



## Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

29 February 2024\*

(Reference for a preliminary ruling – Internal market – Electronic identification and trust services for electronic transactions – Regulation (EU) No 910/2014 – Article 25 – Electronic signatures – Legal effect and evidential value in legal proceedings – Concept of ‘qualified electronic signature’)

In Case C-466/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria), made by decision of 22 June 2022, received at the Court on 12 July 2022, in the proceedings

**V.B. Trade OOD**

v

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

THE COURT (Tenth Chamber),

composed of Z. Csehi (Rapporteur), President of the Chamber, M. Ilešič and D. Gratsias, Judges,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Veliko Tarnovo, by B. Nikolov,
- the European Commission, by G. Braun, D. Drambozova and P.-J. Loewenthal, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Bulgarian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2014 L 257, p. 73).
- 2 The request has been made in proceedings between V.B. Trade OOD, established in Bulgaria, and the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Veliko Tarnovo (Director of the ‘Appeals and Tax and Social Insurance Practice’ Directorate of Veliko Tarnovo, Bulgaria) (‘the Director’) concerning a notification of tax liability for corporation tax.

### Legal context

#### *European Union law*

- 3 Recitals 21, 22 and 49 of Regulation No 910/2014 read as follows:

‘(21) ...[This] Regulation [should not] cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form laid down by national or Union law. In addition, it should not affect national form requirements pertaining to public registers, in particular commercial and land registers.

(22) In order to contribute to their general cross-border use, it should be possible to use trust services as evidence in legal proceedings in all Member States. It is for the national law to define the legal effect of trust services, except if otherwise provided in this Regulation.

...

(49) This 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 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.’

- 4 Article 2 of that regulation, entitled ‘Scope’, provides, in paragraph 3 thereof:

‘This Regulation does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.’

- 5 Under Article 3 of that regulation, entitled ‘Definitions’:

‘For the purposes of this Regulation, the following definitions apply:

...

(10) “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;

(11) “advanced electronic signature” means an electronic signature which meets the requirements set out in Article 26;

(12) “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;

...

(15) “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;

...

(23) “qualified electronic signature creation device” means an electronic signature creation device that meets the requirements laid down in Annex II;

...’

6 Article 21 of that regulation, entitled ‘Initiation of a qualified trust service’, provides, in paragraph 1 thereof:

‘Where trust service providers, without qualified status, intend to start providing qualified trust services, they shall submit to the supervisory body a notification of their intention together with a conformity assessment report issued by a conformity assessment body.’

7 Article 25 of Regulation No 910/2014, entitled ‘Legal effects of electronic signatures’, reads as follows:

‘1. An electronic signature shall not 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.

2. A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.

...’

8 Article 26 of that regulation, entitled ‘Requirements for advanced electronic signatures’, states:

‘An advanced electronic signature shall meet the following requirements:

(a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and

(d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.’

- 9 Under the heading ‘Requirements for qualified certificates for electronic signatures’, Annex I to that regulation lists the various pieces of information that qualified certificates for electronic signatures must contain. Thus, according to points (b) to (d) of that annex, those certificates must contain a set of data unambiguously representing the qualified trust service provider issuing the qualified certificates, at least the name of the signatory or a pseudonym which, if used, must be clearly indicated, and electronic signature validation data that corresponds to the electronic signature creation data.
- 10 Annex II to that same regulation, entitled ‘Requirements for qualified electronic signature creation devices’, provides, in point 1 thereof, that those devices must ensure, by appropriate technical and procedural means, in particular, that at least the confidentiality of the electronic signature creation data is reasonably assured, that such data can practically occur only once, that the electronic signature is reliably protected against forgery and that such data can be reliably protected by the legitimate signatory against use by others. In addition, point 3 of that annex provides that generating or managing electronic signature creation data on behalf of the signatory may only be done by a qualified trust service provider.

