Finnish Transport and Communications Agency
National Cyber Security Centre

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Interpretation memorandum of the Finnish Transport and Communications Agency (Traficom) on using a driving licence to verify one's identity when an electronic identification means has been locked or when an identification means or authentication factor is being renewed

1 Question and purpose of this interpretation memorandum

Identification service providers have requested advice from the Finnish Transport and Communications Agency (Traficom) on the situations listed below.

The questions involve cases where the identification means was issued prior to 1 January 2019 and
the customer's locked identification means needs to be reopened or the customer is applying for a new identification means or authentication factor because the customer has misplaced the previous identification means or authentication factor:

- Is the identification of the customer in these cases an initial identification as laid down in the Act on Strong Electronic Identification and Electronic Trust Services (laki vahvasta sähköisestä tunnistamisesta ja sähköisistä luottamuspalveluista, 617/2009; the "Identification Act")?
- Which requirements should be followed in the identification of a customer if it is not a case of an initial identification as laid down in the Identification Act?
- Can a driving licence be used to identify the customer in these cases, considering that a driving licence is no longer considered, as of 1 January 2019, to be a valid document for an initial identification?

Traficom is of the opinion that the practices of the industry on whether an identity card or a passport is required in all or some of the above-mentioned cases vary.

The points of law mentioned in this memorandum and the requirements of Commission Implementing Regulation (EU) 2015/1502 on setting out minimum technical specifications and procedures for assurance levels for electronic identification (the "Level of Assurance Regulation", LOA) influence the interpretation in terms of the Identification Act.

The purpose of this memorandum is to provide proactive advice to parties active in the industry on Traficom's interpretation based on the Identification Act. This memorandum does not consider any impact of regulation of the financial sector on the matter.

2 Summary

Traficom does not consider the said case to be a case of initial identification.

Traficom holds that verifying that an identification means does not unlawfully end up in the hands of a third party in connection with its renewal/replacement or reactivation cannot be based on a driving licence alone. If (all of) the factors required to use an identification means will be handed over to the customer, only a passport or an identity card can be accepted as proof of identification.

The renewal/replacement or reactivation procedure may also involve the presenting of a driving licence, but other controls to verify that the identification means and the factors required to use it will be handed over only to the person to whom they belong even if the presented driving licence was forged or stolen must be included in the handover procedure and other related actions. Using a passport or an identity card even in such cases is naturally recommended.

3 Assessment of regulations: is it a question of initial identification?

3.1 Requirements of initial identification in the Identification Act

Section 17 (23.11.2018/1009) Identifying a natural person applying for an identification means (unofficial translation)

The initial identification of a natural person shall be made personally or electronically in a way that fulfils the requirements for assurance level substantial or high laid down in section 2.1.2 of the Annex of the Level of Assurance Regulation on Electronic Identification. The proofing of a person's identity may be based on a document by an authority showing the person's identity issued or a strong electronic identification means referred to in this Act. In addition, the proofing of an identity may be based on a procedure used at an earlier date by a public or private entity for a purpose other than the issuing of a strong electronic identification means, which the Finnish Transport and Communications Agency approves pursuant to regulations and regulatory control on the procedure, or pursuant to a confirmation by a conformity assessment body referred to in section 28, subsection 1.

In initial identification that is solely based on a document issued by an authority showing the person's identity, the only acceptable documents are a valid passport or a personal identity card issued by an authority of a member state of the European Economic Area, Switzerland or San Marino. If the identification means provider so desires, they may also verify the identity from a valid passport granted by an authority of another state.

Government proposal 74/2016:

The second subsection of the section would be amended in such a manner that when the initial identification of a person is based solely on a document proving their identity that has been issued by an authority, the service provider could no longer verify the person's identity by using only a driving licence issued by a Finnish authority or an authority in another European Economic Area member state. The regulation would include a period of transition until the end of 2018. As of 2019, an identification means could no longer be issued by only using a driving licence to verify the person's identity. This change of procedure is considered to be necessary because a driving licence can no longer be considered a proof of the person's identity; instead, it is a proof of the person's right to drive a vehicle.

Justification for the transitional provision: According to section 2 of the proposed [transitional provision], the provider of the identification means may also use, until 31 December 2018, as an acceptable document as laid down in section 17, subsection 2 of this Act, a valid driving licence issued by an authority of a member state of the European Economic Area after 1 October 1990. Initial identification of a person based on a driving licence by 31 December 2018 would comply with the requirements of this Act and verifying the initial identification by other means would not be necessary.

3.2 Assessment of the matter

According to section 2 of the Identification Act, initial identification refers to a verification of the identity of an applicant of an identification means in connection with the acquisition of the identification means.

