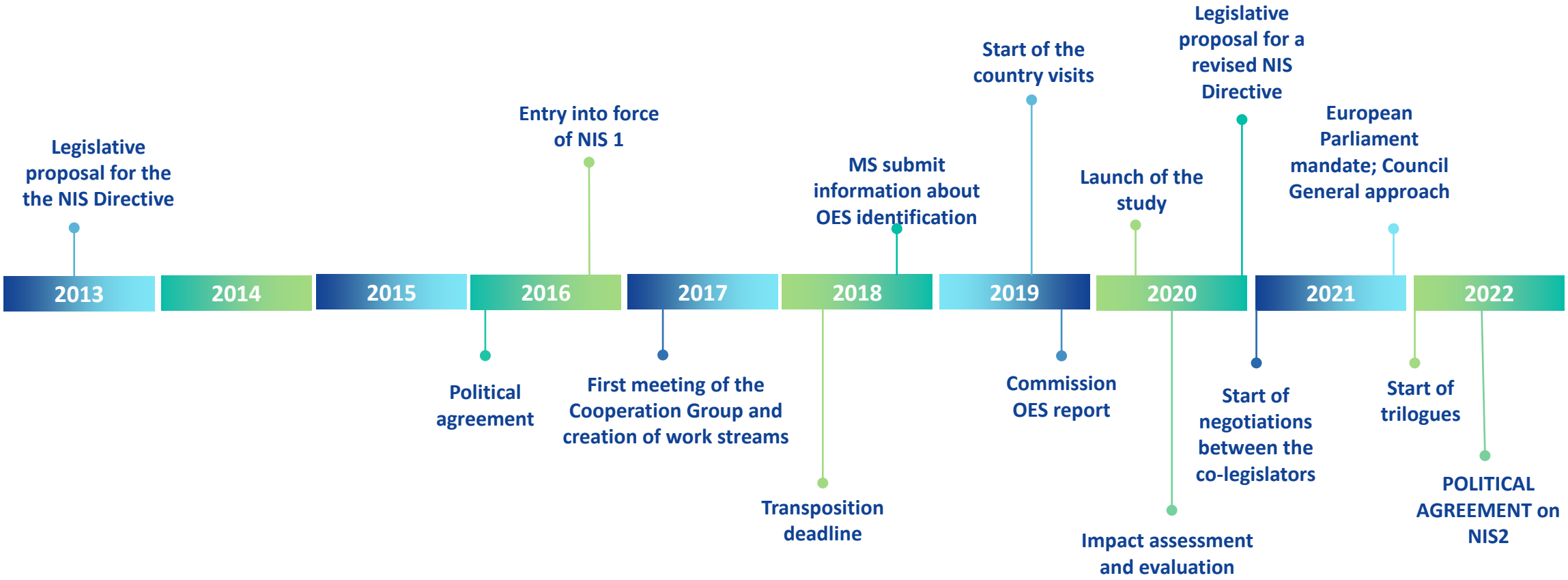
The NIS Directive Revision (NIS 2) State of Play

Unit H2 – Cybersecurity & digital privacy policy

DG CNECT, European Commission

Timeline of the NIS Directive



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Three main pillars of NIS 1

Member State capabilities

- **National NIS authority**
- **Computer Security Incident Response Team** (CSIRT) to handle incidents
- **Single Point of Contact** (SPOC) for EU cooperation
- **National NIS strategy**

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- **Cooperation Group** gathering national NIS authorities (e.g. to implement the Directive)
- **CSIRTs network** for operational cooperation (e.g. to discuss incidents)

Risk management

- Companies are required to take **security measures**
- Companies are required to **notify incidents**

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Sectors and services under NIS 1

Operators of essential services (OES)	Digital service providers (DSP)
Energy	Online marketplace
Transport	Online search engine
Banking	Cloud computing service
Financial market infrastructures	
Health sector	
Drinking water supply and distribution	
Digital Infrastructure	

