

Proposed Mandatory Registration of Subscriber Identity Modules (SIMs) used for Publicly Available Electronic Communications Services Regulations

Public Consultation

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www.mca.org.mt

(+356) 2133 6840
info@mca.org.mt

Valletta Waterfront, Pinto Wharf,
Floriana FRN1913, Malta



MINISTRY FOR HOME AFFAIRS
AND NATIONAL SECURITY



PARLIAMENTARY SECRETARIAT FOR FINANCIAL SERVICES,
DIGITAL ECONOMY AND INNOVATION
OFFICE OF THE PRIME MINISTER

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1 Introduction

Citizens are entitled to feel safe and protected, and the proposal for the mandatory registration of Subscriber Identity Modules (SIMs) is an initiative of the Government to ensure the security of all citizens and to counter all forms of crime.


Pre-paid unregistered SIMs are widely used in criminal circles and are especially appealing because of the anonymity they provide. In fact, it is common practice that criminals change their SIM on a regular basis to avoid being tracked or detected. Through the course of their work the Malta Police Force have determined that the mandatory registration of SIMs would provide an effective tool which will assist them in crime prevention and investigation.

At present, only SIMs related to post-paid plans are fully registered by the undertakings. This is done as there is a bill-payment obligation between both parties. SIMs for prepaid plans are not always registered, although one can opt to register on a voluntary basis. From the latest statistics collated by the Malta Communications Authority (MCA) it is estimated that Malta's mobile penetration rate at the first quarter of 2018 stood at 129% of the population and that a total of 393,192 of mobile telephony subscribers at the end of the same period were using a prepaid plans while on the network. In practical terms, this means that there is no or limited visibility on who is making use of these SIMs.

More than half of the European Member States have already taken this stand and the mandatory registration of SIMs is prescribed in: Austria, Belgium, Bulgaria, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Slovakia and Spain. Belgium has introduced the mandatory registration of SIMs as part of a package of anti-terror measures following the 2016 Brussels terrorist attacks. Poland has also recently introduced a similar legislation to increase the efficiency of the Polish counter-terrorism system. Austria is the latest Member State to adopt a legislation to register pre-paid SIMs as part of a 'security package' legislation. The Austrian legislation will enter into force on 1 January 2019.

In line with these developments at a European level it is advisable that Malta follows suit and adopts this measure at a national level.

The Ministry for Home Affairs and National Security, the Parliamentary Secretary for Financial Services, Digital Economy and Innovation within the Office of the Prime



Minister and the MCA has through the last months collaborated in drafting the Mandatory Registration of Subscriber Identity Modules (SIMs) used for Publicly Available Electronic Communications Services Regulations as proposed within this consultation.

2 Scope

These Regulations will prescribe that all SIMs purchased and acquired by legitimate means in Malta shall be registered with the respective undertaking that provides electronic communications networks and services. This obligation shall also apply with regard to those SIMs purchased and acquired by legitimate means in Malta, prior to the entry into force of these Regulations.


These Regulations will be technologically neutral to capture all the different variances of SIM cards, be it a traditional SIM card, an e-SIM, or any other variance of such which might exist (which will include embedded SIMs e.g. those found in cars, white goods, toys etc. only if activated).

3 Process

Over the last months, discussions took place between members of the Government (OPM and MHAS/Police representatives) and the MCA on the content of these Regulations. Two working groups, which separately dealt with the legal drafting of the Regulations and the implementation of the proposal were set up. The Legal Working Group, was composed by members of the Government (OPM and MHAS/Police representatives), the MCA and the three largest undertakings.

Following the conclusion of this Consultation and the publication of the Regulations, it is the intention of the Government to continue consulting with the undertakings and to hold meetings with the Implementation Working Group, both during and after the implementation phase of these Regulations.

Given that the proposed Regulations involves the processing of personal data, the Government has repeatedly consulted with the Office of the Information and Data Protection Commissioner (IDPC). After taking into account the relevant national data protection legislation including the GDPR, sufficient and important safeguards were included in the proposal to ensure that the rights of the subscribers are duly protected.



Identity Malta was also consulted and involved in discussions since the Government has agreed, following a request made by the undertakings during the Legal Working Group, to grant the undertakings access to the National Central Data Base (CDB) to facilitate the implementation process for the registration of all SIMs.

4 Content of the Regulations

The proposed draft Mandatory Registration of Subscriber Identity Modules (SIMs) used for Publicly Available Electronic Communications Services Regulations shall be published under the Electronic Communications (Regulations) Act, Cap. 399 of the Laws of Malta, which falls under the remit of the MCA.

4.1 Registration of SIMs


The proposed Regulations impose an obligation on all subscribers to register activated SIMs purchased and acquired by legitimate means in Malta, both prior and after the entry into force of these Regulations.

The Regulations cater for two instances of registration. The first instance is that of voluntary registration which will come into force following publication of these Regulations and will provide undertakings with the legal basis to register existing SIM belonging to their subscribers.

The second instance is that of mandatory registration, which will come into force on such date as the Parliamentary Secretary for Financial Services, Digital Economy and Innovation may by notice in the Government Gazette appoint.

