The text beginning on the next page is an open letter on the position of scientists and NGOs on the EU's proposed digital identity reform.

As of the 8th November 2023, the letter has been signed by 504 scientists and researchers from 39 countries, as well as numerous NGOs.

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For information on signing the letter, please see the end of this document.

Joint statement of scientists and NGOs on the EU's proposed eIDAS reform

2nd November 2023

Dear Members of the European Parliament,
Dear Member States of the Council of the European Union,

We the undersigned are cybersecurity experts, researchers, and civil society organisations from across the globe.

We have read the near-final text of the eIDAS digital identity reform which has been agreed on a technical level in the trilogue between representatives from the European Parliament, Council and Commission. We appreciate your efforts to improve the digital security of European citizens; it is of utmost importance that the digital interactions of citizens with government institutions and industry can be secure while protecting citizens' privacy. Indeed, having common technical standards and enabling secure cross-border electronic identity solutions is a solid step in this direction. However, we are extremely concerned that, as proposed in its current form, this legislation will not result in adequate technological safeguards for citizens and businesses, as intended. In fact, it will very likely result in less security for all.

Last year, many of us wrote to you to highlight some of the dangers in the European Commission's proposed eIDAS regulation. After reading the near-final text, we are deeply concerned by the proposed text for Article 45. The current proposal radically expands the ability of governments to surveil both their own citizens and residents across the EU by providing them with the technical means to intercept encrypted web traffic, as well as undermining the existing oversight mechanisms relied on by European citizens. Concretely, the regulation enables each EU member state (and recognised third party countries) to designate cryptographic keys for which trust is mandatory; this trust can only be withdrawn with the government's permission *(Article 45a(4))*. This means any EU member state or third party country, acting alone, is capable of intercepting the web traffic of any EU citizen and there is no effective recourse. We ask that you urgently reconsider this text and make clear that Article 45 will not interfere with trust decisions around the cryptographic keys and certificates used to secure web traffic.

Article 45 also bans security checks on EU web certificates unless expressly permitted by regulation when establishing encrypted web traffic connections *(Article 45(2a))*. Instead of specifying a set of minimum security measures which must be enforced as a baseline, it effectively specifies an upper bound on the security measures which cannot be improved upon without the permission of ETSI. This runs counter to well established global norms where new cybersecurity technologies are developed and deployed in response to fast moving developments in technology. This effectively limits the security measures that can be taken to protect the European web. We ask that you reverse this clause, not limiting but encouraging the development of new security measures in response to fast-evolving threats.

The current text also mentions in multiple places the need for the European Digital Identity Wallet to protect privacy, including data minimization, and prevention of profiling. Yet, the legislation still allows relying parties like governments and service providers to unnecessarily link together and gain full knowledge about the uses of credentials in the new European Digital Identity System. Given the broad intended uses of this system, which span all areas of life from health, finance, commerce, online activity up to public transport, we believe that failing to require both unlinkability and unobservability will severely compromise the privacy of EU citizens. Article 6a(7)(a) should be aligned with the negotiation mandate from the European Parliament lead Industry Committee and thereby prevent technologically that such information can be obtained by governments and other parties without the explicit consent of users. Article 6a(7a)(b) should "mandate" instead of "enable" that interactions cannot be linked by relying parties or other actors, where identification of the user is not mandatory. Lastly, forum-shopping from 'Big Tech' and other bad actors can only be prevented by a harmonised implementation of the Regulation that allows national eIDAS agencies to be overruled should they fail to act.

Finally, we would like to highlight our frustration that decisions crucial for the security and privacy of citizens, businesses, and governments, are being taken behind closed doors in trilogue negotiations without public consultation of experts about the potential consequences of the proposed regulations. We urge the European Parliament, Commission, and Council to reconsider their legislative processes and commit to greater transparency so that experts and the public can effectively contribute to the development of new regulations.[1]

In summary, we strongly warn against the currently proposed trilogue agreement, as it fails to properly respect the right to privacy of citizens and secure online communications; without establishing proper safeguards as outlined above, it instead substantially increases the potential for harm.

[1] T-540/15 - De Capitani v Parliament

1. Undermining website authentication undermines communications security

The current text of Article 45 mandates that browsers must accept any root certificates provided by any Member State (and any third party country approved by the EU) and will have severe consequences for the privacy of European citizens, the security of European commerce, and the Internet as a whole.

