

Draft memo to lawyer-linguist staff reviewing final Trilogue version of eIDAS Recital (32) and Article 45

Subject: Suggestion for a conforming change to Recital (32) to match the wording of Article 45 in Trilogue version of eIDAS

The Trilogue completed its final version of the eIDAS 2 legislation, which was then endorsed by the Council and approved by the ITRE Committee in Parliament on December 7, 2023. The draft is now before the legal and linguistic staff to prepare for final approval by the Parliament and Council in February.

We would like to suggest a conforming change to Recital (32) to match the wording of Article 45 in Trilogue version of eIDAS and avoid confusion and potential conflict after final passage of the legislation.

1. The Conflict in the Trilogue draft

The conflict in the Trilogue draft concerns (1) the definition of a “certificate for website authentication” in Article 3, and (2) the language of Recital (32). These two sections are in conflict because they both relate to Qualified Certificates for Website Authentication (QWACs), which is the subject of eIDAS Article 45.

(a) Article 3 definition of “certificate for website authentication”

In the Trilogue draft, Article 3(38) defines a “certificate for website authentication” as follows [emphasis and shading supplied]:

(38) ‘certificate for website authentication’ means an electronic attestation that [1] makes it possible to authenticate a website and [2] links the website to the natural or legal person to whom the certificate is issued.

Article 3(39) simply extends that definition to a QWAC issued by a QTSP under Article 45:

(39) ‘qualified certificate for website authentication’ means a certificate for website authentication, which is issued by a qualified trust service provider and meets the requirements laid down in Annex IV;’

(b) Recital (32) text

Recital (32) states in part as follows [emphasis and shading supplied]:

Recognition of QWACs means that the providers of web-browsers should not deny the authenticity of qualified certificates for website authentication **attesting the [2] link between the website domain name and the natural or legal person** to whom the certificate is issued and confirming the identity of that person.

(c) The conflict in the text

What is the conflict between the definition of a “web authentication certificate” and the text of Recital 32?

Simply this: the Definition says that a web authentication certificate does **two things** – it [1] authenticates a website *and also* [2] links the website to the natural or legal person to whom the certificate is issued.

This means Recital (32) is potentially inaccurate and misleading because it only mentions the second function – “link[ing] the website to the natural or legal person to whom the certificate is issued”. Recital (32) fails to mention the first defined function of a QWAC – “authenticat[ing] a website.”

This could cause confusion among the Commission, QTSPs, browsers, and website owners – and could make Recital (32) in conflict with the definition of a “web authentication certificate”.

This potential for confusion and conflict can be easily fixed by the post-Trilogue legal staff. We suggest that Recital (32) now be modified as follows to match the Definition at Article 3(38) and (39) of a website authentication certificate and a QWAC:

Recognition of QWACs means that the providers of web-browsers should not deny the authenticity of qualified certificates for website authentication **that make it possible to authenticate a website** and ~~attesting~~ **attest** the link between the website domain name and the natural or legal person to whom the certificate is issued and ~~confirming~~ **confirm** the identity of that person.

These are very small changes that follow the apparent intent of the language and make the Recital 32 sentence entirely consistent with the definition of a “web authentication certificate.” After all, these certificates are actually called “website authentication” certificates, so the word “authentication” should also appear in new Recital (32).

Thanks for your consideration.