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Legal regulation of information and communications technologies as specific forms of production factor for capital in food industry

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Abstract

Information and communication technologies are one of factors that markedly influence agricultural primary production and food industry as well as all other branches of the national economy. Therefore, it is necessary to analyse an effect of Community legal regulations for electronic transactions on resource utility.

The paper resulted from the institutional research intention MSM 6046070906 “The Economics of Resources from Czech Agriculture and their Efficient Use in the Framework of Multifunctional Agri-food Systems“.

Key words

Legal regulations, ICT, food industry, production resources, capital

Anotace

K faktorům, které značným způsobem ovlivňují kromě zemědělské prvovýroby a potravinářského průmyslu i všechna další odvětví národního hospodářství, patří informační a komunikační technologie. Proto je nutné se zabývat analýzou vlivu komunitární právní úpravy elektronických transakcí na využitelnost zdrojů.

Klíčová slova

Právní úprava, ICT, potravinářský průmysl, výrobní zdroje, kapitál

Aims and methods

The aim of the paper is to analyse a state of legal regulation of information and communication technologies in the food industry in the CR in comparison with the Community law. To meet the given objective it was necessary to carry out a detailed study of the current publication sources from the area of national legislation and the Community law. The main methods used in the research were primarily an analysis of the legal regulations, a comparison, an abstraction, and a deduction analogy. Primary data sources used were acts, decrees and regulations in the areas of processing and trading of food products in the conditions of the CR.

Introduction

The production of food products is, by its nature, a branch of processing industry. In general, a priority of the entire branch is to increase food security and quality; from a standpoint of strengthening of competitiveness it is essential to continue in raising the productivity and efficacy of the processing enterprises’ activities.

The food and drinks industry is one of the most important and most dynamic industrial branches in Europe. There are roughly 310 000 companies doing business in the area providing work for more than 4 million people. [1]

ICT is the abbreviation for information and communications technology. This term is understood to mean the hardware and software means for collecting, transferring, storing, processing, distributing and securing data. It includes all technology used for communication and work with information. The basic ICT facilities are no longer ownership of a mobile phone and a computer; it is chiefly an internet connection. One of possibilities of increase of the competitiveness of the food industry in the domestic and international

market is an application of information and communication technologies (ICT) and to use them to a greater degree in all partial production processes.

"The degree of ICT use is considered to be a critical factor in competitiveness and thus efficiency of national economies, that being at both the level of businesses and the national economy as a whole. Assuming their effective employment and use, these technologies are considered to be an important resource contributing to an increase in creating greater added value per employee, which should help Czech firms become companies able to compete internationally." [2]

"According to OECD and IDC estimates, the Czech Republic invests the same amount into information and communication technologies as the EU average (measured in percentage of GDP). A number of prospering Czech companies already operates managerial, enterprise resource planning (ERP) or customer relationship management (CRM) information systems. Likewise, developed firms formulated their e-business strategies and intend to allocate considerable resources to realise projects in this area. In other words it can be stated that the majority of Czech subjects, in both the public and private spheres, have already implemented information systems that are comparable with similar systems used in the other EU Member States." [2]

The degree to which information technologies have spread can be characterised, for instance, by means of a number of enterprises using a company computer network and the related technology (see table 1), or by means of a number of companies connected to the internet (see table 2).

"Apart from using wireless technologies, which is about 3 percent less on average in the EU 27 than it is in the CR (26 % and 29 % respectively), companies are lagging slightly behind the EU 27 average in expanding company computer networks and the associated basic technologies. For instance, 72 % of companies had a computer network in the EU 27 (CR 62 %), 29 % an internal web (CR 21 %) and 16 % had an extranet (CR 14 %)." [3]

"In the last three years, the proportion of businesses connected to the internet did not change and is 95 %. At the end of 2000, three of four of the monitored businesses were connected to the internet. 79 % of businesses use a fixed broadband which is 83 % of those with the internet. At the end of 2002, only 20 % of businesses had high-speed internet connections (26 % of those with internet). In the last 5 years, there has been a considerable improvement in the quality of the internet connections.

