

European Cyberlaw: electronic documents

Article 3 Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'electronic identification' means the process of using person identification data in electronic form uniquely representing either a natural or legal person, or a natural person representing a legal person;

(5) 'authentication' means an electronic process that enables the electronic identification of a natural or legal person, or the origin and integrity of data in electronic form to be confirmed;

(10) 'electronic signature' means 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;

(11) 'advanced electronic signature' means an electronic signature which meets the requirements set out in Article 26;

(12) 'qualified electronic signature' means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures;

(16) 'trust service' means an electronic service normally provided for remuneration which consists of:

(a) the creation, verification, and validation of electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates related to those services, or

(b) the creation, verification and validation of certificates for website authentication; or

(c) the preservation of electronic signatures, seals or certificates related to those services;

(22) 'electronic signature creation device' means configured software or hardware used to create an electronic signature;

(23) 'qualified electronic signature creation device' means an electronic signature creation device that meets the requirements laid down in Annex II;

(25) 'electronic seal' means data in electronic form, which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;

(26) 'advanced electronic seal' means an electronic seal, which meets the requirements set out in Article 36;

(27) 'qualified electronic seal' means an advanced electronic seal, which is created by a qualified electronic seal creation device, and that is based on a qualified certificate for electronic seal;

(33) 'electronic time stamp' means data in electronic form which binds other data in electronic form to a particular time establishing evidence that the latter data existed at that time;

(34) 'qualified electronic time stamp' means an electronic time stamp which meets the requirements laid down in Article 42;

(35) 'electronic document' means any content stored in electronic form, in particular text or sound, visual or audiovisual recording;

(36) 'electronic registered delivery service' means a service that makes it possible to transmit data between third parties by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage or any unauthorised alterations;

(37) 'qualified electronic registered delivery service' means an electronic registered delivery service which meets the requirements laid down in Article 44;

(38) 'certificate for website authentication' means an attestation that makes it possible to authenticate a website and links the website to the natural or legal person to whom the certificate is issued;

(39) 'qualified certificate for website authentication' means a certificate for website authentication, which is issued by a qualified trust service provider and meets the requirements laid down in Annex IV;

Article 25 Legal effects of electronic signatures

1. 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 or that it does not meet the requirements for qualified electronic signatures.

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

3. A qualified electronic signature based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic signature in all other Member States.

Article 26 Requirements for advanced electronic signatures

An advanced electronic signature shall meet the following requirements:

(a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and

(d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

Article 43 Legal effect of an electronic registered delivery service

1. Data sent and received using an electronic registered delivery service shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic registered delivery service.
2. Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

Article 44 Requirements for qualified electronic registered delivery services

1. Qualified electronic registered delivery services shall meet the following requirements:
 - (a) they are provided by one or more qualified trust service provider(s);
 - (b) they ensure with a high level of confidence the identification of the sender;
 - (c) they ensure the identification of the addressee before the delivery of the data;
 - (d) the sending and receiving of data is secured by an advanced electronic signature or an advanced electronic seal of a qualified trust service provider in such a manner as to preclude the possibility of the data being changed undetectably;
 - (e) any change of the data needed for the purpose of sending or receiving the data is

clearly indicated to the sender and addressee of the data;

(f) the date and time of sending, receiving and any change of data are indicated by a qualified electronic time stamp.

In the event of the data being transferred between two or more qualified trust service providers, the requirements in points (a) to (f) shall apply to all the qualified trust service providers.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for processes for sending and receiving data. Compliance with the requirements laid down in paragraph 1 shall be presumed where the process for sending and receiving data meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 45 Requirements for qualified certificates for website authentication

1. Qualified certificates for website authentication shall meet the requirements laid down in Annex IV.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified certificates for website authentication. Compliance with the requirements laid down in Annex IV shall be presumed where a qualified certificate for website authentication meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 6 Mutual recognition

1. When an electronic identification using an electronic identification means and authentication is required under national law or by administrative practice to access a service provided by a public sector body online in one Member State, the electronic identification means issued in another Member State shall be recognised in the first Member State for the purposes of cross-border authentication for that service online, provided that the following conditions are met:

(a) the electronic identification means is issued under an electronic identification scheme that is included in the list published by the Commission pursuant to Article 9;

(b) the assurance level of the electronic identification means corresponds to an assurance level equal to or higher than the assurance level required by the relevant public sector body to access that service online in the first Member State, provided that the assurance level of that electronic identification means corresponds to the assurance level substantial or high;

(c) the relevant public sector body uses the assurance level substantial or high in relation to accessing that service online.

Such recognition shall take place no later than 12 months after the Commission publishes the list referred to in point (a) of the first subparagraph.

2. An electronic identification means which is issued under an electronic identification scheme included in the list published by the Commission pursuant to Article 9 and which corresponds to the assurance level low may be recognised by public sector bodies for the purposes of cross-border authentication for the service provided online by those bodies.