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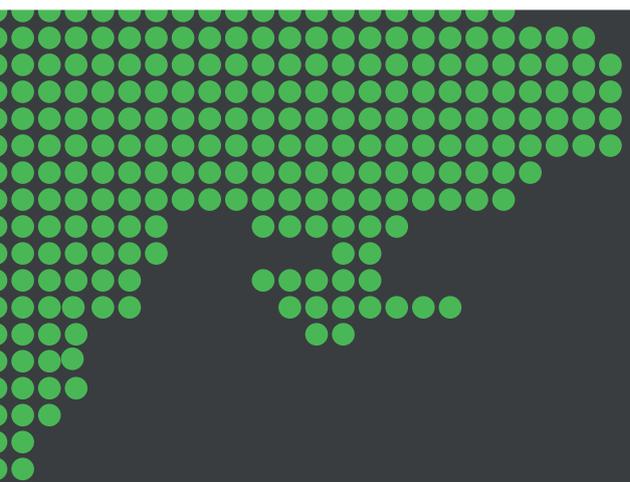
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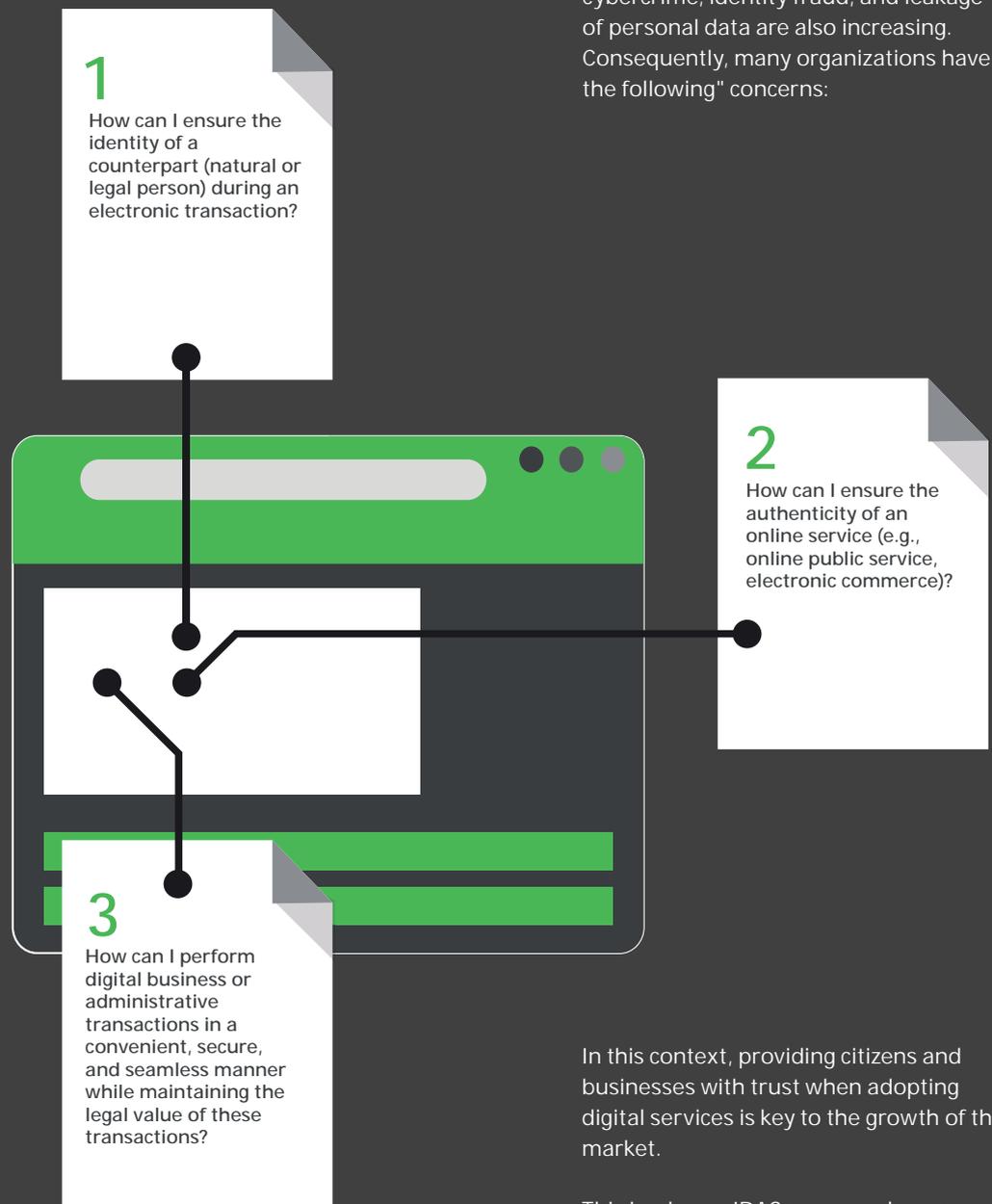