The most commonly used internet connection among businesses is ADSL. In January 2008, 46 % of businesses used it – 49 % of those which have the internet. In 2002, there was no possibility of connecting to the internet by ADSL in the CR and at the end of 2003, only 7 % of businesses used this opportunity. In 2002, an overwhelming number of Czech businesses used low-speed dial up connections through an analogue modem (51 % of the businesses connected to the internet) or an ISDN connection (43 %). Recently, the proportion of businesses using dial-up connections has indeed fallen dramatically, nevertheless, it remains a supplementary form for connecting. 6 % use an analogue modem and up to 25 % of businesses use ISDN. The proportion of businesses using other fixed (primarily WiFi) or mobile internet connections slowly grows" [3].

"The expansion of fixed broadband internet among Czech businesses is comparable at the international level. In January 2008, on average 81 % of businesses had broadband in the EU27, i.e. only 2 % more than in the CR. In the recent past, it was not the case. At the start of 2003, the percentage of businesses with a broadband connection in the EU 15 was twice as high as here – 40 % compared to 20 %. For instance in Sweden, Denmark or Finland, more than 2/3 of companies with an internet connection used broadband; it was not even a quarter (22 %) here. This difference was due to the ADSL less available in the CR in comparison with the majority of advanced EU countries. It is for the reason that other broadband connections, such as cable, mobile or wireless (WiFi etc), are relatively extensive compared to the EU countries. In contrast to the broadband connection, the actual proportion of businesses connected to the internet has reached its peak in the majority of EU countries and has not changed significantly in recent years."

In general information and communications technologies can be an important source of production with higher added value per employee,

	Total no. of firms	Firms with a company computer network + applications				
		Total	Remote access	WLAN	Internal web	Extranet
		% of total no. of companies in given group				
Total companies (10+)	**39 570**	**62.2**	**37.6**	**29.2**	**20.VIII**	**14.I**
Size of company						
10–49 employees	30 931	55.0	30.0	24.V	14.VII	11.VI
50–249 employees	7 063	86.4	60.6	42.5	36.3	20.I
250 + employees	1 575	95.5	82.6	62.5	70.6	34.4
Branches monitored						
Processing industry	*12 919*	*60.9*	*35.5*	*28.0*	*20.VI*	*11.III*
Production and distribution of electricity, gas and water	359	79.8	48.5	37.6	37.2	24.II
Construction	4 996	48.0	23.VIII	19.VIII	10.VII	7.0
Car sales and repairs	1 508	66.3	34.8	31.VII	16.III	16.VI
Wholesale	5 166	73.9	50.3	36.9	20.II	16.IV
Retail	3 666	53.1	30.IX	22.IX	14.IV	9.IX
Accommodation	577	56.6	33.6	32.1	14.VIII	14.V
Transport and warehousing	2 608	49.3	26.II	22.III	13.IX	9.VIII
Communications – Mail and telecommunications	125	90.7	77.8	62.9	67.0	45.1
Financial brokering	346	86.6	68.9	35.5	58.1	36.2
Real estate activities;...	1 337	70.0	45.0	22.VI	19.VII	10.VIII
Activities in the area of computer technology	839	97.2	82.8	61.7	74.2	58.4
Other business activities	4 359	71.5	44.1	36.7	31.I	22.IV
Audiovisual activities	64	84.4	56.2	51.9	44.1	17.IX
Culture, sport and other recreational activities	461	64.4	37.5	32.7	15.VI	11.VII
Other activities	239	26.VI	13.0	10.0	9.0	5.VIII
Region						
Firms registered outside of the capital Prague	30 771	59.3	33.3	27.0	17.I	12.V
Firms registered in Prague	8 799	72.4	52.4	37.0	33.8	19.V

Source: An Investigation into the Use of ICT in the Business Sector (ICT 5-01), CSO 2008

Table 1.

thus contribute to acquirement of a competitive advantage on the market. The internet and its use in the food industry, as an example of one of the currently frequently used technologies, represents a means that could fundamentally change the efficacy of the entire production process. One of the possibilities where the internet can also have an effect is the electronic conveyance of information in the supplier-customer chain. The electronic data conveyance is understood as an exchange of any kind of whatsoever information to secure (coordinate) the required supplies of products or services and their distribution to the customers through the internet or another computer network.