The Government is conscious that sufficient time must be given to the undertakings and their resellers to prepare and implement the necessary technical, operational and logistical requirements to be able to undertake the registration process for all those SIMs which must be registered. As above-mentioned even though the Regulations will be published, mandatory registration will only come into force on such date as the Parliamentary Secretary for Financial Services, Digital Economy and Innovation may by notice in the Government Gazette appoint.

The appointment of this date shall not occur earlier than six (6) months from the date of the publication of the Regulations. This will enable the coordination between the Government and the undertakings to implement mandatory registration of SIMs only when the necessary structures are ready to handle the large influx of



subscribers who will then have six (6) months from this appointed date to register their SIMs.

Under these Regulations the undertakings are also obliged to notify their subscribers and, or end-users to register their SIMs and will deactivate any SIMs which have not been registered in accordance with these Regulations.

Following the publication of the Regulations a Government funded nation-wide information campaign shall be launched which will encourage voluntary SIM registration based on the premise that the registration of SIMs is a responsibility of every citizen as it contributes towards the common good and a secure society.

This informative campaign shall inform citizens about the objectives of the Regulations, the mechanics and timeframes especially with regard to the fact that mandatory registration will be implemented in the near future. The campaign shall in fact re-peak once mandatory registration will become enforceable to inform subscribers that at that stage they have six (6) months to register or else their SIMs shall be deactivated. The undertakings are being invited to support the campaign especially in delivering the necessary information to their subscribers. This campaign will not serve any commercial purpose.


4.2 Data requested on registration

The Regulation lists down the proposed procedure that needs to be followed when registering a SIM. All subscribers shall only be requested to provide data, which is strictly necessary for the purposes set out in the proposal. In view of this, the subscribers shall produce an original and valid identity document or passport attesting the truthfulness of the details provided hereunder:

- Full Name and Surname.
- Address.
- Number of Identity Document or Passport.

If a legal representative is registering on behalf of an entity, then the same details must be provided in this respect where such details are applicable.

The proposal takes into consideration the issue of minors (under 18 years of age) who make use of a SIM. In such cases an undertaking shall not register a SIM in a minor's name. A SIM which is being used by a minor must be registered in the name



of an adult in line with the Regulations and once the minor has attained majority, he may decide to request that such SIM is transferred on to his name.

The Regulations underline that a subscriber shall always be responsible for a SIM which is registered in his name but is being used by another person.

The Regulations also cover those instances where the registered subscriber transfers the SIM to another person and when a person needs to register on behalf of a subscriber.

A subscriber shall also be responsible to inform an undertaking to deactivate a SIM if this has been lost or stolen. This responsibility has also been placed on the reseller with the addition that the obligation to inform the undertaking is also applicable not only when a SIM is lost or stolen but also when it is damaged.

4.3 Data Protection

The undertakings are obliged to register and retain the personal data of all subscribers and, or end-users who have in their possession a SIM. The registration details shall be kept by the undertaking for six (6) months following deactivation of SIM; unless such data is requested by the competent authorities for the purposes of prevention, detection, investigation and prosecution of criminal offences, including the safeguarding against and the prevention of threats to public security or for any other purpose in accordance with the Security Service Act (Cap 391 of the Laws of Malta).

The processing of data shall be regulated in accordance with the applicable national data protection legislation and the relevant Union law.

4.4 Administrative Sanctions

With regards to sanctions, the MCA may impose such administrative fines, as it may consider appropriate upon any undertaking who acts in breach of these Regulations.

4.5 Criminal Sanctions

The applicable provisions of the Criminal Code (Cap. 9 of the Laws of Malta) in relation to the submission of false documents shall apply if any person provides documentation, which is not original and/or valid.

In addition to this, any person who sells, issues, distributes or puts into circulation SIMs in breach of these Regulations, shall be liable on conviction to a fine (*multa*) of not more than €25,000 in respect of each SIM and upon the demand of the

prosecution, the Court may order that any SIMs be forfeited and delivered to the Commissioner of Police.

5 Invitation to Comments

The Authority would be pleased to receive comments and proposals on any other aspects that may be deemed relevant for the purposes of this consultation.

For the sake of clarity and ease of understanding, the Authority encourages stakeholders to structure their comments in the same order as adopted throughout this document.

Invitation to Comments

In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested parties and stakeholders during the national consultation period, which shall run from the **5th September 2018** till the **10th October 2018**.

The Authority appreciates that respondents may provide confidential information in their feedback to this Consultation document. This information is to be included in a separate annex and should be clearly marked as **confidential**. Respondents are also requested to state the reasons why the information should be treated as confidential.

For the sake of transparency, the Authority may publish a list of all respondents to this Consultation on its website, within three (3) working days following the deadline for responses. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received, in accordance with the MCA's confidentiality guidelines and procedures¹. Respondents are however encouraged to avoid confidential markings wherever possible.

All responses may be submitted to the MCA electronically on simregistration@mca.org.mt or in writing to:

Executive Chairman
Malta Communications Authority
Valletta Waterfront, Pinto Wharf,

¹ http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf



Floriana, FRN1913

Malta.

Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the Authority deems fit. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

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