[FR] Publication of the Implementing Decree on Electronic Signatures

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Mathilde de Rocquigny
Légipresse

The Act of 13 March 2000 (see IRIS 2000-3: 12) has now amended the general provisions of the French Civil Code on literal proof by laying down the principle according to which "a document written on an electronic support has the same evidentiary value as a document written on a paper support". Article 1316-4 of the Civil Code contains new provisions on electronic signatures. According to paragraph 2, where a signature is "electronic, it consists of using a reliable identification process guaranteeing its link with the document to which it is attached. The reliability of the process is presumed, unless there is proof to the contrary, where the signature is created, the identity of the person signing and the integral nature of the document are guaranteed, under the conditions set by decree of the Council of State".

This implementing decree, of 30 March 2001, has just been published in the official journal. It lays down the conditions necessary for the validity of the electronic signature, which can thus be considered secure and can benefit from the presumption of reliability in the same way as a handwritten signature. The first condition for the validity of an electronic signature (section I) is that the hardware and software used for its creation must be certified by the bodies designated by an office authorised by the Prime Minister (Central Directorate for the Security of Information Systems). These bodies are to issue certificates of conformity, which will be made public. Article 3 of the Decree lays down two requirements, concerning firstly certainty as to the identity of the person signing, and secondly certainty as to the content being signed. To obtain certification, the hardware used for signature will be required to ensure that this cannot be falsified, that it is confidential, that it offers a satisfactory level of protection against any use by a third party, and that it must not be possible to alter the content of the document to be signed, while guaranteeing that the person signing the document is fully cognisant of the document in question. The Decree also states the conditions for checking an electronic signature (section II) and covers the content of "electronic certificates" guaranteeing the identity of the person signing a document. It sets out in detail the framework within which professionals (called "certification service providers") are to work; these professionals will issue the certificates (section III). This new text, which updates the law on proof in line with information technology, constitutes an initial step before the implementation of the full-scale Information Society Act, which will deal more particularly with e-commerce (see IRIS 2001-5: 14).

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