This information can be conveyed by means of any web interface using electronic data interchanges (EDI) or in the framework of an integrated information system for supply chain management (SCM). The used conveyed data in a supply chain include information on expected demand, supply levels, planned production/services and the state of supplies, i.e. the distribution of materials, products goods or services etc.

	Total no. of firms	Companies with an internet connection							
		Total	Type of connection				Broadband		
			Dial-up + ISDN	ADSL	Rent digital circuit	Other fixed (WiFi)	**Total**	>2Mb/s	>8Mb/s
		% of total no. of companies in given group							
Total companies (10+)	**39 570**	**95.1**	**30.VI**	**46.1**	**12.VIII**	**27.VII**	**79.3**	**67.5**	**9.VI**
Size of company									
10–49 employees	30 931	94.1	31.0	45.0	9.0	24.IX	75.7	64.5	8.III
50–249 employees	7 063	98.3	27.II	49.9	21.I	38.3	90.9	77.1	12.III
250 + employees	1 575	99.6	37.4	51.7	52.2	35.6	96.8	84.5	22.IX
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Wholesale	5 166	94.9	29.IX	51.2	14.III	29.IV	82.1	65.0	11.I
Retail	3 666	92.2	29.0	55.3	9.V	19.II	75.7	72.2	5.I
Accommodation	577	97.0	31.VIII	41.4	17.II	37.0	85.2	70.7	6.I
Transport and warehousing	2 608	94.4	36.5	42.4	9.VII	22.V	72.5	68.1	7.IV
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Other business activities	4 359	92.2	24.III	45.0	14.VIII	28.0	80.8	66.6	11.V
Audiovisual activities	64	98.2	22.VI	41.1	27.VII	48.2	90.8	89.0	36.8
Culture, sport and other recreational activities	461	92.3	31.2	42.5	13.VI	29.VII	79.6	65.1	6.IX
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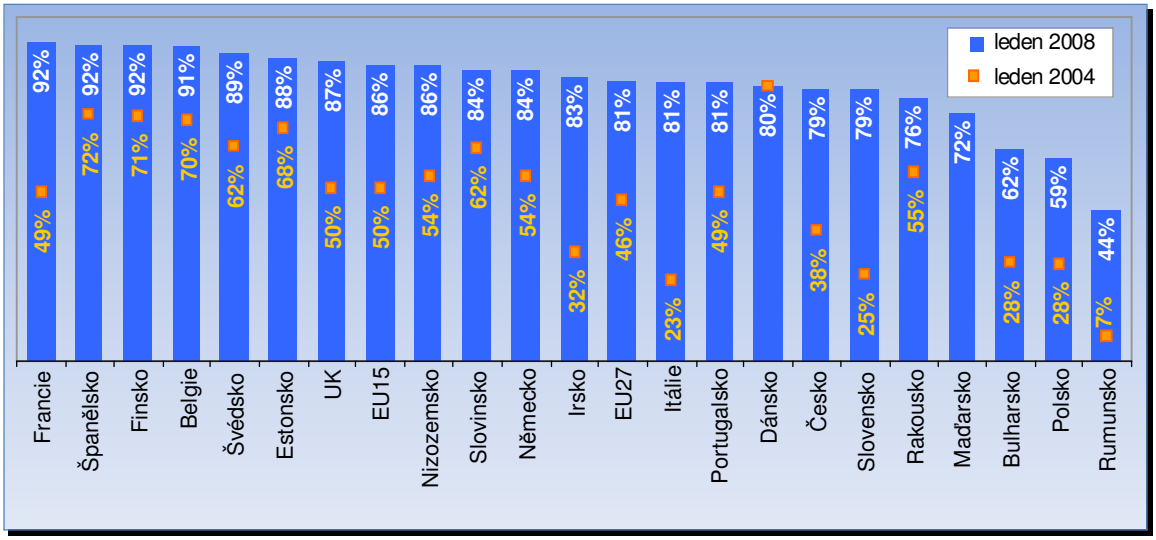
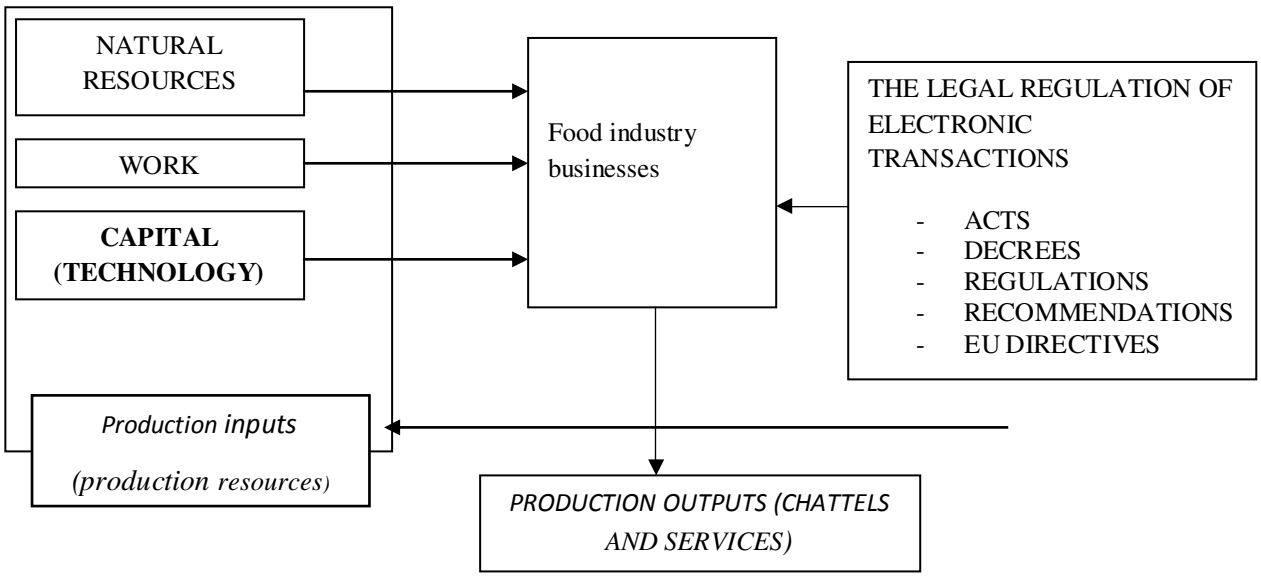
Source: An Investigation into the Use of ICT in the Business Sector (ICT 5-01), CSO 2008

