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WORKING DOCUMENT

From: Presidency

To: Working Party on Civil Protection (CER Directive)

No. prev. doc.: WK 3341/2022, 7567/22, 7987/22, 8415/22

Subject: Proposal for a Directive of the European Parliament and of the Council on the resilience of critical entities - 4-column table resulting from the technical meetings of 6 and 16 May 2022

Delegations will find in Annex the four-column table concerning the above legislative proposal. The annotations on the 4th column are the result of the technical meetings of 6 and 16 May 2022 and prior technical meetings.

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the
resilience of critical entities**

2020/0365(COD)

Outcome of the technical meetings of 6 and 16 May 2022

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
1	2020/0365 (COD)	2020/0365 (COD)	2020/0365 (COD)	
Proposal Title				
2	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the resilience of critical entities	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the resilience of critical entities	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the resilience of critical entities	
Formula				
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	

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Citation 1				
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	
Citation 2				
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
Citation 3				
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
Citation 4				
7	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p . .	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p . .	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C , , p . .	
Citation 5				
8	Having regard to the opinion of the Committee of the Regions ¹ ,	Having regard to the opinion of the Committee of the Regions ¹ ,	Having regard to the opinion of the Committee of the Regions ¹ ,	

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	1. OJ C [...], [...], p. [...].	1. OJ C [...], [...], p. [...].	1. OJ C [...], [...], p. [...].	
Citation 6				
9	Acting in accordance with the ordinary legislative procedure ¹ , 1. Position of the European Parliament [...] and of the Council [...].	Acting in accordance with the ordinary legislative procedure ¹ , 1. Position of the European Parliament [...] and of the Council [...].	Acting in accordance with the ordinary legislative procedure ¹ , 1. Position of the European Parliament [...] and of the Council [...].	
Formula				
10	Whereas:	Whereas:	Whereas:	
Recital 0				
10a			(0) Critical entities, as providers of essential services, play an indispensable role in the maintenance of vital societal functions or economic activities in the internal market, in an increasingly interdependent Union economy. The smooth operation of each critical entity heavily depends on its level of preparedness and resilience, enabling it to continue or to rapidly resume performing its activity whenever disruptions	

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			occur. It is therefore essential to set out a Union-wide framework aiming both at enhancing the resilience of critical entities in the internal market by laying down a minimal harmonised set of obligations and at assisting them through coherent, dedicated support and supervision measures.	
Recital 1				
11	(1) Council Directive 2008/114/EC ¹ provides for a procedure for designating European critical infrastructures in the energy and transport sectors, the disruption or destruction of which would have significant cross-border impact on at least two Member States. That Directive focused exclusively on the protection of such infrastructures. However, the evaluation of Directive 2008/114/EC conducted in 2019 ² found that due to the increasingly interconnected and cross-border nature of operations using critical infrastructure, protective measures relating to individual assets alone are insufficient to prevent all	(1) Council Directive 2008/114/EC ¹ provides for a procedure for designating European critical infrastructures in the energy and transport sectors, the disruption or destruction of which would have significant cross-border impact on at least two Member States. That Directive focused exclusively on the protection of such infrastructures. However, the evaluation of Directive 2008/114/EC conducted in 2019 ² found that due to the increasingly interconnected and cross-border nature of operations using critical infrastructure, protective measures relating to individual assets alone are insufficient to prevent all	(1) Council Directive 2008/114/EC ¹ provides for a procedure for designating European critical infrastructures in the energy and transport sectors, the disruption or destruction of which would have significant cross-border impact on at least two Member States. That Directive focused exclusively on the protection of such infrastructures. However, the evaluation of Directive 2008/114/EC conducted in 2019 ² found that due to the increasingly interconnected and cross-border nature of operations using critical infrastructure, protective measures relating to individual assets alone are insufficient to prevent all	

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	<p>disruptions from taking place. Therefore, it is necessary to shift the approach towards ensuring the resilience of critical entities, that is, their ability to mitigate, absorb, accommodate to and recover from incidents that have the potential to disrupt the operations of the critical entity.</p> <p>1. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p.75). 2. SWD(2019) 308.</p>	<p>disruptions from taking place. Therefore, it is necessary to shift the approach towards ensuring the resilience of critical entities, that is, their ability to mitigate, absorb, <u>react</u>, accommodate to and recover from incidents that have the potential to disrupt the operations <u>of provision of essential services</u> <u>by</u> the critical entity, <u>the free movement of essential services</u> <u>and the functioning of the internal market</u>.</p> <p>1. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p.75). 2. SWD(2019) 308.</p>	<p>disruptions from taking place. Therefore, it is necessary to shift the approach towards ensuring that risks are better accounted for, the role and duties of individual entities as providers of services essential to the functioning of the internal market are better defined and coherent, Union-wide rules are adopted to enhance the resilience of critical entities, that is, As such, critical entities should be in a position to reinforce their ability to mitigate, absorb, accommodate to prevent, protect against, respond to, resist, mitigate, absorb, accommodate and recover from incidents that have the potential to disrupt the operations of the critical entity provision of essential services.</p> <p>1. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p.75). 2. SWD(2019) 308.</p>	
Recital 2				
12	(2) Despite existing measures at	(2) Despite existing measures at	(2) Despite existing Currently,	

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	<p>Union¹ and national level aimed at supporting the protection of critical infrastructures in the Union, the entities operating those infrastructures are not adequately equipped to address current and anticipated future risks to their operations that may result in disruptions of the provision of services that are essential for the performance of vital societal functions or economic activities. This is due to a dynamic threat landscape with an evolving terrorist threat and growing interdependencies between infrastructures and sectors, as well as an increased physical risk due to natural disasters and climate change, which increases the frequency and scale of extreme weather events and brings long-term changes in average climate that can reduce the capacity and efficiency of certain infrastructure types if resilience or climate adaptation measures are not in place. Moreover, relevant sectors and types of entities are not recognised consistently as critical in all Member States.</p> <p><small>1. European Programme for Critical Infrastructure Protection (EPCIP).</small></p>	<p>Union¹ and national level aimed at supporting the protection of critical infrastructures in the Union, the entities operating those infrastructures are not <u>always</u> adequately equipped to address current and anticipated future risks to their operations that may result in disruptions of the provision of services that are essential for the performance of vital societal functions or economic activities. This is due to a dynamic threat landscape with an evolving <u>hybrid and</u> terrorist threat <u>threats</u> and growing interdependencies between infrastructures and sectors, as well as an increased physical risk due to natural disasters and climate change, which increases the frequency and scale of extreme weather events and brings long-term changes in average climate that can reduce the capacity, <u>efficiency and lifespan and efficiency</u> of certain infrastructure types if resilience or climate adaptation measures are not in place. Moreover, relevant sectors and types of entities are not recognised consistently as critical in all Member States. <u>At Union level there is no single recognised</u></p>	<p>while a number of measures at Union¹ and national level aimed aim at supporting the protection of critical infrastructures in the Union, the entities operating those infrastructures are not adequately equipped to address current and anticipated future could be legally better mandated and better equipped to address risks to their operations that may result in disruptions of the provision of services that are essential for the performance of vital societal functions or economic activities services . This is due to a dynamic threat landscape with, including an evolving terrorist threat, and growing interdependencies between infrastructures and sectors, as well as an increased physical risk due to natural disasters and climate change, which increases intensifies the frequency and scale of extreme weather events and brings long-term changes in average climate that can reduce the capacity and efficiency of certain infrastructure types if resilience or climate adaptation measures are not in place. Moreover, Moreover, the internal market is</p>	

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		<p><u><i>list of critical infrastructure sectors. Instead, different legal acts cover different sectors.</i></u></p> <p>1. European Programme for Critical Infrastructure Protection (EPCIP).</p>	<p>characterised by fragmentation in respect of the identification of critical entities, as relevant sectors and types of entities are not recognised consistently as critical in all Member States.</p> <p>1. European Programme for Critical Infrastructure Protection (EPCIP).</p>	
Recital 2a				
12a		<p><u><i>(2a) Certain critical infrastructures have a pan-European dimension, such as the European Organisation for the Safety of Air Navigation, Eurocontrol, and the Union's Global Satellite Navigation System, Galileo.</i></u></p>		
Recital 3				
13	<p>(3) Those growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in the sectors of energy, transport, banking, financial market infrastructure, digital infrastructure, drinking and</p>	<p>(3) Those growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in the sectors of energy, transport, banking, financial market infrastructure, digital infrastructure, drinking and</p>	<p>(3) Those growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in the sectors of energy, transport, banking, financial market infrastructure, digital infrastructure, drinking and</p>	

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	<p>waste water, health, certain aspects of public administration, as well as space in as far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programmes. These interdependencies mean that any disruption, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The COVID-19 pandemic has shown the vulnerability of our increasingly interdependent societies in the face of low-probability risks.</p>	<p>waste water, <u>food production, processing and delivery</u>, health, certain aspects of public administration, as well as space in as far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programmes. These interdependencies mean that any disruption <u>of essential services</u>, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The COVID-19 pandemic has shown the vulnerability of our increasingly interdependent societies in the face of low-probability risks.</p>	<p>waste water, health, as well as space. In terms of the energy sector and in particular the methods of electricity generation and transmission (in respect of supply of electricity), it is understood that where deemed appropriate, electricity generation may include electricity transmission parts of nuclear power plants, but exclude the specifically nuclear elements covered by relevant nuclear legislation including treaties and Community law. The certain aspects of public administration, as well as space sector is concerned, in as far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programmes. These interdependencies mean that any disruption, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting</p>	

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			in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The COVID-19 pandemic has shown the vulnerability of our increasingly interdependent societies in the face of low-probability risks.	
Recital 4				
14	(4) The entities involved in the provision of essential services are increasingly subject to diverging requirements imposed under the laws of the Member States. The fact that some Member States have less stringent security requirements on these entities not only risks impacting negatively on the maintenance of vital societal functions or economic activities across the Union, it also leads to obstacles to the proper functioning of the internal market. Similar types of entities are considered as critical in some Member States but not in others, and those which are identified as critical are subject to divergent requirements in different Member States. This results in additional and unnecessary administrative burdens for	(4) The entities involved in the provision of essential services are increasingly subject to diverging requirements imposed under the laws of the Member States. The fact that some Member States have less stringent security requirements on these entities not only risks impacting <u>creates varying levels of resilience but also impacts</u> negatively on the maintenance of vital societal functions or economic activities across the Union, it also leads <u>and leads to unfair competition and</u> to obstacles to the proper functioning of the internal market. <u>Investors and companies can rely on and trust critical entities that are resilient, and reliability and trust are cornerstones of a well-functioning internal market.</u> Similar types of	(4) The entities involved in the provision of essential services are increasingly subject to diverging requirements imposed under the laws of the Member States. The fact that some Member States have less stringent security resilience-enhancing requirements on these entities not only risks impacting negatively on the maintenance of vital societal functions or economic activities across the Union, it also leads to obstacles to the proper functioning of the internal market. Similar types of entities are considered as critical in some Member States but not in others, and those which are identified as critical are subject to divergent requirements in different Member States. This results in additional and unnecessary administrative	

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	companies operating across borders, notably for companies active in Member States with more stringent requirements.	entities are considered as critical in some Member States but not in others, and those which are identified as critical are subject to divergent requirements in different Member States. This results in additional and unnecessary administrative burdens for companies operating across borders, notably for companies active in Member States with more stringent requirements. <u><i>A Union framework will therefore also have the effect of levelling the playing field for critical entities across the Union.</i></u>	burdens for companies operating across borders, notably for companies active in Member States with more stringent requirements. It also results in an uneven playing field and disincentives to operate across borders.	
Recital 5				
15	(5) It is therefore necessary to lay down harmonised minimum rules to ensure the provision of essential services in the internal market and enhance the resilience of critical entities.	(5) It is therefore necessary to lay down harmonised minimum rules to ensure the provision <u><i>and free movement</i></u> of essential services in the internal market, <u><i>to enhance the resilience of critical entities and to improve cross-border cooperation between competent authorities. It is essential that those rules be future-proof. To that end, the aim of this Directive is to make critical entities resilient, thereby improving their capacity to ensure the continuous provision of</i></u>	(5) It is therefore necessary to lay down harmonised minimum rules to ensure the provision of essential services in the internal market and enhance the resilience of critical entities.	

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		<p><u>essential services in the face of a diverse set of risks. By laying down minimum rules, this Directive enables Member States to adopt or maintain more stringent rules to ensure the provision of essential services in the internal market and enhance</u> and enhance the resilience of critical entities.</p>		
Recital 6				
16	<p>(6) In order to achieve that objective, Member States should identify critical entities that should be subject to specific requirements and oversight, but also particular support and guidance aimed at achieving a high level of resilience in the face of all relevant risks.</p>	<p>(6) In order to achieve that objective, Member States should identify critical entities that <u>provide essential services in the sectors and subsectors set out in the Annex to this Directive. Those critical entites</u> should be subject to specific requirements and oversight, but also particular support and guidance aimed at achieving a high level of resilience in the face of all relevant risks.</p>	<p>(6) In order to achieve that objective high level of resilience, Member States should identify critical entities that should will be subject to specific requirements and oversight, but also particular support and guidance aimed at achieving a high level of resilience in the face of all relevant risks.</p>	
Recital 7				
17	<p>(7) Certain sectors of the economy such as energy and transport are already regulated or may be regulated in the future by sector-</p>	<p>(7) Certain sectors of the economy such as energy and transport are already regulated or may be regulated in the future by sector-</p>	<p>(7) Certain sectors of the economy such as energy and transport are already regulated or may be regulated in the future by sector-</p>	

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	<p>specific acts of Union law that contain rules related to certain aspects of resilience of entities operating in those sectors. In order to address in a comprehensive manner the resilience of those entities that are critical for the proper functioning of the internal market, those sector-specific measures should be complemented by the ones provided for in this Directive, which creates an overarching framework that addresses critical entities' resilience in respect of all hazards, that is, natural and man-made, accidental and intentional.</p>	<p>specific acts of Union law that contain rules related to certain aspects of resilience of entities operating in those sectors. In order to address in a comprehensive manner the resilience of those entities that are critical for the proper functioning of the internal market, those sector-specific measures should be <u>regarded as <i>lex specialis and should be</i></u> complemented by the ones provided for in this Directive, which creates an overarching framework that addresses critical entities' resilience in respect of all hazards, that is, natural and man-made, accidental and intentional.</p>	<p>specific acts of Union law that contain rules related to certain aspects of resilience of Where provisions of Union or national law require critical entities to assess risks relevant for the purposes of this Directive and to take measures to ensure their own resilience, those requirements should be adequately considered for the purposes of supervising critical entities' compliance with the provisions as set out in this Directive. On that basis, national competent authorities should be able to decide to exclude those critical entities operating in those sectors. In order to address in a comprehensive manner the resilience of from their supervisory objectives and plans under this Directive, in line with the risk based approach and with a view to alleviate the burden on those critical entities that are critical for the proper functioning of the internal market, those sector-specific. Member States should be empowered to decide the regime applicable to risk assessment and resilience measures should be complemented</p>	

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			<p>by the ones provided for in if they are at least equivalent to those of this Directive, which creates an overarching framework that addresses critical entities' resilience in respect of all hazards, that is, natural and man-made, accidental and intentional.</p> <p>Member States should nevertheless include all the sectors listed in the Annex in their strategy for reinforcing the resilience of critical entities, the risk assessment and the support measures pursuant to Chapter II and be able to identify critical entities in those sectors where the applicable conditions have been met.</p>	
Recital 8				
18	<p>(8) Given the importance of cybersecurity for the resilience of critical entities and in the interest of consistency, a coherent approach between this Directive and Directive (EU) XX/YY of the European Parliament and of the Council¹ [Proposed Directive on measures for a high common level of cybersecurity across the Union; (hereafter "NIS 2 Directive")] is</p>	<p>(8) Given the importance of cybersecurity for the resilience of critical entities and in the interest of consistency, a coherent approach between this Directive and Directive (EU) XX/YY of the European Parliament and of the Council¹ [Proposed Directive on measures for a high common level of cybersecurity across the Union; (hereafter "NIS 2 Directive")] is</p>	<p>(8) Given the importance of cybersecurity for the resilience of critical entities and in the interest of consistency, a coherent approach between this Directive and Directive (EU) XX/YY of the European Parliament and of the Council¹ [Proposed Directive on measures for a high common level of cybersecurity across the Union; (hereafter "NIS 2 Directive")] is</p>	

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	<p>necessary wherever possible. In view of the higher frequency and particular characteristics of cyber risks, the NIS 2 Directive imposes comprehensive requirements on a large set of entities to ensure their cybersecurity. Given that cybersecurity is addressed sufficiently in the NIS 2 Directive, the matters covered by it should be excluded from the scope of this Directive, without prejudice to the particular regime for entities in the digital infrastructure sector.</p> <p>1. [Reference to NIS 2 Directive, once adopted.]</p>	<p>necessary wherever possible. In view of the higher frequency and particular characteristics of cyber risks, the NIS 2 Directive imposes comprehensive requirements on a large set of entities to ensure their cybersecurity. Given that cybersecurity is addressed sufficiently in the NIS 2 Directive, the matters covered by it should be excluded from the scope of this Directive, without prejudice to the particular regime for entities in the digital infrastructure sector. <u>As a result, the competent authorities designated under the NIS 2 Directive will be responsible for the supervision of entities identified as critical entities or entities equivalent to critical entities under this Directive as regards matters that fall under the scope of that Directive.</u></p> <p>1. [Reference to NIS 2 Directive, once adopted.]</p>	<p>necessary wherever possible. In view of the higher frequency and particular characteristics of cyber risks, the NIS 2 Directive imposes comprehensive requirements on a large set of entities to ensure their cybersecurity. Given that cybersecurity is addressed sufficiently in the NIS 2 Directive, the matters covered by it should be excluded from the scope of this Directive, without prejudice to the particular regime for entities in the digital infrastructure sector.</p> <p>1. [Reference to NIS 2 Directive, once adopted.]</p>	
Recital 9				
19	(9) Where provisions of other acts of Union law require critical entities to assess relevant risks, take measures to ensure their	(9) Where provisions of other acts of Union law require critical entities to assess relevant risks, take measures to ensure their	(9) Where provisions of other acts of Union law require critical entities to assess relevant risks, take measures to ensure their	

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	<p>resilience or notify incidents, and those requirements are at least equivalent to the corresponding obligations laid down in this Directive, the relevant provisions of this Directive should not apply, so as to avoid duplication and unnecessary burdens. In that case, the relevant provisions of such other acts should apply. Where the relevant provisions of this Directive do not apply, its provisions on supervision and enforcement should not be applicable either. Member States should nevertheless include all the sectors listed in the Annex in their strategy for reinforcing the resilience of critical entities, the risk assessment and the support measures pursuant to Chapter II and be able to identify critical entities in those sectors where the applicable conditions have been met, taking into account the particular regime for entities in the banking, financial market infrastructure and digital infrastructure sector.</p>	<p>resilience or notify incidents, and those requirements are at least equivalent to the corresponding obligations laid down in this Directive, the relevant provisions of this Directive should not apply, so as to avoid duplication and unnecessary burdens. In that case, the relevant provisions of such other acts should apply. Where the relevant provisions of this Directive do not apply, its provisions on supervision and enforcement should not be applicable either. Member States should nevertheless include all the sectors listed in the Annex in their strategy for reinforcing the resilience of critical entities, the risk assessment and the support measures pursuant to Chapter II and be able to identify critical entities in those sectors where the applicable conditions have been met, taking into account the particular regime for entities in the banking, financial market infrastructure and digital infrastructure sector.</p>	<p>resilience or notify incidents, and those requirements are at least equivalent to the corresponding obligations laid down in this Directive, the relevant provisions of this Directive should not apply, so as to avoid duplication and unnecessary burdens. In that case, the relevant provisions of such other acts should apply. Where the relevant provisions of this Directive do not apply, its provisions on supervision and enforcement should not be applicable either.</p> <p>In order not to jeopardize the security of Member States should nevertheless include all the sectors listed in the Annex in their strategy for reinforcing the resilience or the security and commercial interests of critical entities, the risk assessment and the support measures pursuant to Chapter II and be able to identify critical entities in those sectors where the applicable conditions have been met, taking into account the particular regime for entities in the banking, financial market infrastructure and digital infrastructure sector access to,</p>	

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			exchange and handling of sensitive information shall be done carefully and with particular attention to the transmission channels and storage capacities that will be used by the relevant stakeholders.	
Recital 9a				
19a			(9a) This Directive should not be deemed to affect the competences of Member States and of their authorities in terms of administrative autonomy, organisation and functioning of the judiciary, parliaments or central banks, or affect their responsibility to safeguard national interest, particularly concerning public security, defence and national security. Moreover, this Directive should not apply to any entity, either public or private, that mainly carries out activities in the areas of defence, national security, public security or law enforcement. It should also not apply to the activities of entities conducted in these areas. Member States should perform	

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			<p>an individual assessment of entities that meet the criteria for being identified as a critical entity but also mainly carry out activities in the areas of national security, defence, public security or law enforcement. Upon that assessment of these specific activities, entities would be granted the benefit of the regime established by this Directive or fall outside of its scope. No Member State is to be obliged to supply information the disclosure of which would be contrary to the essential interests of its public security. National or Union rules for protecting classified information, non-disclosure agreements, and informal non-disclosure agreements are of relevance.</p>	
Recital 10				
20	<p>(10) In view of ensuring a comprehensive approach to the resilience of critical entities, each Member State should have a strategy setting out objectives and policy measures to be implemented. To achieve this, Member States should ensure that</p>	<p>(10) In view of ensuring a comprehensive approach to the resilience of critical entities, each Member State should have a strategy setting out objectives and policy measures to be implemented. To achieve this, <u>and taking into account the hybrid</u></p>	<p>(10) In view of ensuring a comprehensive approach to the resilience of critical entities, each Member State should have in place a strategy setting out objectives and policy measures to be implemented. That strategy should be designed to seamlessly</p>	

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	<p>their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority under this Directive and the NIS 2 Directive in the context of information sharing on incidents and cyber threats and the exercise of supervisory tasks.</p>	<p><u>nature of many threats and the Union’s strategy on resilience prepared by the Critical Entities Resilience Group, established by this Directive</u>, Member States should ensure that their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority<u>authorities of Member States</u> under this Directive and the <u>under</u> NIS 2 Directive in the context of, <u>including</u> information sharing on incidents and cyber threats and the exercise of supervisory tasks.</p>	<p>integrate existing policies, building wherever possible upon relevant existing national and sectoral strategies, plans or similar documents. To achieve this, Member States should ensure that their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority under this Directive and the NIS 2 Directive in the context of information sharing on cybersecurity risks, cyber threats and incidents and cyber non-cyber risks, threats and incidents and the exercise of supervisory tasks.</p>	
Recital 11				
21	<p>(11) The actions of Member States to identify and help ensure the resilience of critical entities should follow a risk-based approach that targets efforts to the entities most relevant for the performance of vital societal functions or economic activities. In order to ensure such a targeted approach, each Member State should carry out, within a harmonised framework, an assessment of all relevant natural and man-made risks that may</p>	<p>(11) The actions of Member States to identify and help ensure the resilience of critical entities should follow a risk-based approach that targets efforts to the entities most relevant for the performance of vital societal functions or economic activities. In order to ensure such a targeted approach, each Member State should carry out, within a harmonised framework, an assessment of all relevant natural and man-made risks, <u>including</u></p>	<p>(11) The actions of Member States to identify and help ensure the resilience of critical entities should follow a risk-based approach that targets efforts to the entities most relevant for the performance of vital societal functions or economic activities. In order to ensure such a targeted approach, each Member State should carry out, within a harmonised framework, an assessment of all relevant natural and man-made risks that may</p>	

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	<p>affect the provision of essential services, including accidents, natural disasters, public health emergencies such as pandemics, and antagonistic threats, including terrorist offences. When carrying out those risk assessments, Member States should take into account other general or sector-specific risk assessment carried out pursuant to other acts of Union law and should consider the dependencies between sectors, including from other Member States and third countries. The outcomes of the risk assessment should be used in the process of identification of critical entities and to assist those entities in meeting the resilience requirements of this Directive.</p>	<p><u><i>cross-sectoral and cross-border risks</i></u>, that may affect the provision of essential services, including accidents, <u><i>hybrid threats</i></u>, natural disasters, public health emergencies such as pandemics, and antagonistic threats, including terrorist offences, <u><i>criminal infiltration and sabotage</i></u>. When carrying out those risk assessments, Member States should take into account other general or sector-specific risk assessment carried out pursuant to other acts of Union law and should consider the dependencies between sectors, including from other Member States and third countries. <u><i>Member States should not consider as a risk any regular business risk to operations arising from market conditions or any risk arising from democratic decision-making.</i></u> The outcomes of the risk assessment should be used in the process of identification of critical entities and to assist those entities in meeting the resilience requirements of this Directive. <u><i>At their request the Commission should also be able to provide entities based in third countries with advisory expertise.</i></u></p>	<p>affect the provision of essential services, including accidents, natural disasters, public health emergencies such as pandemics, and hybrid threats or other antagonistic threats, including terrorist offences. When carrying out those risk assessments, Member States should take into account other general or sector-specific risk assessment carried out pursuant to other acts of Union law and should consider the dependencies between sectors, including from other Member States and third countries. The outcomes of the risk assessment should be used in the process of identification of critical entities and to assist those entities in meeting the their resilience requirements of this Directive..</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 12				
22	<p>(12) In order to ensure that all relevant entities are subject to those requirements and to reduce divergences in this respect, it is important to lay down harmonised rules allowing for a consistent identification of critical entities across the Union, while also allowing Member States to reflect national specificities. Therefore, criteria to identify critical entities should be laid down. In the interest of effectiveness, efficiency, consistency and legal certainty, appropriate rules should also be set on notification and cooperation relating to, as well as the legal consequences of, such identification. In order to enable the Commission to assess the correct application of this Directive, Member States should submit to the Commission, in a manner that is as detailed and specific as possible, relevant information and, in any event, the list of essential services, the number of critical entities identified for each sector and subsector referred to in the Annex</p>	<p>(12) In order to ensure that all relevant entities are subject to those requirements and to reduce divergences in this respect, it is important to lay down harmonised minimum rules allowing for a consistent identification of critical entities across the Union, while also allowing Member States to reflect national specificities. Therefore, common criteria and methodologies to identify critical entities should be laid down in a transparent manner. In the interest of effectiveness, efficiency, consistency and legal certainty, appropriate rules should also be set on notification and cooperation relating to, as well as the legal consequences of, such identification. In order to enable the Commission to assess the correct application of this Directive, Member States should submit to the Commission, in a manner that is as detailed and specific as possible, relevant information and, in any event, the list of essential services, the number of critical entities</p>	<p>(12) In order to ensure that all relevant entities are subject to those requirements and to reduce divergences in this respect, it is important to lay down harmonised rules allowing for a consistent identification of critical entities across the Union, while also allowing Member States to reflect national specificities exercise their decision making powers, adequately reflecting the role and importance of these entities as providers of services on their territory. Therefore, criteria to identify critical entities should be laid down. In the interest of effectiveness, efficiency, consistency and legal certainty, appropriate rules should also be set out on notification and cooperation relating to, as well as the legal consequences of, such identification. In order to enable the Commission to assess the correct application of this Directive, Member States should submit to the Commission, in a manner that is as detailed and specific as possible, relevant</p>	<p>(12) <i>COM Proposal of 10 March: The explanation in the Recital could be added to Recital 12 (NB the text used below is the COM proposal, without integrating the amendments of EP/Council).</i></p> <p>COM proposal line 22, Recital (12): <i>In order to ensure that all relevant entities are subject to those requirements and to reduce divergences in this respect, it is important to lay down harmonised rules allowing for a consistent identification of critical entities across the Union, while also allowing Member States to reflect national specificities. Therefore, criteria to identify critical entities should be laid down. In the process of identifying critical entities, Member States should start by considering types of entities in all the sectors and sub-sectors referred to in the Annex that are active on their territory. Applying the criteria laid down in this Directive, Member States should then identify critical entities which provide one or more essential services that</i></p>


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	and the essential service or services that each entity provides and any thresholds applied.	identified for each sector and subsector referred to in the Annex and the essential service or services that each entity provides and any thresholds applied.	information and, in any event, the list of essential services, the number of critical entities identified for each sector and subsector referred to in the Annex and, if used, thresholds , which can be presented as such or in aggregated form, meaning that the information can be averaged by geographic area, by year, sector, sub-sector, or by other means, and can include information on the range of the indicators provided and the essential service or services that each entity provides and any thresholds applied.	depend on an infrastructure located in the territory of the Member State undertaking the identification, such as a network, system or facility. If there is no entity meeting those criteria in a Member State, that Member State has no obligation to identify a critical entity in the corresponding sector or sub-sector. <i>In the interest of effectiveness, efficiency, consistency and legal certainty, appropriate rules should also be set on notification and cooperation relating to, as well as the legal consequences of, such identification. In order to enable the Commission to assess the correct application of this Directive, Member States should submit to the Commission, in a manner that is as detailed and specific as possible, relevant information and, in any event, the list of essential services, the number of critical entities identified for each sector and subsector referred to in the Annex and the essential service or services that each entity provides and any thresholds applied.</i>
Recital 13				
23				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(13) Criteria should also be established to determine the significance of a disruptive effect produced by such incidents. Those criteria should build on the criteria provided in Directive (EU) 2016/1148 of the European Parliament and of the Council¹ in order to capitalise on the efforts carried out by Member States to identify those operators and the experience gained in this regard.</p> <p>¹ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).</p>	<p>(13) Criteria should also be established to determine the significance of a disruptive effect produced by such incidents. Those criteria should build on the criteria provided in Directive (EU) 2016/1148 of the European Parliament and of the Council¹ in order to capitalise on the efforts carried out by Member States to identify those operators and the experience gained in this regard.</p> <p>¹ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).</p>	<p>(13) Criteria should also be established by the Member States to determine the significance of a disruptive effect produced by such incidents taking into account the criteria of Article 6(1). Those criteria should build on the criteria provided in Directive (EU) 2016/1148 of the European Parliament and of the Council¹ in order to capitalise on the efforts carried out by Member States to identify those operators and the experience gained in this regard.</p> <p>¹ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).</p>	<p>(13) <i>COM informal proposal of 10.3.22 linked to Line 102:</i></p> <p><i>The explanation in the Recital could be added to Recital 13 (NB the text used below is the COM proposal, without integrating the amendments of EP/Council).</i></p> <p><i>(13) Criteria should also be established to determine the significance of a disruptive effect produced by such incidents. Those criteria should build on the criteria provided in Directive (EU) 2016/1148 of the European Parliament and of the Council¹ in order to capitalise on the efforts carried out by Member States to identify those operators and the experience gained in this regard. The COVID-19 pandemic has shown the importance of ensuring the supply chain security and demonstrated how its disruption can have negative economic and societal impacts across a large number of sectors and across borders. Therefore, Member States should also consider effects on the supply chain, to the extent possible, when determining the dependency of other sectors [and</i></p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				subsectors]. 1. [1] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).
Recital 13a				
23a			(13a) Pursuant to sectoral Union law provisions, entities in the banking, financial market infrastructure and digital infrastructure sectors which may qualify as critical entities under this Directive are required to assess relevant risks, take measures to ensure their resilience and notify incidents. Given that those requirements are at least equivalent to the corresponding obligations laid down in this Directive, the provisions of Article 9a and Chapters III to V should not apply to those entities, so as to avoid duplication and unnecessary burdens on the entities. By consequence, the specific provisions on supervision and enforcement set out in	

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			<p>Chapter VI should not be applicable either to those entities. However, in order to reinforce the resilience of the internal market as a whole and maintain the coherence and comprehensive character of the Member States' competent authorities efforts and oversight, the dedicated strategies for reinforcing the resilience of critical entities, the risk assessments and the support measures as set out in Chapter II of this Directive should also be applicable in those specific sectors. Moreover, Member States should still identify which entities in those sectors qualify as critical entities, taking into account the particular regime for entities in the banking, financial market infrastructure and digital infrastructure sectors.</p>	
Recital 13b				
23b			<p>(13b) Moreover, with the same aim of avoiding duplication and unnecessary burdens on critical entities, this Directive should establish a generally applicable equivalence regime. Thus, in a</p>	

