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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Interoperable Europe Act: ES, IT, AT, SI joint proposal

Delegations will find in the annex the ES, IT, AT, SI joint proposal on Interoperable Europe Act.

ES, IT, AT, SI joint proposal on Interoperable Europe Act

Interoperability enables the collaborative delivery of European public services¹ to citizens, businesses and public organisations in order to foster cooperation and reduce administrative burdens for an actionable, efficient, secure and vibrant Internal Market, where EU citizens can exercise their right to free movement laid down in the Treaties. Since the Delors White Paper and the Bangemann Report in the 1990s, the Commission has promoted the European interoperability through various programmes and policies but, while the Union is moving towards a common regulatory framework for the Single Market, the fragmentation of European policies for the collaborative delivery of European public services still remains.

The Single Market really needs a big step forward with a regulation that ensures interoperability of European public services through appropriate provisions and support measures, driven by an agile and effective co-governance. This regulation must meet the needs of countries ranging from more centralised to more federal, with more or less comprehensive national interoperability and eGovernment frameworks, and of numerous competent authorities with more or less limited resources. This requires full respect for the subsidiarity, proportionality and efficiency principles, which are compromised by certain parts of the proposal.

During these years, the European policies have provided Member States with sectoral European networks and information systems, such as EESSI and ECRIS, each of which has a comprehensive interoperability framework and requires specific resource allocation and efforts. In addition, cross-sectoral collaborative delivery of European public services¹ faces legal, organisational and semantic interoperability issues that cannot be addressed by technical solutions or national policies, but only by fully interoperable European policies. In this sense, we can note:

1. Interoperability assessments seem the appropriate measure to ensure fully interoperable European policies, enabling both cross-cutting collaborative delivery of European public services and appropriate synergies among sectoral European solutions. ***Considering subsidiarity, proportionality and efficiency, interoperability assessments should only be mandatory for those European legislation and acts that have an impact on European public services¹.*** These interoperability assessments, taking into account the four dimensions, aim at ensuring the feasibility of existing, proposed or future cross-border systems, thus promoting the interconnection and interoperability of national networks as well as access to such networks, as referred to in TFEU Art. 170(2).

In this regard, ***it is important that the application of this regulation creates only affordable burdens on Member States and no burdens on competent authorities with limited resources***, such as some local authorities.

Nonetheless, Member States should collaborate with the Commission and Union bodies responsible for such instruments to identify interoperability obstacles and facilitators to be taken into account in their interoperability assessments before the legislation and act is adopted.

2. The details of the interoperability assessments, support measures and any further decisions related to the interoperability of European public services should be taken by the **Interoperable Europe Board** only in the public interest. This requires **a genuine and agile co-governance** of the European interoperability through a **simple organisation** to be effective and efficient.

The Interoperable Europe Board should be composed of the national coordinators for the application of this regulation in the Member States and the main representatives of the Union entities. In federal countries a single authority cannot be responsible for the national interoperability, but can coordinate

¹ According to EIF 2017, 'European public service' means any public sector service exposed to a cross-border dimension and supplied by public administrations, either to one another or to businesses and citizens in the Union.

the application of the regulation by the relevant competent authorities; in centralised countries, the national coordinator may be the competent authority for regulating and implementing the national interoperability as well. In any case, although a single national coordinator per Member State is required to be a member of the Board and the single point of contact, each national coordinator should be able to organise the related tasks according to the internal organisation of the Member State, as the SDGR scheme². **Interoperability coordinators for Union bodies, particularly EC DGs, should play a role similar to that of the national coordinators** and be members of the Board with voice but without vote. The Commission would be the voting member and the Board Secretariat.

The Board should adopt its own rules of procedure by consensus, fully respecting the Commission's exclusive competence to propose European legislation and acts. **The Board rules of procedure should include a co-governance arrangement for the Board to propose to the Commission the adoption of binding and non-binding decisions**, which should be also mentioned in the regulation, enabling the Commission the possibility to adopt delegated or implementing acts. Given the number of operational tasks required to support the Board decisions, the creation of working groups seems necessary under decisions of the Board on the tasks and goals, rules of procedure and member profiles for each group.

3. Although a vibrant open community around European interoperability is a worthy goal, the proposed **Interoperable Europe Community cannot be considered as a governance advisory group and the mandatory source of working group members**. The focus of the regulation is on the interoperability of European public services thus the public interest, governed by the Board, which is composed by the Member States, the Commission and other public bodies. Using membership revocation to resolve conflicts of interest in the Community could be perceived by some private stakeholders as a discriminatory or arbitrary decision, thus causing uncomfortable controversy. The Interoperable Europe Portal should provide the means for the establishment and the operation of the Interoperable Europe Community, whose rules of procedure should be adopted by the Board. This Community may use these means to bring interoperability matters to the attention of the Board, while the Board may decide to involve the Community or some of its members in activities of the support measures, working groups or any consultation deemed necessary.

Related to this question, the peer reviews have been presented as a mutual learning process among public sector bodies with clear and conclusive results, but this allegation is debatable. On the one hand, the participation of private stakeholders in the review of interoperability assessments could pose some risk to the due privacy and security, and their opinions could be biased by their legitimate interests. On the other hand, the experts on interoperability of European public services are mainly civil servants since a good knowledge on public administration procedures is needed, but civil servants are a scarce resource. Without totally ruling out its usefulness, there are other options as workshops or seminars that are proved to be efficient.

To conclude, on behalf of efficiency, subsidiarity and proportionality, since this regulation aims to achieve real and practical European interoperability, this objective should avoid obligations for interoperability assessments at sub-European level, assessments for reusing shared solutions and limit the specific tasks required to the Board and the national coordinators. European interoperability has to be built by solid European instruments, led by the Commission and supported by the Board, which could later be implemented by the Member States.

² Competent authorities, with specific responsibilities for the services covered by the SDGR, are also responsible for the application of such regulation and its governance falls on the national coordinators and the Commission as the members of the Coordination Group, under which working sub-groups can be created. One national coordinator per Member State is the member of the Coordination group and the contact point for all matters related to the regulation. Each Member State may, in accordance with its internal administrative structure, appoint one or more coordinators in order to carry out any of the national coordinator tasks, which aim to help the Commission and the competent authorities in the application of the regulation.