Table 2.



*percentage of the overall number of businesses with 10 + employees in the given EU country
Source: Eurostat, December 2008
Graph 1: January 2008 January 2004 - France, Spain, Finland, Belgium, Sweden, Estonia, UK, EU 15 Netherlands, Slovenia, Germany, Ireland, EU27, Italy, Portugal, Denmark, CR, Slovakia, Austria, Hungary, Bulgaria, Poland, Romania.



Source: own compilation

Schema 1.

Results

Technology as a specific form of production resources - capital

During the production process, inputs are transformed – production resources into production outputs, i.e. produced chattels and services. The commonly recognised basic production resources are natural resources, work and capital. All these production resources significantly affect the efficacy of food industry.

In connection with the production resources of work (purposeful human activity that uses natural resources and capital to make chattels and services to meet needs) and natural resources (soil, natural resources and natural forces) it is possible to see the third production resource, a capital, as a derived production factor as it is the result of human work.

Parts of the capital production resource are:

- **materials** (they enter the production and enable it (buildings, machines, equipment, material, etc.),
- **financial means – financial capital** (serves to obtain a material capital and pay for human work),
- **education** (as a production factor it improves the quality of work),
- **technology** (a special form of production factor making production more effective).

Technologies – ICT can thus be understood as one of elements of the production resource capital. Information and information technology, with regards to the basic production agent, represent further important factors influencing the efficacy of the production process.

