

This comment is being submitted on behalf of the ICANN's At-Large Advisory Committee (ALAC). The ALAC is responsible for representing the interests of individual Internet users within ICANN.

As currently written, there are a number of gaps that will not allow NIS2, and particularly Article 23, to fulfill its intended function.

The key issue is that NIS2 focuses on TLD registries but for most gTLD registrations, the registration data is not collected or stored by registries, but rather by registrars, resellers and privacy/proxy providers (P/P-P).

- For most registrations, the registration data is not held by the registry, but by the registrar.
- Many registrars have "resellers" and it is these resellers that interact with the registrant.
- Resellers may themselves have resellers. These 2<sup>nd</sup>-order resellers have no direct link to or contract with the registrar and in fact, the registrar may not even be aware of them. There is no limit to the depth of this reseller chain.
- Some or all of the registration data may never be stored by (or even presented to) the registrar. It will be held by a privacy or proxy provider. A proxy provider will not pass on either the name of the real registrant or their contact information. A privacy provider protects only the contact data. A P/P-P may be an affiliate of the registrar or reseller, or a completely separate entity.
- For a P/P registration made through a reseller only the reseller or the P/P-P can verify the accuracy of the registration data.

In short, focusing primarily on TLD registries will miss the bigger picture. Moreover, not explicitly referencing the other participants may allow them to be excluded from future ICANN policy and Member State legislation.

To remedy this:

- Registrars must be explicitly defined in Article 4.
- Resellers and P/P-P must be included in Article 4, either as separate definitions or explicitly integrated into the definition of registrar.
- Article 2 on Scope must ensure that registrars, resellers and P/P-P are subject to NIS2, regardless of size, just as it does for registries.
- Registrars, resellers and P/P-P must be classified as essential or important services in Annexed I and II. It is these entities that collect, store, publish and release registration data in almost all cases. They must be subject to the supervision and penalties described in Articles 28-34. If there are not clear and dissuasive penalties for all players in the registration process, then Article 23 becomes meaningless [the fact that some registrars may run DNS servers and thus be considered essential is not sufficient].

Other Issues

Undue Delay: Article sections 23.4 and 23.5 make reference to "without undue delay". Although the ALAC understands the EC desire that NIS2 remain high level and leave specificity to the Member States,

the potential for misinterpretation here is too great. As an example, the draft ICANN policy for an URGENT request (imminent threat to human life or critical infrastructure) allows of up to 3 calendar days in some cases. Other requests allow a mean (not maximum) response time of up to 10 business days (2-3 weeks).

Publication: Article 23.4 calls for the publication of specific registration data. The form of publication must be specified, presumably via publicly accessible Internet access and without charge.

Accuracy: Article 23 calls for the collection and maintenance of accurate and complete registration data usable to identify and contact the domain name holder. Since privacy advocates and registrars believe that the data subject is the sole judge of “accuracy”. A clear requirement that these data items must be verified as accurate should be included.

### Summary

The ALAC appreciates the NIS2 initiative in regard to ICANN-related services and thanks the European Commission for this opportunity to submit comments. NIS2, with appropriate enhancements as described here, has the potential to greatly improve Internet security and the ALAC looks forward to its adoption.