



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 251 (2) of the EC-Treaty

**ON THE COMMON POSITION OF THE COUNCIL**

on the Proposal for a

**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE  
ON A COMMUNITY FRAMEWORK FOR ELECTRONIC SIGNATURES**

## **1. BACKGROUND**

On 13 May 1998, the Commission adopted a proposal for a European Parliament and Council Directive on "A Common Framework for Electronic Signatures" (COM (1998) 297 - C4-0376/98 - 98/191(COD))<sup>1</sup>. The legal basis is Art. 47 (2), 55 and 95 of the Treaty establishing the European Community.

The proposal was formally transmitted to the European Parliament and to the Council on 16 June 1998.

The Economic and Social Committee gave its Opinion on the 2/3 December 1998<sup>2</sup> and the Committee of the Regions on the 13/14 January 1999<sup>3</sup>. The European Parliament adopted a favourable Resolution at its First Reading on the 13<sup>th</sup> January 1999, and proposed 32 amendments to the Commission proposal<sup>4</sup>.

The Commission adopted an amended proposal<sup>5</sup> accepting 22 of the amendments in full, in part or in principle; this amended proposal was transmitted to Council on 12 May 1999.

The Council, acting in accordance with Article 251 of the Treaty, formally adopted a common position on 28 June 1999.

## **2. PURPOSE OF THE ORIGINAL COMMISSION PROPOSAL FOR A DIRECTIVE**

The purpose of the Directive is to facilitate the use of electronic signatures and to contribute to their legal recognition. It aims at establishing a legal framework for electronic signatures and for certain certification services in order to ensure the proper functioning of the internal market.

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<sup>1</sup> OJ C 325, 23.10.1998, p.5.

<sup>2</sup> OJ C 40, 15.2.1999, p.29.

<sup>3</sup> OJ C 93, 6.4.1999, p.33.

<sup>4</sup> OJ C 104, 14.4.1999, p.49.

<sup>5</sup> COM (1999)195final of 29.04.1999 (not yet published).

### **3. COMMENTS ON THE COMMON POSITION OF THE COUNCIL**

#### **3.1. General Observations on the common position**

The Council has adopted a favourable approach to the proposal of the Commission and the amendments of the European Parliament accepted by the Commission.

The Commission considers that the Council common position is broadly acceptable, given the need to achieve a qualified majority.

#### **3.2. Analysis of the common position of the Council**

##### **3.2.1. Amendments submitted by European Parliament in first reading**

In its first reading, the Parliament proposed 32 amendments to the Commission proposal. The Commission accepted 12 amendments in full (amendments 3, 11, 12, 14, 18, 20, 27, 30, 31, 32, 33 and 34) and 10 in part or in principle (amendments 2, 4, 5, 9, 13, 16, 17, 21, 22 and 25) while rejecting 10 (amendments 1, 6, 7, 10, 15, 23, 24, 26, 28 and 29).

More detailed information is provided in the Commission's explanatory memorandum to the Amended Proposal indicating how the amendments submitted by the Parliament in first reading were taken into account by the Commission.

##### **3.2.2. Parliament's amendments accepted by the Commission and incorporated in the common position**

Of the 22 amendments accepted by the Commission, the Council can be said to have incorporated 18, in whole or in part, at least as regards their spirit (amendments 2, 3, 4, 9, 11, 12, 13, 14, 17, 18, 20, 21, 22, 25, 31, 32, 33 and 34).

The table in the Annex shows how these EP amendments have been incorporated into the Council Common Position.

##### **3.2.3. Parliament's amendments accepted by the Commission and not incorporated in the common position**

The Council did not accept 4 of the amendments (5, 16, 27 and 30) proposed by the European Parliament and accepted by the Commission. The Commission position on these is given below.

- *(EP amendment 5)) New recital with regard to cross-border services for citizens in the public sector*

The Council accepted a specific reference to cross-border services for citizens in the text of the Directive (Article 3 (7)) stipulating that specific requirements for certification services in the public sector shall not constitute an obstacle for cross-border services for citizens.

Therefore, it does not appear to be essential to add a recital containing the same principle. The Commission can accept this.

- *(EP amendment 16)) Specific reference to accreditation schemes managed by non-governmental organisations in Article 3 (2)*

The Council added a new definition of a voluntary accreditation scheme in Article 2 (13). This definition makes it clear that an accreditation system can be managed by either a public or a private body.

Therefore, the Commission can agree with the Council not to include such a specific reference in Article 3.

- *(EP amendment 27) Access to data revealing the identity of a data subject in cases of pseudonym certificates (Article 8 (4))*

This amendment was not accepted by the Council. The Council argued that revealing the identity of a person using a pseudonym if it is necessary for the investigation of criminal offences, is a matter of national competence only. Furthermore, disclosure of pseudonyms for civil claims should also have been addressed.

