Latest EU cybersecurity legislative initiatives– NIS 2 and CRA

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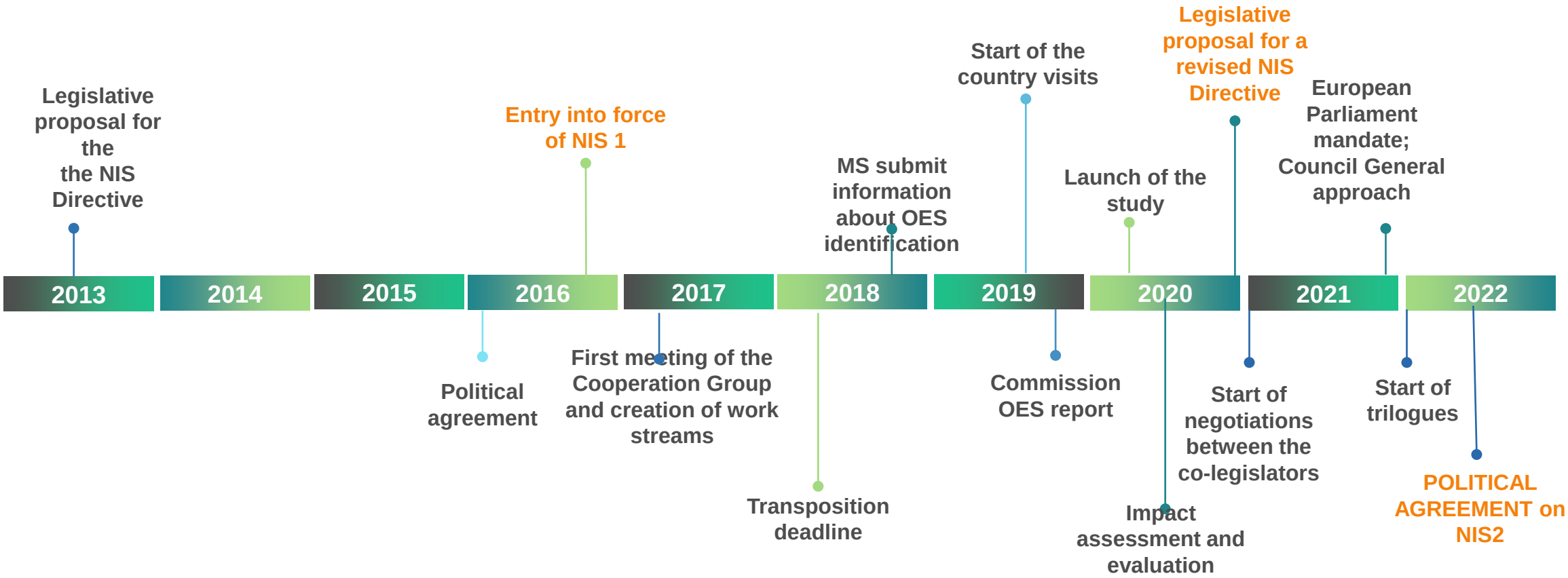
NIS 2 Directive: state of play

Timeline of the NIS Directive



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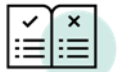
Three main pillars of the proposal for NIS 2

MEMBER STATE CAPABILITIES



National authorities

National strategies

Coordinated Vulnerability Disclosure (CVD) frameworks

Crisis management frameworks

RISK MANAGEMENT & REPORTING

Size threshold

Accountability for top management for non-compliance

Entities are required to take cybersecurity risk management measures

Entities are required to notify incidents

COOPERATION AND INFO EXCHANGE

Cooperation Group

CSIRTs network

CyCLONe

CVD and European vulnerability database

Peer-reviews

Biennial ENISA cybersecurity report

Which sectors are covered?

