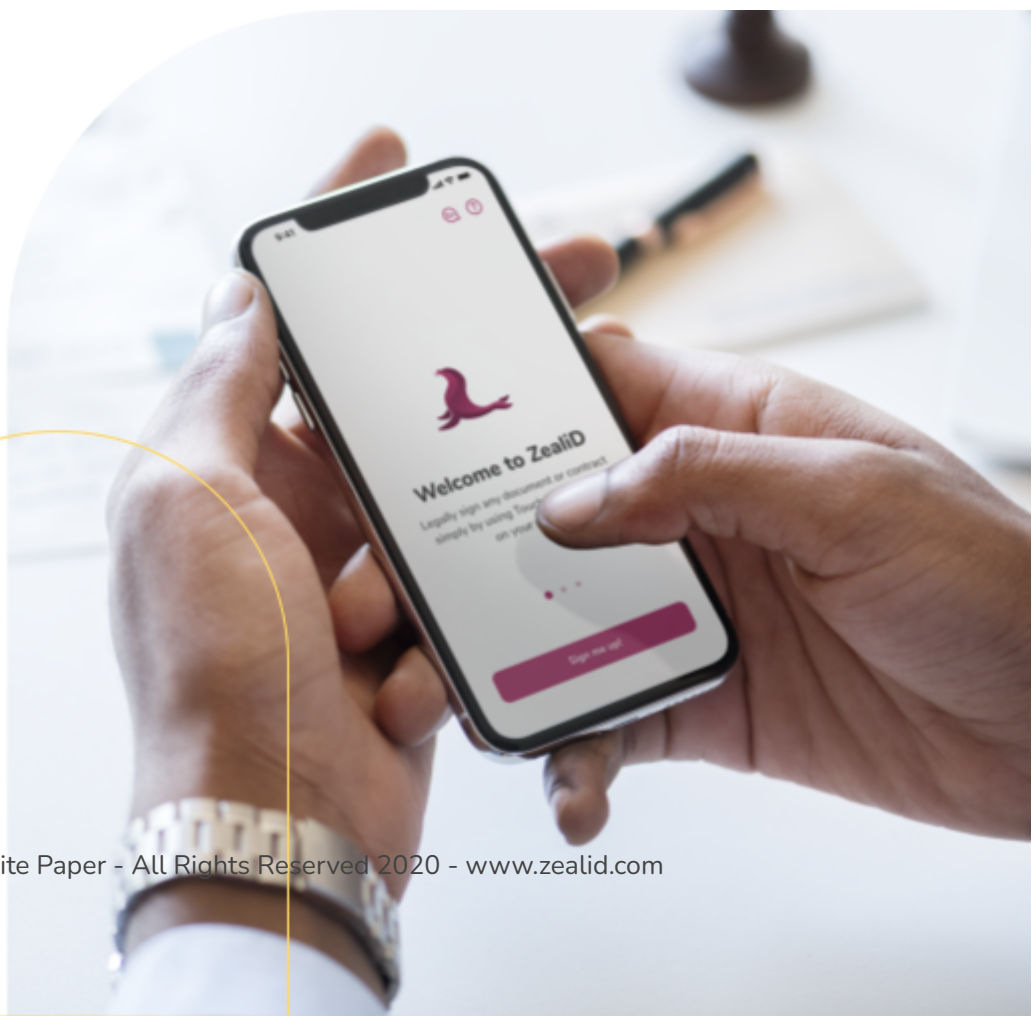




# Qualified Electronic Signatures (QeS) legal status in the EU Member States



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# Introduction

The [EU Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market](#) ('eIDAS Regulation') has created a new, detailed regulatory system for e-signatures as well as e-identification, e-seals, e-timestamps, e-documents, e-delivery systems and website authentication. It entered into force from 1 July 2016. The value of this Regulation is that unlike the previous Electronic Signatures Directive (1999/93/EC), it is immediately applicable without any need to be transposed into national legislation in all the 28 EU Member States.

## Electronic Signatures Profile by Country

### Austria

The Austrian legal framework for electronic signatures is made up of the [Signature and Trust Services Act](#) -*Signatur- und Vertrauensdienstegesetz, SVG*-. That Act implemented EU Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market ('eIDAS Regulation'). The eIDAS Regulation provides the basis both for EU implementing acts and for provisions of national law.

Austrian law contracts can, in principle, be concluded orally or in writing according to § 883 [Austrian Civil Code](#) -*Allgemein Bürgerliches Gesetzbuch (ABGB)*- without following any specific formal requirements. Thus, conforming to the "freedom of form" concept of Austria civil legislation, electronic contracts are normally lawfully legal and binding.

Moreover, conforming to § 4 (1) of the Signature and Trust Services Act a qualified electronic signature meets the legal requirement for the written form in accordance with § 886 of the [Austrian Civil Code \(ABGB\)](#). Other legal form requirements, in particular those that provide for the involvement of a notary or a lawyer, as well as contractual agreements on the form, remain unaffected. A **qualified electronic signature** can be used as an equivalent for contracts that are subject to handwriting.<sup>1</sup>

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<sup>1</sup> Axel Anderl, [Electronic contracts and signatures in Austria](#), July, 15th, 2019, DORDA.

## Belgium

The regulation of electronic signatures in Belgium is governed by the provisions of the [Law of 21 July 2016](#), which includes Regulation No 980/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation).

