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NOTE

From:	General Secretariat of the Council
To:	Delegations
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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 2016/1148 - Revised Presidency compromise proposal on interaction of NIS 2 with sectoral legislation: Comments by AT, DE, ES, FI, HU, LV, NL and SE delegations

Delegations will find in Annex comments by AT, DE, ES, FI, HU, LV, NL and SE delegations on the second revision of the Presidency compromise proposal on interaction of NIS 2 with sectoral legislation.

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AUSTRIA

We want to thank you for the new compromise proposal on NIS 2 interaction with sectoral legislation and for taking on board most of our comments. We want to express our overall preference on the REV2 compared to the REV1. We still think, however, that Art 18.1 (specifying the “all-hazard” approach) would be more appropriate in a recital.

FINLAND

Comparison and analysis of definitions between the NIS 2 Directive and the EECC security provisions, WK 8543/2021

As we have previously commented, we see that the current proposal to delete articles 40 and 41 without having a thorough impact assessment first would pose a risk of discrepancies to the regulatory framework of the telecom sector.

Therefore, we warmly welcome our NL colleagues' analysis on the matter. We see that the views provided in the analysis are justified. The current proposal to delete articles 40 and 41 may cause legal uncertainty because the terminology and definitions used in NIS2 do not fully correspond to those used in EECC.

Recital 48 in NIS2 lacks a clear justification on how deleting articles 40 and 41 and replacing them with NIS2 provisions would benefit the telecom sector in increasing the level of cybersecurity.

Based on NL analysis and our views, we see that we should explore further the possibility of not deleting these articles if we can truly see that this would present more risks than benefits for the regulatory coherence of the telecom sector.

Still, we welcome keeping the telecom sector within NIS2 in terms of the cybersecurity strategy and cooperation mechanisms, such as NIS Cooperation Group, CSIRTs etc. as these mechanisms would still be beneficial as a whole.

We would welcome a legal analysis by CLS for example on this matter, on whether the deletion would pose more risks than benefits. Strengthening our knowledge base would provide us a solid basis for assessing a common understanding on the matter in the WP going forward.

As an option, we would suggest evaluating the possibility for *lex specialis*, as we have already suggested in our previous comments on art. 40 and 41.

**Comments and Text Proposals to the Second Revised Presidency Compromise
Proposal on NIS2 Interaction with Sectoral Legislation dated 5 July 2021**

by Germany

22 July 2021

Preliminary note: This document does not contain our complete assessment of all proposed changes. Consequently, we reserve the right to provide further comments at a later date, in particular (but not limited to) with regard to those provisions (or parts thereof) which we are not commenting on below.

Recitals

(12) This Directive sets out the baseline for cybersecurity risk management measures and reporting obligations across all sectors that fall within its scope. In order to avoid unnecessary fragmentation of cybersecurity provisions of Union legal acts, when additional sector-specific provisions pertaining to cybersecurity risk management measures and reporting obligations appear to be necessary to ensure **a high levels** of cybersecurity, **an assessment should be considered made** by the Commission **should assess as to** whether such provisions could be stipulated in an implementing **act** or **a** delegated act. Should such acts not be suitable for **that purpose**, sector-specific legislation **and instruments could** contribute to ensuring **a** high levels of cybersecurity, while taking full account of the specificities and complexities of **these the** sectors **concerned**. At the same time, such sector-specific provisions of Union legal acts should duly take **into** account of the need for a comprehensive and **consistent harmonised** cybersecurity framework. This Directive does not preclude the adoption of additional sector-specific Union acts addressing cybersecurity risk management measures and incident notifications. This Directive is without prejudice to the existing implementing powers that have been conferred **to on** the Commission in a number of sectors, including transport and energy.

(12a) Where a sector-specific Union legal act **contains provisions requiring** essential or important entities to adopt **measures of at least an equivalent effect to the obligations laid down in this Directive related to** cybersecurity risk management measures **and obligations** to notify **significant** incidents or ~~significant~~ cyber threats of at least an equivalent effect to the obligations laid down in this Directive, those sector-specific provisions, **including on supervision and enforcement**, should apply. ~~Where the respective Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, the latter should also apply.~~ When determining the equivalent effect of ~~the~~ obligations set out in the sector-specific provisions of an Union legal act, the following aspects should be considered: (i) the cybersecurity risk management measures should consist of appropriate and proportionate governance requirements and technical and organisational measures to manage the risks posed to the security of network and information systems which the relevant entities use in the provision of their services, and should include as a minimum all the elements laid down in this Directive; (ii) the ~~requirement~~ **obligation** to notify significant incidents and cyber threats should (be at least equivalent ~~with/reflect at the minimum~~) **to** the obligations set out in this Directive as regards the content, format and timelines of the notifications; (iii) the reporting modalities ~~by entities and the relevant~~ **authorities** of sector-specific Union legal acts should (be at least equivalent ~~with to /reflect at the a minimum~~) the requirements set out in this Directive as regards their content, format and timelines and should take into account the role of ~~the~~ CSIRTs; (iv) the cross-border cooperation requirements for the relevant authorities should (be at least equivalent ~~with to /reflect at the a minimum~~) those set out ~~by in~~ this Directive. If the sector-specific provisions of a Union legal act do not cover all entities in a specific sector falling within the scope of this Directive, the **relevant** provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

The Commission should ~~regularly~~ **periodically review** the application of the equivalent effect requirement in relation to sector-specific provisions of Union legal acts and ~~may~~ **can** issue guidelines ~~or~~ **recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in order to address possible** **potential** gaps with ~~in relation to provisions under this Directive.~~ relation to the implementation of the *lex specialis*. The Commission ~~shall~~ **is to** consult the Cooperation Group when preparing the ~~regular~~ **periodical review** and developing ~~those~~ **potential guidelines, recommendations and measures.**

(12aab) Key-Future Sector-specific Union legal acts should take account of the Key definitions outlined in Article 4 of this Directive. ~~should serve as a baseline for sector-specific Union legal acts.~~

(12aba) Where sector-specific provisions of Union legal acts require essential or important entities to adopt measures of at least ~~an~~ equivalent effect to the **reporting** obligations laid down in this Directive, overlapping ~~of~~ reporting obligations should be avoided, and coherence and effectiveness of handling of notifications of cyber threats or incidents should be ensured. For ~~that is~~ purpose, ~~the above-mentioned those~~ sector-specific provisions ~~may can~~ **provide for** allow Member States to establish a common, automatic and direct reporting mechanism for **notifying** significant incidents and cyber threats to both the authorities whose tasks are set out in the respective sector-specific provisions and the competent authorities, including the single point of contact and CSIRTs as appropriate, responsible for the cybersecurity tasks provided for in this Directive, **or** for a mechanism that ensures systematic and immediate sharing of information and cooperation among the relevant authorities and CSIRTs concerning the handling of such notifications. For the purposes of simplifying reporting and ~~for of~~ implementing the common, automatic and direct reporting mechanism, Member States **can** utilise the single-entry point they establish according to Article 11(5a) of this Directive. To ensure harmonisation, reporting obligations of sector-specific Union legal acts should be aligned with those specified under this Directive.

- (13) Regulation XXXX/XXXX of the European Parliament and of the Council should be considered to be a sector-specific Union legal act in relation to this Directive with regard to ~~the~~ financial sector entities. The provisions of Regulation XXXX/XXXX relating to information and communications technology (ICT) risk management measures, management of ICT-related incidents and notably incident reporting, as well as on digital operational resilience testing, information sharing arrangements and ICT third party risk should apply instead of those set up **out in** this Directive. Member States should therefore not apply the provisions of this Directive on cybersecurity risk management, ~~information sharing~~ and reporting obligations, and supervision and enforcement to ~~any~~ financial entities covered by Regulation XXXX/XXXX. At the same time, it is important to maintain a strong relationship and the exchange of information with the financial sector under this Directive. To that end, Regulation XXXX/XXXX allows ~~all financial supervisors~~, the European Supervisory Authorities (ESAs) for the financial sector and the national competent authorities under Regulation XXXX/XXXX, to participate in ~~the strategic policy discussions and technical~~ **work of** workings of the Cooperation Group, and to exchange information and cooperate with the single points of contact designated under this Directive, ~~and~~ **as well as** with the national CSIRTs. The competent authorities under Regulation XXXX/XXXX should transmit details of major ICT-related incidents **and significant cyber threats** also to the single points of contact ~~or the national CSIRTs~~ designated under this Directive. **This can be achieved, for example, by automatic and direct forwarding of incident notifications or a common reporting platform.** Moreover, Member States should continue to include the financial sector in their cybersecurity strategies and national CSIRTs ~~may~~ **can** cover the financial sector in their activities.

- (13a) In order to avoid gaps **between** and duplications of cybersecurity obligations imposed on entities in the aviation sector referred to in **point 2 (a) of Annex I-(2) (a)**, competent authorities under **Regulations 300/2008, 2018/1139 and this Directive**~~Commission Implementing Regulation 2019/1583~~ and competent authorities under this Directive should cooperate in relation to the implementation of cybersecurity risk management measures and the supervision of those measures at national level. The compliance of an entity with the cybersecurity risk management measures under this Directive ~~may~~**can** be considered by the competent authorities under **Regulations 300/2008 and 2018/1139**~~Commission Implementing Regulation 2019/1583 as compliant~~ with the requirements laid down in ~~that Commission Implementing Regulation 2019/1583~~.
- (14) In view of the interlinkages between cybersecurity and the physical security of entities, a coherent approach should be ensured between Directive (EU) XXX/XXX of the European Parliament and of the Council and this Directive. To achieve this, Member States should ensure that critical entities, and equivalent entities, pursuant to Directive (EU) XXX/XXX are considered **to be as** essential entities under this Directive. Member States should also ensure that their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority under this Directive and the one under Directive (EU) XXX/XXX in the context of information sharing on incidents, and cyber threats, and the exercise of supervisory tasks. **Competent** authorities under both Directives should cooperate and exchange information, particularly in relation to the identification of critical entities, cyber threats, cybersecurity risks, incidents **as well as on non-cyber risks, threats and incidents** affecting critical entities or **entities equivalent to critical entities**, ~~as well as on~~ **including** the cybersecurity **and physical** measures taken by critical entities **and the results of supervisory measures**~~activities~~ carried out with regard to such entities. Furthermore, in order to streamline supervisory activities between the competent authorities designated under both directives and in order to minimise the administrative burden for the entities **concerned**, competent authorities should endeavour to align incident notification templates and supervisory processes. ~~Upon request of~~

Where appropriate, competent authorities under Directive (EU) XXX/XXX, **may can** request competent authorities under this Directive ~~should be allowed~~ to exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical. Both **Competent** authorities under both Directives should cooperate and exchange information for **that** purpose.

(14a) Union law on the protection of personal data and privacy applies to any processing of personal data **falling within the scope of under** this Directive. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council and therefore should not affect notably the tasks and powers of the independent supervisory authorities competent to monitor compliance with the respective Union data protection law.

~~(19)~~ Postal service providers within the meaning of Directive 97/67/EC of the European Parliament and of the Council¹⁸, as well as express and courier delivery service providers, should be subject to this Directive if they provide at least one of the steps in the postal delivery chain and in particular clearance, sorting or distribution, including pick-up services, **while taking into due account of the degree of their dependence on network and information systems.**

(23) Competent authorities or the CSIRTs should receive notifications of incidents from entities in an effective and efficient way, **also with a view to facilitate, where appropriate, a timely response to incidents in accordance with Article 10(2c) and to provide a response to the notifying entity in accordance with Article 20(5).** The single points of contact should be tasked with forwarding incident notifications to the single points of contact of other affected Member States. At the level of Member States' authorities, to ensure one single entry point in every Member States, the single points of contacts should also be the addressees of relevant information on **major ICT incidents and significant cyber threats** concerning financial sector entities from the competent authorities under Regulation XXXX/XXXX.

which they should be able to forward, as appropriate, to the relevant national competent authorities or CSIRTs under this Directive.

- (23a) ~~Competent authorities of~~ **under** ~~The sector-specific Union legal acts which require cybersecurity risk management measures or notification reporting obligations of at least equivalent effect with those laid down in this Directive~~ **sector-specific lex specialis may could provide that their designated competent authorities** ~~exercise their supervisory and enforcement powers in relation to such measures or obligations with~~ **exercise the supervision and enforcement** ~~over as regards obligations given provided for in those sector-specific lex specialis with the assistance of the competent~~ **authorities** ~~designated in accordance with this Directive.~~ **In order to achieve this, t** ~~The~~ **competent authorities concerned should** ~~could~~ **establish effective cooperation arrangements** ~~for this purpose.~~ Such cooperation arrangements ~~shall c~~ **should** specify, amongst others, the procedures concerning the coordination of supervisory activities, including the procedures of investigations and on-site inspections in accordance with the national law and **a** mechanism for the exchange of information between competent authorities, including access to cyber related information requested by competent **authorities** designated in accordance with this Directive.

