



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 September 2007

**Interinstitutional File:
2006/0276 (CNS)**

13320/07

LIMITE

**PROCIV 149
JAI 479
COTER 69
ENER 231
TRANS 289
TELECOM 112
ATO 121
ECOFIN 368
ENV 482
SAN 170
CHIMIE 24
RECH 253
DENLEG 89
RELEX 679**

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC**

OUTCOME OF PROCEEDINGS

from : Working Party on Civil Protection
on : 13-14 September 2007

No. prev. doc. : 12286/07 PROCIV 134 JAI 423 COTER 65 ENER 212 TRANS 256 TELECOM
01 ATO 105 ECOFIN 336 ENV 435 SAN 159 CHIMIE 21 RECH 218 DENLEG
9 RELEX 607

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

I. INTRODUCTION

1. The Working Party on Civil Protection examined, with the participation of critical infrastructure protection experts, at its meeting on 13-14 September 2007 articles 1 to 4

para. 1 of the above-mentioned Commission proposal as well as the opinion of the European Parliament. Moreover, a first exchange of views on the non-paper presented by DE took place. Delegations will find in the Annex the text as it stands following the proceedings of the Working Party.

2. With a view to the next meeting on 8-9 October 2007, delegations will kindly note that it is the intention of the Presidency to discuss the comments and proposals from Member States and the Commission reflected in the footnotes of this outcome of proceedings, starting with article 4. Therefore, delegations are invited to consider which of their reservations could be lifted in the light of these proposals.
3. 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).

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

4. The Commission submitted to the Council and Parliament, on 18 December 2006, the above proposal.
5. 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.
6. The European Parliament issued its opinion on 10 July 2007 (the provisional edition 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 and 13 September 2007.
7. Several delegations announced that they would have a general parliamentary scrutiny reservation.

8. Following the discussions of the Working Party on Civil Protection on article 1 to 4 para. 1 of the proposed directive, in particular the following questions remain outstanding:

- DE expressed its opposition to the approach proposed by the Commission and, as one possible alternative, proposed the adoption of 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*. Therefore, all detailed comments made by DE on the proposed Directive are to be seen in the light of this overall rejection of the approach proposed by the Commission.
- UK entered a reservation against the inclusion of hazardous infrastructures in article 2 para. a) (2); the hazardous sectors (nuclear, chemical and dams) should be excluded from the scope of the ECI designation process. DE/NL/SE entered a scrutiny reservation on article 2 para. a) (2).
- DE/DK/EE/NL/UK/SE requested that, in order to meet the definition of "European Critical Infrastructures" in article 2 para. b), the disruption or destruction of the critical infrastructure should have a significant impact on at least three (instead of "two") Member States.
- Following comments made by several delegations on article 3 para. 1, Cion accepted that it would submit proposals on the cross-cutting criteria as well as for some sector-specific criteria before the end of October 2007; these criteria would be annexed to the proposed Directive. The priority sectors to be considered at this stage will be transport and energy as well as information and communication technologies.
- BE/DE/NL/SE/UK entered a reservation on the proposed lists of critical infrastructures (Article 4 para. 1).

DRAFT

DIRECTIVE OF THE COUNCIL

**on the identification and designation of European Critical Infrastructure and the assessment
of the need to improve their protection¹**

(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,]²

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Parliament⁴,

Having regard to the opinion of the European Central Bank⁵,

¹ **General scrutiny reservation by all delegations. DE against proposed directive and in favour of 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***

² **Scrutiny reservation by DE regarding the use of Article 203 of the *Treaty establishing the European Atomic Energy Community* as a legal basis.**

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C 116, 26.5.2007, p. 1.

Whereas⁶:

- (1) In June 2004, the European Council asked for the preparation of an overall strategy to protect critical infrastructures⁷. In response, on 20 October 2004, the Commission adopted a Communication on Critical Infrastructure Protection in the Fight against Terrorism⁸ 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 Protection⁹ 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.
- (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-

⁶ **The recitals will be examined following agreement on the articles.**

⁷ 10679/2/04 REV 2.

⁸ 13979/04

⁹ 14910/05

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 protection¹⁰¹¹.

¹⁰ **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."**

¹¹ **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 shall fully recognise the provisions of Article 2A of the**

- (7) Each owner/operator of European critical infrastructure should establish an Operator Security Plan identifying critical assets and laying¹² 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.¹³¹⁴
- (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.

