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<p>How Law No. 214/2024 changes the future of e-signed documents in Romania</p> <p>Law No. 214/2024 on the use of electronic signature, time stamp and the provision of trust services based on them (“Law No. 214/2024”) will enter into force on 8 October 2024.</p> <p>Nearly a decade after the entry into force of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (the “eIDAS Regulation”), Law No. 214/2024 will replace the old regulation on electronic signatures (i.e. Law No. 455/2001 on electronic signature). This new law will establish an updated national legal framework governing electronic signatures, electronic seals, time stamps and trust service providers.</p> <p>This material does not aim to cover all the provisions of Law No. 214/2024; rather, it will focus on analysing the legal status of electronically signed electronic documents used in private law relationships - a subject that has sparked numerous controversies and inconsistent interpretations over time</p> <p>A. KEY TAKEAWAYS</p> <p style="margin-left:40px">1.. Qualified electronic signature: the queen of electronic signatures</p> <p>The solution that offers the highest level of trust is a qualified electronic signature. This signature has full legal force without any additional conditions or restrictions. However, if the authentic form is required, signing documents with a qualified electronic signature will not be sufficient and it will be necessary to go through the authentication procedure for notarial electronic legal acts.</p> <p> </p> <p style="margin-left:40px">2. Advanced and simple electronic signatures are deemed equal to handwritten signatures (under specific conditions)</p> <p>Law No. 214/2024 provides that, under specific conditions (for details, refer to Sections C.2 and C.3 below), (i) advanced electronic signatures are deemed equal to handwritten signatures regarding validity and proof of legal acts, and (ii) simple electronic signatures are deemed equal to handwritten signatures concerning the proof of legal acts.</p> <p>Thus, the electronic document signed with an advanced electronic signature under Law No. 214/2014 will be considered validly concluded if the written form is required as a condition of validity, and will have full evidentiary force just as a document in hard copy.</p> <p>The electronic document signed with a simple electronic signature under Law No. 214/2024, when the written form is not required as a condition of validity, will have full evidentiary force like a document in hard copy</p> <p> </p> <p style="margin-left:40px">3. Legal effects of electronic signatures that do not meet the conditions in Law No. 214/2024</p> <p>If the written form is required as a condition of validity, a legal act concluded as an electronic document will be considered validly concluded only if it is signed with an electronic signature that complies with the conditions provided for by this legislative act, namely either a qualified electronic signature or an advanced electronic signature used in observance of Law No. 214/2014.</p> <p>If the written form is required as a proof of the legal act, a document signed using an electronic signature that does not comply with the conditions laid down in this law for the electronic signature to be deemed equal to a handwritten signature will not have full evidentiary force. The document thus signed will be considered only as prima facie written evidence and, in the event of potential legal disputes, it will be necessary to produce other means of evidence to prove the execution of the legal act.</p> <p> </p> <p style="margin-left:40px">4. Legal acts concluded by professionals, which do not need to be made in writing to be valid: is it mandatory to use the types of signatures provided by Law No. 214/2024?</p> <p>According to Law No. 214/2024, professionals may use any type of electronic signature to sign legal acts, except in cases where the law requires the written form for the legal act to be valid.</p> <p>The documents thus signed carry full evidentiary weight against the professional. It remains to be determined how the courts will interpret this provision, especially when it comes to disputing simple electronic signatures, and given that simple electronic signatures do not inherently offer technological assurances regarding the signatory’s identity, the integrity of the document, or the signatory’s consent to the content of the document thus signed.</p> <p>In any case, the above-mentioned rule does not apply when the electronic document is enforced against a consumer. In such instances, professionals must use qualified electronic signatures or, if they opt for advanced or simple electronic signatures, these must adhere to the conditions specified in Law No. 214/2024</p> <p> </p> <p style="margin-left:40px">5. What happens if electronic signatures are disputed?</p> <p>A qualified electronic signature is presumed to be valid, even if the signature is disputed by the party against whom the electronic document is enforced. The party disputing the validity of the signature must

