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Committee on Civil Liberties, Justice and Home Affairs

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AMENDMENTS

20 - 147

Draft opinion
Carl Schlyter
(PE514.755v01-00)

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

Proposal for a directive
(COM(2013)0048 – C7-0035/2013 – 2013/0027(COD))

Amendment 20
Marie-Christine Vergiat

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Network and information systems and services play a vital role in the society. Their reliability and security are essential to economic activities **and** social welfare, **and in particular to the functioning of the internal market.**

Amendment

(1) Network and information systems and services play a vital role in the society. Their reliability and security are essential to economic activities, social welfare **and communications and exchanges between people, civil-society organisations and undertakings, as well as protection of, and respect for, private life and personal data.**

Or. fr

Amendment 21
Ágnes Hankiss

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The magnitude and frequency of deliberate or accidental security incidents is increasing and represents a major threat to the functioning of networks and information systems. Such incidents can impede the pursuit of economic activities, generate substantial financial losses, undermine user confidence and cause major damage to the economy of the Union.

Amendment

(2) The magnitude and frequency of deliberate or accidental security incidents is increasing and represents a major threat to the functioning of networks and information systems. Such incidents can impede the pursuit of economic activities, generate substantial financial losses, undermine user confidence and cause major damage to the economy of the Union. ***There has been a growing recognition that control systems are vulnerable to cyber-attacks from numerous sources, including hostile governments, terrorist groups and other malicious intruders. Smart attacks and coordinated attacks could have severe impacts to the stability, performance, and economics of the infrastructure.***

Amendment 22
Marie-Christine Vergiat

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The magnitude and frequency of deliberate or accidental security incidents is increasing and represents a major threat to the functioning of networks and information systems. Such incidents can impede the pursuit of economic activities, generate substantial financial losses, undermine user confidence and cause major damage to the economy of the Union.

Amendment

(2) The magnitude and frequency of deliberate or accidental security incidents, ***whoever may be responsible for them***, is increasing and represents a major threat to the functioning of networks and information systems. Such incidents can impede the pursuit of economic activities, generate substantial financial losses, undermine user confidence and cause major damage to the economy of the Union. ***They particularly harm members of the public and damage their confidence in IT systems when their personal data are processed on a massive scale and are subjected to surveillance without any appropriate control.***

Or. fr

Amendment 23
Marie-Christine Vergiat

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) As a communication instrument without frontiers, digital information systems, and primarily the Internet play an essential role in facilitating the cross-border movement of goods, services and people. Due to that transnational nature, substantial disruption of those systems in one Member State can also affect other

Amendment

(3) As a communication instrument without frontiers, digital information systems, and primarily the Internet play an essential role in facilitating the cross-border movement of goods, services and people. Due to that transnational nature, substantial disruption of those systems in one Member State can also affect other

Member States and the Union as a whole. The resilience and stability of network and information systems is therefore essential to the smooth functioning of the internal market.

Member States and the Union as a whole. The resilience and stability of network and information systems is therefore essential to the smooth functioning of the internal market *and to communications and exchanges between people, civil-society organisations and undertakings.*

Or. fr

Amendment 24
Marie-Christine Vergiat

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) A cooperation mechanism should be 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.

Amendment

(4) A cooperation mechanism should be 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. *This requires the establishment of appropriate training courses which, inter alia, deal with the impact of these incidents on data protection and protection of the private life of citizens.*

Or. fr

Amendment 25
Ágnes Hankiss

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Directive should focus on the truly critical component of critical infrastructure :

(1) that is critical due to its structural position in the whole system of infrastructures and reinforces interdependencies between other infrastructures and sectors;

(2) that is inherently critical because of its role or function in society.

Or. en

Amendment 26
Marie-Christine Vergiat

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) To cover all relevant incidents and risks, this Directive should apply to all network and information systems. The obligations on public administrations and **market operators** should however not apply to undertakings providing public communication networks or publicly available electronic communication services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)²⁵, which are subject to the specific security and integrity requirements laid down in Article 13a of that Directive nor should they apply to trust service providers.

(5) To cover all relevant incidents and risks, this Directive should apply to all network and information systems. The obligations on public administrations and **undertakings** should however not apply to undertakings providing public communication networks or publicly available electronic communication services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), which are subject to the specific security and integrity requirements laid down in Article 13a of that Directive nor should they apply to trust service providers.

Or. fr

Amendment 27
Marie-Christine Vergiat

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 public administrations and *undertakings* in turn makes it impossible to set up a global and effective mechanism for cooperation at Union level.

Or. fr

Amendment 28
Ágnes Hankiss

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) It is vital to acknowledge the uncertainty inherent in the complex systems that sustain us. This requires better shared understanding of what is critical between those who protect an organization and those who set its strategic direction.

Amendment 29
Marie-Christine Vergiat

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The provisions of this Directive should be without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences. In accordance with Article 346 TFEU, no Member State is to be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

Amendment

(8) The provisions of this Directive should be without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences, ***with the proviso that they should not take this as a pretext for failing to comply with their more general obligations with regard to respect for the protection of private life and personal data.*** In accordance with Article 346 TFEU, no Member State is to be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

Or. fr

Amendment 30
Marie-Christine Vergiat

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) To achieve and maintain a common high level of security of network and information systems, each Member State should have a national NIS strategy defining the strategic objectives and concrete policy actions to be implemented. NIS cooperation plans complying with

Amendment

(9) To achieve and maintain a common high level of security of network and information systems, each Member State should have a national NIS strategy defining the strategic objectives and concrete policy actions to be implemented. NIS cooperation plans complying with

essential requirements need to be developed at national level in order to reach capacity response levels allowing for effective and efficient cooperation at national and Union level in case of incidents.

essential requirements need to be developed at national level in order to reach capacity response levels allowing for effective and efficient cooperation at national and Union level in case of incidents, ***respecting and protecting private life and personal data.***

Or. fr

Amendment 31
Ágnes Hankiss

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To allow for the effective implementation of the provisions adopted pursuant to this Directive, ***a body*** responsible for coordinating NIS issues and acting as a focal point for cross-border cooperation at Union level should be established or identified in each Member State. ***These bodies*** should be given the adequate technical, financial and human resources to ensure that they can carry out in an effective and efficient manner the tasks assigned to them and thus achieve the objectives of this Directive.

