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**NOTE**

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Digital files - state of play

Delegations will find in Annex 1 an overview of legislative files on digital matters (either under negotiation or in implementation) that are dealt with outside JHA but have an internal security dimension. The purpose of this overview is to keep delegations updated about relevant legislative developments in digital matters outside JHA.

Annex 2 contains a list of legislative files with a digital angle handled within JHA.

**Legislative files with internal security relevance that are dealt with outside JHA****1. Artificial Intelligence (AI) Act**

The Artificial Intelligence Act<sup>1</sup> entered into force on 1 August 2024. One of the objectives of the Regulation is to ensure that AI systems placed or put into service on the Union market and used in the Union are safe and respect existing law on fundamental rights and Union values.

The Regulation will apply, for most parts, as of August 2026, except for the prohibited AI practices for which it has applied since 2 February 2025, and as of August 2025 for provisions concerning notifying authorities and notified bodies, governance, general purpose AI models, confidentiality, and penalties.

The Commission Guidelines on prohibited artificial intelligence practices established by the AI Act were published in February 2025, still pending their formal adoption. These non-binding guidelines provide an overview of AI practices that are deemed unacceptable due to their potential risks to European values and fundamental rights, specifically addressing practices such as harmful manipulation, social scoring, and real-time remote biometric identification, among others.

The guidelines provide legal explanations and practical examples to help stakeholders understand and comply with the AI Act's requirements.

One of the next main deliverables relevant for the internal security community are the Commission Guidelines on high-risk AI systems. Following an open consultation to gather evidence and concrete use cases, the Commission will draft the guidelines and subsequently launch a targeted consultation process. The publication of the guidelines is envisaged by the beginning of 2026.

The Commission Expert Group on AI in home affairs was relaunched in 2024. It met on 19 February 2025 to discuss prohibited practices with a focus on real-time biometric recognition and the home affairs specificities of fundamental rights impact assessments.

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<sup>1</sup> Regulation (EU) 2024/1689 of the European Parliament and the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending certain regulations ('the AI Act').

## 2. Digital Services Act (DSA)<sup>2</sup>

Following the entry into force of the DSA on 16 November 2022, all platforms had to publish the number of monthly users by 17 February 2023, and this must now be updated every six months. Based on the information received, on 25 April 2023 the Commission made the first decisions as to designating 19 entities as a very large online platform (VLOP) or very large online search engine (VLOSE). Following the designation decisions by the Commission, the entities in question had until the end of August to comply with the obligations under the DSA, including carrying out the first annual risk assessment exercise. On 20 December 2023, the Commission designated 3 additional platforms as VLOPs and VLOSEs. During April-June 2024, the Commission designated 3 additional online platforms as VLOPs.

To allow for the supervision and enforcement of the DSA, Member States had to designate their digital services coordinators (DSCs) by 17 February 2024, the general date of entry into application of the DSA. DSCs can request access to VLOPs' and VLOSEs' data, order inspections and impose fines in the event of an infringement. They are responsible for certifying 'trusted flaggers' and out-of-court dispute settlement bodies.

In addition to the supervision and enforcement done by the Member States' DSCs, the Commission has exclusive powers for the supervision and enforcement of certain obligations applicable to VLOPs or VLOSEs.

On 20 October 2023, the Commission published a Recommendation for Member States to coordinate their response to the spread and amplification of illegal content, such as terrorist content or unlawful hate speech, before it can lead to a serious threat to public security. The aim was for Member States to support the Commission in ensuring full compliance by VLOPs and VLOSEs with their new obligations under the DSA, ahead of the deadline for Member States to play their role in the enforcement of the DSA. With the Recommendation, the Commission was encouraging Member States to designate an independent authority to be part of a network of prospective DSCs, ahead of the legal deadline. The Recommendation also recalls powers to tackle illegal content conferred on Member States by various EU legal instruments, such as the Regulation on addressing the dissemination of terrorist content online (TCO), in force since June 2022.