eIDAS

The EU as a
forerunner
in boosting
the digital
economy 

On 23 July 2014, the European Parliament and the Council of the European Union have adopted the regulation EU 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS regulation).¹ Repealing the European directive on a community framework for electronic signatures,² this new regulation aims at providing a common transnational foundation for secure electronic interaction between European citizens, businesses, and public authorities. Thus, by providing the building blocks for ensuring trust, convenience, and security in the online environment, eIDAS represents a major contribution to the European Digital Single Market.

Over the past 20 years, the rise and rapid evolution of information and communication technologies has led to new digital services and usage responding to customers' need for mobility, convenience, efficiency, and rapidity in the service response time. In the banking industry for example, this evolution was reflected by the development of services such as online and mobile banking and their rapid adoption by the customers. However, as these new electronic services grow in magnitude, the risks related to cybercrime, identity fraud, and leakage of personal data are also increasing. Consequently, many organizations have the following "concerns":



In this context, providing citizens and businesses with trust when adopting digital services is key to the growth of this market.

This is where eIDAS comes as leverage for the European Digital Single Market, addressing these concerns and accelerating the development of the business in a trusted and secure environment.

Electronic Identification

By 29 September 2018, a European citizen with an eID card, notified to the EU Commission according to eIDAS, will be able to access any online public service from any EU Member State and perform administrative procedures online with the same trust as if the person was physically present in the concerned administration.

Identifying a person without his or her physical presence will be possible through electronic identification, defined by eIDAS. As of today, several electronic identification means are deployed in the EU, either by the member states (e.g., electronic identity cards or eID cards) or by private actors (e.g., private smart cards, authentication tokens, or mobile applications). Without eIDAS, there is no mutual recognition of these eID means between member states, nor alignment on the level of assurance and trust offered by these eID means. For example, a Luxembourg citizen's eID card is not automatically recognized by other EU Member States for authentication for online services and electronic transactions.

This allows the development of cross-border digital administration services such as filling taxes, registering online to university programs, or accessing medical records online across the EU.

Nevertheless, the trust placed in eID means will depend on the level of assurance that they provide toward the identity of the physical or legal person behind them. The regulation defines three assurance levels—low, substantial, and high—that depend on different aspects, such as the applicant's identity verification process. The public sector bodies of each member state offering online services will define the assurance level required to access these services.

The recognition of the notified eID means by all EU Member States is mandatory as of 29 September 2018.

However, as of 29 September 2015, the Member States already had the option, on a voluntary basis, to notify their eID means to the European Commission, and to recognize the eID means defined by other Member States.³

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In practice, eIDAS gives EU Member States the opportunity to notify their eID means to the European Commission, and makes it mandatory for other member states to recognize the notified eID means on their online public services. As a concrete application of this provision, a European citizen with an eID card (among the list of notified eID means) will be able to access any online public service from any EU Member State and perform her administrative procedures online as if she was physically present in the concerned administration.

Mutual recognition of eID means will help break down the barriers related to electronic administrations within Europe. However, like for all electronic processes, the benefits also come with new risks and security matters. To address them, the regulation enforces the member states' accountability and responsibilities toward the eID means under their responsibility. Member states will be held liable for damages caused intentionally or negligently in a cross-border transaction due to a failure to comply with the regulation. In addition, in case of security breach affecting the reliability of the notified eID means, member states will have to suspend or revoke the cross-border authentication or the compromised parts and notify other member states and the European Commission. ➔

1. REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=EN>
2. DIRECTIVE 1999/93/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 1999 on a Community framework for electronic signatures: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0093&from=en>
3. "The first big step in eIDAS implementation accomplished" by Andrea Servida: <https://ec.europa.eu/digital-single-market/en/blog/first-big-step-eidas-implementation-accomplished>

“A qualified electronic signature shall have the equivalent legal effect of a handwritten signature”.

