



Council of the European Union
General Secretariat

**Interinstitutional files:
2020/0359(COD)**

Brussels, 18 May 2021

WK 6380/2021 COR 2

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From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	14150/20 [COM (2020) 823 final]
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148: interaction with sectoral legislation - Comments by FI delegation

Delegations will find in Annex comments by FI delegation on the above-mentioned subject. Comments by LT were wrongly attributed to FI in WK 6380/2021 INIT.

FINLAND

NIS2 – CER

We support the current draft provisions on the relation between NIS2 and CER as presented in recital 14 and articles 2(2)(g), 5(1)(f), 11(4), 11(5), 12(8), 20(10), 29(9).

As presented in our previous comments in relation to NIS2 and DORA, we would suggest that NIS2 and CER transposition periods are also aligned to 24 months instead of the current 18 months to ensure sufficient time for national processes. We would therefore suggest to amend art. 38 of NIS2 accordingly.

NIS2 – DORA

We support the current draft provisions on the relation between NIS2 and DORA as presented in recitals 13, 23 and articles 11(4), 12(3).

We support the reciprocity of NIS2 and DORA wordings in terms of cooperation mechanisms.

Article 38: The transposition period should be amended to 24 months instead of the current 18 month period to ensure coherence with DORA.

It is important that NIS2 ensures national leeway for cooperation arrangements between national competent authorities. The roles of CSIRTs and SPOCs under NIS2 in relation to DORA should be further clarified between both proposals. However, it is important to make sure that the supervisory responsibility of financial entities under DORA always remains on the national competent authority as defined in Article 41 of DORA.

NIS2 - Cybersecurity Act

We support the current draft provisions in art. 4(3), 4(7), 15(2).

Article 21: The use of cybersecurity certification schemes (based on Cybersecurity Act provisions) according to NIS2 art. 21 should not interfere with certification schemes relating to national security (especially if there are simultaneous certification requirements from NIS2 and national certification schemes). This should be clarified in the article if needed.

NIS2 – eIDAS

As presented in our previous comments, we highlight the need for an analysis on the concrete effects of the proposed amendments. It is important to ensure that the requirements for trust service providers under NIS2 are similar to the requirements according to eIDAS before amending article 19 in eIDAS according to recital 48 and article 39.

Currently, the requirements from eIDAS do not apply to non-qualified trust service providers. The scope of NIS2 would be extended to both qualified and non-qualified trust service providers. In practice, this would add a significant burden to entities (especially small and micro) and national supervising authorities.

As a first option, the possibility for *lex specialis* should be evaluated. As a second option to limit the burden for entities and supervising authorities, we could explore the possibilities of limiting the NIS2 scope of TSP's to include only qualified trust service providers.

Still, we should bear in mind that the new eIDAS proposal will be published soon, which will enable us to assess drafting needs between both proposals even further.

If the current draft amendments of eIDAS in NIS2 are retained, possible references to requirements from NIS2 should be included in eIDAS to ensure clarity.

NIS2 – EECC

As presented in our previous comments, we highlight the need for an analysis on the concrete effects of the proposed amendments. It is important to ensure that the requirements for providers of public electronic communications networks under NIS2 are similar to the requirements according to EECC before amending articles 40 and 41 in EECC according to recital 48 and article 40.

The possibility for *lex specialis* should also be evaluated.

NIS2 – ePrivacy

We support the current draft provisions in recitals 48 (ePrivacy reference), 56, 58.

NIS2 – GDPR

We support the current draft provisions in recitals 25, 48 (GDPR reference), 56, 69, 77 and articles 26(1), 32(1).

NIS2 – EASA Opinion/PART-IS

According to our understanding, PART-IS (based on so-called EASA Basic Regulation (EU) 2018/1139) would include at least the same cybersecurity requirements as in NIS2 for the aviation sector. Based on this, we need to evaluate the possibility for *lex specialis* according to recital 12 and article 2(6). The aviation sector should still benefit from the cooperation mechanisms under NIS2.

General *lex specialis* provisions in NIS2:

The framework for cybersecurity requirements continues to expand in different sectoral legislation. This should be taken into account in NIS2 to ensure a coherent cybersecurity framework within the EU.

In addition to the current provisions in recital 12 and art. 2(6), we suggest that NIS2 would clarify provisions on the application of *lex specialis* (for both existing and future sectoral legislation) providing at least equivalent requirements as in NIS2. One way to add clarity would be to adjust art. 2(6) as a separate article for *lex specialis* provisions and adjust the wording where needed. In addition to this and to ensure the horizontal nature of NIS2, establishing a cybersecurity baseline with minimum requirements for sectoral legislation in art. 18 could be explored, as was proposed by DE. Correspondingly, references to these provisions could be added to sector-specific legislation. We would also suggest exploring the possibility for the Commission to compile and maintain a list of existing and future sectoral legislation that would be considered *lex specialis* in this context, as this could help Member States.