Amendment

(10) To allow for the effective implementation of the provisions adopted pursuant to this Directive, ***a national competent authority under civilian control with full democratic oversight and transparency in their operations being*** responsible for coordinating NIS issues and acting as a focal point for cross-border cooperation at Union level should be established or identified in each Member State. ***The national competent authority and the national single point of contact*** should be given the adequate technical, financial and human resources to ensure that they can carry out in an effective and efficient manner the tasks assigned to them and thus achieve the objectives of this Directive.

Or. en

Amendment 32
Ágnes Hankiss

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) This cooperation network should also allow for the competent national authorities and the Commission, in consultation with ENISA, Europol's Cybercrime Centre and relevant public administrations and market operators, to share experience, discuss any questions and agree on all aspects related to the consistent interpretation and the smooth and harmonious implementation of this Directive and in particular of its Chapter IV across all Member States.

Or. en

Amendment 33
Ágnes Hankiss

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) More sectors adopt cloud services in their computing environment such as IT services operating critical infrastructure. Sufficient security measures need to ensure the confidentiality, integrity and availability of the data in the cloud. Hosting infrastructure services, and storing sensitive data in the cloud environment brings with it security and resilience requirements that existing cloud services are not well placed to address. Therefore, there needs to be an assurance that the cloud computing environment can provide proficient protection of the sensitive critical infrastructure data, through the development of innovative techniques for detecting intrusions.

Or. en

Amendment 34

Ágnes Hankiss

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) As most network and information systems are privately operated, cooperation between the public and private sector is essential. Market operators should be encouraged to pursue their own informal cooperation mechanisms to ensure NIS. They should also cooperate with the public sector and share information and best practices *in exchange of* operational support in case of incidents.

Amendment

(15) As most network and information systems are privately operated, cooperation between the public and private sector is essential. Market operators should be encouraged to pursue their own informal cooperation mechanisms to ensure NIS. They should also cooperate with the public sector and *mutually* share information and best practices *as well as reciprocal* operational support *as needed* in case of incidents.

Or. en

Amendment 35

Marie-Christine Vergiat

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) As most network and information systems are *privately* operated, cooperation between the public and private sector is essential. *Market operators* should be encouraged to pursue their own informal cooperation mechanisms to ensure NIS. They should also cooperate with the public sector and share information and best practices in exchange of operational support in case of incidents.

Amendment

(15) As most network and information systems are operated *by private undertakings*, cooperation between the public and private sector is essential. *Undertakings* should be encouraged to pursue their own informal cooperation mechanisms to ensure NIS. They should also cooperate with the public sector and share information and best practices in exchange of operational support in case of incidents.

Or. fr

Amendment 36
Nils Torvalds

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Already existing national cooperation mechanisms between public and private operators should be fully respected and the provisions stipulated in this Directive should not undermine such established cooperation arrangements.

Or. en

Amendment 37
Josef Weidenholzer

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 and risks.

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

Or. de

Amendment 38
Marie-Christine Vergiat

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

(16) To ensure transparency and properly inform EU citizens and ***undertakings***, the competent authorities should set up a

common website to publish non confidential information on the incidents and risks.

common website to publish non confidential information on the incidents and risks *and on simple measures to protect information systems.*

Or. fr

Amendment 39
Ágnes Hankiss

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The threshold which triggers the notification requirement should be defined in such a way so that it builds on the ENISA technical guidelines on reporting incidents for Directive 2009/140/EC and focusses the notification requirement on those breaches which do or may affect the continuity or integrity of networks and services concerned. This will promote conditions and criteria for the consistent application and harmonized enforcement of the provisions of this Directive.

Or. en

Amendment 40
Nils Torvalds

Proposal for a directive
Recital 18

Text proposed by the Commission

Amendment

(18) On the basis in particular of national crisis management experiences and in cooperation with ENISA, the Commission and the Member States should develop a Union NIS cooperation plan *defining* cooperation mechanisms to counter risks

(18) On the basis in particular of national crisis management experiences and in cooperation with ENISA, the Commission and the Member States should develop a Union NIS cooperation plan *indicating* cooperation mechanisms to counter risks

and incidents. That plan should be duly taken into account in the operation of early warnings within the cooperation network.

and incidents. That plan should be duly taken into account in the operation of early warnings within the cooperation network.

Or. en

Amendment 41
Ágnes Hankiss

Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order to avoid duplication among the on-going activities performed by various international and EU institutions, bodies and agencies and already existing CERTs, the opportunity to engage in the cooperation network to the most feasible extent should be provided to ENISA, the national CERTs and Europol's Cybercrime Centre.

Or. en

Amendment 42
Josef Weidenholzer

Proposal for a directive
Recital 19

Text proposed by the Commission

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*** 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

(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, ***i.e. only in the case of*** 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

evaluation, all information relevant for the assessment of the risk or incident should be communicated to the cooperation network.

for the assessment of the risk or incident should be communicated to the cooperation network.