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<sup>2</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

The Council addressed the implementation of the DSA when it comes to a unified approach regarding the enforcement of EU-standards in e-commerce as an AOB point at the meeting of the Competitiveness configuration on 26 September 2024 (13596/24) and raised the issue of the reporting obligation for illegal content at the JHA Council on 10 October 2024 (13839/24).

According to the current plans, the Commission is planning to make a first small review of the DSA by November 2025 and a full review by 2027.

### **3. ePrivacy and lawful access to electronic evidence, including data retention**

The proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications (proposal for an ePrivacy Regulation) was published on 10 January 2017. On 10 February 2021, Coreper adopted a negotiating mandate on this legislative proposal. As far as JHA is concerned, the Council mandate includes important access to electronic evidence and data retention aspects (Article 2(2)(d) - scope; Article 6(1)(d) - opening for data processing for law enforcement and public security purposes; Article 7(4) - explicit provision on data retention; Article 11 - exceptions to the obligations and rights provided for in the instrument).

Since May 2021, the Parliament and the Council have been discussing the proposal at technical level. According to the Commission work programme 2025, the Commission intends to withdraw the file within the next six months absent foreseeable agreement and it being outdated in light of recent legislation.

**Legislative files handled within JHA****1. JHA digital files under negotiation**

<b>File</b>	<b>State of play</b>
Regulation laying down rules to prevent and combat child sexual abuse	No Council position yet.
Regulation laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679 Regulation on a temporary derogation from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 as regards a progressive start of operations of the Entry/Exit System	Interinstitutional negotiations are ongoing.  The interinstitutional negotiations will start in May 2025.

## 2. JHA digital files in implementation

Adopted legislative act	State of implementation
Regulation (EU) 2017/2226 of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011	EES is expected to be rolled out in Q4 2025.
Regulation (EU) 2018/1240 of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226	ETIAS is expected to be in operation in 2026.
Regulation (EU) 2019/816 of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726	ECRIS-TCN is expected to be in operation in Q4 2025.
Regulation (EU) 2019/817 of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 and Council Decisions 2004/512/EC and 2008/633/JHA	May 2025: Shared Biometric Matching Service (sBMS). Q4 2025: European Search Portal (ESP), Common Identity Repository (CIR), Central Repository for Reporting and Statistics (CRRS). TBC: Multiple Identity Detector (MID).
Regulation (EU) 2021/784 of 29 April 2021 on addressing the dissemination of terrorist content online (TCO Regulation)	The TCO Regulation has applied since 7 June 2022. Evaluation report in 2026.
Directive (EU) 2022/2555 of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)	Member States had until 17 October 2024 to transpose the NIS2 Directive into national law.

Adopted legislative act	State of implementation
Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (e-evidence)	The e-evidence Regulation will apply from 18 August 2026.
Regulation (EU, Euratom) 2023/2841 of the European Parliament and of the Council of 13 December 2023 laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union (EUIBAS Regulation)	In force.
Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation	The Regulation will apply from 1 May 2025.
Regulation (EU) 2024/982 of the European Parliament and of the Council of 13 March 2024 on the automated search and exchange of data for police cooperation, and amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, (EU) No 2019/817 and (EU) 2019/818 of the European Parliament and of the Council (the Prüm II Regulation)	In force. The Regulation will apply once the router is put into service.
Regulation (EU) 2024/1307 of the European Parliament and of the Council of 29 April 2024 amending Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse	In force, applies until 3 April 2026.
Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) 2019/1020 and Directive (EU) 2020/1828 (Cyber Resilience Act)	The main obligations introduced by the Act will apply from 11 December 2027.
Regulation (EU) 2025/13 of the European Parliament and of the Council of 19 December 2024 on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818	In force. The Regulation will apply once the router is put into service.

Adopted legislative act	State of implementation
Regulation (EU) 2025/37 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2019/881 as regards managed security services (Cybersecurity Act)	In force.
Regulation (EU) 2025/38 of the European Parliament and of the Council of 19 December 2024 laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cyber threats and incidents and amending Regulation (EU) 2021/694 (Cyber Solidarity Act)	In force.
Regulation (EU, Euratom) 2023/2841 of the European Parliament and of the Council of 13 December 2023 laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union (EUIBAS Regulation)	In force.

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