

LETTER OF LEGAL ADVICE

Thank you for instructing us in relation with the bellow matter.

You have requested a legal advice concerning the burden of proof of evidence-certificate issued by your company for your trust-services provided to your clients, according to Romanian Law.

1. EUROPEAN LEGAL FRAMEWORK

- 1.1. European regulatory framework on level of security of electronic identification means is Regulation 910/2014 on *electronic identification and trust services for electronic transactions in the internal market*.
- 1.2. From a formal point of view, Regulation 910/2014 is at a higher level of EU legislation framework than the previous legislation, Directive 1993/93/1999, being granted more powerful law enforcement.
- 1.3. Like all EU directive, former Directive 1993/93/1999 drew only major goals and has no direct law enforcement on member-states.
- 1.4. Member-states of EU have the right to adopt domestic law to implement it, and only these domestic law benefits of direct legal enforcement.
- 1.5. Regulations 910/2014 has fully and direct law enforcement in all member-states, according to art. 288 of Treaty on the Functioning of the European Union(TFUE).¹
- 1.6. Regulation 910/2014 does not necessitate a domestic law to own directly legal enforcement in all member-states.
- 1.7. Member states cannot adopt domestic law to alter in any way the letter and/or intent and purpose of Regulation 910/2014.
- 1.8. If any previous or prior domestic law alter the letter, intent or purpose of Regulation 910/2014, the domestic law is deemed, a priori, as null and void.

¹ Article 288 (ex Article 249 TEC) :

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

- 1.9. If any previous or prior domestic law interfere, in any way, with Regulation 910/2014, Regulation 910/2014 will have priority legal enforcement.
- 1.10. If there are any legal matter, where a member-state can add domestic law to regulate some aspects of trust services, there are only on that matters that are expressly mentioned within the text of Regulation 910/2014.
- 1.11. The only exception is contracts or procedure which need a special form, for concluding a contract or for fulfil a procedural obligation(ex: special form like handwriting signing, in front of a notary, of the contract regarding a real estate).
- 1.12. Summarising, the legal principles of Regulation 910/2014 are the bellow mentioned ones.
- 1.13. Emphasising the security as the legal core of electronic service, Regulation 910/2016 generally called all the electronic services(electronic signature, time stamp, electronic seal, registered delivery service, etc) as „ trust services”(art.2 pct.16 of Regulation 910/2014).
- 1.14. Regulation 910/2014 divides trust services in two major categories :
- 1.14.1. qualified trust services(art.3 pct.17)
- 1.14.2. non-qualified trust services(art. 3 pct.19)
- 1.15. Consequently, there are two categories of providers² :
- 1.15.1. Qualified providers(art. 3 pct.20, art.24)
- 1.15.2. Non-qualified providers(art.3 point 19, art.19 par.1)
- 1.16. Theoretically, the legal status of „ qualified trust services providers” is the outcome of legal status of „ qualified trust services”.
- 1.17. Any provider to provide a „ qualified trust-services”, who fulfilled the technical requirements of Reg.9/2014, might be automatically deemed as an „ qualified trust services provider”.
- 1.18. But, practically, the situation is different, because it implies an assessment procedure, performed by a conformity assessment body, which must be done at least at every 24 months and an official document issued by conformity assessment body.
- 1.19. In fact, the order of consequences is reversed: a status of „quality provider” triggered automatically the status of „ qualified trust-services”.³
- 1.20. So, qualified providers are those providers who basically own an official document⁴ which proved this legal status, granted by the domestic conformity assessment body, as an

² In order of simplicity, we will use the shorter version „ qualified provider/non-qualified provider” instead of longer and formal formula of „ qualified/non-qualified trust service provider”.

³ According to Romanian law, this conclusion stands also on merits of practical situation : if a provider/ a client of a provider pretends in front of a court he provides „ qualified trust services”/ a „qualified certificates” the courts will ask him to prove his statement. If he cannot provide a formal official document issued by a conformity body, the court will ask for an expertise to prove the status of „ qualified”services . The expertise could be carried only by a conformity assessment body, because Reg.9/2014 stipulates clearly that the legal status of „ qualified services” is provided only by conformity body.

⁴ We used deliberately the term „ official document” instead of „ certificate” in order to do not confound the document issued by the conformity assessment body to a qualified provider with the certificate issued by a provider(qualified or not-qualified) to one of his clients.

outcome of evaluation procedures of their service's conformity with requirements of the Regulation 910/2014.

- 1.21. Non-qualified providers status does not require any assessment by a domestic conformity assessment body.
- 1.22. Regulation 910/2014 does incur any obligation to non-qualified providers, not regarding the technical requirements of their services, neither to an assessment procedure in front of a conformity assessment body.
- 1.23. Secondly, both categories of trust services providers can provide freely their services in the whole territory of European Union, according to internal market principle (art.4 of Regulation 910/2014).
- 1.24. Thirdly, any providers, no matter of which categories they belong to, can provide certificates for their client regarding their services.
- 1.25. There will be :
 - 1.25.1. Qualified certificates, which comply with the requirements of the Regulation 910/2014, mostly provided in the Annex of the Regulation 910/2014,
 - 1.25.2. Non- qualified certificates, in respect of which Regulations 910/2014 does not have requirements.
- 1.26. Practically, Reg.9/2014 states the requirement of a certificate for just 3 following trust services :
 - 1.26.1. Electronic signatures
 - 1.26.2. Electronic seal
 - 1.26.3. Website authentication
- 1.27. Reg.9/2014 does not stipulate mandatory certificates and for rest of 2 trust-services :
 - a) Registered delivery
 - b) Electronic time-stamp.
- 1.28. Because Reg.9/2014 doesn't either stipulate an interdiction, it results, as a application of „ per a contrario” law principle, that a provider can issue an optional certificate for any of this 2(two) above mentioned trust-services.
- 1.29. A legal statement need to be carry out regarding the legal status of a certificate (in case of electronic signature and electronic seal) to be deemed as „ qualified” and the legal status of a provider to be deemed as „ qualified provider”.
- 1.30. Qualified certificate doesn't mean automatically a qualified provider and, consequently, does not mean automatically qualified trust services.
- 1.31. A qualified certificate is only a part of the compliance procedure for issuing the official document by the conformity body for the 3(three) mentioned services mentioned at point 1.22.
- 1.32. A trust provider can provide a qualified certificate to one of his clients, but it doesn't mean he will be automatically deemed as a qualified provider.

