



**COUNCIL OF  
THE EUROPEAN UNION**

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REV 4**

**LIMITE**

**JAI 3  
PROCIV 1  
COTER 1  
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DENLEG 1  
RELEX 3**

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**NOTE**

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from : the Presidency

to : the Working Party on Civil Protection

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No. prev. doc. : 14915/3/07 REV 3 PROCIV 194 JAI 573 COTER 79 ENER 269 TRANS 350  
TELECOM 136 ATO 151 ECOFIN 440 ENV 600 SAN 198 CHIMIE 37  
RECH 352 DENLEG 108 RELEX 832

No. Cion prop. : 16933/06 PROCIV 273 JAI 725 COTER 64 ENER 323 TRANS 345 TELECOM  
133 ATO 174 ECOFIN 472 ENV 713 SAN 270 CHIMIE 43 RECH 365  
DENLEG 61 RELEX 929 + ADD 1 + ADD 2

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Subject : Proposal for a Directive of the Council on the identification and designation of  
European Critical Infrastructure and the assessment of the need to improve their  
protection

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## I. INTRODUCTION

1. The Working Party on Civil Protection examined at its meeting on 2 April 2008 Article 4, Articles 5 and 6 together with the corresponding recitals 7, 7a<sup>1</sup> and 8, Annex IV, the specific energy criteria (doc. 7252/1/08 Rev 1 - "*EU-Restricted*") as well as the cross-cutting criteria classified as "*EU Confidential*" (document 7701/08). As regards the latter document, the Working Party agreed to downgrade the classification of future Council documents concerning cross-cutting criteria to "EU Restricted".
2. In order to take work on this file forward, the Presidency also encourages delegations to send any comments or text proposals they may have to the Presidency (*epcip.eu2008@mors.si*) copied the Council Secretariat (*secretariat.civil-protection@consilium.europa.eu*).

## II. STATE OF PLAY IN THE NEGOTIATIONS ON THE PROPOSED DIRECTIVE

3. The Commission submitted to the Council and Parliament, on 18 December 2006, the above proposal.
4. The European Central Bank issued its opinion on 13 April 2007 (8987/07). The Working Party on Civil Protection examined the opinion at its meeting on 27 June 2007.
5. The European Parliament issued its opinion on 10 July 2007 (the provisional version of the opinion is contained in doc. P6\_TA-PROV (2007)0325). The Working Party on Civil Protection examined the opinion at its meetings on 26 July, 13 September 2007 and on 12 February 2008. The Working Party has accepted a number of amendments proposed by EP in full, in part or in principle (2, 3, 4, 5, 8, 13, 14, 15, 16, 22, 24, 33, 37, 39, 41). Some of the EP amendments have not yet been examined (1, 6, 10, 11).
6. Several delegations have entered general parliamentary scrutiny reservations.

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<sup>1</sup> **DELETED** entered a reservation linked its reservation on the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (as amended by the Amendment adopted at Vienna on 8 July 2005)

7. Following the discussions of the Working Party on Civil Protection on the proposed Directive, the following questions, in particular, remain outstanding:

- While recognising the added-value of EU-cooperation on Critical Infrastructure Protection, **DELETED**, followed by **DELETED**, has requested clarification of the relationship between existing sector-specific instruments and the proposed Directive, entered an overall reservation on the proposed Directive. More specifically, the **DELETED** delegation has suggested a Council Decision instead of a Council Directive (see **DELETED** comments and suggestions in doc. 14282/07 and DS 196/08). **DELETED** have noted that some elements of the approach proposed by **DELETED** deserved further consideration. **DELETED** has also entered an overall reservation but does not see the **DELETED** suggestions as the only possible alternative. In the context of the **DELETED** suggestion, the Council Legal Service has been invited to examine and provide a written contribution on the legal implications if the legal act were to be adopted in the form of a Council Decision instead of a Council Directive.
- **DELETED** has suggested, with a view to taking the process forward, a step-by-step approach, e.g. like in the Action Plan set out in Commission Communication on a Programme for Critical Infrastructure Protection (Doc. 16932/06). While expressing recognition of the work done so far and the progress achieved, several delegations (**DELETED**) have also indicated that a step-by-step approach could be a viable way forward.
- **DELETED** has entered a reservation on the inclusion of hazardous infrastructures in Article 2 (a) (2); the hazardous sectors (nuclear, chemical and dams) should be excluded from the scope of the ECI designation process; a detailed explanation of this position is contained in the joint **DELETED** non-paper of 19 March 2008 (Doc. DS 370/08)

