

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4636 of 07 November, 2019

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LEGAL NOTICE NO. 221 OF 2019

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### THE ELECTRONIC IDENTIFICATION AND TRUST SERVICES FOR ELECTRONIC TRANSACTIONS (AMENDMENT) (EU EXIT) REGULATIONS 2019

In exercise of the powers conferred on him by section 11 of the European Union (Withdrawal) Act 2019 and all other enabling powers, the Minister has issued the following Regulations—

#### **Title.**

1. These Regulations may be cited as The Electronic Identification and Trust Services for Electronic Transactions (Amendment) (EU Exit) Regulations 2019.

#### **Commencement.**

2. These Regulations shall come into operation on exit day.

#### **Interpretation.**

3. In these Regulations, “the eIDAS Regulation” means Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

#### **Amendments of retained EU law.**

4.(1) In the Schedule—

- (a) Part 1 amends the eIDAS Regulation;
- (b) Part 2 amends or revokes other retained direct EU legislation; and
- (c) Part 3 amends the agreement on the European Economic Area, so far as it applies or adapts measures amended or revoked by Part 1 or 2.

(2) An amendment or revocation made by the Schedule has the same extent as the provision amended or revoked.

SCHEDULE

**Amendments of retained EU law**

PART 1

**The eIDAS Regulation**

1. The eIDAS Regulation is amended as follows.
2. In Article 1-
  - (a) in the words before point (a)-
    - (i) delete “internal”;
    - (ii) delete “electronic identification means and”;
  - (b) delete paragraph (a).
3. In Article 2-
  - (a) delete paragraph 1;
  - (b) in paragraph 2, for “resulting from national law” substitute “by operation of law”;
  - (c) in paragraph 3, for “national or Union” substitute “the”.
4. In Article 3-
  - (a) delete point (4).
  - (b) in point (6) delete “an electronic identification or”.
  - (c) in point (8) substitute –

““body governed by public law’ means bodies that have all of the following characteristics-

    - (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
    - (b) they have legal personality; and
    - (c) they have any of the following characteristics-

(i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;

(ii) they are subject to management supervision by those authorities or bodies; or

(iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;”.

(d) After point (41) insert-

“(42) ‘the equivalent EU law’ means Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, or any instrument replacing that Regulation, as it has effect in EU law from time to time.”.

5. Delete Article 4.

6. Delete Article 5.

7. Delete Chapter II.

8. In Article 13-

(a) in paragraph 1, in the first subparagraph, after “trust service providers” insert “established in Gibraltar or the EU”;

(b) in paragraph 3, for “national rules on liability” substitute “general principles of liability in tort”.

9. Delete Article 14.

10. Delete Article 15.

11. Delete Article 16.

12. In Article 17-

(a) delete paragraphs 1 and 2;

(b) in paragraph 3-

- (i) in the words before point (a), after “supervisory body” insert “(as assigned to the Gibraltar Regulatory Authority by regulation 4 of the Electronic Identification and Trust Services for Electronic Transactions Regulations 2017)”;
- (ii) in points (a) and (b), for “territory of the designating Member State” substitute “Gibraltar”.
- (c) in paragraph 4-
  - (i) delete point (a);
  - (ii) in point (c) delete “other supervisory bodies and”;
  - (iii) delete point (d);
  - (iv) in point (h) delete “national”;
- (d) for paragraph 5 substitute-

“5. The Minister with responsibility for Commerce may give directions to the supervisory body requiring it to establish, maintain and update a trust infrastructure in accordance with the directions.”.
- (e) delete paragraphs 6 to 8.

13. For Article 18 substitute-

**“Co-operation with EU authorities**

1. The supervisory body may give information and assistance to, and otherwise co-operate with, a public authority in the EU if the supervisory body considers that to do so would be in the interests of effective regulation or supervision of trust services (whether inside or outside Gibraltar).
2. Nothing in paragraph 1 authorises the processing of personal data other than in accordance with the data protection legislation.

In this paragraph, “processing”, “personal data” and “the data protection legislation” have the meanings given by section 2 of the Data Protection Act 2004.”.

