



UiO : **Department of Private Law**
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EDIW: Safe and Inclusive or Unsafe and Discriminatory?

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Safe and inclusive or unsafe and discriminatory? European digital identity wallets and the challenges of ‘sole control’

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SODI Societal Security and Digital Identities

Duration: 01.06.2021–31.12.2025

In this project, we will study how law and technology can work together to detect and reduce vulnerabilities linked to the use and misuse of eID systems.



Illustration: Colourbox.com

ID - juristen

The ID Lawyer provides free legal aid and guidance to victims of eID fraud or to persons having difficulties accessing eID in Norway.





Photo: Tormod Strand



Photo: Varden

The principle of ‘sole control’

- eIDAS 2.0 article 5a (4)
 - the EDIW shall enable the user to “securely request, obtain, select, combine, store, delete, share and present, under the **sole control of the user**, person identification data”.
- eIDAS 1.0 article 26
 - An advanced electronic signature should be ‘created using electronic signature creation data that the signatory can, with a high level of confidence, use under his **sole control**’

Legal and real life implications of «Sole control»

- cryptographic assumption → legal obligation → compliance?
- Many struggle to maintain «sole control»
 - Limited digital skills or disabilities
 - Social engineering, coercion, threats, violence
- What should be the legal consequences with regard to access to eID and loss allocation following a situation where someone lost «sole control»?

The Exclusion Problem



BANK-INDEPENDENT BANK ID: "At Finance Norway's Consumer Conference, we launched the idea of a BankID that can be distributed by others than the banks, a "bank-independent" BankID", says Øyvind Westby Brække, CEO of BankID BankAxept AS (in the middle) (Photo: Lisbet Jære)

BankID is discriminatory

BankID currently covers 96 percent of the population between the ages of 20 and 70, but many fall outside. Without access to services such as Helsenorge and VIPPS, everyday life becomes difficult for many.

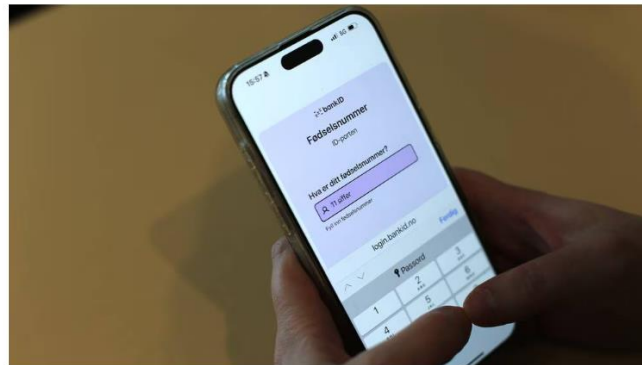


Lisbet Jære

Last updated Sep 25, 2024

One in ten lacks BankID: "Discriminatory to keep people out"

Many people are unable to log in to digital services in banks, the Norwegian Labour and Welfare Administration (NAV) and Helsenorge. The Norwegian Association for the Mentally Handicapped (NFU) thinks it is scandalous. Now the government promises a solution.



DIGITAL OUTSIDE: 600,000 do not have access to BankID in Norway.
PHOTO: ROSA IREN VILLALOBOS / NRK



Rosa Iren Villalobos
Journalist

We report from Haugesund

Published Aug. 14, at 05:08

‘Sole control’ as a legal obligation in Norway

- The Financial Contracts Act:
 - duty to protect credentials → remain in sole control
 - Standard BankID contract:
 - prohibits users from sharing their security credentials with third parties, including family members, law enforcement, bank employees, and legal guardians
- Individuals requiring assistance denied access to BankID



Thomas is not allowed to use BankID because he cannot read and write

Stricter rules for BankID have meant that more users have lost access: "Discrimination," says Thomas Martiniussen (26), who has cerebral palsy.



