

AMENDMENT OF THE E-COMMERCE LAW OF 14 AUGUST 2000

On 28 July 2020, the Law of 17 July 2020 has been published in the Luxembourg official journal (Memorial A), which amends the Law of 14 August 2000 on Electronic Commerce ("E-Commerce Law") to align it with the provisions of Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions ("eIDAS Regulation").

CONTEXT

The E-Commerce Law sets out the main rules governing, amongst others, the use of electronic signatures, the activity of the providers of such electronic signature solutions ("**Trust Service Providers**") and their supervision.

The eIDAS Regulation, directly applicable in all EU Member States from July 2016 introduced a harmonised European framework for electronic signatures along with stricter obligations on trust service providers. Its entry into force however raised several issues of consistency with the E-Commerce Law, which the Law of 17 July 2020 aims at resolving.

THE LAW OF 17 JULY 2020

The Law of 17 July 2020 provides for an in-depth amendment of the E-Commerce Law, namely:

- the amendment of the definitions to reference those under the eIDAS Regulation, thus giving qualified Trust Service Providers a recognition under Luxembourg law;
- the alignment of the powers of the Luxembourg supervisory authority of Trust Service Providers, the *Institut luxembourgeois de la normalisation, de l'accréditation, de la sécurité et qualité des produits et services* ("ILNAS");
- the introduction of administrative and criminal sanctions for breach of the E-Commerce Law and the eIDAS Regulation by Trust Service Providers.

The articles of the Luxembourg Civil Code defining an e-signature remain untouched. The legislator did not take the opportunity to indicate whether the definition therein aligns with the notion of advanced electronic signature pursuant to the eIDAS Regulation.

It shall be noted that the Law of 17 July 2020 deleted Article 18 of the E-Commerce Law, which provided that a judge may not dismiss an e-signature on the sole basis that it is not a wet ink signature and that no person may be forced into signing

Key issues

- The Law of 17 July 2020 amends the E-Commerce Law to ensure compliance with the eIDAS Regulation;
- The definitions of the eIDAS Regulation are now integrated into the E-Commerce Law;
- The articles of the Luxembourg Civil Code defining the e-signature remain untouched;
- The ILNAS is granted with new powers of supervision on Trust Service Providers;
- Trust Service Providers face new administrative and criminal fines in case of breach of the E-Commerce Law and the eIDAS Regulation;
- The right to sign with a wet ink signature no longer exists.

electronically. Whereas the former rule was deleted on the ground that it is already provided for by the eIDAS Regulation, the latter was deleted to avoid contradictions with procedures which now require the use of electronic signature (e.g., when submitting documents to the Luxembourg Business Register, to the CSSF, or in the context of public procurement procedures).

It follows that from the entry into force of the Law of 17 July 2020 on the 1 August 2020, parties required to sign electronically may not anymore invoke the right to sign in wet ink on the basis of the E-Commerce Law, underlining that the use of technology has evolved since the 2000s.

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