



Council of the
European Union

Brussels, 3 January 2023
(OR. en)

15670/22
PV CONS 76
TRANS 773
TELECOM 515
ENER 661

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(**Transport**, **Telecommunications** and Energy)
5 and 6 December 2022

CONTENTS

Page

1. Adoption of the agenda..... 4
2. Approval of "A" items 4
Non-legislative list

TRANSPORT

Legislative deliberations

3. Revision of the Regulation on Union guidelines for the development of the trans-European transport network (TEN-T) 5

Non-legislative activities

4. Conclusions on the ongoing development of inland waterway transport (NAIADES III) 5

Any other business

5. (a) Strengthening the sustainability and fairness of the aviation sector 5
- (b) Transport relations with Ukraine 6
- (c) Road safety trends and reinforced efforts to achieve road safety targets 6
- (d) CCAM (Connected, Cooperative and Automated Mobility) States Representative Group Meeting (Prague, 29 November 2022): Outcome 6
- (e) Current legislative proposals 6
 - i) Regulations on Single European Sky 2 +
 - ii) Decision on CORSIA offsetting requirements
 - iii) Regulation on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation initiative)
 - iv) Regulation on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU
 - v) Revision of the Directive on the framework for the deployment of Intelligent Transport Systems (ITS)
 - vi) Regulation on the use of renewable and low-carbon fuels in maritime transport (FuelEU Maritime initiative)
 - vii) Directive amending Directive 2003/25/EC introducing improved stability requirements for ro-ro passenger ships
- (f) Work programme of the incoming Presidency 7

TELECOMMUNICATIONS

Legislative deliberations

6. Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts 8
7. Regulation amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity..... 8
8. Regulation on harmonised rules on fair access to and use of data (Data Act) 8
9. Regulation on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020..... 8

Non-legislative activities

10. Digital skills for the Digital Decade 9

Any other business

11. (a) Telecom support for Ukraine 9
- (b) Current legislative proposals..... 9
Regulation concerning the respect for private life and the protection of personal data in electronic communications (ePrivacy Regulation)
- (c) European Declaration on Digital Rights and Principles for the Digital Decade..... 9
- (d) International initiatives in the digital field (with a focus on TTC and digital partnerships): State of play..... 9
- (e) High-level expert meeting on the governance and enforcement of Union rules in the digital sphere (virtual, 17 October 2022) 9
- (f) Conference on EU Secure and Innovative Digital Future (Prague, 3-4 November 2022)..... 10
- (g) Work programme of the incoming Presidency 10

- ANNEX - Statements for the Council minutes 11

MEETING ON MONDAY 5 DECEMBER 2022

1. Adoption of the agenda

The Council adopted the agenda set out in 15323/22.

2. Approval of "A" items

Non-legislative list

15463/22

The Council adopted the "A" items listed in 15463/22 including COR and REV documents presented for adoption.

For the following item the documents should read as follows:

Delegated or Implementing Acts

Internal Market and Industry

11. Commission Delegated Directive (EU) .../... of 5.10.2022 amending Directive 2009/43/EC of the European Parliament and of the Council as regards the updating of the list of defence-related products in line with the updated Common Military List of the European Union of 21 February 2022
Delegated act - Intention not to raise objections
approved by Coreper, Part 1, on 30.11.2022


15135/22
13374/22
+ **COR 1 (cs)**
+ ADD 1
MI

TRANSPORT

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

Horizontal

3. **Revision of the Regulation on Union guidelines for the development of the trans-European transport network (TEN-T)**  15058/22
General approach
+ ADD 1-3
+ ADD 4 REV 1
+ ADD 5 REV 1
+ ADD 6-19
+ **ADD 20 REV 1**
+ ADD 21-47

The Council agreed on a General Approach on the proposal for the Revision of the Regulation on Union guidelines for the development of the trans-European transport network (TEN-T) as set out in doc. 15058/22 and its addenda.


Non-legislative activities

Inland Waterway Transport

4. **Conclusions on the ongoing development of inland waterway transport (NAIADES III)**  14847/22
Approval

The Council approved the conclusions as presented in 14847/22.

Any other business

5. a) **Strengthening the sustainability and fairness of the aviation sector**  15380/22
Information from the French, Belgian, Luxembourg, Netherlands and Portuguese delegations

The Council took note of the information provided by the French, Belgian, Luxembourg, Netherlands and Portuguese delegations.

- b) **Transport relations with Ukraine** [2] 15587/22 + **COR 1**
Information from the Presidency and the Commission

The Council took note of the of the information provided by the Presidency and the Commission.

