



# HR Electronic Records – Belgium

## 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.

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

Electronically scanned copies of paper originals are generally permitted in Belgium. If a scanned paper record is questioned, evidence of the validity of the record will need to be provided. The exception to this is records stored in government “qualified” archiving systems, which have the presumption of validity.

Some HR records require the employee's agreement in order for the document to be sent and stored electronically. There must be a mutual agreement between the employer and employee in order to electronically send and archive: the individual account, the salary and the fringe benefits by month/quarter/year, pay slips, transmittal/delivery documentation, secondment documents and termination documents. The agreement between the employee and employer should specify which documents are included.

After the calendar year in which the agreement is signed, employees (and employers) can request to stop sending and storing these records electronically. In this case, the employer would

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then need to revert to paper transmission and archiving. Employers, as appropriate, can also store additional employee documents electronically with both the consent of the employee and a collective bargaining agreement (CBA).

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

The Code of Economic Law (Book XII, Title 2, Chapter 3) and Miscellaneous Labour Provisions of 3 June 2007 govern the legal framework for electronic archiving of employee data in Belgium.

Employers are responsible for archiving the above documents along with contracts for at least five years after the end of the employment contract. Employees must be able to access the archived copy at any time. After the end of the retention period, if requested by the employee, the employer must transmit the social documents to Sigedis, a non-profit organization responsible for storing employee-related data for Belgium

nationals (Act to provide various employment provisions, January 15, 2018, Ch. 5). Employees should be informed of the option to transmit the documents to Sigedis in advance of records being deleted.



## 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.

Last updated March 2023.

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