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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Telecommunications And Information Society (Attachés)
Working Party on Telecommunications and Information Society

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 - Comments from Finland

Delegations will find, in annex, comments from Finland on the above mentioned subject.

FI Written Comments to the 4th eIDAS 4Column Document

Per the discussion in the working group on July 20th and in light of the upcoming technical discussions on the regulation, Finland would like to highlight its concerns regarding some rows in the four-column document provided on July 19th, as follows.

Row 223b-223f (Sanctions)

We have raised several times (in the Working Party and Coreper) some concerns on the issue of the proportionality of the proposed penalties, in particular the administrative fines concerning trust service providers.

We can accept the outcome of the trilogies that the penalties should follow the NIS2 directive. However, the NIS2 directive has much clearer and more comprehensive rules on administrative fines than those taken into the eIDAS 4 column document so far. To ensure the proportionality and legality of the sanctions rules, we would propose that the NIS2 framework would be mirrored more closely, in particular by:

1. Setting the general conditions of laying down administrative fines more in detail (similarly than in Article 34 of NIS2 Directive and Article 83(2) of GDPR). In particular it should be clarified that the fines should be always proportionate taking into account the circumstances of each individual case.
2. Defining more precisely, which infringement can be subject to administrative fines (similarly than in Article 34 of NIS2 Directive). We propose, that this could be done by referring to obligations in Articles 20, 21 and 24. This would ensure more coherent implementation across the MSs, reduce the risk of forum shopping and it would also be essential from the perspective of trust service providers legal protection.
3. Clarifying, that MSs can decide whether and to what extent administrative fines may be imposed on public administration (similarly than in Article 37(4) of NIS2 Directive and Article 83(7) of GDPR).

Proposed minimum changes to eIDAS Article 16:

1. Without prejudice to Article 31 of the Directive (EU) 2022/2555, Member States shall lay down the rules on penalties applicable to infringements of this Regulation. The penalties and **administrative fines** shall be effective, proportionate and dissuasive, **taking into account the circumstances of each individual case**.
2. Member States shall ensure that infringements by qualified and non-qualified trust service providers of the obligations of this Regulation **referred in Articles 20, 21, 24, ---**, be subject to administrative

finer of a maximum of at least EUR 5,000,000 when the trust service provider is a natural persons or 5,000,000 or 1% of the total worldwide annual turnover of the undertaking to which the trust service provider belonged in the financial year preceding the year in which the infringement occurred, whichever is higher.

3. Without prejudice to the powers of the competent authorities, each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public administration entities.

Row 118 f (The additional functionalities of the Wallet)

We can accept the outcome of the trilogies that the additional functionalities of the Wallet are required. However, we think that for the purpose of requirements on selective disclosure and user's full control over the data, one clarification is needed for the wording in the row 118f. Clarification is needed to ensure that the text does not create an impression that the Wallet has continuous connections with relying parties but the connections are ended after each transaction.

Proposed minimum changes to row 118f

(i) view an up to date list of relying parties with whom the user has **been in** established a connection **with** and where applicable all data exchanged;

Row 116b (The open source obligation)

We see many positive points in open source. Open source could promote citizens' trust in Wallets and could also provide transparency in the processing of personal data in the Wallets. However, we think that it is important to follow the Council Mandate in this matter and encourage to an open source in a recital, and not require open source the Articles. Private sector service providers can provide Wallets also and an obligation for an open source could hinder the interest for developing Wallet solutions.

Rows 197-203 (Delegated powers)

It is of utmost importance for us, that per the Council mandate (row 158n), the Commission shall not be empowered to adopt delegated acts regarding the requirements for recognition of the European Digital Identity wallet as described on row 203. Our position is that such matters should not be legislated by way of delegated powers.

Row 144a (Intermediaries as relying parties)

As raised earlier in the Working Party and Coreper, we think that the intermediaries should have their own role and not be compared to relying parties. This matter has been discussed in the Coreper 17.5

and we are in the understanding that this row is to be deleted in the technical preparations. However, the row still remains orange in 4th 4Column Document.

Row 404m.4 (Supervision of the Wallet and NIS2)

As a technical remark please take into account that the NIS2-directive only applies to trust services and not European Digital Identity Wallets. Therefore we do not see any need for the supervisor of EDIW framework to inform the authorities designated pursuant to NIS2 of any significant breaches of security.

Row 373 (Electronic Attestation of Attributes)

Our preference is the Council mandate as-is. It is particularly important to us that the language in the Council mandate is preserved, or sufficiently similar, when it comes to the requirements set out to Member States in Article 45d, paragraph 1 and that those requirements must be in accordance with national or Union law.

Row 377a (Electronic Attestation of Attributes)

Article 45e, paragraph 1a remains ambiguous and unclear to us. "Public registers" are not defined at all and it is not clear what the suggested obligation is supposed to mean.

Therefore, our strong preference is that it should not be included in the final text at all. Otherwise we think that this matter can not be agreed on technical negotiations but is a political level issue. Also we would require further clarifications on the intent of the paragraph so we can properly assess its potential impact and suggest revisions. In general, we oppose a universal obligation for public sector bodies to provide qualified electronic attestations of attributes on request, as such an obligation would be burdensome and require public sector bodies to develop the capability to provide such attestations regardless of actual need.