Government proposal 74/2016

The initial identification laid down in section 7 refers to a verification of the identity of a natural person or the legal personality of a legal person who is applying for an identification means before issuing them with the identification means. Initial identification is a key aspect in the reliability of strong electronic identification. There are regulations on it in section 17 of the currently valid Act. Initial identification has become an established term due to the Identification Act. It is used to clearly separate a specific event from identification events that will be repeated several times at a later point in time.

The request for interpretation does not seem to refer to a case discussed during the preparation of the Act where the identity of an applicant of an identification means is verified before issuing the identification means.

The request for interpretation is limited to cases where there is no applicant but a holder of an identification means to whom the identification means has already been issued before.

Traficom does not consider the case to be a case of initial identification. On the other hand, one can also state that it is not an identification event carried out by using an identification means as referred to at the end of the quote from the preparation of the Act.

4 Assessment of regulations: Which requirements apply to a case that is not a case of initial identification?

Even though the case referred to in the request for interpretation is not a case of initial identification, one cannot directly deduce from this which requirements apply to the identification of a holder of an identification means in the cases referred to in the request for interpretation.

4.1 Cases classified in the Level of Assurance Regulation and the Identification Act

The Level of Assurance Regulation and the Identification Act separately discuss *issuing/delivery* and *renewal/replacement*.

Furthermore, the Level of Assurance Regulation separately discusses *reactivation*. There are no regulations on reactivation in the Identification Act.

The cases have not been specifically determined. Hence, the following must be assessed:

- Significance of only replacing some of the authentication factors
  - E.g. replacing a misplaced list of one time passwords
- Significance of the reason for the replacement (whether the identification means has been misplaced, locked, expired or something else)
- What is the significance of handing over all of the authentication factors required to use an identification means to a person, for example?
- What if processes other than personal delivery are used?
- How will the deployment of a onetime password code application (mobile app) be classified if the identification is not carried out electronically by using a previously issued identification means?

In the case of *renewal and replacement*, the Level of Assurance Regulation refers to compliance with requirements corresponding to those that were used when identity was initially verified and authenticated, taking into account the risk of personal data having changed.

The requirements on *issuing, delivery and release* state that it must be ensured that the identification means will not unlawfully end in the possession of a third party.

4.2 Overall requirements for identification scheme and means

Section 8 of the Identification Act (29.6.2016/533) Requirements posed on the electronic identification scheme (unofficial translation)

An electronic identification scheme must fulfil the following requirements:

1) the identification means shall be based on identification according to section 17 and section 17 a, where the relevant data can be verified afterwards as set out in section 24;
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3) The identification means can be used verify that only the holder of the identification means can use the means in a way that, at a minimum, meets the conditions for assurance level substantial laid down in sections 2.2.1 and 2.3 of the Annex to the Level of Assurance Regulation on Electronic Identification;

4) The identification scheme is reliable and safe so that, at a minimum, it meets the conditions for assurance level substantial laid down in sections 2.2.1, 2.3.1 and 2.4.6 of the Annex to the Level of Assurance Regulation on Electronic Identification and takes into account the threats to the information security of the technology available at the time ---.

Section 2.2.1 of the Level of Assurance Regulation Electronic identification means characteristics and design

Low:
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2. The electronic identification means is designed so that the issuer takes reasonable steps to check that it is used only under the control or possession of the person to whom it belongs.

Application instructions[1]:
In referring to actions to ensure that the electronic identification means is in the possession of the person to whom it belongs, it should be noted that the actions may only include such that the party granting the identification means can be reasonably expected to carry out. The practical implementation is linked to the requirements specified in section 2.2.2.
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Substantial
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2. The electronic identification means is designed so that it can be assumed to be used only if under the control of the person to whom it belongs.
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4.3 Requirements on release, issuance, delivery and activation

Section 21 of the Identification Act (29.6.2016/533) Delivering the identification means to the applicant (unofficial translation)

The identification service provider shall deliver the identification means to the applicant as stated in the agreement. The identification service provider must ensure that when the identification means (device) is handed over, it does not become subject to unauthorized possession. The method for ensuring this must meet, at a minimum, the requirements laid down for assurance level substantial in section 2.2.2 of the Annex of the Level of Assurance Regulation on Electronic Identification.

Government proposal 36/2009, p. 59: The identification service provider carries the risk caused by the sending of an identification means, including the unique data related to its use, to the payer. The responsibility will not be transferred to the holder of the identification means in compliance with section 23, subsection 1 until the holder has received the identification means. The service provider is obligated to prove that the holder of the identification means has received the identification means and any unique data related to its use.