The Commission can understand these concerns but would have preferred to keep the provision and to modify it as proposed by Parliament. The proposed amendment linked the provision to Community law in form of Directive 95/46/EC and included the possibility to reveal the identity for legal claims. The provision would have been of importance in terms of harmonisation of rules relevant for both the cross-border provision of this service and privacy protection.

- *(EP amendment 30) References to "recognised" bodies (Article 11)*

The Commission agrees with the Council not to refer to "recognised" bodies in this Article because such a reference could lead to misinterpretations.

The wording of the amendment leaves open the question of what exactly is meant by "recognised" and who would be responsible for recognising accreditation and supervision bodies. In addition, nowhere else does the Directive define or mention "recognised" bodies.

#### **3.2.4. New provisions and other modifications introduced by the Council compared to the Commission's original proposal**

- > clarification of the provisions with regard to the requirements laid down in Annex III (recital 15);
  - > reference to electronic signatures used within the public sector (recital 19);
  - > new recitals to introduce the concept of an advanced electronic signature and of a qualified certificate (recital 20);
  - > adaptation of recital 21 on the legal effect of electronic signatures to reflect the new wording in Article 5.
- they provide for more security with respect to the provision of certification services:
    - > establishment of appropriate supervision systems for CSP issuing qualified certificates to the public (Article 3 (3));
    - > introduction of a system based on notified bodies to determine whether secure signature-creation devices fulfil the requirements in Annex III (Article 3 (4));
    - > extension of the scope of the liability provisions in Article 6 to the guaranteeing of qualified certificates;
    - > introduction of liability rules to the provision of revocation services related to qualified certificates (Article 6 (2));
    - > addition of an indication that a certificate is issued as a qualified certificate (Annex I (a));
    - > additional requirements for the storage of certificates in Annex II (I);
    - > additional requirements for secure signature-creation devices (Annex III);
    - > addition of recommendations for signature-verification devices in Annex IV;
    - > clarification of the provisions with regard to supervision systems for CSP (recital 13).
  - they provide vaster consumer choice:
    - > for data protection reasons CSP are allowed to indicate a pseudonym in a certificate for users who request so (Article 8 (3));
    - > adaptation of recitals 24/25 on data protection to reflect the new wording in Article 8 (3).

### **3.3 Committee procedures**

The Commission regrets that the Council has introduced a management Committee procedure, to be applied in respect of the clarification of the requirements laid down in Annexes, the criteria referred to in Article 3 (4) and the generally recognised standards for electronic signature products established and published pursuant to Article 3 (5).

The Council has made changes to the Commission proposal which, together with the amendments proposed by the European Parliament and accepted by the Commission, make the application of certain Articles more precise. Furthermore, they provide clarifications which the Commission is prepared to accept, because they do not prejudice the fundamental aims of the original proposal.

However, the Council introduced some important modifications to the original proposal.

a) The main differences with the original proposal consist of:

- explicit coverage of electronic signatures used within closed systems with respect to their legal recognition (Article 5);
- distinguishing between electronic signatures and advanced electronic signatures;
- the extension of the Internal Market provisions of the Directive to all electronic signature products and services;
- adding a third annex containing requirements for signature-creation devices and;
- modifying the liability provisions related to the issuing of qualified certificates to the public (Article 6).

b) The amendments added to the original proposal by the Council have the following objectives:

- they take into consideration the amendments of the Parliament accepted by the Commission.
- they improve the clarity of the text by adding the following provisions:
  - > definition of a voluntary accreditation in Article 2;
  - > definitions of a secure-signature-creation device, a signature-creation device, signature-creation data and signature-verification data in Article 2 corresponding to Annex III;
  - > description of prior authorisation in recital 10;
  - > clarification of the provisions concerning the legal effect of electronic signatures in Article 5;
  - > modification of the provisions in relation to the liability of CSP in Article 6 (minimum harmonisation, principle of negligence and revised burden of proof);
  - > explicit reference to the Dual-Use Regulation (EC) No 3381/94 (recital 5) and to services with regard to the confidentiality of information (recital 6);
  - > description of "electronic signature related services" (recital 9);

#### 4. Conclusions

The Commission accepts the Council's Common Position on the proposal for a European Parliament and Council Directive on a Community framework for electronic signatures and certification services.

It regrets nevertheless, as already pointed out in the comments on the Common Position above, that the Council did not accept fully or at least partially certain EP amendments regarding liability and data protection.

However, the Commission considers that the Council's Common Position retains all the important elements of the Commission proposal and will facilitate the use of electronic signatures and contribute to their legal recognition.

