

LAW No. 589 / 2004 on the legal status of electronic notarial activity

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CHAPTER 1 - General provisions

ART. 1

This law sets out the legal status of the electronic notarial acts, carried out by the public notary within the notarial activity governed by the Law on public notaries and notarial activity No. 36/1995, as subsequently amended and supplemented, as well as by the diplomatic missions and consular offices of Romania.

ART. 2

(1) The electronic notarial acts drawn up by the public notary must satisfy, under the sanction of absolute nullity, the following conditions:

- a) to be electronically processed;
- b) to bear the extended electronic signature of the public notary, based on a qualified certificate, issued by a provider of accredited certification services. The certificates issued for the public notaries shall contain information concerning the notary office, established through regulations by the regulatory and supervisory authority in the field;
- c) to meet the substantive conditions provided by the law for the legal operation recorded.

(2) The public notary and the other institutions provided in Article 1 shall be bound to check that all conditions provided in paragraph (1) are satisfied.

ART. 3

The electronic notarial acts shall have the same legal status as the notarial acts carried out pursuant to the Law No. 36/1995, as subsequently amended and supplemented.

ART. 4

(1) The validity of the electronic notarial act abroad shall be established by international conventions to which Romania is a party.

(2) The electronic documents originating from the authorities or notary offices of another state may be considered by the public notaries for drawing up an electronic notarial act only if the foreign electronic signatures are based on a quality certificate, issued by a provider of accredited certification services.

CHAPTER 2 - Competence of the public notaries in the matter of the electronic notarial acts

ART. 5

The following notarial acts can be electronically processed:

- a) legalisation of electronic copies of the original documents;
- b) giving a fixed date by time-marking of the documents that meet the conditions provided in Article 2 (1) and attesting the place where their conclusion was effected;
- c) receipt and safe-keeping in the electronic archives of documents that meet the conditions provided in Article 2 (1);

- d) authentication of electronic translations;
- e) issuing of duplicates;
- f) other operations provided by the law.

ART. 6

(1) The public notary authorised to carry out electronic notarial acts shall have general competence, under the terms of the law.

(2) Competence of other institutions provided in Article 1 shall be established in compliance with the Law No. 36/1995, as subsequently amended and supplemented, that shall be applied accordingly.

CHAPTER 3 - Licensing of public notaries to draw up of electronic notarial acts

ART. 7

(1) The electronic notarial acts may be drawn up by the public notaries only after a licence is obtained from the regulatory and supervisory authority in the field.

(2) In view of issuing the licence provided in paragraph (1), the public notaries must satisfy the following conditions:

- a) to have at their disposal appropriate financial means and material, technical and human resources to secure the safety, viability and continuity of electronic notarial services;
- b) to use a homologated IT system, in compliance with the norms issued by the regulatory and supervisory authority in the field;
- c) to ensure the fast and safe operation of registration of the electronic notarial acts, in compliance with the structure of notarial registers established by the regulation approved by the Ministry of Justice;
- d) to ensure the possibility to determine precisely the date and hour when the notarial act was drawn up;
- e) to order appropriate means, according to the legal provisions and procedures described in the regulations issued by the regulatory and supervisory authority in the field, for checking the identity of the applicant and the validity of his extended electronic signature;
- f) to use staff that have specialised knowledge in the field of technology of electronic signature and a sufficient practice as regards the appropriate security procedures;
- g) to apply the adequate administrative and management procedures and that correspond to the recognised standards;
- h) to adopt safety measures against the forgery of the electronic notarial acts and to secure the confidentiality during the process of generating and putting them into archive;
- i) to preserve all information with regard to a electronic notarial act for the period established in compliance with the technical norms concerning the activity of safe-keeping of documents created and received by the public notary offices, the Chambers of public notaries and the National Union of Public notaries from Romania, according to the norms issued by the regulatory and supervisory authority in the field;
- j) to use homologated systems to put the electronic notarial acts into archive;
- k) any other conditions established by the regulatory and supervisory authority in the field.