Article 25(2) of the eIDAS regulation.

Trust services

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Since 1 July 2016, eIDAS created opportunities for banks to remotely open clients' accounts, sign electronic contractual documents, validate electronic transactions, and deploy other electronic services while ensuring a cross-border legal value of these documents and processes within the EU.

Before eIDAS, when the European Union adopted the Directive 1999/93/EC on electronic signatures, the objective was the promotion of electronic signatures,

the development of international electronic commerce, and cross-border activities. However, the main shortcoming of the previous framework was that, as a directive, it was transposed differently in national laws, thus leading to a lack of harmonization between member states regarding the technical standards.

eIDAS addresses the cross-border harmonization of the legal value of eIDs within the EU. In addition, leveraging the new technologies and the development opportunities identified for the European Digital Single Market, the eIDAS regulation goes further by defining new trust services in addition to electronic signatures (cf. picture below).

EIDAS new trust services



Electronic seals

Trust service intended for legal persons to ensure the origin and integrity of data and documents



Electronic time stamps

Trust service aiming at ensuring the correctness of the time linked to data and documents



Electronic registered delivery service

Trust service aiming at transmitting data and documents between third parties and providing evidence relating to this transmission



Website authentication

Trust service that ensures visitors of a website of the identity of the legal person who owns the website



Validation service

for qualified electronic signatures, qualified electronic seals, certificates related to those services, and certificates for website authentication



Preservation service

for qualified electronic signatures, qualified electronic seals, and certificates related to those services

To address the risks related to the provision of these trust services and for ensuring an adequate level of security, the regulation defines security requirements for trust service providers in terms of risk management and security incident management.

Moreover, for each of the trust services, the regulation defines which are considered qualified trust service providers and qualified trust services. Even if all trust services benefit from the principle of non-discrimination as evidence in legal proceedings, only qualified trust services benefit from the presumption of reliability in legal proceedings (i.e., the presumption of integrity, correctness of origin, and accuracy) and cross-border recognition of qualified status in the EU Member States. In the specific case of qualified electronic signatures, the regulation goes even further by bestowing upon a qualified electronic signature to have the legal equivalent of a handwritten signature.

International aspects

With eIDAS, the EU positions itself as a forerunner in electronic identification and trust services, given that the regulation applies at the European continental scale. Several countries have implemented national legislations covering the legal value of electronic signatures. For example, in the USA, the applicable laws are the Electronic Signatures in Global and National Commerce Act (ESIGN),⁴ adopted by the federal government, and the Uniform Electronic Transactions Act (UETA),⁵ used as a baseline for state regulations. According to both laws, a signature shall not be denied legal effect or enforceability solely because it is in electronic form (ESIGN Section Sec. 101 and UETA Section 7). However, in the USA or in other third countries, even when national legislation exists, it only covers electronic signatures, and not other trust services.

Europe is a precursor on electronic identification and trust services, as eIDAS defines a common ground for all EU Member States on key foundations of the digital economy such as the electronic identification and the trust services. The European Union has also understood the need to open the European Single Digital Market to non-EU citizens, businesses, and administrations across the world. This topic has a dedicated article in eIDAS, titled "International aspects," which allows for the mutual recognition of trust services between the European Union and third countries under specific conditions.⁶

Conclusion

With the eIDAS Regulation, the European Union provided fertile ground for a trustworthy, secure, and convenient digital single market. In addition, as no similar regulation exists on the other continents, Europe positions itself as a forerunner and paves the way to remove the legal and regulatory barriers related to the cross-border digital transactions.

The eIDAS Regulation is a wonderful opportunity for the European Union to harmonize trust in digital services across the different member states. It is up now to European actors of the digital economy (citizens, businesses, and public authorities) to unlock the full potential of this regulation and to boost the growth of the digital economy. ●

4. <https://www.gpo.gov/fdsys/pkg/PLAW-106publ229/html/PLAW-106publ229.htm>

5. http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf

6. Article 14. 1. "Trust services provided by trust service providers established in a third country shall be recognised as legally equivalent to qualified trust services provided by qualified trust service providers established in the Union where the trust services originating from the third country are recognised under an agreement concluded between the Union and the third country in question or an international organisation in accordance with Article 218 TFEU"