Or. de

Amendment 43
Marie-Christine Vergiat

Proposal for a directive
Recital 21

Text proposed by the Commission

(21) Given the global nature of NIS problems, there is a need for closer international cooperation to improve security standards and information exchange, and promote a common global approach to NIS issues.

Amendment

(21) Given the global nature of NIS problems, there is a need for closer international cooperation to improve security standards and information exchange, and promote a common global approach to NIS issues, ***with the proviso that the States with which this cooperation is planned have data control and protection instruments which ensure the same level of security as those of the EU.***

Or. fr

Amendment 44
Nils Torvalds

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

Amendment

(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. ***Where such a***

level playing field is also essential to the effective functioning of the cooperation network to ensure effective cooperation from all Member States.

culture of risk management already exists, and, in particular, where it relies on voluntary practices, it should be supported, strengthened and shared.
Establishing a level playing field is also essential to the effective functioning of the cooperation network to ensure effective cooperation from all Member States.

Or. en

Amendment 45
Marie-Christine Vergiat

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 public administrations and ***undertakings***. A culture of risk management, involving risk assessment and the implementation of security measures ***which seek to anticipate security incidents, whether deliberate or accidental***, should be promoted and developed through appropriate regulatory requirements and 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.

Or. fr

Amendment 46
Marie-Christine Vergiat

Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Public administrations and private

undertakings, including network service-providers and suppliers of information and software, should regard the protection of their information systems and of the data which they contain as forming part of their duty of care. Appropriate levels of protection should be provided against reasonably identifiable threats and areas of vulnerability. The cost and burden of such protection should reflect the likely damage which a cyber-attack would cause to those affected.

Or. fr

Amendment 47
Ágnes Hankiss

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 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

Amendment

(24) Those obligations should be extended ***to those cloud computing services that store sensitive critical infrastructure data of the European Union***, as defined in Directive 2008/114/EC on critical infrastructure. 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, ***health and agriculture***. Disruption of those network and information systems would affect the internal market.

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.

²⁷ OJ L 204, 21.7.1998, p. 37.

²⁷ OJ L 204, 21.7.1998, p. 37.

Or. en

Amendment 48
Nils Torvalds, Sophia in 't Veld

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 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

Amendment

(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 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 **play an important role in safeguarding software and hardware against both intentional and**

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.

²⁷ OJ L 204, 21.7.1998, p. 37.

unintentional backdoors, which can have negative impacts on the right to data privacy and network and information security, and should therefore also be included under the scope of this Directive. 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.

²⁷ OJ L 204, 21.7.1998, p. 37.

Or. en

Amendment 49
Marie-Christine Vergiat

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 public administrations and **undertakings** should not require that a particular commercial information and communications technology product be designed, developed or manufactured in a particular manner.

Or. fr

Amendment 50
Marie-Christine Vergiat

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 public administrations and **undertakings** 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 **undertakings** and public administrations regardless of whether they perform the maintenance of their network and information systems internally or outsource it.

Or. fr

Amendment 51

Nils Torvalds, Sophia in 't Veld

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The use of both intentional and unintentional backdoors in soft- and hardware used by key providers of information society services is of specific concern. The use of these intentional and unintentional backdoors for the processing of personal data shall be lawful only under legal obligation or legal necessity based on Union or Member State law.

Or. en

Amendment 52

Tanja Fajon

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Children are exposed to internet and other modern technology from the very early stage of their lives as well as to threats that come with it. A proper governance of child-friendly online space is crucial to mitigate harm and ensure that the protection of children and their rights are not compromised;

Or. en

Amendment 53

Nils Torvalds

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) To avoid imposing a disproportionate financial and administrative burden on **small** operators and users, the requirements should be proportionate to the risk presented by the network or information system concerned, taking into account the state of the art of such measures. These requirements should not apply to micro enterprises.

(27) To avoid imposing a disproportionate financial and administrative burden on operators and users, the requirements should be proportionate to the risk presented by the network or information system concerned, taking into account the state of the art of such measures. These requirements should not apply to micro enterprises.

Or. en

Amendment 54

Marie-Christine Vergiat

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) To avoid imposing a disproportionate financial and administrative burden on small operators and users, the requirements

(27) To avoid imposing a disproportionate financial and administrative burden on small operators and users, the requirements

should be proportionate to the risk presented by the network or information system concerned, taking into account the state of the art of such measures. These requirements should not apply to *micro enterprises*.

should be proportionate to the risk presented by the network or information system concerned, taking into account the state of the art of such measures. These requirements should not apply to *small undertakings unless they fall within the field of the sensitive sectors to which the obligations pursuant to Directive 2002/58/EC of 12 July 2002 are extended by this Directive, as the risk in this field depends not on the size of the undertaking but on the nature and volume of the data processed*.

Or. fr

Amendment 55
Josef Weidenholzer

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 prior to the release of appropriate security fixes*.

Amendment

(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 *assign precedence to* the interest of the public in being informed about threats *rather than to short-term economic considerations*.

Or. de

Amendment 56
Marie-Christine Vergiat

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 prior to the release of appropriate security fixes.

Amendment

(28) Competent authorities should pay due attention to preserving informal and trusted channels of information-sharing between **undertakings and the public sector.** In the implementation of the notification obligations, competent authorities should pay particular attention to the need to maintain information about product vulnerabilities strictly confidential prior to the release of appropriate security fixes.