[Maria Bjerkensj ](#)
Journalist

[Benjamin Vorland Andersr d](#)
Journalist

[Sofie S rth n](#)
Journalist

We report from Fredrikstad

Published July 2, 2021 at 19:15
Up-to-date July 2, 2021 at 21:05

The article is several years old.

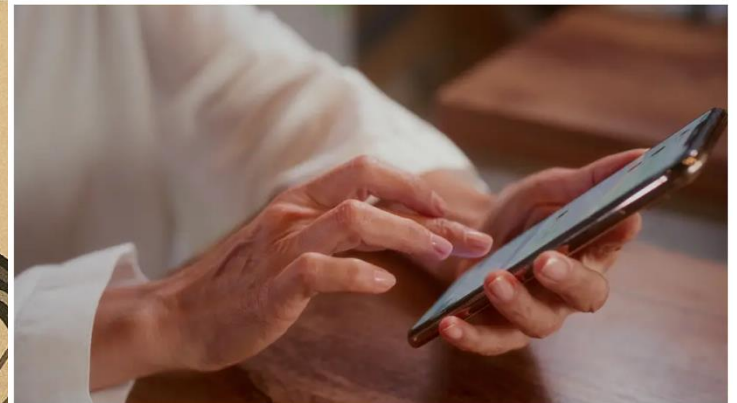
It has become more difficult for Thomas Martiniussen to get in touch with the public sector after he was deprived of BankID access.

PHOTO: MARIA BJERKENST  / NRK

Debate | BankID

*Mom feels disempowered and helpless.
The bank deprived her of BankID.*

A daughter



It is inexorable: If you have no arms, you will not have cake! Not allowed to receive help digitally! writes one daughter. Photo: SibFilm, Shutterstock/NTB

My "old" mother can recite poems by Welhaven, read books in French and use Facebook. But she is not allowed to have BankID.

Strict interpretation of 'Sole Control' under eIDAS 2.0?

- Obligation on Member states to provide EDIW for 'all'
 - Art. 5a (1)
- The EDIW should be 'under the sole control of the user'
 - Art. 5a (4)
- Contradiction?

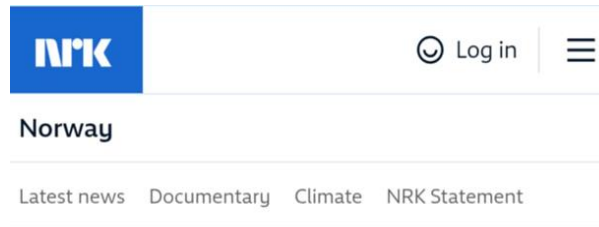
The UN Convention on the Rights of Persons with Disabilities (CRPD)

- EU Member States bound by CRPD
- Article 5 - Equality and non-discrimination
- Article 9 – Accessibility
- Strict “sole control” risks breaching these obligations

Ensuring inclusion

- Policymakers should ensure that
 - Accessible design
 - Guardians/legal reps can assist securely and lawfully
 - Representation mechanisms to guarantee access for those needing help
 - Public oversight to prevent banks/private actors as gatekeepers
 - Redress mechanisms for excluded individuals
 - Alternative access methods to public & private services actively maintained

The Social Engineering and Coercion problem



Huge increase in scams: Approaching elderly women at home and pretending to be police

The police are seeing a big increase in brazen fraud cases in several places in Norway. The criminals have taken a step back due to better computer security. Now they show up at home.



