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From:	DE delegation
To:	Coreper I
Subject:	Comments and drafting suggestions from Germany based on the Presidency compromise text from the 17th of November 2017 on Proposal for a Regulation on establishing a single digital gateway (SDG)

**GER comments and suggestions in the Attaché meeting
on November 20th, 2017 on the SDG proposal**

Given the short period of time available for an assessment of the newly revised proposal submitted on Friday, November 17th, we maintain a general scrutiny reservation on the entire proposal. We emphasize that our priority lies with our key issues submitted on the 16th of November 2016. As we are still in the process of completing the interinstitutional consultations, our comments and suggestions on the SDG in the Attaché meeting are to be considered preliminary and we maintain the right to add further comments and suggestions in the course of the negotiations.

General remarks

Germany is in favour of the overall goals pursued by the proposed Single Digital Gateway (SDG) Regulation. As the German Federal Government and the 16 Federal States of Germany have jointly launched a comprehensive digitalization initiative of the GER public administration, we are generally supporting the SDG. Our interest in the SDG focuses on standardization and interoperability. In our view the SDG should facilitate information and most importantly should link online offers. To reach that goal the SDG should be focussed on public administrative information and procedures. In order for the SDG to be successful, the following points – that represent key issues for Germany - need special attention and should be addressed and included in the proposal accordingly:

On Article 2 and Article 4:

- **Focus on EU internal market in tribute to subsidiarity:**
To remain within the competency framework of the EU and to sharpen the clear-cut focus on the EU internal market, we call for a recital clarifying that with the expression “established at national Law” no additional information requirements will be introduced for provisions under the safeguard clause of Art. 168 paragraph 7 TFEU.
- **Focus on public administrative information and procedures:**
Article 2 paragraph 1 second sentence: As we maintain that the SDG should be focussed on public administrative information and procedures, we ask to add „to administrative information and services” after „with a common user interface”.
- Not part of the instructions but only a stylistic hint for the sake of coherence and consistency: The wording in Recital 7 (“comprehensive information”) ought to be adjusted to the wording in the rest of the text (i.e. “sufficiently comprehensive information”).

On Article 9a:

- We welcome that the latter part of the provision in recital 39a has been included in the actual text of the proposal. Yet, with regard to the new Art. 9a we suggest the following amendments:
“Where Member States do not provide the information set out in Articles 7, 8(1) and 9 including the instructions set out in Article 11(1)(a) in an official Union language broadly understood by the largest possible a broad number of cross-border users, they shall request translations in that language, within the limits of the available budget as referred to in Article 28(1)c).
The Member States shall ensure that these translations cover at least the basic information in all areas listed in Annex I and, where sufficient budget is available, any further information as referred to in Articles 7, 8(1) and 9 including instructions as referred to in Article 11(1)(a), taking account of the most important needs of cross-border users. Member States shall provide the links to such translated information to the repository for links.”

- Scrutiny reservation with regard to a preference for Art. 9a or the revisions in Art. 7, 8 and 9 - and on the question whether such a choice needs to be made at all.

On Article 12:

We welcome the ambitious path set out in SDG proposal in line with the Tallin Declaration on eGovernment for working towards implementing the Once Only Principle (OOP) for key public services at least as an option for citizens and businesses. Yet, in a spirit of feasibility and as a tribute to national competencies, GER calls **for a safeguard clause that Member States do not have to do something on a cross-border level that they are not (yet) able to do on a national level** with regard to automated data exchange. We therefore suggest to restrict the **scope of article 12 by the following addition to paragraph 4:**

- „The competent authorities responsible for online procedures referred to in paragraph ~~1~~ **0** shall, upon an explicit request of the user, request evidence directly from competent authorities issuing evidence in other member States through the technical system. The issuing competent authorities shall, in accordance with point (d) of ~~subject to~~ paragraph 2 ~~(d)~~, make such evidence available through the technical system *provided that the issuing competent authority issues such evidence in **automated** electronic format for the purpose of procedures referred to in paragraph 1 within its own Member State*”
- **Alternatively**, the aim might be achieved by adjusting the wording of the new paragraph 0 in one of the following ways:
 - a) „Where competent authorities ~~issue~~ **enable automated exchange of** 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 Directive 2005/36/123/EC, 2014/24/EU and 2014/25/EU, they shall also make such evidence available **via the technical system** to requesting competent authorities from other Member States.
 - b) „Where competent authorities **issue** evidence in electronic format within their own Member State **in automated form** which is relevant for the online procedures listed in Annex II and procedures provided for in Directive 2005/36/123/EC, 2014/24/EU and 2014/25/EU, they shall also make such evidence available **in such form** to requesting competent authorities from other Member States.
- a **clarification in recital 28 regarding data protection** („Insofar as personal data are concerned a legal basis for each data transfer between public authorities should be necessary in accordance with the provisions of the General Data Protection Regulation and the Regulation (EC) no. 45/2001.”)
- We support the question raised by our Hungarian colleagues why the reference to the hearing of the EU Data Protection Supervisor has been deleted from page 1 of the newly revised proposal.

