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Committee on the Internal Market and Consumer Protection

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union (COM(2013)0048 – C7-0035/2013 – 2013/0027(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union (COM(2013)0048 – C7-0035/2013 – 2013/0027(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0048),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0035/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the opinion of the European Economic and Social Committee of 22 May 2013¹,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Foreign Affairs, the Committee on Industry, Research and Energy and the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

Amendment

(4) A cooperation mechanism should be

(4) A cooperation mechanism should be

¹

established at Union level to allow for information exchange and coordinated detection and response regarding network and information security ('NIS'). For that mechanism to be effective and inclusive, it is essential that all Member States have minimum capabilities and a strategy ensuring a high level of NIS in their territory. Minimum security requirements should also apply to *public administrations and* operators of *critical* information infrastructure to promote a culture of risk management and ensure that the most serious incidents are reported.

established at Union level to allow for information exchange and coordinated detection and response regarding network and information security ('NIS'). For that mechanism to be effective and inclusive, it is essential that all Member States have minimum capabilities and a strategy ensuring a high level of NIS in their territory. Minimum security requirements should also apply to operators of information infrastructure to promote a culture of risk management and ensure that the most serious incidents are reported.

Or. en

Amendment 2

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) While public administrations, because of their public mission, should exert due diligence in the management and the protection of their own network and information systems, this Directive should focus on critical infrastructure essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, financial market infrastructures or health. Software developers and hardware manufacturers should be excluded from the scope of this Directive.

Or. en

Amendment 3

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) The existing capabilities are not sufficient enough to ensure a high level of NIS within the Union. Member States have very different levels of preparedness leading to fragmented approaches across the Union. This leads to an unequal level of protection of consumers and businesses, and undermines the overall level of NIS within the Union. Lack of common minimum requirements on **public administrations and** market operators in turn makes it impossible to set up a global and effective mechanism for cooperation at Union level.

Amendment

(6) The existing capabilities are not sufficient enough to ensure a high level of NIS within the Union. Member States have very different levels of preparedness leading to fragmented approaches across the Union. This leads to an unequal level of protection of consumers and businesses, and undermines the overall level of NIS within the Union. Lack of common minimum requirements on market operators in turn makes it impossible to set up a global and effective mechanism for cooperation at Union level.

Or. en

Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Responding effectively to the challenges of the security of network and information systems therefore requires a global approach at Union level covering common minimum capacity building and planning requirements, exchange of information and coordination of actions, and common minimum security requirements for all market operators concerned **and public administrations**.

Amendment

(7) Responding effectively to the challenges of the security of network and information systems therefore requires a global approach at Union level covering common minimum capacity building and planning requirements, exchange of information and coordination of actions, and common minimum security requirements for all market operators concerned.

Or. en

Amendment 5

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In view of the differences in national governance structures and in order to safeguard already existing sectoral arrangements and to avoid duplication, Member States should be able to designate more than one national competent authority in charge of fulfilling the tasks linked to the security of the networks and information systems of market operators under this Directive. However, in order to ensure smooth cross-border cooperation and communication, it is necessary that each Member State designate only one national single point of contact in charge of cross-border cooperation at Union level. Where its constitutional structure or other arrangements so require, a Member State should be able to designate only one authority to carry out the tasks of the competent authority and the single point of contact.

Or. en

Amendment 6

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) To ensure transparency and properly inform EU citizens and market operators, the ***competent authorities*** should set up a common website to publish non confidential information on the incidents

(16) To ensure transparency and properly inform EU citizens and market operators, the ***single points of contact*** should set up a common ***Union-wide*** website to publish non confidential information on the

and risks.

incidents and risks.

Or. en

Amendment 7

Proposal for a directive Recital 19

Text proposed by the Commission

(19) Notification of an early warning within the network should be required only where the scale and severity of the incident or risk concerned are or may become so significant that information or coordination of the response at Union level is necessary. Early warnings should therefore be limited to **actual or potential** incidents or risks that grow rapidly, exceed national response capacity or affect more than one Member State. To allow for a proper evaluation, all information relevant for the assessment of the risk or incident should be communicated to the cooperation network.

Amendment

(19) Notification of an early warning within the network should be required only where the scale and severity of the incident or risk concerned are or may become so significant that information or coordination of the response at Union level is necessary. Early warnings should therefore be limited to incidents or risks that grow rapidly, exceed national response capacity or affect more than one Member State. To allow for a proper evaluation, all information relevant for the assessment of the risk or incident should be communicated to the cooperation network.

Or. en

Amendment 8

Proposal for a directive Recital 20

Text proposed by the Commission

(20) Upon receipt of an early warning and its assessment, the **competent authorities** should agree on a coordinated response under the Union NIS cooperation plan. **Competent authorities** as well as the Commission should be informed about the measures adopted at national level as a result of the coordinated response.

Amendment

(20) Upon receipt of an early warning and its assessment, the **single points of contact** should agree on a coordinated response under the Union NIS cooperation plan. **The single points of contact** as well as the Commission should be informed about the measures adopted at national level as a result of the coordinated response.

Amendment 9**Proposal for a directive****Recital 22***Text proposed by the Commission*

(22) Responsibilities in ensuring NIS lie to a great extent on **public administrations and** market operators. A culture of risk management, involving risk assessment and the implementation of security measures appropriate to the risks faced should be promoted and developed through appropriate regulatory requirements and voluntary industry practices. Establishing a level playing field is also essential to the effective functioning of the cooperation network to ensure effective cooperation from all Member States.

Amendment

(22) Responsibilities in ensuring NIS lie to a great extent on market operators. A culture of risk management, involving risk assessment and the implementation of security measures appropriate to the risks faced should be promoted and developed through appropriate regulatory requirements and voluntary industry practices. Establishing a level playing field is also essential to the effective functioning of the cooperation network to ensure effective cooperation from all Member States.

