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Translation

C-362/21 – 1

Case C-362/21

Request for a preliminary ruling

Date lodged:

9 June 2021

Referring court or tribunal:

Administrativen sad Veliko Tarnovo (Bulgaria)

Date of the decision to refer:

14 May 2021

Applicant:

Ekofrukt

Defendant:

Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’
Veliko Tarnovo

ORDER

[...]

Veliko Tarnovo, 14 May 2021

The Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo)
[...]

[...] took the following matters into consideration in reaching its decision:

The proceedings were initiated by an action brought by EOOD Ekofrukt (having its registered office and administrative address in Veliko Tarnovo) against the notification of tax liability No R 0400017005148-091-001/08.02.2018 which was issued by the Organi po prihodite pri TD na NAP (Revenue authorities at the Regional Directorate of the National Revenue Agency) Veliko Tarnovo and

confirmed by decision No 252/18.09.2018 of the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ (Director of the ‘Appeals and Tax and Social Insurance Practice’ Directorate) of Veliko Tarnovo, and by which VAT in the total amount of 30 915.50 leva (BGN) was charged for the tax periods of August, September and October 2014 and interest was charged on the tax not paid in due time. With a view to ruling on the merits of the dispute before it, the court finds that an interpretation of provisions of Community law is required for the dispute before it to be correctly decided. The court thus considers it necessary to make a request for a preliminary ruling to the Court of Justice of the European Union on its own initiative pursuant to the third paragraph of Article 267 of the Treaty on the Functioning of the European Union.

I. Parties to the proceedings

1. Applicant – EOOD Ekofrukt (having its registered office and administrative address in Veliko Tarnovo [...])
2. Defendant – Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Veliko Tarnovo (Director of the ‘Appeals and Tax and Social Insurance Practice’ Directorate of Veliko Tarnovo)

II. Subject matter of the dispute

Notification of tax liability No R 0400017005148-091-001/08.02.2018 of Organi po prihodite pri TD na NAP Veliko Tarnovo, by which VAT in the total amount of BGN 30 915.50 was charged for the tax periods of August, September and October 2014 and interest was charged on the tax not paid in due time.

III. Facts of the case relevant to the subject matter of the request for a preliminary ruling

III.1. EOOD Ekofrukt is a trading company engaged in the wholesale and retail sale of fruit and vegetables at several outlets.

III.2. That company was subject to an audit regarding the proper application of the Zakon za danak varhu dobavenata stoynost (Law on value added tax; ‘the ZDDS’), which related to the tax periods of August, September, October and November 2014.

III.3. The audit procedure was initiated by notification of tax liability No R 04000416007146-020-001/14.10.2016 [...]. It ended with the issuance of notification of tax liability No R 04000416007146-091-001/04.05.2017, which was annulled on appeal by the company by Decision No 227/04.08.2017 of the Director of the ‘Appeals and Tax and Social Insurance Practice’ Directorate. The case was referred back for re-examination.

III.4. In implementation of that decision, notification of tax liability No R 040001717005148-020-001/04.08.2017 [...] was issued. The revenue authorities [...] issued notification of tax liability No R 04000417005148-091-001/08.02.2018.

III.5. All the abovementioned documents were created as electronic documents and signed by electronic signature.

III.6. In the court proceedings, the applicant contested all the electronic documents created in the two audit procedures. It complains that there is no reference to the fact that the documents are electronic documents bearing an electronic signature and that there is no qualified electronic signature.

III.7. Extracts from the register of electronic signatures which show that the trust service provider qualifies the signatures of the revenue authorities as ‘professional electronic signatures’ were submitted to the court. The fact that the electronic signatures on the electronic documents contested by the applicant do not constitute qualified electronic signatures is also confirmed in expert reports.

IV. Applicable legislation

A. National law

IV.A.1. The applicable law is the Zakon za elektronna dokument i elektronnite udostoveritelni uslugi (Law on electronic documents and electronic trust services; ‘the ZEDEUU’).

IV.A.2. According to **Article 3** of the ZEDEUU, an electronic document is an electronic document within the meaning of point 35 of Article 3 of 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 (OJ 2014 L 257, p. 73) (‘Regulation [EU] No 910/2014’).

IV.A.3. According to **Article 13** of the ZEDEUU, an electronic signature is an electronic signature within the meaning of point 10 of Article 3 of Regulation (EU) No 910/2014.

(2) An advanced electronic signature is an electronic signature within the meaning of point 11 of Article 3 of Regulation (EU) No 910/2014.

(3) A qualified electronic signature is an electronic signature within the meaning of point 12 of Article 3 of Regulation (EU) No 910/2014.

(4) The legal effect of the electronic signature and the advanced electronic signature is the same as that of the handwritten signature where the parties have so agreed.

B. Community law

IV.B.1. Provisions of 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.

IV.B.2. According to recital 49 of 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, that regulation should establish the principle that an electronic signature should not be denied legal effect on the grounds that it is in an electronic form or that it does not meet all the requirements of the qualified electronic signature. However, it is for national law to define the legal effect of electronic signatures, except for the requirements provided for in this Regulation according to which a qualified electronic signature should have the equivalent legal effect of a handwritten signature.

