



**IDENTITIES ON THE MOVE**  
Documents Cross Borders

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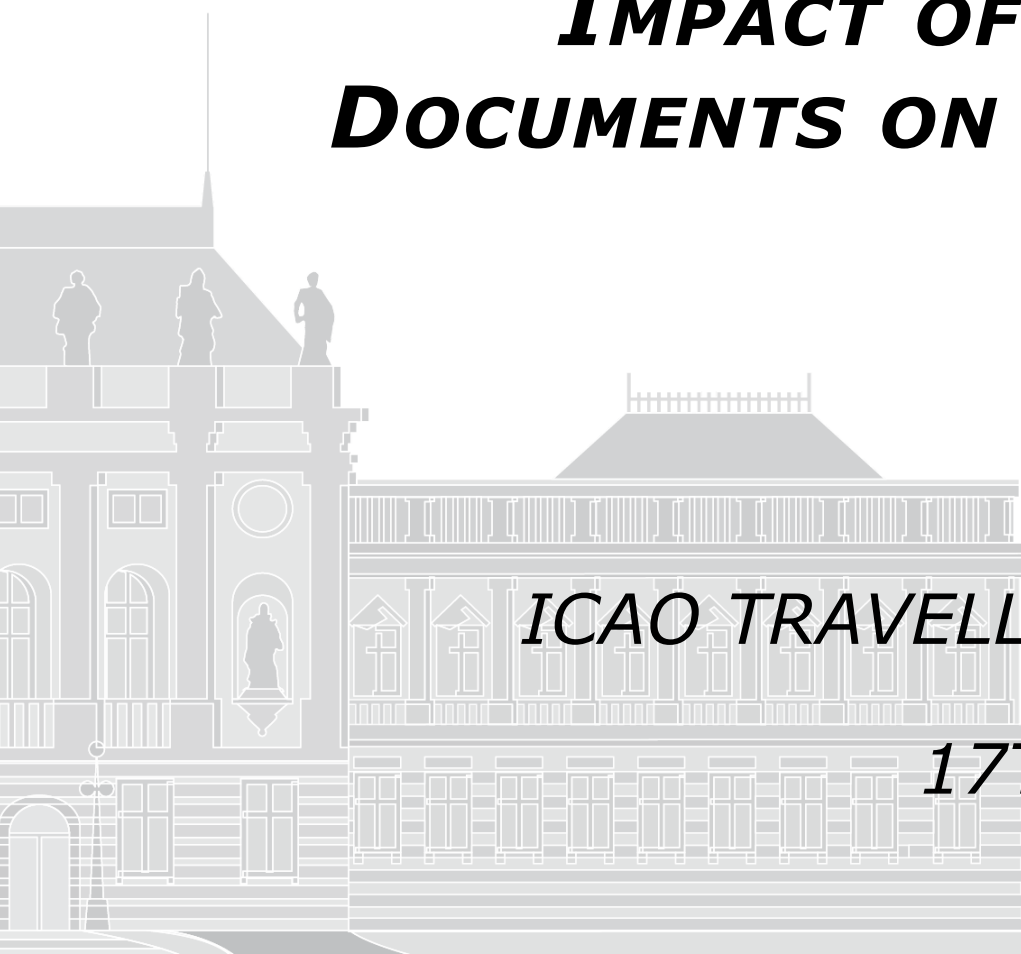


# **IDENTITIES ON THE MOVE: *IMPACT OF ELECTRONIC DOCUMENTS ON BORDER CONTROL***

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# ELECTRONIC PUBLIC DOCUMENTS: PRESENT or FUTURE of the EU?

- More and more pure data records, without any layout
- The use of XML-schemas
- XADES digital signatures
- Direct transmission of electronic records among EU Member States

# Border control

When it comes to children and family status, evidence given at the border may consist of public documents.

These documents may be presented in electronic form. Some forms are somehow harmonized (e-apostille), others are not.

The EU has established eIDAS standards.

EU electronic public documents may have several national standards (QRs etc.).

Towards an integration within the same document of e-seals/signatures and QRs or equivalent codes.

# Focus on the EU and public documents

In 2018 a new Regulation entered into force:

*Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012*

# Key points in relation to border control (1)

The Regulation covers documents in relation to the facts they certify, among them:

- *Citizenship*
- *Residence*
- *Family status (marriage, registered partnership, parenthood)*

For some of these documents there are multilingual standard forms (in all EU official languages). E.g. NOT for parenthood!

They bear value only if attached to the public document.

