**European Parliament**
2019-2024

*Committee on Industry, Research and Energy*

**(2020)0365(COD)**

03.5.2021

# DRAFT OPINION

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the resilience of critical entities
(COM(2020)0829 – C9-0421/2020 – (2020)0365(COD))

Rapporteur for opinion: Nils Torvalds

(*) Associated committees – Rule 57 of the Rules of Procedure

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## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

**Amendment 1**

**Proposal for a directive**
**Recital 4**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (4) The entities involved in the provision of essential services are increasingly subject to diverging requirements imposed under the laws of the Member States. The fact that some Member States have less stringent security requirements on these entities not only risks impacting negatively on the maintenance of vital societal functions or economic activities across the Union, it also leads to obstacles to the proper functioning of the internal market. Similar types of entities are considered as critical in some Member States but not in others, and those which are identified as critical are subject to divergent requirements in different Member States. This results in additional and unnecessary administrative burdens for companies operating across borders, notably for companies active in Member States with more stringent requirements. | (4) The entities involved in the provision of essential services are increasingly subject to diverging requirements imposed under the laws of the Member States. The fact that some Member States have less stringent security requirements on these entities not only risks impacting negatively on the maintenance of vital societal functions or economic activities across the Union, it also leads to obstacles to the proper functioning of the internal market. ***The resilience of critical entities provides investors and companies with predictability and trust, which are cornerstones of a well-functioning internal market.*** Similar types of entities are considered as critical in some Member States but not in others, and those which are identified as critical are subject to divergent requirements in different Member States. This results in additional and unnecessary administrative burdens for companies operating across borders, notably for companies active in Member States with more stringent requirements. |

Or. en

**Amendment 2**

**Proposal for a directive**
**Recital 18**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (18) ***Given that under the NIS 2 Directive*** entities identified as critical entities***,*** as well as ***identified*** entities in the digital infrastructure sector that are to be treated as equivalent under the present Directive are subject to the cybersecurity requirements of the NIS 2 Directive, the competent authorities designated under the two Directives should cooperate, particularly in relation to cybersecurity risks and incidents affecting those entities. | (18) Entities identified as critical entities ***under this Directive*** as well as entities in the digital infrastructure sector that are to be treated as equivalent under the present Directive are subject to the cybersecurity requirements of the NIS 2 Directive***.*** ***Consequently***, the competent authorities designated under the two Directives should cooperate, particularly in relation to cybersecurity risks and incidents affecting those entities. ***Member States should also take measures to avoid double reporting and control due to the two separate Directives.*** |

Or. en

*Justification*

*Critical entities as defined in CER are essential entities in NIS2. NIS 2 does not and should not identify critical entities.It is also good to underline the importance of not creating unnecessary burden of reporting due to the two separate directives.*

**Amendment 3**

**Proposal for a directive**
**Recital 30**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (30) Member States should ensure that their competent authorities have certain specific powers for the proper application and enforcement of this Directive in relation to critical entities, where those entities fall under their jurisdiction as specified in this Directive. Those powers should include, notably, the power to conduct inspections, supervision and audits, require critical entities to provide information and evidence relating to the measures they have taken to comply with their obligations and, where necessary, issue orders to remedy identified infringements. When issuing such orders, | (30) Member States should ensure that their competent authorities have certain specific powers for the proper application and enforcement of this Directive in relation to critical entities, where those entities fall under their jurisdiction as specified in this Directive. Those powers should include, notably, the power to conduct inspections, supervision and audits, require critical entities to provide information and evidence relating to the measures they have taken to comply with their obligations and, where necessary, issue orders to remedy identified infringements. When issuing such orders, |