- (26) Given the importance of international cooperation on cybersecurity, CSIRTs should be able to participate in international cooperation networks in addition to the CSIRTs network established by this Directive. CSIRTs should be able to exchange information, including personal data, with national CERTs and CSIRTs of third countries **for the purposes of their tasks. Such disclosure or** **The exchange of such personal data, which must be in accordance with Regulation (EU) 2016/679, in particular the provisions laid out in Chapter V thereof, and is considered necessary for the purposes of mitigating significant cyber threats and responding to an ongoing significant incident, could be considered an** ~~may constitute~~ important reasons of public interest.
- (40) Risk-management measures should **take into account the degree of dependence of the entity on network and information systems and** include measures to identify any risks of incidents, to prevent, detect and handle incidents and to mitigate their impact. The security of network and information systems should comprise the security of stored, transmitted and processed data.
- (40a) As threats to the security of network and information systems can have different origins, this Directive applies an “all-hazard” approach that includes the protection of network and information systems and their physical environment from any event such as theft, fire, flood, telecommunications ~~or power failures,~~ power failures or from any unauthorised physical access and damage to and interference with the organisation’s information and information processing facilities that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of ~~the related~~ services offered by, or accessible via, network and information systems. The risk- management measures should therefore ~~in particular~~ **also** address the physical and environmental security by including measures to protect the entity’s network and information systems from system failures, human error, malicious actions or natural phenomena in line with internationally recognised standards, such as **those** included in **the** ISO 27000 series. Those measures should be **in line** ~~coherent~~ with Directive XXXX [CER Directive].

(44a) National competent authorities, in the context of their supervisory tasks, may also benefit from MSSP services such as security audits and penetration testing. To assist entities as well as national competent authorities in selecting skilled and trustworthy MSSPs, the Commission with the assistance of the Cooperation Group and ENISA, should consider the possibility of establishing relevant EU certification schemes, where appropriate under the Regulation 2019/881.

- (48) In order to streamline the legal obligations imposed on providers of public electronic communications networks or publicly available electronic communications services, and trust service providers related to the security of their network and information systems, as well as to enable those entities and their respective competent authorities to benefit from the legal framework established by this Directive (including designation of CSIRT responsible for risk and incident handling, participation of competent authorities and bodies in the work of the Cooperation Group and the CSIRT network), they should be included in the scope of application of this Directive. The corresponding provisions laid down in Regulation (EU) No 910/2014 of the European Parliament and of the Council and Directive (EU) 2018/1772 of the European Parliament and of the Council related to the imposition of security and notification requirements on those types of entities should therefore be repealed and appropriately complemented in this Directive. The rules on reporting obligations should be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council.

- (49) Where appropriate and to avoid unnecessary disruption, existing national guidelines ~~and national legislation~~ adopted for the transposition of the rules related to security measures laid down in Articles ~~40(1)~~ and 41 of Directive (EU) 2018/1722, as well as of the requirements of Article 40(2) of that Directive concerning the parameters related to the significance of an incident, should continue to be used by the competent authorities in charge of supervision and enforcement for the purposes of this Directive **should** be taken into account in transposition arrangements implemented by the Member States in relation to this Directive, thereby building on the knowledge and skills already acquired under Directive (EU) 2018/1722 concerning security risk management measures and incident notifications. ENISA **may can** also develop guidance **documentation** on security and reporting **requirements arrangements** for **providers of public electronic communication networks or publicly available electronic communication services entities that were subject to obligations from under Directive (EU) 2018/1722** to facilitate harmonisation, transition and minimise disruption. Member States **may can** assign the role of competent authorities for electronic communications to the national regulatory authorities in order to ensure the continuation of current practices and to build on the knowledge and experience gained in Directive (EU) 2018/1722.
- (69) ~~The processing of personal data, to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, the processing of personal data by essential and important entities, public authorities, CERTs, CSIRTs, and providers of security technologies and services~~ **or the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe and cybersecurity information sharing arrangements established under this Directive** should constitute a legitimate interest of the data controller concerned, as referred to in Regulation (EU) 2016/679 **and pProcessing of personal data by competent authorities, SPOCs and CSIRTs should be laid down inor the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe established under this Directive should be laid down in Union or national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679.**

—That should include measures related to the prevention, detection, analysis and response to incidents, measures to raise awareness in relation to specific cyber threats, exchange of information in the context of vulnerability remediation and coordinated disclosure, as well as the voluntary exchange of information on those incidents, as well as cyber threats and vulnerabilities, indicators of compromise, tactics, techniques and procedures, cybersecurity alerts and configuration tools. Such measures may require the processing of the following various types of personal data, such as: IP addresses, uniform resources locators (URLs), domain names, and email addresses.

(69a) Processing of personal data by competent authorities, SPOCs, CSIRTs and EU

CvCLONe should be laid down in national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679. These national legal bases may allow competent authorities, SPOCs and CSIRTs under national law to process special categories of personal data in accordance with Article 9 of Regulation (EU) 2016/679, to the extent that is strictly necessary and proportionate for the purpose of ensuring the security of network and information systems of essential and important entities, , in particular by providing for suitable and specific measures to safeguard the fundamental rights and interests of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.

Articles

Article 2

Scope

(...)

- 3a This Directive is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.

~~To the extent that is necessary and proportionate for the purposes of ensuring the security of network and information systems of essential and important entities, competent authorities, SPOCs and CSIRTs may process special categories of personal data referred to in Article 9 (1) of Regulation (EU) 2016/679, subject to appropriate safeguards for the fundamental rights and freedoms of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.~~

6. Where ~~provisions of~~ sector-specific Union legal acts of Union law require essential or important entities either to adopt cybersecurity risk management measures or to notify significant incidents or significant cyber threats, and where those requirements are at least equivalent in effect to the obligations laid down in this Directive, the relevant provisions of this Directive, ~~including the provisions on supervision and enforcement~~ laid down in Chapter VI, shall not apply to ~~those such~~ entities. ~~Where the respective sector-specific Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, Chapter VI of this Directive should shall not apply to those such entities either.~~ If sector-specific Union legal acts do not cover all entities in a specific sector falling within the scope of this Directive, the relevant provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

~~7. The requirements referred above in this paragraph shall be considered equivalent in effect to the obligations laid down in this Directive if aIn order to safeguard ensure a coherent minimum standard of cybersecurity across all sectors, sector-specific Union legal acts referred to in paragraph 6 should shall include:~~

- (a) cybersecurity risk management measures, ~~that are,~~ at a minimum, equivalent to those laid down in ~~Article 18 paragraphs (1) and (2) of this Directive; or~~
- (b) requirements to notify significant incidents or cyber threats ~~that are,~~ at a minimum, equivalent to those laid down in ~~Article 20 paragraphs (1) through to (4) (6) and further include:~~
 - (i) , automatic and direct access by the national competent authority under this directive or the CSIRT designated in accordance with this directive to the incident notifications ~~by the national competent authority under this Directive through a common reporting mechanism, where appropriate; or~~
 - (ii) ~~where appropriate, automatic and direct forwarding of the notifications to the national competent authority under this Directive or the national Computer Security Incident Response TeamsCSIRTs designated in accordance with this Direective by the authority that receives incident notifications under the sector-specific Union legal act, where appropriate.~~
- (c) ~~concerning cross-border cooperation for the relevant authorities shall are be at least equivalent with those set out by in this Directive.~~

~~78. The Commission shall periodically review the application of the equivalent effect requirement in paragraph 6 in relation to sector-specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing those regular assessments periodical reviews and when developing the potential guidelines, recommendations on necessary actions or measures.~~

9. ~~When additional sector-specific provisions pertaining to cybersecurity risk management measures and notification obligations appear to be necessary to ensure a high levels of cybersecurity, the Commission should shall assess whether such provisions can be stipulated in an implementing act or a delegated act referred to in Article 18 (5) and (6) of this Directive.~~

Article 4
Definitions

(...)

- (2) ‘security of network, services and information systems’ means the ability of network, services and information systems to resist, at a given level of confidence, any ~~action~~ event that ~~may~~ compromises the availability, authenticity, integrity or confidentiality of stored data or transmitted or processed data or ~~of~~ the related services offered by, or accessible via, those network, services and information systems;
- (2a) ‘electronic communications services’ means electronics communications services within the meaning of Article 2(4) of Directive (EU) 2018/1972;
- (5) ‘incident’ means any event compromising the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems, **electronic communications services or trust services**;
- (16a) ‘trust services’ means trust services within the meaning of Article 3(16) of Regulation (EU) No 910/2014;
- (16b) qualified trust service provider’ means a qualified trust service provider within the meaning of Article 3(20) of Regulation (EU) No 910/2014;

(...)

Article 5
National cybersecurity strategy

(...)

- 1.(f) a policy framework for enhanced coordination between the competent authorities under this Directive and Directive (EU) XXXX/XXXX of the European Parliament and of the Council [Resilience of Critical Entities Directive] for the purposes of information sharing on **cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents and** the exercise of supervisory tasks, as appropriate.

(...)

Article 10
Requirements and Tasks of CSIRTs
(...)

- 3a. CSIRTs ~~may~~ **shall** establish cooperation relationships with national CERTs and CSIRTs of third countries. **As part of this cooperation, they** ~~and may~~ exchange relevant, necessary and proportionate information, **including personal data in accordance with Union law on data protection. in view of their tasks, which, in this context, can create an important reason of public interest**

Article 11
Cooperation at national level

(...)

4. To the extent necessary to effectively carry out the tasks and obligations laid down in this Directive, Member States shall ensure appropriate cooperation between the competent authorities and single points of contact and law enforcement authorities, data protection authorities, and the **competent authorities designated** responsible for critical infrastructure pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], **the competent authorities under Commission Implementing Regulation 2019/1583, the national regulatory authorities designated in accordance with Directive (EU) 2018/1972, the national authorities designated pursuant to Article 17 of Regulation (EU) No 910/2014, and the national financial authorities designated in accordance with Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [the DORA Regulation]], as well as competent authorities designated by **future other** sector-specific Union legal acts,** within that Member State.
5. Member States shall ensure that their competent authorities **under this Directive and the competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience**

~~of Critical Entities Directive]~~ regularly ~~exchange provide~~ information to ~~competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive]~~ on **the identification of critical entities, cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents** affecting essential entities identified as critical, or as entities equivalent to critical entities, pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], as well as the measures taken by ~~competent authorities in response to those risks and incidents.~~ **Member States shall also ensure that competent authorities under this Directive regularly exchange relevant cyber information with competent authorities designated under Regulation (XXXX/XXXX)[DORA Regulation], Directive 2018/1972 and Regulation (EU) 910/2014.**

- 5a For the purposes ~~of simplifying the reporting of security incidents which entail a possible personal data breach,~~ Member States ~~shall~~may establish a single-entry point for all notifications required under this Directive, as well as under Regulation (EU) 2016/679 and Directive 2002/58/EC, where appropriate, ~~when such incidents entail a possible potential personal data breach.~~ Member States may integrate notifications required under other sector-specific Union legal acts in the single-entry-point. This single-entry point shall not affect the application of the provisions of Regulation (EU) 2016/679 and Directive 2002/58/EC, in particular those relating to independent ~~supvisory~~supervisory authorities.

- 5b Member States shall ensure that their competent authorities under this Directive and the competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] regularly exchange information on cybersecurity risks, cyber threats and incidents affecting essential entities who may be financial entities or critical third party ICT service providers, pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation], as well as the measures taken by competent authorities in response to those risks and incidents.
- 5c Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law, including the exchange of information among competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] or competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] and competent authorities designated in accordance with Article 8 of this Directive.
- 5d Member States shall ensure that their competent authorities under this Directive and the supervisory bodies designated pursuant to Article 17 of Regulation (EU) No 910/2014 regularly, and at least once per year, exchange information on cybersecurity risks, cyber threats and incidents affecting trust service providers.
- 5e ~~The providers of public electronic communications networks or electronic communications services available to the public referred to in Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code shall cooperate, as appropriate, with competent authorities designated under this Directive.~~

Article 12
Cooperation Group

(...)

3. The Cooperation Group shall be composed of representatives of Member States, the Commission and ENISA. The European External Action Service shall participate in the activities of the Cooperation Group as an observer. The European Supervisory Authorities (ESAs) in accordance with Article 17(5) **point** (c) of Regulation (EU) XXXX/XXXX [the DORA Regulation] may participate in the activities of the Cooperation Group. **A meeting with the participation of ESAs shall be held regularly, and, at least, once a year.**

~~4.(l) providing guidance and cooperating with the Commission on guidelines, recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in relation to the implementation of said those legal acts in order to ensure consistency with provisions under this Directive.~~

~~4.(m) adopting security rules on the protection of classified information and sensitive non-classified information in accordance with security principles and rules laid down in Commission Decisions 2015/443 and 2015/444 in connection with information sharing on cybersecurity risks, threats and incidents between the arrangements set out in Article 26 of this Directive and arrangements under Article 40 of Regulation (EU) XXXX/XXXX [DORA Regulation].~~

8. The Cooperation Group shall meet regularly and at least once a year with the Critical Entities Resilience Group established under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] to promote strategic cooperation and **facilitate** exchange of information.

Article 18
Cybersecurity risk management measures

- 1. This Directive applies an “all-hazard” approach that includes the protection of network and information systems and the physical protection from relevant natural and man-made risks that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems.**

Member States shall ensure that essential and important entities ~~shall~~ take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network, **services** and information systems which those entities use in the provision of their services. Having regard to the state of the art, those measures shall ensure a level of security of network, services and information systems appropriate to the risk presented.

(...)

