

EU eIDAS Regulation

Zaccaria / Schmidt-Kessel / Schulze / Gambino

2020

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EU eIDAS Regulation



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EU eIDAS Regulation

Regulation (EU) 910/2014
on electronic identification and trust services
for electronic transactions in the
internal market

Article-by-Article Commentary

edited by

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Foreword

This *Commentary* is the result of a very complex work and a not negligible dose of courage has been required to bring it forward. The *Regulation EU no. 910/2014 on electronic identification and trust services for electronic transactions in the internal market* can certainly not be defined, in fact, as being a legal text in all respects, or, better still, can certainly not be defined as a normative text in the traditional meaning of this expression. The *technical* component of a non-legal extraction often appears to be predominant.

Alongside rules that deal with *classical* civil law issues, such as Articles 11 and 13 regarding liability, or Articles 25, 35 and 41 which outline legal effects and probative values, respectively concerning electronic signatures, electronic seals and electronic time stamps means, there are many other rules whose structures and contents closely depend instead on specific characteristics, such as *technical ones* regarding electronic tools taken into consideration on a case by case basis.

This *high specialization* phenomenon, by which the rules formed in this perspective result to be significantly unknown by customary civil law categories, is increasingly common in European legislation, especially when the latter concerns the regulation of the digital world.

It is, therefore, understandable that during the congress recently organized at the *Max-Planck-Institut* in Hamburg to celebrate the 25th Anniversary of *ZEuP*, and dedicated to the new trends within the European Private Law framework, considering the impossibility to continue on the same path of elaborating more or less consistent doctrinal projects (like CFR or CESL, to be clear) and considering the advisability to focus instead on norms drawn up by Regulations and Directives, Jürgen Basedow suggested to omit the *specialized* parts and instead to focus the attention on norms of more *classic* content, such as those regarding civil liability, which are often stated in very different terms, for reasons that are not always very clear, so that, there is a need to create a systematic framework that can be functional both in view of an immediate harmonization, as far as possible, on an interpretative level and in view of future rules on the matter.

This book was born because of a different choice, oriented in an opposite direction and, I would say, a more ambitious one.

Nothing regarding the Regulation taken into consideration was meant to be left out. It was meant to challenge the fact of looking over the whole text, despite the *technical* asperities that it presents, and the most classical, and probably the least suitable, form of exposition was adopted: the *Commentary*.

An attempt, certainly not an easy one, was made in order to combine tradition and modernity.

Readers will decide if this attempt has had a happy outcome and we hope to be able to reach them throughout the European Union. This is the reason why the commentary was published in English, although I certainly don't have a passion for this language. I have criticized the preferential use of this language, in the legal field, when the opportunity came up on several occasions.

As for the English editorial staff – and I sincerely wish to thank them – Prof. Giovanna Tavarozzi, a Canadian citizen, and my assistant to the High Council for the

Foreword

Judiciary, Dr. David Lucio Simone, also a Canadian citizen, have mostly contributed to this work. They have gained full knowledge regarding issues dealt with in the *Regulation* and a perfect mastery of the related terminology. I am particularly grateful to them for fulfilling this task, although I am not sure that they are equally grateful to me for having asked them to do so.

I also wish to express, from the bottom of my heart, my deepest gratitude, to Colleagues Alberto Maria Gambino of the *Università europea di Roma*, Reiner Schulze of the *University of Münster* and Martin Schmidt-Kessel of the *University of Bayreuth*, for having accepted, with (reckless?) enthusiasm, to get involved in this adventure.

Bayreuth and its University, in recent years, after many other visits to Germany, are now becoming a second home for my family and for me. So much so that, with the help and supervision of Martin Schmidt-Kessel, most of the authors, even if not belonging to that University, have worked there and that is where the editorial centre of the commentary has taken place, incarnated with passionate dedication by Katharina Erler, Eva Weigel and Christian Fleischmann.

All of this has been possible thanks to the *Alexander von Humboldt-Stiftung*, which – I gratefully wish to underline – has financed, in fact, the project of this commentary since I supported it through the *Humboldt Forschungspreis* that was generously awarded to me in 2015.

Ferrara, June 2019

Alessio Zaccaria



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