EU Policy News Bulletin

ICT

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AT A GLANCE: COMMISSION SUGGESTS 4-STEP PLAN TO REMOVE UNANIMITY REQUIREMENT FOR TAX ISSUES AMID ON-GOING DISCUSSIONS ON THE DIGITAL TAX – EU REGRETS OUTCOME OF WITHDRAWAL AGREEMENT VOTE IN UK PARLIAMENT – ROMANIAN PRESIDENCY PROGRAMME ON CYBERSECURITY AND AI – EUROPEAN PARLIAMENT'S COMMITTEE ON INDUSTRY DEBATES CYBERSECURITY COMPETENCE CENTRE PROPOSAL – CONFERENCE ON CYBERSECURITY STANDARDISATION AND THE CYBERSECURITY ACT

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GLOSSARY

COUNCIL OF THE EU: Co-legislator, made up of representatives from Member State Governments. Has a six-month rotating presidency, currently held by Romania until the end of June 2019.

MEP: Member of the European Parliament, a co-legislator within the EU that is made up of representatives from political parties throughout Member States.

EUROPEAN COUNCIL: The European Council is made up of the leaders of the EU Member States. It defines the EU's overall political direction and priorities but does not pass laws.

TRIO PRESIDENCY PROGRAMME: Member States holding three successive presidencies of the Council of the European Union form a trio Presidency and work together over an 18-month period, on the basis of a common programme.

WITHDRAWAL AGREEMENT: The Brexit Withdrawal Agreement was a proposed agreement between the United Kingdom and the European Union on the terms of separation between the EU and the UK.

TRILOGUES: Informal negotiations between the European Parliament, Commission and Council of the EU to reach an agreement on a specific legislative proposal. Agreement then needs to be formally adopted by the Parliament and Council.

RAPPORTEUR: A Rapporteur is a Member of the European Parliament made responsible for handling a legislative proposal drawn up by the European Commission, both procedurally as well as with regard to the substance of the proposal. The Rapporteur leads negotiations with the other institutions on the dossier (trilogues) and handles the discussions in the responsible committee of the European Parliament as well as in plenary.

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DIGITAL TAX

Commission suggests 4-step plan to remove unanimity requirement for tax issues amid on-going discussions on the digital tax

©igor batrakov

The Commission presented in January a **Communication** that calls on EU countries to move away from the need for unanimity on certain tax files and towards a qualified majority system. This initiative had been announced by Commission President Jean Claude Juncker in his State of the Union Speeches of 2017 and 2018.

The shift to qualified majority would end what the Communication describes as a "unanimity culture" that encourages governments to focus on the preservation of domestic policies at the expense of the EU's general interest. The Commission argues the tax veto has undermined the EU's policy ambitions on climate change and in the financial, digital, and energy sectors.

A four-step plan is recommended to transition to qualified majority voting for tax:

First, it should apply to measures that have no direct impact on EU countries' taxing rights, bases or rates but are critical in combating tax abuse, evasion and avoidance, improving administrative cooperation and covering international agreements.

Second, it would cover measures designed to support other policy goals e.g. fighting climate change, protecting the environment or improving public health.

Third, it would be extended to tax measures that are already largely harmonized e.g. value-added tax (VAT) and excise duties (not rates).

Fourth, covering initiatives deemed necessary for the single market and for fair and competitive taxation in Europe e.g. the Common Consolidated Corporate Tax Base (CCCTB).

EU leaders are asked "to decide swiftly" to converge on a decision to develop steps 1 and 2, while they should only "consider" developing steps 3 and 4 and by a looser timeframe – by the end of 2025.

To move ahead with its plan, the Commission requires unanimity both in the European Council and no opposition from any national Parliament, leaving the plan vulnerable to the same veto that has several tax files blocked in the Council. The Communication is already being met with resistance from Member States

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as for smaller countries in particular the tax veto is one of the few tools that prevents larger countries like France and Germany from imposing policies on them, a safeguard that they are unlikely to relinquish.

Given the short timeframe for discussion in the Council with upcoming EU elections in May 2019, it is likely that the plan will be passed on to the next Commission to attempt to bolster support for it. It is not the first time the Commission has tried to get rid of unanimous agreement in the Council on tax rules, with EU countries pushing back each time.

An example of a contentious tax proposal currently facing difficulties in the Council is the one on a digital tax. Council meetings in January have shown strong opposition from countries like Spain and Estonia on the last update of the proposal, which significantly limits the scope of the tax to only cover revenue from online advertising. As previously, Denmark and Ireland were also strongly critical, while Finland and Sweden voiced "reservations".

This opposition could threaten France's plan to have the updated proposal (which has not yet been published) adopted in March 2019. In view of these difficulties, a number of Member States, notably France, Spain, Austria and Italy have either announced or are currently actively working on national digital taxes. French Minister of Economy, Bruno Le Maire, said in January that the French government aimed at presenting a specific Draft Bill by the end of February 2019, which would be "rapidly put before the Parliament for a vote". Moreover, he gave some new information regarding the tax rate (up to 5%) and the scope (the tax would work retroactively and be effective from 1 January 2019), which goes beyond the EU proposal and the compromise he made with Germany.

(Source: Interel)

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BREXIT

EU regrets outcome of Withdrawal Agreement vote in UK Parliament

©ratlos

EU decision-makers are closely following the Brexit-related developments in the UK, after the UK Government was defeated by 432 votes to 202 – a margin of 230 votes (a record defeat) on the vote of the Withdrawal Agreement. The European Commission's President Jean-Claude Juncker **regretted** in a statement the outcome of the vote, requesting clarity on what the UK now wants, warning that the risk of no-deal has increased and stressing that the EU will continue with its contingency work for a no deal. Michel Barnier, who led the negotiations from the EU side, repeated that the EU27 were open to changing their position if the UK would change its red lines.

