COUNCIL OF
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OUTCOME OF PROCEEDINGS

from :	Working Party on Civil Protection
on :	26 July 2007
No. prev. doc. :	11872/07 PROCIV 123 JAI 389 COTER 61 ENER 207 TRANS 247 TELECOM 96 ATO 100 ECOFIN 329 ENV 412 SAN 153 CHIMIE 19 RECH 210 DENLEG 65 RELEX 570
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
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

At its meetings on 26 July 2007 the Working Party on Civil Protection examined, with the participation of critical infrastructure protection experts, articles 9 to 14 as well as Annexes I and II of the above-mentioned Commission proposal. Delegations will find in the Annex the text as it stands following the proceedings of the Working Party.

With a view to the next meeting on 13 and 14 September 2007, delegations will kindly note that it is the intention of the Presidency to first discuss the opinion of the European Parliament and then to discuss the comments and proposals from Member States and the Commission reflected in the footnotes of this outcome of proceedings.
Therefore, delegations are invited to consider which of their reservations could be lifted in the light of these proposals.

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 (DELETED) and in copy to the Council Secretariat (DELETED).

DRAFT[1]

DIRECTIVE OF THE COUNCIL

on the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection[2]

(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,][3]

Having regard to the proposal from the Commission[4],

Having regard to the opinion of the European Parliament[5],

Having regard to the opinion of the European Central Bank[6],

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1 **Bolds and strikeouts mark the modifications in the Commission proposal**

2 **General scrutiny reservation by <u>all delegations.</u>**

3 **Scrutiny reservation by <u>DE</u> regarding the use of Article 203 of the *Treaty establishing the European Atomic Energy Community* as a legal basis.**

4 OJ C […], […], p. […].

5 OJ C […], […], p. […].

6 OJ C 116, 26.5.2007, p. 1.

Whereas[7]:

(1) In June 2004, the European Council asked for the preparation of an overall strategy to protect critical infrastructures[8]. In response, on 20 October 2004, the Commission adopted a Communication on Critical Infrastructure Protection in the Fight against Terrorism[9] 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[10] 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 clearly showed the need to set up 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 principle of subsidiarity and 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.

(4) The primary responsibility for protecting critical infrastructures currently falls on the Member States and the owners/operators of critical infrastructures. This should not change.

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7 **The recitals will be examined following agreement on the articles.**
8 10679/2/04 REV 2.
9 13979/04
10 14910/05

(5) There are a certain number of critical infrastructures in the Community, the disruption or destruction of which would affect two or more Member States or a Member State other than that in which the critical infrastructure is located. 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.

(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 critical infrastructure protection[11].

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[11] **Cion suggested inserting an additional recital (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 central banks, and to the contribution made by central banks to the stability of the financial system. 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."***

(7) Each owner/operator of European critical infrastructure should establish an Operator Security Plan identifying critical assets and laying[12] 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.[13]

(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.

(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, including where relevant information on possible gaps and cross-sector dependencies, which should be the basis for the development of specific proposals on improving the protection of ECI, 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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12 **Cion suggested replacing the first part of this sentence by*: "An Operator Security Plan should be established for each European critical infrastructure. It should identify critical assets and lay (down…)"***

13 **Cion suggested inserting the following sentence: *"Pursuant to article 249 of the Treaty establishing the European Community, it is up to each Member State to select the appropriate form and methods in order to achieve the requirement of having an Operator Security Plan for each European Critical Infrastructure as set out in this Directive. Sectors, including the financial sector, 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."***

(11) 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. Owners/operators of European critical infrastructure should be given access to best practices and methodologies concerning critical infrastructure protection.

(12) Effective protection of critical infrastructure requires communication, coordination, and cooperation at national and Community level. This is best achieved through the nomination of CIP Contact Points in each Member State, who should coordinate CIP issues internally, as well as with other Member States and the Commission.

(13) In order to develop 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. Certain Critical Infrastructure Protection[14] information is of such nature that its disclosure would undermine the protection of the public interest as regards public security. Specific facts about a critical infrastructure asset, which could be used to plan and act with a view to causing unacceptable consequences for critical infrastructure installations should be classified and access granted only on a need-to-know basis, both at Community level and at Member State level. [15]

(14) Information sharing regarding 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 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[16].