The possibility of signing contracts electronically is established in Article 1322.2 of the [Belgian Civil Code](#) “*For the purposes of this article, a set of electronic data attributable to a specific person and capable of indicating the integrity of the contents of a deed, can meet the requirements of a signature*”. An electronic signature should not be considered inadmissible because it is electronic, according to the non-discrimination principle. Thus the scope is very wide for contracts or documents that can be electronically signed.<sup>2</sup>

Similarly, according to the Article Art. XII.16. of the [Code of Economic Law](#), the electronic conclusion of a contract is considered valid for any act or contract. However, the courts may exclude those acts or contracts that:

- 1°. Involve a transfer of immovable property
- 2°. Require the intervention of the court / authority / professional in charge of a public function (such as a notary),
- 3°. Provide personal guarantees or securities,
- 4°. Relate to family or inheritance law.<sup>3</sup>

In addition, the latest law of evidence ([Book 8 of the Civil Code](#)), which entered into force on 1 November 2020, is a true facelift of electronic signatures, in which the equivalence of electronic signatures and electronic records with their paper equivalents is expressly verified.<sup>4</sup> The legislation takes account of the fact that many online transactions take place and that contracts/documents can not always be drawn up with a handwritten signature in writing as a result. Moreover, the electronic signature would be better matched with the European regulations in this legislation.<sup>5</sup>

## Bulgaria

The [Electronic Document and Electronic Trust Services Act](#) (EDETSA, *Закон за електронния документ и електронния подпис*, in Bulgarian) of 2017 as amended, is the key source of the EU Regulation No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS).<sup>6</sup>

The [Law of Obligations and Contracts](#) is the primary source of civil law in Bulgaria. In other laws, such as the Commercial Act, the Property Act, the Family Code, and others, it has the feature of *lex generalis*. It is not possible to include a full list of all possible deals, contracts, etc. with the form

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<sup>2</sup> David Zygas and Stefan Deswert, [Belgian law in brief: under what conditions is an electronic signature legally equivalent to a wet ink signature?](#), July, 7th, 2020, Osborne Clarke.

<sup>3</sup> Jeroen Smets, Charlotte Stynen, and Patrice Corbiau, [COVID-19: Electronic Conclusion of Contracts and E-Signatures in Belgium](#), April, 27th, 2020, National Law Review, Volume X, Number 118.

<sup>4</sup> Anneleen Dammekens, [Le nouveau droit de la preuve](#), July, 2nd, 2019, Fédération des Entreprises de Belgique.

<sup>5</sup> Tracy Enta and Ulrike Beuselinck, [Corona crisis and the importance of electronic signatures](#), April, 10th, 2020, Seeds of Law.

<sup>6</sup> Desislava Anastasova, [Assen Georgiev, and Anna Tanova. E-signatures in Commercial Contracts in Bulgaria](#), July, 22nd, 2020, CMS Legal.

specifications. In Bulgaria, the type of legal action may be as follows: simple form, written form, notarial certification, and notarial form.

The Article 293.4 of the [Commercial Law](#) sets that the written form will be considered fulfilled if the declaration is technically registered in a way that allows its reproduction.<sup>7</sup> Similarly, the EDE TSA equates the electronic document with the written one (Article 3.2 EDE TSA) by stating that the written form is considered to be fulfilled if an electronic document has been prepared. Although, the use of any electronic trust service, including electronic signatures, cannot substitute the last two types of expressions of will. For more eligible forms that require the physical presence of individuals, eIDAS notes that a QES is equivalent to a handwritten signature, but there is no such law.<sup>8</sup>

Only **qualified electronic signatures (QES) have the power of a handwritten signature** in the relations with other persons.<sup>9</sup> However, the Article 13.4 EDE TSA provides that electronic signatures other than qualified signatures are subject to the authority of a handwritten signature only if this is specifically agreed between the correspondents and their scope of application is considerably narrower.<sup>10</sup>

## Croatia

In the Republic of Croatia, electronic signatures are regulated by the Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market ("eIDAS Regulation") with the [Act on Implementation of the eIDAS Regulation \(Zakon o provedbi Uredbe \(EU\) br. 910/2014 Europskog parlamenta i Vijeća\)](#) and the [Electronic Document Act \(Croatian Zakon o elektroničkoj ispravi, EDA\)](#).

According to the [Obligations Law \(Zakonom o obveznim odnosima -ZOO-\)](#), the contract can be concluded in any form also applies to all subsequent amendments to the contract, except in cases where a certain form of expression of will is prescribed in advance as a condition for the validity of the contract by law or the will of the parties.<sup>11</sup> In line with Article 2 of the EDA specifically confirms that an electronic form of a document shall be deemed equivalent to its written form, provided that the use and circulation of such document is in accordance with the provisions of EDA.

Although, the **electronic form of a document is expressly excluded** by Article 11.2 of the EDA in respect of all documents requiring signatures to be certified before a notary public or to be in the form of notarial actions.<sup>12</sup>

## Cyprus

The regulatory framework for electronic signatures in Cyprus is constituted by the [Law no.55\(I\)/2018 "Providing for a legal framework for electronic identification and related issues"](#) [Ο περί της

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<sup>7</sup> Popov, Arnaudov and Partners, [Преимущества на писмената форма на договора в търговския оборот](#), November, 19th, 2020, Popov, Arnaudov and Partners.

<sup>8</sup> Yasen Rosenov Petkov (2020) [Impugnment of electronic signatures Reflection of EU Regulation 910/2014 in the civil procedures of Bulgaria and the Netherlands](#), Tilburg University- Law & Technology.

<sup>9</sup> Djingov, Gouginski, Kyutchukov & Velichkov, [The Bulgarian Law on e-Document and e-Signature rendered in compliance with the eIDAS Regulation](#), November, 3th, 2017, Djingov, Gouginski, Kyutchukov & Velichkov.

<sup>10</sup> The Supreme Cassation Court (SCC) in Bulgaria has dealt with this provision in Decision n° 70 from 19.02.2014, case 868/ 2012.

<sup>11</sup> Ugovori, [Oblik Ugovora](#), Ugovori.

<sup>12</sup> Karanovic & Partners, [E-Signature in Croatia](#), April, 23th, 2020, Karanovic & Partners.