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			<p>set of clearly identified areas, measures that are equivalent to the measures pursuant to this directive and already taken by critical entities belonging to any sector in order to comply with their obligations under sector-specific acts of Union law can be recognised as equivalent by Member States. Accordingly, Member States should be able to exempt critical entities, in respect of recognised equivalent measures, from taking the specific measures required under this Directive.</p>	
Recital 13a				
23c		<p><u><i>(13a) In accordance with applicable Union and national law, including Regulation (EU) 2019/452 of the European Parliament and of the Council, which establishes a framework for the screening of foreign direct investments in the Union, the potential threat posed by foreign ownership of critical infrastructure within the Union is to be acknowledged because services, the economy and the free movement and safety of Union</i></u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>citizens depend on the proper functioning of critical infrastructure. It is crucial that Member States and the Commission be vigilant with regard to financial investments that foreign countries make in the operation of critical entities within the Union and the consequences that such investments could have on the ability to prevent significant disruptions.</u></p> <p><u>1. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</u></p>		
Recital 14				
24	<p>(14) Entities pertaining to the digital infrastructure sector are in essence based on network and information systems and fall within the scope of the NIS 2 Directive, which addresses the physical security of such systems as part of their cybersecurity risk management and reporting obligations. Since those matters are covered by the NIS 2 Directive, the obligations of this Directive do not</p>	<p>(14) Entities pertaining to the digital infrastructure sector are in essence based on network and information systems and fall within the scope of the NIS 2 Directive, which addresses the physical security of such systems as part of their cybersecurity risk management and reporting obligations. Since those matters are covered by the NIS 2 Directive, the obligations of this Directive do not</p>	<p>(14) Entities pertaining to the digital infrastructure sector are in essence based on network and information systems and fall within the scope of the NIS 2 Directive, Directive XXXX/XXXX [NIS2 Directive] requires entities to take appropriate technical and organizational measures to manage the risks posed to the security of network and information systems which</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>apply to such entities. However, considering the importance of the services provided by entities in the digital infrastructure sector for the provision of other essential services, Member States should identify, based on the criteria and using the procedure provided for in this Directive mutatis mutandis, entities pertaining to the digital infrastructure sector that should be treated as equivalent to critical entities for the purposes of Chapter II only, including the provision on Member States' support in enhancing the resilience of these entities. Consequently, such entities should not be subject to the obligations laid down in Chapters III to VI. Since the obligations for critical entities laid down in Chapter II to provide certain information to the competent authorities relate to the application of Chapters III and IV, those entities should not be subject to those obligations either.</p>	<p>apply to such entities. However, considering the importance of the services provided by entities in the digital infrastructure sector for the provision of other essential services, Member States should identify, based on the criteria and using the procedure provided for in this Directive mutatis mutandis, entities pertaining to the digital infrastructure sector that should be treated as equivalent to critical entities for the purposes of Chapter II only, including the provision on Member States' support in enhancing the resilience of these entities. Consequently, such entities should not be subject to the obligations laid down in Chapters III to VI. Since the obligations for critical entities laid down in Chapter II to provide certain information to the competent authorities relate to the application of Chapters III and IV, those entities should not be subject to those obligations either.</p>	<p>addresses the physical security of such systems as part of their cybersecurity risk management and reporting obligations those providers use in the provision of their services as well as to notify significant incidents and cyber threats. Since those matters are covered by the NIS 2 Directive, the obligations of this Directive do not apply to such entities. However, considering the importance of the services provided by entities in the digital infrastructure sector for the provision of other essential services, Member States should identify threats to the security of network and information systems can have different origins, therefore [NIS2 Directive] applies an "all-hazard" approach that includes the protection of network and information systems and their physical environment. The entities pertaining to the digital infrastructure sector are in essence based on the criteria and using the procedure provided for in this Directive mutatis mutandis, network and information systems and therefore the obligations imposed</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>on those entities pertaining to the digital infrastructure sector that should be treated as equivalent to critical entities for the purposes of Chapter II only, including the provision on Member States' support in enhancing the resilience of these entities. Consequently, such by [the NIS2 Directive] address in a comprehensive manner the physical security of such systems as part of their cybersecurity risk management and reporting obligations. However, considering the importance of the services provided by entities should not be subject to the obligations laid down in Chapters III to VI. Since the obligations for critical entities laid down in Chapter II to provide certain information to the competent authorities relate to the application of Chapters III and IV, those in the digital infrastructure sector to critical entities belonging to all other relevant economic sectors, Member States should identify, based on the criteria and using the procedure provided for in this Directive mutatis mutandis, entities should not be subject to those obligations</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			either pertaining to the digital infrastructure sector as critical entities.	
Recital 15				
25	(15) The EU financial services acquis establishes comprehensive requirements on financial entities to manage all risks they face, including operational risks and ensure business continuity. This includes Regulation (EU) No 648/2012 of the European Parliament and of the Council ¹ , Directive 2014/65/EU of the European Parliament and of the Council ² and Regulation (EU) No 600/2014 of the European Parliament and of the Council ³ as well as Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁴ and Directive 2013/36/EU of the European Parliament and of the Council ⁵ . The Commission has recently proposed to complement this framework with Regulation XX/YYYY of the European Parliament and of the Council [proposed Regulation on digital operational resilience for the financial sector (hereafter "DORA	(15) The EU financial services acquis establishes comprehensive requirements on financial entities to manage all risks they face, including operational risks and ensure business continuity. This includes Regulation (EU) No 648/2012 of the European Parliament and of the Council ¹ , Directive 2014/65/EU of the European Parliament and of the Council ² and Regulation (EU) No 600/2014 of the European Parliament and of the Council ³ as well as Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁴ and Directive 2013/36/EU of the European Parliament and of the Council ⁵ . The Commission has recently proposed to complement this framework with Regulation XX/YYYY of the European Parliament and of the Council [proposed Regulation on digital operational resilience for the financial sector (hereafter "DORA	(15) The EU financial services acquis establishes comprehensive requirements on financial entities to manage all risks they face, including operational risks and ensure business continuity. This includes Regulation (EU) No 648/2012 of the European Parliament and of the Council ¹ , Directive 2014/65/EU of the European Parliament and of the Council ² and Regulation (EU) No 600/2014 of the European Parliament and of the Council ³ as well as Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁴ and Directive 2013/36/EU of the European Parliament and of the Council ⁵ . The Commission has recently proposed to complement this framework with Regulation XX/YYYY of the European Parliament and of the Council legal framework will be complemented with Regulation XX/YYYY of the European Parliament and of the Council [proposed Regulation on digital	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>Regulation")⁶], which lays down requirements for financial firms to manage ICT risks, including the protection of physical ICT infrastructures. Since the resilience of entities listed in points 3 and 4 of the Annex is comprehensively covered by the EU financial services acquis, those entities should also be treated as equivalent to critical entities for the purposes of Chapter II of this Directive only. To ensure a consistent application of the operational risk and digital resilience rules in the financial sector, Member States' support to enhancing the overall resilience of financial entities equivalent to critical entities should be ensured by the authorities designated pursuant to Article 41 of [DORA Regulation], and subject to the procedures set out in that legislation in a fully harmonised manner.</p> <p>1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1). 2. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and</p>	<p>Regulation")⁶], which lays down requirements for financial firms to manage ICT risks, including the protection of physical ICT infrastructures. Since the resilience of entities listed in points 3 and 4 of the Annex is comprehensively covered by the EU financial services acquis, those entities should also be treated as equivalent to critical entities for the purposes of Chapter II of this Directive only <u>and, consequently, such entities should not be subject to the obligations laid down in Chapters III to VI of this Directive</u>. To ensure a consistent application of the operational risk and digital resilience rules in the financial sector, Member States' support to enhancing the overall resilience of financial entities equivalent to critical entities should be ensured by the authorities designated pursuant to Article 41 of [DORA Regulation], and subject to the procedures set out in that legislation in a fully harmonised manner.</p> <p>1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L</p>	<p>operational resilience for the financial sector (hereafter "DORA Regulation")⁶], which lays down requirements for financial firms to manage ICT risks, including the protection of physical ICT infrastructures.</p> <p>Since the resilience of entities listed in points 3 and 4 of the Annex is comprehensively covered by the EU financial services acquis, those entities should also, similar to entities in the digital infrastructure sector, be identified as be treated as equivalent to critical entities exclusively for the purposes of Articles 1-9 Chapter II of this Directive only. To ensure a consistent application of the operational risk and digital resilience rules in the financial sector, Member States' support to enhancing the overall resilience of financial entities equivalent to critical entities should could be ensured by the authorities designated pursuant to Article 41 of [DORA Regulation] or those designated pursuant to this Directive, and subject to the procedures set out in the</p>	

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	<p>Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).</p> <p>3. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).</p> <p>4. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).</p> <p>5. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).</p> <p>6. Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014, COM(2020) 595.</p>	<p>201, 27.7.2012, p. 1).</p> <p>2. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).</p> <p>3. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).</p> <p>4. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).</p> <p>5. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).</p> <p>6. Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014, COM(2020) 595.</p>	<p>applicable that legislation in a fully harmonised coherent manner.</p> <p>1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).</p> <p>2. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).</p> <p>3. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).</p> <p>4. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).</p> <p>5. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).</p> <p>6. Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014,</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			COM(2020) 595.	
Recital 16				
26	<p>(16) Member States should designate authorities competent to supervise the application of and, where necessary, enforce the rules of this Directive and ensure that those authorities are adequately empowered and resourced. In view of the differences in national governance structures and in order to safeguard already existing sectoral arrangements or Union supervisory and regulatory bodies, and to avoid duplication, Member States should be able to designate more than one competent authority. In that case, they should however clearly delineate the respective tasks of the authorities concerned and ensure that they cooperate smoothly and effectively. All competent authorities should also cooperate more generally with other relevant authorities, both at national and Union level.</p>	<p>(16) Member States should designate authorities competent to supervise the application of and, where necessary, enforce the rules of this Directive and ensure that those authorities are adequately empowered and resourced. In view of the differences in national governance structures and in order to safeguard already existing sectoral arrangements or Union supervisory and regulatory bodies, and to avoid duplication, Member States should be able to designate more than one competent authority. In that case, they should however clearly delineate the respective tasks of the authorities concerned and ensure that they cooperate smoothly and effectively, <u>including with competent authorities of other Member States</u>. All competent authorities should also cooperate more generally with other relevant authorities, both at national and Union level, <u>including with competent authorities of other Member States</u>.</p>	<p>(16) Member States should designate authorities competent to supervise the application of and, where necessary, enforce the rules of this Directive and ensure that those authorities are adequately empowered and resourced. In view of the differences in national governance structures and in order to safeguard already existing sectoral arrangements or Union supervisory and regulatory bodies, and to avoid duplication, Member States should be able to designate more than one competent authority. In that case, they should however clearly delineate the respective tasks of the authorities concerned and ensure that they cooperate smoothly and effectively. All competent authorities should also cooperate more generally with other relevant authorities, both at national and Union level.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 17				
27	(17) In order to facilitate cross-border cooperation and communication and to enable the effective implementation of this Directive, each Member State should, without prejudice to sector-specific Union legal requirements, designate, within one of the authorities it designated as competent authority under this Directive, a single point of contact responsible for coordinating issues related to the resilience of critical entities and cross-border cooperation at Union level in this regard.	(17) In order to facilitate cross-border cooperation and communication and to enable the effective implementation of this Directive, each Member State should, without prejudice to sector-specific Union legal requirements, designate, within one of the authorities it designated as competent authority under this Directive, a single point of contact responsible for coordinating issues related to the resilience of critical entities and cross-border cooperation at Union level in this regard. <u><i>Each single point of contact should liaise and coordinate all communication, with the competent authorities of its Member State, with the single points of contact of other Member States and with the Critical Entities Resilience Group. The single points of contact should use efficient, secure and standardised reporting channels.</i></u>	(17) In order to facilitate cross-border cooperation and communication and to enable the effective implementation of this Directive, each Member State should, without prejudice to sector-specific Union legal requirements, designate, within one of the authorities it designated as competent authority under this Directive, a one national single point of contact responsible for coordinating issues related to the resilience of critical entities and cross-border cooperation at Union level in this regard.	
Recital 18				
28				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(18) Given that under the NIS 2 Directive entities identified as critical entities, as well as identified entities in the digital infrastructure sector that are to be treated as equivalent under the present Directive are subject to the cybersecurity requirements of the NIS 2 Directive, the competent authorities designated under the two Directives should cooperate, particularly in relation to cybersecurity risks and incidents affecting those entities.</p>	<p>(18) Given that under the NIS 2 Directive Entities identified as critical entities, <u>under this Directive</u> as well as identified entities in the digital infrastructure sector that are to be treated as equivalent under the present Directive are subject to the cybersecurity requirements of the NIS 2 Directive. The competent authorities designated under the two Directives should <u>therefore cooperate in an effective and consistent manner</u>, particularly in relation to cybersecurity risks and incidents affecting those entities. <u>It is important that Member States take measures to avoid double reporting and checks and to ensure that the strategies and requirements provided for in this Directive and the NIS 2 Directive are complementary and that critical entities are not subject to an administrative burden beyond that which is necessary to achieve the objectives of this Directive.</u></p>	<p>(18) Given that under the NIS 2 The competent authorities designated under this Directive entities identified as critical entities, as well as identified entities in the digital infrastructure sector that are to be treated as equivalent under the present Directive are subject to the cybersecurity requirements of the NIS 2 Directive, theand those designated under [NIS 2 Directive] should cooperate and exchange information nationally, in relation to cybersecurity risks, cyber threats and incidents and non-cyber risks, threats and incidents affecting critical entities as well as on relevant measures taken by competent authorities designated under [the NIS 2 Directive] and this Directivethe two Directives should cooperate, particularly in relation to cybersecurity risks and incidents affecting those entities.</p>	
Recital 19				
29	<p>(19) Member States should support critical entities in strengthening their resilience, in</p>	<p>(19) Member States should support critical entities in strengthening their resilience, in</p>	<p>(19) Member States should support critical entities in strengthening their resilience, in</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>compliance with their obligations under this Directive, without prejudice to the entities' own legal responsibility to ensure such compliance. Member States could in particular develop guidance materials and methodologies, support the organisation of exercises to test their resilience and provide training to personnel of critical entities. Moreover, given the interdependencies between entities and sectors, Member States should establish information sharing tools to support voluntary information sharing between critical entities, without prejudice to the application of competition rules laid down in the Treaty on the Functioning of the European Union.</p>	<p><u>particular those that qualify as small or medium-sized enterprises (SMEs), in</u> compliance with their obligations under this Directive, without prejudice to the entities' own legal responsibility to ensure such compliance. Member States could<u>should</u> in particular develop guidance materials and methodologies, support the organisation of exercises to test their resilience and provide training to personnel of critical entities. <u>Where necessary and justified by public interest objectives, Member States should be able to provide financial resources to critical entities, without prejudice to applicable rules on State aid.</u> Moreover, given the interdependencies between entities and sectors, Member States should establish information sharing tools to support voluntary information sharing <u>and good practices</u> between critical entities, without prejudice to the application of competition rules laid down in the Treaty on the Functioning of the European Union.</p>	<p>compliance with their obligations under this Directive, without prejudice to the entities' own legal responsibility to ensure such compliance. Member States could in particular develop guidance materials and methodologies, support the organisation of exercises to test their resilience and provide advice and training to personnel of critical entities. Moreover, given the interdependencies between entities and sectors, Member States should establish information sharing tools to support facilitate voluntary information sharing between critical entities, without prejudice to the application of competition rules laid down in the Treaty on the Functioning of the European Union.</p>	
Recital 19a				
29a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>(19a) With the aim of enhancing the resilience of critical entities identified by Member States and to reduce the administrative burden for those entities, the designated competent authorities of Member States should engage in consultations whenever appropriate for the consistent application of the Directive. Those consultations should be entered into at the request of any interested competent authority, and should focus on ensuring a convergent approach regarding inter-linked critical entities that use critical infrastructure which is physically connected between two or more Member States, that belong to the same groups or corporate structures, or that have been identified in one Member State and provide essential services to or in other Member States.</p>	
Recital 19a				
29b		<p><u><i>(19a) When implementing this Directive, it is important that Member States take all the necessary actions to prevent any excessive administrative burdens,</i></u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>particularly on SMEs, and avoid duplications or unnecessary obligations. It is crucial that Member States assist with and facilitate the provision of adequate support to SMEs, when requested, by taking the technical and organisational measures required under this Directive.</u>		
Recital 20				
30	(20) In order to be able to ensure their resilience, critical entities should have a comprehensive understanding of all relevant risks to which they are exposed and analyse those risks. To that aim, they should carry out risks assessments, whenever necessary in view of their particular circumstances and the evolution of those risks, yet in any event every four years. The risk assessments by critical entities should be based on the risk assessment carried out by Member States.	(20) In order to be able to ensure their resilience, critical entities should have a comprehensive understanding of all relevant risks to which they are exposed and analyse those risks. To that aim, they should carry out risks assessments, whenever necessary in view of their particular circumstances and the evolution of those risks, yet in any event every four years. The risk assessments by critical entities should be based on the risk assessment carried out by Member States <u>and should be in line with common criteria and methodologies.</u>	(20) In order to be able to ensure their resilience, Critical entities should have a comprehensive understanding of all relevant risks to which they are exposed and a duty to analyse those risks. To that aim, they should carry out risks assessments, whenever necessary in view of their particular circumstances and the evolution of those risks, yet in any event every four years. The risk assessments by critical entities should be based on the risk assessment carried out by Member States. If critical entities have already conducted an assessment of these risks and dependencies as set out in Article 10 under other acts of Union or national law, Member States may recognise equivalence, in	

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			whole or in part, of these existing risk assessments.	
Recital 21				
31	(21) Critical entities should take organisational and technical measures that are appropriate and proportionate to the risks they face so as to prevent, resist, mitigate, absorb, accommodate to and recover from an incident. Although critical entities should take measures on all points specified in this Directive, the details and extent of the measures should reflect the different risks that each entity has identified as part of its risk assessment and the specificities of such entity in an appropriate and proportionate way.	(21) Critical entities should take organisational and technical measures that are appropriate and proportionate to the risks they face so as to prevent, resist, mitigate, absorb, accommodate to and recover from an incident. Although critical entities should take measures on all points specified in this Directive, the details and extent of the measures should reflect the different risks that each entity has identified as part of its risk assessment and the specificities of such entity in an appropriate and proportionate way.	(21) Critical entities should take organisational, security and technical measures that are appropriate and proportionate to the risks they face so as to prevent, protect against, respond to , resist, mitigate, absorb, accommodate to and recover from an incident. Although While critical entities should take measures on all points specified in this Directive in accordance with Article 11 , the details and extent of the measures should reflect the different risks that each entity has identified as part of its risk assessment and the specificities of such entity in an appropriate and proportionate way. To promote a coherent Union-wide approach, the Commission should, after consultation of the Critical Entities Resilience Group, adopt non-binding guidelines to further specify those technical, security and organisational measures. In the performance of its duties under this Directive, each critical entity	

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			should designate a liaison officer or equivalent as point of contact with the national competent authorities.	
Recital 22				
32	(22) In the interest of effectiveness and accountability, critical entities should describe those measures, with a level of detail to sufficiently achieve those aims, having regard to the risks identified, in a resilience plan or in a document or documents that are equivalent to a resilience plan, and apply that plan in practice. Such equivalent document or documents may be drawn up in accordance with requirements and standards developed in the context of international agreements on physical protection to which Member States are parties, including the Convention on the physical protection of nuclear material and nuclear facilities, as appropriate.	(22) In the interest of effectiveness and accountability, critical entities should describe those measures, with a level of detail to sufficiently achieve those aims, having regard to the risks identified, in a resilience plan or in a document or documents that are equivalent to a resilience plan, and apply that plan in practice. Such equivalent document or documents may be drawn up in accordance with requirements and standards developed in the context of international agreements on physical protection to which Member States are parties, including the Convention on the physical protection of nuclear material and nuclear facilities, as appropriate.	(22) In the interest of effectiveness and accountability, critical entities should describe the measures they take those measures , with a level of detail to sufficiently achieve those aims, having regard to the risks identified, in a resilience plan or in a document or documents that are equivalent to a resilience plan, and apply that plan in practice. Such equivalent document or documents may be drawn up in accordance with national law or with requirements and standards developed in the context of international agreements on physical protection to which Member States are parties, including the Convention on the physical protection of nuclear material and nuclear facilities, as appropriate.	
Recital 23				
33				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(23) Regulation (EC) No 300/2008 of the European Parliament and of the Council¹, Regulation (EC) No 725/2004 of the European Parliament and of the Council² and Directive 2005/65/EC of the European Parliament and of the Council³ establish requirements applicable to entities in the aviation and maritime transport sectors to prevent incidents caused by unlawful acts and to resist and mitigate the consequences of such incidents. While the measures required in this Directive are broader in terms of risks addressed and types of measures to be taken, critical entities in those sectors should reflect in their resilience plan or equivalent documents the measures taken pursuant to those other Union acts. Moreover, when implementing resilience measures under this Directive, critical entities may consider referring to non-binding guidelines and good practices documents developed under sectorial workstreams, such as the EU Rail Passenger Security Platform⁴.</p> <p><small>1. Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the</small></p>	<p>(23) Regulation (EC) No 300/2008 of the European Parliament and of the Council¹, Regulation (EC) No 725/2004 of the European Parliament and of the Council² and Directive 2005/65/EC of the European Parliament and of the Council³ establish requirements applicable to entities in the aviation and maritime transport sectors to prevent incidents caused by unlawful acts and to resist and mitigate the consequences of such incidents. While the measures required in this Directive are broader in terms of risks addressed and types of measures to be taken, critical entities in those sectors should reflect in their resilience plan or equivalent documents the measures taken pursuant to those other Union acts. Moreover, <u>critical entities ar also to take into consideration Directive 2008/96/EC of the European Parliament and of the Council⁴, which introduces a network-wide road assessment to map the risks of accidents and a targeted road safety inspection to identify hazardous conditions, defects and problems that increase the risk of accidents and injuries, based on a</u></p>	<p>(23) Regulation (EC) No 300/2008 of the European Parliament and of the Council¹, Regulation (EC) No 725/2004 of the European Parliament and of the Council² and Directive 2005/65/EC of the European Parliament and of the Council³ establish requirements applicable to Other acts of national or Union law may require critical entities in the aviation and maritime transport sectors to prevent incidents caused by unlawful acts and to resist and mitigate the consequences of such incidents. While to establish resilience measures equivalent to those under Article 11. Member States may choose to recognise equivalence, in whole or in part, between these measures required in this Directive are broader in terms of risks addressed and types of measures to be taken, and those referred to in Article 11, or to ensure that critical entities indscribe those sectors should reflect in their measures in the resilience plan or equivalent documents the measures taken pursuant to those other Union acts. Moreover, when implementing</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97/72, 9.4.2008, p. 72).</p> <p>2. Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6.).</p> <p>3. Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28).</p> <p>4. Commission Decision of 29 June 2018 setting up the EU Rail Passenger Security Platform C/2018/4014.</p>	<p><u>site visit of an existing road or section of road. Ensuring the protection and resilience of critical entities is of the utmost importance for the railway sector and</u>, when implementing resilience measures under this Directive, critical entities may consider referring <u>are encouraged to refer</u> to non-binding guidelines and good practices documents developed under sectorial workstreams, such as the EU Rail Passenger Security Platform^{4,5}.</p> <p>1. Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97/72, 9.4.2008, p. 72).</p> <p>2. Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6.).</p> <p>3. Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28).</p> <p>4. Commission Decision of 29 June 2018 setting up the EU Rail Passenger Security Platform C/2018/4014 <u>Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management (OJ L 319, 29.11.2008, p. 59).</u></p> <p><u>5. Commission Decision of 29 June 2018</u></p>	<p>resilience measures under this Directive, critical entities may consider referring to non-binding guidelines and good practices documents developed under sectorial workstreams, such as the EU Rail Passenger Security Platform⁴. document or documents.</p> <p>1. Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97/72, 9.4.2008, p. 72).</p> <p>2. Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6.).</p> <p>3. Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28).</p> <p>4. Commission Decision of 29 June 2018 setting up the EU Rail Passenger Security Platform C/2018/4014.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		setting up the EU Rail Passenger Security Platform C/2018/4014.		
Recital 24				
34	(24) The risk of employees of critical entities misusing for instance their access rights within the entity's organisation to harm and cause damage is of increasing concern. That risk is exacerbated by the growing phenomenon of radicalisation leading to violent extremism and terrorism. It is therefore necessary to enable critical entities to request background checks on persons falling within specific categories of its personnel and to ensure that those requests are assessed expeditiously by the relevant authorities, in accordance with the applicable rules of Union and national law, including on the protection of personal data.	(24) The risk of employees of critical entities misusing for instance their access rights within the entity's organisation to harm and cause damage is of increasing concern. That risk is exacerbated by the growing phenomenon of radicalisation leading to violent extremism and terrorism. It is therefore necessary to enable critical entities to request background checks on persons falling within specific categories of its personnel and to ensure that those requests are assessed expeditiously by the relevant authorities, in accordance with the applicable rules of Union and national law, including on the protection of personal data, in particular Regulation (EU) 2016/679.	(24) The risk of employees or contractors of critical entities misusing for instance their access rights within the entity's organisation to harm and cause damage is of increasing concern. That risk is exacerbated by the growing phenomenon of radicalisation leading to violent extremism and terrorism may substantiate a need to make provision for a specific procedure for performing background checks for persons designated to undertake sensitive roles or access certain spaces within the critical entities. It is therefore necessary to enable Member States, where appropriate, to allow critical entities to request background checks on persons falling within specific clearly defined categories of its personnel persons and to ensure that those requests are assessed expeditiously by them in accordance with criteria set out in national legislation and	


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>procedures. Such background checks should, where relevant authorities, in accordance with the applicable rules of Union and national law, including on the protection of personal data and applicable, draw upon information obtained from the European Criminal Records Information System (ECRIS)¹ and can also, where relevant and applicable, draw upon the Second Generation Schengen Information System (SIS II)², intelligence as well as any other objective information available that may be necessary to determine to suitability of the person concerned to work in the position in relation to which the critical entity has requested a background check.</p> <p>1. Council Framework Decision 2009/315/JHA and Regulation (EU) 2019/816 of the European Parliament and of the Council of 22 May 2019, OJ L 135, p.1</p> <p>2. Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council</p>	

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			Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, p.56	
Recital 25				
35	(25) Critical entities should notify, as soon as reasonably possible under the given circumstances, Member States' competent authorities of incidents that significantly disrupt or have the potential to significantly disrupt their operations. The notification should allow the competent authorities to respond to the incidents rapidly and adequately and to have a comprehensive overview of the overall risks that critical entities face. For that purpose, a procedure should be established for the notification of certain incidents and parameters should be provided for to determine when the actual or potential disruption is significant and the incidents should thus be notified. Given the potential cross-border impacts of such disruptions, a procedure should be established for Member States to inform other	(25) Critical entities should notify, as soon as reasonably possible under the given circumstances <u>and, in any event, no later than 24 hours after becoming aware of the incident in question</u> , Member States' competent authorities of incidents <u>any incident</u> that significantly disrupt or have <u>disrupts or has</u> the potential to significantly disrupt their operations. The <u>competent authority should inform the public of such an incident where it determines that it would be in the public interest to do so. The competent authority should ensure that the critical entity concerned inform users of its services that might be affected by such an incident of the incident and, where relevant, of any possible safety measures or remedies.</u> The notification should allow the competent authorities to	(25) Critical entities should notify, as soon as reasonably possible under the given circumstances, Member States' competent authorities of incidents that significantly disrupt or have the potential to significantly disrupt their operations the provision of essential services . The notification should allow the competent authorities to respond to the incidents rapidly and adequately and to have a comprehensive overview of the overall risks that critical entities face. For that purpose, a procedure should be established for the notification of certain incidents and parameters should be provided for to determine when the actual or potential disruption is significant and the incidents should thus be notified. Given the potential cross-border impacts of such disruptions, a procedure should be established	

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	affected Member States via single points of contacts.	respond to the incidents rapidly and adequately and to have a comprehensive overview of the overall risks that critical entities face. For that purpose, a procedure should be established for the notification of certain incidents and parameters should be provided for to determine when the actual or potential disruption is significant and the incidents should thus be notified. Given the potential cross-border impacts of such disruptions, a procedure should be established for Member States to inform other affected Member States via single points of contacts, <u>without undue delay. Information on incidents should be treated in a way that respects confidentiality and the security and commercial interests of the critical entity concerned.</u>	for Member States to inform other affected Member States via single points of contacts.	
Recital 26				
36	(26) While critical entities generally operate as part of an increasingly interconnected network of service provision and infrastructures and often provide essential services in more than one Member State, some of those entities are of particular	(26) While critical entities generally operate as part of an increasingly interconnected network of service provision and infrastructures and often provide essential services in more than one Member State, some of those entities are of particular	(26) While critical entities generally operate as part of an increasingly interconnected network of service provision and infrastructures and often provide essential services in more than one Member State, some of those entities are of particular	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>significance for the Union because they provide essential services to a large number of Member States, and therefore require specific oversight at Union level. Rules on the specific oversight in respect of such critical entities of particular European significance should therefore be established. Those rules are without prejudice to the rules on supervision and enforcement set out in this Directive.</p>	<p>significance for the Union <u>and the internal market</u> because they provide essential services to a large number of <u>several</u> Member States, and therefore require specific oversight at Union level. Rules on the specific oversight in respect of such critical entities of particular European significance should therefore be established. Those rules are without prejudice to the rules on supervision and enforcement set out in this Directive.</p>	<p>significance for the Union because they provide essential services to a large number of or in more than one third of Member States, and therefore require could benefit from specific oversight support at Union level. Rules on advisory missions the specific oversight in respect of such critical entities of particular European significance should therefore be established. Those rules are without prejudice to the rules on supervision and enforcement set out in this Directive.</p>	
Recital 27				
37	<p>(27) Where any Member State considers that additional information is necessary to be able to advise a critical entity in meeting its obligations under Chapter III or to assess the compliance of a critical entity of particular European significance with those obligations, in agreement with the Member State where the infrastructure of that entity is located, the Commission should organise an advisory mission to assess the measures put in place by that entity. In order to</p>	<p>(27) Where any Member State considers that additional information is necessary to be able to advise a critical entity in meeting its obligations under Chapter III or to assess the compliance of a critical entity of particular European significance with those obligations, in agreement with the Member State where the infrastructure of that entity is located, the Commission should organise an advisory mission to assess the measures put in place by that entity. In order to</p>	<p>(27) Where any Upon the reasoned request of one or more Member State considers that States to or in which the essential service is provided or of the Commission, where additional information is necessary to be able to advise a critical entity in meeting its obligations under Chapter III or to assess the compliance of a critical entity of particular European significance with those obligations, in agreement with the Member State where the infrastructure of that</p>	

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	<p>ensure that such advisory missions are carried out properly, complementary rules should be established, notably on their organisation and conduct, the follow-up to be given and the obligations for the critical entities of particular European significance concerned. The advisory missions should, without prejudice to the need for the Member State where the advisory mission is conducted and the entity concerned to comply with the rules of this Directive, be conducted subject to the detailed rules of the law of that Member State, for instance on the precise conditions to be fulfilled to obtain access to relevant premises or documents and on judicial redress. Specific expertise required for such missions could, where relevant, be requested through the Emergency Response Coordination Centre.</p>	<p>ensure that such advisory missions are carried out properly, complementary rules should be established, notably on their organisation and conduct, the follow-up to be given and the obligations for the critical entities of particular European significance concerned. The advisory missions should, without prejudice to the need for the Member State where the advisory mission is conducted and the entity concerned to comply with the rules of this Directive, be conducted subject to the detailed rules of the law of that Member State, for instance on the precise conditions to be fulfilled to obtain access to relevant premises or documents and on judicial redress. Specific expertise required for such missions could, where relevant, be requested through the Emergency Response Coordination Centre.</p>	<p>entity is located, the Commission should be enabled to organise an advisory mission to assess the measures put in place by that entity. In order to ensure that such advisory missions are carried out properly, complementary rules should be established, notably on their organisation and conduct, the follow-up to be given and the obligations for the critical entities of particular European significance concerned. The advisory missions should, without prejudice to the need for the Member State where the advisory mission is conducted and the entity concerned to comply with the rules of this Directive, be conducted subject to the detailed rules of the law of that Member State, for instance on the precise conditions to be fulfilled to obtain access to relevant premises or documents and on judicial redress. Specific expertise required for such missions could, where relevant, be requested through the Emergency Response Coordination Centre.</p>	
Recital 27a				
37a		<u><i>(27a) Standardisation should remain primarily a market-driven</i></u>		

