Council of the European Union
General Secretariat

Interinstitutional files:
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Brussels, 14 December 2023

WK 16944/2023 INIT

LIMITE

CYBER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Horizontal Working Party on cyber issues (attachés)
N° prev. doc.:	WK 16914/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents - Presentation

Delegations will find in the Annex a presentation by the Presidency to illustrate the text of the draft mandate issued on 13 December 2023.

PUBLIC

PRESIDENCIA ESPAÑOLA
CONSEJO DE LA UNIÓN EUROPEA

Cyber Solidarity Act

Draft mandate – WK 16914/23
Visual aid

14.12.2023

[redacted] – Cyber Team

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Chapter II – The European Cyber Security Alert System

What is it? What for? – Article 3

What it is

A pan-European infrastructure consisting of :

- **ENTITIES with the FUNCTIONALITIES defined in Article 2 of the Regulation, and**
- **The CROSS BORDER PLATFORMS composed by at least three of those entities**

Purpose

- **BETTER PROTECTION and REPONSE to cyber threats**
- **Through SUPPORTING THE DEVELOPMENT OF ADVANCED CAPABILITIES FOR detection, analysis and data processing on cyber threats and incidents.**

- ✓ **Based on VOLUNTARY Cooperation**
- ✓ **Cooperate and SUPPORT EXISTING entities, CSIRTs in particular**
- ✓ **Financed through the DEP Program In particular Objective 3 (Article 3)**

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Chapter II – The European Cyber Security Alert System

Which entities? What do they do?

NATIONAL CYBER HUB → **CROSS - BORDER CYBER HUB**

Article 2

- Functions defined in Article 2
- To be decided **voluntarily** by each Member State if CSIRT or another entity **(Article 4)**

Articles 6, 7, 8

- Entities from at least three Member States create **voluntarily** a cross- border platform

They **create voluntarily**, a **hosting consortia :**

- ✓ To apply for funding (ECCC joint procurement and grants) **(Article 8a)**
- ✓ To participate in actions **(Article 5)**

They **sign a consortium agreement, deciding voluntarily on its terms**:

- ✓ Conditions for exchange of information within the consortium **(Article 6)**
- ✓ Conditions for exchange of information with Union level entities and networks **(Article 7)**
- ✓ Security measures **(Article 8)**

They **decide voluntarily among themselves on their conditions for interoperability (Article 6 (3))**

- ✓ On the basis of the guidance from ENISA
- ✓ They inform the Commission

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Chapter III – The Cyber Emergency Mechanism

What is it? What for? – Articles 9, 10 and 11

Purpose

- Support EU resilience to threats, and prepare and mitigate the short term impact of significant and large-scale cyber security incidents

Types of actions

- Preparedness actions
- Actions supporting response
- Mutual assistance actions

- ✓ <u>Upon request</u> and complimentary to the Member States efforts
- ✓ Cybersecurity emergency reserve implemented by COM and ENISA - Rest of the Emergency Mechanism primarily via ECCC and NNCC
- ✓ Involvement of the NIS Cooperation Group, ENISA, HR and EU-CyCLONe (when relevant) in risk scenarios
- ✓ When services pre-committed for response are not used, they can be used for preparedness
- ✓ Financed through the DEP Program, In particular Objective 3

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EU Cyber Security Reserve

Establishment – Article 12 (6) – Options and implications

*" The Commission [**may/shall**] entrust the operation and administration of the EU Cybersecurity Reserve, [**in full or in part**], to ENISA, by means of contribution agreements."*

OPTION A

"Shall"

Article 317 TFUE: COM's overall responsibility in the implementation of the budget

+

DEP – management possibilities

- **Direct management**
- **Indirect management**
  - **Council would make this biding, introducing more amendments to DEP**
    - **Commission might oppose**
      - **Council would need to adopt by unanimity**

OPTION B

ENISA "May" be entrusted (art 12 (6))–
The Commission "should entrust to ENISA" (Recital 33a) +
Political declaration by COM (poss.)

