

WOLF THEISS | Romania: What it takes to sign employment documents electronically?



Under Romanian law, employment contracts must be concluded in writing for validity purposes. This justifies the extra care companies invest in a legally binding execution of these documents, as well as the growing interest in E-signing employment documents in Romania.

While the core legislation regarding E-signature (eIDAS Regulations and Law 455/2001) was allowing the E-signing on all contracts requiring the written format for validity purposes (therefore including employment contracts), though indeed only in the format of the qualified E-signature, some say that the electronic execution of employment contracts was officially recognized in the employment legislation via GEO 36/2021 amending the Labor Code as of May 2021. Prior to this "official recognition" most employers preferred the traditional approach of signing in ink (despite any "headaches" associated with this approach, especially concerning cross-border retention), while few used E-signing for employment contracts (most of the times when it comes to retention of high professionals who already owned a qualified E-signature). A minority of employers took advantage of the lack of express interdiction and signed contracts in counterparts where the employee signed in wet ink signature and the employer electronically, with qualified E-signature. While we cannot fully endorse this lastly described practice from a legal perspective, let's face it: it has some cool practical advantages.

With less physical contact and a move towards more flexibility in a working environment, the Romanian legislator proposed a solution: GEO 36/2021. This piece of legislation was intended to bring additional flexibility in terms of execution of the employment documents. As it turned out, however, it introduced legal requirements in addition to those under the eIDAS Regulations and severely limited the de facto use of electronic signature in this area. It basically created a standstill surrounding use of electronic signature in employment relations at the time.

On 25 July 2021, Law 208/2021 amending and supplementing GEO 36/2021 entered into force. Law 208/2021 intends to partially eliminate the previously introduced legal and technical requirements and to simplify the use of electronic signature in employment relations.

Recent changes:

Law 208/2021 implements two main changes:

- elimination of additional formalities (electronic time stamp and electronic seal) upon electronic execution of employment contracts; and
- more flexibility when executing other employment documents.

We include below a comparative analysis of these changes:

Technical clarifications:

As legal experts, the technical subtleties sometimes elude us. However, to be able to fully understand the changes to the Labor Code, we collected intelligence from providers of electronic signature and here's what we found out:

- ◆ The *time stamp* and the *electronic seal* are indeed separate products, in addition to the standard digital content of the e-signature products (advanced, respectively qualified). The changes brought by GEO 36/2021 were therefore indeed confusing and inefficient.
- ◆ The *(qualified) electronic seal* is the equivalent of the company stamp - the link is to the organization and not the actual signatory on behalf of the organization.
- ◆ The advanced E-signature is rather problematic since the technical conditions and criteria set out by art. 26 EIDAS are not clear and precise. Two options are available at this point: (i) the provider issues the product as being an advanced E-signature and warrants that the conditions are met; or (ii) the provider issues a (simple) signature and the user/client undertakes the additional burden to effectively link a certain individual to the signature (e.g. via internal policies). The second option sometimes leaves much of the duty of proof to the person using the signature or to the person alleging the signature is valid, which can create practical difficulties to say the least. Therefore, as the product is not standardized, many providers prefer not to offer it and there may be limited offer on the market.

Where do we stand now?

→ The main advantage of Law 208/2021 is in our view the possibility granted to companies to now use (simple) electronic signatures or the electronic seal for signing or validating the huge amount of "paperwork" required in Romania for HR management. In our view, this provision applies mainly to the unilateral documents issuing from employers but may very well apply (e.g. via rules included in the Internal Regulations of a company) also to the documents originating from the employees, such as various types of consents or data filled in various electronic tools. This becomes a recognition of a practice used since many years ago by employers which turned to securing employee consent via various IT tools, apps and platforms.

→ Prior to GEO 36/2021 and Law 208/2021, parties could only use qualified E-signature for the valid execution of an employment contract (due to the *ad validitatem* requirement under the Labor Code). Now parties can also use advanced e-signatures. At the same time, from a practical perspective (availability of the product, cost vs. benefits analysis) it may be that qualified E-signature stays at the top of the employers' preferences when discussing E-signing contracts.

→ The use of symmetric signatures remains an issue. In order to sign employment contracts electronically, the employer will in fact need to procure electronic signatures for its employees. We anticipate that, at least for a while, employment contracts will mainly continue to be signed with wet ink signatures. |

About WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

Adelina Iftime-Blagean is a Counsel in the Bucharest office of Wolf Theiss and is the coordinator of the Employment team. Throughout her 15+ years of legal career, Adelina was involved in a wide range of transactions

and projects on labor law, compliance and personal data protection, often in a transactional and / or cross-border context.

Adelina has assisted in many multi-jurisdictional and national labor law projects, such as complete range of restructurings, including collective dismissals or automatic transfers of employees, special work arrangements, cross-border retention arrangements, compliance checks at company or group level, vendor or seller due diligence processes, whistleblowing assessments, group level corporate governance implementation and unification projects, cross-border transfers of personal data, implementation of stock options and similar plans, etc.

While since more or less 10 years Adelina's work is exclusively focused on employment matters, her background in corporate-M&A and financial regulatory matters, including capital markets projects, are key to her exceptional understanding of complexities and pitfalls that one may meet in international projects such as transfers of businesses or international restructurings. Additionally, Adelina has a strong experience in data protection and compliance/corporate investigations projects, which enable her to have a complete overview of the issues and risks that may be relevant in HR context. Adelina and Wolf Theiss Romania are the Romanian members with INPLP, the International Network of Privacy Law Professionals.

Andreea Stan is a Senior Associate in the Employment and Corporate/M&A teams of the Wolf Theiss Bucharest office. She specializes in labour law, corporate and commercial law, with a focus on transactional matters with 8+ years of experience. Andreea has previously coordinated challenging automatic transfer of employees projects (with cross-border focus, re-allocation of duties and advice on the interplay with existing position at the transferee entity level) and very complex collective dismissal projects and has supported clients with sensitive and sophisticated transactional advice (especially in transactions where employment matters play a big role) and complex negotiations with the employees. Andreea is also advising clients with difficult, multi-steps / cascading restructurings of group companies where (re)allocation of duties or reporting lines, individual/collective redundancies and intra-group resource sharing projects are the focus of the project. Andreea has been ranked as Rising Star in Legal 500 2020 report. She graduated from the Faculty of Law, University of Bucharest and is a member of the Bucharest Bar.