

Bird & Bird

NIS2 Monitoring Service



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NIS2: Why it matters

NIS2 will repeal the current NIS Directive, amending the rules on security of network and information systems. It has a broader concept of ‘essential’ and ‘important’ entities and has materially expanded the types of organisations that fall within these categories.

Below are some of our frequently asked questions around NIS2

Is my business in scope of the EU cyber security regulations?

With the [NIS2](#), critical sectors like energy, transport, banking, financial markets, health, drinking water, wastewater and digital infrastructures (e.g., cloud computing service providers, data centre service providers, providers of public electronic communications networks, providers of publicly available electronic communications services) need to comply with cybersecurity requirements.

The NIS2 Directive is one of the most important pieces of cybersecurity legislation. By **October 2024**, the new rules need to be implemented by Member States that can extend the scope and obligations for businesses.

What are the obligations for business?

The new rules contain inter alia specific cybersecurity risk management requirements, including:

- risk analysis and information system security policies
- incident handling
- business continuity, such as backup management and disaster recovery, and crisis management
- supply chain security including security-related aspects concerning the relationships between each entity and its direct suppliers or service providers
- security in network and information systems acquisition, development and maintenance
- policies and procedures to assess the effectiveness of cybersecurity risk management measures
- stronger reporting obligations
- governance requirements
- cybersecurity certification

How about management responsibility?

The new rules involve personal liability of the business management and in-company training. Bird & Bird offers a management training on cybersecurity requirements and compliance in cooperation with local IT-security firms.

My business operates in more than one Member State in the EU. What should I do?

Each Member State may extend the scope of the new cybersecurity rules and obligations. At Bird & Bird we monitor the developments for all EU Member States and identify national add-ons. See our [NIS2](#) tracker.

How do I keep track of the relevant developments for my business?

For international businesses that operate in more than one member state, tracking the relevant developments can be a challenge. To help you, we have developed tracker products that provide insights into new national legislation, further analysis and a tailored impact assessment for a fixed price per country.

I want to ensure that my business is compliant with the cybersecurity standards and regulations. What do I need to do?

- Draft a products and services impact assessment
- Evaluate your business and incident response and reporting processes
- Arrange training of management and personal involved

What should I do now to properly respond to the cybersecurity regulatory tsunami?

You should assess in particular the following:

- Whether your organisation falls/might fall within the scope of the new cybersecurity legislation
- What new requirements would need to be implemented by your organisation if you directly fall within the scope of the new legislation
- If your organisation is not directly covered by the legislative act(s), whether you deal with suppliers or customers subject to the new rules
- What obligations your organisation needs to attribute to your suppliers in your contractual arrangements to facilitate a seamless, cybersecurity compliant supply chain and to be in conformity with other requirements foreseen by the applicable legislative act
- Prepare/update processes for incident and threat reporting
- Whether the Member State(s) in which you operate will mandate the use of certified products, services or processes
- Whether the Commission's implementing acts will result in the harmonisation of additional cybersecurity requirements across the EU
- Whether there are any related or additional local IT security requirements, which still or would potentially need to be implemented due to any national legislation, and to steer for a coordinated approach in terms of implementation
- With respect to the local implementation of the NIS2, considering the minimum harmonisation approach for the legislative act, in addition to the EU Member States (intend to) adopting stricter measures

NIS Monitoring Service

By monitoring NIS2, you can timely initiate your compliance preparations. Achieving compliance with NIS2 requires a significant amount of time, investment, and will have implications for both your products and operations. It is essential to note that there is a compulsory requirement to report any breaches related to products and services governed by NIS2.

As an EU Directive, NIS2 will transpose into national laws across the EU. Going beyond the *minimum* requirements that NIS2 introduces, countries can impose additional, robust obligations, ensuring comprehensive security measures. For multinational enterprises, navigating diverse jurisdictions adds complexity to the compliance landscape.

Our NIS 2 monitoring service solution will help your business greatly by effortlessly monitoring and managing your compliance obligations in the jurisdictions that matter most to you. We understand that effective monitoring can be both time-consuming and financially burdensome. That's why our cost-effective fixed-price product offers unparalleled value, leveraging our expertise in tracking crucial legal reforms.

We are offering you a choice of two fixed price products, each of which track the transposition of NIS2 across the European Economic Area.