ENISA will assume the full operation and administration of the reserve, becoming the contracting authority for the whole reserve (recital 33a)

Experts from MS might participate in the definition of the criteria in the tender specifications and in the assessment of the tenders

- **Internal deployment:**
  Will assess the requests in consultation with CSIRT Netwok and EU-CyCLONe, informing the Council of its decisions
- **External deployment:**
  Will receive the support of the COM for the assessment of the requests and the decision will be approved by the Council

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EU Cyber Security Reserve

Establishment – Article 12

Entrusts

[Art. 12(5)]

[Art. 12(6)]

- ✓ **Sets priorities (reviewed every 2 years) in cooperation with :**
  - **EU-CyCLONe**
  - **ENISA**
  - **NIS Cooperation Group**
- ✓ **Supervises implementation ensuring complementarity, consistency and synergies**
- ✓ **Defines types and number of response services via Implementing Acts seeking advice of the NIS Cooperation Group and ENISA [Art. 12(8)] and taking into account the mapping in [Art. 12(7)]**

Via cooperation agreements

Operation and administration

Contracting authority

Prepares mapping of needs [Art. 12(7)]

At least every two years

Internal deployment

Consulting:
- **NIS Cooperation Group**
- **EU-CyCLONe**
- **Commission**
- **IICB (where applicable)**

External deployment

Consulting:
- **EU-CyCLONe**
- **Commission**
- **The High Representative (where relevant)**

Informing:
- **Council**

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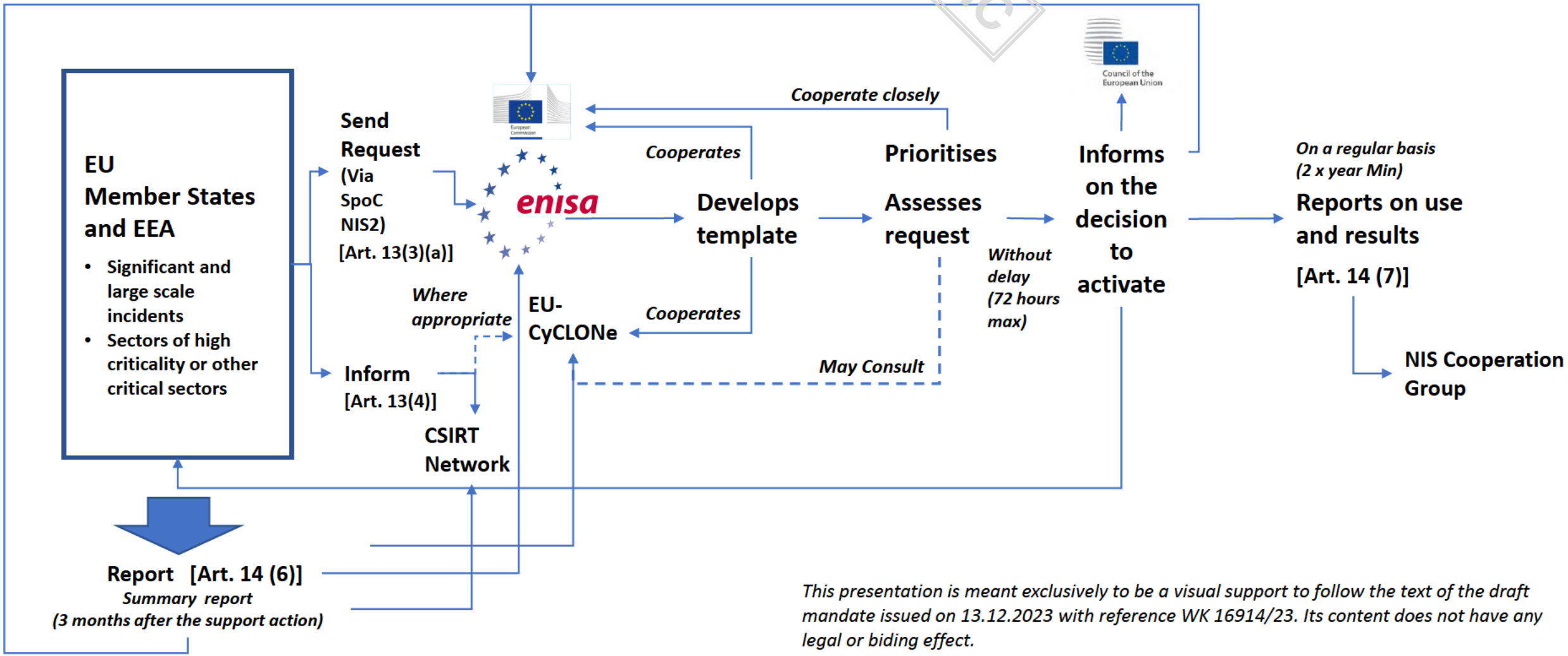
Implementation phase

