

# TIME TO GO LEGALLY PAPERLESS

Start your digital archiving strategy here.



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## HANDLING THE INFORMATION OVERFLOW

In today's business environment, digital is everywhere; digital communication through email or (enterprise) social networks is increasing, financial solutions are more and more digitized, medical patient files are digitized and accessible to all the professionals and the patients ... This results in **an increasing amount of digital information and documents that need to be managed.**

To manage these new corporate assets, companies usually rely on document management and EIM systems, or other platforms. However, the **legal value of the information is still at risk** and enforces companies to keep the paper burden.

The EU commission tackled this issue by adopting a new regulation in 2014, commonly called [the eIDAS regulation](#). Since its entry went into force on July 1, 2016, companies can rely on **trust service providers** (TSP) to [electronically sign or seal](#) their documents and to keep the same legal value as paper signed documents. This regulation, applicable all around the EU, enforces the trust in digital documents and **allows companies to fully digitize their processes.**

Nevertheless, the EU regulation has a big weakness since it doesn't cover the preservation of the trustworthy documents in the long term. Signing a document with legal value is very important indeed, but **how can we preserve the legal value of the signed documents**, taking into account the technological evolutions in the next 5, 10 or 20 years? The Belgian government decided to prevent this issue by publishing a law on July 21, 2016, commonly called [the Digital Act](#). This Act defines how to preserve the legal or financial value of any document (signed or not) by using a qualified archiving solution.

## TOGGLING EUROPE IN THE DIGITAL AGE

In the late 90's, the European commission defined a **basic legal framework** to enable the use of electronic signature within the EU. The first text published - 1999/93 CE - was a European directive which implied that every EU member state needed to transpose this framework into their national law books. This resulted in a patchwork of legislations around Europe, curbing the development and use of digital signatures. To tackle this issue and to adapt to the new technologies, the EU decided to imply a new legislation that applied to all the EU member states.

The EU Regulation 910/2014, commonly called **eIDAS**, was published on July 23, 2014 and entered into force two years later. This text not only defined the legal framework for the electronic signature and the digital seal, but also added dispositions regarding the **electronic timestamping, the electronic identity/identification** (such as the e-ID card in Belgium) and the **web authentication**. For each solution, service providers can propose a standard, advanced or qualified solution, which offer different levels of legal value and protection to the end user. For instance, a qualified solution can imply the reversion of the burden of the proof.

To become qualified and to offer qualified services, a **trust service provider** (TSP) needs to follow a strict audit procedure, defined by eIDAS, and request the qualification to a Supervisory Body in one of the EU member states. Since it's a regulation, this scheme is the same in every country and allows a TSP to request the qualification in any member state and become recognized as a qualified trust service provider (QTSP) everywhere. You can find an overview of the regulation in the following blog post that provides an easy explanation of **eIDAS in 8 bullet points**.

### The key principles of eIDAS

The regulation attends to give legal value to digital documents and provides some great principles such as **non-discrimination, assimilation** or **presumption**. Practically, this means that a digital document cannot be rejected by court based on its digital format. In addition, a qualified electronic signature will have the same legal value as a handwritten signature. That makes it **important that a digital solution is technology neutral** to avoid issues in the future.

Article 19 of eIDAS provides security requirements imposed to the TSP to ensure the trustworthiness of the services and the documents and to comply fully with the legislation.

### The opportunities and shortcomings of eIDAS

**eIDAS** assigns trust and legal value to digital documents and encourages companies to complete their journey to a **paperless office**. Using qualified trust services for digital time stamping or signature will allow companies to get rid of paper documents and to **fully digitize their processes** such as invoicing, contract management, etc.

The regulation allows to use trust services to identify and authenticate documents, but it also contains one big gap, it lacks recommendations on **how to preserve the validity of documents through time**. Digital preservation has become crucial in today's business since we more and more have to preserve the legal value of documents in a perpetual changing

technological environment. It's the Belgian legislator that filled that gap by building a legal framework for digital archiving upon the eIDAS regulations.

## THE RISE OF THE BELGIAN DIGITAL ACT

After the publication of the eIDAS regulation, the Belgian legislator has adapted its legal framework to comply with the EU 910/2014 regulation. First, Belgium had to repeal the previous digital signature law, and then define a framework for digital archiving to assure the digital information lifecycle.

The new law, called the [Digital Act](#), was published on July 21, 2016, inserting Title 2 "Certain rules relating to the legal framework for trust services" into Book XII 'Electronic Economy Law' of the Code of Economic Law. The main update of this law was to **provide a legal framework for qualified digital archives and for (Qualified) Trust Service Providers**.

### The final step to digital transformation

As for the other eIDAS services, the Digital Act defines two levels of services offering them specific legal ground. The most important one, is the document's **authenticity and integrity presumption for Qualified Trust Services** by returning the burden of the proof. Practically it implies that a company preserving its documents in a qualified archiving solution does not need to prove the integrity or the authenticity of the documents.

By the Digital Act, the Belgian government intends to provide a legal basis to the digital market, offering opportunities to Belgian companies to make the **final step to digital transformation**. In this context, article XII.25 paragraph 5 states that a [qualified archiving solution](#) will be mandatory when a preservation is required according to one of the legal books. This implies among others financial, social, HR, ... documents of organizations. Basically, this new legislation will impact all the organizations in Belgium who will have to be ready when these regulations will come into force.

If the Digital Act follows the requirements of eIDAS regarding **QTSP accreditation**, it also impacts digital archiving. A qualified digital archiving solution can be implemented internally into a company, avoiding to resort to a third party and adding a risk in data privacy management. Nevertheless, companies should be aware that the qualification and accreditation are not only based on the technical environment, but also on organizational and operational procedures such as retention period and document disposition.

## QUALIFIED ARCHIVING REQUIREMENTS

The legal texts and annexes consist of generic requirements that need to be further precised. To achieve this goal, Minister De Croo has set up a **task force** gathering members of public services and the private sector, including archives professionals and technology service providers, to precise technical and operational requirements to fulfill compliance. To achieve this goal, the task force will identify standards that will help to meet requirements such as the ISO 14721:2012 or ISO 16363:2012.

This task force will result in the publication of a **Royal Decree** that will precise the scope of the law, and that will determine the certification scheme to follow to be granted the qualification.

## CONCLUSION

### Are you ready to improve your document management strategy?

Digital transformation offers companies the opportunity to improve their document management and to **share their information safely**, therefore optimizing their daily work. In order to preserve the document's integrity, authenticity and readability, the information should be managed in a [digital archiving solution](#). The Belgian Digital Act offers this opportunity by defining operational and technical requirements within a legal framework and thereby offering legal value to digitally archived documents.

Although the Royal Decree is yet to be published, every company should start thinking about a digital archive. Digital Archiving starts by identifying the documents that need to be legally preserved and by defining the processes and procedures that locate and preserve the documents. **The Digital Act** will require that companies resort on a **qualified archiving solution** for specific documents, and all organizations will have to be ready together with the royal decree.

Interested to add a digital archiving solution to your **information management strategy**? Then contact our experts via [hello@docbyte.com](mailto:hello@docbyte.com) or start by reading this [guide to a qualified digital archive](#).

# THANK YOU !

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