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14 **Cion suggested replacing "*Certain Critical Infrastructure Protection (information…)*" by "*Sensitive Critical Infrastructure Protection related (information…)*".**

15 **Cion suggested adding the following sentence: "*Each Member State should respect the relevant security classification of sensitive documents given by the originator of the document*".**

16 **Cion suggested inserting two additional recitals: *"(14a) Generic data pursuant to summary reports concerning vulnerabilities, threats and risks submitted to***

(15) 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.

(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[17].[18]

(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[19].

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the Commission by the Member State will be classified at an appropriate level. Similarly, the lists of European Critical Infrastructure shall be classified at an appropriate level and access granted strictly on a need-to-know basis to relevant Commission and Member State officials having the necessary security vetting. (14 b) Relevant CIP provisions in the individual EU Member States may vary. For this reason, it is important for critical infrastructure in Europe to be identified and designated according to a common procedure. In doing this, and in order to develop CIP activities, a high degree of confidentiality also within Member States is a precondition. The security procedures for access to CIP documents on the national level shall be established according to the national legislation and rules covering the handling on sensitive data."

17 OJ L 184, 17.7.1999, p. 23.

18 **Cion suggested inserting the following sentence: *"The comitology procedure shall only be used for the development of implementation 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 shall not go beyond the mandate and scope set out by this Directive. The regulatory procedure shall be used for the purpose of this Directive".***

19 **The European Central Bank suggested in its opinion (OJ C 116, 26.5.2007, p. 1.) the inclusion of an additional recital (17 a): *"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. Particular***

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

HAS ADOPTED THIS DIRECTIVE:

attention in this regard needs to be given to the operation and oversight of payment and securities clearing and settlement infrastructures and systems by the ESCB central banks, and to the contribution made by central banks to the stability of the financial system. To avoid unnecessary duplication of work, Member States should rely on the work and regular assessments conducted by the central banks within their fields of competence."

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**. **Such an approach shall be based on an all-hazard approach, while recognizing the threat from terrorism as a priority**[20]**.**

Article 2

Definitions

For the purpose of this directive:

a) "Critical Infrastructure" means those assets[21] or parts thereof which are essential for the maintenance of [critical][22] societal functions, [including the supply chain][23], health, safety, security, economic or social well-being of people[24];

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[20] **New wording proposed by Pres in order to take into account that, following the *"Council conclusions on principles for EPCIP"* (14689/05, para. 5), some delegations highlighted that the protection of critical infrastructures should be based on an all-hazard approach, whereas others stressed that these conclusions recognized the threat from terrorism as a priority.**
Scrutiny reservation by SE.
GR suggested to mention first the "*threat from terrorism*" and only afterwards the "*all-hazard approach*".
AT opposed to the inclusion of the second sentence ("*Such an …").*

[21] **ES/FR/IT/NL/SE/UK/Cion suggested inserting "*and systems*"; IT/UK suggested mentioning also "*services*" explicitly.**

[22] **In order not to repeat the word "*critical*" in the text of the definition ES suggests replacing it by "*fundamental*" or "*important*". DE considered to suggest "necessary for the maintenance of essential societal functions"; scrutiny reservation by NL.**

[23] **Deletion of "*supply chain*" requested by AT as in the past no agreement on this notion could be found in the Working Group on Transport (Horizontal questions)**

[24] **Cion suggested to divide the definition into two parts and to add *"and the disruption or destruction of which would have a significant impact in a Member State as result of the failure to maintain those functions; or 2. any other [hazardous] assets, systems or parts thereof the disruption or destruction of which would, as a direct consequence, have a significant impact in a Member State regardless of***

b) "European Critical Infrastructure" means critical infrastructures[25] the disruption or destruction of which would [significantly affect][26] [two][27] or more Member States, [or a single Member State if the critical infrastructure[28] is located in another Member State][29]. This includes effects resulting from cross-sector dependencies on other types of infrastructure;

[c) "severity" means the impact of the disruption or destruction of a particular infrastructure, with reference to:

- public effect (number of members of the population affected);
- economic effect (significance of economic loss and/or degradation of products or services);
- environmental effect;
- political effects;
- psychological effects[30]
- public health consequences;[31]][32]

d) ["vulnerability" means a characteristic of an element of the critical infrastructure's design, implementation, or operation that renders it susceptible to disruption or destruction by a threat and includes dependencies on other types of infrastructure;][33]

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any impact on the maintenance of critical societal functions."