(3) The regulatory and supervisory authority in the field shall be bound to notify the National Union of Public notaries from Romania about every grant of licence, at the same time with its issuing by the public notary that requests it.

(4) The National Union of Public notaries from Romania shall be bound to notify to the regulatory and supervisory authority specialised in the field about the exclusion, suspension or the end of the suspension from the profession of the public notaries.

ART. 8

(1) The public notaries shall be bound to notify beforehand the regulatory and supervisory authority specialised in the field about any change brought to the homologated IT system.

(2) The regulatory and supervisory authority in the field shall decide with regard to the endorsement of the changes brought, within 15 days as of the date of registration of the notification.

ART. 9

(1) In case the identification data of the public notary or of the public notary office are changed, it shall be necessary to update the licence issued according to Article 7.

(2) The public notary shall be bound to notify the regulatory and supervisory authority specialised in the field, within 24 hours, about any change brought to the identification data. The regulatory and supervisory authority in the field shall be bound to check the new identification data and, in case they comply with the legislation in force, to update the licence held by the notary office within maximum 48 hours.

ART. 10

It shall be forbidden to draw up electronic notarial acts during the period required for the licence update or for suspension from the profession of public notary.

ART. 11

(1) The regulatory and supervisory authority in the field shall be bound to check periodically that the conditions provided in Article 7 (2) b), d), e), g), h) and j) are satisfied in order to supervise the implementation of the provisions of this law and of the regulations issued by it.

(2) In case of failure to comply with the conditions provided in Article 7 (2) b), d), e), g), h) and j), the regulatory and supervisory authority in the field shall order the suspension or, as applicable, the withdrawal of licence.

ART. 12

The acts issued by the regulatory and supervisory authority in the field while exercising the attributions conferred by this law shall be administrative acts and can be challenged under the terms provided by the Law on administrative disputed claims No. 29/1990, as subsequently amended.

CHAPTER 4 - Provision of services specific for drawing up of electronic notarial acts

ART. 13

(1) The provision of services specific for drawing up of electronic notarial acts shall be carried out by the providers of qualified certification services, accredited by the regulatory and supervisory authority in the field and by the National Union of Public notaries from Romania, hereinafter called providers of qualified certification services.

(2) The providers of qualified certification services shall fulfil the attributions of the providers of qualified certification services, provided by the Law No. 455/2001 on electronic signature.

ART. 14

(1) The providers of qualified certification services shall be bound to communicate to the regulatory and supervisory authority in the field all information relative to the safety and certification procedures used, as well as other information requested by such authority.

(2) The providers of qualified certification services shall be bound to communicate to the regulatory and supervisory authority in the field, at least 10 days beforehand, concerning any intention to change the safety and certification procedures, by stating the date and hour when the change is effective, as well as to confirm the change within 24 hours.

(3) In emergency situations, when the safety of the certification services is affected, the provider may operate changes of the safety and certification services, following to communicate, within 24 hours, to the regulatory and supervisory authority in the field the changes made and the reasons for making this decision.

CHAPTER 5 - Electronic notarial acts

ART. 15

(1) The electronic notarial acts shall be drawn up in compliance with the substantial rules regarding the procedure of notarial acts regulated by the Law No. 36/1995, as subsequently amended and supplemented.

(2) It shall be forbidden to use the pseudonym when drawing up electronic notarial acts.

ART. 16

(1) The applications for drawing up an electronic notarial act may be forwarded electronically by the public notary, in this case being signed with the extended electronic signature of the applicant.

(2) In case the application is made through a representative, the act pursuant to which the parties are represented shall be enclosed and this can be also made electronically if signed with the extended electronic signature of the parties.