- c) **Road safety trends and reinforced efforts to achieve road safety targets** [2] 15078/22
Information from the Commission

The Council took note of the information provided by the Commission.

- d) **CCAM (Connected, Cooperative and Automated Mobility) States Representative Group Meeting (Prague, 29 November 2022): Outcome** [2] 15488/22
Information from the Presidency

The Council took note of the information provided by the Presidency

- e) **Current legislative proposals** (Public deliberation in accordance with Article 16(8) of the Treaty on European Union) [1][C]

- i) **Regulations on Single European Sky 2 +** 10840/20 + ADD 1

The Council took note of the information provided by the Presidency. The Irish, Finnish and Maltese delegations presented a written statement which is included in 16231/22.

- ii) **Decision on CORSIA offsetting requirements** 10869/21 + COR 1

The Council took note of the information provided by the Presidency.

- iii) **Regulation on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation initiative)**

10884/1/21 REV 1
+ **REV 2 (da)**
10884/21 ADD 1

The Council took note of the information provided by the Presidency.

- iv) **Regulation on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU**

10877/21 + ADD 1

The Council took note of the information provided by the Presidency.

- v) **Revision of the Directive on the framework for the deployment of Intelligent Transport Systems (ITS)**

15114/21 + ADD 1

The Council took note of the information provided by the Presidency.

- vi) **Regulation on the use of renewable and low-carbon fuels in maritime transport (FuelEU Maritime initiative)**

10327/21 + ADD 1

The Council took note of the information provided by the Presidency.

- vii) **Directive amending Directive 2003/25/EC introducing improved stability requirements for ro-ro passenger ships**
Information from the Presidency

6405/22 + ADD 1

The Council took note of the information provided by the Presidency.

- f) Work programme of the incoming Presidency
Information from the Swedish delegation

MEETING ON TUESDAY 6 DECEMBER 2022

TELECOMMUNICATIONS

Legislative deliberations


(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

6. **Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts**  14954/22
General approach + ADD 1


The Council unanimously approved a general approach as set out in 14954/22.

7. **Regulation amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity**  14959/22
General approach + ADD 1-2

The Council unanimously approved a general approach as set out in 14959/22.

8. **Regulation on harmonised rules on fair access to and use of data (Data Act)**  15213/22
Progress report

The Council took note of the progress report.

9. **Regulation on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020**  14477/22
Progress report

The Council took note of the progress report.

Non-legislative activities

10. **Digital skills for the Digital Decade¹**

 14868/22

Policy debate


The Council held an exchange of views based on a discussion paper provided by the Presidency. Ministers underlined the importance of life-long learning programmes with regard to digital skills, while stressing the need for closing the gender gap and involving the private sector. The contributions pointed out the importance of sharing information about actions aimed at upskilling the working population and boosting the number of ICT specialists.

11. a) Telecom support for Ukraine¹

Information from the Commission

b) **Current legislative proposals** (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

Regulation concerning the respect for private life and the protection of personal data in electronic communications (ePrivacy Regulation)

  5358/17
+ **REV 1 (pt)**

Information from the Presidency

The Council took note of the state of play of negotiations on this file.

c) **European Declaration on Digital Rights and Principles for the Digital Decade**



Information from the Presidency

The Council took note of the state of play of negotiations on this file.

d) International initiatives in the digital field (with a focus on TTC and digital partnerships): State of play

Information from the Commission

e) High-level expert meeting on the governance and enforcement of Union rules in the digital sphere (virtual, 17 October 2022)

15172/22

Information from the Presidency

¹ In the presence of Ms Valeriya Ionan, Ukrainian Deputy Minister for Eurointegration.

- f) Conference on EU Secure and Innovative Digital Future
(Prague, 3-4 November 2022)
Information from the Presidency
- g) Work programme of the incoming Presidency
Information from the Swedish delegation

-
- 1** First reading
 - 2** Public debate proposed by the Presidency (Article 8(2) of the Council's Rules of Procedure)
 - C** Item based on a Commission proposal
-

Statements to the legislative "B" items set out in 15323/22

Ad "B" item 6: **Regulation laying down harmonised rules on artificial intelligence
(Artificial Intelligence Act) and amending certain Union legislative acts**
General approach

STATEMENT BY GERMANY

"Germany supports the text presented by the Presidency to achieve the general approach in the Telecommunications Council on 6 December 2022.

However, Germany sees some need for improvements on certain aspects, and refers in this regard to its written comments of 8 November 2022.

With a view to the forthcoming interinstitutional negotiations with the European Commission and the European Parliament, we trust that these aspects will be given serious and careful consideration and included in the deliberations."

