



#USCCongress

IV International Congress University Smart Card

Lisbon - Portugal - April 7 - 8, 2016





IV International Congress
University Smart Card

European Regulation on Electronic Identification and Trust Services

Raúl Rubio

Baker & Mckenzie

Context

- It replaces the Directive 1999/93/EC and corrects some of its deficiencies:
 - Previously only the electronic signature was regulated.
 - Did not provide for any overall cross-border or cross-sector framework in the UE to guarantee that electronic transactions were secure, reliable, and easy to use

Main practical consequences of the new Regulation

- It regulates elements of electronic identity that already existed but which did not have their own legal framework. It also provides more importance to certain authentication or signature methods that already existed, such as electronic seals or electronic time stamps.
- It regulates **new identification and trust services**
- It establishes a more favourable environment in the EU for **cross-border transactions**, which will benefit any company that carries out electronic formalities and will boost the use of electronic contracting and electronic trade

Scope of application

- It is applicable to electronic identification **systems** that have been **notified** by Member States and to providers established in the EU
- It is not applicable to services used exclusively within closed systems subject to national law or to agreements amongst a defined group of participants
- It does not affect national or EU law related to contractual validity or other obligations or procedures related to legal form

Regulated Services

Type of Service according to eIDAS Regulation	Creation	Validation	Safekeeping/preservation
Certificate for Electronic Signature	✓	✓	✓
Certificate for Stamp	✓	✓	✓
Certificate for Website Authentication	✓	✓	NA
Signature	✓	✓	✓
Seal	✓	✓	✓
Time Seal	✓	✓	✓
Registered Delivery	✓	✓	✓
eID and authentication	✓	✓	NA

Electronic identification

- A framework is established for the **mutual recognition** of electronic identification between Member States
- Its most notable elements include:
 - A system to notify the EU Commission regarding the electronic identification systems used by the different Member States.
 - **Assurance levels:** “low”, “substantial” and “high” which must be specified.
 - Specific liability schemes
 - Interoperability of the national systems of electronic identification that are notified to the Commission

Trust services

- They consist of the creation, verification and validation of:
 - Electronic signatures
 - Electronic seals
 - Electronic time seals
 - Certificates for such services
 - Certificates for websites and the preservation thereof
- The Regulation distinguishes between qualified and non-qualified services and it establishes a specific liability regime for each
- Inverse burden of proof: the intention or negligence of a qualified provider is presumed

Supervision

- The Regulation regulates each Member State's obligation to appoint a national supervisory body that must cooperate with the other supervisory bodies in Europe
- Qualified service providers and the services they render are subject to supervision
- Measures can be taken against non-qualified service providers if it is made known that they are not complying with the requirements established under the Regulation
- Pre-authorisation regime for qualified service providers

Supervision

- Supervisory body (“SB”)
- Conformity assessment body (“CAB”):
 - Biannually: a conformity assessment report (“CAR”) is issued, at the expense of the QTSP
 - TÜV Nord, Bureau Veritas?, Applus?

Trusted Lists and the EU Trust Mark

- Each Member State will publish “trusted lists” with information regarding the service providers that are subject to supervision
- These lists will be signed electronically for the automated processing of said information.
- Qualified service providers may use the EU Trust Mark, guaranteeing that a link to the pertinent Trusted List exists on their website.

Qualified service providers : most notable elements

- Identification of **natural and legal persons**
- Third-party identification is expressly allowed (**registration authority**)
- Obligation to supply **information** regarding the validity and revocation of certificates in a manner that is automated, trustworthy, **free of charge** and efficient
- **Remote processing** of certificates is permitted
- Qualified providers of **validation and preservation services**, as well as of electronic registered **delivery services** have been established.

Electronic signatures in public services

- For cross-border uses, Member States **may not require** a higher level of electronic signature than the **qualified electronic signature**.
- The **attributes** of the certificates **shall not affect the interoperability** and recognition of the electronic signatures.

Calendar

- Partial entry into force on 14 September 2014:
 - Obligations of the Member States are established
- 18 September 2015:
 - Interoperability framework → certificate profiles
 - Common assurance levels
 - Signature formats → Suppliers of SW signing
 - TSL
- 16 July 2016
 - Complete entry into force → any services offered must comply with the Regulation
- 16 July 2017
 - Art. 51, establishes a one-year grace period for the PSCs to submit their CAR (*Conformity Assessment Report*)

Conclusions

- Providers are more closely monitored
- New regulated services
- Liability for Member States
- Commission holds more authority
- Interoperability is guaranteed in the medium term

