



# COVID-19 KEY EU DEVELOPMENTS POLICY & REGULATORY UPDATE

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This regular alert covers key regulatory EU developments related to the COVID-19 situation. It does not purport to provide an exhaustive overview of developments and contains no analysis or opinion.

## LATEST KEY DEVELOPMENTS

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- European Commission approves further schemes under COVID Temporary Crisis Framework
- European Commission approves further schemes under Ukraine Temporary Crisis Framework

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- Council of the European Union adopts 2030 Policy Programme: Path to the Digital Decade
- Council of the European Union moves ahead on proposed framework for European Digital Identity

## COMPETITION & STATE AID

### State Aid

#### **Council of the European Union approves last national recovery plan (subject to meeting rule of law milestones (see [here](#)))**

On 15 December 2022, the Council adopted the [Implementing Decision approving Hungary's recovery plan under the Recovery and Resilience Facility \(RRF\)\\*](#), to be financed by €5.8 billion in grants (see [here](#)). This was the Council's last remaining approval of the 27 Member State recovery plans.

However, Hungary's recovery plan is conditioned on Hungary's full and effective implementation of 27 milestones on the rule of law, judicial independence, anti-corruption, and protecting the EU's budget. These reforms must be fulfilled before any payment to Hungary is possible (see also [Jones Day COVID-19 Update No. 93 of 1 December 2022](#)).

Of the 27 milestones, 17 of these respond to the Commission's launch against Hungary of a "conditionality mechanism of the rule of law procedure" in April 2022. This procedure against Hungary is the first one under the Conditionality Regulation, adopted in December 2020 to protect the EU budget (see [here](#) and [Jones Day COVID-19 Update No. 87 of 23 September 2022](#)).

The remaining milestones in Hungary's recovery plan concern other rule of law reforms related to judicial independence and audit and control measures.

Despite certain reforms underway by Hungary, the Commission considered that Hungary had failed to timely and adequately implement central aspects of the necessary 17 remedial measures agreed under the conditionality mechanism. The Commission thereby announced on 30 November 2022 that it maintained its proposed Council Implementing Decision (see below) for budget protection measures under the Conditionality Regulation against Hungary's breaches of the rule of law.

On 15 December 2022, the Council also adopted the [Implementing Decision on budget protection measures under the Conditionality Regulation against Hungary's breaches of the rule of law](#) (see [here](#)), including:

- a suspension of 55% of the commitments for three operational programs under cohesion policy, amounting to €6.3 billion; and
- a prohibition to enter into legal commitments with the public interest trusts for programs implemented in direct and indirect management.

The measures defined in this Implementing Decision are temporary in nature and can be lifted by the Council, acting on a proposal from the Commission, without loss of EU funding, if Hungary fully remedies the situation within two years.

*\* The RRF is the key component of NextGenerationEU, the EU's historic recovery fund for rebounding from the COVID-19 crisis (and now also the energy crisis). Member State recovery plans have set out the reforms and public investment projects foreseen for implementation with the RRF, which makes available €723.8 billion (in current prices) (i.e., grants totaling €338 billion and €385.8 billion in loans). These national recovery plans must comply with State aid rules.*

**European Commission approves further schemes under COVID Temporary Crisis Framework (see [here](#) and [here](#))**

The Commission has adopted a significant number of State aid measures under Article 107(2)b, Article 107(3)b and under the State aid COVID Temporary Crisis Framework adopted in March 2020.

With certain exceptions, the Temporary Framework applied until 30 June 2022.\* Among the latest schemes (until 19 December 2022):

- Reintroduction of a French aid scheme, including a budget increase of €10 million, intended to partially compensate sports clubs and organizers of sporting events for the damage suffered due to the coronavirus pandemic.
- €14.3 million Croatian support measure to compensate Zagreb International Airport for the damage suffered due to the coronavirus pandemic.
- €20 million Greek aid measure to compensate Athens International Airport for the damage suffered due to the coronavirus pandemic.
- €1.26 billion (HRK 9.5 billion) Croatian wage subsidy scheme to support employers and self-employed persons affected by the coronavirus pandemic.
- €25 million Italian investment support scheme towards a sustainable recovery of the economy in the region of Marche in the context of the coronavirus pandemic.
- €15 million Italian scheme to support the rail freight sector in the context of the coronavirus pandemic.