'The team understands that data privacy & data protection isn't solely about GDPR and ePrivacy, but also about other (emerging) regulations and directives, such as the DSA, NIS2 and AI Act. Importantly, they apply their knowledge specifically to the SaaS (& TMT) context.'

Legal 500, 2023

Option 1: Basic NIS2 Tracker; Jurisdiction Transposition Status Overview

What information will the basic NIS2 tracker provide?

- The basic NIS2 tracker consists of an **overview** for selected jurisdictions **across the European Economic Area**, providing basic information about the developments in the primary legislative process in the EU Member States.
- Clients may select the **specific jurisdictions** to be monitored, and the fee payable will be based on the number of jurisdictions that you select to monitor and report on.

The basic NIS2 tracker will be prepared using information published and made available in each EEA jurisdiction, **accurate to within three working days of the date of issue of the tracker**, and will be issued on the last Friday of each calendar month.

The tracker provides, on a calendar monthly basis, on the Bird & Bird secure Access platform:

- An overview of all jurisdictions selected by the client, showing progress on consultations and status of the legislative process (primary legislation only);
- Provision of links to the most relevant **national legislative documents** in the original language of that jurisdiction; links will be provided to you to the consultation document, the transposition bill and the transposition act.

If we come across intermediate developments, we may circulate additional alerts before the next reporting date, but this is as a courtesy and not part of the contracted service; any additional alerts would not be charged for. You are free to download the report from our Bird & Bird secure Access platform and to share it with any of your employees.

The last monthly jurisdiction overview will be provided by **17 October 2024** or earlier if NIS2 is transposed in all EEA Member States before that date. If some Member States are late with transposition, we will offer additional services to support a tracker and will contact you in October 2024 to discuss what these services will be.

Pricing: The pricing for the basic NIS2 Tracker Tool Option 1 is fixed and is based on a 'per selected jurisdiction' calculation with **5% discount for 13 to 25 jurisdictions and 10% total discount for the 26 Member States of the European Union jurisdictions**.

Optional add-on: Monthly or quarterly (at your option, and on demand) calls with two members of the Bird & Bird NIS2 team, with requested local NIS2 Bird & Bird counsel participating in the monthly meetings, if there are relevant developments that may require further assessment or discussion.

Pricing: Additional cost calculated on the time spent preparing and attending the calls, and charged on the then discounted hourly rates agreed with the client.

Option 2: Basic NIS2 Tracker plus Essential Articles Monitoring Service

What information will the basic NIS2 tracker provide?

The tracker will include the information contained in the basic NIS2 Tracker Tool (option 1) and would also contain a comparison of the draft primary legislation in the Member States that you have selected. This tracker **highlights the difference between that legislation and the essential articles of the NIS2 Directive**.

This option is at a **fixed price** and can also be priced based on the number jurisdictions that you decide to track.

The report would contain the **essential NIS2 Directive articles**. The relevant articles in the implementation proposal will be in its original language and an informal English translation thereof achieved using DeepL or Google Translate. The report to you would conveniently spotlight the differences in the text, but would not analyse the impact or consequences of the differences.

Option 2 would deliver the following content to you for the jurisdictions that you preselect to track:

i Consultation phase of each of the selected Member States transposing law (first report)

In the first monitoring report the consultation document will be displayed side by side with the essential articles of the NIS2 Directive, highlighting the difference between that legislation and the essential articles without further comment or analysis.

ii Final transposition of NIS2 into each of the selected Member States (second report)

The final report shall be completed on the basis of the consultation proposal (first report) and on the basis of the final transposition act (second report), again displayed side by side with the essential articles of the NIS2 Directive, highlighting the difference between that legislation and the essential articles, without further comment or analysis. Reports will be made available on the secure Bird & Bird access platform and will be sent by email upon request.

If we come across **intermediate developments**, we may circulate additional alerts, but this is as a courtesy and not part of the contracted service; additional alerts would not be charged for.

The **last monthly jurisdiction overview** will be provided by **17 October 2024** or earlier if NIS2 is transposed in all EEA Member States before that date. If some Member States are late with transposition, we will offer additional services to support a tracker and will contact you in October 2024 to discuss what these services will be.

Pricing NIS2 Tracker Tool Option 2: The pricing for the basic NIS2 tracker tool is fixed and is based on a 'per selected jurisdiction' calculation with **5% discount for 13 to 25 jurisdictions and 10% total discount for the 26 Member States of the European Union jurisdictions**.