provide evidence that the legal and technical conditions for the use of the signature have been infringed.</p> <p>The situation is different for advanced e-signatures and simple e-signatures, even when they are used in accordance with Law No. 214/2024. In such cases, the person asserting the validity of the signature must prove that the legal and technical conditions applicable to the type of signature used have been satisfied. Although Law No. 214/2024 provides for several alternative methods of signature validation, proving compliance with the technical conditions is likely to require a specialized audit, particularly for simple electronic signatures. Therefore, entities using such signatures should be aware of the risks associated with potential legal disputes where the party signing such documents does not acknowledge the signatures.</p> <p> </p> <p>B. TYPES OF ELECTRONIC SIGNATURES</p> <p>As a novelty, Law No. 214/2024 defines the concept of simple electronic signature, without however altering the concepts used in the eIDAS Regulation regarding the typology of electronic signatures. Therefore, the legal landscape of e-signatures continues to be characterised by the three broad categories of signatures with which we are already familiar:</p> <p>a) Electronic signature =/= simple electronic signature (“SES”) - an electronic signature (i.e. data in electronic form, attached to or logically associated with other data in electronic form and used by the signatory to sign) which does not comply with the requirements set out in Article 26 of the eIDAS Regulation;</p> <p>b) Advanced Electronic Signature (“AES”) - an electronic signature that complies with the requirements set out in Article 26 of the eIDAS Regulation; 1</p> <p>c) Qualified electronic signature (“QES”) - an AES signature that (i) is created by a qualified electronic signature creation device and (ii) is based on a qualified certificate for electronic signatures.</p> <p> </p> <p>C. LEGAL EFFECTS OF DOCUMENTS SIGNED WITH ELECTRONIC SIGNATURES</p> <p>C.1. GENERAL </p> <p>Before discussing the legal effects of electronic documents signed using the types of electronic signatures provided for by Law No. 214/2024, it is worth mentioning that such legal effects should be analysed from the perspective of two primary categories of formalities applicable to legal acts:</p> <p>1. Form required by law ad validitatem</p> <p>A legal act must comply with certain formal conditions in order to be considered valid. If such conditions are not met, the legal act is void (unless it can be converted into another valid act).</p> <p>In Romania, the principle of consensualism applies to most contracts, which means that no specific form is required for them to be valid.</p> <p>The law requires certain legal acts to be made in writing in order to be validly concluded. For example, the written form is required for a number of contracts, such as: lease, memorandum of association (for companies with legal personality), contract of surety, contract of mortgage on movable property.</p> <p>In other instances, the law provides for legal acts not only to be concluded in writing, but also to be authenticated by a notary. For example, authentication is required for a number of contracts, such as: donation contract, maintenance contract, or contract of mortgage on immovable property</p> <p> </p> <p>2. Form required ad probationem</p> <p>For a document to serve as proof of a legal act, particular formal conditions must be met. The law requires the written form for certain legal acts, such as: commission contract, consignment contract, agency contract, current account contract, insurance or deposit contract (with certain exceptions).</p> <p>If this requirement is not fulfilled, the electronic document containing the legal act will have limited evidentiary value. In practice, this means that it cannot be used as standalone evidence and will require additional evidence for support.</p> <p>C.2. QES-SIGNED DOCUMENTS</p> <p>Law No. 214/2024 does not bring any significant changes to the legal framework applicable to QES-signed electronic documents. QES is the signature offering the highest level of trust.</p> <p>Thus, Law No. 214/2024 reiterates the principle that a QES signature is deemed equal to a handwritten signature. An electronic document signed with such a signature in private-law relationships is treated in the same way as a document under private signature.</p> <p style="margin-left:40px"><u>Note</u>: If the authentic form is required for the execution of a legal act (e.g., a mortgage contract), signing with a QES signature will not be sufficient. In addition, it will be necessary to go through the authentication procedure for the document in accordance with the legislation on electronic notarial activities.</p> <p>C.3. AES-SIGNED DOCUMENTS</p> <p>Law No. 214/2024 stipulates that, under certain conditions, AES has legal effects similar to a handwritten signature (i.e., the document thus signed will be treated just as

a document under private signature both in terms of validity and proof of legal act), namely if:</p> <p>• the AES is based on a qualified certificate issued by a qualified public authority or trust service provider;</p> <p>• the electronic document is acknowledged by the party against whom it is enforced. Acknowledgment may also result from the performance, in whole or in part, of the obligations in the document; or</p> <p>• the parties have explicitly agreed in a separate document (signed by hand or by a QES signature) that the AES will have the legal effects of a handwritten signature, and have confirmed that they understand the risks and burden of proof. If the parties are professionals, the document may also be signed with an AES signature.</p> <p>In evidence, an AES-signed document that does not comply with the above-mentioned conditions will only function as prima facie written evidence.</p> <p>C.4. SES-SIGNED DOCUMENTS</p> <p>The SES offers the lowest level of trust. However, as it is widespread in practice, the legislator has also conferred to such type of signature legal effects similar to those of the handwritten signature, but in much more limited cases and only where the written form is required as a condition of proof, not as a condition for the validity of the legal acts. Specifically, an SES signature will be deemed equal to a handwritten signature if:</p> <p>• it is used for acts that can be evaluated in money, with a value of less than half of the gross minimum wage in the economy on the signing date (i.e. less than RON 1,850 as at the date hereof);</p> <p>• the electronic document is acknowledged by the party against whom it is enforced. Acknowledgment may also result from the performance, in whole or in part, of the obligations in the document; or</p> <p>• the parties are professionals and have explicitly agreed, in a separate document (signed by hand or by QES), that the SES will have the legal effects of a handwritten signature and have confirmed that they understand the risks and the burden of proof.