**COD1998/191: Electronic communication, open networks safety: electronic signatures, common regulatory framework**

<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1998/0191(COD)&l=en>

\*Mattila and Lane’s coding of voting outcome: 1 (NO VOTE) and it is under Unanimity.

**#1. Recital 3 in EP 1st Reading (not important)**

EP 1st reading replaced the word, “digital” with “electronic” but Commission and Council did not adopt this change.

***ORIGINAL PROPOSAL (Recital 3)***:

Whereas on 1 December 1997, the Council invited the Commission to submit as soon as possible a proposal for a

Directive of the European Parliament and the Council on **digital** signatures;

***COUNCIL COMMON POSITION*** ***(Recital 3):***

SAME AS ORIGINAL PROPOSAL

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#2. Recital 4 in EP 1st Reading (important)**

EP 1st reading made it clear that “clear common framework conditions for electronic signatures will strengthen confidence in the new technologies” and Member States’ divergent actions “must not be allowed to hinder the free movement of goods and services in the internal market” whereas Original Proposal simply stated that non-harmonization of standards “hinders the development of the internal market” and harmonization at Community level is needed given divergent actions in Member States. Amended proposal adopted EP 1ST READING and Council Common Position almost adopted EP 1ST READING except for slight changes in wording (e.g. it uses “legislation” rather than “divergent actions” in Member States). EP 2ND READING and Final Act adopted Council’s Common Position.

***ORIGINAL PROPOSAL (Recital 4)***:

Whereas electronic communication and commerce necessitate electronic signatures and related services allowing data authentication; whereas divergent rules with respect to legal recognition of electronic signatures and the accreditation of certification service providers in the Member States may create a significant barrier to the use of electronic communications and electronic commerce **and thus hinder the development of the internal market;** whereas divergent actions in the Member States **indicate the need for harmonisation at Community level;**

***EP 1ST READING (Recital 4):***

Whereas electronic communication and commerce necessitate electronic signatures and related services allowing data authentication; whereas divergent rules with respect to legal recognition of electronic signatures and the accreditation of certification service providers in the Member States may create a significant barrier to the use of electronic communications and electronic commerce; **whereas clear common framework conditions for electronic signatures, on the other hand, will strengthen confidence in and general acceptance of the new technologies;** whereas ***divergent actions*** in the Member States **must not be allowed to hinder the free movement of goods and services in the internal market;**

***AMENDED PROPOSAL (Recital 4):***

SAME AS EP 1ST READING

***COUNCIL COMMON POSITION*** ***(Recital 4):***

Whereas electronic communication and commerce necessitate "electronic signatures" and related services allowing data authentication; whereas divergent rules with respect to legal recognition of electronic signatures and the accreditation of certification-service providers in the Member States may create a significant barrier to the use of electronic communications and electronic commerce; whereas, on the other hand, a clear Community framework **regarding the conditions applying to** electronic signatures will strengthen confidence in, and general acceptance of, the new technologies; whereas **legislation** in the Member States **should not** hinder the free movement of goods and services in the internal market;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

HARD TO TELL / GREEN

**#^3. Recital 5 in Common Position (IMPORTANT)**

Council Common Position adds two relevant regulations to be conditioned on. EP 2ND READING and Final Act adopted Council Common Position.

***ORIGINAL PROPOSAL (Recital 5)***:

Whereas the interoperability of electronic signature products should be promoted; whereas, in accordance with Article **7a** of the Treaty, the Internal Market **is to comprise** an area in which the free movement of goods **is to be ensured;** whereas essential requirements specific to electronic signature products **used by certification service providers** must be met in order to ensure free **circulation** within the Internal Market and to build trust in electronic signatures;

***COUNCIL COMMON POSITION*** ***(Recital 5):***

Whereas the interoperability of electronic-signature products should be promoted; whereas, in accordance with Article **14** of the Treaty, the internal market **comprises** an area **without internal frontiers** in which the free movement of goods **is ensured**; whereas essential requirements specific to electronic-signature products must be met in order to ensure free **movement** within the internal market and to build trust in electronic signatures, **without prejudice to Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods (5) and Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods (6);**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#4. Recital 6 in EP 1st Reading (not IMPORTANT)**

EP 1ST Reading deleted the last sentence stating that “digital signatures based on public-key cryptography are currently the most recognized form of electronic signature” and Amended Proposal, Council Common Position, EP 2nd Reading, and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 6)***:

Whereas the rapid technological development and the global character of the Internet necessitate an approach which is open to various technologies and services capable of authenticating data electronically; **whereas, however, digital signatures based on public-key cryptography are currently the most recognised form of electronic signature;**

***EP 1ST READING (Recital 6):***

Whereas the rapid technological development and the global character of the Internet necessitate an approach which is open to various technologies and services capable of authenticating data electronically;

***COUNCIL COMMON POSITION*** ***(Recital 8):***

SAME AS EP 1ST READING

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#5. Recital 6a(new) in EP 1st Reading (important)**

EP 1ST READING newly introduced this recital calling for the Commission’s review of this Directive before 2003 and its examination of the implications of associated technical areas such as confidentiality and its submission of a report to the EP and the Council. Amended Proposal adopted EP 1st reading with slight changes in wording. Council Common Position replaced “before 2003” with “two years after its implementation” and deleted the word, “confidentiality” from its goals. EP 2ND READING and Final Act adopted Council Common Position.

***COUNCIL COMMON POSITION*** ***(Recital 27):***

Whereas **two years after its implementation** the Commission **will carry out a review** **of** this Directive **so as, inter alia,** to ensure that the advance of technology or changes in the legal environment have not created barriers to achieving the aims stated in this Directive; whereas **it** should examine the implications of associated technical areas and **submit** a report to the European Parliament and the Council on this subject;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^6. Recital 9(new) in Common Position (not important)**

Council Common Position newly introduced this recital stating the range of new services and products related to or using electronic signatures. EP 2ND READING and Final Act adopted this.

***COUNCIL COMMON POSITION*** ***(Recital 9):***

**Whereas electronic signatures will be used in a large variety of circumstances and applications, resulting in a wide range of new services and products related to or using electronic signatures; whereas the definition of such products and services should not be limited to the issuance and management of certificates, but should also encompass any other service and product using, or ancillary to, electronic signatures, such as registration services, time-stamping services, directory services, computing services or consultancy services related to electronic signatures;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^7. Recital 10 in Common Position (not important)**

Council Common Position deleted the phrase stating that “there is no immediate need to ensure the free circulation….” And instead, it added a new phrase defining “prior authorization” in detail. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 7)***:

Whereas the internal market enables certification services providers to develop their cross-border activities with a view to increasing their competitiveness, and thus to offer consumers and business new opportunities to exchange information and to trade electronically in a secure way, regardless of frontiers; whereas in order to stimulate the Community-wide provision of certification services over open networks, certification service providers should in general be free to **offer** their services without prior authorization; **whereas there is no immediate need to ensure the free circulation of certification services by harmonizing justified and proportionate national restrictions on the provision of those services;**

***COUNCIL COMMON POSITION*** ***(Recital 10):***

Whereas the internal market enables certification-service-providers to develop their cross-border activities with a view to increasing their competitiveness, and thus to offer consumers and businesses new opportunities to exchange information and trade electronically in a secure way, regardless of frontiers; whereas in order to stimulate the Community-wide provision of certification services over open networks, certification-service-providers should be free to **provide** their services without prior authorisation. **Prior authorisation means not only any permission whereby the certification-service-provider concerned has to obtain a decision by national authorities before being allowed to provide its certification services, but also any other measures having the same effect.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^8. Recitals 12 and 14 in Common Position (important)**

