

Position Paper

Bitkom on the eIDAS 2.0 ITRE Proposal

Background and Initial Statement

The ITRE Committee presented its proposal for a regulation establishing a framework for a European Digital Identity on 7 February 2023. This proposal aims to review the eIDAS Regulation from 2014 in order to extend its benefits to the private sector and promote trusted digital identities to all European citizens and legal entities. Bitkom strongly supports the objectives of the proposal introducing a streamlined European legal framework for secure public electronic identification, including digital signatures, facilitating and giving people access to public, private and cross-border digital transactions. However, prior to the start of the Trialogue negotiations, the proposal still lacks both linguistic clarity and technical specifications concerning the implications of several suggestions entailed in the proposal. Since the proposal touches upon a wide range of industries, including Banking, Travel, Education, etc., simplified and unclear language that leaves room for interpretation and thus insecurities can be detrimental for concerned industries and, as a consequence, the success of the EU Digital Identity.

The proposal should also consider that rolling out the EU eID Wallet completely and streamlining separate and individual national eID solutions will take a considerable amount of time. Public and private sector alike need more time and clear guidelines to provide the national frame- and groundwork eIDAS 2.0 requires from the EU Member States.

Summary

Bitkom welcomes the aim of the proposed regulation to introduce a European Digital Identity Wallet and to ensure universal access for people and businesses to secure and trustworthy electronic identification and authentication. It also welcomes the goal of streamlining the European eID ecosystem and to promote cross-border digital

Rebekka Weiß, LL.M.
Head of Trust & Security

T +49 30 27576 161
r.weiss@bitkom.org

Clemens Schlepner
Policy Officer Digital
Identity & Trust Services

T +49 30 27576-214
c.schlepner@bitkom.org

Albrechtstraße 10
10117 Berlin

operations. However, key elements of the ITRE Committee's proposal in their current form don't support this very goal. Specifically, setting the Level of Assurance "high" for the issuance and usage of the EUDIW will undoubtedly lead to the Wallet's failure. Nevertheless, Bitkom supports the introduction of a European Digital Identity Wallet.

General Requirements

Level of Assurance

We reiterate our opposition regarding the Committee's proposal to set the LoA "high" for the issuance of a qualified certificate or qualified electronic attestation of attributes. The negative implications trump the benefits by far, ignoring the current market requirements and experiences, effectively making existing eID solutions useless, and creating an unnecessary barrier for the daily use of the EUDIW that will likely lead to its rejection by users. LoA "high" requires the use of a device containing the issued certificate, for example a person's electronic identity based on national ID cards. However, it excludes identities based on the Public Digital Identity System which is currently based on a "substantial" LoA. This applies to most of the used eID ecosystems in Europe. This mandatorily tying of the usability of the Wallet to a valid identity issued by the Member State, requiring citizens to verify their identity before they can use the Wallet, creates a high (and unnecessary) hurdle for onboarding.

On those industries required to accept the EUDIW as a mean of identification, ensuring all preconditions necessary for a "high" level of assurance in any identification process will pose a disproportionate burden and financial efforts. As long as the EUDIW is not a serious and far-spread alternative to currently existing and accepted identification methods, this obligation needs to be reconsidered. The success of the EU wallet will be measured by its regular use and how easy and attractive it is. Therefore, all use cases must be possible and only enabled for the respective identity level. From the outset, the wallet must be usable for private sector applications if it has been technically tested and certified in accordance with the criteria for an EU wallet. However, it may only bear the corresponding label "EU Wallet" once users have proven their identity at a high level according to the criteria of eIDAS 2.0 and linked it to the Wallet. This step can be carried out in the wallet as soon as a concrete use case is required (the principle of upgrading or upselling). Furthermore, the ENISA Security Guidelines clearly state that "QES that are based on recognized EU standards are preferable unless the parties

operate purely in a local context". The new eIDAS Regulation should therefore not promote a less secure form of electronic signatures on a large scale.

Art. 24 a:

„by means of a notified electronic identification means which meets the requirements set out in Article 8 with regard to the assurance levels **‘substantial’** or ‘high’.”

Recital 31 a should be deleted.

Issuance of EUDIW

While we support the amendments clarifying that signing by means of qualified electronic seals is also possible with the EUDIW, defining that the issuance and usage of the EUDIW for all natural and legal persons as well as QES shall be free of charge promises to weaken the European ecosystem of QTSPs on the one hand and nationalize a service that ought to be open to private solutions. While we support in principle the goal to provide a free infrastructure to natural persons, private QTSPs and providers of wallet or other identification solutions should be able to sustain their current business models. The Regulation needs to ensure that the end user can choose their provider freely from a variety of issuers.