Convention on the Physical Protection of Nuclear Material (as amended by the Amendment adopted at Vienna on 8th July 2005). Following the entry into force of the amended Convention, the implementation of the provisions of this Article shall 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."

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 replacing this sentence by: "*The Operator Security Plan should include a risk analysis and take into account other relevant information provided by Member States. 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.*"

¹⁴ **UK** suggested inserting an additional recital 6 (c): "*The relevant Member State authorities that will be involved in the ECI process will be defined by the Member State, taking into account the variations for different sectors.*"

- (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.
- (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 access¹⁵ 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 coordinate¹⁶ 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 Protection¹⁷ information is of such nature that its disclosure would undermine the protection of the public interest as regards public security¹⁸. Specific facts about a critical infrastructure asset, which could be used to plan and act with a view to causing unacceptable consequences¹⁹ 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.²⁰
- (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

¹⁵ **UK suggested inserting "through relevant Member State authorities"**

¹⁶ **UK suggested inserting "European"**

¹⁷ **Cion suggested replacing "Certain Critical Infrastructure Protection (information...)" by "Sensitive Critical Infrastructure Protection related (information...)"**.

¹⁸ **UK suggested replacing "public interest as regards public security" by "infrastructure".**

¹⁹ **UK suggested replacing "unacceptable consequences" by "disruption or destruction"**

²⁰ **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".**

providing Critical Infrastructure related information outweigh the costs for the industry and society in general. Critical Infrastructure Protection information exchange should therefore be encouraged²¹.

- (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.²²
- (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 Commission²³.²⁴
- (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

²¹ **Cion** suggested inserting two additional recitals: *"(14a) Generic data pursuant to summary reports concerning vulnerabilities, threats and risks submitted to 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."

²² **Cion** suggested having this recital back-to-back with recital 6 (a) and adding the following sentence: **"Duplication of, or contradiction between, different acts or provisions shall be avoided at all cost."**

²³ OJ L 184, 17.7.1999, p. 23.

²⁴ **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"*.

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 objectives²⁵.

- (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:

²⁵ **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 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.

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.²⁶
- b) “European Critical Infrastructure” means critical infrastructure located in the EU Member States the disruption or destruction of which would have a significant impact on two²⁷ or more Member States, or a single Member State if the critical infrastructure is located in another Member State²⁸. This includes effects resulting from cross-sector dependencies on other types of infrastructure;

²⁶ **Reservation by the UK against the inclusion of hazardous infrastructures in the Directive but in favour of retaining the full definition within the Directive. Scrutiny reservation by DE/NL/SE.**

²⁷ **"Three" suggested by DE/DK/EE/NL/SE/UK as well as by the EP.**

²⁸ **Depending on the outcome of the discussions on the first part of this sentence ("two" or "three") this part of the sentence may have to be changed as well.**

- 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 installations²⁹.
- 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) "ECI 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.

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);

²⁹ **Reservation by DE against the necessity for definitions in article 2 c) to g)**

- public effect (number of members of the population affected including the effects on public confidence);
- environmental effect (with the exception of pollution);

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

The sectoral criteria shall be developed for priority sectors while taking into account the characteristics of individual critical infrastructure sectors and involving relevant stakeholders through Member States and 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 (3) 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.

3. Each Member State shall identify the potential European critical infrastructures located within its territory as well as the potential European critical infrastructures outside its territory that may have an impact on it, which both satisfy the criteria adopted pursuant to paragraphs 1 and meet the definitions set out in Article 2 (b) and 3 (1) following the procedure provided in Annex III.

Each Member State shall notify the Commission of the potential European critical infrastructures thus identified per critical infrastructure sector pursuant to the list of critical infrastructure sectors listed in Annex I at the latest one year after the adoption of the cross-cutting criteria for that sector. Each Member State shall regularly review the ECI for prioritised sectors, and inform the Commission of potential new ECI or changed status of existing ECI for these sectors.

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 infrastructures³⁰ to be designated as European Critical Infrastructures³¹.
2. The list³² of critical infrastructures designated as European Critical Infrastructure shall be adopted in accordance with the procedure referred to in Article 11(3)³³³⁴ ³⁵.

The list³⁶ may be amended in accordance with the procedure referred to in Article 11(3)³⁷.