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		<p><i><u>process. However, there might still be situations where it is appropriate to require compliance with specified standards at Union level. The Commission and the Member States should support and promote the development and implementation of standards and specifications relevant to the resilience of critical entities as set by the European Standardisation Organisations for the undertaking of technical and organisational measures aimed at ensuring critical entities' resilience. Member States should also encourage the use of internationally accepted standards and specifications relevant to resilience measures applicable to critical entities.</u></i></p>		
Recital 28				
38	<p>(28) In order to support the Commission and facilitate strategic cooperation and the exchange of information, including best practices, on issues relating to this Directive, a Critical Entities Resilience Group, which is a Commission expert group, should be established. Member States</p>	<p>(28) In order to support the Commission and facilitate strategic cooperation and the exchange of information, including best practices, on issues relating to this Directive, a Critical Entities Resilience Group, which is a Commission expert group, should be established. Member States</p>	<p>(28) In order to support the Commission and facilitate cooperation among Member States strategic cooperation and the exchange of information, including best practices, on issues relating to this Directive, a Critical Entities Resilience Group, which is as a Commission expert group,</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>should endeavour to ensure effective and efficient cooperation of the designated representatives of their competent authorities in the Critical Entities Resilience Group. The group should begin to perform its tasks from six months after the entry into force of this Directive, so as to provide additional means for appropriate cooperation during the transposition period of this Directive.</p>	<p>should endeavour to ensure effective and efficient cooperation of the designated representatives of their competent authorities in the Critical Entities Resilience Group. The group should begin to perform its tasks from six months after the entry into force of this Directive, so as to provide additional means for appropriate cooperation during the transposition period of this Directive.</p>	<p>should be established. Member States should endeavour to ensure effective and efficient cooperation of the designated representatives of their competent authorities in the Critical Entities Resilience Group, including by designating members holding the appropriate security clearance. The group should begin to perform its tasks from six months after the entry into force of this Directive, so as to provide additional means for appropriate cooperation during the transposition period of this Directive. The group should interact with relevant other sector specific expert working groups.</p>	
Recital 29				
39	<p>(29) In order to achieve the objectives of this Directive, and without prejudice to the legal responsibility of Member States and critical entities to ensure compliance with their respective obligations set out therein, the Commission should, where it considers it appropriate, undertake certain supporting activities aimed at facilitating compliance with</p>	<p>(29) In order to achieve the objectives of this Directive, and without prejudice to the legal responsibility of Member States and critical entities to ensure compliance with their respective obligations set out therein, the Commission should, where it considers it appropriate, undertake certain supporting activities aimed at facilitating compliance with</p>	<p>(29) In order to achieve the objectives of this Directive, and without prejudice to the legal responsibility of Member States and critical entities to ensure compliance with their respective obligations set out therein, the Commission should, where it considers it appropriate, undertake certain supporting activities aimed at facilitating compliance with</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	those obligations. When providing support to Member States and critical entities in the implementation of obligations under this Directive, the Commission should build on existing structures and tools, such as those under the Union Civil Protection mechanism and the European Reference Network for Critical Infrastructure Protection.	those obligations. When providing support to Member States and critical entities in the implementation of obligations under this Directive, the Commission should build on existing structures and tools, such as those under the Union Civil Protection mechanism and the European Reference Network for Critical Infrastructure Protection.	those obligations. When providing support to Member States and critical entities in the implementation of obligations under this Directive, the Commission should build on existing structures and tools, such as those under the Union Civil Protection mechanism and the European Reference Network for Critical Infrastructure Protection. The financial resources for these supporting activities should be provided in line with the agreed allocations in the Multiannual Financial Framework and should be covered in particular from the available envelope foreseen under the Internal Security Fund for the period 2021-2027.	
Recital 30				
40	(30) Member States should ensure that their competent authorities have certain specific powers for the proper application and enforcement of this Directive in relation to critical entities, where those entities fall under their jurisdiction as specified in this Directive. Those powers should include, notably, the power to conduct	(30) Member States should ensure that their competent authorities have certain specific powers for the proper application and enforcement of this Directive in relation to critical entities, where those entities fall under their jurisdiction as specified in this Directive. Those powers should include, notably, the power to conduct	(30) Member States should ensure that their competent authorities have certain specific powers for the proper application and enforcement of this Directive in relation to critical entities, where those entities fall under their jurisdiction as specified in this Directive. Those powers should include, notably, the power to conduct	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>inspections, supervision and audits, require critical entities to provide information and evidence relating to the measures they have taken to comply with their obligations and, where necessary, issue orders to remedy identified infringements. When issuing such orders, Member States should not require measures which go beyond what is necessary and proportionate to ensure compliance of the critical entity concerned, taking account of in particular the seriousness of the infringement and the economic capacity of the critical entity. More generally, those powers should be accompanied by appropriate and effective safeguards to be specified in national law, in accordance with the requirements resulting from Charter of Fundamental Rights of the European Union. When assessing the compliance of a critical entity with its obligations under this Directive, competent authorities designated under this Directive should be able to request the competent authorities designated under the NIS 2 Directive to assess the cybersecurity of those entities. Those competent authorities should</p>	<p>inspections, supervision and audits, require critical entities to provide information and evidence relating to the measures they have taken to comply with their obligations and, where necessary, issue orders to remedy identified infringements. When issuing such orders, Member States should not require measures which go beyond what is necessary and proportionate to ensure compliance of the critical entity concerned, taking account of in particular the seriousness of the infringement and the economic capacity of the critical entity. More generally, those powers should be accompanied by appropriate and effective safeguards to be specified in national law, in accordance with the requirements resulting from Charter of Fundamental Rights of the European Union. <u><i>The assessment of critical entities under this Directive, in matters that fall under the scope of the NIS 2 Directive such as physical and non-physical cybersecurity, is the responsibility of the competent authorities designated under the NIS 2 Directive. Furthermore,</i></u> when assessing the compliance of a critical entity with its obligations</p>	<p>inspections, supervision and audits, require critical entities to provide information and evidence relating to the measures they have taken to comply with their obligations and, where necessary, issue orders to remedy identified infringements. When issuing such orders, Member States should not require measures which go beyond what is necessary and proportionate to ensure compliance of the critical entity concerned, taking account of in particular the seriousness of the infringement and the economic capacity of the critical entity. More generally, those powers should be accompanied by appropriate and effective safeguards to be specified in national law, in accordance with the requirements resulting from Charter of Fundamental Rights of the European Union. When assessing the compliance of a critical entity with its obligations under this Directive, competent authorities designated under this Directive should be able to request the competent authorities designated under the NIS 2 Directive to exercise their supervisory and enforcement powers in relation to an essential</p>	

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	cooperate and exchange information for that purpose.	under this Directive, competent authorities designated under this Directive should be able to request the competent authorities designated under the NIS 2 Directive to assess the cybersecurity of those entities. Those competent authorities should cooperate and exchange information for that purpose.	entity under the scope of [NIS 2 Directive] that is also identified as critical under this Directive assess the cybersecurity of those entities. Those competent authorities should cooperate and exchange information for that purpose.	
Recital 31				
41	(31) In order to take into account new risks, technological developments or specificities of one or more of the sectors, the power to adopt acts in accordance with Article 290 Treaty on the Functioning of the European Union should be delegated to the Commission to supplement the resilience measures critical entities are to take by further specifying some or all of those measures. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13	(31) In order to take into account new risks, technological developments or specificities of one or more of the sectors, the power to adopt acts in accordance with Article 290 Treaty on the Functioning of the European Union should be delegated to the Commission to supplement the resilience measures critical entities are to take by further specifying some or all of those measures. <u><i>In order to avoid the divergent application of this Directive and to improve the functioning of the internal market, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the</i></u>	(31) In order to take into account new risks, technological developments or specificities of one or more of the sectors, the power to adopt acts in accordance with Article 290 Treaty on the Functioning of the European Union should be delegated to the Commission to supplement the resilience measures critical entities are to take by further specifying some or all of those measures. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13	


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>¹. OJ L 123, 12.5.2016, p. 1.</p>	<p><u>Commission to supplement this Directive by drawing up a common list of essential services.</u></p> <p>It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>¹. OJ L 123, 12.5.2016, p. 1.</p>	<p>April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>¹. OJ L 123, 12.5.2016, p. 1.</p>	
Recital 32				
42	(32) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should	(32) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should	(32) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.</p> <p>¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	<p>be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.</p> <p>¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	<p>be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.</p> <p>¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	
Recital 33				
43	<p>(33) Since the objectives of this Directive, namely to ensure the provision in the internal market of services essential for the maintenance of vital societal functions or economic activities and to enhance the resilience of critical entities providing such services, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of</p>	<p>(33) Since the objectives of this Directive, namely to ensure the provision in the internal market of services essential for the maintenance of vital societal functions or economic activities and to enhance the resilience of critical entities providing such services, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of</p>	<p>(33) Since the objectives of this Directive, namely to ensure the provision in the internal market of services essential for the maintenance of vital societal functions or economic activities and to enhance the resilience of critical entities providing such services, – cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	proportionality as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives.	proportionality as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives.	proportionality as set out in that Article 5, this Directive does not go beyond what is necessary in order to achieve those objectives.	
Recital 34				
44	(34) Directive 2008/114/EC should therefore be repealed,	(34) Directive 2008/114/EC should therefore be repealed,	(34) Directive 2008/114/EC should therefore be repealed,	
Formula				
45	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
Chapter I				
46	Chapter I Subject matter , Scope and definitions	Chapter I Subject matter , Scope and definitions	Chapter I Subject matter , Scope and definitions	
Article 1				
47	Article 1 Subject matter and scope	Article 1 Subject matter and scope	Article 1 Subject matter and scope	
Article 1(1), introductory part				
48	1. This Directive:	1. <u>This Directive lays down</u>	1. This Directive:	1. 22/4 Technical meeting

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		<p><u>measures with a view to achieving a high level of resilience of critical entities in order to ensure the provision of essential services within the Union and to improve the functioning of the internal market. To that end,</u> this Directive:</p>		<p>CSL: Consider this to be more of an objective that could be included under a recital</p> <p>EP: proposes to include this as a point F.</p> <p>COM: See this as a policy choice, it could go here or in a recital.</p> <p>CSL: Agree that this could be moved within the list as a point ... (f).</p> <p>Provisionally agreed to move to a new point f.</p>
Article 1(1), point (a)				
49	<p>(a) lays down obligations for Member States to take certain measures aimed at ensuring the provision in the internal market of services essential for the maintenance of vital societal functions or economic activities, in particular to identify critical entities and entities to be treated as equivalent in certain respects, and to enable them to meet their obligations;</p>	<p>(a) lays down obligations for Member States to take certain measures aimed at ensuring the <u>continuous</u> provision in the internal market of services essential for the maintenance of vital societal functions or economic activities, in particular to identify critical entities and entities to be treated as equivalent in certain respects, and to enable them to meet their obligations;</p>	<p>(a) lays down obligations for Member States to take certain specific measures aimed at ensuring the provision in the internal market of services essential for the maintenance of vital societal functions or economic activities, in particular to identify critical entities and entities to be treated as equivalent in certain respects, within the scope of Article 114 TFEU, in particular to identify critical entities and to</p>	<p>(a) 22/4</p> <p>CSL: On ‘continuous’ - Consider that this could have a legal consequence - would prefer a word along the lines of ‘unobstructed’ ‘unhindered’ . The word ‘certain’ is too vague and we prefer ‘specific’. Consider the word ‘enable’ not quite appropriate’</p> <p>COM: could accept ‘unhindered’ or unobstructed’. Can accept CSL</p>


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			enables support them to meet their obligations;	reference to the legal base. No issue with 'support'. EP: Can support 'unobstructed'. Naming the legal base is acceptable. Provisionally agreed as per the above, with CSL's deletion of equivalent entities in [...]
Article 1(1), point (b)				
50	(b) establishes obligations for critical entities aimed at enhancing their resilience and improving their ability to provide those services in the internal market;	(b) establishes obligations for critical entities aimed at enhancing their resilience and improving their ability to provide those services in the internal market;	(b) establishes obligations for critical entities aimed at enhancing their resilience and improving their ability to provide those services in the internal market;	(b) 22/4 Provisionally agreed on the Council text
Article 1(1), point (c)				
51	(c) establishes rules on supervision and enforcement of critical entities, and specific oversight of critical entities considered to be of particular European significance.	(c) establishes rules on supervision and enforcement of critical entities, and specific oversight of critical entities considered to be of particular European significance.	(c) establishes rules on supervision and enforcement of critical entities, and specific oversight of critical entities considered to be of particular European significance.;	(c) 22/4 CSL: Elaborated further the elements of the Commission proposal under points d and e below. EP: Suggests to add 'establishes rules on supervision of critical entities and enforcement'

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				COM is fine with the above EP proposal and suggestions on points d and e. CSL agrees. Lines 51, 51a and 51b provisionally agreed in line with the above.
Article 1(1), point (d)				
51a			(d) establishes rules for the identification of critical entities of particular European significance and advisory missions thereto.	
Article 1(1), point (e)				
51b			(e) establishes common procedures for cooperation and reporting for the application of the provisions of this Directive.	
Article 1(2)				
52	2. This Directive shall not apply to matters covered by Directive (EU) XX/YY [proposed Directive on measures for a high common level	2. This Directive shall not apply to matters covered by Directive (EU) XX/YY [proposed Directive on measures for a high common level	2. This Directive shall not apply to matters covered by Directive (EU) XX/YY [proposed Directive on measures for a high common level	2. 22/4 CSL: It was not clear what

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	of cybersecurity across the Union; ('NIS 2 Directive')], without prejudice to Article 7.	of cybersecurity across the Union; ('NIS 2 Directive')], without prejudice to Article 7. <u>In view of the interlinkages between cybersecurity and the physical security of entities, Member States shall ensure a coherent implementation of this Directive and the NIS 2 Directive.</u>	of cybersecurity across the Union; ('NIS 2 Directive')], without prejudice to Article 7.	<p>'coherent' meant. Council was also concerned that a formal link would be created putting obligations throughout the text. Not opposed to the principle but needs to be clarified.</p> <p>COM: Agree with the CSL. The coherence needs to be ensured now during drafting, but each act during implementation needs to be respected in its own right. The issue of cooperation in implementation is also taken care of elsewhere in the text, and is included in a recital - prefer to find a solution there rather than article 1.</p> <p>CSL agrees that the best place would be in a recital.</p> <p>EP agrees to reflect internally and come back with a proposal.</p>
Article 1(3)				
53	3. Where provisions of sector-specific acts of Union law require critical entities to take measures as set out in Chapter III, and where those requirements are at least equivalent to the obligations laid	3. Where provisions of sector-specific acts of Union law require critical entities to take measures as set out in Chapter III, and where those requirements are at least equivalent to the obligations laid	3. Where provisions of sector-specific acts of Union law require critical entities to take measures as set out in Chapter III , and where those requirements are recognised as at least equivalent to the	3. 22/4 CSL: deleted "set out in chapter III" to ensure it was a broader provision.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	down in this Directive, the relevant provisions of this Directive shall not apply, including the provisions on supervision and enforcement laid down in Chapter VI.	down in this Directive, the relevant provisions of this Directive shall not apply, including the provisions on supervision and enforcement laid down in Chapter VI.	obligations laid down in this Directive, the relevant provisions of this Directive shall not apply, including the provisions on supervision and enforcement laid down in Chapter VI.	<p>COM: These AMs are limited, the principle stipulated in COM proposal remains. The deletion of Chapter III not entirely clear as this is where the obligations on critical entities are included. We have serious concerns regarding recitals that have been included by Council related to this provision which go substantially wider (“equivalence regime”).</p> <p>EP: Feel this needs more reflection as has legal consequences where legal instruments are not legally comparable. Not opposed and have entities in mind that face burdens but need to reflect.</p> <p>CSL: There are certain requirements outside of Chapter III that should be covered to avoid duplication. Need to reflect on the second point and come back on, we feel the competent authorities should deal with this equivalence recognition and decide if the requirements are being met.</p>
Article 1(4)				
54	4. Without prejudice to Article 346 TFEU, information that is	4. Without prejudice to Article 346 TFEU, information that is	4. Without prejudice to Article 346 TFEU, information that is	4. 22/4

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	<p>confidential pursuant to Union and national rules, such as rules on business confidentiality, shall be exchanged with the Commission and other relevant authorities only where that exchange is necessary for the application of this Directive. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of that exchange. The exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of critical entities.</p>	<p>confidential pursuant to Union and national rules, such as rules on business confidentiality, shall be exchanged with the Commission and other relevant authorities only where that exchange is necessary for the application of this Directive. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of that exchange. The exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of critical entities.</p>	<p>confidential pursuant to Union and national rules, such as rules on business confidentiality, shall be exchanged with the Commission and other relevant authorities only where that exchange is necessary for the application of this Directive. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of that exchange. The exchange of information shall preserve the confidentiality of that information and respect the security of Member States as well as protect the security and commercial interests of critical entities.</p>	<p>CSL: Intended to remind that confidentiality also has an impact on Member States.</p> <p>COM propose:</p> <p>The exchange of information shall preserve the confidentiality of that information and the security and commercial interests of critical entities, while respecting the security of Member States.</p> <p>Provisionally agreed on the Commission proposal above.</p>
Article 1(5)				
54a			<p>5. This Directive is without prejudice to the Member States' responsibility to safeguard national security and defence or their power to safeguard other essential state functions, including ensuring the territorial integrity of the State and maintaining law and order.</p> <p>This Directive does not apply to:</p>	<p>4a. 22/4</p> <p>CSL: It was felt that CER was lacking appropriate clarity on exclusions for entities involved in national security.</p> <p>COM: COM proposal did not include this provision as Article 4(2) of Treaty spells out MS responsibility regarding national security. The additions of Council</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>go beyond Article 4(2), including defence, law enforcement - this is a policy choice. There has been some work on exclusions in NIS2 and it would make sense to ensure coherence. We are concerned this broadly formulated clause would exclude some of the entities that provide essential services in the internal market. The exclusion clause could be a useful way forward linked to the public administration sector, but need to be careful that there isn't broadly varying interpretation and implementation in Member States.</p> <p>EP: This point and subsequent linked points will be returned to during the trilogue.</p>
Article 1(5), point (a)				
54b			<p>(a) entities that fall outside the scope of Union law and, in any event, entities that mainly carry out activities in the areas of defence, national security, public security or law enforcement, regardless of which entity is carrying out those activities and whether it is a public entity or a private entity;</p>	<p>(a) EP: Can accept national security exclusions. On defence there may be certain areas we would want to include. Law enforcement, this is an area that merits more of a discussion and is also linked to EP inclusion of rule of law.</p>

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Article 1(5), point (b)				
54c			(b) entities that carry out activities in the areas of the judiciary, parliaments, or central banks;	(b) EP: related to discussions already taken place on the annex. This is for the political level.
Article 1(5), point (c)				
54d			(c) activities of entities which fall outside the scope of Union law and, in any event, all activities concerning national security or defence, regardless of which entity is carrying out those activities and whether it is a public entity or a private entity.	(c) EP: Some reservations towards such a 'catch-all' phrase COM agrees this is very broad and a departure from the Dir. which covers entities while this amendment focusses on 'activities'
Article 1(4b)				
54e			The obligations laid down in this Directive do not entail the supply of information, the disclosure of which is contrary to the Member States' essential interests of national security, public security or defence.	4b. COM: This could be brought together with other provision in article 1 on information sharing.
Article 1(4c)				


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54f			<p>6. This Directive is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679¹ and Directive 2002/58/EC.²</p> <p>1. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; OJ L 119, 4.5.2016, p. 1</p> <p>2. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector; OJ L 201, 31.7.2002, p. 37</p>	<p>4c. 22/4</p> <p>Provisionally agreed.</p>
Article 2				
55	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions	<p>Article 2 Definitions</p> <p>Provisionally agreed on technical trilogue of 8/02.</p>
Article 2, first paragraph, introductory part				
56				


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	For the purposes of this Directive, the following definitions apply:	For the purposes of this Directive, the following definitions apply:	For the purposes of this Directive, the following definitions apply:	Provisionally agreed on technical trilogue of 8/02. For the purposes of this Directive, the following definitions apply:
Article 2, first paragraph, point (1)				
57	(1) “critical entity” means a public or private entity of a type referred to in the Annex, which has been identified as such by a Member State in accordance with Article 5;	(1) “critical entity” means a public or private entity of a type referred to in the Annex, which has been identified as such by a Member State in accordance with Article 5;	(1) "critical entity" means a public or private entity belonging to the categories of a type referred to in the third column of the table in the Annex, which has been identified as such by a Member State in accordance with Article 5;	(1) Discussed on technical trilogue of 8/02: Provisionally agreement on Council text with the term of "categories" in square brackets to be checked later for coherence with NIS2. “critical entity” means a public or private entity belonging to the [categories] referred to in the third column of the table in the Annex, and has been identified as such by a Member State in accordance with Article 5; <small>Text Origin: Council Mandate</small>
Article 2, first paragraph, point (2)				
58	(2) “resilience” means the ability to prevent, resist, mitigate, absorb, accommodate to and recover from an incident that disrupts or has the potential to disrupt the operations	(2) “resilience” means the ability to prevent, resist, mitigate, absorb, accommodate to and recover from an incident that disrupts or has the potential to disrupt the operations	(2) "resilience" means the a critical entity’s ability to prevent, protect against, respond to, resist, mitigate, absorb, accommodate to and recover from an incident that	(2) Discussed in technical trilogue on 8/02: -Provisionally agreement on the insertion "critical entity's" - Provisionally agreement on the

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of a critical entity;	of a critical entity;	disrupts or has the potential to disrupt the operations of a critical entity;	insertion "protect against, respond to" -Possibility to reintegrate the definition of incident (fully in line with what would be agreed on article 2.3). This issue may be discussed with the respective Legal Services. We will then revert to the issue. "resilience" means a critical entity's ability to prevent, protect against, respond to, resist, mitigate, absorb, accommodate and recover from an incident [that disrupts or has the potential to disrupt the operations of a critical entity];
Article 2, first paragraph, point (3)				
59	(3) "incident" means any event having the potential to disrupt, or that disrupts, the operations of the critical entity;	(3) "incident" means any event having the potential to disrupt, or that disrupts, the operations of the <u>the provision of an essential service by a</u> critical entity;	(3) "incident" means any event having the potential to significantly disrupt, or that disrupts, the operations of the critical entity provision of an essential service ;	(3) Discussed on the technical trilogue of 8/02: -provisionally agreement on "the provision of the essential service by a critical entity" (instead of "operations") -EP shows concerns over the insertion of the word "significantly" because they perceive it as a limitation of the scope. Council explained that they added significantly to be more concrete; Council does not think

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>that all incidents, including minor ones, need to be covered. EP shares that not all minor problems need to be reported. Need to be seen together with the implications for risk assessments, identification and reporting. Possibility to explore new language. To be reverted to this wording later.</p> <p>"incident" means any event having the potential to [significantly] disrupt, or that disrupts, the provision of an essential service;</p>
Article 2, first paragraph, point (4)				
60	<p>(4) "infrastructure" means an asset, system or part thereof, which is necessary for the delivery of an essential service;</p>	<p>(4) "infrastructure" means an asset, system or part <u>assets, including facilities, systems and equipment, or parts</u> thereof, which is <u>are</u> necessary for the delivery of an essential service;</p>	<p>(4) "critical infrastructure" means an asset, facility, equipment, network, system or part thereof, which is necessary for the delivery provision of an essential service;</p>	<p>(4) Discussed on the technical trilogue of 8/02: -Provisionally agreement on using "provision" (instead of delivery) but EP highlights that it needs to be in line with the use of this term in the rest of the Directive. -Provisionally agreement to include "network" -Regarding singular vs plural: To be checked with respective Legal Services and then we will revert to this issue. To be kept in mind a single asset needs to be covered in the definition. -Regarding the insertion of "critical"</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>infrastructure", the EP proposes to keep it in square brackets for now and will further reflect on the issue. EP is concerned with the impact on the overall proposal if the term critical infrastructure is kept. Need to revert to the issue later.</p> <p>-Provisional agreement on: "[critical] infrastructure means an asset, facility, equipment, network, system or part thereof, which is necessary for the provision of an essential service;" (With the issue of plural vs singular to be checked)</p>
Article 2, first paragraph, point (5)				
61	<p>(5) "essential service" means a service which is essential for the maintenance of vital societal functions or economic activities;</p>	<p>(5) "essential service" means a service which is essential for the maintenance of vital societal functions, <u>economic activities, public health and safety, the environment or the rule of law</u> or economic activities;</p>	<p>(5) "essential service" means a service which is essential indispensable for the maintenance of vital societal functions or economic activities;</p>	<p>(5) Discussed on the technical trilogue of 8/02: -Council explained that "essential" is replaced by "indispensable" to avoid the repetition of essential. EP thinks that essential and indispensable are not fully synonymies and perceives that this may limit the scope. Provisional agreement to replace essential by "crucial". -The issue of the insertion of "rule of law" or "public health and safety, the environment" needs to be further discussed. The Council</p>

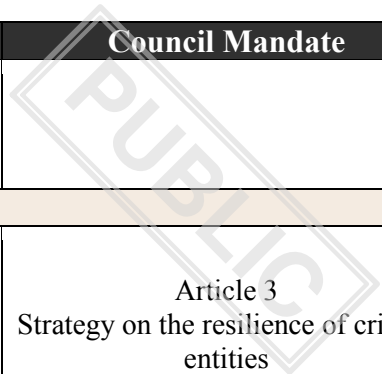
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>has important concerns (including legal ones) against these inclusions particularly the inclusion of "rule of law". The Commission highlighted the this paragraph is in their view related to the sectorial coverage (particularly regarding the status of public administration in the Annex) as well as the potential connection of this paragraph with article 6.1.c. Council suggested to identify a new place in the text for a reference to rule of law.</p> <p><i>Council compromise proposal: the Council could consider to identify a new place in a recital to mention "rule of law"</i></p>
Article 2, first paragraph, point (6)				
62	(6) "risk" means any circumstance or event having a potential adverse effect on the resilience of critical entities;	(6) "risk" means any circumstance or event having a potential adverse effect on the resilience of <u>ability of</u> a critical entities <u>entity to provide an essential service</u> ;	(6) "risk" means any circumstance or event having a potential adverse effect on the resilience of critical entities;	(6) <i>COM informal proposal of 15.02</i> risk' means the potential for loss or disruption caused by an incident and is to be expressed as a combination of the magnitude of such [loss or] disruption and the likelihood of occurrence of said incident

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				<p>(6) Discussed on the technical trilogue on 8/02: -To revert to this issue later, particularly after discussion of article 2.7. EP highlighted that there is a definition of risk on NIS2 and raised the need for coordination. Council highlighted that NIS2 does not seem to have definition of risk assessment.</p>
Article 2, first paragraph, point (7)				
63	<p>(7) “risk assessment” means a methodology to determine the nature and extent of a risk by analysing potential threats and hazards and evaluating existing conditions of vulnerability that could disrupt the operations of the critical entity.</p>	<p>(7) "risk assessment" means a methodology to determine the nature and extent of a risk by analysing<u>assessing</u> potential threats and hazards and evaluating<u>against the resilience of a critical entity, analysing</u> existing conditions of vulnerability that could disrupt<u>lead to the disruption of</u> the operations of the<u>a</u> critical entity: <u>and evaluating the potential adverse effect the disruption of operations could have on the provision of essential services;</u></p>	<p>(7) "risk assessment" means the overall process undertaken by the national competent authorities pursuant to Article 4, or by the critical entities pursuant to Article 10, in order to determine the nature and extent of relevant threats, vulnerabilities and risks that could lead to an incident-a methodology to determine the nature and extent of a risk by analysing potential threats and hazards and evaluating existing conditions of vulnerability that could disrupt the operations of the critical entity.</p>	<p>(7) Discussed on the technical trilogue on 8/02: -To revert to this issue later as it needs further assessment. Council has a problem with the word methodology and EP is open to the idea of replacing it. EP would in principle prefer not to mention cross references to other articles. Commission will provide drafting proposals for both the definitions of risk and risk assessment.</p> <p>COM informal proposal of 15.2</p> <p>risk assessment" means the overall process to determine the nature and extent of a risk by identifying and analysing potential relevant threats, vulnerabilities and hazards that</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>could lead to an incident and evaluating the potential [loss or] disruption of the provision of an essential service caused by the incident.</p> <p>Council compromise proposal: Council proposes to either :</p> <ul style="list-style-type: none"> - Delete the end of the definition (from "evaluating the potential" onwards) or - Add "where appropriate" before "evaluating"
Article 2, first paragraph, point (7)(a)				
63a		<p><u>(a) 'standard' means standard as defined in Article 2, point (1), of Regulation (EU) No 1025/2012 of the European Parliament and of the Council¹:</u></p> <p><u>1. Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC</u></p>		<p>(a) (a) Discussed on the technical trilogue of 8/02: -Need to revert to this issue later. Council raised concerns on this addition (including legal ones). EP explained that they wanted to promote the use of the existing standards and recalled the need to see this paragraph together with article 13a. The Commission highlighted that the purpose of standard is to help to a more coherent implementation and that this supports convergence.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12)</u>		<i>Council compromise proposal: Council considers to remove article 2a on minimum harmonisation principle, in exchange for the deletion of the definitions of "standard" and "technical specification"</i>
Article 2, first paragraph, point (7)(b)				
63b		<u>(b) 'technical specification' means technical specification as defined in Article 2 point (4), of Regulation (EU) No 1025/2012;</u>		<p>(b) Discussed on the technical trilogue of 8/02: -Need to revert to this issue later. Council raised concerns on this addition (including legal ones). EP explained that they wanted to promote the use of the existing standards and recalled the need to see this paragraph together with article 13a. The Commission highlighted that the purpose of standard is to help to a more coherent implementation and that this supports convergence.</p> <p><i>Council compromise proposal: Council considers to remove article 2a on minimum harmonisation principle, in exchange for the deletion of the definitions of "standard" and "technical specification"</i></p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2a				
63c			Article 2a Minimum harmonisation	
Article 2a, first paragraph				
63d			Without prejudice to their obligations under Union law, Member States may adopt or maintain provisions of national law with a view to achieving a higher level of resilience of critical entities.	Discussed on the technical trilogue on 8/02: -Need to revert to the issue later. Council included this to provide clarity. Council highlighted that article 114 (legal basis) may call for full or minimal harmonisation and it felt the need to be concrete (for MS and for critical entities which will read the Directive). EP felt that this article is not needed given the legal basis but it does not fundamentally oppose to it, however, it requires further reflection. EP felt that this new article may promote incoherence on the implementation.
Chapter II				
64	Chapter II National Frameworks on the Resilience of Critical Entities	Chapter II National Frameworks on the Resilience of Critical Entities	Chapter II National Frameworks on the Resilience of Critical Entities	Chapter II National Frameworks on the Resilience of Critical Entities



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Provisionally agreed on the technical trilogue on 8/02
Article 3				
65	Article 3 Strategy on the resilience of critical entities	Article 3 Strategy on the resilience of critical entities	Article 3 Strategy on the resilience of critical entities	Article 3 Strategy on the resilience of critical entities Provisionally agreed on the technical trilogue on 8/02
Article 3(1)				
66	1. Each Member State shall adopt by [three years after entry into force of this Directive] a strategy for reinforcing the resilience of critical entities. This strategy shall set out strategic objectives and policy measures with a view to achieving and maintaining a high level of resilience on the part of those critical entities and covering at least the sectors referred to in the Annex.	1. <u>Following a consultation open to all affected stakeholders</u> , each Member State shall adopt by [three years after entry into force of this Directive] a strategy for reinforcing the resilience of critical entities. This strategy shall <u>take into account the Union strategy on resilience prepared by the Critical Entities Resilience Group, referred to in Article 16, and</u> set out strategic objectives and policy measures with a view to achieving and maintaining a high level of resilience on the part of those critical entities and covering at least the sectors referred to in the Annex.	1. Each Member State shall adopt by [three years after entry into force of this Directive] a strategy for reinforcing enhancing the resilience of critical entities. This strategy shall set out strategic objectives and policy measures, building upon relevant existing national and sectoral strategies or documents , with a view to achieving and maintaining a high level of resilience on the part of those critical entities and covering at least the sectors referred to in the Annex.	1. Discussed on the technical trilogue on 8/02: Only the addition of "Following a consultation open to all affected stakeholders," was discussed. - Need to revert to this issue later. For the Council, the consultation is important but, given the difficulties on organising open consultations (including regarding information security), Council suggested to add "if possible" at the beginning. The reference to "all" is particularly problematic for the Council and causes legal problems. For the EP, the consultation is also important. Council also proposed to add "as



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>adequate". EP would consider particularly problematic if any future language will put in question the happening of the consultation itself.</p> <p>18/2 - COM propose 'the strategy shall take into account the views of relevant stakeholders' to replace EP consultation proposal. CSL initially positive on COM proposal but express concern on word 'consultation', in particular with regard to security considerations and national laws that could deter entities from participating. EP wishes to keep consultation but happy to explore something along the lines of COM proposal.</p> <p><i>Council compromise proposal: "The strategy shall take into account the views of relevant stakeholders"</i></p>
Article 3(2), introductory part				
67	2. The strategy shall contain at least the following elements:	2. The strategy shall contain at least the following elements:	2. The strategy shall contain at least the following elements:	2. Provisionally agreed on the technical trilogue on 18/02 2. The strategy shall contain at least the following elements:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 3(2), point (a)				
68	(a) strategic objectives and priorities for the purposes of enhancing the overall resilience of critical entities taking into account cross-border and cross-sectoral interdependencies;	(a) strategic objectives and priorities for the purposes of enhancing the overall resilience of critical entities taking into account cross-border and cross-sectoral interdependencies;	(a) strategic objectives and priorities for the purposes of enhancing the overall resilience of critical entities taking into account cross-border and cross-sectoral dependencies and interdependencies ;	(a) Discussed on the technical trilogue on 18/02: CSL add dependencies to be more precise. EP agrees in principle that adds clarity. COM agree. CSL version provisionally agreed on the technical trilogue on 8/02 a) strategic objectives and priorities for the purposes of enhancing the overall resilience of critical entities taking into account cross-border and cross-sectoral dependencies and interdependencies;
Article 3(2), point (b)				
69	(b) a governance framework to achieve the strategic objectives and priorities, including a description of the roles and responsibilities of the different authorities, critical entities and other parties involved in the implementation of the strategy;	(b) a governance framework to achieve the strategic objectives and priorities, including a description of the roles and responsibilities of the different authorities, critical entities and other parties involved in the implementation of the strategy;	(b) a governance framework to achieve the strategic objectives and priorities, including a description of the roles and responsibilities of the different authorities, critical entities and other parties involved in the implementation of the strategy;	(b) Provisionally agreed on the technical trilogue on 18/02 (b) a governance framework to achieve the strategic objectives and priorities, including a description of the roles and responsibilities of the different authorities, critical entities and other parties involved in the implementation of the strategy;

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 3(2), point (c)				
70	<p>(c) a description of measures necessary to enhance the overall resilience of critical entities, including a national risk assessment, the identification of critical entities and of entities equivalent to critical entities, and the measures to support critical entities taken in accordance with this Chapter;</p>	<p>(c) a description of measures necessary to enhance the overall resilience of critical entities, including a national risk assessment <u>as referred to in Article 4</u>, the identification of critical entities and of entities equivalent to critical entities, and the measures to support critical entities taken in accordance with this Chapter, <u>including measures to enhance cooperation between the public sector and the private sector and public and private entities</u>;</p>	<p>(c) a description of measures necessary to enhance the overall resilience of critical entities, including a description of a national risk assessment, the identification of critical entities and of entities equivalent to process of critical entities s, and the measures to support critical entities taken in accordance with this Chapter;</p>	<p>(c) Discussed on the technical trilogue on 18/02: CSL generally agrees with EP proposal on cooperation. On 'description' CSL wanted to be more precise. COM highlight the opening of paragraph which is already a description. EP suggest replacing A by THE national risk assessment. EP and CSL additions to be merged. COM suggest square brackets on CSL deletion subject to further discussions on the use of the notion of « entities equivalent to critical entities » elsewhere in text. EP can agree to additions subject to consultations (except entities elements in []). CSL could accept all EP amendments in this row if EP accepted all the Council ones (with the exception of the sentence "of critical entities and of entities equivalent to" as that pertains to the discussions on the notion of entities equivalent to).</p> <p>Possible compromise text (c) a description of measures necessary to enhance the overall</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>resilience of critical entities, including <i>a description</i> of the national risk assessment as referred to in Article 4, the identification [<i>process of</i>] [of critical entities and of entities equivalent to] critical entities, and the measures to support critical entities taken in accordance with this Chapter, <i>including measures to enhance cooperation between the public sector and the private sector and public and private entities;</i></p> <p><i>Technical meeting 6 May: Provisional agreement on the Council compromise proposal, which is: Council proposes to accept the EP amendments, if the Council amendments were accepted and if the end of the paragraph will have the following drafting: “cooperation between the public sector, on the one hand, and the private sector and public and private entities, on the other hand.”</i></p>
Article 3(2), point (ca)				
70a		<u><i>(ca) a list of all authorities and stakeholders involved in the implementation of the strategy;</i></u>		(ca) Discussed on the technical trilogue on 18/02: CSL expresses concerns over

