



the global voice of  
the legal profession®

# European Regional Forum News

Newsletter of the International Bar Association Legal Practice Division

**NO 7 APRIL 2016**



persons and arrangements; and  
 • facilitate international cooperation.

The Directive criminalises:

- travelling for terrorist purposes, both within and outside the EU, to counter the phenomenon of foreign terrorist fighters;
- the funding, organisation and facilitation of such travels, including through logistical and material support, including the provision of firearms and explosives, shelter, means of transportation, services, assets and goods;
- receiving training for terrorist purposes. Law enforcement will be provided with the possibility to investigate and prosecute training activities having the potential to lead to the committing of terrorist offences;
- providing funds used to commit terrorist offences and offences related to terrorist groups or terrorist activities.

The Directive also strengthens provisions criminalising recruitment, training for terrorist purposes and the spread of terrorist propaganda, including on the internet. Terrorist groups have demonstrated advanced

skills in the use of the internet and new communication technologies to disseminate propaganda, interact with potential recruits, share knowledge, plan and coordinate operations.<sup>1</sup>

The Directive also lays out new rules, complementing the Directive on rights for victims from 2012 (Directive 2012/29/EU), to ensure that victims of terrorism receive immediate access to professional support services providing for physical and psycho-social treatments as well as immediate information on their rights, independently of where they live in the European Union.

Note

<sup>1</sup> On 16-17 December 2015, in New York, the United Nations Security Council Counter-Terrorism Committee held a special meeting on preventing terrorists from exploiting the internet and social media to recruit terrorists and incite terrorist acts, while respecting human rights and fundamental freedoms. This meeting was complemented by United Nations Counter-Terrorism Committee Executive Directorate-organised thematic sessions.

# The EU Regulation on electronic identification and certification services: paving the way forward towards more secure internet transactions

**T**he constant development of the internet and new technology progressively and relentlessly changes the world in which we live, communicate, do business and exercise our citizen rights. And as difficult as it might sometimes be, the legislator enthusiastically endeavours to keep up with the pace of the digital reality. A recent and vivid example of an attempt to adapt the online world to the administrative reality, existing within the physical one, is the European Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market, repealing Directive 1999/93/EC<sup>1</sup> ('the Regulation').

The Regulation addresses the need for establishment of valid, legitimate and mutually recognised means for electronic identification and for the introduction of workable certification services, and thus reaches new heights in the pursuit of building up trust amongst stakeholders within the internet environment. Stepping on previous European legislation, such as the E-Signatures Directive,<sup>2</sup> the Regulation is designed to further remedy the fragmentation of the European digital market by introducing rules directly applicable within the whole European Union and by creating appropriate conditions for the mutual recognition of key enablers such as electronic identification, electronic

## EUROPEAN UNION

**George Dimitrov**

Dimitrov, Petrov & Co  
 Law Firm, Sofia  
 george.dimitrov@dpc.  
 bg

**Svilena Dimitrova**

Dimitrov, Petrov & Co  
 Law Firm, Sofia  
 svilena.dimitrova@dpc.  
 bg

documents, electronic signatures, electronic seals, electronic time-stamping, electronic registered delivery service and website authentication.

One of the two notable aims of the Regulation is to remove the existing barriers to the cross-border use of electronic identification means commonly used in the Member States to authenticate, in as much as these barriers prevent EU citizens from operating with their electronic identification to authenticate themselves in another Member State, and service providers from enjoying the full benefits of the internal market. The Regulation faces this challenge by introducing the principle of mutual recognition between EU Member States which are now bound to gradually proceed to recognising each other's electronic identification means, issued under a notified identification scheme, for the purpose of the cross-border use of public services. In order to ensure the effectivity and the workability of the mechanism, the Member States will cooperate and guarantee that the electronic identification schemes, notified to the Commission and published in the Official Journal, are interoperable. For the purposes of ensuring interoperability, the Regulation provides for the establishment of an interoperability framework, which will involve a reference to minimal technical requirements related to assurance levels, a mapping of national assurance levels, a reference to minimal technical requirements for interoperability as well as to a minimum set of person identification data, arrangements for dispute resolution and common operational security standard. As most of the mechanisms introduced by the Regulation, the interoperability framework is bound to abide by the principle of technological neutrality, to follow European and international standards, to facilitate the privacy-by-design and to ensure that personal data is lawfully processed.

Further to the introduction of the mutual recognition mechanism in the European legal arsenal, the Regulation designs a general legal framework for the use of a number of trust services, namely electronic signatures, electronic seals, time-stamping, electronic registered delivery service and website authentication. This framework includes a set of horizontal principles which apply with regard to trust service providers and their activity, as well as specific rules relating to the use of trust services.

