

The eIDAS Regulation: An Opportunity for Financial Services and Insurance?

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1. INTRODUCTION

More than 315m Europeans use the internet every day and the European Single Market offers access to more than 500m consumers. However, fewer than 4 percent of online services are offered across national borders, meaning that businesses actually reach only a restricted percentage of that population with their goods and services. A small percentage of consumers buy online from a site hosted in another EU country, and even fewer small enterprises risk internet sales to cross-border customers. Policymakers know that, to boost economic recovery in the EU, they must urgently remove obstacles to e-business.

In May this year, the European Commission responded to the challenge with the [Digital Single Market strategy](#) (DSM) which sets out 16 initiatives to set a firm foundation for Europe's digital future. Eye-catching initiatives include tackling online copyright concerns, consumer law and value-added tax.

Work dealing with trust and security for electronic transactions, initiated in 2011, is less well-known, although it is a central issue for DSM. This work has culminated in eIDAS, a new European regulation which sets the legal framework for electronic identification (eID) and a new regulatory and supervisory system for electronic trust services and providers in the EU (Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC). As such, the regulation should boost both e-commerce and cross-border digital public services.

In summary, it provides:

- Legal effects for qualified electronic signatures, seals, certificates for electronic seals, timestamps and documents as well as e-signature and e-seal creation devices.
- A legal framework for e-registered delivery services and website authentication services.
- The basis for eID schemes notified under the regulation in one member state to be recognised in

another.

- Security of personal data and breach notification requirements for all trust service providers.
- Supervision for qualified trust service providers (QTSPs), trusted lists and a trust mark for QTSPs to demonstrate compliance with the regulation.

The regulation comes fully into effect on July 1, 2016. As it is a regulation, it is directly applicable in the member states, without the need for national legislative measures. This September, formats for e-signatures and e-seals and other such details will be available, published as implementing acts by the European Commission.

This article reviews the preparations to put the regulation into practical effect, highlighting points of interest for cross-border financial services and insurance.

Taking some of the discussion points and bringing them up-to-date, we review as follows.

2. ALIGNMENT WITH OTHER EU LAW

The **Payments Services Directive** (soon to be PSD2), the **Anti-Money Laundering Directive** and the **Personal Data Protection Directive** will be familiar to readers of PaymentsCompliance as pertinent to the payments industry. If eIDAS is to fulfil its full potential and enable seamless cross-border electronic transactions, existing legislation and national implementing measures may need review to ensure full compatibility.

An example serves to illustrate: an online insurance distributor has devised a web video solution for client identification purposes. This is acceptable to supervisors in its home market for anti-money laundering purposes according to national implementing rules but there is no guarantee that it would be acceptable to another, were it to expand the online business to attract clients in another member state.

For payment service providers, once PSD2 comes into effect, there is greater EU harmonisation in that Article 87 requires member states to ensure payment service providers apply strong customer authentication. To avoid divergence in approach, the European Banking Authority (EBA), in close cooperation with the European Central Bank (ECB), must submit draft regulatory technical standards for adoption by the commission.

More generally, eIDAS has not been developed by the commission department, DG FISMA, responsible for financial services and insurance, although DG FISMA has provided input. The commission is open, therefore, to hearing about industry concerns, which, for financial services operators, could cover the abovementioned directives and their national implementing measures, as well as other network and information security matters such as guidelines on the security of internet payments.

3. EUROPEAN SINGLE MARKET

eIDAS should create incentives to digitise the European Single Market. When offering cross-border services, member states will have to recognise eID schemes notified under the regulation in another member state, but the private sector is under no such obligation. A key measure of success will be the extent to which commercial operators participate. The private sector is invited to incorporate eIDAS-notified eID schemes in their own identification and authentication processes. To encourage participation, certain measures have been put in place:

- Notified eID schemes will be designated according to defined levels of assurance — high, substantial and low — so that so-called “relying parties” can ascertain security levels.
- Interoperability and cooperation between member states and industry is encouraged.
- Liability provisions are clearly set out.

Given the considerable pressures from fraud and other cyber risks associated with e-finance, the private sector will benefit from close study of these aspects.

4. UPTAKE

The commission has held a series of stakeholder meetings throughout the year, the most recent being a **meeting** in London in June where financial services and insurance representatives discussed: eIDAS for cross-border finance; the legal and governance obstacles, how interoperability, security and attributes concerns could be addressed and how to educate the public of the benefits of using eID. There was strong support for the use of smartphones and other mobile devices to provide user-friendly trusted eID.

The commission is also assisting member states and private sector partners to explore innovative project ideas through the Connected Europe Facility (CEF), an EU funding programme. An example is **STORK2.0**. Part of this project is an e-banking component involving a bank in Austria and customers in Austria, Slovenia and Italy. The 2015 call will open in early October, with a deadline to submit proposals by January 19, 2016. The total budget available is €7m.

5. A FINAL WORD OF CAUTION

Despite optimism that eIDAS could have a significant impact on e-finance, cybercrime is a growing threat. The European Union Agency for Network and Information Security (ENISA) has drafted several reports over the last few years with recommendations for the sector. Two points stand out.

Mobile devices are particularly vulnerable. As more people use their smartphones for finance, incidents

have increased rapidly. Commercial operators are only too aware that the eID methods they select need to be adequate and some criminals can crack even two-step authentication processes. Professionals and customers need continuous education to stay one step ahead of the fraudsters; and more can be done to secure the e-finance environment (user devices and online applications).

As rightly pointed out in the most recent ENISA report, financial services institutions and insurers operating in the EU are often multi-jurisdictional operations, subject to foreign legislation and supervision. Key decisions are often not made in the EU. Lack of awareness of eIDAS and eID schemes could be a major factor against take-up.

More generally, with strong links to the United States (as well as Switzerland, Hong Kong, Singapore, the British Crown Dependencies, etc.), the finance sector is not limited to the EU and its e-security agenda. Operators may, therefore, regret the restrictions placed in the regulation on foreign trust services and trust service providers.

6. AUTHORS' DETAILS



Philip Woolfson, the managing partner of Steptoe's Brussels office, concentrates on European Union law of financial services, with a particular focus on insurance and reinsurance, and in related areas of French and Belgian law. He is well-known for his experience in European supervision of insurance and reinsurance undertakings and insurance intermediaries, regulation of their conduct of business and insurance contract law, in particular in a cross-border context. He also advises on various governance and compliance issues, such as anti-money laundering, protection of personal data and bribery and corruption, and on EU tax law and policy affecting the sector.



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