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**WK 7407/2020 INIT**

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**WORKING PAPER**

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**WORKING DOCUMENT**

From:	CY, IE and SK delegations
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres: compromise proposal Art. 15 (voting rights) - Comments from CY, IE and SK delegations

## **CYPRUS**

### Cyprus comments on Voting Rights

The regulation concerning the Competence Centre proposes a new governance structure to select and adopt the items and their budget for the work programme for (some of the) Cybersecurity parts of Digital Europe Programme (DEP) and Horizon Europe Programme (HEP) Regulations.

For the remaining parts of those regulations the selection and adoption of the work programmes is governed via implementing acts and standard comitology procedure as set out in REGULATION (EU) No 182/2011 “Laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers”:

#### For the DEP programme:

##### *Article 23 Work Programmes*

*5. The work programmes .... shall be adopted by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27a (2).*

##### *Article 27a Committee procedure*

- 1. The Commission shall be assisted by the Digital Europe Programme Coordination Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*

For the HEP programme:

*Article 11 Work programmes*

2. *The Commission shall adopt separate work programmes, by means of implementing acts,... ..... in accordance with the examination procedure referred to in Article 12(4).*

*Article 12 Committee procedure*

1. *The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
4. *Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*

REGULATION (EU) No 182/2011 Laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

According to the above regulation:

*Article 3 Common provisions*

5. *The Commission shall be assisted by a committee composed of representatives of the Member States. The committee shall be chaired by a representative of the Commission. **The chair shall not take part in the committee vote.***
6. *The chair shall submit to the committee the draft implementing act (i.e. the work programme) to be adopted by the Commission.*

7. *Until the committee delivers an opinion, any committee member may suggest amendments and the chair may present amended versions of the draft implementing act.*

*The chair shall endeavour to find solutions which command the widest possible support within the committee. The chair shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the committee.*

#### *Article 5 Examination procedure*

3. *.....if the committee delivers a negative opinion, the Commission shall not adopt the draft implementing act. Where an implementing act is deemed to be necessary, the chair may either submit an amended version of the draft implementing act to the same committee within 2 months of delivery of the negative opinion....*

As can be seen, in the existing procedure, that we are trying to replace with the new procedure, the Commission has no voting rights and it is in their best interest “to endeavour to find solutions which command the widest possible support” from MS (which apparently they have been doing quite well, since a negative opinion is rather rare).

Furthermore, since (in contrast with a lot of Partnerships) all the MS are represented in the Governing Board, their vote represents the will of the Union, especially if an overwhelming majority of MS vote in the same direction. However, even if all 27 MS representatives vote differently from the Commission, the Commission vote will prevail, if it holds 50% of the vote. Therefore, we propose the following amendment, highlighted in yellow:

## *Article 15 Voting rules of the Governing Board*

*-1. A vote shall be held if the members of the Governing Board failed to achieve consensus.*

*-2. The Governing Board shall take its decisions by a majority of at least 75% of all its members, the representatives of the Commission constituting a single member for this purpose. An absent member of the Governing Board may delegate his or her vote to his or her alternate or, in the absence of his or her alternate, to another member. Any member of the Governing Board may represent not more than one other member. For decisions related to the usage of Union funds in Article 13(3) except point (cb), the Union should hold 50% of the voting rights. However, if an overwhelming majority of X% of representatives of Member States vote against the Commission, their vote shall prevail.*

We propose a fairly high number for X%, say 85%-90% of Member States, to be able to override the Commission Veto.

## IRELAND

IE are supportive in general with this proposal, however we feel that the text could be further strengthened by adding an additional sentence at the end such as below, namely:

“...is not ensured. Any such justification shall be in writing and supported by legal advice.”

### **Compromise proposal for the voting rights of Commission in Art. 15 CCCN**

**- 3. For decisions which are taken under Article 13(3), except those taken under point (cb), and concerning the use of Union funds, the Commission shall have a right of veto with the sole aim of ensuring the legality of those decisions, including their compatibility with the Commission's responsibility for implementing the Union's budget. In case of disagreement with any other member of the Governing Board whether this requirement is met by such a draft decision, the Commission shall justify before it exercises its right of veto why the legality of such a draft decision is not ensured. Any such justification shall be in writing and supported by legal advice.**

## **SLOVAK REPUBLIC**

### **SK comment to: WK 7181/2020 INIT**

**The Slovak Republic proposes to delete the provisions concerning the “right of veto” and 50% of the voting rights held by the Commission - from compromise proposal Art. 15 (voting rights) - WK 7181/2020 INIT.**

#### **Justification:**

According to the art 17 (1) of (the Consolidated version of) the Treaty on European Union: *“The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.”*. According to art. 317 of (the Consolidated version of) the Treaty on the Functioning of the EU: *“The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.”*. **Neither art. 17 (1) TEU nor art. 317 TFEU (both referenced by COM in the Commission services non-paper) provide for the “right of veto” or 50% of the voting rights for the Commission.**

The Slovak Republic acknowledges that the implementation of the funds will take place according to the rules of particular programs (Horizon Europe, Digital Europe). However, the Slovak Republic **would like to highlight** that these rules should apply **only within the programs that are based on these particular rules** (e.g. joint actions from Horizon Europe), i.e. **these rules should not apply generally to all the financial decisions** related to the usage of Union funds.

In addition, the Slovak Republic would like to accentuate that if the application of the **“right of veto” and 50% of the voting rights** held by the **Commission is stated in the specific legal act** (e.g. the rules governing joint actions from Horizon Europe), **this legal act will prevail over the general legal act** (the proposed regulation), as the general legal principle **“*lex specialis derogat legi generali*”** will apply.

On the basis of the abovementioned the Slovak Republic is convinced that the **deletion of the provisions concerning the “right of veto” and 50% of the voting rights** held by the **Commission from compromise proposal Art. 15 (voting rights)** will bring more legal certainty as well as predictability for the Member States and it will definitely not prevent the Commission from performing its competences within the programs that are based on the **“right of veto” and 50% of the voting rights** held by the **Commission**.