

L.N. 434 of 2011

**EUROPEAN UNION ACT
(CAP. 460)**

**Critical Infrastructures and European Critical Infrastructures
(Identification, Designation and Protection) Order, 2011**

BY VIRTUE of the powers conferred by article 4(2) of the European Union Act, the Prime Minister has made the following Order:-

Citation and
scope.

1. (1) The title of this order is the Critical Infrastructures and European Critical Infrastructures (Identification, Designation and Protection) Order, 2011.

(2) The purpose of this Order is the transposition of 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.

Interpretation.

2. In this Order:

"critical infrastructure" or "CI" means an asset, system or part thereof located in Malta 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;

"the Directive" means 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, as may be amended from time to time;

"European critical infrastructure" or "ECI" means critical infrastructure located in Malta 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 which shall include effects resulting from cross-sector dependencies on other types of infrastructure;

"Member State" means a Member State of the European Union;

"owners or operators of CIs" means those entities responsible for investments in, and, or day-to-day operation of, a particular asset, system or part thereof designated as a CI or an ECI under this Order;

"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;

"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;

"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;

"the Unit" means the Malta Critical Infrastructure Protection (CIP) Unit established under article 3.

3. (1) There shall be a body to be known as the Malta Critical Infrastructure Protection (CIP) Unit within Cabinet Office, Office of the Prime Minister. Critical Infrastructure Protection Unit.

(2) The Unit shall be entrusted with the powers and duties provided for in this Order.

(3) The Unit shall, *inter alia*, be responsible for -

(a) establishing the criteria for the identification and designation of CIs;

(b) identifying critical assets and maintaining a national inventory for CIs;

(c) ensuring that a risk assessment is carried out by all owners or operators of CIs;

(d) ensuring that each owner or operator of a CI draws up and maintains an Operator Security Plan;

(e) collating a national critical infrastructure plan;

(f) instigating simulated runs of sectoral emergency plans;

(g) collaborating with the European Union and international partners on CIP; and

(h) building partnerships with operators of CIs for information-sharing.

(4) The Unit shall furthermore act as the European critical infrastructure protection contact point ("ECIP contact point") in Malta, and shall coordinate European critical infrastructure protection issues within Malta, with other Member States, and with the European Commission:

Provided that the provisions of this sub-article shall not preclude other national authorities from being involved in European critical infrastructure protection issues.

(5) The Unit shall also perform such related and consequential duties as the Prime Minister may delegate from time to time.

Identification of ECIs.

4. (1) The Unit shall, in accordance with the procedure set out in the Schedule, identify potential European Critical Infrastructures in Malta which -

(a) satisfy the cross-cutting and sectoral criteria set out in this article; and

(b) meet the definitions of the terms "critical infrastructure" and "European critical infrastructure" in article 2.

(2) The cross-cutting criteria referred to in sub-article (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.

(3) The thresholds applicable to the cross-cutting criteria shall be determined on a case-by-case basis by the Unit, and shall be based on the severity of the impact of the disruption or destruction of a particular critical infrastructure.

(4) The Unit shall inform the European Commission on an annual basis of the number of infrastructures per sector for which

discussions were held concerning the cross-cutting criteria thresholds.

(5) The sectoral criteria referred to in sub-article (1) shall -

(a) take into account the characteristics of individual ECI sectors; and

(b) be classified.

(6) In applying the cross-cutting and sectoral criteria with a view to identifying ECIs, the Unit may use such guidelines and thresholds as are developed by the European Commission together with the Member States pursuant to Article 3 of the Directive.

(7) The following sectors and subsectors shall be subject to this Order:

(a) the energy sector which is divided into the following subsectors:

(i) electricity, comprising infrastructures and facilities for generation and transmission of electricity in respect of supply of electricity,

(ii) oil, comprising oil production, refining, treatment, storage and transmission by pipelines,

(iii) gas, comprising gas production, refining, treatment, storage and transmission by pipelines, and LNG terminals; and

(b) the transport sector which is divided into the following subsectors:

(i) road transport,

(ii) air transport,

(iii) ocean and short-sea shipping, and

(iv) ports.

5. (1) The Unit shall inform the relevant authorities in other Member States which may be significantly affected by a potential ECI about its identity and the reasons for its designation as a potential ECI. Designation of ECIs.

(2) A potential ECI located in Malta, which has passed through the procedure set out in the Schedule shall only be

communicated to the Member States which may be significantly affected by that potential ECI.

(3) Where a potential ECI is located in Malta, the Unit shall -

(a) engage in discussions with the relevant authorities in other Member States which may be significantly affected by the potential ECI; and

(b) designate it as an ECI following an agreement between the Government of Malta and the Member States which may be significantly affected.

(4) Where a designated ECI is located in Malta, the Unit shall inform the European 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, and only the Member States which may be significantly affected by an ECI shall know its identity.

(5) Where an ECI is located in Malta, the Unit shall inform the owner or operator of the infrastructure concerning its designation as an ECI and such information shall be classified at an appropriate level.