*\* Exceptions notably include the possibility for Member States to (i) create direct incentives for private investments (until 31 December 2022) and (ii) provide solvency support measures (until 31 December 2023) aimed at easing access to equity finance for smaller companies*

**European Commission approves further schemes under Ukraine Temporary Crisis Framework (see [here](#))**

The Commission continues to approve additional measures under the State aid Temporary Crisis Framework for State Aid measures in the context of Russia's invasion of Ukraine.

To recall, in adopting this Crisis Framework, the Commission noted that the conflict had significantly impacted the energy market, and steep rises in energy prices had affected various economic sectors, including some of those particularly affected by the COVID-19 pandemic, such as transport and tourism. The conflict has also disrupted supply chains for both EU imports from Ukraine (in particular, cereals and vegetable oils) and EU exports to Ukraine.

The Commission earlier prolonged (until 31 December 2023 (instead of 31 December 2022)) and expanded the Crisis Framework (see [Jones Day COVID-19 Update No. 90 of 28 October 2022](#)).

Among the latest schemes under the Crisis Framework (until 19 December 2022):

- €80 million Finnish recapitalisation measure to support Meyer Turku

Oy in the context of Russia's war against Ukraine.

- Amendments to Maltese schemes, including €4.5 million budget increase, to support the agricultural, fisheries and aquaculture sectors in the context of Russia's war against Ukraine
- €1 billion Dutch scheme to support small energy users in the context of Russia's war against Ukraine.
- €20 million (CZK 500 million) Czech guarantee scheme to support medium and large companies in the context of Russia's war against Ukraine.
- Modifications to French scheme, including €2 billion budget increase, to support energy-intensive companies amid Russia's war on Ukraine
- Amendment to Italian scheme, including €800 million budget increase, to support the agricultural, forestry, fisheries and aquaculture sectors in the context of Russia's war against Ukraine.
- Amendments to an existing Spanish scheme to support companies, including an increase of the maximum aid ceilings for limited amounts of aid, in the context of Russia's war against Ukraine.
- €2 million Lithuanian scheme to support the horticultural sector, in particular apple producers, in the context of Russia's war against Ukraine.
- €1.2 billion Irish scheme to support companies in the context of Russia's war against Ukraine.
- €1.9 million Slovenian scheme to support the beekeeping sector in the context of Russia's war against Ukraine.
- €200,000 Cypriot scheme to support the wine producers of the 'Xinisteri' and 'Dopio Mavro' varieties in the context of Russia's war against Ukraine.
- Amendments to existing Hungarian schemes, including €3 billion (HUF 1.23 trillion) budget increase, to support companies in the context of Russia's war against Ukraine.
- €45 million Portuguese scheme to support gas-intensive businesses in the context of Russia's war against Ukraine.
- Amendments to an existing Italian scheme, including a €5.7 billion budget increase, to support companies in Southern Italy in the context of Russia's war against Ukraine.
- Amendments to an existing Flemish scheme, including a €700 million budget increase, to support companies in the context of Russia's war against Ukraine.
- €250 million Flemish scheme to support companies facing increased energy costs in the context of Russia's war against Ukraine.
- Amendments to a scheme to support companies active in fast ferry passenger transport between the islands of Malta and Gozo,

including an overall budget increase by €3 million, in the context of Russia's war against Ukraine.

- €1 billion French scheme to support companies in the context of Russia's war against Ukraine.

Notably, the Crisis Framework complements the various possibilities for Member States to design measures in line with existing EU State aid rules. For instance, State aid measures under the Crisis Framework may be cumulated with aid granted under the COVID-19 Temporary Framework, provided that their respective cumulation rules are respected.

The Crisis Framework, applicable since 1 February 2022, will be in place until 31 December 2023. During its period of application, the Commission will keep the Framework under review in light of developments regarding the energy markets, other input markets, and the general economic situation. Prior to the Crisis Framework's end date, and in view of maintaining legal certainty, the Commission will assess whether it should be prolonged.

