

ARTICLE:

HYBRID SIGNATURES UNDER BELGIAN LAW

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Traditionally, Belgian evidence law makes a distinction between a deed and a copy thereof on the basis of the presence of an original handwritten signature on the document. For a document to become a (common) deed, the paper document had to contain a handwritten signature. Any reproduction of this deed (whatever the technology used and the degree of perfection achieved) it qualified legally as a ‘copy’, having only extremely limited evidential value.¹

The simplicity of this legal rule was profoundly affected with the introduction in 2000 of the electronic signature under Belgian law.² Since the introduction of the law, an electronic document, containing an electronic signature, may under certain circumstances qualify as a deed. As a consequence of the technology used and contrary to what applies to deeds in paper form, an electronic copy of the original electronic deed could have the same legal value as the ‘original’ electronic deed. In a sense, the word ‘original’ and ‘copy’ are more difficult to apply in this context.

If the electronic deed is materialized in paper form however, the document once again loses its legal value and it is reduced to a ‘copy’ in the traditional legal meaning of the word, i.e. a document with only extremely limited evidential value. For instance, if an electronic common deed (i.e. an electronic document containing the requisite electronic signature) is printed, this printed

copy loses the evidential value of the electronic deed. This logically follows from the definition of electronic signatures, which are defined as ‘data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication’ (article 2, 1° of the Law of 9 July 2001). By changing the nature of the document, from an electronic document to a paper document, the electronic signature contained in the electronic document no longer complies with the requirements in the definition of an electronic signature (‘data in electronic form’), nor can it be qualified as a handwritten signature.

This proved to be an impediment to the development of certain e-government services and, as a result, the Belgian legislator decided to implement a small change to the Law of 9 July 2001. A new paragraph was introduced in article 4 of the Law of 9 July 2001:³

‘§6. The signature of a holder of a certificate can be made manifest in an equivalent form that satisfies the requirements of article 2, §2, 2°.’

This new paragraph allows an electronic signature to be reproduced in any other equivalent form, providing that this equivalent form complies with the following requirements (which are the requirements for advanced electronic signatures):

¹ For a more detailed explanation of rule of evidence in Belgium, see Joachim Meese and Johan Vandendriessche, ‘Belgium’ in Stephen Mason, gen ed, *International Electronic Evidence* (British Institute of International and Comparative Law, 2008), 65-103.
² Law of 20 October 2000 introducing the use of telecommunications means and electronic

signatures in judicial and extrajudicial proceedings (Belgian State Gazette of 22 December 2000) and Law of 9 July 2001 establishing certain rules in relation to the legal framework for electronic signatures and certification services (Belgian State Gazette of 29 September 2001). For a translation of this legislation into English, see: Johan Vandendriessche, *Digital Evidence and*

Electronic Signature Law Review, 1 (2004) 67–74.

³ Article 2 of the Law of 15 February 2012 modifying the Law of 9 July 2001 establishing certain rules in relation to the legal framework for electronic signatures and certification services (Belgian State Gazette of 7 March 2012).

- (i) it is uniquely linked to the signatory;⁴
- (ii) it is capable of identifying the signatory;
- (iii) it is created using means that the signatory can maintain under his sole control;
- (iv) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

Currently a hybrid signature solution is already being used by two municipalities in Belgium for the provision of civil registry certificates to their citizens. The hybrid signatures solution used by these municipalities works by adding an electronic security stamp to the electronic document, which contains the data contained in the electronic document. When the document is subsequently printed, the electronic stamp can be scanned and verified, thereby guaranteeing the authenticity and integrity of the paper copy.⁵ In other words, the printed security stamp is a reproduction of the

electronic signature in equivalent form.

The hybrid signature is an interesting tool to close the gap between a paperless environment, where copies of electronically signed documents are in principle equal to the originally signed document, and an environment where paper is still required.

Finally, it is important to note that a hybrid signature solution may also be useful to increase the degree of trust that may be placed in paper certificates, even in the absence of any legal requirement concerning the signature of this certificate, because the hybrid signature solution also serves to warrant the integrity of the paper document upon which it is mentioned.

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4 It is impossible for any form of electronic signature to be retained under the exclusive control of a person, as amply illustrated in Stephen Mason, *Electronic Signatures in Law* (3rd edn, Cambridge University Press, 2012), pp 118-120. It is expected that it is for this reason that the European Union have proposed to amend art 2(1)(2)(c) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic

signatures, OJ L 013, 19.01.2000 p. 0012 – 0020, for which see ‘Proposal for a Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (Text with EEA relevance)’ {SWD(2012) 135}, {SWD(2012) 136}, COM(2012) 238/2, where the revised text in proposed new article 3(7)(c) reads ‘it is created using electronic signature creation data that the signatory can, with high level

of confidence, use under his sole control’, available at http://ec.europa.eu/information_society/policy/esignature/docs/regulation/com_2012_2038_en.pdf.

5 The cities of Antwerp and Mechelen use a hybrid signature solution developed by Inventive Designers (<http://www.inventivedesigners.com/products/intellistamp>) to provide civil registry certificates.