Council Common Position adds a new phrase stating that “certification services can be offered either by a public entity or a legal or natural person, when it established in accordance with the national law” and it replaced “such” with “voluntary.” EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 8, last sentence)***:

….whereas Member States should not prohibit certification service providers from operating outside **such** accreditation schemes;whereas it should be ensured that accreditation schemes do not reduce competition for certification services; whereas it is important to strike a balance between consumer and business needs;

***COUNCIL COMMON POSITION*** ***(Recital 12):***

Whereas **certification services can be offered either by a public entity or a legal or natural person, when it is established in accordance with the national law;** whereas Member States should not prohibit certification-service-providers from operating outside **voluntary** accreditation schemes; whereas it should be ensured that **such** accreditation schemes do not reduce competition for certification services; (LAST SENTENCE IS RELOCATED TO RECITAL 14 VERBATIM)

***COUNCIL COMMON POSITION*** ***(Recital 14):***

Whereas it is important to strike a balance between consumer and business needs;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / RED

**#^9. Recital 13(new) in Common Position (not important)**

Council Common Position newly introduces this recital on the supervision of compliance. It is up to Member States. EP 2nd Reading and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Recital 13):***

**Whereas Member States may decide how they ensure the supervision of compliance with the provisions laid down in this Directive; whereas this Directive does not preclude the establishment of private-sector-based supervision systems; whereas this Directive does not oblige certification-service-providers to apply to be supervised under any applicable accreditation scheme;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^10. Recital 15(new) in Common Position (important)**

Council Common Position newly introduces this recital on Annex III covering requirements for secure signature-creation devices. EP 2nd reading and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Recital 13):***

**Whereas Annex III covers requirements for secure signature-creation devices to ensure the functionality of advanced electronic signatures; whereas it does not cover the entire system environment in which such devices operate; whereas the functioning of the internal market requires the Commission and the Member States to act swiftly to enable the bodies charged with the conformity assessment of secure signature devices with Annex III to be designated; whereas in order to meet market needs conformity assessment must be timely and efficient ;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^11. Recitals 16 in Common Position (important)**

\*\*note: I don’t think this relieves restrictions but what do you think? Original Proposal states that the framework does not apply to the closed systems (expansion) but Council Common Position introduces exceptions to it (adds restrictions). EP 2nd reading basically adopts it with more precise wordings.

Council Common Position adds new phrase calling for exceptions where this regulatory framework should be applied even for electronic signatures within closed user-groups**. EP 2ND Reading defines “closed systems” such that “the one based on voluntary agreements under private law between a specified number of participants.” It highlights that “the legal effectiveness of electronic signatures used in such systems and their admissibility as evidence in legal proceedings must be recognized.”** Final Act adopted EP 2nd Reading with slight wording changes.

***ORIGINAL PROPOSAL (Recital 9, first-third sentence)***:

Whereas this Directive **should therefore** contribute to the use and legal recognition of electronic signatures within the Community; whereas a regulatory framework is not needed for electronic signatures exclusively used within closed systems; whereas the freedom of parties to agree among themselves the terms and conditions under which they accept electronically signed data should be respected to the extent allowed by national law…

***FINAL ACT (Recital 16):***

This Directive contributes to the use and legal recognition of electronic signatures within the Community; a regulatory framework is not needed for electronic signatures exclusively used within systems, which are based on voluntary agreements under private law between a specified number of participants; the freedom of parties to agree among themselves the terms and conditions under which they accept electronically signed data should be respected to the extent allowed by national law; **the legal effectiveness of electronic signatures used in such systems and their admissibility as evidence in legal proceedings should be recognised;**

GREEN / GREEN

**#^12. Recitals 17 in Common Position (not important)**

Council common position largely adopted Original Proposal but there are some slight changes in wording. EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 9, fourth and fifth sentences)***:

…whereas this Directive **is not intended to** harmonize national rules concerning contract law, particularly the formation and performance of contracts, or **other non-contractual formalities requiring signatures;** whereas for this reason the provisions concerning the legal effect of electronic signatures should be without prejudice to **formal** requirements **prescribed by** national law with regard to the conclusion of contracts or the rules determining where a contract is concluded;

***COUNCIL COMMON POSITION*** ***(Recital 17):***

Whereas this Directive **does not seek** to harmonise national rules concerning contract law, particularly the formation and performance of contracts, or **other formalities of a non-contractual nature concerning signatures;** whereas for this reason the provisions concerning the legal effect of electronic signatures should be without prejudice to requirements **regarding form laid down** in national law with regard to the conclusion of contracts or the rules determining where a contract is concluded;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^13. Recital 18(new) in Common Position (not important)**

Council Common Position newly introduces this recital warning that the storage and copying of signature-creation data could cause a threat to the legal validity of electronic signatures. EP 2nd Reading and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Recital 18):***

**Whereas the storage and copying of signature-creation data could cause a threat to the legal validity of electronic signatures;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^14. Recital 19(new) in Common Position (important)**

Council common position newly introduces this recital calling for electronic signature’s usage in the public sector. EP 2nd Reading and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Recital 19):***

**Whereas electronic signatures will be used in the public sector within national and Community administrations and in communications between such administrations and with citizens and economic operators, for example in the public procurement, taxation, social security, health and justice systems;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^15. Recital 20 in Common Position (not important)**

Council Common Position adds new paragraphs stating that national laws lay down different requirements for the legal validity of hand-written signatures and defining the relationship between qualified certificates and advanced electronic signatures. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 10, last sentences)***:

… whereas harmonized **rules concerning** the legal effect of electronic signatures will preserve a coherent legal framework across the Community;

***COUNCIL COMMON POSITION*** ***(Recital 20):***

Whereas harmonised **criteria relating to** the legal effects of electronic signatures will preserve a coherent legal framework across the Community; **whereas national law lays down different requirements for the legal validity of hand-written signatures; whereas certificates can be used to confirm the identity of a person signing electronically; whereas advanced electronic signatures based on qualified certificates aim at a higher level of security; whereas advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device can be regarded as legally equivalent to hand-written signatures only if the requirements for hand-written signatures are fulfilled;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^16. Recitals 21 in Common Position (important)**

Council Common Position deleted the phrases on the case where an electronic signature should not be denied legal validity. Instead, it newly adds the phrases asking for national law and courts to govern the use of electronic signatures. It replaces the word, “signatures” with “authentication methods.” EP 2ND READING AND Final Act largely adopted Council Common Position.

