

# Remote Identification Procedures – Draft Regulations entitled ‘Electronic Trust Services (Remote Identification Procedures), Regulations

**Public Consultation**

MCA/C/20-4007

October 2020

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## 1 Background

On the 1st July 2016 EU Regulation 910/2014 on electronic identification and trust services for electronic communications in the internal market (the 'eIDAS' Regulation) came into force and was as a result directly applicable to Malta. This EU Regulation provided for the repeal of the Directive 1999/93/EC which dealt with the regulation of electronic signatures. The eIDAS Regulation in substance enhances trust in electronic transactions in the EU by providing a common foundation for secure electronic interaction.

As a result of the enactment of the eIDAS Regulation, Government made various amendments to the then existing legislation dealing with electronic signatures. These amendments were mainly done by amending the Electronic Commerce Act (Cap. 426), whereby the then applicable provisions relating to electronic signatures were deleted, whereas new provisions were introduced to facilitate the enforcement of the eIDAS Regulation in line with the requirements of the aforesaid EU Regulation. As a result of these amendments the MCA as the competent regulator under the Electronic Commerce Act assumed the role of the supervisory body responsible for ensuring compliance with the requirements of the eIDAS Regulation.

This consultation is being issued for public consultation post consultation with the office of the Parliamentary Secretary for Financial Services and Digital Economy within the Ministry for Finance and Financial Services. The consultation period will run from the 16th October 2020 to the 20th November 2020. Please refer to Section 5 for further details about the submission of comments.

### Next Steps

The MCA will, after taking into consideration the responses received to this consultation, submit to the Parliamentary Secretary for Financial Services and Digital Economy within the Ministry for Finance and Financial Services its proposed amendments to the Regulations.

## 2 Purpose

Article 24 of the eIDAS Regulation requires that a qualified trust service provider ('QTSP') verifies the identity, and where applicable any special attributes, of the person to whom a qualified certificate is being issued. Article 24 lists amongst the diverse identification methods that may be used, the following methods namely:

'other identification methods recognised at national level which provide equivalent assurance in terms of reliability to physical presence'.

The eIDAS Regulation further requires that such 'equivalent' assurance' is confirmed by a conformity assessment body ('CAB'). One such method which is gradually being used in various EU member states is the use of remote identification procedures by using video-conferencing.

The purpose of the proposed regulations is to regulate the use of remote identification procedures by QTSPs, ensuring that the procedures used are duly certified by a CAB as being in compliance with the safeguards provided for in the said proposed regulations.

### 3 The Salient Points of the Proposed Regulations

Unless stated otherwise the definitions in the eIDAS Regulation and the Electronic Commerce Act apply. This serves to ensure that there is consistency in the interpretation of the terms used in all the applicable laws.

A QTSP before making use of a remote identification procedure, is required to submit to the MCA a conformity assessment report ('CAR') issued by a CAB, which report must confirm that the QTSP provides equivalent assurance in terms of physical presence and meets all the requirements as stated in the draft regulations.

The draft regulations require a QTSP to undertake various measures before adopting a remote identification procedure, including carrying out a risk analysis, tests of the effectiveness and safety and an internal assessment of the adequacy of the method to be used to mitigate any risks identified in the risk analysis.<sup>1</sup> The draft regulations also provide for a number of technical and organisational requirements that the QTSP must abide with, norms to be complied with during the actual remote identification session, and norms requiring the recording and retention of such a session.<sup>2</sup>

The draft regulations provide the necessary enforcement tools to enable the MCA to inspect and require any information about any remote identification procedures carried out in compliance with the draft regulations. The MCA is furthermore empowered to require any person to desist from the continued use of any remote identification procedure if there is non-compliance with the applicable norms.<sup>3</sup> The draft regulations empower the MCA to impose administrative fines if there is a breach with the provisions of the proposed regulations.<sup>4</sup>

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<sup>1</sup> See reg. 6 of draft regulations.

<sup>2</sup> Ibid regs. 7 to 12.

<sup>3</sup> Ibid reg. 15.

<sup>4</sup> Ibid reg. 16.

## 4 The Need to Regulate Remote Identification Procedures

Such regulation is required for a number of reasons namely:

- The MCA had received a number of requests from potential foreign QTSPs who were interested in establishing their business operations in Malta. Since Malta does not currently expressly cater for remote identification regulation, these QTSPs did not proceed with their plans.
- Various EU member states have taken measures to facilitate the use of remote identification procedures. Malta, in line with such developments in other countries, needs to actively consider the introduction of the appropriate regulatory measures more so if it is to attract foreign based QTSPs to Malta.
- Such procedures shall contribute to the uptake of eCommerce and the general trust of the public and business in information systems. For instance, the ability to securely sign documents without the need for a wet signature will greatly improve the efficiency of electronic transactions.
- It is important that there is a solid regulatory regime factoring such safeguards facilitating such procedures whilst ensuring that there is no misuse or abuse of such procedures.

## 5 Invitation to Comments

The Authority invites comments on the draft regulations, 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.

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 consultation period, which shall run from the **16<sup>th</sup> October 2020** till the **20<sup>th</sup> November 2020**.

The Authority appreciates that respondents may provide confidential information in their feedback to this Consultation document. Such information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state their 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 its confidentiality guidelines and procedures. Respondents are however encouraged to avoid confidential markings wherever possible.

The MCA will, after taking into consideration the responses received to this consultation, submit to the Parliamentary Secretary for Financial Services and Digital Economy within the Ministry for Finance and Financial Services the proposed changes to the Regulation.

The consultation period will run until close of business of 20th November 2020.

All responses are to be submitted to the MCA electronically on [idas@mca.org.mt](mailto:idas@mca.org.mt) or in writing to:

**The Chief Executive Officer**

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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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