

# ELECTRONIC SIGNATURE of acts or contracts on immovable properties



Use electronic conveyancing as regards immovable properties, which traditionally, in most countries, have specific formalities, requiring the simultaneous presence of the parties and the intervention of a public official, independent and endowed with public faith, usually the notary, that guarantees the free expression of the will and a qualified verification of the identity of the parties, when adapting the contract to a legal format, under the sole principle of legality.

## Regulation 910/2014 of 23 July 2014 - eIDAS Regulation

Electronic identification and trust services for electronic transactions in the internal market

**electronic signature** - data in electronic form attached to other data in electronic form, which is used by the signatory to sign – simple electronic signature

**advanced electronic signature** - electronic signature that meets the requirements of uniquely linked to the signatory, being capable of identifying the signatory, uses technological tools that allow the signatory to use it under his sole control and is linked to the data signed therewith in such a way that any subsequent change in the data is detectable (article 26)

**qualified electronic signature** - an advanced electronic signature based on a qualified certificate for electronic signatures

## Article 25<sup>th</sup>

An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form.

A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.

**Electronic document** - any content stored in electronic form, in particular text or sound, visual or audio-visual recording.

An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form.

eIDAS Regulation - “***does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.***”



## Responses

22 representing 20 MS

In the majority of the MS it is **still not possible to sign electronically contracts regarding immovable properties** (whether authentic or private documents)

## Question 1

Is it possible to sign acts or contracts regarding immovable properties without physical presence of parties, namely by electronic means or remote mode?

» 8 MS have answered **yes** – **Cyprus, Estónia, Finland, Latvia, the Netherlands, Scotland, Slovakia and Sweden.**

» 13 MS have answered **no** but in some of them new projects are in discussion.

- » **Cyprus** - no such contract has been registered yet and the process to do so is not decided.
- » **Netherlands** - it is only possible as regards contracts of purchase and sale drafted by real estate agents, brokers or parties themselves and cannot concern notarial deeds.
- » **Scotland** - there is a general restriction on the registration of such deeds - they can't yet be registered, except discharges of security deeds.
- » **Sweden** it is possible mainly regarding mortgages, but not for conveyancing on immovable.

**Question 2 :** What kind of electronic tool is used, or planned to be used, to perform electronic signature of authentic documents?

Mostly qualified electronic signature in the terms of the eIDAS Regulation.

**Austria** – in commercial book cases - a mobile phone based on eID.

**Finland** - electronic signatures provided by service providers accepted and listed by The National Cyber Security Center

**Latvia** - “eParaksts” eID

**Sweden** - Bank-id is commonly used for mortgages

**Question 3 :** Who is (or is planned to be) the entity responsible for the security and liability of such platform guaranteeing the inalterability of the electronic document and its recording with the associated documents?

Always **Public entity**, even in the projects of **Portugal** and **Spain**

Except from **Austria** and the **Netherlands**, where notaries and other entities might be responsible and liable for the electronic signatures.

**Question 4 :** Who is (or will be) the legal professional in charge of performing this kind of acts or contracts?

**Notaries** in most countries.

In countries where traditionally the conveyancing on immovable properties does not require notarial intervention, no legal professional is demanded - **Cyprus, Finland, Latvia** and in some circumstances the **Netherlands, Scotland, Slovakia and Sweden**

**Question 5 :** What kind of acts or contracts related to immovable property is (or will be) possible to sign by electronic means or remote mode?

- Purchase and sale
- Mortgage
- Donation
- Will
- Power of attorney or procurement
- Others

All MS that accept electronical signed contracts on immovables, answered that **they are all possible**.

- » **Finland** and **Portugal** (project) - the will is an exception
- » **Scotland** - the donation is excepted
- » **Sweden** - only mortgages and power of attorney
- » **Belgium** - only power of attorney.
- » **Spain** - the aforesaid acts can already be signed electronically, but not without the physical presence of the parties, since the notary must make a judgement on the natural capacity of those parties to fulfil the act or contract.



**Question 6 :** How does the identification of the involved person take place (or will take place)? Is there (or intend to be) a face-identification tool also?

In most countries the subject is considered a previous one related to the issuing of the advanced electronic signature.

No face to face identification in any MS

**Slovakia** - it is contrary to the protection of personal data.

**Scotland** - considers an option in the new package of remote ID.

**Question 7 :** Is there the possibility (or will be) of georeferencing the location of the contracting parties?

» **Yes** only in **Estonia**

» In Finland and Scotland - there is no need for it

» In the Netherlands - it may arise the need for parties' authorization for reasons of privacy.

**Question 8 :** Do the contracting parties have (or will have) to sign the contract simultaneously?

» in all countries where the electronic signature is allowed there is no need for simultaneity

» in **Estonia** - electronic signature must take place in the same moment

» the Portuguese project determines that all parties must sign in the same day.

» In **Spain** currently some contracts can be signed by the parties in different moments, although some extense rulings are established regarding to the effects in the meantime

**Question 9 :** Is it (or will be) necessary to use a video-conference tool?  
If yes, is it (or will be) recorded?

- » **yes** only in **Estonia** and **Latvia**
- » **yes** within the Portuguese project.
- » In **Scotland** it may be required by the solicitors involved to satisfy themselves.
- » In **Latvia** the video conference is recorded and kept for 10 years.

**Question 10 :** Which is (or will be) the format of the documents (certifications, licenses, proof of tax payment, etc) necessary to perform the contract?

» Electronic format, as a rule

In the **Netherlands** depends on the type of contract

## Novelties

**Austria:** Has enabled notaries in the commercial books to establish notarial contracts (deeds) by means of videoconference tool. It is possible to assume it as a pilot before introducing this option in a broader base. The general use of videoconference systems would substitute the personal presence of parties in case of notarial acts.

**Belgium:** From January 2020, the law of evidence incorporates the concepts of electronic signature and electronic writing. Despite these advances, Belgian legislation does not yet effectively organise the electronic signature of deeds or documents relating to immovable property except for the authentic power of attorney in dematerialised form introduced in April 2020

**Ireland:** The Property Registration Authority and other stakeholders have made representations to government to extend the application of the electronic signature to include documents relating to real property, but to date no further action has been taken.

**Italy:** Recently, due to covid19, notaries and government discussed this issue. However there are two critical points: impossibility to verify the identity of the parties; AND the risk that the party was signing the document under threat.

**The Netherlands:** The Kadaster is building a new platform (to replace or update S/MIME) in close cooperation with the dutch notarial board and the board of judicial officers, where signing the deeds will be done by means of tooling that will be provided by these professional organizations.



**Portugal:** New project presented by the Ministry of Justice aiming to allow electronic signature of all types of contracts regarding immovable properties (excepted the wills), under the surveillance of a legal professional, notary, lawyer or registrar, necessarily recorded and signed by all parties in the same day.

**Scotland:** Electronic documents can be both formally valid and probative, as is the existing case for paper documents. The entity responsible for such documents is public, but the future ambition is that the liability might sit with a trusted provider chosen by the parties or the professional as the one that best suits their business.

**Spain:** The Government is discussing about the possibility of electronically signing contracts on immovable properties and video-conference tools can be the mean to enable it. However, some problems have been found about this, in particular with frauds that can be committed nowadays, with the current level of technology.

**Sweden:** Lantmäteriet has a great interest in changing the current legislation and allow electronic documents and signatures regarding immovable properties and site leaseholds, but as of today there is no ongoing governmental investigation or proposition about it.

**Thank you very much for your attention!**

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