- 5.** The Commission may adopt implementing acts in order to lay down the technical and the methodological specifications of the elements referred to in paragraph 2 **of this Article.** **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).** When ~~preparing those~~ **such implementing** acts, the Commission shall ~~proceed in accordance with the examination procedure referred to in Article 37(2) and follow,~~ to the greatest extent possible, **follow** international and European standards, as well as relevant technical specifications **and exchange advice with the Cooperation Group on the draft implementing act in accordance with Article 12(4)(d).**

Article 21

Use of European cybersecurity certification schemes

1. In order to demonstrate compliance with certain requirements of Article 18 cybersecurity **risk management measures**, Member States may require **all or certain groups of** essential and important entities to certify certain **use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014**. Member States may **also** require entities to use particular ICT products, ICT services and ICT processes certified under specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. **The in order to demonstrate compliance or establish a presumption of conformity with certain requirements. The ICT products, services and processes subject to certification may be developed by an essential or important entity or procured from third parties.**

~~1a. Member States may, rely on cybersecurity services providers certified under Regulation (EU) 2019/881 or national certification schemes in the absence of a relevant EU certification scheme to demonstrate compliance with certain requirements of Article 18, or to enforce the supervision activities foreseen in Articles 29 and 30.~~

2. The Commission shall be empowered to adopt ~~delegated~~ **implementing** acts specifying which categories of essential entities shall be required to use certain certified ICT products, ICT services and ~~ICT processes~~ or obtain a certificate ~~and under which~~ specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. ~~pursuant to paragraph 1 The delegated acts shall be adopted in accordance with Article 36.~~ **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).** When preparing **the such** implementing acts, the Commission shall:

(i) take into account the impact of the measures on the manufacturers or providers of such ICT products, services or processes and on the users in terms of the cost of those measures and the societal or economic benefits stemming from the anticipated enhanced level of security for the targeted ICT products, services or processes;

(ii) carry out an open, transparent and inclusive consultation process with all relevant stakeholders and Member States;

(iii) take into account any implementation deadlines, transitional measures and periods, in particular with regard to the possible impact of the measures on the manufacturers or providers of ICT products, services or processes, particularly SMEs;

3. The Commission may request ENISA to prepare a candidate scheme **or to review an existing European cybersecurity certification scheme** pursuant to Article 48(2) of Regulation (EU) 2019/881 in cases where no appropriate European cybersecurity certification scheme for the purposes of paragraph 2 **of this Article** is available.

Article 21a

Use of trust services or notified electronic identification schemes

In order to demonstrate compliance with certain requirements of Article 18 cybersecurity risk management measures referred to in Article 18, Member States may require all or certain groups of essential and important entities to certify certain use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014.

Article 29

Supervision and enforcement for essential entities

(...)

9. Member States shall ensure that their competent authorities **under this Directive** inform the relevant competent authorities **within that same** of the Member State ~~concerned~~ designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity identified as critical, or as an entity equivalent to a critical entity, under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] with the obligations pursuant to this Directive. **Where appropriate**, ~~Upon request of~~ competent authorities under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], **may request** competent authorities **under this Directive** **may to** exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical or equivalent.

Article 32

Infringements entailing a personal data breach

1. Where the competent authorities have indications **evidence** **become aware** that the infringement by an essential or important entity of the obligations laid down in Articles 18 and 20 **of this Directive** entails a personal data breach, as defined by Article 4(12) of Regulation (EU) 2016/679 which shall be notified pursuant to Article 33 of that Regulation, they shall, **without undue delay**, inform the supervisory authorities competent pursuant to Articles 55 and 56 of that Regulation ~~within a reasonable period of time~~.

Article 35
Review
Exercise of the delegation

(...)

2. ~~The Commission shall periodically review the application of the equivalent effect requirement in Article 2(6) of this Directive in relation to sector specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing these regular assessments.~~ The power to adopt delegated acts referred to in Articles 18(6) and 21(2) shall be conferred on the Commission for a period of five years from [...]
3. The delegation of power referred to in Articles 18(6) and 21(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(...)

Article 38
Transposition

1. **By ... [18 24 months after the date of entry into force of this Directive],** Member States shall adopt and publish; **by ... [18 24 months after the date of entry into force of this Directive]**, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

_____ They shall apply those measures from ... [one day after the date referred to in the first subparagraph].

(...)

Article 39

Amendment of Regulation (EU) No 910/2014

In Regulation (EU) No 910/2014, Article 19 of Regulation (EU) No 910/2014 is deleted **with** effect from... [-date of the transposition deadline of **this** Directive].

Article 40

Amendment of Directive (EU) 2018/1972

In Directive (EU) 2018/1972, Articles 40 and 41 of Directive (EU) 2018/1972 are deleted **with** effect from... [-date of the transposition deadline of **this** Directive].

ANNEXES

With regard to trust service providers, a differentiation of the regulatory treatment between non-qualified and qualified trust service providers could be envisaged with the following proposed amendments in Annex I and II:

- i) In Annex I point 8:- qualified trust service providers referred to in point (19) (20) of Article 3 of Regulation (EU) No 910/2014
- ii) In Annex II point 6:- non-qualified trust service providers referred to in point (19) of Article 3 of Regulation (EU) No 910/2014

With regard to providers of public electronic communications networks, a precision of the regulatory treatment for micro and small enterprises could be envisaged with the following proposed amendment in Annex I and II:

- i) In Annex I point 8: - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available. This is not applicable to entities that qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

In Annex II point 6a (new) Digital infrastructure - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available when they qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

Hungary

Recitals

(12) This Directive sets out the baseline for cybersecurity risk management measures and reporting obligations across all sectors that fall within its scope. In order to avoid unnecessary fragmentation of cybersecurity provisions of Union legal acts, when additional sector-specific provisions pertaining to cybersecur

ity risk management measures and reporting obligations appear to be necessary to ensure a high levels of cybersecurity, ~~an assessment should be considered made by the~~ Commission ~~should assess as to~~ whether such provisions could be stipulated in an implementing ~~act~~ or a delegated act. Should such acts not be suitable for ~~that~~ purpose, sector-specific legislation ~~and instruments could an~~ contribute to ensuring a high levels of cybersecurity, while taking full account of the specificities and complexities of ~~those~~ ~~the~~ sectors ~~concerned~~. At the same time, such sector-specific provisions of Union legal acts should duly take ~~into~~ account ~~of the need for a comprehensive and~~ ~~consistent~~ ~~harmonised~~ cybersecurity framework. ~~This Directive does not preclude the adoption of additional sector specific Union acts addressing cybersecurity risk management measures and incident notifications. This Directive is without prejudice to the existing implementing powers that have been conferred to on the Commission in a number of sectors, including transport and energy.~~

(12a) Where a sector-specific Union legal act **contains provisions requiring** essential or important entities to adopt **measures of at least an equivalent effect to the obligations laid down in this Directive related to** cybersecurity risk management measures **and obligations** to notify **significant** incidents or ~~significant~~ cyber threats of at least an equivalent effect to the obligations laid down in this Directive, those sector-specific provisions, **including on supervision and enforcement**, should apply. ~~Where the respective Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, the latter should also apply.~~ When determining the equivalent effect of ~~the~~ obligations set out in the sector-specific provisions of an Union legal act, the following aspects should be considered: (i) the cybersecurity risk management measures should consist of appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which the relevant entities use in the provision of their services, and should include as a minimum all the elements laid down in this Directive; (ii) the ~~requirement~~ **obligation** to notify significant incidents and cyber threats should ~~(be at least equivalent with/reflect at the minimum)~~ **to** the obligations set out in this Directive as regards the content, format and timelines of the notifications, and should take into account the role of the CSIRTs; (iv) the cross-border cooperation requirements for the relevant authorities should ~~(be at least equivalent with to /reflect at the a minimum)~~ those set out **by in** this Directive. If the sector-specific provisions of a Union legal act do not cover all entities in a specific sector falling within the scope of this Directive, the **relevant** provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

The Commission should ~~regularly~~ **periodically review** the application of the equivalent effect requirement in relation to sector-specific provisions of Union legal acts and ~~may~~ **can** issue guidelines ~~or~~ **recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in order to address possible** **potential** gaps with ~~in relation to provisions under this Directive.~~ relation to the implementation of the *lex specialis*. The Commission ~~shall~~ **is to** consult the Cooperation Group when preparing the ~~regular~~ **periodical review** and developing ~~those~~ **potential guidelines, recommendations and measures.**

(12aab) Key-Sector-specific Union legal acts should be aligned with the Key definitions outlined in Article 4 of this Directive. ~~should serve as a baseline for sector specific Union legal acts.~~

(12aba) Where sector-specific provisions of Union legal acts require essential or important entities to adopt measures of at least ~~an~~ equivalent effect to the **reporting** obligations laid down in this Directive, overlapping ~~of~~ reporting obligations should be avoided, and coherence and effectiveness of handling of notifications of cyber threats or incidents should be ensured. For ~~that is~~ purpose, ~~the above-mentioned those~~ sector-specific provisions ~~may can~~ **provide for** allow Member States to establish a common, automatic and direct reporting mechanism for **notifying** significant incidents and cyber threats to both the authorities whose tasks are set out in the respective sector-specific provisions and the competent authorities, including the single point of contact and CSIRTs as appropriate, responsible for the cybersecurity tasks provided for in this Directive, **or** for a mechanism that ensures systematic and immediate sharing of information and cooperation among the relevant authorities and CSIRTs concerning the handling of such notifications. For the purposes of simplifying reporting and ~~for of~~ implementing the common, automatic and direct reporting mechanism, Member States **can** utilise the single-entry point they establish according to Article 11(5a) of this Directive. To ensure harmonisation, reporting obligations of sector-specific Union legal acts should be aligned with those specified under this Directive.

- (13) Regulation XXXX/XXXX of the European Parliament and of the Council should be considered to be a sector-specific Union legal act in relation to this Directive with regard to ~~the~~ financial sector entities. The provisions of Regulation XXXX/XXXX relating to information and communications technology (ICT) risk management measures, management of ICT-related incidents and notably incident reporting, as well as on digital operational resilience testing, information sharing arrangements and ICT third party risk should apply instead of those set up **out in** this Directive. Member States should therefore not apply the provisions of this Directive on cybersecurity risk management, ~~information sharing and reporting obligations, and supervision and enforcement to any financial entities covered by Regulation XXXX/XXXX.~~ At the same time, it is important to maintain a strong relationship and the exchange of information with the financial sector under this Directive. To that end, Regulation XXXX/XXXX allows ~~all financial supervisors,~~ the European Supervisory Authorities (ESAs) for the financial sector and the national competent authorities under Regulation XXXX/XXXX, **work of** to participate in ~~the strategic policy discussions and technical~~ **workings** of the Cooperation Group, and to exchange information and cooperate with the single points of contact designated under this Directive, ~~and~~ **as well as** with the national CSIRTs. The competent authorities under Regulation XXXX/XXXX should transmit details of major ICT-related incidents **and significant cyber threats** also to the single points of contact ~~or the national CSIRTs~~ designated under this Directive. **This can be achieved, for example, by automatic and direct forwarding of incident notifications or a common reporting platform.** Moreover, Member States should continue to include the financial sector in their cybersecurity strategies and national CSIRTs ~~may~~ **can** cover the financial sector in their activities.

- (13a) In order to avoid gaps **between** and duplications of cybersecurity obligations imposed on entities in the aviation sector referred to in **point 2 (a) of Annex I (2) (a)**, competent authorities under **Regulations 300/2008, 2018/1139 and this Directive**~~Commission Implementing Regulation 2019/1583~~ and competent or appropriate authorities under this Directive should cooperate in relation to the implementation of cybersecurity risk management measures and the supervision of those measures at national level. The compliance of an entity with the cybersecurity risk management measures under this Directive **may can** be considered by the competent or appropriate authorities under **Regulations 300/2008 and 2018/1139** ~~Commission Implementing Regulation 2019/1583~~ **as compliant** with the requirements laid down in ~~that~~ **Commission Implementing Regulation 2019/1583**.
- (14) In view of the interlinkages between cybersecurity and the physical security of entities, a coherent approach should be ensured between Directive (EU) XXX/XXX of the European Parliament and of the Council and this Directive. To achieve this, Member States should ensure that critical entities, and equivalent entities, pursuant to Directive (EU) XXX/XXX are considered **to be as** essential entities under this Directive. Member States should also ensure that their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority under this Directive and the one under Directive (EU) XXX/XXX in the context of information sharing on incidents, and cyber threats, and the exercise of supervisory tasks. **Competent** authorities under both Directives should cooperate and exchange information, particularly in relation to the identification of critical entities, cyber threats, cybersecurity risks, incidents **as well as on non-cyber risks, threats and incidents** affecting critical entities or **entities equivalent to critical entities**, ~~as well as on~~ **including** the cybersecurity **and physical** measures taken by critical entities **and the results of supervisory measures** ~~activities~~ **activities** carried out with regard to such entities. Furthermore, in order to streamline supervisory activities between the competent authorities designated under both directives and in order to minimise the administrative burden for the entities **concerned**, competent authorities should endeavour to align incident notification templates and supervisory processes. ~~Upon request of~~

Where appropriate, competent authorities under Directive (EU) XXX/XXX, **may can** request competent authorities under this Directive ~~should be allowed~~ to exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical. Both **Competent** authorities under both Directives should cooperate and exchange information for **that** purpose.