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>confidentiality and national security and 'ALL authorities and STAKEHOLDERS'. « All » cannot be accepted by the Council and « stakeholders » is too vague. EP highlights they do not want to refer to the entities themselves but to the authorities. This is a matter of transparency and is important for the entities affected.</p> <p>COM: highlight article 8(7) where designation of single point of contact / competent authority must be made public by MS. Possibly this type of single point of entry has some merit.</p>
Article 3(2), point (d)				
71	<p>(d) a policy framework for enhanced coordination between the competent authorities designated pursuant to Article 8 of this Directive and pursuant to [the NIS 2 Directive] for the purposes of information sharing on incidents and cyber threats and the exercise of supervisory tasks.</p>	<p>(d) a policy framework for enhanced coordination between the competent authorities designated pursuant to Article 8 of this Directive and pursuant to [the NIS 2 Directive] for the purposes of information sharing on incidents and cyber threats and the exercise of supervisory tasks.</p>	<p>(d) a policy framework for enhanced coordination between the competent authorities designated pursuant to Article 8 of this Directive and pursuant to [the NIS 2 Directive] for the purposes of information sharing on cybersecurity risks, cyber threats and incidents and cybernon-cyber risks, threats and incidents and the exercise of supervisory tasks.</p>	<p>(d) Discussed on the technical trilogue on 18/02: CSL - precisions. COM - agree, also with enhanced deletion. EP: Agree in principle to CSL proposals including deletion of 'enhanced', and close this line.</p> <p>CSL version provisionally agreed on the technical trilogue on 8/02</p> <p>d) a policy framework for coordination between the</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				competent authorities designated pursuant to Article 8 of this Directive and pursuant to [the NIS 2 Directive] for the purposes of information sharing on cybersecurity risks, cyber threats and incidents and non-cyber risks, threats and incidents and the exercise of supervisory tasks.
Article 3(2), point (da)				
71a		<u><i>(da) a policy framework addressing the specific needs and characteristics of small and medium-sized enterprises identified as critical entities to improve their resilience;</i></u>		(da) Discussed on the technical trilogue on 18/02: CSL: ask for clarity of what this would entail. COM: This shouldn't allow for a deviation from the obligations under the Directives. However, something that considers the situation of SMEs could be a useful thought. EP: want to make sure there is a plan for SMEs. Open to work on the wording 'policy framework' CSL: We think the same thing, but in a different way. Ask COM to provide a compromise as it's just a question of wording. COM agree to provide a compromise text. <i>Technical meeting of 6 May:</i>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p><i>Provisional agreement on the Council compromise proposal below:</i></p> <p><i>(da) a description of measures already in place aimed to facilitate the implementation of obligations pursuant to chapter III by small and medium-sized enterprises within the meaning of the Annex to Commission Recommendation 2003/361/EC* that Member States identified as critical entities.</i></p> <p><i>* [footnote: ‘Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).]’</i></p>
Article 3(2), point (db)				
71b		<p><u><i>(db) the relevant aspects of the national cybersecurity strategy provided for in the NIS 2 Directive and any other sectoral national strategy with a view to achieving coordination, complementarity and synergies.</i></u></p>		<p>(db) Discussed on the technical trilogue on 18/02: CSL: Highlight this element of EP proposal is developed in CSL amendment at Art 3.1 COM: Concerned this provision would create need for constant cross-checking and updating. Would this be better achieved through cooperation between</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				competent authorities. Better to keep documents separate but ensure cooperation/ coordination. EP: To consult with internal colleagues and come back with a proposal, reflecting on CSL proposal on Art 3.1. COM recommend line 71 and Art. 8 as pointers.
Article 3(2), first paragraph				
72	The strategy shall be updated where necessary and at least every four years.	<u>Following a consultation open to all affected stakeholders</u> , the strategy shall be updated where necessary and at least every four years.	The strategy shall be updated where when necessary and at least every four years.	Discussed on the technical trilogue on 18/02: EP: 'consultation' already discussed elsewhere. EP consider 'where necessary and' is redundant. CSL: To consult their LS and report back. Technical meeting of 16 May: Provisional agreement on the EP deletion of "where necessary and"
Article 3(3)				
73	3. Member States shall communicate their strategies, and any updates of their strategies, to the Commission within three months from their adoption.	3. Member States shall communicate their strategies, and any updates of their strategies, to the Commission within three months from their adoption.	3. Member States shall communicate the relevant aspects of their strategies, including of elements referred to in paragraph 2 , and any updates of their strategies thereof , to the	3. Discussed on the technical trilogue on 18/02: CSL: Part of strategy will include very specific and sensitive points - sharing the whole strategy presents a risk. But we want to ensure COM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Commission within three months from their adoption.	<p>has what they need. EP concerned with 'relevant' that would give the COM fragmented information. COM: Art 3.1 obliges MS to produce strategy. 3.2 includes 'at least' - if we include and respect elements specified in this Dir that would already go a long way and recognise CSL sensitivities on security. EP agree to reflect, it should make clear that those elements included in Dir are included to ensure consistency. If there is common understanding on what is necessary EP open to suggestions. Asks CSL to clarify those elements. CSL agrees to reflect and return with a proposal.</p> <p><i>Council compromise proposal: The Council proposes to introduce "a comprehensive summary of their strategies"</i></p> <p>Technical meeting 16/5: timeline provisionally agreed</p>
Article 4				
74	Article 4 Risk assessment by Member States	Article 4 Risk assessment by Member States	Article 4 Risk assessment by Member States	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 4(1), introductory part				
75	<p>1. Competent authorities designated pursuant to Article 8 shall establish a list of essential services in the sectors referred to in the Annex. They shall carry out by [three years after entry into force of this Directive], and subsequently where necessary, and at least every four years, an assessment of all relevant risks that may affect the provision of those essential services, with a view to identifying critical entities in accordance with Article 5(1), and assisting those critical entities to take measures pursuant to Article 11.</p>	<p>1. Competent authorities designated pursuant to The Commission is empowered to adopt a delegated act in accordance with Article 8 shall establish <u>1 to supplement this Directive by establishing</u> a list of essential services in the sectors <u>and subsectors</u> referred to in the Annex. They <u>The Commission shall adopt the delegated act no later than... [six months after the date of entry into force of this Directive].</u> <u>Competent authorities designated pursuant to Article 8</u> shall carry out by [three years after entry into force of this Directive], and subsequently where necessary, and at least every four years, an assessment of all relevant risks that may affect the provision of those <u>the</u> essential services <u>listed in the delegated act</u>, with a view to identifying critical entities in accordance with Article 5(1), and assisting those critical entities to take measures pursuant to Article 11.</p>	<p>1. Competent authorities designated pursuant to Article 8 shall establish a list of essential services in the sectors referred to in the Annex. They shall carry out by [three years after entry into force of this Directive], and subsequently where necessary, and at least every four years, a risk-an assessment of all relevant risks that may affect the provision of those essential services, with a view to identifying critical entities in accordance with Article 5(1), and assisting those critical entities to take measures pursuant to Article 11.</p>	<p>1. Discussed on the technical trilogue on 18/02: EP: Provides COM responsibility and clarifies subsectors. CSL: Sensitive point for CSL. Possibly not in line with principle that DAs focus on 'non-essential elements' COM: Gave this task to MS as such an exercise was already carried out as part of NIS1. Authorities could build on their previous work. The delegation would need to be prescribed in a certain way - EP text is very open. If legislators decide for an empowerment of the COM, further details would be needed. EP: Could work with LS to ensure clarity on proposal. Agree that this is a political level issue. COM: EP is asking for what constitutes an essential service at EU level - this is different to COM proposal and could MS contemplate this? If so, we could look at alternatives to a DA. An annex could be another mechanism. CSL: this was not discussed with</p>

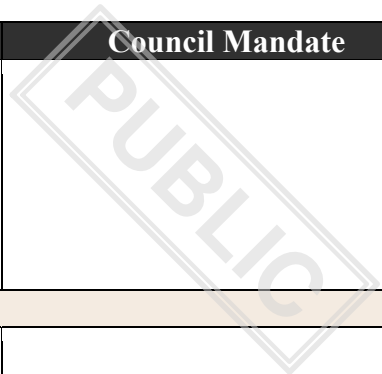
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>MS - but we can reopen the debate to see where the limits are in terms of articulating a list, remembering DAs are very sensitive. CSL reflected that it may be better to find wording before taking it to MS. This will have time implications, and also need to consider impact on DORA and NIS2 as a list would certainly touch these two Directives. Conclusion: To be sent to the Political level.</p> <p>Technical meeting 16/5: timeline provisionally agreed.</p>
Article 4(1), first paragraph				
76	<p>The risk assessment shall account for all relevant natural and man-made risks, including accidents, natural disasters, public health emergencies, antagonistic threats, including terrorist offences pursuant to Directive (EU) 2017/541 of the European Parliament and of the Council¹.</p> <p>¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision</p>	<p>The risk assessment shall account for all relevant natural and man-made risks, including <u>those of a cross-sectoral or cross-border nature</u>, accidents, natural disasters, public health emergencies, antagonistic threats, including terrorist offences pursuant to Directive (EU) 2017/541 of the European Parliament and of the Council¹.</p> <p>¹ Directive (EU) 2017/541 of the European Parliament and of the Council of</p>	<p>The risk assessment shall account for all relevant natural and man-made risks, including accidents, natural disasters, public health emergencies, hybrid threats or other antagonistic threats, including terrorist offences pursuant to Directive (EU) 2017/541 of the European Parliament and of the Council¹.</p> <p>¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and</p>	<p>Discussed on 1/03 technical meeting: Council considered that "all" is unnecessary in this sentence. EP and COM considers "all" is necessary to cover a broad scope.</p> <p>Text provisionally agreed (except language in square brackets): The risk assessment shall account for [all] relevant natural and man-made risks, including those of a cross-sectoral or cross-border nature, accidents, natural disasters,</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).	15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).	replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).	public health emergencies, hybrid threats or other antagonistic threats, including terrorist offences pursuant to Directive (EU) 2017/541 of the European Parliament and of the Council
Article 4(2), introductory part				
77	2. In carrying out the risk assessment, Member States shall take into account as a minimum:	2. In carrying out the risk assessment, Member States shall take into account as a minimum:	2. In carrying out the risk assessment, Member States shall take into account at least the following as a minimum:	2. Discussed on 1/03 technical meeting: Text provisionally agreed as follows: In carrying out the risk assessment, Member States shall take into account at least the following:
Article 4(2), point (a)				
78	(a) the general risk assessment carried out pursuant to Article 6(1) of Decision No 1313/2013/EU of the European Parliament and of the Council ¹ ; 1. Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).	(a) the general risk assessment carried out pursuant to Article 6(1) of Decision No 1313/2013/EU of the European Parliament and of the Council ¹ ; 1. Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).	(a) the general risk assessment carried out pursuant to Article 6(1) of Decision No 1313/2013/EU of the European Parliament and of the Council ¹ ; 1. Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).	(a) Discussed 1/03 technical meeting: Text provisionally agreed. a) the general risk assessment carried out pursuant to Article 6(1) of Decision No 1313/2013/EU of the European Parliament and of the Council ¹ ; ¹ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Protection Mechanism (OJ L 347, 20.12.2013, p. 924).
Article 4(2), point (b)				
79	<p>(b) other relevant risk assessments, carried out in accordance with the requirements of the relevant sector-specific acts of Union law, including Regulation (EU) 2019/941 of the European Parliament and of the Council¹ and Regulation (EU) 2017/1938 of the European Parliament and of the Council²;</p> <p>1. Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1). 2. Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).</p>	<p>(b) other relevant risk assessments, carried out in accordance with the requirements of the relevant sector-specific acts of Union law, including Regulation (EU) 2019/941 of the European Parliament and of the Council¹ and Regulation (EU) 2017/1938 of the European Parliament and of the Council²;</p> <p>1. Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1). 2. Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).</p>	<p>(b) other relevant risk assessments, carried out in accordance with the requirements of the relevant sector-specific acts of Union law, including Regulation (EU) 2019/941 of the European Parliament and of the Council¹ and , Regulation (EU) 2017/1938 of the European Parliament and of the Council², Directive 2012/18/EU of the European Parliament and of the Council³ and Directive 2007/60/EC of the European Parliament and of the Council⁴;</p> <p>1. Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1). 2. Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1). 3. Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing</p>	<p>(b) Discussed on 1/03 technical meeting: Provisional agreement on : other relevant risk assessments, carried out in accordance with the requirements of the relevant sector-specific acts of Union law, including Regulation (EU) 2019/941 of the European Parliament and of the Council¹, Regulation (EU) 2017/1938 of the European Parliament and of the Council², Directive 2012/18/EU of the European Parliament and of the Council³ and Directive 2007/60/EC of the European Parliament and of the Council⁴;</p> <p>1. Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1). 2. Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1). 3. Directive 2012/18/EU of the European</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1).</p> <p>4. Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27).</p>	<p>Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1).</p> <p>4. Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27).</p>
Article 4(2), point (c)				
80	<p>(c) any risks arising from the dependencies between the sectors referred to in the Annex, including from other Member States and third countries, and the impact that a disruption in one sector may have on other sectors;</p>	<p>(c) any risks arising from the dependencies between the sectors referred to in the Annex, including from other Member States and third countries, and the impact that a disruption in one sector may have on other sectors, <u>including any risks to citizens and the internal market</u>;</p>	<p>(c) any relevant risks arising from the dependencies between the sectors referred to in the Annex, including from dependencies on entities located within other Member States and third countries, and the impact that a significant disruption in one sector may have on other sectors;</p>	<p>(c) Discussed on 1/03 technical meeting: Council has concerns regarding the EP amendment because it may change the scope. EP reasserts the need for this amendment as the essential service is only useful if it helps the citizen and the amendment does not aim to create an obligation. EP: How to refer to the internal market may be addressed horizontally (to point that only relevant parts of internal market are referred). On Council inclusion of "relevant", EP is concerned that it narrows down the meaning. COM: refers to Art 4(1) "all relevant risks" which is broad so the notion of EP amendment could go to a recital; the inclusion of</p>







	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				third countries, and the impact that a [significant] disruption in one sector may have on other sectors, including any significant risks to citizens and the internal market;
Article 4(2), point (d)				
81	(d) any information on incidents notified in accordance with Article 13.	(d) any information on incidents notified in accordance with Article 13.	(d) any relevant information on incidents notified in accordance with Article 13.	(d) Discussed 1/03 technical meeting: This is linked to article 13. EP concerned that by adding "relevant" some important information is missed. EP wonders how many incidents will be there and which kind of information will be provided. Council: we need to be precise and refer only to what is relevant (not all minor incidents). Conclusion: to come back when article 13 is discussed.
Article 4(2), first paragraph				
82	For the purposes of point (c) of the first subparagraph, Member States shall cooperate with the competent authorities of other Member States and third countries, as appropriate.	For the purposes of point (c) of the first subparagraph, Member States shall cooperate with the competent authorities of other Member States and third countries, as appropriate.	For the purposes of point (c) of the first subparagraph, Member States shall cooperate with the competent authorities of other Member States and third countries, as appropriate.	Discussed 1/3 technical meeting. Provisionally agreed. For the purposes of point (c) of the first subparagraph, Member States shall cooperate with the competent authorities of other Member States

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				and third countries, as appropriate.
Article 4(3)				
83	<p>3. Member States shall make the relevant elements of the risk assessment referred to in paragraph 1 available to the critical entities that they identified in accordance with Article 5 in order to assist those critical entities in carrying out their risk assessment, pursuant to Article 10, and in taking measures to ensure their resilience pursuant to Article 11.</p>	<p>3. Member States shall make the relevant elements of the risk assessment referred to in paragraph 1 available, <u>through their single point of contact referred to in Article 8(2)</u>, to the critical entities that they identified in accordance with Article 5 in order to assist those critical entities in carrying out their risk assessment, pursuant to Article 10, and in taking measures to ensure their resilience pursuant to Article 11.</p>	<p>3. Member States shall make the relevant elements of the risk assessment referred to in paragraph 1 available to the critical entities that they identified in accordance with Article 5. The information provided to in order to assist those critical entities shall assist them in carrying out their risk assessment, pursuant to Article 10, and in taking measures to ensure their resilience pursuant to Article 11.</p>	<p>3. Discussed on technical meeting 1/03: -On EP amendment: EP: This is related to art 8.2. Aim of EP amendment: is to cut red tape to allow for more swift procedure but the MS are the ones which have to implement. COM: If art. 8.2 remains as is, this amendment would not be useful (as not in line with role/tasks of single point of contact in Art 8.2). In any case, COM reminds that list of competent authorities and the single points of contact need to be public. Council: It would be too much for a single point of contact to also deal with this (as thousands of entities in scope that it is often dealt in each sector). Council proposes to add "preferably" before the EP amendment. Conclusion: To revisit when discussing art 8.2. -On Council amendments: It is provisionally agreed.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	Text provisionally agreed: Member States shall make the relevant elements of the risk assessment referred to in paragraph 1 available [, preferably through their single point of contact referred to in Article 8(2),] to the critical entities that they identified in accordance with Article 5. The information provided to critical entities shall assist them in carrying out their risk assessment, pursuant to Article 10, and in taking measures to ensure their resilience pursuant to Article 11.
Article 4(4)				
84	4. Each Member State shall provide the Commission with data on the types of risks identified and the outcomes of the risk assessments, per sector and sub-sector referred to in the Annex, by [three years after entry into force of this Directive] and subsequently where necessary and at least every four years.	4. Each Member State shall provide the Commission with data on the types of risks identified and the outcomes of the risk assessments, per sector and sub-sector referred to in the Annex, by [three years after entry into force of this Directive] and subsequently where necessary and at least every four years.	4. Each Member State shall provide the Commission with data summarised on the types of risks identified and the summarised outcomes of the risk assessments, per sector and sub-sector referred to in the Annex , by within [three years months after entry into force of this Directive carrying out the risk assessment] and subsequently where necessary and at least every four years.	4. Discussed in technical meeting 1/03: Council: is concerned because information can be sensitive or classified. Council proposes that all deadlines could be seen together later on. EP: We are worried that not enough info is provided. EP understands the security concerns but the real benefit is to have the COM gathering anonymised info so that they can do recommendations. COM: We need precise info

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>(particularly info per sector and per subsector) to understand how MS implement the Directive. COM recalls that there are systems in place to share and protect classified info.</p> <p>Council new proposal (1): Each Member State shall provide the Commission with the types of risks identified and the relevant outcomes of the risk assessments, per sector and per sub-sector referred to in the Annex, within (...).</p> <p>EP: Replacing "summarised" by "relevant" outcomes is not appropriate.</p> <p>CION: Council proposal goes in the right direction but would be better to eliminate the adjective relevant.</p> <p>Council: chooses relevant due to coherence with the rest of the text.</p> <p>Council new proposal (2): Each Member State shall provide the Commission with the types of risks identified and the conclusions of Union interest of the risk assessments (...) (this replaces summarised outcomes). Sectors and subsectors stay deleted.</p> <p>COM: Thinks that this is a step backwards as it is even more</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>abstract level. The objective is to understand the implementation of the provision at national level.</p> <p>Council new new proposal (3): the conclusions of the risk assessments (to replace summarised outcomes). Sectors and subsectors stay deleted.</p> <p>EP: To follow up discussion in writing.</p> <p>Council: sees this is related to row 85 in which COM will provide a template.</p> <p><i>Council compromise proposal: "the conclusions of the risk assessments" (to replace "summarised outcomes").</i></p> <p>Technical meeting 16 May: On the change of deadline proposed by CL:</p> <p>CL We added 3 months to allow for the communication to CION. Need to elaborate the conclusions of risk assessment</p> <p>EP We are puzzle what these 3 months make the difference of. Would there be vital?</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>CION</p> <p>The CL proposal gives 3 months for the sending of the information, similar for the line 73 when 3 months are given. In principle fine for COM as is only about communicating, it does not extend the deadline to carry out the risk assessment.</p> <p>EP</p> <p>What is important is the risk assessment itself. We could possibly come to a common understanding after seeing the global agreement on deadline.</p>
Article 4(5)				
85	5. The Commission may, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4.	5. The Commission may shall, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4.	5. The Commission may shall, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4.	<p>5. Discussed technical meeting 1/03: Council: sees this related to row 84.</p> <p>Provisional agreement on replacing may by shall:</p> <p>The Commission shall, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 5				
86	Article 5 Identification of critical entities	Article 5 Identification of critical entities	Article 5 Identification of critical entities	
Article 5(1)				
87	1. By [three years and three months after entry into force of this Directive] Member States shall identify for each sector and subsector referred to in the Annex, other than points 3, 4 and 8 thereof, the critical entities.	1. By [three years and three months after entry into force of this Directive] Member States shall identify for each sector and subsector referred to in the Annex, other than points 3, 4 and 8 thereof, the critical entities.	1. By [three four years and three months] after entry into force of this Directive] Member States shall identify for each sector and subsector sectors and subsectors referred to in the Annex, other than points 3, 4 and 8 thereof, the critical entities.	1. Discussed 1/03 technical meeting: EP: If a sector does not exist on a MS, then no need to identify critical entities in that sector. COM: Need to add "the" before sectors in the Council amendment. Suggests including a recital clarifying the process and that not all MS may have entities in all sectors. Conclusion: -Provisionally agreed that deadlines will be treated as a package. -Provisionally agreed to refer to points 3,4, and 8 later globally. -Provisional agreement on: [By [YYY after entry into force of this Directive]] Member States shall identify for the sector and subsector referred to in the Annex, the critical entities. -Provisional agreement on adding a




	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>recital explaining among other things that not all MS may have entities in all sectors. COM to provide text.</p> <p>Technical meeting 16 May: On the deadline:</p> <p>CL We went up to 4 years (9 months more) to allow MS to do proper identification which is not rushed. 3 months after the risk assessment is not enough time</p> <p>EP This is a key element. We worry this may lead to further delays. Given the change of security situation due to UA, we think that we cannot delay action</p> <p>CION We see need to swift progress of implementation. 3 years and 3 months is quite some time already. Many of the critical entities identified under CER would be already part of national critical infrastructure framework.</p> <p>CL We will come back to this.</p>
	Article 5(2), introductory part			
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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	2. When identifying critical entities pursuant to paragraph 1, Member States shall take into account the outcomes of the risk assessment pursuant to Article 4 and apply the following criteria:	2. When identifying critical entities pursuant to paragraph 1, Member States shall take into account the outcomes of the risk assessment pursuant to Article 4 and <u>the strategy on the resilience of critical entities referred to in Article 3 and shall</u> apply the following criteria:	2. When identifying critical entities pursuant to paragraph 1, Member States shall take into account the outcomes of the risk assessment pursuant to Article 4 and apply the all following criteria:	2. Discussed on 1/3 technical meeting: -CL agrees provisionally on EP amendment and explains that all is there to clarify. -provisional agreement on: When identifying critical entities pursuant to paragraph 1, Member States shall take into account the outcomes of the risk assessment pursuant to Article 4 and the strategy on the resilience of critical entities referred to in Article 3 and shall apply all following criteria:
Article 5(2), point (a)				
89	(a) the entity provides one or more essential services;	(a) the entity provides one or more essential services;	(a) the entity provides one or more essential services;	(a) Discussed on 1/03 technical meeting: Provisional agreement a) the entity provides one or more essential services;
Article 5(2), point (b)				
90	(b) (the provision of that service depends on infrastructure located in the Member State; and	(b) the provision of that <u>essential</u> service depends on infrastructure located in the Member State; and	(b) (the provision of that service depends on infrastructure located in the entity and its critical infrastructure are located on the territory of the Member State	(b) Discussed on 1/03 technical meeting: Council: states that clarity is needed on whether the Directives opts for a Home or Host regulatory


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>performing the identification; and</p>	<p>regime. Council opted for a Home one and made it explicit. The centre of this Directive is the critical entity and not the infrastructure. Council is open to discuss the precise language. EP: Very important political point. COM proposal to focus on the service itself is something we want to support. If we enter the Council approach (double conditionality), it may lead to gaps and may create legal uncertainty. We can continue to provide clarity technically but this to be resolved in political level. COM: The link to entity and service is in point (a), and point (b) refers to the link between the service and infrastructure. We wonder where the Council sees a gap. Clarity needed on what is meant with 'entity located' and what is to be achieved with adding the second criterion. Conclusion: This issue is to be resolved at political level, although further clarifying questions can be addressed at technical level.</p> <p><i>Council compromise proposal: "(b) The entity operates on the territory of the Member State</i></p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<i>performing the identification and its critical infrastructure is located on the territory of this Member State; and"</i>
Article 5(2), point (c)				
91	(c) an incident would have significant disruptive effects on the provision of the service or of other essential services in the sectors referred to in the Annex that depend on the service.	(c) an incident would have significant disruptive effects on the provision of the <i>essential</i> service or of other essential services in the sectors referred to in the Annex that depend on the service.	(c) an incident would have significant disruptive effects on the provision of these essential services the service or of other essential services in the sectors referred to in the Annex that depend on the service pursuant to Article 6(1) .	(c) Technical meeting 6 May: Provisional agreement on Council compromise proposal: <i>"(c) An incident would have significant disruptive effects, pursuant to Article 6(1), on the provision of one or more of these essential services the service or of other essential services in the sectors referred to in the Annex that depend on the service."</i>
Article 5(3), introductory part				
92	3. Each Member State shall establish a list of the critical entities identified and ensure that those critical entities are notified of their identification as critical entities within one month of that identification, informing them of their obligations pursuant to Chapters II and III and the date from which the provisions of those Chapters apply to them.	3. Each Member State shall establish a list of the critical entities identified and ensure that those critical entities are notified of their identification as critical entities within one month of that identification, informing them of their obligations pursuant to Chapters II and III and the date from which the provisions of those Chapters apply to them.	3. Each Member State shall establish a list of the critical entities identified and ensure that those critical entities are notified of their identification as critical entities within one month of that identification, informing them. Member States shall inform those critical entities of their obligations pursuant to Chapters II and III and IV and the date	3. Technical meeting 14 March: CION: if the approach proposed by the Council would be agreeable for the EP, then in principle willing to follow the Council approach (delete the category of entities equivalent to critical entities), but we need to clearly distinguish those entities who will have obligations flowing from the directive and those who don't

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>from which the these provisions apply to them, without prejudice to Article 7 of those Chapters apply to them.</p>	<p>(objective of COM proposal with 2 denominations was to ensure legal clarity). On lines 92 and 94, there is a need for further clarity regarding the entities in the sectors referred to in points 3, 4 and 8 of the Annex.</p> <p>EP : in principle not against to the deletion of the category of entities equivalent to critical entities but EP does not have the mandate to address that today. I However it is important to clearly establish what is required from the entities and what is not.</p> <p>Council : proposes one amendment to clarify, pending on the discussion on article 7. Council has concerns on the coverage of physical resilience discussed in DORA and NIS2 directive. Council proposes to add at the end the following : “Member States shall inform critical entities in the sectors referred to in points 3, 4 and 8 of the Annex that they have no obligations pursuant to Chapters III and IV.”</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>EP : looks acceptable, pending to the discussion on article 7. We can put it square brackets.</p> <p>COM: very good clarification</p> <p>Provisionally agreed : 3. Each Member State shall establish a list of the critical entities identified and ensure that those critical entities are notified of their identification as critical entities within one month of that identification. Member States shall inform those critical entities of their obligations pursuant to Chapters III and IV and the date from which these provisions apply to them, [without prejudice to Article 7]. Member States shall inform critical entities in the sectors referred to in points 3, 4 and 8 of the Annex that they have no obligations pursuant to Chapters III and IV.]</p> <p>In any case: the above agreement is dependent on an agreement on art 7.</p>
Article 5(3), first paragraph				
93	For the critical entities concerned,	For the critical entities concerned,	For the critical entities concerned,	Technical Meeting 14/03:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>the provisions of this Chapter shall apply from the date of the notification and the provisions of Chapter III shall apply from six months after that date.</p>	<p>the provisions of this Chapter shall apply from the date of the notification and the provisions of Chapter III shall apply from six months after that date.</p>	<p>the provisions of Chapters III and IV this Chapter shall apply from twelve months after that date, except for the date of the notification and the provisions of Chapter III Article 14(2)(a) which shall apply from six months after that date the date of the notification.</p>	<p>All timelines to be discussed altogether later on.</p> <p>Provisionally agreed : For the critical entities concerned, the provisions of <i>Chapters III and IV</i> shall apply from [twelve months after that date] except for the provisions of <i>Article 14(2)(a) which</i> shall apply [from the date of the notification].</p> <p>Technical meeting of 16 May: On the deadlines: CL We added 6 months (total 12 months) because 6 months was not enough for critical entities to implement the resilience measures (core of the Directive). EP EP is concerned with this change. It is indeed core of the matter. Measures should be taken asap. Administrative burden should not be too high for them. CION Need for swift implementation, to achieve the resilience of entities asap. In the process of implementing (before designation), it is expected that there would be already informal contacts, therefore</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>critical entities would be able to start preparing in advance. CL</p> <p>Concern is that we don't want to have entities that are unable to implement the resilience measures. Proposal is to keep here 12 months here and be flexible on other deadlines on MS obligations. EP</p> <p>We have shown already flexibility on a number of elements to try to reduce the burden on entities (e.g. on equivalence regime). There is need to inform entities with lot of time in advance. At this point we cannot make any concessions on this. CION: suggestion to narrow down the difference between the two proposals, to find possible compromise. EP</p> <p>If we look at the initial proposal. We look 3 years and 10 months after entry into force and what CL proposes is more than 5 years. It is not few months more or less. Every month counts. We would need CL to move more CL</p> <p>Compromise proposed: In line 87, 3 years and 6 months (instead of 4</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>years) in exchange of keeping 12 months (in line 93 and 133). EP Do you have specific feedback from entities about their difficulties to fulfil 6 months deadline? CL Entities need first to do the risk assessment, then identify and implement the resilience measures. The timeline needs to be realistic. This is the first time that we will implement the Directive. EP We don't want to overburden them. 6 months makes a difference. It is crucial. We need to find a good middle ground.</p>
Article 5(4)				
94	<p>4. Member States shall ensure that their competent authorities designated pursuant to Article 8 of this Directive notify the competent authorities that the Member States designated in accordance with Article 8 of [the NIS 2 Directive], of the identity of the critical entities that they identified under this Article within one month of that identification.</p>	<p>4. Member States shall ensure that their competent authorities designated pursuant to Article 8 of this Directive notify the competent authorities that the Member States designated in accordance with Article 8 of [the NIS 2 Directive], of the identity of the critical entities that they identified under this Article within one month of that identification.</p>	<p>4. Member States shall ensure that their competent authorities designated pursuant to Article 8 of this Directive notify the competent authorities that the Member States designated in accordance with Article 8 of [the NIS 2 Directive], of the identity of the critical entities that they identified under this Article within one month of that identification.</p>	<p>4. Technical Meeting 14/03: -Provisionally agreed the deletion of the Council. -CION: On lines 92 and 94, provided that the co-legislators agree on the approach proposed by the Council (i.e. unique denomination 'critical entities' for all sectors) there is a need for further clarity regarding the entities in the sectors referred to in points 3, 4 and 8 of the Annex to ensure</p>

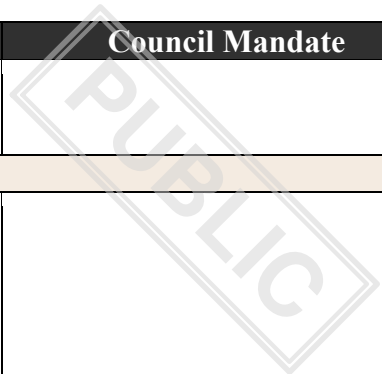


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>legal clarity. -Council proposes to add at the end of this line: “That notification shall specify, where applicable, that the critical entities concerned are entities in the sectors referred to in points 3, 4 and 8 of the Annex to this Directive and have no obligations under Chapters III and IV thereof.” EP provisionally satisfactory, put it in square brackets. In any case: the above agreement is dependent on an agreement on art 7.</p> <p>Provisionally agreed: Member States shall ensure that their competent authorities designated pursuant to Article 8 of this Directive notify the competent authorities designated in accordance with Article [X] of [the NIS 2 Directive], of the identity of the critical entities that they identified under this Article within one month of that identification. [That notification shall specify, where applicable, that the critical entities concerned are entities in the sectors referred to in points 3, 4 and 8 of the Annex to this Directive and have no obligations</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				under Chapters III and IV thereof.]
Article 5(5)				
95	5. Following the notification referred in paragraph 3, Member States shall ensure that critical entities provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they have been identified as a critical entity in one or more other Member States. Where an entity has been identified as critical by two or more Member States, these Member States shall engage in consultation with each other with a view to reduce the burden on the critical entity in regard to the obligations pursuant to Chapter III.	5. Following the notification referred in paragraph 3, Member States shall ensure that critical entities provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they have been identified as a critical entity in one or more other Member States. Where an entity has been identified as critical by two or more Member States, these Member States shall engage in consultation with each other with a view to reduce <u>achieving the highest possible degree of coherence and to reducing</u> the burden on the critical entity in regard to the obligations pursuant to Chapter III.	5. Following the notification referred in paragraph 3, Member States shall ensure that critical entities provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they have been identified as a critical entity in one or more other Member States. Where an entity has been identified as critical by two or more Member States, these Member States shall engage in consultation with each other with a view to reduce the burden on the critical entity in regard to the obligations pursuant to Chapter III.	5. Technical Meeting 14/03: -Council: Some of these parts were moved to 9a in the Council General Approach. Moreover we changed article 5.2. to avoid multiple identification of the same critical entity by different Member states (by adding another criterion for the identification), so there were no need to set up the mechanism laid down in article 5(5). Deletion that is coherent with the change made by the Council in article 5(2)b. -CION: Ok in principle to move substance to Art 9a. Conclusion: As this is linked to art 9a and 5.2.b, we put all this line 95 in square brackets waiting for a resolution of the related articles. In case this paragraph was to be reintroduced, the Council would accept EP amendment.
Article 5(6)				
96	6. For the purposes of Chapter IV, Member States shall ensure that	6. For the purposes of Chapter IV, Member States shall ensure that	6. For the purposes of Chapter IV, Member States shall ensure that	6. Technical meeting 14 March: On the Council amendment:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>critical entities, following the notification referred in paragraph 3, provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they provide essential services to or in more than one third of Member States. Where that is so, the Member State concerned shall notify, without undue delay, to the Commission the identity of those critical entities.</p>	<p>critical entities, following the notification referred in paragraph 3, provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they provide <u>the same or similar</u> essential services to or in more than one <u>third of three</u> Member States. Where that is so, the Member State concerned shall notify, without undue delay, to the Commission the identity of those critical entities.</p>	<p>critical entities, following the notification referred in paragraph 3, provide information to their competent authorities designated pursuant to Article 8 of this Directive on whether they provide essential services to or in more than one third of Member States. Where that is so, the Member State concerned shall notify, without undue delay, to the Commission the identity of those critical entities.</p>	<p>- Council: In our General Approach, this is moved to art 14 (rows 167a and 167b, with a precision added on what essential service is provided). Conclusion: agreed to be discussed when art 14.</p> <p>-EP on “same or similar” essential services : We fear that a service may have a certain name in one MS and another one in another MS. This is an IMCO amendment. CION: Sympathy with EP amendment, it would be useful in case the identification of essential services is done by MS (as in COM proposal). In such a case, it is likely that there will be some differences from MS to MS. To be kept in mind that EP proposed a delegated act for defining a common list of essential services. -Council is afraid of lack of clarity and mentioned that an example would help.</p> <p>Threshold to be discussed when article 14 is addressed and at political level.</p> <p>Conclusion: All this line is put in square</p>

