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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Civil Protection (CER Directive)
N° prev. doc.:	7987/2022, WK 3342/2022
N° Cion doc.:	14262/20 +ADD1
Subject:	Document de discussion de la présidence: Propositions de compromis concernant la Directive CER

Les délégations trouveront en annexe le document de discussion de la présidence mentionné ci-dessus.

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LIMITE

Line	Article	Context	Compromise proposal 1	Compromise proposal 2 (in case the 1st one was not accepted)
Presidency compromise proposals on articles discussed during the last technical meetings				
109 and 110	6	<p>The Parliament is worried that the information given to the Commission would be too abstract so they cannot properly check how the Member states implement the directive.</p> <p>The Council committed to further reflect on this point and to come back with a proposal.</p>	<p>Rationale: The Presidency would like to propose the EP to provide to the Commission the number of critical entities identified for each essential services, in exchange for keeping the Council proposal on point (c) (thresholds).</p> <p>The Member states would therefore share information as follow :</p> <p>“MS XX reports 216 CE in the Electricity subsector (Energy sector), providing the following essential services:</p> <ul style="list-style-type: none"> - Electricity production: 67 CE - Operation of control rooms/control stations: 74 CE - Grid operation: 103 CE - Substations: 157 CE” <p>Compromise wording:</p> <p>2. Member States shall submit to the Commission by [three years and within [three months after the entry into force of this Directive of the identification of the critical entities] the following information:</p> <p>b) the number of critical entities identified for each sectors and subsectors referred to in the Annex and each essential services referred to in article 4(1)</p> <p>Recital 12 would be amended consequently.</p>	<p>Same changes for row 109 and recital 12. Moreover row 110 would be amended as follow:</p> <p>2. Member States shall submit to the Commission by [three years and within [three months after the entry into force of this Directive of the identification of the critical entities] the following information:</p> <p>(c) any if not resulting in critical entities identity's disclosure, thresholds applied to specify one or more of the criteria in paragraph 1-</p>

118a	8	<p>In its general approach Council added the row 118a, in part to get around the deletion of article 7(2).</p> <p>The Parliament expressed concerns over the multiplication of competent authorities and advocated simplification. They asked for the deletion of « where appropriate ».</p> <p>The Commission explained that removing « where appropriate » would not infringe the Member states' administrative autonomy as NIS 2 and DORA would still allow for the designation of one or more competent authorities.</p>	<p><u>Compromise wording:</u></p> <p>« 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 unless reasoned justification, be the competent authorities designated pursuant to Article 41 of [DORA Regulation]. In respect of critical entities referred to in point 8 of the table in the Annex, the designated competent authorities shall, where appropriate, unless reasoned justification be the competent authorities designated pursuant to Article 8 of [NIS 2 Directive]. »</p>	
120	8	<p>The Parliament does not oppose deletion of “competent authority” as such but would like to see some qualification, such as “where relevant”. The Parliament finds useful that the SPOC possesses broader liaison functions including as regards to relation with Commission and third countries. It would not oppose keeping the SPOC’s role as an emergency centre only but the Presidency would like to know if delegations were open to broaden the tasks attributed to the SPOC so it could find compromises on other elements.</p>	<p><u>Compromise wording:</u></p> <p>2. Each Member State shall, within the competent authority, designate one national a single point of contact, where relevant within the competent authority, to exercise a liaison function to ensure cross-border cooperation with the single points of contact competent authorities of other Member States and the Critical Entities Resilience Group referred to in Article 16 (‘single point of contact’). <u>Where relevant, it could also ensure a liaison function with the Commission and cooperation with third countries.</u></p>	
134	10	<p>The Parliament expressed concern over the equivalences’ regime introduced by the Council and expect it to lead to a huge patchwork of ways to be implemented. Moreover, it finds it hard</p>	<p>The Presidency proposes the following rephrasing to clarify the aim of the equivalences’ regime and the authority responsible for recognising it.</p> <p><u>Compromise wording:</u></p>	<p><u>Second option:</u> First option plus keeping “all” before “relevant risks”:</p>