Or. fr

Amendment 57
Marie-Christine Vergiat

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 should have the necessary means to perform their duties, including powers to obtain sufficient information from **undertakings** 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 58
Tanja Fajon

Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) A fraudulent use of the internet enables organised crime to expand its activities online for the purposes of money laundering, counterfeiting and other IPR infringing products and services as well as to experiment with new criminal activities, thereby revealing a fearsome ability to adapt to modern technology;

Or. en

Amendment 59
Ágnes Hankiss

Proposal for a directive
Recital 30

Text proposed by the Commission

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 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

(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 ***such as cyber terrorism -***

EU laws on cybercrime.

meaning the use of cyber tools to shut down critical national infrastructures for the purpose of coercing or intimidating a government or civilian population - should be assessed in the light of EU laws on cybercrime and the Council of Europe Convention on Cybercrime.

Or. en

Amendment 60
Marie-Christine Vergiat

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 *certain* cases underlying an incident, *and incidents may constitute criminal offences. In these cases*, 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.

Or. fr

Amendment 61
Ágnes Hankiss

Proposal for a directive
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Member States should commit sufficient resources to domestic counter-radicalisation and counter-terrorism as it extends quickly to critical infrastructure protection; they should maintain closer cooperation between the EU and NATO in counter-terrorism policy. The EU High Representative for Foreign Affairs and Security Policy, the EU Counter-terrorism Coordinator and Europol's Cybercrime Centre should be fully informed in case risks are perceived to be of terrorist nature.

Or. en

**Amendment 62
Tanja Fajon**

**Proposal for a directive
Recital 30 a (new)**

Text proposed by the Commission

Amendment

(30a) Cybercrime is creating increasingly significant economic and social damage affecting millions of consumers and is causing annual losses estimated at EUR 290 billion¹;

¹ According to the Norton Cybercrime Report 2012.

Or. en

**Amendment 63
Tanja Fajon**

**Proposal for a directive
Recital 31 a (new)**

Text proposed by the Commission

Amendment

(31a) Personal data is often obtained fraudulently, especially by organised crime, to create false documents or alter genuine documents and thus committing other crimes;

Or. en

Amendment 64
Tanja Fajon

Proposal for a directive
Recital 31 b (new)

Text proposed by the Commission

Amendment

(31b) According to research by the Commission¹, 1.8% of Internet users in the European Union have been victims of identity theft and 12% have been victims of some form of online fraud. The protection of personal data online is an essential precondition for combating online crime and is an important tool for restoring citizens' trust in online services;

¹ *Special Report No 390 on Cybercrime, July 2012.*

Or. en

Amendment 65
Tanja Fajon

Proposal for a directive
Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) This directive should only be adopted after the General Data Protection

Amendment 66
Marie-Christine Vergiat

Proposal for a directive
Recital 33

Text proposed by the Commission

(33) The Commission should periodically review this Directive, in particular with a view to determining the need for modification in the light of changing technological or market conditions.

Amendment

(33) The Commission should periodically review this Directive, in particular with a view to determining the need for modification in the light of changing technological or market conditions ***and of obligations geared to the highest level of security and integrity of networks and information and protection of private life and personal data.***

Amendment 67
Marie-Christine Vergiat

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 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.

Amendment

(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 exchange is strictly necessary for the application of this Directive, ***including for the purpose of applying the criminal law.*** The information exchanged should be limited to that which is relevant and proportionate to the purpose of such exchange.

Amendment 68
Marie-Christine Vergiat

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 documents³¹ 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 Community institutions and bodies and on the free movement of such data.

³¹ OJ L 145, 31.05.01, p. 43.

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 may require the processing of personal data. ***Where*** such a processing of personal data is necessary to meet the objectives of public interest pursued by this Directive, ***it may be*** legitimate under Article 7 of Directive 95/46/EC. It does not, ***however, relieve the competent authorities of the obligation to act proportionately, in a way which is likely not to impair*** 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 appropriate³¹. 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 Community institutions and bodies and on the free movement of such data.

³¹ OJ L 145, 31.05.01, p. 43.

Amendment 69
Josef Weidenholzer

Proposal for a directive
Recital 41 a (new)

Text proposed by the Commission

Amendment

(41a) In the case of all measures, fundamental human rights, particularly those referred to in the European Convention on Human Rights (Article 8, respect for private life), should be appropriately protected and the principle of proportionality must be respected.

Or. de

Amendment 70
Marie-Christine Vergiat

Proposal for a directive
Article 1 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) establishes security requirements for ***market operators*** and public administrations.

(c) establishes security requirements for ***undertakings*** and public administrations.

Or. fr

Amendment 71
Marie-Christine Vergiat

Proposal for a directive
Article 1 – paragraph 5

Text proposed by the Commission

Amendment

5. This Directive ***shall also be without***

5. This Directive ***fully respects*** Directive

prejudice to Directive **95/46/CE** of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³³, and to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector and to the Regulation 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 data³⁴.

³³ OJ L 281, 23.11.95, p. 31.

³⁴ SEC(2012) 72 final.

95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector and to the Regulation 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.

³³ OJ L 281, 23.11.95, p. 31.

³⁴ SEC (2012) 72 final.

Or. fr

Amendment 72
Ágnes Hankiss

Proposal for a directive
Article 2

Text proposed by the Commission

Member States shall not be prevented from adopting or maintaining provisions ensuring a higher level of security, without prejudice to their obligations under Union law.

