

The European digital union: The potential impact of the EU eIDAS regulation on Euro-African transactions

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Summary:

Having scarcely received attention in France, the EU Regulation of 23 July 2014 on “electronic identification and trust services for electronic transactions in the Internal market” makes a big step toward a Digital Single Market in Europe, in particular toward an electronic administration. Although this “eIDAS regulation” mainly concerns exchanges between citizens and EU member states, it might also help develop transactions between Europe and Africa.

Since many experts have discussed the impact on domestic commerce of the European Union's eIDAS regulation,¹ let us shift focus to a lesser known aspect on electronic identification and signatures, namely: the potential impact on trade between the EU and Africa.² To do this, let us first take a look at the chronology of events that suggest an opening of the “European digital union” toward the economic reality of countries outside the EU, in particular in Africa, which is the focus of this article:

- On 26 January 2010, ADETEF (now Expertise France) presented to the Union for the Mediterranean a selection, drawn up by conferring with parties in countries from the South, of ten decisive digital programs decisive for the Mediterranean area.
- On 4 December 2013, during a meeting of African heads of state in Paris, the president of France set the objective of doubling France’s economic transactions (both exports and imports) with Africa.
- On 15 July 2014, at Bercy in Paris, the Fondation Franco-Africaine pour la Croissance was officially launched with four priorities, one of them the digital economy. This foundation adopted the name AfricaFrance with the motto “For shared growth”.³
- On 23 July 2014, the EU Parliament and Council adopted the eIDAS regulation with the stated purpose of “*building trust in the on-line environment, a key to economic and social development [... and ...] providing a common foundation for secure electronic interaction between citizens, businesses and public authorities*”.⁴

¹ For an in-depth analysis of the eIDAS Regulation: D. Gobert, *Le règlement européen du 23 juillet 2014 sur l'identification électronique et les services de confiance (eIDAS): Analyse approfondie*, June 2015. Available at: <http://www.caprioli-avocats.com/images/pdf/ReglementeIDAS.pdf>

² This article has been written with the precious help of: Gérard Galler (International Relations Officer, European Commission, Directorate-General for Communication Networks, Content & Technology, DG CONNECT, Unit D.1 International); and by Didier Gobert (head of the service Droit de l'Économie Électronique in the division Télécommunications et Société de l'Information de la DG Réglementation Économique, Belgian Ministry of the Economy). It has been translated from French by Noal Mellott (Omaha Beach, France). Several references have been updated in the translated version.

³ Visit the website www.africafrance.org, in particular:

<http://www.africafrance.org/evenements/reunion-de-lancement-de-fondation-franco-africaine-croissance-15-juillet-2014/>

⁴ Regulation n° 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. Full text available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOL_2014_257_R_0002&from=EN

- In a 2014, France ranked first in Europe and fourth in the world on the United Nation's e-government development index (EGDI).⁵
- On 30 September 2014, the ministers of the Union for the Mediterranean, meeting in Brussels to discuss the digital economy, set the interoperability of electronic trust services as a priority.⁶
- On 18 November 2015, the EU modified its Neighborhood Policy, clearly declaring that one of its tools was digital technology.
- On 4 February 2016, at the French Ministry of Foreign Affairs, Alain Juppé, Jean-Louis Guigou and their African colleagues reviewed ten years of the activities conducted by the Institut de Prospective Économique du Monde Méditerranéen (IPEMED).⁷ They launched the predecessor of the Foundation Africa-Mediterranean-Europe (AME) with the strategic objective of forming a network of a hundred researchers from these three regions.
- On 18 February 2016, Thierry Breton, CEO of Atos, announced in Dakar the creation there of a thousand jobs in the digital economy. He declared that his firm recruits ten thousand persons per year, normally on the East-West axis but, now, on the North-South axis too.
- On 21-22 April 2016, Vienna, in response to a formal request by the United Nations Commission on International Trade Law (UNCITRAL), hosted a conference on legal questions about managing electronic identification and trust services.⁸
- On 1 July 2016, the section on trust services in the eIDAS regulation took effect in the EU (replacing Directive n° 1999/93/CE on electronic signatures). It sets up a standard framework for digital identification and trust services in electronic transactions with public administrations.