		<p>to understand how recognition of equivalence will be established. Moreover, the Parliament expressed concerns over the deletion of « all » before « relevant risks ».</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 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.</p> <p><u>Where the critical entities already possess risk assessments that address at least the risks and dependencies referred to in this Article, they shall not be forced to duplicate their work and their risk assessment should be recognised, in whole or in part, as equivalent by the national authorities among those referred to in article 3(2) point b, after duly analysing it.</u></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 an incident. [...] »</p> <p>Third option: Second option plus adding a point in article 3(2) mentioning that the national strategy should include a framework on equivalences.</p> <p>(e) a framework describing the process followed by the Member State to recognise equivalences concerning the risk assessments referred in article 10.</p>
137	11	<p>The Parliament was not in favor of adding a discretionary room for the critical entities to decide on what measures should be taken or not. The Council made it clear that this amendment was made to acknowledge the fact that not all entities have to take all the measures listed throughout the article but that they will be legally obliged to take them into consideration.</p>	<p>The Parliament proposed the following wording to replace “duly taking into account”. The Presidency is willing to accept it:</p> <p>“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</p>	

			<p>referred to in Article 10, including measures necessary to:</p> <p>(a) prevent incidents from occurring, duly considering taking including through disaster risk reduction and climate adaptation measures;</p>	
167	14	The Parliament introduced the notion of « same or similar » essential service in order gaps if several Member states would designate the same service under different denominations.	<p>The Presidency would be willing to accept the notion of « same or similar » essential services :</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 the same or similar essential services to or in more than one third of the Member States and has been notified as such to the Commission pursuant to Article 5(1) and (6), respectively.</p> <p>The Presidency would also ask for a recital clarifying what is intended to be covered by this notion of « same or similar ».</p>	
168	14	The Parliament finds the process of notification uncommon: the Commission notifies the Member state's competent authorities that then passes on the message to the critical entity. The Parliament is worried by potential delay in the notification and prefers simplified procedures.	<p>Rationale: As the Council finds it important to use pre-existing channels that have been developed and secured between the national competent authority and the critical entity, the Presidency would keep the process of notification through the competent authority.</p> <p>The Presidency would offer to make it clear that the national competent authorities have no discretion power on the designation by the Commission.</p> <p>Compromise wording:</p> <p>3. If the Commission 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,</p>	<p>Second option</p> <p>If the first option was not accepted by the Parliament, the Presidency would offer to add a time limit to the notification.</p> <p>3. [...]. Once the competent authority is informed by the Commission, its notification to the critical entity designated as of particular European shall be forwarded within one month.</p> <p>Third option:</p>

			<p>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. <u>Once the competent authority is informed by the Commission, its notification to the critical entity designated as of particular European significance shall be forwarded in due time.</u></p>	<p>As a last proposal, the Presidency could accept notification by the Commission only if it goes with the obligation to notify both the competent authority of the Member state and the critical entity designated as of particular European significance at the same time and to explicitly state that it would not undermine the role of the national competent authority, particularly in enforcing obligations on critical entities.</p>
172a	15	<p>The Parliament is concerned by the Member state's agreement requirement before conducting an advisory mission.</p>	<p>The Presidency would propose a reasoning "by default": the advisory mission will take place, except if the Member states opposes:</p> <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, <u>unless the Member state where the critical infrastructure of the critical entity of particular European significance is located opposes upon reasoned justification.</u></p>	<p>In addition to the first proposal, the Presidency could propose an additional paragraph 1b (new line 172b):</p> <p><u>1b. In case the Member state where the critical infrastructure of the critical entity of particular European significance is located opposes the organization of the advisory mission, in application of paragraph 1a, this Member States shall provide a summary report to the Commission and to the Member States to or in which the essential service is provided, assessing if the critical entity complies with the applicable obligations of this directive.</u></p>
178	15	<p>The Parliament believes that the Commission should have more freedom to choose the experts, including from Member states that are not part of the ones affected by the provision of the essential service, especially if a specific expert comes from a different Member state. They agree on the fact that the Member state where the critical infrastructure is located is to be included but too many steps might be unnecessary and might delay the start of the mission.</p>	<p>Rationale: to offer flexibility in the composition of the advisory mission, while offering some minimum warranties to the Member State where the entity is located, the Presidency proposes the following wording:</p> <p>4. Each advisory mission shall consist of experts, <u>at least</u>, 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. <u>Experts from Member states to or in which the essential service is not provided can be appointed upon agreement of the Member states where the critical</u></p>	<p>4. Each advisory mission shall consist of experts, <u>at least</u>, 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. <u>Experts from Member states to or in which the essential service is not provided can be appointed upon agreement of the Member states where the critical infrastructure of the critical entity of particular European significance is located.</u> These Member</p>