- 1.33. In order to be deemed as a qualified provider, and, consequently to benefit the advantages of the Regulation 910/2014 for qualified providers, he must be granted this legal status of „qualified” by the domestic conformity assessment body of any of the member-states.
- 1.34. A non-qualified trust provider who, technically, are issuing a qualified certificate, but who are not granted the legal status of „qualified provider” will not benefit the advantages of Regulation 910/2014 for qualified-providers.
- 1.35. He could benefits only the benefits the advantages of his domestic law for qualified certificates, if any.
- 1.36. The reasons of this situation is may be varied from not complying with other requirements of a conformity body, other than a „qualified certificate” , the procedure is in progress but not finalised, to the fact there are still no assessment body in his own country. Of course, in vast majority of cases a trust services provider who can issue a qualified certificate, eventually it is granted the official status of qualified provider.
- 1.37. Consequently, the legal force of a certificate for electronic signature or for electronic seal - and of the data provided/ confirmed by certificate- is triggered, first of all, by the legal status of the provider, as follows :
- 1.37.1. If it is issued by qualified provider, it will be almost absolute, according directly to Regulation 910/2004.
- 1.37.2. If it issued by a non-qualified provider, his force will be less powerful according to Regulation 910/2014, but may be more or less powerful according to domestic law of a member-state.
- 1.38. The same, the legal force of an optional certificate for registered delivery and time-stamp services will be triggered by the status of provider. The above statements for qualified electronic signature and qualified electronic seal shall apply for registered delivery services and time-stamp, too.
- 1.39. Regulation 9/1204 deals both with qualified and non-qualified providers and their trust services, but at the different level of legal outcomes.
- 1.40. Regulation 910/2014 deals primarily with qualified providers and qualified trust services (art.3 point 17 of Regulation 910/2014), at an extensive level of legal outcomes regulation
- 1.41. Secondly, Regulation 910/2014 deals with non-qualified trust providers and non-qualified trust services, at a less extensive level of legal outcomes regulation.
- 1.42. In respect of burden of proof subject of our report, we will follow this distinction between qualified trust services and not trust services.

- 1.43. Also, our analyse will follow, subsequently and distinctly, every and all of trust services regulated⁵ by the Regulation 910/2014 provided by Lleida, directly or by means of a third party
- a. Registered delivery services;
 - b. Electronic signature;
 - c. Electronic seal;
 - d. Electronic time stamp;

2. BURDEN OF PROOF OF QUALIFIED SERVICES, ACCORDING TO EUROPEAN FRAMEWORK

- 2.1. Regulation 910/ 2014 stipulated both the principles and, very important, the extent of legal force of certificated issued by a qualified provider.
- 2.2. The principles of all qualified trust services are :
- 2.2.1. A trust service provided by a qualified provider is deemed as a qualified trust service.(art.3 pct.17).
 - 2.2.2. A qualified-provider within member-states is a qualified-provider all over EU and a qualified-trust service provided within a member-state of EU is a qualified-trust service all over EU, according to single market principle (art.4 alin.2).
 - 2.2.3. No domestic law can void, ignore or alter the legal outcomes of the status of qualified trust services, as outcome of art.288 of TFUE.
 - 2.2.4. No domestic law can impose other requirement for a qualified certificate (for electronic signature and electronic seals), others than those stipulated by Regulation 910/2014. (art.28 par.2, art.38 par.2).
- 2.3. The extent of legal effects of qualified trust services is also clearly stipulated.
- 2.4. Regarding electronic signature, qualified signature has the most powerful legal outcomes of any signature: it has the legal effect of a handwritten signature (art.
- 2.5. Regarding the electronic seal, qualified electronic seal has also an absolute legal effect: the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked. (art. 35 pct.2).
- 2.6. Regarding the electronic time stamp, a qualified electronic time stamp enjoys the same powerful presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound. (art.41 par.2).

⁵ Website authentication is not part of our analyze, because it is not a trust-service provided by Lleida.

- 2.7. Regarding registered delivery services, qualified trust services enjoys the same absolute legal effect on the most longer extension, legally and technically: the presumption of the integrity of
- 2.7.1. data sent
 - 2.7.2. the sending of that data by the identified sender,
 - 2.7.3. its receipt by the identified addressee
 - 2.7.4. the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.(art.43 par.2).
- 2.8. These legal effects are binding for all European courts, according to art.288 TFUE.
- 2.9. For a client of a qualified provider or even for a qualified provider(for himself as applicant for his own claims in front of a court), the burden of proof means, in fact and in law, only to prove the legal status of qualified trust-service provider.
- 2.10. This is a simple procedure, which involved only submitting to court the qualified certificate (in case of electronic signature/ electronic seal) or the official document issued by conformity body (in case of registered delivery services/ electronic time-stamp).
- 2.11. In fact, the burden of proof is reversed. The party who challenges these legal presumptions must proof the lack of requirements of Regulation 910/2014, which means to challenge the official document issued by conformity body and the evaluation procedures of services conformity performed by this body.
- 2.12. The challenge is not only about pretending(saying) the opposite to the above legal presumption(of the identity of the sender, of the integrity of the data sent, of the date and time, of the receiving by the addressee-receiver person,etc.), but to prove technically the opposite. The chances to successfully challenge this presumption are very low, to a degree almost equals to zero.
- 2.13. Eventually, it is very important to asses that Regulation 910/2014 allow that a specific qualified trust-service(like qualified electronic signature) can be provided not only directly, but also indirectly, relying on a third-qualified provider of other trust-services(art. 24 par.1 in conjunction with art.44).
- 2.14. This situation of a qualified provider relying on a third party qualified provider does not alter the legal status of „qualified provider” of the former and neither the legal status of his „ qualified trust-services”.

