section 20

Repealing provisions (not translated)

Zrušují se:

1. Zákon č. 227/2000 Sb., o elektronickém podpisu a o změně některých dalších zákonů (zákon o elektronickém podpisu).
2. Část pátá zákona č. 226/2002 Sb., kterým se mění zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád), ve znění pozdějších předpisů, zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, zákon č. 337/1992 Sb., o správě daní a poplatků, ve znění pozdějších předpisů, zákon č. 71/1967 Sb., o správním řízení (správní řád), ve znění pozdějších předpisů, a zákon č. 227/2000 Sb., o elektronickém podpisu a o změně některých dalších zákonů (zákon o elektronickém podpisu).
3. Část osmá zákona č. 517/2002 Sb., kterým se provádějí některá opatření v soustavě ústředních orgánů státní správy a mění některé zákony.
4. Zákon č. 440/2004 Sb., kterým se mění zákon č. 227/2000 Sb., o elektronickém podpisu a o změně některých dalších zákonů (zákon o elektronickém podpisu), ve znění pozdějších předpisů.
5. Část dvacátá osmá zákona č. 501/2004 Sb., kterým se mění některé zákony v souvislosti s přijetím správního řádu.
6. Část třetí zákona č. 635/2004 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o správních poplatcích.
7. Část třicátá druhá zákona č. 444/2005 Sb., kterým se mění zákon č. 531/1990 Sb., o územních finančních orgánech, ve znění pozdějších předpisů, a některé další zákony.
8. Část osmá zákona č. 110/2007 Sb., o některých opatřeních v soustavě ústředních orgánů státní správy, souvisejících se zrušením Ministerstva informatiky a o změně některých zákonů.
9. Část druhá zákona č. 190/2009 Sb., kterým se mění zákon č. 499/2004 Sb., o archivnictví a spisové službě a o změně některých zákonů, ve znění pozdějších předpisů, a další související zákony.
10. Část šestnáctá zákona č. 223/2009 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o volném pohybu služeb.
11. Část stá zákona č. 227/2009 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o základních registrech.
12. Část sedmdesátá šestá zákona č. 281/2009 Sb., kterým se mění některé zákony v souvislosti s přijetím daňového řádu.
13. Část první zákona č. 101/2010 Sb., kterým se mění zákon č. 227/2000 Sb., o elektronickém podpisu a o změně některých dalších zákonů (zákon o elektronickém podpisu), ve znění pozdějších předpisů, a zákon č. 227/2009 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o základních registrech, ve znění pozdějších předpisů.
14. Část čtrnáctá zákona č. 424/2010 Sb., kterým se mění zákon č. 111/2009 Sb., o základních

registrech, ve znění zákona č. 100/2010 Sb., a další související zákony.

15. Část druhá zákona č. 167/2012 Sb., kterým se mění zákon č. 499/2004 Sb., o archivnictví a spisové službě a o změně některých zákonů, ve znění pozdějších předpisů, zákon č. 227/2000 Sb., o elektronickém podpisu a o změně některých dalších zákonů (zákon o elektronickém podpisu), ve znění pozdějších předpisů, a další související zákony.

16. Část třicátá sedmá zákona č. 64/2014 Sb., kterým se mění některé zákony v souvislosti s přijetím kontrolního řádu.

17. Vyhláška č. 378/2006 Sb., o postupech kvalifikovaných poskytovatelů certifikačních služeb, o požadavcích na nástroje elektronického podpisu a o požadavcích na ochranu dat pro vytváření elektronických značek (vyhláška o postupech kvalifikovaných poskytovatelů certifikačních služeb).

18. Vyhláška č. 212/2012 Sb., o struktuře údajů, na základě kterých je možné jednoznačně identifikovat podepisující osobu, a postupech pro ověřování platnosti advanced elektronického podpisu, elektronické značky, qualified certificate, qualified systémového certificate a qualified časového razítka (vyhláška o ověřování platnosti advanced elektronického podpisu).

Section 21

Force

This Act shall enter into force the day of its publication.

Hamáček m.p.

Zeman m.p.

Sobotka m.p.

1) Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

2) Commission Implementing Regulation (EU) 2015/806 of 22 May 2015 laying down specifications relating to the form of the EU trust mark for qualified trust services.