## TRADE / EXPORT CONTROLS

### **Council of the European Union expands sanctions against Russia and Iran (see [here](#) and [here](#))**

The EU relies on restrictive measures (sanctions) as one of its tools to advance its Common Foreign and Security Policy (CFSP) objectives, such as safeguarding EU's values, fundamental interests, and security; preserving peace; and supporting democracy and the rule of law.

Sanctions include measures such as travel bans (prohibition on entering or transiting through EU territories); asset freezes; prohibition on EU citizens and companies from making funds available to the listed individuals and entities; ban on exports (e.g., no exports to Iran of equipment that might be used for internal repression and of equipment for monitoring telecommunications).

Among the most recent additions to EU sanctions:

- **Russia:** On 16 December 2022, the Council adopted a [ninth package of sanctions](#) against Russia for its war against Ukraine.\* The package includes, amongst others: new export restrictions on sensitive dual-use and advanced technologies that contribute to Russia's military capabilities and technological enhancement; sanctioning of three additional Russian banks; restricting direct exports of drone engines to Russia and the export to any third countries, such as Iran, where there is a suspicion that they will be used in Russia; and an additional 141 individuals and 49 entities added to the list of those subject to a freezing of their assets.

Altogether, EU restrictive measures now apply to a total of 1386 individuals and 171 entities.

The European Commission's [Q&A](#) on the ninth package of sanctions provides further details (see [here](#)). The Q&A, in particular, specifies that none of the EU's sanctions adopted against Russia prevent the supply of agri-food, medical equipment or medicines for the general population in Russia. Also, no EU sanctions would prohibit third countries from purchasing Russian fertilizers.

\* *An in-depth analysis of the ninth package of sanctions against Russia is available from the authors of the COVID-19 Update (see contact details*

*below for Nadiya Nychay (Brussels) and Rick van 't Hullenaar (Amsterdam)).*

- Iran: On 12 December 2022, the Council added 4 individuals and 4 entities to the list of those subject to restrictive measures for undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, in view of their role in developing and delivering Unmanned Aerial Vehicles (UAVs) used by Russia in its war against Ukraine.

The Council also added 20 individuals and 1 entity to the list of those subject to restrictive measures in the context of the existing Iran human rights sanctions regime. This is in view of their role in the death of Mahsa Amini and the violent response to the recent demonstrations in Iran.

Provision of humanitarian aid: The Commission, to recall, has also provided guidance on the provision of humanitarian aid in compliance with EU sanctions. The Commission most recently published a Guidance Note in June 2022 (see [here](#)), which noted the importance of clarifying humanitarian exceptions to EU sanctions imposed in response to Russia's invasion of Ukraine, although the Guidance Note seeks to provide clarifications for all EU sanctions regimes.

This Guidance Note notably builds on previous guidance of August 2021 on the provision of humanitarian aid to fight the COVID-19 pandemic (clarification on COVID-19 vaccines and therapeutics, EU counter-terrorism sanctions and Iran, Nicaragua, Syria, Venezuela sanctions regimes) (see [here](#) and [Jones Day COVID-19 Update No. 59 of 21 August 2022](#)).

In particular, the Guidance Note provides a series of hypothetical cases on the application of sanctions. These include various accompanying references to the August 2021 COVID-19 guidance as a source of clarification (e.g., If a designated (sanctioned) person intervenes in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. Insofar as no funds or economic resources are made available to a designated person, the Iran Regulations do not prohibit liaising with the former).

**EU-US Trade and Technology Council issues Joint Statement following third Ministerial Meeting (see [here](#))**

On 5 December 2022, the EU-US Trade and Technology Council (TTC) issued a Joint Statement following its third Ministerial Meeting, which focused on global crises, including Russia's war against Ukraine and the heightened assertiveness of autocratic regimes.

To recall, the TTC was launched in June 2021 and is central to the EU-US partnership. The TCC, entailing 10 Working Groups, is led by relevant government services to set out deliverables and coordinate technical work. The European Commission's Futurium platform allows stakeholders to join any of these 10 Working Groups, addressing areas such as Secure Supply Chains; Technology Standards; Climate and Clean Tech; and Access to and Use of Digital Tools (see also [Jones Day COVID-19 Update No. 84 of 17 May 2022](#)).

