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LAW IN DIGITAL  
ENVIRONMENT

ПРАВО В ЦИФРОВУЮ  
ЭПОХУ

New EU legislation on electronic identification and trust  
services for electronic transactions"  
(EU Regulation 910/2014 of 23 July 2014)

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In 1999 the EU introduced a legal framework for electronic signatures

DIRECTIVE 1999/93/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 13 December 1999  
on a Community framework for electronic signatures

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>,

Whereas:

(1) On 16 April 1997 the Commission presented to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a Communication on a European Initiative in Electronic Commerce;

(2) On 8 October 1997 the Commission presented to the European Parliament, the Council, the Economic and

(5) The interoperability of electronic-signature products should be promoted; in accordance with Article 14 of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods is ensured; essential requirements specific to electronic-signature products must be met in order to ensure free movement within the internal market and to build trust in electronic signatures, without prejudice to Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods <sup>(5)</sup> and Council Decision 94/942/CSP of 19 December 1994 on the joint action adopted by the Council concerning the control of exports of dual-use goods <sup>(6)</sup>;

(6) This Directive does not harmonise the provision of services with respect to the confidentiality of information where they are covered by national provisions concerned with public policy or public security;

(7) The internal market ensures the free movement of persons, as a result of which citizens and residents of the European Union increasingly need to deal with authorities in Member States other than the one in which they reside; the availability of electronic communication could be of great service in this respect;

# European Directive 1999:

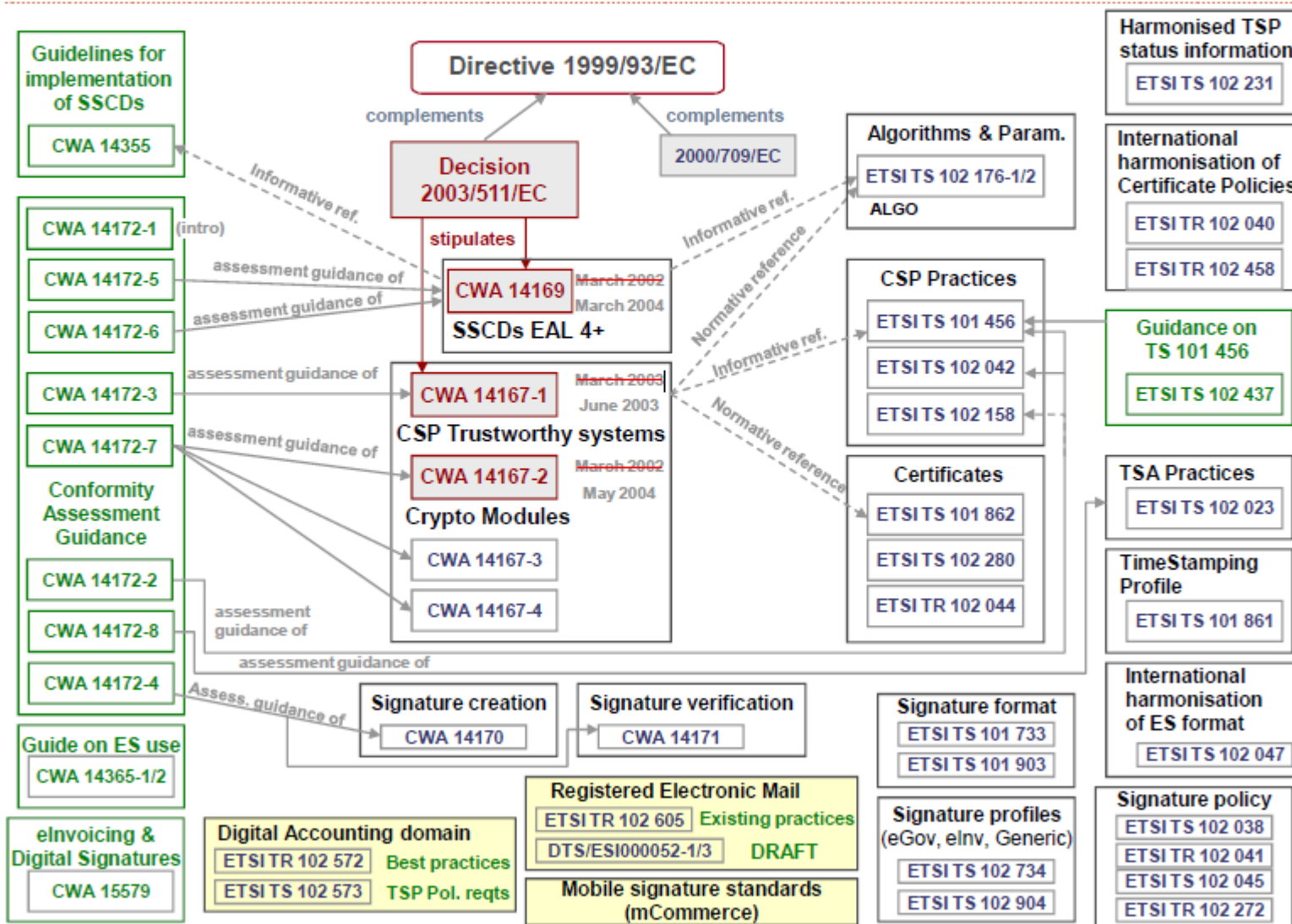
“qualified” = “equivalent” (to handwritten signatures)



OK, but ... When is an electronic signature “qualified”??

