
Intellectual Property, Media and IT

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- > **Electronic transactions:
eIDAS Regulation
implemented into
Portuguese law through
Decree Law 12/2021**



I. Electronic transactions: eIDAS Regulation implemented into Portuguese law through Decree Law 12/2021

Decree Law 12/2021 was published on February 9, 2021, implementing Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the "eIDAS Regulation") into Portuguese law.

The eIDAS Regulation effects Member States directly, and it governs the main aspects of the electronic identification of trust services, providers of trust services, electronic registered sending services, and certificate services for website authentication using electronic signatures and documents, electronic seals, and time stamps.

Decree Law 12/2021 will enter into force on March 11, 2021, on which date the main laws that have so far governed this matter will cease to apply, namely:

- › Decree Law 290-D /99 of August 2, which approved the legal regime for electronic documents and digital signatures, and associated regulations; and
- › Decree Law 116-A/2006 of June 16, which created the State Electronic Certification System - Public Key Infrastructure and appointed the National Security Authority as the national accreditation authority, and associated regulations.

As the legal definitions currently used in Portuguese law have not been updated and are not the same as those used in the eIDAS Regulation, Decree Law 12/2021 updates domestic legislation on the validity, effectiveness and probative value of electronic documents and the legal recognition of electronic seals and time stamps, and it establishes the rules applicable to the State Electronic Certification System - Public Key Infrastructure (SCEE).

As Decree Law 12/2021 leaves the fundamental components of electronic signature and document regulation untouched, we highlight the main aspects of the regime that remain the same:

- › **Legal form requirement.** Electronic documents only meet the written legal form requirement when their content consists of a written statement.
- › **Signing methods.** It will still be possible to use the three types of electronic signature (simple electronic signature, advanced electronic signature, and qualified electronic signature) under the eIDAS Regulation, the legal effect of which is expressly recognized by Decree Law 12/2021.
- › **Legal equivalence.** Signing an electronic document with a qualified electronic signature is equivalent to signing the document in paper format, as it shows that a private document has been signed and creates the legal presumption that:
 - the person who signed the document with the qualified electronic signature either owns the signature or is a representative of the legal entity concerned and has sufficient authority to sign;



- the qualified electronic signature was used to sign the electronic document; and
- the electronic document was not changed after it was signed with the qualified electronic signature.

Scans and photocopies. Copies of electronic documents that use the same format as that of the original, or that are in a different format and cannot be used to verify or validate an electronic signature or seal, will still be valid and effective in general legal terms and will have the same probative value as that of photographic copies.

Amendments introduced by Decree Law 12/2021

Among the new developments introduced, we highlight the following material and official amendments to national regulations:

- › **Legal definitions.** National regulations no longer use domestic law concepts and definitions that create confusion. This includes the term “electronic signature,” which now has the meaning established by Article 3 of the eIDAS Regulation.
- › **Scope.** The new law now governs the State Electronic Certification System - Public Key Infrastructure.
- › **Electronic seals.** The new regulations expressly recognize two legal concepts that already existed in the eIDAS Regulation but that until now had no legal meaning under Portuguese law:
 - Qualified electronic seals are attached to electronic documents to confirm their origin and integrity.
 - Qualified time stamps are attached to documents to confirm their integrity and date and time of issuance.
- › **Trust service providers.** The new regulations adopt the terms used in the eIDAS Regulation (“trust service providers”) and establish a procedure to assign this status to interested parties in a more straightforward way that is compatible with the eIDAS Regulation.

Trust service providers are public or private individuals or legal entities who are recognized as such by the supervisory agency, which in Portugal is the National Security Office (GNS). Service providers are authorized to create, verify, and validate signatures, stamps, certificates, documents, and other types of legally important electronic acts.

Trust service providers are also obliged to:

- inform the supervisory agency;
- adopt appropriate measures to prevent certificates from being falsified or altered and, if the qualified trust service provider manages signature creation data, it must ensure that the data remains confidential during the creation process;
- ensure the signature creation data used to sign qualified certificates are unique; and



- keep physical or electronic versions of the documents and records used to provide these services for seven years after the certificate at issue expires.
- › **State Electronic Certification System (SCEE).** The SCEE, which is governed by Decree Law 12/2021, aims to establish an electronic trust structure so that the certifying entities it applies to comply with certain quality guarantees.

Only certifying entities that are part of the SCEE and other trust service providers that are recognized by the SCEE can provide trust services to public bodies. Certifying entities that are part of the SCEE must comply with the eIDAS Regulation rules on the provision of trust services.



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