

Dimensions and Legal Issues of E-Identity: Taiwan's Perspectives

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I. Dimensions of E-Identity

1. Identity and verification in a digital world: real identity or virtual identity/online identity.

With the high degree of informatization of human society, the Internet has become an essential medium for people to connect with each other in both the public domain and in the social field. In the public domain, many traditional administrative procedures are improving with the development of informatization and electronification, such as online applications or automatic decision-making. As for the situation in the private field, the Internet has also become an important way for people to interact with each other, such as the wide spreading use of social media. Various legal acts in the material world need to verify people's identity; in the virtual world, it is also necessary to develop a measure through which a natural person can be identified. Therefore, relevant discussions about e-identity in the legal field have boomed in recent years.

2. Information that may be used to identify a natural person (personal data) stored digitally in ID card or mobile devices (e-ID).

Another legal issue related to E-Identity concerns the storage and access of personal data. According to the current technology, states or private sectors can collect and save personal files in a specific database or hardware facility, which leads to issues of information security, data utilization, and data access rights. For example, does the law allow certain agencies to access personal files? How to access personal files (For instance, by using fingerprint access or ID card)? How can personal files be used? Who has access to these personal files? Moreover, who should be responsible if personal information is leaked due to a lack of management? These are all issues related to e-ID in the future.

II. State of Regulation

1. Verification of digital identity

Regarding the relevant regulation of e-ID, German law already has relatively sufficient regulations. For example, Paragraph 2, Article 3a of the Federal Administrative Procedure Law and Article 126a of the Federal Civil Code have provisions on electronic communication. In addition, Germany has established the Act on Identity Cards and Electronic Identification (PAuswG), which also regulates electronic identity cards. Compared with Germany, Taiwan's regulations are still incomplete in public and private fields.

2. The New e-ID plan in Taiwan

When the Covid-19 pandemic peaked in Taiwan on 19 March 2020, the Department of Household Registration, Ministry of Interior announced the "Regulations for the National-wide Replacement of National ID Cards" based on the "New e-ID Replacement of National ID Cards Plan" revealed on May 2019. The new e-ID was initially slated for issuance in October 2020; however, this project was postponed due to the delay in delivering related equipment and materials caused by the pandemic. It is deserving to pay attention to whether the authority takes advantage of the people's seeking behavior for safety during the epidemic to promote "comprehensive implement of digital footprint" and "digital surveillance by citizens." In 2021, civil organizations and some jurisprudence expressed their strong concerns and at the same time applied to the Administrative Court for a provisional injunction, requesting the Ministry of the Interior to stop the implementation of e-ID. After that, the Executive Yuan announced that the New e-ID plan had been halted since January 2021 until various technical issues have been resolved to clear up doubts about potential data abuse.

III. Legal challenges to e-ID

1. Legal challenges to e-ID policy in Taiwan

- 1) Should e-ID be mandatory? duty to live in a digital world vs. right to stay in the analog age.

Even though Taiwan has not yet decided to restart the e-ID plan, the project's future development is still foreseeable. There are several issues we should pay attention to.

First, when promoting the replacement of e-ID, Taiwan is bound to face a value choice similar to that of Germany: should everyone be forced to change their e-ID cards? The Act on Identity Cards and Electronic Identification in Germany allows people to choose between traditional paper ID cards or e-ID, thereby respecting the individual's constitutionally guaranteed right to information self-determination. However, according to the New e-ID replacement plan introduced by Taiwan's Ministry of the Interior, a policy of compulsory replacement is adopted, whose constitutionality should be further considered.

- 2) Should national ID be required only for specified and regulated purposes? mandatory identity verification vs. voluntary proof of identity.

Can e-ID cards be used for specific purposes only? Or is it broadly applicable to all administrative procedures and private transactions? In particular, Taiwan has advocated the "e-government" policy in recent years, attempting to link the databases of all administrative agencies with personal electronic ID cards, thereby simplifying and facilitating administrative procedures. Does this measure have information security concerns? Releveled issues should also be discussed in depth before being fully implemented.

- 3) Should leaving and collecting digital footprints be left unregulated? How to prevent or control surveillance state and surveillance capitalism?

In recent years, many companies have used the digital footprints left by individuals' virtual activities, through the calculation of algorithms, as assets to judge personal preferences and life patterns. This process is called personal profiling in informatics. Personal profiling requires a lot of personal information, and if it is used by the public sector, it will inevitably give rise to George Orwellian concerns about "total surveillance"; however, if it is used by private enterprises, it may lead to the "surveillance capitalism". Therefore, how to use the digital footprint generated by adopting e-ID is also a tough challenge for legal control.

2. National security concerns in Taiwan

- 1) data security threat: suspicious links between manufacturers of e-ID hardware and software systems and external hostile forces¹

Should the manufacturers and suppliers of e-ID cards be subject to national laws?

¹ Paragraph 1, Article 2 of Anti-infiltration Act: external hostile forces refers "to a country, political entity or group that is at war with our country or confronting our country by force. The same applies to countries, political entities or groups that advocate the non-peaceful means to endanger our sovereignty."

This issue involves the protection of personal information and national security. In particular, some manufacturers of e-ID and archives, who have the opportunity to obtain personal information, are overseas companies. There may be concerns about information leakage. Considering Taiwan's special international relations, Taiwan passed the Anti-Infiltration Bill in 2020 to prevent hostile foreign forces from obtaining national security information about Taiwan through various means. Whether this requirement should be incorporated into the strategy of regulating e-ID cards deserves further consideration.

2) danger of exploitation from enemy: case of Afghanistan e-ID.

For instance, Afghanistan's identity card (called Tazkira) was digitized in 2018 and linked with people's data, including ethnicity and religious belief, voting preferences, bank records, land and property ownership. It is not difficult to find out that those databases containing sensitive information usually place vulnerable people in danger. Those data have been used to target vulnerable people in the most frequent condition, and digitized, searchable databases amplify the risks of abuse of this data. Therefore, it should be necessary to bring in the law explicitly dealing with the relevant issues since it protects the country from the invasion of external hostile forces and guards the human rights and public interests from digital violation.