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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the resilience of critical entities

Delegations will find attached document SWD(2020) 359 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the
resilience of critical entities

{COM(2020) 829 final} - {SEC(2020) 433 final} - {SWD(2020) 358 final}

Executive Summary Sheet

Impact assessment on additional measures for Critical Infrastructure Resilience (CWP 2020 item)

A. Need for action

Why? What is the problem being addressed?

The provision of essential services using critical infrastructures that underpin vital societal functions or economic activities in the Union requires that such services are provided reliably, meaning that the relevant operators must be resilient to current and anticipated future risks (such as natural hazards, hybrid actions, terrorism, insider incidents, public health emergencies or accidents). The European framework that exists today is neither fully fit-for-purpose nor future-proof. Despite the 2008 European Critical Infrastructure (ECI) Directive and other EU- and national-level measures that have been taken since, operators are not always adequately equipped to address risks created by an increasingly complex operational context defined by *inter alia* a dynamic risk landscape and deeper interdependencies between sectors. The ECI Directive, focused on asset protection rather than operator resilience, concerns a small number of European critical infrastructures with identified cross-border implications in two sectors (energy and transport). Furthermore, divergent approaches and deficiencies exist at national level, concerning sectoral coverage, criteria, risk assessment, information-exchange, etc. This results in obstacles for the proper functioning of the internal market, significantly hampering the operators' ability to provide the services concerned across the Union reliably and unhampered by any unjustified restrictions.

What is this initiative expected to achieve?

The general objective of the initiative is to ensure the continuous provision of essential services in the internal market by enhancing the resilience of operators of critical infrastructure (referred to in the proposal as 'critical entities') in the Member States. This general objective will be met by pursuing the following specific objectives:

- Ensure a greater understanding of risks and interdependencies, as well as the means to address them;
- Ensure that all relevant entities in all key sectors are identified as critical by Member States authorities;
- Ensure that a wide range of resilience-enhancing activities are reflected in both public policy and operational practice; and,
- Strengthen capacities and improve cooperation and communication between stakeholders.

What is the value added of action at the EU level?

An EU intervention is justified due to the common nature of many of the risks faced by operators of critical infrastructures in Europe, which continue to grow increasingly interdependent upon one another, as well as diverging national rules on the subject matter, which hamper the operators' ability to provide their services in the internal market. The transnational nature of the provision of essential services means that even localised disruptions can have far-reaching European implications that national action alone cannot reasonably be expected to mitigate. A coherent EU-wide approach to all-hazards risk management in this area would ensure that all relevant operators take adequate resilience-enhancing measures. This in turn would ensure the more reliable provision of essential services, but also contribute to a more level playing field in the internal market.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Four policy options have been considered.

Policy Option 1 envisages voluntary, non-legislative measures to encourage more common approaches and information-sharing-as a complement to the existing ECI Directive.

Policy Option 2 entails a revision of the existing ECI Directive in order to align the sectoral coverage with that of the existing Network and Information Systems (NIS) Directive, and to refine the selection criteria for and requirements on ECI operators, e.g. maintaining an operator resilience plans. Both Member States and designated ECI operators would also be required to carry out risk assessments.

Meanwhile, **Policy Option 3** involves replacing the existing ECI Directive with an overarching framework legal instrument in order to enhance the resilience of critical entities in at least the sectors covered by the existing NIS Directive and improve the functioning of the internal market in this respect. Implementation would be supported by a knowledge hub within the Commission. Member States would be required to identify, on the basis of risk assessment, critical entities, which would be subject to different resilience-enhancing requirements. Both Member States and critical entities would be obliged to carry out risk assessments. A procedure for the identification of critical entities with particular European significance would also be included, as well as certain particular rules applicable to those entities.

Policy Option 4 includes all elements outlined in Option 3. In addition, the Commission would play a more active role in designating critical entities and a dedicated EU Agency for critical infrastructure resilience would be created.

Having considered the anticipated impacts and value of each option, the preferred option is Option 3, which would result in a more comprehensive resilience framework accounting for existing EU measures and national specificities.

Who supports which option?

A limited number of Member States and operators found the current framework sufficient and preferred the voluntary measures under Option 1. As for Option 2, one Member State preferred keeping the focus on European Critical Infrastructures in their current form, while others were in favour of revising the ECI concept to cover infrastructures with a clear pan-European dimension. A majority of Member States preferred Option 3. The operators were most supportive of Options 2 and 3. Of all of the options, Option 4 was the least favoured by both Member States and operators; the option was seen to be too intrusive and inflexible, i.e. not allowing for room to account for sectoral specificities.

C. Impacts of the preferred option

What are the benefits of the preferred options (if any, otherwise main ones)?

Given the vital role that essential services play in the lives of EU citizens and the EU economy, actors in all economic sectors, including small-, medium- and large-scale enterprises, would benefit from enhanced operator resilience. Besides having positive effects on individual businesses, EU-level efforts to ensure the uninterrupted delivery of essential services would also serve to enhance overall economic stability and further improve the attractiveness of the EU market to investors.

Besides the economic impact, the resilience-building measures contained in Option 3 would lead to fewer disruptions, safer working conditions, improved quality of life and health for EU citizens. Indeed, the more reliable the provision of essential services becomes, the greater the likelihood for positive economic, social, educational, professional and recreational benefits in citizens' lives. Moreover, additional efforts to reduce the frequency and severity of disruptions to the provision of essential services would also have a positive environmental impact insofar as they would guarantee the more efficient use of resources as well as more sustainable consumption and production patterns in the EU.

What are the costs of the preferred options (if any, otherwise main ones)?
The main costs for the Member States would relate to the development of national strategies, the conduct of risk assessments, and the identification of critical entities, as well as oversight and enforcement. However, in doing so, competent authorities would be able to draw on existing policies and processes, including strategy documents, risk assessment arrangements, as well as the designation procedure provided in the Network and Information System Directive, as a basis to support implementation, thus limiting overall costs. Meanwhile, the direct costs experienced by identified critical entities would be associated with, where necessary or where not already being done, carrying out operator-level risk assessments, taking appropriate organisational and/or technical measures to enhance operator resilience, and reporting incidents to competent authorities.
How will businesses, SMEs and micro-enterprises be affected?
Among those operators affected by the various options, the number of SMEs that would be affected is expected to be small. While in sectors such as transport, energy or water, actors likely to be designated as critical entities are typically medium- to large-scale enterprises with thousands of employees, critical entities in other sectors may be smaller in size. For instance, it is conceivable that in the health sector, SMEs might provide specific, highly technical or specialised services. However, SMEs in this position are arguably incentivised to ensure a high level of resilience on their own and/or are subject to specific national- and/or EU-level requirements, thus reducing the additional costs associated with the preferred option.
Will there be significant impacts on national budgets and administrations?
There will be some impacts on competent Member State authorities stemming from specific obligations, e.g. regular national-level risk assessments, national strategies, and supervisory and enforcement measures. Furthermore, the need to provide additional support to operators identified as being critical entities in fulfilling the obligations arising from the legislation would entail certain costs.
Will there be other significant impacts?
N/A
D. Follow up
When will the policy be reviewed?
The evaluation of the impact of the legislative act will be engaged four years after the deadline for implementation of the legislative act to ensure that there is a sufficiently long period to evaluate the effects of the initiative after it has been fully implemented across all Member States.