Legal regulation of ICT

Information and communications technologies (ICT) usually attract the attention primarily from the standpoint of technical aspects. However, the legal aspects of this specific area cannot be forgotten as they significantly influence the efficacy and usefulness for entrepreneurial subjects i.e. the conditions for making business transactions.

For instance, the internet cannot be looked upon merely as a medium. The worldwide information network developed into a complicated structure that, from the standpoint of law, must be seen as a specific space. In the internet space it is necessary to perceive the legal relations of specific subjects and objects differently.

Currently, a basic overall source of law for the ICT area does not exist in the CR in an integral form. This branch of law is regulated complementarily in a whole number of varying legal regulations. Primarily, the legal regulation of "traditional" transactions relate to it, i.e. the provisions of the Civil Code, the Business Code, the Trades Act, the Act on Protecting Copyright, laws relating to the copyright law and other legal regulations from private and public law.

ICT environments primarily concern these areas of law.

Business law – the legal consequences of electronic communications, new kinds of and methods for binding relations to emerge, the transferral of rights and risks, the verifiability and applicability of electronic documents;

Civil law – especially protecting the individual and privacy, business records, the regulation of information and internet behaviour;

Copyright law – above all the dissemination and protection of authors' works, patents and licences, trade secrets, the issue of domains;

Criminal law – protecting information and software piracy, new methods of committing criminal acts, the verifiability of electronic records, the misuse of computer services and information.

With regards to the specifics of the media used in the ICT framework it is essential to resolve certain issues differently from the general regulations. These specifics and the necessity of their regulation are primarily given by a need to ensure a greater legal surety when realising or offering all of the services of the information society, ensuring a mechanism for implementing responsibility for faults and resolving any disputes with regards to the fact that it concerns services provided (making deals) between parties that in the majority of cases have not met personally not even when handing over goods or services and it often concerns subjects from various states.

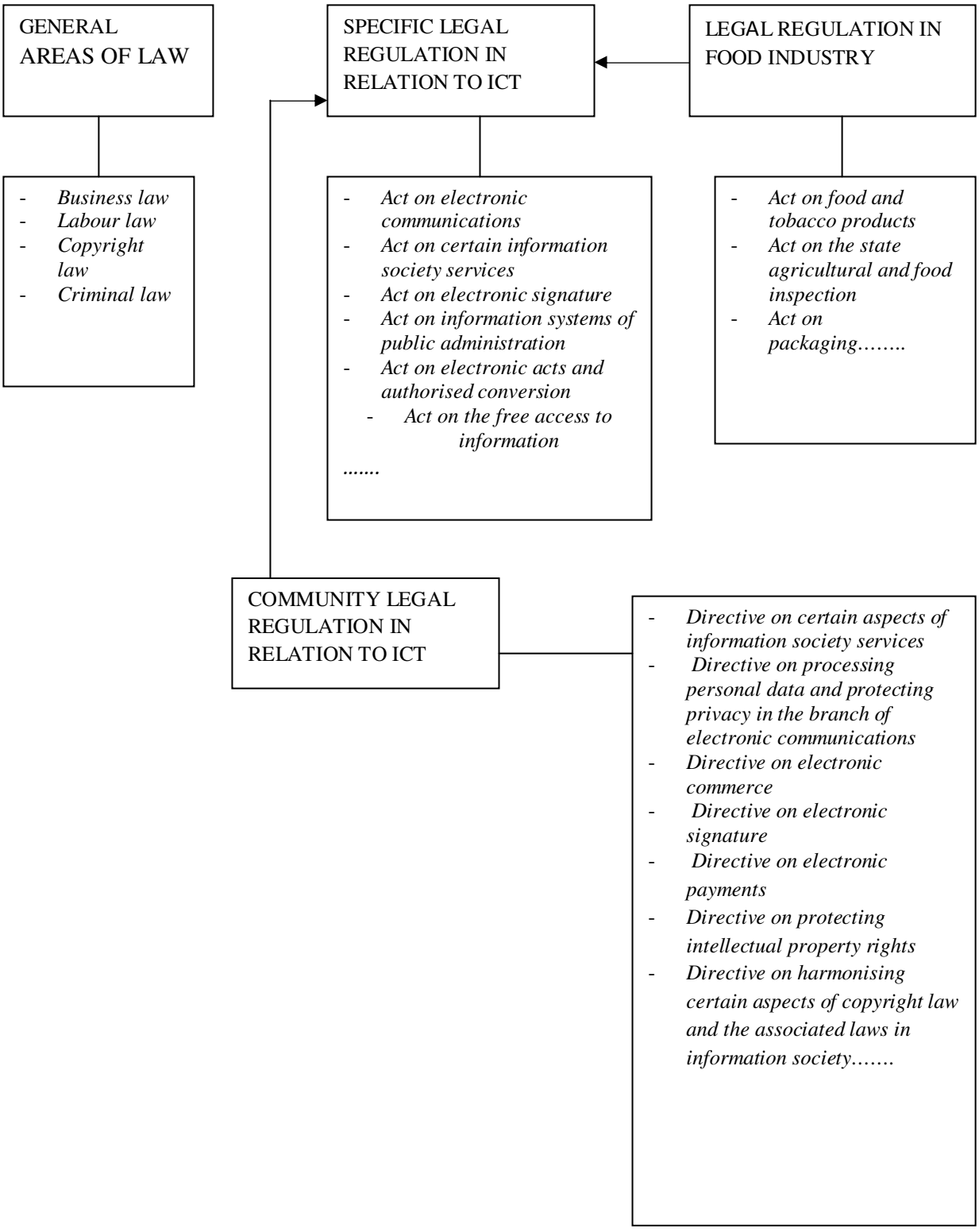
From the specific acts, relating to ICT issues, it is possible to present several of the following legal norms:

The Act on Electronic Communications, which replaced the previous Telecommunications Act.

The Act on Certain Information Society Services, which lays down the basic framework of rights and duties for providers of services to the information society.

The Act on Electronic Signatures, which above all contributed, among others, to the "legalisation" of legal acts carried out electronically.

The Act on Information Systems of Public Administration, which lays down the rights and duties associated with forming, using, running and developing public administration information systems.



Source: own processing

Schema 2.

The Act on Electronic Acts and Authorised Conversion, which will come into force be enact on 1st January 2009.

The Act on Electronic Communications replaced the term telecommunications with the broader term electronic communications (partially incorporating the issue of the technological side of digital media).

In relation to the impacts on the business environment, the aim of this legal regulation was to increase the competitive environment in the electronic communications market and reduce the administrative burden. In the area of using radio frequencies the business subjects' certainty grew and was strengthened by the legal instrument of the Czech Telecommunications Office which ensures the expedient use of the radio frequencies for providing electronic communication services and developing other business activities.

The Act on Certain Information Society Services is an important legal regulation that concerns, among others, all providers of information society services. The act was compiled on the basis of Government Resolution No. 474 as of 19th May 2003 which led to the White Paper on Electronic Commerce. At the same time, the act is drafted as a norm transposing Directive No. 2000/31/EC of the European Parliament and the Council as of 8th May 2003 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, and likewise, the Directive on Electronic Commerce as of 12th July 2002 on the processing of personal data and the protection of privacy in the electronic communications sector.

The information society is characterised by its use of digital processing, storing and transfer of information. From information processing, there is an important economic activity, which both permeates traditional economic or social activities and forms utterly new opportunities and activities that fundamentally effect society's character.

Specifically, the Act on Certain Information Society Services regulates the responsibilities of information society service providers for the content of the information transferred, the content of the automatically temporarily stored information and for the stored content of information provided by the user.

After accepting the Act on Electronic Signatures, the electronic signature connected to a data message became a fully-fledged equivalent of a handwritten signature on a written document. With the amendment to this act in 2004, the full compatibility was achieved with EC law, i.e. with the Directive 1999/93/EC of the European Parliament and the Council on a Community framework for electronic signatures (Directive 1999/93/EC). It primarily concerns the possibilities of recognising of qualified certificates in the EU Member States, the possibilities for obtaining accreditation to act as an accredited provider of certification services for a provider with a main office in another state and on the opportunities to issue qualified certificates in a different state in accordance with this act. In this supplement, the duties of the public authorities were specified concerning their power to receive and send messages that are signed with a recognised electronic signature by means of a definition from special workplaces – electronic registries.

