

# ELECTRONIC SIGNATURE - ongoing study -

## Legal relations through computers and networks



## UN Convention on the Use of Electronic Communications in International Contracts - New York 2005

eIDAS REGULATION (EU) n. 910/2014 – 23 Jul  
(in force since 1<sup>st</sup> July 2016)

- » remove obstacles to the use of electronic communications
- » mitigate risks imposing security mechanisms

**Oops, something went  
wrong. Please try again later.**

**OK**

Electronic conveyancing on immovable properties, is at a very **early stage** except from

- » Estonia
- » Finland
- » Latvia
- » Slovakia

Other countries adopted measures, but still with limited scope and practical effects.

**Land Registries systems**, aware of the effects of the information therein, ensuring legal security of real estate transactions, must be prepared to receive, analyse and use electronic documents for registration purposes, providing, it never hurts to reaffirm it, **legal certainty**.

## Signature

Literally, a signature is the act of affixing or placing the name of an individual, *written in its particular way*, to any document.

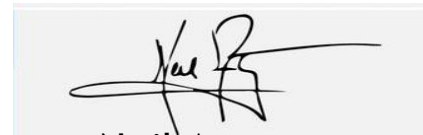
Signing a document implies connecting its author to the content therein.



Mozart



J.K.  
Rowling



Neil Armstrong



Barack Obama



Mel Gibson



Pablo Picasso



Banksy



Diego Maradona



Walt Disney



## Electronic Signature

- » absence of graphical display
- » new manner of placing one's name *without writing in its particular way* as a means of uniquely expressing one's will or consent
- » a set of technological tools and devices that allow someone to associate the authorship of a written content in a dematerialized format

» **simple electronic signature**

» **advanced electronic signature**

- uniquely linked to the signatory
- capable of identifying the signatory
- technological tool that allow the signatory to use it under his sole control
- linked to the data signed in a way that any subsequent change is detectable

» **qualified electronic signature**

Electronic Signature can only be placed on an **electronic document** meaning any content stored in electronic form.

## Written documents

- » Original versus copy (or derivative)
- » Private versus authentic (or with specific formalities)

**Original** - written document where the signatures are placed whether handwritten or through machinery processing.

The original electronic document is the one generated on computer **or** the document originated in a different support (for instance, in paper) and then introduced in computing environment, namely by digitalization.

**Copy** - mechanical reproduction of the original, that when issued by an authorized depositary is a certificate, with the evidentiary strength of the original.  
In electronic format, copies extracted from the original may keep the same or a different electronic form or even materialize in paper support, if necessary.

**Private** - signed without any further formality, its strength as evidence being freely appreciated by the court.  
A private written document in electronic format, cannot be complete without a technological procedure with a signature guaranteed by a trust service provider.

In the electronic environment there is no place for the concept of a 100% private document.

**Authentic** - drawn up, with legal formalities, by a public authority, granting with independence and under the sole principle of legality, the identity of the parties and the free expression of their will.

It provides full proof of the facts therein, unless proven false



**Electronic document, with advance electronic signature**  
provided by a trust service (article 26<sup>th</sup> and 46<sup>th</sup> of eIDAS  
Regulation):

- » might **be**, by its own nature, an authentic document since necessarily “*equipped*” with the additional formalities of identification of the signatory and detectability of any subsequent change; **or**
- » might **never be** an authentic document due to the absence of a trusted professional, granting certainty between the apparent and the real author of the declaration.

## Electronic document, with advance electronic signature

- » hardly framed within the classic difference between private and authentic written documents
- » shaped in a totally new hybrid reality,
- » shall have the equivalent legal effect of a handwritten signature, but article 25th of eIDAS Regulation does not make explicit in which kind of document it is placed

## Land Registry Systems

1. The sufficiency of the electronic document (or title) to perform the transmission or encumber of the immovable and, hence, to allow a registry entry
2. The use of electronic signatures by the land registry offices, in internal and external proceedings and organization.

## 1.1.

Article 2 n. 3 of eIDAS Regulation states that it does not affect national law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.

## 1.2.

MS determine the formal validity and legal effects of electronic contracts on immovable properties, namely, defining:

- » the need (or not) of a legal professional who, in a remote way, assures the free consent and expression of the will;
- » the way the document is stored ensuring its preservation and inviolability; and
- » the access to the document respecting its confidentiality.

## 2.

### Using electronic signatures in Land Registry Activity with electronic data basis

**2.1.** check the identification of the applicant and his electronic signature in the electronic requirement - principle of legitimacy

**2.2.** delivering electronic proof of the application with an electronic signature and time stamp – principle of priority

**2.3.** access to different data base or key registries in order to get information needed to perform the entry

**2.4.** use of electronic signature by the Registrar to sign the entry itself - guarantee of integrity and time stamping, use under his sole control and immutability – principle of independence and of legality

**2.5.** making available certificates on land registry information in an electronic format

Land Registry **receiving or sending** electronic documents

Electronic delivery services with legal requirements of article 44<sup>th</sup> of eIDAS Regulation:

- » confidence on the identification of the sender
- » secure identification of the delivery address
- » precision on the indication of the sending and receiving date and time



Lot of work to be done, both IT and Legal professionals holding hands – that is what we are doing in IMOLA!



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

Luisa Clode  
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