Amendment 10**Proposal for a directive****Recital 24***Text proposed by the Commission*

(24) Those obligations should be extended beyond the electronic communications sector to **key providers of information society services, as defined in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services²⁷, which underpin downstream information society services or on-line activities, such as e-commerce platforms, Internet payment**

Amendment

(24) Those obligations should be extended beyond the electronic communications sector to operators of infrastructure which rely heavily on information and communications technology and are essential to the maintenance of vital economical or societal functions such as electricity and gas, transport, credit institutions, **financial market infrastructures** and health. Disruption of those network and information systems would affect the internal market.

*gateways, social networks, search engines, cloud computing services, application stores. Disruption of these enabling information society services prevents the provision of other information society services which rely on them as key inputs. Software developers and hardware manufacturers are not providers of information society services and are therefore excluded. Those obligations should also be extended to public administrations, and operators of critical infrastructure which rely heavily on information and communications technology and are essential to the maintenance of vital economical or societal functions such as electricity and gas, transport, credit institutions, **stock exchange** and health. Disruption of those network and information systems would affect the internal market.*

Or. en

Amendment 11

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Technical and organisational measures imposed to **public administrations and** market operators should not require that a particular commercial information and communications technology product be designed, developed or manufactured in a particular manner.

Amendment

(25) Technical and organisational measures imposed to market operators should not require that a particular commercial information and communications technology product be designed, developed or manufactured in a particular manner.

Or. en

Amendment 12

Proposal for a directive Recital 26

Text proposed by the Commission

(26) The **public administrations and** market operators should ensure security of the networks and systems which are under their control. These would be primarily private networks and systems managed either by their internal IT staff or the security of which has been outsourced. The security and notification obligations should apply to the relevant market operators **and public administrations** regardless of whether they perform the maintenance of their network and information systems internally or outsource it.

Amendment

(26) The market operators should ensure security of the networks and systems which are under their control. These would be primarily private networks and systems managed either by their internal IT staff or the security of which has been outsourced. The security and notification obligations should apply to the relevant market operators regardless of whether they perform the maintenance of their network and information systems internally or outsource it.

Or. en

Amendment 13

Proposal for a directive Recital 28

Text proposed by the Commission

(28) Competent authorities should pay due attention to preserving informal and trusted channels of information-sharing between market operators and between the public and the private sectors. Publicity of incidents reported to the competent authorities should duly balance the interest of the public in being informed about threats with possible reputational and commercial damages for the **public administrations and** market operators reporting incidents. In the implementation of the notification obligations, competent authorities should pay particular attention to the need to maintain information about product vulnerabilities strictly confidential

Amendment

(28) Competent authorities **and single points of contact** should pay due attention to preserving informal and trusted channels of information-sharing between market operators and between the public and the private sectors. Publicity of incidents reported to the competent authorities **and single points of contact** should duly balance the interest of the public in being informed about threats with possible reputational and commercial damages for the market operators reporting incidents. In the implementation of the notification obligations, competent authorities **and single points of contact** should pay particular attention to the need to maintain

prior to the release of appropriate security fixes.

information about product vulnerabilities strictly confidential prior to the release of appropriate security fixes. ***As a general rule, single points of contact should not disclose personal data of individuals involved in incidents. Single points of contact should only disclose personal data where the disclosure of such data is necessary and proportionate in view of the objective pursued.***

Or. en

Justification

In case the disclosure to the public of information includes personal data, it should be done in line with the ECJ "Schecke" ruling (Joined cases C-92/09 and C-93/09).

Amendment 14

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) Competent authorities should have the necessary means to perform their duties, including powers to obtain sufficient information from market operators ***and public administrations*** in order to assess the level of security of network and information systems as well as reliable and comprehensive data about actual incidents that have had an impact on the operation of network and information systems.

Amendment

(29) Competent authorities ***and single points of contact*** should have the necessary means to perform their duties, including powers to obtain sufficient information from market operators in order to assess the level of security of network and information systems as well as reliable and comprehensive data about actual incidents that have had an impact on the operation of network and information systems.

Or. en

Amendment 15

Proposal for a directive

Recital 30

Text proposed by the Commission

(30) Criminal activities are in many cases underlying an incident. The criminal nature of incidents can be suspected even if the evidence to support it may not be sufficiently clear from the start. In this context, appropriate co-operation between competent authorities and law enforcement authorities should form part of an effective and comprehensive response to the threat of security incidents. In particular, promoting a safe, secure and more resilient environment requires a systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. The serious criminal nature of incidents should be assessed in the light of EU laws on cybercrime.

Amendment

(30) Criminal activities are in many cases underlying an incident. The criminal nature of incidents can be suspected even if the evidence to support it may not be sufficiently clear from the start. In this context, appropriate co-operation between competent authorities, ***single points of contact*** and law enforcement authorities should form part of an effective and comprehensive response to the threat of security incidents. In particular, promoting a safe, secure and more resilient environment requires a systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. The serious criminal nature of incidents should be assessed in the light of EU laws on cybercrime.

Or. en

Amendment 16

Proposal for a directive

Recital 31

Text proposed by the Commission

(31) Personal data are in many cases compromised as a result of incidents. In this context, competent authorities and data protection authorities should cooperate and exchange information on all relevant matters to tackle the personal data breaches resulting from incidents. ***Member states shall implement*** the obligation to notify security incidents in a way that minimises the administrative burden in case the security incident is also a personal data breach ***in line with the Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data***

Amendment

(31) Personal data are in many cases compromised as a result of incidents. In this context, competent authorities, ***single points of contact*** and data protection authorities should cooperate and exchange information on all relevant matters to tackle the personal data breaches resulting from incidents. The obligation to notify security incidents ***should be carried out*** in a way that minimises the administrative burden in case the security incident is also a personal data breach ***that requires to be notified in accordance with Regulation 2013/xx/EU of the European Parliament and of the Council¹***. ENISA ***should*** assist

and on the free movement of such data. Liaising with the competent authorities and the data protection authorities, ENISA could assist by developing information exchange mechanisms and templates avoiding the need for two notification templates. This single notification template would facilitate the reporting of incidents compromising personal data thereby easing the administrative burden on businesses and public administrations.

by developing information exchange mechanisms and *a* single notification template *that* would facilitate the reporting of incidents compromising personal data thereby easing the administrative burden on businesses and public administrations.