(14a) Union law on the protection of personal data and privacy applies to any processing of personal data falling within the scope of under this Directive. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council and therefore should not affect notably the tasks and powers of the independent supervisory authorities competent to monitor compliance with the respective Union data protection law.

~~(19)~~ Postal service providers within the meaning of Directive 97/67/EC of the European Parliament and of the Council¹⁸, as well as express and courier delivery service providers, should be subject to this Directive if they provide at least one of the steps in the postal delivery chain and in particular clearance, sorting or distribution, including pick-up services, **while taking into due account of the degree of their dependence on network and information systems.** Transport services that are not undertaken in conjunction with one of those steps should fall outside of the scope of postal services-

(23) Competent authorities or the CSIRTs should receive notifications of incidents from entities in an effective and efficient way, also with a view to facilitate, where appropriate, a timely response to incidents in accordance with Article 10(2c) and to provide a response to the notifying entity in accordance with Article 20(5). The single points of contact should be tasked with forwarding incident notifications to the single points of contact of other affected Member States. At the level of Member States' authorities, to ensure one single entry point in every Member States, the single points of contacts should also be the addressees of relevant information on **major ICT incidents and significant cyber threats** concerning financial sector entities from the competent authorities under Regulation XXXX/XXXX.

For that purpose, Member States may can determine that competent authorities under this Directive or national CSIRTs are the addressees of the notifications in accordance with Regulation EU [of Regulation XXX DORA], ~~which they should be able to forward, as appropriate, to the relevant national competent authorities or CSIRTs under this Directive.~~

- (23a) ~~Competent authorities of~~ under The sector-specific Union legal acts which require cybersecurity risk management measures or notification reporting obligations of at least equivalent effect with those laid down in this Directive ~~sector-specific lex specialis may~~ could provide that their designated competent authorities exercise their supervisory and enforcement powers in relation to such measures or obligations with ~~exercise the supervision and enforcement over as regards obligations given provided for in those sector-specific lex specialis with the assistance of the competent~~ authorities designated in accordance with this Directive. In order to achieve this, the competent authorities concerned ~~should~~ could establish effective cooperation arrangements for this purpose. Such cooperation arrangements ~~shall~~ should specify, amongst others, the procedures concerning the coordination of supervisory activities, including the procedures of investigations and on-site inspections in accordance with the national law and a mechanism for the exchange of information between competent authorities, including access to information requested by competent authorities designated in accordance with this Directive.

- (26) Given the importance of international cooperation on cybersecurity, CSIRTs may participate in international cooperation networks in addition to the CSIRTs network established by this Directive. CSIRTs may exchange information, including personal data, with national CERTs and CSIRTs of third countries ~~for the purposes of their tasks. Such disclosure or~~ **The exchange of such personal information that is considered necessary for the purposes of mitigating significant cyber threats and responding to an ongoing significant incident could be considered** ~~an~~ **may constitute** important reasons of public interest.
- (40) Risk-management measures should **take into account the degree of dependence of the entity on network and information systems** **and** include measures to identify any risks of incidents, to prevent, detect and handle incidents and to mitigate their impact. The security of network and information systems should comprise the security of stored, transmitted and processed data.
- (40a) As threats to the security of network and information systems can have different origins, this Directive applies an “all-hazard” approach that includes the protection of network and information systems and their physical environment from any event such as theft, fire, flood, telecommunications ~~or power failures,~~ power failures or from any unauthorised physical access and damage to and interference with the organisation’s information and information processing facilities that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of ~~the related~~ services offered by, or accessible via, network and information systems. The risk- management measures should therefore ~~in particular~~ **also** address the physical and environmental security by including measures to protect the entity’s network and information systems from system failures, human error, malicious actions or natural phenomena in line with internationally recognised standards, such as **those** included in **the** ISO 27000 series. Those measures should be ~~in line~~ **coherent** with Directive XXXX [CER Directive].

(44a) National competent authorities, in the context of their supervisory tasks, may also benefit from MSSP services such as security audits and penetration testing. To assist entities as well as national competent authorities in selecting skilled and trustworthy MSSPs, the Commission with the assistance of the Cooperation Group and ENISA, should consider the possibility of establishing relevant EU certification schemes, where appropriate under the Regulation 2019/881.

- (48) In order to streamline the legal obligations imposed on providers of public electronic communications networks or publicly available electronic communications services, and trust service providers related to the security of their network and information systems, as well as to enable those entities and their respective competent authorities to benefit from the legal framework established by this Directive (including designation of CSIRT responsible for risk and incident handling, participation of competent authorities and bodies in the work of the Cooperation Group and the CSIRT network), they should be included in the scope of application of this Directive. The corresponding provisions laid down in Regulation (EU) No 910/2014 of the European Parliament and of the Council and Directive (EU) 2018/172 of the European Parliament and of the Council related to the imposition of security and notification requirements on those types of entities should therefore be repealed and appropriately complemented in this Directive. The rules on reporting obligations should be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council.

- (49) Where appropriate and to avoid unnecessary disruption, existing national guidelines ~~and national legislation~~ adopted for the transposition of the rules related to security measures laid down in Articles ~~40(1) and 41~~ of Directive (EU) 2018/1972, ~~as well as of the requirements of Article 40(2) of that Directive concerning the parameters related to the significance of an incident, should continue to be used by the competent authorities in charge of supervision and enforcement for the purposes of this Directive~~ **should** be taken into account in transposition arrangements implemented by the Member States in relation to this Directive, thereby building on the knowledge and skills already acquired under Directive (EU) 2018/1972 concerning security risk management measures and incident notifications. ENISA ~~may can~~ also develop guidance **documentation** on security and reporting **requirements** **arrangements** for **providers of public electronic communication networks or publicly available electronic communication services** ~~entities that were subject to obligations from under Directive (EU) 2018/1972~~ to facilitate harmonisation, transition and minimise disruption. Member States ~~may can~~ assign the role of competent authorities for electronic communications to the national regulatory authorities in order to ensure the continuation of current practices and to build on the knowledge and experience gained in Directive (EU) 2018/1972.
- (69) ~~The processing of personal data, to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, the processing of personal data by essential and important entities, public authorities, CERTs, CSIRTs, and providers of security technologies and services~~ **or the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe and cybersecurity information sharing arrangements established under this Directive** should constitute a legitimate interest of the data controller concerned, ~~as referred to in Regulation (EU) 2016/679 and~~ **Processing of personal data by competent authorities, SPOCs and CSIRTs should be laid down in the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe established under this Directive should be laid down in Union or national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679.**

—That should include measures related to the prevention, detection, analysis and response to incidents, measures to raise awareness in relation to specific cyber threats, exchange of information in the context of vulnerability remediation and coordinated disclosure, as well as the voluntary exchange of information on those incidents, as well as cyber threats and vulnerabilities, indicators of compromise, tactics, techniques and procedures, cybersecurity alerts and configuration tools. Such measures may require the processing of the following various types of personal data, such as: IP addresses, uniform resources locators (URLs), domain names, and email addresses.

—**Processing of personal data by competent authorities, SPOCs and CSIRTs should be laid down in national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679.**

(69a) Competent authorities, SPOCs and CSIRTs can, to the extent that is strictly necessary and proportionate for the purpose of ensuring the security of network and information systems of essential and important entities, process special categories of personal data in accordance with Article 9(1) of Regulation (EU) 2016/679, in particular by providing for suitable and specific measures to safeguard the fundamental rights and interests of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.

Articles

Article 2

Scope

(...)

- 3a This Directive is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.

~~To the extent that is necessary and proportionate for the purposes of ensuring the security of network and information systems of essential and important entities, competent authorities, SPOCs and CSIRTs may process special categories of personal data referred to in Article 9 (1) of Regulation (EU) 2016/679, subject to appropriate safeguards for the fundamental rights and freedoms of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.~~

6. Where ~~provisions of~~ sector-specific Union legal acts of Union law require essential or important entities either to adopt cybersecurity risk management measures or to notify significant incidents or significant cyber threats, and where those requirements are at least equivalent in effect to the obligations laid down in this Directive, the relevant provisions of this Directive, ~~including the provisions on supervision and enforcement~~ laid down in Chapter VI, shall not apply to ~~those such~~ entities. ~~Where the respective sector-specific Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, Chapter VI of this Directive should shall not apply to those such entities either.~~ If sector-specific Union legal acts do not cover all entities in a specific sector falling within the scope of this Directive, the relevant provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

~~7. The requirements referred above in this paragraph shall be considered equivalent in effect to the obligations laid down in this Directive if aIn order to safeguard ensure a coherent minimum standard of cybersecurity across all sectors, sector-specific Union legal acts referred to in paragraph 6 should shall include:~~

- ~~(a) cybersecurity risk management measures, that are, at a minimum, equivalent to those laid down in Article 18 paragraphs (1) and (2) of this Directive; or~~
- ~~(b) requirements to notify significant incidents and cyber threats that are, at a minimum, equivalent to those laid down in Article 20 paragraphs (1) through to (4) (6) and further include include:~~

~~(by the national competent authority under this Directive through a common reporting mechanism, where appropriate; or~~

~~(ii) where appropriate, automatic and direct forwarding of the notifications to the national competent authority under this Directive or the national Computer Security Incident Response TeamsCSIRTs designated in accordance with this Dirceective by the authority that receives incident notifications under the sector-specific Union legal act, where appropriate.~~

~~(c) concerning cross-border cooperation for the relevant authorities shall are be at least equivalent with those set out by in this Directive.~~

~~78. The Commission shall periodically review the application of the equivalent effect requirement in paragraph 6 in relation to sector-specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing those regular assessments periodical reviews and when developing the potential guidelines, recommendations on necessary actions or measures.~~

9. ~~When additional sector-specific provisions pertaining to cybersecurity risk management measures and notification obligations appear to be necessary to ensure a high levels of cybersecurity, the Commission should shall assess whether such provisions can be stipulated in an implementing act or a delegated act referred to in Article 18 (5) and (6) of this Directive.~~

Article 4
Definitions

(...)

- (2) ‘security of network, services and information systems’ means the ability of network, services and information systems to resist, at a given level of confidence, any ~~action~~ event that ~~may~~ compromises the availability, authenticity, integrity or confidentiality of stored data or transmitted or processed data or ~~of~~ the related services offered by, or accessible via, those network, services and information systems;
- (2a) ‘electronic communications services’ means electronics communications services within the meaning of Article 2(4) of Directive (EU) 2018/1972;
- (5) ‘incident’ means any event compromising the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems, **electronic communications services or trust services**;
- (16a) ‘trust services’ means trust services within the meaning of Article 3(16) of Regulation (EU) No 910/2014;
- (16b) qualified trust service provider’ means a qualified trust service provider within the meaning of Article 3(20) of Regulation (EU) No 910/2014;

(...)

Article 5
National cybersecurity strategy

(...)

- 1.(f) a policy framework for enhanced coordination between the competent authorities under this Directive and Directive (EU) XXXX/XXXX of the European Parliament and of the Council [Resilience of Critical Entities Directive] for the purposes of information sharing on **cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents and** the exercise of supervisory tasks, as appropriate.

(...)

Article 10
Requirements and Tasks of CSIRTs
(...)

- 3a. CSIRTs **may** ~~shall~~ establish cooperation relationships with national CERTs and CSIRTs of third countries. **As part of this cooperation, they** ~~and~~ may exchange relevant, necessary and proportionate information, **including personal data in accordance with Union law on data protection. in view of their tasks, which, in this context, can create an important reason of public interest**

Article 11
Cooperation at national level

(...)

4. To the extent necessary to effectively carry out the tasks and obligations laid down in this Directive, Member States shall ensure appropriate cooperation between the competent authorities and single points of contact and law enforcement authorities, data protection authorities, and the **competent authorities designated** responsible for critical infrastructure pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], **the competent authorities under Commission Implementing Regulation 2019/1583, the national regulatory authorities designated in accordance with Directive (EU) 2018/1972, the national authorities designated pursuant to Article 17 of Regulation (EU) No 910/2014, and the national financial authorities designated in accordance with Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [the DORA Regulation]], as well as competent authorities designated by **future other** sector-specific Union legal acts,** within that Member State.
5. Member States shall ensure that their competent authorities **under this Directive and the competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience**

~~of Critical Entities Directive]~~ regularly ~~exchange~~ provide information to competent authorities designated pursuant to Directive (EU) XXXX/XXXX [~~Resilience of Critical Entities Directive~~] on **the identification of critical entities, cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents** affecting essential entities identified as critical, or as entities equivalent to critical entities, pursuant to Directive (EU) XXXX/XXXX [~~Resilience of Critical Entities Directive~~], as well as the measures taken by competent authorities in response to those risks and incidents. **Member States shall also ensure that competent authorities under this Directive and the competent authorities designated under Regulation (XXXX/XXXX)[DORA Regulation], Directive 2018/1972 and Regulation (EU) 910/2014 regularly exchange relevant information.**

- 5a For the purposes ~~of~~ simplifying the reporting of ~~security incidents which entail a possible personal data breach~~, Member States ~~shall~~may establish a single-entry point for all notifications required under this Directive, as well as under Regulation (EU) 2016/679 and Directive 2002/58/EC, where appropriate, ~~when such incidents entail a possible potential personal data breach~~. Member States may integrate notifications required under other sector-specific Union legal acts in the single-entry-point. This single-entry point shall not affect the application of the provisions of Regulation (EU) 2016/679 and Directive 2002/58/EC, in particular those relating to independent ~~suprvisory~~supervisory authorities.