25 **Cion suggested replacing *"critical infrastructures"* by *"critical infrastructure assets"***

26 **FR suggested "*have a serious impact on*"**

27 **"Three" suggested by EE/DK/NL/UK; SE supported this view but questioned, in the first place, whether there was a need for a legally binding instrument at all.**

28 **Cion suggested to add *"asset"***

29 **Depending on the outcome of the discussions on the first part of this sentence ("*two*" or "*three*") this part of the sentence may be changed as well.**

30 **Clarification requested by DE/UK**

31 **IT/NL requested the inclusion of two additional elements in the definition: duration of the disruption and possible alternatives to the relevant infrastructure**

32 **DE/FI/SE/UK suggested that the term "*severity*" be defined only in Article 3 para. 1; Cion agreed and suggested a new provision to be included in Article 3 para. 1**

e) ["threat" means any indication, circumstance, or event with the potential to disrupt or destroy critical infrastructure, or any element thereof;]

f) ["risk" means the possibility of loss, damage or injury having regard to the value placed on the asset by its owner/operator and the [impact of loss or change][34] to the asset, and the likelihood that a specific vulnerability [will be exploited][35] by a particular threat;]

g) ["Critical[36] Infrastructure Protection Information"[37] means specific[38] facts about a critical infrastructure asset, which if disclosed could be used to plan and act with a view to guaranteeing[39] failure or causing[40] unacceptable consequences for critical infrastructure installations[41].]

Article 3

Identification of European Critical Infrastructure

1. The cross-cutting and sectoral criteria to be used to identify European Critical Infrastructures[42] shall be adopted in accordance with the procedure referred to in Article 11(3). They may be amended in accordance with the procedure referred to in Article 11(3)[43].

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33 **FI suggests that this term is to be defined only in the relevant article; Pres suggests discussing this definition together with the relevant article.**

34 **SK suggested replacing "*impact of loss or change*" by "*size of after-effects of loss, damage or destroyed infrastructure*"**

35 **SK suggested replacing "*will be exploited*" by " *will be misused*"**

36 **UK suggested replacing "*critical*" by "*sensitive*"**

37 **Cion suggested replacing this notion by *"Sensitive CIP-related information"***

38 **Cion suggested replacing this notion by *"detailed"***

39 **Cion suggested replacing this notion by *"causing"***

40 **Cion suggested deletion of *"causing"***

41 **FI requested a definition of the notions "*owner*" and "*operator*".**
SE requested a definition of the notion "protection".
SK recommended to integrate into article 2 also definitions of "*security plan*", "*threats scenario*", "*sector*", and "*priority sector*"

42 **Cion suggested replacing *"infrastructures"* by *"infrastructure"***

43 **AT/DE/FI/IR/SE were opposed to an adoption of the criteria through comitology procedure and suggested that the criteria were to be defined by the Council in the directive. Accordingly, Cion suggested to replace *"adopted in accordance … Article 11 (3)"* by *"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 an appropriate level."***

The cross-cutting criteria having a horizontal application to all critical infrastructure sectors shall be developed taking into account the severity of the effect[44] of the disruption or destruction of a particular infrastructure[45].They shall be adopted by [*one year after the entry into force of this Directive*] at the latest[46].

The sectoral criteria shall be developed for priority sectors while[47] taking into account the characteristics of individual critical infrastructure sectors and involving, as appropriate,[48] relevant stakeholders[49]. They shall be adopted for each priority sector at the latest one year following the designation as a priority sector[50].

2. The priority sectors to be used for the purposes of developing the criteria provided for in paragraph 1 shall be identified by the Commission[51] on an annual basis from among those listed in Annex I.

Annex I may be amended in accordance with the procedure referred to in Article 11(3) in so far as this does not broaden the scope of this Directive[52].

