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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL REGULATION amending Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union

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2020/0126 (APP)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Official Journal of the European Union is published in electronic form pursuant to Regulation (EU) No 216/2013 ("the Regulation")[1].

In order to guarantee the authenticity of the Official Journal, this electronic publication has to bear a qualified electronic signature or a qualified electronic seal in accordance with Regulation (EU) No 910/2014[2].

Authenticity, integrity and inalterability of the electronic edition of the Official Journal can be guaranteed by various organisational and technical means which provide comparative security guarantees. These means can change over time. In order to avoid the need to amend the Regulation with each new method or technology or change of technical details, it is proposed to reformulate the wording of the Regulation in a more generic way. The French and Luxembourgish rules governing the publication of their respective national gazettes have served as a source of inspiration. For the sake of transparency, the system put into place to ensure authenticity will be described on the EUR-Lex website, allowing citizens to easily verify the authenticity of the electronic edition of the Official Journal.

Despite the fact that the Official Journal is in principle inalterable, situations arise where it is necessary to remove certain information from the Official Journal, once it has been published. Such removals are carried out by application of the Union data protection legislation or based on decisions of the Court of Justice of the European Union adopted pursuant to its rules of procedure.[3] For the sake of legal certainty, this interference with the rules on authenticity should be regulated. The proposed amendment will not change the practice that the original version of the issue of the Official Journal concerned by the removal is not altered in the process and is kept in the archives of the Publications Office for an unlimited period.

According to the Regulation, only the Official Journal published in electronic form is authentic and produces legal effects. There is only one exception to this rule[4]: in situations when the Official Journal cannot be published due to an unforeseen and exceptional disruption of the information system of the Publications Office. In those cases, only the printed edition of the Official Journal is authentic and produces legal effects. Once the information system of the Publications Office is restored, an electronic edition corresponding to the printed edition is made available to the public on the EUR-Lex website. This electronic edition is for information purposes only.

The Publications Office has put in place contingency measures, which minimise the risk of not being able to publish and make available the electronic edition of the Official Journal on the EUR-Lex website. For those very unlikely situations where despite all the measures this risk should materialise, a preferable fall back solution consists in displaying the Official Journal at the Publications Office premises in printed or electronic form (for example, stored

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1 Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the Official Journal of the European Union (OJ L 69, 13.3.2013, p. 1).

2 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

3 Article 66 of the Rules of procedure of the General Court and Article 95 of the Rules of procedure of the Court of Justice.

4 Article 3 of the Regulation.

on an off-line PC), depending on which solution is feasible in a concrete situation. The Regulation should therefore be amended in this sense.

Introduction of the authentic electronic edition of the Official Journal has simplified access to EU law and increased legal certainty. Based on the same reasoning, it is preferable that citizens can rely as much as possible on the version of the Official Journal that has been made available on the EUR-Lex website. Therefore, it is proposed that the electronic edition made available to the public on the EUR-Lex website subsequently to a disruption of the information systems becomes the authentic edition from the moment it is made available. Legal certainty then requires that from that moment, the earlier (printed or electronic) edition no longer has authentic status.

Finally, since the entry into force of the Regulation, only three issues of the Official Journal have been published in the authentic printed edition pursuant to its article 3.[5] In line with the reasoning explained above, and in order to ensure coherence, it is appropriate to confer authentic character and legal effects to the corresponding electronic editions of those printed editions. These editions are based on the same authenticated files as the printed editions and were made available to the public on the EUR-Lex website promptly after the publication of the paper editions. Hence, legal certainty will not be called into question by the provision proposed in this regard.

- **Consistency with existing policy provisions in the policy area**

The proposed amendment is complementary, with regard to the authentication of the Official Journal, to the option - offered by Regulation No 910/2014 on electronic identification and trust services for electronic transactions in the internal market - to authenticate a document by an electronic signature or seal. It is also complementary to the existing EU rules on the protection of personal data.

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Proposal for a Regulation is based on Article 352 TFEU. This is the legal basis for Regulation No 216/2013 and its amending Regulation (EU) 2018/2056. Regulation No 216/2013 is proposed for a second amendment and should have the same legal basis.

- **Subsidiarity (for non-exclusive competence)**

N/A

- **Proportionality**

The aim of the Proposal is to simplify the publication of the Official Journal and citizens' access to it. The more generic wording of the Proposal will enable the authentication of the Official Journal by new technological means, without the need for additional amendments. It reconciles the obligation to remove certain information from the Official Journal with the inalterability principle and establishes authenticity of electronic editions published subsequently to a disruption of the information systems. The proposed amendments are what is required to achieve this aim.

