



**COUNCIL OF  
THE EUROPEAN UNION**

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**COMMON POSITION (EC) No /99  
ADOPTED BY THE COUNCIL ON .....  
WITH A VIEW TO THE ADOPTION OF  
DIRECTIVE 99/ /EC OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL ON A COMMUNITY FRAMEWORK  
FOR ELECTRONIC SIGNATURES AND CERTIFICATION SERVICES**

**DRAFT STATEMENT OF THE COUNCIL'S REASONS**

## **I. INTRODUCTION**

1. On 16 June 1998 the Commission submitted a proposal for a European Parliament and Council Directive on a common framework for electronic signatures.
2. The European Parliament delivered its Opinion at first reading on 13 January 1999 and the Economic and Social Committee and the Committee of the Regions delivered their Opinions on 3 December 1998 and 14 January 1999 respectively.
3. On ..... June 1999 the Council adopted its common position in accordance with Article 251 of the Treaty.

## **II. OBJECTIVE**

The purpose of the proposal is to ensure the proper functioning of the Internal Market in the field of electronic signatures by creating a harmonised legal framework.

This framework, consisting of a set of criteria to be used as a basis for the legal recognition of electronic signatures, will facilitate the use of such signatures and enable consumers and businesses in Europe to benefit fully from the opportunities offered by electronic communications.

## **III. ANALYSIS OF THE COMMON POSITION**

### **A. General comments**

Although the Council adopted the approach and aims proposed by the Commission and supported by the Parliament, it considered it necessary, when drawing up its common position, to make a number of changes to both the substance and the wording of the proposed Directive.

When making these changes the Council's main concerns were to:

- clarify the provisions of the new Directive and make it easier to read,
- provide greater security in electronic communications,
- take greater account of the various technologies and services for authenticating information transmitted electronically,
- take greater account of the diversity of national situations.

B. Specific comments

1. Principal changes made to the Commission proposal

(a) distinction made between advanced electronic signatures and other electronic signatures

According to the approach chosen by the Council, an advanced electronic signature is a signature providing a high security level which is therefore recognised as having equivalent validity to a handwritten signature (see Article 2(2) and Article 5(1)).

Such a signature must be based on a qualified certificate drawn up and delivered in compliance with a number of requirements (see Annex I for the requirements for qualified certificates and Annex II for the requirements for certification service providers). It must also be created using a secure electronic signature creation device (see requirements in Annex III).

Other electronic signatures must at least benefit from the principle of non-discrimination and cannot therefore be considered to have no legal effect for the sole reason that they are presented in electronic form or that they do not comply with the requirements for advanced electronic signatures (see Article 2(1) and Article 5(2)).

(b) Additional measures to improve the level of service provided by the certification service providers

Although the common position enshrines the principle of prohibiting any prior authorisation for the provision of certification services, it supports the introduction at national level of voluntary accreditation schemes to improve the level of such services and requires the Member States to establish an appropriate system for supervising service providers which issue qualified certificates to the public (see Article 3(2) and (3)).

The common position also extends the responsibility of service providers as regards the validity of the content of the approved certificates which they issue, in order to increase user confidence in those certificates (see Article 6). This responsibility covers in particular the revocation of certificates (see Article 6(2)).

(c) Committee assisting the Commission

The Council considered it desirable to adopt for this Committee a type IIB regulatory procedure on account of the importance of the tasks entrusted to it (see Articles 9 and 10).

This Committee will have the following tasks:

- clarifying the requirements laid down in the Annexes to the Directive,
- establishing the criteria for designating the national bodies responsible for verifying the Directive's conformity with secure signature creation devices used for advanced signatures (see Article 3(4)).
- determining the standards generally recognised for electronic signature products, compliance with which will confer a presumption that those products comply with the requirements of the Directive (see Article 3(5)).

(d) Recommendations concerning signature verification devices

The common position sets out a number of recommendations to make the advanced electronic signature verification process as secure as possible and asks Member States and the Commission to work together to promote the development and use of signature verification devices on the basis of those recommendations (see Article 3(6) and Annex IV).

2. The Council's position on the European Parliament amendments

(a) Amendments incorporated fully or in part into the common position

The Council incorporated the full wording of amendments 3, 11, 12, 14, 18, 20, 31, 32, 33 and 34, and the principle of amendments 2, 13, 21, 22 and 25.

The Council incorporated amendments 4, 9 and 17 in part, aligning its decision on the Commission's position.

(b) Amendments not incorporated into the common position

In not incorporating amendments 1, 6, 7, 10, 15, 23, 24, 26, 28 and 29, the Council followed the Commission's negative opinion.

In not incorporating amendments 5, 16, 27 and 30, the Council based its decisions on the following considerations:

- amendment 5 concerning easier access for European Union citizens to the administrative services of a Member State other than that in which they reside (new recital).

The Council considered that Article 3(7), stipulating that by regulating the use of electronic signatures in the public sector Member States could not create obstacles to cross-border services for citizens, took account of the European Parliament's concerns in this matter,

- amendment 16 concerning the recognition of accreditation schemes administered by non-governmental bodies (Article 3(2)).

The Council considered that the European Parliament's concerns were taken into account in the definition of voluntary accreditation inserted into Article 2(13),

- amendment 27 concerning the transmission to public authorities of information concerning the identity of persons using pseudonyms (Article 8(4)).

The Council considered that the proposal to authorise such transmission only in the case of a criminal investigation or court proceedings was too restrictive and might involve the risk of encouraging the illegal use of electronic communications,

- amendment 30 concerning reference to "recognised" national bodies as regards notification of the bodies responsible for accreditation and supervision (Article 11).

The Council considered that the expression "recognised bodies", which was not defined or mentioned in the rest of the Directive, could give rise to problems of interpretation.