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44 **Cion suggested replacing *"effect"* by *"impact"***

45 **Following a request for clarification by DE/FI/SE/UK, Cion suggested to insert the following definition in Article 3 para. 1 : *"the severity of the impact shall be determined with reference to its:***

- ***Casualties and public health consequences;***
- ***Economic effect (significance of economic loss and/or degradation of products or services);***
- ***Public effect (number of members of the population affected including the effects on public confidence);***
- ***Environmental effect;***

For infrastructure providing an essential service, the cross-cutting criteria shall also take into account the availability of alternatives and the duration of disruption/time for the recovery of service."

46 **Cion suggested the deletion of this sentence.**

47 **Cion suggested the deletion of the word *"while".***

48 **AT requested deletion of *"as appropriate"***

49 **Cion suggested replacing *"stakeholders" with "Member States authorities".***

50 **Cion suggested the deletion of this sentence.**

51 **FI/SE/UK suggested insertion of *"and Member States"*; on this basis, Cion suggested replacing *"identified by the Commission"* by *"assessed in accordance with the procedure referred to in article 11 (3)"***

52 **DE said that *"in so far as this does not broaden the scope of this directive"* would not solve its problems regarding the comitology procedure**

3. Each Member State shall[53] identify the[54] critical infrastructures located within its territory as well as critical infrastructures outside its territory that may have an impact on it, which[55] satisfy the criteria adopted pursuant to paragraphs 1 and 2[56].

Each Member State shall[57] notify the Commission of the[58] critical infrastructures thus identified[59] at the latest one year after the adoption of the relevant criteria[6061] and thereafter on an ongoing basis.

Article 4

Designation of European Critical Infrastructure

1. On the basis of the notifications made pursuant to the second paragraph of Article 3(3) and any other information at its disposal, the Commission shall propose a list of critical infrastructures[62] to be designated as European Critical Infrastructures[63].

2. The list[64] of critical infrastructures designated as European Critical Infrastructure shall be adopted in accordance with the procedure referred to in Article 11(3)[6566].

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53 **SE suggested replacing *"shall"* by *"may"***

54 **AT requested the insertion of *"European"***

55 **Following a proposal by FR/IT/NL/SE/UK, Cion suggested the inclusion of *"both"***

56 **Following a proposal by FR/IT/NL/SE/UK, Cion suggested replacing *"and 2"* by *"and meet the definitions set out in Article 2 (b) and 3(1)), following the procedure provided in Annex 3."***

57 **SE suggested replacing *"shall"* by *"may"***

58 **AT requested the insertion of *"European"***

59 **Cion suggested the inclusion of *"per critical infrastructure sector pursuant to the list of critical infrastructure sectors listed in Annex 1"***

60 **FR/IT/NL/SE/UK suggested the inclusion of *"and definitions"***

61 **Cion suggested replacing *"of the relevant criteria"* by *"of the cross-cutting and sectoral criteria"***

62 **BE/DE/FI/IT/NE/SE/UK were opposed to the idea of establishing lists; FR accepted current text provided that these lists contain only general information. ES and FR requested that the list must be classified; Cion explained that the lists were to be classified as "EU secret" documents**

63 **Cion suggested the inclusion of *"per critical infrastructure sector. The lists shall contain information sufficient to identify the infrastructure."***

64 **Cion suggested replacing *"list"* by *"lists"***

65 **Cion suggested the inclusion of the following sentence: *"The acceptance of the Member State on whose territory the critical infrastructure to be designated as a European Critical Infrastructure is located, shall be required."* PL supported this proposal from Cion but suggested the inclusion also of the following sentence: *"This decision shall be binding for the European Commission."***

The list[67] may be amended in accordance with the procedure referred to in Article 11(3)[68].

Article 5

Operator Security Plans[69]

1. Each Member State shall require the owners/operators of each European Critical Infrastructure located on its territory to establish and update an Operator Security Plan[70] and to review it at least every two years[71].

