

Electronic signatures – legal and regulatory introduction

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With you today



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EU regulatory framework

eIDAS

Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market

- ▶ Electronic identification and authentication
- ▶ Trust services
- ▶ **Electronic signing**, sealing, stamping



National legal framework

eIDAS 2.0

Regulation (EU) 2024/1183 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework

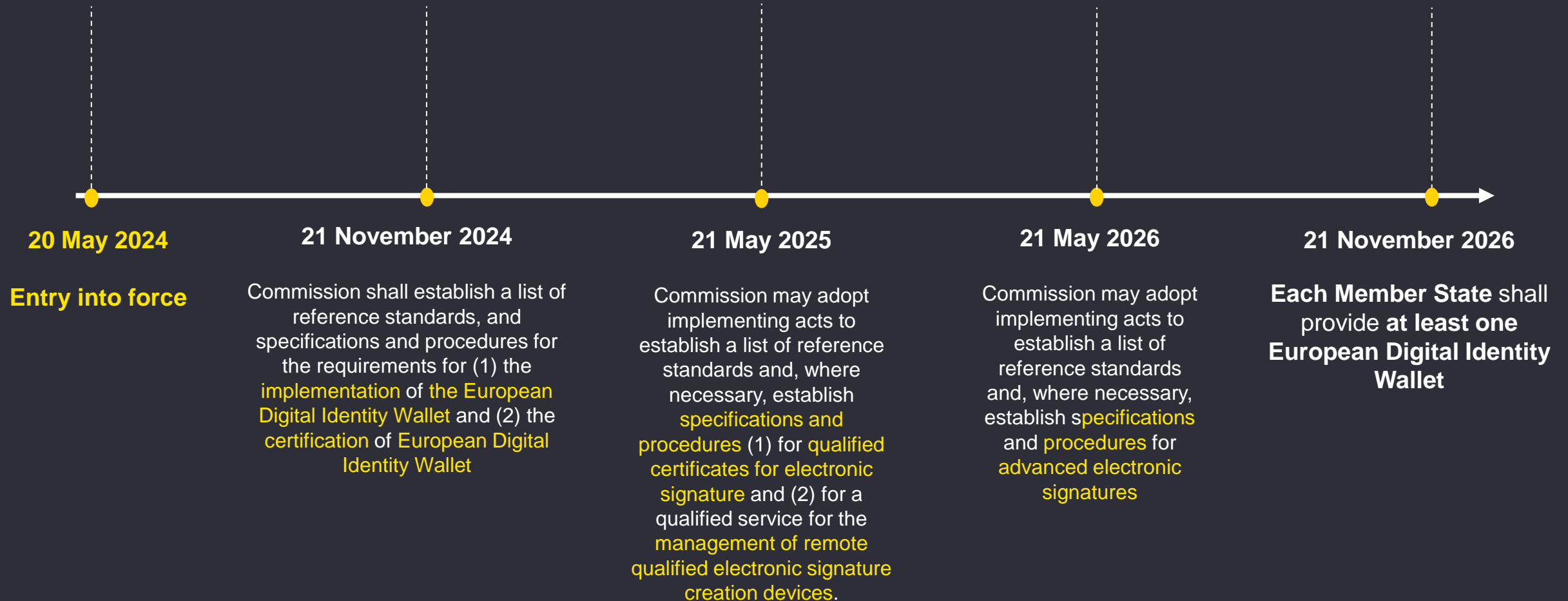
- ▶ eID Wallet: digital proof of identity for the entire EU
- ▶ Enhanced rules on identification
- ▶ Additional trust services

...no substantially new rules on electronic signatures, **but**:

- management of remote qualified electronic signature creation device
- validation of advanced electronic signatures based on qualified certificates



eIDAS 2.0 phased implementation



Legal regime

Civil (contractual) law

- Contractual freedom
- Expression of will
- Role of signature
- Means of evidence

Public law

- Dealing with public authorities
- Recognition by the state
- Means of identification
- Regulatory requirements

Practical issues – general case law

- ✓ Problem with simple electronic signature with regard to identification of a counterparty
- ✓ Ambiguity of the legal nature of an email with a written name and surname
- ✓ Provability (i.e. persuasiveness) of a (simple) electronic signature as legal evidence



Basic terms

eIDAS

Electronic signature

data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory (i.e. **natural person**) to sign

