

Draft e-ID Act to be prepared by Summer 2018

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Draft e-ID Act Comment

Switzerland is in the process of adopting legislation on electronic identification. On February 22 2017 the Federal Council published a preliminary draft e-ID Act and opened it for consultation by any interested actors. Subsequently, on November 15 2017 the Federal Council shared the consultation findings and commissioned the Federal Department of Justice and Police to prepare a revised draft act by Summer 2018.

Draft e-ID Act

Under the concept retained in the preliminary draft of February 2017, private actors – and not the state – must provide electronic identification that is recognised by the state and contains information available only in the various relevant government registers. The preliminary draft foresees three different levels of security: weak, substantial and high. Naturally, the highest level offers the most protection (eg, against tampering), but it comes with the burdens associated with higher security requirements (eg, complex authentication procedures). Further, alignment with EU legal developments, especially EU Regulation 910/2017, as well as a technologically and financially sound strategy are the stated objectives of the preliminary draft.

The public consultation ended on May 29 2017 with the Federal Council publishing the findings on November 15 2017. Many actors intervened, including the Swiss cantons, national political parties, various companies, sector-specific associations, interest groups and individuals. In the consultation process, several voices called for the state to play a stronger, more central role in the provision of electronic identification. However, the set-up proposed in the preliminary draft, which gives an important role to the private sector, may be more appropriate to foster the practical and commercial success of electronic identification.

Moreover, electronic identification is likely to contain personal and sensitive data (eg, physical attributes such as age, height and eye colour, as well as place of birth, domicile and civil status). In this respect, the preliminary draft provides for the user's consent to the initial transfer of personal data, which may then be used only for the purpose of providing identification services. Nevertheless, the consultation process raised many questions regarding the actual scope and risks of data processing under the preliminary draft.

Comment

Overall, the consultation process has demonstrated that the spectrum of opinion is broad. It is hoped that the future draft e-ID Act will consider the issues raised by private sector players as well as IT interest groups, while simultaneously guaranteeing a high level of data protection to end users. This should serve to promote a competitive market for electronic identification services, while maintaining high security standards. Electronic identification is expected to benefit e-governance services and businesses seeking to authenticate and identify their customers with more certainty, as well as further bolstering the digital economy.

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