

## COVID-19: Federal Council implements new measures to facilitate the delivery and use of electronic signatures

Electronic signatures have been suddenly gaining traction and interest as the governmental measures to limit the spread of COVID-19 make it difficult for contracting parties to sign agreements with wet ink, in the traditional manner. Swiss law provides for certain categories of electronic signatures. In particular, a qualified electronic signature legally equates to the traditional wet ink signature and thereby fulfils the requirements for the written form. Such electronic signatures rely on a certificate, which only a few recognized certification service providers can establish (for instance, Swisscom, QuoVadis and SwissSign).

Consequently and to further facilitate the use of electronic signatures, on 1 April 2020, the Federal Council adopted a temporary modification of the Ordinance on Certification Services in the Field of Electronic Signatures and Other Applications of Digital Certificates (OCSES; RS 943.032). Its aim is to allow businesses and individuals to obtain an electronic signature, and thus be able to continue entering into contracts that require the written form, without necessitating any person to person contacts.

The novel Article 7a of the OCSES extends the possibility to obtain an electronic signature without having to physically visit a recognized certification service provider for purposes of identification. Indeed, it allows these providers to perform their identification obligations through real-time audiovisual telecommunication, rather than in person. This possibility was previously only open to actors of the financial sector and came with additional limitations.

As for security concerns, the process used to verify the applicant's identity must comply with the requirements of the Anti-Money Laundering Act; or with the requirements of Article 24(1) *subparagraph* 1 letter d of the EU Regulation No. 910/2014 (generally known as the "eIDAS Regulation") and the national law of a State that is subject to this Regulation.

The modification of the OCSES is only temporary and will apply for six months at the most, starting from 2 April 2020. Certifications obtained under Article 7a of the OCSES are therefore temporary and remain valid only as long as the modification remains in force. Naturally, the validity of contracts entered into using electronic signatures delivered via the above-mentioned video-onboarding process will not be (retroactively) affected.

As such, this measure complements the existing array of temporary ordinances which the Federal Council adopted in the effort to manage the COVID-19 outbreak. One can generally welcome this new measure. Indeed, this sanitary crisis has shown the general reliance on IT solutions and a swifter move towards contracting (in written form) via electronic means is becoming a necessity in order to allow proper day-to-day business. Therefore, in permitting the use of remote video identification methods, the Federal Council sent out a positive message. If these measures prove satisfactory during the next few months, one could then hope for them to remain in place on a permanent basis.

### Useful links:

- The OCSES ([French](#), [German](#) and [Italian](#))
- The modification of the OCSES of April 1st, 2020 ([French](#), [German](#) and [Italian](#))
- The press release of the Federal Council ([French](#), [German](#) and [Italian](#))

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