Annex I	Annex II
Energy (electricity, district heating, oil (incl. central oil stocktaking entities), gas and hydrogen)	Postal and courier services
Transport (air, rail, water, road)	Waste management
Banking	Chemicals (manufacture, production, distribution)
Financial market infrastructures	Food (production, processing, distribution)
Health (healthcare, EU reference labs, research and manufacturing of pharmaceuticals and medical devices)	Manufacturing (medical devices; computer, electronic and optical products; electrical equipment; machinery; motor vehicles and (semi-)trailers; transport equipment)
Drinking water	Digital providers (search engines, online market places and social networks)
Waste water	RESEARCH **
Digital Infrastructure (IXP, DNS, TLD, cloud, data centres, Content Delivery Networks, electronic communications, trust service providers,)	
ICT Service management**	
Public administration entities	
Space	

** additional sectors or sub-sectors agreed by the co-legislators

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More harmonised security requirements & incident reporting

- Accountability for top management for non-compliance with cybersecurity risk management measures
- Risk-based approach: appropriate and proportionate cybersecurity measures
- Defining a minimum set of measures

(such as risk analysis and information security policy, incident handling, business continuity, supply chain security)

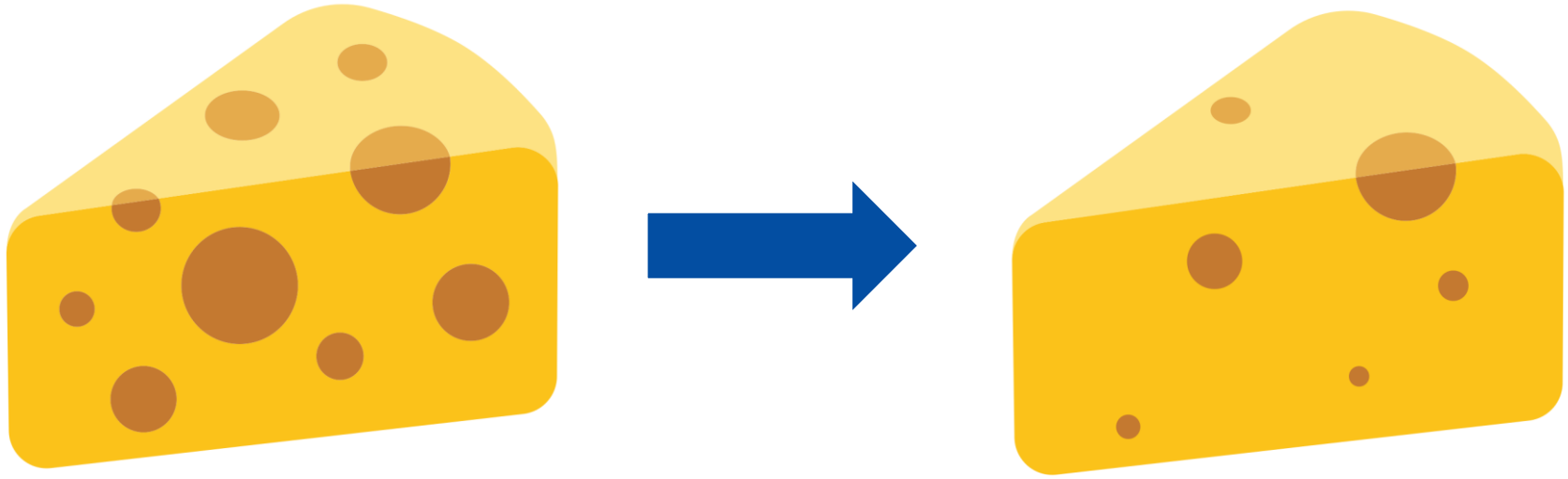
- Reporting of significant incidents
- MS to inform each other and ENISA of incidents with cross-border nature

Supply chain security

- Supply chain security is **one of the security measures** that essential and important entities need to take into account
- Member States are required to address cybersecurity in the supply chain for ICT products and services for essential and important entities in their **national cybersecurity strategies**
- The **Cooperation Group** is explicitly empowered with carrying out coordinated security risk assessments of specific critical ICT services, systems or products supply chains (based on the example of 5G)