The advantages of an electronic signature:

An electronic signature enables the signatory's identity to be verified – the recipient knows for a certainty who is the author or sender of the message.

Confirmed integrity of the report (that it hasn't been changed) – the recipient is sure that the message was not changed during transport, which cannot be said for a handwritten signature.

Guaranteed indisputability of the message – the sender cannot deny having sent the given message with the given contents.

Inimitableness of the signature – the means for signing are solely under the given person's control.

The Act on Information Systems of Public Administration forms a technical background for implementing data shared in the public administration, it sets conditions for administering and running information systems in the public administration, and sets out the rules in the area of security and informatics management. The Act also contains an institute for issuing of "verified outputs from public administration information systems". On the basis of this regulation notaries, the holder of a postal licence (Česká pošta Czech Post), municipalities and the Chamber of Commerce can, upon request, issue verified outputs, for instance from the land registry office or the criminal records register and, gradually, from other registers. Part of the Act is also the duty to publish information on the internet in such a form so that it is available to those with health problems.

The aim of the Act on Electronic Acts and Authorised Conversion is to replace a large part of

the personal communication and postal correspondence in public administration and outside of it with electronic communication and correspondence. A unified system for delivery in an electronic manner is implemented by the authorised conversion of documents (between the printed and electronic form). In addition natural persons can use "data boxes". A data box will be obligatory for legal entities. The authorised conversion is the complete conversion of a document in an electronic form to a printed one and vice versa. The document that undergoes this conversion will be, from the legal standpoint, identical with the original. The councils of city wards, district and regional councils, Česká pošta, the Chamber of Commerce and notaries will be able to carry out an authorised conversion (Czech POINT).

According to the government decision, there are no considerations to make a separate legal regulation – a separate act on electronic commerce. The EU has issued directives on electronic operations (e.g. the Directive on Electronic Commerce, the Directive on Electronic Signatures, the Directive on Electronic Payments and others) and these directives are taken on through amendments to the relevant legal norms in the CR. With regards to the great fragmentation and frequent confusion in interpreting these amendments by subjects participating in electronic transactions, there are misunderstandings and uncertainty in the legal interpretation of the entire commercial operation.

The transposition of European legal regulations on electronic transactions into the legal regulations of the CR must be carried out. These regulations contain a number of specific requirements for closing of legal relations in an electronic manner and deal with problems arising out of the certain degree of anonymity on the internet as a medium and its extension beyond state borders, whilst, on the other hand, it is desirable to anchor a maximum amount of protection for the purchaser. At the same time, protection for the operators of facilitation services should be maintained.

As can be seen from the State Information Policy, the state's main role in this area is, from the standpoint of public administration, to give subjects, that want to use an electronic form of relations with their surrounding environment, the certainty that it concerns sufficiently safe practices and a formally accepted form of conduct. The state's aim is to ensure, from the standpoint of authorship, (the time factor and the originality and constancy of the contents) a binding legal protection to the extent as relates to comparable acts realised by any other legally binding form.

The current non-existence of a basic legal source for the area of ICT is substituted for by negotiating specific conditions when contractual parties sign various types of business contracts. The disadvantage of this approach is an absence of a basic legal surety and the impossibility of resting upon the interpretation of a specific legal regulation.

With regards to the fact that it concerns complicated and complex relations when signing such contracts, the contractual types according to the Business Code (for instance a Purchasing Contract or Work Contract) cannot be simply applied – as a rule the contracts tend to be innominate, i.e. unnamed contracts, which places greater demands on the contracts structure and contents.

An institutional approach to ICT

For the issue of information technologies, the Czech Republic chose a similar approach as some other states and formed a separate Ministry of Informatics. In principle, it is possible to distinguish two methods of resolving the competencies of this issue. There are countries that, identically with the CR, set up a body at the ministerial level (having the words information society, technology, innovations or something similar in their titles), other countries deal with this agenda through a central body subordinate to the prime minister.