*Εφαρμογής του Κανονισμού (Ε.Ε.) αριθ. 910/2014, σχετικά με την Ηλεκτρονική Ταυτοποίηση και τις Υπηρεσίες Εμπιστοσύνης για τις Ηλεκτρονικές Συναλλαγές στην Εσωτερική Αγορά, Νόμος του 2018 (Ν. 55(Ι)/2018)). It provides that in any proceeding before an administrative body, electronic signatures (as specified in the Regulation) can be admitted as proof and have the same legal force as handwritten signatures.<sup>13</sup>*

The Regulation on Electronic Transactions was adopted in the [Evidence Law, Chapter 9 of the Laws of Cyprus](#) [Ο περί Αποδείξεως Νόμος (ΚΕΦ.9)]. In accordance with Section 2 a 'document' is anything upon which content, is recorded or imprinted including electronic signatures, electronic seals, electronic time stamps, electronic documents, registered electronic dispatch as these are defined by the Regulation on Electronic Transactions.<sup>14</sup>

Nonetheless, certain authorities require signatures for "wet ink". For example, the Land Registry Offices in Cyprus require original "wet ink" signatures, certified by the certifying officer if the signatory is present.<sup>15</sup>

## Czech Republic

[Electronic Transaction Trust Services Act 297/2016 Coll.](#) (the TSET Act, *Zákon o službách vytvářejících důvěru pro elektronické transakce*) adapts to the legal framework of the Czech Republic relating to Law (EU) No 910/2014 in the field of trust services. The regulatory act lays down general rules relating to electronic signatures, electronic seals and the use of qualified electronic time stamps, and also points down some procedures for qualified trust service providers.<sup>16</sup>

Generally, for an agreement to be legal under Czech law, it is not necessary to be in writing. Contracts should be entered into validly verbally, online or in a physical paper record.<sup>17</sup> In cases where written form is required In compliance with Section 561(1) of the [Czech Civil Code](#) (Act 89/2012 Coll., *Zákon občanský zákoník*), the authenticity of any act carried out in writing includes the signature of the acting individual and in some situations, where this is usual, the signature can be supplemented by a mechanical signature, such as a stamp, or by some other form specified by another law. Thus, pursuant to Section 562 of the Czech Civil Code is written form also maintained if made in electronic form.

The Czech Electronic Transactions Act provides that electronic signature can be in a form of a guaranteed electronic signature, a certified electronic signature, a recognized electronic signature, or any other type of electronic signature. In all cases where the Czech Electronic Transactions Act does not allow for a requirement to use a guaranteed electronic signature, the last form of signature (plain electronic signature) can be used in particular in cases of public records, where it is a matter of faith in electronic transactions within the public sector. Every other form of electronic signature, i.e. virtually any electronic evidence (the so-called 'other type of electronic signature'), should also be appropriate in private relationships.<sup>18</sup>

<sup>13</sup> M. Paraschou Law, [Signing Document during COVID-19: E-signatures in Cyprus](#), May, 7th, 2020, M. Paraschou Law.

<sup>14</sup> Harris Sharpe, [Digital Signature of Documents in Cyprus](#), August, 30th, 2019, The Cyprus Lawyer.

<sup>15</sup> M. Paraschou Law, [Signing Document during COVID-19: E-signatures in Cyprus](#), May, 7th, 2020, M. Paraschou Law.

<sup>16</sup> eGovernment Department, [Electronic Signatures](#), August 20th, 2020, The Ministry of the Interior of the Czech Republic.

<sup>17</sup> Clifford Chance, [The coronavirus lock-down: are electronic signatures a possible solution under Czech Law?](#), March, 2020, Clifford Chance.

<sup>18</sup> Mojmir Ježek, [Going Paperless? Guidelines for Electronic Personnel Documents in the Czech Republic](#), ECOVIS JEŽEK, ADVOKÁTNÍ KANCELÁŘ S.R.O.

In addition, the case law of the Supreme Court of the Czech Republic has considered the electronic signature only in the form of a recognized electronic signature, being a guaranteed electronic signature based on a qualified certificate.<sup>19</sup>

## Denmark

The legal framework in Denmark that regulate the use of electronic signatures include the [Act on Supplementing Provisions which regulates the enforcement of the provisions of the eIDAS Regulation](#), Act No. 617 of 08/06/2016 (*Lov om supplerende bestemmelser til forordning om elektronisk identifikation og tillidstjenester til brug for elektroniske transaktioner på det indre marked*) and the [Danish Contracts Act](#) (*Aftalelov*) that in principle, regulates the termination of contracts, irrespective of the medium by which the contract is concluded. Contracts are deemed to be binding until the parties enter an agreement (verbally, physically or electronically) and can use electronic signatures, not only handwritten signatures, for this reason.<sup>20</sup>

However, there may be formal requirements in legislation for the conclusion of certain types of agreements.<sup>21</sup> For example, the Danish Land Registry requires wet ink signatures, the attorney's powers to be registered with the Danish Land Registry can not be signed using an electronic signature.<sup>22</sup>

## Estonia

The electronic signatures are regulated by the [Digital Signatures Act](#) (*Digitaalallkirja seadus*, DAS). Estonian private law is based on The principle of freedom of form, proclaimed in § 77(1) of the [General Part of the Civil Code Act](#) (GPCCA) and § 11(1) of the [Law of Obligations Act](#) (LOA). According to this principle, a transaction may be entered into in any format unless a mandatory format of the transaction is provided by law, then the contract may be entered into orally, in writing or in any other form if there are no other required forms provided by law. The GPCCA outlines all the criteria pertaining to various types: : written form (§ 78), form which can be reproduced in writing (§ 79), electronic form (§ 80), notarial certification of transaction (§ 81), and notarial authentication of transaction (§ 82).

However, **electronic signature is equal to a transaction in written form only if it respect the requirements set on the § 80(3) GPCCA**, that is to say, as long as it allows the signature to be associated with the content of the transaction, the person entering into the transaction and the time of entry into the transaction.<sup>23</sup>

The Estonian legal system was too rigid to consider anything less than an electronic signature equal to a handwritten signature. For example, if the legislation specifies that the contract must be concluded in a manner which can be replicated in writing (§ 79 GPCCA), the digital signature referring to the eligible e-signature in the eIDAS Regulation is the only way to sign it electronically.

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<sup>19</sup> Kocián Šolc Balaščík advocates, [How to sign documents electronically in the time of coronavirus \(or any other time\)?](#), March, 24th, 2020, Kocián Šolc Balaščík advocates.