[5] OJ L 347 of 20 December 2013, OJ L 221 of 25 July 2014 and OJ L 261I of 14 October 2019.

- **Choice of the instrument**

N/A

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

The draft proposal was presented to the Institutions at the meeting of the Management Committee of the Publications Office held on 18 October 2019, and at the meeting of the Groupe Interinstitutionnel Lex (GIL) on 15 October 2019.

- **Collection and use of expertise**

N/A

- **Impact assessment**

Since the changes are minor, no impact assessment was carried out.

- **Regulatory fitness and simplification**

Publishing the Official Journal under conditions ensuring its authenticity does not alter current technological options in any way. Clear rules, which reconcile the requirement of inalterability of the Official Journal with the obligations stemming from Union legislation on the protection of personal data or from decisions by the Court of Justice of the European Union to have certain information removed vis-à-vis the public, are added by the proposed amendment. Simplification of access to the Official Journal is achieved by ensuring that when available, only the electronic edition made available to the public on the EUR-Lex website is authentic and produces legal effects. A provision conferring exclusive authenticity status to the electronic editions of the few authentic printed editions of the Official Journal published after the entry into force of Regulation (EU) No 216/2013 also contributes to that simplification.

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Implementation is planned from the entry into force.

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

N/A

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amending Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Regulation (EU) No 216/2013 ([6])provides that the Official Journal of the European Union published in electronic form ('the electronic edition of the Official Journal') is to bear a qualified electronic signature or qualified electronic seal as defined in Regulation (EU) No 910/2014 of the European Parliament and of the Council ([7]). Regulation (EU) No 216/2013 also sets out an obligation to publish the qualified certificates for electronic signature or for electronic seal and renewals thereof on the EUR-Lex website to allow the public to verify the authenticity of the electronic edition of the Official Journal.

(2) Authenticity, integrity and inalterability of the electronic edition of the Official Journal can be ensured by a variety of technical means, inasmuch as they offer comparable guarantees to those provided by a qualified electronic signature or qualified electronic seal as defined in Regulation (EU) No 910/2014, including future innovative solutions and technologies. The need to amend Regulation (EU) No 216/2013 each time a new solution or technology is to be employed or when the legal framework governing them changes should be avoided.

(3) It is necessary to lay down clear rules reconciling the requirement of inalterability of the Official Journal with the obligations stemming from Union legislation on the protection of personal data or from decisions by the Court of Justice of the European Union to have certain information removed vis-à-vis the public.

(4) For the sake of legal certainty, where in exceptional situations it is not possible to publish the Official Journal on the EUR-Lex website and the publication is done by other means, in a printed or electronic version, it is necessary to ensure that the

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6 Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the Official Journal of the European Union (OJ L 69, 13.3.2013, p. 1)

7 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

electronic edition subsequently made available to the public on the EUR-Lex website becomes the only authentic edition and that it produces legal effects.

(5) In order to provide the maximum benefit to citizens in terms of ease of access to the Official Journal, as well as to ensure legal certainty, it is also appropriate to confer exclusive authenticity status on the electronic edition of the few authentic printed editions of the Official Journal published after the entry into force of Regulation (EU) No 216/2013.

(6) Regulation (EU) No 216/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 216/2013 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The electronic edition of the Official Journal shall be published under technical conditions ensuring the authenticity of its content.

The system put into place to ensure authenticity shall be documented on the EUR-Lex website and allow for the authenticity of the electronic edition of the Official Journal to be easily verified.';

(b) the following paragraph 4 is added:

'4. Where certain information in the Official Journal must be removed after publication pursuant to a decision of the Court of Justice of the European Union or for reasons of protection of personal data in accordance with Union legislation, a new version of the electronic edition of the Official Journal concerned shall be published, accompanied by a notice to that effect. The original version of the electronic edition of the Official Journal concerned shall be kept in the archives of the Publications Office for an unlimited period.';

(2) Article 3 is replaced by the following:

'*Article 3*

1. Where it is not possible to publish the electronic edition of the Official Journal on the EUR-Lex website due to an unforeseen and exceptional disruption of the information systems involved, the issue of the Official Journal concerned, in printed or electronic form, shall be displayed at the premises of the Publications Office. Such edition shall be authentic and shall produce legal effects.

2. Once the information systems referred to in paragraph 1 are restored, the electronic edition of the Official Journal corresponding to the edition published in accordance with paragraph 1 shall be made available on the EUR-Lex website. From that moment on, it shall be considered as the only authentic edition and shall produce legal effects.

3. The electronic editions of the Official Journal corresponding to the authentic printed editions of the Official Journal published after 1 July 2013 shall be considered as the only authentic editions from the date of entry into force of this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President