14. For Article 19-

- (a) in paragraph 1, after “trust service providers” insert “established in Gibraltar”.
- (b) in paragraph 2-
  - (i) in the first subparagraph-

- (a) after “trust service providers” insert “established in Gibraltar”;
  - (b) delete “and, where applicable, other relevant bodies, such as the competent national body for information security or the data protection authority,”;
  - (ii) delete the third subparagraph.
  - (c) delete paragraphs 3 and 4.
15. In Article 20-
- (a) in paragraph 3, for “lists” substitute “list”;
  - (b) delete paragraph 4.
16. In Article 21-
- (a) in paragraph 1, after “providers” insert “established in Gibraltar”;
  - (b) in paragraph 2, in the second subparagraph, for “lists” substitute “list”;
  - (c) in paragraph 3, for “lists” substitute “list”;
  - (d) delete paragraph 4.
17. For Article 22, substitute-

**“Trusted list**

1. The Minister with responsibility for Commerce must make arrangements for the maintenance and publication of a trusted list, containing information relating to qualified trust service providers and the qualified trust services provided by them.
2. The arrangements must provide for the maintenance and publication of the trusted list, in a secured manner, in a form that is electronically signed or sealed and suitable for automated processing.
3. The arrangements must provide for a body to be responsible for the maintenance and publication of the trusted list.
4. The arrangements may provide for the trusted list to include information relating to trust service providers established in Gibraltar that do not have qualified status, and the trust services provided by them. Where the arrangements do so, they

must also provide for the list to indicate clearly which providers and services are not qualified.

5. The arrangements must provide for the publication, in a form that is electronically signed or sealed and suitable for automated processing, of:
  - (a) information on the body referred to in paragraph 3, and
  - (b) details of where the trusted list is published, the certificates used to sign or seal the list, and any changes thereto.
6. The trusted list maintained under this Article is initially to consist of the information that was in the list maintained immediately before exit day under Article 22 of this Regulation as it then had effect.”.

18. Delete Article 23.

19. In Article 24-

- (a) In paragraph 1-
  - (i) in the first subparagraph, delete “and in accordance with national law”;
  - (ii) in the second subparagraph-
    - (a) in the words before point (a), delete “in accordance with national law”;
    - (b) in point (b), for the words “set out in Article 8 with regard to the assurance levels ‘substantial’ or ‘high’” substitute “for the assurance levels ‘substantial’ or ‘high’ under the equivalent EU law so far as relating to electronic identification schemes (or would meet those requirements if they were not predicated on the doing of anything in, or by, a Member State)”;
    - (c) in point (d) delete “recognised at national level”.
- (b) In paragraph 2-
  - (i) in point (c) delete “, in accordance with national law”;
  - (ii) in point (j) delete “in accordance with Directive 95/46/EC”.
- (c) Delete paragraph 5.

20. After Article 24 insert-

“Article 24A

**Recognition of EU standards etc.**

1. For the purposes of Articles 25(2), 27, 35(2), 37, 41(2) and 43(2) (and any implementing measures having effect for the purposes of those provisions), anything which is not qualified under this Regulation is to be treated as qualified if:
  - (a) it is qualified under the equivalent EU law, or
  - (b) the application of any one or more of the assumptions in paragraph 2 would result in its being qualified under either this Regulation or the equivalent EU law.
2. The assumptions are:
  - (a) to the extent that being qualified depends on anything being done by a qualified trust services provider, that a trust services provider with qualified status under this Regulation has qualified status under the equivalent EU law (and *vice versa*);
  - (b) to the extent that being qualified depends on any related service, device, process or record being qualified, that any such thing that is qualified under this Regulation is qualified under the equivalent EU law (and *vice versa*);
  - (c) to the extent that being qualified depends on meeting any technical standard or requirement, that anything meeting such a standard or requirement under this Regulation meets any corresponding standard or requirement under the equivalent EU law (and *vice versa*).
3. For the purposes of this Article, a trust service is not to be regarded as being qualified under the equivalent EU law if it is qualified (or is treated as such) only by virtue of provision for the recognition of trust services provided by entities established outside the EU pursuant to an international agreement to which the EU is party.”.

21. In Article 25, delete paragraph 3.

22. In Article 27-

(a) for paragraphs 1 to 3 substitute-

“1. If a public sector body requires an advanced electronic signature for the use of an online service offered by or on behalf of that body (but does not require it to be based on a qualified certificate for electronic signature), the body must recognise any advanced electronic signature (whether or not based on a qualified certificate for electronic signature) that complies with the Implementing Decision.

2. If a public sector body requires an advanced electronic signature based on a qualified certificate for electronic signature to use an online service offered by or on behalf of that body, the body must recognise any advanced electronic signature based on a qualified certificate for electronic signature, or any qualified electronic signature, that complies with the Implementing Decision.

3. If a public sector body requires an electronic signature to use an online service offered by or on behalf of that body, the body may not, for the use of that service from a place outside Gibraltar, require the signature to be at a higher security level than that of a qualified electronic signature.”.

(b) delete paragraph 4.

(c) for paragraph 5 substitute-

“5. In this Article “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies.”.