Cyber Resilience Act

CRA in a nutshell



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Main elements of the proposal

- **Cybersecurity rules** for the placing on the market of hardware and software
- Based on **New Legislative Framework** (well-established EU product-related legislative setting)
- **Obligations** for manufacturers, distributors and importers
- Cybersecurity **essential requirements** across the life cycle (5 years)
- Harmonised **standards** to follow
- **Conformity assessment** – differentiated by level of risk
- **Market surveillance and enforcement**

Scope

Products with digital elements:

- ✚ **Hardware products** and components placed on the market separately, such as laptops, smart appliances, mobile phones, network equipment or CPUs
- ✚ **Software products** and components placed on the market separately, such as operating systems, word processing, games or mobile apps
- ⓘ The definition of **“products with digital elements”** also includes **remote data processing solutions.**

Not covered:

- ✖ **Non-commercial projects, including open source** in so far as a project is not part of a commercial activity
- ✖ **Services, in particular cloud/Software-as-a-Service** – *covered by NIS2*

Outright exclusions:

- ✖ **Certain products sufficiently regulated on cybersecurity** (cars, medical devices, *in vitro*, certified aeronautical equipment) under the new and old approach

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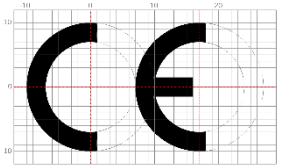
Obligations of manufacturers

Assessment of the risks associated with a product

(1) Product-related essential requirements (Annex I, Section 1)
(2) Vulnerability handling essential requirements (Annex 1, Section 2)
(3) Technical file, including information and instructions for use (Annex II + V)



Conformity assessment, CE marking, EU Declaration of Conformity (Annex IV)

Continued compliance with **vulnerability handling** essential requirements throughout the product life time (Annex I, Section 2)

Design and development phase

Maintenance phase
(5 years or across product lifetime, whichever is shorter)

Obligation to report to ENISA within 24 hours:

(1) exploited vulnerabilities
(2) incidents having an impact on the security of the product

Reporting obligations to continue

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Product-related essential requirements

1. Appropriate level of security
2. Products to be delivered without known vulnerability
3. Based on the risk and where applicable:
    - Security **by default**
    - Protection from **unauthorised access**
    - **Confidentiality** and **integrity of data**, commands and programs
    - **Minimisation** of data
    - Availability of **essential functions**
    - Minimise **own negative impact** on other devices
    - Limit **attack surfaces**
    - Reduce **impact of an incident**
    - **Record and monitor** security relevant events
    - Enable adequate **security updates**

Vulnerability handling requirements

- **Identify and document dependencies** and vulnerabilities, including **SBOM**
- No known vulnerabilities and **address vulnerabilities** without delay
- **Test the security** of the digital product
- Publically **disclose information** about fixed vulnerabilities
- **Coordinated vulnerability disclosure** policy
- Facilitate the **sharing of information** about potential vulnerabilities
- Mechanisms allowing the **secure updating**
- Patches are delivered **without delay**, **free of charge** and with **advisory messages**