<sup>20</sup> LawyersDenmark.com, [Signing a Contract with a Danish Company](#), July, 01st, 2019, LawyersDenmark.com.

<sup>21</sup> Kromann Reumert, [COVID-19 og elektroniske underskrifter](#), March, 26th, 2020, Kromann Reumert.

<sup>22</sup> CMS, [Electronic Signatures in Real Estate Documents](#), April, 28th, 2020, CMS.

<sup>23</sup> Irene Kull and Laura Kask (2019) [Electronic Signature Under the eIDAS Regulation in Domestic and Cross-Border Communication: Estonian Example](#), Journal of the University of Latvia, p.26.

By virtue of § 80 GPCCA, the digital signature was also the only possible signature to complete the contract in electronic form.<sup>24</sup> A problem in Estonia is that the word used for electronic signature equal to handwritten signature was “digital signature” and people, but even lawyers and those working in Estonia and abroad, are ignorant of the expression “qualified electronic signature”.<sup>25</sup>

## Finland

The legal framework in Finland is formed by [Act on Strong Electronic Identification and Electronic Trust Services](#) (*Laki vahvasta sähköisestä tunnistamisesta ja sähköisistä luottamuspalveluista*).<sup>26</sup> According to the Chapter 1 Section 1 of the [Finnish Contracts Act](#) the contracts don't need a handwritten signature to be seen as credible. They are seen as such as long as legally able individuals have reached an agreement (this can be by agreeing verbally, electronically or by physically signing). However some forms of arrangements can also include formal paper correspondence, such as wills, legal records, property titles.

## France

According to Article 1367 of the [French Civil Code](#) (previously Article 1316-4) an electronic signature has had legal validity in France since 2000. The eIDAS would appear at the European level in 2016, establishing the legal reference system for electronic signatures. In 2017, France will be compliant with the eIDAS regulation through the [Decree no. 2017-1416 of 28 September 2017 relating to electronic signatures](#).<sup>27</sup>

An electronic legal declaration shall be considered to have been made in writing, in compliance with Article 1366 of the French Civil Code, if it is possible to properly identify the person from which it originates, and if it is produced and held under conditions which guarantee its validity. From a functional standpoint, **where the statute requires written form, documents signed with qualified or advanced electronic signatures may be viewed as legally binding written documents**. The use of qualified electronic signatures allows signatories to benefit from the legal reliability assumption of Article 1367.<sup>28</sup> However, the precision of an advanced electronic signature shall be proved, consistent with French case law.<sup>29</sup>

## Germany

The electronic signatures in Germany are regulated in the [German Trust Services Act](#) (*Vertrauensdienstegesetz, VDG*) that implements the eIDAS legislation and promotes the use of the eIDAS Regulation of electronic trust facilities.

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<sup>24</sup> Irene Kull and Laura Kask (2019) [Electronic Signature Under the eIDAS Regulation in Domestic and Cross-Border Communication: Estonian Example](#), Journal of the University of Latvia, p.27.

<sup>25</sup> Irene Kull and Laura Kask (2019) [Electronic Signature Under the eIDAS Regulation in Domestic and Cross-Border Communication: Estonian Example](#), Journal of the University of Latvia, p.28.

<sup>26</sup> Ministry of Transport and Communications, [Finnish identification system to be made compatible with EU member states](#), May, 4th, 2016, Ministry of Transport and Communications.

<sup>27</sup> Reclx Avocats, [La validité de la signature électronique](#), 2020, Reclx Avocats.

<sup>28</sup> Anne Laure Villedieu and Pierre Fumery, [E-signatures in Commercial Contracts in France](#), July, 22nd, 2020, CMS.

<sup>29</sup> Cour de cassation, civile, Chambre civile 1, 6 avril 2016, n° [15-10.732](#); Cour d'appel de Chambéry, 25 janvier 2018 n° [17-01050](#); etc.



No statutory prerequisite occurs in theory for the conclusion of legal transactions in Germany. A contract may also therefore be signed verbally, unless otherwise established by statute. Furthermore, a certain sort is sometimes settled upon by the parties of a civil transaction. However for a significant number of lawful transactions owing to their particular meaning or in order to defend against haste, the legislator has recommended a certain form.<sup>30</sup> Observing formal specifications is also a necessary prerequisite for declarations and contracts to be effective.<sup>31</sup> The formal requirements have been stipulated by the legislator are: text form, written form, notarial recording, and official certification.<sup>32</sup>

The statutory written form can be replaced by an electronic form in the sense of § 126a.1 of the [German Civil Code](#) (*Bürgerliches Gesetzbuch*, BGB). The value of such a substitution is that **it does not require a handwritten signature, but that a qualified electronic signature is appropriate**. Such a qualified electronic signature must be based on a certificate provided by a qualified trusted service provider, and a secure signature development device must have been developed..

Where statutory law requires a specific form as a written form or notarial form, electronic contracts are typically insufficient to form a valid contract. However the necessary statutory written form can, unless expressly forbidden by statutory law, be replaced by such electronic means by the use of a qualified electronic signature in compliance with § 126a BGB.<sup>33</sup>

## Greece

In Greece, Directive 99/93/EC of the European Parliament and of the Council on the Community system for electronic signatures has been adopted into Greek legislation under [Presidential Decree 150/2001](#). The latter developed the legislative basis for the use of electronic signatures and their legal validity. This Directive was revoked, with effect from 1 July 2016, by the 'eIDAS Regulation'.

Articles 158 and 160 of the [Greek Civil Code](#) (*ΑΣΤΙΚΟΣ ΚΩΔΙΚΑΣ*) highlight that to be seen as credible, contracts don't require a handwritten signature. As long as legally competent people have reached an understanding, they are seen as such (this can be by agreeing verbally, electronically or by physically signing, however sometimes parties will have to provide evidence in court to support).