2. The Operator Security Plan shall identify the assets of the European Critical Infrastructure and establish[72] relevant security solutions[73] for their protection in accordance with Annex II[74]. Sector specific requirements concerning the Operator Security Plan taking into account existing Community measures may be adopted in accordance with the procedure referred to in Article 11(3)[7576].

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66 **AT/FI/SE opposed to an adoption of the list through comitology procedure and suggested that the lists were to be adopted by the Council**

67 **Cion suggested replacing *"list"* by *"lists"***

68 **Cion suggested the inclusion of the following sentence: *"Each list shall be classified at EU SECRET level."***

69 **Reservation on whole article 5 by BE**

70 **DE/CZ/NE/SE/UK opposed to an obligation to establish OPSs, inter alia because its implementation would entail that ECIs could be identified by the public**

71 **Following comments made by CZ and FR, Cion suggested replacing *"require the owners/operators … every two years."* by *"either by laws or regulations or by measures, principles or guidelines ensure that owners or operators of ECI located on its territory prepare Operator Security Plans in accordance with Annex II and that these Operator Security Plans are reviewed regularly."***

72 **Cion suggested adding the word *"that"* after *"establish"*.**

73 **Cion suggested adding *"have been considered"* after *"solutions"*.**

74 **Cion suggested deleting "*in accordance with Annex II*"**

75 **Cion suggested replacing this sentence by *"In accordance with the procedure referred to in Article 11 (3), the Operator Security Plan template contained in Annex II may be adapted to sectoral requirements, while taking into account existing Community measures, but without broadening the scope of this Directive."***

76 **AT suggested that the requirements for the Operator Security Plan were laid down in the text of the directive**

Acting in accordance with the procedure referred to in Article 11(2), the Commission may decide that compliance with measures applicable to specific sectors listed in Annex I satisfies the requirement to establish and update an Operator Security Plan[77].

3. [78]The owner/operator of a European Critical Infrastructure shall submit the Operator Security Plan to the relevant Member State authority within one year following designation of the critical infrastructure as a European Critical Infrastructure.

Where sector specific requirements concerning the Operator Security Plan are adopted based on paragraph 2, the operator security plan shall only be submitted to the relevant Member State authority within 1 year following the adoption of the sector specific requirements[79].

4. [80]Each Member State shall set up a system ensuring adequate and regular supervision of[81] the Operator Security Plans and their implementation based on the risk and threat assessments conducted pursuant to Article 7(1).[8283]

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77 **Cion suggested the deletion of this sentence.**

78 **Reservation by SE**

79 **Cion suggested the deletion of Article 5(3) and replacing it by *"Each Member State shall verify that owner/operators of ECI located on its territory have developed an Operator Security Plan 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 the Commission*.**
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".

80 **Reservation by SE**

81 **Cion suggested replacing *"set up a system ensuring adequate and regular supervision of"* by *"regularly review"***

82 **Cion suggested replacing "*based on the risk and threat assessments conducted pursuant to Article 7(1)*" by "*for ECI located on its territory*".**

83 **Following comments made by AT/FI/NL on existing legislation in other sectors Cion suggested adding a new para. 5: *"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 supervision 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.

5. Compliance with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security satisfies the requirement to establish an Operator Security Plan[84].

Article 6[85]

Security Liaison Officers

1. Each Member State shall require the owners/operators of[86] European Critical Infrastructures on their[87] territory to designate a Security Liaison Officer as the point of contact for security related issues between the owner/operator of the infrastructure and the relevant critical infrastructure protection authorities in the Member State.[88][89]
The Security Liaison Officer shall be designated within one year following the designation of the critical infrastructure as a European Critical Infrastructure[90].

2. Each Member State shall communicate relevant information concerning identified risks and threats to the Security Liaison Officers of the European Critical Infrastructure concerned[91].

Annex IV may be amended in accordance with the procedure referred to in Article 11(2).".
BE questioned whether this proposal transformed existing recommendations on the national level into obligations on the Community level.

