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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications And Information Society (Attachés) Working Party on Telecommunications and Information Society
Subject:	Interoperable Europe Act: AT comments of the 2nd compromise proposal (doc. 8907/23)

Delegations will find in the annex the AT comments of the 2nd compromise proposal on IEA (doc. 8907/23).

AT comments of the second compromise proposal on the Interoperable Europe Act (document 8907/23)

Reference	Second compromise proposal	Drafting suggestion	Comment
			AT upholds her general comments regarding the legal basis, choice of legal instrument and proportionality (see doc. WK 5262/2023 INIT – AT comments).
Art 1 para 1	1. This Regulation lays down measures to promote the cross-border interoperability of network and information systems which are used to provide or manage public services in the Union by establishing common rules and a framework for coordination on public sector interoperability, with the aim of fostering the development of interoperable trans-European digital public services infrastructure.	1. This Regulation lays down measures to promote the cross-border interoperability ~~of network and information systems which are used to provide or manage public services in the Union~~ for the processing of elements from another Member State in European public services by establishing common rules and a framework for the governance and coordination on public sector interoperability, with the aim of fostering the development of ~~interoperable trans-~~European digital public services ~~infrastructure~~ and promoting the interconnection and interoperability of the involved national network and information systems.	Since this is a regulation on "Interoperable Europe" for public services, the subject matter should be limited to European public services and the cross-border interoperability that enables them.
Art 1 para 2	2. This Regulation applies to public sector bodies of Member States and institutions, bodies and agencies of the Union that provide or manage network or information systems that enable public services to be delivered or managed electronically.	2. This Regulation applies to ~~public sector bodies of Member States and~~ institutions, bodies and agencies of the Union that adopt legislation and acts affecting European public services, and to the public sector bodies of Member States that collaborate in their adoption and implementation, where they may be supported by digital infrastructures in accordance with current, past or	The scope of this Regulation should include the institutions, bodies and agencies of the Union that adopt legal decisions at European level affecting European public services and the public sector bodies of Member States that collaborate in the adoption and implementation of these decisions,

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		future European acts ~~provide or manage network or information systems that enable public services to be delivered or managed electronically~~.	regardless of whether they are already supported by digital infrastructures or the decision provides for such infrastructures or further decisions may provide for them.
Art 2 (new para)		(1a) '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. European public services are digital or digitizable human-centric services that require the processing of elements from another Member State.	it is important to define the concept of "European public services" and to include the four dimensions of cross-border interoperability in article 2 according to the EIF definitions.
Art 2 para 1	(1) 'cross-border interoperability' means the ability of network and information systems to be used by public sector bodies in different Member States and institutions, bodies, and agencies of the Union in order to interact with each other by sharing data by means of electronic communication;	(1) 'cross-border interoperability' means the ability of cross-border organisations to interact towards mutually beneficial goals, involving the sharing of information and knowledge between these organisations, through the business processes they support and considering the legal, organisational, semantic and technical requirements of the interaction ~~network and information systems to be used by public sector bodies in different Member States and institutions, bodies, and agencies of the Union in order to interact with each other by sharing data by means of electronic communication~~;	See comment regarding Art 1 para 1.
Art 2 para 2	(2) 'network and information system' means a network and information system as defined in Article ~~4~~ **6**, point (1), of the ~~proposal for a~~ Directive **(EU) 2022/2555**		The wording of Art 1 in conjunction with Art 2 para 2 seems to suggest that also network and information systems primarily used on a national level fall

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	~~of the European Parliament and of the Council on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148 [proposal~~ **(**NIS 2 **Directive)**~~]~~;		under the definition of Art 2 para 2. Therefore, the scope seems without limits - almost every digital application of MS administrations could possibly fall into the scope of this Regulation which seems to go beyond what is necessary to achieve the goal to promote better cooperation between MS administrations and the Union (and therefore could go against the principle of proportionality).
Art 3 (new para)		(1a) Interoperability assessments aim to raise awareness and ensure an adequate level of cross-border interoperability in legal decisions that can impact on European public services, thereby mitigating or removing barriers to cross-border legal, organisational, semantic and technical interoperability.	Considering subsidiarity, proportionality and efficiency, interoperability assessments should only be mandatory for those European legislation and acts that have an impact on European public services, before their adoption. These interoperability assessments, taking into account the four interoperability dimensions, should aim at ensuring the feasibility of existing, proposed or future cross-border services and systems supporting European public services, thus promoting the interconnection and interoperability of national networks as well as access to such networks, as referred to in TFEU Art. 170(2).
Art 3 para 1	1. Where a public sector body or an institution, an agency or body of the Union intends to set **requirements for**	1. An interoperability assessment shall be carried out for an intended decision that may impact on the cross-border interoperability of European	

