



### Electronic Document, Electronic Signature and Electronic Transactions

#### The implementation of the Regulation on Trust Services for Electronic Transactions in the Internal Market

The growing trend of online sales and the conclusion of business at a distance has raised the need to increase the safety and confidence of users in the use of electronic tools.

There is no new need since this topic was regulated in 2014 through [Regulation \(EU\) No. 910/2014](#) of the European Parliament and the Council on electronic identification and trust services for electronic transactions in the internal market.

The aim was to ensure that the Member States mutually recognized the means of electronic identification to facilitate services in the internal market across borders.

Although there was already a significant modernization of public services and increasing flexibility of companies in doing business, the current pandemic and the constraints imposed by public authorities have boosted the deals concluded exclusively through electronic means and the need to adapt quickly to a new reality.

And, it should be noted, we are not only talking about online sales, but all types of businesses, commitments, contracts, and agreements concluded through a simple email.

The growing need to use electronic tools thus began to give rise to several issues related to the validity of contracts signed through the affixing of an electronic signature or communicating such electronic documents.

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Many of these questions are answered both in the European Regulation and in the recent Decree-Law No. 12/2021, of 9 February, which ensures the implementation of Regulation (EU) No. 910/2014 of the European Parliament and the Council, and which regulates the validity, effectiveness and probative value of electronic documents, electronic means of identification and provides rules applicable to the State's Electronic Certification System.

## Electronic Signature

The first note to note is that a **qualified electronic signature** can replace the autograph signature. The affixing of this type of signature creates the presumption that:

- a) The person who signed the signature is the respective holder or is a representative of a company;
- b) The signature was affixed to sign the document; and
- c) The document has not changed since the signature was affixed.

And we are talking about a qualified electronic signature and not another type of electronic identification. This point is of particular importance since only the qualified electronic signature has the probative power of a signed private document.

The remaining electronic documents not associated with qualified trust services are considered under the general terms of the law.

In terms of qualified trust services, there are also **qualified electronic seals** - the origin and integrity of the electronic document are presumed - and **qualified electronic time stamps** - the accuracy of the date and time, and the integrity of the document are assumed.

**An electronic signature that is not qualified can also be used to sign an electronic document.** In these cases, it is required that the parties adopt this means of identification under an agreement on proof (which may be a clause in the contract) or that the other party accept

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## Communication Electronic Documents

Another relevant aspect of electronic documents concerns their form of communication. The electronic document (for example, a contract) sent by an electronic means of communication is considered to be sent and received by the recipient if transmitted to the electronic address defined by agreement of the parties and received therein.

And **sending an email may be equivalent to sending a registered letter with acknowledgement of receipt**. For this, it is necessary to affix a qualified electronic signature or a qualified electronic seal and a means of communication that ensures effective reception is used and if the reception is confirmed by a confirmation message from the recipient in the same way.

## Trusted Services

In this theme, it is common to find several references to the terms "Trusted Service Providers" and "Qualified Trusted Services".

"Trust Service" means an electronic service that consists of:

- a) In the creation, verification and validation of electronic signatures, electronic seals or time stamps, electronic registered delivery services and certificates related to those services; or
- b) In the creation, verification, and validation of certificates for website authentication; or
- c) In the preservation of electronic signatures, seals or certificates related to those services.

And "Trust Service Providers" are the natural or legal persons that provide such trusted services.

Trust Service Providers and their Qualified Trust Services are registered in the National Trusted List accessible at the following link: [Trusted List Browser \(europa.eu\)](#).

Decree-Law no. 12/2021, of 9 February, also establishes the requirements for attributing the status of trustworthy service provider and the applicable sanctioning regime.

A final note to mention that under the exceptional and temporary measures related to the pandemic, a special regime was approved that recognizes that the signature of the digitalized copies of the acts and contracts by hand or using a qualified electronic signature does not affect the validity of the documents. Even if different forms of signature coexist in the same act or contract ●

*Article written in accordance with the legislation in force on 15 April 2021.*