Council of the European Union
General Secretariat

Interinstitutional files:
2023/0109 (COD)

Brussels, 09 February 2024

WK 2035/2024 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Horizontal Working Party on Cyber Issues
Subject:	Cyber Solidarity Act update HWPCI 07/02/24 - presentation

Delegations will find in the Annex a presentation given at the meeting of the Horizontal Working Party on Cyber Issues on 7 February 2024.

Cyber Solidarity Act update HWPCI 07/02/24

1. Result of the fourth round of technical meetings (art. 16-20)

   Basis: Coreper steering note including 4 col doc ST 5849/1/24

2. Possible compromise proposals on pending issues

3. Trilogue topics

1. Outcome of the latest technical meetings

Article 16 – Trusted Providers

Agreed

- **Security Clearance:** as required by Member State (l. 175)
- **Certification:** (tbc) providers should be certified within 2 years after a scheme enters into application (l. 181)
- **Additional criteria & Local entities**: Council position (l. 181e); stimulation of local entities added to recital 34

Pending

- **Clarifying recitals:** gender balance, confidentiality, no bundle services.
- **Language requirement:** agreement on principle; difficult to find the right wording expressing all complexities
  - Addition of a **recital**

Trilogue

- **Service Providers from 3rd countries** (l. 181 b)

2. Presidency Compromise proposals

Art. 16(2)(i) Language requirements

(i) the provider shall be able to provide the service in ~~the local~~ **any of the official** language**s** of the Member State **or of the Union, as required by the Member State whose user can receive the service;** ~~(s) where it can deliver the service~~***, if so required by the Member State(s)***;

New (separate) recital 34a

When the Reserve is activated to assist a Member State user, the trusted providers should be able to deliver this service in the language or languages required by that user's Member State. A Member State should be able to require one or more of its official languages or one or more of the official languages of the Union. It may also not require any language. When selecting the providers of the Reserve, the contracting authority should ensure that the Reserve, when taken as a whole, contains providers that are sufficiently able to accommodate the Member States' language requirements in this regard.

All user language requirements will should be established during the mapping of needed services. However, such language requirements should not lead the contracting authority to unduly privilege multinational providers, which are able to deliver services is many different required languages. Also in this regard it is important to encourage the participation of smaller providers, active at regional and local level.

1. Outcome of the latest technical meetings

Article 17 – Trusted Providers

Agreed	Trilogue
• **Information from DEP associated 3rd countries:** (l. 187) Council text, but no notification to CyCLONE from external users (cf. Horizontal CyCLONE reference below)	• **Council Role & decision in external use** (l.186a & 187a)

1. Outcome of the latest technical meetings

Article 18 – Review Mechanism

Agreed

- **Requesting the Review (**l.191**):** Council text, but keeping request rights for the Commission
- **Inclusion of best practices and lessons learned from relevant stakeholders** (l. 194)

Pending

- **Approval of MS for interaction with affected entities:** (l. 192) key point for Council
- **No details on unpatched actively exploited vulnerabilities** (l.193)
- **Public Report:** (l. 195) right of ENISA to publish a report vs Member States consent on information

2. Presidency Compromise proposals

Art. 18(5) l. 195 Public Report

~~5. *Where possible, a version*~~**With the approval** ~~of the *report shall be made available publicly. This*~~**Member State(s) concerned, ENISA may publish a** ~~version *shall only include*~~**of the report containing only** ~~public information.~~

Where ENISA wishes to issue a publicly available version of the report, it shall only include information with consent of the Member State(s) concerned [and of other user as referred to in article 12(3), where relevant].

1. Outcome of the latest technical meetings

Article 19 – Amendments to the DEP Regulation (2021/694)

Agreed

- **Emergency mechanism in DEP formulation** (l. 204)

Pending

- **Terminology** that is not approved yet: CAS and (Cross-Border) Cyber Hubs

Trilogue

- **Budget issues:** too political for the EP to be discussed during the ITM's.
  - Main points of debate:
    - **budget cap** for the Reserve
    - **Funding from** SO2 (AI) and 4 (skills)
    - **Required amounts for an effective reserve**
    - **Quid limiting derogation to annuality principle?**
- **Procurement from third country providers**

1. Outcome of the latest technical meetings

Article 20 – Evaluation (and review)

Pending

- **Timeframe (**l. 232) for evaluation: principle agreement to have first one within 2 years, then on a regular basis and at least every 4 years
  - Recital: tied to MFF