The Ministry of Informatics of the CR was set up on 1.1.2003. It operated as a central organ for the state administration of information and communications technologies, telecommunications and postal services. The Ministry of Informatics was also a coordinator of developing electronic public administration, e-Government in the Czech Republic. Other priorities of the Ministry of Informatics are e.g. a competition in the telecommunications market, developing electronic commerce, and support for computer literacy in the Czech Republic.

A two-stage approach was used for electronic commerce. The gradual elaboration of two documents was set as the aim. At first a Green Paper and in connection with this a White Paper, which expresses the aims of the state, the setting of priorities and an outline of the basic objectives and barriers standing in the way of electronic commerce. However, the aim to support the development of e-commerce appeared for the first time in another document – the State Information Policy, approved by Government Resolution on 31.5.1999. In the framework of the State Information Policy, the electronic commerce was chosen as one of the priorities. A year later, in May 2000, the Action Plan for Realisation of the State Information Policy was approved, which already had a specific project for elaboration of the Green Paper which finally become a White Paper.

Despite the relatively stormy discussions in the lay and professional public, the programme declaration was met in 2006 and, by government decision, the Ministry of Informatics ended its activities as a separate department on 31st Amy 2007. Since the 1st of June 2007, its agenda has been taken on by the Ministry of the Interior, the Ministry of Trade and Industry and the Ministry for Local Development. The aim of these changes was to improve the promotion of new changes in the area of digitalising of public administration, telecommunications and the post. The power and the bargaining position of the original Ministry of Informatics was shown to be rather weak.

The Ministry of the Interior primarily took over the area of digitalising public administration, eGovernment projects, from the Ministry of Informatics. Further the Ministry of the Interior administers the public administration portal **www.portal.gov.cz**. The informatics section is responsible for digitalising of public administration and has new departments one for eGovernment projects; one for the conception and coordination of public administration information systems and one for developing and of he communication infrastructure of the public administration (the department for informatisation of public administration continues in the informatics section and so far its competence hasn't changed). The Ministry of Interior fulfils a coordinating role for information and communications technologies.

The Government Council for the Information Society, an advisory body for the government in the area of ICT and e-Government, should also contribute to ensuring the coordination and conceptual procedure. The Council's task is to advise the government on what manner they should coordinate the development of e-Government, to react to the proposed legal regulations concerning this area and, at the same time to propose a government strategy, objectives and policies in the area of information society.

- The Council follows the latest global trends in information society development and provides the government with a professional knowledge base for decision-making in matters concerning information and communications technologies and the electronization of public administration.
- The Council's task is to submit proposals for projects and solutions to the information society development such that there is more cohesion and coordination between ministerial and national projects.

An example of the Council's activities is the Strategy for Developing Services for the "Information Society", which was approved in April 2008. Its aim is to transform and simplify the processes used in public administration so that they use modern technologies in a similar manner to the commercial sphere. The Strategy for Developing Services for the "Information Society" should create the conditions for easy-to-use, safe and trustworthy communications between the citizen and public administration at all levels.

Conclusions

For an integral concept of resource approach to development of the agrarian sector and trade it is essential to have an outlook of the legal regulation of ICT. Together with economic and social research it is possible to create a space for a better allocation of resources in connection to the ascertained needs of citizens of particular EU regions. For this, a suitable analysis of the legal regulations of the processing industry, technologies and internal trade including its subsystems is highly justified, especially comparisons with the Community law /with the EU legal regulation. It was shown that developing and supported production and commercial activities with food creates a long-term synergistic effect on economic efficiency and

stability in agrarian trade in all the EU areas. It becomes the basis of sustainable development in rural areas as it is supported by the EU in its Common Agricultural Policy.

A factor that significantly acts upon and influences the entire food industry and its ties to other business subjects is the legal regulation. The state is a creator of legal regulations of varying legal powers and a coordinator of the entire business environment at the national level. By means of its institutions and bodies the state intervenes in the working of ICT and their management; other of its tasks is also to support the development of new technologies. The state forms have the opportunity to influence the conditions that electronic business is governed by.

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