



**An Roinn Comhshaoil,
Aeráide agus Cumarsáide**
Department of the Environment,
Climate and Communications

**Report of the
Department of the Environment, Climate and Communications**

To the Oireachtas

Under Section 2(5) of the European Union (Scrutiny) Act, 2002
For the period January to June 2023

Introduction

This Report is in two parts. The first part sets out the principal developments in the policy areas which fell within the responsibility of the Department of the Environment, Climate and Communications during the Swedish Presidency of the EU from January to June 2023. The second part provides a summary of draft EU legislative proposals submitted by the Department for review by the Oireachtas during that period.

Part 1: Summary of Developments during the Swedish Presidency of the EU

COMMUNICATIONS

In general terms, the Swedish Presidency were well-resourced and displayed good organisational skills to deliver on their aims. Working Party meetings were well-organised, issues flagged in advance with timely publication of documents and compromise positions to enable Member States to react/contribute.

eIDAS Regulation: *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*

eIDAS sets the **standards and criteria for simple electronic signature, advanced electronic signature, qualified electronic signature, qualified certificates, and online trust services**. Furthermore, it set the rules on **electronic transactions** and their management.

Building on the work of the Slovenian and Czech Presidencies, the Swedes opened negotiations with the European Parliament in January. They focused on resolving the main gaps between Council and Parliament dealing with issues such as certification, issuance and business model for the digital wallet and the use of a unique and persistent identifier.

The Swedish Presidency was successful in agreeing these issues in principle and concluded a 1st Reading Legislative Agreement with the European Parliament, though there are residual issues that will require legal scrubbing under the current Spanish Presidency to conclude the file.

ePrivacy Regulation: *REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)*

The ePrivacy Regulation will repeal and replace the existing ePrivacy Directive (Directive 2002/58/EC) and aims to make Europe's online privacy rules fit for the digital age. It will update the rules in respect of the processing of end-users' electronic communications data (including metadata); the storage of information on end-user's terminal equipment; direct marketing using electronic communications services; and inclusion in publicly available directories. The ePrivacy Regulation particularises and complements the General Data Protection Regulation ("GDPR"). Accordingly, the GDPR will apply as the general rule and the ePrivacy Regulation will be *lex specialis* to it.

The Czech Presidency resumed discussions with the European Parliament and made little progress due to the wide gap in the positions between Council and EP. The Swedish Presidency decided to devote their resources to other files where substantial progress was more likely and help no meetings in the ePrivacy Regulation.

Gigabit Infrastructure Act: *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU.*

In February, the Commission presented a package of actions aiming to make faster and cheaper connectivity available to all citizens and businesses across the EU in line with the Digital Decade 2030, including the Gigabit Infrastructure Act (GIA) Regulation, The GIA proposal has several aims:

- To put forward new rules to enable faster, cheaper, and more effective rollout of Gigabit networks across the EU.
- To reduce administrative costs and red tape in relation to permit granting and to facilitate the joint use of physical infrastructure.
- To ensure utilities and local authorities are within scope, and to improve access to public infrastructure.
- To review and replace the Broadband Cost Reduction Directive (2014), which was not felt to have been progressed evenly among member states and set out targets which are now technologically outdated (e.g., target speeds of only 30mbps).
- To strengthen the role of the Single Information Point.

The Swedish opening discussions on the file and completed a first read through of the text with Member States, they presented a progress report to Ministers at the June Telecoms Council.

DATA ACT: *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on harmonised rules on fair access to and use of data* Page **4** of **11**

The Data Act will ensure fairness in the digital environment, stimulate a competitive data market, open opportunities for data-driven innovation and make data more accessible for all. It will lead to new, innovative services and more competitive prices for aftermarket services and repairs of connected objects.

The Data Act includes:

- Measures that enable users of connected devices to access the data generated by these devices and by services related to these devices. Users will be able to share

such data with third parties, boosting aftermarket services and innovation. Simultaneously, manufacturers remain incentivised to invest in high-quality data generation while their trade secrets remain protected.

- Measures to provide protection from unfair contractual terms that are unilaterally imposed. These aim to safeguard EU companies from unjust agreements, fostering fair negotiations and enabling SMEs to participate more confidently in the digital marketplace.
- Mechanisms for public sector bodies to access and use data held by the private sector in cases of public emergencies such as floods and wildfires, or when implementing a legal mandate where the required data is not readily available through other means.
- New rules that grant customers the freedom to switch between various cloud data-processing service providers. These rules aim to promote competition and choice in the market while preventing vendor lock-in. Additionally, the Data Act includes safeguards against unlawful data transfers, ensuring a more reliable and secure data-processing environment.
- Measures to promote the development of interoperability standards for data-sharing and data processing, in line with the EU Standardisation Strategy.

