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eIDAS-Regulation - Electronic Identification and Trust Services for Electronic Transactions in the Internal Market

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The German Civil Law Notary

- German Notaries are highly qualified legal professionals
- They are independent holders of a public office
- They are appointed by the state and are subject to government supervision
- All of the approximately 7,000 notaries are organized in 21 regional chambers
- There are different types of notaries (single-profession notary v. advocate/notary) sharing the same professional code

The Federal Chamber of German Civil Law Notaries (Bundesnotarkammer)

- The Federal Chamber of German Civil Law Notaries is a statutory public entity. All 21 regional Chambers of Notaries are its members.

- single-profession civil law notaries
- advocate and notary



The Role of the Federal Chamber of Civil Law Notaries – Providing Qualified Electronic Signatures

- Since 2001, the Federal Chamber of German Civil Law Notaries is one of the largest certification authorities (CA) in Germany, issuing signature cards for qualified electronic signatures on the highest quality level under German and European law.
- Currently, more than 70,000 cards for notaries, courts and attorneys are in use.



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 **01**


Overview

Regulation (EU) No. 910/2014

- eIDAS Regulation
 - Enacted on 23 July 2014
 - Effective since 1 July 2016
- Directly applicable in all Member States of the European Union
- Priority over national law
- Member States enact national implementation acts to establish the necessary prerequisites for the effective implementation of the eIDAS Regulation
 - Draft of the German Trust Services Act has been notified with the EU Commission on 19 March 2017

Regulation (EU) No. 910/2014

- The eIDAS regulation aims to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic transactions between citizens, businesses and public authorities
 - Establishment of a general legal framework for trust services including the legal effects thereof
 - Removal of barriers to the cross-border use of electronic identification means

Regulation (EU) No. 910/2014

- eIDAS-Regulation comprises two separate subsections
 - Provisions regarding electronic identification means (Art. 6 - 12)
 - Provisions regarding trust services (Art. 13 – 45)
 - Electronic signatures (Art. 25 – 34)
 - Electronic seals (Art. 35 – 40)
 - Electronic time stamps (Art. 41 – 42)
 - Electronic registered delivery services (Art 43)
 - Website authentication (Art. 45)

 **02**


Scope of the eIDAS Regulation

Scope of the eIDAS Regulation (1)

- eIDAS Regulation provides a general legal framework for electronic identification and trust services
 - Legal effects (e.g. form requirements) of the use of trust services are generally defined by the applicable national law
 - Direct legal effects of the eIDAS Regulation are limited to the rules of evidence
- No general obligation for the use of eIDs and trust services except for online services provided by public sector bodies:
 - If electronic identification is required to access a service provided by a public sector body online electronic identification means issued in another Member State shall be recognized
 - Member States shall not request an electronic signature at a higher security level than a qual. electronic signature for cross-border use in an online service provided by a public sector body

Scope of the eIDAS Regulation (2)

- eIDAS Regulation does not apply to closed systems with a defined set of participants
 - Art. 2 II 2: *“This Regulation does not apply to the provision of trust services that are used exclusively within closed systems resulting from national law or from agreements between a defined set of participants.”*
- Systems set up in businesses or public administrations to manage internal procedures are not subject to the eIDAS Regulation
 - Internal PKI of private companies
 - System of electronic mailboxes for German lawyers and notaries
 - Electronic health cards
 - Certificates issued by public authorities provided they are used for internal communications only

Scope of the eIDAS Regulation (3)

- eIDAS Regulation does not comprise provisions regarding the formal or procedural requirements for the conclusion of contracts
 - Art. 2 III: *“This Regulation does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.”*
 - Recital 21: *“In addition, it should not affect national form requirements pertaining to public registers, in particular commercial and land registers.”*
- eIDAS regulation provides tools that can be used to enter into a contract electronically. If and how a contract can be concluded electronically is determined by the applicable national law
 - See. e.g. Sec. 126a German Civil Code (BGB)

 **03**


Electronic Identification

Electronic Identification (eID)

- Mutual recognition of electronic identification means (Art. 6)
 - Any notified eID with the same assurance level
 - For natural and legal persons
 - e.g. German identity card
 - Note: eID not a proof of existence or representation of a company
- Notification (Art. 7 – 9)
- Security breach (Art. 10)
- Liability (Art. 11)
- Cooperation and interoperability (Art. 12)

