

German antitrust authority Bundeskartellamt raises serious concerns that Browser/EFF opposition to eIDAS Article 45 violates antitrust law

Google has recently been investigated by the German Bundeskartellamt antitrust authority for possible **violations** of Article 45 of the eIDAS Regulation. The proceedings dealt in particular with Google's **modified display of information, in particular about more trustworthy TLS website certificates**¹ and also its unilateral **withdrawal of trust** from a qualified trust service provider. The agency stated that both actions by Google may have been "impediments" which violated EU and German antitrust law.

The German antitrust authority however decided to take **no** action at this time as there is a Commission draft for a v2.0 revision of the eIDAS Regulation that significantly **strengthens Article 45**. The German antitrust authority indicated it wishes the **legal gap to be remedied by adoption of the proposed Article 45** which will solve the problem at the "European level" and not just in Germany.

Browsers and the Electronic Frontier Foundation (EFF), who are heavily intertwined and share common interests in **not** providing any identity information to the user, are lobbying heavily against Article 45 of the Commission proposal. **Serious concerns have been raised by in Bundeskartellamt report** that the browser/EFF position may **violate** both EU and German antitrust law.

The European Signature Dialog (ESD)² represents the leading European trust service providers (TSPs) that enable secure digital interactions across Europe every day, and **urges all MEPs to support the Commission's eIDAS Article 45 provisions**.

The Commission amendments are **essential** to strengthen transparency and trust, fight cybercrime and also to comply with the EU's "**right to know**" and **GDPR**³ laws, thus taking an important step in the direction of **secure digital identities**.

¹ TLS (Transport Layer Security) certificates have two different functions: They provide an encrypted and secure connection between a service (e.g., a website) and a client (e.g., a user). More trustworthy TLS certificates also *authenticate* the entity providing the service. QWACs are a type of TLS certificate that performs both functions for users.

² <https://www.european-signature-dialog.eu/>

³ General Data Protection Regulation. See also the law on Consumer rights 2011/83/EU, Article 6, which includes a "right to know" regarding the identity of websites and the law on Services in the internal market 2006/123/EC Article 22.

A. The Commission proposal strengthens Article 45 and the consumer's 'right to know' as Browsers have disregarded European law for years

Big tech browsers have not cooperated with the goals of eIDAS since its enactment in 2014, which the Commission is now addressing in its review proposal for a v2.0 revision of the eIDAS Regulation⁴.

In its draft Regulation the Commission significantly strengthened Article 45, where requirements for Qualified certificates for website Authentication (QWACs) are specified.

1. It requires browsers to display in a **user-friendly manner** the **identity** of the **person or organization** operating a QWAC-certified website. This identity display is needed to strengthen transparency and trust, and also to comply with the EU's "**right to know**" and **GDPR** laws.
2. It strengthens QWACs (which are a European standard), by clarifying that browsers **can no longer unilaterally refuse to trust QWACS** issued by **Qualified Trust Service Providers (QTSPs)** that are on the EU Trusted Lists⁵ and which enable the encryption of data to websites and provide the website operators' identity information to EU citizens.

Some client software such as Adobe Acrobat have already simply adopted the EU Trusted Lists of QTSPs as defined by Article 22 of the eIDAS regulation – **and browsers should do the same.**

With the proposed Article 45 for an amended eIDAS Regulation the Commission takes an important step to protect and empower citizens using secure digital identities and trust services in the European Union.

B. Browsers have rejected the Commission proposal for reasons that may violate European and German antitrust law, the German antitrust authority says

Browsers want full control of how website identity information is displayed or not displayed to users

Browsers and the Electronic Frontier Foundation (EFF), who are heavily intertwined and share common interests in not providing any identity information to the user oppose the Article 45 requirement to display a "**user friendly**" website identity UI (user interface) to EU citizens to comply with EU "right to know" and GDPR laws.

