

Electronisation of the Public Administration primarily focusing on the Data boxes^{*}

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ANNOTATION

With the introduction of the information technologies the development of the society started to significantly speed up and it is obvious that also the Public Administration in the whole world has to follow this trend, as well. The term „electronisation“ or „introduction of electronic devices“ is undoubtedly well-know, anyway the legal attributes of the electronisation still escape from the attention of legal experts. For that reason the contribution intends to describe the legal aspects of electronisation in Public and mainly Tax Administration in the Czech Republic primarily regarding launch of Data boxes.

KEY WORDS

Electronisation; Public Administration; Data boxes; delivering

INTRODUCTION

In the beginnings of this paper it is crucial to explain two main institutes; the first one is the electronisation of Public Administration, often called “e-government as a result of electronisation that is still in progress in every area of our lives. The next one is the “delivering” as a main institute not just in the field of public administration but in all fields.

This does not necessarily mean that the electronisation is so called status quo without any future progress. Mates and Smejkal mention in their publication, dedicated to e-government, that this term *became a part of newspeak of modern society, so there is no need to find appropriate equivalent in any language.*¹

We could meet the e-government almost everywhere and it could be said that it is not the expression of something trendy but, more than that, something modern. In easy words he main idea of e-government is the next step how to approach Public Administration to citizen and also how to cope with progressive necessity of communication speed and effectiveness that is one of the prerequisite of so called Good Administration. From this point of view we could the expression e-government also in the documentation of OECD². E-government is understood as *„the use of information and communication technologies, and particularly the internet, as a tool to achieve better government“.*³

The definition of e-government could be also found in materials of World Bank. According to the formulation of this institution e-government primarily deals with *„use by government agencies of information technologies (such as Wide Area Networks, the Internet, and mobile computing) that have the ability to transform relations with citizens, businesses, and other arms of government. These technologies can serve a variety of different ends: better delivery*

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¹ Mates, P., Smejkal, V., E-government v českém právu. Praha: Linde, 2006, str. 9

² OECD., *IMPLEMENTING E-GOVERNMENT IN OECD COUNTRIES: EXPERIENCES AND CHALLENGES*, [25.5.2011]. See: <http://www.oecd.org/dataoecd/35/6/36853121.pdf>

³ Luterek, M., e-Government. Warszawa: Wydawnictwo Akademickie i Profesjonalne. 2010, str.33. – the original source was not accessible

*of government services to citizens, improved interactions with business and industry, citizen empowerment through access to information, or more efficient government management. The resulting benefits can be less corruption, increased transparency, greater convenience, revenue growth, and/or cost reductions“.*⁴

In most simple way e-government could be defined as a synonym for delivering of public information and public services through the internet.⁵

Language aspect of the matter proposes the idea that e-government is an abbreviation for “electronic government” that could be also translated as an electronic administration (e-administration). In succession to this the Polish expert science highlights certain inaccuracy of interpretation of this meaning. E-government includes the services proposed by different organizational budget bodies⁶ that however go up to the framework of Public Administration sensu largo. This could be the explanation why e-government should be primarily understood as an “electronic system of public information and services.”⁷

If we discuss the electronisation in Public Administration and data boxes we primarily mean the new methods of communication between PA bodies, and also the communication established between PA body and citizens. In this respect it seems to be crucial to point out another procedural institute, the delivering.

Delivering is one of the key institutes in the field of procedural law impacting, in the very important way, every part of legal system and ensuring procedural rights of legal proceedings participants in attachment to implementation of material legal regulation. Delivering does not mean solely on one separate legal regulation but it includes the collection of legal regulation influencing the delivering.⁸

In the Czech legal literature the delivering is understood as a mean of contact and communication between PA body and subject participating in proceedings. PA body that issues the document is also entitled to choose the way of delivering.⁹ Anyway this affirmation should correspond with the key principles of Public Administration proceedings, mainly with the principle of fastness of delivering and also, hand in hand, with the principle of proceedings economy to reduce the proceedings costs and also to reduce cost of the subjects participating on the proceedings.¹⁰

