



# **INTERFACE BETWEEN C-ITS (FUTURE?) REGULATION AND THE NIS DIRECTIVE**

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# KU LEUVEN INVOLVEMENT IN CONCORDA: LEGAL TOOLKIT

- 2 objectives: guidance towards legal compliance of pilots + legal analysis of legislative initiatives based on CONCORDA experience → both in parallel.
- Topics covered:
  - Testing frameworks, licencing and authorisation regimes for C&A driving
  - Liability of road authorities, fleet management operators, drivers, electronic communications network and service providers
  - Cybersecurity obligations of actors in the C&A driving ecosystem
  - Data protection in the connected and automated driving ecosystem
  - Then: Wrap up and recommendations



## FOCUS ON FINDINGS IN...

### **Cybersecurity obligations of actors in the C&A driving ecosystem**

As part of which, chosen topic for today's discussion:



### **Interface between C-ITS (future?) regulation and the NIS Directive**



# INTERFACE BETWEEN C-ITS REGULATION AND NIS DIRECTIVE

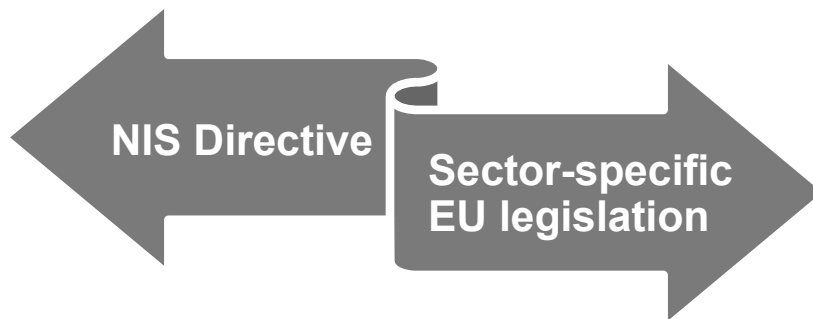
- **The stillborn proposal for a C-ITS Delegated Regulation**
  - March 2019: EC proposal notified to European Parliament and Council
  - June 2019: objection from the Council → proposal is dropped
  - Yet, EC still wants to regulate C-ITS → towards a future C-ITS regulation?
- **Under-discussed question: the interface between C-ITS regulation & NIS Directive**
  - Both regulate security in the field of C-ITS... overlap?
  - NIS Directive (Art. 1 (7)): Other EU sector-specific legislation prevails if “requirements are at least equivalent in effect to the obligations laid down” in NISD
  - Proposed C-ITS Regulation: mere recital on the “complementary” role of NISD
- **Proposed C-ITS Regulation as a case study for recommendation on future C-ITS regulation**



# ARTICLE 1(7) OF THE NIS DIRECTIVE IN A NUTSHELL

**1/ Are security-related obligations in the sector-specific EU legislation “at least equivalent in effect” to these of the NIS Directive ?**

**2/ Balancing exercise**



**3/ Effect → If yes: sector-specific EU legislation prevails over NIS Directive**



# FROM THEORY TO PRACTICE

Which obligations are relevant?

For which actors / operators?

**1/ Are security-related obligations in the proposed C-ITS regulation “equivalent in effect” to these of the NIS Directive ?**

NIS Directive

C-ITS Regulation

How to assess? Which criteria?

**2/ Balancing exercise**  
“Obligations at least equivalent”

To what extent? What ensuing legal regime?

**3/ If yes: C-ITS regulation would provide a legal regime “equivalent in effect” to the NIS Directive**



- **NIS Directive: (C-)ITS as potential “essential service”, but who is the “operator of (C-) ITS”?**
  - Not clear which C-ITS operators are targetted by NIS Directive; No clear link with ITS Directive and with proposed C-ITS Regulation
    - **“C-ITS Station operator” as the key operator?**
  - **As a result:** unclear scope in the NIS Directive + unclear & inconsistent overlap of scope *rationae personae* between the NIS Directive and C-ITS regulation