38

³⁰ **DE/UK** were opposed to the idea of establishing lists; **FR/SK/SI** accepted current text provided that these lists contain only general information; scrutiny reservation by **BE/SE. ES and FR** requested that the list must be classified; **Cion** explained that the lists were to be classified as "EU secret" documents

³¹ **Cion** suggested the inclusion of *"per critical infrastructure sector. The lists shall contain information sufficient to identify the infrastructure."*

³² **Cion** suggested replacing "list" by "lists"

³³ **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."*

³⁴ **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

³⁵ **Cion** suggested the inclusion of the following sentence: *"Each Member State shall only be granted access to those parts of the list which contain information about critical infrastructure whose disruption or destruction would have a significant impact on it."*

³⁶ **Cion** suggested replacing "list" by "lists"

³⁷ **Cion** suggested the inclusion of the following sentence: *"Each list shall be classified at EU SECRET level."*

³⁸ **Cion** suggested to add the following para. 3: *"An owner or operator of a European Critical Infrastructure may not disclose the fact that it is designated as a European Critical Infrastructure without prior written approval by the relevant Member State authority or supervisory authorities."*

Article 5
*Operator Security Plans*³⁹

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 Plan⁴⁰ and to review it at least every two years⁴¹.
2. The Operator Security Plan shall identify the assets of the European Critical Infrastructure and establish relevant security solutions for their protection in accordance with Annex II⁴². 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)⁴³.

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 Plan⁴⁵.

3. ⁴⁶The 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.

³⁹ **Reservation on whole article 5 by BE**

⁴⁰ **DE/CZ/NL/SE/UK opposed to an obligation to establish OPSs, inter alia because its implementation would entail that ECIs could be identified by the public**

⁴¹ **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."**

⁴² **Cion suggested replacing the first sentence in article 5 para. 2 by: "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."**

⁴³ **Cion suggested replacing this sentence by "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 requirements, while taking into account existing Community measures, but without broadening the scope of this Directive."**

⁴⁴ **AT suggested that the requirements for the Operator Security Plan were laid down in the text of the directive**

⁴⁵ **Cion suggested the deletion of this sentence.**

⁴⁶ **Reservation on the whole para. by SE**

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 requirements⁴⁷.

4. ⁴⁸Each Member State shall set up a system ensuring adequate and regular supervision of the Operator Security Plans and their implementation based on the risk and threat assessments conducted pursuant to Article 7(1).⁴⁹⁵⁰
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 Plan⁵¹.

⁴⁷ **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"*.

⁴⁸ Reservation on the whole para. by **SE**

⁴⁹ **Cion** suggested replacing the current text of Article 5 para. 4 by: *"Each Member State shall regularly review the Operator Security Plans and their implementation for ECI located on its territory."*

⁵⁰ 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.

Annex IV may be amended in accordance with the procedure referred to in Article 11(3)."

BE questioned whether this proposal transformed existing recommendations on the national level into obligations on the Community level.

⁵¹ **Cion** suggested replacing the current text of Article 5 para. 5 by: *"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."*

Security Liaison Officers

1. Each Member State shall require the owners/operators of European Critical Infrastructures on their 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.⁵³⁵⁴ The Security Liaison Officer shall be designated within one year following the designation of the critical infrastructure as a European Critical Infrastructure⁵⁵.
2. Each Member State shall communicate relevant information concerning identified risks and threats to the Security Liaison Officers of the European Critical Infrastructure concerned⁵⁶.

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)."

UK supported this proposal but suggested that the last sentence of Article 5 para. 5 reads as follows: *"Annex IV may be amended to add, replace or remove measures, principles or guidelines where redundant, in accordance with the procedure referred to in Article 11(2)."*

⁵² **Scrutiny reservation by DK; SE and UK against the obligation to designate Security Liaison Officers**

⁵³ **Cion suggested replacing the first sentence of Article 6 para. 1 by: "Each Member State shall require the owners/operators of each European Critical Infrastructures on its 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 Member State authority."**

⁵⁴ **BE and LU against detailed obligations as these matters were the competence of Member States'**

⁵⁵ **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."**

⁵⁶ **SK suggested that the Security Liaison Officer should be available in person or via a designated representative 24/7. Accordingly, Cion suggested adding: "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 concerning access to sensitive and classified information."**

Article 7
Reporting

1. Each Member State shall conduct a risk and threat assessment⁵⁷ 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 Commission⁵⁸ on a summary basis on the types of vulnerabilities, threats and risks encountered in each⁵⁹ sector referred to in Annex I⁶⁰ within 18 months following the adoption of the list provided for in Article 4(2) and thereafter on an ongoing basis every two⁶¹ years.

