

CMS | Romania passes law expanding use of electronic signatures



On 8 July 2024, Romania published and adopted Law no. 214/2024 on electronic signature and trust services, which represents a significant legislative update in the area of digitalisation.

The Law, which will enter into force on 8 October 2024, aims to create a clear and predictable legal framework for the use and effects of different types of electronic signatures (i.e. qualified, advanced, and simple), further harmonises local legislation and implements the EU Regulation on electronic identification and trust services for electronic transactions (**eIDAS Regulation**).

As general background, Romania recognises three types of electronic signatures, each offering varying levels of security and legal recognition: the simple signature, the advanced signature, and the qualified signature.

Prior to this Law, only the qualified electronic signature had general legal effect regulated under Romanian law, recognised as having the same effect as a handwritten signature, with the advanced electronic signature recognised only in specific circumstances governed by special laws.

As the process to obtain a qualified electronic signature was cumbersome, Romanian businesses predominantly used handwritten signatures in contrast to other jurisdictions where e-signature services have largely replaced traditional wet-ink signatures.

Main amendments

Expanding on the eIDAS Regulation, the new Law makes several types of electronic signatures similar to handwritten signatures, provided certain conditions are met.

For legal acts requiring written form for their validity (e.g. mortgage agreements, individual employment agreements), an electronic document fulfils this requirement if signed with a qualified or advanced electronic signature, which are deemed equivalent to handwritten signatures.

For legal acts that require written form only for probatory purposes (e.g. storage agreements, legal assistance agreements), an electronic document meets this requirement if it is signed with any type of electronic signature, including a simple electronic signature. This provision will ensure that all types of electronic signatures are admissible as evidence in court.

Simple electronic signatures, which do not fulfil the security conditions for advanced electronic signatures under the eIDAS Regulation but are the most readily available solutions on the market today, will have the same legal effect as a document signed by a handwritten signature in any of the following cases:

- **acts of low value:** acts valued at less than half of the gross minimum wage (i.e. RON 1,700 or approximately EUR 340) at the time of signing;
- **recognition by the opposing party:** if recognised explicitly or if recognition can be inferred from the unequivocal actions of the opposing party, such as fulfilling contractual obligations;
- **agreement between professionals:** if the parties are professionals (i.e. business entities) and have explicitly agreed in a separate written document, signed with a handwritten signature or with a qualified electronic signature.

An advanced electronic signature has the same legal effects as a handwritten signature in the following cases:

- **certified provider:** if the signature is created with a certificate issued by a public authority, institution, or a qualified trust service provider;
- **recognition by the opposing party:** if recognised explicitly or if recognition can be inferred from the unequivocal actions of the opposing party, such as fulfilling contractual obligations;
- **agreement between parties:** if the parties have explicitly agreed in a separate written document, signed with a handwritten signature or with a qualified electronic signature.

If the document requires notarisation, traditional authentication procedures must be followed, since the Law would not apply.

The validity of an electronic signature is determined based on the conditions at the time of signing. The expiration of the certificate used for the signature does not affect the document's validity. If the validity of a qualified electronic signature or seal is contested, the court will verify its validity. The burden of proof rests with the party contesting or claiming the validity of the signature.

Conclusion

The Law modernises the legal framework for electronic signatures in Romania, providing greater flexibility and legal certainty for electronic transactions. This legislation is expected to encourage the adoption of electronic signatures in Romanian business, which has been slow to adopt electronic signatures.

For more information on electronic signatures in Romania, contact your CMS client partner or local CMS experts: **Elena Andrei** and **Rares Crismaru**.