(6) The process of identifying and designating ECIs under this Order shall be reviewed on a regular basis.

Operator
security plans.

6. (1) The operator security plan ("OSP") procedure shall -

(a) identify the CI and ECI assets located in Malta;

(b) identify the security solutions that exist or are being implemented for their protection; and

(c) cover, as a minimum, the information set out in article 7.

(2) The Unit shall assess whether each designated CI and ECI located in Malta possesses an OSP or has in place equivalent measures addressing the issues identified in article 7.

(3) If the Unit finds that an OSP or equivalent measures have not been prepared, it shall ensure, by any measures deemed appropriate, that the OSP or equivalent measures are prepared addressing the issues identified in article 7:

Provided that, where supervisory or oversight arrangements

already exist in relation to a CI or an ECI located in Malta, such arrangements are not affected by the provisions of this article and the Unit shall be the supervisor under those existing arrangements:

Provided further that compliance with any measure, including a European Union measure, which in a particular sector requires, or refers to a need to have, a plan similar or equivalent to an OSP and oversight by the Unit of such a plan, shall be deemed to satisfy all the requirements under this article.

(4) The Unit shall ensure that the OSP or equivalent measures pursuant to this article are in place and are reviewed regularly within one year following designation of each CI and each ECI:

Provided that the said period may be extended in exceptional circumstances, and the Unit shall notify the European Commission of any extension granted in relation to an ECI pursuant to this sub-article.

7. (1) The ECI OSP procedure referred to in article 6 shall cover at least the following matters: ECI OSP Procedure.

- (a) the identification of important assets;
- (b) the conduct of a risk analysis based on major threat scenarios, vulnerability of each asset, and potential impact; and
- (c) the identification, selection and prioritisation of counter-measures and procedures with a distinction between -
 - (i) permanent security measures, which identify indispensable security investments and means which are relevant to be employed at all times. These shall include the information set out in sub-article (2); and
 - (ii) graduated security measures, which can be activated according to varying risk and threat levels.

(2) The information referred to in sub-article (1)(c)(i) is information concerning:

- (a) general measures such as technical measures, including installation of detection, access control, protection and prevention means;
- (b) organisational measures, including procedures for alerts and crisis management;

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- (c) control and verification measures;
- (d) communication;
- (e) awareness raising and training; and
- (f) security of information systems.

Security Liaison Officers.

8. (1) The Unit shall assess whether each designated ECI located in Malta possesses a Security Liaison Officer or equivalent, who shall act as the point of contact for security related issues between the owner or operator of the ECI and the Unit.

(2) If the Unit 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:

Provided that compliance with any measure, including a European Union measure, which in a particular sector requires, or refers to a need to have, a Security Liaison Officer or equivalent shall be deemed to satisfy all the requirements under this article.

(3) The Unit shall implement an appropriate communication mechanism between itself and each 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 the requirements concerning access to sensitive and classified information laid down by any other law.

Reporting.

9. (1) The Unit shall conduct a threat assessment in relation to CI and ECI subsectors within one year following the designation of critical infrastructure in Malta as a CI or an ECI within those subsectors.

(2) Every two years the Unit shall submit to the European Commission a classified report containing 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 under article 5.

Sensitive critical infrastructure protection-related information.

10. (1) Any person handling classified information pursuant to this Order on behalf of the Unit or the Government of Malta shall have an appropriate level of security vetting to be determined by the Unit.

(2) The Unit shall ensure that sensitive critical infrastructure protection-related information submitted to it is not used for any

purpose other than the protection of critical infrastructures.

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

SCHEDULE

[Article 4]

Procedure for the identification of critical infrastructures which may be designated as an ECI.

In identifying critical infrastructures which may be designated as an ECI pursuant to article 4, the Unit shall apply the following consecutive steps:

(1) In Step 1, the sectoral criteria referred to in article 4(7) shall be applied in order to make a first selection of critical infrastructures within each sector.

(2) In Step 2, the definition of the term "critical infrastructure" in article 2 shall be applied to the potential ECI identified under Step 1.

The significance of the impact shall be determined by using national methods for identifying critical infrastructures or with reference to the cross-cutting criteria set out in article 4(2). For infrastructure providing an essential service, the availability of alternatives and the duration of disruption or recovery or both shall be taken into account.

(3) In Step 3, the trans-boundary element of the definition of "ECI" in article 2 shall be applied to the potential ECI that has passed the first two steps of this procedure. A potential ECI which does satisfy the definition shall follow the next step of the procedure. For infrastructure providing an essential service, the availability of alternatives and the duration of disruption or recovery or both shall be taken into account.

(4) In Step 4, the cross-cutting criteria set out in article 4(2) shall be applied to the remaining potential ECIs. Such cross-cutting criteria shall take into account -

- (a) the severity of impact;

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(b) for infrastructure providing an essential service, the availability of alternatives; and

(c) the duration of disruption or recovery or both.

A potential ECI which does not satisfy the cross-cutting criteria shall not be considered to be an ECI.

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