

# TECHNOLOGIES INNOVATION

NEW RULES IN PORTUGAL ON  
ELECTRONIC DOCUMENTS  
AND IDENTIFICATION

VdA EXPERTISE



**February 2021**

## The legislation implementing in Portugal the European Regulation<sup>(1)</sup> on electronic identification and trust services for electronic transactions in the internal market has been approved and published.

Decree-Law no. 12/2021

The new Decree-Law no. 12/2021 of 9 February essentially consolidates the Portuguese legislation on electronic means of identification, namely as to the **validity, effectiveness and probative value of electronic documents, since it is a diploma implementing** Regulation (EU) 12/2014 which is direct applicable in the Member States of the European Union.

What changes, in practice, with the new Decree-Law?

First of all, this new law standardizes and adopts the terms used in Regulation 910/2014. For instance, the concept of "digital signature" is no longer used (as it happened with Decree-Law no. 290-D/99) and the certifying entities are now referred to as qualified trust service providers.

The validity, efficacy and probative value of **electronic seals** (which can be attached or associated to documents or data in electronic form and ensure their origin and integrity) **and electronic time stamps** (which provide proof of the exact time period where certain electronic data or documents existed, serving as an electronic time certificate) are also recognized.

As regards the communication of electronic documents, the new diploma recognises the equivalence of the communication of documents by means of a **qualified electronic registered delivery service** to the postal **delivery by registered mail with acknowledgment of receipt**

A new framework for administrative offences of trust service providers has also been established, with the following fines:

- Between € 2500 and € 20 000 for **serious administrative offences**; and
- Between € 500 and € 44 890 for **very serious administrative offences**.

Lastly, the new Decree-Law sets out the rules applicable to the **State Electronic Certification System (SCEE)**, which aims to define an electronic trust structure of the Portuguese State. In this context, the diploma determines the **exclusivity in the provision of trust services by public authorities**, since only state certifying entities within the SCEE, or other trust service providers recognized thereby, may provide trust services to public entities.

The Decree-Law no. 12/2021 enters into force 30 days after being published (i.e., on march 11, 2021).

This new Decree-Law revokes, among others, Decree-Law no. 290-D/99, of august 2, which established the legal framework of electronic documents and the digital signature, more than 20 years after being published.

(1) 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

## What doesn't change with Decree-Law no 12/2021?

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### **Electronic Document**

- Complies with the **legal requirement of written form** when its content translates into a written declaration.
  - The probative value of electronic documents not associated with qualified trust services is **freely assessed by the courts**.
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### **Qualified Electronic Signature**

- If it is placed in an electronic document with content which translates into a written declaration, it shall have full probative value.
  - The electronic signature with a certificate which is revoked, expired or suspended on the date of the signature shall be **freely assessed by the courts**.
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### **Communication of Electronic Documents**

- When sent electronically, documents are considered sent and received by the recipient if they are sent to the e-mail address defined by agreement of the parties and received therein.
  - When an electronic signature or stamp is placed in the document, it shall be equivalent to the **delivery by registered mail**. If the receipt is confirmed by confirmation message, it shall be equivalent to the delivery by **registered mail with acknowledgement of receipt**.
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### **Copies of Electronic Documents**

- Copies of electronic documents, on a type of media that does not allow for the verification and validation of electronic signatures or seals, are valid and effective in the **general terms of law**.
  - In case their conformity with the original document is attested by a notary, they shall have the **probative value of the original document**
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