

## Digital Principality: The reform of Law No. 1.383 of 2 August 2011 on Digital Economy

Draft Law No. 994 amending Act No. 1.383 of 2 August 2011 on Digital Economy was passed in Public Session on 4 December 2019 (awaiting publication in the *Journal de Monaco*).

The expected and far-reaching reform, which will have major challenges for professionals, is part of the Principality's economic development strategy and the [Extended Monaco programme](#).

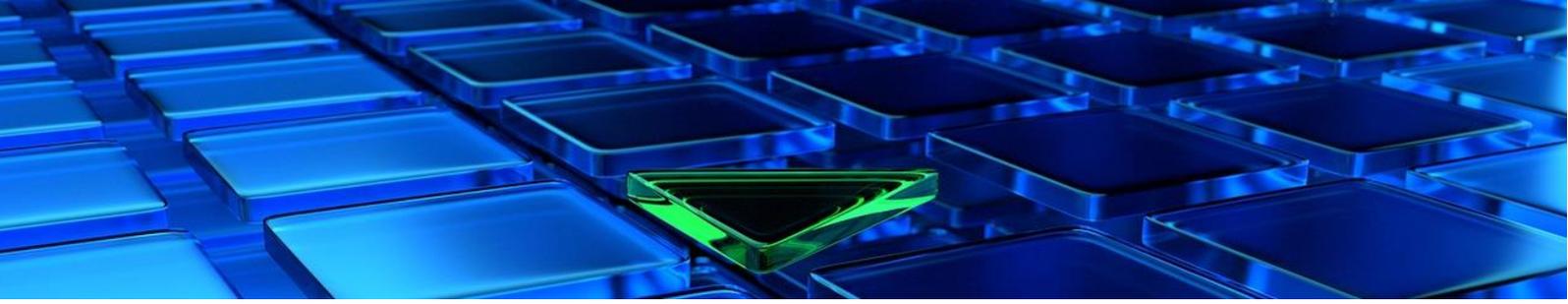
Draft Law No. 994 (set of 43 articles) constitutes the "general text", with a "central role" in relation to the other two "specific texts", namely Draft Law No. 992 on Digital Identity (also passed on 4 December 2019) and [Draft Law No. 995 on blockchain technology](#) [Report on Draft Law No. 994, 21 October 2019, p. 5].

Draft Law No. 994 amends:

- Law No. 1.383 on Digital Economy, as amended (online service platforms, cryptology, electronic safe and other trust services, two types of which use Blockchain technology known as "digital recording device on a shared register" [*dispositif d'enregistrement numérique sur un registre partagé*], liability of service providers, digitalisation of exchanges with the administration, budgetary and accounting documents);
- The preliminary provisions of the Civil Code on contracts and evidence (digitalisation of exchanges, copying, electronic archiving);
- Law No. 638 of 11 January 1958 instituting the control of the payment and declaration of wages (electronic pay slip).

The text passed is based on the standards of the European Union, and of the neighbouring country:

- Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) [applicable since 1st July 2016 for the most part] ;
- Article 1379 of the French Civil Code relating to the reliability of copying.



#### Amendments to the Civil Code:

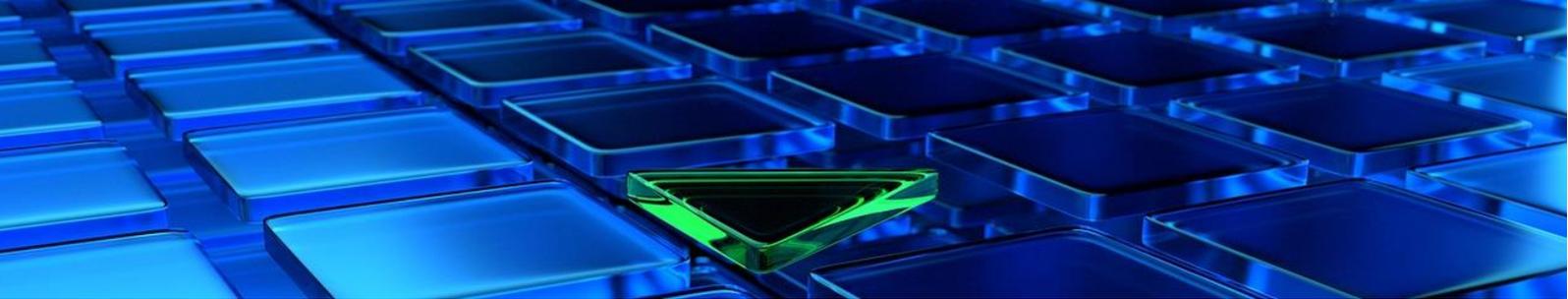
- **New provisions relating to electronic stamps** (new art. 1163-4).
- **Modification of the conditions relating to the requirement of a plurality of originals** (art. 1172, para. 5).
- **Transposition of "paper" contractual formalities to the electronic context** (new Articles 962-1, 962-2 and 962-3).
- **Redrafting of the evidentiary regime of copying into a single text** (Art. 1181) leading to the repeal of Art. 1182 (3) of Art. 1184 (3) of Art. 1195.