- 5b Member States shall ensure that their competent authorities under this Directive and the competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] regularly exchange information on cybersecurity risks, cyber threats and incidents affecting essential entities who may be financial entities or critical third party ICT service providers, pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation], as well as the measures taken by competent authorities in response to those risks and incidents.
- 5c Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law, including the exchange of information among competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] or competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] and competent authorities designated in accordance with Article 8 of this Directive.
- 5d Member States shall ensure that their competent authorities under this Directive and the supervisory bodies designated pursuant to Aarticle 17 of Regulation (EU) No 910/2014 regularly, and at least once per year, exchange information on cybersecurity risks, cyber threats and incidents affecting trust service providers.
- 5e ~~The providers of public electronic communications networks or electronic communications services available to the public referred to in Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code shall cooperate, as appropriate, with competent authorities designated under this Directive.~~

Article 12
Cooperation Group

(...)

3. The Cooperation Group shall be composed of representatives of Member States, the Commission and ENISA. The European External Action Service shall participate in the activities of the Cooperation Group as an observer. The European Supervisory Authorities (ESAs) in accordance with Article 17(5) **point** (c) of Regulation (EU) XXXX/XXXX [the DORA Regulation] may participate in the activities of the Cooperation Group. **A meeting with the participation of ESAs shall be held regularly, and, at least, once a year.**

~~4.(l) providing guidance and cooperating with the Commission on guidelines, recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in relation to the implementation of said those legal acts in order to ensure consistency with provisions under this Directive.~~

~~4.(m) adopting security rules on the protection of classified information and sensitive non-classified information in accordance with security principles and rules laid down in Commission Decisions 2015/443 and 2015/444 in connection with information sharing on cybersecurity risks, threats and incidents between the arrangements set out in Article 26 of this Directive and arrangements under Article 40 of Regulation (EU) XXXX/XXXX [DORA Regulation].~~

8. The Cooperation Group shall meet regularly and at least once a year with the Critical Entities Resilience Group established under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] to promote strategic cooperation and **facilitate** exchange of information.

Article 18
Cybersecurity risk management measures

- 1. This Directive applies an “all-hazard” approach that includes the protection and continuous operation of network and information systems and the physical protection from relevant industrial, natural and man-made risks that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems.**

Member States shall ensure that essential and important entities ~~shall~~ take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network, **services** and information systems which those entities use in the provision of their services. Having regard to the state of the art, those measures shall ensure a level of security of network, services and information systems appropriate to the risk presented.

(...)

- 5. The Commission may adopt implementing acts in order to lay down the technical and the methodological specifications, as well as sectoral specificities, as necessary, of the elements referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).** When ~~re~~ preparing ~~those~~ **such implementing** acts, the Commission shall ~~proceed in accordance with the examination procedure referred to in Article 37(2) and follow~~, to the greatest extent possible, **follow** international and European standards, as well as relevant technical specifications **and exchange advice with the Cooperation Group on the draft implementing act in accordance with Article 12(4)(d). -**

Article 21

Use of European cybersecurity certification schemes

1. In order to demonstrate compliance with certain requirements of Article 18 cybersecurity ~~risk management measures~~, Member States may require ~~all or certain groups of~~ essential and important entities to certify certain ~~use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014~~. Member States may ~~also~~ require entities to use particular ICT products, ICT services and ICT processes certified under specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. ~~The in order to demonstrate compliance or establish a presumption of conformity with certain requirements. The ICT products, services and processes subject to certification may be developed by an essential or important entity or procured from third parties.~~

~~1a. Member States may, rely on cybersecurity services providers certified under Regulation (EU) 2019/881 or national certification schemes in the absence of a relevant EU certification scheme to demonstrate compliance with certain requirements of Article 18, or to enforce the supervision activities foreseen in Articles 29 and 30.~~

Article 21a

Use of trust services or notified electronic identification schemes

~~In order to demonstrate compliance with certain requirements of Article 18 cybersecurity risk management measures referred to in Article 18, Member States may require all or certain groups of essential and important entities to certify certain use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014.~~

Article 29

Supervision and enforcement for essential entities

(...)

9. Member States shall ensure that their competent authorities **under this Directive** inform the relevant competent authorities **within that same** of the Member State ~~concerned~~ designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity identified as critical, or as an entity equivalent to a critical entity, under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] with the obligations pursuant to this Directive. **Where appropriate**, ~~Upon request of~~ competent authorities under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], **may request** competent authorities **under this Directive** **may to** exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical or equivalent.
10. Member States shall ensure that their competent authorities **under this Directive** inform the Oversight Forum pursuant to Article 29-(1) of Regulation (EU) XXXX/XXXX [DORA] when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity designated as critical ICT third-party service provider pursuant to Article 28 of Regulation (EU) XXXX/XXXX [DORA] with the obligations pursuant to this Directive.

Article 32

Infringements entailing a personal data breach

1. Where the competent authorities have indications **evidence-established** that the infringement by an essential or important entity of the obligations laid down in Articles 18 and 20 **of this Directive** entails a personal data breach, as defined by Article 4(12) of Regulation (EU) 2016/679 which shall be notified pursuant to Article 33 of that Regulation, they shall, **without undue delay**, inform the supervisory authorities competent pursuant to Articles 55 and 56 of that Regulation ~~within a reasonable period of time~~.

Article 35~~3~~6
Review
Exercise of the delegation

(...)

2. ~~The Commission shall periodically review the application of the equivalent effect requirement in Article 2(6) of this Directive in relation to sector specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing these regular assessments.~~ The power to adopt delegated acts referred to in Articles 18(6) and 21(2) shall be conferred on the Commission for a period of five years from [...]
3. The delegation of power referred to in Articles 18(6) and 21(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(...)

Article 38
Transposition

1. **By ... [18 24 months after the date of entry into force of this Directive],** Member States shall adopt and publish; **by ... [18 24 months after the date of entry into force of this Directive]**[□], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

_____ They shall apply those measures from ... [one day after the date referred to in the first subparagraph].

(...)

Article 39

Amendment of Regulation (EU) No 910/2014

In Regulation (EU) No 910/2014, Article 19 of Regulation (EU) No 910/2014 is deleted **with**
effect from... [-date of the transposition deadline of **this** Directive].

ANNEXES

With regard to trust service providers, a differentiation of the regulatory treatment between non-qualified and qualified trust service providers could be envisaged with the following proposed amendments in Annex I and II:

- iii) In Annex I point 8:- qualified trust service providers referred to in point (19) (20) of Article 3 of Regulation (EU) No 910/2014
- iv) In Annex II point 6:- non-qualified trust service providers referred to in point (19) of Article 3 of Regulation (EU) No 910/2014

With regard to providers of public electronic communications networks, a precision of the regulatory treatment for micro and small enterprises could be envisaged with the following proposed amendment in Annex I and II:

- ii) In Annex I point 8: - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available. This is not applicable to entities that qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

In Annex II point 6a (new) Digital infrastructure - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available when they qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

SPAIN

Spanish proposal on the interaction of NIS and sectoral legislation

AMENDMENT 1

Article 2 – paragraph 2 – point (a)

Text proposed by the Commission

2. However, regardless of their size, this Directive also applies to entities referred to in Annexes I and II, where:

(a) the services are provided by one of the following entities:

- (i) public electronic communications networks or publicly available electronic communications services referred to in point 8 of Annex I;
- (ii) trust service providers referred to point 8 of Annex I;
- (iii) top-level domain name registries and domain name system (DNS) service providers referred to in point 8 of Annex I;

Amendment

2. However, regardless of their size, this Directive also applies to entities referred to in Annexes I and II, where:

(a) the services are provided by one of the following entities:

- (i) public electronic communications networks or publicly available electronic communications services referred to in point 8 of Annex I **and point 6a of Annex II**;
- (ii) trust service providers referred to point 8 of Annex I;
- (iii) top-level domain name registries and domain name system (DNS) service providers referred to in point 8 of Annex I;

AMENDMENT 2

Annex I – table – row 8 – electronic communications

Text proposed by the Commission

— Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available

Amendment

— Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available. ***This is not applicable to entities that qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.***

AMENDMENT 3

Annex II – table – row 6a (new) – Digital Infrastructure

Amendment

Sector	Subsector	Type of entity
<i>6a Digital infrastructure</i>		— Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available <i>when they qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.</i>

JUSTIFICATION

Micro and small enterprises of telecommunications sector must be categorized as “important entities” instead of “essential entities”

Art. 2.2.a establishes that the Directive applies to **all** public electronic communications networks or publicly available electronic communications services referred to in point 8 of Annex I, **regardless of their size**. Therefore, all the operators are considered essential entities and shall be subject to ex-ante supervision.

This proposal would represent **a disproportionate increase in burden in the case of Spain, where more than 400 small local telecommunications operators are registered**. These companies lack of the necessary economic and human resources to comply with the highly demanding **ex-ante** requirements of article 29.

The general principle of exclusion of art. 2.1 leaves micro and small businesses (less than 50 employees or 10M€ turnover) out of the scope of the Directive with the aim of reducing compliance costs and administrative burden, as stated in the impact assessment. On the other hand, art. 30 establishes a reactive, ex-post supervision regime for important entities, light-touch and more proportional, *“with a view to ensuring a fair balance of obligations for both entities and competent authorities”*, as elaborated in recital (70).

A more balanced solution would be **to keep micro and small enterprises providers of electronic communications services and infrastructures in the scope of the Directive, but with the categorisation of important entities**. This approach would recognize their importance as a key element in the digital infrastructures’ ecosystem, ensuring their general compliance with the Directive, and at the same time minimizing administrative burden with the application of the ex-post supervision regime instead of ex-ante.

AMENDMENT 4

On Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), include the following reference in NIS2 proposal:

Add an article with this provision: “**The providers of public electronic communications networks or electronic communications services available to the public; referred to in Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code; will communicate to competent authority with the least possible delay the possible breaches of personal data and will cooperate to face them from their respective competences.**”

AMENDMENT 5

On REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

The new proposal of a Directive on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148 (henceforth referred to as NIS2) is, according to the text of the proposal, fully consistent with the Regulation (EU) No 910/2014 on trust services (eIDAS Regulation). We highlight that we do not agree with this assertion, and do think the text of the proposal is not fully consistent with the Regulation.

However, the NIS2 proposal envisions the repeal of the provisions laid down in the eIDAS Regulation related to the imposition of security and notification requirements on trust service providers. Article 39 of the NIS2 proposal deletes Article 19 of Regulation (EU) No 910/2014, and its provisions are superseded by those of the proposal for all trust service providers referred to point 8 of Annex I of the NIS2 proposal, including micro and small entities within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003. The NIS2 proposal seeks to repeal the entire supervisory mechanism instituted by Regulation (EU) No 910/2014 on trust services (eIDAS Regulation), including these as a subsector of “important entities”.

We most strongly oppose the provisions laid down in NIS2 proposal concerning trust services. We strongly request that trust services be eliminated as a subsector of essential entities in application of the principle of *lex specialis*, as in the current Directive.

The following paragraphs detail the three most problematic aspects of the provisions laid down in NIS2 proposal concerning trust services.

- First, the scope of assets to be supervised in the eIDAS Regulation is broader than that of the proposed Directive NIS2. The proposal is limited to the security of the information systems and networks that the entities use in the provision of services. The eIDAS Regulation supervises all dangers with an impact on the security of the trust service, from the Registration Authority (normally its network infrastructure will be from another company) to the procedures executed in the user environment and the user environment and its communications. For example, it also supervises the provision of the service itself (eg issuance of the certificate), as well as the use of the products (eg that certificate) that would be within the scope of the user. This derogation implies a removal of this security supervision.

The proposal refers only to "the security of network and information systems which those entities use in the provision of their services". It does not cover the security of issued certificates or smart cards, which do fall within the objective of article 19 eIDAS.

"Qualified and non-qualified trust service providers shall take appropriate technical and organizational measures to manage the risks posed to the security of the trust services they provide.". The security imposed by art. 19 of the eIDAS Regulation to trust services has a greater scope than the physical and logical infrastructures of the provider, to which the NIS2 proposal is limited. Under the proposal, an incident as serious as ROCA would not be reported.
- Second, the inclusion of the sector in the proposal gives the Member States the possibility to demand different technical security measures, when the eIDAS Regulation and its implementing acts impose common ones. It is precisely this fragmentation that motivated the conversion of the Electronic Signature Directive into the current eIDAS Regulation. The NIS2 proposal, in its article 18 (Cybersecurity risk management measures) places in the hands of the MS the cybersecurity measures that essential and important entities must take to ensure a level of security of their networks and information systems. The NIS2 only imposes very vague general guidelines on EMMs in this regard ("The measures referred to in paragraph 1 shall include at least the following: ..."). This is not the case in the eIDAS Regulation. Article 24 2 of eIDAS says, for example, in section e) that suppliers must use reliable systems and products that are protected against any alteration and that guarantee the security and technical reliability of the processes they support. And section f) says that they have to use reliable systems to store data.
- Third, the proposal applies the toughest supervisory regime to all companies in the sector, even small and micro-companies. The eIDAS Regulation has an ex ante supervision regime, similar to that of "essential entities", for qualified trust service providers and an ex post, similar to that of "important entities", for non-qualified ones. This follows the unanimous criterion of the supervisory authorities of the MS, who judge this level of supervision adequate to the relative importance of each provider. This tightening would have a pernicious effect on companies in the sector, undermining their already diminished competitiveness vis-à-vis suppliers from outside the EU."