Amendment

Member States shall not be prevented from adopting or maintaining provisions ensuring a higher level of security, without prejudice to their obligations under Union law. ***However, when transposing the provisions of Chapter IV, Member States shall not maintain or introduce national provisions diverging from or conflicting with those laid down in that Chapter.***

Or. en

Amendment 73
Csaba Sógor

Proposal for a directive
Article 2

Text proposed by the Commission

Member States shall not be prevented from adopting or maintaining provisions ensuring a higher level of security, without prejudice to their obligations under Union law.

Amendment

Member States shall not be prevented from adopting or maintaining provisions ensuring a higher level of security, without prejudice to their obligations under Union law, ***but such provisions must comply with the common minimum expectations applicable in this case which are enshrined in this Directive.***

Or. hu

Amendment 74
Josef Weidenholzer

Proposal for a directive
Article 3 – point 1 – point c

Text proposed by the Commission

(c) computer data stored, processed, retrieved or transmitted by elements covered under point (a) and (b) for the purposes of their operation, use, ***protection and maintenance.***

Amendment

(c) computer data stored, processed, retrieved or transmitted by elements covered under point (a) and (b) for the purposes of their operation ***and*** use.

Or. de

Amendment 75
Marie-Christine Vergiat

Proposal for a directive
Article 3 – point 2

Text proposed by the Commission

(2) "security" means the ability of a network and information system to resist, ***at a given level of confidence,*** accident or malicious action that compromise the

Amendment

(2) "security" means the ability of a network and information system to resist accident or malicious action that compromise the availability, authenticity,

availability, authenticity, integrity and confidentiality of stored or transmitted data or the related services offered by or accessible via that network and information system;

integrity and confidentiality of stored or transmitted data or the related services offered by or accessible via that network and information system;

Or. fr

Amendment 76
Nils Torvalds

Proposal for a directive
Article 3 – point 6

Text proposed by the Commission

(6) ‘NIS cooperation plan’ means a plan establishing *the* framework for organisational roles, responsibilities and procedures to maintain or restore the operation of networks and information systems, in the event of a risk or an incident affecting them;

Amendment

(6) ‘NIS cooperation plan’ means a plan establishing *an indicative* framework for organisational roles, responsibilities and procedures to maintain or restore the operation of networks and information systems, in the event of a risk or an incident affecting them;

Or. en

Amendment 77
Marie-Christine Vergiat

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

Text proposed by the Commission

(8) *"market operator"* means:

Amendment

(8) *"undertakings"* means:

Or. fr

Amendment 78
Josef Weidenholzer

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

Text proposed by the Commission

(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;

Amendment

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

Or. de

Amendment 79

Ágnes Hankiss

Proposal for a directive

Article 3 – point 8 – point b

Text proposed by the Commission

(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.

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, **health and agriculture**, a non-exhaustive list of which is set out in Annex II.

Or. en

Amendment 80

Josef Weidenholzer

Proposal for a directive

Article 3 – point 8 – point b

Text proposed by the Commission

(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.

Amendment

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

Or. de

Amendment 81
Ágnes Hankiss

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

Text proposed by the Commission

Amendment

(11a) "threat information" means information that describes an attack that results in an incident or an attempt to cause an incident and includes cyber-attack signatures;

Or. en

Amendment 82
Josef Weidenholzer

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Each Member State shall adopt a national NIS strategy defining the strategic objectives and concrete policy ***and regulatory*** measures to achieve and maintain a high level of network and information security. The national NIS strategy shall address in particular the following issues:

1. Each Member State shall adopt a national NIS strategy defining the strategic objectives and concrete policy measures to achieve and maintain a high level of network and information security. The national NIS strategy shall address in particular the following issues:

Or. de

Amendment 83
Josef Weidenholzer

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) A governance framework to achieve the strategy objectives and priorities, including a clear definition of the roles and responsibilities of the government bodies and the **other** relevant actors;

Amendment

(b) A governance framework to achieve the strategy objectives and priorities, including a clear definition of the roles and responsibilities of the government bodies and the relevant actors;

Or. de

Amendment 84
Sari Essayah

Proposal for a directive
Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) The identification of the general measures on preparedness, response and recovery, including cooperation mechanisms between the public and private sectors;

Amendment

(c) The identification of the general measures on preparedness, response and recovery, including cooperation mechanisms between the public and private sectors **and between the public and third sectors**;

Or. fi

Amendment 85
Marie-Christine Vergiat

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

Text proposed by the Commission

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

Amendment

(a) A risk **management framework incorporating, at the minimum, regular** assessment to identify risks and assess the impacts of potential incidents, **and measures to preserve the security and integrity of information, including early warning**;

Or. fr

Justification

An assessment plan is not sufficient, and does not include other measures necessary for the purpose of managing network and information security risks. The EDPS recommends establishing a risk management framework which includes risk assessment.

Amendment 86
Josef Weidenholzer

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

3. The national NIS strategy and the national NIS cooperation plan shall be communicated to the Commission within one month from their adoption.

Amendment

3. The national NIS strategy and the national NIS cooperation plan shall be communicated to the Commission, ***the committee responsible at the European Parliament and the European Data Protection Supervisor*** within one month from their adoption.

Or. de

Amendment 87
Csaba Sógor

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

(3) The national NIS strategy and the national NIS cooperation plan shall be communicated to the Commission within one month from their adoption.

Amendment

(3) ***Each Member State shall draft its national NIS strategy within 12 months of the adoption and promulgation of this Directive.*** The national NIS strategy and the national NIS cooperation plan shall be communicated to the Commission within one month from their adoption.