- **Exact content of the Evaluation [& Review**]
  - To be decided once rest of the text is fixed

2. Presidency Compromise proposals

1) The role of CyCLONe in the Cyber Solidarity Act

Principle: respect NIS2 and indicated mandate there (principle of non duplication)

Agreed	Pending
• Negotiated: 61b, 80a, 146, 159a • Commission proposal: 140. 191 • Not maintained: 187	With a clear link • line 108 - art.13(3b) situational awareness • line 125 - art.13(3a) preparedness Less directly linked • ligne 133 • ligne 149

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2. Presidency Compromise proposals

2) Update on confidentiality aspects

Key condition to allow for trust and added value:
- Cyber alert system to function
- Cyber emergency mechanism will be used
- Lessons can be learnt from the Incident review mechanism

EP concerns with many references, but challenging to have a horizontal clause in light of very different requirements in each situation

Specific EP concern on visible marking

2. Presidency Compromise proposals

3) The assessment of requests for the Reserve: how does it work? (1/3)

1. **Agreed**: all requests shall be transmitted to the Contracting Authority (l. 140)
   - -> **Single point of entry for all requests i.e. ENISA** (since all agree that ENISA should be fully entrusted with the Reserve) Via template (art. 13(6)).

2. **Agreed**: the **need-to-know** principle for requests (recital 17)

3. **Council position**: COM shall assess **external use** (Art. 17(6)). Therefore, it needs their request info. COM shall collaborate with ENISA & HRP, so they also need these requests.

4. **Council position, on internal use**: ENISA & COM shall closely cooperate to **prioritise** between multiple internal requests (l. 155b). Therefore: COM needs the request info, but **only** when there is a need to prioritise.
   - ENISA gets all requests, so it knows when prioritisation is needed.
   - Only in that case shall ENISA forward the full request info to COM

2. Presidency Compromise proposals

The assessment of requests for the Reserve: how does it work? (2/3)

5. In case prioritisation is needed, ENISA should be able to share request info (quickly) with COM. Therefore: l**ine 149a on visible markings should be adapted** to allow for this scenario.

Compromise proposal: Art. 14(1a) l. 149a

The contracting authority shall ensure the confidentiality of the information shared in the course of requesting and providing the services. The contracting authority shall not share the information with others where further distribution of that information has been excluded by means of a visible marking applied by a user, unless the user explicitly authorises such sharing ***or where such sharing is required for the assessment procedures established by this Regulation.***

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2. Presidency Compromise proposals

The assessment of requests for the Reserve: how does it work? (3/3)

Compromise proposal: new explanatory recital

.All requests for support by the Cybersecurity Reserve shall be transmitted to the contracting authority. Where operation and administration of the EU Cybersecurity Reserve has been entrusted, in full or in part, to ENISA, ENISA shall immediately share with the Commission the requests received from DEP-associated third countries, to allow the Commission to assess these requests in collaboration with the High Representative and ENISA. ENISA shall assess all other requests and shall respect the confidentiality of all information shared in the context of the requests. Only in case of multiple concurrent requests, be they from DEP-associated third countries, Member State users or CERT-EU, shall ENISA share with the Commission all concurrent requests, to allow the Commission to collaborate with ENISA in prioritising requests

2. Presidency Compromise proposals

4) Remediation Plan

Compromise proposal: new recital 29 (l. 40a) - instead of introducing the notion in Art. 11(a) l. 125

Entities subject to coordinated preparedness testing should be strongly encouraged to develop and implement a remediation plan that carries out the recommendations resulting from preparedness tests.

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2. Presidency Compromise proposals

5) Private sector & Telemetry (art. (4(1a)/l.89a)

Compromise proposal: in Art. 4(1a) [on National cyber hubs]

National Cyber Hubs may cooperate closely with the private sector, including with managed security service providers that provide services to entities operating in sectors of high criticality or other critical sectors, as well as with sectoral and cross-sectoral communities. For the purpose of detecting and preventing cyber threats and incidents, National Cyber Hub may receive, where appropriate and in accordance with National and Union law, information and relevant data including telemetry, sensor and logging data.

3. Trilogue topics

1) Prioritization
2) Procurement from Third Countries' entities
3) External use of the Reserve
4) Information Sharing
5) Budget: exchange of views
6) Implementing/delegated acts

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