AMENDMENT 6

On REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), include the following reference NISD2 proposal:

Add an article with this provision: **“The competent authority and the authorities responsible for data protection; referred to in on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); they will communicate with the least possible delay the possible breaches of personal data and will cooperate to address them from their respective competences.”**

AMENDMENT 7

On Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014

Article 11 Cooperation at national level

Amendment: Add a new section 11.6 with the following text: **“For the purposes of simplifying the reporting of security incidents, Member States should establish a single-entry point for all notifications required under this Directive and also under other Union law such as Regulation (EU) 2016/679 and Directive 2002/58/EC.”**

Justification

Regarding the notification of incidents, DORA (art. 17) includes the obligation of banking entities to notify serious incidents to the competent authority of the financial sector, which in turn will notify the European Banking and Financial Authorities and the NIS Single Point of Contact, establishing an incident notification procedure that could be parallel to that established by the NIS Directive.

However, DORA proposal does not include the CSIRT network in the notification process. This network has been in place for several years, is getting a high level of maturity and a lot of resources has been invested by the EU and Member States.

Recital 56, for the purposes of simplifying the reporting of security incidents, includes that: *“for the purposes of simplifying the reporting of security incidents, Member States should establish a single-*

entry point for all notifications required under this Directive and also under other Union law such as Regulation (EU) 2016/679 and Directive 2002/58/EC.”

This idea must be included in the articles. Article 11.1 only requires the coordination of authorities at a national level, but it does not impose this single entry point. It is very important to keep this point, and it represents a solution for other legislations and authorities, such as DORA. This national single point would distribute the information among the involved authorities and CSIRTs.

LATVIA

Regarding our comments on 9583/2/21 REV 2, we have 1 substantial comment:

44a:

Explanation of the abbreviation “MSSP” is needed. Also it should be explained what type of schemes for MSSP are planned with regards to the reference “consider the possibility of establishing relevant EU certification schemes” and compliance with 2019/881 should be checked.

NETHERLANDS

NL Written comments and drafting proposals on REV 2 of the Presidency compromise proposal on NIS 2 interaction with sectoral legislation

22 July 2021

The Netherlands would like to thank the Presidency for their efforts in compiling this revised compromised proposal. Please note that amendments on the articles and recitals below can be adjusted or expanded upon in the future.

Drafting proposals are highlighted in track changes below.

Art.	Compromise proposal REV2	Drafting proposal	Motivation
19	Postal service providers within the meaning of Directive 97/67/EC of the European Parliament and of the Council, as well as express and courier delivery service providers, should be subject to this Directive if they provide at least one of the steps in the postal delivery chain and in particular clearance, sorting or distribution, including pick-up services, while taking into due account the degree of their dependence on network and information systems . Transport services that are not undertaken in conjunction with one of those steps should fall outside of the scope of postal services.	-	- As mentioned in our written comments on article 2 and the annex, the Netherlands considers it necessary to have a substantive discussion on the sectors, subsectors and the definition of the type of entities covered in Annex I & II. At this stage, drafting proposals or comments on these specific recitals are not feasible. The discussion on recitals that relate to the scope of the NIS2 should be incorporated in this discussion.
26	Given the importance of international cooperation on cybersecurity, CSIRTs should be able to participate in international cooperation networks in addition to the CSIRTs network established by this Directive. CSIRTs should be	Given the importance of international cooperation on cybersecurity, CSIRTs should be able to participate in international cooperation networks in addition to the CSIRTs network established by this Directive. CSIRTs should be able to exchange	- Drafting proposal to clarify that the exchange of personal data by a CSIRT is an important reason of public interest (as described in art. 49 (1) from the GDPR), when it is performed in the execution of its tasks under this Directive.

	able to exchange information, including personal data, with national CERTs and CSIRTs of third countries. for the purposes of their tasks. Such disclosure or The exchange of such personal information that is considered necessary for the purposes of mitigating significant cyber threats and responding to an ongoing significant incident could be considered an may constitute important reasons of public interest.	information, including personal data, with national CERTs and CSIRTs of third countries. for the purposes of their tasks. Such disclosure or Such exchanges of personal data could be considered to constitute important reasons of public interest, to the extent that this is necessary for the purpose of the tasks of the CSIRT and thereby for ensuring network and information security for essential and important entities, especially in case of significant cyber threats and incidents having a significant impact on the provision of services. may constitute.	<ul style="list-style-type: none"> - NL is available to provide further clarification if necessary.
44a	National competent authorities, in the context of their supervisory tasks, may also benefit from MSSP services such as security audits and penetration testing. To assist entities as well as national competent authorities in selecting skilled and trustworthy MSSPs, the Commission with the assistance of the Cooperation Group and ENISA, should consider the possibility of establishing relevant EU certification schemes, where appropriate under the Regulation 2019/881.	-	<ul style="list-style-type: none"> - Study reservation.
80	In order to take into account new cyber threats, technological developments or sectorial specificities, the power to adopt	The Commission should be empowered to adopt implementing acts establishing which categories of essential entities shall be required to	<ul style="list-style-type: none"> - For consistency with our drafting proposals on article 21, submitted on 24 June.

	<p>acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the elements in relation to risk management measures required by this Directive. The Commission should also be empowered to adopt delegated acts establishing which categories of essential entities shall be required to obtain a certificate and under which specific European cybersecurity certification schemes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>	<p>obtain a certificate and under which specific European cybersecurity certification schemes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>	
4 (5)	<p>'incident' means any event compromising the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and</p>		<ul style="list-style-type: none"> - The "related services" for telecom & trust sector also encompass electronic communications services or trust services; so this definition does not fit for these two sectors.

	information systems, electronic communications services or trust services;		
18	<p>[...]</p> <p>Member States shall ensure that essential and important entities shall take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network, services and information systems which those entities use in the provision of their services. Having regard to the state of the art, those measures shall ensure a level of security of network, services and information systems appropriate to the risk presented.</p>	<p>Member States shall ensure that essential and important entities shall take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which those entities use in the provision of their services. Having regard to the state of the art, those measures shall ensure a level of security of network, services and information systems appropriate to the risk presented.</p>	<ul style="list-style-type: none"> - Services are not a part of network- and information systems. A service is something which is provided to third parties and that is already covered by "provision of their services".
21 (2)	<p>The Commission shall be empowered to adopt delegated implementing acts specifying which categories of essential entities shall be required to use certain certified ICT products, ICT services and ICT processes or obtain a certificate and under which specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. pursuant to paragraph 1 Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2). When preparing the such</p>	<p>The Commission shall be empowered to adopt delegated implementing acts specifying which categories of essential and/or important entities shall be required to use certain certified ICT products, ICT services and ICT processes or obtain a certificate and under which specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. pursuant to paragraph 1 Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2). When preparing the such implementing acts, the Commission shall:</p>	<ul style="list-style-type: none"> - This should also be possible for important entities.

	implementing acts, the Commission shall: [...]	[...]	
39	In Regulation (EU) No 910/2014 , Article 19 of Regulation (EU) No 910/2014 is deleted with effect from... [date of the transposition deadline of this Directive] .		<ul style="list-style-type: none"> - The security requirements in the eIDAS regulation have a broader scope than in the NIS directive. Hence removing these requirements from the eIDAS-regulation will lead to a security and notification gap. - This may lead to deharmonisation of the supervisory regime on security requirements in trust services and hence more fragmentation of the internal market of trust services. - Coherence in eIDAS is reduced, repairs in the revision of the eIDAS might be unnecessarily complicated
40	In Directive (EU) 2018/1972 , Articles 40 and 41 of Directive (EU) 2018/1972 are deleted with effect from... [date of the transposition deadline of this Directive] .	Study reservation	As stated in the analysis on the coherence between EEC and NIS2 that was distributed in the HWP-CI, the Netherlands has concerns related to the deletion of article 40 and 41 from the EEC. The Netherlands has taken note of the non-paper that was distributed by the Presidency recently and is still studying its content. The Netherlands will come up with a more substantive reply later.

Recitals

- (12) This Directive sets out the baseline for cybersecurity risk management measures and reporting obligations across all sectors that fall within its scope. In order to avoid unnecessary fragmentation of cybersecurity provisions of Union legal acts, when additional sector-specific provisions pertaining to cybersecurity risk management measures and reporting obligations appear to be necessary to ensure **a high levels** of cybersecurity, **an assessment should be considered made** by the Commission after consultation with Member States in the program committee/expert group **should assess as to** whether such provisions could be stipulated in an implementing **act** or **a** delegated act. Should such acts not be suitable for **that purpose**, sector-specific legislation **and instruments could** contribute to ensuring **a** high levels of cybersecurity, while taking full account of the specificities and complexities of ~~these~~ **the** sectors **concerned**. **At the same time, such sector-specific provisions of Union legal acts should duly take into account of the need for a comprehensive and consistent harmonised** cybersecurity framework. ~~This Directive does not preclude the adoption of additional sector-specific Union acts addressing cybersecurity risk management measures and incident notifications. This Directive is without prejudice to the existing implementing powers that have been conferred to on the Commission in a number of sectors, including transport and energy.~~

(12a) Where a sector-specific Union legal act **contains provisions requiring** essential or important entities to adopt **measures of at least an equivalent effect to the obligations laid down in this Directive related to** cybersecurity risk management measures **and obligations** to notify **significant** incidents or ~~significant~~ cyber threats of at least an equivalent effect to the obligations laid down in this Directive, those sector-specific provisions, **including on supervision and enforcement**, should apply. ~~Where the respective Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, the latter should also apply.~~ When determining the equivalent effect of ~~the~~ obligations set out in the sector-specific provisions of an Union legal act, the following aspects should be considered: (i) the cybersecurity risk management measures should consist of appropriate and proportionate governance requirements and technical and organisational measures to manage the risks posed to the security of network and information systems which the relevant entities use in the provision of their services, and should include as a minimum all the elements laid down in this Directive; (ii) the ~~requirement~~ **obligation** to notify significant incidents and cyber threats should (be at least equivalent ~~with/reflect at the minimum~~) **to** the obligations set out in this Directive as regards the content, format and timelines of the notifications; (iii) the reporting modalities ~~by entities and the relevant o~~ **authorities** of sector-specific Union legal acts should (be at least equivalent ~~with to /reflect at the a minimum~~) the requirements set out in this Directive as regards their content, format and timelines and should take into account the role of ~~the~~ CSIRTs; (iv) the cross-border cooperation requirements for the relevant authorities should (be at least equivalent ~~with to /reflect at the a minimum~~) those set out ~~by in~~ this Directive. If the sector-specific provisions of a Union legal act do not cover all entities in a specific sector falling within the scope of this Directive, the **relevant** provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

The Commission should ~~regularly~~ **periodically review** the application of the equivalent effect requirement in relation to sector-specific provisions of Union legal acts and ~~may~~ **can** issue guidelines ~~or~~ recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in order to address ~~possible~~ **potential** gaps with ~~in relation to provisions under~~ this Directive. ~~relation to the implementation of the *lex specialis*.~~ The Commission ~~shall~~ **is to** consult the Cooperation Group when preparing the ~~regular~~ **periodical review** and developing ~~those~~ **potential guidelines, recommendations and measures.**

(12aab) Key-Sector-specific Union legal acts should take account of the Key definitions outlined in Article 4 of this Directive. ~~should serve as a baseline for sector-specific Union legal acts.~~

(12aba) Where sector-specific provisions of Union legal acts require essential or important entities to adopt measures of at least ~~an~~ equivalent effect to the **reporting** obligations laid down in this Directive, overlapping ~~of~~ reporting obligations should be avoided, and coherence and effectiveness of handling of notifications of cyber threats or incidents should be ensured. For ~~that is~~ purpose, ~~the above-mentioned those~~ sector-specific provisions ~~may can~~ **provide for** allow Member States to establish a common, automatic and direct reporting mechanism for **notifying** significant incidents and cyber threats to both the authorities whose tasks are set out in the respective sector-specific provisions and the competent authorities, including the single point of contact and CSIRTs as appropriate, responsible for the cybersecurity tasks provided for in this Directive, **or** for a mechanism that ensures systematic and immediate sharing of information and cooperation among the relevant authorities and CSIRTs concerning the handling of such notifications. For the purposes of simplifying reporting and ~~for of~~ **implementing** the common, automatic and direct reporting mechanism, Member States **can** utilise the single-entry point they establish according to Article 11(5a) of this Directive. To ensure harmonisation, reporting obligations of sector-specific Union legal acts should be aligned with those specified under this Directive.

