

Electronic signatures in Spain



Under Spanish civil law, generally, there are no specific required formalities for contracts. Therefore, such contracts can be concluded or issued by any means in which the parties may express their consent.

Consequently, as a general rule, there is neither any specific legal requirement to use a signature, or to stamp a signature in a particular format, whether a physical (or “wet”) signature or an electronic signature (or e-signature). There are only a few exceptions (e.g. mortgages, donations, etc.) where a specific legal provision requires special formalities, such as granting or incorporating an agreement into a notarial deed and/or registration in public Registries (such as Land Registry or Commercial Registry). In those cases, physical signature and/or appearance of the parties may be required.

In business practice, however, contracts are normally entered into in writing and signed in order for the parties to be able to explicitly evidence the existence and content of their rights and obligations, and ultimately to be able to confidently and predictably enforce their rights. Particularly, a signature, as a part of such contracts, is the most common and efficient way to evidence the consent of the parties to the specific terms and conditions agreed upon within a contract, especially should a later dispute occur and a Court needed to enforce the parties’ understanding.

Under Spanish Law 34/2002, of 11 July, on Information Society Services, contracts concluded by electronic means shall produce all legal effects under the same validity requirements as non-electronic contracts. The electronic format is considered admissible in Court as documentary evidence.

The use of electronic signatures is currently regulated by:

- Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 (“eIDAS Regulation”), and
- Spanish Law 6 /2020 of 11 November, on Trust Electronic Services, which locally develops certain elements of eIDAS Regulation and amends a number of Spanish pieces of legislation to ensure compliance with and effectiveness of the eIDAS Regulation. To further ensure that the provisions of the eIDAS Regulation are applied by Spanish Courts in legal proceedings where the authenticity of a document signed by electronic signature is challenged, Spanish Civil Procedural Law (Law 1/2000) was amended to reference Spanish Law 6/2020, of 11 November.

Under this legal framework, there are three types of electronic signatures:

1

Simple electronic signatures (SES): defined as the set of data in electronic form which is attached to or logically associated with other electronic data and which is used by the signatory to sign.

2

Advanced electronic signature (AES): an electronic signature that is (i) uniquely linked to the signatory; (ii) capable of identifying the signatory; (iii) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and (iv) linked to the data signed in such a way that any subsequent change in the data is detectable.

3

Qualified electronic signature (QES) or “digital” signature: an advanced electronic signature created by a qualified electronic signature creation device and which is based on a qualified digital certificate for electronic signatures.

As set forth in Article 25 of the eIDAS Regulation, an electronic signature (e-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. Therefore, an electronic signature of any of the above three types or levels is legally enforceable and admissible under Spanish law. A qualified electronic signature has the added benefit of shifting the burden of proof of the electronic signature’s validity onto the party challenging the signature.

Practical consequences

In practice, many contractual transactions are concluded using electronic signatures. The choice of the type of signature depends on the needs in each case. Simple electronic signatures are often used for a large majority of transactions, while advanced and qualified e-signatures typically are used in government transactions, highly sensitive transactions and in heavily regulated industries.

Support for electronic signatures in Spain

There are relatively few judicial decisions specifically ruling on the validity of electronic signature, which reflects a strong consensus that, as a general rule, a signature in electronic form is capable of being legally accepted as a valid and sufficient way to evidence and enforce legal rights and obligations. To help illustrate the current state of Spanish Court cases with regard to electronic transactions and signatures, below are several examples.

Electronic transaction and signature court cases

Granada's Court of Appeal, ruling of 19 July 2018

Contracting through DocuSign eSignature.

A bank claimed a debt under a consumer loan concluded by means of electronic contracting, through the DocuSign system.

The Court ruled that the certificate issued by the DocuSign entity, which accredits the debtor's electronic signature, and which appears at the top of all the pages of the contract **is enough to allow the contract to produce full legal effects**. Therefore, Granada's Court of Appeal understood that in accordance with the applicable legislation, the documents provided in the proceedings supported the good legal appearance of the existence of a contract by virtue of which there was an obligation to pay the claimed debt.

Madrid's Court of Appeal, ruling of 27 September 2019

AAP Madrid 249/2019

Contracting through an online banking account.