- As regards the nuclear sector, **DELETED** have entered reservations on the inclusion of nuclear issues in Article 2 (a) (2) and the use of Article 203 of the *Treaty establishing the European Atomic Energy Community* as a legal basis. **DELETED** have consistently maintained that they did not want to see the nuclear sector within the scope since this would directly violate the principle of Complementarity given the existing efforts in the nuclear sector and no security gaps have been identified, thus including the nuclear sector in the proposed instrument would directly contravene the principle of Proportionality. **DELETED** has also entered a reservation on the inclusion of nuclear installations in the scope. **DELETED** have entered a scrutiny reservation on Article 2 (a) (2). Due to the different legal nature of international treaties and EU legislation, **DELETED** has indicated the necessity to include the nuclear sector in the directive even though the security aspect has been covered by the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (as amended by the Amendment adopted at Vienna on 8 July 2005) since only EU legislation would provide for binding obligations considered being necessary to maintain security and ensure enforcement (DS 391/08). In the context of the nuclear sector, the Working Party has invited the Council Legal Service to provide a written contribution on the possible overlap between the proposed instrument and other legislation in this field, including the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, as well as on the use of Article 203 of the Treaty establishing the European Atomic Energy Community as a legal basis.
- **DELETED** have requested that, in order to meet the definition of "European Critical Infrastructures" (ECI) in Article 2 (b), the disruption or destruction of the critical infrastructure should have a significant impact on at least three (instead of "two") Member States. On 4 March 2007, the Working Party exchanged views on a possible compromise as regards the definition of an ECI (Article 2(b)) and the cross-cutting criteria (Article 3). This solution represented a balance between burdens on bigger Member States and smaller Member States' wish not to fall outside the scope of the instrument. The compromise would introduce a reference to a significant cross-border impact without mentioning the number of Member States' affected and would introduce

a "0.5 % loss of GDP threshold" of a least two Member States other than the direct affected Member State in the economic cross-cutting criterion.

- **DELETED** has entered a reservation on the necessity of definitions in Article 2 (c) to (g).
- The Working Party on 4 March 2008 examined the modifications to Articles 3 and 4 concerning identification and designation of European Critical Infrastructures (ECI) in the Presidency compromise text (doc 5051/2/08 Rev 2).

Several delegations reiterated their doubts or reservations on "*environmental effects*" included under the "*economic effects*" and "*public effects*"; these delegations considered the scope of the term "*environmental effects*" was unclear, e.g. whether the scope would cover "*accidental pollution*" or "*recovery costs*." **DELETED** entered, in line with its general reservation, reservations on Articles 3 and 4. **DELETED** have underlined that modifications of the list of priority sectors used for the purposes of developing sectoral and cross-cutting criteria should be treated in Council. **DELETED** has suggested that Member States' responsibility for the identification and designation of ECI be mentioned in a recital. Cion has explained that the first two priority sectors (transport and energy) as well as the cross-cutting criteria would be listed in separate Annexes to be adopted together with this Directive. In addition, if the scope of the Directive were to be broadened, a Council procedure would be required. A revised compromise suggestion is set out in the Annex.

- In response to reservations entered by several delegations (**DELETED**) which are opposed to the obligation to implement the requirements on Operator Security Plans (OSPs) ( Article 5) and on Security Liaison Officers (Article 6) in national legislation, the Working Party on 2 April 2008 examined a compromise text in document 5051/3/08 Rev 3. **DELETED**, in particular, voiced opposition to the obligatory nature of OSPs because there had been no previous 'needs analysis'; without demonstrating a need the EU should not introduce legislation. In this context, the Council Legal Service was invited to examine and provide a written contribution on whether the suggested wording would allow Member States to implement the envisaged requirement through non- legally binding measures. Pending this contribution, **DELETED** entered scrutiny reservations. In line with its overall reservation, **DELETED** entered a reservation.

- **DELETED** have expressed their opposition to the obligation of owners/operators of ECI to designate Security Liaison Officers as proposed in Article 6; **DELETED** has entered a reservation.
- **DELETED** has indicated that it did not see a role for a committee and therefore suggested deleting Article 11; **DELETED** has also requested the deletion of this Article.
- **DELETED** has entered a reservation on Article 12 as it saw, based on its suggestion for a decision, no need for a provision on the implementation.
- The Working Party on 12 February 2008 examined a **DELETED** non-paper concerning Annex III on the procedure for the identification by the Member States of Critical Infrastructure which may be designated as European Critical Infrastructure pursuant to Article 3(3). The Presidency concluded that a broad majority of delegations agreed to the **DELETED** suggestion which - with a minor modification - has been incorporated in the Presidency compromise; **DELETED** has entered scrutiny reservations.
- Specific comments on the recitals and articles as well as comments made on the Annexes to the proposed directive are reflected in footnotes.

Based on delegations' comments, the Presidency has elaborated the compromise set out in the Annex to this note. New texts compared to document 5051/3/08 Rev 3 are indicated in **bold** (Pending the Council Legal service's examination, paragraphs 1-3 of Article 6 remain in bold. The text in Article 3 paragraph 1 is also identical to the text in document 5051/2/08 REV2; a minor modification has been introduced in Article 3 paragraph 2.); deleted texts are in ~~strikeout~~ ("~~strikeout~~"). The recitals, which were not examined at the Working Party on 4 March 2008, are identical to the version in document 5051/2/08 REV2.

DRAFT

## DIRECTIVE OF THE COUNCIL

on the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection<sup>2</sup>

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

[Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,]<sup>3</sup>

Having regard to the proposal from the Commission<sup>4</sup>,

Having regard to the opinion of the European Parliament<sup>5</sup>,

Having regard to the opinion of the European Central Bank<sup>6</sup>,

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<sup>2</sup> **DELETED**, supported by **DELETED**, entered an overall reservation on the proposed directive and instead suggested adopting a *Council Decision establishing a mechanism for the exchange of information and best practices as well as for the preparation of recommendations regarding European Critical Infrastructure priority sectors in order to improve their protection*. **DELETED** has also entered an overall reservation but does not see the **DELETED** suggestions as the only possible alternative.