Nav suspects BankID fraud: Several payments sent to the wrong bank account

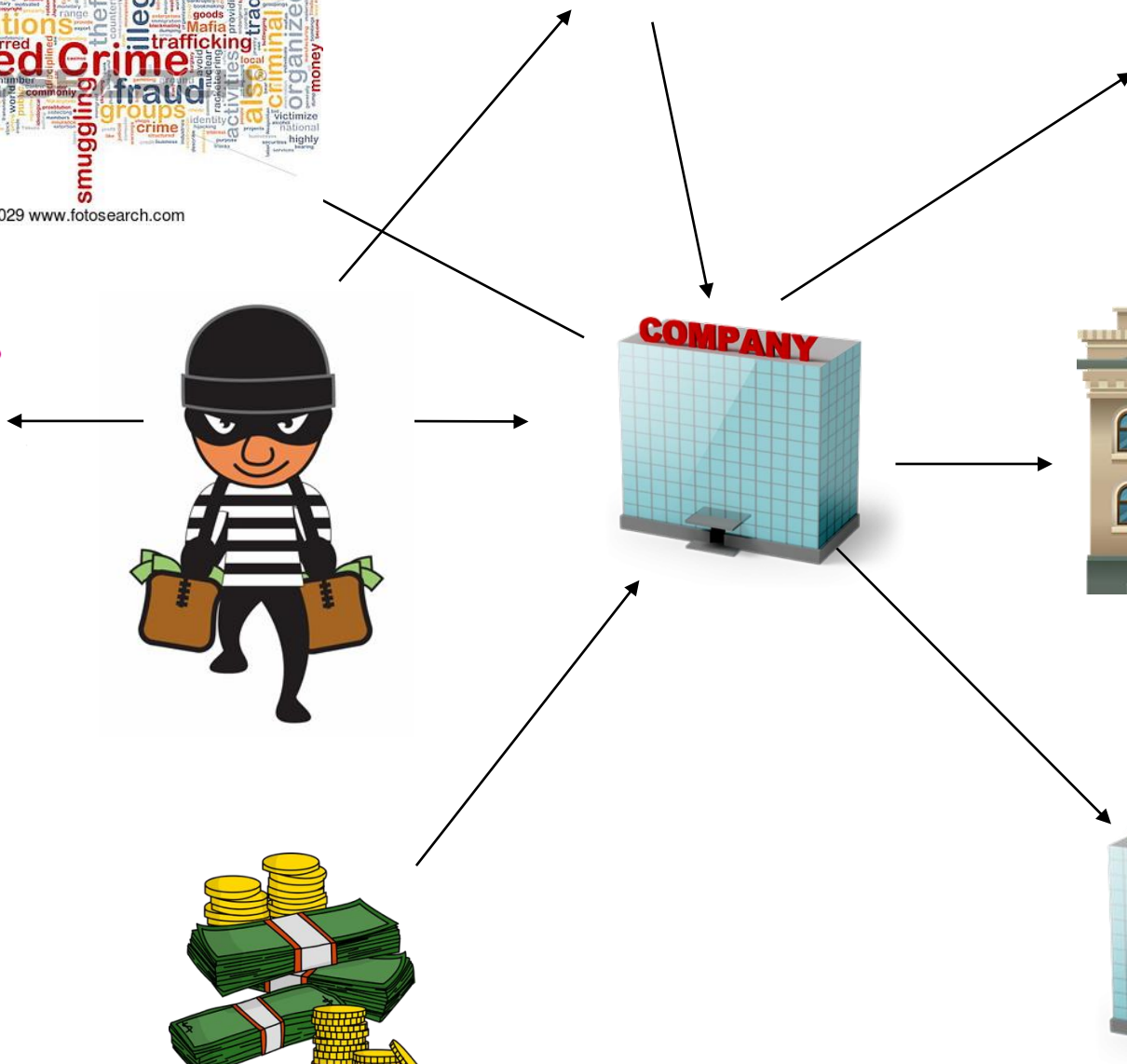
Nav is in dialogue with its bank connection and the police.



Photo: Frode Hansen / VG



Emma Fondenes Øvrebo, Sven Arne Buggeland og Wild Flaaen



Preventing and mitigating identity theft and coercion in the EDIW

- Technical measures in the wallet
- Measures implemented by relying parties
- A robust legal framework to mitigate the *consequences* of identity theft and coerced transactions

Who bears the loss when fraud or coercion occurs?