84 **Cion suggested deleting Article 5 (5).**

85 **Scrutiny reservation by DK; SE and UK against an obligation to designate Security Liaison Officers**

86 **Cion suggested including the word *"each".***

87 **Cion suggested replacing *"their"* by *"its".***

88 **Cion suggested replacing *"(relevant) critical infrastructure protection authorities in the Member State."* by *"(relevant) Member State authority."***

89 **BE and LU against detailed obligations as these matters were the competence of Member States'**

90 **SK suggested specifying the competences and terms of references of Security Liaison Officers. Cion suggested the inclusion of an additional para. (1 a): *"Each Member State shall ensure the Security Liaison Officer has an appropriate level of security vetting."***

91 **SK suggested that the Security Liaison Officer should be available in person or via a designated representative 24/7. Accordingly, Cion suggested that the para. reads as follows: *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 Infrastructure concerned.***
This communication mechanism shall be without prejudice to national requirements

Article 7

Reporting

1. Each Member State shall conduct a[92] risk and threat assessment[93] in relation to ECI situated on their territory within one year following the designation of the critical infrastructure as an ECI.

2. Each Member State shall report to the Commission[94] on a summary basis on the types of vulnerabilities, threats and risks encountered in each[95] sector referred to in Annex I[96] within 18 months following the adoption of the list provided for in Article 4(2) and thereafter on an ongoing basis every two[97] years.

   A common template for these reports shall be developed in accordance with the procedure referred to in Article 11(3).[98]

3. The Commission shall assess on a sectoral basis whether specific protection measures are required for European Critical Infrastructures[99].

4. Common methodologies[100] [101] for carrying out vulnerability, threat and risk assessments in respect of European Critical Infrastructures may be developed on a sectoral basis in accordance with the procedure referred to in Article 11(3).[102]

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concerning access to sensitive and classified information."

92 **Cion suggested replacing *"a"* by *"relevant".***

93 **Cion suggested replacing *"assessment"* by *"assessments".***

94 **Cion suggested the inclusion of *"generic data (on a)"***

95 **Cion suggested the inclusion of *"ECI (sector)"***

96 **Cion suggested to include *", and for which ECI is located on its territory (within) ".***

97 **AT suggested "*(every) four (years)*"**

98 **Cion suggested including the following subparagraph: *"Each report shall be classified at an appropriate level.".***

99 **Following comments made by AT/DE/DK/FI/FR/NL/SE, Cion suggested replacing this sentence by: *"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."***

100 **AT suggested that the assessment is to be based also on common technical criteria**

101 **Cion suggested to replace *"methodologies"* by *"methodological guidelines"***

102 **Cion suggested adding the sentence: *"Adoption of such guidelines will be optional for adoption by Member States.".***

Article 8

Commission support for ECI

The Commission shall support[103] the owners/operators of designated European Critical Infrastructures by providing access to available best practices and methodologies[104] related to critical infrastructure protection.

Article 9[105]

CIP Contact Points

1. Each Member State shall appoint a[106] critical infrastructure protection Contact Point[107].

2. The Contact Point shall coordinate[108] critical infrastructure protection issues within the Member State, with other Member States and with the Commission[109].

Article 10

Confidentiality and CIP information exchange[110]

1. In applying this Directive[111], the Commission shall take appropriate measures, in accordance with Decision 2001/844/EC, ECSC, Euratom, to protect information subject to the requirement of confidentiality to which it has access or which is communicated to

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103 **SK suggested to add *"Member States and"*. Following comments made by FR and UK, Cion suggested the inclusion of *"(support), through the relevant Member States authority, (the owners/operators)"***

104 **AT suggested the inclusion of "(methodologies) as well as by providing training and informing on new technical developments"**

105 **AT, supported by Cion, suggested changing the order of articles 9 and 10.**

106 **UK followed by other delegations and Cion suggested to add "European"**

107 **MT/IT requested a definition of the "contact point" in article 2; NL followed by Cion objected to this suggestion as this was a national responsibility**

108 **UK followed by other delegations and Cion suggested to add "European"**

109 **Cion suggested the inclusion of the following sentence: *"the appointment of a CIP Contact Point does not preclude other authorities in the Member States from being involved in European CIP issues."***

110 **Cion suggested replacing this title by *"Sensitive CIP-related Information"*; ES suggested the inclusion of *"European"* before *"CIP-related information"***

111 **SE, supported by NL, UK and Cion, suggested replacing "*In applying this directive*" by "*Without prejudice to the right of public access to Commission documents according to Regulation (EC) no. 1049/2001 of the European Parliament and of the Council,*".**

it by Member States[112]. Member States shall take equivalent measures in accordance with relevant national legislation. Due account shall be given to the gravity of the potential prejudice to the essential interests of the Community or of one or more of its Member States.[113]

2. Any person handling confidential information[114] pursuant to this Directive on behalf of a Member State shall have an appropriate level of security vetting by the Member State concerned.