Parliamentary scrutiny reservations by **DE/DK/SE/UK**.

<sup>3</sup> Reservation by **DELETED** regarding the use of Article 203 of the *Treaty establishing the European Atomic Energy Community* as a legal basis.

**DELETED** suggested a joint statement which is closely linked to **DELETED** suggestion on recital (4); a draft statement will be circulated at a later stage.

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> OJ C 116, 26.5.2007, p. 1.

Whereas<sup>7</sup>:

- (1) In June 2004, the European Council asked for the preparation of an overall strategy to protect critical infrastructures<sup>8</sup>. In response, on 20 October 2004, the Commission adopted a Communication on Critical Infrastructure Protection in the Fight against Terrorism<sup>9</sup> which put forward suggestions as to what would enhance European prevention of, preparedness for and response to terrorist attacks involving critical infrastructures.
- (2) On 17 November 2005 the Commission adopted a Green Paper on a European Programme for Critical Infrastructure Protection<sup>10</sup> which provided policy options on the establishment of the programme and the Critical Infrastructure Warning Information Network (CIWIN). The responses received to the Green Paper **emphasised the added value of** a Community framework concerning critical infrastructure protection. The need to increase the critical infrastructure protection capability in Europe and to help reduce vulnerabilities concerning critical infrastructures was acknowledged. The importance of the **key principles of subsidiarity, proportionality and complementarity, as well as** of stakeholder dialogue was emphasised.
- (3) In December 2005 the Justice and Home Affairs Council called upon the Commission to make a proposal for a European Programme for Critical Infrastructure Protection (EPCIP) and decided that it should be based on an all-hazards approach while countering threats from terrorism as a priority. Under this approach, manmade, technological threats and natural disasters should be taken into account in the critical infrastructure protection process, but the threat of terrorism should be given priority. ~~If the level of protection measures against a particular high level threat is found to be adequate in a critical infrastructure sector, stakeholders should concentrate on other threats to which they are still vulnerable.~~

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<sup>7</sup> **The recitals need to be re-examined once a final agreement has been reached on the articles.**

<sup>8</sup> 10679/2/04 REV 2.

<sup>9</sup> 13979/04

<sup>10</sup> 14910/05

- (3a) **In April 2007 the Council adopted conclusions on the European Programme for Critical Infrastructure Protection in which it reiterated that it was the ultimate responsibility of the Member States to manage arrangements for the protection of critical infrastructures within their national borders while welcoming the efforts of the Commission to develop a European procedure for the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection.**
- (4) **This Directive does not modify the existing powers of the EC and Euratom Communities as regards the protection of European Critical Infrastructures, the primary and ultimate responsibility for which falls on the Member States and the owners/operators of such infrastructures.** ~~The primary responsibility for protecting critical infrastructures currently falls on the Member States and the owners/operators of critical infrastructures<sup>11</sup>.~~  
This ~~should~~ **will** not change **with the adoption of this Directive.**
- (4a) **The protection of European critical infrastructure is of vital significance for internal security in the Union and for the well-being of Union citizens. In the final analysis, the disruption or destruction of certain infrastructure can wreck human lives, the environment and economic assets as well as cause lasting damage to public confidence.**
- (5) There are a certain number of critical infrastructures in the Community, the disruption or destruction of which would **have a significant cross-border impact** . This may include transboundary cross-sector effects resulting from interdependencies between interconnected infrastructure. Such European critical infrastructures should be identified and designated by means of a common procedure. The need to improve the protection of such critical infrastructures should be assessed under a common framework. Bilateral schemes for cooperation between Member States in the field of critical infrastructure protection constitute a well established and efficient means of dealing with transboundary critical infrastructure. EPCIP should build on such cooperation.

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<sup>11</sup> **DELETED** suggestion, supported by Cion, which is linked to a joint statement.

(6) Since various sectors have particular experience, expertise and requirements concerning critical infrastructure protection, a Community approach to critical infrastructure protection should be developed and implemented taking into account sector specificities and existing sector based measures including those already existing at EU, national or regional level, and where relevant cross-border mutual aid agreements between owners/operators of critical infrastructure already in place. Given the very significant private sector involvement in overseeing and managing risks, business continuity planning and post-disaster recovery, a Community approach will need to encourage full private sector involvement. The establishment of a common list of critical infrastructure sectors is necessary in order to facilitate the implementation of the sector-by-sector approach to **European** critical infrastructure protection <sup>12</sup>.

**(6a) For the purposes of the financial sector, this Directive should be compatible with the tasks and duties conferred on the European System of Central Banks (ESCB) by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank, and on National Central banks, Financial Regulatory Authorities and Financial Supervisory Authorities under other equivalent EU or national provisions. Particular attention in this regard needs to be given to the operation and oversight of payment and securities trading, clearing and settlement infrastructures and systems by the ESCB, and to the contribution made by central banks to the stability of the financial system.**

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<sup>12</sup> **Cion** suggested inserting an additional recital (6b): *"To avoid duplication with existing requirements adopted by Member States for the protection of nuclear facilities and nuclear material against acts which could directly or indirectly endanger the health and safety of the public or the environment by exposure to radiation or release of radioactive substances, implementation of this Directive should fully recognise the provisions of Article 2A of the Convention on the Physical Protection of Nuclear Material (as amended by the Amendment adopted at Vienna on 8th July 2005). Following the ratification ~~entry into force~~ of the amended Convention, the implementation of the provisions of this Article should be deemed to satisfy the requirements of this Directive in respect of the protection of the nuclear industry (including nuclear power stations) against such acts."* A suggestion in the **DELETED** non-paper is in line with the principles of the above Cion proposal. **DELETED** entered scrutiny reservations on the proposed text.

