



The ELDOC Study

Legal status of electronic documents in Europe
Provisional overview of findings

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Project presentation

- ✦ “Legal study on national legal and administrative practices regarding the validity and mutual recognition of electronic documents (ELDOC) with a view to identifying existing barriers for e-business”
- ✦ Very broad subject: beyond transposition of directives
- ✦ Purpose: create an overview of the status of electronic documents in all common business processes



Relevant processes and documents (I)

First of all: the general legal framework

- ✦ For on-line contracts (the eCommerce directive)
- ✦ For other common contract types which are not covered by the directive
- ✦ For electronic communication: electronic notices, electronic registered mail, ...
- ✦ Or surrounding practices: electronic archiving and TTPs
- ✦ Keeping into account the administrative element: eGovernment readiness

General expectation: relatively few difficulties



Relevant processes and documents (II)

- ✚ Secondly: formalistic contract types in distinct business phases:
 - Credit arrangements: documentary credit, bills of exchange, ...
 - Transport and storage contracts
 - Customs declarations
 - eInvoice and eAccounting



Followed approach and current status

- ✚ Brief preliminary study to determine the questions to ask (Belgium, Poland, Bulgaria), resulting in a standardised questionnaire
- ✚ Data collection using legal correspondents for 32 states (Member States, EEA and Candidate Countries)
- ✚ Finally: analysis and recommendations

- ✚ Currently: Phase II (Data collection) is almost complete



Preliminary overview of the main findings

I. In commercial contracts, the validity of electronic documents is not an issue for most contract types

- ✿ Autonomy of will is a key principle in European contract law
- ✿ All surveyed states allow the conclusion of agreements on methods of contracting in commercial law (and in some countries in civil law)
- ✿ In all countries, electronic contract conclusion was accepted in some form or other, even prior to EU initiatives



Preliminary overview of the main findings

II. In legal commercial practice,
rules of evidence tend to be flexible

- ✿ No country automatically eliminated electronic evidence from consideration, although binding contracts generally required a signature
- ✿ The signature requirement was (and still is) interpreted differently throughout Europe
- ✿ Mostly: application of the eSignature directive's principles: non-discrimination, preferential treatment of qualified signatures
- ✿ But: "qualified documents" always remain



Preliminary overview of the main findings

III. Technical and infrastructural difficulties remain, and a market solution may not be imminent

- ✿ Knowledge and infrastructure vary from country to country
- ✿ Knowledge gap: prevalent in legal *and* industry practice
- ✿ Infrastructure gap: some countries do not use eSignatures simply because there are no adequate certification service providers
- ✿ While solutions are developing in the market, the European interoperability of such solutions is a long term evolution



Preliminary overview of the main findings

IV. There is no generic legal framework for the role of Trusted Third Parties in any Europe country

- ✦ Certification service providers have a (limited) legal framework, but no generic framework is available
- ✦ Barrier to electronic notices, electronic registered mail, and most of all electronic archiving (some of which have a partial solution in some European countries).
- ✦ A generic framework could alleviate a lot of concerns



Preliminary overview of the main findings

V. For specific document types,
originality remains a requirement for legal validity

- ✿ Common examples include bills of lading, storage notes,
- ✿ The document is not only *proof*, but an *embodiment* of a right
- ✿ Thus, only one can be allowed to exist
- ✿ Dematerialisation to a digital form would require a technical framework and intervention by a TTP



Preliminary overview of the main findings

VI. And sometimes, the laws just won't change...

- ✿ Formal requirements in some document types remain
 - Large variation between countries
 - Depends on who you ask...
- ✿ Sometimes for very valid reasons (e.g. family law)
- ✿ Sometimes out of commercial tradition (e.g. bills of exchange)
- ✿ Sometimes for outdated reasons (e.g. obligation to affix a fiscal stamp)



General assessment of the legal framework

Most correspondents are cautiously optimistic

- ✦ Almost all correspondents consider their national legal framework to be flexible and fairly well adjusted
- ✦ Socio-cultural problems are possibly the largest impeding factor: relative newness of the technology
- ✦ Need for additional / more comprehensive public information and guidelines
- ✦ Need for a legal framework for TTPs

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