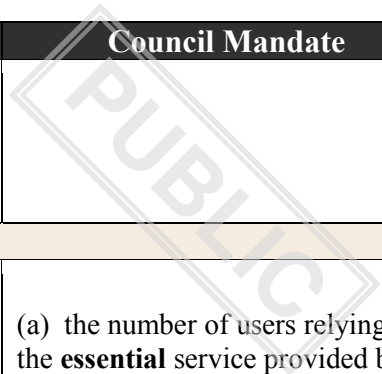
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				brackets.
Article 5(7), introductory part				
97	7. Member States shall, where necessary and in any event at least every four years, review and, where appropriate, update the list of identified critical entities.	7. Member States shall, where necessary and in any event at least every four years, review and, where appropriate, update the list of identified critical entities.	7. Member States shall, where necessary and in any event at least every four years, review and, where appropriate, update the list of identified critical entities.	7. Technical meeting 14 March: Provisionally agreed. 7. Member States shall, where necessary and in any event at least every four years, review and, where appropriate, update the list of identified critical entities.
Article 5(7), first paragraph				
98	Where those updates lead to the identification of additional critical entities, paragraphs 3, 4, 5 and 6 shall apply. In addition, Member States shall ensure that entities that are no longer identified as critical entities pursuant to any such update are notified thereof and are informed that they are no longer subject to the obligations pursuant to Chapter III as from the reception of that information.	Where those updates lead to the identification of additional critical entities, paragraphs 3, 4, 5 and 6 shall apply. In addition, Member States shall ensure that entities that are no longer identified as critical entities pursuant to any such update are notified thereof and are informed <i>in due time</i> that they are no longer subject to the obligations pursuant to Chapter III as from the reception of that information.	Where those updates lead to the identification of additional critical entities, paragraphs 3, 4, 5 and 6 and 4 shall apply. In addition, Member States shall ensure that entities that are no longer identified as critical entities pursuant to any such update are notified thereof and are informed that they are no longer subject to the obligations pursuant to Chapter III as from the reception of that information.	Technical meeting 14 March: Conclusion: Provisionally agreed in accepting all amendments from EP and Council. Where those updates lead to the identification of additional critical entities, paragraphs 3 and 4 shall apply. In addition, Member States shall ensure that entities that are no longer identified as critical entities pursuant to any such update are notified thereof and are informed in due time that they are no longer subject to the obligations pursuant to Chapter III as from the reception



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				of that information.
Article 5(7a)				
98a		<u>7a. The Commission shall, in cooperation with the Member States, develop recommendations and guidelines to support Member States in identifying critical entities.</u>		<p>7a. Technical meeting 14 March: -EP: There is a need for guidelines for, among other reasons, a more coherent approach through the EU. -CION: we are open to the suggestion, happy to support the MS. -Council: to add “non-binding” before guidelines and to ensure that the non-binding nature of Commission recommendations and guidelines is made explicit in a recital. -EP: We thought it was clear already, so we are in agreement. "Non-binding guidelines and recommendations" is okay with us. -Council to discuss with delegations to see if agreeable. It goes in square brackets.</p> <p>Provisionally agreed: [The Commission shall, in cooperation with the Member States, develop non-binding guidelines and recommendations to support Member States in identifying critical entities.]</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Technical meeting of 6 May: Provisional agreement on <i>Council compromise proposal</i> : <i>Council is willing to accept the EP amendment ("The Commission shall, in cooperation with the MS, develop recommendations and guidelines to support MS in identifying critical entities"), in exchange for adding "non-binding guidelines" and adding a recital to clarify the non-binding nature of these recommendations and guidelines.</i>
Article 6				
99	Article 6 Significant disruptive effect	Article 6 Significant disruptive effect	Article 6 Significant disruptive effect	Article 6 Article 6 Significant disruptive effect Technical meeting 14 March: Provisionally agreed
Article 6(1), introductory part				
100	1. When determining the significance of a disruptive effect as referred to in point (c) of Article 5(2), Member States shall take into account the following criteria:	1. When determining the significance of a disruptive effect as referred to in point (c) of Article 5(2), Member States shall take into account the following criteria:	1. When determining the significance of a disruptive effect as referred to in point (c) of Article 5(2), Member States shall take into account the following criteria:	1. Technical meeting 14 March: Provisionally agreed 1. When determining the significance of a disruptive effect



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				as referred to in point (c) of Article 5(2), Member States shall take into account the following criteria:
Article 6(1), point (a)				
101	(a) the number of users relying on the service provided by the entity;	(a) the number of users relying on the <u>essential</u> service provided by the entity;	(a) the number of users relying on the essential service provided by the entity;	(a) Technical meeting 14 March: Provisionally agreed including essential a) the number of users relying on the essential service provided by the entity;
Article 6(1), point (b)				
102	(b) the dependency of other sectors referred to in the Annex on that service;	(b) the dependency of other sectors <u>and subsectors</u> referred to in the Annex <u>or of the supply chain</u> on that <u>essential</u> service;	(b) the dependency of other sectors referred to in the Annex on that essential service;	(b) Technical meeting 14 March: EP: Need to make explicit subsector and supply chain (in early times of pandemic there was small disturbance in part of the chain that led to big disturbance down the line in the supply chain. This amendment comes from IMCO) -CION: No problem adding 'essential'. Fine to add 'subsector', it is a clarification. Supply chain: open to have a reference if it's agreeable for co-legislators; one could consider adding it in a recital.



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>-Council: Reference to supply chain could be consider a bureaucratic burden. This is complicated for us. We would prefer to include it in a recital.</p> <p>-EP we know that the concept can be vague. We cannot say now if we can agree, we need to check with IMCO. But it is positive compromise proposal to include it in a recital. We will come back to you in written with a proposal.</p> <p>Provisionally agreed: (b) the dependency of other sectors <i>and subsectors</i> referred to in the Annex [or of the supply chain] on that <i>essential</i> service;</p> <p><i>See also COM informal proposal on supply chain in Recital 13 (Line 23)</i></p> <p><i>Technical meeting of 6 May: Provisional agreement on Council compromise proposal: Council proposes to include the supply chain element in a recital.</i></p>
Article 6(1), point (c)				
103	(c) the impacts that incidents could have, in terms of degree and	(c) the impacts that incidents could have, in terms of degree and	(c) the impacts that incidents could have, in terms of degree and	(c) Technical meeting 14/03: -EP: We discussed in row 61

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	duration, on economic and societal activities, the environment and public safety;	duration, on economic and societal activities, the environment and public safety;	duration, on economic and societal activities, the environment, public safety and security, and health of the population and public safety;	already but the objective in row 61 is not the same than here. -CION: Okay with GA text Conclusion: Council amendment provisionally agreed. However it depends on the closure of row 61.
Article 6(1), point (d)				
104	(d) the market share of the entity in the market for such services;	(d) the market share of the entity in the market for such services;	(d) the market share of the entity in the market for such services;	(d) Technical meeting 14/03: Provisionally agreed d) the market share of the entity in the market for such services;
Article 6(1), point (e)				
105	(e) the geographic area that could be affected by an incident, including any cross-border impacts;	(e) the geographic area that could be affected by an incident, including any cross-border impacts, <u>taking into account the vulnerability associated with the degree of isolation of certain types of geographic areas, such as insular regions, outermost regions or mountainous areas</u> ;	(e) the geographic area that could be affected by an incident, including any cross-border impacts;	(e) Technical meeting 14/03: EP: Need to explain that not all the regions are the same. Council: No opposition. CION: In principle fine. However; “outermost regions” could be replaced with “remote regions”, as ‘outermost region’ has a specific meaning in EU law. “Remote” more in line with other listed examples that refer to geographic characteristics. EP and Council agree.



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Provisionally agreed (e) the geographic area that could be affected by an incident, including any cross-border impacts, <i>taking into account the vulnerability associated with the degree of isolation of certain types of geographic areas, such as insular regions, remote regions or mountainous areas</i> ;
Article 6(1), point (f)				
106	(f) the importance of the entity in maintaining a sufficient level of the service, taking into account the availability of alternative means for the provision of that service.	(f) the importance of the entity in maintaining a sufficient level of the <u>essential</u> service, taking into account the availability of alternative means for the provision of that <u>essential</u> service.	(f) the importance of the entity in maintaining a sufficient level of the essential service, taking into account the availability of alternative means for the provision of that service.	(f) Technical meeting 14/03: Provisionally agreed on EP text. f) the importance of the entity in maintaining a sufficient level of the essential service, taking into account the availability of alternative means for the provision of that essential service.
Article 6(2), introductory part				
107	2. Member States shall submit to the Commission by [three years and three months after the entry into force of this Directive] the following information:	2. Member States shall submit to the Commission by [three years and three months after the entry into force of this Directive] the following information:	2. Member States shall submit to the Commission by [three years and three months after the entry into force of this Directive] and within [three months after the entry into force of this Directive of the identification of the critical entities] the following information:	2. Technical meeting 14/03: Agreement on discussing all the timelines in a package later. Technical meeting of 16 May: On the deadline:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>CL Our amendment at the beginning. MS needs sufficient time to transmit important information.</p> <p>EP If I understood correctly, this is line with line 84. We keep it open</p> <p>CION In principle fine for COM, as it only concerns sharing info , but does not delay the actual tasks of identification.</p>
Article 6(2), point (a)				
108	(a) the list of services referred to in Article 4(1);	(a) the list of services referred to in Article 4(1);	(a) the list of essential services referred to in Article 4(1);	<p>(a) Technical meeting 14 March: Provisionally agreed the Council addition.</p> <p>a) the list of essential services referred to in Article 4(1);</p>
Article 6(2), point (b)				
109	(b) the number of critical entities identified for each sector and subsector referred to in the Annex and the service or services referred to in Article 4(1) that each entity provides;	(b) the number of critical entities identified for each sector and subsector referred to in the Annex and the service or services referred to in Article 4(1) that each entity provides;	(b) the number of critical entities identified for each sector and subsector referred to in the Annex and the service or services referred to in Article 4(1) that each entity provides;	<p>(b) Technical meeting 14/03: Council: Concerned that provision of too much info would allow adversaries to identify, target and attack critical entities</p> <p>EP: The info given to CION cannot be too abstract so they can properly</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>check how the Member states implement the directive. Different MS may come to different conclusions, to reduce the discrepancies, then sharing the info is needed. CION: We are in line with EP. COM will not know the identities of identified critical entities. To understand how MS implement the Directive, some information/proxies are needed. Conclusion: Council need to do further reflection with MS and come back with a proposal</p>
Article 6(2), point (c)				
110	(c) any thresholds applied to specify one or more of the criteria in paragraph 1.	(c) any thresholds applied to specify one or more of the criteria in paragraph 1.	(c) any thresholds applied to specify one or more of the criteria in paragraph 1, which can be presented as such or in aggregated form.	<p>(c) Technical meeting 14/03: -Council: Again we added the reference to aggregated form to protect the identities of the entities. We see a potential risk in sharing this information that are usually classified. An added problem is that we create a new type of information/product by gathering all this information from Member states at the EU level, which can be a very interesting new objective for our adversaries. It is not a problem of trust on the Commission. -EP: CION needs to be seen as a</p>



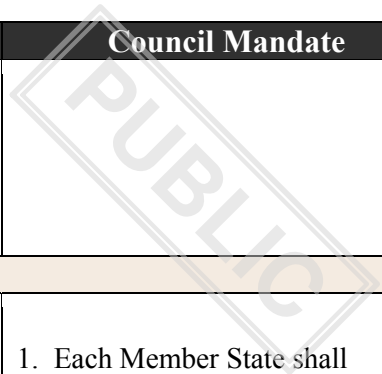
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>trusted third party. There are the channels to exchange info safely and the colleagues referring will hold appropriate security clearances. We expect flexibility from MS. Thresholds were expected at the NIS2 proposal so it should be feasible to include them too. Pls see the Council what you can achieve internally</p> <p>CION: the points a b and c are modelled on the NIS existing legislation. The way point c is amended risks retaining an obligation to share, but in such a way that it does not provide clear info (with high level of aggregation it may not be telling). If aggregation is part of the final compromise, then the agreement should be at least to provide aggregated information at sub sector level.</p> <p>-Council: we will discuss with MS but this is a very sensitive issue</p>
Article 6(2), first paragraph				
111	They shall subsequently submit that information where necessary, and at least every four years.	They shall subsequently submit that information where necessary, and at least every four years.	They shall subsequently submit that information where necessary, and at least every four years.	Technical meeting 14 March: Provisionally agreed They shall subsequently submit that information where necessary,

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				and at least every four years.
Article 6(3)				
112	3. The Commission may, after consultation of the Critical Entities Resilience Group, adopt guidelines to facilitate the application of the criteria referred to in paragraph 1, taking into account the information referred to in paragraph 2.	3. The Commission may shall, after consultation of the Critical Entities Resilience Group, adopt guidelines to facilitate the application of the criteria referred to in paragraph 1, taking into account the information referred to in paragraph 2.	3. The Commission may shall, after consultation of the Critical Entities Resilience Group, adopt non-binding guidelines to facilitate the application of the criteria referred to in paragraph 1, taking into account the information referred to in paragraph 2.	3. Technical meeting 14 March: Provisionally agreed taking all EP and Council amendments. 3. The Commission shall, after consultation of the Critical Entities Resilience Group, adopt non-binding guidelines to facilitate the application of the criteria referred to in paragraph 1, taking into account the information referred to in paragraph 2.
Article 7				
113	Article 7 Entities equivalent to critical entities under this Chapter	Article 7 Entities equivalent to critical entities under this Chapter	Article 7 Critical entities equivalent to critical entities under this Chapter in the banking, financial market infrastructure and digital infrastructure sectors	
Article 7(1)				
114	1. As regards the sectors referred to in points 3, 4 and 8 of the Annex, Member States shall, by	1. As regards the sectors referred to in points 3, 4 and 8 of the Annex, Member States shall, by	1. As regards the sectors referred to in points 3, 4 and 8 of the Annex, Member States shall, by	1. 22/4 CSL: We proposed these

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>[three years and three months after entry into force of this Directive], identify the entities that shall be treated as equivalent to critical entities for the purposes of this Chapter. They shall apply the provisions of Articles 3, 4, 5(1) to (4) and (7), and 9 in respect of those entities.</p>	<p>[three years and three <u>one year and six</u> months after entry into force of this Directive], identify the entities that shall be treated as equivalent to critical entities for the purposes of this Chapter. They shall apply the provisions of Articles 3, 4, 5(1) to (4) and (7), and 9 in respect of those entities.</p>	<p>[three years and three months after entry into force of this Directive], identify the entities that shall be treated as equivalent to critical entities for the purposes of this Chapter. They shall apply the provisions of Articles 3, 4, 5(1) to (4) and (7), and 9 in respect of those entities.</p>	<p>modifications to be coherent with NIS2.</p> <p>COM: Important provision given DORA and NIS2 negotiations. It is important to ensure that entities in the 3 sectors falling under NIS2 and DORA comply with the provisions under those Dir as they cover comprehensively also the physical aspects, this article is important to avoid duplication/double burdens. This principle has been maintained via Council's amendments. Lines 115 and 116 being moved elsewhere in text is fine.</p> <p>CSL: It is important that if there are gaps at Union level, national law / measurements can supplement it.</p> <p>Council suggests a new formulation for line 116a: « Member States shall ensure that the provisions of Article 9a and Chapters III to VI shall not apply in respect of designated critical entities in the sectors referred to in points 3, 4 and 8 of the table in the Annex, <i>unless Member States choose to achieve a higher level of</i></p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p><i>resilience of critical entities through national law.”</i></p> <p>COM suggests informally alternative text to CSL further amendment to line 116a: Member States shall ensure that the provisions of Article 9a and Chapters III to VI shall not apply in respect of designated critical entities in the sectors referred to in points 3, 4 and 8 of the table in the Annex. <i>Member States may adopt or maintain provisions of national law achieving a higher level of resilience of critical entities provided that such provisions are consistent with their obligations under Union law.</i></p> <p>EP: Will need to reflect internally but welcome wording proposal of the Commission. Makes the point of denomination and equivalence - we would need to discuss it horizontally.</p>
Article 7(2)				
115	2. In respect of the entities in the sectors referred to in points 3 and 4 of the Annex identified pursuant to paragraph 1, Member States shall	2. In respect of the entities in the sectors referred to in points 3 and 4 of the Annex identified pursuant to paragraph 1, Member States shall	2. In respect of the entities in the sectors referred to in points 3 and 4 of the Annex identified pursuant to paragraph 1, Member States shall	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	ensure that, for the purposes of the application of Article 8(1), the authorities designated as competent authorities are the competent authorities designated pursuant to Article 41 of [DORA Regulation].	ensure that, for the purposes of the application of Article 8(1), the authorities designated as competent authorities are the competent authorities designated pursuant to Article 41 of [DORA Regulation].	ensure that, for the purposes of the application of Article 8(1), the authorities designated as competent authorities are the competent authorities designated pursuant to Article 41 of [DORA Regulation].	
Article 7(3)				
116	3. Member States shall ensure that the entities referred to in paragraph 1 are, without undue delay, notified of their identification as entities referred to in this Article.	3. Member States shall ensure that the entities referred to in paragraph 1 are, without undue delay, notified of their identification as entities referred to in this Article.	3. Member States shall ensure that the entities referred to in paragraph 1 are, without undue delay, notified of their identification as entities referred to in this Article.	
Article 7				
116a			Member States shall ensure that the provisions of Article 9a and Chapters III to VI shall not apply in respect of designated critical entities in the sectors referred to in points 3, 4 and 8 of the table in the Annex.	3a. See line 114.
Article 8				
117	Article 8 Competent authorities and single point of contact		Article 8 Competent authorities and single point of contact	Article 8 Competent authorities and single point of contact




	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Discussed on 1 April technical meeting: Provisionally Agreed.
Article 8(1), introductory part				
118	1. Each Member State shall designate one or more competent authorities responsible for the correct application, and where necessary enforcement, of the rules of this Directive at national level ('competent authority'). Member States may designate an existing authority or authorities.	1. Each Member State shall designate one or more competent authorities responsible for the correct application, and where necessary enforcement, of the rules of this Directive at national level ('competent authority'). Member States may designate an existing authority or authorities.	1. Each Member State shall designate one or more competent authorities responsible for the correct application, and where necessary enforcement, of the rules of this Directive at national level ('competent authority'). Member States may designate an existing authority or authorities.	1. Discussed on 1 April technical meeting: Provisionally Agreed. 1. Each Member State shall designate one or more competent authorities responsible for the correct application, and where necessary enforcement, of the rules of this Directive at national level ('competent authority'). Member States may designate an existing authority or authorities.
Article 8(1), second paragraph				
118a			In respect of the critical entities in the sectors referred to in points 3 and 4 of the table in the Annex, the authorities designated as competent authorities shall, where appropriate, be the competent authorities designated pursuant to Article 41 of [DORA	Discussed on 1 April technical meeting: Council: To allow MS autonomy to best match the structure of their national systems, and in line with Article 7, we have placed emphasis on "where appropriate" with regard

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>Regulation]. In respect of critical entities referred to in point 8 of the table in the Annex, the designated competent authorities shall, where appropriate, be the competent authorities designated pursuant to Article 8 of [NIS 2 Directive].</p>	<p>to the designation of the competent authorities.</p> <p>EP is in principle in favour of simplification. However, expressed concern with the addition of “where appropriate” in view of possible incoherencies. Do not seek to reduce ability of MS to take administrative decisions. Would like that by default, the competent authorities of NIS2 and DORA serve as such, subject to a reasoned justification otherwise. Preference to fully remove “where appropriate”.</p> <p>COM expresses principled agreement with EP position. Does not view removal of “where appropriate” as infringing national administrative autonomy as it can be exercised under NIS2 and DORA respectively. The relevant MS actors are called upon to cooperate.</p> <p>Council notes that we should not prejudice the decision of Member States. We can attempt to find an alternative, but it may not interfere with the principle of national administrative autonomy.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>EP would prefer a rule by default: the competent authorities should be the one designated in DORA and in NIS 2 unless there are justified reasons.</p> <p>Council to revert to Member States.</p>
Article 8(1), first paragraph				
119	Where they designate more than one authority, they shall clearly set out the respective tasks of the authorities concerned and ensure that they cooperate effectively to fulfil their tasks under this Directive, including with regard to the designation and activities of the single point of contact referred to in paragraph 2.	Where they designate more than one authority, they shall clearly set out the respective tasks of the authorities concerned and ensure that they cooperate effectively to fulfil their tasks under this Directive, including with regard to the designation and activities of the single point of contact referred to in paragraph 2.	Where they designate more than one authority, they shall clearly set out the respective tasks of the authorities concerned and ensure that they cooperate effectively to fulfil their tasks under this Directive, including with regard to the designation and activities of the single point of contact referred to in paragraph 2.	<p>Discussed on 1 April technical meeting:</p> <p>Provisionally Agreed.</p> <p>Where they designate more than one authority, they shall clearly set out the respective tasks of the authorities concerned and ensure that they cooperate effectively to fulfil their tasks under this Directive, including with regard to the designation and activities of the single point of contact referred to in paragraph 2.</p>
Article 8(2)				
120	2. Each Member State shall, within the competent authority,	2. Each Member State shall, within the competent authority,	2. Each Member State shall, within the competent authority,	2. Discussed on 1 April technical meeting:

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>designate a single point of contact to exercise a liaison function to ensure cross-border cooperation with competent authorities of other Member States and with the Critical Entities Resilience Group referred to in Article 16 ('single point of contact').</p>	<p>designate a single point of contact to exercise a liaison function to ensure cross-border cooperation with competent authorities of other Member States and with the <u>Commission and the Critical Entities Resilience Group</u> referred to in Article 16 ('single point of contact') <u>and, where relevant, to ensure cooperation with third countries.</u></p>	<p>designate one national a single point of contact to exercise a liaison function to ensure cross-border cooperation with the single points of contact <u>competent authorities</u> of other Member States and with the Critical Entities Resilience Group referred to in Article 16 ('single point of contact').</p>	<p>EP supports the idea of a single PoC and finds useful that it possesses broader liaison functions (COM, third countries e.g. those in accession negotiations that may benefit from advance exchanges). Would not oppose an emergency centre within the PoC but requires further explanation. Does not oppose deletion of "competent authority" as such but would like to see some qualification such as "where relevant".</p> <p>Council amendments are to provide clarity. Deletion of "competent authority" is to allow for MS to autonomously designate a PoC within one of their institutions.</p> <p>COM intention with the single PoC was to ensure clarification with regard to liaison with CERG and between MS. COM notes that certain MS envisaged single PoC as exercising a 24/7 function / emergency service. Decision to expand liaison functions is with co-legislators.</p> <p>Council can agree with EP addition of the PoC exercising liaison</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	functions with COM. On further tasks, will revert to Delegations. Council showed openness to accept language that the single point of contact is designated “where relevant” within the competent authority.
Article 8(3)				
121	3. By [three years and six months after entry into force of this Directive], and every year thereafter, the single points of contact shall submit a summary report to the Commission and to the Critical Entities Resilience Group on the notifications received, including the number of notifications, the nature of notified incidents and the actions taken in accordance with Article 13(3).	3. By ... [three <u>four</u> years and six months after entry into force of this Directive], and <u>in the first trimester of</u> every year thereafter, the single points of contact shall submit a summary report to the Commission and to the Critical Entities Resilience Group on the notifications received, including the number of notifications, the nature of notified incidents and the actions taken in accordance with Article 13(3).	3. By [three years and six months seven years after entry into force of this Directive], and every year two years thereafter, the single points of contact shall submit a summary report to the Commission and to the Critical Entities Resilience Group on the notifications received, including the number of notifications, the nature of notified incidents and the actions taken in accordance with Article 13(3).	3. Discussed on 1 April technical meeting: Matter of timelines to be discussed globally. Council proposes extensions to timeline for practical quality reasons. EP preliminarily deems seven years a long period but optimistic with regards to intermediate compromise. Also wants first summary report within a given timeframe (first trimester) and would also support to include a specific deadline if needed. COM supports for having a clear date. EP proposes “by 31 st of March”.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>Technical meeting of 16 May: ON deadlines:</p> <p>CL Reporting obligations can be big burden. Time is needed. We understand that 7 years can seem a lot, we are open to talk</p> <p>EP We agreed to longer for summary report in line with implementation. 7 years is very long in politics. We hope that CL can reduce. If so, then we can show openness on the every two years</p> <p>CION 7 years maybe too long; it should be feasible to have the report earlier (depending on the agreement on other timelines). COM could eventually accept frequency of the report every two years, if agreed by co-legislators.</p> <p>CL We need reports every 2 years. We are open to reconsider and go down from 7 years. This would be dependent on an overall agreement on deadlines.</p> <p>EP By 5 years and every two years (by 31 March of every other year)</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>CL We can pre agree but would depend on general agreement on deadlines</p> <p>CL We wonder if 5 years is possible with our 12 months proposal for entities. Either we validate 5 years and 6 months or we leave it open for later. We think that it is important to keep it</p> <p>EP Maybe we can link 121 to 156, instead of 93.</p>
Article 8(3)				
121a			<p>The Commission shall, in cooperation with the Critical Entities Resilience Group, develop a voluntary common reporting template for the summary report referred to in the subparagraph above.</p>	<p>3a. Discussed on 1 April technical meeting:</p> <p>Council addition for coherence and in view of COM support to MS.</p> <p>EP endorses proposal in principle. Linguistic question expressed with regard to “voluntary” template.</p> <p>COM in agreement with Council proposal and EP remark.</p> <p>Council proposal: “an optional reporting template”.</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Provisionally agreed: “The Commission shall, in cooperation with the Critical Entities Resilience Group, develop an optional reporting template for the summary report referred to in the subparagraph above.”
Article 8(4)				
122	4. Each Member State shall ensure that the competent authority, including the single point of contact designated therein, has the powers and the adequate financial, human and technical resources to carry out, in an effective and efficient manner, the tasks assigned to it.	4. Each Member State shall ensure that the competent authority, including the single point of contact designated therein, has the powers and the adequate financial, human and technical resources to carry out, in an effective and efficient manner, the tasks assigned to it.	4. Each Member State shall ensure that the competent authority, including and the single point of contact designated therein, has have the powers and the adequate financial, human and technical resources to carry out, in an effective and efficient manner, the tasks assigned to it them .	4. Council modified text in view of being coherent with 8(2). EP can agree with addition subject to an agreement reached in line 120 adding “where relevant”. COM concurs. Can provisionally agree subject to an agreement reached in line 120.
Article 8(5)				
123	5. Member States shall ensure that their competent authorities, whenever appropriate, and in accordance with Union and national law, consult and cooperate with other relevant national authorities, in particular those in	5. Member States shall ensure that their competent authorities, whenever appropriate, and in accordance with Union and national law, consult and cooperate with other relevant national authorities, in particular those in	5. Member States shall ensure that their competent authorities, whenever appropriate, and in accordance with Union and national law, consult and cooperate with other relevant national authorities, in particular including	5. Discussed on 1 April technical meeting: Provisionally agreed on the basis of Council text. “5. Member States shall ensure that

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	charge of civil protection, law enforcement and protection of personal data, as well as with relevant interested parties, including critical entities.	charge of civil protection, law enforcement and protection of personal data, as well as with relevant interested parties, including critical entities.	those in charge of civil protection, law enforcement and protection of personal data, as well as with critical entities and relevant interested parties, including critical entities.	their competent authorities, whenever appropriate, and in accordance with Union and national law, consult and cooperate with other relevant national authorities, including those in charge of civil protection, law enforcement and protection of personal data, as well as critical entities and relevant interested parties”
Article 8(6)				
124	6. Member States shall ensure that their competent authorities designated pursuant to this Article cooperate with competent authorities designated pursuant to [the NIS 2 Directive] on cybersecurity risks and cyber incidents affecting critical entities, as well as the measures taken by competent authorities designated under [the NIS 2 Directive] relevant for critical entities.	6. Member States shall ensure that their competent authorities designated pursuant to this Article cooperate with competent authorities designated pursuant to [the NIS 2 Directive] on cybersecurity risks and cyber incidents affecting critical entities, as well as the measures taken by competent authorities designated under [the NIS 2 Directive] relevant for critical entities.	6. Member States shall ensure that their competent authorities designated pursuant to this Article cooperate and exchange information with competent authorities designated pursuant to [the NIS 2 Directive] on cybersecurity risks, cyber threats and incidents and non-cyber risks, threats and and cyber incidents affecting critical entities, as well as the relevant measures taken by competent authorities designated under [the NIS 2 Directive] relevant for critical entities and this Directive .	6. Discussed on 1 April technical meeting: Council amendments in view of greater clarity. EP and COM in agreement. Provisionally Agreed: “6. Member States shall ensure that their competent authorities designated pursuant to this Article cooperate and exchange information with competent authorities designated pursuant to [the NIS 2 Directive] on cybersecurity risks, cyber threats and incidents and non-cyber risks, threats and incidents affecting

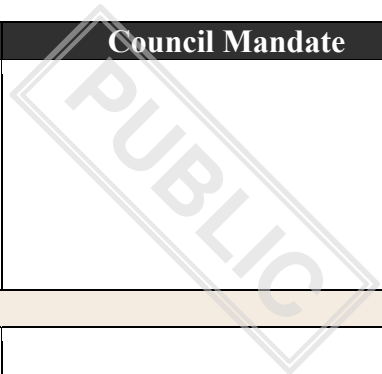
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				critical entities, as well as relevant measures taken by competent authorities designated under [the NIS 2 Directive] and this Directive”
Article 8(7)				
125	7. Each Member State shall notify the Commission of the designation of the competent authority and single point of contact within three months from that designation, including their precise tasks and responsibilities under this Directive, their contact details and any subsequent change thereto. Each Member State shall make public its designation of the competent authority and single point of contact.	7. Each Member State shall notify the Commission of the designation of the competent authority and single point of contact within three months from that designation, including their precise tasks and responsibilities under this Directive, their contact details and any subsequent change thereto. Each Member State shall make public its designation of the competent authority and single point of contact.	7. Each Member State shall notify the Commission of the designation of the competent authority and single point of contact within three months from that designation, including their precise tasks and responsibilities under this Directive, their contact details and any subsequent change thereto. Where Member States decided to appoint other authorities than those indicated under paragraph 1, second subparagraph, as the designated competent authorities in respect of the critical entities referred to in points 3, 4 and 8 of the table in the Annex, they shall also specify that to the Commission. Each Member State shall make public its designation of the competent authority and single point of contact.	7. Discussed on 1 April technical meeting: Council amendment to ensure clarity and coherence. EP can agree to deletion of “precise”. With regard to the Council addition, this is linked to debate on Art. 8(2). Proposes to maintain in square brackets in view of final agreement on line 118a. COM concurs with EP. Technical meeting 16/5: timeline provisionally agreed.
Article 8(8)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
126	8. The Commission shall publish a list of Member States' single points of contacts.	8. The Commission shall publish a list of Member States' single points of contacts.	8. The Commission shall publish a list of Member States' single points of contacts.	8. Discussed on 1 April technical meeting: Provisionally Agreed. 8. The Commission shall publish a list of Member States' single points of contacts.
Article 9				
127	Article 9 Member States' support to critical entities	Article 9 Member States' support to critical entities	Article 9 Member States' support to critical entities	Article 9 Member States' support to critical entities Discussed on 1 April technical meeting: Provisionally Agreed.
Article 9(1)				
128	1. Member States shall support critical entities in enhancing their resilience. That support may include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing training to personnel of critical entities.	1. Member States shall support critical entities in enhancing their resilience. That support may shall include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing training to personnel of critical entities. <u>Member States</u>	1. Member States shall support critical entities in enhancing their resilience. That support may include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing advice and training to personnel of critical entities.	1. Discussed on 1 April technical meeting: Provisional agreement reached on the basis of: - Maintaining "may" instead of "shall". - Maintain Council addition on "advice"