To avoid unnecessary duplication of work, Member States should rely on the work and regular assessments conducted by National Central Banks, the European central bank and Financial Regulatory and Supervisory Authorities within their fields of competence.

- (6b) **This Directive complements existing sectoral measures at Community level and in the Member States. Where Community mechanisms are already in place, they should continue to be used and will contribute to the overall implementation of this Directive. Duplication of, or contradiction between, different acts or provisions shall be avoided.**<sup>13</sup>
- ~~(7) Each owner/operator of European Critical Infrastructure should establish an Operator Security Plan identifying critical assets and laying down relevant security solutions for their protection. The Operator Security Plan should take into account vulnerability, threat and risk assessments, as well as other relevant information provided by Member State authorities~~
- (7) **Operator Security Plans or equivalent measures comprising an identification of important assets, a risk assessment and the identification, selection and prioritisation of counter-measures and procedures should be in place in all designated European Critical Infrastructure. With a view to avoiding unnecessary work and duplication, each Member State should first assess whether the owners/operators of designated European Critical Infrastructure possess relevant Operator Security Plans or similar measures. Where such plans do not exist, each Member State should take the necessary steps to make sure that appropriate measures are put in place. It should be up to each Member State to decide on the most appropriate form of action with regard to the establishment of Operator Security Plans.**
- (7a) **Sectors, in which there are already in place measures, principles, guidelines including Community measures that refer to the need to have a plan similar or equivalent to an Operator Security Plan and where compliance with relevant measures, principles or guidelines is ensured, will be deemed to satisfy the requirements in relation to an Operator Security Plan.**

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<sup>13</sup> **DELETED** suggested inserting an additional recital 6 (c): "*The relevant Member State authorities that will be involved in the European Critical Infrastructure process will be defined by the Member State, taking into account the variations for different sectors.*".

- ~~(8) Each owner/operator of European Critical Infrastructure should designate a Security Liaison Officer in order to facilitate cooperation and communication with relevant national critical infrastructure protection authorities.~~
- (8) **Security Liaison Officers should be identified in all designated European Critical Infrastructure in order to facilitate cooperation and communication with relevant national critical infrastructure protection authorities. With a view to avoiding unnecessary work and duplication, each Member State should first assess whether the owners/operators of designated European Critical Infrastructure already possess a Security Liaison Officer or equivalent. Where such a Security Liaison Officer does not exist, each Member State should take the necessary steps to make sure that appropriate measures are put in place. It should be up to each Member State to decide on the most appropriate form of action with regard to the designation of Security Liaison Officers.**
- (9) The efficient identification of risks, threats and vulnerabilities in the particular sectors requires communication both between owners/operators of European Critical Infrastructure and the Member States, and between the Member States and the Commission. Each Member State should collect information concerning European critical infrastructures located within its territory. The Commission should receive generic information from the Member States concerning vulnerabilities, threats and risks **in the sectors**<sup>14</sup> **where the European Critical Infrastructure was identified (Annex I)**, including where relevant information on possible **improvements in the European Critical Infrastructures** gaps and cross-sector dependencies, which **could should** be the basis for the development of specific proposals **by the Commission** on improving the protection of European Critical Infrastructure, where necessary.
- (10) In order to facilitate improvements in the protection of European Critical Infrastructures, common methodologies should be developed for the identification and classification of vulnerabilities, threats and risks to infrastructure assets.

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<sup>14</sup> **Cion** suggested replacing the word "*sectors*" by the word "*sub-sectors*".

- (11) **By defining the respective responsibilities of all relevant stakeholders** ~~Only~~ a common framework can provide the necessary basis for a coherent implementation of measures to protect European Critical Infrastructure ~~and clearly define the respective responsibilities of all relevant stakeholders.~~ **Member States and** owners/operators of European Critical Infrastructure should be given access primarily through relevant Member State authorities to best practices and methodologies concerning critical infrastructure protection.
- (12) Effective protection of **European** Critical Infrastructure requires communication, coordination, and cooperation at national and Community level. This is best achieved through the nomination of **European** CIP Contact Points in each Member State, who should coordinate **European** CIP issues internally, as well as with other Member States and the Commission.
- (13) In order to develop **European** Critical Infrastructure Protection activities in areas which require a degree of confidentiality, it is appropriate to ensure a coherent and secure information exchange in the framework of this Directive. It is important that the rules of confidentiality according to applicable national law or the Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents are observed with regard to specific facts about critical infrastructure assets, which could be used to plan and act with a view to causing unacceptable consequences for critical infrastructure installations. Classified information should be protected in accordance with relevant Community and Member State legislation. Each Member State and the Commission should respect the relevant security classification given by the originator of a document.
- (14) Information sharing regarding **European** Critical Infrastructure should take place in an environment of trust and security. The sharing of information requires a relationship of trust such that companies and organisations know that their sensitive **and confidential** data will be sufficiently protected. ~~To encourage information sharing, it should be clear for the industry that the benefits of providing Critical Infrastructure related information outweigh the costs for the industry and society in general. Critical Infrastructure Protection information exchange should therefore be encouraged.~~

