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ELECTRONIC EVIDENCE

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LEGAL TEXTS

- D.p.r. 513/1997 (abrogated)
- D.p.r. 445/2000
- Dir. 1999/93/EC
- D.lgs. 10/2002
 - European legislation on the harmonization in the evidentiary issues (Council regulation (EC) n. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters – not yet in force)



LEGAL EFFECTIVENESS OF ELECTRONIC DOCUMENT 1/2

The legal effectiveness of electronic document is present in various legal Italian documents such as the law on the protection of consumers in respect of distance contracts are considered as a valid form of performing contracts that has adopted the Directive 97/7/EC.

In particular Directive 97/7/EC

Art. 2 Definitions

(4) 'means of distance communication` means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties. An indicative list of the means covered by this Directive is contained in Annex I;

Annex I

Means of communication covered by Article 2 (4)

11th whereas concerns electronic mail



LEGAL EFFECTIVENESS OF ELECTRONIC DOCUMENT 2/2

- Directive 1999/93/EC on electronic signatures
- Directive 2000/31/EC on e-commerce

- e-mail is a valid form of concluding contracts
- electronic respects the legal formality of written form (i.e. written confirmation or confirmation in in an other durable medium available and accessible to him, art. 5 directive 97/7/EC)



LEGAL EFFECTIVENESS OF ELECTRONIC SIGNATURES

The legal effectiveness of electronic signatures is directly mentioned in the European Directive on electronic signatures

Art. 5 **Advanced electronic signatures** has to:

- 1) be based on a qualified certificate
- 2) created by a secure-signature-creation device
- 3) satisfy the legal requirements of a signature in relation to data in electronic form in the same manner as a hand-written signature satisfies those requirements in relation to paper-based data
- 4) be admissible as evidence in legal proceedings

Art. 5 **Electronic signatures** has to:

- 1) have legal effectiveness
- 2) be admissible as evidence in legal proceedings



THE ITALIAN LAW ON ELECTRONIC SIGNATURES: EVIDENTIARY WEIGHT

- Electronic document → mechanical reproduction (photograph)
- Electronic signatures → legal evidence free evaluated
- Digital signature or any other advanced electronic signature → conclusive evidence




DOCUMENTARY EVIDENCES

- Legal evidences.
- Documentary evidences could be primary or original.
- Secondary or reported evidence.



DOCUMENTARY EVIDENCES

- In common law the extrinsic evidence is not admissible to demonstrate through witnesses the content of a contract 
conclusive evidence
- In Italy the internal content of a written document can be proved by any proof, conclusive evidence is the authenticated signature such as a declaration of paternity of that document.
- The effectiveness of authenticated signature can be claimed by a particular proceeding called "*querela di falso*", a sort of action of declaration about the validity or the invalidity of a conclusive documentary evidence.



HAND-WRITTEN SIGNATURES

- The identification the person who signs
- Intent of signatory
- Confirmation that the signer has read and reviewed the contents of a document



SIGNATURES AND AUTOGRAPH

The difference between a signature and an autograph is that the former represents the intention to authenticate, then the requirement of the signature could depend upon the nature of the transaction.



EVIDENTIARY WEIGHT

- In Italy the hand-written signature assumes an evidentiary weight if it is:
 - a) authenticated by a public notary
 - b) not claimed in a legal proceeding
 - c) recognized by its author in a legal proceeding



DIGITAL SIGNATURE 1/2

- The digital signature is a particular advanced electronic signature that is able to guarantee a higher level of security.
- In Italy it is a conclusive evidence, without further proof. Solely with a particular proceeding it is possible to demonstrate the possible alteration of it.



DIGITAL SIGNATURE 2/2

The digital signature grants:

- 1) authentication
- 2) integrity of signed data
- 3) non-repudiation of the signature



ELECTRONIC DOCUMENT IN LEGAL PROCEEDING

- Delivery of documents
- Verification of the validity of electronic documents: it should be required a particular proceeding during a trial to guarantee the effectiveness of the defence



TRUSTED THIRD PARTIES

- TTP should be free to provide their services without prior authorisation
- Voluntary accreditation schemes aiming at an enhanced level of service-provision



CERTIFICATION-SERVICE-PROVIDER

- The trusted third party ensures that the holder of the private key related to the public key for digital signature is certainly identifiable.
- Article 6 of the European Directive on electronic signatures requires that the trusted third party will be liable for damages to any entity who reasonably relies on the certificate that it has issued.
- The same article requires that Member States shall ensure that the certification-service-provider may indicate the limitation of qualified certificate's use and of the value of transaction for which the certificate can be used.
- These limitations have to be recognized by third parties.



PROBLEMS

- The limitations of the using of certificate
- The misuse of digital signature
- The legal proceeding to demonstrate the fraudulent use of the digital signature.



Thank you for your attention

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