

Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (Text with EEA relevance)

Article 1

Subject matter

This Directive establishes a procedure for the identification and designation of European critical infrastructures ('ECIs'), and a common approach to the assessment of the need 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 an asset, system or part thereof located in Member States which is 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;
- (b) 'European critical infrastructure' or 'ECI' means critical infrastructure located in Member States the disruption or destruction of which would have a significant impact on at least two Member States. The significance of the impact shall be assessed in terms of cross-cutting criteria. This includes effects resulting from cross-sector dependencies on other types of infrastructure;
- (c) 'risk analysis' means consideration of relevant threat scenarios, in order to assess the vulnerability and the potential impact of disruption or destruction of critical infrastructure;
- (d) 'sensitive critical infrastructure protection related information' means facts about a critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations;
- (e) 'protection' means all activities aimed at ensuring the functionality, continuity and integrity of critical infrastructures in order to deter, mitigate and neutralise a threat, risk or vulnerability;
- (f) 'owners/operators of ECIs' means those entities responsible for investments in, and/or day-to-day operation of, a particular asset, system or part thereof designated as an ECI under this Directive.

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Article 3

Identification of ECIs

1 Pursuant to the procedure provided in Annex III, each Member State shall identify potential ECIs which both satisfy the cross-cutting and sectoral criteria and meet the definitions set out in Article 2(a) and (b).

The Commission may assist Member States at their request to identify potential ECIs.

The Commission may draw the attention of the relevant Member States to the existence of potential critical infrastructures which may be deemed to satisfy the requirements for designation as an ECI.

Each Member State and the Commission shall continue on an ongoing basis the process of identifying potential ECIs.

- 2 The cross-cutting criteria referred to in paragraph 1 shall comprise the following:
- a casualties criterion (assessed in terms of the potential number of fatalities or injuries);
 - b economic effects criterion (assessed in terms of the significance of economic loss and/or degradation of products or services; including potential environmental effects);
 - c public effects criterion (assessed in terms of the impact on public confidence, physical suffering and disruption of daily life; including the loss of essential services).

The cross-cutting criteria thresholds shall be based on the severity of the impact of the disruption or destruction of a particular infrastructure. The precise thresholds applicable to the cross-cutting criteria shall be determined on a case-by-case basis by the Member States concerned by a particular critical infrastructure. Each Member State shall inform the Commission on an annual basis of the number of infrastructures per sector for which discussions were held concerning the cross-cutting criteria thresholds.

The sectoral criteria shall take into account the characteristics of individual ECI sectors.

The Commission together with the Member States shall develop guidelines for the application of the cross-cutting and sectoral criteria and approximate thresholds to be used to identify ECIs. The criteria shall be classified. The use of such guidelines shall be optional for the Member States.

- 3 The sectors to be used for the purposes of implementing this Directive shall be the energy and transport sectors. The subsectors are identified in Annex I.

If deemed appropriate and in conjunction with the review of this Directive as laid down in Article 11, subsequent sectors to be used for the purpose of implementing this Directive may be identified. Priority shall be given to the ICT sector.

Article 4

Designation of ECIs

1 Each Member State shall inform the other Member States which may be significantly affected by a potential ECI about its identity and the reasons for designating it as a potential ECI.

2 Each Member State on whose territory a potential ECI is located shall engage in bilateral and/or multilateral discussions with the other Member States which may be

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significantly affected by the potential ECI. The Commission may participate in these discussions but shall not have access to detailed information which would allow for the unequivocal identification of a particular infrastructure.

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

3 The Member State on whose territory a potential ECI is located shall designate it as an ECI following an agreement between that Member State and those Member States that may be significantly affected.

The acceptance of the Member State on whose territory the infrastructure to be designated as an ECI is located, shall be required.

4 The Member State on whose territory a designated ECI is located shall inform the Commission on an annual basis of the number of designated ECIs per sector and of the number of Member States dependent on each designated ECI. Only those Member States that may be significantly affected by an ECI shall know its identity.

5 The Member States on whose territory an ECI is located shall inform the owner/operator of the infrastructure concerning its designation as an ECI. Information concerning the designation of an infrastructure as an ECI shall be classified at an appropriate level.

6 The process of identifying and designating ECIs pursuant to Article 3 and this Article shall be completed by 12 January 2011 and reviewed on a regular basis.