- (15) ~~(deleted) This Directive complements existing sectoral measures at Community level and in the Member States. Where Community mechanisms are already in place, they should continue to be used and will contribute to the overall implementation of this Directive. **Duplication of, or contradiction between, different acts or provisions shall be avoided.**~~
- (16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>15</sup>. **The comitology procedure should only be used for the development of implementation measures pursuant to this Directive with a view to guaranteeing the expediency of decision making while taking into account the sensitive nature of the critical infrastructure protection process. The use of implementation measures should not go beyond the mandate and scope set out by this Directive. The regulatory procedure should be used for the purpose of this Directive.**
- (17) Since the objectives of this Directive, namely the creation of a procedure for the identification and designation of European Critical Infrastructures, and a common approach to the assessment of the needs to improve the protection of such infrastructures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

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<sup>15</sup> OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

*Subject-matter*

This directive establishes a procedure for the identification and designation of European Critical Infrastructures, and a common approach to the assessment of the needs to improve the protection of such infrastructures in order to contribute to the protection of people.

*Article 2*

*Definitions*

For the purpose of this directive:

- a) “Critical Infrastructure” means
1. those assets, systems or parts thereof located in the EU Member States which are essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions; or
  2. those hazardous assets, systems or parts thereof located in the EU Member States the disruption or destruction of which would, as a direct consequence, have a significant impact in a Member State regardless of any impact due to the loss of service from that infrastructure.
- b) “European Critical Infrastructure” means critical infrastructure located in the EU Member States the disruption or destruction of which would have a significant **cross-border** impact ~~on two or more Member States, or a single Member State if the critical infrastructure is located in another Member State~~. This includes effects resulting from cross-sector dependencies on other types of infrastructure;
- c) "risk analysis" means consideration of relevant threat scenarios, in order to assess the vulnerability and the potential impact of disruption or destruction of critical infrastructure.

- d) "Sensitive Critical Infrastructure Protection related Information" means facts about a critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations.
- e) "priority sectors" means those critical infrastructure ~~protection~~ sectors designated as such under this Directive.
- f) "protection" means all activities aimed at ensuring the functionality, continuity and integrity of critical infrastructure in order to deter, mitigate and neutralise a threat, risk or vulnerability.
- g) "European Critical Infrastructure owners/operators" means those entities responsible for day-to-day operation and investment in a particular asset, system or part thereof designated as a European Critical Infrastructure under this Directive.
- h) "Impacted Member States" means those Member States which are affected by a critical infrastructure, but excluding the Member State on whose territory the critical infrastructure is located.**

### *Article 3*

#### *Identification of European Critical Infrastructure*

1. The cross-cutting and sectoral criteria to be used to identify European Critical Infrastructure shall be annexed to this Directive. They shall be the subject of a separate proposal made by the Commission to amend this Directive. The annex shall be classified at ~~EU~~ ~~CONFIDENTIAL~~ level.

The cross-cutting criteria having a horizontal application to all European Critical Infrastructure sectors shall be developed taking into account the severity of the impact of the disruption or destruction of a particular infrastructure. The severity of the impact shall be determined with reference to one or several of the following subject matters:

- Potential to cause casualties and public health consequences
- economic effect (significance of economic loss and/or degradation of products or services; **or environmental effects**)

- public effect (number of members of the population significantly affected including the effects on public confidence; **or environmental effects**);
- ~~environmental effect (with the exception of pollution caused as a result of regular industrial activity);~~

For infrastructure providing a vital service in the priority sectors the cross-cutting criteria shall also take into account the availability of alternatives and the duration of disruption/time for recovery of service.

**The cross-cutting criteria are listed in Annex V.**

The sectoral criteria shall be developed for priority sectors taking into account the characteristics of individual European Critical Infrastructure sectors and involving relevant stakeholders through Member States and the Commission.

2. The priority sectors to be used for the purposes of ~~developing the criteria provided for in~~ paragraph 1 shall be identified in accordance with the procedure referred to in Article 11(2) on an annual basis from among those listed in Annex I.

**The sectoral criteria for the priority sectors are listed in Annex VI.**

Annex I may be amended in accordance with the procedure referred to in Article 11(2) in so far as it provides further clarification of the sectors, but does not broaden the scope of this Directive.

3. Within ~~42~~ **15** months of the adoption of the cross-cutting and sectoral criteria pursuant to paragraph 1, each Member State shall identify the potential European Critical Infrastructure located within its territory as well as the potential European Critical Infrastructure outside its territory that may have a significant impact on it, which both satisfy the criteria adopted pursuant to paragraph 1 and meet the definitions set out in Article 2(a) and 2(b), following the procedure provided in Annex III.

The Commission may assist Member States at their request to identify potential European Critical Infrastructure which both satisfy the criteria adopted pursuant to paragraph 1 and meet the definitions set out in Article 2(a) and 2(b).

The Commission may draw the attention of the relevant Member States to the existence of potential critical infrastructure for priority sectors which may be deemed to satisfy the requirements for designation as a European Critical Infrastructure.