ART. 17

(1) Within 24 hours as of the electronic receipt of the application, the public notary shall carry out the necessary checks with regard to the lawfulness of the requested notarial act, shall assess the identity of parties, by checking the extended electronic signature, and shall send to the applicant a reply indicating the stamp fee and the notary fee relative to

the act or the grounds of refusal to draw up the notarial act requested on electronic support.

(2) After the receipt of confirmation of having paid the stamp fees and the notary fee, the public notary shall be bound to draw up the requested notarial act within 24 hours.

(3) The fee shall be established according to the provisions of Article 28 (2) c) of the Law No. 36/1995, as subsequently amended and supplemented.

(4) The time limits provided in paragraphs (1) and (2) can be shortened in exchange of an emergency fee.

ART. 18

The electronic notarial conclusion whereby it is established that an electronic notarial act has been drawn up shall include the following elements:

- a) the electronic address of the public notary;
- b) the name of the conclusion and the number assigned to it;
- c) the date and hour of drawing up the notarial act;
- d) the first name and surname of the public notary;
- e) the place where the electronic notarial act was drawn up;
- f) the extended electronic signature of the parties, if necessary;
- g) the extended electronic signature of the applicant, in case the applicant is a different person than the party;
- h) the extended electronic signature of the public notary;
- i) the number and date of issuing the licence for drawing up of electronic notarial acts, as well as the date when the licence expires.

ART. 19

(1) The public notary can carry out the authentication of the electronic copies of a material document, kept in the archives of the public notary or presented by the parties as being the original document, only after confronting the electronic copy with the material original document.

(2) In the electronic notarial conclusion whereby the electronic copy is authenticated a mention shall be made about the original document and about the conformity of the electronic copy to the original document.

(3) The electronic authenticated copies of the documents kept in the archives of the public notary shall only be released for the parties, heirs and their legal representatives, as well as for the persons that can justify a legitimate right or interest.

ART. 20

The electronic notarial conclusion whereby it is registered the receipt into the electronic archive shall include, besides the elements provided in Article 18, the following mentions:

- a) the list of individually identified electronic documents received;
- b) the identification data of the depositor and the identification data of the person that takes over the electronic documents;
- c) the time limit for safe-keeping.

ART. 21

(1) The electronic translations may be authenticated by the public notary if they bear the extended electronic signature of an authorised translator, according to the law.

(2) In the case provided in paragraph (1), the authentication conclusion shall include the elements provided Article 18 a) - e), h) and i) and extended electronic signature of the authorised translator.

ART. 22

In case an electronic notarial act has disappeared the duplicate of such act shall be released, on the request from the parties, or, as applicable, of their heirs, after consulting the electronic archive of the public notary having drawn up such act.

ART. 23

(1) In case an electronic notarial act disappears from the parties and from the electronic archive of the notary, the reconstruction shall be carried out by the public notary office that has drawn up the act, after a prior notice to all parties, or, as applicable, their heirs, after consulting the electronic archive of the public notary.

(2) The provisions of paragraph (1) shall apply accordingly also in case the notarial act that has disappeared was drawn up by the authorised institutions provided in Article 1.

CHAPTER 6 - Electronic notarial records

ART. 24

(1) The public notary shall be bound to keep in the electronic archive the electronic notarial acts which he draws up, for the period established in compliance with the technical norms regarding the activity of safe-keeping of the documents created and received by the public notary offices, Chambers of public notaries and National Union of Public notaries from Romania.

(2) The provisions of Article 102 of the Law No. 36/1995, as subsequently amended and supplemented, shall apply accordingly.

ART. 25

(1) The public notary shall keep up-to-date an electronic general register for all the electronic notarial acts which he draws up.

(2) The form of the general register and the manner of keeping and making the entries shall be established by the Ministry of Justice through regulations.

ART. 26

The public notary shall also keep electronic financial and accounting records. The manner in which such records must be filled and kept shall be established by the Ministry of Public Finances and by Ministry of Justice by methodological norms, within 60 days as of the coming into force of this law.