***ORIGINAL PROPOSAL (Recital 10, first-fifth sentences)***:

Whereas in order to contribute to the general acceptance of electronic **signatures**, an electronic signature **should not be denied legal validity solely on the grounds that it is in the form of electronic data,** **not based upon a qualified certificate or upon a certificate issued by an accredited certification service provider, or that the service provider who has issued the related certificate is from another Member State;** **whereas electronic signatures which are related to a trustworthy certification service provider who complies with the essential requirements should have the same legal effect as hand written signatures;** whereas it has to be ensured that electronic signatures can be used as evidence in legal proceedings in all Member States; whereas the legal recognition of electronic signatures should be based upon objective criteria and not be linked to authorization of the service provider involved;…

***FINAL ACT (Recital 21):***

In order to contribute to the general acceptance of electronic authentication methods it has to be ensured that electronic signatures can be used as evidence in legal proceedings in all Member States; the legal recognition of electronic signatures should be based upon objective criteria and not be linked to authorisation of the certification-service-provider involved; national law governs **the legal spheres** in which electronic documents and electronic signatures may be used; this Directive is without prejudice to the power of a national court to make a ruling regarding conformity with the requirements of this Directive and does not affect national rules regarding the unfettered judicial consideration of evidence;

RED / RED

**#^17. Recitals 22 in Common Position (important)**

Council Common Position deleted the sentences except for the first one from Original Proposal on the consequences of having differences in liability rules. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Recital 11)***:

Whereas certification service providers **offering** certification services to the public are subject to national **liability rule**s; **whereas differences in the scope and content of such liability rules may result in legal uncertainty, particularly concerning third parties relying on their services; whereas such uncertainty will be detrimental to the development of cross-border trade and will hamper the proper functioning of the Internal Market; whereas harmonized liability rules provide legal security and predictability for both certification service providers and consumers; whereas such rules would contribute to the general acceptance and legal recognition of electronic signatures within the Community and consequently have a beneficial effect on the functioning of the Internal Market;**

***COUNCIL COMMON POSITION*** ***(Recital 22):***

Whereas certification-service-providers **providing** certification-services to the public are subject to national **rules regarding liability;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / RED

**#18. Recital 10a(new) in EP 1st Reading (IMPORTANT)**

Council Common Position deleted the phrase on the electronic filing of petitions and also the conditions under which electronic communication could be of great service.

***COUNCIL COMMON POSITION*** ***(Recital 7):***

Whereas the internal market **ensures** the free movement of persons, as a result of which citizens and residents of the European Union increasingly need to deal with authorities in Member States other than the one in which they reside; whereas the availability of electronic communication could be of great service in this respect;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#19. Recital 12 in EP 1st Reading (IMPORTANT)**

EP 1ST Reading newly adds the last sentence calling for agreements on multilateral rules with non-member states to respect the right of the EU to maintain and develop existing rules on data protection. Amend proposal did not adopt EP 1ST Reading. Council Common Position deleted all sentences except for the first sentence from Original Proposal. EP 2nd reading reintroduces the second sentence from EP 1st Reading to Council Common Position. Final Act adopted EP 2nd reading.

***ORIGINAL PROPOSAL (Recital 12)***:

Whereas the development of international electronic commerce requires cross-border mechanisms which involve non-member countries; **whereas those mechanisms should be developed at a business level**; whereas in order to ensure interoperability at a global level, agreements on multilateral rules with non-member countries on mutual recognition of certification services could be beneficial;

***EP 2ND READING*** ***(Recital 23):***

Whereas the development of international electronic commerce requires cross-border arrangements involving third countries; whereas in order to ensure interoperability at a global level, agreements on multilateral rules **with third countries on mutual recognition of certification services could be beneficial;**

***FINAL ACT (Recital 23):***

SAME AS EP 2ND READING

GREEN / RED

**#20. Recital 12a(new) in EP 1st Reading (IMPORTANT)**

EP 1ST Reading adds a new recital calling for data protection and respect for privacy. Amended proposal, Council Common Position, EP 2nd Reading and Final Act did not adopt it

***COUNCIL COMMON POSITION:***

NOT ADOPTED

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

NO CHANGE / WHITE

**#21. Recital 13a(new) in EP 1st Reading (IMPORTANT)**

EP 1ST READING newly adds this recital calling for the Directive to be without prejudice to existing national provisions about public policy or public security or confidentiality services. Amended Proposal adopted it. However, Council Common Position got rid of “existing” from national provisions. EP 2nd Reading adopted this position, so did Final Act.

***COUNCIL COMMON POSITION*** ***(Recital 6):***

Whereas this Directive **does not harmonise the provision of services with respect to the confidentiality** of information **where they are covered by national provisions concerned with public policy or public security;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / RED

**#^22. Recital 24 in Common Position (IMPORTANT)**

Council Common Position changes wordings of the first sentence slightly and deleted the latter part of the sentences. EP 2ND READING and Final Act adopted this.

***ORIGINAL PROPOSAL (Recital 13)***:

Whereas in order to **stimulate electronic communication and electronic commerce by ensuring user confidence,** **Member States should oblige** certification service providers to respect data protection legislation and individual privacy **and should be required to provide certification services also for pseudonyms at the request of the signatory; whereas national law should lay down if and under what conditions the data revealing the identity of the data subject must be transferred for investigation of criminal offences; whereas certification service providers should inform users in advance of their conditions, in particular regarding the precise use of their certificates and limitations of their liability, in writing and in readily understandable language and using a durable means of communication;**

***COUNCIL COMMON POSITION*** ***(Recital 24):***

Whereas in order to **increase user confidence in electronic communication and electronic commerce**, certification-service-providers **must observe** data protection legislation and individual privacy;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / RED

**#^23. Recital 25(new) in Common Position (IMPORTANT)**

Council Common Position newly introduced this recital allowing Member States’ discretion to require identification of persons despite provisions on the use of pseudonyms.

***COUNCIL COMMON POSITION*** ***(Recital 25):***

**Whereas provisions on the use of pseudonyms in certificates should not prevent Member States from requiring identification of persons pursuant to Community or national law;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / RED

**#24. Recital 14 in EP 1st Reading (IMPORTANT)**

EP 1ST READING replaced “consultative Committee” with “Contact Committee” but Amended Proposal didn’t adopt it. Council Common Position again replaced it with “management committee.” EP 2ND READING adopted it. However, Final Act deleted the whole phrase and introduced a new recital vaguely mentioning that implementation will be done according to the procedures for the exercise of implementing powers conferred to the Commission.

***ORIGINAL PROPOSAL (Recital 14)***:

Whereas for the purposes of the application of this Directive, the Commission should be assisted by a **consultative** Committee;

***Final Act (Recital 26):***

**The measures necessary for the implementation of this Directive are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1);**

HARD TO TELL / GREEN

**#25. Article 1 in EP 1st Reading (not IMPORTANT)**

EP 1ST READING mostly adopted Original Proposal except for changes in location of the third sentence. Amended Proposal adopted it. However, Council Common Position creates more exceptions having to do with national laws. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 1)***:

**This Directive covers the legal recognition of electronic signatures.**

It does not cover other aspects related to the conclusion and validity of contracts or **other non-contractual formalities requiring signatures.**

It establishes a legal framework for certain certification services **made available to the public.**

***COUNCIL COMMON POSITION*** ***(Article 1):***

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

It does not cover aspects related to the conclusion and validity of contracts or other **legal obligations where there are requirements as regards form prescribed by national or Community law nor does it affect rules and limits, contained in national or Community law, governing the use of documents.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^26. Article 2(1) in Amended Proposal (not important)**

Amended Proposal replaced the word, “digital” with “electronic.” Council Common Position accepted it but relocated the part calling for “meeting the following requirements” to Article 2(2), introduction after making distinctions between electronic signature and advanced electronic signature. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(1))***:

For the purpose of this Directive:

(1) "electronic signature" means a signature in **digital** form in, or attached to, or logically associated with, data which is used by a signatory to indicate his approval of the content of that data and meets the following requirements:

***COUNCIL COMMON POSITION*** ***(Article 2(1)):***

"electronic signature" means data in **electronic** form **which are** attached to or logically associated with **other electronic data and which serve as a method of authentication; [Relocated SUB-PARAGRAPH FROM ORIGINAL PROPOSAL]**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^27. Article 2(2) in Common Position (NOT important)**

Council Common Position makes a distinction between “electronic signature” and “advanced electronic signature” and replaced the words, “alteration” with “change” and “revealed” with “detectable.” EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(1)(a)-(d))***:

(a) it is uniquely linked to the signatory,

(b) it is capable of identifying the signatory,

(c) it is created using means that the signatory can maintain under his sole control, and

(d) it is linked to the data to which it relates in such a manner that any subsequent **alteration** of the data is **revealed**.

