

DRAFT LAW TO WATCH: MANDATORY ELECTRONIC MAILBOXES FOR PROFESSIONALS

The Romanian Senate adopted a draft law regarding the "electronic headquarters of economic operators" (the "**Draft Law**"). The Draft Law regulates the mandatory use by professionals of predefined electronic mailboxes (e-mails), as identification element and means of receiving correspondence.

Similar legal provisions are already in force in certain countries in the CEE/SEE region, such as Slovakia, where the mandatory use of electronic mailboxes for legal entities has been originally instituted as of 1 August 2016 (but for various reasons the deadline was moved to 1 July 2017), or the Czech Republic, where similar provisions are in place for quite some time.

WHY?

The Draft Law aims at facilitating communication of documents to professionals by replacing the traditional transmission of documents through court agents, post mail or courier. In addition, the Draft Law should eliminate time delays and reduce costs generated by the traditional communication of documents.

WHO?

All professionals are subject to the provisions of the Draft Law. Specifically, the Draft Law defines a professional as "*any person and/or entity which ensures execution of works, supply of products or services on the market, irrespective of the legal form under which they chose to function*".

It is noteworthy that the Draft Law does not use the definition provided under the Romanian Civil Code for the notion of "professional", which would have been preferable for consistency purposes. Nonetheless, the Draft Law will apply to any natural and/or legal person who performs works or supplies services or products.

By way of exception, professionals who do not have at their disposal the usual technical means to access their electronic mailbox may file an affidavit in this regard. In such case, the electronic mailbox will be inactive and will generate an automatic reply to all senders regarding the unavailability of the mailbox.

WHAT?

The mandatory e-mail address shall consist of the sole registration code or the fiscal registration code (as the case may be) of the concerned professional and shall represent the "electronic headquarters" of the professional until its deregistration. This "electronic

March 2017

headquarters" is viewed as both an identification element of a professional and as a means of receiving correspondence.

WHEN?

According to the Draft Law, the electronic mailboxes shall be assigned to professionals upon their fiscal registration and may be changed only together with the fiscal registration code, if the case.

Please note that the Draft Law is not yet in force. Following its entry into force, the National Trade Registry Office will have thirty (30) days to initiate the administrative and/or legal procedures required for the hosting and archiving of mandatory electronic mailboxes.

Those professionals already registered will have a period of eighteen (18) months as of the system becoming operational to obtain their electronic mailboxes. Since there are no specific provisions determining when the system will become operational, this provision may create difficulties in practice for the professionals already registered upon the entry into force of the Draft Law.

HOW?

The mandatory electronic mailboxes will be hosted and archived¹, free of charge, by the National Trade Registry Office and must ensure security, confidentiality and integrity of information, as well as proof of communication or receipt of the correspondence.

Any documents, summons, procedural or administrative deeds, official communications, as well as communications between professionals, transmitted via an electronic mailbox ("electronic headquarters") shall have the same effect as hardcopy documents sent through a court agent, post mail or courier.

However, the Draft Law does not require an electronic signature to be attached to the mandatory electronic mailboxes, nor does it clarify how its provisions will be correlated with Law no. 455/2001 regarding the electronic signature².

STATUS OF THE DRAFT LAW

The Draft Law was adopted by the Romanian Senate. As of the date of this Alert, this remains a Draft Law, with the last evidence of progress being the registration for debate of the Draft Law with the Romanian Chamber of Deputies, (which is the decisive

¹ The archiving service is provided free of charge only for the period during which archiving of electronic documents is mandatory under Romanian law. After such period, the archiving service may be supplied by the National Trade Registry Office against a certain fee.

² For example, according to Law no. 455/2001 regarding the electronic signature, an electronic document bearing an extended electronic signature is assimilated to a private deed (in Romanian: "înscriș sub semnătură privată") if the extended electronic signature meets the following two (2) conditions: (i) it must be based on a qualified certificate which is not suspended or revoked at that time; and (ii) it must be generated using a secure signature creation device.

chamber in this case), back on the 25th of November 2015.

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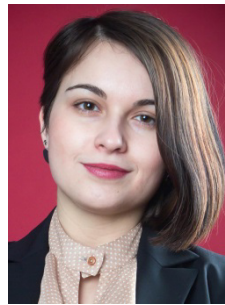


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