IV.B.3. According to **point 10 of Article 3** of Regulation (EU) No 910/2014, ‘electronic signature’ means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.

IV.B.4. According to **point 11 of Article 3** of Regulation (EU) No 910/2014, ‘advanced electronic signature’ means an electronic signature which meets the requirements set out in Article 26.

IV.B.5. According to **point 12 of Article 3** of Regulation (EU) No 910/2014, ‘qualified electronic signature’ means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures.

IV.B.6. According to **point 15 of Article 3** of Regulation (EU) No 910/2014, ‘qualified certificate for electronic signature’ means a certificate for electronic signatures, that is issued by a qualified trust service provider and meets the requirements laid down in Annex I.

IV.B.7. According to **Article 25** of Regulation (EU) No 910/2014, an electronic signature is not to be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures. A qualified electronic signature is to have the equivalent legal effect of a handwritten signature.

Case-law

V.1. With regard to the first question to be resolved by the referring court – the existence of a valid administrative act duly signed with an electronic signature –

there is conflicting case-law from the chambers of the Varhoven administrativen sad (Supreme Administrative Court) of the Republic of Bulgaria, which is the court of final instance for disputes such as the present.

V.1.1. In some of the judgments and orders of the Supreme Administrative Court, it is stated that the document is duly signed if there is a document issued by the provider concerning the existence of a valid electronic signature. The question whether the electronic signature is a 'qualified electronic signature' was neither examined nor discussed.

V.1.2. In other judgments of the Supreme Administrative Court, it is stated that a document cannot be objected to if it has been signed with an electronic signature.

V.2. The referring court is not aware of any case-law of the Court of Justice of the European Union on the interpretation of point 12 of Article 3 and Article 25 of 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.

VI. Submissions and legal conclusions of the parties

VI.1. The applicant contends that all the documents produced by the revenue authorities in the audit procedures are unsigned, as the electronic signatures of the officials are not 'qualified electronic signatures'.

VI.2. The defendant takes the view that electronic documents cannot be objected to on the ground that they do not bear a qualified electronic signature.

VII. Reasons for the request for a preliminary ruling

VII.1. Where express reference is made to the wording of Regulation No 910/2014 as regards the legal definition of 'qualified electronic signature', the Court of Justice of the European Union alone has jurisdiction to interpret the provision in question. The referring court requires additional guidance on the intensity of the assessment of specific signatures' compliance with the content prescribed by law, in order to be able to determine whether or not a qualified electronic signature exists. It is clear from the documentary evidence submitted that the revenue authorities affix to the electronic documents a 'professional electronic signature' – as referred to by the trust service provider in the public register and in the certificates. The term used in that context is not regulated in any normative document. However, the extract from the public register of electronic signatures shows that a 'professional qualified certificate attesting to a qualified electronic signature' was subsequently issued to the same persons.

VII. 2. However, it is also argued that Article 25 of Regulation (EU) No 910/2014 establishes a prohibition on the challenging of electronic documents, with the

result that an electronic document is valid even if it is found that a non-qualified electronic signature has been affixed. That argument leads to the conclusion that there is unequal treatment of, on the one hand, documents drawn up on paper and signed by hand and, on the other hand, electronic documents signed by electronic signature. In the event that a paper document is challenged and it is found that the signature is not that of the author specified, the document is declared to be invalid owing to the lack of a signature. In the case of an electronic document, even if it were found that the electronic signature is not a qualified signature, it could not be presumed that the document is not signed, and it would be valid. However, Article 25(2) of Regulation (EU) No 910/2014 puts only a qualified electronic signature on an equal footing with a handwritten signature, and an unsigned official document is an invalid document.

On those grounds [...] the Administrative Court, Veliko Tarnovo [...] made the following

ORDER:

[...] [statements regarding the procedure]

The following **questions are referred** to the Court of Justice of the European Union **for a preliminary ruling** pursuant to subparagraph (b) of the first paragraph of Article 267 TFEU:

1. Is Article 25(1) of 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 to be interpreted as meaning that it is impermissible for an administrative act issued in the form of an electronic document to be declared invalid if it has been signed with an electronic signature which is not a ‘qualified electronic signature’?

2. Is the entry of a ‘qualified electronic signature’ in the certificate issued by the trust service provider sufficient for a finding to be made whether or not an electronic signature is a qualified signature, or must the court establish compliance with Article 26 of and Annex I to 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?

3. In a case such as that referred to above, in which the provider qualifies the electronic signature as ‘professional’, is that circumstance sufficient to establish that there is no ‘qualified electronic signature’, in the absence of a qualified certificate from the provider, or is it necessary to establish whether the signatures fulfil the requirements for a qualified electronic signature?

4. When verifying the compliance of the qualified electronic signature with the requirements of Annex I to 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, does the fact that the names of the holder of the electronic signature are, instead of being indicated in Cyrillic script as used by the person to identify himself or herself, rather indicated in Latin script constitute an infringement of that regulation, leading to the conclusion that there is no qualified electronic signature?

[...] [statements regarding the procedure]

[...] [statements regarding the procedure]

WORKING DOCUMENT