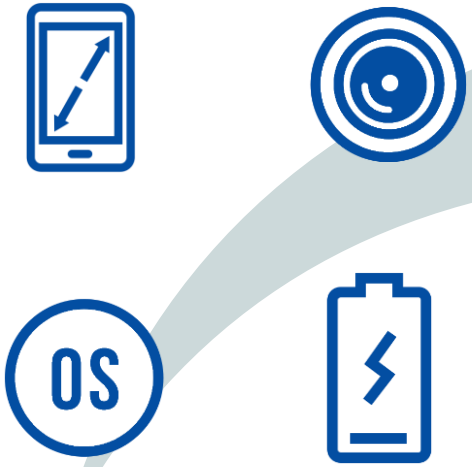
Information and instructions

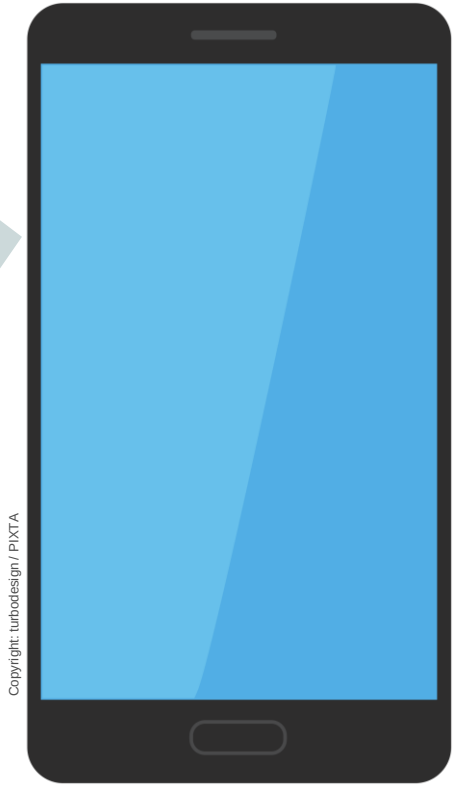
- **CE marking**
- **Contact** information for reporting vulnerabilities
- **Intended use**, including the security environment foreseen
- Security **properties** of the product
- Where the **SBOM** can be accessed (if publicly available)
- EU **Declaration of Conformity**
- Type of **support offered** by the manufacturer and for how long
- Instructions on **secure use** and secure removal of data

A simplified example of smartphones

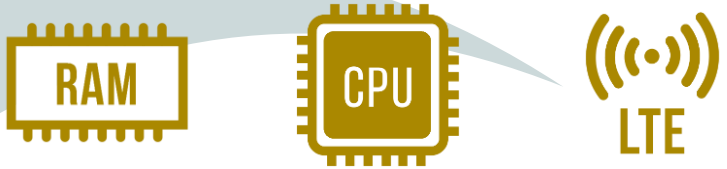
*As a rule, whoever places on the market a **"final" product or a component** is required to comply with the **essential requirements**, undergo **conformity assessment** and affix the **CE marking.***

Developed by the manufacturer placing the smartphone on the market:





Developed by upstream manufacturers for integration into the "final" product:



Placed on the market separately for users to buy and integrate:

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Which conformity assessment to follow?

90% of products	10% of products		
Default category	**Critical "Class I"**	**Critical "Class II"**	**Highly critical**
Self-assessment	**Application of a standard or third party assessment**	**Third party assessment**	**Mandatory EU certification**
Criteria: **n/a**	**Criteria:** • **Functionality** (e.g. critical software) • **Intended use** (e.g. industrial control/NIS2) • **Other criteria** (e.g. extent of impact)		**Additional criteria:** • Used by **NIS2** entities • Resilience of **supply chain**
	To be amended/specified via delegated acts		
Examples: Photo editing, word processing, smart speakers, hard drives, games etc.	**Examples (Annex III):** Password managers, network interfaces, firewalls, microcontrollers etc.	**Examples (Annex III):** Operating systems, industrial firewalls, CPUs, secure elements etc.	**Examples:** **n/a** (empowerment to future-proof the CRA)

