



Will the new eIDAS standards help your business win market share?

Picture this familiar (Sisyphean) story. After a hard slog, it looks like you're about to clinch a huge deal with a major European firm. You've pushed the mythical boulder up the mountainside. All that remains is for the client to sign on the dotted line, so you hurriedly dispatch the contract documents. But then, unexpectedly, a complication arises: the customer wants to sign the contract electronically. To your dismay, you realise you don't know how to comply with this requirement. And so you watch, helplessly, as the boulder tumbles back down the mountainside, right into the open arms of your competitors.

For many years, companies have fretted about the risks associated with e-signatures (particularly so in Financial Services). Or, as in the above tale, they've fretted about not knowing exactly how it all works. Confusion over the rules governing electronic signatures, coupled with the novelty of the technology itself, has fuelled fears that using this digital tool could lead to a hard landing. So avoidance was the reflex move.

Today, those fears are misplaced. In essence, the legal landscape has altered considerably over recent years, thanks to a flurry of regulatory initiatives across the European Union. Current market practice has altered considerably as well: company reliance on wet signatures is giving way to electronic signatures.

Arguably the most significant of these legal initiatives is the Electronic Identification and Trust Services for Electronic Transactions in the Internal Market regulation (eIDAS), which came into force on 1st July, 2016. eIDAS standardises the rules concerning electronic signatures, establishing an EU-wide regulatory framework. Much of its strength stems from eIDAS having direct effect, superseding the previous Directive, applying across all 28 member states, and overriding any conflicting laws – a striking departure from the previous Directive, which was inconsistently implemented, with no common technical standards, which caused uncertainty and hindered adoption. In short, these uniform rules further stimulate cross-border e-commerce within the EU market.

The UK Law Society has also joined the debate. A practice note was issued reaffirming the use of electronic signatures in commercial transactions under English Law. George Gooderham, Counsel at Linklaters, observes that the note was very robust in its conclusions: 'the parties will wish to know that where the signatories to an English-law document have used an e-signature, that document has been validly executed as a matter of English law. The guidance note should provide parties with a considerable degree of comfort in this regard'.

Clarity of the rules and guidance on the law clears the path for widespread adoption of electronic signatures

There is little doubt that the spate of legal reforms was linked to recent technological innovations and surging business demand – just as the former legal regime was linked to a bygone era. eIDAS regulation is ‘more attuned to the Digital Age’, says Richard Oliphant, EMEA General Counsel at DocuSign, a leading electronic signature technology firm. eIDAS ‘explicitly allows providers to use cloud technology so their customers can generate and validate electronic signatures with a mobile device.’ Not only that, the new rules will spur uptake of electronic signature platforms, which generate a digital audit trail and offer greater security and authentication than other methods of electronic signature. In an environment of complexity, where it is increasingly difficult to securely manage digital identities, this is particularly welcome. As for UK law, he says ‘the business community favours – and the Law Society’s practice note endorses – the use of simple electronic signatures for transactions’, adding that ‘the vast majority of UK corporate, commercial, finance, HR and consumer contracts may be executed with an electronic signature’.

So far we’ve touched upon the growing formalisation of the legal framework for electronic signatures. But what are the business implications?

As it happens, clarity with the rules matters quite a bit in the commercial world. By quelling business worries about the legal certainty and predictability surrounding the use of electronic signatures, the path is cleared for their widespread adoption. Our DocuSign subject matter expert, Simon Rose, noted, ‘As the legality question has been answered, organisations can move forward at pace and with confidence in adopting electronic signatures. The time is right to begin eliminating paper, and provide a compelling, easy way for your customers to transact. After all, it’s as simple as a contactless payment and will have a positive impact on business.’

Nowhere is this more important than in the financial sector. Banks stand to reap enormous gains now that e-signatures represent binding commitments, and even more when e-transactions attain the same acceptance as paper-based transactions. First, it will expedite contract executions. For many, this might not seem worthy of comment. Yet, in reality, by speeding up the execution of the contract(s), you could see a positive uplift in revenues sooner, which could mean the difference between being in the red or the black. Second, it will help facilitate the banks’ transition to a fully digital services environment. With these reforms, the scope for transforming ways of working improved overnight, as did the banks’ capability in reshaping the customer journey. Third, banks – and their customers – in utilising electronic signatures, will realise more efficient implementation of contracts and their associated transactions when their activities span the member states of the EU.

In this post, we have taken a glimpse at some of the benefits that flow from embracing new electronic signature technologies. And we’ve hinted at the dark fate awaiting companies that renounce retooling and re-aligning with these developments (the boulder shooting down the hill). Yet looming above all is the question of what companies should be doing about it? A key challenge is to assess how disruptive or enabling these new technologies will be to their business and industry. And accordingly decide whether to take a proactive approach to embed these technologies into their digital platform, or simply wait and see. Of course, the risk of doing nothing is that opportunities for winning business may be forfeited, while new entrants taking a more aggressive stance will snatch market share.

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there to truly
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customer journey**

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