The Swedish Presidency concluded a political agreement with the European Parliament which will be subject to formal approval by the two co-legislators. Once adopted, the Data Act will enter into force on the 20th day following its publication in the Official Journal and will become applicable 20 months after the entry into force.

AI Act: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS

The draft regulation presented by the Commission in April 2021 is a key element of the EU's policy to foster the development and uptake across the single market of safe and lawful AI that respects fundamental rights.

The proposal follows a risk-based approach and lays down a uniform, horizontal legal framework for AI that aims to ensure legal certainty. It promotes investment and innovation in AI, enhances governance and effective enforcement of existing law on fundamental rights and safety, and facilitates the development of a single market for AI applications. It goes hand in hand with other initiatives, including the Coordinated Plan on Artificial Intelligence which aims to accelerate investment in AI in Europe.

Under the Czech Presidency, Telecoms Council agreed a General Approach on the file, the Swedish Presidency opened negotiations with the European Parliament and made

substantial progress on the main issues culminating in a progress report to Ministers at the Telecoms Council in June 2023.

CYBER

EU Cyber Resilience Act: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020

The European Cyber Resilience Act (CRA) aims to set the boundary conditions for the development of secure products with digital elements by ensuring that hardware and software products are placed on the market with fewer vulnerabilities and that manufactures take security seriously throughout a product's life cycle. It also aims to create conditions allowing users to take cybersecurity into account when selecting and using products with digital elements.

The Act splits products covered into categories. Products without critical cybersecurity vulnerabilities will be self-assessed by the responsible companies. The remaining products will be split into different Classes based on their level of risk and will be subject to more stringent conformity assessments. There are also vulnerability and incident disclosure requirements. Discussions are ongoing around the scope of the Act and classification of products.

The Swedish Presidency advanced discussions on the file and published several compromise texts to facilitate a move towards consensus at Council Working Groups. The ambition of the Spanish presidency is to agree a general approach on this text by mid-July, to begin trilogue negotiations in September.

Cybersecurity framework for the EU institutions: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union.

The Regulation to achieve a high common level of cybersecurity across the framework of EU institutions, bodies and agencies mirrors the requirements imposed by NIS2 on public authorities in Member States. It aims to institute a "high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union". The key elements of the proposal for Cybersecurity Regulation are to:

- Strengthen the mandate of CERT-EU and provide the resources it needs to fulfil it.
- Require from all EU institutions, bodies, offices, and agencies to:
 - Have a framework for governance, risk management and control in the area of cybersecurity.
 - Implement a baseline of cybersecurity measures addressing the identified risks.
 - Conduct regular maturity assessments.
 - Put in place a plan for improving their cybersecurity, approved by the entity's leadership.
 - Share incident-related information with CERT-EU without undue delay.
- Set up a new inter-institutional Cybersecurity Board to drive and monitor the implementation of the regulation and to steer CERT-EU.

The Swedish Presidency led the trilogue negotiations with the Parliament which the Spanish Presidency are hoping to complete in July.

EU Cyber Solidarity Act: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents

The Cyber Solidarity Act seeks to strengthen solidarity at Union level to better detect, prepare and respond to cybersecurity threats and incidents. The Proposal has three aims:

- The deployment of a pan-European infrastructure of SOCs (European Cyber Shield) to build and enhance common detection and situational awareness capabilities.
- The creation of a Cyber Emergency Mechanism to support Member States in preparing for, responding to an immediate recovery from significant and large-scale cybersecurity incidents. Support for incident response shall also be available to European institutions, bodies, offices, and agencies of the Union (EUIBAs).
- The establishment of a European Cybersecurity Incident Review Mechanism to review and assess specific significant or large-scale incidents.

The proposal would draw on funding from the Digital Europe Programme to establish the European Cyber Shield and Cyber Emergency Mechanism. The Cyber Emergency Mechanism will ensure that preparedness and response to cybersecurity incidents are improved by testing entities in crucial sectors such as finance, energy and healthcare for potential weaknesses that could make them vulnerable to cyber threats, creating an EU Cybersecurity Reserve made up of incident response services from private service providers that can be deployed at the request of Member States or Union Institutions, bodies and agencies, to help them address significant or large-scale cybersecurity incidents, as well as a mechanism to support a Member State that offers mutual assistance to another Member State affected by a cybersecurity incident.

There has been no agreed general approach under the Swedish Presidency, the Spanish presidency are hoping to agree an approach by December.