Given the weak signals coming from these events, and passing over the oft discussed impact of eIDAS on the EU and France, let us examine the international ramifications. These can be briefly formulated as five points: *a)* The World Bank digital identification in Africa; *b)* The EU is backing electronic signatures in the Mediterranean; *c)* Africa is preparing major innovations; *d)* The eIDAS regulation contains an article on "international aspects"; and *e)* European and French businesses have adopted a wait-and-see attitude.

The World Bank's promotion of digital identification in Africa

Thanks to French funding, the World Bank published in 2014 the *Digital Identity Toolkit*.⁹ This booklet recalls that developing and emerging countries are voicing more and stronger demands related to the identification of persons and goods. Besides being secure, digital identification — a key to transactions among people and to interactions between people and machines — has to be "*mobile, transactional, interoperable, portable and social*". One of its principal applications is to build "*secure, robust and reliable digital identification systems capable of establishing unique, official identities for individuals to enable e-government and e-commerce*". Let us bear in mind that national identification programs assign one identity per person for his/her whole life and for all needs.

Since then, the World Bank has launched a program for a "*global identification for development*" (ID4D). This program sponsored various events in June 2015 and May 2016 in Kigali,¹⁰ and is still being amply promoted by the bank.

⁵ United Nations, *E-Government Survey 2014*. Available at:

<https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2014>

⁶ <http://ufmsecretariat.org/fr/union-for-the-mediterranean-ufm-ministerial-meeting-on-digital-economy/>

⁷ www.ipemed.coop

⁸ The conclusions of this conference ("Legal issues related to identity management and trust services", A/CN.9/891) are available on:

<http://www.uncitral.org/uncitral/en/commission/sessions/49th.html>

⁹ Joseph Atick, Alan Gelb, Seda Pahlavooni, Ramos Gasol & Zaid Safdar, *Digital Identity Toolkit: A Guide for Stakeholders in Africa*, World Bank Working Paper, 2014, 59p. Available via:

<http://documents.worldbank.org/curated/en/2014/06/20272386/digital-identity-toolkit-guide-stakeholders-africa-guide-de-identit%C3%A9-%C3%A9lectronique-%C3%A0-l'intention-des-parties-prenantes-dafrique>

¹⁰ "Annual forum and expo on electronic identity in Africa", 24-26 May 2016 in Kigali. See:

<http://www.id4africaforum.com/2016/>; Twitter: @ID4Africa &

Unfortunately, the World Bank's toolkit was published well before the EU adopted eIDAS. Despite French funding, the bank did not discuss eIDAS in the French edition of the toolkit, which simply touts American norms.

The EU's backing of e-signature programs in the Mediterranean

The EU has shown interest in promoting electronic signature technology in the larger Mediterranean area. A notable example is its twinning program (with a section devoted to electronic signatures) with the Jordanian regulatory authority of telecommunications. Despite experts' recommendations, this program has been limited to drafting regulatory documents and setting up work teams but without taking into account whether or not a market exists and without paying attention to international aspects. The persons trained in Amman have, therefore, probably never handled any actual cases involving electronic signatures. By the time a market requiring electronic signatures emerges, the team will very likely have been dissolved.

