

Image not found or type unknown



<div class="event-subscription p-3"><!--BEGIN-OF-FILE-LIST-->Published in: <b><!--BEGIN-OF-FROM-NAME-->CEE Legal Matters<!--END-OF-FROM-NAME--></b> (<!--BEGIN-OF-FROM-LINK-->

At a global scale, trends in the financial sector are undoubtedly oriented towards digitalization. By employing new technologies, financial institutions are striving to meet clients' surging demand for contracting financial services via digital channels. In other words, the spotlight is turning from branch-proximity to digital-technology, as the use of paper-based documentation and the need for clients to be present in person when contracting financial services are shrinking.

Switching to digital services has generated the need for a legal framework that would increase consumer confidence in remote means of negotiation and conclusion of contracts for financial services.

In Romania, this legal framework is represented by Government Ordinance No. 85/2004 on Consumer Protection in Concluding and Performing Distance Agreements Related to Financial Services, as further amended and supplemented. As per this enactment, a "distance contract" means any contract concerning financial services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. The "means of distance communication" refers to any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the remote trading or marketing of a service between those parties. Therefore, a prerequisite for switching to digital services is for the financial institutions to have in place a secure technical infrastructure ensuring the processing, storing, and transmission of information to clients with a view to entering into a distance contract. In brief technical terms, a digital platform must ensure safe means of remote communication, allowing for the secure and unique identification of the client, as well as a durable medium for storing and recording of the agreements.

Unless otherwise agreed by the parties, distance agreements are deemed concluded upon the receipt, by the supplier, of acceptance from the consumer, with respect to its offer. The agreement can be sent through any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Certain requirements must be taken into consideration for probative purposes; for example, when remote agreements need to be submitted as evidence before a court of law. In accordance with the Romanian Civil Procedure Code, in the case of data stored on IT devices, the document that reproduces such data must be legible; in fact, this requirement concerns the means that store the relevant data, which, by reading (i.e., viewing or listening), must reproduce an intelligible message. Further, the document must present sufficiently serious guarantees to make full evidence of its content and the identity of its issuer: the document is created systematically and without gaps and the recorded data is protected against alterations or counterfeiting, ensuring the integrity of the document.

The provisions of Government Ordinance No. 85/2004 apply to any banking, credit, insurance, individual pension, financial investment services, or any services related to payment in kind. However, there are still certain legal provisions regulating particular financial services that establish specific form requirements for the validity of certain agreements.

In accordance with the National Bank of Romania Regulation No. 6/2006 regarding the issuance and the use of electronic payment instruments and relations between participants to transactions involving these instruments as further amended and supplemented, agreements concerning the issuance of cards must be in writing to be valid. This requires that the consent of the parties be expressed in writing, which traditionally implies affixing handwritten signatures to paper documents. However, in order to keep in line with current trends, there is also the alternative of using qualified electronic signatures, which allows the parties to observe the signing requirements when concluding agreements remotely, by electronic means. Qualified electronic signatures are governed by both local and European Union enactments and must be generated by secure devices, based on specific certifications, in order to have the same legal effects as handwritten signatures.

*This article first appeared in CEE Legal Matters, Issue 8, August 2018*