3. Member States[115] shall ensure that Critical Infrastructure Protection Information[116] submitted to the Member States or to the Commission, is not used for any purpose other than the protection of critical infrastructures.[117][118]

Article 11[119]

Committee

1. The Commission shall be assisted by a Committee composed of a representative of each CIP Contact Point.[120]

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112 **UK, followed by SE and Cion, requested that also non-written information received in meetings should be protected**

113 **LU felt that the criteria given in this sentence were too vague; Cion stated that this sentence was a quotation from Regulation (EC) no. 1049/2001 of the European Parliament and of the Council and suggested adding the sentence: *"Each Member State and the Commission shall respect the relevant security classification given by the originator of a document."*; NL requested to add the following sentence: *Member States and the Commission shall respect each others classification."***

114 **SK requested the notion *"confidential information"* to be specified; Cion suggested replacing *"confidential"* by *"sensitive"***

115 **ES requested to add *"and Commission". Cion suggested to add "(Member States,) the Commission, and relevant supervisory authorities (shall)".***

116 **Cion suggested replacing *"Critical Infrastructure Protection Information"* by *"sensitive CIP-related information"***

117 **SE suggested the deletion of para. 3; further clarification on this suggestion requested by several delegations and Cion.**

118 **Cion suggested the inclusion of a new paragraph reading: *"The provisions of this article shall also apply to non-written information exchanged during meetings at which sensitive subjects are discussed."***

119 **AT/CZ suggested that article 11 came before the article dealing with *"Sensitive CIP-related Information"* (currently article 10)**

120 **Reservation by DE. DK suggested to replace the text contained in para. 1 by *"The Commission shall be assisted by a committee preferably composed of a representative***

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.[121]

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.[122]

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

4. The Committee shall adopt its Rules of Procedure.[123]

Article 12

Implementation

1. Member States shall bring into force the[124] laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2007 at the latest[125]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   When Member States adopt these provisions, 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.

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of each CIP contact point. The regulatory procedure will be used by this committee."; **ES and FI suggested replacing *"(representative) of each CIP contact point"* by *"(representative) of the competent authority in each Member State".* Cion suggested replacing *"(composed of) representative of each CIP Contact Point" by "(composed of) the CIP Contact Points and/or their nominated representatives".***

121 **Cion suggested the deletion of para. 2; DE/EE/FI/NL/SE/UK questioned in the first place the need for this provision but possibly could, as well as BE/CZ, accept a comitology procedure with respect to the implementation of the directive**

122 **Cion suggested the deletion of *"having regard to the provisions of Article 8 thereof*".**

123 **SE asked for clarification whether para. 4 needed to be deleted. Cion suggested the deletion of para. 4.**

124 **Cion suggested the inclusion of *"relevant (laws)".***

125 **SK, followed by BE/CZ/FI/NL/PL/UK and Cion suggested replacing *"by 31 December 2007 at the latest"* by *"at the latest two years after its entry into force"*; LT suggested *"one year".* DE questioned whether there was a need for implementation measures at all; SE entered a reservation as it was against the adoption of a legally binding instrument.**

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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
The President

ANNEX I

LIST OF CRITICAL INFRASTRUCTURE SECTORS[126][127]

Sector		Sub-sector	
I	Energy	1	Oil and gas production, refining, treatment, storage and distribution by pipelines
		2	Electricity generation and transmission[128]
II	Nuclear industry[129]	3	Production and storage/processing of nuclear substances
III	Information, Communication Technologies, ICT	4	Information system and network protection[130]
		5	Instrumentation automation and control systems (SCADA etc.)[131]
		6	Internet
		7	Provision of fixed telecommunications
		8	Provision of mobile telecommunications
		9	Radio communication and navigation
		10	Satellite communication[132]
		11	Broadcasting[133]