¹ *Regulation xxx of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ ...).*

Or. en

Amendment 17

Proposal for a directive Recital 34

Text proposed by the Commission

(34) In order to allow for the proper functioning of the cooperation network, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the definition of the criteria to be fulfilled for a Member State to be authorized to participate to the secure information-sharing system, *of the further specification of the triggering events for early warning, and of the definition of the circumstances in which market operators and public administrations are required to notify incidents.*

Amendment

(34) In order to allow for the proper functioning of the cooperation network, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the definition of the criteria to be fulfilled for a Member State to be authorized to participate to the secure information-sharing system.

Or. en

Amendment 18

Proposal for a directive

Recital 36

Text proposed by the Commission

(36) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission as regards the cooperation between **competent authorities** and the Commission within the cooperation network, the access to the secure information-sharing infrastructure, the Union NIS cooperation plan, the formats and procedures applicable to informing the public about incidents, **and the standards and/or technical specifications relevant to NIS**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment

(36) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission as regards the cooperation between **single points of contact** and the Commission within the cooperation network, **without prejudice to existing cooperation mechanisms at national level**, the access to the secure information-sharing infrastructure, the Union NIS cooperation plan, **and** the formats and procedures applicable to informing the public about incidents. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Or. en

Amendment 19

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) Information that is considered confidential by a competent authority, in accordance with Union and national rules on business confidentiality, should be exchanged with the Commission and other **competent authorities** only where such

Amendment

(38) Information that is considered confidential by a competent authority **or a single point of contact**, in accordance with Union and national rules on business confidentiality, should be exchanged with the Commission and other **single points of**

exchange is strictly necessary for the application of this Directive. The information exchanged should be limited to that which is relevant and proportionate to the purpose of such exchange.

contact only where such exchange is strictly necessary for the application of this Directive. The information exchanged should be limited to that which is relevant, **necessary** and proportionate to the purpose of such exchange.

Or. en

Amendment 20

Proposal for a directive Recital 39

Text proposed by the Commission

(39) The sharing of information on risks and incidents within the cooperation network and compliance with the requirements to notify incidents to the national competent authorities may require the processing of personal data. Such a processing of personal data is necessary to meet the objectives of public interest pursued by this Directive and is thus legitimate under Article 7 of Directive 95/46/EC. It does not constitute, in relation to these legitimate aims, a disproportionate and intolerable interference impairing the very substance of the right to the protection of personal data guaranteed by Article 8 of the Charter of fundamental rights. In the application of this Directive, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply as appropriate. When data are processed by Union institutions and bodies, such processing for the purpose of implementing this Directive should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the

Amendment

(39) The sharing of information on risks and incidents within the cooperation network and compliance with the requirements to notify incidents to the national competent authorities **or single points of contact** may require the processing of personal data. Such a processing of personal data is necessary to meet the objectives of public interest pursued by this Directive and is thus legitimate under Article 7 of Directive 95/46/EC. It does not constitute, in relation to these legitimate aims, a disproportionate and intolerable interference impairing the very substance of the right to the protection of personal data guaranteed by Article 8 of the Charter of fundamental rights. In the application of this Directive, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply as appropriate. When data are processed by Union institutions and bodies, such processing for the purpose of implementing this Directive should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the

Community institutions and bodies and on the free movement of such data.

processing of personal data by the Community institutions and bodies and on the free movement of such data.

Or. en

Amendment 21

Proposal for a directive Recital 41 a (new)

Text proposed by the Commission

Amendment

(41a) In accordance with the joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

Or. en

Amendment 22

Proposal for a directive Article 3 – point 4

Text proposed by the Commission

Amendment

(4) ‘incident’ means any ***circumstance or*** event having an actual adverse effect on security;

(4) ‘incident’ means any event having an actual adverse effect on security;

Or. en

Amendment 23

Proposal for a directive Article 3 – point 5

Text proposed by the Commission

Amendment

(5) ‘information society service’ mean service within the meaning of point (2) of Article 1 of Directive 98/34/EC;

deleted

Or. en

Amendment 24

Proposal for a directive Article 3 – point 8 – point a

Text proposed by the Commission

Amendment

(a) provider of information society services which enable the provision of other information society services, a non exhaustive list of which is set out in Annex II;

deleted

Or. en

Amendment 25

Proposal for a directive Article 3 – point 8 – point b

Text proposed by the Commission

Amendment

(b) operator of **critical** infrastructure that are essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, **stock exchanges** and health, a non exhaustive list of which is set out in Annex II.

(b) operator of infrastructure that are essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, **financial market infrastructures** and health, **and the disruption or destruction of which would have a significant impact in a Member State as a result of the**

failure to maintain those functions, a non exhaustive list of which is set out in Annex II.

Or. en

Amendment 26

Proposal for a directive Article 3 – point 11 a (new)

Text proposed by the Commission

Amendment

(11a) 'regulated market' means regulated market as defined in point 14 of Article 4 of Directive 2004/39/EC of the European Parliament and of the Council¹;

¹ ***Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 45, 16.2.2005, p. 18).***

Or. en

Justification

Alignment of the definition with the still to be adopted Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

Amendment 27

Proposal for a directive Article 3 – point 11 b (new)

Text proposed by the Commission

Amendment

(11b) 'multilateral trading facility (MTF)' means multilateral trading facility as defined in point 15 of Article 4 of Directive 2004/39/EC;

Justification

Alignment of the definition with the still to be adopted Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

Amendment 28

**Proposal for a directive
Article 3 – point 11 c (new)**

Text proposed by the Commission

Amendment

(11c) 'organised trading facility' means a multilateral system or facility, which is not a regulated market, a multilateral trading facility or a central counterparty, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with the provisions of Title II of Directive 2004/39/EC;

Justification

Introduction of the definition in line with and subject to the outcome of the still to be adopted Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

Amendment 29

**Proposal for a directive
Article 5 – paragraph 2 – point a**

Text proposed by the Commission

Amendment

(a) A risk **assessment plan to identify risks and assess the** impacts of potential incidents;

(a) A risk **management framework including the identification, prioritisation, evaluation and treatment of risks, the assessment of the** impacts of potential incidents, **prevention and control options, and criteria for the choice of possible countermeasures;**

Or. en

Justification

The wording should be broadened in order to include also other activities required when managing information security risks.