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>may provide financial resources to critical entities, without prejudice to applicable rules on State aid, where necessary and justified by public interest objectives.</i></u>		<p>- Insert EP addition with regard to financial resources.</p> <p>Provisionally agreed:</p> <p>1. Member States shall support critical entities in enhancing their resilience. That support may include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing advice and training to personnel of critical entities. Member States may provide financial resources to critical entities, without prejudice to applicable rules on State aid, where necessary and justified by public interest objectives.</p>
Article 9(2)				
129	2. Member States shall ensure that the competent authorities cooperate and exchange information and good practices with critical entities of the sectors referred to in the Annex.	2. Member States shall ensure that the competent authorities cooperate and exchange information and good practices with critical entities of the sectors referred to in the Annex.	2. Member States shall ensure that the competent authorities cooperate and exchange information and good practices with critical entities of the sectors referred to in the Annex.	<p>2. Discussed on 1 April technical meeting:</p> <p>Provisionally Agreed.</p> <p>2. Member States shall ensure that the competent authorities cooperate and exchange information and good practices with critical entities of the sectors referred to in the</p>

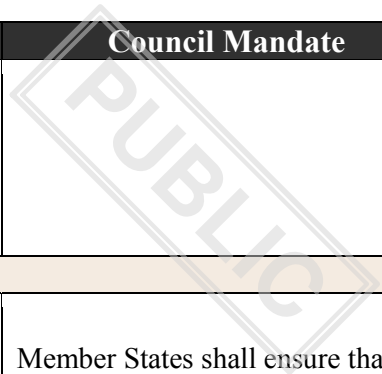
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Annex.
Article 9(3)				
130	<p>3. Member States shall establish information sharing tools to support voluntary information sharing between critical entities in relation to matters covered by this Directive, in accordance with Union and national law on, in particular, competition and protection of personal data.</p>	<p>3. Member States shall establish information sharing tools to support voluntary information sharing between critical entities in relation to matters covered by this Directive, in accordance with Union and national law on, in particular, competition and protection of personal data.</p>	<p>3. Member States shall establish information sharing tools to support facilitate voluntary information sharing between critical entities in relation to matters covered by this Directive, in accordance with Union and national law on, in particular, classified and sensitive information, competition and protection of personal data.</p>	<p>3. Discussed on 1 April technical meeting:</p> <p>Council deleted “information-sharing tools” in view of large administrative burden entailed. Also concerns with sensitivity of information. Would not like MS to have to develop new software in this regard.</p> <p>COM sees Council amendments as not affecting the intended objective of facilitating voluntary information sharing. Can also agree with Council additions on classified and sensitive information.</p> <p>EP did not interpret this provision as requiring any new IT developments. Not opposed to Council changes and additions.</p> <p>Provisionally Agreed: “3. Member States shall facilitate voluntary information sharing between critical entities in relation to matters covered by this</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Directive, in accordance with Union and national law on, in particular, classified and sensitive information, competition and protection of personal data.”
Article 9a				
130a			Article 9a Cooperation between Member States	<p>Article 9a Article 9a Technical meeting 14 March: EP: There is a concern on moving from the consultation with Commission to only bilateral ones between MS.</p> <p>SION: "Consistent" (Council language) application reflects well the provision on MS cooperation set out in Art 5(5) of the COM proposal. Cooperation between MS can be brought to CERG when deemed necessary and useful even if not explicitly mentioned in art 9a.</p> <p>Council: It was important to cover a gap regarding cooperation . The Directive did not foresee cooperation options between a number MS that are below the threshold for Critical Entities of Special European significance. EP: We need to consult internally (including the legal dimension).</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				But there are positive elements, we are happy that consistency is mentioned. To be put in square brackets, no need to further discuss now.
Article 9a, first paragraph, introductory part				
130b			Member States shall engage in consultations with each other regarding critical entities whenever appropriate for the consistent application of the Directive. Such consultations shall take place in particular regarding critical entities:	
Article 9a, first paragraph, point (a)				
130c			(a) that use critical infrastructure which is physically connected between two or more Member States;	
Article 9a, first paragraph, point (b)				
130d			(b) that are part of corporate structures that are connected with, or linked to, critical entities in other Member States;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 9a, first paragraph, point (c)				
130e			(c) that have been identified as such in one Member State and provide essential services to or in other Member States.	
Article 9a, second paragraph				
130f			The consultations shall aim at enhancing the resilience of critical entities and, where possible, reducing the administrative burden for the critical entities.	
Chapter III				
131	Chapter III Resilience of Critical Entities	Chapter III Resilience of Critical Entities	Chapter III Resilience of Critical Entities	Chapter III Resilience of Critical Entities Discussed on 1 April technical meeting: Provisionally Agreed.
Article 10				
132	Article 10 Risk assessment by critical entities	Article 10 Risk assessment by critical entities	Article 10 Risk assessment by critical entities	Article 10 Risk assessment by critical entities



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Discussed on 1 April technical meeting: Provisionally Agreed.
Article 10, first paragraph				
133	Member States shall ensure that critical entities assess within six months after receiving the notification referred to in Article 5(3), and subsequently where necessary and at least every four years, on the basis of Member States' risk assessments and other relevant sources of information, all relevant risks that may disrupt their operations.	Member States shall ensure that critical entities assess within six months after receiving the notification referred to in Article 5(3), and subsequently where necessary and at least every four years, on the basis of Member States' risk assessments and other relevant sources of information, all relevant risks that may disrupt their operations <u>provision of essential services concerned</u> .	Member States shall ensure that critical entities assess within six twelve months after receiving the notification referred to in Article 5(3), and subsequently where necessary and at least every four years, on the basis of Member States' risk assessments and other relevant sources of information, all relevant risks that may disrupt the provision of essential services their operations.	Discussed on 1 April technical meeting: EP has only included one change which is line with Council amendments. Questions with regard to the timeline to be dealt as a package. Expresses concern with the deletion of "all" and requests further explanation from Council. Removal of "all" appears as affording too much discretion to entities to choose which risks they envisage as disrupting the provision of the essential service. Seen as a small addition which may have far-reaching consequences. Council deletion of "all" intended to reduce administrative burden. Latter EP amendment is in line with Council. COM agree with latter Council and EP amendments on the "provision

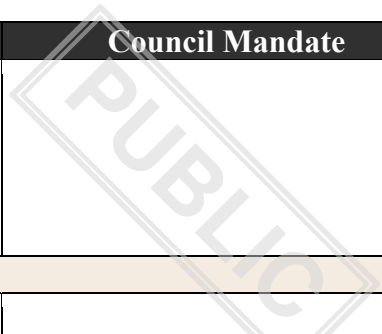


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>of essential services”. On deletion of “all”, given that “relevant” remains, does not share concern.</p> <p>Provisionally agreed on the basis of the EP proposal: “Member States shall ensure that critical entities assess within six months after receiving the notification referred to in Article 5(3), and subsequently where necessary and at least every four years, on the basis of Member States’ risk assessments and other relevant sources of information, all relevant risks that may disrupt their provision of essential services concerned.”</p> <p>Technical meeting 16 May: On the deadline, see discussion on line 93.</p>

Article 10, second paragraph

134	<p>The risk assessment shall account for all relevant risks referred to in Article 4(1) which could lead to the disruption of the provision of essential services. It shall take into account any dependency of other sectors referred to in the Annex on the essential service provided by the critical entity, including in</p>	<p>The risk assessment shall account for all relevant risks referred to in Article 4(1) which could lead to the disruption of the provision of essential services. It shall take into account any dependency of other sectors referred to in the Annex on the essential service provided by the critical entity, including in</p>	<p>The risk assessment of the critical entities shall account for all relevant risks referred to in Article 4(1) which could lead to the disruption of the provision of essential services an incident. It shall take into account dependencies of and on any dependency of other sectors</p>	<p>Discussed on 1 April technical meeting:</p> <p>Council proposes an equivalence regime for risk assessment providing flexibility to MS and reducing administrative burden.</p> <p>EP on deletion of “all” has to be</p>
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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>neighbouring Member States and third countries where relevant, and the impact that a disruption of the provision of essential services in one or more of those sectors may have on the essential service provided by the critical entity.</p>	<p>neighbouring Member States and third countries where relevant, and the impact that a disruption of the provision of essential services in one or more of those sectors may have on the essential service provided by the critical entity.</p>	<p>referred to in the Annex on the essential service provided by the critical entity, including in neighbouring Member States and third countries where relevant, and the impact that a disruption of the provision of essential services in one or more of those sectors may have on the essential service provided by the critical entity relevant. Member States may recognise equivalence, in whole or in part, between existing risk assessments of critical entities in as far as they address the risks and dependencies referred to in this Article.</p>	<p>jointly reflected with Article 4(1). Additions on “incident”, on “dependencies” are acceptable. Expresses puzzlement with regard to equivalence regime. However open to look at this specific proposal, also in relation to Art. 1(3). But stresses need to avoid legal uncertainties.</p> <p>COM: Concurs with EP on acceptable amendments. On equivalence regime, COM expresses serious concern with Council proposal. While COM had proposed an equivalence regime in Art. 1(3), it was circumscribed to other acts of Union law, giving precedence to other acts of sectoral Union law over CER in case of “at least” equivalent requirements. Council regime implicates national and international law in equivalence. This could lead to a patchwork implementation of CER. Also no mechanism provided for through which COM could understand how equivalence is being recognised and how said provision would be implemented in practice by MS.</p> <p>EP and Council agree to place “all”</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				and the last Council amendment on equivalence in square brackets. Remaining parts provisionally agreed.
Article 11				
135	Article 11 Resilience measures of critical entities	Article 11 Resilience measures of critical entities	Article 11 Resilience measures of critical entities	Article 11 Resilience measures of critical entities Discussed on 1 April technical meeting: Provisionally Agreed.
Article 11(1), introductory part				
136	1. Member States shall ensure that critical entities take appropriate and proportionate technical and organisational measures to ensure their resilience, including measures necessary to:	1. Member States shall ensure that critical entities take appropriate and proportionate technical and organisational measures to ensure their resilience, including measures necessary to:	1. Member States shall ensure that critical entities take appropriate and proportionate technical, security , and organisational measures to ensure their resilience, according to the outcomes of the risk assessments referred to in Articles 4 and 10 , including measures necessary to:	1. Discussed on 1 April technical meeting: Council stresses attachment to its additions. EP not opposed to addition of “security” but would like to disambiguate references to Article 4 and 10. Reference to Article 4 is too broad. Suggests disambiguating the two but can agree with the principle.



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>EP proposes: “according to the relevant information provided by Member States on the risk assessment referred to in Article 4, as well as the outcomes of the Risk Assessment referred to in Article 10.”</p> <p>COM concurs.</p> <p>Provisionally agreed : “1. Member States shall ensure that critical entities take appropriate and proportionate technical, security, and organisational measures to ensure their resilience, according to the relevant information provided by Member States on the risk assessment referred to in Article 4, as well as the outcomes of the Risk Assessment referred to in Article 10, including measures necessary to:”</p>
Article 11(1), point (a)				
137	(a) prevent incidents from occurring, including through disaster risk reduction and climate adaptation measures;	(a) prevent incidents from occurring, including through disaster risk reduction and climate adaptation measures;	(a) prevent incidents from occurring, duly taking into account including through disaster risk reduction and climate adaptation measures;	(a) Discussed on 1 April technical meeting: Council amendment is to avoid that the entity is obliged to take the outlined specific measures. The

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>intention was not to add a discretionary element but to acknowledge the fact that not all entities have to take climate adaptation measures et al. Some entities will de facto not have to take such measures. The Council amendment alleviates the need to take a positive step towards climate adaptation as an entity if there should be no such obligation in the first place. All entities will nonetheless have to duly consider.</p> <p>Council proposes: “duly considering...measures”</p> <p>EP not opposed in principle. Linguistic concerns on whether it makes sense seeing the overall context of this Article, including on use of term “measures”. EP to further reflect internally on the basis of Council explanations and proposal.</p> <p>COM: Concern. “Duly taking into account,” adds an element of discretion for the entity.</p>
Article 11(1), point (b)				
138	(b) ensure adequate physical	(b) ensure adequate physical	(b) ensure adequate physical	(b) Discussed on 1 April technical

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	protection of sensitive areas, facilities and other infrastructure, including fencing, barriers, perimeter monitoring tools and routines, as well as detection equipment and access controls;	protection of sensitive areas, facilities and other infrastructure, including fencing, barriers, perimeter monitoring tools and routines, as well as detection equipment and access controls;	protection of sensitive areas, facilities and other infrastructure, including fencing, barriers, perimeter monitoring tools and routines, as well as detection equipment and access controls; and the critical infrastructure, including duly taking into account measures such as fencing, barriers, perimeter monitoring tools and routines, as well as detection equipment and access controls;	meeting: Council deletion of “including” in view of broadening the list of possible measures through the use of examples. EP no principled disagreement but further reflection needed. COM in principle fine with Council amendments with regard to “premises” and critical infrastructure”. COM notes change of approach from COM to Council text. If agreeable to co-legislators, COM could possibly agree. Provisionally agreed on except “duly taking into account” which is retained in square brackets in view of horizontal reflection on the matter.
Article 11(1), point (c)				
139	(c) resist and mitigate the consequences of incidents, including the implementation of risk and crisis management procedures and protocols and alert routines;	(c) resist and mitigate the consequences of incidents, including the implementation of risk and crisis management procedures and protocols and alert routines;	(c) respond to , resist and mitigate the consequences of incidents, including incidents, duly taking into account the implementation of risk and crisis management procedures and protocols and alert routines;	(c) Discussed on 1 April technical meeting: Council added “respond to” to correspond with definition of resilience.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Provisionally agreed on except “duly taking into account” which is retained in square brackets in view of horizontal reflection on the matter.
Article 11(1), point (d)				
140	(d) recover from incidents, including business continuity measures and the identification of alternative supply chains;	(d) recover from incidents, including business continuity measures and the identification of alternative supply chains, <u>to ensure the continuous provision of the essential service</u> ;	(d) recover from incidents, duly taking into account including business continuity measures and the identification of alternative supply chains;	<p>(d) Discussed on 1 April technical meeting:</p> <p>EP notes that amendment is aligned with what was previously discussed in line 49. Sees value in addition of time element to the provision of the essential service. Will confirm if we can opt for different language instead of “continuous”.</p> <p>COM: As we are talking of a post-incident situation (recovery), questionable whether the element added by the EP is useful here.</p> <p>EP proposes: “to resume the provision of the essential service”.</p> <p>Council agrees to EP proposal.</p> <p>Provisionally agreed on except “duly taking into account” which is retained in square brackets in view</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	of horizontal reflection on the matter. “(d) recover from incidents, [duly taking into account] business continuity measures and the identification of alternative supply chains, to resume the provision of the essential service;”
Article 11(1), point (e)				
141	(e) ensure adequate employee security management, including by setting out categories of personnel exercising critical functions, establishing access rights to sensitive areas, facilities and other infrastructure, and to sensitive information as well as identifying specific categories of personnel in view of Article 12;	(e) ensure adequate employee security management, including by setting out categories of personnel exercising critical functions, <u>laying down appropriate training requirements and qualifications</u> , establishing access rights to sensitive areas, facilities and other infrastructure, and to sensitive information as well as identifying specific categories of personnel in view of Article 12; <u>where external providers are involved in employee security management, critical entities shall ensure that they comply with generally accepted standards and specifications</u>	(e) ensure adequate employee security management, duly taking into account measures such as including by setting out categories of personnel exercising critical functions, establishing access rights to sensitive areas, facilities and other premises, critical infrastructure, and to sensitive information, as well as designating the categories of persons and setting up vetting procedures in accordance with identifying specific categories of personnel in view of Article 12;	
Article 11(1), point (f)				
142	(f) raise awareness about the	(f) raise awareness about the	(f) raise awareness about the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	measures referred to in points (a) to (e) among relevant personnel.	measures referred to in points (a) to (e) among relevant personnel, <u>including by means of periodic training.</u>	measures referred to in points (a) to (e) among relevant personnel du ly taking into account training courses, information materials and exercises.	
Article 11(2)				
143	2. Member States shall ensure that critical entities have in place and apply a resilience plan or equivalent document or documents, describing in detail the measures pursuant to paragraph 1. Where critical entities have taken measures pursuant to obligations contained in other acts of Union law that are also relevant for the measures referred to in paragraph 1, they shall also describe those measures in the resilience plan or equivalent document or documents.	2. Member States shall ensure that critical entities have in place and apply a resilience plan or equivalent document or documents, describing in detail the measures pursuant to paragraph 1. Where critical entities have taken measures pursuant to obligations contained in other acts of Union law that are also relevant for the measures referred to in paragraph 1, they shall also describe those measures in the resilience plan or equivalent document or documents.	2. Member States shall ensure that critical entities have in place and apply a resilience plan or equivalent document or documents, describing in detail the measures pursuant to paragraph 1. Where critical entities have taken measures pursuant to obligations contained in other acts of Union, national or international law . Member States may recognise equivalence, in whole or in part, between law that are also relevant for the measures referred to in paragraph 1, they shall also and these measures or ensure that critical entities describe those measures in the resilience plan or equivalent document or documents.	
Article 11(2a)				
143a			2a. Member States shall ensure that each critical entity	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			designates a liaison officer or equivalent as point of contact with the competent authorities.	
Article 11(3)				
144	3. Upon request of the Member State that identified the critical entity and with the agreement of the critical entity concerned, the Commission shall organise advisory missions, in accordance with the arrangements set out in Article 15(4), (5), (7) and (8), to provide advice to the critical entity concerned in meeting its obligations pursuant to Chapter III. The advisory mission shall report its findings to the Commission, that Member State and the critical entity concerned.	3. Upon request of the Member State that identified the critical entity and with the agreement of <u>in consultation with</u> the critical entity concerned, the Commission shall organise advisory missions, in accordance with the arrangements set out in Article 15(4), (5), (7) and (8), to provide advice to the critical entity concerned in meeting its obligations pursuant to Chapter III. The advisory mission shall report its findings to the Commission, that Member State and the critical entity concerned. <u>At their request the Commission may also offer advisory missions to entities based in third countries.</u>	3. Upon request of the Member State that identified the critical entity and with the agreement of the critical entity concerned, the Commission shall organise advisory missions, in accordance with the arrangements set out in Article 15(4), (5) 15(5) , (7) and (8), to provide advice to the critical entity concerned in meeting its obligations pursuant to Chapter III. The advisory mission shall report its findings to the Commission, that Member State and the critical entity concerned.	
Article 11(4)				
145	4. The Commission is empowered to adopt delegated acts in accordance with Article 21 supplementing paragraph 1 by establishing detailed rules	4. The Commission is empowered to adopt delegated acts in accordance with Article 21 supplementing paragraph 1 by establishing detailed rules	4. The Commission is empowered to adopt delegated acts in accordance with Article 21 supplementing paragraph 1 by establishing	4. 22/4 CSL highlight sensitive issue of delegated act and that this relates to essential elements so we could not

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	specifying some or all of the measures to be taken pursuant to that paragraph. It shall adopt those delegated acts in as far as necessary for the effective and consistent application of that paragraph in accordance with the objectives of this Directive, having regard to any relevant developments in risks, technology or the provision of the services concerned as well as to any specificities relating to particular sectors and types of entities.	specifying some or all of the measures to be taken pursuant to that paragraph. It shall adopt those delegated acts in as far as necessary for the effective and consistent application of that paragraph in accordance with the objectives of this Directive, having regard to any relevant developments in risks, technology or the provision of the services concerned as well as to any specificities relating to particular sectors and types of entities.	detailed rules specifying some or all shall, after consultation of the measures to be taken pursuant to that paragraph. It shall Critical Entities Resilience Group , adopt those delegated acts in as far as necessary for the effective and consistent application of that paragraph in accordance with the objectives of this Directive, having regard to any relevant developments in risks, technology or the provision of the services concerned as well as to any specificities relating to particular sectors and types of entities non-binding guidelines to further specify the technical, security and organisational measures that can be taken pursuant to paragraph 1.	support disproportionate obligations on entities. This is why we replaced a delegated act with guidelines. This is a red line for some delegations. COM: Consider a delegated act a useful tool in order to take into account developments and a DA is faster and quicker than reopening a legislative act. EP: Understand this may be perceived as a burden imposed but MS would be closely involved in the preparation of the ACT and would still have the possibility to reject it. Therefore we are less concerned.
Article 11(5)				
146	5. The Commission shall adopt implementing acts in order to set out the necessary technical and methodological specifications relating to the application of the measures referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to	5. The Commission shall adopt implementing acts in order to set out the necessary technical and methodological specifications relating to the application of the measures referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to	5. The Commission shall adopt implementing acts in order to set out the necessary technical and methodological specifications relating to the application of the measures referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	in Article 20(2).	in Article 20(2).	in Article 20(2).	
Article 12				
147	Article 12 Background checks	Article 12 Background checks	Article 12 Background checks	
Article 12(1)				
148	1. Member States shall ensure that critical entities may submit requests for background checks on persons who fall within certain specific categories of their personnel, including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks.	1. Member States shall ensure that critical entities may submit requests for background checks on persons who fall within certain specific categories of their personnel, including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks. <u>Such background checks shall be proportionate and strictly limited to what is necessary and relevant for the fulfilment of the duties of the persons concerned.</u>	1. Member States shall may , where appropriate , ensure that critical entities are permitted to may submit requests for background checks on persons who fall within certain specific categories of their personnel, including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks.: are permitted to submit requests for background checks on persons who fall within certain specific categories of their personnel, including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks.:	1. <i>COM informal proposal</i> <i>(a) perform sensitive roles relevant for the resilience of the critical entity, notably direct or remote access to control systems, access to premises, and security of persons, goods or information;</i> Tech meeting 6/5 CSL: Concerns over intelligence services being included here, including regarding the legal basis and scope. EP: AM based on data protection law and prominent in GDPR and vital to be included. Underline that these principles need to be included. COM: Important article in view of

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>antagonistic threats. COM reserves their position on the elements that were deleted by CSL. Regarding the EP addition, in principle fine for COM.</p> <p>CSL: Have had a reflection within MS of this article and will be presenting new text. Some MS have concerns on burdens, regarding controls requested by EP and are reflecting on this.</p> <p>EP: Offers to include ‘shall, where appropriate’ as a way to offer more flexibility.</p>
Article 12(1), point (a)				
148a			<p>(a) sensitive or designated roles in or for the critical entity;</p>	<p>(a) Tech meeting 6/5 <i>COM informal proposal</i></p> <p><i>(b) are being considered for recruitment to positions involving the roles mentioned under point a).</i></p> <p>COM: CSL additions are useful elements, we had left more to discretion of the entities, but the EDPS had comments on this. So being more explicit about who could undergo a background check could be useful. Some fine tuning</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>of CSL text needed (e.g. what is meant by ‘designated role’), here or in recital.</p> <p>EP: Not against these proposals but will wait for new CSL text.</p>
Article 12(1), point (b)				
148b			(b) are mandated to use or maintain – directly or remotely - its premises including in connection with the security of persons, goods or information; ,	
Article 12(1), point (c)				
148c			(c) are being considered for recruitment to positions involving the roles mentioned under points a) and b).	
Article 12(1), second paragraph				
148d			Those requests shall be assessed within a reasonable timeframe and processed in accordance with national legislation and procedures.	<p>1a. Tech meeting 6/5 CSL: want to ensure the MS have enough flexibility when implementing this provision. This could be rewritten if needed to fit in with a/the new approach on this article. CSL also tried to be more</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>in line with a legal approach.</p> <p>COM: suggest adding ‘applicable union law’ in this provision as there are sector specific union laws that do apply here i.e. aviation. Also reference to Union law in Art 12 itself (ECRIS).</p> <p>EP: feel ‘union laws’ would be useful and necessary here. On ‘expediously’, we are open to different words but ‘reasonable timeframe’ possibly too flexible.</p>
Article 12(2), introductory part				
149	<p>2. In accordance with applicable Union and national law, including Regulation (EU) 2016/679/EU of the European Parliament and of the Council¹, a background check as referred to in paragraph 1 shall:</p> <p>¹. OJ L 119, 4.5.2016, p. 1.</p>	<p>2. In accordance with applicable Union and national law, including Regulation (EU) 2016/679/EU of the European Parliament and of the Council¹, <u>Member States shall ensure that</u> a background check as referred to in paragraph 1 <u>is carried out for the sole purpose of evaluating a potential security risk to the critical entity concerned. A background check</u> shall:</p> <p>¹. OJ L 119, 4.5.2016, p. 1.</p>	<p>2. In accordance with applicable Union and national law, including Regulation (EU) 2016/679/EU of the European Parliament and of the Council¹, a background check as referred to in paragraph 1 shall:</p> <p>¹. OJ L 119, 4.5.2016, p. 1.</p>	<p>2. Tech meeting 6/5 EP: Key for EP to introduce a purpose limitation to make sure the checks only relate to a security risk. Agree with COM approach to clarify this over the next paras.</p> <p>COM: Support EP additions, as in line with COM intention to better circumscribe the purpose of background checks. Concerned with CSL deletions as the Dir should make sure that there is a minimum number of elements as part of background check. Leaving it only to national level could lead</p>

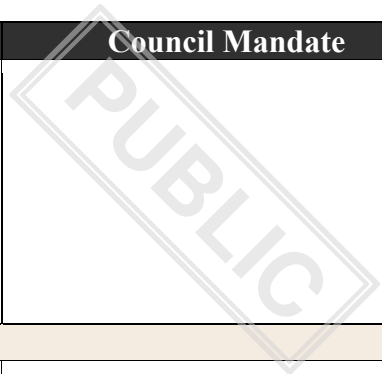
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>to many different approaches and risk opening weaknesses (cf interdependencies).</p> <p>CSL: Not opposed to the ideas in principle and will be proposing a new article 12 and these points were developed in new Article 1(6)</p> <p>EP: highlight legislation on explosives and aviation that already serve as a blueprint at EU level and what is included here should not go beyond those sectors. This should be a useful basis to move forward.</p>
Article 12(2), point (a)				
150	(a) establish the person's identity on the basis of documentary evidence;	(a) establish the person's identity on the basis of documentary evidence;	(a) establish the person's identity on the basis of documentary evidence;	
Article 12(2), point (b)				
151	(b) cover any criminal records of at least the preceding five years, and for a maximum of ten years, on crimes relevant for recruitment on a specific position, in the Member State or Member States of nationality of the person and in any	(b) cover any criminal records of at least the preceding five years, and for a maximum of ten years, on crimes relevant for recruitment on a specific position, in the Member State or Member States of nationality of the person and in any	(b) cover any criminal records of at least the preceding five years, and for a maximum of ten years, on crimes relevant for recruitment on a specific position, in the Member State or Member States of nationality of the person and in any	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of the Member States or third countries of residence during that period of time;	of the Member States or third countries of residence during that period of time;	of the Member States or third countries of residence during that period of time;	
Article 12(2), point (c)				
152	(c) cover previous employments, education and any gaps in education or employment in the person's resume during at least the preceding five years and for a maximum of ten years.	(c) cover previous employments, education and any gaps in education or employment in the person's resume during at least the preceding five years and for a maximum of ten years.	(c) cover previous employments, education and any gaps in education or employment in the person's resume during at least the preceding five years and for a maximum of ten years.	
Article 12(2), first paragraph				
153	As regards point (b) of the first subparagraph, Member States shall ensure that their authorities competent to carry out background checks obtain the information on criminal records from other Member States through ECRIS in accordance with the procedures set out in Council Framework Decision 2009/315/JHA, and, where relevant, Regulation (EU) 2019/816 of the European Parliament and of the Council ¹ . The central authorities referred to in Article 3 of that Framework Decision and in Article 3(5) of that Regulation shall provide replies to	As regards point (b) of the first subparagraph, Member States shall ensure that their authorities competent to carry out background checks obtain the information on criminal records from other Member States through ECRIS in accordance with the procedures set out in Council Framework Decision 2009/315/JHA, and, where relevant, Regulation (EU) 2019/816 of the European Parliament and of the Council ¹ . The central authorities referred to in Article 3 of that Framework Decision and in Article 3(5) of that Regulation shall provide replies to	As regards point (b) of the first subparagraph, Member States shall ensure that their authorities competent to carry out background checks obtain, for the purpose of obtaining the information on criminal records from other Member States, use the European Criminal Records Information System (through ECRIS) in accordance with the procedures set out in Council Framework Decision 2009/315/JHA, and, where relevant and applicable , Regulation (EU) 2019/816 of the European Parliament and of the Council ¹ . The central authorities	Tech meeting 6/5 CSL: Concerned on service provision that the checks could impose delays and reduce quality of checks. COM: CSL deletions follow the logic of modifications in previous provisions. 'and applicable' is fine as not all MS take part. ECRIS AMs and Article 8(1) addition also fine. EP: Positive over the changes from CSL but to be considered as part of the new overall proposal on Art. 12.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>requests for such information within 10 working days from the date the request was received.</p> <p>1. OJ L 135, 22.5.2019, p. 1.</p>	<p>requests for such information within 10 working days from the date the request was received.</p> <p>1. OJ L 135, 22.5.2019, p. 1.</p>	<p>referred to in Article 3 of that Framework Decision and in Article 3(5) of that Regulation shall provide replies to requests for such information within 10 working days from the date the request was received in accordance with Article 8(1) of that Framework Decision.</p> <p>1. OJ L 135, 22.5.2019, p. 1.</p>	
Article 12(3)				
154	<p>3. In accordance with applicable Union and national law, including Regulation (EU) 2016/679, each Member State shall ensure that a background check as referred to in paragraph 1 may also be extended, on the basis of a duly justified request of the critical entity, to draw upon intelligence and any other objective information available that may be necessary to determining the suitability of the person concerned to work in the position in relation to which the critical entity has requested an extended background check.</p>	<p>3. In accordance with applicable Union and national law, including Regulation (EU) 2016/679, each Member State shall ensure that a background check as referred to in paragraph 1 may also be extended, on the basis of a duly justified request of the critical entity, to draw upon intelligence and any other objective information available that may be necessary to determining the suitability of the person concerned to work in the position in relation to which the critical entity has requested an extended background check.</p>	<p>3. In accordance with applicable Union and national law, including Regulation (EU) 2016/679, each Member State shall ensure that a background check as referred to in paragraph 1 may also be extended, on the basis of a duly justified request of the critical entity, to draw upon intelligence and any other objective information available that may be necessary to determining the suitability of the person concerned to work in the position in relation to which the critical entity has requested an extended background check.</p>	
Article 13				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
155	Article 13 Incident notification	Article 13 Incident notification	Article 13 Incident notification	
Article 13(1)				
156	<p>1. Member States shall ensure that critical entities notify without undue delay the competent authority of incidents that significantly disrupt or have the potential to significantly disrupt their operations. Notifications shall include any available information necessary to enable the competent authority to understand the nature, cause and possible consequences of the incident, including so as to determine any cross-border impact of the incident. Such notification shall not make the critical entities subject to increased liability.</p>	<p>1. Member States shall ensure that critical entities notify without undue delay the competent authority of incidents that significantly disrupt or have the potential to significantly disrupt their operations. <u>An initial notification shall be submitted within 24 hours of a critical entity becoming aware of an incident, followed by a detailed report no later than one month thereafter.</u> Notifications shall include any available information necessary to enable the competent authority to understand the nature, cause and possible consequences of the incident, including so as to determine any cross-border impact of the incident. Such notification shall not make the critical entities subject to increased liability. <u>Where an incident has or might have a significant impact on critical entities or on the continuity of the provision of essential services in more than</u></p>	<p>1. Member States shall ensure that critical entities notify without undue delay the competent authority of incidents that significantly disrupt or have the potential to significantly disrupt their operations. Notifications shall include any available information necessary to enable the competent authority to understand the nature, cause and possible consequences of the incident, including so as to determine any cross-border impact of the incident. Such notification shall not make the critical entities subject to increased liability. the provision of essential services. In order to determine the significance, the following parameters shall not be taken into account:</p>	<p>1. Tech meeting 6/5 CSL: Reorganised COM text in this Art. Deadline on notification would pose difficulties for MS, summary would make it more feasible. Obligations on notifications on incidents in 3 or more MS not linked to any action the COM could take so would unnecessarily increase burdens on MS.</p> <p>EP: Not opposed to CSL approach in lines 156a,b,c. On insertion of a deadline, logical that incidents are reported in a timely manner. On 2nd part, useful to have this information in order to identify patterns and also to CERG as part of the process.</p> <p>COM: CSL renumbering / reordering approach is fine for COM. Considers the ‘without undue’ delay is sufficient, concerned that a deadline could distract from resolving an actual</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u><i>three Member States, Member States shall ensure that the critical entities concerned notify such incidents to the Commission. The Commission shall inform the Critical Entities Resilience Group of any such notifications without undue delay. The Commission and the Critical Entities Resilience Group shall, in accordance with Union law, treat information provided as part of such notifications in a way that respects its confidentiality and protects the security and commercial interests of the critical entity or entities concerned.</i></u></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-30deg);">PUBLIC</p>	<p>incident but would follow legislators decisions. Understand CSL concerns on EP additions, this kind of set up exists in cyber (with agency and capacity for operational follow-up after incidents) but not in this area - possibly more coherent to continue with the flow of information from entity to competent authority; and then to COM and other concerned authorities</p> <p>CSL: focus / priority needs to be on resolving the issue, not reporting it. CSL offer to propose to MS 48hrs to MS as a possible deadline.</p> <p>Technical meeting 16 May: EP Two obligations first notification 24 hours and second for a month. In NIS2 they agree upon 24 hours deadline for early warning. Proposal to stay with 24 hours. CL We need to analyse what is in NIS2 precisely. We see in principle the importance of coherence with NIS2 CION for consideration: a recital to</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				circumscribe what the initial notification should contain. To remain in the spirit of early warning EP Open to idea of recital explaining.
Article 13(1), point (a)				
156a			(a) the number and share of users affected	(a) Tech meeting on 6 May Provisionally agreed lines 158, 159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph.
Article 13(1), point (b)				
156b			(b) the duration	(b) Tech meeting on 6 May Provisionally agreed lines 158, 159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph.
Article 13(1), point (c)				
156c			(c) the geographical area affected.	(c) Tech meeting on 6 May Provisionally agreed lines 158,



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph. Provisional agreement on: (c) the geographical area affected, taking into account whether the area is geographically isolated.
Article 13(2), introductory part				
157	2. In order to determine the significance of the disruption or the potential disruption to the critical entity's operations resulting from an incident, the following parameters shall, in particular, be taken into account:	2. In order to determine the significance of the disruption or the potential disruption to the critical entity's operations resulting from an incident, the following parameters shall, in particular, be taken into account:	2. In order to determine the significance of the disruption or the potential disruption to the critical entity's operations resulting from an Notifications shall include any available information necessary to enable the competent authority to understand the nature, cause and possible consequences of the incident, including so as to determine any cross-border impact of the incident. Such notification the following parameters shall, in particular, be taken into account: not make the critical entities subject to increased liability.	2. Tech meeting 6/5 CSL: Reorganisation of text as per previous lines. COM: No problem EP: fine Provisionally agreed
Article 13(2), point (a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
158	(a) the number of users affected by the disruption or potential disruption;	(a) the number of users affected by the disruption or potential disruption;	(a) the number of users affected by the disruption or potential disruption;	(a) Tech meeting 6/5 CSL: Included above (156a,b,c) COM: ok with changes EP: Fine for EP Provisionally agreed lines 158, 159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph.
Article 13(2), point (b)				
159	(b) the duration of the disruption or anticipated duration of a potential disruption;	(b) the duration of the disruption or anticipated duration of a potential disruption;	(b) the duration of the disruption or anticipated duration of a potential disruption;	(b) Tech meeting 6/5 As above. Agreed. Provisionally agreed lines 158, 159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph.
Article 13(2), point (c)				
160	(c) the geographical area affected by the disruption or potential disruption.	(c) the geographical area affected by the disruption or potential disruption, <u>taking into account whether the area is geographically isolated.</u>	(c) the geographical area affected by the disruption or potential disruption.	(c) Tech meeting 6/5 EP: Propose to include EP amendment on geographically isolated areas in 156c. CSL and COM: Positive.