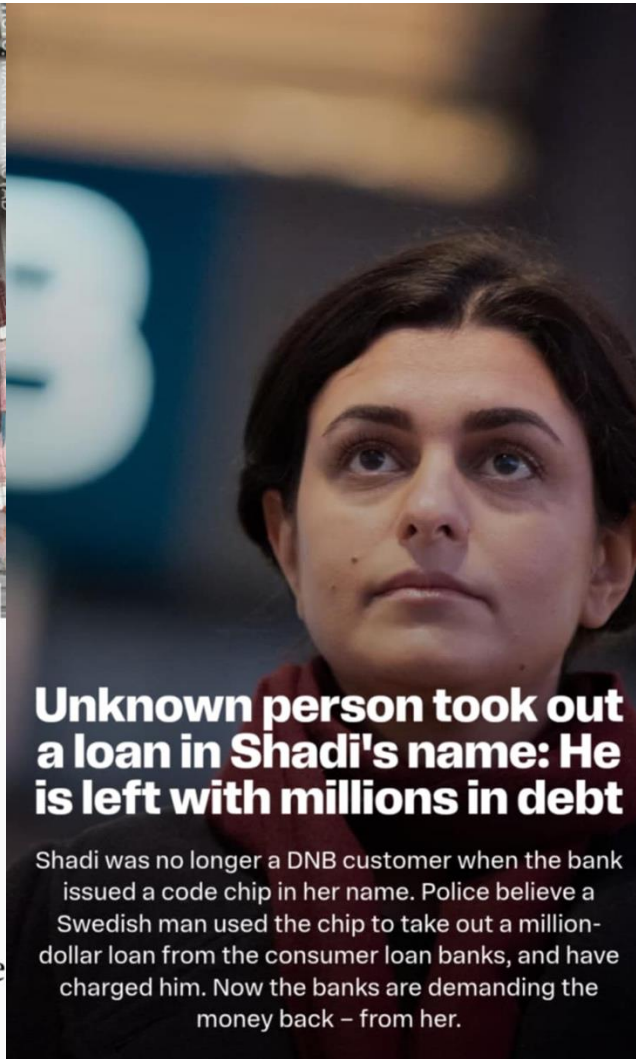
- Payment transactions
 - Regulated by PSD 2
 - ‘Unauthorised’ vs. ‘authorised’ transactions
- All other dispositions/transactions
 - Not regulated on a European level
 - End users will often be held liable based on national contract and tort law regardless of whether the transaction was authorised or unauthorised



When law becomes absurd

Petter Omland, Rent and Debt Group at Jussbuss

KRONIKK: A young woman was ordered to pay off consumer debt taken out by her mother in her name. The decision is law at its most absurd.



Unknown person took out a loan in Shadi's name: He is left with millions in debt

Shadi was no longer a DNB customer when the bank issued a code chip in her name. Police believe a Swedish man used the chip to take out a million-dollar loan from the consumer loan banks, and have charged him. Now the banks are demanding the money back – from her.

Online newspaper

Menu

BankID

Trond is furious with the bank after his son's partner took out a loan with his BankID



LONG BATTLE AFTER FRAUD: Trond Lysholm has fought a long battle for his son, after his son's former partner took out a loan with his BankID. Photo: (private)

- Supreme Court decision, HR-2020-2021-A
- New liability framework in the financial contracts act
 - Extending PSD2-style protections for unauthorised credit fraud



(Photo: Scanpix)

