



**COUNCIL OF  
THE EUROPEAN UNION**

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**TELECOM 137  
MI 489  
DATAPROTECT 90  
JAI 996  
CAB 31  
INST 530  
CODEC 1362**

**PROGRESS REPORT**

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from: Presidency  
to: COUNCIL

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Nos. Cion prop.: 14322/10 TELECOM 98 MI 344 DATAPROTECT 69 CAB 15 INST 358  
CODEC 936

14358/10 TELECOM 99 MI 346 DATAPROTECT 70 JAI 794 CAB 16 INST  
361 CODEC 943

No prev, doc. 16602/10 TELECOM 131 MI 470 DATAPROTECT 89 JAI 980 CAB 30 INST  
519 CODEC 1316

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Subjects: - Proposal for a Regulation of the European Parliament and of the Council  
amending Regulation (EC) No 460/2004 establishing the European Network  
and Information Security Agency as regards its duration  
- Proposal for a Regulation of the European Parliament and of the Council  
concerning the European Network and Information Security Agency (ENISA)

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**I. INTRODUCTION**

1. On 30 September 2010, the Commission transmitted to the Council a proposal for a Regulation amending the Regulation 460/2004 establishing the European Network and Information Security Agency (hereafter "ENISA") as regards its duration.

2. On 1 October 2010 the Commission transmitted to the Council another proposal on a new modernised mandate for ENISA. This initiative is foreseen in the Digital Agenda for Europe<sup>1</sup>.
3. On 27 October 2010, the Council decided to request the opinion of the Committee of the Regions on both proposals.
4. In various meetings the Working Party on Telecommunications and Information Society examined these proposals as well as the impact assessments accompanying them<sup>2</sup>.

On 24 November 2010, the Permanent Representatives Committee agreed to submit the Presidency's progress report to the Council.

5. The aim of this progress report is to take stock of the progress made so far and identify the political questions to be tackled in the course of the upcoming negotiations. Since both proposals should be adopted according to the ordinary legislative procedure, the Council will need to shape its position for the upcoming discussions with the European Parliament, where a first exchange of views on the proposals is planned to take place in the Committee on Industry, Research and Energy (ITRE) on 9 December 2010.

## **II. THE COMMISSION PROPOSALS**

1. The Commission proposal on a new modernised mandate for ENISA aims to strengthen and modernise ENISA and to establish a new mandate for a period of five years. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).

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<sup>1</sup> Doc 9981/1/10 REV 1. Key Action 6 of the Digital Agenda for Europe stipulates that the Commission will present in 2010 measures aiming at a reinforced and high level Network and Information Security Policy, including legislative initiatives such as a modernised European Network and Information Security Agency (ENISA), and measures allowing faster reactions in the event of cyber attacks, including a CERT for the EU institutions.

<sup>2</sup> Doc. 14358/10 ADD 1 and ADD 2

2. The general objective of the proposal is to reinforce network and information security in Europe. This could be achieved by enabling the EU Member States and stakeholders to develop a high degree of capability and preparedness to prevent, detect and better respond to network and information security problems. The Commission believes that a modernised ENISA will play an important role in boosting trust by enhancing the security and privacy of users. Trust and security are key elements which underpin the development of the Information Society. Furthermore, it will help make European businesses more competitive and strengthen the development of the Single Market.
3. The Commission opts for an expansion of the tasks of ENISA to allow for a more dynamic response to the constantly evolving network and information security challenges. Although ENISA's new list of tasks does not include operational ones, it is updated and reformulated broadly. Additionally, the Commission proposes that ENISA should act as an interface between cyber-security experts and public authorities involved in the fight against cybercrime. With the aim to better align ENISA to the Union's policy and regulatory process, the Commission proposes that European institutions and bodies may refer to it for assistance and advice. The proposal further streamlines ENISA's management structures. In particular, its governance structure is strengthened, its internal procedures are simplified and the possibility of extending the term of office of the Executive Director for three years is introduced. Last but not least, the Commission proposes a gradual increase of ENISA's financial and human resources, without prejudice to the Commission's proposal for the post-2013 multi-annual financial framework.
4. In addition to this proposal, the Commission proposes to modify the Regulation 460/2004 establishing ENISA as regards its duration. It proposes to extend its current mandate expiring in March 2012 for 18 months. The Commission declares being aware that the legislative procedure in the European Parliament and the Council for the proposal on a modernised mandate for ENISA may require extensive time for debate. Therefore, it proposes this extension as an interim measure which would help to avoid a legal vacuum if the new mandate for ENISA is not adopted before the expiry of the current mandate.

### **III. PRINCIPAL REACTIONS OF THE DELEGATIONS**

1. Both proposals were examined by the Delegations in various meetings of the Working Party on Telecommunications and Information Society. In principle, all Delegations welcome the proposals and acknowledge the growing importance of network and information security in Europe. They agree that ENISA should continue its work in the field of network and information security which they consider as a rapidly evolving sector that is crucial for Europe. In principle, all Delegations welcome the streamlining of the ENISA's management structures. The majority of Delegations welcomes the approach that ENISA should not take up operational tasks. Concerning the extension of the current mandate, in principle all Delegations acknowledge the need to ensure the continuity of the ENISA, but do not wish that the proposed extension becomes an obstacle to a possible rapid adoption of the actual proposal on a modernised mandate.
2. Several Delegations would welcome further clarifications on the tasks of ENISA. Some Delegations would welcome more explicit references to concrete tasks, a more flexible mandate and/or an indefinite mandate. The role of ENISA in relation to cybercrime would need to be discussed further. Some Delegations would welcome a closer international cooperation. Several Delegations would moreover, welcome precisions concerning the budget of the modernised ENISA and its management structures. Some delegations have indicated their intention not to support any increase of financial resources for ENISA.

### **IV. MAIN ISSUES TO BE DISCUSSED FURTHER**

1. At this stage in the negotiations on the ENISA proposals in the Working Party on Telecommunications and Information Society, the main fundamental questions that require a common view from the Council include the following:

a. **ENISA's tasks**

Although the current list of tasks is in principle welcomed by Delegations, a fine tuning of several tasks should be made. In particular, the role of ENISA in relation to cybercrime should be further discussed. Some Delegations propose the addition of concrete tasks as for example, tasks related to resilience, organisation of regular network security exercises, cooperation between Member States and European institutions and bodies. These proposals would need to be examined in more detail, to determine the Council position for further negotiations.

b. **Duration of the mandate**

The majority of Delegations agree in principle to a mandate limited in time. Some Delegations however support an indefinite mandate or a longer mandate than the one proposed by the Commission.

c. **The role and the structure of the Bodies of ENISA**

The participation of the law enforcement and privacy protection agencies as fully fledged stakeholders to the Permanent Stakeholders' Group would need further discussion. This issue is linked to the role of ENISA in relation to cybercrime. Some Delegations propose to give the Management Board a role in the establishment of the work programme of the Agency. Others propose minor changes in the management structures in view of ensuring the effectiveness of Management Board.

d. **Funding**

In the current financial climate, some clarification on the contributions from Member States to the revenues of ENISA, as well as to its future budget would be welcomed by the majority of Delegations. The Commission already clarified in the meetings of the Working Party on Telecommunications and Information Society that Member States contribute on a voluntary basis.