Amendment 30

Proposal for a directive

Article 5 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) The definition of the roles and responsibilities of the various actors involved in the implementation of the **plan**;

(b) The definition of the roles and responsibilities of the various **authorities and other** actors involved in the implementation of the **framework**;

Or. en

Amendment 31

Proposal for a directive

Article 6 – title

Text proposed by the Commission

Amendment

National competent **authority** on the security of network and information systems

National competent **authorities and single points of contact** on the security of network and information systems

Or. en

Amendment 32

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate **a** national competent **authority** on the security of network and information systems (the ‘competent authority’).

Amendment

1. Each Member State shall designate **one or more** national competent **authorities** on the security of network and information systems (**hereinafter referred to as** the ‘competent authority’).

Or. en

Amendment 33

Proposal for a directive Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a Member State designates more than one competent authority, it shall designate a national authority, for instance a competent authority, as national single point of contact on the security of network and information systems (hereinafter referred to as "single point of contact"). Where a Member State designates only one competent authority, that competent authority shall also be the single point of contact.

Or. en

Amendment 34

Proposal for a directive Article 6 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The competent authorities and the single point of contact of the same Member State shall cooperate closely with regard to the obligations laid down in this Directive.

Or. en

Amendment 35

Proposal for a directive

Article 6 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. The single point of contact shall ensure cross-border cooperation with other single points of contact.

Or. en

Amendment 36

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that the competent authorities have adequate technical, financial and human resources to carry out in an effective and efficient manner the tasks assigned to them and thereby to fulfil the objectives of this Directive. Member States shall ensure the effective, efficient and secure cooperation of the ***competent authorities*** via the network referred to in Article 8.

3. Member States shall ensure that the competent authorities ***and the single points of contact*** have adequate technical, financial and human resources to carry out in an effective and efficient manner the tasks assigned to them and thereby to fulfil the objectives of this Directive. Member States shall ensure the effective, efficient and secure cooperation of the ***single points of contact*** via the network referred to in Article 8.

Or. en

Amendment 37

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the competent authorities receive the notifications of incidents from **public administrations and** market operators as specified under Article 14(2) and are granted the implementation and enforcement powers referred to under Article 15.

Amendment

4. Member States shall ensure that the competent authorities **and single points of contact** receive the notifications of incidents from market operators as specified under Article 14(2) and are granted the implementation and enforcement powers referred to under Article 15.

Or. en

Amendment 38

Proposal for a directive Article 6 – paragraph 5

Text proposed by the Commission

5. The competent authorities shall consult and cooperate, whenever appropriate, with the relevant law enforcement national authorities and data protection authorities.

Amendment

5. The competent authorities **and single points of contact** shall consult and cooperate, whenever appropriate, with the relevant law enforcement national authorities and data protection authorities.

Or. en

Amendment 39

Proposal for a directive Article 6 – paragraph 6

Text proposed by the Commission

6. Each Member State shall notify to the Commission without delay the designation of the competent **authority**, its tasks, and

Amendment

6. Each Member State shall notify to the Commission without delay the designation of the competent **authorities and the single**

any subsequent change thereto. Each Member State shall make public its designation of the competent **authority**.

point of contact, its tasks, and any subsequent change thereto. Each Member State shall make public its designation of the competent **authorities**.

Or. en

Amendment 40

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. The **competent authorities** and the Commission shall form a network ('cooperation network') to cooperate against risks and incidents affecting network and information systems.

Amendment

1. The **single points of contact** and the Commission shall form a network (**hereinafter referred to as** 'cooperation network') to cooperate against risks and incidents affecting network and information systems.

Or. en

Amendment 41

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. The cooperation network shall bring into permanent communication the Commission and the **competent authorities**. When requested, the European Network and Information Security Agency ('ENISA') shall assist the cooperation network by providing its expertise and advice.

Amendment

2. The cooperation network shall bring into permanent communication the Commission and the **single points of contact**. When requested, the European Network and Information Security Agency ('ENISA') shall assist the cooperation network by providing its expertise and advice. **Where appropriate, market operators may also be invited to participate in the activities of the cooperation network referred to in points (g), (h) and (i) of paragraph 3.**

Or. en

Amendment 42

Proposal for a directive

Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

3. Within the cooperation network the *competent authorities* shall:

Amendment

3. Within the cooperation network the *single points of contact* shall:

Or. en

Amendment 43

Proposal for a directive

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The cooperation network shall publish once a year a report, based on the activities of the network and on the summary report submitted in accordance with Article 14(4) of this Directive, for the preceding 12 months.

Or. en

Amendment 44

Proposal for a directive

Article 8 – paragraph 3 – point f

Text proposed by the Commission

(f) cooperate and exchange information on all relevant matters with the EuropeanCybercrime Center within Europol, and with other relevant European bodies in particular in the fields of data protection, energy, transport, banking, *stock exchanges* and health;

Amendment

(f) cooperate and exchange information on all relevant matters with the EuropeanCybercrime Center within Europol, and with other relevant European bodies in particular in the fields of data protection, energy, transport, banking, ***financial market infrastructures*** and

health;

Or. en

Amendment 45

Proposal for a directive Article 8 – paragraph 3 – point i a (new)

Text proposed by the Commission

Amendment

(ia) involve, consult and exchange information with market operators, where appropriate.