CHAPTER 7 - Registry of public notaries licensed to draw up electronic notarial acts

ART. 27

On the date of coming into force of this law it shall be established the Registry of public notaries licensed to draw up electronic notarial acts, hereinafter called registry, established and updated by the regulatory and supervisory authority in the field.

ART. 28

(1) The registration in the registry provided in Article 27 of the identification data and the information necessary with regard to the activity of the public notaries that draw up the electronic notarial acts shall be carried out on the basis of an individual application, submitted with the regulatory and supervisory authority in the field at the latest on the date of commencement of activity.

(2) The mandatory contents of the application provided in paragraph (1) and the necessary documentation shall be established by the regulatory and supervisory authority in the field.

ART. 29

(1) The registry is public and shall be permanently updated.

(2) The conditions of keeping the registry, the actual access to the information contained, the information that can be supplied to the applicants and the fashion of updating the registry shall be established by the regulatory and supervisory authority in the field.

CHAPTER 8 - Homologation of IT systems

ART. 30

(1) The conformity of the IT systems used by the public notaries with the norms for securing the processed or archived information shall be checked by homologation agencies, public law or private law legal persons, agreed by the regulatory and supervisory authority in the field, under the conditions established by regulations issued by it.

(2) After the checking procedure is completed the certificate of homologation of IT system shall be issued. The certificate may be withdrawn in case the homologation agency establishes that the IT system does no longer meet the requirements provided in the norms for securing the processed or archived information.

(3) The conditions and procedure of agreement of the homologation agencies shall be established by the regulatory and supervisory authority in the field.

(4) The agreement decision shall be issued by the regulatory and supervisory authority in the field.

CHAPTER 9 - Contraventions and sanctions

ART. 31

The following deeds of the public notary shall be considered contraventions:

a) to draw up electronic notarial acts without the licence provided in Article 7 (1);

- b) to draw up notarial acts for the period of suspension from the profession or for the period necessary to update the licence;
- c) to omit to make the notification provided in Article 8 (1);
- d) to omit to make the notification provided in Article 9 (2).

ART. 32

The contraventions provided in Article 31 shall be sanctioned as follows:

- a) by fine from ROL 10 000 000 to ROL 250 000 000, those provided in letters a) and b);
- b) by fine from ROL 5 000 000 to ROL 50 000 000, those provided in letters c) and d).

ART. 33

The establishing of contraventions and the application of sanctions provided in Articles 31 and 32 shall fall under the competence of the staff with control powers within the regulatory and supervisory authority in the field.

ART. 34

The quantum of fines provided in this law can be updated by a government decision, depending on the evolution of the inflation index.

ART. 35

The provisions of the Government Ordinance No. 2/2001 on the legal status of contraventions, approved with amendments and additions by the Law No. 180/2002, as subsequently amended, shall apply to the contraventions provided in Article 31.

CHAPTER 10 - Transitory and final provisions

ART. 36

The procedure of grant, update and renewal of licence shall be established by the regulatory and supervisory authority in the field by specific regulations, within 60 days as of the coming into force of this law.

ART. 37

Within 60 days as of the coming into force of this law, the regulatory and supervisory authority in the field shall elaborate the regulations relative to the performance and security rules with regard to the IT systems provided by the public notaries, the transmission of electronic documents and their preservation into archives.

ART. 38

(1) The expenses made for investments, endowments and other utilities necessary for the carrying on of the electronic notarial activity shall be deducted from the gross incomes, for a period of 2 years as of the date of commencement of activity.

(2) The expenses for changing and improving the IT systems used in the electronic notarial activity shall be deducted from the taxable incomes of the fiscal year during which the investment was made.

ART. 39

The public notaries licensed under the terms of Article 7 shall be able to begin the notarial electronic activity within 90 days as of the coming into force of this law.

ART. 40

The provisions of this law shall be supplemented by the provisions of the Law No. 36/1995, as subsequently amended and supplemented, and of the Law No. 455/2001.