Pursuant to the Regulation, trust service providers may be 'qualified' and 'non-qualified'. Despite the difference between them,<sup>3</sup> both qualified and non-qualified trust service providers may be held liable for damages caused intentionally or negligently to customers - natural or legal persons, due to a failure to comply with the obligations under the Regulation, unless customers have been duly informed of the limitations of the respective trust service. In addition, both qualified and non-qualified trust service providers are bound by the requirement to take the appropriate technical and organisational measures to manage the risks that the provision of trust services implies. Further to the general rules, applicable to both qualified and non-qualified service providers, the Regulation provides qualified trust service providers with additional rights and obligations which are deemed to further increase the transparency of the market. On the one hand, a noteworthy advantage which qualified service providers may benefit from is the possibility to use the EU trust mark<sup>4</sup> to indicate in a simple and recognisable way the service they provide. On the other hand, qualified service providers are subject to a set of additional requirements pertaining to the use of verification means for the purposes of issuing qualified certificates for trust services to natural or legal persons, the information obligation in case of change of the provision of qualified services, the personnel, the liability for damages, the technical security and reliability, and the trustworthiness of the data storage systems.

In addition to the general framework on the qualified and non-qualified trust service providers and on their activities, the Regulation further develops rules regarding each of the introduced trust services. In general, these rules substantiate the need to ensure that electronic trust services are recognised with the same legal effect as their tangible analogues, and are not denied legal effect and admissibility as evidence in legal proceedings only because of their electronic form.

Finally, it is noteworthy that the Regulation's added value and contribution to the development of the European digital single market may be appreciated not only through the legal innovations it brings in substance to the EU legal framework but also through its methodological and procedural approach with regard to the adoption, enforcement and application of its rules.

In order to complete some technical tasks in a timely and convenient manner, the European legislator has delegated to the European Commission the power to adopt secondary legislative acts. In addition, the Regulation is designed in such a way so as to provide Member States with enough time to prepare internally and to adopt convenient procedures and properly set up mechanisms to fulfil their obligations under the new legal framework. Although the Regulation entered into force on 17 September 2014, provisions regarding electronic trust services will start applying as of 1 July 2016. Member States are already given the option to voluntarily recognise other Member states' notified e-identification schemes, however provisions regarding the mandatory mutual recognition of e-identification schemes are previewed for mid-2018. This progressivity and graduality in terms of enforcement clearly reveals the European legislator's pursuit of legal certainty for market operators, users and public

bodies, and affirms its intention to slowly but certainly pave the way towards more secure online transactions. Such improvement of the digital environment we live and work in today is a major step towards the opening up of new economic, social and business opportunities.

#### Notes

- 1 Official Journal L 257, 28.8.14, 73-114.
- 2 Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, Official Journal L 013, 19.01.00, 12-20.
- 3 Qualified service providers are those who provide one or more qualified trust services and are granted the qualified status by a Member State's supervisory body. Non-qualified service providers are those who do not provide qualified trust services under the meaning of the Regulation.
- 4 According to Recital (1) of Commission Implementing Regulation (EU) 2015/806 of 22 May 2015 laying down specifications relating to the form of the EU trust mark for qualified trust services, the aim of the EU trust mark is to clearly differentiate qualified trust services from other trust services, which would essentially contribute to transparency in the market by fostering confidence in and convenience of online services which are essential for users to fully benefit and consciously rely on electronic services.

## To BD or not to be

**B**usiness development (BD) is an integral part of the lawyers' daily work and embedded into law firm culture in many ways. In the current market, characterised by intense competition amongst firms and more demanding clients, a structured approach for the right kind of work with the right type of clients is essential for economic success. The market for legal services is as diverse as are the various service providers – small, medium, large law firms, alternative legal service providers – there is no 'one size fits all' approach for business development. Only one element trumps everything and all players in the legal market share this, which is the need of clients for premium legal services at the best combination of price, speed and quality. The question is not to engage in business development but to do it in a planned, organised and strategic manner.

In order to utilise business development to its full potential we are making the distinction between business development as a function and as a process.

### BD as a function

Each lawyer has made inroads into business development – even a regular chat with a client is a business development exercise. So each lawyer is acting in a functional sense as he/she is likewise in a human resources, financial or IT function. The integration of this function within a law firm is dependent on the structure of the law firm, for example by size, geography or market position. Sometimes lawyers do feel overwhelmed with the complexity of the task at hand due to the education focus on delivering premium law advice. To be sure, there is a lot of natural talent for business development in the lawyers' community but some do have difficulties adapting to a business development mindset. It is therefore very important to understand that business development is as crucial for the success of a law firm as delivering premium law advice.

In addition, lawyers do always work under time constraints with even tighter daily schedules, so when time is invested in business development it should be done

## EUROPEAN UNION

### Thorsten Zulauf

Law Firm Change  
Consultants, Munich  
thz@lawfirmchange.  
com