Add-on services

1. Add-on advice and analysis: transposition of NIS2 into each of the selected Member States

In addition to the standard content reported on in the NIS2 Tracker Tools Option 1 and Option 2, we offer in-depth **legal analysis of any NIS2 Directive provision** as it is planned to be transposed in any EES jurisdiction of your choice.

We will begin by flagging whether:

- i there is an inconsistency with the NIS2 directive,
- ii whether there are jurisdiction specific add-ons; and
- iii whether there is a basis for secondary legislation

In more detail, we can assess the following elements:

- **Scope** – *Inconsistencies in implementation? Provisions broadening the scope compared to NIS2 in national legislation (additional categories? SME-definition?)* Implementation of the definitions of essential and important entities in sectors which are most relevant for you
- **Obligations** – New/amended obligations for essential and important entities with respect to registration/notification and cybersecurity risk-management as well as reporting obligations; *exceeding NIS2 minimum list of cybersecurity risk-management requirements or exceeding NIS2 notification requirements?*
- **Level of cybersecurity** – *higher levels of cybersecurity foreseen in national legislation?*
- **National cybersecurity strategy** – legal basis regarding the national cybersecurity strategy and consistency with elements referred to in NIS2
- **Practical information** – names/contact details of competent authorities at the national level
- **Management responsibilities** – *responsibilities of management bodies exceeding responsibilities referred to in NIS2?*
- **Notification and reporting obligations** – *steps for notification and reporting in line with provisions of NIS2?*
- **Certification schemes and standards** – *national provisions in line with NIS2?*
- **Supervision and enforcement** – *powers exceeding NIS2? Maximum levels of fines including for management bodies*
- Date of entry into force and transitional provisions

Pricing advice and analysis: The pricing for advice and analysis on the transposition of NIS2 into each of the selected Member States will be calculated on the time spent preparing, providing and discussing advice, including attending the calls, and charged on the then discounted hourly rates agreed with the client.

2. **First add-on NIS2 Tracker Tool Option 2:** Monthly or quarterly (at your option, and on demand) calls with two members of the Bird & Bird NIS2 team, with requested local NIS2 Bird & Bird counsel participating in the monthly meetings, if there are relevant developments that may require further assessment or discussion.

Pricing: The additional cost of this service will be calculated on the time spent preparing and attending the calls and charged on the then discounted hourly rates agreed with the client.

3. **Second add-on NIS2 Tracker Tool Option 2:** Apart from the transposition into national legislation, NIS2 provides the basis for implementing and delegated acts, guidelines and recommendations by the EU Commission, ENISA and the Cooperation Group on EU level.

Pricing: Monitoring of additional articles in the NIS2 Directive (those outside of the essential articles covered in the NIS2 Tracker Tool Option 2) and EU level secondary legislation can be offered subject to tailored pricing.

Next Steps

Please contact us below if you are interested in the following:

- **NIS2 Tracker Tools**
- **Any add-on Tools that you wish to include**
- **The jurisdictions that you have selected to track using each tool**

We will then supply you with a monitoring proposal tailored to your needs. We are also interested in any other comments or suggestions that you might have.



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NIS2 Directive

Our market leading Tech & Comms cybersecurity practice covers all technologies and can offer expert advice on matters relating to the NIS Directive.

The Act introduces more stringent supervisory measures for national authorities, stricter enforcement requirements which clients should be aware of.

- **Registration requirements:** The entities falling within scope of the NIS 2 Directive will need to submit certain information to the competent authorities in connection with their registration obligations.
- **Strengthened cybersecurity risk-management requirements:** The entities will need to have certain measures in place (e.g., measures regarding incident handling, business continuity, supply chain security, human resources security, access control policies and asset management) to manage the risks to the security of the network and information systems.
- **More detailed reporting obligations:** The NIS2 Directive follows a graduated approach with respect to notification of significant incidents to the CSIRT or, where applicable, the competent authority. The entities will also need to notify the recipients of their services in certain cases.
- **Cybersecurity certification:** For the purposes of demonstrating compliance with cybersecurity risk-management measures, Member States may require essential or important entities to use particular ICT products, services and processes, either developed by the essential or important entity or procured from third parties, that are certified under European cybersecurity certification schemes
- **Explicit governance requirements:** The management bodies of essential and important entities will be required to approve and oversee the implementation of the cybersecurity risk-management measures. In addition, the members of these management bodies will be required to follow training and shall encourage entities to offer similar training to their employees on a regular basis.
- **Accountability of top management, supervision and enforcement:** The new legislative act also introduces accountability and liability of top management for the non-compliance with cybersecurity obligations, more stringent supervisory measures for national authorities as well as stricter enforcement requirements and aims to harmonise sanctions regimes across Member States.
- **Administrative fines:** In case of infringements of certain obligations, organisations within the scope of the NIS2 Directive may be subject to **administrative fines** shown below.