A loan contract was concluded through the bank's online service. The lawsuit was rejected as the first instance Court considered that there had been a failure to provide proof of the signatory's acceptance of the loan conditions.

Madrid's Court of Appeal ruled that all the necessary documentation was provided, including the supporting documents of the loan where the customer was informed that his handwritten signature was not necessary, since he had accessed his online banking account through his PIN number and had already signed the contract electronically. Therefore, **the loan must be considered electronically signed**, and in accordance with current legislation the Court considers that **this signature replaces the handwritten signature and has the same legal effect**.

Barcelona's Court of Appeal, ruling of 31 January 2019

SAP Barcelona 68/2019

Contract containing a scanned handwritten signature.

The bank claimed the amount owed was based on a loan contract signed with a consumer through an internet platform. The contract contained a scanned signature. The defendant argued that the signature was false and did not correspond to his personal one.

Barcelona's Court of Appeal stated that the handwritten and **scanned holographic signature produces legal effects**, as there was other factual evidence confirming that the consumer had actually entered into the contract.

**Barcelona's Court of Appeal,
ruling of 15 January 2019**

AAP Barcelona 6/2018

Contracting through an online banking account.

The defendant registered as a customer for online banking. The defendant contracted for a loan by entering his online banking passwords.

Barcelona's Court of Appeal considered that the first instance Court's argument for rejecting this lawsuit (it said that the claimant did not provide enough documentation to justify that these contracts were actually signed by the defendant) could not be accepted, because **the electronic contract signed with the online banking password was considered sufficient evidence.**

**Madrid's Court of Appeal,
ruling of 23 October 2019**

AAP Madrid 210/2019

Signing a lawsuit with a professional qualified electronic (digital) signature.

A lawyer digitally signed a claim on behalf of her client and the first instance Court rejected the claim for lack of a valid digital signature without providing further details on the defect.

Madrid's Court of Appeal set out the theory of the validity of electronic signatures and its applicable regulation, explaining that an electronic signature that does not meet the requirements of a qualified electronic signature **cannot be denied legal effect** on the basis of the electronic form in which it was presented.

The signatory proved that she had a qualified digital certificate issued by the General Council of Spanish Lawyers.

Comparison: Informal electronic signature vs. an electronic signing platform

Although a simple electronic signature (SES), such as a digital image of a person's signature or a digital PIN, can record the consent of the parties to be bound by a contract, there are risks associated with this simple type of e-signature.

The Court may reject these types of e-signatures, especially in cases where a party challenges the authenticity of the e-signature and the other party is not able to provide additional evidence to confirm that the document was actually accepted by the challenging party.

Risks that may be associated with such e-signatures include:

- It may not be clear whether a name or a squiggle that a party inserted in the document was intended to be a signature.
- An informal electronic signature or a scanned handwritten signature can easily be copied or reproduced in another document without the signatory's consent.
- An easily editable electronic document (e.g., a document lacking fraud evident protections) signed with an informal electronic signature may be thought to be less legitimate than documents signed in more secure ways.

To avoid these risks, in Spanish contracting practice, the use of e-signing platforms such as DocuSign eSignature, are used to generate more rigorous, legally admissible assent. In the case of DocuSign eSignature, the electronic signing process is tightly associated with an auditable structured step-by-step process whereby the signer electronically reviews and signs a document.

Document integrity

An informal electronic signature (e.g., a mere image of a signature) leaves open the possibility of dispute about what the signed document consists of, and whether it might have been subsequently altered. Secure e-signature platforms, such as that provided by a platform, like DocuSign eSignature, with digital audit trails and tamper evident document protections, substantially reduce this risk.

Identity of signatory

What if the signatory subsequently denies that they signed the document? Can we prove that it was them? Many businesses wish to have the flexibility to choose a level of identity assurance that reflects the nature of the document and the value and importance of the transaction.

In the business context, companies can choose the type of electronic signature deemed appropriate for the transaction with an associated level of identity authentication. Experience suggests that, for most transactions, businesses have found that the technological level of identity assurance of a qualified digital signature rarely is necessary, since a simple or advanced e-signature has been deemed sufficient for most transactions. When a heightened level of identity of the signers is truly needed, qualified electronic signatures may be used.

Disclaimer:

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