

European Commission  
attn. Mr M. Šefčovič, Vice-President for Interinstitutional Relations  
and Foresight  
Wetstraat 200  
1049 Brussels  
Belgium

*datum* 23 May 2023

*betreft* Further questions about the proposal for a Regulation on horizontal cybersecurity requirements COM(2022) 454

*ons kenmerk* 173205.01U

## ***Courtesy translation***

Dear Mr Šefčovič,

In their committee meeting on 9 May 2023, the members of the standing committee for Justice and Security of the Senate of the States General discussed your letter of 31 March 2023 concerning the proposal for a Regulation on horizontal cybersecurity requirements (COM(2022) 454).<sup>1</sup> The members of the parliamentary parties of **GroenLinks** (GreenLeft Alliance), **PvdA** (Labour Party), **SP** (Socialist Party) and **PvdD** (Animal Rights Party) together wish to thank the European Commission for answering their questions. They now have a few more follow-up questions.

### **Questions of the members of the GroenLinks, PvdA, SP and PvdA parliamentary parties**

#### *Free and open-source software*

The members welcome the fact that the Commission shares their concerns about the impact of the Cybersecurity Resilience Act (CRA) on free and open-source software and that the Commission wants to remove as much uncertainty as possible by proactively informing developers. However, in the opinion of the members, the question remains why the Commission has not chosen a framework based on the purpose for which a product with digital elements has been developed. An element having a clear commercial purpose could then fall entirely under the CRA, whereas other projects serving a more altruistic purpose or resulting from research and experimentation would fall outside the scope of the CRA. Can such a distinction based on purpose be made and would this not be a more workable model in practice?

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<sup>1</sup> *Parliamentary Papers, Senate, 2022/23, 36239, D.*

### *Clarity of the requirements*

The members note that there are serious concerns among experts about the workability and clarity of the CRA's requirements both for free and open-source software projects and for commercial products. Bert Hubert, a former member of the Exercise of Powers Review Committee (*Toetsingscommissie Inzet Bevoegdheden / TIB*), voices many of these concerns and warns that a number of the CRA's unclear requirements could prove to be wholly unfeasible in practice. He also expresses concern that the implementation of the CRA in practice will be heavily dependent on a general standard that does not yet exist. Until this standard has been introduced, Hubert expects there to be a lot of uncertainty. He also doubts whether the formulation of this standard will go smoothly for the simple reason that no comparable standards yet exist. How does the European Commission view the concerns expressed by Hubert and others. Does the Commission consider that the latest proposals for the text of the CRA introduce improvements that will help to allay these concerns???

### *Product lifetime*

In answering the members' questions about the period chosen for mandatory updates to address vulnerabilities, the Commission indicates that a general period of five years has been chosen in order to strike a good overall balance between the importance of ensuring that products with digital elements are safe to use in the long term and the interests of manufacturers in avoiding running excessive risk when introducing new product categories. In view of the wide range of products, it would not be practicable to adopt a different period for each product category. But the members wonder whether the EU's very successful product-specific rules on energy labels do not show that it is quite possible to set appropriate and ambitious targets for each product category. Why was it not decided to have a period of five years as the standard, while adopting further rules for certain important product categories? The members would consider a longer term to be appropriate for, say, motor vehicles, servers, desktops and smart home appliances such as refrigerators and washing machines. Another aim of a more flexible arrangement would be to allow the support period to grow in line with developments in the industry. Can the Commission explain why this arrangement was not chosen, taking into account what this means for the sustainability of the latter products?

### *Artificial intelligence*

These members note that artificial intelligence is evolving at a rapid rate. As software is used to make AI systems, the members assume that the CRA will also apply to AI. Is this assumption correct? Can the Commission explain to the members how the CRA relates to the AI Act with regard to the regulation of the cybersecurity aspects of AI systems?

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The members of the standing committee for Justice and Security await your reply with interest.

Yours sincerely,

M.M. de Boer  
Chair of the standing committee for Justice and Security