4. BURDEN OF PROOF OF NON-QUALIFIED TRUST SERVICES, ACCORDING TO EUROPEAN FRAMEWORK

- 4.1. Regulation 910/2014 stipulates only the general legal principles for non-qualified trust services.
- 4.2. In fact there is only one legal principle : a non-qualified provider from a member-state can provide freely his services in all member-states, according to single market principle(art.4).

- 4.3. Regulation 910/2014 does regulate in concrete the legal effects of non-qualified trust services, as it does on qualified services.
- 4.4. For all non-qualified services, Regulation 910/2014 stipulated only a general negative principle, first stated for electronic signature and, then, reiterated for all non-qualified trust services :
„It shall not be denied legal effect and admissibility as evidence(art. 25 pct.1, art.35 pct.1, art.41 point 1).”
- 4.5. This is means that a state-member court could not deny legal effect of non-qualified trust services.
- 4.6. But the Regulation 910/2014 does not provide which are in concrete the legal effects, as it does for qualified trust services.
- 4.7. Regulation 910/2014 does not stipulate, for example, which are legal effects of a non-qualified signatures compared to a qualified-signature or with a hand-written signature, if there are or not legal presumption for any of the non-qualified trust services, the burden of proof, etc.
- 4.8. In fact, Regulation 910/2014 only provided a general possibility of legal effects for non-qualified trust services, without regulate them at any extent or degree.
- 4.9. As a result, the burden of proof and others legal effects of any non-qualified trust services will be the legal effects regulated by domestic laws of member-states and will vary from state to state.
- 4.10. We strongly believe that above considerations, being drafted in consideration of an imperative EU framework for all members-states, can be a reliable starting point for legal analyze of legal framework of any other EU member-states where Lleida intend to provide his services.

5. LEGAL PRESUMPTIONS OF OUR LETTER OF ADVICE

- 5.1. Our opinions and advices are based upon the following legal and technical presumptions.
- 5.2. Based on the information provided to us, we understand that :
- 5.2.1. Lleida is a Spanish Company which provides trust services, according to Regulation 910/2014
- 5.2.2. Lleida is a qualified trust services provider of „ registered delivery services”, as this term is defined by Regulation 910/2014.
- 5.2.3. According to art.2 pct.36 of Regulation 910/2014, registered delivery services has the larger sphere of electronic communications comprising :
- transmitting of data between third parties by electronic means;
 - providing evidence relating to the handling of the transmitted data, including proof of sending and receiving the data;
 - protecting transmitted data against the risk of loss, theft, damage or any unauthorised alterations;

- 5.2.4. A qualified registered delivery services will always include qualified electronic seal, qualified time-stamp and advanced electronic signature, provided by the same qualified registered service provider or relying on other qualified service provider/ advanced electronic signature provider, as mentioned on art.44 of Regulation 910/2014.
- 5.2.5. As part of his registered delivery services, i.e. to transmitting of data, providing evidence of handling/ sending/ receiving of data transmitted and protecting against loss/theft/damage/ alterations of data transmitted, Lleida's qualified trust services is relying on following qualified trust services, provided on a third party-qualified provider:
- a) Electronic seal, provided by a Spanish qualified provider
 - b) Electronic time stamp, provided by a Spanish qualified provider;
- 5.2.6. Also, as part of his registered delivery services, Lleida provided his own trust services of advanced electronic signature.
- 5.2.7. Lleida provides to his clients a mix of trust-services :
- a) Registered delivery services.
 - b) Advanced electronic signature : as part of his qualified registered delivery services;
 - c) Electronic seal : as part of as part of his qualified registered delivery services
 - d) Electronic time-stamp : as part of his qualified registered delivery services
- 5.2.8. Bases on his legal status of qualified provider, Lleida issues for every client and for every electronic communication of his client, an evidence-certificate of qualified registered delivery services provided.
- 5.2.9. His evidence-certificate will mention, also, the using of 2(other) qualified trust services(electronic stamp and electronic seal) as part of his qualified registered delivery services.
- 5.2.10. Every evidence-certificate is issued and signed electronically by Lleida with a qualified electronic signature.
- 5.2.11. The storage medium and technology used by Lleida for all his services guarantee integrity of document and/or contents stored and/or send by his clients.
- 5.2.12. Every evidence-certificate contains the data/information's electronically transmitted by sender to addressee(receiver), including the content of any(if) document attached;
- 5.2.13. The above mentioned data/informed are technically provide in an intelligible(readable) manner and can be printed on paper;
- 5.2.14. The subject of this legal report is legal validity of evidence-certificate and of the data/documents enclosed within, in respect of Romanian law regarding meanings of proof.
- 5.2.15. Burden of proof refers to electronic documents and electronic communications, especially contracts, legal notification, correspondence with or without electronic documents attached, etc.

- 5.2.16. Burden of proof refers to a legal relationship between 2 (two) parties , at least one of them being a person(natural or legal entity) who use Lleida trust-services.
- 5.2.17. A legal relationship means both contractual and non-contractual relationship.
- 5.2.18. Legal relationships above mentioned are subject only to Romanian law and not to other member-state jurisdiction.
- 5.2.19. Burden of proof refers to validity and legal effects of Lleida evidence-certificate in front of a Romanian court.