A common template for these reports shall be developed in accordance with the procedure referred to in Article 11(3).⁶²

3. The Commission shall assess on a sectoral basis whether specific protection measures are required for European Critical Infrastructures⁶³.
4. Common methodologies⁶⁴ 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).⁶⁵

⁵⁷ **Cion** suggested replacing "*a risk and threat assessment*" by "*relevant risk analyses*".

⁵⁸ **Cion** suggested the inclusion of "*generic data (on a)*"

⁵⁹ **Cion** suggested the inclusion of "*ECI (sector)*"

⁶⁰ **Cion** suggested to include "*, and for which ECI is located on its territory (within)*".

⁶¹ **AT** suggested "*(every) four (years)*"

⁶² **Cion** suggested including the following subparagraph: "*Each report shall be classified at an appropriate level as deemed necessary by the originator.*"

⁶³ Following comments made by **AT/DE/DK/FI/FR/NL/SE** as well as the **EP, 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.*"

⁶⁴ **AT** suggested that the assessment is to be based also on common technical criteria

⁶⁵ **Cion** suggested replacing the current text contained in Article 7 para. 4 by: "*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(3). Adoption of such guidelines will be optional by Member States.*"

Article 8

Commission support for ECI

The Commission shall support⁶⁶ the owners/operators of designated European Critical Infrastructures by providing access to available best practices and methodologies⁶⁷ related to critical infrastructure protection.

Article 9⁶⁸

CIP Contact Points

1. Each Member State shall appoint a⁶⁹ critical infrastructure protection Contact Point⁷⁰.
2. The Contact Point shall coordinate⁷¹ critical infrastructure protection issues within the Member State, with other Member States and with the Commission⁷².

Article 10

Confidentiality and CIP information exchange⁷³

1. In applying this Directive⁷⁴, 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 it by Member States⁷⁵. Member States shall take equivalent measures in accordance with relevant

⁶⁶ **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)"**

⁶⁷ **AT suggested the inclusion of "(methodologies) as well as by providing training and informing on new technical developments"**

⁶⁸ **AT, supported by Cion, suggested changing the order of articles 9 and 10.**

⁶⁹ **UK followed by other delegations and Cion suggested to add "European"**

⁷⁰ **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**

⁷¹ **UK followed by other delegations and Cion suggested to add "European"**

⁷² **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."**

⁷³ **Cion suggested replacing this title by "Sensitive CIP-related Information"; ES suggested the inclusion of "European" before "CIP-related information"**

⁷⁴ **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,".**

⁷⁵ **UK, followed by SE and Cion, requested that also non-written information received in**

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.⁷⁶

2. Any person handling confidential information⁷⁷ 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 States⁷⁸ shall ensure that Critical Infrastructure Protection Information⁷⁹ submitted to the Member States or to the Commission, is not used for any purpose other than the protection of critical infrastructures.⁸⁰⁸¹

Article 11⁸²

Committee

1. The Commission shall be assisted by a Committee composed of a representative of each CIP Contact Point.⁸³

meetings should be protected

⁷⁶ **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."*

⁷⁷ **SK** requested the notion *"confidential information"* to be specified; **Cion** suggested replacing *"confidential"* by *"sensitive"*

⁷⁸ **ES** as well as the EP requested to add *"and Commission"*. **Cion** suggested to add *"(Member States,) the Commission, and relevant supervisory authorities (shall)"*.

⁷⁹ **Cion** suggested replacing *"Critical Infrastructure Protection Information"* by *"sensitive CIP-related information"*

⁸⁰ **SE** suggested the deletion of para. 3; further clarification on this suggestion requested by several delegations and **Cion**.

⁸¹ **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."*

⁸² **AT/CZ** suggested that article 11 came before the article dealing with *"Sensitive CIP-related Information"* (currently article 10)

⁸³ 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 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"*

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.⁸⁴

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.⁸⁵

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.⁸⁶

Article 12

Implementation

1. Member States shall bring into force the⁸⁷ laws, regulations and administrative provisions necessary to comply⁸⁸ with this Directive by 31 December 2007 at the latest⁸⁹. 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.

and/or their nominated representatives".