Administrative fines

Essential Entities

- Maximum €10,000,000;
Or
- 2% total worldwide annual turnover of the preceding financial year

Important Entities

- Maximum €7,000,000;
Or
- 1.4% total worldwide annual turnover of the preceding financial year

NIS2 Directive: Sectors in scope

The NIS2 Directive, which will replace the NIS Directive, expands the scope to so-called essential and important entities in sectors of high criticality listed in Annex I and other critical sectors listed in Annex II introducing a size-cap rule as a general rule.

Annex I – Sectors of high criticality

- Energy
- Transport
- Financial market infrastructure, banking
- Health
- Drinking water, wastewater
- Digital infrastructure
 - Internet Exchange Point providers
 - DNS service providers, excluding operators of root name servers
 - TLD name registries
 - Cloud computing service providers
 - Data centre service providers
 - Content delivery network providers
 - Trust service providers
 - Providers of public electronic communications networks
 - Providers of publicly available electronic communications services
- ICT service management (B2B)
 - Managed service providers (MSP), Managed security service providers
- Public administration
- Space

Annex II – Other critical sectors

- Postal and courier services
- Waste management
- Manufacture, production and distribution of chemicals
- Production, processing and distribution of food
- Manufacture of medical devices, certain electronic products as well as machinery and transport
- Digital providers
 - Providers of online marketplaces
 - Providers of online search engines
 - Providers of social networking services platforms
- Research

Why Bird & Bird

Our Cybersecurity team has been deeply engaged in all aspects of cyber since 2010, making it one of the longest established specialist legal teams around.

Everything is connected

We recognise that cybersecurity is global issue for businesses, we are a truly international firm, organised around our clients. With our technical expertise and problem-solving experience, we'll help you unlock the potential of change and realise your ambitions.

With more than 1,400 lawyers and legal practitioners across a worldwide network of over 31 offices, Bird & Bird delivers expertise across a full range of legal services.

The key to our success is our constantly evolving sector-focused approach. Our clients build their businesses on technology and intangible assets, and operate in regulated markets. In addition to constantly changing risk scenarios, increasingly clients face legal and compliance requirements in the area of cybersecurity.

Deep industry knowledge

- Expertise in the legal and regulatory cybersecurity framework relating to each sector.
- A more practical, commercial approach, supported by advisors with decades of experience working in the relevant industries and with the relevant regulators and trade bodies.

The level of the advice is exceptional, based on a deep understanding of our segment of the market.

Data Protection, Privacy and Cybersecurity, Legal 500 Tier 1 - 2024

International reach

We deliver a complete cybersecurity legal service. We have offices in key business centres across Europe, and where we don't have presence, we have strong partner firms with whom we have worked with closely so that they are aligned to our clients' needs with which we can work seamlessly and, in a cost effective and efficient manner.

Cybersecurity

Bird & Bird has one of the longest established legal cyber teams globally. We have lawyers in all offices who are leading the way with issues relating to cybersecurity, helping clients daily to manage cyber issues for the business. We engage with industry players to discuss the impact of technological and regulatory changes over the coming years.

Clients turn to us for advice on challenges and opportunities presented by all angles of cybersecurity regulation.

Technology

An understand of the legal issues associated with the technology impacted by the cyber breach is critical. Our market leading expertise in technology is underpinned by our deep industry and market knowledge and longstanding commitment to these areas.

As trusted advisors to many of the most valuable Tech & Comms companies in the world, we are proud to have helped our clients achieve real commercial advantage. We are renowned for our creative and original solutions, some of which have shaped the global technology and communications landscape.

Rankings

- **Band 1: TMT**
Chambers UK 2024; Asia-Pac 2024; Europe-wide 2024; Global 2024
- **Tiers 1 and 2 for TMT** in 17 jurisdictions
Legal 500 2023



Thank you

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