6. ROMANIAN LEGAL FRAMEWORK REGARDING ELECTRONIC DOCUMENTS AND ELECTRONIC EVIDENCE.

- 6.1. The bellow statements are available for all trust services provided by Lleida.
- 6.2. Regulation 910/2014 uses the notion of electronic document, meaning any content stored in electronic form, in particular text or sound, visual or audiovisual recording.
- 6.3. On matter of means of proof, Romanian law does not use the term „ document”, not for hand-written neither for electronic forms of a document.
- 6.4. Romanian law, i.e. Code of Civil Procedure(C.C.P.) from 2013 uses the Romanian term of „ înscris”, both for physically document and electronic document.
- 6.5. Romanian term of „ înscris” is impossible to translate into legal English language (literally means in-written). The most appropriate manner translation of Romanian term, „ înscris” is „written evidence”, by written being understood any type of written(hand-written, computer-typed, electronically, etc).
- 6.6. Because the English term of „ written” can create confusion, we will use the term of „document”, which is more neutral, meaning :
 - 6.6.1. both hand-written and electronic form,
 - 6.6.2. both signed and not signed hand-written or electronic form
- 6.7. We asses to , please, do not confound the legal meaning of concept of „ document” with the common-use sense from current speak.
- 6.8. Also, we will use the term of „electronic evidence”, which is more complex than electronic document, because is comprises, as we will prove bellow, a mix of pure electronic document and printed-on-paper document in Romanian law.
- 6.9. Legal function of a written evidence(document) is to prove a legal act or a legal fact, unilateral or between two parties, either contractual or non-contractual.
- 6.10. The legal content of notion „ written evidence=document” is exhaustive :
„ any writing or any other record which includes (holds) information about a legal act or fact, irrespective of the medium or modality of storage or of preservation.”(art.265 C.C.P.).

- 6.11. A document does not mandatory requires a signature for her legal validity, as evidence in front of a court.
- 6.12. A signature on a document is an additional component which adds more powerful legal force to written evidence.
- 6.13. According to art.268 of C.C.P., the signature creates a powerful presumption :
„(1) Signature of a written creates full confidence(full faith), until proven otherwise, about the existence of the consent of the signing party as to the content of the written evidence. If signature belongs to a public servant, the written evidence shall be deemed as an authentic written, under the law.
“(2) Electronic signature is available only if it is created under the conditions laid down by the law”.
- 6.14. This presumption may be rebutted only in case of a vice of consent, which is a very difficult- almost impossible to prove in case of electronic signature document. In case of a hand-written signature of a hand-written document, this presumption may be rebutted by means of a graphology expertise proceeded by an expert on handwritten, only on an original signed document(not on printed or photocopy of a document).
- 6.15. This presumption is at the same level of legal enforcement as the same presumption of Regulation 910/2014 for qualified signature of electronic documents.
- 6.16. Romanian law has 2 types of electronic evidence, both valid in front of a Romanian Court.
- 6.17. The 2 category of electronic evidence has different legal requirements for their validity, as evidence in front of a Romania court.
- 6.18. The first one is the category of pure electronic document, like an electronic contract signed with a qualified signature(art.267 of C.C.P.)
- 6.19. The validity of this type of electronic document requires an qualified signature(art.268 par.2 of C.C.P.).
- 6.20. The existence of qualified electronic signature gives birth to the powerful presumption above mentioned regarding the identity of the signer(but not of other party) and his consent about the content of the document.
- 6.21. The second category of electronic evidence is named „Documents on electronic data storage medium”, and it means a document=data/ information about a legal act/fact which are stored(hold) on a data storage medium. (art.282-284 of CCP).
- 6.22. Practically, in front of a court the evidence will be the printed-on-paper form of the document on electronic data storage medium , meaning the printed-on-paper data/ information about a legal act/ fact which are electronically stored.
- 6.23. The legal requirements for „ Documents on electronic data storage medium” are different than of first category of pure electronic document.

- 6.24. It is important to assess that this legal requirements does not include a qualified electronic signature. For this reason, all the non-qualified signed electronic documents and basically all documents on electronic form(signed or non-signed) belongs primarily to this second category, of „ Documents on electronic data storage medium”.
- 6.25. This category are defined as follows:
„Section IV. Documents on electronic data storage medium
Art.282 Concept
When information(data) of an legal act/legal fact are stored by the means of a data storage-medium, the document(printed document or other document on physical medium) which reproduces this information/data acts as proof evidence of the legal act/fact, if document can be read(intelligible/comprehensible) and if it offers sufficiently reliable(seriously) guarantees to creates full confidences about the contents of the document and identify of person who the document(information/data) originates from. ”
- 6.26. So, the legal requirements are :
- 6.26.1. Information/ data to be stored on data storage-medium
 - 6.26.2. Information/data to can be reproduced on physical (material) medium, like printed on paper
 - 6.26.3. Information/data can be read(intelligible/comprehensible); for example a picture of computer typed-document cannot be intelligible because of the lack of the quality of the picture; in case of a hand-writing document, because hand-writing is so poor/ugly that it cannot be understood.
 - 6.26.4. To offers sufficiently reliable(seriously) guarantees; this guarantees is to be about the information/data(content of the document) and identity of the person who the document originates from.
- 6.27. The definition of legal statement „ it offers sufficiently reliable(seriously) guarantees to creates full confidences” is laid out in art.238 of CCP :
- „Art.238 Presumption of valid writing :
- Writing of information/data of a legal act/fact on electronic data storage medium is presumed to offers sufficiently reliable(seriously) guarantees to create full confidences if this (electronic) writing is done systematically, without gaps and when writing data are in such a manner protected against any alterations or counterfeiting that integrity of the data is fully provided.”
- 6.28. Summarising, there are 6 legal requirements for a document on electronic storage medium , in order to be valid as proof in front of a Romanian Court.
- 6.28.1. Information/ data to be stored on data storage-medium
 - 6.28.2. Information/data to can be subsequently reproduced on physical (material) medium, like printed on paper
 - 6.28.3. Information/data can be read(intelligible/comprehensible);
 - 6.28.4. Electronic writing is done systematically, without gaps

- 6.28.5. Writing data are in such a manner protected against any alterations or counterfeiting that integrity of the data are fully provided
- 6.28.6. offers sufficiently reliable(seriously) guarantees to identify the person who the document(information/data) originates from;

6.29. It also has to be stressed that there are no difference, as of legal force and/or validity, between the 2(two) categories of electronic evidence, if both categories fulfils their own legal requirements.