126 **DE/UK entered a scrutiny reservation on the entire Annex I; UK suggested making a distinction between sectors covering services on the one hand and, on the other hand, activities that are by their nature hazardous; FI suggested to add *"Indicative (list …)"* to the title**

127 **Cion suggested including the following paragraph in Annex 1: *"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."***

128 **Cion suggested to add *"including nuclear power stations"***

129 **DE reiterated its scrutiny reservation regarding the use of article 2003 of the *Treaty establishing the European Atomic Energy Community* as a legal basis; Cion argued that security matters were not addressed by this treaty which covered only safety aspects**

130 **UK 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.**

131 **UK 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.**

132 **Deletion requested by CZ**

133 **Deletion requested by AT/CZ**

IV	Water[134]	12	Provision of drinking water[135]
		13	Control of water quality
		14	Stemming and control of water quantity[136]
V	Food	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	Payment and securities clearing and settlement infrastructures and systems[137]
		20	Regulated markets[138]
VIII	Transport	21	Road transport[139]
		22	Rail transport[140]
		23	Air transport[141]
		24	Inland waterways transport[142]
		25	Ocean and short-sea shipping
IX	Chemical industry	26	Production and storage/processing of chemical substances
		27	Pipelines of dangerous goods (chemical substances)
X	Space	28	Space
XI	Research facilities	29	Research facilities[143]

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134 **BG requested to add a sub-sector on the protection of water sources**

135 **Cion suggested adding *"including water sources".***

136 **Cion suggested adding *"including dams".***

137 **Following the opinion of the European Central Bank (OJ C 116, 26.5.2007, p. 1.), Cion suggested that the sub-sector reads as follows: *"Trading, payment clearing and settlement infrastructures and systems for financial instruments"***

138 **Following the opinion of the European Central Bank (OJ C 116, 26.5.2007, p. 1.), Cion suggested the deletion of this sub-sector**

139 **Deletion requested by AT**

140 **Deletion requested by AT**

141 **Deletion requested by MT as this sector was already covered by other instruments; FI objected to this argument**

142 **Deletion requested by AT**

143 **Cion suggested the wording *"Scientific research facilities".***

ANNEX II

OPERATOR SECURITY PLAN[144] (OSP)

The OSP shall identify the critical infrastructure owners' and operators' assets and establish relevant security solutions for their protection[145]. The OSP will cover at least[146]:

– 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 cannot be installed by the owner/operator at short notice.[147] This heading will[148] include information concerning general measures;[149] 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 are[150] activated according to varying risk and threat levels.

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144 **Cion suggested to add the word *"(plan) Procedure"***

145 **Cion suggested replacing the words *"and establish relevant security solutions for their protection"* by *"and which security solutions exist or are being implemented for their protection".***

146 **DE/NL/SE/UK requested the inclusion of the word *"procedure"* after *"OSP"* and expressed their opposition to a proscriptive approach. Cion agreed adding the word *"procedure"***

147 **Following a proposal made by DK, Cion suggested to replace "*which cannot … at short notice.*" by "*that are relevant to be employed on a permanent basis.*"**

148 **DK suggested to replace "*will*" by "*may*"**

149 **Cion suggested to include *"such as (technical)"***

150 **Cion suggested replacing the word *"are"* by *"can be".***

ANNEX III[151]

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.

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.
Step 4
Each Member State shall apply the cross-cutting criteria adopted pursuant to Article 3(1) of this Directive to the remaining potential ECI. The cross-cutting criteria shall take into account: the severity of impact; and, for infrastructure providing an essential service,

[151] **Based on a proposal contained in the Non-paper by FR/IT/NL/SE/UK (doc. DS 474/07), Cion suggested the inclusion of Annex III**

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 ECI which has passed through this procedure shall be identified for nomination to the Commission as ECI.

ANNEX IV[1]

The measures, principles or guidelines referred to in Article 5(5) 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".

The possibility of including the following measures is currently under consideration.

• 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);

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[1] **Cion suggested the inclusion of Annex IV**