			<p><u>infrastructure of the critical entity of particular European significance is located.</u> Those Member States <u>to or in which the essential service is provided</u> may propose candidates to be part of an advisory mission. The Commission shall, after consultation with the Member State where the <u>critical infrastructure of the</u> 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-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.</p>	<p>States <u>to or in which the essential service is provided</u> may propose candidates to be part of an advisory mission. The Commission shall, after consultation with <u>inform</u> the Member State where the <u>critical infrastructure of the</u> critical entity is <u>identified of the composition of the expert team prior to the advisory mission</u>, 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-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.</p>
179	15	<p>The Parliament deleted “<u>in agreement with</u> the Member state” not to grant to much discretionary power to it and to avoid red tapes.</p>	<p>The Commission shall organise the programme of an advisory mission, in consultation with the members of the specific advisory mission and <u>following prior consent of</u> the Member State where the infrastructure of the critical entity of European significance concerned is located.</p>	<p>The Commission shall organise the programme of an advisory mission, in consultation with the members of the specific advisory mission and the Member State where the infrastructure of the critical entity of European significance concerned is located. This <u>Member States cannot oppose this programme, unless reasoned justification.</u></p>

Row	Article	Context	Compromise proposal 1	Compromise proposal 2 (in case the 1st one was not accepted)
Presidency compromise proposals following the previous consultation of Member states				
62	2	Duly taking into consideration the remarks of the delegations, the Presidency considers that it could accept the definition proposed by the Commission, as it is the same as the one agreed in NIS2 trilogues.	<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."</i>	
83	4	Delegations were not in favour of the following wording: "preferably through their single point of contact", so the Presidency would like to propose a softer phrasing.	3. Member States shall make the relevant elements of the risk assessment referred to in paragraph 1 available, where relevant, through their single point of contact , 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.	

Row	Article	Context	Compromise proposal 1	Compromise proposal 2 (in case the 1st one was not accepted)
Presidency compromise proposals that have not been discussed in technical meetings				
49	1	The Parliament introduced the principle of “continuous” provision of the essential services. If the Presidency agrees upon the intended aim (a quick resume to the provision of the service) stating that the continuity should be ensured is problematic precisely because this directive is dealing with resilience, meaning re-establishing the provision of the service after an incident.	The presidency would propose accepting the notion of “continuity” in a recital only (recital 5).	Option 1 + replacing « measures aimed at ensuring the continuous provision » as follow : (a) lays down obligations for Member States to take specific measures aimed at ensuring achieving the unhindered provision in the internal market of services essential for the maintenance of vital societal functions or economic activities, within the scope of Article 114 TFEU, in particular to identify critical entities and to support them to meet their obligations;
52	1	The Parliament made the following amendment: « <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> ». “interlinkages” and “coherent implementation” are legally problematic, therefore the Presidency would propose a rewording because it concurs with the idea.	“in the view of the relationship between cybersecurity and the physical of entities, Member states shall ensure a coordinated implementation of this directive and the NIS 2 directive.”	