

HU position paper on the scope of NIS2

We have attempted to **assess the number of entities in Hungary that would fall under the scope of NIS2 in its current form**. We believe that this is an important exercise from a proportionality point of view, considering the administrative burden on entities and the increased workload of national authorities, and we would like to encourage Member States to share their assessment.

We have used the 2008 NACE categories which cannot be fully matched to some of the definition in Annex I, especially with regards to the digital infrastructure sector. (This should not be a problem under the revised NACE, expected to be adopted in 2025.) Nonetheless, when assigning HU NACE numbers to the sectors and subsectors listed in Annex I, we strove to include all relevant activities. Thus, these numbers are not exact but are a **solid estimate**.

First, we looked at how many entities would fall under NIS2 based on their full scope of activities (so both main and auxiliary), as the NIS2 proposal does not restrict its scope to entities whose “main activity” is performed in the given sector. Then we narrowed it down based on main activity.

Essential medium and large enterprises

NIS2 sector	NIS2 subsector	Number of companies with relevant NACE no. listed amongst either in its <u>main</u> or <u>auxiliary</u> activities	Number of companies with relevant NACE no. listed amongst its <u>main</u> activities	Current number of identified OES and DPS under NIS1
Energy	Electricity	36	28	11
	District heating and cooling ¹	82	33	1
	Oil	6	3 ²	1
	Gas	32	11	1
	Hydrogen	600	235	0
Transport	Air	7	3	4
	Rail	18	15	0
	Water	13	3	0
	Road	706	273	3
Banking		33	33	3
Financial market infrastructures		73	73	2

¹ When implementing NIS1, Hungary has already added district heating to the Energy sector.

² Less than 3 but the exact number is sensitive information.

Health		242	116	40
Drinking water		90	39	13
Waste water		59	3	1
Digital infrastructure		610	184	11
Public administration		956	954	0
Space		6	5	0
Total		3569	1947	97

It is important to keep in mind, that **the total number of essential entities will be even higher** as it will include

- small and micro companies in the public electronic communications networks, publicly available electronic communications services, trust service providers and top-level domain name registries and domain name system (DNS) service providers categories, and
- entities identified by the MSs according to Article 2 (2) c)- g).

We can conclude that NIS2, in its current form, **would increase the number of Hungarian entities under its scope by 36 times, at least**. Furthermore, it would cover, at minimum, 44% of all medium and large enterprises registered in Hungary.

In our view, this is **not a gradual or proportionate increase** and does not seem to correspond with the 20-30% increase in compliance and enforcement costs foreseen for national authorities in the Commission's impact assessment.

It should also be noted that the size of an entity does not necessarily correspond to its importance in a given sector and that NIS2 should focus on strengthening the resilience of those entities that are essential to the functioning of society and the economy. Keeping the current, overly broad scope of NIS2 will substantially increase the administrative burden on entities and authorities, and can negatively affect both the competitiveness of European companies and the efficiency of their supervision. It should be noted here that with these numbers, risk-based supervision, in practice, could easily mean ex post supervision for the low-risk end of essential entities.

Therefore, **we are on the position that NIS2 should maintain the national identification in the essential sectors**, and allow Member States, who have the necessary knowledge, insight and experience, to identify essential entities. We are happy to engage in rewording the relevant Articles.

If our proposal above does not enjoy support from other Member States then, **the scope of NIS2 should be narrowed down, as a minimum, to entities which perform their main activities** in the sectors listed in Annex I and II. In theory, it is possible that there would be a few key entities with a relevant activity listed only as auxiliary (thus not automatically under

the scope of NIS2) but these would be identified by MS as essential based on Article 2 (2) c)-f). Thus, this solution would help proportionality without carrying the risk of leaving key entities out of the ecosystem.

A preliminary wording proposal to this end:

This Directive applies to public **entities** and private entities **whose main activities correspond to the** ~~of a~~ type referred to as essential entities in Annex I and as important entities in Annex II. This Directive does not apply to entities that qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

A **dedicated paragraph on risk-based supervision in the preamble** would also be needed to balance the large number of entities covered with the finite resource available for their supervision.