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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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 - Progress report

I. INTRODUCTION

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, following compulsory compliance assessment and voluntary certification within the European cybersecurity certification framework and based on common technical standards. In order to set up the necessary technical architecture, provide guidelines to Member states and avoid fragmentation, the proposal was accompanied by a Recommendation for the development of a Union Toolbox.

More specifically, the proposed Regulation aims to provide, for cross-border use: access to highly secure and trustworthy electronic identity solutions; that public and private services can rely on trusted and secure digital identity solutions; that natural and legal persons are empowered to use digital identity solutions; that these solutions are linked to a variety of attributes and allow for the targeted sharing of identity data limited to the needs of the specific service requested; acceptance of qualified trust services in the EU and equal conditions for their provision.

3. In the European Parliament, the proposal was assigned to the Committee on Industry, Research and Energy (ITRE). The rapporteur for the file is Romana Jerković (S&D, Croatia). The ITRE committee has not adopted its report yet.
4. On 15 July 2021 the European Economic and Social Committee was requested to provide its opinion on the proposal, which was subsequently delivered on 20 October 2021. The European Committee of the Regions spontaneously issued an opinion on the proposal on 12 October 2021.
5. The European Data Protection Supervisor (EDPS) issued formal comments on the proposal on 28 July 2021.

II. WORK WITHIN THE COUNCIL

6. In the Council, the examination of the proposal has been carried out in the Working Party on Telecommunications and Information Society (hereinafter: WP TELECOM). Following an introductory workshop on 17 April on the revision of the eIDAS Regulation, the WP TELECOM started discussing the proposal under the PT Presidency during its meetings on 17 and 23 **June** 2021. The first discussion saw the proposal — which by many was labelled as a national political priority — being positively received and its level of ambition praised. Due to the complexity of the file, a step-by-step approach was advocated and questions revolved around MS obligations, the involvement of the private sector, as well as funding opportunities.

The actual analysis was prompted on 23 June, when the PT Presidency opened a discussion on the Impact Assessment in order to collect national views on the perceived soundness and solidity of the proposal. Delegations intervened with comments mainly on the timeline, security issues, costs, and the interplay with existing legislation in the field of eGovernment.

7. The analysis of the proposal continued in the WP TELECOM under the SI Presidency during the meetings held on 20 July, 13 and 28 September, and 19 October 2021, with the first reading being successfully concluded on 15 November 2021.
8. In **July** some delegations again voiced concern about the tight deadlines for technical implementation set by the Commission and the interplay with other legislation, in particular the Single Digital Gateway Regulation and the Once Only Principle. In addition, doubts about data protection were raised and some reservations were placed on security level "high" due to feasibility concerns.

The significant technical complexity of the proposal led to the organization of workshops and to requesting the assistance of the eIDAS Expert Group (hereinafter: the EG), while ensuring that the TELE WP would remain the decision-maker throughout negotiations. The EG — established by the Commission’s Directorate General for Communications Networks, Content and Technology (‘DG CONNECT’) as an informal, permanent expert group in 2014 to support the implementation of the eIDAS regulation — was identified as the main interlocutor for the implementation of the Commission Recommendation on the common Union Toolbox.

The EG held three meetings on 30 September, 27 October, 9-10 November 2021, in parallel to the analysis of the proposal in the WP TELECOM, with a view to clarifying some technical aspects of the proposal, favoring the exchange of good practices and initiatives in the area of electronic identification and trust services, as well as discussing pilots and practical solutions for a coordinated approach towards a European Digital Identity Framework.

9. The meeting on 13 **September** was dedicated to the European Digital Identity Wallets, with questions from delegations on the obligations for the parties involved and the interplay of the proposed Regulation with GDPR and the Cybersecurity Act. Several remarks were made on the language used in the new provisions concerning the Wallet's security features, unique identification, and the certification of eID schemes.

The discussion on the Wallets continued on 28 September with a focus on cross-border recognition, liability issues, supervision, and the security requirements that were moved to the NIS2 Directive. The latter topic caused some hiccups, with several delegations voicing concern that the interplay may create confusion as to which authorities would be competent under which regime. Identity matching was also debated, as the adoption of persistent identifiers appeared potentially problematic for some delegations. Additionally, the Commission was asked about the use of delegated acts to revise wallet requirements.

10. The 19 **October** meeting was dedicated to further technical aspects linked to the Wallet, namely electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services up to starting a discussion on website authentication. Once again severe concerns were raised over security elements being transferred to the NIS2 Directive.
11. The first reading of the draft Regulation was concluded on 15 **November** 2021, after some requests for clarification on electronic attestation of attributes, electronic archiving services, electronic ledgers and final provisions. The lack of sanctions for non-compliance with website authentication requirements, particularly in relation to the attestation of attributes, was flagged as undermining enforcement. There were also indications that maintaining the current authorities' competence structure is paramount, and that the proposal should not conflict with public access policies at national level. Finally, there were questions on data collection for statistical purposes and some concern about a potentially increased administrative burden for national authorities.
12. Several spontaneous comments and drafting suggestions were provided by delegations since the inception of the analysis and in between meetings. However, despite the progress made through a thorough and complete examination of the text and several iterations with the Commission, the level of common understanding reached is not yet sufficient for any drafting exercise to take place under the SI Presidency, not least due to time constraints.

Nonetheless, delegations may be invited by the incoming FR Presidency to provide official comments before the end of the year. Both unsolicited and requested inputs from delegations will constitute a solid basis for the drafting exercise that is set to start in January.

III. CONCLUSION

13. The COREPER is invited to take note of this progress report from the Presidency, with a view to submitting it to the TTE Telecom Council at its meeting on 3 December 2021.