Or. hu

Justification

Unless a deadline is set for the drafting of national strategies, significant delays may occur,

which will be damaging precisely to the network aspect. Although Article 21 requires the provisions of the present directives to be transposed into national law within 18 months after adoption, the national strategies themselves may only be adopted at the very last moment, in which case delays will occur at other levels. This amendment therefore proposes that, in the case of the national strategies, a 12-month limit should apply.

Amendment 88

Csaba Sógor

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The Commission shall summarise the NIS strategies of all the Member States and forward them to all Member States in an organised form.

Or. hu

Justification

It will be useful if the Member States also see one another's plans. It will help them to determine their approaches, and there may even be opportunities for exchanges of best practices.

Amendment 89

Csaba Sógor

Proposal for a directive

Article 5 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

(3b) Within six months after the adoption of this Directive, the Commission shall compile a guide to the structure of the NIS strategy. Its aim shall be to help Member States to draft and adopt documents with approximately the same structure.

Or. hu

Justification

The work of organisation and summarising at Community level may be more effective if the 28 documents on which it is based adhere to a certain general structure. Although the Commission's guide would not be binding, it would still have the effect of inducing Member States to adhere to this recommended model/structure when drafting their own national strategies.

Amendment 90 **Josef Weidenholzer**

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 shall consult and cooperate ***closely*** with the ***competent*** law enforcement national authorities and data protection authorities.

Or. de

Amendment 91 **Marie-Christine Vergiat**

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 shall consult with the relevant law enforcement national authorities and data protection authorities ***in cases where this appears necessary, taking account of the principle of proportionality, and shall cooperate with them whenever appropriate.***

Or. fr

Amendment 92 **Sophia in 't Veld**

Proposal for a directive
Article 6 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that the competent authorities shall, in any case, inform the relevant national law enforcement authorities and data protection authorities as soon as the suspicion rises that a national authority of a Member State or a third country:

- is the originator of a notified incident;***
- is the originator of a possible incident as reported on the basis of material published by whistle-blowers, a credible public source, or on the basis of information that has been provided to the competent authority confidentially.***

Or. en

Amendment 93
Sophia in 't Veld

Proposal for a directive
Article 6 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Member States shall ensure that notifications to national law enforcement authorities on the basis of paragraph 5a (new) will automatically lead to the instruction of the Europol Cyber Crime Centre to investigate into the incident, without prejudice to Member States' competence to investigate into the incident.

Or. en

Amendment 94
Josef Weidenholzer

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

Amendment

6. Each Member State shall notify to the Commission, ***the committee responsible at the European Parliament and the European Data Protection Supervisor*** without delay the designation of the competent authority, its tasks, and any subsequent change thereto. Each Member State shall make public its designation of the competent authority.

Or. de

Amendment 95
Csaba Sógor

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

Text proposed by the Commission

Amendment

(6a) The competent authority shall draw up an annual report to the ministry/state secretary responsible in the Member State concerned regarding the year's activities and the extent to which it has proved possible to carry out the responsibilities created by the Directive. A financial account shall also be attached to the annual report.

Or. hu

Justification

A minimum requirement when creating any organisation is that the relevant legal instrument should provide for accounting by, and accountability of, the organisations, which in this case can best be done in the form of an annual report.

Amendment 96

Ágnes Hankiss

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall set up **a** Computer Emergency Response Team (hereinafter: ‘CERT’) responsible for handling incidents and risks according to a well-defined process, which shall comply with the requirements set out in point (1) of Annex I. A CERT may be established within the competent authority.

Amendment

1. Each Member State shall set up **at least one** Computer Emergency Response Team (hereinafter: ‘CERT’) responsible for handling incidents and risks according to a well-defined process, which shall comply with the requirements set out in point (1) of Annex I. A CERT may be established within the competent authority.

Or. en

Amendment 97

Josef Weidenholzer

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall set up a Computer Emergency Response Team (hereinafter: "CERT") responsible for handling incidents and risks according to a well-defined process, which shall comply with the requirements set out in point (1) of Annex I. A CERT **may** be established within the competent authority.

Amendment

1. Each Member State shall set up a Computer Emergency Response Team (hereinafter: "CERT") responsible for handling incidents and risks according to a well-defined process, which shall comply with the requirements set out in point (1) of Annex I. A CERT **shall** be established within the competent authority.

Or. de

Amendment 98

Josef Weidenholzer

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

4. Member States shall inform the Commission about the resources and mandate as well as the incident handling process of the CERTs.

Amendment

4. Member States shall inform the Commission, ***the European Data Protection Supervisor and also the public*** about the resources and mandate as well as the incident handling process of the CERTs.

Or. de

Amendment 99
Ágnes Hankiss

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 competent authorities. When requested, the European Network and Information Security Agency ('ENISA') shall assist the cooperation network by providing ***technology neutral guidance with suitable measures for both public and private sectors***.

Or. en

Amendment 100
Josef Weidenholzer

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

Text proposed by the Commission

(c) publish on a regular basis ***non-confidential*** information on on-going early warnings and coordinated response on a common website;

Amendment

(c) publish on a regular basis, ***and immediately, comprehensive*** information on on-going early warnings and coordinated response on a common website;

Amendment 101
Josef Weidenholzer

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

Text proposed by the Commission

(d) jointly discuss and assess, at the request of one Member State *or of* the Commission, one or more national NIS strategies and national NIS cooperation plans referred to in Article 5, within the scope of this Directive.

Amendment

(d) jointly discuss and assess, at the request of one Member State, the Commission *or the European Parliament*, one or more national NIS strategies and national NIS cooperation plans referred to in Article 5, within the scope of this Directive.