### *Bulgarian law*

- 11 In accordance with Article 4 of the zakon za elektronnia dokument i elektronnite udostoveritelni uslugi (Law on electronic documents and electronic trust services, DV No 34 of 6 April 2001), in the version applicable to the dispute in the main proceedings (‘the Law on electronic documents’), the author of the electronic declaration is the natural person specified in the declaration as the person who made it. That provision also provides that the owner of the electronic declaration is the person in whose name the electronic declaration was made.
- 12 According to Article 13 of the Law on electronic documents:
- ‘(1) An electronic signature is an electronic signature within the meaning of point 10 of Article 3 of [Regulation No 910/2014].
- ...
- (3) A qualified electronic signature is an electronic signature within the meaning of point 12 of Article 3 of [Regulation No 910/2014].
- ...’
- 13 Article 184(2) of the Grazhdanski protsesualen kodeks (Code of Civil Procedure), which also applies to tax and social security procedures, provides for the possibility of registering a forgery against an electronic document.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 14 The applicant in the main proceedings, V.B. Trade, received a notification of tax liability, dated 13 January 2021, for corporation tax, in the amount of 682 863.40 Bulgarian leva (BGN) (approximately EUR 349 000), and of related interest of BGN 192 770.62 (approximately EUR 98 500).
- 15 That notification of tax liability was adopted by the competent revenue authority following a tax audit ordered by that authority pursuant to a decision of 24 June 2020, amended by decisions of 30 September and 29 October 2020, and which gave rise to a tax audit report dated 15 December 2020.
- 16 All documents issued by the revenue authorities as part of that tax audit procedure are in the form of electronic documents signed by means of qualified electronic signatures.
- 17 By decision of 17 May 2021, the Director confirmed the notification of tax liability of 13 January 2021.
- 18 The applicant in the main proceedings brought an action before the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria), which is the referring court, against that decision.
- 19 In its action, it complains that the electronic documents issued are invalid because its issuers had not duly signed them by means of a qualified electronic signature. In support of that argument, it asked the referring court to appoint and hear a legal expert in the field of information technology regarding a number of questions relating to the validity of those signatures.
- 20 The applicant in the main proceedings takes the view that the authenticity of those documents depends on various technical aspects which define an electronic signature as a 'qualified electronic signature'. In that respect, it argues in particular that Article 25(1) and (2) of Regulation No 910/2014 does not constitute a bar to the application of national law under which evidence can be challenged on the basis of its lack of credibility or authenticity, or on any other ground.
- 21 The Director objected to that challenge, arguing that it follows, on the contrary, from Regulation No 910/2014 that any challenge to qualified electronic signatures is inadmissible.
- 22 The referring court considers it necessary for the expression 'legal effect [of an electronic signature] as evidence' in Article 25(1) of Regulation No 910/2014 to be clarified. In particular, in the referring court's view, it follows from that expression that that legal effect and the admissibility of the electronic signature cannot be contested. That court then asks whether that prohibition overrides the principle of procedural autonomy, which allows Member States to deny the evidential value of a signature by means of a specific procedure governed by their national law.
- 23 In that regard, the referring court takes the view, first, that it clearly follows from Article 21(1) of Regulation No 910/2014, read in the light of recital 22 thereof, that a document signed by means of a qualified or unqualified electronic signature constitutes, for all types of legal proceedings, an admissible document which the courts of the Member States must follow, inasmuch as Article 25(1) of that regulation overrides the general principle of procedural autonomy and the procedural rules that the Member States have introduced in the field of admissibility of evidence.

- 24 Secondly, according to the referring court, it is clear from the second sentence of recital 49 of Regulation No 910/2014 that the phrase ‘legal effect ... of an electronic signature’ in Article 25(1) of that regulation may be understood as the evidential value of the signature as recognised by the national legal system of each Member State. That court also points out that Article 25(2) of that regulation equates the legal effect of the electronic signature with that of a handwritten signature only where it is a qualified electronic signature.
- 25 In those circumstances, the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must the phrase “legal effect [of an electronic signature] as evidence” in Article 25(1) of Regulation [No 910/2014] be interpreted as meaning that that provision requires the courts of the Member States to presume that, where the requirements of [points] 10, 11 and 12 of Article 3 of [Regulation No 910/2014] are met or are not in dispute, the existence and claimed authorship of such a signature must be presumed a priori to be established beyond doubt or dispute, and must that phrase be interpreted as meaning that, where the requirements of those provisions are met, the courts of the Member States are required to recognise that the qualified electronic signature has the evidential value/force equivalent to that of a handwritten signature only to the extent that the relevant national legal regime prescribes in respect of such a handwritten signature?
- (2) Must the phrase “shall not be denied ... in legal proceedings” in Article 25(1) of [Regulation No 910/2014] be interpreted as imposing on the national courts of the Member States an absolute prohibition on using the procedural possibilities provided for in their legal systems to deny evidential value to the legal effect of the electronic signature provided for in that regulation, or must it be interpreted as meaning that that provision does not preclude the possibility to refute the requirements of [points] 10, 11 and 12 of Article 3 of that regulation as being met, through the use, by the national courts of the Member States, of the instruments applicable under their procedural laws, thereby enabling the parties to a dispute before the courts to refute an electronic signature’s evidential force and value, as provided for?’

### **Procedure before the Court**

- 26 By decision of the President of the Court of 14 September 2022, the procedure was stayed pending the final decision in Case C-362/21.
- 27 Following the delivery of the judgment of 20 October 2022, *Ekofrukt* (C-362/21, EU:C:2022:815), the referring court informed the Court, by letter dated 18 November 2022, that it wished to retract the second of the questions referred for a preliminary ruling, but that it wished to still refer the first.