## Hungary

Hungary's [Electronic Signature Act](#) (2001. évi XXXV. törvény az elektronikus aláírásról, ESA) became effective in 2001. Current Hungarian civil law attaches particular importance to the formal (written) requirements of certain civil law declarations. A civil law declaration may be made orally, in writing or by implied conduct.<sup>34</sup>

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<sup>30</sup> Natalie Daghles, Otto von Gruben, Stefan Widder and Rainer Wilke, [Legal Update: How to Implement Contracts in Germany During the COVID-19 Crisis](#), March, 23th, 2020, Latham & Watkins LLP.

<sup>31</sup> Morrison & Foerster LLP, [Use Of Electronic Signatures In The German Real Estate Industry](#), January, 14th, 2020, Morrison & Foerster LLP.

<sup>32</sup> Natalie Daghles, Otto von Gruben, Stefan Widder and Rainer Wilke, [Legal Update: How to Implement Contracts in Germany During the COVID-19 Crisis](#), March, 23th, 2020, Latham & Watkins LLP.

<sup>33</sup> Florian Hensel, Franziska Ladiges, et al., [Electronic contracts and signatures in Germany](#), October, 30th, 2018, SKW Schwarz Rechtsanwälte.

<sup>34</sup> Data Privacy, [Az elektronikus jognyilatkozatok "írásbeliségének" nehézségei a magyar jogban](#), November, 16th, 2019, Data Privacy.

However, § 6:7 sets when legal statements are due to be executed in writing. According to that section, if a legal statement is to be made in writing, it shall be considered valid if at least the key points thereof are executed in writing. An equality between proprietary handwritten signature solutions and other legal declarations in electronic form is established in the § 6:7(3) while it is necessary a number of conditions are met: executed in a form with facilities for **retrieving the information** contained in the legal statement **unaltered**, and for **identifying the person** making the legal statement and **the time** when it was made.

This is a technology-neutral rule in which it is necessary to examine on a case-by-case basis whether a given solution meets these requirements. According to current case law, **an electronic document can be considered to be in writing if it is at least provided with an qualified electronic signature.**<sup>35</sup>

## Ireland

Since the [Electronic Commerce Act 2000](#), which introduced the Electronic Signatures Directive 1999/93/EC was adopted, electronic signatures have been legally accepted in Ireland. Section 13 contemplates the use of contracts of electronic signatures where each party consents to the use by the other party of an electronic signature. With force from 1 July 2016, 'eIDAS Regulation' repealed the 1999 Directive and further enshrined the norm in EU law that electronic signatures are not refused legal effect or admissibility as evidence in legal proceedings solely on the basis that they are in electronic form.<sup>36</sup>

There is no need for a simple contract to be of any specific form in the absence of any regulatory or contractual requirements under Irish Law. The contractual nexus is complete until shared. Therefore, unless otherwise provided for in explicit contracts, simple contracts may be concluded by means of an electronic signature (including a simple electronic signature), providing that they do not need to be of any particular form. Legislation can however, mandate that in "writing," "signed" or "executed by hand," a contract be executed.

Furthermore, Section 13(1) of the E-Commerce Act 2000 states that where 'a signature of an individual or public authority is needed by statute or otherwise (whether the necessity is in the form of a duty or the result of the absence of a signature) or allowed, an electronic signature can be used, pursuant to subsection (2)'. **A contract performed using electronic signatures and which may remain entirely in electronic form fulfills a contractual obligation for the contract to be in writing and/or signed, unless the contract specifies otherwise.**<sup>37</sup>

## Italy

The use of electronic signatures and subsequent legal consequences was governed at national level by the [Digital Administration Code](#) or CAD (Legislative Decree no. 82 of 7 March 2005, as subsequently amended- *Codice dell'amministrazione digitale*) and its implementing provisions.

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<sup>35</sup> Zala Megyei Kereskedelmi és Iparkamara, [Társasági döntések járvány idején](#), March, 29th, 2020, Zala Megyei Kereskedelmi és Iparkamara.

<sup>36</sup> Maples Group, [COVID-19 Ireland Update: Electronic Signatures](#), April, 1st, 2020, Maples Group.

<sup>37</sup> Law Society of Ireland (2020) [E-signatures, electronic contracts and certain other electronic transactions](#), Law Society of Ireland, p.7.

Italian law is founded on the **principle of freedom of form**. The Italian Civil Code does not permit a written form to be used for the valid conclusion of deeds and agreements, except in those situations when it is necessary an "ad substantiam" written form. More precisely, Article 1350 of the [Italian Civil Code](#) lists the actions and agreements which require the written form to be taken into account (notarial deed or agreement or private agreement).

Any mode of expression of agreement, even the simplest form of electronic signature, can be used if the deed or arrangement does not include a written form *ad substantiam* in order to be validly executed. If the deed or arrangement includes a written form, the substance of the contract must be checked under the penalty of nullity. In this respect, the Code of Digital Administration provides:

1. Except where notarial authentication is required, the deeds and agreements referred to in points **1 to 12 of Article 1350 of the Italian Civil Code** may be signed by a **qualified electronic signature** or **digital signature**<sup>38</sup>;
2. Deeds and agreements referred to in point **13 of Article 1350 of the Italian Civil Code** can be signed by means of an **advanced electronic signature**, a **qualified electronic signature** or a **digital signature**.

Thus, whether the electronic document has been signed by a digital signature, a qualified electronic signature or an advanced electronic signature, it satisfies the written form criteria and has the effect provided for by Article 2702 of the Italian Civil Code. In accordance with Article 2712 of the Italian Civil Code, all cases not included in the preceding paragraph, the suitability of an electronic record to conform with the obligation of written form and its probative power, shall be freely tested in court in relation to protection in accordance with Article 2712 of the Italian Civil Code.<sup>39</sup>

## Latvia

The legal basis for electronic signatures in Latvia is made up of the [Electronic Documents Act \(Elektronisko dokumentu likums\)](#). Under the Latvian Civil law (Articles 1473, 1474 [Latvian Civil Code](#), *Civillikums*), in general, **the form of a legal transaction depends on the will of the parties** in the case, except in cases directly specified by law. In this way, the participants of a transaction may enter into it in accordance with the procedures provided in the notarial law or the Orphan's Court or in private, be satisfied with a verbal agreement or write a deed, enter into a transaction in the presence or absence of witnesses and make it public.