Or. de

Amendment 102
Josef Weidenholzer

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

Text proposed by the Commission

(e) jointly discuss and assess, at the request of a Member State *or* the Commission, the effectiveness of the CERTs, in particular when NIS exercises are performed at Union level;

Amendment

(e) jointly discuss and assess, at the request of a Member State, the Commission *or the European Parliament*, the effectiveness of the CERTs, in particular when NIS exercises are performed at Union level;

Or. de

Amendment 103
Josef Weidenholzer

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 European Cybercrime 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 relevant matters with the European Cybercrime Center within Europol, **the European Data Protection Supervisor and national data protection authorities;**

Or. de

Amendment 104
Josef Weidenholzer

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

Text proposed by the Commission

(h) organise regular peer reviews on capabilities **and** preparedness;

Amendment

(h) organise regular peer reviews on capabilities, preparedness **and compliance with data protection provisions;**

Or. de

Amendment 105
Josef Weidenholzer

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

Text proposed by the Commission

(i) organise NIS exercises at Union level and participate, **as appropriate**, in international NIS exercises.

Amendment

(i) organise NIS exercises at Union level and participate in international NIS exercises.

Or. de

Amendment 106
Marie-Christine Vergiat

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

Text proposed by the Commission

(i) organise NIS exercises at Union level and participate, as appropriate, in international NIS exercises.

Amendment

(i) organise NIS exercises at Union level and participate, as appropriate, in international NIS exercises, ***with the proviso that the data of European citizens must be protected by the Member States concerned.***

Or. fr

Amendment 107
Marie-Christine Vergiat

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

Text proposed by the Commission

Amendment

1a. Personal data shall be communicated only to recipients authorised to process them for the purpose of carrying out their duties. The data communicated shall be confined to those necessary for the purpose of carrying out those duties in accordance with European law on the subject. Compliance with the purpose limitation principle shall be ensured. The time limit for the retention of these data shall not exceed six months, which may be extended once for the same period.

Or. fr

Amendment 108
Ágnes Hankiss

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall adopt, by means of implementing acts, decisions on the access of the Member States to this secure infrastructure, pursuant to the criteria referred to in paragraph 2 and 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(3).

deleted

Or. en

Amendment 109
Josef Weidenholzer

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

Amendment

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.

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

Or. de

Amendment 110
Ágnes Hankiss

Proposal for a directive
Article 10 – paragraph 4a (new)

Text proposed by the Commission

Amendment

(4a) Concrete threat intelligence on cyber threats to critical national infrastructure shall be disseminated to security-cleared personnel in targeted private sector facilities.

Or. en

Amendment 111
Nils Torvalds

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

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

Or. en

Amendment 112
Nils Torvalds

Proposal for a directive
Article 12 – paragraph 2 – point a – indent 2

Text proposed by the Commission

– a definition of the **procedures and the** criteria for the assessment of the risks and incidents by the cooperation network.

Amendment

– a definition of the criteria for the assessment of the risks and incidents by the cooperation network.

Or. en

Amendment 113
Josef Weidenholzer

Proposal for a directive
Article 13

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

Amendment

Without prejudice to the **scope open to** the cooperation network, the Union may conclude international agreements with third countries or international organisations allowing and organizing their

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.

participation in some activities of the cooperation network. Such agreement *must provide for a high level of* protection of the personal data circulating on the cooperation network.

Or. de

Amendment 114
Marie-Christine Vergiat

Proposal for a directive
Article 13

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 *may be concluded only with Member States which protect the data of their citizens to a level comparable to that of the Union and which enables European citizens to defend their rights within their territory. Otherwise they may only engage in informal cooperation.*

Or. fr

Amendment 115
Nils Torvalds

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

Amendment

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.

appropriate **and proportional** 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 116
Josef Weidenholzer

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 public administrations and market operators take appropriate technical and organisational measures to **limit** 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 **and security of the data** underpinned by those networks and information systems.

Or. de

Amendment 117
Marie-Christine Vergiat

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 public administrations and **undertakings** 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. fr

Amendment 118
Christian Ehler

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

Amendment

1. Member States shall ensure that public administrations and market operators take appropriate technical and organisational measures to **detect and effectively** 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

they provide and thus ensure the continuity of the services underpinned by those networks and information systems.

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 119
Ágnes Hankiss

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 public administrations and market operators notify to the competent authority **about both incident and threat information having** impact on the security of the core services they provide.

Or. en

Amendment 120
Christian Ehler

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 public administrations and market operators **completely and without measurable delay** notify to the competent authority incidents having a significant impact on the security of the core services they provide.

Or. en

Amendment 121
Marie-Christine Vergiat

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 public administrations and **undertakings** notify to the competent authority incidents having a significant impact on the security of the core services they provide.

Or. fr

Amendment 122
Josef Weidenholzer

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 public administrations and market operators notify to the competent authority incidents having an impact on the security of the core services they provide.

Or. de

Amendment 123
Carl Schlyter

Proposal for a directive
Article 14 – paragraph 2 point a (new)

Amendment

(a) Commercial software producers shall be held responsible despite non liability clauses in users' agreement in case of gross negligence regarding safety and security.

Or. en

Justification

In the license agreement, commercial software producers absolve themselves from all liability that may arise due to a poor security mind-set and inferior programming. To promote the software producers to invest in security measures, a different culture is required. It can only be realised if the software producers are held responsible for any shortcomings in security.

Amendment 124 **Marie-Christine Vergiat**

Proposal for a directive **Article 14 – paragraph 3**

Text proposed by the Commission

3. The requirements under paragraphs 1 and 2 apply to all **market operators** providing services within the European Union.