Each Member State and the Commission will continue on an ongoing basis the process of identifying potential European Critical Infrastructure in priority sectors.

#### *Article 4*

##### *Designation of European Critical Infrastructure*

1. Within ~~15~~ **18** months of the adoption of the cross-cutting and sectoral criteria pursuant to Article 3, each Member State shall inform the other Member States which may be significantly affected by a potential European Critical Infrastructure about its identity and the reasons for designating it as a potential European Critical Infrastructure.
2. Each Member State on whose territory a potential European Critical Infrastructure is located shall engage in bilateral and/or multilateral discussions with the other Member States which may be significantly affected by the potential European Critical Infrastructure. The Commission may participate in these discussions but will not have access to detailed information which would allow for the unequivocal identification of a particular infrastructure.

The bilateral and/or multilateral discussions shall focus on the applicability of the sectoral and cross-cutting criteria in relation to a particular potential European Critical Infrastructure.

A Member State that has reason to believe that it may be significantly affected by the potential European Critical Infrastructure, but has not been identified as such by the Member State on whose territory the potential European Critical Infrastructure is located, may inform the Commission about its wish to be engaged in bilateral and/or multilateral discussions on this issue. The Commission shall without delay communicate this wish to the Member State on whose territory the potential European Critical Infrastructure is located and endeavour to facilitate agreement between the parties.

3. The Member State on whose territory a potential European Critical Infrastructure is located shall designate it as a European Critical Infrastructure following an agreement between that Member State and the significantly affected Member States.

The acceptance of the Member State on whose territory the ~~critical~~ infrastructures to be designated as a European Critical Infrastructure is located, shall be required.

4. Within ~~21~~ 24 months following the adoption of the cross-cutting and sectoral criteria pursuant to Article 3 and thereafter on an annual basis, the Member State on whose territory a designated ECI is located shall inform the Commission of the number of designated European Critical Infrastructure per sector and of the number of Member States dependent on each designated European Critical Infrastructure. Only those Member States significantly affected by an European Critical Infrastructure shall know its identity.

- 5<sup>16</sup>. The Member States on whose territory the European Critical Infrastructure is located shall inform the owner/operator of the infrastructure concerning its designation as a European Critical Infrastructure. Information concerning the designation of an infrastructure as a European Critical Infrastructure shall be classified at an appropriate level.

#### *Article 5*

##### *Operator Security Plans*

1. **The Operator Security Plans procedure shall identify the critical infrastructure assets and which security solutions exist or are being implemented for their protection. The Operator Security Plan shall identify the assets of the European Critical Infrastructure and establish that relevant security solutions have been considered for their protection protection.** The minimum content to be addressed by an Operator Security Plan **procedure** is set out in Annex II.

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<sup>16</sup> **DELETED**: Scrutiny reservation

2. Each Member State shall assess whether each designated European Critical Infrastructure located on its territory possesses an Operator Security Plan or has in place equivalent measures addressing the issues identified in Annex II. If a Member State finds that such an Operator Security Plan or equivalent exists and is updated regularly, no further action shall be necessary.
3. If a Member State finds that such an Operator Security Plan or equivalent has not been prepared, it shall ensure by any measures deemed appropriate, that the Operator Security Plan is prepared addressing the issues identified in Annex II. Each Member State shall ensure that the Operator Security Plans are in place and are reviewed regularly within one year following designation of the critical infrastructure as a European Critical Infrastructure. This period may be extended in exceptional circumstances, by agreement with the Member State authority and with a notification to the Commission.
4. In accordance with the procedure referred to in Article 11(2), the Operator Security Plan template contained in Annex II may be adapted to sectoral characteristics, while taking into account existing Community measures, but without broadening the scope of this Directive.
5. In a case where supervisory or oversight arrangements already exist in relation to a European Critical Infrastructure such arrangements are not affected by this Article and the relevant Member State authority referred to in this paragraph shall be the supervisor under those existing arrangements.
6. Compliance with measures, principles or guidelines including Community measures which in a particular sector require, or refer to a need to have, a plan similar or equivalent to an Operator Security Plan and oversight by the relevant authority of such a plan, is deemed to satisfy all the requirements of Member States in, or adopted pursuant to, this Article.

Annex IV includes a non-exhaustive list of measures, principles and guidelines applicable in some sectors which are deemed to satisfy the Operator Security Plan requirements of this Directive.

Annex IV may be amended in accordance with the procedure referred to in Article 11(2).

*Article 6*  
*Security Liaison Officers*

1. **The Security Liaison officer shall function as the point of contact for security related issues between the owner/operator of the European Critical Infrastructure and the relevant Member State authority.**
2. **Each Member State shall assess whether each designated European Critical Infrastructure located on its territory possesses a Security Liaison Officer or equivalent. If a Member State finds that such a Security Liaison Officer is in place or an equivalent exists, no further action shall be necessary.**
3. **If a Member State finds that a Security Liaison Officer or equivalent does not exist in relation to a designated European Critical Infrastructure, it shall ensure by any measures deemed appropriate, that such a Security Liaison Officer is designated **nominated**.**
4. Each Member State shall implement an appropriate communication mechanism between the relevant Member State authority and the Security Liaison Officer with the objective of exchanging relevant information concerning identified risks and threats in relation to the European Critical Infrastructure concerned. This communication mechanism shall be without prejudice to national requirements concerning access to sensitive and classified information.

