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Commercial analysis: How will the new regulation for the mutual recognition of electronic identification across member states work in practice? Gian Marco Rinaldi, a Milan-based lawyer at Bird & Bird, welcomes the development but warns the lawyers will need to be ready to advise on a host of issues.

Original news

Council adopts electronic identification rules

What is the aim of the new regulation?

The aim is to create a new legal framework for the mutual recognition of electronic identification for trust services across member states. This will include electronic documents, electronic signatures, electronic seals, electronic registered delivery services and authentication services for website identification. It is a welcome development and much needed as we have been dealing with a regime that was established under Directive 1999/93/EC which only dealt with electronic signatures. Not only that, since it was a directive, the law was implemented individually in all member states and as a result, there are differences now between national rules on electronic signatures. The new regulation does not set out to harmonise these different rules on electronic signatures but rather to create a new and uniform rule on the recognition of a whole variety of electronic identification procedures.

What does the regulation do?

As mentioned previously, it establishes a new legal framework for the mutual recognition of electronic identification in trust services and increases the scope of existing rules which only apply to electronic signatures. It will provide a very useful set of rules which public authorities, businesses and clients can rely on provided all the correct procedures are followed. In doing so, it will help streamline business. The new rules require member states to recognise, in certain circumstances, the means of electronic identification of natural and legal persons falling under a member state's electronic identification scheme which has been notified to the Commission. It is up to the member state to notify all or part of the scheme used at the national level.

Presently, the rules on electronic signatures are not the same in different member states as they have individually implemented the 1999 Directive. The new regulation should shortly receive formal assent and will come into effect immediately after that--for the most part, it must become effective on 1 July, 2016. There are some rules which will not become mandatory in 2016, but only in a second stage. The old signature directive will be repealed from 1 July 2016.

Are there any potential practical challenges?

There may be quite a lot of challenges in implementing the new rules. They will have to be applied across a number of fields including contract law and in different member states where the law on a variety of subjects is different. Even in civil law jurisdictions, each member state has its own rules on various subjects. Another issue may be that while the rules will be static, information technology is changing all the time and we will have to see how the rules will stand up as technology advances.

What are the implications for clients and what should lawyers be advising them?

It may depend on how much the clients use or intend to use devices like electronic signatures and seals and other trustee services. In Italy, I believe we use more digital signatures (a kind of advanced legal signature under the 1999 Directive) than anywhere--trustees, lawyers, public administrators, tax consultants use them. Many banks have also adopted solutions of advanced legal signature with their clients. But since the legal framework for this is about to change, everyone, including the trustee service providers, will need to understand the new rules and how they are to be implemented. Lawyers in particular will have to be advising afresh on this. We have some time until the new rules must be implemented. Legislators will have to look too at what legislation may need to be changed to keep abreast of the new rules.

Is there anything else that lawyers should be aware of?

We need to be aware of the fact that it is not just the rules on the mutual recognition of electronic signatures that will change. We have entirely new rules on matters like assurance levels of electronic identification schemes, electronic seals, electronic registered delivery services and website identification. Lawyers will have to be prepared to advise on these new issues.

How does this fit in with other developments in this area?

I think this regulation could help expand the scope of trust services. It may promote more faith in the security of e-commerce between different member states so it could act as a boost to trade in the European market. Then, it could improve the electronic relationships of citizens with public administrations. Some points of the regulation introduce new instruments such as different assurance levels of electronic identification schemes so we will have to see how these instruments will be concretely implemented by European institutions and if and how they will be adopted by users.

Interviewed by Diana Bentley.

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