Amendment

3. The requirements under paragraphs 1 and 2 apply to all **undertakings** providing services within the European Union.

Or. fr

Amendment 125 **Josef Weidenholzer**

Proposal for a directive **Article 14 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. The competent authority **must** inform the public, or require the public administrations and market operators to do so. Once a year, the competent authority shall submit a summary report to the cooperation network on the notifications received and the action taken in accordance with this paragraph.

Or. de

Amendment 126
Marie-Christine Vergiat

Proposal for a directive
Article 14 – paragraph 4

Text proposed by the Commission

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

Amendment

4. The competent authority may inform the public, or require the public administrations and *undertakings* 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 cooperation network on the notifications received and the action taken in accordance with this paragraph.

Or. fr

Amendment 127
Christian Ehler

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Besides reporting to public authorities, market operators shall be obliged to announce incidents involving their corporation in their annual business report.

Or. en

Amendment 128
Josef Weidenholzer

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. de

Amendment 129

Marie-Christine Vergiat

**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.

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 **undertakings** are required to notify incidents.

Or. fr

Amendment 130

Josef Weidenholzer

**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.

deleted

Amendment 131
Marie-Christine Vergiat

Proposal for a directive
Article 14 – paragraph 6

Text proposed by the Commission

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.

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 **undertakings** are required to notify incidents.

Or. fr

Amendment 132
Josef Weidenholzer

Proposal for a directive
Article 14 – paragraph 8

Text proposed by the Commission

8. Paragraphs 1 and 2 shall not apply to microenterprises as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises³⁵.

Amendment

deleted

³⁵ OJ L 124, 20.5.2003, p. 36.

Or. de

Amendment 133
Josef Weidenholzer

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 have 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.

Or. de

Amendment 134
Marie-Christine Vergiat

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 have all the powers necessary to investigate cases of non-compliance of public administrations or **undertakings** with their obligations under Article 14 and the effects thereof on the security of networks and information systems.

Or. fr

Amendment 135
Marie-Christine Vergiat

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

Amendment

2. Member States shall ensure that the competent authorities have the power to

require *market operators* and public administrations to:

require *undertakings* and public administrations to:

Or. fr

Amendment 136
Ágnes Hankiss

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 available to the competent authority.*

Amendment

(b) *demonstrate the effective implementation of security policies (measured by ongoing application of industry global best-practices) by suitable means, and make available to the competent authority or to the single point of contact the results of a security audit carried out by an authorised internal representative or a qualified external auditor.*

Or. en

Amendment 137
Marie-Christine Vergiat

Proposal for a directive
Article 15 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 138
Josef Weidenholzer

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 shall work in close cooperation with personal data protection authorities when addressing **security** incidents **relating to** personal data.

Or. de

Amendment 139
Ágnes Hankiss

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. Without prejudice to applicable data protection law, and in full consultation with the relevant data controllers and processors, 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.

Or. en

Amendment 140
Marie-Christine Vergiat

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**

Amendment

6. Member States shall ensure that any obligations imposed on public administrations and **undertakings** under

under this Chapter may be subject to judicial review.

this Chapter may be subject to judicial review.

Or. fr

Amendment 141
Ágnes Hankiss

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

Text proposed by the Commission

Amendment

1a. Member States shall guarantee that the penalties in paragraph 1 of this Article are applied only if market operators and public administrations due to gross negligence or intent failed to fulfil their obligations under Chapter IV.

Or. en

Amendment 142
Josef Weidenholzer

Proposal for a directive
Article 20 – paragraph 1

Text proposed by the Commission

Amendment

The Commission shall periodically review the functioning of this Directive and report to the European Parliament and the Council. The first report shall be submitted no later than **three** years after the date of transposition referred to in Article 21. For this purpose, the Commission may request Member States to provide information without undue delay.

The Commission shall periodically review the functioning of this Directive and report to the European Parliament and the Council. The first report shall be submitted no later than **two** years after the date of transposition referred to in Article 21. For this purpose, the Commission may request Member States to provide information without undue delay.

Or. de

Amendment 143
Josef Weidenholzer

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

Text proposed by the Commission

(b) The CERT shall implement and manage security measures to ensure the confidentiality, integrity, availability and authenticity of information it receives and treats.

Amendment

(b) The CERT shall implement and manage security measures to ensure the confidentiality, integrity, availability and authenticity of information it receives and treats ***and ensure data protection.***

Or. de

Amendment 144
Sari Essayah

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

Text proposed by the Commission

(b) The CERT shall establish cooperative relationships with private sector.

Amendment

(b) The CERT shall establish cooperative relationships with private sector ***and the third sector.***

Or. fi

Amendment 145
Marie-Christine Vergiat

Proposal for a directive
Annex 2 – title

Text proposed by the Commission

List of *market operators*

Amendment

List of ***undertakings to which this directive applies***

Or. fr

Amendment 146
Ágnes Hankiss

Proposal for a directive
Annex 2

Text proposed by the Commission

Amendment

List of market operators
Referred to in Article 3(8)a)

List of market operators
Referred to in Article 3(8)a)

1. e-commerce platforms

2. Internet payment gateways

3. Social networks

4. Search engines

5. Cloud computing services

5. Cloud computing services **that store critical infrastructure data of the European Union**

6. Application stores

Or. en

Amendment 147
Ágnes Hankiss

Proposal for a directive
Annex 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

Amendment

5a. Agriculture sector: settings of industrial agriculture a) genetic technology b) agricultural machinery

Or. en