Section 2.2.2 of the Level of Assurance Regulation Issuance, delivery and activation

Substantial:
After issuance, the electronic identification means is delivered via a mechanism by which it can be assumed that it is delivered only into the possession of the person to whom it belongs.

(High:
The activation process verifies that the electronic identification means was delivered only into the possession of the person to whom it belongs.)

Application instructions:

Potential mechanisms include, among others:

- Delivery in person
- Recorded delivery
- Using an activation method in the case of which one can reasonably assume that only the correct person has the information needed to activate the

[1] Unofficial application instructions prepared by a liaison group of the member states and the Commission
https://www.kyberturvallisuuskeskus.fi/sites/default/files/media/file/LOA_Guidance.pdf

method (such as a default PIN code that is delivered separately from the identification means)

Several authentication factors must be used at the substantial level. Activation codes are not mandatory. Compliance with the requirements of the substantial level can be achieved with a variety of combinations of issuance, delivery and activation methods:

- The electronic identification means can be delivered by post and the activation can be carried out by sending a code to the person's bank account. The applicant will enter a code that will activate the electronic identification means. The assumption is that the bank's verification method is, at least, at the substantial level.
- The electronic identification means and the activation code are delivered to the person's verified address as separate letters.
- The electronic identification means is delivered by post to the applicant's address.
- Use of the electronic identification means will be allowed once the applicant's identity has been verified.

4.4 Requirements for renewal and replacement

Section 22 of the Identification Act (29.6.2016/533) Renewal of the identification means (unofficial translation)

The identification service provider may provide a new identification means without explicit request to the holder only if a previously delivered identification means needs to be replaced. The renewal of the identification means must follow, at a minimum, the requirements laid down for assurance level substantial in section 2.2.4 of the Annex of the Level of Assurance Regulation on Electronic Identification.

Section 2.2.4 of the Level of Assurance Regulation Renewal and replacement

Substantial:
Taking into account the risks of a change in the person identification data, renewal or replacement needs to meet the same assurance requirements as initial identity proofing and verification or be based on a valid electronic identification means of the same, or higher, assurance level.

(High:
The same as above, with the following addition: Where renewal or replacement is based on a valid electronic identification means, the identity data is verified by an authoritative source.)

Traficom holds that the reference in the requirement of the Assurance Level Regulation to the same assurance requirements as in the initial identity proofing and verification refers to section 2.1.2 of the Level of Assurance Regulation, in particular, but it can also be considered to be a general requirement on compliance with all of the previous assurance requirements regardless of the renewal/replacement (as in the case of reactivation specified in section 2.2.3(3) of the Level of Assurance Regulation).

Section 2.1.2 of the Level of Assurance Regulation Identity proofing and verification
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Substantial:
Level low, plus one of the alternatives listed in points 1 to 4 has to be met:

1. The person has been verified to be in possession of evidence recognised by the Member State in which the application for the electronic identity means is being made and representing the claimed identity
and
the evidence is checked to determine that it is genuine; or, according to an authoritative source, it is known to exist and relates to a real person
and
steps have been taken to minimise the risk that the person's identity is not the claimed identity, taking into account for instance the risk of lost, stolen, suspended, revoked or expired evidence;

or

2. An identity document is presented during a registration process in the Member State where the document was issued and the document appears to relate to the person presenting it
and
steps have been taken to minimise the risk that the person's identity is not the claimed identity, taking into account for instance the risk of lost, stolen, suspended, revoked or expired evidence;

3. Where procedures used previously by a public or private entity in the same Member State for a purpose other than the issuance of electronic identification means provide for an equivalent assurance to those set out in section 2.1.2 for the assurance level substantial, then the entity responsible for registration need not to repeat those earlier procedures, provided that such equivalent assurance is confirmed by a conformity assessment body referred to in Article 2(13) of Regulation (EC) No 765/2008 of the European Parliament and of the Council or by an equivalent body;

or

4. Where electronic identification means are issued on the basis of a valid notified electronic identification means having the assurance level substantial or high, and taking into account the risks of a change in the person identification data, it is not required to repeat the identity proofing and verification processes. Where the electronic identification means serving as the basis has not been notified, the assurance level substantial or high must be confirmed by a conformity assessment body referred to in Article 2(13) of Regulation (EC) No 765/2008 or by an equivalent body.

4.5 Level of Assurance Regulation only: suspension, revocation and reactivation

Section 2.2.3 of the Level of Assurance Regulation Suspension, revocation and reactivation

Low, substantial, high:
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2. The existence of measures taken to prevent unauthorised suspension, revocation and/or reactivation.

3. Reactivation shall take place only if the same assurance requirements as established before the suspension or revocation continue are met.