*Article 7*  
*Reporting*

1. Each Member State shall conduct relevant risk analyses in relation to European Critical Infrastructure situated on their territory within one year following the designation of the critical infrastructure as an European Critical Infrastructure.
2. Each Member State shall report every 24 months to the Commission generic data on a summary basis on the types of vulnerabilities, threats and risks encountered per European Critical Infrastructure sector referred to in Annex I in which European Critical Infrastructure is located on its territory.

A common template for these reports shall be developed in accordance with the procedure referred to in Article 11(2).

Each report shall be classified at an appropriate level as deemed necessary by the originating Member State.

3. Based on the report referred to in paragraph 2, the Commission and the Member States shall assess on a sectoral basis whether further protection measures should be considered for European Critical Infrastructures.
4. Common methodological guidelines for carrying out risk analyses in respect of European Critical Infrastructures may be developed on a sectoral basis in accordance with the procedure referred to in Article 11(2). Adoption of such guidelines will be optional for the Member States.

#### *Article 8*

##### *Commission support for European Critical Infrastructure*

The Commission shall support, through the relevant Member State authority, the owners/operators of designated European Critical Infrastructures by providing access to available best practices and methodologies as well as by as well as by support training and the exchange of information on new technical developments related to critical infrastructure protection.

#### *Article 9*

##### *Sensitive CIP-related Information*

1. Any person handling classified information pursuant to this Directive on behalf of a Member State or the Commission shall have an appropriate level of security vetting.

Member States, the Commission, and relevant supervisory bodies shall ensure that sensitive CIP-related information submitted to the Member States or to the Commission, is not used for any purpose other than the protection of critical infrastructures.

2. The provisions of this article shall also apply to non-written information exchanged during meetings at which sensitive subjects are discussed.

*Article 10*  
*European CIP Contact Points*

1. Each Member State shall appoint a European Critical Infrastructure protection Contact Point.
2. The Contact Point shall coordinate European Critical Infrastructure protection issues within the Member State, with other Member States and with the Commission. The appointment of a European CIP Contact Point does not preclude other authorities in a Member State from being involved in European CIP issues.

*Article 11*  
*Committee*

1. The Commission shall be assisted by a Committee composed of the representatives of the Member States.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

*Article 12*  
*Implementation*

Member States shall take the necessary measures to comply with this Directive at the latest two years after its entry into force. They shall forthwith inform the Commission thereof and communicate the text of those measures and their correlation with this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 13*  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 14*  
*Addressees*

This Directive is addressed to all Member States.

Done at Brussels,

*For the Council*

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LIST OF CRITICAL INFRASTRUCTURE SECTORS<sup>17</sup>

Sector	Sub-sector
I Energy	1 Oil and gas production, refining, treatment, storage and distribution by pipelines
	2 All methods of electricity generation and transmission including oil, gas, solar, wind, water and nuclear power, but only in respect of supply of electricity <sup>18</sup>
II Nuclear fuel-cycle industry (for radiological hazard) <sup>19</sup>	3 Production, storage/processing/ <b>reprocessing and use</b> of nuclear fuel-cycle <b>materials</b> , including within nuclear power stations
III Information, Communication Technologies, ICT <sup>20</sup>	4 European Information systems <sup>21</sup>
	5 Instrumentation automation and control systems (SCADA etc.) <sup>22</sup>
	6 Internet
	7 Provision of fixed telecommunications
	8 Provision of mobile telecommunications
	9 Radio communication and navigation
	10 Satellite communication
	11 Broadcasting

<sup>17</sup> **DELETED** entered a reservation on the entire Annex I. **DELETED** suggested making a distinction between sectors covering services on the one hand and, on the other hand, activities that are by their nature hazardous; **DELETED** expressed their opposition to this suggestion.

<sup>18</sup> Reservation by **DELETED** on the inclusion of the gas sector and request for clarification that nuclear power plants are not included in this paragraph.

<sup>19</sup> **DELETED** reiterated its scrutiny reservation regarding the use of article 203 of the *Treaty establishing the European Atomic Energy Community* as a legal basis and requested the deletion of the entire sector II; reservation on sector II by **DELETED**; scrutiny reservation by **DELETED**. **Cion** argued that security matters were not addressed by this treaty which covered only safety aspects.

<sup>20</sup> **DELETED** requested the deletion of Sector III; following comments made by delegations, **Cion** suggested that, due to the horizontal nature of the ICT sectors, information systems and SCADA systems should be addressed, where relevant, within all critical infrastructure sectors in which dependence on these systems exists.

<sup>21</sup> **DELETED** felt that this was not a sub-sector in its own right as it played a role also for other sectors. Scrutiny reservation by **DELETED** on the deletion of the sub-sector 4; **DELETED** opposed to the deletion of this sub-sector.

<sup>22</sup> **DELETED** felt that this was not a sub-sector in its own right as it played a role also for other sectors. Consequently, **Cion** suggested the deletion of this sub-sector. **DELETED** opposed to the deletion; **DELETED** entered a scrutiny reservation.