European Cybersecurity Certification Schemes under the European Cyber Security Act

The European Cybersecurity Act (ECA) (Regulation EU 2019/881) came into force on 27 June 2019. The ECA has two elements: to strengthen the powers of ENISA, the European Union Agency for Cybersecurity, by making it a permanent agency of the EU; and to establish a European cybersecurity certification framework which will ensure the application of common cybersecurity certification schemes for ICT products, services, and processes. The system of certification is intended to address regulatory fragmentation in the single market, in which several Member States have national schemes. The ECA proposes that each scheme will have three levels of certification – basic, substantial, and high – with the high level intended for use by operators of essential services as defined in the NIS2 Directive. ENISA is tasked with developing candidate schemes, which are considered by a group of Member States' technical experts – the European Cybersecurity Certification Group (ECCG). The Commission then takes the candidate scheme and the ECCG opinion and drafts an implementing act to give legal effect to the scheme. ENISA currently has three candidate schemes in development, one of which is intended to cover cloud computing services (called EUCS). The provision of a cloud certification scheme would have a positive impact on cyber resilience and there is considerable interest among cloud service providers in Ireland – including SMEs and startups – of obtaining EU certification to facilitate trading in the Single Market.

In 2021 a draft of the EUCS proposal was shared with technical experts in Member States, and a major issue of contention arose regarding the inclusion in the high level of certification of provisions relating to sovereignty or nationality of suppliers.

The EUCS is currently being discussed at the European Cybersecurity Certification Group (ECCG) by the technical experts and was the subject of discussion in May 2023. Ireland is represented on that group by the Head of Certification in the National Cyber Security Centre.

There has been some discussion of this scheme at the Horizontal Working Party on Cyber Issues (HWPCI) under the Swedish presidency, because of the political elements in the proposed scheme. Ireland has strong concerns about the impact of the proposals, and this will no doubt be discussed under the Spanish presidency.

European Cyber Security Act - Proposed amendment regarding managed security services

The Commission made a proposal to amend the Cyber Security Act as regards managed security services in April 2023

The proposed amendment aims to enable, by means of Commission implementing acts, the adoption of European cybersecurity certification schemes for 'managed security services', in addition to information and technology (ICT) products, ICT services and ICT processes, which are already covered under the Cybersecurity Act. Managed security services play an increasingly important role in the prevention and mitigation of cybersecurity incidents.

Some Member States have already begun adopting certification schemes for managed security services. There is therefore a growing risk of fragmentation of the internal market for managed security services owing to inconsistencies in cybersecurity certification schemes across the Union. This proposal enables the creation of European cybersecurity certification schemes for those services to prevent such fragmentation.

There has been some discussion of this scheme at the HWPCI under the Swedish presidency. The Spanish presidency are hoping to agree an approach by December.

CLIMATE – progress on Fit for 55

Fit for 55 is an extensive legislative programme on climate, energy and transport, which will enable EU Member States to reduce emissions by at least 55 per cent by 2030 and become climate-neutral by 2050.

Under the Swedish Presidency, the Council and the Parliament agreed on important components of the EU's Fit for 55 climate package and many of the proposals were adopted.

The key files in question, including strategic Irish concerns were as follows:

1. Revision of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading (ETS) adopted by the Council on 25 April 2023 – includes a derogation for Ireland on the application of the scheme relative to Ireland's carbon tax regime.
2. Regulation establishing a Social Climate Fund, adopted by the Council on 25 April 2023 – linked to the ETS and as such to the derogation for Ireland - a successful outcome for Ireland.
3. Revision of Regulation (EU) 2018/842 on reductions of binding annual greenhouse gas emissions by Member States from 2021 to 2030 (ESR or Effort Sharing Regulation), adopted by the Council on 28 March 2023 – no major issues for Ireland.
4. Revision of Regulation (EU) 2018/841 on greenhouse gas emissions and removals from land use, land-use change and forestry (LULUCF), adopted by the Council on 28 March 2023 – includes a flexible mechanism successfully negotiated for Ireland in recognition of historical legacy issues associated with, inter alia, organic soils.
5. Revision of Regulation (EU) 2019/631 setting CO₂ emission performance standards for new passenger cars and new light commercial vehicles (ventilation) adopted by the Council on 28 March 2023 – no major issues for Ireland.

ENVIRONMENT

The SE Presidency was conducted in a very efficient manner with significant progress being achieved in relation to the Environmental Agenda.

The first Environment Council was held on the 16th of March and the second on the 20th of June.

In respect of the Environmental Agenda under the DECC remit, a General Approach or negotiating mandate with the European Parliament was achieved on the following files:

1. Industrial Emissions Directive – IED
2. Industrial Emissions Portal.
3. F-Gases
4. Ozone Depleting Substances (ODS),
5. waste shipment and
6. electrical and electronic waste.