6.30. An electronic document signed with a qualified electronic signature will be no more valid or legal powerful than and documents on electronic data storage medium, if both electronic evidence fulfils their own legal requirements.

6.31. If his legal requirements are fulfilled, a document on electronic data storage medium benefits the same powerful presumption as a pure electronic document signed with a qualified signature, as it was laid out at point.

6.32. According to art.283 par.2, the legal presumption of a document on electronic data storage medium is extended to third parties who has interest related to court case:

„ Such a presumption shall stand for third-parties interests by simple fact that writing(technical procedure of writing) is provided by a professional (provider).”

6.33. According to Romanian law, professional(provider) is deemed to be a natural person/ legal entity which owns a legal license to practice as provider .

6.34. Given the specific context of our legal report, this presumption may be called in front of a Romanian Court by a third party, which is not involved in an electronic communications(other than sender and receiver) which pretend his own claims(against of sender/receiver or third parties) based on the legal relationship between sender and receiver of documents.

6.35. The full proof legal power of a document on electronic data storage medium is supplementary underlined in art.284 par.1 of CCP and art.266 of CCP :

„Art.284 Proof legal power

„ (1) Document which reproduces data of a legal act/fact, stored on electronic data storage medium, has full legal power between parties, until proven otherwise.”

„Art. 266 Document on electronic storage medium

Document on electronic storage medium has the same legal power proof(same proof legal validity) as a hand-written document if it fulfils the legal requirements”.

6.36. Also, art. 328 defines what it means a legal presumption :

„ Art.328 Legal presumption

Legal presumption extempt from burden of proof in the benefit of which presumption is laid down, in whole aspects regarding the facts considered by the presumption as being proven.”

- 6.37. Summarising, all our above statements, it means that an pure electronic document or an document on electronic data storage medium, which fulfil their own legal request :
- 6.37.1. has full legal power as legal proof(writing-evidence) between parties of the legal act/fact
 - 6.37.2. create a powerful presumption of valid proof(writing-evidence), the same as a hand-written document
 - 6.37.3. does not need supplementary proofs(evidences) to prove the validity and full legal power of document(data/information related to a legal act/fact).
 - 6.37.4. the other party must challenge the proof, must try to rebut this legal presumption of technical conformity. In other words, given the specific context of electronic communications (trust services) and electronic document, the other party must proof the lack of above legal requests for pure electronic document or for document on electronic data storage medium. In case of a third party(other than the sender or receiver of an electronic communication) he must proof only that the technical provider of the document(data/ information related to a legal act/fact) is not a professional provider.
- 6.38. Moreover, Romanian law also states the proof power in case of rebutting of this legal presumption.
- 6.39. In case of lack of technical integrity, the document on electronic storage medium still holds a proof power, but this legal is lower and is called „beginning of writing evidence”, according to art. 284 alin.2 CCP :
- „ If storage medium or technology involved in document drafting does not guarantee integrity of document, the document will stand, depending on the circumstances, as material proof or as beginning of writing evidence.”
- 6.40. In this case, this document, as legal proof, it must be supplemented with other types of proof(other writing evidence, witness, testimony, cross-examinations, etc).
- 6.41. Also it has to be stressed that electronic evidence could belongs also to both category.
- 6.42. The information within electronic evidence can relate not only to owner of the qualified signature of the pure electronic documents.
- 6.43. Most often, the very content of electronic evidence relates to information/data about third parties than owner of a qualified signature of the electronic evidence(document).
- 6.44. A qualified signature proves only the identity of the signer and his consent about the content of the document, as we mentioned before, but not the reality and legal validity of the information/data within the electronic document, information/data regarding a third party. It is the major reason why an only qualified signature, belonging to just one party, it is not a sufficient proof, in front of a court, for legal acts which requires consent of two parties(like a contract).

- 6.45. That is the reason why, according to Romanian law, an qualified signed electronic document can be both :
- 6.45.1. a pure electronic document, regarding the identity of the owner of the qualified signature and his consent about the content of electronic document
 - 6.45.2. a „ document on electronic data storage medium”, as it concerns information/data related to other party than the signer.

7. ROMANIAN LEGAL STATUS OF EVIDENCE-CERTIFICATE PROVIDED BY LLEIDA TO HIS CLIENTS FOR EVERY ELECTRONIC COMUNICATIONS OF HIS CLIENTS.

- 7.1. The bellow statements are available for all trust services provided by LLeida.
- 7.2. The main question is the legal status, according to Romanian law, of evidence-certificate provided by LLeida to his clients for a specific electronic communication.
- 7.3. The evidence-certificate LLeida is signed by LLeida representative, in the name and on behalf of LLeida company, with a qualified signature provided to LLeida by a Spanish qualified signature provider. Please, do not confound this qualified signature of LLeida on his own document with the qualified signature of one of his clients and neither to advanced electronic signature provided by LLeida to one of his client.
- 7.4. Being provided to LLeida by a Spanish qualified provider, LLeida qualified signature is deemed to be qualified signature available in Romania, according to art. 25 par.3 of Regulation 910/2014, in conjunction with art. 288 of TFUE and art.148 par.2-4 of Romanian Constitution.⁶
- 7.5. The existence of qualified signature proves the identity of LLeida, as provider of the evidence-certificate and his consent(approval) on the content of evidence-certificate, according to art.268 par.1 of CCP.
- 7.6. This is means that the evidence-certificate is a valid pure electronic document, according to art.267 of CCP.
- 7.7. This is means, consequently, that any Romanian Court is forced to admit this evidence-certificate as valid written-evidence, according to art.art.268 par.2 of CCP.
- 7.8. As far, we can conclude that, from a formal legal point of view, the evidence-certificate provide by LLeida is a valid evidence, which a Romanian Court is forces to admit as evidence.

