

# Supreme Court decides on enforceability of electronic promissory notes

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In 2015 the Supreme Court granted leave to appeal a case regarding the enforceability of an electronic promissory note (for further details please see "[Enforceability of electronic promissory notes](#)"). The electronic promissory note was not enforceable due to the fact that it was a negotiable instrument and an original document had not been presented. The promissory note had been executed by electronic signature and thus existed only as an electronic copy.

Pursuant to Chapter 2, Section 2 of the Enforcement Execution Code, a request for enforcement by the Enforcement Authority must be accompanied by the enforcement title on which the claim is based. In respect of a negotiable promissory note, that means that an original must be submitted. The existence of electronically signed loans that are classified as negotiable, in combination with this law, has led to legal uncertainty and has been an obstacle to enforcement for creditors.

The case was finally decided by the Supreme Court on November 2 2017 (Ö 5072-16). The court investigated whether the relevant electronic loan document was to be viewed as a non-negotiable or negotiable instrument, and settled that it was indeed a non-negotiable promissory note. This meant that the requirement to present an original to the Enforcement Authority did not apply after all, and the case was sent back to the Enforcement Authority for continued processing.

In a concurring opinion, Chief Justice Lindskog clarified the Supreme Court's stance that an electronically signed loan document may be classified under Swedish law as a negotiable promissory note, should the underlying technology allow for more of the features of a negotiable instrument to be tied to it (eg, the possibility for sole possession and control of the instrument to avoid fraudulent transfers). To prepare for such developments, the chief justice pointed out that the law on enforcement should be updated to work regardless of the underlying technology. This should be read in the context of an ongoing legislative project for updates to the Enforcement Execution Code (SOU 2016:81: *En modernare utsökningsbalk*, in particular Page 88) which gives an account of the unsatisfactory situation regarding electronic promissory notes that are viewed as negotiable instruments. It appears that the Supreme Court had urged the legislature to update the law, while the legislature had hoped for clarifying precedents from the Supreme Court.

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