The Joint Statement, in particular, highlighted the following:

- Semiconductors: As Russia's war against Ukraine has put considerable pressure on global supply chains, the EU and US signed two agreements: (i) an early warning mechanism to cooperatively

address and mitigate semiconductor supply chain disruptions; and (ii) a commitment to unprecedented levels of reciprocal transparency on semiconductor subsidies, in view of avoiding a subsidy race.

TTC Working Group 3 – Secure Supply Chains, to recall, was launched to include a focus on semiconductors that sought to respond to a “perfect storm” of pandemic-related factors that led to shortages of certain semiconductors (e.g. surging demand for computers and technology products due to remote working and home schooling, while COVID-19-related shutdowns contributed to supply disruptions).

- Export controls / investment screening: TTC cooperation has been vital in swiftly deploying aligned export controls on advanced technologies against Russia. The EU and US agreed to further cooperate in this area, particularly with respect to information sharing. Discussions also continue on investment screening, focusing on security risks posed by certain investments in sensitive technologies.
- Expanding transatlantic trade: Towards increasing transatlantic trade, the Ministerial Meeting agreed to pursue the extension of the Mutual Recognition Agreement (MRA) on pharmaceuticals (vaccines) and the MRA on marine equipment. The EU and US also agreed to engage in a pilot project on digital tools initiatives in view of easing trade-related administrative burdens.

The next TTC meeting is planned for mid-2023, to be hosted by the EU.

**European Commission publishes third Counterfeit and Piracy Watch List (see [here](#))**

On 1 December 2022, the Commission published the third Counterfeit and Piracy Watch List, which identifies certain physical marketplaces or online service providers outside of the EU that reportedly engage in, facilitate or benefit from counterfeiting and piracy.\* The Watch List was compiled based on a consultation with concerned stakeholders, as well as contributions by Europol and EUIPO (European Union Intellectual Property Office).

The Watch List notes, in particular, that the COVID-19 pandemic aggravated existing trends in the trade in dangerous fake goods, citing the 2022 OECD/EUIPO Report on Illicit Trade: Dangerous Fakes (see [here](#)). The Report indicated that the pandemic particularly impacted trade in counterfeit medicines and other high risk sectors such as consumer goods and alcohol, as broken supply chains and shifting demand brought new opportunities for criminal activity.

The Commission will use the Watch List in ongoing cooperation with the EU's trading partners in the framework of intellectual property rights dialogues and technical cooperation programmes in China, Southeast Asia and Latin America. The Commission will also monitor local authorities' actions in relation to the listed marketplaces and service providers, as well as the measures taken by the operators, service providers and marketplace owners to address intellectual property infringements.

The Commission will regularly update the Watch List.

\* *The second Counterfeit and Piracy Watch List was published on 14 December 2020 (see [Jones Day COVID-19 Update No. 30 of 7 January 2021](#)).*

## MEDICINES AND MEDICAL DEVICES

**Council of the European Union adopts updated Recommendations lifting all restrictions on free movement and travel to the EU during COVID-19 pandemic (see [here](#) and [here](#))**

On 13 December 2022, the Council adopted updated Recommendations that lift all travel restrictions imposed during the COVID-19 pandemic. Member States should remove these restrictions as of the date of application of the updated Recommendations, which concern:

- (i) Free movement in the EU (Council Recommendation (EU) 2022/2547 amending Council Recommendation (UE) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic (see also [Jones Day COVID-19 Update No. 74 of 24 January 2022](#))), and
- (ii) Travel to the EU (Council Recommendation (EU) 2022/2548 on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912 (see also [Jones Day COVID-19 Update No. 77 of 23 February 2022](#))).

However, as the SARS-CoV-2 virus persists, the updated Recommendations retain a number of safeguards in case of a deteriorating epidemiological situation. For instance, on free movement in the EU, if a Member State considers that free movement restrictions are necessary due to a severe worsening of the epidemiological situation, these restrictions should be limited to requiring travellers to hold a valid EU digital COVID certificate; and on travel to the EU, when a variant of concern emerges in a third country, Member States might exceptionally establish an urgent, common and temporary travel restriction or travel requirements.

