NOTICE TO MEMBERS
(01/2020)

Subject: Legislative scrutiny time on the implementation of the “NIS Directive”, Directive (EU) 2016/1148

9.1.2020

Practical arrangements

At the request of IMCO Coordinators, the IMCO committee is holding a legislative scrutiny session on 22 January 2020 on the status of implementation of “Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union” (NIS Directive).

Mr Jakub BORATYNISKI, Head of Unit for “Cybersecurity and Digital Privacy Policy” in DG CNECT, will address the IMCO Committee, followed by a debate with Members.

Background information on the NIS Directive

The NIS Directive is the EU’s first internal market instrument with the aim of improving the resilience of the EU against cyber-security risks. It was adopted in 2016 and the transposition deadline was May 2018. A full review of the Directive is due in 2021.

The Directive obliges operators falling within its scope, in critical sectors like energy and transport, to take measures to manage cybersecurity risks and notify serious incidents to competent authorities. On the basis of criteria set out in Article 5 of the Directive, Member States are obliged to identify the operators in its territory that fall within the scope: so-called...
“operators of essential services”.

It is worth noting that besides operators of essential services, some categories of digital services are also covered by the Directive, namely online marketplaces, online search engines and cloud computing services.

**Purpose of the Legislative Scrutiny Session**

The purpose of the legislative scrutiny session is to scrutinise the Commission in respect of the implementation of the NIS Directive, and in particular in respect of the report it published on 28 October 2019 ([COM(2019)546 final](#)). In that report the Commission assesses the consistency of Member State approaches in the identification of “operators of essential services”.

The report stresses that consistency in identifying operators is crucial: 1) to avoid fragmentation in the internal market; 2) to reduce the risk of cyber-threats propagating throughout the internal market; 3) to guarantee a level playing field for operators in the internal market; 4) to reduce divergent interpretations of the Directive.

The report concludes that Member States have developed a wide variety of practices for identifying operators, which has led to very different numbers of operators being notified to the Commission by Member States, ranging from 20 to nearly 11000 per Member State. The fragmentation identified could undermine the level playing field in the internal market for the sectors concerned.

The Commission identifies several ways of improving the situation, noting, among other things, that:

1. further work is needed to achieve a more aligned list of essential services;
2. Member States that have not yet provided complete information are required to do so;
3. there is scope for Member States to engage more actively with each other to align practices;
4. consideration should be given to strengthening the NIS Cooperation Group, which exists to promote strategic cooperation between Member States.

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1 Report from the Commission to the European Parliament and the Council of 28 October 2019 assessing the consistency of the approaches taken by Member States in the identification of operators of essential services in accordance with Article 23(1) of Directive 2016/1148/EU.