EUid Wallet

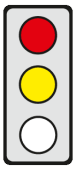
cep**PolicyBrief** No. 25/2021

KEY ISSUES

Background: Until now, the EU has lacked solutions for a digital identity solution which could be used across borders allowing people to identify themselves and make use of services requiring identification.

Objective of the Regulation: Member States will be obliged to provide "EUid wallets" for cross-border use - e.g. in the form of an app - in which inter alia personal identification data can be stored.

Affected parties: Natural and legal persons, very large online platforms, regulated sectors such as banks.



Pro: EUid wallets have the potential to strengthen the internal market, accelerate interaction with public authorities and generate gains in efficiency.

Contra: (1) EUid wallets are not public goods. Member States should therefore make use of the option to engage private actors to develop EUid wallets or recognise wallets developed by private actors as EUid wallets.

(2) The obligation for regulated sectors and very large online platforms to accept EUid wallets gives EUid wallets an unreasonable competitive advantage over other identity solutions.

(3) The Commission's right to extend, by way of delegated acts, the group of companies that must accept EUid wallets is in breach of primary EU law.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2021) 281 of 3 June 2021 for a **Regulation** amending Regulation (EU) No 910/2014 **as regards establishing a framework for a European Digital Identity**

Brief Summary

Note: Article numbers refer to Regulation (EU) No 910/2014 ("eIDAS Regulation") which is being amended.

- **Context and objective**
  - Digital identity solutions, e.g. in the form of an app, enable users, in particular, to
    - identify themselves digitally to a third party, e.g. if stopped by the police,
    - make use of services which require identification, such as the online submission of a tax declaration, and/or
    - submit credentials digitally, e.g. training certificates.
  - The existing digital identity solutions include e.g. [Impact Assessment p. 7 et seq.]
    - private digital wallets for identification purposes such as Thales, Indemia and Verimi,
    - the login systems of online platforms ("social login") such as Google Sign-In and
    - digital identity solutions used by banks such as BankID.
  - According to the Commission, however, these often have limited functionality or a low level of security and data privacy, or are limited to specific areas of use [Impact Assessment p. 7 et seq.].
  - By amending the eIDAS Regulation [(EU) No. 910/2014], the Commission wants to oblige Member States, in particular, to provide a digital identity solution which can be used across borders ("EUid wallet") [p. 9].

- **Function of the EUid wallet**
  - The EUid wallet enables natural and legal persons to store the following information [new Art. 3 No. 21 and 42]:
    - Person identification data: This is data which establishes identity such as name, address or tax reference number [Art. 3 No. 3].
    - Credentials: These are proof of a person's abilities, experience, rights or permissions, such as driving licence or business permit [new Art. 3 No. 52].
    - Attribute: This is a characteristic such as age, gender, vaccination status or legal form [new Art. 3 No. 43].

    The EUid wallet must enable integration of the legal identity of natural or legal persons as established by the Member States [Recital 9].
  - Each Member State must "issue" an EUid wallet within 12 months of entry into force of the Regulation. Issuance is carried out by [new Art. 6a (1) and (2)]
    - the Member State itself,
    - private actors mandated by the Member State or
    - private actors whose digital identity solution is recognised as an EUid wallet by the Member State.

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– The information stored in an EUid wallet allows the user [new Art. 3 No. 42, new Art. 6a (1) and (3)]
  - to issue and use electronic signatures and seals, e.g. for the purpose of signing paperless documents in a legally sound manner and to guarantee their origin and authenticity, and
  - to authenticate himself/herself when using a cross-border public or private online or offline service offered by a third party that accepts the EUid wallet (so-called "relying party"). Member States can decide whether authentication should also be possible when using national services.
– "Relying parties" can use the EUid wallet to request and validate, via an interface, person identification data and attestations of attributes, and thereby authenticate users [new Art. 6a (4) (a) and (d)].
– Each Member State must provide technical validation mechanisms to allow [new Art. 6a (5)]
  - verification of the authenticity and validity of an EUid wallet,
  - relying parties to verify the validity of attestations of attributes, and
  - relying parties to verify the authenticity and validity of person identification data.
– The technical specifications for the requirements applicable to EUid wallets will be established by the Commission in implementing acts [new Art. 6a (11)].
– Use of the EUid wallet is free of charge to natural persons [new Art. 6a (6)].