</p> <p style="margin-left:40px"><u>Note</u>: no covenants regarding evidence can be established in contracts between professionals and consumers. This legislative approach is somewhat debatable, as Article 256 of the Civil Procedure Code does not lay down any conditions as to the status of the parties when entering into covenants regarding evidence</p> <p>In evidence, an SES-signed document that does not comply with the above-mentioned conditions will only function as prima facie written evidence.</p> <p> </p> <p>D. LEGAL ACTS CONCLUDED BY PROFESSIONALS FOR WHICH THE LAW DOES NOT PROVIDE THE WRITTEN FORM AS A CONDITION OF VALIDITY. WHAT TYPES OF SIGNATURES CAN BE USED?</p> <p>According to Law No. 214/2024, any type of electronic signature (including those that do not comply with the conditions in Law No. 214/2024) may be used to prove legal acts concluded by professionals for which the law does not require a written form as a condition of validity. Without expressly stating so, Law No. 214/2024 suggests that the document thus signed will have full evidentiary force against the professional.</p> <p>Documents signed with a simple electronic signature (given the technical solutions used to create electronic signatures) typically do not provide guarantees as to the identity of the signatory and the existence of the signatory’s consent to the content of the document. Therefore, it remains to be seen how the courts will interpret this provision for electronic documents signed with a simple electronic signature, in particular where the electronic signatures are disputed by the party against whom the document is enforced.</p> <p>Also, it should be noted that this rule is not applicable if the electronic document is enforced against a person who is not acting in the exercise of his/her professional activity (e.g., a consumer). In this case, to ensure full evidentiary value against a consumer, professionals must use qualified electronic signatures. Alternatively, if advanced electronic signatures or simple electronic signatures are used, they must meet the conditions provided for by Law No. 214/2024.</p> <p> </p> <p>E. THE PARTICULAR CASE OF CLOSED ELECTRONIC SYSTEMS</p> <p>Law No. 214/2024 provides that public institutions and private legal entities may define closed electronic systems, if a number of conditions are met:</p> <p>• all participants are identified as having a high or substantial level of assurance under Implementing Regulation (EU) 2015/1502; and</p> <p>• the systems are subject to an auditing process, which must be repeated at least every two years and which envisages at least data security and ensuring traceability of all user actions in the system related to authentication and electronic signature.</p> <p>An AES-signed electronic document, issued by a legal person governed by private law, and used in a closed system, causes in such closed system the same legal effects as a document signed with a handwritten signature (both as a requirement of validity and as proof of the legal act).</p> <p>Also, in the interaction between users of a closed electronic system, members can agree on the value and legal effects for any type of electronic

signature. It will be possible to establish that an SES-signed document will be considered validly concluded even when the law requires the legal act to be entered into in written form as a requirement for its validity. The solution is instriguing, but its implementation may come with challenges, particularly regarding SES signatures. Only time will tell how this system will be put into practice and how a system that deviates from the legal rules concerning the effects of electronic signatures, which are not legally equivalent to handwritten signatures, will be interpreted in real-world scenarios..</p> <p>F. SPECIAL RULES ON THE USE OF ELECTRONIC SIGNATURES</p> <p>Law No. 214/2024 amends a number of legislative acts and sets forth a set of specific rules for the use of certain categories of electronic signatures in specific areas, such as for certain corporate documents, documents relating to the functioning of associations and foundations, etc.</p> <p>Also, Law No. 214/2024 does not affect the conditions regarding the use and legal effects of electronic signatures already provided for in other legislative acts (e.g., the Labour Code).</p> <p>G. PROCEDURE FOR DISPUTING ELECTRONIC SIGNATURES</p> <p>QES is presumed to be valid. Thus, the person who does not acknowledge or disputes a QES-signed document must prove that the legal and technical conditions attached to this type of electronic signature have been infringed.</p> <p>In the case of documents signed with disputed AES and SES signatures, the burden of proof as to their validity is reversed. The person asserting the validity of the signature must prove that the legal and technical conditions applicable to such type of signature have been met. The validity of these signatures can be verified through the following methods:</p> <p>• by publicly available validation methods validated by the relevant supervisory and regulatory authority;</p> <p>• by the issuer of the advanced electronic signature, under the conditions laid down by law; or</p> <p>• by a specialized technical audit, if the signature cannot be validated as per the above.</p> <p> </p> <p>H. PENALTIES</p> <p>In addition to a number of penalties applicable to trust service providers or public authorities, Law No. 214/2024 also penalizes the unlawful use of electronic signatures. Therefore, anyone who uses an electronic signature or electronic seal without the knowledge and consent of the rightful user will be fined between RON 75,000 and RON 100,000, unless the act qualifies as a criminal offense.</p>