⁶Art.148 of Romanian Constitution

(2) As a result of the accession (to EU-n.n.), the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

- 7.9. This formal validity of evidence-certificate does prove only about identity Lleida and his legal status as qualified provider.
- 7.10. From now on, we will state about the validity and legal power, as evidence, of the data/information related to parties involved in electronic communications, which are :
- d) Lleida clients and
 - e) Private person/legal entity who received the electronic communications.
- 7.11. From now on, we will state about the validity and legal force power of Lleida evidence-certificates as „document on electronic storage medium”, on Romanian law.
- 7.12. We remind that term „ document” means, according to Romanian law(art.265 of CCP), any information/data about a legal act/fact.
- 7.13. In our context of electronic communication between a Lleida client and another private/legal entity, „document” is deemed to be any information/data related to both Lleida client and the addressee(receiver), no matter that information data are for, for example, documents attached to an e-mail, pure content of an e-mail /SMS, information about the time of sending/ receiving, etc.
- 7.14. The identity of Lleida as provider of evidence-certificate means that the content of the evidence-certificate :
- f) is provided by an qualified-provider of registered delivery services(Lleida)
 - g) is provided with an qualified-electronic seal, as part of qualified registered delivery services(provided by other Spanish qualified provider)
 - h) is provided with an qualified electronic time-stamp(as part of qualified registered delivery services(provided by other Spanish qualified provider)
 - i) is provided with an electronic advanced signature
- 7.15. Being provided by Spanish qualified providers, all this three trust services(registered delivery service, electronic seal and time-stamp) are deemed to be qualified trust services on Romania, according to art. 43-44, art 35 par.3, art.41 par.3 of Regulation 910/2014, in conjunction with art. 288 of TFUE and art.148 par.2-4 of Romanian Constitution.
- 7.16. Being qualified registered delivery services, all the data/information which are part of a registered delivery services(art.3 pct.36 and art.44 of Regulation 910/2014) will benefit from presumption stipulated on art.43 of Regulation 910/2014 in front of a Romanian court :
- a) the integrity of the data transmitted, included documents attached if there are
 - b) the sending of that data by the identified sender,
 - c) its receipt by the identified addressee
 - d) the accuracy of the date and time of sending and receipt indicated.

- 7.17. The very subject of this presumption is detailed in art.44 of Regulation 910/2014, as:
- a) ensure with a high level of confidence the identification of the sender;
 - b) ensure the identification of the addressee before the delivery of the data;
 - c) the sending and receiving of data is secured in such a manner as to preclude the possibility of the data being changed undetectably;
 - d) any change of the data needed for the purpose of sending or receiving the data is clearly indicated to the sender and addressee of the data;
 - e) the date and time of sending, receiving and any change of data are indicated by a qualified electronic time stamp.
- 7.18. Confronting this presumption stipulated by Regulation 910/2014 with the 6 legal requirements of Romanian law(art.282-283 of CCP), it is obviously that evidence-certificate of Lleida not only fulfils entirely the Romanian legal requirements but, exceeds them by far, from both legal and technical points of view.
- 7.19. Regarding the legal request of „ Information/ data to be stored on data storage-medium”, Lleida provides advanced electronic stored medium solution, which exceeds the basic requirements of Romanian law for a usually electronic-storage medium.
- 7.20. Regarding the request „ Information/data to can be subsequently reproduced on physical (material) medium”, Lleida provide it this feature for his services; more than that, there is a link where it can be seen and printed anytime the data/ information sent.
- 7.21. Regarding the request „ Information/data can be read(intelligible/comprehensible)”, this is by default fulfilled by a qualified registered delivery service under Regulation 910/2014
- 7.22. Regarding the request „Electronic writing is done systematically, without gaps”, this is by default technically fulfilled and exceeded by a qualified registered delivery service under Regulation 910/2014.
- 7.23. Regarding the legal request of,, writing data are in such a manner protected against any alterations or counterfeiting that integrity of the data are fully provided”, this request is by default fulfilled and exceeded technically by a qualified registered delivery service under Regulation 910/2014.
- 7.24. Regarding the request „ offers sufficiently reliable(seriously) guarantees to identify the person who the document(information/data) originates from”, this request is fulfilled and exceeded by any advanced electronic signature under Regulation 910/2014;
- 7.25. As we mentioned before advanced electronic signature means „ a high level of confidence the identification of the sender”(art.44 of Regulation 910/2014), that exceeds an „ sufficiently” guarantees requested by Romanian law(art.282 of CCP).

