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(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/1148 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 6 July 2016****concerning measures for a high common level of security of network and information systems across the Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Network and information systems and services play a vital role in society. Their reliability and security are essential to economic and societal activities, and in particular to the functioning of the internal market.
- (2) The magnitude, frequency and impact of security incidents are increasing, and represent a major threat to the functioning of network and information systems. Those systems may also become a target for deliberate harmful actions intended to damage or interrupt the operation of the 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.
- (3) Network and information systems, and primarily the internet, play an essential role in facilitating the cross-border movement of goods, services and people. Owing to that transnational nature, substantial disruptions of those systems, whether intentional or unintentional and regardless of where they occur, can affect individual Member States and the Union as a whole. The security of network and information systems is therefore essential for the smooth functioning of the internal market.
- (4) Building upon the significant progress within the European Forum of Member States in fostering discussions and exchanges on good policy practices, including the development of principles for European cyber-crisis cooperation, a Cooperation Group, composed of representatives of Member States, the Commission, and the European Union Agency for Network and Information Security ('ENISA'), should be established to support and

⁽¹⁾ OJ C 271, 19.9.2013, p. 133.

⁽²⁾ Position of the European Parliament of 13 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 17 May 2016 (not yet published in the Official Journal). Position of the European Parliament of 6 July 2016 (not yet published in the Official Journal).

facilitate strategic cooperation between the Member States regarding the security of network and information systems. For that group to be effective and inclusive, it is essential that all Member States have minimum capabilities and a strategy ensuring a high level of security of network and information systems in their territory. In addition, security and notification requirements should apply to operators of essential services and to digital service providers to promote a culture of risk management and ensure that the most serious incidents are reported.

- (5) The existing capabilities are not sufficient to ensure a high level of security of network and information systems within the Union. Member States have very different levels of preparedness, which has led to fragmented approaches across the Union. This results in an unequal level of protection of consumers and businesses, and undermines the overall level of security of network and information systems within the Union. Lack of common requirements on operators of essential services and digital service providers in turn makes it impossible to set up a global and effective mechanism for cooperation at Union level. Universities and research centres have a decisive role to play in spurring research, development and innovation in those areas.
- (6) Responding effectively to the challenges of the security of network and information systems therefore requires a global approach at Union level covering common minimum capacity building and planning requirements, exchange of information, cooperation and common security requirements for operators of essential services and digital service providers. However, operators of essential services and digital service providers are not precluded from implementing security measures that are stricter than those provided for under this Directive.
- (7) To cover all relevant incidents and risks, this Directive should apply to both operators of essential services and digital service providers. However, the obligations on operators of essential services and digital service providers should 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 ⁽¹⁾, which are subject to the specific security and integrity requirements laid down in that Directive, nor should they apply to trust service providers within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council ⁽²⁾, which are subject to the security requirements laid down in that Regulation.
- (8) This Directive should be without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of the essential interests of its security, to safeguard public policy and public security, and to allow for the investigation, detection and prosecution of criminal offences. In accordance with Article 346 of the Treaty on the Functioning of the European Union (TFEU), no Member State is to be obliged to supply information the disclosure of which it considers to be contrary to the essential interests of its security. In this context, Council Decision 2013/488/EU ⁽³⁾ and non-disclosure agreements, or informal non-disclosure agreements such as the Traffic Light Protocol, are of relevance.
- (9) Certain sectors of the economy are already regulated or may be regulated in the future by sector-specific Union legal acts that include rules related to the security of network and information systems. Whenever those Union legal acts contain provisions imposing requirements concerning the security of network and information systems or notifications of incidents, those provisions should apply if they contain requirements which are at least equivalent in effect to the obligations contained in this Directive. Member States should then apply the provisions of such sector-specific Union legal acts, including those relating to jurisdiction, and should not carry out the identification process for operators of essential services as defined by this Directive. In this context, Member States should provide information to the Commission on the application of such *lex specialis* provisions. In determining whether the requirements on the security of network and information systems and the notification of incidents contained in sector-specific Union legal acts are equivalent to those contained in this Directive, regard should only be had to the provisions of relevant Union legal acts and their application in the Member States.
- (10) In the water transport sector, security requirements for companies, ships, port facilities, ports and vessel traffic services under Union legal acts cover all operations, including radio and telecommunication systems, computer systems and networks. Part of the mandatory procedures to be followed includes the reporting of all incidents and should therefore be considered as *lex specialis*, in so far as those requirements are at least equivalent to the corresponding provisions of this Directive.

⁽¹⁾ 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) (OJ L 108, 24.4.2002, p. 33).

⁽²⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

⁽³⁾ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

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