

ICANN74 - THE HAGUE
IPC MEMBERSHIP MEETING - 14 JUNE 2022
THE EU'S NIS2 DIRECTIVE AND ITS PROVISIONS ON
“WHOIS”

The “NIS2” Directive and its provisions on “WHOIS” – Overview of presentation

Genesis

EC proposal

The EU’s inter-institutional negotiations (2021-22)

Political agreement (May 2022)

Substance of the agreement

Scope and definitions

The five pillars of Article 23

Recitals matter

Next steps

Finalization at EU level

Entry into force and national implementation

Monitoring effective application

The “NIS2” Directive and its provisions on “WHOIS”

Genesis:

- EC proposal on 16 December 2020
 - Internal debates - DSA vs. other possible avenues
 - Political will
 - Useful reports/communications/studies (EU Security Union (07/2002), Interisle (01/2021), DNS abuse (01/2002 - University of Grenoble)
- Overview of the EU’s inter-institutional negotiations in 2021-22
 - The EP’s Industry Committee and other consulted EP committees
 - The Council’s Horizontal WP on cyber-issues
 - A France/Renew understanding?
- Political agreement of 13 May 2022
 - Speeding up the ordinary EU co-decision procedures

The “NIS2” Directive and its provisions on “WHOIS”

Substance of the agreement:

- Scope and definitions
 - Member States, “essential” and “important” entities
 - Size-cap rule with exceptions (e.g., TLD registries)
 - Incl. registrars, agents, privacy/proxy registration services, resellers
- The five pillars of Article 23
 - Running a WHOIS database (Art 23.1)
 - Data collected and maintained (Art 23.2)
 - Completeness, accuracy and verification (Art 23.3)
 - Quick availability upon registration (Art 23.4)
 - Provision of access (Art 23.5)
- The Recitals matter
 - Lawful access, not only to LEA (R. 60)
 - Legal persons out of GDPR scope (R.62)
 - Free of charge access (R.62)
 - Jurisdiction + designation of representatives + ENISA registry of entities (R.63-64-65 + Art 24)

The “NIS2” Directive and its provisions on “WHOIS”

Next steps:

- Finalization at EU level
 - Last political trilogue on May 13th
 - Ongoing technical meetings + lawyer-linguists checks
 - ITRE Committee in June, EP Plenary in July, back to Council (Member States for rubber-stamping)
- Entry into force and national implementation
 - Official Journal + 20 days
 - 21 months national transposition deadline
- Monitoring effective application
 - Recall that NIS2 is an EU Directive, not an EU Regulation
 - Local allies
 - Early-warning systems

THANK YOU!

DISCUSSION - Q & A