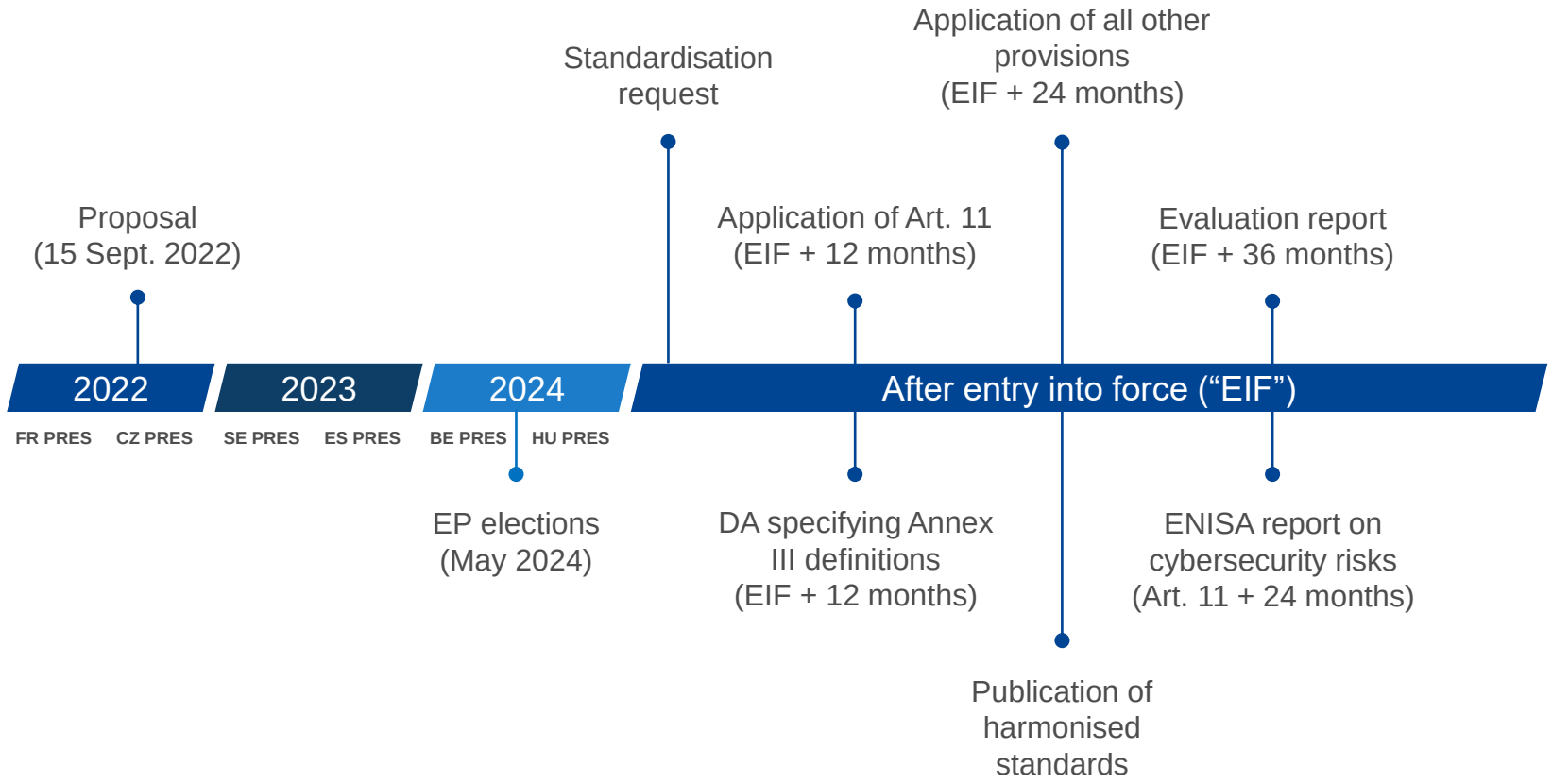
Market surveillance powers and sanctions

- Tools for checks at the disposal of market surveillance authorities (MSAs): documentary checks, requests for information, inspections, laboratory checks etc.
- **When non-compliance found**, MSAs have powers to:

  1) require **manufacturers to bring non-compliance to an end** and eliminate risk;
  2) to **prohibit/restrict the making available** of a product or to order that the product is **withdrawn/recalled**;
  3) impose **penalties** (including fines up to 15 000 000 EUR or up to 2.5 % of worldwide turnover).

- In exceptional circumstances, COM may require ENISA to conduct an evaluation and, based on the results, establish a **corrective or restrictive measure is necessary at Union level** via an Implementing Act (and following MS consultations).

Tentative timeline



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Thank you.

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