 **04**


Trust Services

Electronic Signatures (1)

- Electronic signatures must be attributed to a natural person
- eIDAS Regulation distinguishes between advanced and qualified electronic signatures
 - Qualified electronic signatures require the use of a qualified signature creation device (**QSCD**) and must be based on a qualified certificate which can only be issued by a qualified trust service provider
- eIDAS Regulation allows remote electronic signatures
 - Recital 52: “ [...] *remote electronic signature service providers should apply specific management and administrative security procedures and use trustworthy systems and products, including secure electronic communication channels, in order to guarantee that the electronic signature creation environment is reliable and is used under the sole control of the signatory.*”

Electronic Signatures (2)

- **Legal effects of electronic signatures (Art. 25)**
 - An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures
 - A **qualified** electronic signature shall have the equivalent legal effect of a handwritten signature
 - A **qualified** electronic signature based on a qualified certificate issued in one Member State shall be recognized as a qualified electronic signature in all other Member States

Electronic Signatures (3) – The role of the notary



handwritten signature =
qualified electronic signature



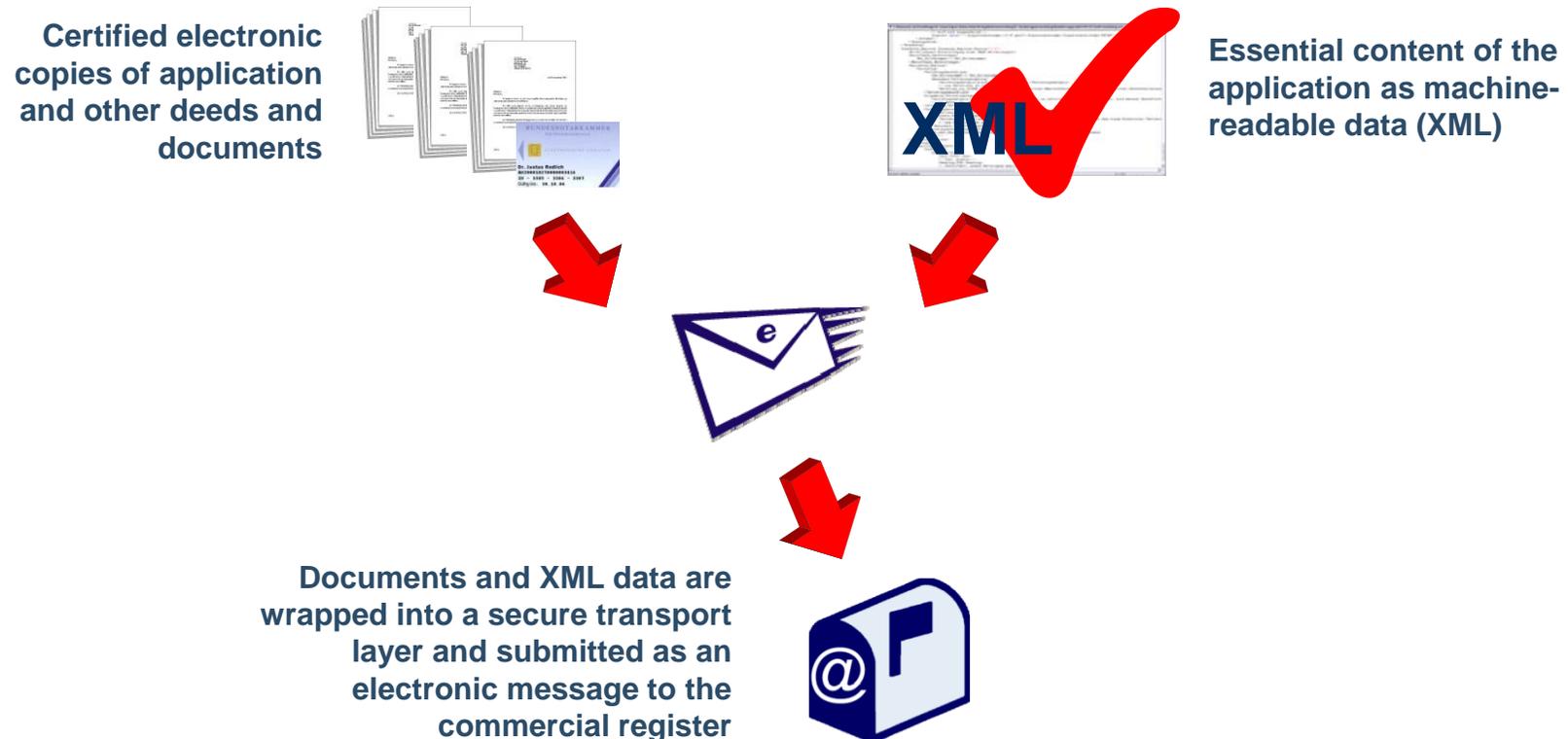
BUNDESNOTARKAMMER
ZERTIFIZIERUNGSSTELLE

**QUALIFIZIERTE
ELEKTRONISCHE SIGNATUR**

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notarial seal =
attribute „notary“ in the certificate of the
signature

Electronic Signatures (3) – Structure of an Electronic Application to the Commercial Register



Efficient Collaboration (1): The Notary...

collects

- required information and documents, mostly also preparing them for the parties

evaluates

- their content (completeness, legal accuracy, legal validity) and gives impartial and independent legal advice where required

prepares

- by digitizing the documents
- by certifying the accuracy of the electronic version and
- by filtering and structuring information relevant for the entry(XML data)

Efficient Collaboration (2): The Commercial Register...

can rely

- on information already verified and documents prepared by highly qualified and trusted legal professionals

re-checks

- information and documents for completeness, accuracy, legal validity, (*“second set of eyes”*)

incorporates

- electronic documents and structured data (XML) into the register in a process of few clicks, usually without having to make any changes to the data.

Conclusions

The German system of commercial law and its socio-economic benefits are based on transparency and public trust in the content of the commercial register. The principle of public trust is only viable if the information in the register can be relied on as legally and factually accurate, complete and current.

- The system of public trust in the commercial register has been maintained in compliance with the demands of modern procedures and EU regulation
- Entry into the commercial register is no longer a major bureaucratic process, but a cost- and time-efficient and modern service rendered by notaries and courts