Or. en

Amendment 46

Proposal for a directive Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall establish, by means of implementing acts, the necessary modalities to facilitate the cooperation between ***competent authorities*** and the Commission referred to in paragraphs 2 and 3. Those implementing acts shall be adopted in accordance with the consultation procedure referred to in Article 19(2).

4. The Commission shall establish, by means of implementing acts, the necessary modalities to facilitate the cooperation between ***single points of contact*** and the Commission referred to in paragraphs 2 and 3. Those implementing acts shall be adopted in accordance with the consultation procedure referred to in Article 19(2).

Or. en

Amendment 47

Proposal for a directive Article 9 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

These criteria shall at least include confidentiality and security measures in accordance with Articles 16 and 17 of Directive 95/46/EC and Articles 21 and 22 of Regulation (EC) No 45/2001.

Or. en

Amendment 48

Proposal for a directive Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The ***competent authorities*** or the Commission shall provide early warnings within the cooperation network on those risks and incidents that fulfil at least one of the following conditions:

1. The ***single points of contact*** or the Commission shall provide early warnings within the cooperation network on those risks and incidents that fulfil at least one of the following conditions:

Or. en

Amendment 49

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. In the early warnings, the ***competent authorities*** and the Commission shall communicate any relevant information in their possession that may be useful for assessing the risk or incident.

2. In the early warnings, the ***single points of contact*** and the Commission shall communicate any relevant information in their possession that may be useful for assessing the risk or incident.

Or. en

Amendment 50

Proposal for a directive Article 10 – paragraph 4

Text proposed by the Commission

4. Where the risk or incident subject to an early warning is of a suspected criminal nature, the **competent authorities** or the Commission shall inform the European Cybercrime Centre within Europol.

Amendment

4. Where the risk or incident subject to an early warning is of a suspected criminal nature, the **single points of contact** or the Commission shall inform the European Cybercrime Centre within Europol.

Or. en

Amendment 51

Proposal for a directive Article 10 – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 18, concerning the further specification of the risks and incidents triggering early warning referred to in paragraph 1.

Amendment

deleted

Or. en

Justification

The notions of 'risk' and 'incident' are defined in Article 3 (3) and (4). Delegated acts further specifying these notions could lead to contradictions with the basic act. Furthermore, Article 10 paragraph 1 already lays down further criteria for early warnings.

Amendment 52

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. Following an early warning referred to

Amendment

1. Following an early warning referred to

in Article 10 the *competent authorities* shall, after assessing the relevant information, agree on a coordinated response in accordance with the Union NIS cooperation plan referred to in Article 12.

in Article 10 the *single points of contact* shall, after assessing the relevant information, agree on a coordinated response in accordance with the Union NIS cooperation plan referred to in Article 12.

Or. en

Amendment 53

Proposal for a directive

Article 12 – paragraph 2 – point a – indent 1

Text proposed by the Commission

– a definition of the format and procedures for the collection and sharing of compatible and comparable information on risks and incidents by the *competent authorities*,

Amendment

– a definition of the format and procedures for the collection and sharing of compatible and comparable information on risks and incidents by the *single points of contact*,

Or. en

Amendment 54

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

Without prejudice to the possibility for the cooperation network to have informal international cooperation, the Union may conclude international agreements with third countries or international organisations allowing and organizing their participation in some activities of the cooperation network. Such agreement shall take into account the need to ensure adequate protection of the personal data circulating on the cooperation network.

Amendment

Without prejudice to the possibility for the cooperation network to have informal international cooperation, the Union may conclude international agreements with third countries or international organisations allowing and organizing their participation in some activities of the cooperation network. Such agreement shall take into account the need to ensure adequate protection of the personal data circulating on the cooperation network.
Any transfer of personal data to recipients located in countries outside the Union shall be conducted in accordance with

Or. en

Amendment 55

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that **public administrations and** market operators take appropriate technical and organisational measures to manage the risks posed to the security of the networks and information systems which they control and use in their operations. Having regard to the state of the art, these measures shall guarantee a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of incidents affecting their network and information system on the core services they provide and thus ensure the continuity of the services underpinned by those networks and information systems.

Amendment

1. Member States shall ensure that market operators take appropriate technical and organisational measures to manage the risks posed to the security of the networks and information systems which they control and use in their operations. Having regard to the state of the art, these measures shall guarantee a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of incidents affecting their network and information system on the core services they provide and thus ensure the continuity of the services underpinned by those networks and information systems.

Or. en

Amendment 56

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that **public administrations and** market operators notify to the competent authority incidents having a significant impact on the **security** of the core services they provide.

Amendment

2. Member States shall ensure that market operators notify to the competent authority **or to the single point of contact** incidents having a significant impact on the **continuity** of the core services they

provide. *To determine the significance of the impact of an incident, the following parameters shall inter alia be taken into account:*

Or. en

Justification

The parameters laid down in points a), b) and c) to determine the significance of the impact of an incident should be similar to the ones established by the ENISA technical guidelines on reporting incidents for Directive 2009/140/EC.

Amendment 57

Proposal for a directive

Article 14 – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

(a) the number of users whose core service is affected;

Or. en

Amendment 58

Proposal for a directive

Article 14 – paragraph 2 – point b (new)

Text proposed by the Commission

Amendment

(b) the duration of the incident;

Or. en

Amendment 59

Proposal for a directive

Article 14 – paragraph 2 – point c (new)

Text proposed by the Commission

Amendment

(c) geographic spread with regard to the area affected by the incident.

Or. en

Amendment 60

Proposal for a directive Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Market operators shall notify the incidents referred to in paragraphs 1 and 2 to the competent authority or the single point of contact in the Member State where the core service is affected. Where core services in more than one Member State are affected, the single point of contact which has received the notification shall, based on the information provided by the market operator, alert the other single points of contact concerned.