► **Acceptance of the EUid wallet**
– Relying parties wishing to accept an EUid wallet must first notify the Member State in which they are established of the intended use of the EUid wallet [new Art. 6b (1)]. Member States will develop a "common mechanism" for the authentication of relying parties [new Art. 6b (2)]. The Commission will establish technical and operational specifications for this by way of implementing acts [new Art. 6b (4)].
– The following actors are obliged to accept EUid wallets in cross-border cases:
  - "Public sector bodies" – i.e. in particular public authorities and private entities acting at their behest –, insofar as they require electronic identification for use of an online service [Art. 3 No. 7, new Art. 12b (1)].
  - Companies that are required by law or by contract to use "strong user authentication" for online identification, e.g. banks [new Art. 12b (2)]; "strong user authentication" means an authentication based on at least two of the following elements [new Art. 3. No. 50]
    - user knowledge, e.g. password,
    - user possession, e.g. smartphone,
    - user inherence, e.g. fingerprint.
  - Very large online platforms - i.e. those with an average of at least 45 million active users in the EU -, insofar as they require user authentication to access online services. The acceptance obligation aims to provide users with better protection against fraud and secure a high level of data protection [Recital 28].
– Very large online platforms may only request those user attributes necessary for the specific online service, e.g. proof of age [new Art. 12b (3)].
– The Commission shall encourage the development of self-regulatory codes of conduct by service providers in order to contribute to wide availability and usability of the EUid wallet [new Art. 12b (4)].
– Within 18 months of deployment of the EUid wallet, the Commission must assess whether to require - by means of delegated acts - additional private online service providers to accept the EUid wallet. Assessment criteria may include the extent of user base, cross-border presence of service providers, technological development and evolution in usage patterns. [Art. 12b (5)]

► **Security and data protection of the EUid wallet**
– EUid wallets must meet a "high" level of security, i.e. identity fraud using an EUid wallet must be virtually impossible [new Art. 6a (4) (c) in conjunction with Art. 8].
– The issuer of the EUid wallet [new Art. 6a (7)]
  - is not allowed to collect information about the use of the EUid wallet unless it is necessary for the provision of the wallet,
  - is not permitted, without the consent of the user, to combine person identification data, or any other personal data, with personal data from any other services offered by this issuer or by a third-party, and
  - must keep personal data "relating to the provision of EUid wallets" separate from any other data.
– The issuing Member State must suspend issuance without delay, revoke the validity of the EUid wallet and inform the Commission and the other Member States in case of [new Art. 10a]
  - breaches of an EUid wallet, such as where a criminal extracts private information, or
  - compromises affecting the reliability of an EUid wallet, e.g. because the validation mechanism does not work properly.
– Once the breach or compromise of reliability has been remedied, the issuing Member State must re-establish issuance, revoke the invalidity and notify the Commission and other Member States without undue delay [new Art. 10a (2)].
– The issuing Member State must withdraw an EUid wallet permanently, and inform the Commission and other Member States without undue delay, if the breach or compromise is "sufficiently severe" or is not remedied within three months [new Art. 10a (3)].

- **Technical framework of the EUid wallet**
  - A "structured process of cooperation" will be established between the Commission, Member States and the private sector [Recommendation C(2021) 3968, Recitals 9 and 11].
  - This should ensure the cross-border functionality of the EUid wallet and, in particular, create the technical architecture, thereby counteracting any obstacles arising due to varying technical standards ("Toolbox") [Recommendation C(2021) 3968, Recitals 9–11].

Statement on Subsidiarity by the Commission

Only intervention at EU-level can ensure that users have access to cross-border digital services requiring authentication, and that online service providers can rely on secure digital identity solutions, irrespective of where in the EU they have been issued.

Policy Context

The EU Commission strategy on Shaping Europe's digital future [COM(2020) 67] describes the advancement of trustworthy digital identities as a key EU measure. The Communication "Digital Compass 2030" [COM(2021) 118] establishes the target to make available an eID solution for 80% of EU citizens by 2030. The proposal for a Regulation is accompanied by a Recommendation from the Commission for a common and coordinated approach towards a European Digital Identity [C(2021) 3968].