#### Amendment of Law No. 638:

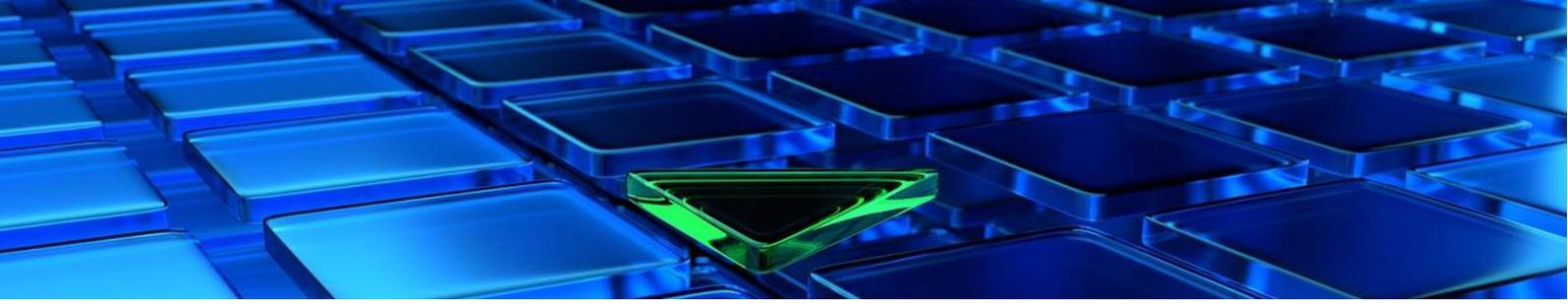
- **Dematerialization of pay slips:** delivery possible (unless the employee objects) in electronic form under the conditions provided for in articles 1163-3 and/or 1163-4 of the Civil Code (art. 2, para. 1).

#### Amendments of Law No. 1.283:

- **New title:** "Law on Digital Economy" becomes "**Law for a Digital Principality**".
- **New definitions (Art. 1):** "digital asset"; "virtual financial asset"; "electronic archiving"; "electronic stamp (advanced, qualified)"; "(qualified) authentication certificate"; "(qualified) website authentication certificate"; "(qualified) electronic stamp certificate"; "(qualified) electronic signature certificate"; "private key"; "public key"; "online public communication"; "electronic public communication"; "stamp designer"; "(qualified) electronic stamp creation device"; "(qualified) electronic signature creation device"; "digital recording device on a shared registry"; "personal data"; "electronic (transferable) document"; "electronic stamp creation data"; "electronic signature creation data"; "validation data"; "(qualified) electronic registered mail "; "provider of online public communication services"; "(qualified) electronic time stamping"; "token"; "digitalisation"; "online platform operator"; "public sector bodies"; "user party"; "(qualified) trusted service provider"; "digital contractual protocol"; "qualified electronic registered mail service"; "authentication service (qualified)"; "website authentication service (qualified)"; "electronic stamp service (advanced) (qualified)"; "digital safe service (qualified)"; "trust service"; "(qualified) service of depositing digital assets on a digital recording device on a shared registry"; "(qualified) digital recording service on a digital recording device on a shared registry"; "(qualified) electronic time stamping service "; "digitization service (qualified)"; "(qualified) electronic signature service"; "signatory"; "(advanced, qualified) electronic signature "; "validation".
- **Recast of existing definitions (Art. 1):** "consent"; "consumer"; "distance contract"; "e-mail".
- **Accessibility for people with disabilities** (Art. 1-2).
- **New derogations concerning the contractual process laid down in Art. 7 and Art. 8 para. 2 of Law No. 1.383** (Art. 17): for contracts for the supply of goods or services concluded exclusively by exchange of e-mails.