- (13) Regulation XXXX/XXXX of the European Parliament and of the Council should be considered to be a sector-specific Union legal act in relation to this Directive with regard to ~~the~~ financial sector entities. The provisions of Regulation XXXX/XXXX relating to information and communications technology (ICT) risk management measures, management of ICT-related incidents and notably incident reporting, as well as on digital operational resilience testing, information sharing arrangements and ICT third party risk should apply instead of those set up **out in** this Directive. Member States should therefore not apply the provisions of this Directive on cybersecurity risk management, ~~information sharing~~ and reporting obligations, and supervision and enforcement to ~~any~~ financial entities covered by Regulation XXXX/XXXX. At the same time, it is important to maintain a strong relationship and the exchange of information with the financial sector under this Directive. To that end, Regulation XXXX/XXXX allows ~~all financial supervisors~~, the European Supervisory Authorities (ESAs) for the financial sector and the national competent authorities under Regulation XXXX/XXXX, to participate in ~~the strategic policy discussions and technical~~ **work of** workings of the Cooperation Group, and to exchange information and cooperate with the single points of contact designated under this Directive, ~~and~~ **as well as** with the national CSIRTs. The competent authorities under Regulation XXXX/XXXX should transmit details of major ICT-related incidents **and significant cyber threats** also to the single points of contact ~~or the national CSIRTs~~ designated under this Directive. **This can be achieved, for example, by automatic and direct forwarding of incident notifications or a common reporting platform.** Moreover, Member States should continue to include the financial sector in their cybersecurity strategies and national CSIRTs ~~may~~ **can** cover the financial sector in their activities.

- (13a) In order to avoid gaps **between** and duplications of cybersecurity obligations imposed on entities in the aviation sector referred to in **point 2 (a) of Annex I-(2) (a)**, competent authorities under **Regulations 300/2008, 2018/1139 and this Directive**~~Commission Implementing Regulation 2019/1583~~ and competent authorities under this Directive should cooperate in relation to the implementation of cybersecurity risk management measures and the supervision of those measures at national level. The compliance of an entity with the cybersecurity risk management measures under this Directive ~~may~~**can** be considered by the competent authorities under **Regulations 300/2008 and 2018/1139**~~Commission Implementing Regulation 2019/1583 as compliant~~ with the requirements laid down in ~~that Commission Implementing Regulation 2019/1583~~.
- (14) In view of the interlinkages between cybersecurity and the physical security of entities, a coherent approach should be ensured between Directive (EU) XXX/XXX of the European Parliament and of the Council and this Directive. To achieve this, Member States should ensure that critical entities, and equivalent entities, pursuant to Directive (EU) XXX/XXX are considered **to be as** essential entities under this Directive. Member States should also ensure that their cybersecurity strategies provide for a policy framework for enhanced coordination between the competent authority under this Directive and the one under Directive (EU) XXX/XXX in the context of information sharing on incidents, and cyber threats, and the exercise of supervisory tasks. **Competent** authorities under both Directives should cooperate and exchange information, particularly in relation to the identification of critical entities, cyber threats, cybersecurity risks, incidents **as well as on non-cyber risks, threats and incidents** affecting critical entities or **entities equivalent to critical entities**, ~~as well as on~~ **including** the cybersecurity **and physical** measures taken by critical entities **and the results of supervisory measures**~~activities~~ carried out with regard to such entities. Furthermore, in order to streamline supervisory activities between the competent authorities designated under both directives and in order to minimise the administrative burden for the entities **concerned**, competent authorities should endeavour to align incident notification templates and supervisory processes. ~~Upon request of~~

Where appropriate, competent authorities under Directive (EU) XXX/XXX, **may can** request competent authorities under this Directive ~~should be allowed~~ to exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical. Both **Competent** authorities under both Directives should cooperate and exchange information for **that** purpose.

(14a) Union law on the protection of personal data and privacy applies to any processing of personal data falling within the scope of under this Directive. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council and therefore should not affect notably the tasks and powers of the independent supervisory authorities competent to monitor compliance with the respective Union data protection law.

~~**(19)**~~ Postal service providers within the meaning of Directive 97/67/EC of the European Parliament and of the Council¹⁸, as well as express and courier delivery service providers, should be subject to this Directive if they provide at least one of the steps in the postal delivery chain and in particular clearance, sorting or distribution, including pick-up services, **while taking into due account of the degree of their dependence on network and information systems.** Transport services that are not undertaken in conjunction with one of those steps should fall outside of the scope of postal services-

(23) Competent authorities or the CSIRTs should receive notifications of incidents from entities in an effective and efficient way, **also with a view to facilitate, where appropriate, a timely response to incidents in accordance with Article 10(2c) and to provide a response to the notifying entity in accordance with Article 20(5).** The single points of contact should be tasked with forwarding incident notifications to the single points of contact of other affected Member States. At the level of Member States' authorities, to ensure one single entry point in every Member States, the single points of contacts should also be the addressees of relevant information on **major ICT incidents and significant cyber threats** concerning financial sector entities from the competent authorities under Regulation XXXX/XXXX.

For **that** purpose, Member States **may can** determine that competent authorities **under this Directive** or national CSIRTs are **the** addressees of the notifications in accordance with Regulation EU [of Regulation XXX DORA], ~~which they should be able to forward, as appropriate, to the relevant national competent authorities or CSIRTs under this Directive.~~

- (23a) ~~Competent authorities of~~ **under** The sector-specific **Union legal acts which require cybersecurity risk management measures or notification reporting obligations of at least equivalent effect with those laid down in this Directive** ~~sector-specific lex specialis may~~ **could provide that their designated competent authorities exercise their supervisory and enforcement powers in relation to such measures or obligations with** ~~exercise the supervision and enforcement over as regards obligations given provided for in those sector-specific lex specialis with the assistance of the competent~~ **authorities** designated in accordance with this Directive. **In order to achieve this, the** competent authorities concerned ~~should~~ **could** establish effective cooperation arrangements **for this purpose**. Such cooperation arrangements ~~shall~~ **should** specify, amongst others, the procedures concerning the coordination of supervisory activities, including the procedures of investigations and on-site inspections in accordance with the national law and **a** mechanism for the exchange of information between competent authorities, including access to information requested by competent **authorities** designated in accordance with this Directive.

- (26) Given the importance of international cooperation on cybersecurity, CSIRTs should be able to participate in international cooperation networks in addition to the CSIRTs network established by this Directive. CSIRTs should be able to exchange information, including personal data, with national CERTs and CSIRTs of third countries ~~for the purposes of their tasks. Such disclosure or~~ **The exchange of such personal information that is considered necessary for the purposes of mitigating significant cyber threats and responding to an ongoing significant incident could be considered an** ~~may constitute~~ important reasons of public interest.
- (40) Risk-management measures should **take into account the degree of dependence of the entity on network and information systems and** include measures to identify any risks of incidents, to prevent, detect and handle incidents and to mitigate their impact. The security of network and information systems should comprise the security of stored, transmitted and processed data.
- (40a) As threats to the security of network and information systems can have different origins, this Directive applies an “all-hazard” approach that includes the protection of network and information systems and their physical environment from any event such as theft, fire, flood, telecommunications ~~or power failures,~~ power failures or from any unauthorised physical access and damage to and interference with the organisation’s information and information processing facilities that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of ~~the related~~ services offered by, or accessible via, network and information systems. The risk- management measures should therefore ~~in particular~~ **also** address the physical and environmental security by including measures to protect the entity’s network and information systems from system failures, human error, malicious actions or natural phenomena in line with internationally recognised standards, such as **those** included in **the** ISO 27000 series. Those measures should be **in line coherent** with Directive XXXX [CER Directive].

(44a) National competent authorities, in the context of their supervisory tasks, may also benefit from MSSP services such as security audits and penetration testing. To assist entities as well as national competent authorities in selecting skilled and trustworthy MSSPs, the Commission with the assistance of the Cooperation Group and ENISA, should consider the possibility of establishing relevant EU certification schemes, where appropriate and in line with the Regulation 2019/881.

- (48) In order to streamline the legal obligations imposed on providers of public electronic communications networks or publicly available electronic communications services, and trust service providers related to the security of their network and information systems, as well as to enable those entities and their respective competent authorities to benefit from the legal framework established by this Directive (including designation of CSIRT responsible for risk and incident handling, participation of competent authorities and bodies in the work of the Cooperation Group and the CSIRT network), they should be included in the scope of application of this Directive. The corresponding provisions laid down in Regulation (EU) No 910/2014 of the European Parliament and of the Council and Directive (EU) 2018/1772 of the European Parliament and of the Council related to the imposition of security and notification requirements on those types of entities should therefore be repealed and appropriately complemented in this Directive. The rules on reporting obligations should be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council.

- (49) Where appropriate and to avoid unnecessary disruption, existing national guidelines ~~and national legislation~~ adopted for the transposition of the rules related to security measures laid down in Articles ~~40(1)~~ and 41 of Directive (EU) 2018/1972, ~~as well as of the requirements of Article 40(2) of that Directive concerning the parameters related to the significance of an incident, should continue to be used by the competent authorities in charge of supervision and enforcement for the purposes of this Directive~~ **should** be taken into account in transposition arrangements implemented by the Member States in relation to this Directive, thereby building on the knowledge and skills already acquired under Directive (EU) 2018/1972 concerning security risk management measures and incident notifications. ENISA ~~may can~~ also develop guidance **documentation** on security and reporting **requirements arrangements** for **providers of public electronic communication networks or publicly available electronic communication services entities that were subject to obligations from under Directive (EU) 2018/1972** to facilitate harmonisation, transition and minimise disruption. Member States ~~may can~~ assign the role of competent authorities for electronic communications to the national regulatory authorities in order to ensure the continuation of current practices and to build on the knowledge and experience gained in Directive (EU) 2018/1972.
- (69) ~~The processing of personal data, to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, the processing of personal data by essential and important entities, public authorities, CERTs, CSIRTs, and providers of security technologies and services~~ **or the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe and cybersecurity information sharing arrangements established under this Directive** should constitute a legitimate interest of the data controller concerned, ~~as referred to in Regulation (EU) 2016/679 and~~ **Processing of personal data by competent authorities, SPOCs and CSIRTs should be laid down in the processing of personal data within the Cooperation Group, CSIRT network and CyCLONe established under this Directive should be laid down in Union or national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679.**

—That should include measures related to the prevention, detection, analysis and response to incidents, measures to raise awareness in relation to specific cyber threats, exchange of information in the context of vulnerability remediation and coordinated disclosure, as well as the voluntary exchange of information on those incidents, as well as cyber threats and vulnerabilities, indicators of compromise, tactics, techniques and procedures, cybersecurity alerts and configuration tools. Such measures may require the processing of the following various types of personal data, such as: IP addresses, uniform resources locators (URLs), domain names, and email addresses.

—**Processing of personal data by competent authorities, SPOCs and CSIRTs should be laid down in national law and considered necessary for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, as referred to in Article 6(1) point (c) or (e) of Regulation (EU) 2016/679.**

(69a) Competent authorities, SPOCs and CSIRTs can, to the extent that is strictly necessary and proportionate for the purpose of ensuring the security of network and information systems of essential and important entities, process special categories of personal data in accordance with Article 9(1) of Regulation (EU) 2016/679, in particular by providing for suitable and specific measures to safeguard the fundamental rights and interests of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.

(80) In order to take account of new cyber threats, technological developments or sectorial specificities, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the elements in relation to risk management measures required by this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making³. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

³ OJ L 123, 12.5.2016, p. 1.

Articles

Article 2

Scope

(...)

- 3a This Directive is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.

~~To the extent that is necessary and proportionate for the purposes of ensuring the security of network and information systems of essential and important entities, competent authorities, SPOCs and CSIRTs may process special categories of personal data referred to in Article 9 (1) of Regulation (EU) 2016/679, subject to appropriate safeguards for the fundamental rights and freedoms of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.~~

6. Where ~~provisions of~~ sector-specific Union legal acts of Union law require essential or important entities either to adopt cybersecurity risk management measures or to notify significant incidents or significant cyber threats, and where those requirements are at least equivalent in effect to the obligations laid down in this Directive, the relevant provisions of this Directive, ~~including the provisions on supervision and enforcement~~ laid down in Chapter VI, shall not apply to ~~those such~~ entities. ~~Where the respective sector-specific Union legal act containing such sector-specific provisions lays down corresponding rules on supervision and enforcement, Chapter VI of this Directive should shall not apply to those such entities either.~~ If sector-specific Union legal acts do not cover all entities in a specific sector falling within the scope of this Directive, the relevant provisions of this Directive should continue to apply to the entities not covered by those sector-specific provisions.

- ~~7.~~ The requirements referred above in this paragraph shall be considered equivalent in effect to the obligations laid down in this Directive if ~~a~~ in order to safeguard ensure a coherent minimum standard of cybersecurity across all sectors, sector-specific Union legal acts referred to in paragraph 6 should shall include:
- (a) cybersecurity risk management measures, ~~that are~~, at a minimum, equivalent to those laid down in Article 18 ~~paragraphs (1) and (2)~~ of this Directive; ~~or~~
 - (b) requirements to notify significant incidents or cyber threats ~~that are~~, at a minimum, equivalent to those laid down in Article 20 ~~paragraphs (1) through to (4)~~ ~~(6)~~ and further include:
 - (i) where appropriate, automatic and direct access to the incident notifications ~~by the national competent authority under this Directive through a common reporting mechanism, where appropriate; or~~
 - ~~(ii) where appropriate, automatic and direct forwarding of the notifications to the national competent authority under this Directive or the national Computer Security Incident Response Teams CSIRTs designated in accordance with this Directive by the authority that receives incident notifications under the sector-specific Union legal act, where appropriate.~~
 - ~~(c) concerning cross border cooperation for the relevant authorities shall are be at least equivalent with those set out by in this Directive.~~
- ~~78.~~ The Commission shall periodically review the application of the equivalent effect requirement in paragraph 6 in relation to sector-specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing those regular assessments ~~periodical reviews~~ and ~~when~~ developing the potential guidelines, recommendations on necessary actions or measures.

