

Electronic signature - new regulations from October

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As is generally (but not yet sufficiently) known, electronic signatures considerably simplify and speed up the signing of documents, especially in the case of transactions between absentees.

In this regard, Act No. 214/2024 (“the **Act**”) introduced practical innovations that will come into force on October 8th.

With this in mind, here are some practical explanations of the different types of electronic signatures (hereinafter “**ES**”) and a brief description of the new regulations.

Legal framework

In Romania, the following regulations currently apply to ES:

- Regulation (EU) No. 910/2014 (“**eIDAS**”);
- Act No. 455/2001 on electronic signatures (“**Act 455**”);
- EO No. 38/2020 on the use of electronic documents by public authorities and institutions;
- EO 36/2021 on the use of ES in employment relationships.

eIDAS is binding as an EU regulation and is directly applicable in Romania before Law 455. However, the legal effect of electronic signatures is fundamentally defined by national law.

Types of ES

Romanian law distinguishes between the simple ES, the extended ES (according to eIDAS “advanced” ES - for medium-risk documents) and the qualified ES (for high-risk documents).

The qualified ES is created by a qualified electronic signature creation device and is based on a qualified certificate for electronic signatures. Therefore, there is a presumption of authenticity of the signatory’s identity. A document signed with a qualified ES is equivalent to an act with a private signature in terms of its conditions and effects.

According to eIDAS, a qualified ES based on a qualified certificate from one EU member state is also recognized as a qualified ES in all other member states.

For details, please refer to our last article: https://stalfort.ro/wp-content/uploads/2024/03/20240222_ADZ_GP_Electronic_signature.pdf

New regulations

➤ Simple ES

An electronic document signed with a simple ES has the same legal effect as a handwritten document in the following cases:

1. For legal transactions that can be valued in monetary terms and whose value is less than half of the minimum gross salary;
2. The person against whom the document is held acknowledges it - including by full or partial but unequivocal fulfillment of the obligations under the document;
3. The contracting parties are entrepreneurs and have previously expressly agreed, by means of a separate document signed by hand or with a qualified ES, to give the simple ES the legal effect of a handwritten signature.

➤ **Advanced ES**

A document signed with advanced ES has the same legal effect as a handwritten document in the following cases:

1. The advanced ES with which it is signed was created with a certificate for the ES issued by a public authority or institution in Romania or by a qualified trust service provider;
2. It is recognized by the person against whom it is held - including by full or partial, but unequivocal fulfillment of the obligations under the document by the person who does not recognize the advanced ES;
3. The contracting parties have explicitly agreed in advance, by means of a separate document signed by hand or with a qualified ES, that the advanced ES shall have the legal effect of a handwritten signature.

- With regard to the **qualified ES**, the regulation according to which this is equated with a handwritten signature remains in place.

➤ **Principles, probative value**

All of the above types of ES have legal effect and can generally be used as evidence in court.

Furthermore, any electronic document signed with the type of ES provided for by law or with a qualified ES has the same effect as a written document.

If it bears a signature which, according to the law, does not have the same validity as a handwritten signature, it serves only as the “beginning of a proof” (practically as an indication) based on the Romanian Code of Civil Procedure.

➤ **Burden of proof**

Depending on the ES, the burden of proof for non-recognition or contestation in court varies:

1. Non-compliance with the legal regulations or technical requirements for a qualified ES must be proven by the person questioning them.
2. On the other hand, the party claiming the effectiveness of a simple or advanced ES must prove this to the party questioning it.

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