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	one or several ~~up a new or significantly modify an existing~~ network and information systems that enables public services to be delivered or managed electronically, it shall carry out an assessment of the **expected** impacts of the planned action on cross-border interoperability ('interoperability assessment') in the following cases: […]	public services ~~Where a public sector body or an institution, an agency or body of the Union intends to set **requirements for one or several** up a new or significantly modify an existing network and information systems that enables public services to be delivered or managed electronically, it shall carry out an assessment of the **expected** impacts of the planned action on cross-border interoperability ('interoperability assessment')~~ in the following cases: […]	
Art 3 para 1 lit a	(a) where the **requirements** ~~intended set up or modification~~ affect~~s~~ one or more network and information systems used for the provision of cross-border services across several sectors or administrations~~;~~ **or**	(a) where a legal decision is intended to be taken at European level, the institution, agency or body of the Union responsible of proposing the decision shall carry out the interoperability assessment, with the collaboration of relevant experts and involved competent authorities of the Member States ~~the **requirements** intended set up or modification affects one or more network and information systems used for the provision of cross-border services across several sectors or administrations; **or**~~	
Art 3 para 1 lit b	(b) where the **requirements** ~~intended set up or modification~~ concerns a network and information system used for the provision of cross-border services and funded through Union programmes. The public sector body or the institution, body or agency of the Union concerned	(b) where the previous case does not apply and the implementation of the intended decision concerning European public services ~~**requirements** intended set up or modification concerns a network and information system used for the provision of cross-border services and~~ is funded through Union programmes, candidates for these Union programmes may be required to submit an	

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	may also carry out the interoperability assessment in other cases.	interoperability assessment of their proposal to be taken into account in the grant decision. ~~The~~ A public sector body or the institution, body or agency of the Union concerned may also carry out the interoperability assessment in other cases.	
Art 3 para 2	2. The interoperability assessment shall be carried out before taking decisions on the legal, organisational, semantic or technical requirements for the new or modified network and information system in a binding manner. A single interoperability assessment may be carried out to address a set of requirements and several network and information systems.	2. The interoperability assessment shall be carried out before taking legal decisions on the legal, organisational, semantic or technical cross-border interoperability of European public services ~~requirements for the new or modified network and information system in a binding manner~~. A single interoperability assessment may be carried out to address a set legal decisions. ~~of requirements and several network and information systems~~.	
Art 3 para 3	3. The national competent authorities and the interoperability coordinators shall provide the necessary support to carry out the interoperability assessment. […]	3. The national ~~competent authorities~~ and ~~the~~ interoperability coordinators shall provide the necessary support to carry out the interoperability assessment. […]	
Art 3 para 4	4. The interoperability assessment shall contain ~~at least~~:	4. The interoperability assessment shall contain at least:	
Art 3 para 4 lit a	(a) a description of the intended operation and its impacts on the cross-border interoperability of one or several network and information systems concerned, including the estimated costs	(a) a description of the intended ~~operation~~ decision and its impacts on the legal, organisational, semantic and technical cross-border interoperability ~~of one or several network and information systems concerned, including the estimated costs for the adaptation of the network~~	