On Article 21 (2):

- A deletion of the recording and collection of response times in Art. 21 (2).

On Article 28:

- We ask for a **recital clarifying** our key concern that the implementation of the regulation should not lead to any additional costs in the EU budget, which means that the measures can be financed through redeployment of existing EU funds and that the future multiannual financial framework is not prejudged.

On Article 35:

- As the implementing acts foreseen in the proposal are of general scope, we welcome that Article 35 establishes a committee procedure according to Art. 5 of Regulation (EU) No. 182/2001. Yet, we propose that reference to Art. 35 of the proposal is not only made in the text (Art. 12(7), 15 (4), 21 (4), 22 (5)) **but also in the respective recitals** (13, 31, 31a, 33a, 36, 37).
- Not part of the instructions but only a stylistic hint for the sake of coherence and consistency: The wording in Recital 13 "in cooperation with the member States" ought to be adjusted to the wording in the rest of the text (i.e. "in **close** cooperation with the Member States")

On Article 37:

Five-year implementation period for the entire proposal (Art. 37)

- GER calls for a five-year implementation period for the entire proposal. To be able to comply with the envisaged rules and regulations of the SDG proposal in all its complexity, it is mandatory that the implementation period is not set below the implementation period of respective national law (Online Access Law).
- We recall that a complex digitalization project like the SDG can only be successfully implemented in a large federal MS, if the stakeholders on federal, state and municipality level are taken on board, which requires a sufficient amount of time.

On Annex I:

We consider the present scope of Annex I as too broad. We particularly plead for a **focus on the public administrative sector** and therefore for the exclusion of the private sector (especially the field of contract law) and **the deletion of respective bulletpoints in Annex I**, i.e. number

- 2 und 5 in "Travel within the Union";
- 4 in "Vehicles in the Union"
- 2 in "Healthcare"
- 1,2,4,5,6 in "Consumer rights"
- 2,3,4,5,6,7,8 in "Starting, running and closing a business"
- 5 und 6 in "Goods".

as well as a new recital 7b that reads as follows:

(7b) Neither should the information to be provided cover registers of intellectual property rights. There is no need to create an additional access point in this area. Users are well acquainted with the websites of national patent and trademark offices which already offer all the relevant information, including the possibility of submitting applications electronically. As to patents, the European Patent Office as the key European contact point does not fall within the competence of the European Union."

On Annex II:

As regards Annex II, we call for the following changes:

- In the life event „Starting a business“ the procedure „General registration of business...“ is to be changed in, "General registration of business activity, **excluding procedures concerning the registration with a commercial or company register**" (incl. a respective change of recital 18).
- In the life event "working" the procedure "notifying changes ... relevant for social security **benefits**" is to be changed in "... relevant for social security **coverage**".
- Following a request from the Federal States - and given the short period of time for the assessment of the changes in the newly revised proposal - we need to **maintain a scrutiny reservation** on the procedure "requesting academic recognition of qualifications". Concerning the use of academic titles, it should be

made clear in recital 19b that MS, in which the use of foreign academic titles does not require permission, do not need to establish such an online procedure.

On Recital 14b:

- We ask for a clarification in recital 14b to ensure that in areas where existing EU law already obliges Member States to provide online information, Member States only need to link to that online information, in order to comply with Art. 4 and 7. This would also provide a necessary interpretation to Art. 16 (6). The following sentence might be added to this effect:
"Where Member States already have to provide online information pursuant to other existing provisions of Union law, as for example pursuant to Directive 2014/67/EU, it should be sufficient that Member States and the gateway provide links to the existing online information."

On Recital 19:

- We would welcome an addition in Recital 19 clarifying that the prevention of fraud qualifies as an "overriding public interest".