Or. en

Amendment 61

Proposal for a directive Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. The competent authority may inform the public, **or require the public administrations and market operators to do so, where it determines that disclosure of the incident is in the public interest.** Once a year, the **competent authority** shall submit a summary report to the

4. **After consultation with** the competent authority **and the market operator concerned, the single point of contact** may inform the public **about individual incidents, where public awareness is necessary to prevent an incident or deal with an ongoing incident, or where the**

cooperation network on the notifications received and the action taken in accordance with this paragraph.

market *operator, subject to an incident, has refused to address a serious structural vulnerability related to that incident without undue delay*. Once a year, the *single point of contact* shall submit a summary report to the cooperation network on the notifications received and the action taken in accordance with this paragraph.

Or. en

Amendment 62

Proposal for a directive Article 14 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 concerning the definition of circumstances in which public administrations and market operators are required to notify incidents.

deleted

Or. en

Amendment 63

Proposal for a directive Article 14 – paragraph 6

Text proposed by the Commission

Amendment

6. Subject to any delegated act adopted under paragraph 5, the competent authorities may adopt guidelines and, where necessary, issue instructions concerning the circumstances in which public administrations and market operators are required to notify incidents.

6. The competent authorities or the single points of contact may adopt guidelines concerning the circumstances in which market operators are required to notify incidents.

Or. en

Amendment 64

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent authorities **have all** the powers necessary to **investigate** cases of non-compliance of **public administrations or** market operators with their obligations under Article 14 and the effects thereof on the security of networks and information systems.

Amendment

1. Member States shall ensure that the competent authorities **and the single points of contact have** the powers necessary to **examine** cases of non-compliance of market operators with their obligations under Article 14 and the effects thereof on the security of networks and information systems.

Or. en

Amendment 65

Proposal for a directive Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that the competent authorities have the power to require market operators **and public administrations** to:

Amendment

2. Member States shall ensure that the competent authorities **and the single points of contact** have the power to require market operators to:

Or. en

Amendment 66

Proposal for a directive Article 15 – paragraph 2 – point b

Text proposed by the Commission

(b) **undergo** a security audit carried out by a qualified independent body or national authority and make the **results thereof**

Amendment

(b) **provide evidence of effective implementation of security policies, such as results of** a security audit carried out by **internal auditors**, a qualified independent

available to the competent authority.

body or national authority, and make the *evidence available to the competent authority or to the single point of contact. Where necessary, the competent authority or the single point of contact may require additional evidence or carry out an additional audit.*

Or. en

Amendment 67

Proposal for a directive

Article 15 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

When sending that request, the competent authorities and the single points of contact shall state the purpose of the request and sufficiently specify what information is required.

Or. en

Amendment 68

Proposal for a directive

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that competent authorities have the power to issue binding instructions to market operators *and public administrations*.

3. Member States shall ensure that *the* competent authorities *and the single points of contact* have the power to issue binding instructions to market operators.

Or. en

Amendment 69

Proposal for a directive Article 15 – paragraph 4

Text proposed by the Commission

4. The competent authorities shall notify incidents of a suspected serious criminal nature to law enforcement authorities.

Amendment

4. The competent authorities ***and the single points of contact*** shall notify incidents of a suspected serious criminal nature to law enforcement authorities.

Or. en

Amendment 70

Proposal for a directive Article 15 – paragraph 5

Text proposed by the Commission

5. The competent authorities shall work in close cooperation with personal data protection authorities when addressing incidents resulting in personal data breaches.

Amendment

5. The competent authorities ***and the single points of contact*** shall work in close cooperation with personal data protection authorities when addressing incidents resulting in personal data breaches. ***The single points of contact and the data protection authorities shall develop, in cooperation with ENISA, information exchange mechanisms and a single template to be used both for notifications under Article 14(2) of this Directive and Regulation [xxx] of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.***

Or. en

Amendment 71

Proposal for a directive Article 15 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that any obligations imposed on **public administrations and** market operators under this Chapter may be subject to judicial review.

Amendment

6. Member States shall ensure that any obligations imposed on market operators under this Chapter may be subject to judicial review.

Or. en

Amendment 72

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. The Commission shall draw up, by means of implementing acts a list of the standards referred to in paragraph 1. The list shall be published in the Official Journal of the European Union.

Amendment

deleted

Or. en

Amendment 73

Proposal for a directive Article 17 – paragraph 1 a (new)

Text proposed by the Commission

1a. Member States shall ensure that, where the market operator has not failed to fulfil its obligations under Chapter IV with intent or gross negligence, the penalties referred to in paragraph 1 of this Article are not applicable.

Amendment

Or. en

Amendment 74

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

2. The power to adopt delegated acts referred to in **Articles 9(2), 10(5) and 14(5)** shall be conferred on the Commission. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Amendment

2. The power to adopt delegated acts referred to in **Article 9(2)** shall be conferred on the Commission **for a period of five years from the date of transposition referred to in Article 21**. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Or. en

Amendment 75

Proposal for a directive Article 18 – paragraph 3

Text proposed by the Commission

3. The delegation of **powers** referred to in **Articles 9(2), 10(5) and 14(5)** 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 powers 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 act already in force.

Amendment

3. The delegation of **power** referred to in **Article 9(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 powers 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 act already in force.

Or. en

Amendment 76

Proposal for a directive Article 18 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Articles 9(2), 10(5) and 14(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment

5. A delegated act adopted pursuant to **Article 9(2)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Or. en

Amendment 77

Proposal for a directive Annex 2 – paragraph 1 – introductory part

Text proposed by the Commission

Referred to in Article 3(8) a):

Amendment

deleted

Or. en

Justification

The title "Referred to in Article 3(8) a):" should be deleted. A deletion amendment was technically not possible.