Main challenges of NIS 1

Not all sectors that may be considered critical are in scope

Great **inconsistencies** and gaps due to the NIS scope being *de facto* defined by MS (case by case OES identification)

Diverging **security requirements** across MS

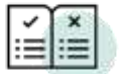
Diverging **incident notification** requirements

Ineffective supervision and limited enforcement

Voluntary and ad-hoc cooperation and info sharing between MS and between operators

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

Accountability for top management for non-compliance

Essential and **important** entities are required to take **security measures**, including **supply chain security**

Companies are required to notify incidents

COOPERATION AND INFO EXCHANGE

Cooperation Group

CSIRTs network

CyCLONe

CVD and European vulnerability registry

Peer-reviews

Biennial ENISA cybersecurity report

Framework of specific cybersecurity information-sharing arrangements between companies

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Two regulatory regimes

	Essential entities	Important entities
Scope	Scope of NIS1 + certain new sectors	Most new sectors + certain entities from NIS1 scope
Security requirements	Risk-based security obligations, including accountability of top management	
Reporting obligations	Significant incidents and significant cyber-threats	
Supervision	Ex-ante + ex post	Ex-post
Sanctions	Minimum list of administrative sanctions, including fines. Only for essential entities*: ultima ratio* possibility to suspend authorisation or impose temporary ban on managerial duties	
Jurisdiction	General rule: MS where the service is provided Exception: Main establishment + ENISA registry for certain digital infrastructures and digital providers	

Which sectors are covered?

Main selection criteria: *Existing Member States' policies, stakeholders' views, digital intensity, importance for society (as revealed by COVID-19 crisis), interdependencies between sectors*

Essential entities	Important entities
Energy (electricity*, district heating, oil, 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	
Digital Infrastructure (IXP, DNS, TLD, cloud, data centres, CDN, electronic communications and trust service providers)	
Public administrations	
Space	

* **New types of entities in electricity:** producers, NEMOs, electricity market participants providing aggregation, demand response or energy storage services

** **Infrastructure managers and railway undertakings including operators of service facilities (as defined in Directive 2012/34/EU)**

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Scope: size threshold

- **Identification** has proven **inefficient** → difficulty in identifying consistent thresholds
- **Size** as a clear-cut benchmark (all companies, which are medium-sized or larger) and a proxy for importance. **Exceptions:** electronic communications, trust services, TLD registries and public administration.
- **MS** will be in a position to add operators **below the size threshold** in the following cases:
  - **Sole providers** of a service
  - Potential disruption of a service provided by an entity could have an impact on **public safety, public security or public health**
  - Potential disruption of a service provided by an entity could induce **systemic risks**
  - Entities with specific **importance at regional or national level** for a particular sector or type of service, or for other interdependent sectors in a Member State
  - Entities considered as **critical under the proposed Resilience of Critical Entities Directive**

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More harmonised security requirements

- Accountability for top management for non-compliance with cybersecurity risk management measures
- Risk based approach: appropriate and proportionate technical and organisational measures
- Measures to at least include:
  - risk analysis and information system security policies
  - incident handling
  - business continuity and crisis management
  - supply chain security
  - security in network and information systems acquisition, development and maintenance, including vulnerability handling and disclosure
  - policies and procedures to assess the effectiveness of cybersecurity risk management measures
  - the use of cryptography and encryption

More harmonised reporting requirements

- Entities to report significant incidents [and cyber threats]
- Entities to inform recipients of their services
- Incident notification in **three stages**:

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

NIS 2 Directive - State of Play

- **Co-legislators reached a political agreement on 13 May 2022 during the third political trilogue**
- ***What are the next steps?***
  - *technical meetings to finalise the text after the final political trilogue, COREPER approval of the text, followed by EP approval; lawyer linguists checks of the text…*
- **Final adoption of NIS 2 Directive expected in autumn 2022**

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Thank you!

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