STATEMENT BY AUSTRIA

"In a spirit of overall compromise, Austria supports the general approach on the Regulation laying down harmonised rules on artificial intelligence and amending certain Union legislative acts.

During the negotiations, Austria worked towards regulating artificial intelligence in a way that focuses on its safe use and its benefits for humans. A legal act of this kind must be in line with fundamental and human rights and help to promote confidence in artificial intelligence among those concerned.

It is noted that the general approach – the product of a political compromise – has not dispelled Austria's significant concerns regarding data protection and consumer protection concerns. These concerns relate in particular to the following points:

- o The AI Act's relationship with the existing EU data protection regime, as well as with other areas of law with which it overlaps, has not been clarified in the text, which opens up the risk of the current level of protection being undermined.
- o From Austria's point of view, the only partial prohibition of the use of real-time remote biometric identification systems for law enforcement purposes in Article 5 is insufficient. The general prohibition should extend to all purposes and, as a general rule, exceptional use should be possible only in specific cases that are in the public interest and are proportionate, while maintaining strict security standards.

- o Similarly, the use of biometric categorisation systems and emotion recognition systems should also be prohibited as a general rule and possible only in exceptional circumstances subject to compliance with strict security standards. A mere transparency obligation, as provided for in Article 52, is not sufficient to adequately address the risks that are inherent to these systems.
- o The general approach provides only for the optional involvement of national data protection supervisory authorities in the establishment of regulatory sandboxes (Article 53 (1c): ‘Where appropriate...’). In Austria’s view, the involvement of data protection supervisory authorities in the establishment of regulatory sandboxes, in which personal data are also processed, should be mandatory.
- o The exemption of participants in regulatory sandboxes from the imposition of fines, as provided for in Article 53(3), is not consistent with Article 83 GDPR, which does not provide for such an exemption in the event of data protection violations. To the extent that this constitutes an enforcement order to data protection supervisory authorities, it is contrary to Article 52 GDPR because national supervisory authorities must act with complete independence in the performance of their tasks under Article 52(1) GDPR and must be able to decide on the imposition of fines entirely independently.
- o The instruction in the second sentence of Article 53(3) to data protection supervisory authorities involved in regulatory sandboxes to ‘exercise their supervisory powers in a flexible manner’ and to use ‘their discretionary powers [...] with the objective of supporting innovation in AI in the Union’ interferes with the independence of national supervisory authorities’ decision-making and is therefore contrary to Article 52 GDPR.
- o Article 54(1) provides for a blanket, indiscriminate and horizontal authorisation for the processing of any personal data in regulatory sandboxes. From a data protection perspective, this provision is too vague and therefore cannot constitute a legal basis for data processing. The re-use of personal data collected for a specific purpose for purposes that have no substantive or formal connection with the initial purpose is in no way foreseeable for the data subject. To the extent that the provision is intended to be a form of re-use that is ‘compatible’ within the meaning of Article 6(4) GDPR, it should be noted that Article 54(1) does not constitute a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1) pursuant to Article 6(4) GDPR. Moreover, the provision does not distinguish between special categories of personal data pursuant to Article 9(1) GDPR and other personal data. In Austria’s view, the processing of special categories of personal data is not permissible on the basis of Article 6(4) GDPR and runs counter to the risk assessment underlying the GDPR.
- o Furthermore, Article 54(1) completely disregards the data protection principle of data minimisation pursuant to Article 5(1)(c) GDPR, because neither the scope nor the categories of personal data potentially processed in regulatory sandboxes are limited in any way. During the negotiations, Austria proposed, as an alternative, including an opening clause for sector-specific data processing authorisations that would make it possible to identify the typical data sources and typical data categories and therefore ensure the foreseeability and proportionality of the data processing.