However, the law may establish that transactions must be expressed in writing (Article 1482 Latvian Civil Code). For these purposes, the law requires a written form (Article 1483 Latvian Civil Code):

1. As an essential component of known transactions;
2. By entering into a transaction in the institutions referred to in the Article 1474 or with the officials mentioned there;
3. When it should be recorded in the land books;

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<sup>38</sup> A so-called '**digital signature**' is regulated by the Digital Administration Code, which is a particular form of qualified electronic signature based on a system of cryptographic keys, namely a public and a private one each connected to each other, allowing the owner of an electronic signature to view and validate the signature through a private key and a third party through a public key. Digital signatures were still used in Italy before the eIDAS came into effect, and today they are the most commonly used form of qualified electronic signature in Italy. Digital signatures were still used in Italy before the eIDAS Law came into effect, and today they are the most commonly used form of qualified electronic signature in Italy.

<sup>39</sup> Giulio Asquini and Francesca Proietto, [IT solutions for electronic documents signing](#), July, 1st, 2020, The Impact Lawyers.

4. As a condition of the requirements for the right on the basis of the transaction.

Finally, according to the Article 1484 Latvian Civil Code, if the law requires a written form as an essential part of a transaction, then the transaction is invalid before the relevant act is performed.

Thus, in consonance with the Article 3 of the Electronic Documents Act, the requirement of a written form of a document in relation to an electronic document is satisfied if the electronic document has an electronic signature and the electronic document meets other requirements specified in the regulatory provisions.

Likewise, an electronic document is considered to be hand signed if it has a secure electronic signature. Even in cases where it has an electronic signature and the parties have agreed in writing to sign the electronic document with the electronic signature. In such case, the written agreement will be drawn up and signed on paper or electronically with a secure electronic signature.

## Lithuania

The eIDAS Regulation was implemented in Lithuanian legislation through the [Act of the Republic of Lithuania on Electronic Identification and Reliability Assurance Services for Electronic Operations](#) (*Elektroninės atpažinties ir elektroninių operacijų patikimumo užtikrinimo paslaugų įstatymas*).

In principle, the law of Lithuania does not prohibit the parties from entering into agreements electronically (Article 1.64 (1) of the [Lithuanian Civil Code](#) -CC, *Civilinis kodeksas*-, Article 1.73 (2) of the CC, Article 6.192 (2) of the CC). An electronic form of transaction is not allowed if the law requires a form of transaction that is not the simple one in writing (Article 1.73 (2) *a contrario sensu* of the CC). If the law does not require a notarial form of transaction or the recording of a legal transaction, then each contract can be concluded electronically.<sup>40</sup>

## Luxembourg

The terms of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 concerning the Community structure for electronic signatures were, among other items, transposed into national law by [the law of 14 August 2000](#) (*Commerce Electronique Loi*) as amended. The 'eIDAS Regulation' has revoked the Electronic Signatures Directive. The Article 1322-1 of the [Luxembourg Civil Code](#) defines electronic signatures.

Generally, electronic signatures are a legal way of signing private deeds. However the standard of evidence will depend on the type of electronic signature used if the authenticity of the electronic signature (and thus the validity or enforceability of the contract or its formation) is disputed. This principle applies to private deeds only, with the exception of specific statutory rules.<sup>41</sup> In accordance with article 50 of the Law, certain agreements cannot be signed electronically and require "wet ink" signatures.<sup>42</sup>

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<sup>40</sup> Loreta Andziulytė, [COVID-19. 11 dalyku, kuriuos svarbu žinoti apie elektroninį parašą](#), March, 18th, 2020, ECOVIS.

<sup>41</sup> ELVINGER HOSS PRUSSEN, [COVID 19 - Validity and legal effect of electronic signatures under Luxembourg law](#), April, 20th, 2020, ELVINGER HOSS PRUSSEN.

<sup>42</sup> Annie Elfassi, Laurent Fessmann and Jean-François Trapp, [E-Signature in Luxembourg - 10 FAQs and answers](#), May, 8th, 2020, Baker McKenzie.

## Malta

Legally valid in Malta, electronic signatures are regulated under the [E-commerce Act](#) and the EU eIDAS Regulation. For the legality of a contract executed by means of electronic signatures, prior approval of the parties to an agreement signed electronically must be secured. **Malta accepts all advanced and qualified electronic signatures**; in legal cases, neither category can be refused legal effect and admissibility as proof solely on the grounds that the signature is in electronic form. It is deemed that a qualified electronic signature has a legal impact equal to a handwritten signature.<sup>43</sup>

## Netherlands

In the field of civil law, the Netherlands has an integrated codification in the [Dutch Civil Code - Burgerlijk Wetboek -BW-](#). In specific, the national clause referred to in Article 3:15a of the DCC applies to eIDAS for the basic e-signing rules and expands on them in addition.<sup>44</sup>

A qualified electronic signature (QES) is legally deemed to be reasonably accurate, so any person who doubts its reliability must show that it is not a qualified signature. Thus, QeS is the electronic equivalent of a handwritten signature (i.e., a wet ink signature on a hard copy document).<sup>45</sup> Dutch law stipulates that QeS form can be used for some kinds of documents.