The EU has continued working on this topic by organizing a series of seminars in Barcelona. This work came to an end on 23 January 2014 after the adoption of nine recommendations on e-signatures for transactions with countries to the south of the Mediterranean.¹¹ This helped prepare ministers from countries belonging to the Union for the Mediterranean for their meeting in Brussels on 30 September of the same year. According to the declaration made at this meeting, it was necessary *"to prioritize efforts to develop an interoperability framework between the EU and southern Mediterranean countries and between themselves. The first priority in this development shall be electronic trust services including e-signature, using elements of the EU eIDAS Regulation (Regulation 910/2014 on electronic identification and trust services for electronic transactions) as the common reference. This would also facilitate the realization of crossborder markets for goods and services, provide a higher degree of protection against fraud, a greater climate of trust between economic operators and lower costs of service providers"*.¹² Consequently, the work group on the digital economy at the Union for the Mediterranean adopted (on 19-20 April 2016 in Barcelona) a program with eight axes, including the interoperability of trust services.¹³

Morocco, Algeria, Tunisia, Lybia, Egypt, Jordan, Lebanon and the countries bordering on Europe are eligible for financial aid under the EU Neighborhood Policy, launched in 2004 to support and favor stability, security and prosperity in the countries located near EU borders. This policy, modified in November 2015, has two perspectives relevant to this article.¹⁴ For one thing, *"support for the digital economy should be stepped up, to harmonize the digital environments between the EU and its neighbors. This will create jobs, growth and innovation, particularly benefitting the young in terms of opportunities for education and employment, locally or at a distance, and for starting up low initial capital businesses"* (p.9). For another, *"the EU is committed to promoting good governance, democracy, rule of law and human rights"* (p.5). The transposition of these principles into concrete programs lies outside the province of the modified text; it is left up to national programs.

Quite clearly, establishing digital trust services between states and their citizens is a way to promote good governance and the rule of law and to fight against corruption and cybercriminality.

http://www.id4africaforum.com/2016/files/ID4Africa_2016_Program_Draft_FR.pdf

¹¹ "Final exploratory seminar on e-signatures for e-business transactions in the Southern Mediterranean region" held on 22-23 January 2014 in Barcelona. Available at:

http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=4282

¹² Point 4 in the declaration of the Union for the Mediterranean Ministerial Meeting on the Digital Economy held on 30 September 2014 in Brussels. Available at:

ufmsecretariat.org/wp-content/uploads/2014/09/UfMMinistersDeclarationEN.pdf

¹³ <https://www.linkedin.com/groups/8454617>

¹⁴ European Commission, "Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Review of the European Neighborhood Policy" on 18 November 2015. Available at:

http://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf

Africa about to make major innovations

Looking at the African continent, we notice exceptional advances being made thanks to mobile telephony. Several innovative services, such as payment via cell phones, are taking shape in Africa before Europe, because they respond to needs provided by other services in Europe (but not in Africa).

In West Africa alone, Ghana borrowed \$30 million from the World Bank; Nigeria has made an agreement with MasterCard for introducing digital identification; and the Ivory Coast has made part of its national development plan for 2016-2020 a reform to use digital identification for its national registry. It is more than likely that Africa will develop innovative digital identification and trust services, since it needs them more than Europe.

Given the overlapping of customary, administrative and commercial traditions, an African's usual name is not necessarily the registered name assuming, of course, that the country's population registry is up to date and that addresses can be precisely located. Given the high rate of cybercriminality in e-business on this continent, trust services are even more necessary in Africa than in France.

Besides, Africa is a continent where people have an ample capacity for communication and a strong tendency to circulate inside their local area, their country, and even on other continents. The globalization of transactions increases the need, everywhere on the planet, to know the precise digital identities of persons from Africa and to communicate with them in security. In fact, this is a condition for e-business to take off on this continent.¹⁵

The eIDAS regulation's international aspects

As of 1 July 2016 in the EU, the eIDAS regulation has instituted the principle of mutual recognition for qualified trust services; and the mutual recognition of e-identification will be mandatory as of September 2018. Article 14 of eIDAS foresees possibilities for an international recognition of qualified trust services from providers located in countries outside the Union.

