eDocuments
An outlook on legal issues in Europe

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Hamburg, March 2001
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How are today’s legal risks defined? Applications like B2C and B2B need safe document exchange from one IT system to another. The authors of the European Guideline on Community Parameters for Electronic Signatures of Jan. 19, 2000 accorded little or no urgency to the fact that digitally signed documents require edit-proof storage and archiving if they are to have legally binding character.

The guideline itself provides an excellent legal framework for improving user confidence in Internet security, but in turn creates new uncertainties. The future national laws will have to distinguish among three different forms of digital signature. The simple electronic signature serves only to authenticate a user, but says nothing about the content of a declaration. This authentication mechanism can be best compared to biometric processes such as retinal scans. The second version, the advanced electronic signature, possesses both authenticity and integrity, but places no special demands on the technical infrastructure. A certain amount of freedom is granted that allows every vendor to implement his own solution and interpretation of an advanced signature. The third or qualified signature essentially corresponds to that described in 1997 in the German Signature Law (SigG). However, instead of the obligatory approval process by trust centers there will be a voluntary accreditation process. Certification bodies will still be subject to government control, but the requirements for operating a trust center will be reduced to the level of rights and obligations.

The expansion and future potential of eCommerce have led to intensive discussion of the legal status of Internet transactions. The fully electronic processing of transactions whose legal status will rely on confirmation by a digital signature places new demands on their archiving. Following the primary technical testing of Internet applications and a phase, just getting underway, of the development of strategies for marketing information and services on the Internet, the need to save transactions will probably make electronic archiving an important topic. For example, in the discussion surrounding the implementation of the EU guideline there is talk of making trust centers archive completed transactions as neutral third parties, so that they can present these transactions in a court of law if need be. Legal security for all concerned will be achieved only when, in addition to a contract, the framework conditions for the contents of that contract are reproducible.

Future jurisprudence in Europe will therefore follow the following three principles, since these are what define eDocuments:

1. Digital Signature
   The digital signature will lend wings to Internet business, but there are still numerous problems few vendors have considered. The digital signature places new requirements on long-term electronic archiving, although many users are concerned more with solving organizational problems in the archiving process and less so with the legal recognition of electronic storage of documents and data. Even in the EU guideline there is no legal framework for the long-term archiving of digitally signed documents.

2. Electronic Archiving
   Despite the unstoppable advance of the digital signature, electronic long-term archiving is...
still on very shaky legs in almost every European country. Today, a limited level of legal security can only be attained through the documentation of the process used. In only a few European countries does the electronic form enjoy the same status as the written form of a signature. Often, even if the electronic signature is recognized, as in Italy, criteria are missing which would unequivocally identify an electronic document. In other words, laws almost without exception proceed from the written form as the norm. However, eCommerce will give new impetus to electronic archiving, since it requires all legally binding information to be archived, for example so that the condition of a website at a given point in time can be reproduced in order to confirm that a certain offer was in fact made.

3. eCommerce

On the one hand the new Internet technologies give eCommerce wings. On the other hand this environment necessitates complex mechanisms, up to and including the permanent archiving of individual transactions. This applies both to data processing volumes as well as to the reproducibility of complex interrelationships.

All European countries are called upon to implement the digital signature guidelines by next Spring. But the vital areas of eCommerce and electronic archiving are not regulated at the European Union level. Archiving is still a matter for individual countries, who handle it in varying ways:

• Numerous laws in Germany assume an image-like character for documents that involves a faithful reproduction of the original document. However, digital signatures secure only the content, not the form of the representation. And since the digital signature cannot be printed, judges’ reactions cannot be predicted, as is true for the legal recognition of archived documents in general.

• Italy has taken a different route. Electronic copies, mechanical reproductions and phototechnical copies have the same weight of evidence as do originals, as long as the opposing party in a legal dispute does not deny them. This effectively puts the electronic form on the same legal footing as the paper form, and no special requirements are made as regards storage and archiving. Therefore, the care taken in handling electronic documents is defined by the concept of “non-deniability”.

• In France next to no requirements are described for electronic documents. It is left to the business parties to agree on the way in which documents are exchanged. However, since the State can also be considered a business party, the State’s definition is a good guideline to follow.

• According to legislation in Great Britain files are admissible as evidence only when there exists no cause to doubt the contents, no system malfunctions could have influenced the contents, all other rules are observed, the reproduction can be presented in the desired form at the desired time, and any doubts can be eliminated through oral questioning. This means that the requirements are similarly stringent to those in Germany.

• Switzerland is similar to Italy in that it makes the written and the digital forms of a document equal. There are special requirements arising from the obligation to observe proper bookkeeping procedures in accordance with the type and size of the enterprise involved. Thus, in Switzerland no special criteria are attached to the digital form. Indirect requirements are placed on data storage, meaning that process documentation must not be neglected.