23. In Article 28, delete paragraphs 2, 5 and 6.

24. In Article 29, delete paragraph 2.

25. In Article 30-

(a) in paragraph 1, for “Member States” substitute “a person appointed for that purpose by the Minister with responsibility for Commerce (“the appointed person”);

(b) for paragraph 2 substitute-

“2. The appointed person must notify the supervisory body of the name and address of any body the person designates under paragraph 1.



2A. The supervisory body must maintain a list of the names and addresses of the designated bodies notified to it under paragraph 2.”.

(c) in paragraph 3-

(i) in the first subparagraph-

(a) in point (a) substitute-

“(a) a security evaluation process that complies with the Implementing Decision”;

(b) in point (b) for “Commission” substitute “supervisory body”.

(ii) for the second subparagraph, substitute-

“In this paragraph “the Implementing Decision” means Commission Implementing Decision (EU) 2016/650 laying down standards for the security assessment of qualified signature and seal creation devices.”.

(d) delete paragraph 4.

26. In Article 31-

(a) for paragraphs 1 and 2 substitute-

“1. A body designated under Article 30(1) must notify the supervisory body as soon as reasonably practicable of any certification of conformity that it makes, or cancels, for the purposes of Article 30.

2. The supervisory body must maintain and publish a list of electronic signature creation devices the certification of which is notified to it under paragraph 1.”;

(b) delete paragraph 3.

27. In Article 32, delete paragraph 3.

28. In Article 33, delete paragraph 2.

29. In Article 34, delete paragraph 2.

30. In Article 35, delete paragraph 3.

31. In Article 37-

(a) for paragraphs 1 to 3 substitute-

“1. If a public sector body requires an advanced electronic seal for the use of an online service offered by or on behalf of that body (but does not require it to be based on a qualified certificate for electronic seal), the body must recognise any advanced electronic seal (whether or not based on a qualified certificate for electronic seal) that complies with the Implementing Decision.

2. If a public sector body requires an advanced electronic seal based on a qualified certificate for electronic seal to use an online service offered by or on behalf of that body, the body must recognise any advanced electronic seal based on a qualified certificate for electronic seal, or any qualified electronic seal, that complies with the Implementing Decision.

3. If a public sector body requires an electronic seal to use an online service offered by or on behalf of that body, the body may not, for the use of that service from a place outside Gibraltar, require the seal to be at a higher security level than that of a qualified electronic seal.”.

(b) delete paragraph 4.

(c) for paragraph 5 substitute-

“5. In this Article “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies.”.

32. In Article 38, delete paragraphs 2, 5 and 6.

33. In Article 41, delete paragraph 3.

34. In Article 42, delete paragraph 2.

35. In Article 44, delete paragraph 2.

36. In Article 45, delete paragraph 2.

37. Delete Chapter V.

38. Delete Article 49.

39. In Article 51, delete paragraphs 3 and 4.

40. In Article 52, delete paragraphs 3 and 4.

41. After Article 52, delete –

“This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

42. In Annex I, in point (b), delete “, the Member State in which that provider is established and”.

43. In Annex III, in point (b), delete “the Member State in which that provider is established and”.

44. In Annex IV, in point (b), delete “the Member State in which that provider is established and”.

## PART 2

### **Other retained direct EU legislation**

#### **Commission Decision 2009/767/EC.**

45. Commission Decision of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the ‘points of contact’ under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (2009/767/EC) is revoked.

#### **Commission Decision 2010/425/EU.**

46. Commission Decision of 28 July 2010 amending Decision 2009/767/EC as regards the establishment, maintenance and publication of trusted lists of certification service providers supervised/accredited by Member States (2010/425/EU) is revoked.

#### **Commission Decision 2011/130/EU.**

47. Commission Decision of 27 April 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (2011/130/EU) is revoked.

#### **Commission Implementing Decision 2013/662/EU.**

48. Commission Implementing Decision of 14 October 2013 amending Decision 2009/767/EC as regards the establishment, maintenance and publication of trusted lists of certification service providers supervised/accredited by Member States (2013/662/EU) is revoked.

**Commission Implementing Decision 2014/148/EU.**

49. Commission Implementing Decision of 17 March 2014 amending Decision 2011/130/EU establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market is revoked.

**Commission Implementing Decision (EU) 2015/296.**

50. Commission Implementing Decision (EU) 2015/296 of 24 February 2015 establishing procedural arrangements for cooperation between Member States on electronic identification pursuant to Article 12(7) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market is revoked.

**Commission Implementing Regulation (EU) 2015/806.**

51. Commission Implementing Regulation (EU) 2015/806 of 22 May 2015 laying down specifications relating to the form of the EU trust mark for qualified trust services is revoked.

