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Clarification on the Scope and Limitations of Free Qualified Electronic Signatures under the EUDI regulation¹

Key Takeaways

- ✓ **Free qualified electronic signatures** under Article 5a(5)(g) EUDI regulation are intended **exclusively for natural persons**, not for legal persons or their representatives.
- ✓ Member States are not allowed to **extend these free signatures for professional or business use**—doing so would violate EU law.
- ✓ **Allowing free business use would distort competition**, undermine fair market conditions, and violate Article 107(1) TFEU, which prohibits state aid that disrupts the EU Single Market for trust services.
- ✓ A **harmonized and consistent implementation** of the EUDI regulation across all Member States is critical to avoid regulatory fragmentation, ensure interoperability, and maintain legal certainty.

¹ In this statement, the EUDI Regulation and eIDAS 2 are used interchangeably.



ESD and the Need for a Harmonized Digital Trust Framework in Europe

The European Signature Dialog (ESD) stands as the pinnacle consortium of leading European Qualified Trust Service Providers (QTSPs), facilitating secure digital interactions across Europe every day.

ESD has successfully collaborated with all EU institutions leading up to the adoption of eIDAS 2. Now, ESD has established multiple working groups to address the implementing acts of the EUDI Regulation.

Beyond this, ESD closely monitors the further implementation of the EUDI Regulation at the national level across Member States. It is particularly crucial that the regulatory framework for implementation and supervision remains consistent across all Member States to ensure seamless interoperability across borders, equal market conditions for all QTSPs, and the prevention of regulatory fragmentation that could create distortions or competitive disadvantages.

A fragmented approach to supervision or diverging national interpretations of the EUDI Regulation not only risks undermining the level playing field for European trust service providers but could also jeopardize the EU's ambition of a well-functioning Digital Single Market.

Trust services are at the core of digital transactions across industries, and inconsistent national approaches could lead to legal uncertainty, additional compliance burdens, and barriers to cross-border services and innovation. Without a harmonized and predictable regulatory environment, businesses and consumers alike would struggle to fully benefit from a truly integrated and secure European digital ecosystem.

ESD is committed to engaging with EU institutions and national authorities to promote harmonized implementation and enforcement, ensuring a coherent and competitive digital trust ecosystem in Europe.

ESD members are European Qualified Trust Service Providers (QTSPs) with extensive expertise in the trust services market. With several decades of experience, ESD members offer a comprehensive range of trust services across Europe's digital economies. Many of them have actively contributed to the standardization and regulatory efforts at both the European and national levels – and continue to do so today.

The Scope of European Digital Identity Wallets and the Definition of “User”

According to Article 5a (1) of the EUDI Regulation, European Digital Identity Wallets should be made available to both natural and legal persons:



"For the purpose of ensuring that all natural and legal persons in the Union have secure, trusted, and seamless cross-border access to public and private services, while having full control over their data, each Member State shall provide at least one European Digital Identity Wallet [...]."

In line with this, Article 3(5a) of the EUDI Regulation introduces the definition of a "user" as follows:

"'User' means a natural or legal person, or a natural person representing another natural person or a legal person, that uses trust services or electronic identification means provided in accordance with this Regulation."

From ESD's perspective, by introducing this definition and its subsequent application, the EUDI Regulation effectively distinguishes between three types of entities from a usage perspective:

- A natural person,
- A legal person, and
- A natural person acting on behalf of another natural person or representing a legal entity (not acting in their own capacity but rather as a transactional or organizational representative).

The Legal Distinction Between General User Rights and Free Qualified Signatures

Article 5a (4) of the EUDI Regulation establishes the services that must be provided to all users, which includes not only natural persons but also legal persons and representatives.

However, Article 5a (5) of the EUDI Regulation differentiates between categories of stakeholders rather than applying a blanket rule for all users.

This distinction is evident in Article 5a(5)(f), which refers separately to:

- A natural person,
- A legal person, and
- A natural person representing another natural person or a legal entity.

By contrast, Article 5a(5)(g) of the EUDI Regulation specifically mandates that only natural persons shall be provided with qualified electronic signatures by default and free of charge.



Exclusion of Legal Persons and Representatives from Free Qualified Electronic Signatures

The legislator deliberately avoids using the broader term "user" in this provision and explicitly excludes:

1. Legal persons, and
2. Natural persons acting on behalf of others—whether representing another natural person or a legal entity.

This confirms that free qualified electronic signatures are exclusively intended for individual citizens. Organizations and their representatives are NOT entitled to them.

Clarification on the Last Sentence of Article 5a(5)(g)

Many misinterpret the last sentence of Article 5a(5)(g), which states:

"Notwithstanding point (g) of the first subparagraph, Member States may provide for proportionate measures to ensure that the free use of qualified electronic signatures by natural persons is limited to non-professional purposes."

The correct interpretation of this provision is that it empowers Member States to introduce national legislation ensuring that free qualified electronic signatures cannot be used for professional purposes.

Crucially, this sentence does not grant Member States the discretion to allow the use of free qualified electronic signatures by representatives of legal persons. Instead, it merely confirms that natural persons cannot use their free qualified electronic signature for professional purposes (e.g., as a doctor, lawyer, or self-employed person), while granting Member States the right to further regulate such use.

Since the qualified signature under point (g) applies only to natural persons, there is no basis for a natural person to use their free signature in a representative capacity for a legal entity. Even though acting as a representative of a legal person is inherently a professional activity, this scenario is already excluded under point (g).

The Incompatibility of Free Qualified Electronic Signatures for Business Use with EU Law

Beyond the grammatical interpretation of the EUDI Regulation, its systematic interpretation within the broader EU legal framework must also be considered.

Accordingly, Article 107(1) TFEU applies:

"Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects



trade between Member States, be incompatible with the internal market."

The EUDI Regulation has established a single internal market for trust services across the EU. If a Member State were granted the autonomous right to provide qualified electronic signatures free of charge for business purposes, this would:

- Create distortions in the EU trust services market,
- Give businesses operating in that Member State a market advantage over businesses in other Member States that do not allow free use of certificates for business purposes, and
- Violate the principle of fair competition under Article 107(1) TFEU.

Therefore, Article 5a(5)(g) of the EUDI Regulation and the last sentence of Article 5a (5) cannot be interpreted as granting Member States the discretion to decide independently whether a State-provided free qualified electronic signature may also be used for business purposes.

Example of National Interpretation: Hungary

As one of the first national laws in the EU to reference the EUDI Regulation, Hungarian legislation clearly delineates the boundaries of state-issued free signatures: **DAP signatures** (Digital Citizen Program – the Hungarian wallet application) may only be used by **private individuals for private purposes**.

Further clarification was provided by **András Both**, Director of the **Digital Hungary Agency**, responsible for implementing the EUDI Regulation in Hungary:

"The reason why a company cannot use a DÁP signature is because the eIDAS 2 regulation does not allow it. It would be a limitation of competition if the state administration entered a segment where there are already market players that issue company signatures."

Conclusion

If a Member State were to allow the use of a free qualified electronic signature for business purposes, whether within the framework of the EUDI Regulation or through any other means, it would contradict the mandatory and directly applicable law of the European Union.

For further information, please feel free to contact us:

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