While the legal effect of advanced electronic signatures (AES) and simple electronic signatures (SES) signature forms is determined by Article 3:15a of the BW. This Article specifies that if the form used for signature is reasonably accurate, AES and SES shall have the same legal impact as a wet-ink signature, having respect to the reason for which the electronic signature is used and to all other circumstances of the case. Sadly, this is an open norm and Dutch case law about how to view this open norm is very limited. However it is advised, on the basis of the restricted Dutch case law available,<sup>46</sup> to consent at the outset to whether parties consider a reliable form of electronic signing and to have clear personal communication with all signatories before or after the electronic signing process.<sup>47</sup>

In the Netherlands, **freedom of form** applies under Article 3:37(1) of the BW, provided that no formal requirements are imposed that differ from the provisions of an agreement. The **agreement can therefore also be concluded electronically**. However, if it is clear from the law that an agreement is only valid or inviolable in writing, it can only be concluded electronically in accordance with section 6: 227a (1) of the BW if

- a) can be consulted by the parties;
- b) the authenticity of the contract is sufficiently guaranteed;
- c) the time of conclusion of the agreement can be determined with sufficient certainty; and

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<sup>43</sup> Sharon Xuereb, [Electronic contracts and signatures in Malta](#), March, 12nd, 2018, Camilleri Preziosi.

<sup>44</sup> Yassen Rosenov Petkov (2020) [Impugnment of electronic signatures Reflection of EU Regulation 910/2014 in the civil procedures of Bulgaria and the Netherlands](#), Tilburg University- Law & Technology, p.36.

<sup>45</sup> Tia Groeneweg and M-C Brzezinski, [Electronic signatures](#), January, 30th, 2016, Baker & McKenzie Amsterdam.

<sup>46</sup> Dutch case law on the reliability of electronic signatures is very limited, with only two judgments available: [case 200.196.050/01](#), and [case 6454402 RL EXPL 17-27941](#).

<sup>47</sup> Leon Hoppenbrouwers, [Covid-19 Coronavirus: Electronic signing in the Netherlands](#), May, 20th, 2020, Allen & Overy.

d) the identity of the parties can be established with sufficient certainty.<sup>48</sup>

Although, **legalization of a signature is necessary in certain cases**. Such a document has under Dutch law, definitive evidential significance as to the name of the signatory and the authenticity of the signature. Furthermore, Dutch law specifies that a notarial deed be signed, in hard copy, by means of a handwritten signature, before a Dutch civil law notary.<sup>49</sup>

## Poland

Electronic signatures in Poland were implemented through the [Act on Services and Electronic Identification](#) (*Ustawa z dnia 5 września 2016 r. o usługach zaufania oraz identyfikacji elektronicznej*), and the 'the eIDAS Regulation'.<sup>50</sup>

The basic rule regarding the choice of form of a contract is the **principle of freedom of form**. Thus, a written signature for a legal contract is not generally necessary, in compliance with Polish law. Conforming to Article 60 and Article 66 of the [Polish Civil Code](#) (*Kodeks cywilny*), contracts are normally binding if the parties to the contract agree verbally, online or on paper, unless a special form is necessary by statute to conclude the contract.<sup>51</sup> The provisions of the general part of the Civil Code distinguish six specific forms of legal action: notarial deed, signatures certified by a notary, in writing with a certified date,<sup>52</sup> in writing (Article 78 [Polish Civil Code](#)), electronic form (Article 78<sup>1</sup> [Polish Civil Code](#)), and document form.

Hence, under the provisions of civil law (in particular Article 78<sup>1</sup> [Polish Civil Code](#)), to conclude a contract in **electronic form**, it is necessary to submit a declaration of intent in electronic form and to affix a **qualified electronic signature**. When a given electronic signature is assigned to a given person, it is treated as a substitute for handwriting.<sup>53</sup> Unless a special form is required (e.g. a notarial deed), any arrangement can be reached in electronic form.

## Portugal

Portuguese law provides for the use of digital signature in [Decree-Law No. 290-D / 99. of August 2](#) (*Decreto-Lei n.º 290-D/99 Aprova o regime jurídico dos documentos electrónicos e da assinatura digital*). It was reissued in [Decree-Law No. 88/2009. of April 9](#) (*Decreto-Lei n.º 88/2009*), and regulated by [Decree-Regulation No. 25 / 2004, of July 15](#) (*Decreto Regulamentar n.º 25/2004*).

According to Article 3, the electronic document satisfies the legal requirement in written form when its content can be represented as a written declaration. Thus, when a qualified electronic signature

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<sup>48</sup> Mariëlle Broekman, [De elektronische handtekening bij overeenkomsten: een vraag van risicomanagement](#), July, 22nd, 2019, Bird & Bird LLP.

<sup>49</sup> Tia Groeneweg and M-C Brzezinski, [Electronic signatures](#), January, 30th, 2016, Baker & McKenzie Amsterdam.

<sup>50</sup> Tomasz Laba, [Nasze prawo jest gotowe na podpis elektroniczny. Czym jest i dlaczego warto zacząć go stosować?](#), January, 21st, 2019, Bezprawnik.

<sup>51</sup> Lakshay Parmar, [Admissibility / Validity Of Electronic Signatures in Poland and Dubai](#), September, 1st, 2020, SooLegal.

<sup>52</sup> To be legitimate or achieve any lawful results, certain arrangements entered into in a written form must have a certified date. This is not a barrier to the electronic completion of those transactions, given that the qualified e-signature is followed by a qualified electronic timestamp. Clifford Chance, [Signing agreements with a Qualified Electronic Signature](#), April, 2020, Clifford Chance.

<sup>53</sup> Martyna Robakowska, Bartosz Kuraś, and Izabela Zielińska-Bartożek, [Zdalne podpisywanie umów](#), April, 20, 2020, Co do zasady.

certified by an accredited certifier body is attached, the electronic document has the probative force of a signed private document, in the terms of article 376 of the [Portuguese Civil Code](#).

## Romania

In Romania, electronic signatures are regulated in the [Law 455/2001 on the electronic signature](#) (*Lege nr.455 din 18 iulie 2001 privind semnătura electronică*) and the 'eIDAS Regulation'. Both provide for three types of electronic signatures (with a high degree of resemblance definitions):

1. **Electronic signature**;
2. **Advanced/extended electronic signature**;
3. **Qualified/extended electronic signature** based on the unsuspended or revoked qualified certificate and generated by means of a secure electronic signature creation device.<sup>54</sup>

The principle of the autonomy of the will states the **full contractual freedom**, both in the sense of the substantive freedom and in the sense of a full freedom of form (regulated by [Romanian New Civil Code](#), NCC -*Lege nr. 287 din 17 iulie 2009, Codul Civil*- in Article 1178 and in Article 1240). Accordingly, Article 1178 of the NCC specifically states that the contract is validly concluded on the basis of a mere agreement of the parties, unless a certain formality is provided by statute for the valid conclusion thereof. The statute provides for the requirement of concluding a contract in the form of a written agreement with a handwritten signature or a written document with a handwritten signature validated by a public notary for such forms of contracts, called 'solemn contracts'.

