

e-Signature Legality – an Overview

Legal Basis in Europe

With the entry into force of EU Regulation No. 910/2014, also known as the eIDAS regulation (Regulation on Electronic Identification and Trust Services), companies in the EU have the option of using electronic signatures to speed up business transactions or eliminate paper-based processes.



Legal Basis of the eIDAS Regulation

- Since July 1, 2016, the "Regulation on Electronic Identification and Trust Services for Electronic Transactions in the EU Internal Market" (eIDAS Regulation) has been in effect for all EU member countries.
- As an EU regulation, this has immediate legal effect in all 28 EU member countries as well as the European economic region.
- With the introduction of the eIDAS regulation, national signature laws and signature regulations remain in effect and are used where they do not contradict the eIDAS ordinance. The eIDAS regulation takes priority, however, because it is the "higher" law.

Three Key Concepts of the eIDAS Regulation

The goal of the eIDAS regulation is to create European regulations for electronic signatures, seals and time stamps, and to provide a uniform approach for these trust services in the digital internal market. Electronic signatures, seals, and time stamps from German trust services will be accepted in all EU member countries effective immediately.

Three Key Concepts of the eIDAS Regulation:

- Electronic signatures are legal in the EU regardless of the technology that forms the basis.
- The eIDAS regulation defines different types of electronic signatures for use in the EU, and each of these types is beneficial to the use of electronic signatures in your company.
- The EU recommends compliance with the technical EU standards for electronic signatures as a method for complying with the eIDAS regulation and for minimizing the legal risks for your company.

Legal Basis in the US

The United States has a history of being an open, business-friendly, eSignature technology-neutral environment.



The adoption of the Uniform Electronic Transactions Act (UETA) in most states and the passage of Electronic Signatures in Global and National Commerce Act (ESIGN) at the federal level in 2000 solidified the legal landscape for use of electronic records and electronic signatures in commerce.

Both ESIGN and UETA establish that electronic records and signatures carry the same weight and legal effect as traditional paper documents and handwritten signatures, stating that a document or signature cannot be denied legal effect or enforceability solely because it is in electronic form.

Numerous legal proceedings have fully supported the legal integrity of e-signatures in the USA.

ESIGN & UETA Requirements

Both E-SIGN Act and UETA have four major requirements for an electronic signature to be recognized as valid under U.S. law. Those requirements are:

- **Intent to sign:** Electronic signatures, like traditional wet ink signatures, are valid only if each party intended to sign.
- **Consent to do business electronically:** The parties to the transaction must consent to do business electronically. Establishing that a business consented can be done by analyzing the circumstances of the interaction, but consumers require special considerations.
- **Association of signature with the record:** In order to qualify as an electronic signature under the E-SIGN Act and UETA, the system used to capture the transaction must keep an associated record that reflects the process by which the signature was created. Alternatively, it must generate a textual or graphic statement (which is added to the signed record) proving that it was executed with an electronic signature.
- **Record retention:** U.S. laws on e-Signatures and electronic transactions require that electronic signature records be capable of retention and accurate reproduction for reference by all parties or persons entitled to retain the contract or record.

Electronic Signatures Increase the Binding Force

The European eIDAS regulation defines the electronic signature data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.

There are three types of signatures, the standard, the advanced, and the qualified electronic signature:

STANDARD ELECTRONIC SIGNATURE

- The author of a message can be identified on the basis of the standard signature. However, this is not completely forgery-proof.

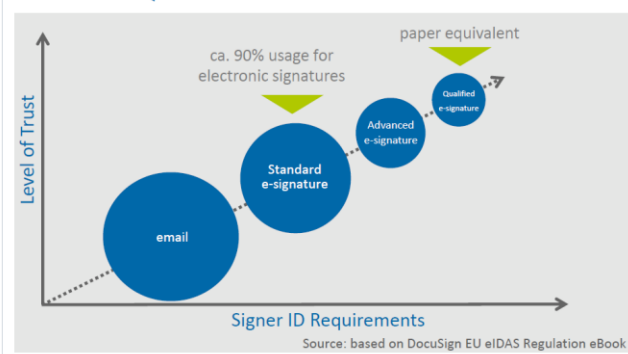
ADVANCED ELECTRONIC SIGNATURE

- An advanced electronic signature is created with the use of electronic signature creation data that the signer can use with a high degree of trust under his sole control.

QUALIFIED ELECTRONIC SIGNATURE

- The qualified signature is an advanced signature that was created with a qualified electronic signature creation device and is based on a qualified certificate for electronic signatures.

SIGNER ID REQUIREMENTS INCREASE WITH LEVEL OF TRUST



Arvato Systems Uses the Standard Electronic Signature

Arvato Systems uses the standard electronic signature, that suffices e.g. for the following types of business cases:

Form-free declarations of intent such as:

- Contracts
- Orders
- Proposals
- Purchase orders
- Applications

Confirmations such as:

- Confirmation of order or receipt
- Documentation
- Minutes
- Notices
- Invoices

When using the standard signature, it is important and sufficient that both parties agree contractually to the use of text form pursuant to eIDAS.

In case of any issues, the basic electronic signature is admissible in court as a form of evidence. In this case, the party which refers to the signature, must prove its authenticity. The documentary evidence is admissible in court.

The effected signature is verified with the Certificate of Completion that DocuSign makes available to every participant in a transaction in addition to the signed contract.

More Information

For more information about eIDAS, ESIGN Act, UETA or e-signature legality in the US or Germany, please visit

- IT.arvato.com/eSigning-en/Whitepaper_eIDAS
- IT.arvato.com/eSigning-en/Whitepaper_UETA_ESIGN
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