Electronic seal

data in electronic form which is attached to or logically associated with other data in electronic form to ensure the latter's **origin and integrity**

Electronic time stamp

data in electronic form which binds other data in electronic form to a particular time establishing evidence that the latter **data existed at that time**



eIDAS 2.0

European Digital Identity (eID) Wallet

electronic identification means which allows the user to securely store, manage and validate person **identification** data and electronic attestations of attributes for the purpose of providing them to relying parties and other users of European Digital Identity Wallets, **and to sign** by means of qualified electronic signatures **or to seal** by means of qualified electronic seals

Electronic identification

process of using person identification data in electronic form **uniquely representing** either a natural or legal person, or a natural person representing another natural person or a legal person

Authentication

electronic process that enables the **confirmation** of the electronic identification of a natural or legal person or the confirmation of the origin and integrity of data in electronic form

Validation

process of verifying and confirming that data in electronic form are **valid** in accordance with this Regulation

Levels of electronic signatures

eIDAS

eIDAS 2.0

(Simple) electronic signature		<p>Art. 26 eIDAS</p> <p>An advanced electronic signature shall meet the following requirements:</p> <ul style="list-style-type: none"> (a) it is uniquely linked to the signatory; (b) it is capable of identifying the signatory; (c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and (d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable. 	<p>Does not bring any change in categorizations and definition of electronic signatures.</p> <p>Art. 5a (5) (g) and last paragraph</p> <p>European Digital Identity Wallets shall, in particular, offer all natural persons the ability to sign by means of qualified electronic signatures by default and free of charge.</p> <p>Member States may provide for proportionate measures to ensure that the use of qualified electronic signatures free-of-charge by natural persons is limited to non-professional purposes.</p>
Advanced electronic signature..			
..without qualified certificate	..with qualified certificate		
Qualified electronic signature			

Electronic signature use cases





Agenda	Consent to the audit trail	Simple electronic signature	Advanced electronic signature		Qualified electronic signature
			Without qualified certificate	With qualified certificate	
Internal processes	✓	✓	✓	?	?
Private legal acts (HR, B2B, B2C)	✗	✓	✓	✓	✓
Legal acts against public administration (B2G)	✗	✗	✗	✓	✓
Cross-border legal acts (B2B, B2G, B2C)	✗	✓	✓	✓	✓

- ✓ Recommended variant
- ✓ Optional variant depending on application of electronic signature
- ? An inappropriate but possible option
- ✗ Unsupported/undesirable variant



Source: SEFIRA spol. s.r.o.

