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Guidelines for e-signature projects and for using electronic signatures by legal professionals

Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif
Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail ccbe@ccbe.org – www.ccbe.org

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I. Introduction

These guidelines are part of a greater scheme by which the CCBE seeks to assist the development of a safe and practical electronic environment for legal professionals throughout Europe. The electronic signature, which is the subject of these guidelines, is not be considered as an isolated matter that stops at the borders of national jurisdictions. The establishment of a greater scheme for European lawyers which will help to facilitate e-communication and make e-communication interoperable is inevitable to help facilitate freedom of services and freedom of establishment for lawyers. It will also help lawyers to interact safely and maintain their role as an independent part of the judicial system and within national e-government structures.

These draft guidelines for e-signature projects follow recommendations on electronic ID cards adopted by the CCBE at the Standing Committee on 13 October 2006. At a later stage this year, a Draft European Framework System for electronic ID cards for lawyers will be presented for decision. This framework system will be based on a technical standard, namely on a common Certification Policy for national certification authorities to interoperate digital certificates. With this European Framework System, the CCBE seeks to support its member bars in the implementation of electronic ID card schemes while at the same time making them interoperable for lawyers throughout Europe. The guidelines on electronic signatures are therefore to be seen as one step in an evolving system, and will hopefully create awareness among lawyers for the necessity of safe e-communication but also about the advantages for the profession it will bring.

II. Guidelines

The following activities are recommended to the bars:

1. To begin by researching existing successful e-signature schemes in other sectors. This is the quickest, safest and most economical way to develop their own systems.
2. To keep costs to a minimum by seeing whether it is possible to use an existing initiative for their own purposes, such as a national eID scheme.
3. To ensure that the chosen signature technology can produce qualified signatures (i.e. signatures satisfying the requirements of Article 5.1 of the Directive1999/93/EC on a Community Framework for electronic signatures which foresees a qualified certificate and a secure-signature-creation device.
4. To ensure technical interoperability, by using widely accepted standards for electronic signature products (e.g. the reference numbers of generally recognised standards[1] published in the European Commission's Decision of 14 July 2003, (2003/511/EC) which is in accordance with Directive 1999/93/EC on electronic signatures.
5. To draft proper underlying legal documentation for the scheme (signature policy, certificate practice statement, certificate policy).
6. To take steps to ensure long term archiving and long term validation (ensuring that the document is the correct document and that it has not been subject to any changes or amendments since originally archived).
7. To explain to their profession that e-Signature projects should not be dealt with in an isolated way, and that they should be incorporated in a global "paperless office" approach, including e.g. enterprise content management, electronic filing towards the courts, etc.
8. To consider the user friendliness of the chosen scheme, since most projects fail because the lawyer does not know how to use the system.
9. To make sure that the certificate contains an attribute relating to the legal profession or refers to a database – meaning that it is possible via the certificate to establish that the owner of the certificate is a qualified lawyer, either in the certificate, or by a reference in the certificate to an external database where such information may be found.
10. To consider the use of smart cards for storing the signature keys needed in the scheme.

[1] Annex to Commission Decision (2003/511/EC)
A. **List of generally recognised standards for electronic signature products that Member States shall presume**
are in compliance with the requirements laid down in Annex II f to Directive 1999/93/EC
— CWA 14167-1 (March 2003): security requirements for trustworthy systems managing certificates for electronic signatures — Part 1: System Security Requirements
— CWA 14167-2 (March 2002): security requirements for trustworthy systems managing certificates for electronic signatures — Part 2: cryptographic module for CSP signing operations — Protection Profile (MCSO-PP)
B. **List of the generally recognised standards for electronic signature products that Member States shall presume are in compliance with the requirements laid down in Annex III to Directive 1999/93/EC**
— CWA 14169 (March 2002): secure signature-creation devices