# EU eSignature Standardisation Work overview

(© SEALED, 2007)



# So, why didn't we use it?

- too complex?
- no services available?
- not relevant in our jurisdiction?
- national legislation is more flexible
- **regulating signatures is not sufficient (= only one part of the chain)**
- signatures are no longer needed

REGULATION (EU) No 910/2014  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014  
on electronic identification and trust services  
for electronic transactions in the internal market  
and repealing Directive 1999/93/EC

<http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32014R0910>

# Content

1. Recognition of **electronic identification** means of natural and legal persons falling under a notified electronic identification scheme of another Member State
2. Rules for **trust services**, in particular for electronic transactions
3. Legal framework for
  - a) **electronic signatures**
  - b) **electronic seals**
  - c) **electronic time stamps**
  - d) **electronic documents**
  - e) **electronic registered delivery services**
  - f) **certificate services for website authentication**

# e-Identification: mutual recognition

- mutual recognition of electronic identities is complex (not all e-id's will be recognised for all circumstances)
- the rule will be:
  - if an online (government) service in a Member State requires access authentication by means of an identification (card, username + password, ...)
  - then this service should be accessible for identification means
    - notified by other Member States and
    - having the same or an higher assurance level
- to implement this rule, you need a number of things (therefore: transition period till 2016)



# Trust Services

- Definition
- Regulate?
- Non-qualified
- Qualified
  - Supervision
  - Annual audit
  - EU trust mark
  - Reversal of burden of proof



# Legal framework for:

- a) electronic signatures
- b) electronic seals
- c) electronic time stamps
- d) electronic documents
- e) electronic registered delivery services
- f) certificate services for website authentication

**qualified or not?**



**IF** service fulfils conditions xyz ...

**THEN** it gets EU label “qualified”



# Example: qualified electronic signature



- Conditions

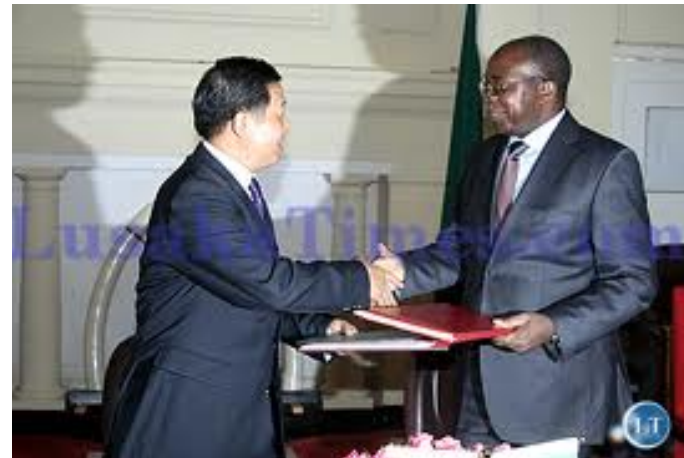
1. uniquely linked to the signatory;
2. capable of identifying the signatory;
3. created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control
4. linked to the data signed therewith in such a way that any subsequent change in the data is detectable
5. created by a qualified electronic signature creation device
6. based on a qualified certificate issued by a qualified trust service provider

- Effect?



Do we need signatures, seals, registered delivery, etc.  
in a digital environment?

## Traditional Context: Sign and Transmit



# Digital environment



```
2011-10-16T16:28:20Z ESXShell: ESXi Shell available
2011-10-16T16:28:40Z shell[2897]: esxcli storage nfs list
2011-10-16T16:28:44Z shell[2897]: cat /var/log/syslog.log
2011-10-16T16:28:57Z shell[2897]: cat /var/log/auth.log
2011-10-16T16:29:06Z shell[2897]: cat /var/log/esxcli.log
2011-10-16T16:29:16Z shell[2897]: cat /var/log/hostd.log
2011-10-16T16:29:27Z shell[2897]: cat /var/log/shell.log
2011-10-16T16:30:18Z shell[2897]: esxcli storage nfs list
2011-10-16T16:30:22Z shell[2897]: cat /var/log/shell.log
2011-10-16T16:39:00Z shell[2897]: vmware -v
2011-10-16T16:39:03Z shell[2897]: clear
2011-10-16T16:39:06Z shell[2897]: vmware -v
2011-10-16T16:41:55Z shell[2897]: clear
2011-10-16T16:41:59Z shell[2897]: cat /var/log/shell.log
- # █
```

## Digital evidence







“Actively consider the removal of the requirement for a signature”

“Refrain from requiring a signature in new rulings or practices”

RESTRICTED

CEFACT/2013/ITXXX  
August 30, 2013

UNITED NATIONS  
CENTRE FOR TRADE FACILITATION AND ELECTRONIC BUSINESS  
(UN/CEFACT)

INTERNATIONAL TRADE PROCEDURES DOMAIN GROUP  
Trade and Transport Programme Development Area

**Recommendation 14**

**Authentication of Trade Documents \***

# Question



What will be the impact of this new legal framework?



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