- 7.26. Lleida's services, being qualified service under Reg.910/204, exceeds by far Romanian Law requirements, involving at least more 6 features provided directly by the Regulation 910/2014:
- a) the sending and receiving of data is secured in such a manner as to preclude the possibility of the data being changed undetectably;
 - b) any change of the data needed for the purpose of sending or receiving the data is clearly indicated to the sender and addressee of the data;
 - c) the accuracy of the date and time of sending and receipt indicated.
 - d) the receipt by the identified addressee
- 7.27. All this 4 extra-more legal features strengthens and extends the legal proof power of evidence-certificate issued by Lleida.
- 7.28. The first feature strengthens the full confidence about the integrity of the data/information sent by electronic communication.
- 7.29. It is importance to asses that the existence of a qualified electronic seal, as part of Lleida qualified registered delivery services, add a new supplementary legal presumption, according to art. 35 par.3 of Regulation 910/2014.
- 7.30. Electronic seal is not regulated in Romanian Law.
- 7.31. As art.35 of Regulation 910/2014 laid out , a qualified electronic seal creates a legal presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked.
- 7.32. This presumption benefits from directly enforcement in front of Romanian court, according to art. 288 of TFUE and art.148 par.2-4 of Romanian Constitution.
- 7.33. As we stated before, this presumptions means that the party needs only to submit the evidence-certificate to the court, in order to proof the data/information sent by electronic communication. The other party must proof that the information/data are not the information/data electronically sent.
- 7.34. The second feature strengths also the integrity of the data, adding clearly that the sender/ addressee(receiver) are notified about any technical requirements to send/receive an electronic communication.
- 7.35. The 3rd feature creates also a new legal presumption, of the date and time of the document(data/information), according to art.41 par.3 of Regulation 910/2014.
- 7.36. From legal point of view, this is an excellent presumption, because date and time very important to in order to clarify the real intent of the parties and also to clarify some other important legal elements (like legal limitation period for a claim in front of a court, the beginning moment of calculating debts/interests, etc).
- 7.37. Like former presumptions, this presumption benefits from directly enforcement in front of Romanian court and it means that a Lleida client needs only to submit the evidence-certificate to the court, in order to proof the date/time of a document.

- 7.38. The last features, corroborated to all other features, creates a new additional legal presumption, probably one of the most important, according to art.43-44 of Regulation 910/2014
- 7.39. This presumption creates full confidence about receiving the document by the addressee(receiver).
- 7.40. Given the specific context of an electronic communication, this is also the presumption of the reality of electronic communication between two parties.
- 7.41. From Romanian legal point of view, this is very important.
- 7.42. The presumption of sending and receiving of a message/document/ notification means legally the existence of a legal relationship, which give birth to rights and obligations of the parties involved.
- 7.43. In Romanian law, this means the no-doubt existence of a legal act or fact between sender and addressee (receiver).

8. CONCLUSIONS

- 8.1. We therefore believe that evidence-certificate issued by Lleida for any of her services :
- 8.1.1. is a perfectly valid electronic evidence, both as pure electronic document and as document on electronic storage medium, in front and any Romanian court;
 - 8.1.2. creates the powerful presumptions of the Romanian Law;
 - 8.1.3. creates the powerful supplementary presumption of Regulation 910/2014, which benefits also by directly legal enforcement in front of a Romanian Court.
- 8.2. According to Romanian Law, the evidence-certificate of Lleida for any of her services :
- 8.2.1. creates full confidences about the very content of the document, its integrity and identity of person who the document(information/data) originates from
 - 8.2.2. has full legal power as legal proof(writing-evidence)
 - 8.2.3. create a powerful presumption of valid proof (writing-evidence)
 - 8.2.4. has the same legal proof validity as a hand-written evidence by the parties involved
 - 8.2.5. does need only to submit the evidence-certificate in front of a Romanian court
 - 8.2.6. does not need to prove otherwise the following elements :
 - a) the content of the electronic message(included any documents attached),
 - b) the integrity of the document,
 - c) identity of the sender

- 8.3. According to Regulation 910/2014, the evidence-certificate of Lleida for any of her services:
- 8.3.1. creates the powerful presumption of integrity of the data and of correctness of the origin of that data;
 - 8.3.2. creates the powerful presumption of the accuracy of the date and time of sending and receipt indicated within it;
 - 8.3.3. creates the powerful presumption of sending of that data by the identified sender,
 - 8.3.4. creates the powerful presumption of the receipt by the identified addressee;
 - 8.3.5. does need only to submit the evidence-certificate in front of a Romanian court
 - 8.3.6. does not need to prove otherwise all the above mentioned elements :
 - a) integrity and correctness of the origin of that data, (included any documents attached to an electronic communication).
 - b) the accuracy of the date and time of sending indicated within it
 - c) the accuracy of the date and time of receipt indicated within it
 - d) the identity of the sender
 - e) the receipt by the identified addressee
- 8.4. According to legal requirements of
- 8.5. Finally, according to client's request, we will state about the special features of electronic communications on matter of the identity of the sender/addressee(receiver).
- 8.6. This question is a common question regarding all electronic communications.
- 8.7. This questions comprise 2(elements) :
- 8.7.1. The identity of the person who send/receive the document
 - 8.7.2. The burden of proof, meaning the legal presumption of identity of the persons who send/receive
- 8.8. On electronic communication, there is no absolute possibility to proof the identity of the person who send/receive a communication.
- 8.9. On electronic communication, nobody can prove absolutely that a specific private person/ representative of the legal person is in fact the natural person to send/receive an electronic communication.
- 8.10. These are the reasons why law (domestic and/or EU law) creates powerful legal presumptions above mentioned, based on what law generally defines as „electronic identification” , „ electronic identifications means” and „ authentication” (art.3 point 1-5 of Regulation 910/2014).
- 8.11. On electronic communications, the concept of „ authentication” is defined as an electronic process (art. 1 pct. 5 of Regulation 910/2014) which performs an electronic identification, not a physical identification process and not on physical identification means (hand-written, finger-tips, etc).