Article 5

Operator security plans

1 The operator security plan ('OSP') procedure shall identify the critical infrastructure assets of the ECI and which security solutions exist or are being implemented for their protection. The minimum content to be addressed by an ECI OSP procedure is set out in Annex II.

2 Each Member State shall assess whether each designated ECI located on its territory possesses an OSP or has in place equivalent measures addressing the issues identified in Annex II. If a Member State finds that such an OSP or equivalent exists and is updated regularly, no further implementation action shall be necessary.

3 If a Member State finds that such an OSP or equivalent has not been prepared, it shall ensure by any measures deemed appropriate, that the OSP or equivalent is prepared addressing the issues identified in Annex II.

Each Member State shall ensure that the OSP or equivalent is in place and is reviewed regularly within one year following designation of the critical infrastructure as an ECI. This period may be extended in exceptional circumstances, by agreement with the Member State authority and with a notification to the Commission.

4 In a case where supervisory or oversight arrangements already exist in relation to an ECI such arrangements are not affected by this Article and the relevant Member State authority referred to in this Article shall be the supervisor under those existing arrangements.

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5 Compliance with measures including Community measures which in a particular sector require, or refer to a need to have, a plan similar or equivalent to an OSP and oversight by the relevant authority of such a plan, is deemed to satisfy all the requirements of Member States under, or adopted pursuant to, this Article. The guidelines for application referred to in Article 3(2) shall contain an indicative list of such measures.

Article 6

Security Liaison Officers

1 The Security Liaison Officer shall function as the point of contact for security related issues between the owner/operator of the ECI and the relevant Member State authority.

2 Each Member State shall assess whether each designated ECI located on its territory possesses a Security Liaison Officer or equivalent. If a Member State finds that such a Security Liaison Officer is in place or an equivalent exists, no further implementation action shall be necessary.

3 If a Member State finds that a Security Liaison Officer or equivalent does not exist in relation to a designated ECI, it shall ensure by any measures deemed appropriate, that such a Security Liaison Officer or equivalent is designated.

4 Each Member State shall implement an appropriate communication mechanism between the relevant Member State authority and the Security Liaison Officer or equivalent with the objective of exchanging relevant information concerning identified risks and threats in relation to the ECI concerned. This communication mechanism shall be without prejudice to national requirements concerning access to sensitive and classified information.

5 Compliance with measures including Community measures which in a particular sector require, or refer to a need to have, a Security Liaison Officer or equivalent, is deemed to satisfy all the requirements of Member States in, or adopted pursuant to, this Article. The guidelines for application referred to in Article 3(2) shall contain an indicative list of such measures.

Article 7

Reporting

1 Each Member State shall conduct a threat assessment in relation to ECI subsectors within one year following the designation of critical infrastructure on its territory as an ECI within those subsectors.

2 Each Member State shall report every two years to the Commission generic data on a summary basis on the types of risks, threats and vulnerabilities encountered per ECI sector in which an ECI has been designated pursuant to Article 4 and is located on its territory.

A common template for these reports may be developed by the Commission in cooperation with the Member States.

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

3 Based on the reports referred to in paragraph 2, the Commission and the Member States shall assess on a sectoral basis whether further protection measures at Community level

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should be considered for ECIs. This process shall be undertaken in conjunction with the review of this Directive as laid down in Article 11.

4 Common methodological guidelines for carrying out risk analyses in respect of ECIs may be developed by the Commission in cooperation with the Member States. The use of such guidelines shall be optional for the Member States.

Article 8

Commission support for ECIs

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

Article 9

Sensitive European critical infrastructure protection-related information

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

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

2 This Article shall also apply to non-written information exchanged during meetings at which sensitive subjects are discussed.

Article 10

European critical infrastructure protection contact points

1 Each Member State shall appoint a European critical infrastructure protection contact point ('ECIP contact point').

2 ECIP contact points shall coordinate European critical infrastructure protection issues within the Member State, with other Member States and with the Commission. The appointment of an ECIP contact point does not preclude other authorities in a Member State from being involved in European critical infrastructure protection issues.

Article 11

Review

A review of this Directive shall begin on 12 January 2012.

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Article 12

Implementation

Member States shall take the necessary measures to comply with this Directive by 12 January 2011. They shall forthwith inform the Commission thereof and communicate the text of those measures and their correlation with this Directive.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 13

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 8 December 2008.

For the Council

The President

B. KOUCHNER