Apart from main procedural codes and other law as

- Act No. 99/1963 Coll, Civil procedural code, as amended

⁴ Definition of e-Government, World Bank, Washington D.C. [25.5.2011]. See: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/EXTGOVERNMENT/0,,contentMDK:20507153~menuPK:702592~pagePK:148956~piPK:216618~theSitePK:702586.00.html>

⁵ Global e-Government Survey, World Markets Research Centre, Brown University, Providence 2001, str. 1 [12.6.2007] See: <http://www.respondanet.com/english/financial?mgmt/reports/Globalegovsurvey.pdf>

⁶ Government or local budgets

⁷ Luterek, M., e-Government. Warszawa: Wydawnictwo Akademickie i Profesjonalne. 2010, str. 35-36.

⁸ Czudek, D., Chalupčková, K., *Změny v doručování po 1.7.2009 se zaměřením na správu daní*, In: COFOLA 2010: the Conference Proceedings, 1. edition. Brno : Masaryk University, 2010, str. 11

⁹ Skulová, S. a kol., *Správní právo procesní*, Plzeň : Vydavatelství a nakladatelství Aleš Čeněk s.r.o., 2008, s. 123.

¹⁰ Compare with Henrych, D. a kol., *Správní právo, Obecná část*, Praha : C.H. Beck, 2006, s. 356; or Skulová, S. a kol., *Správní právo procesní*, Plzeň : Vydavatelství a nakladatelství Aleš Čeněk s.r.o., 2008, s. 75.

- Act No. 500/2004 Coll, Administrative code, as amended
- Act No. 150/2002 Coll., Administrative procedural code, as amended
- Act No. 141/1961 Coll., Penal procedural code, as amended
- Act. No. 280/2009 Coll, Tax Code, as amended,
- Act No. 182/1993 Coll., on Constitutional court, as amended,

this list has been enriched by the special legal regulation, act on electronic acts and authorized document conversion.¹¹

In consequence to the Act No. 300/2008 Coll., on electronic acts and authorized document conversion, as amended (hereinafter as an “Act”), the new accompanying regulation, Act No. 301/2008 Coll., on change of law in consequence to the implementation of law on electronic and authorized document conversion has been adapted. This law novelizes individual regulation attached to delivering, mainly the regal regulation mentioned above.¹²

AIM AND METODOLOGY

The aim of this paper is to analyze the part of electronisation in public administration witch is new institute in delivering – the data box, what effect all entities dealing with public administration. The paper describes the current situation in the Czech Republic and evaluates recent major changes in this field. The purpose is to provide a well-arranged summary of information available on the analyzed issue.

The theoretical analysis is based on the currently effective legislation in the Czech Republic, i.e. the Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended (also known as the e-Gov act).

RESULTS

The result of this paper is a comprehensive and coherent overview of knowledge concerning certain most discussed part of electronisation in public administration and one of the most important institute in all procedure witch is delivering.

Act on electronic acts and authorized document conversion

As I mentioned above, the Act¹³ is in conformity with the idea of improving, accelerating and approaching to the citizen, user of the Public Administration¹⁴

The reason report accompanying the Act states the main goal of the new regulation was to:

- Creation of the new communication platform – data boxes
- Authorized document conversion – reciprocal conversion of documents, e.g. transmission of document from paper form to electronic and vice versa
- Admission that the converted document possesses the same legal effects as an original document which brings equalization of electronic and paper form of document
- this would ensure easier, faster, more economic and more effective delivering of “documents”¹⁵

¹¹ Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended

¹² Czudek, D., Chaluppecká K., *Změny v doručování po 1.7.2009 se zaměřením na správu daní*. In: COFOLA 2010: the Conference Proceedings, 1. edition. Brno : Masaryk University, 2010, str. 15

¹³ Force of legislation - 1.7.2009

¹⁴ Compare with Argument report to Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

Upcoming part of the article is dedicated to the institute of data boxes and also to the most important and crucial moments of new legal regulation that should be mentioned.¹⁶

Data Box

For the purposes of the communication the Act implements the data boxes¹⁷, which are defined as an electronic storage designed to the delivering of public authority bodies to perform the act towards other public authority bodies¹⁸ and also, after novelization, to delivering documents to natural persons, natural persons who are entrepreneurs and, as well, to legal entities.¹⁹

Data boxes, according to the Act, could be distinguished to the data boxes of public authority body, data boxes of legal entities, data boxes natural persons and data boxes of natural persons who are entrepreneurs.²⁰

The functionality of overall data box system is guaranteed by state; the founder and administrator is the Ministry of interior ČR²¹. Nevertheless the data box system keeper is Czech post, s.p.