The updated Recommendations also provides guidance for Member States, and in particular:

- How to determine if there is a severe worsening of the epidemiological situation and what measures to take in such case, in coordination with the Council and the Commission;
- What measures to take in case of variants of concern or interest, such that Member States should activate the emergency brake mechanism; and
- What proof of vaccination, recovery and testing that Member States should accept, providing more detailed guidance on accepting EU Digital COVID Certificates.

The Recommendations apply as of 22 December 2022, the date of publication in the EU Official Journal.

**Council of the European Union adopts Conclusions on vaccination as effective tool for preventing disease and improving public health (see [here](#))**

On 9 December 2022, the EU Ministers for Health approved the Council Conclusions on vaccination as one of the most effective tools for preventing disease and improving public health.

The Council stressed that during the COVID-19 pandemic, strong vaccine hesitancy arose due to diverse factors. This included great mis- and disinformation about the pandemic in both digital and physical environments, posing risks to human health, health systems and effective crisis management.



The Council further noted the vital need for vaccination, as vaccination coverage rates in many regions across the EU fall well below the recommended levels, and infectious diseases can easily resurface under such circumstances.

The Council Conclusions provide Member States and the Commission with guidance on combatting vaccine hesitancy and preparing for upcoming challenges through EU cooperation. The Conclusions, in particular:

- Invite Member States to:
  - Amplify efforts to counter vaccine mis- and disinformation and apply a stronger, evidence-based and more strategic, harmonized approach to vaccine communications;
  - Promote and maintain vaccination campaigns; and
  - Support digitization of the healthcare system and explore the possibility of developing medical facilities' capacity of storing electronic information on citizens' vaccination status.
- Invite the Commission to :
  - Establish an expert forum on Vaccine Hesitancy to provide guidance on increasing vaccination coverage rates across the EU;
  - Strengthen coordination between EU policies on vaccination and on fighting disinformation;
  - Make recommendations on tackling vaccine hesitancy, as well as provide advice on national vaccination campaigns when requested; and
  - Examine possibilities to support the development of new vaccines against (re)emerging infectious threats.
- Invite Member States and the Commission to:
  - Support national policies to ensure equitable, accessible and appealing vaccination services to all eligible people;
  - Develop a virtual database to facilitate exchange of information on surpluses and shortages of essential vaccines; and
  - Support the European Medicines Regulatory Network through a well-resourced and flexible mechanism to consolidate its work and ensure its sustainability.

**Council of the European Union adopts Recommendation for new approach on cancer screening (see**

On 9 December 2022, the Council adopted a Recommendation on strengthening prevention through early detection: A new EU approach on cancer screening replacing Council Recommendation 2003/878/EC. The Recommendation aims at introducing new best practices to improve cancer screening (see also [Jones Day COVID-19 Update No. 87 of 4 October 2022](#)).

As highlighted in the Recommendation, the COVID-19 pandemic disrupted

[here](#))

health promotion and prevention programmes, and negatively impacted access to early diagnosis and treatment of cancer at times of severe pressure on hospital facilities, which detrimentally impact cancer incidence and survival rates.

In announcing the Recommendation, European Commissioner for Health and Food Safety, Stella Kyriakides stated: *“Today’s adoption by the Council of new EU recommendations for cancer screening is a milestone for cancer care both at national and European level. 20 years have passed since the current recommendations were adopted and medicine has made incredible advances. It is high time that new, up-to-date, screening recommendations are rolled out across the EU and that the unacceptable disparities in access are addressed.”*

The Recommendation intends, among other objectives; to support the development of the EU-supported Cancer Screening Scheme to ensure that 90% of the EU population who qualify for breast, cervical and colorectal cancer screenings are offered screening by 2025. The new EU approach recommends:

- breast cancer screening with mammography for women aged 50 to 69, and suggested testing for women from 45 to 74 years;
- testing for human papilloma virus (HPV) as the preferred tool for cervical cancer screening for women aged 30 to 65, with an interval of five years or more;
- quantitative faecal immunochemical testing (FIT) as the preferred screening test for colorectal cancer screening, prior to referring individuals between 50 and 74 years old to follow-up colonoscopy.