- **Creation of a fee for the allocation or renewal of the ".mc" domain name** (Art. 20, new para. 2 ).
- **New Title III** deleting the reference to "electronic signature" because of the integration of the digitized copy into the Civil Code: **"Evidence"**.
- **New provisions on the probative value of (qualified) electronic registered mail** (Arts. 28-1 and 28-2) and **(qualified) electronic timestamping** (Art. 28-3) leading to the repeal of Art. 18 (simple letter by e-mail) and 19 (registered letter by e-mail) of Law No. 1.383 (requirements set by ministerial orders).
- **New provisions on qualified certificates for website authentication** (Art. 28-4) (requirements set by Ministerial Order).
- **New provisions on the probationary regime for the digital registration device on a shared registry [Blockchain]** (Arts. 28-5 and 28-6) (requirements set by Sovereign Order).
- **Strengthening the secrecy of private electronic correspondence under article 22 of the Constitution without prejudice to the provisions of article 9 of Law No. 1.430 of 13 July 2016 on various measures on national security** (Art. 28-7): applicability to electronic communications operators, providers of communication services to the public and their staff.
- **Repression of fraudulent acts involving technical devices or devices likely to enable electronic communication capture operations to be carried out** (Art. 28-8).
- **Submission to an authorisation regime of acts concerning equipment or hardware and software devices or devices likely to enable the interception, listening, analysis, retransmission, recording or processing of correspondence sent, transmitted or received over electronic communications networks** (Art. 28-9).
- **Obligations of online platform operators** (search engines, price comparators, marketplaces, classified ad sites, social networks, etc.) **towards the public and consumers** (Art. 34-1): fair, clear and transparent information obligations (UGC, rights and obligations in civil and tax matters, etc.); advertising; secure space (reference to a Ministerial Order).
- **Obligations of providers of online notices from consumers** (Art. 34-2): fair, clear and transparent information obligations; existence or not of control; authenticity of the notice; secure space (reference to a ministerial order).
- **Modification of Title V** - Security in the Digital Economy: **"Means of cryptology"**.
- **New provision on formalities for the import and export of cryptographic goods or services** (Art. 36, new para. 4) (modalities fixed by Sovereign Order).
- **Specification of the penalties incurred in the event of non-compliance with formalities relating to the export or import of a means of cryptography** (Arts. 37-1 and 37-2)
- **New Title VI: Security, trust services and their providers.**



- **Consecration of "trust services" provided by "trust service providers"** (Art. 38-1): electronic signatures, electronic stamps, electronic time stamps, electronic registered mail; digital identification, authentication (including website); digitization of documents; electronic archiving, digital safe, digital recording device on a shared registry - The list of providers and services provided is established and maintained by the Monegasque Digital Security Authority (AMSN).
- **Obligation of trust service providers to take measures to ensure a level of security commensurate with the degree of risk in the light of the most recent technological developments** (Art. 39).
- **Obligation of trust service providers to notify AMSN of security breaches or loss of integrity with a significant impact on breaches of personal data**, and in case of risk of harm, also notification to the natural or legal person concerned (Art. 39-1).
- **Liability of unqualified and qualified (presumption of liability) trust service providers** (Art. 40): limits may be set, subject to conditions.
- **Obligation of unqualified trust service providers to obtain from AMSN a qualification** attesting to their compliance with the defined level of security (by Sovereign Order) (Art. 40-1).
- **Obligation of qualified trust service providers to provide information on the precise conditions relating to the use of the service, before the contractual relationship is established** (Art. 40-2).
- **Obligation of qualified trust service providers to verify the identity** or even the specific attributes, of the natural or legal person to whom they issue a qualified certificate (Art. 40-3).
- **Obligation of qualified trust service providers in respect of staff and subcontractors** (Art. 40-4).
- **Periodic evaluation of qualified trust service providers** (Art. 40-5) (requirements set by Ministerial Order).
- **Obligations of qualified trust service providers regarding the revocation of qualified certificates**, information on the validity or revocation status of qualified certificates, sufficient financial guarantee or insurance covering the financial consequences of their **professional civil liability** (Art. 40-6).
- **Obligations of trust service providers qualified to inform the AMSN with regard to any change** in the provision of its services, the cessation of activities, following the cessation of activity (registration and accessibility of information for a reasonable period of time, updated plan for cessation of activity) (Art. 40-8).
- **New Title VII: "Facilitation of the use of digital technology"**.
- **Consecration of the digital safe service** (Art. 46): purpose, possibility of benefiting from a qualification established according to a reference system (set by Ministerial Decree), sanction for non-compliance with the characteristics.
- **Consecration of the digital recording service on a digital recording device on a shared registry [Blockchain]**: guarantees, possibility of qualifying according to a reference system (carried out by AMSN) (Art. 47).



- **Consecration of the service of depositing digital assets on a digital recording device on a shared registry [Blockchain] (Art. 48).**
- **New provisions concerning electronic administration and relations between users and public sector bodies** (new Articles 49 to 54): processing of requests, declarations, documents or information sent electronically; secure user area; transmission of information between public sector bodies with the agreement of the user; sending or payment made subject to electronic acknowledgement of receipt (procedures laid down by Ministerial Order); recognition of electronic form for documents and supporting documents within the budgetary and accounting framework (procedures laid down by Ministerial Order).
- **General principle of non-discrimination in the use of an electronic document in commercial activities, and conditions of reliability (Art. 55).**
- **New Title VIII: "Data of general interest".**
- **Conditions under which data and databases collected or produced in the course of the operation of a public service by private law bodies providing a public service must be made available to the State for reuse;** the same applies to beneficiaries of a grant (when its amount exceeds a certain threshold fixed by Sovereign Order) awarded by an administrative authority (Art. 56).