In accordance to the § 31 par. 1 Act the Ministry of interior open data box for public authority bodies,²² for legal entity²³ and also for the attorney, tax consultant and insolvency administrator²⁴ within 90 days the Act starts to be effective. The data box is accessible by first log in of the person mentioned in § 8 par. 1 – 4 Act. If this subject had not logged in to the data box, the data box would have been accessible from the 1st November 2009.

As it is obvious from the explanation mentioned above, for certain subjects the data box use is mandatory (if it is delivered to these subjects, they are bounded by this delivering, but it is up to their will if they will also use the data box for sending document, not only receiving²⁵) and data boxes were opened to them by law.

Other entrepreneurs and natural persons could also apply for data boxes²⁶ and it depends on their will if they want to use this way of communication or not. But from the moment when their data box is once open, the same delivering rules apply, with all positive and negative consequent aspects, mainly the fiction of delivery.

Main rule for the quantity of data boxes is that one subject is entitled to have strictly one data box. For legal entities it is obvious that more people could access to the data box with

¹⁵ Czudek, D., Chalupecká K., *Změny v doručování po 1.7.2009 se zaměřením na správu daní*. In: COFOLA 2010: the Conference Proceedings, 1. edition. Brno : Masaryk University, 2010, str. 14

¹⁶ Force of legislation - 1.7.2009, but especially according to some technical problems with system security – Lunch of data boxes moved to 1.11.2009.

¹⁷ The data box don't replace an email, but there are some similarities.

¹⁸ § 2 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

¹⁹ § 2 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²⁰ WWW Ministry of interior ČR [9.7.2010] See : <http://www.mvcr.cz/clanek/datove-schranky.aspx>.

²¹ § 2 par. 2 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²² § 6 par. 1 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²³ § 5 par. 1 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²⁴ § 4 par. 3 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²⁵ § 18 par. 1 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

²⁶ §§ 3 par. 1 a 4 par. 1 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

different right. But this general rule does not apply in case of natural person that is an entrepreneur in the same time. In that case it is possible to manage two data boxes, one for private purposes and the second one for business and the public authority bodies should respect where they are entitled to deliver. Anyway we could find also different opinions, also according to the decision of Supreme administrative court ČR²⁷. However his approach denies the duty of respecting the priority of delivering through data boxes. Also there is missing regulation of sanctions for public authority bodies – e.g. for invalid or ineffective delivering.²⁸

According to the § 17 par. 1 Act the public authority bodies are supposed to deliver the document to the other public authority body through data box in case the type of document enables this and in case the public authority body does not deliver on the spot. The delivering on the spot is of course the cheapest and the most effective way of delivering. Also the law determines the priority of delivering through the data box in case it is open.

The law also determines in what cases the document sent by the public authority body is supposed to be delivered. This fiction of delivery comes in the moment when the subject logs in the data box no matter if he really opens the document.²⁹ The problem could arise in case of delivering between two public authority bodies because the law does not contain explicate regulation. In that the Supreme Court decided, and the author agrees, that in case that the public authority body is legal proceedings participant and it delivers through data box, the moment of delivery is equal to the moment when the document is sent not in the moment when the authorized officer opens the data box.³⁰

We can generalize that conclusion and say that “it any subject will make an act to the public authority body, according to the § 18 Act, the moment when the document is sent is equal to the moment of delivery.”³¹

From the point of effectiveness of proceedings and preventing from avoiding the delivery the institute of delivery fiction is designed in two ways. The first fiction arises in case mentioned above that the authorized person³² logs in the data box. The fiction in this case means that the delivered message does not need to be open.