The notion of **contracts concluded by electronic means** is explicitly used by the latest Civil Code (Article 1245 NCC), which implicitly recognizes the nature and legality of contracts concluded by electronic means and makes express reference to special legislation in relation to the provisions relating to the form of those contracts. Moreover, the validity of the contract concluded by electronic means is expressly referred in the Article 7(1) of [Law No. 365/2002](#) on electronic Commerce (*Legea 365/2002 privind comerțul electronic*): 'Contracts concluded by electronic means produce all the effects that the law recognizes in relation to contracts, when the conditions requested by the law concerning the validity thereof are satisfied'.

Finally, Article 5 of Law No. 455/2001 lays down the idea that an electronic signature is equal to a handwritten signature, providing that the electronic signature is extended on the basis of a qualified credential, has not been cancelled or withdrawn at the appropriate time and has been created by a secure signature-creation-device. **This definition is consistent with the word 'qualified electronic signature' from the Electronic Signatures Directive.**<sup>55</sup>

## Slovakia

The [Act on Electronic Signature](#) (Act No. 215/2002 Coll. on electronic signature and on amendment of certain acts as amended, *215/2002 Z.z. o elektronickom podpise a o zmene a doplnení niektorých zákonov*) is the legal base of the electronic signatures in Slovakia.

Generally, to be legal under Slovak law, an agreement is not required to be made in writing. It is possible to validly enter into arrangements verbally, online or in a physical paper document. If a higher degree of legal certainty is required, Slovak law generally requires a written form. Where a

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<sup>54</sup> Ciprian Frandes and Romina Iancu, [Electronical signing of transaction documents](#), May, 14th, 2020, DLA PIPER.

<sup>55</sup> Mihaela Giuraniuc, *The validity of contracts concluded by electronic means in Romanian Law*, Challenges of the Knowledge Society. Legal sciences, 2012, pp. 474-476.

written form is needed, the [Slovak Civil Code](#) (*Zákon č. 40/1964 Zb. Občiansky zákonník*) provides that such a form shall be assumed to be preserved if the signatories act by electronic means, providing that such means are capable of recording the contents of their acts and of distinguishing the acting individuals. In any event, if the action is recorded in an **electronic document signed by a qualified electronic signature, the written form is still deemed to be preserved** under the Slovak Civil Code [§ 40 (5) and (6)].<sup>56</sup>

Also, when a signature verified by the notary is required, it can be substituted with a qualified electronic signature or a qualified electronic seal with an electronic time stamp.<sup>57</sup>

## Slovenia

Electronic signatures in the Republic of Slovenia are governed by the Law on electronic business and electronic signatures (*Slovenian Zakon o elektronskem poslovanju in elektronskem podpisu*; 'ZEPEP') and by the 'eIDAS Regulation'.<sup>58</sup> According to Article 13(1) where written form is prescribed by law or other regulations, electronic form shall be deemed equivalent to written form if the data in electronic form are available and suitable for further use. Moreover, Article 15 a **secure electronic signature, certified by a qualified certificate, is equivalent to a handwritten signature** in terms of data in electronic format and therefore has the same validity and evidential value.

## Spain

The regulatory framework for digital signatures is contained in [Law 6/2020, of 11 November, which regulates certain aspects of trusted electronic services](#) (*Ley 6/2020, de 11 de noviembre, reguladora de determinados aspectos de los servicios electrónicos de confianza*) and implements the eIDAS Regulation in Spain.

The general theory of contracts in Spain establishes **freedom of contractual form** under Article 1.278 of the [Spanish Civil Code](#) (in the case of commercial contracts this principle is set out in Article 51 of the [Commercial Code](#)), that is to say, contracts are binding, regardless of the form in which they have been concluded, provided that the essential conditions for their validity are met.

Similarly, in the Spanish legal system, **the principle of functional equivalence** governs by virtue of which contracts concluded by electronic means will produce all the effects provided for by the legal system, as set out in Article 23 of [Law 34/2002, of 11 July, on Information Society Services and Electronic Commerce](#) (*Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico*).

However, there are a series of exceptions to this principle since the equivalence is only with respect to the private written document, since it does not reach the solemn, public or notarial document. The documents that cannot be signed using electronic devices as they require notarisation are

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<sup>56</sup> Clifford Chance, [The coronavirus lock-down: are electronic signatures a possible solution under Slovak Law?](#), March, 2020, Clifford Chance.

<sup>57</sup> Silvia Belovicova and Richard Svocák, [Electronic Execution of Contracts](#), April, 9th, 2020, Squire Patton Boggs.

<sup>58</sup> Karanovic & Partners, [E-Signature in Slovenia](#), April, 23rd, 2020, Karanovic & Partners.



## Sweden

Electronic signatures in Sweden are regulated in the [Act \(2000: 832\) on qualified electronic signatures](#) [*Lag (2000:832) om kvalificerade elektroniska signaturer (Signaturlagen)*]. Thus, electronic contracts are legally valid in Sweden, provided that they follow the requirements of general contract law (primarily, the [Contracts Act](#) (1915:218)).<sup>59</sup>

Electronic signatures, with some exceptions, are legally binding with the same evidential value as traditional signatures. Swedish contract law contains few formal requirements and therefore electronic signatures can generally be used to conclude binding agreements in Sweden.

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<sup>59</sup> Anders Bergsten and Ellen Järpell, [Electronic contracts and signatures in Sweden](#), Mannheimer Swartling, January, 3rd, 2019.