



EUROPEAN COMMISSION

Brussels, 18.9.2013
C(2013) 5881 final

Dear President,

The Commission would like to thank the Senat for its Opinion 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 ("NIS") across the Union {COM(2013) 48 final}.

The Commission welcomes the fact that the Senat has concluded that the proposal complies with the principles of subsidiarity and proportionality.

As regards the appointment of a national competent authority and a CERT, the proposal leaves the Member States enough flexibility to decide on the structure of these entities. For example, Article 6 of the proposal does not require the NIS authorities to be independent, and under Article 7 the Member States would be free to set up a CERT within or outside the competent authority.

The proposal does not prevent Member States from maintaining or establishing sectoral CERTs working in close cooperation with the national CERT. There is, however, a need to have a single focal point on NIS to ensure effective cooperation within a Member State as well as between the Member States within the NIS cooperation network.

As regards the providers of information society services, the Commission would like to stress that the list in Annex 2 is not exhaustive, which is again an example of the flexibility left to the Member States. The Commission is open to possible improvements that could be proposed during the legislative process to achieve more legal certainty. "Social networks" are expressly referred to in Annex II, and both Yahoo and Google are covered as "Search engines". Most of the market operators covered by the NIS Directive are also data controllers under Directive 95/46/EC. They are hence already obliged to adopt security measures to protect personal data, but not to report incidents affecting exclusively their networks and information systems without compromising personal data (cf. point 5.1 of the Impact Assessment SWD (2013)31 accompanying the NIS Directive proposal).

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Finally, the Commission believes that, on substance, the definition of "network and information system" under Article 3(1) is required to cover all the elements concerned by NIS. The Commission is open to discuss what precise terminology to use and whether the terms "network and information system" are the most appropriate.

The Commission hopes that these clarifications address the issues raised by the Senat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš ŠEFČOVIČ
Vice-President*