While the Critical Raw Materials file is being progressed under the COMPET formation, the policy and implementation areas lie primarily with DECC. This file was introduced to the WG on the 16th of March 2023 and after 11 working group meetings a compromise text was presented to Coreper on the 30 June. A General approach has been reached on this file.

These files will now be progressed by way of Trilogue negotiations with the Council represented by the Presidency, the Commission, and the European Parliament. The incoming Spanish Presidency is optimistic about concluding the Trilogue negotiations during their six-month term.

While the Proposal for a Directive on protecting the environment using criminal law is being managed in the Working Party for Judicial Cooperation in criminal matters formation, DECC has been working closely with Officials from the Department of Justice on progressing this file. A General Approach has been agreed on this file and the Trilogue negotiations have started.

A draft Council Decision authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law was also commenced under the Swedish presidency. This work is not yet concluded and will pass to the Spanish Presidency.

The Packaging and Waste Packing Regulation (PPWR) proposal continued to be discussed during the Swedish Presidency. Given the highly complex and technical nature of this file, the Swedish presidency were only able to progress the discussion and to prepare a revised draft which will require further detailed discussion during the Spanish Presidency.

ENERGY

The SE Presidency operated in a calmer global context than the previous Presidencies. While the war of aggression against Ukraine continues, the energy security of supply and price conditions are less precarious than they were in the second half of 2021 and throughout 2022. Thanks to the implementation of RePowerEU measures and great efforts by MS, the energy supply situation is stable for now and prices are closer to historic norms before Russia began the process of reducing gas supply in advance of the invasion of Ukraine. Nevertheless, the situation remains tense and constant vigilance is required as further supply and price shocks cannot be ruled out.

SE successfully finished work commenced under the CZ Presidency, namely completion of trilogues on the Renewable Energy Directive and the Energy Efficiency Directive.

SE achieved a Council General Approach on the Gas Package (Gas Regulation and Directive) at the March Energy Council.

SE Presidency commenced trilogues on the Energy Performance of Buildings Directive (EPBD) and on the Gas Package (Regulation and Directive) and these will continue during the ES Presidency. ES Presidency aims to complete negotiations by the end of their term.

Council did not reach a general approach on the Electricity Market Design Package (two Regulations, one addressing market design and the other addressing market manipulation; one Directive on consumer issues) at the June Energy Council in Luxembourg and this file has been passed to the ES Presidency. If Council reaches a general approach, ES Presidency will aim to complete trilogues before the end of the year.

Trilogues on the Methane Regulation will commence in the autumn and the Presidency wants to close the file before COP28 in November.

In the area of international Affairs, the Presidency will work towards a Council Decision on the Global Pledges for renewable energy and energy efficiency in advance of COP28. The Presidency will also work towards resolution of outstanding issues related to the Energy Charter Treaty (ECT).

The Presidency energy team will be involved in the negotiation of Critical Raw Materials and Net Zero legislation and there will be some joint sessions with Trade colleagues.

Part 2: Update on EU Legislative Proposals for which Information Notes were submitted to the Oireachtas Sub-Committee on European Affairs from January to June 2023

| Commission Proposal Number | Proposal/Measure | Date Reviewed | Decision of the Sub-Committee |
|-----------------------------------|---|----------------------|---|
| COM(22)677 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC | 21/03/2023 | For no further scrutiny |
| COM(23)063 | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) (Text with EEA relevance) | 21/03/2023 | For no further scrutiny No subsidiarity concerns |
| COM(23)094 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act) | 09/05/2023 | For no further scrutiny |
| COM(23)147 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market. Proposal for a REGULATION OF THE EUROPEAN | 25/04/2023 | For no further scrutiny No subsidiarity concerns |
| COM(23)148 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design. | 25/04/2023 | For no further scrutiny No subsidiarity concerns |
| COM(23)160 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020 | 30/05/2023 | For no further scrutiny No subsidiarity concerns |

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| | {SEC(2023) 360 final} - {SWD(2023) 160 final} - {SWD(2023) 161 final} - {SWD(2023) 162 final} | | |
| COM(23)166 | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive) | 30/05/2023 | For no further scrutiny |
| COM(23)178 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the approval and market surveillance of non-road mobile machinery circulating on public roads and amending Regulation (EU) 2019/1020 | 23/05/2023 | For no further scrutiny No subsidiarity concerns |
| COM(23)208 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2019/881 as regards managed security services | 11/07/2023 | For no further scrutiny |
| COM(23)209 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents. | 11/07/2023 | For no further scrutiny |