Amendment 78

Proposal for a directive Annex 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

1. e-commerce platforms

deleted

Or. en

Amendment 79

**Proposal for a directive
Annex 2 – paragraph 1 – point 2**

Text proposed by the Commission

Amendment

2. Internet payment gateways

deleted

Or. en

Amendment 80

**Proposal for a directive
Annex 2 – paragraph 1 – point 3**

Text proposed by the Commission

Amendment

3. Social networks

deleted

Or. en

Amendment 81

**Proposal for a directive
Annex 2 – paragraph 1 – point 4**

Text proposed by the Commission

Amendment

4. Search engines

deleted

Or. en

Amendment 82

**Proposal for a directive
Annex 2 – paragraph 1 – point 5**

Text proposed by the Commission

Amendment

5. Cloud computing services

deleted

Or. en

Amendment 83

**Proposal for a directive
Annex 2 – paragraph 1 – point 6**

Text proposed by the Commission

Amendment

6. Application stores

deleted

Or. en

Amendment 84

**Proposal for a directive
Annex 2 – paragraph 1 – point a (new)**

Text proposed by the Commission

Amendment

(a) Electricity

- Suppliers

***- Distribution system operators and
retailers for final consumers***

***- Transmission system operators in
electricity***

- Electricity market operators

Or. en

Justification

The structure should be as follows: 1. Energy - a. Electricity - Indents. The structure also

applies to the following amendments.

Amendment 85

**Proposal for a directive
Annex 2 – paragraph 1 – point b (new)**

Text proposed by the Commission

Amendment

(b) Oil

- Oil transmission pipelines and oil storage***
- Operators of oil production, refining and treatment facilities, storage and transmission***

Or. en

Amendment 86

**Proposal for a directive
Annex 2 – paragraph 1 – point 1 c (new)**

Text proposed by the Commission

Amendment

(c) Gas

- Suppliers***
- Distribution system operators and retailers for final consumers***
- Natural gas transmission system operators, storage system operators and LNG system operators***
- Operators of natural gas production, refining, treatment facilities, storage facilities and transmission***
- Gas market operators***

Or. en

Amendment 87

Proposal for a directive

Annex 2 – paragraph 1 – point 1 – indent 1

Text proposed by the Commission

Amendment

– Electricity and gas suppliers

deleted

Or. en

Justification

Restructuring of the second part of Annex II (referred to in Article 3(8)b) in parallel with the structure of Annex I of Council Directive 2008/114/EC. This justification applies also to the following amendments.

Amendment 88

Proposal for a directive

Annex 2 – paragraph 1 – point 1 – indent 2

Text proposed by the Commission

Amendment

– Electricity and/or gas distribution system operators and retailers for final consumers

deleted

Or. en

Amendment 89

Proposal for a directive

Annex 2 – paragraph 1 – point 1 – indent 3

Text proposed by the Commission

Amendment

– Natural gas transmission system operators, storage operators and LNG operators

deleted

Or. en

Amendment 90

**Proposal for a directive
Annex 2 – paragraph 1 – point 1 – indent 4**

Text proposed by the Commission

Amendment

**– Transmission system operators in
electricity** *deleted*

Or. en

Amendment 91

**Proposal for a directive
Annex 2 – paragraph 1 – point 1 – indent 5**

Text proposed by the Commission

Amendment

**– Oil transmission pipelines and oil
storage** *deleted*

Or. en

Amendment 92

**Proposal for a directive
Annex 2 – paragraph 1 – point 1 – indent 6**

Text proposed by the Commission

Amendment

– Electricity and gas market operators *deleted*

Or. en

Amendment 93

**Proposal for a directive
Annex 2 – paragraph 1 – point 1 – indent 7**

Text proposed by the Commission

Amendment

– Operators of oil and natural gas production, refining and treatment facilities

deleted

Or. en

Amendment 94

**Proposal for a directive
Annex 2 – paragraph 1 – point a (new)**

Text proposed by the Commission

Amendment

- (a) Road transport***
- (i) Traffic management control operators***
- (ii) Auxiliary logistics services:***
 - warehousing and storage,***
 - cargo handling, and***
 - other transportation support activities***

Or. en

Amendment 95

**Proposal for a directive
Annex 2 – paragraph 1 – point b (new)**

Text proposed by the Commission

Amendment

- (b) Rail transport***
- (i) Railways (infrastructure managers, integrated companies and railway transport operators)***
- (ii) Traffic management control operators***
- (iii) Auxiliary logistics services:***
 - warehousing and storage,***
 - cargo handling, and***

- other transportation support activities

Or. en

Amendment 96

Proposal for a directive Annex 2 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) Air transport

(i) Air carriers (freight and passenger air transport)

(ii) Airports

(iii) Traffic management control operators

(iv) Auxiliary logistics services:

- warehousing,

- cargo handling, and

- other transportation support activities

Or. en

Amendment 97

Proposal for a directive Annex 2 – paragraph 1 – point d (new)

Text proposed by the Commission

Amendment

(d) Maritime transport

(i) Maritime carriers (sea and coastal passenger water transport companies and sea and coastal freight water transport companies)

(ii) Ports

(iii) Traffic management control operators

- (iv) Auxiliary logistics services:*
- warehousing and storage,*
 - cargo handling, and*
 - other transportation support activities*

Or. en

Amendment 98

Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 1

Text proposed by the Commission

Amendment

– Air carriers (freight and passenger air transport) *deleted*

Or. en

Amendment 99

Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 2

Text proposed by the Commission

Amendment

– Maritime carriers (sea and coastal passenger water transport companies and sea and coastal freight water transport companies) *deleted*

Or. en

Amendment 100

Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 3

Text proposed by the Commission

Amendment

– Railways (infrastructure managers, *deleted*

*integrated companies and railway
transport operators)*

Or. en

Amendment 101

**Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 4**

Text proposed by the Commission

Amendment

– Airports

deleted

Or. en

Amendment 102

**Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 5**

Text proposed by the Commission

Amendment

– Ports

deleted

Or. en

Amendment 103

**Proposal for a directive
Annex 2 – paragraph 1 – point 2 – indent 6**

Text proposed by the Commission

Amendment

– Traffic management control operators

deleted

Or. en

Amendment 104

Proposal for a directive

Annex 2 – paragraph 1 – point 2 – indent 7

Text proposed by the Commission

Amendment

– *Auxiliary logistics services (a) warehousing and storage, b) cargo handling and c) other transportation support activities)*

deleted

Or. en

Amendment 105

Proposal for a directive

Annex 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

4. Financial market infrastructures: ***stock exchanges*** and central counterparty clearing houses

4. Financial market infrastructures: ***regulated markets, multilateral trading facilities, organised trading facilities*** and central counterparty clearing houses