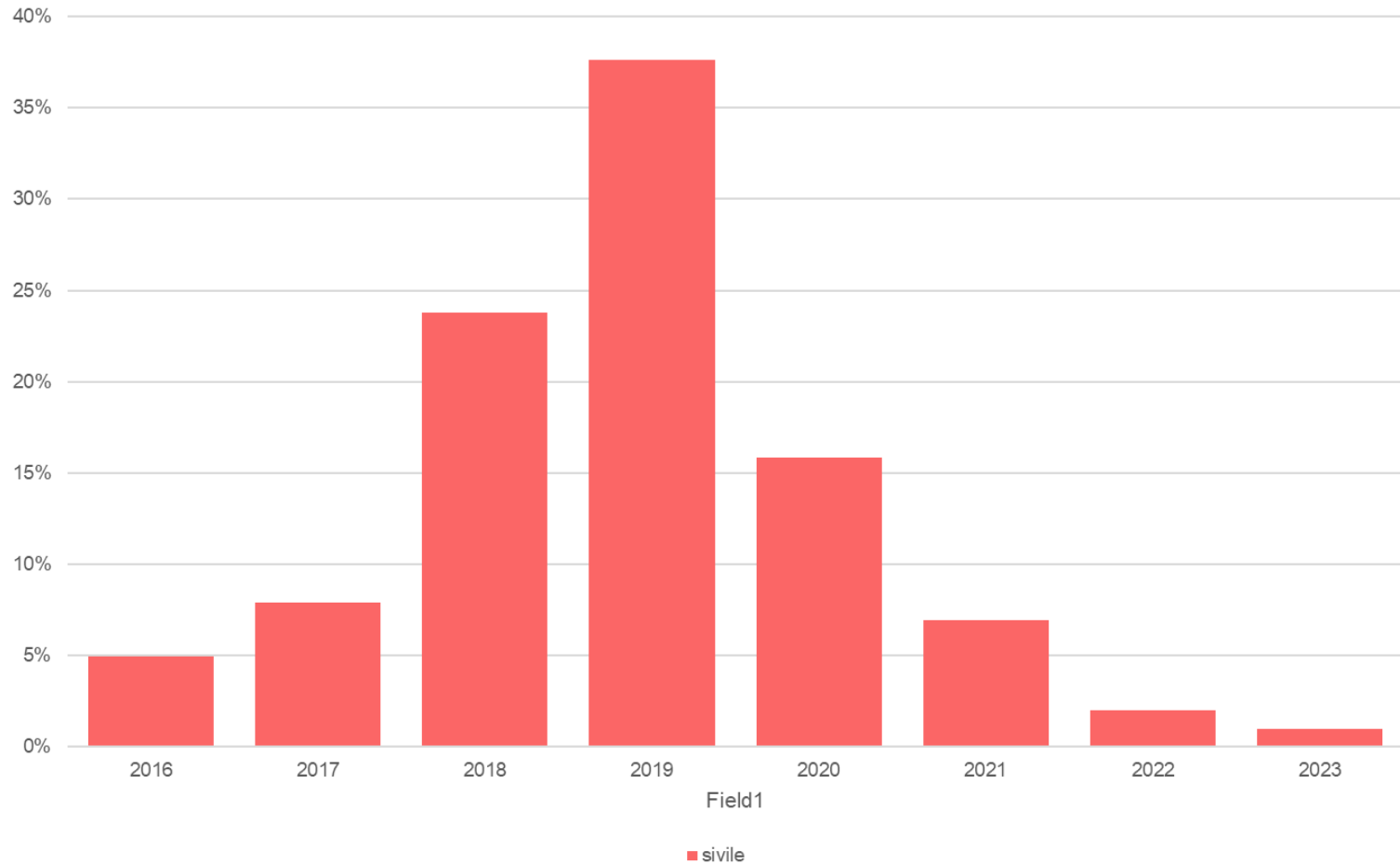
Big victory for consumers in the BankID case

The Supreme Court believes the bank should have done more to ensure that the loan customer was really who he claimed to be.

Kjetil Kolsrud

October 23, 2020 at 2:48 PM Updated: October 30, 2020 at 10:20 AM

Civil law court cases on eID fraud in Norway





From shared security to sole responsibility