

PANORAMA OF RECENT and ACTUAL IT LAW TOPICS IN EUROPEAN UNION

ANNE CANTERO

Doctor in law

Associate member at Centre de recherche Interdisciplinaire « Droit Entreprise et Société » (CRIDES) at
the Catholic University of Louvain La Neuve (BELGIUM)
Senior consultant – IT law expert – Insight Digital Factory

The European IT law has to provide a framework for the development of a trust unique market :

- **To make it efficient and competitive, but also**
- **To make the IT society safeguarding the specific interests of consumers' and citizens' rights**

- ✓ **Regulatory framework for electronic communications** (4 directives and 2 regulations)
- ✓ **Directive 2000/31** of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('**Directive on electronic commerce**')
- ✓ **Directive 2015/2366** of the European Parliament and of the Council of 25 November 2015 **on payment services in the internal market**, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC
- ✓ **Directive 2011/83** of the European Parliament and of the Council of 25 October 2011 **on consumer rights**, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

- ✓ Directive 2013/37 of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98 **on the re-use of public sector information (PSI Directive)**
- ✓ Directive 2016/943 of the European Parliament and of the Council of 8 June 2016 **on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure**
- ✓ The new guidelines to help EU businesses use the cloud in June 2014

- The legal IT topics chosen:
 - E-Identification and Trust services (regulation)
 - Cybersecurity (directive)
 - Personal data protection (regulation)
- The legal difference between regulation and directive

**REGULATION (EU) 910/2014 of 23 July 2014
on electronic identification and trust services for electronic
transactions in the internal market
and repealing Directive 1999/93/EC
(eIDAS regulation)**

Complete transnational and cross-sector framework for electronic transactions

- **electronic identification (state)**
- **trust services (providers)**

➤ Applies to:

- EU countries - public services

➤ Requirements:

- e-ID schemes
- Level security
- E-schemes notified to the European commission and published on a list

➤ Effects : mutual recognition of eIDs

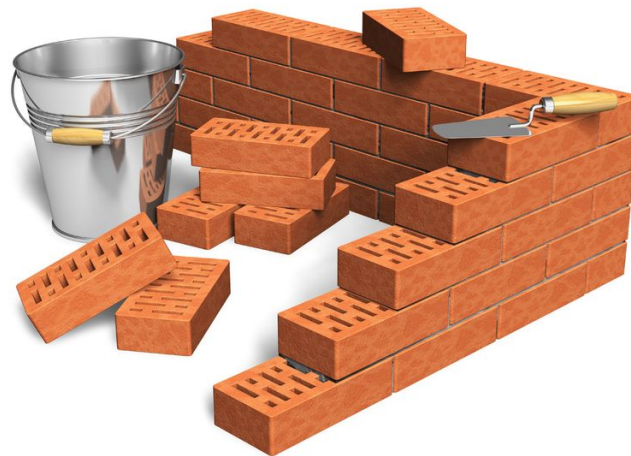
➤ Mandatory: 28 of September 2018

- ✓ eIDAS regulation applies to trust service providers based in the European Union
- ✓ **Basis of freedom : voluntary and non-mandatory process of the actors**
- ✓ « *Trust service means an electronic service **normally provided for remuneration** which consist of :*
 - a) the creation, verification and validation of **electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates** related to those services ; or
 - b) The creation, verification and validation of certificates for **website authentication** ; or
 - c) The **preservation of electronic signatures, seals or certificates** related to those services ».

How to transform a feeling (trust) in a legal and technical reality ?

TRUST

Responsibility
& Guarantees



Reliability
(qualification -
presumption)

**Trust list of QTSP &
EU Trust mark for Q services**

The regulation applied from 17 September 2014

The date of effects was the 1st on July 2016 - with specific dead line for special measures

Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union
(The NIS Directive)

- **The need of a common level of security**
- **Directive / national law**

- **To prevent and to react in case of cyber incidents**
 - ✓ a national strategy has to be concluded
 - ✓ operators of essential services and digital services providers and key digital service providers
 - ✓ **supervision, control, monitoring duties and coordination requirements for cybersecurity** - European Union Agency for Network and Information Security ('ENISA') - Computer Security Incident Response Team (CSIRT) - a competent national NIS authority
 - ✓ Date of effect: 08/08/2016 Date of transposition: 10/05/2018; except for some measures (art. 23)

**REGULATION (EU) 2016/679 of the Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC
(General Data Protection Regulation – GDPR)**

- **Context**
 - ✓ The need of a real harmonisation
 - ✓ A political, an economic and a strategic topic
- **Goals**
 - ✓ An effective and real protection
- Adopted on **27 April 2016**. It will enter into application on the **25 May 2018** after a two-year transition period

What and who are involved ?

- ✓ **Personal data** : *‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*
- ✓ **Natural person**
- ✓ **Data controller or processor based in Europe**
- ✓ **Data controller or processor not based in Europe IF they process personal data of European Union residents**

What's up ?

- ✓ **Enforcement of the rights of the natural person**
- ✓ **Enforcement of duties of data controller or processor of personal data (privacy by design, by default, security, ...)**
- ✓ **Data protection Officer : role, liability, link with authorities**
- ✓ **New requirements about transfer of personal data outside the European Union**
- ✓ **Enforced powers of national independent supervisory authority & mutual cooperation and assistance**
- ✓ **Administrative fines and penalties**

IT regulation is a master piece in European Union

Most of the topics of IT society are involved ...and news issues are coming (**sharing economy**, artificial intelligence, connected objects, ...)

“IT” are not only technical or economical matters,
But also legal matters !

Thank you for your attention !