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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Horizontal Working Party on cyber issues (attachés)
N° Cion doc.:	8511/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/881 as regards managed security services - Presentation

Delegations will find in the Annex a presentation given by the Presidency at the HWPCI meeting on 21 February 2024 to illustrate the results of the technical meeting of 20 February 2024.

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CSA+

update HWPCI 21/02/24



Debriefing ITM 20/2

- We are back at the table.
- EP concerns:
 1. Creating an opportunity to express concerns
 2. Ensuring regular consultations
 3. Transparency where possible
- What's on the table? In exchange for no delegated acts:
 1. New article 49a on information and consultation on cybercertification schemes
 2. Art.49 Preparation, adoption and review of a European cybersecurity certification scheme
 3. Art.67 Evaluation and review

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1. New article 49a on information and consultation on cybercertification schemes

- Approach: Increasing transparency and dialogue without pre-empting the review of the CSA or touching on the comitology procedure
- Structure in 4 paragraphs:
 1. Requests by Commission to ENISA on the preparation or review of a scheme shall be publicly available
 2. Quarterly briefings by the Commission as chair of the ECCG during the technical preparation of schemes, to EP & Council
 3. Dialogue on the functioning of individual schemes and requirement for COM to take this into account during a review
 4. Possibility for Council and EP to inform ENISA of their views on candidate schemes

1. New article 49a on information and consultation on cybercertification schemes

1. *The Commission shall make the information on its request to ENISA to prepare a candidate scheme or to review an existing European cybersecurity certification scheme referred to in Article 48 publicly available.*
2. *[During the preparation of a candidate scheme by ENISA in line with Article 49, the European Parliament as well as the Council may request the Commission in its capacity as chair of the European Cybersecurity Certification Group (ECCG) and ENISA to inform/present relevant information about a draft candidate scheme on a quarterly basis. Upon the request of the European Parliament or the Council, ENISA, in agreement with the Commission, and without prejudice to Article 27, may make available to the European Parliament and to the Council relevant parts of a draft candidate scheme in a manner appropriate to the confidentiality level required, and where appropriate in a restricted manner.]*

1. New article 49a on information and consultation on cybercertification schemes
3. *[Without prejudice to the outcome of the review pursuant to Article 67 of Regulation (EU) 2019/881,] in order to enhance the dialogue between the Union institutions and to contribute to a formal, open, transparent and inclusive consultation process, the European Parliament as well as the Council may invite the Commission and ENISA to discuss matters concerning the functioning of European cybersecurity certification schemes for ICT products, ICT services, ICT processes or managed security services.*
4. *The Commission shall take into account, where appropriate, elements arising from the views expressed by the European Parliament and the Council on the matters referred to in paragraph 3 of this Article when evaluating this Regulation in line with Article 67.*

2. Art. 49 modifications (1) consultation by ENISA

art. 49(3):

3. When preparing a candidate scheme, ENISA shall consult all relevant stakeholders by means of a formal, open, transparent and inclusive consultation process.

EP wants to add 2 additional elements:

- Timing: at least every two years /at the beginning and at the end of the preparation.
- Compliance: pressure by Commission to make sure ENISA fulfils this obligation

2. Art. 49 modifications (2) Ad-hoc working groups

Art.49(4)

4. For each candidate scheme, ENISA shall establish an ad hoc working group in accordance with Article 20(4) for the purpose of providing ENISA with specific advice and expertise.

EP wants to add:

The ad-hoc working groups established for this purpose shall, as appropriate and without prejudice to the procedures and discretion established by this provision, include experts from the public administrations of the Member States, the Union institutions, bodies, offices and agencies, and the private sector.

2. Art. 49 modifications (3) Opinion of the ad hoc working groups

Art. 49(6) :

6. ENISA shall take utmost account of the opinion of the ECCG and the ad hoc working groups before transmitting the candidate scheme prepared in accordance with paragraphs 3, 4 and 5 to the Commission. The opinion of the ECCG and the ad hoc working groups shall not bind ENISA, nor shall the absence of such an opinion prevent ENISA from transmitting the candidate scheme to the Commission.

2. Art. 49 modifications (4) Compliance by ENISA on consultation

Art.49(7) :

7. The Commission, based on the candidate scheme prepared by ENISA, may adopt implementing acts providing for a European cybersecurity certification scheme for ICT products, ICT services and ICT processes which meets the requirements set out in Articles 51, 52 and 54. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(2). Before adopting the implementing acts, the Commission shall also verify that ENISA has complied with the obligation set out in Article 49(3) of this Regulation to consult all relevant stakeholders by means of a formal, open, transparent and inclusive process. In case of non-compliance to this obligation, ENISA shall carry such consultations without undue delay.

→ Alternative for approach in art.49(3)

3. Art.67: Evaluation and review

1. By 28 June 2024, and every **five four** years thereafter, the Commission shall assess the impact, effectiveness and efficiency of ENISA and of its working practices, the possible need to modify ENISA's mandate and the financial implications of any such modification. The evaluation shall take into account any feedback provided to ENISA in response to its activities. Where the Commission considers that the continued operation of ENISA is no longer justified in light of the objectives, mandate and tasks assigned to it, the Commission may propose that this Regulation be amended with regard to the provisions related to ENISA.
4. By 28 June 2024, and every **five four** years thereafter, the Commission shall transmit a report on the evaluation together with its conclusions to the European Parliament, to the Council and to the Management Board. The findings of that report shall be made public.

Suggested approach

Maintain focus on what is needed for the targeted MSS-amendment
BUT openness towards those elements that deepen existing provisions and increase transparency

In concrete terms:

- Agreement in principle with art.49a
- Accept specification of Ad hoc working groups in art.49(4)
- Accept approach on making sure consultation has taken place in art.49(3/7) but in lighter version

Further flexibility?

- Art.49(3) timing for the consultation: added burden, added value?
- Art.49(6): Ad hoc working groups opinions at same level as ECCG's
- Art.67: Modification of timing is out of scope and no added value

Foreseen calendar in case of an agreement

- 22/2 - ITM: feedback on today's discussion
- 23/2 – HWPCI: update
- 23/2 - Coreper steering note
- ?/2 – additional ITM to clean up
- 28/2 – HWPCI: update
- 1/3 – Coreper: preparation of the trilogue
- 5/3 - Final Trilogue

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