IV	Water	12	Drinking water
		13	Control of water quality
		14	Stemming and control of water quantity
V	Food <sup>23</sup>	15	Provision of food and safeguarding food safety and security
VI	Health	16	Medical and hospital care
		17	Medicines, serums, vaccines and pharmaceuticals
		18	Bio-laboratories and bio-agents
VII	Financial	19	Trading, payment clearing and settlement infrastructures and systems for financial instruments <sup>24</sup>
VIII	Transport	20	Road transport <sup>25</sup>
		21	Rail transport <sup>26</sup>
		22	Air transport
		23	Inland waterways transport <sup>27</sup>
		24	Ocean and short-sea shipping
IX	Chemical industry	25	Production and storage/processing of chemical substances
		26	Pipelines of dangerous substances
X	Space	27	Space

The identification by the Member States of Critical Infrastructure which may be designated as European Critical Infrastructure is done pursuant to Article 3(3). Therefore the list of infrastructure sectors in itself does not generate a generic obligation to designate a European Critical Infrastructure in each sector.<sup>28</sup>

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<sup>23</sup> **DELETED** requested the deletion of Sector V.

<sup>24</sup> Scrutiny reservation by **DELETED** as the banking sector was not included.

<sup>25</sup> Deletion requested by **DELETED**.

<sup>26</sup> Deletion requested by **DELETED**.

<sup>27</sup> Deletion requested by **DELETED**.

<sup>28</sup> **DELETED** entered a reservation on the reference to Article 3 (3) of the proposed directive.

**OPERATOR SECURITY PLAN (OSP) PROCEDURE<sup>29</sup>**

The OSP shall identify the critical infrastructure ~~owners' and operators'~~ assets and which security solutions exist or are being implemented for their protection. The OSP procedure will cover at least:

- identification of important assets;
- a risk analysis based on major threat scenarios, vulnerability of each asset, and potential impact shall be conducted;
- identification, selection and prioritisation of counter-measures and procedures with a distinction between:
  - **permanent security measures**, which identify indispensable security investments and means which are relevant to be employed at all times. This heading will include information concerning general measures such as technical measures (including installation of detection, access control, protection and prevention means); organizational measures (including procedures for alerts and crisis management); control and verification measures; communication; awareness raising and training; and security of information systems,
  - **graduated security measures**, which can be activated according to varying risk and threat levels.

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<sup>29</sup> **DELETED: Reservation on Annex II (linked to Article 5).**

**Procedure for the identification by the Member States of Critical Infrastructure which may be designated as European Critical Infrastructure pursuant to Article 3(3)**

Article 3(3) of this Directive requires each Member State to apply the criteria adopted pursuant to Article 3(1) in order to identify those critical infrastructures which may be designated as European Critical Infrastructure. This procedure shall be implemented by each Member State through the following series of consecutive steps.

Potential European Critical Infrastructure which does not satisfy the requirements of one of the following sequential steps is considered to be ‘non-ECI’ and is excluded from the procedure.

Potential European Critical Infrastructure which does satisfy the definitions shall be subjected to the next steps of this procedure.

**Step 1**

Each Member State shall apply the sectoral criteria adopted pursuant to Article 3(1) of this Directive in order to make a first selection of critical infrastructures within a sector.

**Step 2**

Each Member State shall apply the definition of critical infrastructure pursuant to Article 2(a) to the potential European Critical Infrastructure identified under step 1.

The significance of the impact will be determined either by using national methods for identifying critical infrastructures or with reference to the cross-cutting criteria, at an appropriate national level. For infrastructure providing an essential service, the availability of alternatives, and the duration of disruption/recovery will be taken into account.

**Step 3**

Each Member State shall apply the definition of European Critical Infrastructure pursuant to Article 2(b) to the potential European Critical Infrastructure that has passed the first two steps of this procedure. Potential European Critical Infrastructure which does satisfy the definition will follow the next step of the procedure. For infrastructure providing an essential service, the availability of alternatives, and the duration of disruption/recovery will be taken into account.

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<sup>30</sup> **DELETED: Scrutiny reservation.**

#### Step 4

Each Member State shall apply the cross-cutting criteria adopted pursuant to Article 3(1) of this Directive to the remaining potential European Critical Infrastructure. The cross-cutting criteria shall take into account: the severity of impact; and, for infrastructure providing an essential service, the availability of alternatives; and the duration of disruption/recovery. Potential European Critical Infrastructure which does not satisfy the cross-cutting criteria will not be considered to be European Critical Infrastructure.

Potential European Critical Infrastructure which has passed through this procedure shall only be communicated to the Member States which may be significantly affected by the potential European Critical Infrastructure.

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The non-exhaustive list of measures, principles or guidelines referred to in Article 5(6) include:

- Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security;
- Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID);
- Commission Directive 2006/73/EC of 10 August 2006 implementing MFID;
- Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (as amended by the Amendment adopted at Vienna on 8 July 2005)<sup>31</sup>;
- CPSS - Core Principle VII of the Core Principles for Systemically Important Payment Systems;
- CPSS-IOSCO recommendations for Securities Settlement Systems (recommendation 11);
- CPSS-IOSCO recommendations for Central Clearing Providers (recommendation 8);
- **Regulation (EC) No 2320/2002 of the European Parliament and the Council of 16 December 2002 establishing common rules in the field of civil aviation security;**
- **Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services;**
- **Regulation (EC) No 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) No 2096/2005**

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<sup>31</sup> **DELETED** questioned whether this convention covered also the risks arising from terrorist attacks.