

# Overview: Proposed NIS2 Directive Comment Opportunity

Discussion with ICANN At Large

17 February 2021

# What is the proposed NIS2 directive?

- A proposed directive that updates the previous “Directive on the security of network and information systems” (NIS Directive)
- According to the European Commission:

“This proposal is part of a package of measures to improve further the resilience and incident response capacities of public and private entities, competent authorities and the Union as a whole in the field of cybersecurity and critical infrastructure protection.”
- Through various updates, the proposed directive seeks to address cybersecurity, harmonize supervisory measures, and other tasks, including addressing domain name registration data.

# The problem being addressed

- As noted in a recently released study by Interisle (January 2021), currently “86.5% of registrants cannot be identified via WHOIS.” (*emphasis added*)
- Yet the same study details that only 11.5% of domain names under a natural person’s registration are subject to GDPR. (*emphasis added*)
- As the European Parliament noted in a question last year to the Commission, “*approximately 75% of requests for access remain unanswered and almost all requests that receive an answer are denied.*”

# EC recognition of criticality of DNS and WHOIS

- The EC recognizes the criticality of elements of the DNS:

Whereas 15: Upholding and preserving a reliable, resilient and secure domain name system (DNS) is a key factor in maintaining the integrity of the Internet and is essential for its continuous and stable operation, on which the digital economy and society depend.

- As the Council of the EU stated **more than two years ago**:

*“The EU and its Member States note the concerns raised by law enforcement authorities, cybersecurity organisations and intellectual property rights holders about the negative impact of limitations of access to WHOIS data on their work. Finding a workable solution for access to non-public WHOIS data should be treated as a matter of priority.”*

# Opportunity for At Large comment

- Public comment will be “summarised by the European Commission and presented to the European Parliament and Council with the aim of feeding into the legislative debate.”

# Direction of various comment sources

- Ensure the scope of NIS2 specifically covers all relevant actors in the DNS (e.g., those not specifically enumerated).
- Strengthen the provisions concerning “lawful access” to domain name registration data.
- Enhance the public interest basis for timely access to WHOIS data.
- Make suggestions regarding refinement of:
  - Articles 4 and 23
  - Recitals 15, 61, 62 and 69
- Draft of suggested comment basis to be sent shortly

# Tactical outline

- Submit all comments by 18 March
- Outreach to relevant audiences within EC and Parliament following comment
- Outreach to relevant audiences on ICANN Board

Questions? Ideas? Thoughts?

Mason Cole, BC Chair

+1 503 407 2555

[mcole@perkinscoie.com](mailto:mcole@perkinscoie.com)