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From:	LU delegation
To:	Delegations
Subject:	Comments and drafting suggestions from Luxembourg based on the Presidency compromise text from the 7th of November 2017 on Proposal for a Regulation on establishing a single digital gateway (SDG)



PROPOSAL FOR A REGULATION ON ESTABLISHING A SINGLE DIGITAL GATEWAY (SDG)

COMMENTS AND DRAFTING SUGGESTIONS FROM LUXEMBOURG BASED ON THE PRESIDENCY COMPROMISE TEXT FROM 7TH OF NOVEMBER 2017

16.11.2017

These comments are without prejudice to any further comments made in subsequent negotiations.

1. ARTICLE 5 – ACCESS TO PROCEDURES

§ 3.(c):

Proposed amendment: “in a way that ensures, where applicable, delivery of an automatic [...]

Rationale: Not all procedures need this step (receipt) because they deliver directly online the output (point (d)) of the procedure which is at the same time the end of the procedure. Member States should not be forced to add an unnecessary step “acknowledgement of receipt” for procedures where such a step doesn’t make sense and is not in the interest of the user.

§ 4:

Proposed amendment: “Where justified by an overriding reason of public interest or where the objectives pursued by a procedure, referred to in paragraph 2, cannot be achieved by fully online means, Member States may, for the steps of the procedure concerned, offer other appropriate and user centric means, including, where necessary, the physical presence of a natural person or an object.”

Rationale:

Replacement of “and” by “or”: It should be sufficient to have either an overriding reason of public interest **or** to prove that the objectives of the procedure cannot be achieved. Both reasons are sufficient by themselves and legitimate to use non electronic means for the steps of the procedure where they would apply.

Objectives: The plural should be used here as a procedure can have more than one objective or has most of the time more than one objective.

Last part of the sentence: The necessary physical presence of a natural person is not the only situation where it can be absolutely legitimate or necessary to offer a step or a procedure not online. Procedures exist for example where it is strictly impossible to provide evidence in an electronic form (e.g. submission of objects that are not documents and cannot be scanned; visits of buildings in order to verify conformity; etc.), where objects (and not a natural person) have to be physically present (e.g. vehicle) or where the output of a procedure cannot, for legal or practical reasons, be delivered electronically (cf. “Registering a motor vehicle” of Annex II, a procedure where it is legally mandatory and necessary for practical reasons to have a paper output). Furthermore the first sentence of recital 19 acknowledges also that situations



can exist where “evidence to prove facts” “cannot be established through online means” and the last sentence of recital 18a also gives room for exceptions in regard to the electronic delivery of the output. Unfortunately the text of article 5 nevertheless limits exceptions to the necessary presence of physical persons, doesn’t give any room for the other legitimate exceptions listed above and is in contradiction with the recitals mentioned above.

Annex II:

Registering a change of address: Why is this procedure still in the list as it is clearly not a cross-border procedure: You cannot register or de-register if you don’t have an address in the concerned Member State and the use case of somebody moving from one country to another will result in 2 separate national and non-cross-border procedures (cf. recital 19(a) which states essentially the same). As the scope of article 5 should only be on cross-border procedures relevant for the exercise of single market rights, it is incoherent and contradictory to list a non-cross-border procedure here.

Registering a motor vehicle in standard procedures: This is also clearly a procedure that is not cross-border: You have to be in some way a resident in the MS or to have an enterprise residing in the concerned MS in order to be able to register a motor vehicle in a standard procedure.

Furthermore this procedure can by definition not be fully online as the output of the procedure (Proof of registration of the motor vehicle) has to be always and in all Member States in paper form. It is therefore impossible to make this procedure compliant with § 3.(d) of Article 5 which states that it is always and without any exception mandatory that the output of the procedure has to be delivered electronically. The last sentence of recital 18a is in this context by the way also in clear contradiction with Art. 5 as it adds at the end “where possible” and gives room for exceptions. If the intent of the regulation is really to give room for such exceptions in regard to the output, then this has to be clearly stated in the article itself and cannot be hidden in a recital that is in contradiction with the article.

For the reasons mentioned above, the procedure “Registering a motor vehicle” should in our opinion be deleted from Annex II.