Legislative Procedure

3 June 2021	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Communications Networks, Content & Technology
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: Romana Jerkovic (S&D Group, HR)
Federal Ministries:	Economic Affairs and Energy (leading)
Committees of the German Bundestag:	TBA
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

The obligation for Member States to issue EUid wallets will enable citizens and companies, in particular, to identify themselves electronically across borders, in a manner that is both secure and in line with data protection requirements, and enable relying parties to gain access to their legal identity as well as to verified attestations of attributes.
EUid wallets based on a common technical architecture do, in fact, **have the potential to strengthen the internal market, accelerate interaction with public authorities and generate gains in efficiency**, as e.g. media interruptions during identification can be avoided.
The provision of legal identities for integration into the EUid wallet must be done by the State. **EUid wallets** themselves, **however, do not constitute public goods** requiring issuance by the State. **Member States should therefore** always **make use of the option to engage private actors to develop EUid wallets, or recognise wallets developed by private actors as EUid wallets** where they meet the requirements of the Regulation. This would facilitate competition for the best EUid wallets.
Identity solutions generally benefit from network effects: a larger number of relying parties using a certain identity solution will attract more users who in turn will attract even more relying parties. **The obligation for regulated sectors and very large online platforms**, as well as, in future, other online service providers, **to accept EUid wallets** will generate these network effects in a quasi-regulatory manner. This **gives EUid wallets**, whether issued by a Member State or privately, **an unreasonable competitive advantage over other digital identity solutions** that have not been expressly recognised.

This in turn gives rise to the danger of accepted identity solutions being forced out of the market due to regulatory provisions. The acceptance obligation should therefore be rejected. At best, such an obligation is appropriate for the cross-border use of services offered by public authorities, as it simplifies the use of cross-border services and increases employee mobility, thereby strengthening the internal market.
The introduction of the EUid wallet and the acceptance obligation for very large online platforms is also a reaction to the increasing success of identity solutions used by the platforms. However, it is not the task of the State to limit their success by favouring its own solutions. Instead, the Commission should apply competition law if it finds that there has been an abuse of market dominance. Alternatively, ex-ante obligations for large online platforms may also be advisable – such as those set out in the Digital Markets Act (see cep**PolicyBrief** 14/2021) –, if they are considered necessary in order to prevent certain anti-competitive practices and ensure that the markets for identity solutions remain contestable.

Legal Assessment

Legislative Competence of the EU

The Regulation is correctly based on the internal market competence (Art. 114 TFEU).

Subsidiarity

Unproblematic.

Proportionality with Respect to Member States

In order to guarantee interoperable identity solutions, it is appropriate to issue a Regulation.

Compatibility with EU Law in other respects

The Commission's right to extend, by way of delegated acts, the group of companies that must accept EUid wallets is in breach of primary EU law. The Commission is only permitted to issue delegated acts in order to supplement or amend certain non-essential elements of a legislative act (Art. 290 TFEU). Policy decisions cannot be delegated to the Commission. This is what the Proposal does, however, because the Regulation fails to provide the Commission with any clear indication of the extent to which it can extend the obligation to accept the EUid wallets. The definition of who is required to accept the EUid wallet is an essential element as the wallet's success depends on acceptance.
The obligation to accept the EUid wallet is in breach of the freedom to conduct a business [Art. 16 CFR]. Although protecting users against fraud and ensuring a high level of data protection are legitimate reasons for restricting a fundamental right, it is not clear why obliging regulated sectors and online platforms to accept the EUid wallet is necessary in this regard. If the identity mechanisms of certain companies are in breach of the GDPR, these should be met with measures under the GDPR and not with the obligation to accept EUid wallets.

Summary of the Assessment

EUid wallets have the potential to strengthen the internal market, accelerate interaction with public authorities and generate gains in efficiency. They are, however, not public goods. Member States should therefore make use of the option to engage private actors to develop EUid wallets or recognise wallets developed by private actors as EUid wallets. The obligation for regulated sectors and very large online platforms to accept EUid wallets gives EUid wallets an unreasonable competitive advantage over other identity solutions. The Commission's right to extend, by way of delegated acts, the group of companies that must accept EUid wallets is in breach of primary EU law.