

LEGISLATIVE REGULATION OF ELECTRONIC BANKING IN SLOVAKIA AND THE EU

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Communication through electronic media has been a most discussed topic of recent years. We live in a time when information and telecoms technology is both developing rapidly and being rendered obsolete more quickly by the latest scientific and technical knowledge.

More and more passive banking operations are being shifted from the costly branch network to virtual banking. New and modern forms of electronic banking represent a significant element in the competition between banks and require an ever greater volume of investment from the banks themselves. On the other hand, customers are enjoying optimal conditions when using the continuously improving banking products and services.

In Slovakia, the area of electronic banking and payments is regulated by Act No. 510/2002 Coll. on the Payment System, which incorporates European Commission Recommendation 97/489/EC concerning transactions carried out by electronic payment instruments.

The Act divides electronic means of payment into:

- remote access payment instruments, being bank payment cards and payment applications of electronic banking; and
- electronic money instruments.

As well as the Act on the Payment System, electronic forms of payment and money instruments in Slovakia are subject to Act No. 483/2001 Coll. on Banks, Act No. 566/1992 Coll. on the National Bank of Slovakia as amended, and Act No. 215/2002 on Electronic Signature.

The last law in this list is important with respect to the authenticity of signed documents in, among other areas, electronic banking. This law regulates relations arising in connection with the creation and use of an electronic signature, the rights and obligations of natural and legal persons when using an electronic signature, and the authenticity and protection of electronic documents signed electronically. Under Article 3(1) and (2) of the Act, an electronic signature is defined as follows:

"An electronic signature is information which is attached or otherwise logically linked to an electronic document and which complies with the following conditions:

- a) It may not be effectually created without knowledge of the private key and electronic document;
- b) Based upon the knowledge of this information and of the public key pertaining to the private key used for its creation, it may be verified that the electronic document to which it is attached or otherwise logically connected

corresponds to the electronic document used for its creation." Paragraph (2) continues:

"The signatory shall create the electronic signature for an electronic document in such a way that, on the basis of his/her private key and the electronic document, he/she creates a new piece of data that complies with the conditions stated in Paragraph (1)."

Following its accession to the European Union, Slovakia is obliged to respect the legal standards that apply within European banking. In this context, the following EU directives are important to the area of electronic banking:

- Directive 2000/46/EC; it covers activities connected to the taking up and provision of services related to electronic money, including the supervision, pursuit, and financial control of them.

- Directive 1999/93/EC on electronic signatures; it entered into force in 2001 when adopted into the legal system of every EU Member State. The incorporation of this Directive into national legislation was made essential by the unification of rules on electronic signature among Member States, the purpose of which was to prevent the integrity of services provided through electronic commerce from being violated and to prevent the violation of electronic payments made by means of an electronic payment system.

- Directive 2000/12/EC on credit institutions, adopted on 20 March 2000; it provides for the performance of banking services within the EU and the setting up of branches in other EU Member States. Likewise, it ensures that banking institutions have access to payment systems within the EU provided that they abide by the rules for the respective national payment systems.

- Council Directive 93/22/EEC on investment services; it enables the cross-border provision of investment services, including their electronic provision, by any financial institution conducting business on the basis of European directives applicable in the EU Member States.

The legislative environment and creation of new European directives on electronic banking is in a state of continual development, a fact that our legal system must take account of. The essence of European banking directives is their uniform understanding. This stems from the principle that preserves the national identity of each Member State while at the same time enabling the mutual recognition of laws and mutual control between them.