| | |
|---|---|
| Member States should not require measures which go beyond what is necessary and proportionate to ensure compliance of the critical entity concerned, taking account of in particular the seriousness of the infringement and the economic capacity of the critical entity. More generally, those powers should be accompanied by appropriate and effective safeguards to be specified in national law, in accordance with the requirements resulting from Charter of Fundamental Rights of the European Union. When assessing the compliance of a critical entity with its obligations under this Directive, competent authorities designated under this Directive should be able to request the competent authorities designated under the NIS 2 Directive to assess the cybersecurity of those entities. Those competent authorities should cooperate and exchange information for that purpose. | Member States should not require measures which go beyond what is necessary and proportionate to ensure compliance of the critical entity concerned, taking account of in particular the seriousness of the infringement and the economic capacity of the critical entity. More generally, those powers should be accompanied by appropriate and effective safeguards to be specified in national law, in accordance with the requirements resulting from Charter of Fundamental Rights of the European Union. ***The assessment of critical entities under this Directive, in matters that fall under the scope of the NIS 2 Directive such as physical and non-physical cybersecurity, will be a responsibility of the competent authorities designated under the NIS 2 Directive. Furthermore,*** when assessing the compliance of a critical entity with its obligations under this Directive, competent authorities designated under this Directive should be able to request the competent authorities designated under the NIS 2 Directive to assess the cybersecurity of those entities. Those competent authorities should cooperate and exchange information for that purpose. |

Or. en

*Justification*

*Cyber attacks can destroy physical assets and physical attacks can destroy data. The line between the two directives needs to be 100% clear. As long as the NIS 2 draws the line clearly, this amendment could also drop the part about physical and non-physical cybersecurity and become clearer that way.*

**Amendment 4**

**Proposal for a directive**
**Article 1 – paragraph 2**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 2. This Directive shall not apply to matters covered by Directive (EU) XX/YY | 2. This Directive shall not apply to matters covered by Directive (EU) XX/YY |

| | |
|---|---|
| [proposed Directive on measures for a high common level of cybersecurity across the Union; ('NIS 2 Directive')], without prejudice to Article 7. | [proposed Directive on measures for a high common level of cybersecurity across the Union; ('NIS 2 Directive')], without prejudice to Article 7. ***In view of the interlinkages between cybersecurity and the physical security of entities, Member States shall ensure a coherent implementation of both Directives..*** |

Or. en

**Amendment 5**

**Proposal for a directive**
**Article 1 – paragraph 3 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***3a. Member States shall ensure that their security strategies, including sector-specific security strategies, provide for a coordinated policy framework for enhanced coordination in the context of information sharing on incidents and threats and the exercise of supervisory tasks which avoids the duplication of requirements and reporting and monitoring activities.*** |

Or. en

**Amendment 6**

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

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (6) "risk" means any circumstance or event having a potential adverse effect on the ***resilience*** of critical entities; | (6) "risk" means any circumstance or event having a potential adverse effect on the ***operations*** of critical entities; |

Or. en

*Justification*

*The risk is to the capacity of the critical entity to continue providing its services, hence to its "operations" rather than to its "resilience". Paragraph (7) of Art 2, where "risk assessment" is defined, also talks about the disruption of "operations" rather than of the "resilience".*

**Amendment 7**

**Proposal for a directive**
**Article 3 – paragraph 2 – point d a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(da) the relevant aspects from the national cybersecurity strategy as provided for in the NIS2 Directive and any other sectoral national strategy with a view to achieving coordination, complementarity and synergies.*** |

Or. en

**Amendment 8**

**Proposal for a directive**
**Article 4 – paragraph 5**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 5. The Commission ***may***, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4. | 5. The Commission ***shall***, in cooperation with the Member States, develop a voluntary common reporting template for the purposes of complying with paragraph 4. |

Or. en

*Justification*

*To facilitate the data providing obligation in para 4, a change from «may» to «shall» might be in order.*

**Amendment 9**

**Proposal for a directive**
**Article 5 – paragraph 4 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***4a. Member States may identify those entities that they have identified as essential entities under the NIS 2*** |

| | |
|---|---|
| | ***Directive as critical entities under this Directive. Where a Member State decides not to identify the essential entities under the NIS 2 Directive as critical entities under this Directive, it shall justify the reasons therefor.*** |

Or. en

*Justification*

*We can encourage this in order to minimize the risk of essential entities not falling under this directive in non-cybersecurity related issues. Freedom is good from MS point of view but it can also become quite confusing for national authorities and legislators to set up easy to follow processes when some companies might fall under NIS 2 without national contribution and others fall under CER following a national listing. In the end of the day it is MS responsibility to make the listing.*

