

Drafting an eSignature policy

A short introduction

1. Introduction

This document is intended to show relevant considerations for drafting an eSignature policy. It is intended as a starting point for drafting an own policy.

The Liquid Legal Institute provides this eSignature policy drafting two-pager including a short checklist as a public document. Members of the association further benefit from an example text for a policy which can ease the creation of an adapted policy even further. No example or checklist can, however, replace your own considerations, especially about organization and industry specific requirements.

The Liquid Legal Institute's [eSignature working group](#) provides several tools for implementing eSignature, including a [white-paper](#), a [vendor list](#) and a [starter kit](#).

Some US organizations have publicly available eSignature policies, e.g. [United States of America Internal revenue Service](#), [California Department of General Services E-Signature Toolkit](#), [US Environmental Protection Agency Electronic Signature Policy](#) and the [Washington State CIO Electronic Signature Guidelines \(including recommendation on how to approach writing the policy\)](#). We are not aware of similar examples from other jurisdictions.

2. Suggested steps

- Define the scope: Identify use cases and make a risk analysis (identify specific high-risk settings, if any, to exclude them from certain signature paths)
- Understand your internal policy requirements. Usually, corporate policies have a certain format, need to abide by certain criteria set by the company and might need alignment with other teams.
- Think about how the policy interacts with other policies, most prominently delegation of authority, signature authorizations and contracting rules.
- Think about which corporate functions' input you might need, amongst others IT (security and governance) and HR.
- When writing your first draft, consider the topics on the checklist.
- Decide on whether you want a hard (strictly enforced) policy, a somewhat softer one or rather just a guidance.

3. Checklist—topics to think about

When drafting the eSignature policy consider whether and how to include the following:

- ☐ Identify requirements/goals:
 - confidentiality of documents
 - evidence (authorization, non-repudiation)
 - workflow
- ☐ Choose requirements:
 - Acceptable use cases
 - Not admitted use cases (exclusions)
 - Assurance/reliability level signature
- ☐ Authorized personnel:
 - Initiating signature process
 - Authorized signatories
 - Stand-ins/Proxies
 - No signing by using other people's mailbox access
- ☐ List of items to check before signing:
 - Tax and corporate law requirements (for details see LLI eSignature white-paper)
- ☐ Procedure/Implementation
 - Has your organization already approved certain eSignature vendors for use?
 - What are requirements for non- approved vendors (e.g. trust and IT security)
 - Integration with internal approval process (internal requirements for an authorized signatory to sign the document)
 - Specifics for higher trust/identification requirements
- ☐ Technical integration
- ☐ Specific topic guidance
 - Handling of misrouted signature requests

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This introduction is written by Baltasar Cevc and Dr. Rainer Markfort. We would like to thank Jutta Löwe for her kind feedback.

An example policy is available to members of the Liquid Legal Institute e.V. in the internal workspace.

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