- o Contrary to Article 5(1)(e) GDPR, the proposal does not provide for a maximum retention period for personal data in regulatory sandboxes. Moreover, since regulatory sandboxes can be established for an indefinite period of time, the personal data contained therein are permanently accessible and can be processed permanently for an unlimited period of time.
- o As a rule, people affected by decisions based on artificial intelligence systems (e.g. credit ratings) are neither informed that the decision was made using AI, nor provided with information about the basis and parameters of the decision. In the interests of transparency and legal certainty, and to promote trustworthy artificial intelligence, any decision made on the basis of artificial intelligence should therefore be accompanied by mandatory information about the role of artificial intelligence in the decision-making process, how it works, which parameters are applied and which input data were processed. This information is essential for those affected in order for them to be able to understand the decision and, if necessary, raise objections to it. Austria has put forward a specific drafting proposal in this regard.
- o Article 7(1)(a) empowers the European Commission, if necessary, to amend Annex III, provided that the artificial intelligence systems come under points 1 to 8 of Annex III. Some consumer-relevant applications, such as connected products or virtual assistants, are covered by Annex II, but not by Annex III. If the European Commission should determine that their legal or comparable effects justify their inclusion in the list of high-risk systems in accordance with Annex III, they would not fall under points 1 to 8 of Annex III and therefore could not be taken into account. Austria has therefore proposed the inclusion of an additional point in Annex III with the following wording: ‘Use by vulnerable groups or in situations that imply vulnerability to fundamental rights risks’. Otherwise, the European Commission would not be able to add high-risk consumer products to Annex III if required.
- o Enforcement is essential to make substantive law work in practice. Directive (EU) 2020/1828 on representative actions was adopted to reduce shortcomings in enforcement for consumers. Both the proposal for a Data Act (COM(2022) 68) and the proposal for an AI Liability Directive ((COM(2022) 496) provide for their inclusion in the Annex to Directive (EU) 2020/1828. It is incomprehensible that the proposal for an AI Act has not yet been included in the Annex to Directive (EU) 2020/1828.

In our view, the upcoming trilogue negotiations should be used to elaborate on and anchor in the text of the Directive the data protection and consumer protection concerns that we have already put forward, in order to amend the legal act in a way that complies with fundamental rights, in particular the right to data protection, and addresses important consumer protection concerns.

Austria wishes the future presidencies every success in the trilogue negotiations."

**Regulation amending Regulation (EU) No 910/2014 as regards
establishing a framework for a European Digital Identity**

Ad "B" item 7:

General approach

STATEMENT BY DENMARK

"Denmark supports the overall goal of the Regulation in order to ensure harmonized, secure and trusted digital identities available for all Europeans. Further, we support the development of European Digital Identity Wallets. In this respect, we appreciate the significant work carried out on this file and can support the text in the spirit of compromise.

However, we strongly regret that the Regulation maintains the requirement that all European Digital Identity Wallets must meet the requirements set out by the level of assurance 'high'. In our view, such a requirement is not proportionate with the vast majority of use-cases for the European Digital Identity Wallets and we are concerned that European Digital Identity Wallets will not be immediately available for citizens due to requirements such as using external secure hardware, reliance on new and expensive smartphones as well as burdensome processes for on-boarding and subsequent use of the Wallets.

In our view allowing Member States to issue European Digital Identity Wallets under the level of assurance 'substantial' would better facilitate uptake and use, while providing the necessary level of assurance for the vast majority of cases.

Additionally, we appreciate the exemption of micro and small enterprises from the obligation to accept the use of European Digital Identity Wallets, however we still find that the current regulation text may cause many service providers to be forced to implement wallet support for their services, without taking into account proportionality, relevance and demand for the European Digital Identity Wallet in these particular services."

STATEMENT BY AUSTRIA

"Austria supports the overall objective of the regulation in order to create a trusted framework which enables all EU citizens to use electronic identification in a secure way and introducing the EUDI-Wallet.

The latest amendments to the text seek harmonisation of eID means certification in mandating the Cybersecurity Act (CSA) for the EUDI Wallet and for eID means to be notified, respectively. While harmonised cybersecurity certification under (EU) 2019/881 is a desirable goal for the mid-term, there are no schemes readily available under CSA that comprehensively cover either EUDI Wallets or to-be-notified eID schemes.

As pointed out by Austria already, it is not realistic to have such schemes available within the currently given timeframes for the Member States to fulfil their obligations to notify eID means and to issue EUDI-Wallets. This situation could potentially lead to considerable problems in many Member States to implement this Regulation in a timely manner.

The text argues EUCC as an interim solution. Note, however, that EUCC is limited to certification of ICT products (cf. article 1 of EUCC; part 1, section 2 ISO IEC 15480, respectively), whereas the EUDI Wallet and eID means, depending on the implementation options, can be a combination of products or services, thus CSA not being applicable.

We think that an alternative parallel solution is required that allows certification of the Wallet in all possible configurations, but keeps the goal of converging to CSA, where applicable. Austria has already proposed such a solution by foreseeing conformity assessments by accredited bodies under Regulation (EC) No 765/2008 as long as appropriate cybersecurity schemes are missing.

Austria has been intensively involved in the negotiations and intends to remain a constructive partner. For this reason, Austria can agree to the current text in the sense of a compromise solution. However, we hope that a practical transitional solution on the topic of certification can be found in the course of the trilogue negotiations."