⁴ Brussels 3.6.2021, COM (2021) 281 final

⁵ Member States have the obligation to establish trusted lists of QTSPs and the services provided by them. National trusted lists have a constitutive effect: a trust service provider and the trust services it provides will be qualified only if it appears in a trusted list. See EU Trusted Lists for QTSPs at <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home> Browsers must trust these QTSPs, which have fulfilled every industry and EU requirement, as confirmed by annual ETSI audits.

Instead, they argue that the individual **US-based big tech browsers should have 100% control** of how website identity information is displayed (or not displayed, as is the case today) to EU citizens.

In this regard, they support the action by the browsers to **remove** the previous website identity UI in 2019⁶, without reference to any standards organizations and without finding consensus with certification authorities (CAs) or the EU Commission. The Commission has asked browsers to show users a special QWAC UI since 2015 – but the browsers have always said “no”.

Browsers oppose the eIDAS legal requirement that Qualified Trust Service Providers are to be trusted

Browsers also outright reject the Article 45 **legal requirement** that browsers trust all EU Qualified Trust Service Providers (QTSP) and their products that have been **approved by the QTSP’s member state Supervisory Body**, even though the QTSP has passed all standards required for CAs and passed all audits. In fact, QTSPs are subject to **more rigorous technology requirements** than other CAs, and so should be trusted by browsers operating in the EU trust space.

Instead, the browsers and EFF believe that individual browsers should have 100% control over all trust decisions and should be free to not trust any QTSP they choose for any reasons they choose – **without reference to any standards organization, and without any right of legal appeal for a rejected QTSP.**

They have in fact removed trust from CAs and one QTSP in the past based on their own private decision.

C. German antitrust authority Bundeskartellamt suspended its investigation in order to see eIDAS Article 45 be adopted, which would solve the problem with all browses across the EU

The highly respected German antitrust authority Bundeskartellamt noted that the proposed eIDAS Article 45 legislation would **solve the “user friendly” User Interface issue**, and on **this basis**, it decided to terminate its investigation.

In its [report](#) of 17 January 2022, the Bundeskartellamt notes:⁷

- On the website identity information [quote] “...that integrating the [QWAC] certificate information in the browser [UI] formed the **key solution to successfully providing the**

⁶ Until 2019 Google Chrome browser displayed more trustworthy TLS certificates in the address bar by highlighting the lock icon in green in the address bar.

⁷ https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B7-250-19.pdf?__blob=publicationFile&v=4

*information to the users while avoiding manipulation. This provided the interface the actual purpose of informing them about the **security of an accessed website** without the possibility of the website operator to manipulate the certificate."* [Page 6 of the report]

- It continues that **[quote]***"a decision by the Bundeskartellamt against **Google alone** is **unlikely** to have resulted in achieving the **maximum conceivable added value of more trustworthy certificates**".* [Page 9 of the report]
- And concludes **[quote]***"however, a possible obligation for certain website operators to secure their websites with EV certificates or QWACs combined **with a user-friendly display of the certificate information by the browsers** as well as general rules pertaining to the **withdrawal of trust** [from QTSPs] **could only be achieved with legal requirements** - e.g., in the course of the revision of the eIDAS Regulation at European level."* [Page 9 of the report]
- Finally **[quote]** *"In light of these developments and not least based on an effort and benefit analysis, the proceeding against Google regarding TLS certificates and TLS providers was terminated."* [Page 9 of the report]

If eIDAS Article 45 is blocked, the Bundeskartellamt could reopen its investigation but as stated in the report (see above) it's unlikely that a decision by the Bundeskartellamt In Germany against one browser alone will result in the maximum conceivable added value of more trustworthy certificates across Europe.

The **full text** of the German antitrust authority Bundeskartellamt report can be found [here](#).

In case you wish more information please write or call us:

European Signature Dialog

EU Transparency Register number: 994150833943-81

Mail to office@european-signature-dialog.eu

Phone: + +43 676 940 9309