#### **Summary of the analysis of the Common Position:**

	<b>Amendments proposed by Parliament</b>	<b>Amendments accepted by the Commission and incorporated in the common position</b>	<b>Amendments accepted by the Commission and not incorporated in the common position</b>
<b>In full</b>		3, 11, 12, 14, 18, 20, 31, 32, 33 and 34	5, 16, 27 and 30
<b>In part/in principle</b>		2, 4, 9, 13, 17, 21, 22 and 25	
<b>Total</b>	<b>32</b>	<b>18</b>	<b>4</b>

ANNEX

ANALYSIS OF PARLIAMENT'S AMENDMENTS:

Amd.	Recital/ Article	Content	Commission accepted	Council accepted
1	Recital 3	Reference to <u>electronic</u> signatures instead of digital signatures	No	No
2	Recital 4	Additional reference on the impact of the legal framework and on the free movement of goods in the Internal Market.	In part	In part
3	Rec. 6	Deletion of the reference to digital signatures based on public-key cryptography.	Yes	Yes
4	Rec. 6a	Additional recital expressing the need for a review to ensure that the Directive keeps up with technological progress.	In part	In part
5	Rec. 10a	Additional recital stressing that, by making the use of electronic signatures in the public sector subject to additional requirements, Member States should not establish obstacles to access to administration.	In part	No



6	Rec. 12	Additional recital stating that agreements in the field of electronic signatures would have to respect the right to maintain and further develop existing data protection rules.	No	No
7	Rec. 12a	Additional recital stating that agreements in the field of electronic signatures should also cover the issues of data protection and privacy.	No	No
9	Rec. 13a	Additional recital stating that the Directive is without prejudice to national provisions concerned with public policy or public security.	In part	In part
10	Rec. 14	Change the "consultative committee" into a "contact committee".	No	No
11	Art. 1	Changing of the order of the sentences.	Yes	Yes
12	Art. 2	Using the word <u>electronic</u> instead of digital for the electronic signature definition.	Yes	Yes
13	Art. 2	Addition of the words <u>natural person and for himself or on behalf of a legal entity</u> within the definition of a 'signatory'.	In principle	In principle
14	Art. 2	Using the word <u>electronic</u> instead of digital for the qualified certificate definition.	Yes	Yes
15	Art. 2	Addition of the word <u>independent</u> in the definition of a CSP.	No	No

16	Art. 3	Additional sentence stating that accreditation schemes may also be managed by <u>non governmental organisations</u> .	In part	No
17	Art. 3	Additional sentence stating that requirements in the field of public services may not constitute an obstacle for cross border services to citizens.	In part	In part
18	Art. 5	Changing of the order of the paragraphs	Yes	Yes
20	Art. 6	Restricting the reference in Article 6 paragraph 1 exclusively to Annex 1.	Yes	Yes
21	Art. 6 para 3	Addition of a sentence stating that the limitation must be sufficiently recognisable to third parties.	Yes	Yes
22	Art. 6 para 4	Addition of a sentence stating that the limit must be sufficiently recognisable to third parties.	Yes	Yes
23	Art. 6 para 5a	Additional paragraph stating that CSP have to confine themselves to the tasks laid down in their statutes.	No	No
24	Art. 7	Addition of the words " <u>the European Parliament</u> ".	No	No
25	Art. 8 para 2	Addition allowing CSP to collect personal data not only directly from the data subject but also <u>after obtaining permission</u> from the data subject.	In principle	In principle

26	Art. 8 para 3	Additional sentence stating that CSP are allowed to indicate a pseudonym in a certificate provided that this is permitted by national legislation in non-electronic commercial relations.	No	No
27	Art. 8 para 4	<p>Deletion of the first sentence of the Commission proposal which obliged CSP to transmit identity data to public authorities at their request with the consent of the individual.</p> <p>Modification of the beginning of the first sentence in this paragraph: it explicitly refers to Directive 95/46/EC and to national law.</p> <p>Addition stating that in cases of pseudonym certifies the identity of a person should not only be revealed for the investigation of criminal offences but also for legal claims related to transactions using electronic signatures.</p>	Yes	No

28	Art. 9	<p>Change the "consultative committee" into a "contact committee". This is supposed to ensure that there is consistency in the implementation of the requirements laid down in Annexes I and II.</p> <p>Addition of the following sentence: "The committee can also be consulted on the need to develop the requirements in Annex I or II and on the development in the field of generally recognized standards for electronic signatures products pursuant to Article 3(3)."</p>	No	No
29	Art. 9	Addition of a sentence stating that the committee shall consult industry, users and consumer groups and that the agenda, minutes etc. shall be made public and fully transparent.	No	No
30	Art. 11	Addition of non governmental bodies.	Yes	No
31	Annex I b)	Deletion of the words " <u>unmistakable</u> " before name and pseudonym.	Yes	Yes
32	Annex I f)	Deletion of the word " <u>unique</u> " before identity code.	Yes	Yes
33	Annex I i)	Deletion of the reference to general liability limitation.	Yes	Yes

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34	Annex II e)	Deletion of the sentence "so that they can not be used to perform functions other than those for which they have <u>been designed</u> "	Yes	Yes
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