## Key points in relation to border control (2)

The Regulation also removes any obligation to legalize or apostillize public documents for use within the EU

This applies also to national border control authorities

The Regulation does not cover ID documents

# Art. 26: Review clause

The COM Report for 2021 and for 2024 shall also contain an assessment of the appropriateness of (Art. 26.1.c and 26.2.c):

*the use of electronic systems for the direct transmission of public documents and the exchange of information between the authorities of the Member States in order to exclude any possibility of fraud in relation to the matters covered by this Regulation.*

# LET'S FIND SOME ANSWERS

The Regulation is far too silent when it comes to e-documents, whose circulation (but not use) falls within the field of application of the Regulation.

Best practices should be exchanged (see Art. 23), but...

There is too a grey area



# THE REGULATION

Recital No 9 states:

*This Regulation should also cover electronic versions of public documents and multilingual standard forms suitable for electronic exchange. However, each Member State should decide in accordance with its national law whether and under which conditions public documents and multilingual standard forms in electronic format may be presented.*

# THE REGULATION

Recital No 44, third period, announces the exact wording Article 18.2:

*This Regulation is without prejudice to the application of Union law on electronic signatures and electronic identification.*

# TYPES OF ELECTRONIC DOCUMENTS

We may classify the types of electronic documents as follows:

1. A digitized certified copy of a paper document (subdivided by standards of electronic signatures or seals or codes)
2. An original electronic document (subdivided by standards of electronic signatures or seals)
3. An electronic document that bears a code (bar code, QR-code)
4. A digitized copy of a paper document without any electronic signature or seal
5. A file without signatures or seals or codes of any kind

# EIDAS AND ELECTRONIC DOCUMENTS - EFFECTS

The eIDAS definition of 'electronic document' (Art. 3, No 35) is:

*any content stored in electronic form, in particular text or sound, visual or audiovisual recording;*

Compare definition of 'evidence' in the SDG Reg.

## Article 46 – eIDAS Regulation

### Legal effects of electronic documents

*An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form.*

# TYPES OF E-SIGNATURES AND SEALS

According to the eIDAS regulation:

- Electronic signature/seal
- Advanced electronic signature/seal
- Qualified electronic signature/seal

# TYPES OF E-SIGNATURES AND SEALS

## Article 25 – eIDAS Regulation

### Legal effects of electronic signatures

1. An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.
2. A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.
3. A qualified electronic signature based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic signature in all other Member States.

# DOES eIDAS BIND MEMBER STATES?

## Recital 21, last periods – eIDAS Regulation

*Neither should this Regulation cover aspects related to the conclusion and validity of **contracts** or other legal obligations where there are **requirements as regards form laid down by national or Union law**. In addition, it should not affect **national form requirements pertaining to public registers, in particular commercial and land registers**.*

# e-DOCS BEYOND eIDAS: EKOFRUKT

National standards and terminology:

The use of a 'professional electronic signature' → Pending case *Ekofrukt*, C-362/21. Questions to the ECJ:

1) Is Article 25(1) of [the eIDAS Regulation] to be interpreted as meaning that it is impermissible for an administrative act issued in the form of an electronic document to be declared invalid if it has been signed with an electronic signature which is not a 'qualified electronic signature'?



# e-DOCS BEYOND eIDAS: EKOFRUKT

Pending case *Ekofrukt*, C-362/21. Questions to the ECJ:

- 2) Is the entry of a 'qualified electronic signature' in the certificate issued by the trust service provider sufficient for a finding to be made whether or not an electronic signature is a qualified signature, or must the court establish compliance with [eIDAS standards]?
- 3) In a case such as that referred to above, in which the provider qualifies the electronic signature as 'professional', is that circumstance sufficient to establish that there is no 'qualified electronic signature', in the absence of a qualified certificate from the provider, or is it necessary to establish whether the signatures fulfil the requirements for a qualified electronic signature?
- 4) Name in Latin and not Cyrillic script in the certificate

# ISSUING ELECTRONIC DOCUMENTS

Member States are free to regulate whether and how to issue electronic public documents.

Even under the Single Digital Gateway Regulation there are no obligations. See Article 6.2.c:

*the output of the procedure is delivered electronically, or where necessary to comply with applicable Union or national law, delivered by physical means;*

They may use standards beyond eIDAS.

# RECEIVING ELECTRONIC DOCUMENTS: WHAT TO DO

EU Member States (including border control authorities) should not consider the Regulation Recital No 9 as giving *carte blanche*

- Recitals are not binding and e-docs are the future: citizens cannot end in a *cul-de-sac*
- Principle of non-discriminatory State practice should apply. This is in line with eIDAS and eIDAS sets the standards. Compare SDG Regulation

# What is problematic?

Member States define what is also an electronic public document and they could be electronic documents that do not comply with a qualified e-signature or seal under eIDAS standards, such as:

- Files without any signature or code
  - Files with only graphic codes for verification (barcode, QR-code, alphanumeric string)
- Up to the receiving Member State to accept these public documents? Yes, including border control authorities

For developments on the circulation of public documents visit [www.identitiesonthemove.eu](http://www.identitiesonthemove.eu)

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