**Amendment 10**

**Proposal for a directive**
**Article 6 – paragraph 1 – point e**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (e) the geographic area that could be affected by an incident, including any cross-border impacts; | (e) the geographic area that could be affected by an incident, including any cross-border impacts***, taking into account the vulnerability associated with the degree of isolation of certain types of geographic areas, such as insular regions, outermost regions or mountainous areas***; |

Or. en

*Justification*

*The disruptive effect of a risk to a critical entity can be worsened if the geographic area where this entity is located is geographically isolated. This should be taken into account when determining the significance of a disruptive effect.*

**Amendment 11**

**Proposal for a directive**
**Article 8 – paragraph 2**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 2. Each Member State shall, within the competent authority, designate a single point of contact to exercise a liaison function to ensure cross-border cooperation with competent authorities of other Member States ***and*** with the Critical Entities Resilience Group referred to in Article 16 (‘single point of contact’). | 2. Each Member State shall, within the competent authority, designate a single point of contact to exercise a liaison function to ensure cross-border cooperation with competent authorities of other Member States, with the Critical Entities Resilience Group referred to in Article 16 (‘single point of contact’) ***and with the critical entities. Each Member State shall ensure that the single point of contact designated under the NIS 2 Directive is the single point of contact under this Directive***. |

Or. en

**Amendment 12**

**Proposal for a directive**
**Article 9 – paragraph 1**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 1. Member States shall support critical entities in enhancing their resilience. That support may include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing training to personnel of critical entities. | 1. Member States shall support critical entities in enhancing their resilience. That support may include developing guidance materials and methodologies, supporting the organisation of exercises to test their resilience and providing ***periodic*** training to personnel of critical entities. |

Or. en

*Justification*

*The training of personnel should be on a periodic basis to ensure that they are continuously well prepared to face the event of a threat.*

**Amendment 13**

**Proposal for a directive**
**Article 11 – paragraph 1 – point c a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(ca) prevent incidents which might threaten the security and continuation of the supply of goods and services;*** |

Or. en

*Justification*

*No mentioning of proactive supply chain security - more in line with NIS 2 and better considering the threat landscape this way.*

**Amendment 14**

**Proposal for a directive**
**Article 11 – paragraph 1 – point d a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(da) without imposing, or discriminating in favour of, the use of a particular type of service or technology, make use of accepted European standards and specifications relevant to the resilience of critical entities;*** |

Or. en

*Justification*

*More in line with NIS 2 and existing standards might help relevant authorities to set up the necessary processes, which at the same time might be more coherent with each other. Hence, further improving the functioning of the internal market.*

**Amendment 15**

**Proposal for a directive**
**Article 11 – paragraph 1 – point f**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (f) raise awareness about the measures referred to in points (a) to (e) among relevant personnel. | (f) raise awareness about the measures referred to in points (a) to (e) among relevant personnel***, through periodic training***. |

Or. en

*Justification*

*Insist on the need for periodic training for employees of critical entities in order to be prepared to fulfil the measures referred in points (a) and (e) of this article.*

**Amendment 16**

**Proposal for a directive**
**Article 12 – paragraph 1**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 1. Member States shall ensure that critical entities may submit requests for background checks on persons who fall within certain specific categories of their personnel, including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks. | 1. Member States shall ensure that critical entities may submit ***justified*** requests for background checks on persons who fall within certain specific categories of their personnel, ***identified based on common national criteria*** including persons being considered for recruitment to positions falling within those categories, and that those requests are assessed expeditiously by the authorities competent to carry out such background checks. |

Or. en

**Amendment 17**

**Proposal for a directive**
**Article 12 – paragraph 2 – point c**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (c) cover previous employments, education and any gaps in education or employment in the person's resume during at least the preceding five years and for a maximum of ten years. | (c) ***in exceptional cases, based on national criteria,*** cover previous employments, education and any gaps in education or employment in the person's resume during at least the preceding five years and for a maximum of ten years. |