⁸⁴ **Cion** suggested the deletion of para. 2 and replacing it by para. 3; **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

⁸⁵ **Cion** suggested the deletion of "*having regard to the provisions of Article 8 thereof*".

⁸⁶ **SE** asked for clarification whether para. 4 needed to be deleted. **Cion** suggested the deletion of para. 4.

⁸⁷ **Cion** suggested the inclusion of "*relevant (laws)*".

⁸⁸ **UK** suggested replacing "*bring into force ... necessary to comply*" by "*either by laws or regulations or by measures, principles or guidelines ensure compliance*"

⁸⁹ **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*".

UK suggested the following wording of the first sentence of Article 12 para. 1: "*Member States shall either by laws or regulations or by measures, principles or guidelines ensure compliance with this Directive at the latest two years after its entry into force.*"

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

LIST OF CRITICAL INFRASTRUCTURE SECTORS⁹⁰⁹¹

Sector	Sub-sector
I Energy	1 Oil and gas production, refining, treatment, storage and distribution by pipelines
	2 Electricity generation and transmission ⁹²⁹³
II Nuclear industry ⁹⁴	3 Production and storage/processing of nuclear substances ⁹⁵
III Information, Communication Technologies, ICT	4 Information system and network protection ⁹⁶
	5 Instrumentation automation and control systems (SCADA etc.) ⁹⁷
	6 Internet
	7 Provision of fixed telecommunications
	8 Provision of mobile telecommunications
	9 Radio communication and navigation

⁹⁰ **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

⁹¹ **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.*"

⁹² **Cion** suggested to add "*including nuclear power stations*"

⁹³ **UK** suggested the following wording of para. 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*"

⁹⁴ **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. **UK** suggested the following wording for Sector II: "*Nuclear fuel-cycle industry (for Radiological hazard)*"

⁹⁵ **UK** suggested the following wording: "*Production and storage/processing of nuclear fuel-cycle substances, including within nuclear power stations*"

⁹⁶ **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.

⁹⁷ **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.

⁹⁸ Deletion requested by **CZ**

⁹⁹ Deletion requested by **AT/CZ**

	10	Satellite communication ⁹⁸
	11	Broadcasting ⁹⁹
IV	Water ¹⁰⁰	12 Provision of drinking water ¹⁰¹ 13 Control of water quality 14 Stemming and control of water quantity ¹⁰²
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 ¹⁰³ 20 Regulated markets ¹⁰⁴
VIII	Transport	21 Road transport ¹⁰⁵ 22 Rail transport ¹⁰⁶ 23 Air transport ¹⁰⁷ 24 Inland waterways transport ¹⁰⁸ 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 ¹⁰⁹

110

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

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

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

103 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*"

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

105 Deletion requested by **AT**

106 Deletion requested by **AT**

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

108 Deletion requested by **AT**

109 **Cion** suggested the wording "*Scientific research facilities*"

110 **Cion** suggested to add the following para. below the table: "*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."

OPERATOR SECURITY PLAN (OSP)¹¹¹

The OSP shall identify the critical infrastructure owners' and operators' assets and establish relevant security solutions for their protection¹¹². The OSP will cover at least¹¹³:

- identification of important assets;
- a risk analysis based on major threat scenarios, vulnerability of each asset, and potential impact shall be conducted;¹¹⁴
- 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.¹¹⁵ This heading will¹¹⁶ include information concerning general measures;¹¹⁷ 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,

¹¹¹ Cion suggested to add the word "*(OSP) Procedure*"

¹¹² 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*".

¹¹³ 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*"

¹¹⁴ Cion suggested to add the following definition: "*“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.*"

¹¹⁵ Following a proposal made by DK, Cion suggested to replace "*(which) cannot ... at short notice.*" by "*(which) are relevant to be employed at all times.*"

¹¹⁶ DK suggested to replace "*will*" by "*may*"

¹¹⁷ Cion suggested to include "*such as (technical)*"

- **graduated security measures**, which are¹¹⁸ activated according to varying risk and threat levels.
-

¹¹⁸ **Cion** suggested replacing the word "*are*" by "*can be*".

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.

¹¹⁹ **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**

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, 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 notified to the Commission for designation as ECI.

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 MiFID".

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);¹²¹

¹²⁰ **Cion** suggested the inclusion of **Annex IV**

¹²¹ **UK** suggested to also include "*Article 2A of the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (as amended by the Amendment adopted at Vienna on 8th July 2005)*"