Electronic Seals (1)

- eIDAS Regulation distinguishes between advanced and qualified electronic seals
 - Qualified electronic signatures require the use of a qualified signature creation device (**QSCD**) and must be based on a qualified certificate which can only be issued by a qualified trust service provider
- Electronic seals must be attributed to a legal person
 - Electronic seals are instruments to verify the integrity and origin of an electronic document
 - Under German law, an electronic seal can, however, not be used to issue a declaration of intent or knowledge.
 - Should only be used for information that does not have to be attributed to a natural person
 - Cannot be used to conclude a contract electronically

Electronic Seals (2)

- **Legal effects of electronic seals (Art. 35)**
 - An electronic seal shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic seals
 - A **qualified** electronic seal shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked
 - A **qualified** electronic seal based on a qualified certificate issued in one Member State shall be recognized as a qualified electronic seal in all other Member States

Other Trust Services (1)

- **Electronic Time Stamps**
 - Requirements for qualified electronic time stamps are provided in Art. 42
 - Legal effects of electronic time stamps (Art. 41)
 - An electronic time stamp shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic stamp
 - A **qualified** electronic time stamp shall enjoy the presumption of the accuracy of the date and time it indicates and the integrity of the data to which the date and time are bound
 - A **qualified** electronic time stamp issued in one Member State shall be recognized as a qualified electronic time stamp in all other Member States

Other Trust Services (2)

- **Electronic registered delivery services**
 - Requirements for qualified electronic registered delivery services are set out in Art. 42
 - Legal effects of electronic registered delivery service (Art. 41)
 - Data sent and received using an electronic registered delivery service shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic registered delivery service
 - Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service

Other Trust Services (3)

- **Website authentication**
 - Art. 45 provides requirements for qualified certificates for website authentication
 - No provision regarding legal effects

 **05**


Conclusion

Conclusion

- eIDAS Regulation provides an effective “toolkit” that can be used to enhance the trust in and effectiveness of electronic transactions in the internal market
 - eIDAS Regulation facilitates innovative legal instruments (e.g. remote electronic signatures, electronic seals)
 - a comprehensive cross-border and cross-sector trust infrastructure can, however, only be established by the combination of the eIDAS regulation with national implementation acts, national law regarding form and procedural requirements and an effective supervisory regime
- eIDAS Regulation does not affect legal or procedural obligations relating to form under national law
 - i.e. national form requirements of public registers are not affected

Thank you for your attention.

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