Or. en

**Amendment 18**

**Proposal for a directive**
**Article 12 – paragraph 2 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***2a. In accordance with applicable Union and national law, each Member State shall ensure that background checks as referred to in paragraph 1 are carried out with full respect for the fundamental rights of the persons concerned and do not expand beyond the confirmation of the risk level.*** |

Or. en

**Amendment 19**

**Proposal for a directive**
**Article 13 – paragraph 2 – point c**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (c) the geographical area affected by the disruption or potential disruption. | (c) the geographical area affected by the disruption or potential disruption***, taking into account whether that area is geographically isolated***. |

Or. en

*Justification*

*Same logic as in AM3. When determining the significance of the disruption, the criteria "geographic area affected" should not only refer to a "big" area. It should also contemplate whether this area is geographically isolated, a condition that would make the restoration of the operations difficult and, therefore, increase the effect of an incident.*

**Amendment 20**

**Proposal for a directive**
**Article 16 – paragraph 2 – subparagraph 1**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 2. The Critical Entities Resilience Group shall be composed of | 2. The Critical Entities Resilience Group shall be composed of |

| | |
|---|---|
| representatives of the Member States and the Commission. Where relevant for the performance of its tasks, the Critical Entities Resilience Group may invite representatives of ***interested parties*** to participate in its work. | representatives of the Member States and the Commission. Where relevant for the performance of its tasks, the Critical Entities Resilience Group may invite representatives of ***relevant stakeholders*** to participate in its work. |

Or. en

*Justification*

*More concrete and higher expectations of making a difference.*

**Amendment 21**

**Proposal for a directive**
**Article 16 – paragraph 5**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 5. The Critical Entities Resilience Group shall meet regularly and at least once a year with the Cooperation Group established under [the NIS 2 Directive] to ***promote*** strategic cooperation and ***exchange of*** information. | 5. The Critical Entities Resilience Group shall meet regularly and at least once a year with the Cooperation Group established under [the NIS 2 Directive] to ***facilitate*** strategic cooperation and information ***exchange***. |

Or. en

*Justification*

*Facilitate is a little bit more concrete and with higher expectations for results*

**Amendment 22**

**Proposal for a directive**
**Article 16 – paragraph 7 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***7a. The Commission shall set up a common secretariat for the Critical Entities Resilience Group and the Cooperation Group established under [the NIS 2 Directive] in order to better accommodate communication between the two groups and, consequently, to*** |

***minimise ambiguities between the different designated authorities under this Directive and [the NIS 2 Directive].***

Or. en

*Justification*

*The size of the secretariat does not need to be even a full time employee but having a contact person in charge of setting up meetings and facilitating communication between the two groups and, by extension, the national authorities, would most certainly be needed.*

**Amendment 23**

**Proposal for a directive**
**Article 17 – paragraph 2 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***2a. In order to receive and properly use the information received under Article 8(3), the Commission shall keep a European registry of incidents with the aim of developing and sharing best practices and methodologies.*** |

Or. en

*Justification*

*The information will anyway be gathered. The use of it for the good of everyone would therefore be preferred.*

**Amendment 24**

**Proposal for a directive**
**Article 22 – paragraph 2**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the scope of | The Commission shall periodically review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the impact and added value of this Directive on ensuring the resilience of critical entities and whether the scope of |

| | |
|---|---|
| the Directive should be extended to cover other sectors or subsectors. The first report shall be submitted by [six years after the entry into force of this Directive] and shall assess in particular whether the scope of the Directive should be extended to include the food production, processing and distribution sector. | the Directive should be extended to cover other sectors or subsectors. The first report shall be submitted by [six years after the entry into force of this Directive] and shall assess in particular whether the scope of the Directive should be extended to include the food production, processing and distribution sector. ***For that purpose and with a view to further advancing strategic cooperation, the Commission shall take into account any non-binding guidance documents of the Critical Entities Resilience Group on the experience gained at a strategic level.*** |

Or. en

*Justification*

*This will provide a better foundation for utilizing the expertise and cooperation of the CERG also in the long run, if e.g. the Directive would need to be updated.*