



Council of the
European Union

Brussels, 7 October 2022
(OR. en)

13142/22

LIMITE

TELECOM 394
COMPET 764
MI 715
DATAPROTECT 269
JAI 1269
CODEC 1412

Interinstitutional File:
2021/0136(COD)

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	9471/21
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity - Guidance for further work

I. BACKGROUND

1. The Commission adopted the proposal for a Regulation on a European Digital Identity (European eID) on 3 June 2021¹. The initiative amends the eIDAS Regulation from 2014², which had laid the necessary foundations to safely access services and carry out transactions online and across borders in the EU.

¹ doc. 9471/21.

² [Regulation \(EU\) No 910/2014](#).

2. The proposal, based on Article 114 TFEU, requires Member States to issue a European Digital Identity Wallet under a notified eID scheme, built on common technical standards, following compulsory certification. In order to set up the necessary technical architecture, speed up the implementation of the revised Regulation, provide guidelines to Member States and avoid fragmentation, the proposal was accompanied by a Recommendation for the development of a Union Toolbox.
3. The proposed Regulation aims to ensure universal access for people and businesses to secure and trustworthy electronic identification and authentication by means of a personal digital wallet on a mobile phone.
4. In the European Parliament, the proposal was referred to the Committee on Industry, Research and Energy (ITRE), with three committees being asked for an opinion, namely the Committee on the Internal Market and Consumer Protection (IMCO), the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The rapporteur for the file is Romana Jerković (S&D, Croatia). The ITRE committee has not yet adopted its report.

II. STATE OF PLAY

5. Discussions were initiated by the Portuguese Presidency during the meeting of 17 June 2021, with the first reading being successfully completed under the Slovenian Presidency on 15 November 2021. The FR Presidency presented its first compromise proposal on 15 February and 5 April, and the second one was discussed on 23 May and 9 June.
6. In connection with a policy debate held at the WP on Telecommunications and Information Society (WP TELE) of 19 July 2022, the Czech Presidency — building on the work of the French Presidency — singled out major outstanding high-level issues and asked delegations to express their preferred options with a view to redrafting the relevant parts of the second compromise proposal accordingly.

7. The revised version resulted in a third compromise proposal that was presented by the Czech Presidency at the WP TELE of 5 and 8 September. Additional iterations and related adjustments successfully fostered a deeper level of convergence on most of the outstanding issues.
8. However, the fourth compromise proposal, introduced to delegations at the WP TELE of 28 September, revealed persisting divergence between Member States around one high-level issue in particular, namely the Level of Assurance ('LoA') chosen for the European Digital Identity Wallet. Some of the Member States that already have a national eID system in place initially adopted, and subsequently invested, in a LoA 'substantial', whereas in the current eID proposal a LoA 'high' is required.
9. Being aware of a high number of electronic identification means of LoA 'substantial' issued in some Member States, the Presidency has further proposed a mechanism to facilitate the on boarding of users, thereby contributing to the uptake of European Digital Identity Wallets. The provision allows users to enroll to the European Digital Identity Wallet by utilizing existing national eID means at LoA 'substantial' in conjunction with additional remote on-boarding procedures that together meet the requirements of LoA 'high'. Technical and operational specifications are subject to implementing legislation and conformity with requirements shall be certified.

III. ISSUE AT STAKE

10. The LoA should characterise the degree of confidence in electronic identification means in establishing the identity of a person, thus providing assurance that the person claiming a particular identity is in fact the person to whom that identity was assigned.

11. The LoA depends on the degree of confidence that an electronic identification means provides in the claimed or asserted identity of a person, taking into account processes (for example, identity proofing and verification, and authentication), management activities (for example, the entity issuing electronic identification means and the procedure to issue such means) and technical controls implemented. The minimum technical requirements, standards and procedures for the LoA ‘low’, ‘substantial’ and ‘high’ within the meaning of the Regulation are set out in out Commission Implementing Regulation 2015/1502 of 8 September 2015 (‘CIR 1502/2015’).
12. The Commission proposal aims at providing a harmonised European Digital Identity Framework that can provide a high level of trust across the EU, both in the private and public sector, relying on the need to identify and authenticate users with a **LoA ‘high’**. This would also require a high level of security with respect to all aspects of digital identity provision, including the issuing of a European Digital Identity Wallet, and the infrastructure for the collection, storage and disclosure of digital identity data.
13. A European Digital Identity Wallet issued with a ‘high’ LoA could be used to authenticate in order to access all online services, including those requiring ‘high’, ‘substantial’ and ‘low’ LoA. For users of the European Digital Identity Wallet, that would mean that the European Digital Identity Wallet could in principle be used to authenticate in order to access all services in the private and the public sector across borders where the use of an electronic identification means is required. Given that requirements for use cases are not harmonised, only a wallet built to the highest level of assurance across the EU could ensure users equal access to all services, public or private, and create a level playing field for industry.

14. Conversely, a **LoA ‘substantial’** for the European Digital Identity Wallets would entail that citizens would not be able to use the wallets to authenticate in order to access services requiring a higher level of assurance. Consequently, this option would not result in full harmonisation. A European Digital Identity Wallet at level ‘substantial’ would not provide equal access to all digital services in the single market nor many additional benefits over existing wallets provided by companies such as Apple, Google and Microsoft, beyond providing access to e-services across the public sector, which is not possible with any existing private wallets. The setting thus created would not meet the overall ambition of the proposal.

IV. CONCLUSION

15. With a view to ensuring the success of the European Digital Identity proposal, it is vital to set the most favourable conditions for its implementation and to strive for the highest possible level of harmonisation. Reflecting on the scenarios outlined above and in order to obtain indispensable guidance for further work, the Czech Presidency would like Coreper to discuss the following questions:

- a. Can you agree to a Level of Assurance ‘high’ that would ensure an overall high level of security and provide users with equal access to all services, especially since the requirements for use cases are not harmonised?*
- b. What degree of flexibility can you offer in this regard?*
