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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, built on common technical standards and following compulsory compliance assessment by national accreditation bodies and based on certification under the European cybersecurity certification and GDPR frameworks. In order to set up the necessary technical architecture, to speed –up the implementation of the revised Regulation, provide guidelines to Member states and to 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 universal access for people and businesses to secure and trustworthy electronic identification and authentication by means of a personal digital wallet on the mobile phone. This wallet will be widely usable for identification and authentication. It should be recognized in the public sector across the EU as well as by private service providers that require strong user authentication and by very large online platforms. Other private service providers are encouraged to recognize the wallet through voluntary regulatory measures. The proposal also makes it mandatory for Member States to notify an electronic identification scheme, ensuring the European Digital Identity Ecosystem can rely on the availability of highly trustworthy and secure means for onboarding. The proposal empowers the use of digital identity solutions and creates a legal framework and a technical platform for the exchange of attributes and credentials linked to identity. The proposal provides for user control and data protection and the targeted sharing of identity data limited to the needs of the specific service requested. The proposal also ensures equal conditions for the provision and supervision of qualified trust services in the EU.

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 two meetings in June, where the first exchanges among delegations were held. Member states received the proposal positively, its level of ambition was 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. A discussion on the Impact Assessment also took place under the PR Presidency.
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 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, questions on data protection were raised and some reservations were shared, due to feasibility concerns regarding the intended security level "high.

The Commission has regularly updated the TELE WP on progress under the Recommendation for the development of a Union Toolbox.

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 certain cybersecurity supervision requirements that now fall under the NIS2 Directive. Some delegations voiced concern that the interplay between the proposal and the NIS2 Directive may create confusion as to which authorities would be competent under which regime. Identity matching was also debated, as the adoption of unique and persistent identifiers appeared potentially problematic for some delegations. Additionally, the Commission was asked about the use of delegated acts to extend the mandatory reliance on the wallet to other sectors.

10. The 19 **October** meeting was dedicated to further technical aspects linked to amendments proposed under the trust services chapter, namely on electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services and website authentication. Some concerns linked to the transfer of cybersecurity elements to the NIS2 Directive were reiterated. During this meeting, the Commission provided clarifications and additional explanations about the interplay between NIS2 and eIDAS and how, in Commission's view, the concerns raised were addressed both by the NIS2 proposal (through dedicated provisions and recitals - and subsequent compromise texts discussed in the HWP on cyber issues) and the eIDAS review (also through dedicated recitals and provisions).
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 provisions on sanctions in the proposal for non-compliance with website authentication requirements was flagged as undermining enforcement. In relation to the attestations of attributes, delegations also stressed the need to respect the competence structure of national authorities and national access policies to registers. Finally, there were questions on data collection for statistical purposes and some concern about a potentially increased administrative burden for national authorities.
12. Several 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, time was not sufficient for any drafting exercise to take place under the SI Presidency.
Nonetheless, delegations may be invited to provide official comments before the end of the year. Both unsolicited and requested inputs from delegations made during the examination of the file so far will constitute a basis for the drafting exercise to start under the FR Presidency.

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.