

## ELECTRONIC ARCHIVING OF PAPER ORIGINALS

### Legal Framework for Electronic Archiving

Although some countries require certain types of documents to be kept and archived in their original paper form, for most categories of documents, including HR-related records, there is no such requirement, and it is generally acceptable to use electronic versions of paper records (i.e., scanned copies of paper originals) during most government agencies' inspections and audits or in court proceedings.



The evidential or probative value of electronic versions of paper records may be more easily challenged before a court than it would be for the originals. This is mainly because the original records could be tampered with or changed before being scanned, and, unless proper technology has been used (e.g., encryption and timestamping), it may not be easy to detect such changes from a scanned copy. In specific situations, it may be

good practice for employers to retain archives of paper originals in the event such originals would be requested by a specific investigator, auditor, judge or authority.

In France, laws have given rise to the right of *dematerialization* and its corollary: the right of electronic archiving. In some cases, the right to e-archive paper originals is accompanied by specific requirements depending on the document to be archived.

### Are electronic scanned copies of paper originals legally valid?

Firstly, the provisions of the French Civil Code confer an indisputable value to the electronic writing. However, the digital copy of a paper document is "presumed to be reliable,<sup>1</sup>" provided that appropriate means are used for its creation and preservation. These "appropriate means" have existed since 2013, and are specified by the standard NF Z42-013 and its NF461 certification rules (internationality adopted as the standard ISO 14641-1). These rules deal with the processes and technical means to be set up to constitute a *faithful* digital copy and to control its archiving with the due probative value.

<sup>1</sup> Order n° 2016-131 of 10 February 2016 reforming the law of contracts, the general regime and the proof of obligations - Art. 1379. - "The reliable copy has the same probative force as the original. Reliability is left to the discretion of the judge. Nevertheless, the executory or authentic copy of authentic writing is deemed reliable. (...) A copy resulting from an identical reproduction of the form and content of the document, and whose integrity is guaranteed over time by a procedure in accordance with the conditions laid down, shall be presumed to be reliable until proof to the contrary by decree in Council of State. If the original remains, its presentation may still be required."

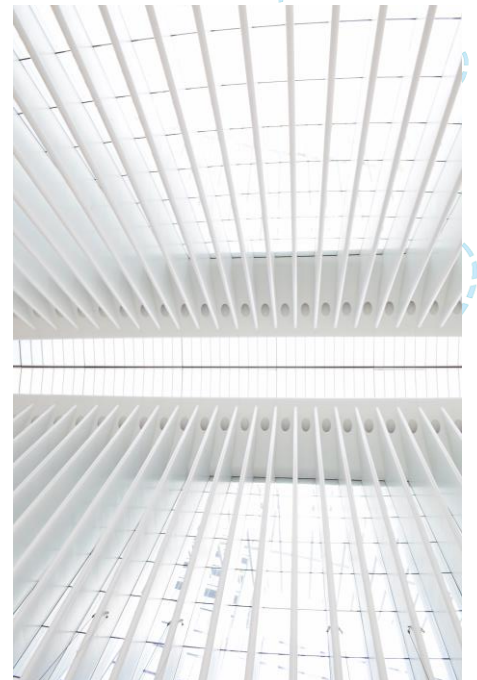
The new French standard, NF Z42-026, is a decree outlining how to properly scan paper documents so that they are considered valid. According to the decree related to the new standard, a copy is presumed to be *reliable* if it results from a reproduction process which results in an irreversible modification or, in the case of an electronic reproduction, of a process that meets certain conditions, such as:

- timestamp and integrity of the copy (via an "electronic stamp", a fingerprint or an electronic signature) in accordance with Regulation (EU) No 910/2014 of the European Parliament - eIDAS Regulation;
- the preservation of electronic copies in conditions which will prevent any alteration of their format or content;
- the preservation of time stamps and traces generated in application of the two previous requirements, and under conditions that do not allow their modification;
- the retention of documentation describing the devices and measures provided for in the previous requirements, for as long as the electronic copies are retained.

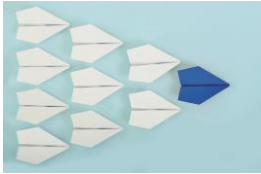
## Are there any legal requirements for electronic archiving systems (EAS)?

The ISO 14641-1 standard defines precisely the characteristics of an EAS for the proper preservation of documents over time:

- Metadata - metadata is used to describe the characteristics of a document when it is submitted to the EAS. They correspond to as many indexes that will facilitate its classification and research. They can be directly embedded in the document or in an accompanying XML structure.
- Control of duplicates - a control mechanism based on metadata review should avoid unintentional duplication.
- File format - the formats should be "standard and freely usable" and can be changed along with the evolution of technology. Any changes including format conversions should be included in the event log of the document.
- The archiving profile - a set of rules applicable to documents sharing the same criteria of confidentiality, destruction, and access. It allows businesses to define all the rules applied to a document simply by referring to a predefined archiving profile.
- Reversibility - all documents archived in the EAS should be exportable if they are to be migrated to another EAS.



- Storage media - the EAS should prohibit any destruction, alteration or modification of information contained in archived documents, either accidentally or voluntarily. The supports must be, in particular, non-rewritable.
- Destruction - the document destruction process should be documented, and explain the conditions for deleting metadata and archived documents. It must imperatively require the validation of an authorized user, and be reported in the event log via an attestation of destruction.



**HR Best Practices:** The full electronic archiving era is approaching, but for now it is not possible to guarantee that all paper documents can be destroyed. Indeed, the acceptance of digital copies remains subject to the discretion of the judge.

Similar to the electronic signature, electronic archiving will probably also develop to a three-level structure: simple, advanced and certified archiving. Over time, this means that certified electronic archiving will make the burden of proof fall under the responsibility of the challenging party.

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