

eIDAS Electronic Signatures – Legal Effects and Value in Civil Registration

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Overview

1. What is eIDAS?
2. Types of electronic signatures
3. Legal value of electronic signatures
4. CJEU Case law
5. Conclusion



1. What is eIDAS?

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« Electronic identification (eID) and electronic Trust Services (eTS) are key enablers for secure cross-border electronic transactions and central building blocks of the Digital Single Market. »

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What is eIDAS?

- ❖ Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market – **eIDAS Regulation**
- ❖ Revised and updated by Regulation (EU) 2024/1183 amending Regulation (EU) 910/2014 as regards establishing the European Digital Identity Framework – **EUDI Regulation**



eIDAS Regulation

- *Provisions on:*
 - Electronic identification
 - Electronic signature and seal
 - Electronic timestamp
 - Electronic registered delivery service
 - Website authentication certificates



EUDI Regulation

- *New provisions on:*
 - European Digital Identity Wallet (EDIW)
 - Attestation of attributes
 - Remote electronic signatures
 - Electronic ledgers and electronic archiving









2. Types of electronic signatures

Types of electronic signatures

(art. 3, (10), (11) and (12) eIDAS Regulation)

1. Simple electronic signature – SES
2. Advanced electronic signature – AES
3. Qualified electronic signature – QES



| Feature |  Simple Electronic Signature (SES) |  Advanced Electronic Signature (AES) |  Qualified Electronic Signature (QES) |
|------------------------------|--|---|---|
| Definition | 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 | An electronic signature which is uniquely linked to and capable of identifying the signatory; created in a way that allows the signatory to retain control and is linked to the document in a way that any subsequent change of the data is detectable. | An advanced electronic signature which is additionally created by a qualified signature creation device (QSCD) and is based on a qualified certificate for electronic signatures. |
| <u>Example</u> | Basic form, such as a scanned signature or clicking "Agree" | PKI based signatures, signature with PIN received by text and check ID | BE: our eID card is a QSCD and holds a signature certificate |
| Identity verification |  Usually no verification |  Identity must be verified |  Strict verification by QTSP |

Requirements of QES

QES = AES + based on a qualified signing certificate + created using a QSCD





Requirements of QES

Based on AES. Requirements of AES :

- a) **uniquely linked** to the signatory;
- b) **capable of identifying** the signatory;
- c) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his **sole control**; and
- d) linked to the data signed therewith in such a way that **any subsequent change in the data is detectable**.

Requirements of QES

Based on a **Qualified Certificate**

- ⇒ Issued by a Qualified Trust Service Provider (QTSP)
- ⇒ Must meet requirements of Annex I of eIDAS

Created by a **QSCD**

- ⇒ Certified to ensure protection of signature creation data
- ⇒ Compliant with Annex II of eIDAS Trust Service












3. Legal value of electronic signatures

Legal value of electronic signatures

- ⇒ Determined by national legislation
- ⇒ Determined by contractual agreement
- ⇒ Always taking into account art. 25 of the eIDAS Regulation

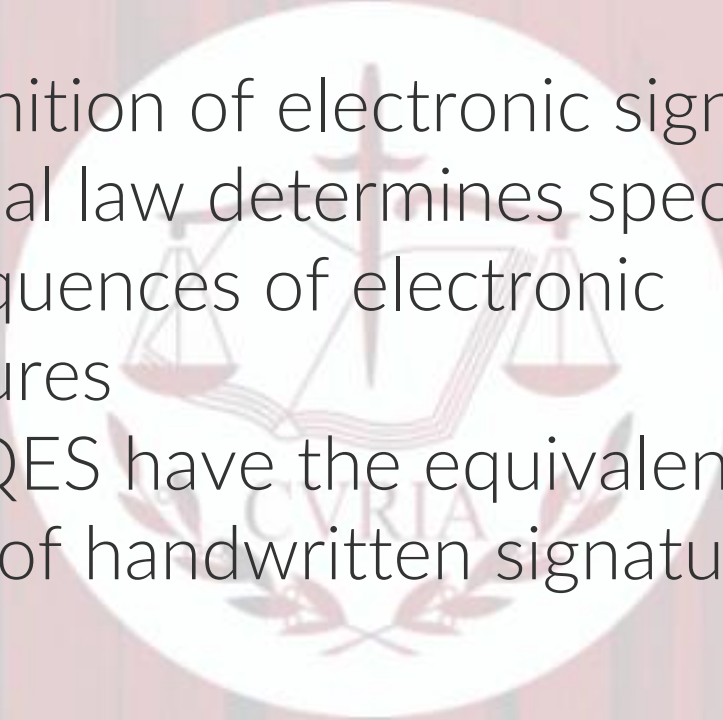


| Value |  Simple Electronic Signature (SES) |  Advanced Electronic Signature (AES) |  Qualified Electronic Signature (QES) |
|----------------|--|--|---|
| Legal Value |  Non-discrimination |  Non-discrimination |  Legal equivalence |
| Court evidence |  Shall not be denied legal effect and admissibility but requires additional proof |  Shall not be denied legal effect and admissibility. Offers stronger proof but disputable |  Automatically legally valid, considered legally equivalent to handwritten signature in EU |

4. CJEU Case law on the legal value of electronic signatures

CJEU C-362/21

- ⇒ Recognition of electronic signatures
- ⇒ National law determines specific legal consequences of electronic signatures
- ⇒ Only QES have the equivalent legal effect of handwritten signatures



CJEU C-466/22

- ⇒ Recognition of QES
- ⇒ National law determines legal effect,
BUT eIDAS equivalence
- ⇒ Challenge QES if challenge
handwritten signatures is allowed
- ⇒ Assessment authenticity under
national procedures

5. Conclusion

Recommendation for civil registration

- ✗ SES – Not recommended
- ⚠ AES – Could be allowed in some cases
- ✓ QES – Suitable for official acts



Thank you!

Questions?