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From:	LU delegation
To:	Delegations
Subject:	Comments and drafting suggestions from Luxembourg based on the Presidency compromise text from the 17th of November 2017 on the 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 17TH OF NOVEMBER 2017

21.11.2017

As some comments made by Luxembourg seem to have led to misunderstandings in the meeting yesterday (20th of November 2017) or were perhaps not sufficiently clear, we thought it could be useful to try to clarify them once more:

1. ARTICLE 5 § 2A – ACCESS TO PROCEDURES

Proposed amendment: “[...], Member States may require, for procedural steps for which the physical presence is necessary, the user to appear in person before the competent authority or the provision of an object for which electronic delivery would be impossible.”

Rationale: 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 of a procedure not online. Procedures exist for example where it is strictly necessary to provide physical objects that cannot be digitalised (e.g. submission of objects that are not documents and cannot be scanned; visits of buildings in order to verify conformity; etc.) or where objects (and not a natural person) have to be physically present (e.g. vehicle).

The aim of this amendment is not to create a general exception which would allow systematically or without any valid reason to ask for the provision of physical evidence in paper form but aims at taking into account reality and steps in procedures strictly impossible to offer in a digitalised manner.

2. ARTICLE 12 § 0 – OOP

Proposed amendment: “Where competent authorities issue, in the context of national “once only” solutions, evidence in electronic format within their own Member State which is relevant for the online procedures listed in Annex II and procedures provided for in Directives 2005/36/EC, 2006/123/EC, 2014/24/EU and 2014/25/EU, they shall also make such evidence available under the conditions, especially in regard to access and security rules, applicable at national level to requesting competent authorities from other Member States.

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. Otherwise it would become necessary to create a specific solution for each of these not yet “once only” enabled procedures which nevertheless already issue evidence in electronic format.

Second amendment: It is also necessary that no parallel delivery channel or delivery type, different from the OOP solution or solutions already used in the concerned Member State, 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. 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.

3. ARTICLE 37 – ENTRY INTO FORCE

As Article 11 creates new very significant requirements (especially in § 1.(d) but also in § 1.(a)), that go beyond the simple application of the principle of non-discrimination and that will lead to very significant work load and to high costs (especially because of the necessity to create new parallel procedures just for cross-border users in many cases), we consider that this article should also only apply from 5 years after the entry into force of the Regulation. A shorter deadline is, in our opinion, unrealistic and underestimates significantly the huge effort that has to be made to check each existing procedure and to duplicate it, if necessary, to comply with the new requirements defined by Article 11 and especially in § 1.(d).
