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NOTE

from: Presidency
to: Council

No. Cion prop.: 6342/13 TELECOM 24 DATAPROTEC 14 CYBER 2 MI 104 CODEC 313

Subject: Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union
- Information on the state of play

1. On 12 February 2013, the Commission submitted the above mentioned proposal with Article 114 TFEU as a legal basis.¹ Following an orientation debate on the basis of a progress report at the June 2013 TTE Council², two further progress reports were submitted to the TTE Councils of December 2013 and June 2014.³

¹ Doc. 6342/13.

² Doc. 10076 and doc. 10457/13.

³ Doc. 16630/13 and 10097/14 respectively.

2. Under the Italian Presidency, a thorough examination of the detailed provisions of the proposal took place and on 10 October and on the basis of a number of main principles and general orientations, the Coreper granted the Presidency a mandate⁴ to start informal exploratory talks with the EP on the above mentioned proposal. A first exploratory trilogue took place on 14 October and a second informal trilogue with the EP took place on 11 November on the basis of an updated mandate.⁵ A 3rd and final trilogue on the proposal is planned to take place on 9 December.
3. On substance, the main outstanding issue between the two institutions concerns the scope of the proposal. Whereas the Council text would allow Member States to assess, on the basis of defined criteria, whether or not certain operators in identified sectors would be subject to the obligations regarding security requirements and incident notifications in the Directive, the EP envisages an approach whereby all operators in all of the sectors identified are subject to the obligations but with a possible varying degree of providing evidence of effective implementation of security policies. The identification and inclusion of certain sectors, to be listed in an Annex, also remains an open issue, including the question whether Internet enablers should be added to the list, as the Commission advocates.
4. Other outstanding issues concern the architecture, objectives and extent of strategic and operational cooperation and the modalities and criteria for national incident notification and for notification in the EU context.
5. The Presidency is confident that the EP and the Council, assisted by the Commission, will be able to work out compromise solutions on the above mentioned outstanding issues and reach a deal before the end of the year.

⁴ Doc. 14076/14.

⁵ Doc. 14850/14 (updated Coreper mandate).