Requests for support – Member States



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Implementation phase

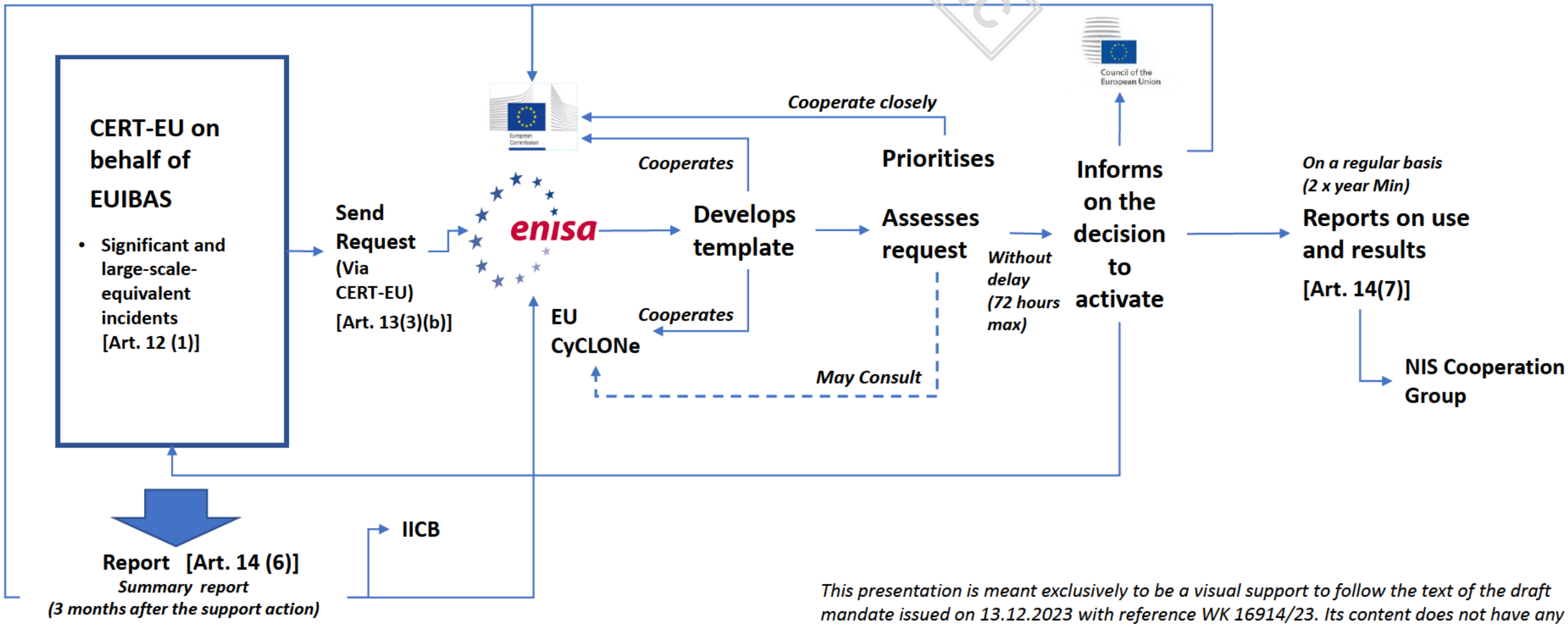
Requests for support – EUIBAS

Users [Art. 12 (3)(b)]

Filing of requests [Art. 13]

Prioritization and Assessment [Art. 14 (1)(2)]

Reporting [Art. 14 (7)]



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Implementation phase

Requests for support – DEP third countries

Users
[Art. 12(3)(c) and Art. 17]

Filing of requests
[Art. 17]

Prioritization and Assessment
[Art. 14(2) and 17(5)(6)]

Approval
[Art. 17(5a)]

Reporting
[Art. 14 (7a)]

DEP-Associated countries

- Where association agreement provides for participation in the Reserve
- CSIRTs and cyber crisis management authorities

Send Request (Via SPoC designated Art. 17(4)) [Art. 13(3)(c)]

European Commission

Prioritises

Assesses request

Takes into account the opinion

Cooperates closely

enisa

Takes into account the opinion

Shares information

EU CyCLONe

Shares information

Informs on the decision to activate

Without undue delay

Council of the European Union

Council of the European Union

Adopts an Implementing Act setting out:

- Time
- Prioritization

European Commission

On a regular basis (2 x year Min)

Reports and informs on use and results

Informs

Reports

Report [Art. 14(6)]
Summary report
(3 months after the support action)

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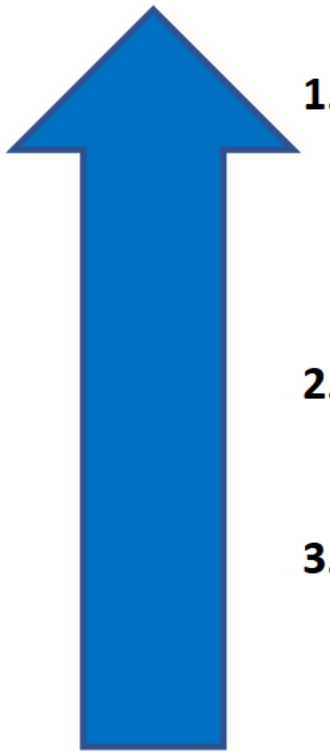
EU Cyber Security Reserve

Alternatives for the Council involvement in the external deployment (DEP - Associated countries only)

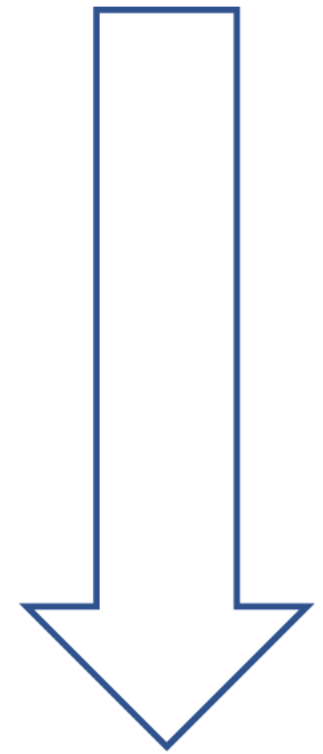
Level of control



1. **Commission prepares the text of the decision and sends it to the Council, which adopts the implementing act by qualified majority. If there is no meeting of the Council and the urgency justifies it: Written procedure by unanimity.**

2. **Obligation to the Commission to consult before taking the final decision**

3. **Council not to be involved in the individual deployment decisions themselves, but the entities where Member States are involved (e.g: EU-CyCLONe) are consulted.**