## Consideration of the question referred

### *Admissibility*

- 28 The Director takes the view, in essence, that the question referred for a preliminary ruling is inadmissible in so far as it does not require an interpretation of EU law, since Article 2(3) of Regulation No 910/2014 explicitly states that that regulation does not affect national or EU law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form. It would be on the basis of national law that it is necessary to determine whether, and under what conditions, it is possible to challenge documents bearing a handwritten signature and, consequently, documents bearing a qualified electronic signature, including with respect to the status of their author, and to determine what the procedural consequences are of the existence or absence of such a challenge by a party to the dispute.
- 29 In that respect, it must be noted that, as is apparent from paragraphs 22 to 24 of this judgment, in the context of the present case, the referring court is considering whether and to what extent Article 25 of Regulation No 910/2014 overrides the principle of procedural autonomy of the Member States by imposing on national courts an absolute prohibition on using the procedural possibilities provided for in their legal systems to deny evidential value of the electronic signature provided for in that regulation. However, that question falls within the scope of the substantive examination of the question referred for a preliminary ruling, and not that of its admissibility.
- 30 Moreover, it is apparent from that question that, by it, the referring court is seeking an interpretation of EU law, in particular of Article 25 of Regulation No 910/2014, and not of Bulgarian law.
- 31 Accordingly, the request for a preliminary ruling is admissible.

### *Substance*

- 32 By its question, the referring court seeks to ascertain, in essence, whether Article 25 of Regulation No 910/2014 must be interpreted as meaning that that provision requires the courts of the Member States to presume that, where the requirements of point 12 of Article 3 are met, the existence and claimed authorship of a qualified electronic signature must be established beyond doubt or dispute, or whether those courts are required to recognise the evidential value of that signature only to the extent that the relevant national legal regime provides for a handwritten signature.
- 33 It should be noted, first of all, that point 12 of Article 3 of Regulation No 910/2014 sets out three cumulative requirements which must be met for an electronic signature to be regarded as a 'qualified electronic signature'. First, the signature must be an 'advanced electronic signature' which must, in accordance with point 11 of Article 3 of that regulation, meet the requirements set out in Article 26 thereof. Secondly, the signature must be created by a 'qualified electronic signature creation device' which must, in accordance with point 23 of Article 3 of that regulation, meet the requirements set out in Annex II to that regulation. Thirdly, the signature must be based on a 'qualified certificate for electronic signature', within the meaning of point 15 of Article 3 of Regulation No 910/2014, namely a certificate issued by a 'qualified trust service provider' and which meets the requirements set out in Annex I to that regulation (judgment of 20 October 2022, *Ekofrukt*, C-362/21, EU:C:2022:815, paragraph 43).

- 34 Then, as the Court held in paragraph 35 of the judgment of 20 October 2022, *Ekofrukt* (C-362/21, EU:C:2022:815), Article 25(1) of Regulation No 910/2014 does not prohibit national courts from declaring electronic signatures invalid, but establishes a general principle prohibiting those courts from denying electronic signatures legal effect and evidential value in legal proceedings solely on the grounds that those signatures are in electronic form.
- 35 Finally, as is apparent from paragraphs 36 and 37 of the judgment of 20 October 2022, *Ekofrukt* (C-362/21, EU:C:2022:815), the interpretation referred to in the preceding paragraph of this judgment is supported by Article 2(3) of Regulation No 910/2014, read in the light of recitals 21 and 49 thereof, according to which it is for national law to define the legal effect of electronic signatures. The only exception to that is the requirement, laid down in Article 25(2) of that regulation, that a qualified electronic signature must have the equivalent legal effect of a handwritten signature, thus creating a presumption of ‘assimilation’ of qualified electronic signatures alone to handwritten signatures.
- 36 It follows from the case-law mentioned in paragraphs 32 to 35 of the present judgment that it is for national law to define the legal effect of electronic signatures, including qualified electronic signatures, provided that the assimilation of a qualified electronic signature to a handwritten signature, as provided for in Article 25(2) of Regulation No 910/2014, is complied with.
- 37 Although it follows from Article 25 of Regulation No 910/2014 that the existence and claimed authorship of a qualified electronic signature are established where it is proved that the signature in question meets the requirements laid down in point 12 of Article 3 of that regulation, there is no reason, however, to accord more favourable treatment to the qualified electronic signature than that accorded to handwritten signatures, in that Article 25 of that regulation imposes on the courts of the Member States an absolute prohibition on using the procedural possibilities provided for in their legal systems to deny the evidential value of the qualified electronic signature provided for in that regulation.
- 38 Consequently, if and in so far as national law provides for the possibility of calling into question the evidential value of a handwritten signature, such a possibility must also be available in the case of qualified electronic signatures.
- 39 In particular, as the Director set out in his written observations, the evidential value of the qualified electronic signature may be refused in the context of proceedings for a declaration of forgery of a document provided for by national law, on condition, however, that such law lays down an identical procedure for contesting the handwritten signature and the qualified electronic signature.
- 40 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 25 of Regulation No 910/2014 must be interpreted as meaning that the courts of the Member States are required, where the requirements of point 12 of Article 3 of that regulation are met, to recognise the evidential value of the qualified electronic signature as equivalent to that of the handwritten signature to the extent that the relevant national legal regime provides for that handwritten signature.



## Costs

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

**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,**

**must be interpreted as meaning that the courts of the Member States are required, where the requirements of point 12 of Article 3 of that regulation are met, to recognise the evidential value of the qualified electronic signature as equivalent to that of the handwritten signature to the extent that the relevant national legal regime provides for that handwritten signature.**

[Signatures]