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				To be aligned as per previous changes. Provisionally agreed lines 158, 159, and 160 (and lines 156a, b, and c), following Council text. The provisional agreement on line 156c includes the EP amendment at the end of the paragraph.
Article 13(3), introductory part				
161	3. On the basis of the information provided in the notification by the critical entity, the competent authority, via its single point of contact, shall inform the single point of contact of other affected Member States if the incident has, or may have, a significant impact on critical entities and the continuity of the provision of essential services in one or more other Member States.	3. On the basis of the information provided in the notification by the critical entity, the competent authority, via its single point of contact, shall inform the single point of contact of other affected Member States if the incident has, or may have, a significant impact on critical entities and the continuity of the provision of essential services in one or more other Member States.	3. On the basis of the information provided in the notification by the critical entity, the competent authority, via its the single point of contact, shall inform the single point of contact of other affected Member States if the incident has, or may have, a significant impact on critical entities and the continuity of the provision of essential services in one or more other Member States.	3. Tech meeting 6/5 CSL: Single point of contact not necessarily within CA. EP and CSL: Agreement on Council's text
Article 13(3), first paragraph				
162	In so doing, the single points of contact shall, in accordance with Union law or national legislation that complies with Union law, treat the information in a way that	In so doing, the single points of contact shall, in accordance with Union law or national legislation that complies with Union law, treat the information in a way that	In so doing, the single points of contact shall, in accordance with Union law or national legislation that complies with Union law , treat the information in a way that	Tech meeting 6/5 CSL: National law should always comply with Union law so superfluous.


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	respects its confidentiality and protects the security and commercial interest of the critical entity concerned.	respects its confidentiality and protects the security and commercial interest of the critical entity concerned.	respects its confidentiality and protects the security and commercial interest of the critical entity concerned.	EP and COM agree. Agreement on Council's text
Article 13(3a)				
162a		<u><i>3a. The competent authority concerned shall submit a summary report annually to the Commission and to the Critical Entities Resilience Group on the notifications received and the action taken in accordance with this Article.</i></u>		<p>3a. Tech meeting 6/5 CSL: Questions what the difference is between this report and the one included in Art 8(3)</p> <p>EP: 8(3) report is only issued 4 or 7 years after entry into force so there is a gap. This is also linked to notifications of entities of European significance but the issue remains that there is no comprehensive reporting in the first years from entry into force.</p> <p>CSL: The first years entities and authorities will be taking steps to implement.</p> <p>EP: Linked to timelines - if there is a gap of seven years then that is an issue - short timeframe is more acceptable.</p> <p>COM: prefer this report to be mentioned once, either here or in Art 8(3). This is linked to the</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>various deadlines that still need to be discussed.</p> <p>Conclusion: to consider as part of overall timeline package.</p>
Article 13(4)				
163	<p>4. As soon as possible upon having been notified in accordance with paragraph 1, the competent authority shall provide the critical entity that notified it with relevant information regarding the follow-up of its notification, including information that could support the critical entity's effective response to the incident.</p>	<p>4. As soon as possible upon having been notified in accordance with paragraph 1, the competent authority shall provide the critical entity that notified it with relevant information regarding the follow-up of its notification, including information that could support the critical entity's effective response to the incident. <u><i>The competent authority shall inform the public of an incident where it determines that it would be in the public interest to do so. The competent authority shall ensure that critical entities inform users of their services that might be affected by an incident of the incident and, where relevant, of any possible safety measures or remedies.</i></u></p>	<p>4. As soon as possible upon having been notified in accordance with paragraph 1, the competent authority shall provide the critical entity that notified it with relevant information regarding the follow-up of its notification, including information that could support the critical entity's effective response to the incident.</p>	<p>4. Tech meeting 6/5 CSL: warnings to general public are already covered in general laws of MS. 'might be affected' is very broad and concerns over unnecessarily alarming population, and if too many alerts are issued people will stop listening / unnecessary detachment, extending the responsibility of entities to informing the public when it is/could be MS responsibility.</p> <p>COM: Understand EP position, adding transparency; but also understand MS already often have processes set up that may not involve the CER authority, but rather crisis response authorities. Also, contractual obligations between entities and users already exist, so hesitation about the need for additional obligation in CER. CSL: Open to accept part of the text but include 'MS shall inform</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>the public where they determine ...' then it is their responsibility to decide how, then remove 2nd sentence.</p> <p>EP positive and will reflect upon but highlight EU telecoms code where provisions on alerts are already included.</p>
Article 13a				
163a		<u>Article 13a Standards</u>		
Article 13a(1)				
163b		<u>In order to promote the consistent implementation of this Directive, Member States shall, without imposing or discriminating in favour of the use of a particular type of technology, encourage the use of standards and specifications relevant to the security and resilience of critical entities.</u>		
Chapter IV				
164	Chapter IV	Chapter IV	Chapter IV	Chapter IV

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Specific oversight over Critical entities of particular European significance	Specific oversight over Critical entities of particular European significance	Specific oversight over Critical entities of particular European significance	Critical entities of particular European significance Technical meeting 14/03: Council: Deleted for precision on what the Chapter is focusing on. EP: We understand CL approach. We could live with the deletion CION: Rewording acceptable. Conclusion: Provisionally agreed the Council text
Article 14				
165	Article 14 Critical entities of particular European significance	Article 14 Critical entities of particular European significance	Article 14 Identification of Critical entities of particular European significance	Article 14 Identification of Critical entities of particular European significance Technical meeting 14/03: Council: As we changed the Chapter title we changed the title here to be precise. EP and CION: Acceptable. Conclusion: Provisionally agreed the Council text
Article 14(1)				
166	1. Critical entities of particular European significance shall be subject to specific oversight, in accordance with this Chapter.	1. Critical entities of particular European significance shall be subject to specific oversight, in accordance with this Chapter.	1. Critical entities of particular European significance shall be subject to specific oversight, in accordance with this Chapter.	1. Technical meeting 14/03: Council: As oversight was deleted in the Chapter title, we deleted this here. Something could be added in

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>recital</p> <p>EP: Ok to propose half sentence or sentence in recital. The word oversight is not essential, special regime also okay.</p> <p>CION: Ok to rephrase. there are already text in recital</p> <p>Council: We will propose some text next time for complement a recital.</p>
Article 14(2)				
167	<p>2. An entity shall be considered a critical entity of particular European significance when it has been identified as a critical entity and it provides essential services to or in more than one third of Member States and has been notified as such to the Commission pursuant to Article 5(1) and (6), respectively.</p>	<p>2. An entity shall be considered a critical entity of particular European significance when it has been identified as a critical entity and it provides <u>the same or similar</u> essential services to or in more than one third of three Member States and has been notified as such to the Commission pursuant to Article 5(1) and (6), respectively.</p>	<p>2. An entity shall be considered a critical entity of particular European significance when it has been identified as a critical entity and pursuant to article 5(1), it provides essential services to or in more than one third of Member States and it has been notified as such to the Commission pursuant to paragraph 3; Article 5(1) and (6), respectively.</p>	<p>2. Technical meeting 14/03: Council: We though needed to referred to art 5 (it can be to art 5.1 or just art 5). The amendments at the end paragraph are related Critical Entities of European significance and the Council changes to their identification. EP: Reference to art 5 of art 5.1 are okay. In general to art 5 in general is better The amendments of the end of paragraph is okay as you develop it further later on. Maybe better to say paragraph 3 of this article. CION: On Art 5 would be fine.</p> <p>On same and similar: CION: The same of similar is to be reconsider in line with the general</p>


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>take. Council: We would like to have examples on how this is implemented.</p> <p>Threshold: EP: These critical entities are essential for the single market. The obligations for these Critical Entities of particular European significance are not overwhelming in any case. The statistics of the Commission shows that a too high threshold it captures too little number of entities. CION: We are aiming for true European dimension. Lowering the threshold will not create additional obligations but creates greater assurances that is (the difference it is about who actually looks what was implemented) Council: The threshold need to be high (if that is was we consider 1/3) because we want to capture those with a true big European entities. Between 3 to 10 there is a middle way, which will need to be found at political level. For the other critical entities (not so big as to qualify for European Critical entities), we have article 9a to deal with those cases</p>


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>We will discuss this with MS on 17/03. We will present our ideas later.</p> <p>EP: To underline: If we speak 4 MS, then we take all the small ones out. We are open to speak 4 or more. If we look at the balance of the additional burden to include more European critical entities vis a vis the benefits, it is clear that it makes sense to be inclusive.</p> <p>Conclusions: Provisionally agree all with square brackets on -same or similar -threshold -Ask lawyer linguist if we need to add paragraph 3 OF THIS ARTICLE?</p>
Article 14(2a), introductory part				
167a			<p>2a. Member States shall ensure that a critical entity, following the notification referred in Article 5(3), provides information to its competent authority designated pursuant to Article 8 of this Directive, when it provides essential services to or in more than one third of Member States, and if so, which essential services to or in which</p>	<p>2a. Technical meeting 14/03: Council: After a critical entity informs its competent authority that it provides an essential service to or in more than X MS. Then we included a step in which the Commission hold consultation to all the MS to which the entity states that it provides essential service. The Commission is empowered to assess if that critical</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>Member States.</p>	<p>entity is of European significance. EP: We cannot commit today, we need to take it to the political groups. We have reservations on the emphasis and burden on the critical entity and their reporting. It could incentivise to over or under report. For notification 167b- we could be open. We do appreciate with consultation with CION It is not clear the role of the CION changes vis a vis the original proposal. Council: Nothing new on the obligation of the critical reporting to the competent authority (as originally art 5.6) CION: Truly big difference here is that Council gave CION the power to identify. CION was through that the identification was automaticity but Council changed this. Council wanted reassurances that everything was correct. CION does not hold the relevant info but they will get info through the consultation with the MS. If there is a list of essential services at EU level, then it is different. But if not, each MS may have differing labelling which will make it more</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				complicated. EP: This is not a red line but we need further reflection.
Article 14(2a), first paragraph				
167b			The Member State shall notify, without undue delay, the Commission of that information as well as the identity of the critical entity.	CL moved the text of this line from line 96. Technical meeting of 16 May: Provisional agreement on CL text regarding the deadline (without undue delay).
Article 14(2a), second paragraph				
167c			The Commission shall engage in consultations with the competent authorities of the Member State which identified such a critical entity and of other Member States concerned, and with the critical entity. In these consultations, each Member State shall communicate to the Commission if it deems that the services provided to it by the critical entity are essential services.	
Article 14(3), introductory part				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
168	<p>3. The Commission shall, without undue delay upon receiving the notification pursuant to Article 5(6), notify the entity concerned that it is considered a critical entity of particular European significance, informing that entity of its obligations pursuant to this Chapter and the date from which those obligations apply to it.</p>	<p>3. The Commission shall, without undue delay upon receiving the notification pursuant to Article 5(6), notify the entity concerned that it is considered a critical entity of particular European significance, informing that entity of its obligations pursuant to this Chapter and the date from which those obligations apply to it.</p>	<p>3. If the Commission shall, without undue delay upon receiving the notification pursuant to Article 5(6) establishes, on the basis of the consultations in paragraph 2a, that the critical entity concerned provides essential services to or in more than one third of Member States, it shall notify the entity concerned, through its competent authority, that it is considered a critical entity of particular European significance, informing that entity of its obligations pursuant to this Chapter and the date from which those obligations apply to it.</p>	<p>3. Technical meeting 14/03: Council: Modified art 14.3 (...) The national authorities have already established channels of communication, it would make sense to keep it like that. If we would introduce a new actor then would require a way to exchange. MS still has a responsibility towards this entity. EP: It will be important that CION notify the critical entity and affected MS in parallel. CION: It would make sense that if CION has the new powers given by Council, then it would make sense that it also notifies. EP: Our idea is that CION sends an email to the critical entity with affected MS in cc. Then it can be emphasised that that the main contact is MS. We need to avoid red tape. CION: In line 167c, CION will be in consultation with the critical entity. CION will not be unknown to the critical entity and the entity will not be surprised when is notified by CION. There is strong sectorial legislation in which CION has a strong role. Council: I don't have mandate to</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>reach compromise on this. I would need to further discuss. An email is not most way to notify, it would be too dangerous.</p> <p>EP: Then following that logic we will need to question if CION would need to be consulted, which is what Council proposes in the lines above. Fully respecting security concerns but delay in informing can create a security situation.</p> <p>After we agree on content, we would like also some clarity on the langue (who informs who).</p> <p>If we stick to the Council approach, the competent has margin of manoeuvre: can a competent authority disagree with CION and not notify?</p> <p>Council: We will not block any transmission of information, that is not the idea. We can reword it if necessary for greater clarity.</p> <p>Technical meeting of 16 May: Council proposed the following compromise:</p> <p>If the Commission establishes, on the basis of the consultations in paragraph 2a, that the critical entity concerned provides essential</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>services to or in more than one third of Member States, it shall notify the entity concerned, through its competent authority, that it is considered a critical entity of particular European significance, informing that entity of its obligations pursuant to this Chapter and the date from which those obligations apply to it. <i>Once the competent authority is informed by the Commission of its decision to consider an entity as a critical entity of particular European importance, the competent authority shall forward the notification to the critical entity designated as of particular European significance without undue delay.</i></p> <p>EP received this compromise positively and needed to check internally.</p>
Article 14(3), first paragraph				
169	The provisions of this Chapter shall apply to the critical entity of particular European significance concerned from the date of receipt of that notification.	The provisions of this Chapter shall apply to the critical entity of particular European significance concerned from the date of receipt of that notification.	The provisions of this Chapter shall apply to the critical entity of particular European significance concerned from the date of receipt of the notification referred to in paragraph 3 that notification.	<p>Technical meeting 14/03: Council: This was a precision. EP: We could make this paragraph 4 for clarity CION: Yes</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>Provisionally agreed on Council text but the paragraph becomes new paragraph 4 of article 14.</p> <p>The provisions of this Chapter shall apply to the critical entity of particular European significance concerned from the date of receipt of the notification referred to in paragraph 3.</p> <p>Technical meeting 16 May: CION noted that this line needs to be checked for coherence with line 93.</p>
Article 15				
170	Article 15 Specific oversight	Article 15 Specific oversight	Article 15 Specific oversight Advisory Missions	Article 15 Advisory Missions Technical meeting 14/03: Provisionally agreed to change to Advisory missions
Article 15(1), introductory part				
171	1. Upon request of one or more Member States or of the Commission, the Member State where the infrastructure of the critical entity of particular	1. Upon request of one or more Member States or of the Commission, <i>the Member State where the infrastructure of the</i> critical entity of particular	1. Upon request of one or more Member States or of the Commission, the Member State where the infrastructure of the critical entity of particular	1. Technical meeting 14/03: Council: we moved this to 173a, happening in the context of an advisory mission. EP: On EP deletions to simplify the

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	European significance is located shall, together with that entity, inform the Commission and the Critical Entities Resilience Group of the outcome of the risk assessment carried out pursuant to Article 10 and the measures taken in accordance with Article 11.	European significance <i>is located</i> shall, together with that entity; inform the Commission and the Critical Entities Resilience Group of the outcome of the risk assessment carried out pursuant to Article 10 and the measures taken in accordance with Article 11.	European significance is located shall, together with that entity, inform the Commission and the Critical Entities Resilience Group of the outcome of the risk assessment carried out pursuant to Article 10 and the measures taken in accordance with Article 11.	procedure. CION: On the amendment of the EP: It gives a direct obligation to a critical entity when the Directive can only oblige the MS (to oblige the entities). CION and CERG need to be mentioned. On the order of the stages (the one proposed in the original proposal or the Council one) is not so important for CION. Conclusion: We put this row into brackets we will develop with 173a, b and c.
Article 15(1), first paragraph				
172	That Member State shall also inform, without undue delay, the Commission and the Critical Entities Resilience Group of any supervisory or enforcement actions, including any assessments of compliance or orders issued, that its competent authority has undertaken pursuant to Articles 18 and 19 in respect of that entity.	That Member State shall also inform, without undue delay, the Commission and the Critical Entities Resilience Group of any supervisory or enforcement actions, including any assessments of compliance or orders issued, that its competent authority has undertaken pursuant to Articles 18 and 19 in respect of that entity.	That The Member State shall also inform, without undue delay, the Commission and the Critical Entities Resilience Group of any supervisory or enforcement actions, including any assessments of compliance or orders issued, that its competent authority has undertaken pursuant to Articles 18 and 19 in respect of that entity where a critical entity of particular European significance is located may request the Commission to organise an advisory mission to assess the measures that the entity	Technical meeting 14/03: Council: We modified as in previous line. We moved this to 173c. EP: We will come back to this. For the other changes, and for the request to organise the mission we could be okay. CION: "Where the critical entities is located" come in line with art 5 on how an entity is identify and we need to keep it coherent. To come back to this line later.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			concerned put in place to meet its obligations pursuant to Chapter III.	
Article 15(1a)				
172a			<p>1a. One or more Member States to or in which the essential service is provided, or the Commission, may also request an advisory mission referred to in paragraph 1. Upon agreement of the Member State where the critical entity of particular European significance is located, the Commission shall organise such an advisory mission.</p>	<p>1a. 22/4</p> <p>CSL: MS would need to agree to the mission, this clarifies the point.</p> <p>EP: Do not want to impose a mission on a MS, however there is a common interest here and are concerned that a MS would be in a position to block a mission.</p> <p>COM: In principle fine, we still need to look at ‘where the entity is located’ under article 5. ‘In consultation’ with as opposed ‘upon agreement’ would be fine with COM if legislators agree.</p> <p>CSL: This is a sensitive issue for MS - we don’t consider it a veto but MS should have the option to say no due to specific reasons i.e. elections, strikes that are diverting resources elsewhere.</p> <p>EP: Highlight examples where certain MS block visits of EU</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				delegations. CSL: This is a challenging question but we will continue work on this.
Article 15(2)				
173	2. Upon request of one or more Member States, or at its own initiative, and in agreement with the Member State where the infrastructure of the critical entity of particular European significance is located, the Commission shall organise an advisory mission to assess the measures that that entity put in place to meet its obligations pursuant to Chapter III. Where needed, the advisory missions may request specific expertise in the area of disaster risk management through the Emergency Response Coordination Centre.	2. Upon request of one or more Member States, or at its own initiative, and in agreement consultation with the Member State where the infrastructure of the critical entity of particular European significance is located, the Commission shall organise an advisory mission to assess the measures that that entity put in place to meet its obligations pursuant to Chapter III. Where needed, the advisory missions may request specific expertise in the area of disaster risk management through the Emergency Response Coordination Centre.	2. Upon reasoned request of one or more Member States, or at its own initiative, and in agreement with to or in which the essential service is provided, or the Commission, the Member State where the infrastructure of the critical entity of particular European significance is located, the Commission shall organise an advisory mission to assess the measures that that entity put in place to meet its obligations pursuant to Chapter III. Where needed, the advisory missions may request specific expertise in the area of disaster risk management through the Emergency Response Coordination Centre. provide:	2. 22/4 CSL: Changes to add clarity and improve trust between MS. EP: Is ‘reasoned’ necessary? Wouldn’t there always be a reason? We don’t want to raise the bar unnecessarily. COM: If MS consider ‘reasoned’ helpful this isn’t a major concern for us. To be returned to.
Article 15(2), point (a)				
173a			(a) a summarised outcome of the risk assessment carried out	(a) 22/4

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			pursuant to Article 10;	<p>CSL: Moved from elsewhere in the text.</p> <p>EP: ‘summarised’ / summary is an issue, as more information beyond that would be necessary.</p> <p>COM: The rationale is to be prepare an advisory mission therefore having a good factual basis is important and we would support the line of argument of the EP.</p> <p>CSL: Propose ‘relevant parts’ or ‘relevant aspects’</p> <p>COM: Don’t consider ‘relevant parts’ is vastly different to summarised.</p>
Article 15(2), point (b)				
			(b) a summary of measures taken in accordance with Article 11;	
Article 15(2), point (c)				
			(c) supervisory or enforcement actions, including assessments of compliance or orders issued, that	(c) 22/4 Provisionally agreed

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			its competent authority has undertaken pursuant to Articles 18 and 19 in respect of that entity.	
Article 15(3), introductory part				
174	3. The advisory mission shall report its findings to the Commission, the Critical Entities Resilience Group and the critical entity of particular European significance concerned within a period of three months after the conclusion of the advisory mission.	3. The advisory mission shall report its findings to the Commission, the Critical Entities Resilience Group and the critical entity of particular European significance concerned within a period of three months after the conclusion of the advisory mission.	3. The advisory mission shall report its findings to the Commission, the Critical Entities Resilience Group and, the Member State where the critical entity of particular European significance is located, the Member States to or in which the essential service is provided and the entity concerned within a period of three months after the conclusion of the advisory mission.	3. 22/4 Lines 174, 175, 176 CSL: Wanted to ensure the COM reported to MS and to the entities relevant to the mission. EP: Sympathy with the CSL amendment but feel there could be benefits and added value in sharing findings with other MS who may face similar challenges. Accept change in line 176 on ‘opinions’ replacing ‘views’. COM: We were part of MS discussions so we understand the CSL position and why it suggested reducing the number of actors who access the information. We should ensure the CERG is not cut out altogether. Consider the EP concerns are not lost completely as CSL proposal on 15(9) covers information sharing.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Technical meeting 16/5: timeline provisionally agreed.
Article 15(3), first paragraph				
175	The Critical Entities Resilience Group shall analyse the report and, where necessary, shall advise the Commission on whether the critical entity of particular European significance concerned complies with its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to improve the resilience of that entity.	The Critical Entities Resilience Group shall analyse the report and, where necessary, shall advise the Commission on whether the critical entity of particular European significance concerned complies with its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to improve the resilience of that entity.	The Member States to or in which the essential service is provided The Critical Entities Resilience Group shall analyse the report and, where necessary, shall advise the Commission on whether the critical entity of particular European significance concerned complies with its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to improve the resilience of that entity.	
Article 15(3), second paragraph				
176	The Commission shall, based on that advice, communicate its views to the Member State where the infrastructure of that entity is located, the Critical Entities Resilience Group and that entity on whether that entity complies with its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to	The Commission shall, based on that advice, communicate its views to the Member State where the infrastructure of that entity is located, the Critical Entities Resilience Group and that entity on whether that entity complies with its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to	The Commission shall, based on that advice, communicate its views opinion to the Member State where that entity is located, the Member States to or in which the essential service is provided the infrastructure of that entity is located, the Critical Entities Resilience Group and that entity on whether that entity complies with	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	improve the resilience of that entity.	improve the resilience of that entity.	its obligations pursuant to Chapter III and, where appropriate, which measures could be taken to improve the resilience of that entity.	
Article 15(3), third paragraph				
177	That Member State shall take due account of those views and provide information to the Commission and the Critical Entities Resilience Group on any measures it has taken pursuant to the communication.	That Member State shall take due account of those views and provide information to the Commission and the Critical Entities Resilience Group on any measures it has taken pursuant to the communication.	That Member State shall ensure that the competent authority and the critical entity concerned take due account of those views that opinion and provide information to the Commission and the Critical Entities Resilience Group on any Member States to or in which the essential service is provided on measures it has taken pursuant to that opinion the communication.	22/4 EP suggest changing its competent authority rather than THE. Provisionally agreed with addition of 'its' competent authority.
Article 15(4), introductory part				
178	4. Each advisory mission shall consist of experts from Member States and of Commission representatives. Member States may propose candidates to be part of an advisory mission. The Commission shall select and appoint the members of each advisory mission according to their professional capacity and ensuring	4. Each advisory mission shall consist of experts from Member States and of Commission representatives. Member States may propose candidates to be part of an advisory mission. The Commission shall select and appoint the members of each advisory mission according to their professional capacity and ensuring	4. Each advisory mission shall consist of experts from the Member State where the critical entity of particular European significance is located, the Member States to or in which the essential service is provided and of Commission representatives. Those Member States may propose candidates to be part of an advisory	4. 22/4 CSL: We thought it was more relevant that the experts impacted where part of the mission. EP: The limitation to only affected MS is too narrow and perhaps may exclude participants who are recognised experts in a particular


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	a geographically balanced representation among Member States. The Commission shall bear the costs related to the participation in the advisory mission.	a geographically balanced representation among Member States. The Commission shall bear the costs related to the participation in the advisory mission.	mission. The Commission shall, after consultation with the Member State where the critical entity is located , select and appoint the members of each advisory mission according to their professional capacity and ensuring where possible a geographically balanced representation from all those among Member States. Whenever necessary, members of the advisory mission shall have a valid and appropriate security clearance. The Commission shall bear the costs related to the participation in the advisory mission.	field. Consultation is not needed, there is already significant consultation. COM: Agree with EP on limits being too narrow, opening possibility as suggested by EP is fine. Agree also that consultation is not needed - it is already set up in close coordination with MS. The 'whenever necessary' on security clearance is fine.
Article 15(4), first paragraph				
179	The Commission shall organise the programme of an advisory mission, in consultation with the members of the specific advisory mission and in agreement with the Member State where the infrastructure of the critical entity or the critical entity of European significance concerned is located.	The Commission shall organise the programme of an advisory mission, in consultation with the members of the specific advisory mission and in agreement with the Member State where the infrastructure of the critical entity or the critical entity of European significance concerned is located.	The Commission shall organise the programme of an advisory mission, in consultation with the members of the specific advisory mission and in agreement with the Member State where the infrastructure of the critical entity or the critical entity of European significance concerned is located.	
Article 15(5)				
180				


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	5. The Commission shall adopt an implementing act laying down rules on the procedural arrangements for the conduct and reports of advisory missions. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 20(2).	5. The Commission shall adopt an implementing act laying down rules on the procedural arrangements for the conduct and reports of advisory missions. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 20(2).	5. The Commission shall adopt an implementing act laying down rules on the procedural arrangements for the requests and their handling, for the conduct and reports of advisory missions and for the handling of the communication on the Commission's opinion and on the measures taken, duly taking into account the confidentiality and the commercial sensitivity of the information concerned. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 20(2).	5. 22/4 Provisionally agreed on the Council text.
Article 15(6)				
181	6. Member States shall ensure that the critical entity of particular European significance concerned provides the advisory mission with access to all information, systems and facilities relating to the provision of its essential services necessary for the performance of its tasks.	6. Member States shall ensure that the critical entity of particular European significance concerned provides the advisory mission with access to all information, systems and facilities relating to the provision of its essential services necessary for the performance of its tasks.	6. Member States shall ensure that the critical entity of particular European significance concerned provides the advisory mission with access to all information, systems and facilities relating to the provision of its essential services necessary for the performance of its tasks carrying out the advisory mission.	6. 22/4 Provisionally agreed on the Council text
Article 15(7)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
182	7. The advisory mission shall be carried out in compliance with the applicable national law of the Member State where that infrastructure is located.	7. The advisory mission shall be carried out in compliance with the applicable national law of the Member State where that infrastructure is located.	7. The advisory mission shall be carried out in compliance with the applicable national law of the Member State where the critical entity of particular European significance that infrastructure is located, respecting that Member State's responsibility for national security and protection of its security interests.	7. 22/4 CSL: In line with concerns on national security. EP - we will come back on location. Do not oppose in principle. Provisionally agreed with location in [...]
Article 15(8)				
183	8. When organising the advisory missions, the Commission shall take into account the reports of any inspections carried out by the Commission under Regulation (EC) 300/2008 and Regulation (EC) 725/2004 and of the reports of any monitoring carried out by the Commission under Directive 2005/65/EC in respect of the critical entity or the critical entity of particular European significance, as appropriate.	8. When organising the advisory missions, the Commission shall take into account the reports of any inspections carried out by the Commission under Regulation (EC) 300/2008 and Regulation (EC) 725/2004 and of the reports of any monitoring carried out by the Commission under Directive 2005/65/EC in respect of the critical entity or the critical entity of particular European significance, as appropriate.	8. When organising the advisory missions, the Commission shall take into account the reports of any inspections carried out by the Commission under Regulation (EC) 300/2008 and Regulation (EC) 725/2004 and of the reports of any monitoring carried out by the Commission under Directive 2005/65/EC in respect of the critical entity or the critical entity of particular European significance, as appropriate.	
Article 15(9)				
183a			9. The Commission shall inform	8a. 22/4

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>the Critical Entities Resilience Group whenever an advisory mission is organised. The Member State where the critical entity of particular European significance is located and the Commission shall also inform the Critical Entities Resilience Group of the summary report of the advisory mission and the lessons-learned with a view to promoting mutual learning.</p>	<p>CSL: Principle moved from elsewhere and to ensure that CERG is consulted.</p> <p>COM: suggest</p> <p>Commission shall also inform the Critical Entities Resilience Group of the main findings of the advisory mission and the lessons-learned with a view to promoting mutual learning.</p> <p>CSL agree.</p> <p>EP: Positive to COM suggestion but will reflect internally.</p>
Chapter V				
184	Chapter V Cooperation and Reporting	Chapter V Cooperation and Reporting	Chapter V Cooperation and Reporting	
Article 16				
185	Article 16 Critical Entities Resilience Group	Article 16 Critical Entities Resilience Group	Article 16 Critical Entities Resilience Group	
Article 16(1)				
186				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	1. A Critical Entities Resilience Group is established with effect from [six months after the entry into force of this Directive]. It shall support the Commission and facilitate strategic cooperation and the exchange of information on issues relating to this Directive.	1. A Critical Entities Resilience Group is established with effect from [six months after the entry into force of this Directive]. It shall support the Commission and facilitate strategic cooperation and the exchange of information on issues relating to this Directive.	1. A– Critical Entities Resilience Group is established with effect from [six months after the entry into force of this Directive]. It shall support the Commission and facilitate cooperation among Member States strategie cooperation and the exchange of information on issues relating to this Directive.	1. 5/6 technical meeting CSL: Did not understand ‘strategic cooperation’ COM: Can accept CSL change EP: EP provisionally agree. Technical meeting 16/5: timeline provisionally agreed.
Article 16(2), introductory part				
187	2. The Critical Entities Resilience Group shall be composed of representatives of the Member States and the Commission. Where relevant for the performance of its tasks, the Critical Entities Resilience Group may invite representatives of interested parties to participate in its work.	2. The Critical Entities Resilience Group shall be composed of representatives of the Member States and the Commission. Where relevant for the performance of its tasks, the Critical Entities Resilience Group may shall invite representatives of interested parties <u>relevant stakeholders</u> to participate in its work <u>and the European Parliament to participate as an observer</u> .	2. The Critical Entities Resilience Group shall be composed of representatives of the Member States and the Commission holding security clearance, where appropriate . Where relevant for the performance of its tasks, the Critical Entities Resilience Group may invite representatives of interested parties other stakeholders to participate in its work.	2. 5/6 technical meeting CSL: due to sensitivity useful to add security clearance. Ask the added value of the EP expert? EP: Not opposed to CSL addition on clearance, prefer relevant stakeholders but think a common understanding is there. Should be an obligation to invite (shall vs may). Consider an EP voice is useful and important for reporting back to EP decision makers. COM: clearance where appropriate is fine, as some but not all deliberations will require it. ‘Stakeholders’ is fine. Concerned over the introduction of

