

The electronic signature – An overview

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Technical progress and digitalization are phenomena currently shaping our society worldwide. These evolutions also imply an increase in the use of the electronic signature. The COVID-19 pandemic led to a greater usage of the so called “remote services” (for instance the conclusion of contracts without physical presence; work from home or telework, etc.) and to a stronger use of such electronic identification, respectively trust services.

Legal framework

The legal basis on European level is the so-called eIDAS Regulation (Regulation No. 910/2014, hereinafter referred to as “**eIDAS Regulation**” or “**Regulation**”), that sets forth a detailed legal framework for the electronic signature. The Regulation applies in every member state and, therefore, also in Romania.

Besides the Regulation, the national law no. 455/2001 (hereinafter „**The law** “) is also applicable in respect of the electronic signature. In case of discrepancies between the European and the national regulations, the former will principally prevail.

eIDAS Regulation

The Regulation distinguishes between:

- the simple
 - the advanced and
 - the qualified
- electronic signature.

The 3 types of electronic signature are not equal from a legal point of view, as they have different effects. Each of the abovementioned three forms has a different security level; the choice will depend on the type of the planned action and the risk implied by such action.

The simple signature („*semnătura electronică*”) has a low trust level and thus can be used for processes implying a reduced risk.

The Regulation defines the *advanced signature* („*semnătura electronică avansată*”) based on 4 requirements that must be fulfilled cumulatively:

- (i) it is uniquely linked to the signatory,
- (ii) it is capable of identifying the signatory,
- (iii) it is created using electronic signature creation data that the signatory can use under his sole control and
- (iv) each subsequent change must be detectable.

The *qualified* Signature guarantees the highest level of security. It must meet all criteria of the advanced signature, however, it is created by a qualified electronic signature creation device, based on a qualified certificate for electronic signatures.

The qualified signature is the only electronic signature that, from a legal point of view, corresponds to a handwritten signature. Therefore, its use is recommended when the risk is considered to be high (e.g. for signing contracts, loan agreements, court case files and so on) and the identity of the signatory has to be undoubtedly established. In contrast to an advanced signature, a qualified signature is presumed to fulfil the above criteria cumulatively. In case of doubt, a proof to this end can be obtained from the trust service provider.

National Regulation

The Romanian Law deviates from the text of the Regulation and distinguishes between the simple and the so-called extended signature (*semnătura extinsă*). The definition of the latter basically corresponds to that of the advanced signature according to the Regulation. The Law includes no express dispositions regarding a qualified signature according to the Regulation, however it is acknowledged since it includes dispositions regarding qualified certificates, signature creations devices and trust service providers.

Notable is that a document signed with an electronic signature according to the national regulation will not benefit from an automatic acknowledgement at European level. Therefore, the providers that are active in this field have adapted their services to the requirements of the Regulation, so that their products can be acknowledged across the union.

Express new regulation

The EO 140/2020 introduced the possibility for specialists active in the construction field (technical experts, engineers, site manager and other) to sign technical documents also within the correspondence with authorities, electronically, by means of a qualified electronic signature.

EO 36 further regulated expressly, in 2021, that employment contracts and labor law related documents can be signed with a qualified signature. In practice, this is, however, rather uninteresting, especially since it implies costs for purchasing a signature for each employee.

Conclusion

The electronic signature has become present in the meantime also in Romania, Unfortunately, the old national regulation is not yet fully adapted to the eIDAS Regulation. Despite the inconsistent and thus confusing text, there is a broad consensus at least in terms of content.

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