Root certificates, controlled by so-called certificate authorities, provide the authentication mechanisms for websites by assuring the user that the cryptographic keys used to authenticate the website content belong to that website. The owner of a root certificate can intercept users' web traffic by replacing the website's cryptographic keys with substitutes he controls. Such a substitution can occur e*ven if the website has chosen to use a different certificate authority with a different root certificate.* **Any root certificate trusted by the browser can be used to compromise any website**. There are multiple documented cases of abuse, because the security of some certificate authorities has been compromised. To avoid this, there exists legislation that regulates certificate authorities, complemented by public processes and continuous vigilance by the security community to reveal suspicious activities.

The proposed eIDAS revision gives Member States the possibility of inserting root certificates at will, with the aim to improve the digital security of European citizens by giving them new ways to obtain authentic information of who operates a website. In practice, this does exactly the opposite. Consider the situation in which one of the Member States (or any of the third party states recognized now or in the future) were to add a new authority to the EU Trusted List. The certificate would have to be immediately added to all browsers and distributed to all of their users across the EU as a trusted certificate. By using the substitution techniques explained above, the government-controlled authority would then be able to **intercept the web traffic of not only their own citizens, but all EU citizens**, including banking information, legally privileged information, medical records and family photos. This would be true even when visiting non-EU websites, as such an authority could issue certificates for any website that all browsers would have to accept. Additionally, although much of eIDAS2.0 regulation carefully gives citizens the capability to opt out from usage of new services and functionality, this is not the case for Article 45. **Every citizen would have to trust those certificates**, and thus every citizen would see their online safety threatened.

Even if this misbehaviour was discovered, under the current proposal it would not be possible to remove this certificate without the ultimate approval of the country having introduced the certificate authority. Neither eIDAS's article 45 nor any provisions in adjacent EU legislation such as the NIS2 Directive provide any independent checks and balances on these decisions. Further, European citizens do not have an effective way to appeal these decisions. This situation would be unacceptably damaging to online trust and safety in Europe and across the world. We believe this legislative text must be urgently reworked to avoid these serious consequences by clarifying that eIDAS does not impose obligations to trust cryptographic keys used for encrypted web traffic.

The proposed legislation also prevents the introduction of security checks when verifying the certificates used for encrypted web traffic in Art 45, (2a). As written, this language requires that the EU's website certificates not be subjected to any mandatory requirements beyond those specified in ETSI standards. Mandatory requirements on certificates are essential when browsers validate certificates presented for use in encrypted web connections. Preventing these additional security checks has no useful purpose and only hampers the improvement of cybersecurity for European citizens. The detailed rules on certificate validation and display are constantly being adapted based on new research results and consensus in the security community. Existing security mechanisms, well-studied and accepted by the security community at large, such as TLS 1.3 and certificate transparency logs currently enable browsers to quickly adapt to changing threats and improve global web security. It is essential that this regulation establishes a mandatory minimum set of security standards, but does not impose a limited set of requirements which would hamper the adoption of new security technology within the EU.

While Article 45 could be understood as reducing the power of the large companies behind the major web browsers, from a technical perspective, this is not the case. There already exists a large number of certificate authorities capable of issuing certificates trusted in every web browser, many of which are European and also recognised under the EU's existing eIDAS legislation. Websites have a free choice about which certificate authority they use and all of the approved certificate authorities are treated equally in the browser. Should issues arise, the EU is already well-equipped to tackle them through the recently passed Digital Markets Act, which specifically identifies popular browsers and cloud services and bans self-preferencing behaviour by gatekeepers. Article 45 itself does nothing to assist this process or to enable European scrutiny of trust decisions by 'Big Tech', instead it only enables the interception of EU citizens' web traffic by European governments. It further prevents concerned users, who may have serious and substantiated concerns about being subject to state surveillance, from choosing, or even creating, a browser that has stricter security checks.

In summary, this regulation allows misbehaviour by any individual Member State (or approved third party countries) to compromise the safety and security of other Member State's citizens. If it is implemented, it would result in citizens having to, **without a choice**, trust **all** certificate authorities defined by Member States (and recognized third countries) **in addition** to the parties they trust today. This regulation does not eliminate any existing risk. Instead, by undermining the existing secure web authentication processes, introduces new risks with no gain by European citizens, businesses, and institutions. Moreover, if this regulation becomes a reality, it is only to be expected that **other countries will put pressure on browsers to obtain similar privileges** as EU Member States — as some have unsuccessfully attempted in the past — globally endangering web security.