### **Policy recommendation for future C-ITS regulation**

Future C-ITS regulation should clarify how its scope *rationae personae* relates to the NIS Directive (e.g. by linking to the expression “operator of (cooperative-) intelligent transport systems”)



# VOCABULARY & TERMINOLOGY

- **Difficult to identify the scope *rationae materiae*...**
  - Scope in NISD: “security of network and information systems” [...]
  - Scope in proposed C-ITS Regulation: “Information security” (narrower)... but substantive obligations suggest it is more (“supporting assets”, “communications channels”, etc.)
  - So... same scope or not? Comparable or not? ⇔ misalignment of terminology
- **... and same issue with respective substantive obligations**
  - E.g. C-ITS stations subject to harmonised technical requirements *not expressly labelled as security* but which aim to secure C-ITS network... in or out?

## Policy recommendation for future C-ITS Regulation

Align terminology of future C-ITS Regulation with NISD





# SECURITY OBLIGATIONS VS. INCIDENT NOTIFICATION – UNCLEAR ENSUING LEGAL REGIME

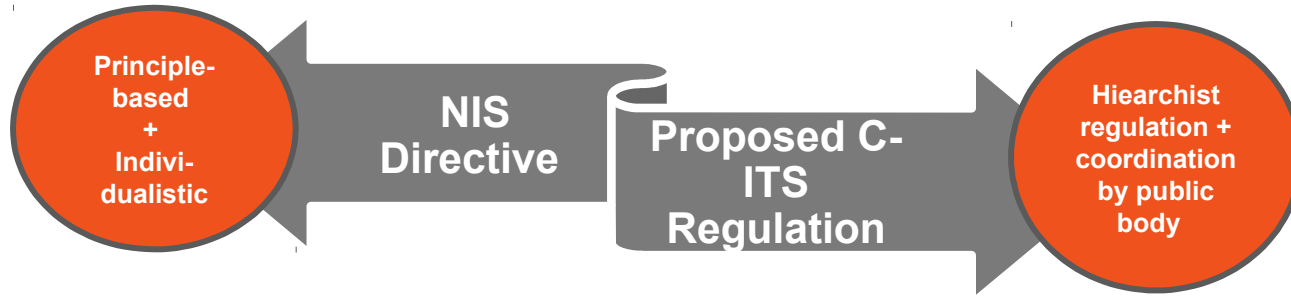
- **What level of granularity when comparing the legal frameworks?**
  - NISD: “security obligations” vs. Incident notification
  - Proposed C-ITS Regulation includes detailed security obligations... but no incident notification obligation
  - Unclear which legal framework applies ⇔ internal inconsistency of NISD
    - EITHER Apply C-ITS Regulation wrt security obligations + NISD for incident notifications
    - OR apply C-ITS Regulation wrt security obligations + NOT the NIS Directive? (⇔ no incident notification obligation)

## Policy recommendation for future C-ITS regulation

Should the legislator want incident notification obligations for C-ITS, better clarify it in future C-ITS regulation



# WHICH CRITERIA TO BALANCE THE LEGAL FRAMEWORKS?



Level of details?

Actually... different regulatory angles...

Specificity criterion

Operators shall take appropriate and proportionate measures to manage the risks

Detailed (security) measures; references to technical norms; a whole Annex to describe ISMI

# CONCLUSIONS

- Methodology
  - Analysis of the legal interface between NISD & proposed C-ITS Regulation as a case study,
  - Purpose is to deliver recommendation for future C-ITS regulation + clarify interpretation of Art. 1(7) NISD
  - Focus on the “C-ITS station operator”
- Conclusions
  - NISD unclear on a number of aspects
  - → **Recommendation** to clarify as much as possible in future C-ITS regulation
    - **Align terminology**: scope *rationae personae* ; scope *rationae materiae* ; security obligations
    - **Include incident notification obligation** in C-ITS regulation if deemed necessary (unclear in NISD)
  - Study also provides recommendations for interpreting Article 1(7) NISD
    - i.a.: **Specificity** of provisions (v/v sector, techno, etc.) as main criterion for balancing legal regimes



**QUESTIONS?**

**THANK YOU FOR YOUR  
ATTENTION!**