- 8.12. On electronic communications, authentication is an electronic manner of identification „ that enables the electronic identification of a natural or legal person, or the origin and integrity of data in electronic form to be confirmed”.(art.3 pct.5 of Regulation 910/2014).
- 8.13. In case of an electronic communication, a trust service provider(Lleida or any other) cannot control the person which uses, in fact, the electronic identification means and/or who perform the electronically identification procedure.
- 8.14. An electronic communication provider(Lleida or any other) cannot have control over the natural person who uses, in fact, the e-mail addresses, the phone-number, the password of an electronic identification means, the identification devices, etc.
- 8.15. The liability for using of the identification means belongs solely to the natural person/ legal entity who buy this identification means from a qualified services provider.
- 8.16. Therefore, the law creates the above powerful legal presumptions of identity between the person the natural person/ legal entity who buy this identification means from a qualified services provider and the real writer and/or sender of an electronic communication.
- 8.17. Regarding the burden of proof of identity of the addressee (the receiver) the situation is the same, from the legal point of view, as in case of any other contact data provided by a party of a legal relationship.
- 8.18. Like in any legal relationships, parties provide each other the contact data, including electronic communication contact data like e-mail address or phone-number.
- 8.19. If a party provides his e-mail/ phone-number, from that moment on any communication sent to this electronic contact data(e-mail, phone-number) is deemed as valid evidence , as long as the other party does not provides another electronic contact data.
- 8.20. So, on electronic communication the authentication of the person/ content of a document are deemed as legally fulfilled if there are used electronic identification means and if it fulfilled the electronic identification procedure.
- 8.21. The electronic identifications means(for identity and/or for data transmitted electronically) are those full mentioned above: electronic signature, electronic seal, registered delivery services, etc.
- 8.22. Comparing with phiscal identification means of natural person/ document, the electronic identification means(electronic signature, electronic seal, registered delivery services,etc) plays the same legal role.
- 8.23. If an electronic identifications means fulfils the legal requirements of a qualified trust services the law(domestic law and EU law) creates the same legal presumptions of identity as, for example, in case hand-written signature of a hand-written document.
- 8.24. As we laid before, at points 6.2-6.3, in case of qualified registered delivery services(like those provided by Lleida) the law creates the more extended legal presumptions, more powerful, regarding also the data transmitted, the date and time, the receipt of the addressee, etc.

- 8.25. As we laid out before, in case of qualified service provider, the law creates the presumption of identity of the sender with a „ high level of confidence”.(art.44 par.1 a of Regulation 910/2014).
- 8.26. Consequently, burden of proof means , in fact and in law, only to prove the legal status of qualified trust-service provider in front of a court and to submit a printed-on-paper evidence of a specific electronic communication issued by a qualified provider.
- 8.27. This is a simple procedure, which involved only to submit to court the qualified certificate(in case of electronic signature/ electronic seal) or conformity-certified copy of official document issued by conformity body (in case of registered delivery services/ electronic time-stamp) and, of course, evidence-certificate for the specific electronic communication which proves the content of that specific electronic communication.
- 8.28. In fact, the burden of proof is reversed. The other party, who challenges these legal effects must prove the lack of requirements of Regulation 910/2014.
- 8.29. In simple word, the challenging party cannot defend- and cannot rebut this legal presumptions- only by pretending(saying) that he/she is not the person who sign/ send the document/ who own the e-mail address, etc.
- 8.30. The challenging party has to prove his allegations.
- 8.31. Giving the specific legal framework of electronic communication and electronic identification means, the challenging party must prove his allegations in an electronic (technical) manner, by challenging the fulfilling of technical conditions requested by Regulation 910/2014 for a qualified trust service.
- 8.32. The chances to successfully challenge this presumption are very low, to a degree almost equals to zero, because of the technical(electronic) nature of electronic communications. Only if the challenging party can prove serious breach of technical requirements, the challenging can rebut all those legal presumptions.

9. SHORT LEGAL RECOMANDATIONS

- 9.1. In the light of the aforesaid, we have several recommendations open to you.
- 9.2. The bellow statements are available for all evidence-certificate provided by Lleida.
- 9.3. Regulation 910/2014 is almost unknown by Romanian courts.
- 9.4. This the reason why, in order to facilitate the burden of proof in front of a Romanian court, we strongly believe that the following statements shall be part of a evidence-certificate issued by Lleida for his Romanian clients :

„ This evidence-certificate is a valid proof of qualified electronic registered delivery service provided by Lleida. As qualified trust-services provider, Lleida provides qualified electronic registered delivery services , according to Regulation 910/2014 and ____ (number and data of official document issued by Spanish authority).

Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service, according to art.43 par.2 of Regulation 910/2014."

- 9.5. On matter of liability, Regulation 910/2014 creates a legal presumption of liability of any qualified trust-service provider for damages caused intentionally or negligently to any natural or legal person due to a failure to comply with the obligations under this Regulation.
- 9.6. The intention or negligence is be presumed unless the qualified trust service provider proves that the damage referred to occurred without the intention or negligence of that qualified trust service provider.
- 9.7. In order to reduce the liability of Lleida for his services, we strongly recommend that Lleida duly informs their customers in advance of the limitations on the use of the services they provide.
- 9.8. In our opinion, this information procedure shall be part of any commercial agreement between Lleida and his clients, before any use of Lleida services by a prospective client.
- 9.9. Also, we strongly recommend that those limitations shall be made available to addressee(receiver) of an electronic communications at the moment he received an electronic communication (e-mail, SMS, etc).
- 9.10. The technical manner to make these limitatons be available is up to Leida and we don't intend to interfere with.
- 9.11. We can recommend, from a legal point of view, that those limitation could made available through a link to Lleida's portal, where any person concerned may read those technical limitations.
- 9.12. For this reasons, we strongly recommend that a general statement, regarding the existence of this limitations and an expressed reference of the link where sender/addressee/ any third party may find this limitations detailed, shall be part of any evidence-certificate issued by Lleida.
- 9.13. If Lleida can prove that those limitations has been made available to sender/ addressee/ any third party concerned, Lleida shall not be liable for damages arising from the use of services exceeding the indicated limitations, according to art.13 par.2 of Regulation 910/2014.

Please, contact us if you have any questions about the matters here discussesd.

Best regards,
Av. Cristian DUMITRAȘCU ANTONIU