2. ARTICLE 11 – CROSS-BORDER ACCESS TO ONLINE PROCEDURES

§ 1(d)

Proposed amendment: “users are able to provide evidence of compliance with applicable requirements in electronic format in all cases where this is also possible for national users as long as this is technically and legally possible in a manner that is comparable to the national approach in regard to efficiency, security, avoidance of fraud and as long as this doesn’t cause an undue burden by leading to costs that are clearly and strongly disproportional in regard to the benefits;”

Rationale: The text, like it is formulated until now, clearly goes far beyond a simple application of the principle of non-discrimination because it prescribes to treat people that are objectively in different situations in the same manner. Cross-border users are often not in a comparable situation regarding the possibilities to submit evidence as their data most of the time are not available in the national registers or databases. It is therefore not possible most of the time to apply to them some OOP approaches (checking the evidence directly in a register or database) or to find the necessary evidence directly in a database in the context of an ad-hoc procedure. It is often not possible either to ask them for this evidence in another efficient electronic and



secure way guaranteeing the validity and the authenticity of the evidence received. In many cases the only possible way to submit evidence would then be simple scans of documents: this is often an unacceptable approach from the point of view of efficiency, security, fraud avoidance and in regard to cost/benefit considerations. The costs could in some cases be completely disproportional.

3. ARTICLE 12 – OOP

§ 2

Proposed amendment: “The technical system shall fulfill all requirements necessary for an effective and efficient implementation of the different “once only” cross-border use cases in the Union. It shall among others:”

Rationale: As the requirements listed until now in § 2 are not exhaustive and cannot be exhaustive at this state of advancement of the project, we should mention in a general manner the most important and the fundamental requirement that the OOP building block has absolutely to comply to, i.e. creating a technical solution allowing to implement the different and quite diverse use cases that we will be confronted with. If the building block will not manage to do this, then it will be of no use for the Member States and it will not be possible to use it. Mentioning this is also important in order to guarantee as far as possible that real needs based on the real use cases will be the basis for the development of a solution and that it will not be one more theoretical solution done for theoretical needs and that does not work in practice.

§ 2(ea)

Proposed amendment: “ensure a high level of interoperability with existing systems, especially existing national “once only” solutions, and should guarantee, as far as possible, that Member States are not forced to implement completely new and specific “Once only” infrastructures and solutions just to be able to use “once only” cross-border;

Rationale: The European OOP building block should build upon the existing national solutions and not lead to the necessity, for MSs already using OOP, to run a new or parallel system. This amendment serves as safeguard in this direction and seems necessary as this element isn't specified anywhere else. An alternative solution could be one more recital stating this.

§ 4

Proposed amendment: “The competent authorities responsible for online procedures referred to in paragraph 1 shall, ~~upon an explicit request of the user~~ in compliance with all relevant data protection and security legislation and, in particular, with regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), request evidence directly from competent authorities issuing evidence in other Member States through the technical system.”

Rationale: Not all OOP use cases will require “explicit request of the user” while staying nevertheless perfectly compliant to GDPR or other relevant legislation. We should not reinterpret GDPR by narrowing down the options it offers in the context of this regulation and we should not without any valid reason and without any need limit the functionalities and the use cases the OOP building block will be allowed to cover.

§ 5



Proposed amendment: “Where competent authorities issue, in the context of national “once only” solutions, evidence in electronic format for the purpose of procedures referred to in paragraph 1 within their own Member State, they shall also make such evidence available, via the same national “once only” solution and under the conditions (especially also in regard to access and security rules) applicable at national level, to the requesting competent authorities from other Member States, through the technical system.

Rationale:

First amendment: We have to make sure that we speak here only of evidence already issued via existing national “once only” solutions and not of evidence that could perhaps be delivered in ad hoc procedures via a specific data base that is not yet “once only” enabled.

Second amendment: We have to make sure that no parallel delivery channel or delivery type would have to be made available due to specific requirements (e.g. formats; document types; etc.) resulting from the specificities of the procedure used in the other MS. Such specific requirements can vary to a very high extent in the different MSs and it cannot be asked to a MS to deliver evidence in all imaginable data or document formats. In an ideal world, the OOP building block should solve a lot of these interoperability problems but it is quite probable that it will not be possible to cover all situations in the first years and that such problems will still occur. We should also avoid all risk of watering down security and privacy requirements: therefore it is absolutely necessary that MSs can still themselves the security and privacy rules that have to be applied.
