



Department for
Digital, Culture,
Media & Sport

Digital Service Providers (EU Exit) Consultation

Call for views on the UK's proposed approach to regulating non-UK based digital service providers operating in this country under the NIS Regulations

Summary

Following the UK's departure from the EU, the UK proposes to introduce a requirement in the NIS Regulations for specified non-UK based DSPs operating in the UK to designate a representative in this country that will be subject to the regulatory authority of the ICO.

Background

The NIS Directive is EU-wide legislation that requires critical infrastructure organisations to implement stronger cyber security. The Directive was adopted by the European Parliament on 6 July 2016 and entered into force in August 2016. The NIS Directive was transposed into UK domestic legislation on 10 May 2018 via the Networks and Information Systems Regulations 2018 (NIS Regulations). The Regulations apply to operators of essential services in the energy, transport, health, water, and digital infrastructure sectors, as well as to digital service providers (DSPs).

The NIS Regulations define DSPs as organisations that provide online marketplace services, online search engine services, and/or cloud computing services. DSPs are in scope of the NIS Regulations if they have 50 or more staff, or a turnover of more than €10m per year.

Designation of representatives

Under the NIS Directive, a DSP that is not established in the EU but offers digital services within the EU, must designate a representative in a Member State in which it operates, to be regulated by the relevant Competent Authority in that country.

When the UK leaves the EU it will become a third country under the NIS Directive. Therefore, UK established DSPs wishing to operate in the EU will be required to designate a representative in a Member State. They must comply with the regulations in that Member State and will be regulated by its relevant Competent Authority.

There is currently no requirement set out in the UK's NIS Regulations for DSPs not headquartered in the UK to designate a representative here. This means that the ICO (as the relevant Competent Authority) would be unable to exercise the enforcement powers provided for in the NIS Regulations with regard to non-UK based DSPs operating here.

Proposed approach

The Government is therefore proposing to introduce a requirement in the NIS Regulations, following the UK's departure from the EU, for non-UK established DSPs operating in the UK, whose size and activities would render them in scope of the NIS Regulations, to designate a representative in this country.

The representative would be required to comply with the NIS Regulations in the UK, and would be regulated by the ICO.

In line with existing requirements for UK based DSPs coming into scope of the NIS Regulations, in scope non-UK based DSPs would be allowed three months in which to provide contact details of the designated representative and register with the ICO.

Call for views

The Government is seeking views on the proposed introduction of this requirement when the UK exits the EU.

We would welcome views and any supporting evidence on the costs and benefits of this proposal, as well as any views on the proposed three month timeframe to designate a representative and register with the ICO.

How to respond

By post:

Hard copy responses can be sent to:

NIS Directive Team (4/47)
Department for Digital, Culture, Media & Sport
4th Floor
100 Parliament Street
London
SW1A 2BQ

Email:

Email responses can be sent to: nis@culture.gov.uk

The closing date for responses is 11.45pm on Tuesday 11 June 2019.

When providing your response, please also provide contact details as we may seek further information or clarification of your views. Copies of responses, in full or in summary, may be published after the consultation closing date on the Department's website.

Previous consultations

The UK held a [public consultation](#) from August to September 2017 on its proposals to implement the NIS Directive. This consultation covered six main topics:

- how to identify essential services;
- a national Framework to manage implementation;
- the security requirements for operators of essential services;
- the incident reporting requirements for operators of essential services;
- the requirements on Digital Service Providers; and
- the proposed penalty regime.

The Government received over 350 responses to its consultation. These responses showed that there was broad support for the Government's approach, and for the decision to continue to apply the NIS Regulations after the UK's exit from the EU. The [Government's response](#) to the public consultation was published on 29 January 2018.

Subsequent to the Government's response, the Implementing Act was published in the Official Journal of the European Union on 30 January 2018 and can be found on the [EUR-LEX website](#). In March 2018, the Government published a [targeted consultation](#) on the implementation of the NIS Regulations for digital service providers. The consultation covered six main topics:

- definitions of digital service providers;
- security measures;
- Incident reporting;
- digital service providers that serve operators of essential services;
- digital service providers that are also operators of essential services; and
- costs.

The Government received 12 responses to its consultation. These responses indicated there was support for the Government's overall approach towards digital service providers, but there continued to be uncertainty over exactly who was in scope, and greater clarification was needed on the subject of cost recovery. The [Government's response](#) to the targeted consultation was published on 31 August 2018.