In the meantime, the EU will continue with its own process of ratification of the Withdrawal Agreement. The first formal step was taken by Ministers this month and the deal has now been formally sent to the European Parliament for ratification. The European Parliament's Constitutional Affairs Committee (AFCO) will draft a report, with a working group formed by representatives from all the EU political groups steering it through the EP. The vote is likely to take place during the 11-14 March 2019 plenary. Final adoption would likely take place at the General Affairs Council of 19 March 2019.

In terms of next steps, there are different options that could materialise in the next months: a renegotiation of the Deal, the extension of Article 50, a No-Deal Brexit, or a second referendum. While preparations for a "No-Deal" are continuing in both sides, an extension of the negotiating period (so-called extension of Art. 50) seems now the most likely scenario. Upon request of the UK, the Council will have to agree unanimously on giving more time for the UK to leave with an agreement. An extension to 1 July 2019, when the new EP has its constituent sitting, is not expected to be too problematic – longer than that would risk having to hold European Parliament elections in the UK.

It is worth noting that this a fluid and fast-developing situation, with new information emerging almost on a daily basis.

(Source: Interel)

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COUNCIL PRESIDENCY

Romanian Presidency programme on cybersecurity and AI

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The Romanian Presidency of the Council of the EU, which took office as of 1st January, has published its **Presidency Programme**, as well as the **Trio Presidency Programme** (Romania, Finland, Croatia) and an **indicative calendar of meetings**.

The main theme of this Presidency is the need for cohesive EU policies among Member States, regions and citizens, with the aim to promote economic, social and territorial convergence. This should be done by enhancing competitiveness and closing development gaps, social progress, promoting connectivity and digitization, stimulating entrepreneurship and strengthening industrial policy.

On cybersecurity, the Presidency believes that the EU has "huge potential in terms of developing the digital economy", including enhancing cybersecurity. Romania wants to contribute to capitalising as much as possible on this potential. More concretely, the Presidency recognises that additional action is needed to improve the Union's resilience to cyberattacks. The presidency also notes that it will try to "advance and, where feasible, complete negotiations on current legislative files", including the proposal on cybersecurity competence centre.

Artificial Intelligence is mentioned throughout the document and it is noted that "Digital transformation and artificial intelligence are the main factors that will define 2030's industrial policies, for which we will need to develop adequate capabilities". The development of digital skills, both in this context and in the cybersecurity debate will be key. Finally, the Presidency wants to organise debates on various aspects of artificial intelligence with a view to facilitating the development of an appropriate ethical and legal framework to ensure that citizens and enterprises trust the technology, understand how it works and benefit from a predictable regulatory environment, which would protect fundamental rights and freedoms.

(Source: Interel)

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CYBERSECURITY COMPETENCE CENTRE

European Parliament's Committee on Industry debates Cybersecurity Competence Centre proposal

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The Industry, Research and Energy (ITRE) Committee of the European Parliament held a debate on the **Draft Report on the Competence Centre proposal** submitted by the Rapporteur, Member of European Parliament (MEP) Ms Julia Reda (Greens, DE), in early December 2018.

Overall, MEPs showed broad support to establish the Competence Centre and the Network of National Coordination Centres even though there is still some disagreement concerning the inclusion of dual-use technology. In this regard the Rapporteur stated that, while having dual-use is somewhat unavoidable, funding for offensive technologies should not be funded under this programme. Reda also advocated for individual experts to be included into the representation of the centres and MEP Paul Rübig (EPP, AT) highlighted the importance of understanding algorithmic opportunities and challenges, including algorithmic accountability and transparency. Some MEPs called for participation to the centres to be limited to companies who have a seat in Europe.

In the general debate around this proposal, it is worth noting that the American Chamber of Commerce to the EU is actively pushing to avoid restricting the participation of stakeholders based in third-countries, including in public procurement procedures.

The vote on the draft report is expected to be on 19 February 2019. While the Chair indicated that the aim is to conclude the first reading in Parliament and voting in Plenary prior to the elections in May 2019, MEP Reda believed that even if the Council adopts a general approach in March 2019, it would be too late to start trilogue negotiations between the Parliament and the Council before the elections.

It is worth highlighting that algorithmic transparency has been brought up in the context of this debate. Algorithms are viewed in Brussels as part of the wider AI debate, and explainability and transparency will feature in the debate on tech regulation in the next legislative cycle. Some first moves in that direction have been made by including provisions on transparency in ranking of search results on online platforms in the context of an update of consumer law and the proposal on platform-to-business relations.

(Source: Interel)

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CYBERSECURITY

Conference on Cybersecurity Standardisation and the Cybersecurity Act

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On 21 January, the European Union Agency for Network and Information Security (ENISA), the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI) organised the conference "Cybersecurity Standardisation and the Cybersecurity Act: Where are we now?".

Although the discussion remained technical, some interesting points were raised during the event. On certification, speakers underlined that this must be considered throughout the entire lifecycle of a product and must not be a barrier to entry or innovation. Speakers also noted that technological developments will always outpace existing formal standards. In that respect, other speakers gave examples of successful standards, attributing their success to the fact that they remained high level, not prescribing specific security solutions, thus enabling them to keep pace with technological developments.

Moreover, recommendations were made to develop, where possible, one standard for sectors that share some common elements, and consequently to only develop sector-specific standards for the non-common aspects. Overall, the conference was an example of sharing best practices among EU regulators and industry representatives.

It is worth noting that a European Commission representative confirmed that the Cybersecurity Act will be formally adopted by the European Parliament during the week 11-14 March 2019 and will enter into force at the end of April 2019 or beginning of May 2019.

"Detailed notes have been circulated to the ICT WG member and are available upon request"

(Source: Interel)