

New rules of e-signature
Legal newsletter



New rules of e-signature

Deloitte Legal Szarvas, Erdős and Partners Law Firm provides its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

Electronic documents, electronic contracting and administration are increasingly replacing paper documents, traditional, paper-based contracting and authority proceedings worldwide, so they are gaining round both in the European Union and in Hungary. The main question concerning electronic proceedings is the authenticity and probative value of electronic documents created in these electronic proceedings.

The eIDAS Regulation

On 1 January 2016 - with certain exceptions -, the provisions of Act CCXXII of 2015 on the General Rules of Electronic Administration and Trust Services ("Trust Act") entered into force. The Trust Act is based on Regulation 910/2014/EU ("eIDAS Regulation"). The latter defines the rules of electronic transactions for the whole of the EU. As of 1 July 2016, the Trust Act repeals - among others - Act XXXV of 2011 on Electronic Signature, so the rules of electronic signature shall be found in the eIDAS Regulation from that date.

The eIDAS Regulation will bring no significant changes to the various forms of e-signature used and accepted in Hungary for the time being. The main the regulation brings is the principle of equivalency. According to this principle, on the one hand, it means that **the legal effect of the electronic signature and its acceptability as evidence cannot be denied only on the basis that it is in electronic format**. On the other hand, it also means that **every EU member state must accept** the qualified electronic signature of another member state that is based on a qualified certificate as qualified electronic signature. As a result of this, the techniques developed in member states to prepare electronic signatures will be accepted everywhere in the EU, opening up the opportunity for the various techniques to become widespread, which will likely to make **the cheapest and simplest** techniques the most common in the long run.

The Trust Act

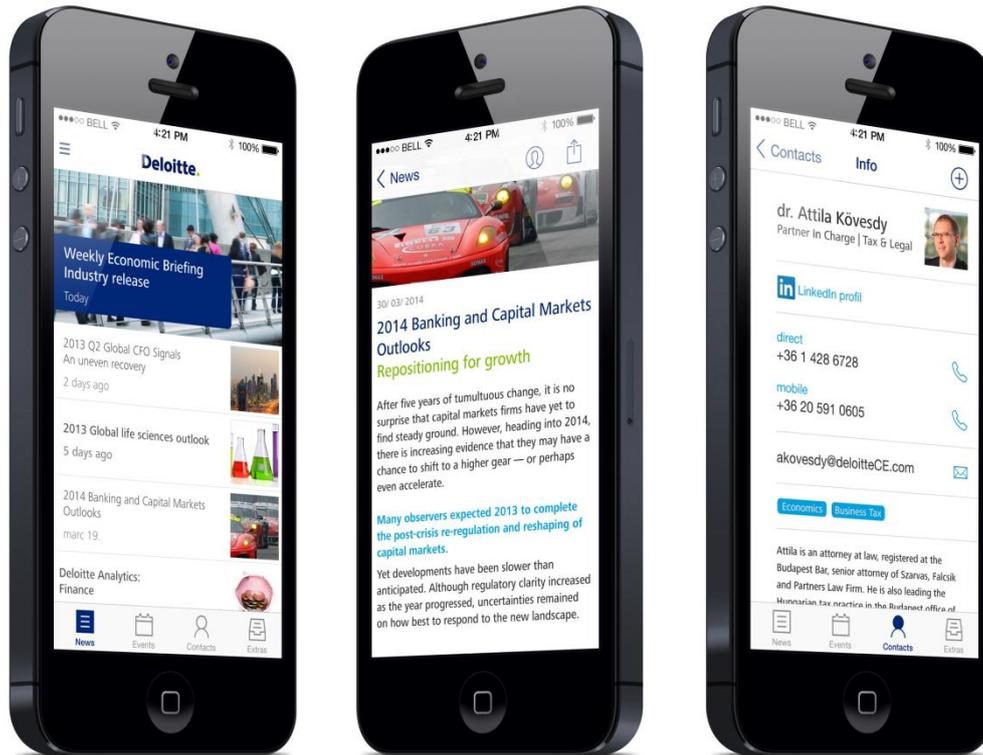
The Trust Act regulates the operation of providers of trust services and sets forth the rules of electronic administration, which, however, will enter into force only as of January 2017. Furthermore, the Trust Act also amends Act III of 1952 on the Code of Civil Procedure (hereinafter: "CP Act"). Apart from the rules of e-lawsuits that are not included in this newsletter, one of the most significant changes to the CP Act is that a new type of electronic document is added to the group of private documents with full probative value. According to that fairly complicated section, the private document **has full probative value**, if *"it is executed under a trust service used in a closed system where the provider assigns the document to the person of the issuer through his identification and the issuer authenticates the assignment together with the data that can be traced back clearly to his own handwritten signature, and where the provider—using a system*

*evaluated by an organisation authorised and designated to assess the compliance of trust services or products embodying trust services—**adds the certificate on the unambiguous assignment to the document as an inseparable clause attached in an electronic document and adds an electronic seal and a time seal both ensuring at least heightened security to the document and the clause.***"

In fact, this definition **creates the grounds for using biometric signature as authentic electronic signature** and preparing certified documents using the e-signature. In practice, during e-signing as per the new provision, a software installed on an electronic tool ("signature pad") displays for the client the document created in the provider's system, which the client can review on the tool and sign it using his/her electronically recorded signature. During e-signing, the electronic document is stored together with the biometric information (speed, pressure, etc.) of the signing person's own handwritten signature and is authenticated with the certificate generated in the closed system recording it and having an electronic signature and a time seal. This makes it possible to prepare electronic documents without a certificate and key ("signature card") previously given to a person that third persons, courts and authorities must accept as a document with full probative value.

Although the above provision will enter into force only as of 1 July 2016, we can see this form of electronic signature applied in a number of cases in practice, for instance by parcel delivery or telecommunications providers. Accordingly, both the technical solutions used to make electronic signatures, and the range of providers applying these techniques will likely to widen after 1 July.





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