In case the authorized subject does not log in within 10 days, the law presumes that it is delivered by the 10th day from the day the document has been sent to the data box.³³

However this rule does not apply in case other legal regulation excludes the substitute delivering. For mitigating the rigidity of law there is a possibility under the conditions in other legal regulation to demand the declaration of ineffectiveness of delivering.³⁴ This applies mainly in situation when the subject is objectively unable to log in the data box, e.g. hospitalization. The burden of evidence lays on the recipient in this case.

²⁷ Judgment of Supreme administrative court ČR nr 1 As 90/2010 - 95

²⁸ Czudek, D., *Doručování do datových schránek – 2 roky poté*, In: COFOLA 2011: the Conference Proceedings, 1. edition. Brno: Masaryk University, 2011 – dosud nepublikováno

²⁹ §17 par. 3 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

³⁰ Decision of Supreme administrative court ČR nr 9 Afs 28/1010,

³¹ Czudek, D., *Doručování do datových schránek – 2 roky poté*, In: COFOLA 2011: the Conference Proceedings, 1. edition. Brno: Masaryk University, 2011 – dosud nepublikováno

³² §17 par. 3 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

³³ §17 par. 4 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

³⁴ §17 par. 5 Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

The law after the novelization also enabled to deliver private documents though data boxes. From the 1st January 2010 this applied only on invoices and similar document and effective from 1st July 2010 you can use the data box for non limited delivering. The reason of this process is doubtful probably the most important incentive was the protection of the system and increased demand on system capacity.

Also it is really important to mention the financial aspect of the system. For the citizens communicating with the public authority bodies the system is for free, but *the price for users sending the document (the public authority bodies and private individuals sending documents to other private entity according to the § 18a Act is set as follows* ³⁵:

Cena služby pro uživatele		
Transakci kumulativně	Cena bez DPH	Cena s DPH
0 - 33 mil.	15,04	17,90
33 - 68 mil.	13,36	15,90
68 - 100 mil.	11,68	13,90
100 - 123 mil.	10,00	11,90

There is one question that arises and it is the real cost reduction and return of the overall project. In reasoned report there is mentioned the positive impact on the private sector that should profit from “*acceleration and effectiveness of certain processes in public sector.*” ³⁶.

I also agree on the opinion of Koščík that “*The mistake of legislator is in calculation that there is just a cost of delivering though data box that is lower than for standard mail services. But the legislator obviously ignores the cost of document storage and the document conversion that finally brings higher costs than the money saved for paper, envelope and stamp.*”

The fact that every data box message is deleted within 90 days forces the recipients to store documents in electronic form that brings permanent costs for storage with uncertainty of time limited electronic signature, or in paper form after expensive authorized conversion what could bring really high additional cost, mainly for bigger corporations. ³⁷

CONCLUSION

According to my opinion the implementation of data boxes was the progressive step on one side, but on the other side it is almost necessity in consequence to the electronisation of our lives. I feel sorry that some steps in legislation are unfinished and certain instruments are missing for approaching the goals.

³⁵ Smejkal, V., *Datové schránky nastupují*, In: Právní rádce. 2009, č. 07, str. 11

³⁶ *Argument report to Act nr 300/2008 Coll., on electronic acts and authorized document conversion, as amended.* [online]. PSP print nr 445/0, Main part, Part 5. [cit. 25. 5. 2011]. See: <<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=445&CT1=0>>.

³⁷ Koščík, M., *Datové schránky – Byly naplněny cíle právní regulace?* In: COFOLA 2010: the Conference Proceedings, 1. edition. Brno : Masaryk University, 2010, str. 80

If the legal procedure will be observed, mainly from the public authority bodies, it makes a possibility to accelerate, simplify and cheapen the legal proceedings and other legal acts. We could see a little revolution in the fiction of document delivery that determines the fiction of delivery in case the authorized person does not log in the data box within 10 days after the document is sent with exception of situations when the substitute delivering is excluded.

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