



GOVERNMENT OF MALTA

Government response to the Consultation on Remote Identification Procedures, Public Consultation on draft regulations entitled 'Electronic Trust Services (Remote Identification Procedures), Regulations, 2020

January 2021

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Valletta, Malta VLT 1116

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Executive Summary

Introduction and overview

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. The eIDAS Regulation in substance enhances trust in electronic transactions in the EU by providing a common foundation for secure electronic interaction. This is done by introducing a number of regulated "trust services" such as qualified certificates for electronic signatures, qualified certificates for electronic seals, qualified certificates for website authentication and others. In order to implement the eIDAS Regulation, amendments were made to Electronic Commerce Act (Chapter 426 of the Laws of Malta), whereby new provisions were introduced to facilitate the enforcement of the eIDAS Regulation, foremost the designation of the MCA as the 'supervisory body' responsible for ensuring compliance with the eIDAS Regulation by Qualified Trust Service Providers ('QTSPs').

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

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

The eIDAS Regulation requires that such 'equivalent assurance' is confirmed by a conformity assessment body ('CAB').¹ One such method being introduced in some EU member states is the use of remote identification procedures by using video-conferencing.

The consultation proposed draft norms to facilitate the use of such procedures in Malta by amongst others using video-conferencing.

1. The objective of the public consultation was to propose draft regulations to be made under the Electronic Commerce Act (Cap. 426 of the Laws of Malta), delineating norms to regulate the use of remote identification procedures by using video-conferencing amongst other means.

The purpose of the aforesaid public consultation was to seek input from interested parties further to the proposed regulations.

2. This public consultation sought the views of stakeholders on the proposed regulations published as a part of the aforesaid public consultation.

¹ A 'CAB' is accredited to carry out conformity assessment of a QTSP and of the qualified trust services the QTSP provides. See Article 3(18) of the eIDAS Regulation.

Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions after consultation with the Malta Communications Authority ('MCA') on these matters.

3. The public consultation was issued on the 16th October 2020 and ran until the 20th November 2020. In total six (6) responses were received. Three (3) responses were submitted by entities established in Malta, including an undertaking providing electronic communications services in Malta, an established law firm and the National Accreditation Board. The three responses from abroad were from an undertaking interested in providing electronic identification and trust services in Malta and two foreign public supervisory bodies responsible for ensuring compliance with the eIDAS Regulation in respective jurisdictions. A list of the respondents can be found at Annex A.

Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who responded to the consultation.

4. Summary of feedback received.

A QTSP that is accredited in another EU Member State argued that the provision of verified trusted attributes should be regulated at a EU level, noting that some EU Member States follow different practices regarding important operational aspects such as identity verification. This respondent made various suggestions including having in place a clear set of rules for remote identification processes. This QTSP has been using remote ID by videoconferencing to issue QES to many clients in the EU for two (2) years and considers it secure.

The National Accreditation Board ('NAB') observed that the MCA had received requests from foreign QTSPs interested in operating from Malta. NAB said that it would be interested in accrediting such certification bodies. NAB also made some comments in relation to the proposed regulations asking for clarifications on certain terms used.

Another respondent did not make any submissions on the proposed regulations, but instead made some remarks in relation to electronic commerce legislation notably the Electronic Commerce Act (Chapter 426 of the Laws of Malta). In substance this respondent argued that there is a need for more clarity in the list of excluded activities from the application of the Electronic Commerce Act more so given the impact of Covid-19 pandemic which has increased the need for use of electronic means to perform transactions.

A supervisory body from another EU Member State commented about the importance that a CAB report based on Article 24 of eIDAS Regulation should contain clear and unambiguous statement that the method of identification provides equivalent assurance to reliability of physical presence. Another supervisory body from a different Member State shared its experience providing information about the process adopted for the verification of the identity, advising that draft norms will be published in the near future specifying the requirements for remote identification.

Another respondent whilst welcoming the proposal to introduce regulatory measures on remote identification procedures in Malta, made various submissions in relation to the content of the proposed regulations. This respondent raised various points notably:

- asking why the proposed regulations focus on video-conferencing, observing that video-conferencing is only one of various methods that may provide equivalent assurance in terms of reliability to physical presence;
- that the definition of QTSPs under the proposed regulations and under the eIDAS Regulation can be interpreted in different ways, specifically seeking clarification about which entities would be considered as being persons acting under the authority or engaged by a QTSP;
- that the draft regulations should clearly state that they apply solely to QTSPs in Malta;
- requesting clarification why a QTSP would be required to keep a record of the entire identification session, noting that this would not be possible in relation to certain methods of verification. This respondent also argued that the seven year retention period is far too long.

5. Assessment of submissions.

The draft regulations will be revised to address some of the points raised by various respondents. Whilst note has been taken as to the suggestion that the means of remote identification should not be limited to video-conferencing, at this stage it is considered advisable to proceed gradually, commencing with video-conferencing as a means of remote identification ensuring that the adequate safeguards are in place to ensure a secure and robust process is in place. This said, it is not excluded that subsequently the applicable norms will be revised to cater for other means of remote identification, which are considered to be substantially secure at the particular point in time.

In relation to the point made that it should be made clear that the norms apply to QTSPs established in Malta, as necessary the draft regulations will be revised to dispell any doubts on this point.

Note has been taken as to the comment that the retention period of seven years is too long, and the point raised will be reconsidered. It is however considered that for the time being a QTSP should be required to keep a record of the entire identification session to curtail any possible abuse.

Though not tied directly to the proposed regulation, note has been taken of the submission advocating a review of the excluded activities under the Electronic Commerce Act. In part amendments to the Electronic Commerce Act are currently being considered in part to address some of the points raised by one the respondents. Moreover it is envisaged that the EU will in the near future review the Directive 2000/31/EC on electronic commerce. Subsequent to such a review, current national legislation will be reviewed and amended as necessary.

Implementation

6. Amendments to the draft regulations as proposed in the aforesaid public consultation are being actively considered to reflect some of the submissions made. These amendments will be considered by Government and as necessary factored in an updated version of the proposed regulations. It is envisaged that the regulations will be issued in the first half of 2021.

Contact Details

If you have any questions regarding this response, please contact: idas@mca.org.mt

Annex A: List of respondents

Organisation
Epic Communications Limited – Malta
Ganado Advocates – Malta
National Accreditation Board - Malta
Agence Nationale de la Securite des Systems de Information (ANSSI) – France
Digitalsign – Certificadora Digital, S.A.- Portugal
Kancelaria Prezesa Rady Ministrów – Poland