



EUROPEAN COMMISSION

Brussels, 21.2.2013  
C(2013) 711 final

Dear President,

*The Commission would like to thank the German Bundesrat for its Opinion on the proposal for a Regulation on "electronic identification and trust services for electronic transactions in the internal market" {COM(2012) 238 final}.*

*The Commission welcomes the Bundesrat's support for a Regulation encompassing the different tools needed to provide a secure environment for cross-border electronic transactions.*

### **1. Scope of the Regulation**

*Regarding the impact of the proposed regulation on the rules governing public registers at national level, it is important to highlight that the aim of the proposed Regulation is not to interfere in Member States' national procedures and/or the approach to the establishment and maintenance of registers, nor to regulate contractual agreements in closed environments. In this regard, article 34(3) has to be understood as providing legal equivalence for a specific form of documents which should be accepted as such across the Union independently of the Member State where they have been issued. The rules applying to the procedures as well as the type of evidence requested rest within the competence of the Member States.*

### **2. Electronic identification**

*The proposed Regulation sets out minimum rules to ensure that electronic identification and authentication means enabling access to public services at national level are mutually recognised and accepted throughout the EU. The Commission would like to underline that guaranteeing access to online services does not mean that the potential rights given by such services are open to the person having been identified. Therefore, the distinction between "non-discriminatory services" and "discriminatory services", if any, still remains in national law when applying the provisions of the Regulation.*

*Moreover, the proposed Regulation establishes that the provision of cross border on-line authentication should be free of charge vis-à-vis third parties to avoid the possible development of surreptitious markets; thus preventing also unfair competition.*

Mr Winfried KRETSCHMANN  
President of the Bundesrat  
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*With regard to security levels, cooperation mechanisms are set up in the Regulation under article 8 to develop a constant dialogue and cooperation between Member State to ensure that the security of the notified electronic identification schemes is adequate with regard to the evolution of technology and of the risks.*

### **3. Electronic trust services**

*Concerning electronic signature (article 3(8)), whilst the Directive 99/93/EC provides definitions of both an electronic signature (as "data in electronic form which are attached to or logically associated to other electronic data") and the purpose of using it (as "a method of authentication"), the proposed Regulation only defines an electronic signature in relation to handwritten signature to avoid any interference with National legislation referring to the use of electronic signatures.*

*With regard to Bundesrat's comment on article 18(2) on trusted lists, the Commission emphasises that this article builds upon article 2 of Commission Decision 2009/767/EC that will remain applicable with the exception of the parts that are explicitly covered in the proposed Regulation. In addition, the Commission highlights that a secured and machine readable list of national trusted lists already exists ([https://ec.europa.eu/information\\_society/policy/esignature/trusted-list/tl-hr.pdf](https://ec.europa.eu/information_society/policy/esignature/trusted-list/tl-hr.pdf)).*

*Concerning article 20(4), the Commission stresses that the provision will not interfere with Member State's decisions to require a security assurance level below that of a qualified electronic signature to carry out transactions with online services. On the other hand, in such cases there will be an obligation for Member States to accept electronic signatures matching, at least, the requested security assurance. As this mechanism will be important to facilitate cross-border transactions such as electronic public procurement or electronic invoicing, delegated acts are foreseen in article 20(6) to support the collective effort to determine, with regard to the risk involved, meaningful security assurance levels for electronic signatures.*

*The Commission highly appreciates the support provided to the introduction of electronic seals within the proposed Regulation. The Commission highlights that the proposed Regulation would not assimilate an electronic seal to an electronic signature for legal persons, as only a natural person should be able to use an electronic signature (as there is always a natural person behind the legal person). Conversely, the proposed Regulation provides for an electronic seal to be recognised as a tool to ensure authenticity of the origin and integrity of a document and, as such, it would not impact civil and criminal law concerning rights and obligations of the legal representatives of a legal person.*

*With regard to Bundesrat's comment on article 33(1) of the proposal on electronic time stamp, the Commission highlights that voluntary standards will establish how to match the requirements for qualified time-stamps under article 33(1), in particular those on the accurate time source and the accurate link of time to data. Such standards may, once compliance is demonstrated, be then referenced in the implementing act foreseen under article 33(2).*

#### **4. Delegated acts**

*With regard to the observations and concerns expressed by the Bundesrat on delegated acts, the Commission would like to emphasize the importance of having, in view of the objectives pursued by the draft Regulation, a flexible legal instrument to ensure legal certainty in an area which is characterised by frequent and unforeseeable technological developments. In this context, the proposed Regulation provides for a set of minimum rules and principles designed to withstand future legal challenges and so to ensure the proper functioning of the legislative act. It does not detail those non-essential elements which are considered to be of a more technical nature and do not require political choices falling within the responsibilities of the European Union legislature as underlined by the Court of Justice in a recent judgement<sup>1</sup>, and may need regular updates to take into account the fast evolution of technology and practices.*

*The Commission hopes that these clarifications address the observations and suggestions made by the German Bundesrat and looks forward to continuing our dialogue on these important issues.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>1</sup> C-355/10, "Schengen Borders Code", 5.09.2012, p. 65.