***COUNCIL COMMON POSITION*** ***(Article 2(2)):***

**"advanced electronic signature" means an electronic signature which meets the following requirements:**

 (a) it is uniquely linked to the signatory;

 (b) it is capable of identifying the signatory;

 (c) it is created using means that the signatory can maintain under his sole control; and

 (d) it is linked to the data to which it relates in such a manner that any subsequent **change** of the data is **detectable;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#28. Article 2(2) in EP 1st Reading (not important)**

***ORIGINAL PROPOSAL (Article 2(2))***:

Signatory means a person who creates an electronic signature;

***COUNCIL COMMON POSITION*** ***(Article 2(3)):***

"signatory" means a person who **holds a signature-creation device and acts** either on his own behalf or on behalf of the entity **or legal or natural person or entity he represents;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^29. Articles 2(4) and (5) in Common Position (not important)**

Council Common Position makes a distinction between “signature creation data” and “signature creation device.” EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(3))***:

"signature creation device" means unique data, such as codes or private cryptographic keys, **or a uniquely configured physical device** which is used by the signatory in creating an electronic signature;

***COUNCIL COMMON POSITION*** ***(Article 2(4)):***

"signature-creation data" means unique data, such as codes or private cryptographic keys, which are used by the signatory to create an electronic signature;

***COUNCIL COMMON POSITION*** ***(Article 2(5)):***

"signature-creation device" means **configured software or hardware used to implement the signature-creation data;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^30. Article 2(6) in Common Position (not important)**

***COUNCIL COMMON POSITION*** ***(Article 2(6)):***

**"secure-signature-creation device" means a signature-creation device which meets the requirements laid down in Annex III;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^31. Articles 2(7) and (8) in Common Position (not important)**

Council Common Position makes a distinction between “signature-verification-data” and “signature-verification device.” EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(4))***:

"signature verification **device**" means **unique** data**,** such as codes or public cryptographic keys, or a **uniquely** configured **physical device** which is used in verifying the electronic signature;

***COUNCIL COMMON POSITION*** ***(Article 2(7)):***

"signature-verification-**data**" means data, such as codes or public cryptographic keys, which are used for the purpose of verifying an electronic signature;

***COUNCIL COMMON POSITION*** ***(Article 2(8)):***

**"signature-verification device"** means configured **software or hardware used to implement the signature-verification-data;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#32. Article 2(5) in EP 1st Reading (important)**

Council Common Position makes a distinction between “certificate” and “qualified certificate”. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(5))***:

qualified certificate’ means a **digital** attestation which links a signature verification device to a person, confirms the identity of that person and meets the requirements laid down in Annex I;

***COUNCIL COMMON POSITION*** ***(Article 2(9)):***

**"certificate"** means an electronic attestation which links signature-verification data to a person and confirms the identity of that person;

***COUNCIL COMMON POSITION*** ***(Article 2(10)):***

"qualified certificate" means **a certificate** which meets the requirements laid down in Annex I **and is provided by a certification-service-provider who fulfils the requirements laid down in Annex II;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#33. Article 2(6) in EP 1st Reading (important)**

EP 1ST READING adds the word, “independent” to “entity” but Amended Proposal didn’t adopt it. Council Common Position also didn’t adopt it and it adds “a legal or natural” to “person.” EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 2(6))***:

certification service provider’ means a person who, or an entity which, issues certificates or provides other services related to electronic signatures to the public;

***COUNCIL COMMON POSITION*** ***(Article 2(11)):***

"certification-service-provider" means an entity or **a legal or natural** person who issues certificates or provides other services related to electronic signatures;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / BLUE

**#^34. Article 2(12) in Common Position (important)**

Council Common Position newly adds the phrase, “**or are intended to be used for the creation or verification of electronic signatures;**” to make the definition of “electronic signature product” more precise.

***ORIGINAL PROPOSAL (Article 2(7))***:

"electronic signature product" means hardware or software, or relevant components thereof, which are intended to be used by a certification service provider for the provision of electronic signature services.

***COUNCIL COMMON POSITION*** ***(Article 2(12)):***

"electronic-signature-product" means hardware or software, or relevant components thereof, which are intended to be used by a certification-service-provider for the provision of electronic-signature services **or are intended to be used for the creation or verification of electronic signatures;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / BLUE

**#^35. Article 2(13)(new) in Common Position (not important)**

Council Common Position newly introduces this article on voluntary accreditation. EP 2ND READING and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Article 2(13)):***

**"voluntary accreditation" means any permission, setting out rights and obligations specific to the provision of certification services, to be granted upon request by the certification-service-provider concerned, by the public or private body charged with the elaboration of, and supervision of compliance with, such rights and obligations, where the certification-service-provider is not entitled to exercise the rights stemming from the permission until it has received the decision by the body.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#36. Article 3(2) in EP 1st Reading (important)**

EP 1ST READING newly adds the second sentence allowing Member States to recognize accreditation schemes by organizations independent of Member States’ administrations. Amended Proposal adopted it. However, Council Common Position went back to Original Proposal. EP 2nd Reading and Final Act followed this move.

***ORIGINAL PROPOSAL (Article 3(2))***:

Without prejudice to the provisions of paragraph 1, Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision. All conditions related to such schemes must be objective, transparent, proportionate and non-discriminatory. Member States may not limit the number of certification service providers for reasons which fall under the scope of this Directive.

***COUNCIL COMMON POSITION*** ***(Article 3(2)):***

SAME AS ORIGINAL PROPOSAL

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

NO CHANGE / WHITE

**#^37. Article 3(3)(new) in Common Position (not important)**

Council Common Position newly introduces this article calling for establishing an appropriate supervision system. EP 2ND READING and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Article 3(3)):***

**Each Member State shall ensure the establishment of an appropriate system that allows for supervision of certification-service-providers which are established on its territory and issue qualified certificates to the public.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^38. Article 3(4)(new) in Common Position (important)**

Council Common Position newly introduces this article laying out how to determine the conformity of secure signature creation devices with the requirements in Annex III. EP 2ND READING and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Article 3(4)):***

**The conformity of secure signature-creation-devices with the requirements laid down in Annex III shall be determined by appropriate public or private bodies designated by Member States. The Commission shall, pursuant to the procedure laid down in Article 9, establish criteria for Member States to determine whether a body should be designated.**

**A determination of conformity with the requirements laid down in Annex III made by the bodies referred to in the first subparagraph shall be recognised by all Member States..**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^39. Article 3(5) in Common Position (important)**

Council Common Position asks compliance with one more regulation, Annex III. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 3(3))***:

The Commission may, in accordance with the procedure laid down in Article 9, establish and publish reference numbers of generally recognized standards for electronic signature products in the Official Journal of the European Communities. Member States shall presume compliance with the requirements laid down in **point (e) of Annex II** when an electronic signature product meets those standards.