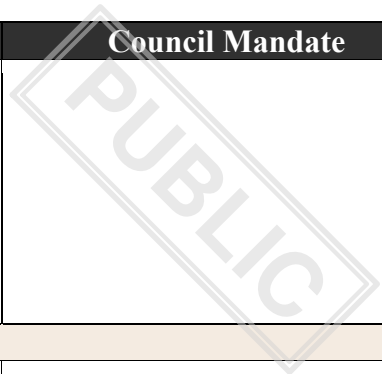
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>‘shall’ by EP - the purpose of expert groups is to support the COM. It is up to the Chair to decide to invite guests on a discretionary basis - very sure the option to invite would be taken up but obligation is too far. EP participation, COM have reservations. The operation of expert groups doesn’t foresee permanent involvement of EP. According to EP-COM framework agreement, EP may request that EP experts participate and then the COM may invite them. COM feel we should stay within the overarching limits of what has been agreed inter-institutionally.</p> <p>EP: do not view their attendance as a permanent measure, but should be related to discussions that are considered important to the EP. Questions whether meeting agendas are substantial enough for EP to decide whether they could/should request to send an observer.</p> <p>COM: COM should retain the discretion on invitees as if a number of stakeholders requests to attend then COM would be obliged</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>to invite them if the wording is 'shall' - organisation needs to remain with the chair and in consultation with the Members.</p> <p>COM suggest the following text:</p> <p><i>2. The Critical Entities Resilience Group shall be composed of representatives of the Member States and the Commission holding security clearance, where appropriate. Where relevant for the performance of its tasks, the Critical Entities Resilience Group may invite relevant stakeholders to participate in its work. If so requested by Parliament, the Commission may also invite Parliament's experts to attend meetings of the Critical Entities Resilience Group.</i></p>
Article 16(2), first paragraph				
188	The Commission's representative shall chair the Critical Entities Resilience Group.	The Commission's representative shall chair the Critical Entities Resilience Group.	The Commission's representative shall chair the Critical Entities Resilience Group.	
Article 16(3), introductory part				
189	3. The Critical Entities Resilience	3. The Critical Entities Resilience	3. The Critical Entities Resilience	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Group shall have the following tasks:	Group shall have the following tasks:	Group shall have the following tasks:	
Article 16(3), point (a)				
190	(a) supporting the Commission in assisting Member States in reinforcing their capacity to contribute to ensuring the resilience of critical entities in accordance with this Directive;	(a) supporting the Commission in assisting Member States in reinforcing their capacity to contribute to ensuring the resilience of critical entities in accordance with this Directive;	(a) supporting the Commission in assisting Member States in reinforcing their capacity to contribute to ensuring the resilience of critical entities in accordance with this Directive;	
Article 16(3), point (b)				
191	(b) evaluating the strategies on the resilience of critical entities referred to in Article 3 and identifying best practices in respect of those strategies;	(b) evaluating the strategies on the resilience of critical entities referred to in Article 3 and identifying best practices in respect of those strategies;	(b) evaluating analysing the strategies on the resilience of critical entities referred to in Article 3 in order to identify and identifying best practices in respect of those strategies;	(b) Tech meeting 6/5 CSL: clarifications, do not substantially change. EP: Prefer CSL changes and can agree. COM: agree. Provisionally agreed.
Article 16(3), point (c)				
192	(c) facilitating the exchange of best practices with regard to the identification of critical entities by	(c) facilitating the exchange of best practices with regard to the identification of critical entities by	(c) facilitating the exchange of best practices with regard to the identification of critical entities by	(c) Tech meeting 6/5 CSL: can agree to EP text. CSL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the Member States in accordance with Article 5, including in relation to cross-border dependencies and regarding risks and incidents;	the Member States in accordance with Article 5, including in relation to cross-border <i>and cross sectoral</i> dependencies and regarding risks and incidents;	the Member States in accordance with Article 5, including in relation to cross-border dependencies and regarding risks and incidents, as well as with regard to the national approach to implementing the equivalence regime;	addition linked to equivalence regime COM: EP addition is useful. Prefer to [...] the equivalence regime as that is still being discussed. EP: Equivalence still horizontally discussed therefore [...]
Article 16(3), point (ca)				
192a		<i>(ca) preparing a Union strategy on resilience in compliance with the objectives set out in this Directive;</i>		(ca) Tech meeting 6/5 CSL: Consider this a national prerogative and EP proposal quite broad, but not opposed in principle. Still this amendment is quite complicated for the Council. COM: As CSL, questions the added value of the strategy as there are many ongoing work strands on resilience (e.g. resilience ‘dashboard’ covering broad range of topics (critical entities/infrastructures always a part but not central); disaster resilience goals; reflection among MS on Union Strategy on Resilience; COM communication on resilience in transport sector). Concerned with overlaps and

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>doubts on the added value. Institutional point: if it was to be produced, it should not be in the hands of an expert group but rather produced by COM or by MS.</p> <p>EP: Could the CERG be involved in the preparation of the dashboard?</p> <p>COM: Will look into this question. CE may be part of what is being looked at in the resilience dashboard exercise, but not exclusively.</p>
Article 16(3), point (d)				
193	(d) contributing to the preparation of the guidelines referred to in Article 6(3) and any delegated and implementing acts under this Directive, upon request;	(d) contributing to the preparation of the guidelines referred to in Article 6(3) and any delegated and implementing acts under this Directive, upon request;	(d) contributing to the preparation of the guidelines referred to in Article Articles 6(3) and any delegated and 11(4) and, upon request, any implementing acts under this Directive, upon request;	<p>(d) Tech meeting 6/5</p> <p>CSL: reflects position on delegated acts. ‘upon request’ clarification.</p> <p>EP: Not opposed but need to be aligned depended on DAs. COM agree</p>
Article 16(3), point (e)				
194	(e) examining, on an annual basis, the summary reports referred to in Article 8(3);	(e) examining, on an annual basis, the summary reports referred to in Article 8(3);	(e) examining, on an annual basis, analysing the summary reports referred to in Article 8(3);	<p>(e) Tech meeting 6/5</p> <p>CSL: consider analysing to be the</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				appropriate word. Deleted ref to timing as this is covered by 8(3) EP: agree on analysing. this is dependent on 8(3) which will be returned to. COM agree
Article 16(3), point (f)				
195	(f) exchanging best practices on the exchange of information related to the notification of incidents referred to in Article 13;	(f) exchanging best practices on the exchange of information related to the notification of incidents referred to in Article 13;	(f) exchanging best practices on the exchange of information related to the notification of incidents referred to in Article 13;	(f) Tech meeting 6/5 CSL: semantic EP and COM provisionally agreed on the Council's text.
Article 16(3), point (g)				
196	(g) analyse and provide advice on the reports of advisory missions in accordance with Article 15(3);	(g) analyse and provide advice on the reports of advisory missions in accordance with Article 15(3);	(g) analyse and provide advice on the discuss the summary reports of advisory missions and lessons-learned in accordance with Article 15(3) 15(9) ;	(g) Tech meeting 6/5 CSL: In line with change on 138a EP and COM provisionally agree on the Council's text.
Article 16(3), point (h)				
197	(h) exchanging information and best practices on research and development relating to the resilience of critical entities in	(h) exchanging information and best practices on <u>innovation</u> , research and development relating to the resilience of critical entities	(h) exchanging information and best practices on research and development relating to the resilience of critical entities in	(h) Tech meeting 6/5 Provisionally agree.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	accordance with this Directive;	in accordance with this Directive;	accordance with this Directive;	
Article 16(3), point (ha)				
197a		<u><i>(ha) promoting and supporting coordinated risk assessments and joint actions among critical entities;</i></u>		<p>(ha) Tech meeting 6/5</p> <p>EP: Believe CERG is in a good place to provide this support / advice</p> <p>CSL: Ask what would be included in 'joint actions'</p> <p>COM: Question if this is a useful task for CERG who are not an operational group. Perhaps Art 9 which is on MS support to entities is more appropriate. Suggests adding to line 130:</p> <p>130: 'MS shall facilitate voluntary information sharing and voluntary cooperation between Critical Entities'</p> <p>CSL: Share COM view and the proposal can be provisionally accepted.</p> <p>EP to consider this proposal.</p>
Article 16(3), point (i)				


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
198	(i) where relevant, exchanging information on matters concerning the resilience of critical entities with relevant Union institutions, bodies, offices and agencies.	(i) where relevant, exchanging information on matters concerning the resilience of critical entities with relevant Union institutions, bodies, offices and agencies.	(i) where relevant, exchanging information on matters concerning the resilience of critical entities with relevant Union institutions, bodies, offices and agencies.	
Article 16(4)				
199	4. By [24 months after entry into force of this Directive] and every two years thereafter, the Critical Entities Resilience Group shall establish a work programme in respect of actions to be undertaken to implement its objectives and tasks, which shall be consistent with the requirements and objectives of this Directive.	4. By [24 months after entry into force of this Directive] and every two years thereafter, the Critical Entities Resilience Group shall establish a work programme in respect of actions to be undertaken to implement its objectives and tasks, which shall be consistent with the requirements and objectives of this Directive.	4. By [24 months after entry into force of this Directive] and every two years thereafter, the Critical Entities Resilience Group shall establish a work programme in respect of actions to be undertaken to implement its objectives and tasks, which shall be consistent with the requirements and objectives of this Directive.	4. Technical meeting 16/5: timeline provisionally agreed
Article 16(5)				
200	5. The Critical Entities Resilience Group shall meet regularly and at least once a year with the Cooperation Group established under [the NIS 2 Directive] to promote strategic cooperation and exchange of information.	5. The Critical Entities Resilience Group shall meet regularly and at least once a year with the Cooperation Group established under [the NIS 2 Directive] to promote facilitate strategic cooperation and exchange of information.	5. The Critical Entities Resilience Group shall meet regularly and at least once a year with the Cooperation Group established under [the NIS 2 Directive] to promote strategic cooperation and facilitate exchange of information.	5. Tech meeting 6/5 CSL: delete strategic in line with 183 as not clear what it means. Agreed at the end: “ facilitate both cooperation and exchange of information.” Technical meeting 16/5: timeline

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				provisionally agreed.
Article 16(6)				
201	6. The Commission may adopt implementing acts laying down procedural arrangements necessary for the functioning of the Critical Entities Resilience Group. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(2).	6. The Commission may adopt implementing acts laying down procedural arrangements necessary for the functioning of the Critical Entities Resilience Group. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(2).	6. The Commission may shall adopt implementing acts laying down procedural arrangements necessary for the functioning of the Critical Entities Resilience Group, pursuant to the provisions of Article 1.4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(2).	6. Tech meeting 6/5 COM: Already rules in place on the establishment of expert groups (terms of reference, rules of procedures), hence the ‘may’; Implemented act is not indispensable. Reference to Art 1.4 not needed here as it is applicable across the CER. EP: Is changing to ‘shall’ over complicating and should the COM have the flexibility? CSL: Provisionally agreed to maintain ‘may’ but request to keep reference to Art 1.4. Provisionally agreed with ‘may’ and ref to Art 1.4 as per CSL text
Article 16(7)				
202	7. The Commission shall provide to the Critical Entities Resilience Group a summary report of the information provided by the	7. The Commission shall provide to the the Critical Entities Resilience Group a summary report of the information provided by the	7. The Commission shall provide to the the Critical Entities Resilience Group a summary report of the information provided by the	7. Tech meeting 6/5 CSL: Not opposed to publishing summary report. Do not

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Member States pursuant to Articles 3(3) and 4(4) by [three years and six months after entry into force of this Directive] and subsequently where necessary and at least every four years.	Member States pursuant to Articles 3(3) and 4(4) by [three years and six months after entry into force of this Directive] and subsequently where necessary and at least every four years. <u><i>The Commission shall regularly publish a summary report of the activities of the Critical Entities Resilience Group. The Commission shall set up a common secretariat for the Critical Entities Resilience Group and the Cooperation Group established under the NIS 2 Directive in order to better accommodate communication between the two groups and, consequently, to minimise ambiguities between the different authorities designated under this Directive and the NIS 2 Directive.</i></u>	Member States pursuant to Articles 3(3) and 4(4) by [three years and six nine months after entry into force of this Directive] and subsequently where necessary and at least every four years.	support/understand ‘common secretariat’ COM: Summary report can be provided. Common secretariat, it is for the COM to decide how to organise its work and do not consider it appropriate to include here. Already good administrative practice to share information between concerned services. EP: Understand arguments on Common Sec, do not expect a whole new unit but want to explore how to foster this kind of cooperation that perhaps isn’t included in a legal text. There should be something in addition to what normal cooperation looks like. Technical meeting of 16 May: Provisional agreement on CL text
Article 17				
203	Article 17 Commission support to competent authorities and critical entities	Article 17 Commission support to competent authorities and critical entities	Article 17 Commission support to competent authorities and critical entities	Article 17 Technical meeting 16/05 Provisionally agreed
Article 17(1)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
204	1. The Commission shall, where appropriate, support Member States and critical entities in complying with their obligations under this Directive, in particular by preparing a Union-level overview of cross-border and cross-sectoral risks to the provision of essential services, organising the advisory missions referred to in Articles 11(3) and 15(3) and facilitating information exchange among experts across the Union.	1. The Commission shall, where appropriate, support Member States and critical entities in complying with their obligations under this Directive, in particular by preparing a Union-level overview of cross-border and cross-sectoral risks to the provision of essential services, organising the advisory missions referred to in Articles 11(3) and 15(3) and facilitating information exchange among experts across the Union.	1. The Commission shall, where appropriate, support Member States and critical entities in complying with their obligations under this Directive, in particular by preparing. The Commission shall prepare a Union-level overview of cross-border and cross-sectoral risks to the provision of essential services, organising organise the advisory missions referred to in Articles 11(3) and 15(3) and facilitating 15 and facilitate information exchange among Member States and experts across the Union.	1. Technical meeting 16/05 Provisionally agreed on Council text
Article 17(2)				
205	2. The Commission shall complement Member States' activities referred to in Article 9 by developing best practices and methodologies, and by developing cross-border training activities and exercises to test the resilience of critical entities.	2. The Commission shall complement Member States' activities referred to in Article 9 by developing best practices and methodologies, and by developing cross-border training activities and exercises to test the resilience of critical entities.	2. The Commission shall complement Member States' activities referred to in Article 9 by developing best practices, guidance materials and methodologies, and by developing cross-border training activities and exercises to test the resilience of critical entities.	2. Technical meeting 16/05 Provisionally agreed on Council text
Article 17(2a)				
205a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>2a. The Commission shall make financial sources available to Member States for enhancing the resilience of their critical entities.</p>	<p>2a. Technical meeting 16/05</p> <p>Council Clarify that financial sources (as funds and information) should be available to MS to implement this Directive.</p> <p>EP Agree on the principle that MS needs to make financial means available to entities. Thus financial means needs to be available to MS.</p> <p>CION Complicated for CION to ensure that there will be financial sources available because Council and EP are the ones deciding on the budget. One possibility could be to nuance this and to narrow the task of COM to providing information on available financial resources . Or another alternative to say "if available" at the beginning of the sentence</p> <p>Council It is important for us is to get clarity and clarity on the possibilities for financing. CION will provide drafting.</p>
Article 17(2a)				
205b		<p><u>2a. In order to receive and</u></p>		2a. Technical meeting 16/05

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u><i>properly use the information received under Article 8(3), the Commission shall keep a Union registry of incidents with the aim of developing and sharing best practices and methodologies.</i></u></p>		<p>EP To make best use of this Directive and harmonisation, it is important to introduce this registry (as notifications would be sent to CION in our mandate). This would help to identify trends across the Union and to develop best practices.</p> <p>CL This is problematic for us, we could propose alternative writing CION This presupposes that COM receives info on every incident. That is not the case in Commission proposal (entities send notifications to MS (art 13), and then MS are obligated to send a summary report to CION (Art 8). In addition, COM does not have operational role with regard to responding to incidents (different set-up than in NIS2 with operational agency). CL proposes: <i>"In order to properly use information received under article 8.3, the Commission shall develop and share best practices and methodologies."</i></p> <p>EP We could reconsider the formulation for sure in line with CION intervention too. The word</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>“registry” is not carved in stone but we need to specify more the CL proposal (to say which are the addressee in mind and what best practices should be analysed). Current text may be too vague. EP will work on CL proposal and resubmit new one.</p> <p>CION CL compromise proposal is a good base but we share the two comments of EP (on addressees and on more specificities). Will also reflect on alternative text.</p>
Chapter VI				
206	Chapter VI SUPERVISION AND ENFORCEMENT	Chapter VI SUPERVISION AND ENFORCEMENT	Chapter VI SUPERVISION AND ENFORCEMENT	Chapter VI Technical meeting 16/05 Provisional agreement
Article 18				
207	Article 18 Implementation and enforcement	Article 18 Implementation and enforcement	Article 18 Implementation and enforcement	Article 18 Technical meeting 16/05 Provisional agreement
Article 18(1), introductory part				
208	1. In order to assess the	1. In order to assess the	1. In order to assess the	1. Technical meeting 16/05

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	compliance of the entities that the Member States identified as critical entities pursuant to Article 5 with the obligations pursuant to this Directive, they shall ensure that the competent authorities shall have the powers and means to:	compliance of the entities that the Member States identified as critical entities pursuant to Article 5 with the obligations pursuant to this Directive, they shall ensure that the competent authorities shall have the powers and means to:	compliance of the entities that the Member States identified as critical entities pursuant to Article 5 with the obligations pursuant to this Directive, they shall ensure that the competent authorities shall have the powers and means to:	Provisional agreement
Article 18(1), point (a)				
209	(a) conduct on-site inspections of the premises that the critical entity uses to provide its essential services, and off-site supervision of critical entities' measures pursuant to Article 11;	(a) conduct on-site inspections of the premises that the critical entity uses to provide its essential services, and off-site supervision of critical entities' measures pursuant to Article 11;	(a) conduct on-site inspections of the critical infrastructure and the premises that the critical entity uses to provide its essential services, and off-site supervision of critical entities' measures pursuant to Article 11;	(a) Technical meeting 16/05 Provisional agreement on CL text
Article 18(1), point (b)				
210	(b) conduct or order audits in respect of those entities.	(b) conduct or order audits in respect of those entities.	(b) conduct or order audits in respect of those entities.	(b) Technical meeting 16/05 Provisional agreement
Article 18(2), introductory part				
211	2. Member States shall ensure that the competent authorities have the powers and means to require, where necessary for the performance of their tasks under this Directive, that the entities that	2. Member States shall ensure that the competent authorities have the powers and means to require, where necessary for the performance of their tasks under this Directive, that the entities that	2. Member States shall ensure that the competent authorities have the powers and means to require, where necessary for the performance of their tasks under this Directive, that the entities that	2. Technical meeting 16/05 Provisional agreement

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	they identified as critical entities pursuant to paragraph 5 provide, within a reasonable time period set by those authorities:	they identified as critical entities pursuant to paragraph 5 provide, within a reasonable time period set by those authorities:	they identified as critical entities pursuant to paragraph 5 provide, within a reasonable time period set by those authorities:	
Article 18(2), point (a)				
212	(a) the information necessary to assess whether the measures taken by those to ensure its resilience meet the requirements of Article 11;	(a) the information necessary to assess whether the measures taken by those to ensure its resilience meet the requirements of Article 11;	(a) the information necessary to assess whether the measures taken by those entities to ensure its their resilience meet the requirements of Article 11;	(a) Technical meeting 16/05 Provisional agreement on CL text
Article 18(2), point (b)				
213	(b) evidence of the effective implementation of those measures, including the results of an audit conducted by an independent and qualified independent auditor selected by that entity and conducted at its expense.	(b) evidence of the effective implementation of those measures, including the results of an audit conducted by an independent and qualified independent auditor selected by that entity and conducted at its expense.	(b) evidence of the effective implementation of those measures, including the results of an audit conducted by an independent and qualified independent auditor selected by that entity and conducted at its expense.	(b) Technical meeting 16/05 Provisional agreement
Article 18(2), first paragraph				
214	When requiring that information, the competent authorities shall state the purpose of the requirement and specify the information required.	When requiring that information, the competent authorities shall state the purpose of the requirement and specify the information required.	When requiring that information, the competent authorities shall state the purpose of the requirement and specify the information required.	Technical meeting 16/05 Provisional agreement

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 18(3)				
215	3. Without prejudice to the possibility to impose penalties in accordance with Article 19, the competent authorities may, following the supervisory actions referred to in paragraph 1, or the assessment of the information referred to in paragraph 2, order the critical entities concerned to take the necessary and proportionate measures to remedy any identified infringement of this Directive, within a reasonable time period set by those authorities, and to provide to those authorities information on the measures taken. Those orders shall take into account, in particular, the seriousness of the infringement.	3. Without prejudice to the possibility to impose penalties in accordance with Article 19, the competent authorities may, following the supervisory actions referred to in paragraph 1, or the assessment of the information referred to in paragraph 2, order the critical entities concerned to take the necessary and proportionate measures to remedy any identified infringement of this Directive, within a reasonable time period set by those authorities, and to provide to those authorities information on the measures taken. Those orders shall take into account, in particular, the seriousness of the infringement.	3. Without prejudice to the possibility to impose penalties in accordance with Article 19, the competent authorities may, following the supervisory actions referred to in paragraph 1, or the assessment of the information referred to in paragraph 2, order the critical entities concerned to take the necessary and proportionate measures to remedy any identified infringement of this Directive, within a reasonable time period set by those authorities, and to provide to those authorities information on the measures taken. Those orders shall take into account, in particular, the seriousness of the infringement.	3. Technical meeting 16/05 Provisional agreement
Article 18(4)				
216	4. Member State shall ensure that the powers provided for in paragraphs 1, 2 and 3 can only be exercised subject to appropriate safeguards. Those safeguards shall guarantee, in particular, that such exercise takes place in an objective, transparent and	4. Member State shall ensure that the powers provided for in paragraphs 1, 2 and 3 can only be exercised subject to appropriate safeguards. Those safeguards shall guarantee, in particular, that such exercise takes place in an objective, transparent and	4. Member State shall ensure that the powers provided for in paragraphs 1, 2 and 3 can only be exercised subject to appropriate safeguards. Those safeguards shall guarantee, in particular, that such exercise takes place in an objective, transparent and	4. Technical meeting 16/05 Provisional agreement : 4. Member State shall ensure that the powers provided for in paragraphs 1, 2 and 3 can only be exercised subject to appropriate safeguards. Those safeguards shall

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	proportionate manner and that the rights and legitimate interests of the critical entities affected are duly safeguarded, including their rights to be heard, of defence and to an effective remedy before an independent court.	proportionate manner and that the rights and legitimate interests of the critical entities affected are duly safeguarded, including their rights to be heard, of defence and to an effective remedy before an independent court.	proportionate manner and that the rights and legitimate interests, such as the protection of trade- and business secrets and operations , of the critical entities affected are duly safeguarded, including their rights to be heard, of defence and to an effective remedy before an independent court.	guarantee, in particular, that such exercise takes place in an objective, transparent and proportionate manner and that the rights and legitimate interests, such as the protection of trade- and business secrets, of the critical entities affected are duly safeguarded, including their rights to be heard, of defence and to an effective remedy before an independent court.
Article 18(5)				
217	5. Member States shall ensure that, when a competent authority assesses the compliance of a critical entity pursuant to this Article, it shall inform the competent authorities of the Member State concerned designated under the [the NIS 2 Directive] and may request those authorities to assess the cybersecurity of such entity, and cooperate and exchange information for this purpose.	5. Member States shall ensure that, when a competent authority assesses the compliance of a critical entity pursuant to this Article, it shall inform the competent authorities of the Member State concerned designated under the [the NIS 2 Directive] and may request those authorities to assess the cybersecurity of such entity, and cooperate and exchange information for this purpose.	5. Member States shall ensure that, when a competent authority assesses the compliance of a critical entity pursuant to this Article, it shall inform the competent authorities of the Member State concerned designated under the [the NIS 2 Directive] and may request those authorities to exercise their supervisory and enforcement powers in relation to an essential entity under the scope of [NIS 2 Directive] that is also identified as critical under this Directive assess the cybersecurity of such entity, and cooperate and exchange information for this purpose.	5. Technical meeting 16/05 Provisionally agreed on CL text.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 19				
218	Article 19 Penalties	Article 19 Penalties	Article 19 Penalties	Article 19 Technical meeting 16/05 Provisionally agreed
Article 19, first paragraph				
219	Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [two years after entry into force of this Directive] at the latest and shall notify it without delay of any subsequent amendment affecting them.	Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [two years after entry into force of this Directive] at the latest and shall notify it without delay of any subsequent amendment affecting them.	Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [two years after entry into force of this Directive] at the latest and shall notify it without delay of any subsequent amendment affecting them.	Technical meeting 16/05 Provisionally agreed
Chapter VII				
220	Chapter VII FINAL PROVISIONS	Chapter VII FINAL PROVISIONS	Chapter VII FINAL PROVISIONS	Chapter VII Technical meeting 16/05 Provisionally agreed


	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 20				
221	Article 20 Committee procedure	Article 20 Committee procedure	Article 20 Committee procedure	Article 20 Technical meeting 16/05 Provisionally agreed
Article 20(1)				
222	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. Technical meeting 16/05 Provisionally agreed
Article 20(2)				
223	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Technical meeting 16/05 Provisionally agreed
Article 21				
224	Article 21 Exercise of the delegation	Article 21 Exercise of the delegation	Article 21 Exercise of the delegation	Article 21 Technical meeting 16/05 CL We deleted this article in line with our position re delegated act. CL did not include any DA in its mandate.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			PUBLIC	<p>EP</p> <p>We already touched on this in the political trilogue. We hope that common ground can be found. Our changes in this article only related to our take on article 4.1.</p> <p>Conclusion: This article would be aligned with the agreement of legislators on Delegated Acts</p>
Article 21(1)				
225	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
Article 21(2)				
226	2. The power to adopt delegated acts referred to in Article 11(4) shall be conferred on the Commission for a period of five years from date of entry into force of this Directive or any other date set by the co-legislators.	2. The power to adopt delegated acts referred to in Article Articles 4(1) and 11(4) shall be conferred on the Commission for a period of five years from date of entry into force of this Directive or any other date set by the co-legislators.	2. The power to adopt delegated acts referred to in Article 11(4) shall be conferred on the Commission for a period of five years from date of entry into force of this Directive or any other date set by the co-legislators.	
Article 21(3)				
227				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	3. The delegation of power referred to in Article 11(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Article <u>Articles 4(1) and</u> 11(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Article 11(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
Article 21(4)				
228	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.	
Article 21(5)				
229	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 21(6)				
230	6. A delegated act adopted pursuant to Article 11(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	6. A delegated act adopted pursuant to Article 11(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	6. A delegated act adopted pursuant to Article 11(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	
Article 22				
231	Article 22 Reporting and review	Article 22 Reporting and review	Article 22 Reporting and review	Article 22 Technical meeting 16/05 Provisionally agreed
Article 22, first paragraph				
232	By [54 months after the entry into force of this Directive], the Commission shall submit a report to the European Parliament and to	By [54 months after the entry into force of this Directive], the Commission shall submit a report to the European Parliament and to	By [54 months six years after the entry into force of this Directive], the Commission shall submit a report to the European Parliament	Technical meeting 16/05 EP On EP amendment: It is very important to see how this

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.</p>	<p>the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. <u>The report shall contain separate country chapters on the concrete implementation progress in each Member State.</u></p>	<p>and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.</p>	<p>instrument is implemented. We see a lot merit on focusing on the situation in each MS. We have this in the Rule of Law area.</p> <p>CI TION</p> <p>Usual practice for transposition reports is to present them chapter by chapter or article by article, grouping the MS together to identify similarities and differences in approaches. A country per country analysis feeds in the report, but the report is presented in a summary way. It is possible but it is not the usual practice to do it MS per MS.</p> <p>CL</p> <p>We have a concern this amendment. The implementation progress should be analysed as a whole. It is better to collect best practices.</p> <p>EP</p> <p>For us, it is not about naming and shaming. But this is a very important tool. There should be common interest on having the implementation as swift and comprehensive as possible. Moreover, if the information is already there, we are in favour of making it available</p> <p>EP</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>Could have a raw data per MS at the end of the report as an Annex? CION</p> <p>Large amounts of data are available for each MS, , not easy to provide in an annex.. CL</p> <p>We fear that there is a risk that critical entities would compare the approaches of each MS to oppose their own supervisory authority. CL proposal: <i>“the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which each Member State has taken the necessary measures to comply with this Directive.”</i> (and EP amendment is deleted) EP</p> <p>We don’t expect the level of detail introduced by our amendment in each report on implementation but on the first one only. The CL proposal is a good one. CION</p> <p>CL proposal goes on the good direction. This report is the basis on which the CION takes the decision to launch infringements where necessary. There is an in-depth analysis on each Member state.</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>EP to reflect on Council proposal and to revert with a wording.</p> <p>On the deadline: provisionally agreed on EP text (54 months)</p>

Article 22, second paragraph

233	<p>The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the scope of the Directive should be extended to cover other sectors or subsectors. The first report shall be submitted by [six years after the entry into force of this Directive] and shall assess in particular whether the scope of the Directive should be extended to include the food production, processing and distribution sector.</p>	<p>The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the scope of the Directive should be extended to cover other sectors or subsectors. The first report shall be submitted by [six years after the entry into force of this Directive] and shall assess in particular whether the scope of the Directive should be extended. <u>For that purpose, the Commission shall take into account relevant documents of the Critical Entities Resilience Group</u> to include the food production, processing and distribution sector.</p>	<p>The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the scope Annex of the Directive should be extended to cover other sectors or subsectors modified. The first report shall be submitted by [six 7 years and 6 months after the entry into force of this Directive] and shall assess in particular whether the scope of the Directive should be extended to include the food production, processing and distribution sector.</p>	<p>Technical meeting 16/05 CL We don't want to single out the food sector as other sectors could be added to the scope too when revising the directive. CL is positive on EP amendment. EP We agree to delete food sector here as we think it should be included in the Annex. It is added value to extension of other sectors potentially in the future. CION No objections on EP amendment. On food sector: reserves the position, pending the decision on whether the sector will be in scope or not (if not in scope, then would advocate to reintroduce it here as an example.</p> <p>Conclusion ; Food sector to be seen</p>
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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				<p>in relation to the final shape of the Annex</p> <p>On deadline: Provisional agreement on using the deadline of line 93 plus 2 years</p> <p>Provisionally agreed: The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the Annex of the Directive should be modified. The first report shall be submitted by [[“deadline of line 93 + 2 years after] the entry into force of this Directive] [and shall assess in particular whether the scope of the Directive should be extended to include the food production, processing and distribution sector]. For that purpose, the Commission shall take into account relevant documents of the Critical Entities Resilience Group.</p>
Article 23				

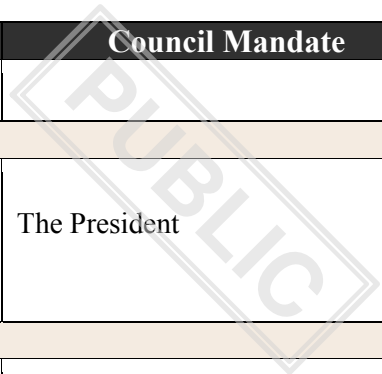
	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
234	Article 23 Repeal of Directive 2008/114/EC	Article 23 Repeal of Directive 2008/114/EC	Article 23 Repeal of Directive 2008/114/EC	Article 23 Technical meeting 16/05 Provisionally agreed
Article 23, first paragraph				
235	Directive 2008/114/EC is repealed with effect from [date of entry into force of this Directive].	Directive 2008/114/EC is repealed with effect from [date of entry into force of this Directive].	Directive 2008/114/EC is repealed with effect from [date of entry into force of transposition of this Directive].	<p>Technical meeting 16/05 CL We don't want to have gaps between entry into force and transposition.</p> <p>CION On the repeal of ECI Directive, as there are references to ECI in other legal acts, CION wants to propose adding: <i>"References to the [ECI Directive] are to be understood as references to the [CER Directive]. References to European Critical Infrastructure within the meaning of the [ECI Directive] are to be understood as references to "critical infrastructure" within the meaning of this Directive."</i></p> <p>CL We will consult our Legal Advisor, we are not opposed. EP</p>



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				We are in principle open but we may want to add a reference on when would this apply. Provisional agreement on change from date of entry into force into date of "transposition"
Article 24				
236	Article 24 Transposition	Article 24 Transposition	Article 24 Transposition	Article 24 Technical meeting 16/05 Provisionally agreed
Article 24(1), introductory part				
237	1. Member States shall adopt and publish, by [18 months after entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [18 months after entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by [18 months two years after entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Technical meeting 16/05 Provisionally agreed on 21 months transposition deadline in line with what was agreed in NIS2. Provisional agreement: 1. Member States shall adopt and publish, by 21 months after entry into force of this Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 24(1), first paragraph				
238	They shall apply those provisions from [two years after entry into force of this Directive + one day].	They shall apply those provisions from [two years after entry into force of this Directive + one day].	They shall apply those provisions from [two years after entry into force of this Directive + one day].	Technical meeting 16/05 Provisionally agreed – the deadline should be aligned with line 237 (i.e. provisionally agreed 21 months).
Article 24(1), second paragraph				
239	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	Technical meeting 16/05 Provisionally agreed
Article 24(2)				
240	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Technical meeting 16/05 Provisionally agreed
Article 25				
241	Article 25 Entry into force	Article 25 Entry into force	Article 25 Entry into force	Article 25 Technical meeting 16/05

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				Provisionally agreed
Article 25, first paragraph				
242	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	Technical meeting 16/05 Provisionally agreed
Article 26				
243	Article 26 Addressees	Article 26 Addressees	Article 26 Addressees	Article 26 Technical meeting 16/05 Provisionally agreed
Article 26, first paragraph				
244	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	Technical meeting 16/05 Provisionally agreed
Formula				
245	Done at Brussels,	Done at Brussels,	Done at Brussels,	Technical meeting 16/05 Provisionally agreed
Formula				
246	For the European Parliament	For the European Parliament	For the European Parliament	Technical meeting 16/05 Provisionally agreed



	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Formula			
247	The President	The President	The President	Technical meeting 16/05 Provisionally agreed
	Formula			
248	For the Council	For the Council	For the Council	Technical meeting 16/05 Provisionally agreed
	Formula			
249	The President	The President	The President	Technical meeting 16/05 Provisionally agreed