Time required

See also: CLS Opinion 11943/22, paras 56-61

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EU Cyber Security Reserve

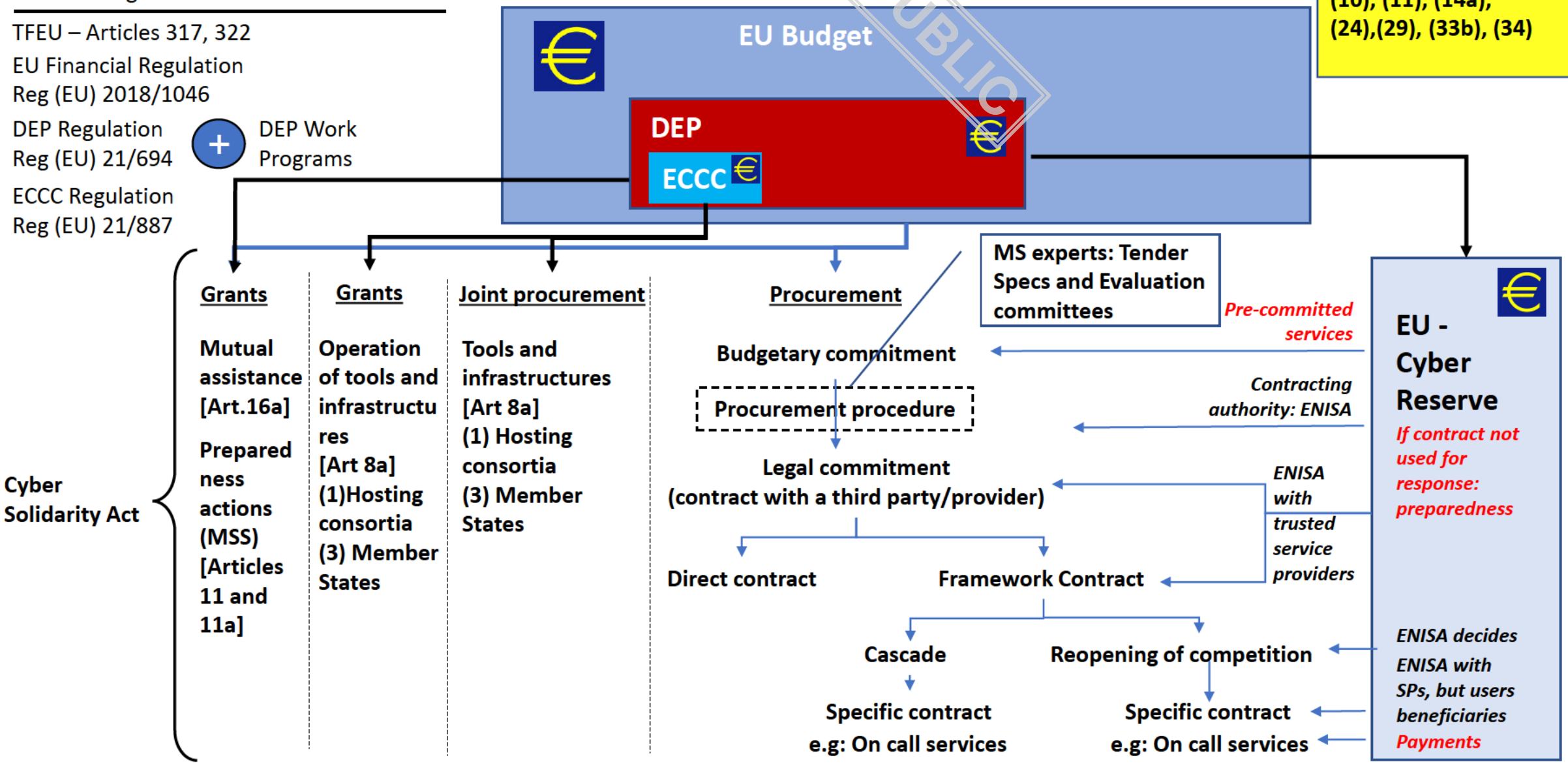
Financial aspects

Relevant Legislation

TFEU – Articles 317, 322
EU Financial Regulation
Reg (EU) 2018/1046
DEP Regulation
Reg (EU) 21/694
ECCC Regulation
Reg (EU) 21/887

\+ DEP Work Programs

This process is referred to in recitals (10), (11), (14a), (24),(29), (33b), (34)



EU Cyber Security Reserve

Amendment to Articles 12(5) and 12(6) of DEP – Article 19(1)(2a) – Strict Conditions

Possibility to obtain services from legal entities that are established in the Union but are controlled from third countries, in actions under Specific Objective 3 - Conditions

	Conditions	Cyber Alert System	EU Cyber Security Reserve
Art. 12(5) DEP Objective 3	Real Risk	Based on mapping done by ECCC [Art. 8(3a)] Tools, infrastructures and services ✓ Necessary ✓ Sufficient → To adequately contribute	Based on mapping done by ENISA [Art. 12(7)] Technology, expertise and capacity ✓ Necessary ✓ Sufficient → To adequately perform its functions
	+		
	Security Risk	✓ Proportionate to the benefits	✓ Proportionate to the benefits ✓ Does not undermine the essential security interests of the Union
		If the conditions are fulfilled, limitations in Article 12(5) DEP will not apply to the Cyber Alert System	If the conditions are fulfilled, limitations in Article 12(5) DEP will not apply to the EU Cyber Security Reserve
Art. 12(6) DEP Objectives 1 and 2		The Cyber Alert System will be then subject to the limitations in Article 12(6) DEP	The EU Cyber Security Reserve will be then subject to the limitations in Article 12(6) DEP

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Chapter II – The European Cyber Security Alert System

Terminology

[NATIONAL SOC HUB

1. National Cyber Hub
2. National Support Hub
3. National Security Operation Hub
4. Cybersecurity Operation Centre
5. National SOC hub

[CROSS - BORDER COLLABORATION PLATFORM]

A. Cross Border Cyber Hub
B. Cross Border Platform
C. Cross Border Cooperation Platform
D. Cross Border Operation Platform
E. Cross Border Collaboration Platform

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¡Gracias!