***COUNCIL COMMON POSITION*** ***(Article 3(5)):***

The Commission may, in accordance with the procedure laid down in Article 9, establish and publish reference numbers of generally recognised standards for electronic-signature products in the Official Journal of the European Communities. Member States shall presume that there is compliance with the requirements laid down in Annex II, **point (f), and Annex III** when an electronic signature product meets those standards.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^40. Article 3(6)(new) in Common Position (not important)**

Council Common Position newly introduces this article calling for Member States’ and the Commission’s cooperation to promote the development and use of signature verification devices. EP 2ND READING and Final Act adopted it.

***COUNCIL COMMON POSITION*** ***(Article 3(6)):***

**Member States and the Commission shall work together to promote the development and use of signature-verification devices in the light of the recommendations for secure signature-verification laid down in Annex IV and in the interests of the consumer**.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#41. Article 3(4) in EP 1st Reading (important)**

EP 1ST READING newly adds the last sentence constraining the requirements not to be an obstacle to cross-border services for citizens. Amended Proposal adopted it. However, Council Common Position relieves it by deleting the latter part mentioning specific fields of services. EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 3(4))***:

Member States may make the use of electronic signatures in the public sector subject to additional requirements. Such requirements shall be objective, transparent, proportionate, and non-discriminatory, and shall only relate to the specific characteristics of the application concerned.

***COUNCIL COMMON POSITION*** ***(Article 3(7)):***

Member States may make the use of electronic signatures in the public sector subject to **possible** additional requirements. Such requirements shall be objective, transparent, proportionate and nondiscriminatory and shall relate only to the specific characteristics of the application concerned. Such requirements may not constitute an obstacle to cross-border services for citizens.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / GREEN

**#42. Article 5 in EP 1st Reading (important)**

EP 1ST READING switches the order of first and second paragraphs. Amended Proposal adopted it. Council Common Position mostly adopts EP 1st reading but newly adds one more condition under which the legal effectiveness and admissibility would not be denied. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 5)***:

1. Member States shall ensure that an electronic signature is not denied legal effects, validity and enforceability solely on the grounds that the signature is in an electronic form, or is not based on a qualified certificate, or is not based on a certificate issued by an accredited certification service provider.

2. Member States shall ensure that electronic signature**s** which are based on a qualified certificate issued by a certification service provider which fulfils the requirements set out in Annex II are, on the one hand, recognised as satisfying the legal requirements of a handwritten signature, and on the other, admissible as evidence in legal proceedings in the same manner as handwritten signatures.

***COUNCIL COMMON POSITION*** ***(Article 5):***

1. Member States shall ensure that **advanced** electronic signatures which are based on a qualified certificate **and which are created by a secure-signature-creation device:**

(a) satisfy the legal requirements of a signature **in relation to data in electronic form in the same manner as a** handwritten signature satisfies **those requirements in relation to paper-based data**; and

(b) are admissible as evidence in legal proceedings.

2. Member States shall ensure that an electronic signature is not denied legal **effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is:**

– in electronic form, or

– not based upon a qualified certificate, or

– not based upon a **qualified** certificate issued by an accredited certification-service-provider, or

**– not created by a secure signature-creation device.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#43. Article 6(1) in EP 1ST READING (important)**

Council Common Position adds the phrase. “as a minimum” and defines “qualified certificate” and “any person” in more detail. Moreover, it adds a new exception to all three means by stating that “unless the certification service provider proves that he has not acted negligently.” It deleted paragraph (b). EP 2ND READING adds one more condition to paragraph (a) and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 6(1))***:

Member States shall ensure that, by issuing a **qualified** certificate, a certification service provider is liable to any person who reasonably relies on the certificate for:

(a) accuracy of all information in the qualified certificate as from the date on which it was issued**, unless the certification service provider has stated otherwise in the certificate**;

(b) **compliance with all the requirements of this Directive in issuing the qualified certificate;**

(c) assurance that the person identified in the qualified certificate held, at the time of the issuance of the certificate, the signature creation device corresponding to the signature verification device given or identified in the certificate;

(d) in cases where the certification service provider generates the signature creation device and the signature verification device, assurance that the two devices function together in a complementary manner.

***COUNCIL COMMON POSITION*** ***(Article 6(1)):***

**As a minimum,** Member States shall ensure that by issuing a **certificate as a qualified certificate to the**

**public or by guaranteeing such a certificate to the public** a certification-service-provider is liable for **damage caused** to any **entity or legal or natural** person who reasonably relies on that certificate:

(a**) as regards** the accuracy at the time of issuance of all information contained in the qualified certificate;

(b) for assurance that at the time of the issuance of the certificate, the signatory identified in the qualified certificate held the signature-creation data corresponding to the signature-verification data given or identified in the certificate;

(c) for assurance that the signature-creation data and the signature-verification data can be used in a complementary manner in cases where the certification-service-provider generates them both**;**

**unless the certification-service-provider proves that he has not acted negligently**.

***FINAL ACT (Article 6(1)(a):***

SAME AS EP 2ND READING

RED / RED

**#^44. Article 6(2) in Common Position (not important)**

Council Common Position adds the phrase, “as a minimum” and lessens the duty of proof by replacing the exception, “if it can demonstrate that it has taken all reasonably practicable measures to verify that information” with the one, “unless the certification service provider proves that he has not acted negligently.” EP 2nd Reading adopted it as well as the Final Act.

***ORIGINAL PROPOSAL (Article 6(2))***:

Member States shall ensure that a certification service provider is **not** liable for **errors in the information in the qualified certificate that has been provided by the person to whom the certificate is issued, if it can demonstrate that it has taken all reasonably practicable measures to verify that information.**

***COUNCIL COMMON POSITION*** ***(Article 6(2)):***

**As a minimum** Member States shall ensure that a certification-service-provider **who has issued a certificate as a qualified certificate to the public** is liable for **damage caused to any entity or legal or natural person who reasonably relies on the certificate for failure to register revocation of the certificate unless the certification-service-provider proves that he has not acted negligently**.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#45. Article 6(3) in EP 1st Reading (not IMPORTANT)**

EP 1ST READING adds new restriction calling for the limit to be sufficiently recognizable to third parties. Amended Proposal adopted it. And Council Common Position adopted it with slight changes in wording. EP 2ND READING and Final Act adopted this Common Position.

***ORIGINAL PROPOSAL (Article 6(3))***:

Member States shall ensure that a certification service provider may indicate in the qualified certificate limits on the uses of a certain certificate. The certification service provider shall not be liable for damages arising from a contrary use of a qualified certificate which includes limits on its uses.

***COUNCIL COMMON POSITION*** ***(Article 6(3)):***

Member States shall ensure that a certification-service-provider may indicate in a qualified certificate limitations on the use of that certificate, **provided that the limitations are recognisable to third parties**. The certification-service-provider shall not be liable for damage arising from use of a qualified certificate which **exceeds the limitations placed on it.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#46. Article 6(4) in EP 1st Reading (IMPORTANT)**

EP 1ST READING adds new restriction calling for the limit to be sufficiently recognizable to third parties. Amended Proposal adopted it. Council Common Position changed the wordings of the first and second sentences slightly and deleted the third sentence stating that “the certification service provider shall not be liable for damages in excess of that value limit”. However, EP 2ND READING reintroduced the this second sentence with slight wording change. Final Act adopted EP 2nd reading with slight wording changes.