**Commission Implementing Regulation (EU) 2015/1501.**

52. Commission Implementing Regulation (EU) 2015/1501 of 8 September 2015 on the interoperability framework pursuant to Article 12(8) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market is revoked.

**Commission Implementing Regulation (EU) 2015/1502.**

53. Commission Implementing Regulation (EU) 2015/1502 of 8 September 2015 on setting out minimum technical specifications and procedures for assurance levels for electronic identification pursuant to Article 8(3) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market is revoked.

**Commission Implementing Decision (EU) 2015/1505.**

54. Commission Implementing Decision (EU) 2015/1505 laying down technical specifications and formats relating to trusted lists pursuant to Article 22(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market is revoked.

**Commission Implementing Decision (EU) 2015/1506.**

55. Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies is amended as follows.

(1) In Article 1—

(a) for “Member States requiring an advanced electronic signature or an advanced electronic signature based on a qualified certificate as provided for in Article 27(1) and (2) of Regulation (EU) No 910/2014, shall recognise” substitute “A signature complies with this Decision if it is an”;

(b) for “those signatures comply” substitute “it complies”.

(2) In Article 2—

(a) for paragraph 1 substitute-

“1. A signature also complies with this Decision if it is in a format other than those referred to in Article 1, provided that:

(a) the trust service provider used by the signatory is established in Gibraltar or the EU, and

(b) the public sector body in question is offered signature validation possibilities in accordance with paragraph 2, suitable, where possible, for automated processing.”;

(b) in paragraph 2-

(i) in point (a), for “other Member States” substitute “the public sector body”;

(ii) in point (c)-

(aa) in point (1), for “that supports the advanced electronic signature was, at the time of signing, a qualified certificate for electronic signature complying with Annex I of Regulation (EU) No 910/2014 and that it was issued by a qualified trust service provider” substitute “met, at the time of signing, all necessary requirements for qualified status”;

(bb) in point (7), after “Regulation (EU) No 910/2014” insert-“, or the corresponding provision of the equivalent EU law (within the meaning given by Article 3(42) of that Regulation),”.

(3) In Article 3-

(a) for “Member States requiring an advanced electronic seal or an advanced electronic seal based on a qualified certificate as provided for in Article 37(1) and (2) of Regulation (EU) No 910/2014, shall recognise” substitute “A seal complies with this Decision if it is an”;

(b) for “those comply” substitute “it complies”.

(4) In Article 4-

(a) for paragraph 1 substitute—

“1. A seal also complies with this Decision if it is in a format other than those referred to in Article 3, provided that:

(a) the trust service provider used by the creator of the seal is established in Gibraltar or the EU, and

(b) the public sector body in question is offered seal validation possibilities in accordance with paragraph 2, suitable, where possible, for automated processing.”;

(b) in paragraph 2-

(i) in point (a), for “other Member States” substitute “the public sector body”;

(ii) in point (c)-

(aa) in point (1), for “that supports the advanced electronic seal was, at the time of sealing, a qualified certificate for electronic seal complying with Annex III of Regulation (EU) No 910/2014 and that it was issued by a qualified trust service provider” substitute “met, at the time of sealing, all necessary requirements for qualified status”;

(bb) in point (7), after “Regulation (EU) No 910/2014” insert- “, or the corresponding provision of the equivalent EU law (within the meaning given by Article 3(42) of that Regulation).”.

(5) After Article 5, delete “This Decision shall be binding in its entirety and directly applicable in all Member States.”.

**Commission Implementing Decision (EU) 2015/1984.**

56. Commission Implementing Decision (EU) 2015/1984 of 3 November 2015 defining the circumstances, formats and procedures of notification pursuant to Article 9(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market is revoked.

**Commission Implementing Decision (EU) 2016/650.**

57. Commission Implementing Decision (EU) 2016/650 laying down standards for the security assessment of qualified signature and seal creation devices is amended as follows.

(1) In Article 1(2)-

(a) delete “Until the establishment by the Commission of a list of standards for the security assessment of information technology products that apply to the certification of qualified electronic signature creation devices or qualified electronic seal creation devices,”;

(b) delete “and that is notified to the Commission by the public or private body referred to in paragraph 1 of Article 30 of Regulation (EU) No 910/2014”

**PART 3**

**Agreement on the European Economic Area**

58.(1) The Agreement on the European Economic Area signed at Oporto on 2 May 1992, so far as it forms part of domestic law by virtue of section 6(2)(b) of the European Union (Withdrawal) Act 2019, is amended as follows.

(2) In Annex X, delete points 1b and 1c.

(3) In Annex XI, in point 5l, delete the second subparagraph.

Dated 7th November, 2019.

V DARYANANI,  
Minister with responsibility for Commerce.