Under the new proposal, it is unclear how EUDIW will be issued and accepted by Member States. Art. 6a (2) limits independently from a Member State issued EUDIW to be recognized only by the state they are issued and managed in. This is a significant change from the Council's proposal. In order to promote an open and European ecosystem, independently issued and managed EUDIW need to be recognized in all EU Member States as well as the processes and conditions for their recognition should be clear, transparent, and common for all EU Member States.

We furthermore urge all parties to sharpen the article's language. Under the current proposal, it is unclear whether Member States can choose one of the three possibilities to issue and manage EUDIWs, which would not incentivize them to open the market for private solutions, or if all Wallets must be accepted, regardless of their issuance by a Member State, under a mandate of a Member State, or independently from a Member State. Bitkom strongly suggests providing clear language favorably of an ecosystem that allows private EUDIW solutions.

Art. 6a (2):

European Digital Identity Wallets shall be issued and managed in any of the following ways **and recognised by all Member States:**

- (a) directly by a Member State;
- (b) under a mandate from a Member State;
- (c) independently from a Member State;

Art. 6a (3) g should be deleted.

Similarly, the Regulation allows in Art. 7 (a) (iii) for the possibility that an electronic identification means can also be issued independently of the notifying Member State and recognized by that Member State. However, Article 7 also mandates the availability of at least one electronic form of identification. The current emphasis on using at least one form of identification hinders the development of the new European framework for digital identity and discourages innovation and freedom of choice, which will lead to no competition between different wallets, leaving it to the State which version it prefers. Instead, it should be made more explicit that user-friendly identity solutions require a combination of government-issued eIDs and private sector innovation. The restriction 'at least' should therefore be deleted.

The goal of transparency, which the amended open-source code aims at, is welcomed. However, the amendment should be completed by specifications concerning licensing terms, terms of use, etc. Furthermore, the option of attestations issued by the user should be dropped with respect to unresolved questions concerning technical feasibility, trust management, and privacy.

VLOPs

Bitkom strongly objects the Committee's proposal to obligate very large online platforms to "include a functionality to generate freely chosen and user managed pseudonyms as a form of authentication". While customers protection and their right to privacy should be taken seriously, such a requirement would have a significant, far-reaching impact on all online platforms used by millions of Europeans daily. Knowing their customer and being able to offer them recommended products based on their previous behaviors is the key unique feature these platforms have to offer. It significantly improves customer experience and builds the backbone of any platforms business.

Recital 9a should be deleted.

QWACs

Bitkom regards the obligation of web-browsers to recognize Qualified Certificates for Website Authentication (QWAC's) as an important element for strengthening European Digital Sovereignty, the European Digital Market as well as consumer protection. We also support the Council's amendment which expands the obligation to adopt implementing acts for specifications and reference numbers of standards to paragraph 2 of Art. 45. The amendments narrowing the definition of QWACs in Art. 3 and 45 should be deleted. Otherwise, confusion would be caused, especially in the context of PSD2, where QWACs are very well established to support machine to machine authentication for the purpose of secure identification in an API, and not in a browser.

Electronic Preservation and Archiving

One of the key factors for success and efficiency of eIDAS 2.0 is clear language that precisely defines the Regulation's scope. Regarding electronic preservation and archiving as it's currently presented in the Committee's proposal, Bitkom suggests reviewing currently used language. The term "electronic documents" in the context of electronic preservation and archiving is linked to "electronic document formats", e.g. PDF, only. In order to include other forms of electronic data, such as electronic files, preservation object container, meta data, etc., the term "data" should be added. This is the case in Recital (33), Art. 1 c, Art. 2 (16) d, and Art. 3 (35).

Similarly, the term "Conservation Period" is to be replaced by "preservation period", as done in the eIDAS 2.0 version before. Conservation Period as a term is not used in the international standards in the context of archiving, information and documentation records management and preservation. It is therefore not sufficient to ensure the

integrity and accuracy of origin of electronic documents and data. The process “preservation” should furthermore be included in the list of processes in Art. 45ga (3).

Conclusion

The Committee’s proposal introduces some significant changes compared to previous version of the eIDAS 2.0 Regulation, such as the free issuance and usage of the EUDIW for all natural and legal persons, recognition and management of different wallet solutions in different EU Member States, or new requirements for VLOP’s effectively limiting their ability to operate efficiently. Some key issues on the other hand have remained the same, specifically on the defined Level of Assurance under which the EUDIW will operate. Bitkom urges all negotiating parties to review the Proposals at hand from the point of view of an open ecosystem where public and private identification methods can coexist.

We do however support the aim to revise the eIDAS Regulation by introducing measures to streamline fragmented European legal frameworks for secure public electronic identification and to grant EU-citizens and legal entities access to secure digital identities. We are determined to proactively improve and develop the legal framework and eager to discuss our abovementioned concerns to find solutions.

Bitkom represents more than 2,700 companies of the digital economy, including 2,000 direct members. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members’ headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom’s concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.