***ORIGINAL PROPOSAL (Article 6(4))***:

Member States shall ensure that a certification service provider may indicate in the qualified certificate a limit on the value of transactions for which the certificate is valid. The certification service provider shall not be liable for damages in excess of that value limit.

***FINAL ACT (Article 6(4)(second paragraph, new)):***

… The certification-service-provider shall not be liable for damage **resulting** **from this maximum limit being exceeded.**

GREEN / WHITE

**#47. Article 6(5a)(new) in EP 1st Reading (IMPORTANT)**

EP 1ST READING newly introduces this provision calling for Member States not to make an additional means of verifying information and not to subject to any form of administrative control. Amended Proposal did not adopt it and Council Common Position, EP 2ND READING and Final Act did not adopt it.

***COUNCIL COMMON POSITION***

NOT ADOPTED

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

NO CHANGE / WHITE

**#^48. Article 7(1) in Common Position (not IMPORTANT)**

Council Common Position expands the scope where certificates from a third country are recognized as legally equivalent to those from within the Community by replacing Annex II with this Directive. EP 2nd reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 7(1))***:

Member States shall ensure that certificates issued by a certification service provider established in a third country are recognized as legally equivalent to certificates issued by a certification service provider established within the Community:

(a) if the certification service provider fulfils the requirements laid down in this Directive and has been accredited **in the context of** a voluntary accreditation scheme established by a Member State; or

(b) if a certification service provider established within the Community, which fulfils the requirements laid down in **Annex II** guarantees the certificate **to the same extent as its own certificates**; or

(c) if the certificate or the certification service provider is recognized under **the regime of** a bilateral or multilateral agreement between the Community and third countries or international organizations.

***COUNCIL COMMON POSITION*** ***(Article 7(1)):***

Member States shall ensure that certificates **which are** issued **as qualified certificates to the public** by a certification-service-provider established in a third country are recognised as legally equivalent to certificates issued by a certification-service-provider established within the Community if:

(a) the certification-service-provider fulfils the requirements laid down in this Directive and has been accredited **under** a voluntary accreditation scheme established in a Member State; or

(b) a certification-service-provider established within the Community which fulfils the requirements laid down in **this Directive** guarantees the certificate; or

(c) the certificate or the certification-service-provider is recognised under a bilateral or multilateral agreement between the Community and third countries or international organisations.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#49. Article 7(2) in EP 1st Reading (IMPORTANT)**

EP 1ST READING deleted the phrase, “for appropriate mandates” but asks to submit proposals to the EP as well as the Council and deleted the last sentence stating that “the Council shall decide by qualified majority.” Amended Proposal did not adopt it. Council Common Position did not adopt it but went back to Origianal Proposal with slight wording changes. EP 2nd Reading and Final Act adopted this Common Position.

***ORIGINAL PROPOSAL (Article 7(2))***:

In order to facilitate cross-border certification services with non-member countries and legal recognition of electronic signatures originating in non-member countries, the Commission will make proposals where appropriate to achieve the effective implementation of standards and international agreements applicable to certification services. In particular and where necessary, it will submit proposals to the Council **for appropriate mandates** for the negotiation of bilateral and multilateral agreements with non-member countries and international organisations. **The Council shall decide by qualified majority.**

***COUNCIL COMMON POSITION*** ***(Article 7(2)):***

In order to facilitate cross-border certification services with **third** countries and legal recognition of **advanced** electronic signatures originating in **third** countries, the Commission **shall** make proposals, where appropriate, to achieve the effective implementation of standards and international agreements applicable to certification services. In particular, and where necessary, it shall submit proposals to the Council **for appropriate mandates** for the negotiation of bilateral and multilateral agreements with **third** countries and international organisations. **The Council shall decide by qualified majority.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

HARD TO TELL / WHITE

**#^50. Article 7(3)(new) in Common Position (important)**

***COUNCIL COMMON POSITION*** ***(Article 7(3)):***

**Whenever the Commission is informed of any difficulties encountered by Community undertakings with respect to market access in third countries, it may, if necessary, submit proposals to the Council for an appropriate mandate for the negotiation of comparable rights for Community undertakings in these third countries. The Council shall decide by qualified majority.**

**Measures taken pursuant to this paragraph shall be without prejudice to the obligations of the Community and of the Member States under relevant international agreements**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^51. Article 8(1) in Common Position (not IMPORTANT)**

Common Position replaced the Directive to comply with. EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 8(1))***:

Member States shall ensure that certification service providers and national bodies responsible for accreditation or supervision comply with the requirements laid down in Directives 95/46/EC 12 **and 97/66/EC13 of the European Parliament and of the Council.**

***COUNCIL COMMON POSITION*** ***(Article 8(1)):***

Member States shall ensure that certification-service-providers and national bodies responsible for accreditation or supervision comply with the requirements laid down in Directive 95/46/EC **of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (8).**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#52. Article 8(2) in EP 1st Reading (IMPORTANT)**

EP 1ST READING adds a new phrase, “or with the latter’s consent.” Amended Proposal makes it more restrictive by adding “explicit consent”. Council Common Position makes it more restrictive by adding “after the explicit consent”. EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 8(2))***:

Member States shall ensure that a certification service provider may collect personal data only directly from the data subject and only in so far as it is necessary for the purposes of issuing a certificate. The data may not be collected or processed for other purposes without the consent of the data subject.

***COUNCIL COMMON POSITION*** ***(Article 8(2)):***

Member States shall ensure that a certification-service-provider **which** **issues** **certificates to the public** may collect personal data only directly from the data subject, or **after** the explicit consent of the data subject, and only insofar as it is necessary for the purposes of issuing **and maintaining** the certificate. The data may not be collected or processed for **any** other purposes without the **explicit** consent of the data subject.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#53. Article 8(3) in EP 1st Reading (not IMPORTANT)**

EP 1ST READING newly introduces a condition under which the certification service provider can indicates a pseudonym instead of the signatory’s name. Amended Proposal did not adopt it. However, Council Common Position largely adopted it with slight changes in wording after deleting the phrase, “at the signatory’s request”. EP 2nd Reading and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 8(3))***:

Member States shall ensure that, at the signatory’s request, the certification service provider indicates in the certificate a pseudonym instead of the signatory’s name.

***COUNCIL COMMON POSITION*** ***(Article 8(3)):***

**Without prejudice to the legal effect given to pseudonyms under national law**, Member States **shall not prevent** certification service providers from indicating in the certificate a pseudonym instead of the signatory’s name.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#54. Article 8(4) in EP 1st Reading (IMPORTANT)**

EP 1ST READING deleted the first the first sentence calling for Member States to transmit the data on the identity of persons using pseudonyms to public authority on request and with the consent of the data subject. It adds one more condition asking this transfer of the data to be based on Directive 95/46/EC. It also states that those transfers can be occurred also for legal claims as well as the investigation of criminal offenses. It deleted the time constraint by deleting the last part on “as soon as possible after the investigation has been completed.” Amended Proposal almost adopted EP 1ST READING with a slight change in wording. Council Common Position deleted the whole provision. EP 2ND READING and Final Act adopted this Council Common Position.

***ORIGINAL PROPOSAL (Article 8(4))***:

**Member States shall ensure that, in the case of persons using pseudonyms, the certification service provider shall transmit the data concerning the identity of those persons to public authorities on request and with the consent of the data subject. Where** according to national lawthe transfer of the data revealing the identity of the data subject is necessary for the investigation of criminal offences relating to the use of electronic signatures under a pseudonym, the transfer shall be recorded and the data subject informed of the transfer **of the data relating to him as soon as possible after the investigation has been completed**.