In order to address these concerns and avoid the security issues introduced by the current legislation proposal which could result in incalculable damage, we recommend:

- The text be clarified to ensure that this legislation will not interfere with trust decisions around the cryptographic keys or certificates used to secure web traffic and the consequent impact on privacy and security of European citizens.

- Additional checks independent from those envisioned in the legislation are not only permitted but encouraged to enable browsers to rapidly incorporate advances made by the security community to improve the security of communications.

In particular:

- The re-introduction of text to Article 45 (2) limiting its scope: “Such recognition, support and interoperability means solely that web-browsers shall ensure that the identity data attested in the certificate provided using any of the methods is displayed in a user-friendly manner.”
- The deletion of Article 45 (2a) so that new security checks can be implemented effectively
- In Recital 32: Adding clarification that the obligations of recognition, interoperability and support in Article 45 do not extend to the use of encryption and authentication technologies for securing web traffic.

We also explicitly note that established processes clearly allow new certificate authorities to be added to browser root trust stores; nation states wishing to establish a new CA legitimate and lawful purposes need to go through the same security certification procedures that existing authorities do, without requiring new regulation. Fostering the development of an EU-native browser, or strengthening the supervision of certificate authorities across the EU, would have a much more positive impact on the overall security of European citizens than attempting to change the status quo of web security from within the eIDAS regulation.

2. A complex system only provides the security and privacy guarantees of its weakest component

The European Digital Identity Wallet (EDIW) is designed to identify and authenticate users with a high level of assurance. The Wallet includes identity information from national IDs (age, sex, etc), and can be extended with additional attributes. These attributes could include very sensitive information such as medical certificates, or important information for the future of European citizens such as their professional qualifications. The eIDAS regulation foresees the creation of an ecosystem of public and private entities that will benefit from the Wallet to have access to certified personal information about citizens.

We welcome the provisions crafted in the legislation, which advocate for strong protections to preclude tracking and profiling, that enable the option of revealing attributes in a selective manner or via zero-knowledge attestation, that attribute providers should not learn about with whom users share their attributes, or that mention that the wallet should allow for unlinkability when identification is not needed. These are essential to promote the use of technologies that can provide these properties by design, and we commend the legislators for including them.

Yet, the legislation only enables the existence of privacy-preserving technologies, but does not mandate them (Article 6a(7a)(b)). We are concerned that this legal ambiguity could lead to a

deterioration of privacy-safeguards that ultimately leaves too much room for technical implementation on member state level. Importantly, operators of the EDIW can still obtain knowledge about concrete user behaviour even when the user has not consented to this. With a privacy-respecting architecture such information is not necessary for the provision of the EDIW. With the current legal text the architecture of the whole system risks undermining trust from citizens in the whole system (Article 6a(7)). A fully harmonised European system for the benefit of the private sector also needs a fully harmonised level of safeguards European citizens can rely upon. Moreover, relying parties (service providers with access to the wallet) can also register in any of the Member States, thus the effective regulatory regime that bad actors and 'Big Tech' can exploit is the weakest of all Member States as we have seen with the GDPR and DSA. This is particularly challenging because of the necessity of cross-border interoperability. Hence, we recommend in Article 46e to empower the European Digital Identity Cooperation Group to overrule the decisions of national eIDAS regulators in order to prevent the circumvention of these important protections.

In order to address these concerns and avoid that the eIDAS regulation results in a new privacy problem with no security gain in terms of authentication, we recommend:

- Make unlinkability a mandatory rather than optional requirement by Replacing "enable" with "mandate" in Article 6a(7a)(b).
- Align the technical architecture with the strong protections established in the lead Industry committee of the European Parliament in Article 6a(7).
- Provide a majority in the European Digital Identity Cooperation Group according to Article 46e the power to overrule the decision of national eIDAS regulators in order to ensure a harmonised enforcement of this regulation.

Without these necessary amendments the eIDAS regulation risks becoming a gift to Google and other Big Tech actors. A European solution to the central question of handling sensitive identity information needs to protect citizens against surveillance capitalism through strong technical mechanisms and be resilient against attempts to exploit the regulatory system through jurisdiction-shopping.

Signatures

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The letter has been signed by 504 scientists and researchers from 39 countries.

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