9. ~~When additional sector-specific provisions pertaining to cybersecurity risk management measures and notification obligations appear to be necessary to ensure a high levels of cybersecurity, the Commission should shall assess whether such provisions can be stipulated in an implementing act or a delegated act referred to in Article 18 (5) and (6) of this Directive.~~

Article 4
Definitions

(...)

- (2) ‘security of network, services and information systems’ means the ability of network, services and information systems to resist, at a given level of confidence, any ~~action~~ event that ~~may~~ compromises the availability, authenticity, integrity or confidentiality of stored data or transmitted or processed data or ~~of~~ the related services offered by, or accessible via, those network, services and information systems;
- (2a) ‘electronic communications services’ means electronics communications services within the meaning of Article 2(4) of Directive (EU) 2018/1972;
- (5) ‘incident’ means any event compromising the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems, **electronic communications services or trust services**;
- (16a) ‘trust services’ means trust services within the meaning of Article 3(16) of Regulation (EU) No 910/2014;
- (16b) qualified trust service provider’ means a qualified trust service provider within the meaning of Aarticle 3(20) of Regulation (EU) No 910/2014;

(...)

Article 5
National cybersecurity strategy

(...)

- 1.(f) a policy framework for enhanced coordination between the competent authorities under this Directive and Directive (EU) XXXX/XXXX of the European Parliament and of the Council [Resilience of Critical Entities Directive] for the purposes of information sharing on **cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents and** the exercise of supervisory tasks, as appropriate.

(...)

Article 10
Requirements and Tasks of CSIRTs
(...)

- 3a. CSIRTs ~~may~~ **shall** establish cooperation relationships with national CERTs and CSIRTs of third countries. **As part of this cooperation, they** ~~and may~~ exchange relevant, necessary and proportionate information, **including personal data in accordance with Union law on data protection. in view of their tasks, which, in this context, can create an important reason of public interest**

Article 11
Cooperation at national level

(...)

4. To the extent necessary to effectively carry out the tasks and obligations laid down in this Directive, Member States shall ensure appropriate cooperation between the competent authorities and single points of contact and law enforcement authorities, data protection authorities, and the **competent authorities designated** ~~responsible for critical infrastructure pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive]], the competent authorities under Commission Implementing Regulation 2019/1583, the national regulatory authorities designated in accordance with Directive (EU) 2018/1972, the national authorities designated pursuant to Article 17 of Regulation (EU) No 910/2014, and the national financial authorities designated in accordance with Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [the DORA Regulation]], as well as competent authorities designated by **future other** sector-specific Union legal acts,~~
5. Member States shall ensure that their competent authorities **under this Directive and the competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience**

of Critical Entities Directive] regularly ~~exchange~~ provide information to competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] on the identification of critical entities, cybersecurity risks, cyber threats and incidents as well as on non-cyber risks, threats and incidents affecting essential entities identified as critical, or as entities equivalent to critical entities, pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], as well as the measures taken by competent authorities in response to those risks and incidents. **Member States shall also ensure that competent authorities under this Directive regularly exchange relevant information with competent authorities designated under Regulation (XXXX/XXXX)[DORA Regulation], Directive 2018/1972 and Regulation (EU) 910/2014.**

- 5a For the purposes ~~of simplifying the reporting of security incidents which entail a possible personal data breach~~, Member States ~~shall~~may establish a single-entry point for all notifications required under this Directive, as well as under Regulation (EU) 2016/679 and Directive 2002/58/EC, where appropriate, ~~when such incidents entail a possible potential personal data breach~~. Member States may integrate notifications required under other sector-specific Union legal acts in the single-entry-point. This single-entry point shall not affect the application of the provisions of Regulation (EU) 2016/679 and Directive 2002/58/EC, in particular those relating to independent ~~suprvisory~~supervisory authorities.

- 5b Member States shall ensure that their competent authorities under this Directive and the competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] regularly exchange information on cybersecurity risks, cyber threats and incidents affecting essential entities who may be financial entities or critical third party ICT service providers, pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation], as well as the measures taken by competent authorities in response to those risks and incidents.
- 5c Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law, including the exchange of information among competent authorities designated pursuant to Regulation (EU) XXXX/XXXX [DORA Regulation] or competent authorities designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] and competent authorities designated in accordance with Article 8 of this Directive.
- 5d Member States shall ensure that their competent authorities under this Directive and the supervisory bodies designated pursuant to Aarticle 17 of Regulation (EU) No 910/2014 regularly, and at least once per year, exchange information on cybersecurity risks, cyber threats and incidents affecting trust service providers.
- 5e ~~The providers of public electronic communications networks or electronic communications services available to the public referred to in Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code shall cooperate, as appropriate, with competent authorities designated under this Directive.~~

Article 12
Cooperation Group

(...)

3. The Cooperation Group shall be composed of representatives of Member States, the Commission and ENISA. The European External Action Service shall participate in the activities of the Cooperation Group as an observer. The European Supervisory Authorities (ESAs) in accordance with Article 17(5) **point** (c) of Regulation (EU) XXXX/XXXX [the DORA Regulation] may participate in the activities of the Cooperation Group. **A meeting with the participation of ESAs shall be held regularly, and, at least, once a year.**

~~4.(l) providing guidance and cooperating with the Commission on guidelines, recommendations on necessary actions or measures to be taken by the competent authorities designated under sector-specific Union legal acts in relation to the implementation of said those legal acts in order to ensure consistency with provisions under this Directive.~~

~~4.(m) adopting security rules on the protection of classified information and sensitive non-classified information in accordance with security principles and rules laid down in Commission Decisions 2015/443 and 2015/444 in connection with information sharing on cybersecurity risks, threats and incidents between the arrangements set out in Article 26 of this Directive and arrangements under Article 40 of Regulation (EU) XXXX/XXXX [DORA Regulation].~~

8. The Cooperation Group shall meet regularly and at least once a year with the Critical Entities Resilience Group established under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] to promote strategic cooperation and **facilitate** exchange of information.

Article 18
Cybersecurity risk management measures

- 1. This Directive applies an “all-hazard” approach that includes the protection of network and information systems and the physical protection from relevant natural and man-made risks that could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the related services offered by, or accessible via, network and information systems.**

Member States shall ensure that essential and important entities ~~shall~~ take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network, **services** and information systems which those entities use in the provision of their services. Having regard to the state of the art, those measures shall ensure a level of security of network, services and information systems appropriate to the risk presented.

(...)

- 5.** The Commission may adopt implementing acts in order to lay down the technical and the methodological specifications, **as well as sectoral specificities, as necessary,** of the elements referred to in paragraph 2 **of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).** When ~~re~~ preparing ~~those~~ **such implementing** acts, the Commission shall ~~proceed in accordance with the examination procedure referred to in Article 37(2) and follow,~~ to the greatest extent possible, **follow** international and European standards, as well as relevant technical specifications **and exchange advice with the Cooperation Group on the draft implementing act in accordance with Article 12(4)(d).**

Article 21

Use of European cybersecurity certification schemes

1. In order to demonstrate compliance with certain requirements of Article 18 cybersecurity ~~risk management measures~~, Member States may require ~~all or certain groups of~~ essential and important entities to certify certain ~~use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014~~. Member States may ~~also~~ require entities to use particular ICT products, ICT ~~ICT~~ services and ICT ~~ICT~~ processes certified under specific European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. ~~The in order to demonstrate compliance or establish a presumption of conformity with certain requirements. The~~ ICT products, services and processes subject to certification may be developed by an essential or important entity or procured from third parties.

~~1a. Member States may, rely on cybersecurity services providers certified under Regulation (EU) 2019/881 or national certification schemes in the absence of a relevant EU certification scheme to demonstrate compliance with certain requirements of Article 18, or to enforce the supervision activities foreseen in Articles 29 and 30.~~

2. The Commission ~~can~~ adopt ~~delegated~~ **implementing** acts specifying which categories of essential entities ~~may~~ be required to use certain certified ICT products, ICT ~~ICT~~ services and ICT ~~ICT~~ processes or obtain a certificate ~~and under which~~ specific European cybersecurity certification schemes **adopted pursuant to Article 49 of Regulation (EU) 2019/881**. ~~pursuant to paragraph 1 The delegated acts shall be adopted in accordance with Article 36.~~ **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).** When preparing ~~the such~~ implementing acts, the Commission shall:

(i) take into account the impact of the measures on the manufacturers or providers of such ICT products, services or processes and on the users in terms of the cost of those measures and the societal or economic benefits stemming from the anticipated enhanced level of security for the targeted ICT products, services or processes;

(ii) carry out an open, transparent and inclusive consultation process with all relevant stakeholders and Member States;

(iii) take into account any implementation deadlines, transitional measures and periods, in particular with regard to the possible impact of the measures on the manufacturers or providers of ICT products, services or processes, particularly SMEs;

3. The Commission may request ENISA to prepare a candidate scheme **or to review an existing European cybersecurity certification scheme** pursuant to Article 48(2) of Regulation (EU) 2019/881 in cases where no appropriate European cybersecurity certification scheme for the purposes of paragraph 2 **of this Article** is available.

Article 21a

Use of trust services or notified electronic identification schemes

In order to demonstrate compliance with certain requirements of Article 18 cybersecurity risk management measures referred to in Article 18, Member States may require all or certain groups of essential and important entities to certify certain use trust services or notified electronic identification schemes under Regulation (EU) No 910/2014.

Article 29

Supervision and enforcement for essential entities

(...)

9. Member States shall ensure that their competent authorities **under this Directive** inform the relevant competent authorities **within that same** of the Member State ~~concerned~~ designated pursuant to Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity identified as critical, or as an entity equivalent to a critical entity, under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive] with the obligations pursuant to this Directive. **Where appropriate**, ~~Upon request of~~ competent authorities under Directive (EU) XXXX/XXXX [Resilience of Critical Entities Directive], **may request** competent authorities **under this Directive** **may to** exercise their supervisory and enforcement powers **on-in relation to** an essential entity identified as critical or equivalent.
10. Member States shall ensure that their competent authorities **under this Directive** inform the Oversight Forum pursuant to Article 29-(1) of Regulation (EU) XXXX/XXXX [DORA] when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity designated as critical ICT third-party service provider pursuant to Article 28 of Regulation (EU) XXXX/XXXX [DORA] with the obligations pursuant to this Directive.

Article 32

Infringements entailing a personal data breach

1. Where the competent authorities have indications **evidence-established** that the infringement by an essential or important entity of the obligations laid down in Articles 18 and 20 **of this Directive** entails a personal data breach, as defined by Article 4(12) of Regulation (EU) 2016/679 which shall be notified pursuant to Article 33 of that Regulation, they shall, **without undue delay**, inform the supervisory authorities competent pursuant to Articles 55 and 56 of that Regulation ~~within a reasonable period of time~~.

Article 35
Review
Exercise of the delegation

(...)

2. ~~The Commission shall periodically review the application of the equivalent effect requirement in Article 2(6) of this Directive in relation to sector specific provisions of Union legal acts. The Commission shall consult the Cooperation Group when preparing these regular assessments.~~ The power to adopt delegated acts referred to in Articles 18(6) and 21(2) shall be conferred on the Commission for a period of five years from [...]
3. The delegation of power referred to in Articles 18(6) and 21(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(...)

Article 38
Transposition

1. **By ... [18 24 months after the date of entry into force of this Directive],** Member States shall adopt and publish; **by ... [18 24 months after the date of entry into force of this Directive]**, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

_____ They shall apply those measures from ... [one day after the date referred to in the first subparagraph].

(...)

Article 39

Amendment of Regulation (EU) No 910/2014

In Regulation (EU) No 910/2014, Article 19 of Regulation (EU) No 910/2014 is deleted **with** effect from... [-date of the transposition deadline of **this** Directive].

Article 40

Amendment of Directive (EU) 2018/1972

In Directive (EU) 2018/1972, Articles 40 and 41 of Directive (EU) 2018/1972 are deleted **with** effect from... [-date of the transposition deadline of **this** Directive].

ANNEXES

With regard to trust service providers, a differentiation of the regulatory treatment between non-qualified and qualified trust service providers could be envisaged with the following proposed amendments in Annex I and II:

- v) In Annex I point 8:- qualified trust service providers referred to in point (19) (20) of Article 3 of Regulation (EU) No 910/2014
- vi) In Annex II point 6:- non-qualified trust service providers referred to in point (19) of Article 3 of Regulation (EU) No 910/2014

With regard to providers of public electronic communications networks, a precision of the regulatory treatment for micro and small enterprises could be envisaged with the following proposed amendment in Annex I and II:

- iii) In Annex I point 8: - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available. This is not applicable to entities that qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.

In Annex II point 6a (new) Digital infrastructure - Providers of public electronic communications networks referred to in point (8) of Article 2 of Directive (EU) 2018/1972(26) or providers of electronic communications services referred to in point (4) of Article 2 of Directive (EU) 2018/1972 where their services are publicly available when they qualify as micro and small enterprises within the meaning of Commission Recommendation 2003/361/EC.