Or. en

Justification

Alignment of the wording in Annex II and introduction of definitions in line with the still to be adopted Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

EXPLANATORY STATEMENT

1. Background

Already in 2010, the Digital Agenda for Europe called for the introduction of legislative instruments aimed at a high level network and information security policy. Due to the interconnectedness of network and information systems, significant disruptions of these in one Member State can affect other Member States and the Union as a whole. The resilience and stability of network and information systems as well as the continuity of core services are essential for the smooth functioning of the internal market, in particular for the further development of the digital single market.

In view of the different levels of capabilities and fragmented approaches across the Union, the European Commission in its present proposal for a Directive concerning measures to ensure a high common level of network and information security across the Union aims at improving the security of the Internet and the private networks and information systems supporting the functioning of our societies and economies.

For this purpose, the Commission requires Member States to increase their preparedness and improve their cooperation with each other. To this end, operators of critical infrastructures, such as energy, transport and key providers of information society services as well as public administrations should adopt appropriate measures to manage security risks and report serious incidents to the national competent authorities.

2. Draft Report

Your Rapporteur supports the overall objective of the proposed Directive, i.e. ensuring a high common level of network and information security. In order to strengthen the effectiveness of the pro-posed measures, your Rapporteur considers that this Directive as a starting point should be limited to certain operators, safeguard investments in network and information security that have already been made and avoid duplication of institutional structures and of obligations imposed on market operators. Further, your Rapporteur is of the opinion that this Directive should support the development of trusted relations and exchanges between public and private actors, and that adverse reactions in the form of a mere ‘compliance culture‘ instead of the desired ‘risk management culture‘ should be avoided. In view of these considerations, your Rapporteur proposes to strengthen the impact of this Directive with the following main modifications.

A. Scope

The draft Directive aims at imposing obligations on public administrations and market operators, including critical infrastructures and information society services. In order to achieve proportionality and swift results of the Directive, your Rapporteur considers that the

compulsory measures laid down in Chapter IV should be limited to infrastructures that are critical in a stricter sense. He takes the view that information society services should therefore not be included in Annex II of this Directive. Instead, this Directive should focus on market operators providing services, inter alia in the energy and transport sector as well as health related and financial markets infrastructures.

In view of their public mission, public administrations have to exert due diligence in the management of their network and information systems. Therefore, your Rapporteur does not consider it proportionate to impose on them the same obligations as on market operators. In addition to the modifications in scope, your Rapporteur supports the non-exhaustive nature of Annex II and agrees with a periodic review of this Directive, also in view of new technological developments.

B. National competent authorities

The proposal for a Directive foresees the designation of one national competent authority per Member States, in charge of monitoring the application of the Directive. Your Rapporteur considers that this does not adequately take into account already existing structures. In certain sectors covered by the scope of this Directive, market operators already notify formally or informally their sector-specific regulatory authority of certain network and information security incidents. Given the direct link and close relations with their respective sectors, these authorities have indepth knowledge about threats and vulnerabilities, particular to their sector, and are therefore in a unique position to assess the impact of potential or current incidents to their sector.

Apart from existing sectoral investments, some Member States may need to designate more than one national competent authority because of their constitutional structure or because of other considerations. Therefore, your Rapporteur proposes to amend the Directive so as to allow the designation of more than one competent authority per Member State. However, in order to ensure a coherent application within the Member State and in order to allow for an effective and streamlined cooperation at Union level, each Member State should appoint one single point of contact in charge of, inter alia, the participation in the cooperation network of art. 8 and the submission of early warnings in accordance with art. 10.

C. Cooperation network

In order to strengthen the activities of the cooperation network, your Rapporteur takes the view that the network should consider inviting market operators to participate, where appropriate. Further, an annual report on the activities of the network would provide valuable information on the progress in exchanging best practice among the Member States and the development of incident notifications across the Union.

D. Security requirements and incident notification

As main novelty, the proposal for a Directive introduces the obligatory notification by market operators of incidents that have a significant impact on the security of the core services. For the purpose of clarifying the scope of obligations and enshrining them in the basic act, your

Rapporteur proposes to replace the delegated acts of Art. 14 (5), with clear criteria to determine the significance of incidents to be reported. In view of the intended alignment with Directive 2009/140/EC, indicators similar to those laid down in the ENISA Technical Guidelines on reporting incidents for Directive 2009/140/EC would clarify the scope and criteria for the notification. Further, your Rapporteur recommends strengthening the safeguards regarding the publication of information related to incidents and clarifies the applicability of law, in case an incident affects the core services in several Member States, in order not to impose multiple or unclear notification obligations.

E. Implementation and enforcement

Your Rapporteur considers it essential to foster a risk management culture and build on existing efforts by market operators. At this, he takes the view that rather than the form of providing information on the concrete risk management activities, the overall cooperation and the concrete measures taken by the market operators are crucial.

Therefore, in the context of Art. 15, it is necessary to allow for flexibility regarding the evidence for compliance with the security requirements imposed on market operators. Proof of compliance provided in a form other than security audits should be admissible.

F. Sanctions

While your Rapporteur sees the need to provide for sanctions on non-compliant market operators in order to strengthen the effectiveness of this Directive, he takes the view that potential sanctions should not disincentivise the notification of incidents and create adverse effects. It should be avoided that the swift notification of incidents is undermined by the risk of sanctions on, inter alia, the mere noncompliance with procedural requirements. Therefore, your Rapporteur proposes to clarify that where the market operator has failed to comply with the obligations under Chapter IV but has not acted with intent or gross negligence, no sanction should be imposed.