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	for the adaptation of the network and information systems concerned;	~~and information systems concerned~~ affecting European public services;	
Art 3 para 4 lit b	(b) a description of the level of alignment of the network and information systems concerned with the European Interoperability Framework, and with the Interoperable Europe solutions, after the operation and where it has improved compared to the level of alignment before the operation;	(b) a reasoned description of the cross-border interoperability barriers ~~level of alignment of the network and information systems concerned with the European Interoperability Framework, and~~ addressed with the Interoperable Europe solutions or other solutions, ~~after the operation and where it has improved compared to the level of alignment before the operation~~;	
Art 3 para 4 lit c	(c) when applicable, a description of the Application Programming Interfaces that enable machine-to-machine interaction with the data considered relevant for cross-border exchange with other network and information systems.	(c) when applicable, a reasoned description of the cross-border interoperability barriers that are not addressed by the intended decision ~~Application Programming Interfaces that enable machine-to-machine interaction with the data considered relevant for cross-border exchange with other network and information systems~~.	
Art 3 para 5	5. The public sector body, or institution, body or agency of the Union concerned shall consult recipients of the services **directly** affected or their representatives ~~on the intended operation if it directly affects the recipients~~. This consultation is without prejudice to the protection of commercial or public interests or the security of such systems.	5. The ~~public sector body, or institution, body or agency of the Union concerned~~ interoperability assessment shall include the results of a consultation to recipients of the European public services **directly** affected ~~or their representatives on the intended operation if it directly affects the recipients~~. This consultation is without prejudice to the protection of commercial or public interests or the security ~~of such systems~~, and may be part of a public consultation on the intended legal decision.	
Art 3 (new para 6a)		(6a) On a proposal from the responsible for the assessed intended decision or the Interoperable Europe Board, an interoperability assessment may	

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		be reviewed through workshops, after which participants may provide their written feedback.	
Art 3 para 6	6. The Interoperable Europe Board shall adopt guidelines **for** ~~on the content of~~ the interoperability assessment by ... at the latest [one year after the entry into force of this Regulation], including practical check lists.	6. The Interoperable Europe Board shall adopt guidelines **for** ~~on the content of~~ the interoperability assessments and rules of procedure for their review on request process by ~~...~~ at the latest ~~[~~one year after the ~~entry into force of this Regulation~~ start of its operations~~]~~, including practical check lists. The Commission may adopt these guidelines on a proposal from the Interoperable Europe Board.	
Art 11 para 2	2. Regulatory sandboxes shall be operated under the responsibility of the participating public sector bodies **or institutions, bodies,** and **agencies of the Union.**, ~~where the~~ **Regulatory** sandbox**es that** entails the processing of personal data by public sector bodies, **shall be operated** under the supervision of other **the** relevant ~~national~~ **supervisory** authorities**.**, ~~or where the~~ **Regulatory** sandbox**es that** entails the processing of personal data by institutions, bodies, and agencies of the Union~~,~~ **shall be operated** under the responsibility of the European Data Protection Supervisor.	2. Regulatory sandboxes shall be operated under the responsibility of the participating public sector bodies **or institutions, bodies,** and **agencies of the Union.**~~,~~ ~~where the~~ **Regulatory** sandbox**es that** entail~~s~~ the processing of personal data by public sector bodies~~,~~ **shall be operated** under the supervision of ~~other~~ **the** national data protection authorities as well as other relevant ~~national~~ **supervisory** authorities**.**~~, or where the~~ **Regulatory** sandbox**es that** entail~~s~~ the processing of personal data by institutions, bodies, and agencies of the Union~~,~~ **shall be operated** under the responsibility of the European Data Protection Supervisor.	It has to be clearly stated that the supervision by the national data protection authorities is mandatory.
Art 11 para 5	5. The Commission, after consulting the Interoperable Europe Board and, where the regulatory sandbox would include the processing of personal data, the	5. The Commission, after consulting the Interoperable Europe Board ~~and, where the regulatory sandbox would include the processing of personal data, the European Data Protection~~	1. In light of Art. 40 Regulation (EU) 2018/1725 the value of this inclusion is unclear. If the instrument of prior authorisation should not be replaced,

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	European Data Protection Supervisor, shall upon joint request from at least three ~~participating~~ **participants** ~~public sector bodies~~ authorise the establishment of a regulatory sandbox. This consultation should not replace the prior consultation referred to in Article 36 of Regulation (EU) 2016/679 and in Article 40 of Regulation (EU) 2018/1725. […]	~~Supervisor,~~ shall upon joint request from at least three ~~participating~~ **participants** ~~public sector bodies~~ authorise the establishment of a regulatory sandbox. Where the sandbox would include the processing of personal data the controller shall prior to processing consult the supervisory authority in accordance with Article 36 of Regulation (EU) 2016/679 or the European Data Protection Supervisor in accordance with Article 40 of Regulation (EU) 2018/1725 respectively with the provision that the prior consultation shall be mandatory regardless of whether the controller has taken measure to mitigate the risk. ~~This consultation should not replace the prior consultation referred to in Article 36 of Regulation (EU) 2016/679 and in Article 40 of Regulation (EU) 2018/1725.~~ […]	then what is the nature of the EDPS's involvement in this authorisation process? Furthermore, in participating in this authorisation the EDPS would prejudge himself without having followed the proper process for prior authorisation in accordance with Art. 40 Regulation (EU) 2018/1725. 2. *„shall…authorise"* according to which criteria? Or is this solely a formal requirement and shall regulatory sandboxes be authorised in any and all cases where three participants jointly request so? 3. Instead of the unclarified inclusion of the EDPS in an unclarified pre-authorisation procedure within the Commission the instrument of prior authorisation in accordance with Art. 36 GDPR/Art. 40 Regulation (EU) 2018/1725 should be made use of. This appears to be the only way to ensure a meaningful involvement of data protection authorities without them running the risk of prejudging themselves and thereby weakening the data subjects' rights.