Nothing will keep European firms from proposing to African clients trust services of the same quality as in Europe. This could, for example, enable African students to enroll on line in universities. Likewise, organizations will, we imagine, adapt eIDAS to private enterprise's needs, in particular for the commercial security of contracts with African countries.

¹⁵ Alain Ducass & Jean-Marc Kwadjane, "E-commerce in Africa: Morocco, Tunisia, Senegal and Ivory Coast" IPEMED Series: Building the Mediterranean, April 2016. Available at: <http://www.ipemed.coop/en/publications-r17/building-the-mediterranean-c49/e-commerce-in-africa-morocco-tunisia-senegal-and-ivory-coast-a2751.html>

The French and European wait-and-see attitude

The eIDAS regulation has received very little attention in France.¹⁶ It was not mentioned even once in the report by the Conseil National du Numérique to the Prime Minister on 18 June 2015.¹⁷ Nor is there any indication that the reform of the law about contracts and the burden of proof, which will soon modify the French Civil Code, has taken this into account.

By way of comparison, other European countries (such as Estonia) have foreseen the advantages that eIDAS will procure. In anticipation of eIDAS, Estonia already offers to anyone anywhere in the world an Estonian “e-citizenship”. This enables the person to open a bank account in Estonia, have an official address there and, very soon, accomplish administrative formalities anywhere in Europe without a physical residence on the continent. By the way, Estonia will thus increase its tax revenue to the detriment of countries with less foresight. By setting low tax rates for e-businesses, it will legally attract profits and taxes from the European and French small and medium-sized companies that set up e-subidiaries in Estonia, similar to what Luxembourg has done in dealings with transnational corporations.

Seizing the opportunity for sharing development with Africa, France has signed a digital pact with Tunisia and the Ivory Coast. Despite its solid industrial position, France still has a wait-and-see attitude about international cooperation in matters of digital identification and trust services. Meanwhile, Id4Africa, which touts a “*legal identity for all in Africa*”,¹⁸ is presided by an American, while several French organizations have postponed indefinitely the offers they have received for cooperation with Africa in matters of digital identification and trusted third parties.¹⁹

The EU seems to be starting to react, spurred on by Alexander Decroo, the Belgian deputy prime minister in charge of Development Cooperation, the Digital Agenda, Telecommunications and the Post Office. On 10 July 2015, Decroo launched a call for “Digitalization as a driver of change for development cooperation”.²⁰ It was cosigned by fifteen European ministers, including the French minister of the Public Administration, Annick Girardin. Let us hope this call along with the launching of France Connect²¹ and the work of the research chair “Values and policies of personal information” will help France move beyond its wait-and-see attitude.

¹⁶ Isabelle Renard, “Le règlement eIDAS aurait-il échappé aux français?”, July 2015.. Available at: www.globalsecuritymag.fr/Isabelle-Renard-Le-reglement-EiDAS,20150706,54129.html

¹⁷ Conseil National du Numérique, “Ambition numérique: Pour une politique française et européenne de la transition numérique”, report to the Prime Minister, June 2015, . Available at:

CNNum--rapport-ambition-numerique.pdf available at <http://cnnumerique.fr/>

¹⁸ www.id4africaforum.com

¹⁹ Such as the DGE, Secure Identity Alliance (<https://www.secureidentityalliance.org>) and Fédération Nationale des Tiers de Confiance (<https://www.fntc.org/>). ADETEF and French businessmen have repeatedly suggested to the Direction Générale des Entreprises (DGE) to list digital identification and trust services among the projects of international cooperation, but the Secrétariat Général pour la Modernisation de l’Action Publique (SGMAP) has halted advances in this field since 2000.

²⁰ <http://www.decroo.belgium.be/fr/le-ministre-de-croo-prend-une-initiative-europ%C3%A9enne-afin-de-donner-%C3%A0-la-digitalisation-un-r%C3%B4le>

²¹ <http://etatplateforme.modernisation.gouv.fr/identite-numerique>