4.6 Interpretation

4.6.1 Impact assessment:

From the perspective of the reliability of the identification means, accepting a driving licence in the cases to which the request for interpretation refers is clearly the poorer solution. On the other hand, it is also a question of reaching a sufficiently high level of assurance on the basis of a risk-based assessment and a question of taking a commercial risk: an error caused by the acceptance of a driving licence could make the provider of the identification means liable for damages.

In the Finninsh trust network liaison group, many identification service providers emphasised the impact on the practical process in case personal identification (on site) was required for all maintenance actions. On the other hand, one of the service providers stated that compliance with section 2.2.3 of the Level of Assurance Regulation would also be required for the identification means to be eligible for notification [to EU Commission].

4.6.2 Interpretation

Traficom holds that the preparation of the Identification Act does not directly support the interpretation that an identity card or a passport would have to be required in all cases involving an identification means issued prior to 1 January 2019. According to the Government proposal, as of 2019, an identification means could no longer be *issued* by only using a driving licence to verify the person's identity; the person's initial identification carried out on the basis of a driving licence by 31 December 2018 would comply with the requirements of the Act and verification of the initial identification by other means would not be necessary.

4.7 Which requirements apply? How should the situation be analysed?

The application recommendation of the Level of Assurance Regulation does not include any more specific application instructions for renewal/replacement or reactivation.

⇨ Renewal/replacement probably also refers to the case included in the request for interpretation where some or all of the authentication factors need to be replaced.

The requirement of the Level of Assurance Regulation on reactivation is not directly applied on the basis of the Identification Act, as there is no reference to reactivation in the Act.

⇨ Terminologically speaking, this could be a case of reactivation if the locked list of onetime passwords will be reopened or the PIN code of a mobile certificate will be reset.

However, a specific classification of the cases is not necessarily decisive in the specification of the applicable requirements.

⇨ As stated above in the paragraph on section 2.2.4 of the Level of Assurance Regulation, compliance with all the previous assurance requirements of the Level of Assurance Regulation, regardless of the renewal/replacement, can be considered to be a general requirement.

Section 8 of the Identification Act includes general requirements on the entire identification scheme, such as

3) The identification means can be used verify that only the holder of the identification means can use the means in a way that, at a minimum, meets the conditions for assurance level substantial laid down in sections 2.2.1 and 2.3 of the Annex to the Level of Assurance Regulation on Electronic Identification.

The provider of the identification means must take reasonable steps to check that the identification means will be used only under the control or possession of the person to whom it belongs.

The Level of Assurance Regulation also especially requires action to prevent unauthorised reactivation.

- ⇨ The requirement laid down in section 8 of the Identification Act and section 2.2.1 of the Level of Assurance Regulation that only the holder of an identification means can use the means is also related to the separate requirement on release in section 21, according to which the identification service provider must ensure that the identification means will not unlawfully end up in the possession of a third party when the identification means is being delivered.
- ⇨ This requirement must be followed in all cases where some or all of the authentication factors or activation codes are rereleased in connection with renewal/replacement or reactivation.

Another general requirement is that the identification means must be based on identification as laid down in section 17 (section 8.1, point 1).

- ⇨ Renewal/replacement or reactivation must not compromise this basis.

Hence, the key is that all of the previous assurance requirements that have been complied with will still be complied with regardless of the renewal, replacement or reactivation.

4.8 Documents used in identification

As the applicable requirements have been specified above, the actual question of interpretation can now be assessed, i.e. what the requirements mean for the documents to be used to identify a person.

As the period of transition for acceptable documents laid down in section 17 ended on 31 December 2018 and a driving licence can no longer be used for the *initial identification*, can a driving licence still be considered to be an acceptable means of control in the case of a renewal/replacement or reactivation?

⇨ If the identification means (all of the factors needed for its use) is released by verifying the person's identity with an identity document, a driving licence cannot be considered to be an acceptable document even in the case of an identification means that was originally issued based on a driving licence.

⇨ Therefore, the identity document as laid down in section 2.1.2 of the Level of Assurance Regulation must be determined on the basis of section 17 and the related regulation on a period of transition in such a manner that a driving licence is no longer considered to be an acceptable document for the verification of identity.

⇨ This means that a person's right to receive an identification means cannot be verified with a driving licence alone. Releasing all of the identification factors solely on the basis of a driving licence is not possible.

⇨ Compliance with the requirement that the identification means must end up in the possession of the person to whom it belongs in the connection with renewal/replacement or reactivation can, however, be ensured by using a variety of combinations of different control methods for identity verification, delivery and activation, and a driving licence may be one of these methods.

⇨ Another form of control to be taken into account as part of the overall assessment may be, for instance, delivery of a misplaced identification factor to a previously verified postal address of the holder of the identification means.