***COUNCIL COMMON POSITION:***

Deleted

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

RED / RED

**#55. Article 9 in EP 1st Reading (IMPORTANT)**

EP 1ST READING replaced the whole provision on a Committee with that on a Contact Committee. Amended Proposal did not adopt it. Council Common Position modified Original Proposal further by laying out the decision making procedure of the Committee and getting rid of the condition to make the opinion in public. It details how the Committee opinion is taken into account but it gives more discretion to the Commission and the Council. EP 2ND READING adopted it. However, Final Act makes the provision even more vague.

***ORIGINAL PROPOSAL (Article 9)***:

The Commission shall be assisted by a Committee, called the Electronic Signature Committee (hereinafter referred to as the Committee), **of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.**

***FINAL ACT*** ***(Article 9(1)-(3)):***

**1. The Commission shall be assisted by an ‘Electronic-Signature Committee’, hereinafter referred to as ‘the committee’.**

**2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.**

**3. The Committee shall adopt its own rules of procedure.**

RED / RED

**#56. Article 10 in EP 1st Reading (NOT IMPORTANT)**

EP 1ST READING deleted the whole article calling for the Committee to be consulted. Amended Proposal did not adopt it. Council Common Position replace the word, “consulted” with “clarify” and gets rid of “where necessary” and adds more conditions for which the committee shall clarify. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 10)***:

**Consultation of the Committee**

**The Committee shall be consulted, where necessary, on the requirements for certification service providers laid down in Annex II and on generally recognised standards for electronic signature products pursuant to Article 3(3).**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#57. Article 11(1) in EP 1st Reading (NOT IMPORTANT)**

EP 1ST READING mostly adopted Original Proposal but it confined “the national bodies” by replacing it with “the national recognized bodies.” Amended Proposal mostly adopted this. Council Common Position asks Member States inform the Commission as well as the other Member States and deleted the word, “recognized” and adds one more condition according to Article 3(7). EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 11(1))***:

1. Member States shall supply the Commission with the following information:

(a) information on voluntary national accreditation regimes, including any additional requirements pursuant to Article 3(4);

(b) the names and addresses of the national bodies responsible for accreditation and supervision;

(c) the names and addresses of accredited national certification service providers.

***COUNCIL COMMON POSITION*** ***(Article 11(1)):***

1. Member States shall **notify to** the Commission **and the other Member States** the following:

(a) information on national voluntary accreditation **schemes**, including any additional requirements **pursuant to Article 3(7);**

(b) the names and addresses of the national bodies responsible for accreditation and supervision **as well as of the bodies referred to in Article 3(4);**

(c) the names and addresses of all accredited national certification service providers.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#58. Article 11(2) in EP 1st Reading (NOT IMPORTANT)**

EP 1ST READING asks for changes to be notified by recognized body as well as Member States and releases time constraints by replacing “as soon as possible” with “within one month.” Amended Proposal adopted it. However, Council Common Position did not adopt it. EP 2ND READNG and Final Act adopted Council Common Position.

***ORIGINAL PROPOSAL (Article 11(2))***:

Any information supplied under paragraph 1 and changes in respect of that information shall be notified by the Member States **as soon as possible**

***COUNCIL COMMON POSITION*** ***(Article 11(2)):***

SAME AS ORIGINAL PROPOSAL.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^59. Article 12(2) in Common Position (NOT IMPORTANT)**

Council Common Position adds “market” development to be also considered and gets rid of “complementary”. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 12(2))***:

The review shall, inter alia, assess whether the scope of the Directive should be modified taking account of technological and legal developments. The report shall in particular include an assessment, on the basis of the experience gained, of aspects of harmonization. The report shall be accompanied, where appropriate, by **complementary** legislative proposals.

***COUNCIL COMMON POSITION*** ***(Article 12(2)):***

The review shall inter alia assess whether the scope of this Directive should be modified, taking account of technological, **market** and legal developments. The report shall in particular include an assessment, on the basis of experience gained, of aspects of harmonisation. The report shall be accompanied, where appropriate, by legislative proposals.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^60. Article 13(1) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Article 13(1))***:

Member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2000 **at the latest**. They shall **immediately** inform the Commission thereof.

When Member States adopt these **provisions**, these shall contain a reference to this Directive or shall be accompanied by such reference **at the time of** their official publication. **The procedure for** such reference shall be **adopted** by Member States.

***COUNCIL COMMON POSITION*** ***(Article 13(1)):***

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **before** .......... (\*\*). They shall **forthwith** inform the Commission thereof.

When Member States adopt these **measures**, they shall contain a reference to this Directive or shall be accompanied by such a reference **on the occasion of** their official publication. **The methods of making** such reference shall be **laid down** by the Member States.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

 **#^61. Article 13(2) in Common Position (NOT IMPORTANT)**

Council Common Position releases restriction by replacing the phrase, “all provisions of national law” with “the text of the main provisions of domestic law” and deleted the last part of the provision. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Article 13(2))***:

Member States shall communicate to the Commission **all provisions of national law** which they adopt in the field governed by this Directive **and in related fields and a correlation table between this Directive and the national provisions adopted.**

***COUNCIL COMMON POSITION*** ***(Article 13(2)):***

Member States shall communicate to the Commission **the text of the main provisions of domestic law** which they adopt in the field governed by this Directive

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^62. Article 14 in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Article 14)***:

This Directive shall entry into force on **the twentieth day following that of** its publication in the Official Journal of the European Communities

***COUNCIL COMMON POSITION*** ***(Article 14):***

This Directive shall enter into force on **the day of** its publication in the Official Journal of the European Communities.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^63. Annex I(a)(new) in Common Position (NOT IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex I(a)):***

**an indication that the certificate is issued as a qualified certificate;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^64. Annex I(b) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(a))***:

**the identifier of** the certification service provider **issuing it;**

***COUNCIL COMMON POSITION*** ***(Annex I(b)):***

**the identification of** the certification-service-provider **and the State in which it is established;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#65. Annex I(b) in EP 1st Reading (NOT IMPORTANT)**

EP 1ST READING deleted “unmistakable” and Amended Proposal adopted it. Council Common Position replaced “holder” with “signatory.” EP 2ND READING AND Final Act adopted it.

***ORIGINAL PROPOSAL (Annex I(b))***:

**the unmistakable** name of the holder or an **unmistakable** pseudonym which shall be identified as such;

***COUNCIL COMMON POSITION*** ***(Annex I(c)):***

the name of the **signatory** or a pseudonym, which shall be identified as such;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^66. Annex I(d) in Common Position (NOT IMPORTANT)**

Council Common Position relieves the restriction by replacing detailed examples of a specific attribute with the phrase, “if relevant, depending on the purpose for which the certificate is intended.” EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Annex I(c))***:

a specific attribute of **the holder such as, the address, the authority to act on behalf of a company, the credit-worthiness, VAT or other tax registration numbers, the existence of payment guarantees or specific permits or licences;**

***COUNCIL COMMON POSITION*** ***(Annex I(d)):***

**provision for** a specific attribute of **the signatory** to be included if relevant**, depending on the purpose for which the certificate is intended;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^67. Annex I(e) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(d))***:

a signature verification **device** which corresponds to a signature creation **device** under the control of **the holder**;

***COUNCIL COMMON POSITION*** ***(Annex I(e)):***

signature-verification **data** which correspond to signature-creation **data** under the control of **the signatory;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^68. Annex I(f) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(e))***:

beginning and end of **the operational** period of the certificate;

***COUNCIL COMMON POSITION*** ***(Annex I(f)):***

**an indication of** the beginning and end of the period of **validity of** the certificate;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#69. Annex I(f) in EP 1st Reading (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(f))***:

the **unique** identity code of the certificate;

***EP 1ST READING (Annex I(f))***:

the identity code of the certificate;

***COUNCIL COMMON POSITION*** ***(Annex I(g)):***

SAME AS EP 1ST READING

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^70. Annex I(h) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(g))***:

the electronic signature of the certification service provider issuing it;

***COUNCIL COMMON POSITION*** ***(Annex I(h)):***

the **advanced** electronic signature of the certification-service-provider issuing it;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#71. Annex I(i) in EP 1st Reading (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex I(i))***:

limitations on the certification **service provider's liability** and on the value of transactions for which the certificate is valid, if applicable.