Electronic signature – overview of levels

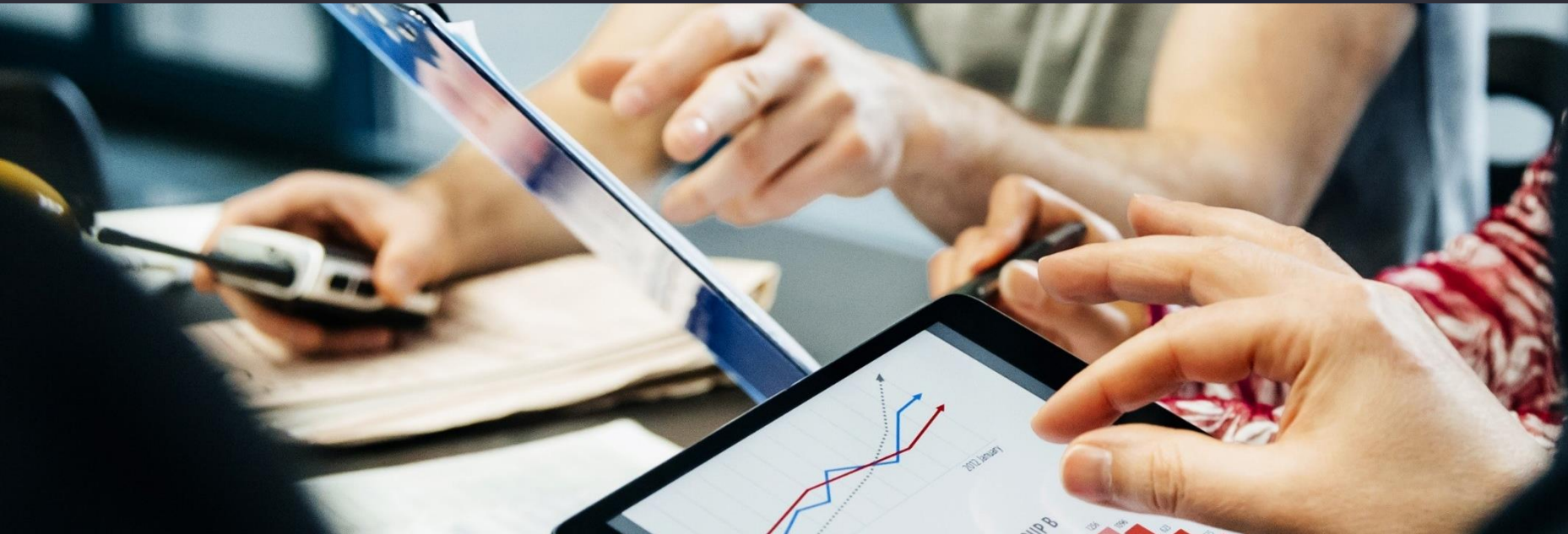
	Level	Description	Example	UX	IT costs
Online	Simple electronic signature / seal	<ul style="list-style-type: none"> Data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign 	<ul style="list-style-type: none"> SMS code, scanning of handwritten signature (without biometry), first transaction, email with a written name and surname (?) 	Difficulty for a client LOW	
	Advanced electronic signature (AdES) / seal	<ul style="list-style-type: none"> An electronic signature that is an electronic signature which is additionally: <ul style="list-style-type: none"> uniquely linked to and capable of identifying the signatory created in a way that allows the signatory to retain control linked to the document in a way that any subsequent change of the data is detectable Creating an advanced electronic signature using a qualified certificate for an electronic signature 	<ul style="list-style-type: none"> public-key infrastructure (PKI), which involves the use of certificates and cryptographic keys or transaction containing a unique code 	Difficulty for a client LOW	
	Qualified electronic signature / seal	<ul style="list-style-type: none"> An advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures Same legal effect as a handwritten signature according to eIDAS Recognized throughout the EU 	<ul style="list-style-type: none"> Qualified certificate issued by Certification Authority on the device (USB sticks, smartcard). 	Difficulty for a client HIGH	
Offline	Signature on a paper	<ul style="list-style-type: none"> A person's name written in a distinctive way as a form of identification in authorizing a document 	<ul style="list-style-type: none"> Handwritten signature 	Difficulty for a client LOW	

Identification – examples of methods (country specific)

	Method	Description
Remote identification	Simplified identification	<ul style="list-style-type: none"> Identification only based on provision of basic identification data Only for clients' and products categories with potential lower level of risk of abuse for the money laundering Natural person and legal entity
	Electronic ID	<ul style="list-style-type: none"> Carrying out the identification of a natural person who is a client or a natural person acting on behalf of a client through an electronic identification means that meets the requirements of the <ul style="list-style-type: none"> technical specifications, standards and procedures for a high level of assurance provided for by eIDAS and which is issued and used within the framework of a qualified system, or the conditions under which an electronic identification means may be used for the purposes of proving identity required by law.
	Acceptance of identification (micropayment)*	<ul style="list-style-type: none"> Identification based on upload of the main ID card and supportive document, provision of a proof of ownership of an account held on the appropriate name, realization of the first payment from the contract through an account held on behalf of the client For all types of products, direction of micropayment given (with exception) Natural person and legal entity
	Acceptance of identification (qualified electronic signature)	<ul style="list-style-type: none"> Identification based on provision of basic identification data and electronic signature For all types of products Natural person and legal entity
	Identification similar to physical identification through technical means (selfie)	<ul style="list-style-type: none"> Identification based on provision of basic identification data and upload of the ID card and taking a selfie / video For all types of products Only natural person
Face to face	Face to face identification	<ul style="list-style-type: none"> Face to face identification at a counter or by an intermediary For all types of products Natural person and legal entity

* PSD2 makes it possible to replace the submission of proof of ownership of an account held in the appropriate name and the making of the first payment by verifying a person using the payment account information service or the indirect payment order service.

Electronic signature + electronic identification
=
(not only)
European Digital Identity Wallet (eID)



Q&A

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