The new screening approach also calls for pursuing the extension of screening programmes to prostate, lung and, under certain circumstances, gastric cancer.

To achieve these objectives, the Proposal recommends Member State actions, such as:

- Implementing cancer screening programs (e.g., offering evidence based and person-centred cancer screening; facilitating the development of piloting “risk stratified cancer screening” protocols, guidelines, and indicators for high quality; ensuring adequate, timely, and complementary diagnostic procedures and treatments);
- Registering and managing screening data (e.g., ensuring that all persons targeted by cancer screening programme are invited to take part in these; using available centralized data systems that adhere to data protection legislation);
- Monitoring the process and outcome of organized cancer screening (e.g., data and information should be appropriately registered, collected, stored and managed using the European cancer information system and should be quickly reported); and
- Introducing promising novel screening tests (e.g., implementing new cancer screening tests in routine healthcare, but only after evaluating these in randomized controlled trials and where these have conclusive scientific evidence of efficacy).

The Recommendation will be complemented by European guidelines with quality assurance schemes containing technical specifications for cancer screenings for specific types of cancer.

Furthermore, in announcing the Recommendation's adoption, the Commission noted that financial support for cancer screening is available, such as €38.5 million already committed for projects under the EU4Health Programme (see [here](#)) and €60 million under Horizon Europe (see [here](#)). Additional support can also be provided from the European regional, cohesion and social funds.

## CYBERSECURITY, PRIVACY & DATA PROTECTION

### Joint Declaration published on EU legislative priorities for 2023 and 2024 (see [here](#))

On 15 December 2022, the three EU institutions (European Parliament; Council; and European Commission) signed the Joint Declaration on EU Legislative Priorities for 2023 and 2024 (see [Jones Day COVID-19 Update No. 72 of 10 January 2022 for the 2022 Legislative Priorities](#)).

In presenting the Joint Declaration, European Parliament President Roberta Metsola stated: *“After two tough years of pandemic and with the Russian invasion still raging in Ukraine, this is the time when European leadership is needed the most. Common actions are needed to deliver European solutions for our citizens and businesses.”*

Together with the EU's Joint Conclusions on policy objectives and priorities for 2020-2024, adopted in December 2020 (see [here](#)), the Joint Declaration highlights key legislative proposals currently pending with the co-legislators, or to be proposed by the European Commission in 2023. The accompanying Working Document, in this respect, lists some 164 key legislative proposals (see [here](#)).

With regard to the objectives of achieving the digital transition and enhancing the EU's resilience, the EU institutions will prioritize initiatives focused on, for example:

- [Artificial intelligence](#) (e.g., Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), see also [Jones Day COVID-19 Update No. 88 of 3 October 2022](#));
- [Data access and use](#) (e.g., Proposal for a Regulation on harmonized rules on fair access to and use of data (Data Act), see also [Jones Day COVID-19 Update No. 77 of 23 February 2022](#)); and
- [Cyber resilience and cybersecurity](#) (e.g., Proposal for a Regulation on horizontal cybersecurity requirements for products with digital elements (Cyber Resilience Act), see also [Jones Day COVID-19 Update No. 87 of 23 September 2022](#)).

The three EU institutions will work together on the basis of the Joint Declaration and accompanying Working Document, in view of progressing as far as possible on these objectives by end-2024. The Joint Declaration notes the particular importance of delivering on these priorities in view of the 2024 European elections, when citizens will assess the EU's response to its current challenges.

**Council of the European Union adopts 2030 Policy**

**Programme: Path to the Digital Decade (see [here](#) and [here](#))**

On 8 December 2022, the Council adopted the Decision establishing the Digital Decade Policy Programme 2030 (“Path to the Digital Decade,” see also [Jones Day COVID-19 Update No. 86 of 8 September 2022](#)).

To recall, the COVID-19 pandemic exposed many vulnerabilities and dependencies of the EU and its Member States. In particular, the pandemic demonstrated the vital role of technology for economic and health resilience and the critical importance of EU’s digital transformation and sovereignty. The Digital Decade Policy Programme aims at addressing these issues by setting out concrete objectives and targets to be achieved by 2030.