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Art 12 para 1	1. The participating public sector bodies **or institutions, bodies, and agencies of the Union** shall ensure ~~that~~, to the extent the ~~innovative interoperability solution~~ **operation of the regulatory sandbox requires** ~~involves~~ the processing of personal data or otherwise falls under the supervisory remit of other national authorities providing or supporting access to data, **that** the national ~~data protection~~ **supervisory** authorities and those other national authorities are associated to the operation of the regulatory sandbox. […]	1. The participating public sector bodies **or institutions, bodies, and agencies of the Union** shall ensure ~~that~~, to the extent the ~~innovative interoperability solution~~ **operation of the regulatory sandbox requires** ~~involves~~ the processing of personal data or otherwise falls under the supervisory remit of other national authorities providing or supporting access to data, **that** the national data protection **supervisory** authorities and those other national authorities are associated to the operation of the regulatory sandbox. […]	The term "*are associated to*" is exceedingly vague. Especially in light of Article 11, which mandates that the national data protection authority needs to supervise the operation of a regulatory sandbox that processes personal data. What purpose does this further "association" of the national data protection authority entail?
Art 12 para 6	6. Personal data **lawfully collected for other purposes** may be processed in the regulatory sandbox subject to the following cumulative conditions: […]	6. Member State and Union law shall provide for sector-specific legal bases for the processing of ~~P~~personal data **lawfully collected for other purposes** ~~may be processed~~ in the regulatory sandbox subject to the following cumulative conditions: […]	We refer to the prior comments on the necessity for clearly determined legal bases for the processing of personal data, in accordance with Art. 8 and 9 CFR as well as Art. 5, 6, 9, 10 and 23 GDPR.
Art 12 para 6 lit g	(g) any personal data processed are protected by means of appropriate technical and organisational measures and deleted once the participation in the sandbox has terminated or the personal data has reached the end of its retention period;	(g) any personal data processed are protected by means of appropriate technical and organisational measures and deleted once the participation in the sandbox has terminated or the personal data has reached the end of its retention period or after a maximum of two years;	A maximal retention period should be introduced. Originally, this would have been 2 years as the former Draft provided that regulatory sandboxes may only run for a maximum of 2 year (see para 2).

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			Also, the reference to the original storage limit, connected to the legal basis the personal data was originally collected for, seems too vague and may prove to be impossible to operate in practice as each personal datum would have to be stored together with information about its origin and its individual time limit. This does not appear feasible in accordance with the principles of data minimisation and storage limitation according to Art. 5 para 1 lit. c and e GDPR.
Art 15			Comments and drafting suggestions from previous AT statements regarding Art 15 are being upheld.
Art 15 para 4 lit q	(q) coordinate with the European Data Innovation Board, referred to in Regulation (EU) No 2022/686 on interoperability solutions for the common European Data Spaces, as well as with any other Union institution, body, or agency of the Union working on interoperability solutions relevant for the public sector;	(q) coordinate with the European Data Innovation Board, referred to in Regulation (EU) No 2022/686 on interoperability solutions for the common European Data Spaces, as well as with any other Union institution, body, or agency of the Union working on interoperability solutions relevant for the public sector, including overarching European initiatives such as the European Open Science Cloud and EuroHPC;	
Art 16			Comments and drafting suggestions from previous AT statements regarding Art 16 are being upheld.

Reference	Second compromise proposal	Drafting suggestion	Comment
Art 17			Comments and drafting suggestions from previous AT statements regarding Art 17 are being upheld.
Art 18			Comments and drafting suggestions from previous AT statements regarding Art 18 are being upheld.

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