***COUNCIL COMMON POSITION*** ***(Annex I(j)):***

limits on the value of transactions for which the certificate **can be used**, if applicable.

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^72. Annex II(b) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(b))***:

**operate** a prompt and secure revocation service;

***COUNCIL COMMON POSITION*** ***(Annex II(b)):***

**ensure the operation of** a prompt and **secure directory and a secure and immediate** revocation service;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^73. Annex II(c)(new) in Common Position (NOT IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex II(c)):***

**ensure that the date and time when a certificate is issued or revoked can be determined precisely;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^74. Annex II(d) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(c))***:

verify by appropriate meansthe identity and **capacity to act of the person** to which a qualified certificate is issued;;

***COUNCIL COMMON POSITION*** ***(Annex II(d)):***

verify, by appropriate means **in accordance with national law**, the identity and**, if applicable, any specific attributes of the person** to which a qualified certificate is issued;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^75. Annex II(e) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(d))***:

employ personnel which possesses the expert knowledge, experience, and qualifications necessary for the **offered** services, in particular competence at the managerial level, expertise in electronic signature technology and familiarity with proper security procedures; they must also **exercise** administrative and management procedures **and processes that** are adequate and **which** correspond to recognized standards;

***COUNCIL COMMON POSITION*** ***(Annex II(e)):***

employ personnel who possess the expert knowledge, experience, and qualifications necessary for the services **provided**, in particular competence at managerial level, expertise in electronic signature technology and familiarity with proper security procedures; they must also **apply** administrative and management procedures **which** are

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#76. Annex II(e) in EP 1st Reading (NOT IMPORTANT)**

EP 1ST READING deleted the phrase, “so that they cannot be used to perform functions other than those for which they have been designed.” Amended Proposal adopted it. Council Common Position deleted “electronic signature” and “certification”. EP 2ND READING and Final Act adopted it.

***ORIGINAL PROPOSAL (Annex II(e))***:

use trustworthy systems, and use electronic signature products that ensure protection against modification of the

products **so that they cannot be used to perform functions other than those for which they have been designed**; they must also use electronic signature products that ensure the technical and cryptographic security of the certification processes supported by the products;

***COUNCIL COMMON POSITION*** ***(Annex II(f)):***

use trustworthy systems and products which **are** protected against modification and ensure the technical and cryptographic security of the processes supported by them;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^77. Annex II(g) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(f))***:

take measures against forgery of certificates, and, in cases where the certification service provider generates **private cryptographic signature keys**, guarantee the confidentiality during the process of generating **those keys**;

***COUNCIL COMMON POSITION*** ***(Annex II(g)):***

take measures against forgery of certificates, and, in cases where the certification-service-provider generates **signature-creation data**, guarantee confidentiality during the process of generating **such data;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^78. Annex II(i) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(h))***:

record all relevant information concerning a qualified certificate for an appropriate period of time, in particular In provide evidence of certification for the purposes of legal proceedings. Such recording may be done electronically;

***COUNCIL COMMON POSITION*** ***(Annex II(i)):***

record all relevant information concerning a qualified certificate for an appropriate period of time, in particular **for the purpose of** providing evidence of certification for the purposes of legal proceedings. Such recording may be done electronically;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^79. Annex II(j) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(i))***:

not store or copy **private cryptographic signature keys** of the person to whom the certification service provider **offered** key management services **unless that person explicitly asks for it;**

***COUNCIL COMMON POSITION*** ***(Annex II(j)):***

not store or copy **signature-creation data** of the person to whom the certification-service-provider **provided** key management services;

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^80. Annex II(k) in Common Position (NOT IMPORTANT)**

***ORIGINAL PROPOSAL (Annex II(j))***:

inform **consumers** before entering into a contractual relationship **in writing, using readily understandable language and a durable** means of communication, of the precise terms and conditions **for** the use of the certificate, including any limitations on **the liability,** the existence of a voluntary accreditation and the procedures for complaints and dispute settlement.

***COUNCIL COMMON POSITION*** ***(Annex II(k)):***

before entering into a contractual relationship **with a person seeking a certificate to support his electronic signature,** inform **that person** by a durable means of communication of the precise terms and conditions **regarding** the use of the certificate, including any limitations on **its use,** the existence of a voluntary accreditation **scheme** and procedures for complaints and dispute settlement. **Such information, which may be transmitted electronically, must be in writing and in readily understandable language. Relevant parts of this information must also be made available on request to third-parties relying on the certificate;**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^81. Annex II(l)(new) in Common Position (NOT IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex II(l)):***

**use trustworthy systems to store certificates in a verifiable form so that:**

 **– only authorised persons can make entries and changes,**

 **– information can be checked for authenticity,**

 **– certificates are publicly available for retrieval in only those cases for which the certificate-holder's consent has been obtained, and**

**– any technical changes compromising these security requirements are apparent to the operator.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

**#^82. Annex III(1)(new) in Common Position (IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex III(1)):***

**Secure-signature-creation devices must, by appropriate technical and procedural means, ensure at the least that:**

**(a) the signature-creation-data used for signature generation can practically occur only once, and that their secrecy is reasonably assured;**

**(b) the signature creation data used for signature generation cannot, with reasonable assurance, be derived and the signature is protected against forgery using currently available technology;**

**(c) the signature-creation-data used for signature generation can be reliably protected by the legitimate signatory against the use of others.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^83. Annex III(2)(new) in Common Position (IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex III(2)):***

**Secure signature creation devices must not alter the data to be signed or prevent such data from being presented to the signatory prior to the signature process.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION

GREEN / GREEN

**#^84. Annex IV(new) in Common Position (NOT IMPORTANT)**

***COUNCIL COMMON POSITION*** ***(Annex IV):***

***Recommendations for secure signature verification***

**During the signature-verification process it should be ensured with reasonable certainty that:**

**(a) the data used for verifying the signature correspond to the data displayed to the verifier;**

**(b) the signature is reliably verified and the result of that verification is correctly displayed;**

**(c) the verifier can, as necessary, reliably establish the contents of the signed data;**

**(d) the authenticity and validity of the certificate required at the time of signature verification are reliably verified;**

**(e) the result of verification and the signatory's identity are correctly displayed;**

**(f) the use of a pseudonym is clearly indicated; and**

**(g) any security-relevant changes can be detected.**

***FINAL ACT:***

SAME AS COUNCIL COMMON POSITION