The Programme identifies the digital targets that the EU and Member States aim to reach by the end of the decade in the following areas: digital skills and education; secure and sustainable digital infrastructure, while complying with EU data protection rules; digital transformation of businesses; and digitalization of public services, which in particular encourages Member States to apply the once-only principle of fostering the re-use of data, in accordance with EU data protection rules.

Towards accomplishing these targets, the Programme establishes a novel cooperation mechanism between the EU institutions and Member States. In particular:

- The Commission, in close cooperation with Member States, will establish EU-level projected trajectories for each of the digital targets. The Member States will then propose national strategic roadmaps in alignment with achieving at EU level the general objectives and the digital targets;
- The Commission will annually submit and present to the European Parliament and to the Council a comprehensive Report on the Digital Decade. The Report will assess progress of the EU’s digital transformation towards the digital targets, as well as the state of compliance with the general objectives. The Report will monitor progress on the digital transformation, in particular, based on the EU and Digital Economy and Society Index (‘DESI’)\*; and
- Member States may propose multi-country projects to facilitate the achievement of the targets for digital transformation. These are large-scale projects that channel coordinated investments between the EU, Member States and, where appropriate, other public or private stakeholders.

The Programme indicates that multi-country projects shall be directed at pursuing a list of objectives (e.g., reinforcing the EU’s technological leadership, innovation and industrial competitiveness in critical technologies; addressing strategic vulnerabilities and dependencies of the EU along the digital supply chains in order to enhance their resilience, etc.).

The Decision was published in the EU Official Journal on 19 December 2022, with entry into force on 8 January 2023.

*\*The Programme defines DESI as “an annual set of analyses and measurement indicators on the basis of which the Commission monitors the EU’s and the Member States’ overall digital performance across several policy dimensions”.*

**Council of the European Union moves ahead on proposed framework for European Digital Identity (see [here](#) and [here](#))**

On 6 December 2022, the Council adopted its common position (or general approach) on the Proposal for a Regulation establishing a framework for a European Digital Identity (see [here](#) and also [Jones Day COVID-19 Update No. 50 of 8 June 2022](#)).

Under the proposed Regulation, all EU citizens, residents, and businesses would benefit from European Digital Identity Wallets, which will help prove their identity and share electronic documents (e.g., for online banking or other online services). The Commission noted the urgency of this proposal in the context of the pandemic, which accelerated the need for effective and user-friendly digital services across the EU.

The Council's general approach introduces several changes to the proposed Regulation, such as the following:

- Further developing the concept of the Wallet and its interplay with national electronic identification means;
- Providing that the wallet must be issued within an electronic identification system that fulfills “assurance level high”;<sup>\*</sup>
- Clarifying that the Cybersecurity Act framework fully applies, including the peer review mechanism between national cybersecurity certification authorities provided within the Cybersecurity Act (see also [Jones Day Commentary, The EU Cybersecurity Act is Now Applicable, June 2019](#));
- Providing for explicit alignment with existing legislation to ensure access to hardware and software features as part of core platform services provided by gatekeepers. In particular, the Council adds a provision clarifying that business users of gatekeepers within the meaning of the Digital Markets Act (“DMA”) includes providers of wallets and issuers of notified electronic identification means acting in a commercial or professional capacity (see also [Jones Day COVID-19 Update No. 92 of 18 November 2022](#)); and
- Specifying that Member States must ensure the protection of personal data and prevent the profiling of users.

Once the European Parliament adopts its own position on the proposed Regulation, it will enter negotiations with the Council to reach an agreement.

Additionally, the Commission's proposed framework for a European Digital Identity also includes a Recommendation on a common Union Toolbox for a coordinated approach towards a European Digital Identity Framework (see [here](#)) and a Q&A on the proposed framework (see [here](#)).

*\*The proposed Regulation indicates that “assurance level high” shall refer to “an electronic identification means in the context of an electronic identification scheme, which provides a higher degree of confidence in the claimed or asserted identity of a person than electronic identification means with the assurance level substantial, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to prevent misuse or alteration of the identity.”*

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