It quickly becomes obvious that eDocuments present legislative bodies with a completely new category of documents. eDocuments go beyond the classical form of the electronic document. For example, they include the configuration of an entire web application at a given time.
point in time. This configuration incontrovertibly discloses the conditions under which a transaction or agreement was made. The high organizational and technical requirements involved will be impossible for any small European web service vendor to fulfill without a certain legal framework.

In summary, Europe urgently needs a uniform set of rules for electronic archiving, so that there can be a secure legal status for eDocuments. There is still a need for regulations on the testing and certification of secure document transfer and archiving. An step in this direction has been taken with the effort to create an international “Records Management” standard (ISO/CD 15489). But unfortunately this standard does not go beyond traditional writing on paper, and is therefore of little or no use for electronic documentation for edit-proof permanent archiving. Another attempt by the international space agencies (OAIS Open Archive Information System) has been submitted to the ISO for standardization and would meet the need for such a guideline, but the 5 years or so it takes to implement international standards are hardly compatible with the information age.

Currently, eDocuments are subject to a variety of different national regulations in Europe. At the very least, the member countries should implement a uniform European guideline on digital signatures by early next year. But this is just a small part of what needs to be done. This guideline will pressure all countries to grant legal status to eDocuments, at the same time increasing the complexities involved in dealing with electronic documents. In addition to the as yet undefined procedures for the edit-proof archiving of electronic documents, there is also the problem of what to do about digitally signed electronic documents.

Whether a document is manually or digitally signed, the signature is not applied before creation and processing, but only before the document is sent. Using a DMS/archiving system, there are many technical possibilities for storing the signature. Regardless of the solution used, it should allow the signing of documents during processing. A distinction must also be made between incoming and outgoing documents, in terms of legal and technical aspects and also of the relevant objects. All of this makes it clear that while the right first steps have been taken, the complexities of eDocuments mean that much remains to be done.

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Dr. Ulrich Kampffmeyer, born in 1952, is the founder and president of PROJECT CONSULT GmbH, one of the leading independent management consultancies for business process organization, knowledge management and workflow in Germany. He is founder and managing partner of PROJECT CONSULT International Ltd., London.

He designed several document management products and supported a large number of vendors, distributors and users in planning, organization and implementation of such systems. To these users belong well-known german and international organizations, groups of combines and companies.

Dr. Kampffmeyer is a well-known keynote speaker, presenter and panelist on the subject of document management, workflow, groupware, business reengineering and organizational change management. His speaking engagements include national and international congresses and conferences as AIIM-Show, AWV, datacontext, dc, DMS, DLM-Forum, Documation, EUROFORUM, IMC, IIR EDOK, IIR Interflow, Online, VOI and others. Dr. Kampffmeyer is one of the rare german consultants and analysts who have an international reputation as the numerous invitations to presentations and keynotes abroad attest. His Keynote-Speeches „Document Management as IT-Infrastructure“ (1995), „The Future of Document Management“ (1997), „Paradigm Shifts in Document Management“ (1998), „Market Transitions: DRT Document Related Technologies“ (1999) and „Changes in Document Management – and where remains the human being?“ (1999) are regarded as contributions that are pointing the way for the whole DRT-field.

Within the Association of information and image management (AIIM), worldwide the most important association for document management, Dr. Kampffmeyer is one of the directors and member of the executive committee of AIIM Europe. For the major part he has played in the introduction of document related technologies and their applications in Germany he has received the "Award of Excellence" in 1992, the "Fellow of IMC" in 1994 and the Award „Fellow of Merit“ in 1997. He is also member of the Publication Advisory Group of the European AIIM „e-doc“ magazine.

As chairman of the board of the VOI "Verband optische Informationssysteme e. V." (trade association of German EDM manufacturers, distributors and integrators) from 1991 to 1998 Dr. Kampffmeyer gained detailed market knowledge in the segments of document management, workflow, groupware, electronic archiving and digital optical storage media. He is regarded as mentor of the DRT-field in Germany.

As an author for national and international magazines as Info21, Document World, e-doc, Office Management, Bit, Document Manager, Computerwoche, Markt & Technik, Information Week, Password, ComputerZeitung, Management Berater, INFOdoc and many other german and international magazines, Dr. Kampffmeyer published more than 220 articles about topics of document management in the past years.

He is author of the book „Document Management – Principles and Future“ as well as the German Codes of Practice „Fundamental Principles of Electronic Archiving“ and „Principles of the documentation of audit-proof records management“. He is also co-author of other European Codes of Good Practice.

Dr. Kampffmeyer takes part in standardizing groups as the AIIM Association for Information and Image Management International, WfMC Workflow Management Coalition, DMA.
Document Management Alliance, ODMA Open Document Management API and several ISO/DIN-groups.

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