



2020/0365(COD)

29.4.2021

DRAFT OPINION

of the Committee on Transport and Tourism

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council
on the resilience of critical entities
(COM(2020)0829 – C9-0421/2020 – 2020/0365(COD))

Rapporteur for opinion: Angel Dzhambazki

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SHORT JUSTIFICATION

The changing nature of the threat landscape requires better protection and more investment in the EU's resilience capacities to reduce vulnerabilities, including for the critical infrastructures that are essential for the functioning of our societies and economy.

The proposal for a Directive on the resilience of critical entities (RCE Directive) expands both the scope and depth of the 2008 European Critical Infrastructure (ECI) Directive. It covers ten sectors, namely energy, transport, banking, financial market infrastructures, health, drinking water, wastewater, digital infrastructure, public administration and space. Noteworthy provisions include to obligation for Member States to have a strategy for ensuring the resilience of critical entities, carry out a national risk assessment and, on this basis, identify critical entities. Critical entities would be required to carry out risk assessments of their own, take appropriate technical and organisational measures in order to boost resilience and report disruptive incidents to national authorities. Furthermore, critical entities providing services to or in at least one-third of Member States would be subject to specific oversight, including advisory missions organised by the Commission.

The rapporteur welcomes this proposal, as Transport is a corner stone sector in the ECI directive. It is also the lifeline of our economies and the last year marked by the spread of the Chinese coronavirus has unequivocally been a proof. Rapid action on resilience of critical infrastructure and supply chains were vital to the mitigation of the negative effects of the pandemic on our societies. The proposal for a Directive on the resilience of critical entities gives us the chance to comprehensively assess the condition of critical infrastructure and emergency procedures across all crucial sectors. Given the growing cross-sectoral interdependencies across borders as well as the introduction of smart technologies and rapid digitisation, this appraisal process will be of utmost importance. However, this could also lead to the emergence of novel threats which raises the need for building a resilient and future-proof RCE Directive. While the Rapporteur believes that the principle of subsidiarity and a decision-making process close to European citizens' needs are important, it is equally important to ensure mutual reliance on the projects, processes and infrastructure of common interest.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Despite existing measures at Union¹⁹ and national level aimed at supporting the protection of critical infrastructures in the Union, the entities operating those infrastructures are not adequately equipped to address current and anticipated future risks to their operations that may result in disruptions of the provision of services that are essential for the performance of vital societal functions or economic activities. This is due to a dynamic threat landscape with **an** evolving **terrorist threat** and growing interdependencies between infrastructures and sectors, as well as an increased physical risk due to natural disasters and climate change, which increases the frequency and scale of extreme weather events and brings long-term changes in average climate that can reduce the capacity **and** efficiency of certain infrastructure types if resilience or climate adaptation measures are not in place. Moreover, relevant sectors and types of entities are not recognised consistently as critical in all Member States.

¹⁹ European Programme for Critical Infrastructure Protection (EPCIP).

Amendment

(2) Despite existing measures at Union¹⁹ and national level aimed at supporting the protection of critical infrastructures in the Union, the entities operating those infrastructures are not adequately equipped to address current and anticipated future risks to their operations that may result in disruptions of the provision of services that are essential for the performance of vital societal functions or economic activities. This is due to a dynamic threat landscape with evolving **manmade threats such as terrorism and cyberattacks** and growing interdependencies between infrastructures and sectors, as well as an increased physical risk due to natural disasters and climate change, which increases the frequency and scale of extreme weather events and brings long-term changes in average climate that can reduce the capacity, efficiency **and lifetime** of certain infrastructure types if resilience or climate adaptation measures are not in place. Moreover, relevant sectors and types of entities are not recognised consistently as critical in all Member States, **which necessitates a higher level of coordination and a more integrated approach which stresses the role of critical infrastructures in horizontal sectors such as the transport or energy sectors.**

¹⁹ European Programme for Critical Infrastructure Protection (EPCIP).

Justification

The amendment adds clarity on the type of possible threats with a special focus on manmade threats. Furthermore, it calls for a more comprehensive approach in an intersectoral legislation, which is highly desired.

Amendment 2**Proposal for a directive****Recital 3***Text proposed by the Commission*

(3) Those growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in the sectors of energy, transport, banking, financial market infrastructure, digital infrastructure, drinking and waste water, health, certain aspects of public administration, as well as space in as far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programmes. These interdependencies mean that any disruption, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The COVID-19 pandemic has shown the vulnerability of our increasingly interdependent societies in the face of low-probability risks.

Amendment

(3) Those growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in the sectors of energy, transport, banking, financial market infrastructure, digital infrastructure, drinking and waste water, health, certain aspects of public administration, as well as space in as far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programmes. These interdependencies mean that any disruption, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The COVID-19 pandemic has shown the vulnerability of our increasingly interdependent societies in the face of low-probability risks ***and has demonstrated the importance of strategic sectors such as the transport sector, through the implementation of green lanes, which provided secure supply chains for healthcare and emergency***

services and ensured an essential food supply and the supply of medical and pharmaceutical products.

Or. en

Justification

The green lanes for transport of essential pharmaceutical products were crucial to the effective rapid response to the COVID-19 pandemic. This example must be followed in potential future crises of the same kind, which would potentially stifle freight across borders.

Amendment 3

Proposal for a directive Recital 5

Text proposed by the Commission

(5) It is therefore necessary to lay down harmonised minimum rules to ensure the provision of essential services in the internal market and enhance the resilience of critical entities.

Amendment

(5) It is therefore necessary to lay down harmonised minimum rules to ensure the provision of essential services in the internal market and enhance the resilience of critical entities, ***which would prevent further divergences between Member States. Such an approach would facilitate the deployment of common specifications and methodologies for future risk assessments that include minimum common indicators for each sector and for both public and private entities. In that regard, the future framework should also take into account innovation and new smart technologies, such as digitalisation, automation, data management and artificial intelligence, particularly in sectors such as the transport sector, which is currently undergoing a comprehensive transformation. In the context of the Trans-European Network (TEN-T), more resilient infrastructure will require improved management schemes, which include an integrated vision that is able to identify threats in the design and operational phases (prevention, monitoring, maintenance), while minimising impact during emergency events and ensuring a prompt social and***

economic recovery.

Or. en

Justification

In the transport sector, future proofing critical infrastructure is essential. The amendment mentions innovation and the introduction of smart technologies. Considering the further development of the TEN-T network it is essential that an integrated strategy is undertaken to ensure resilience of critical transport entities along the project.

Amendment 4

**Proposal for a directive
Recital 20**

Text proposed by the Commission

(20) In order to be able to ensure their resilience, critical entities should have a comprehensive understanding of all relevant risks to which they are exposed and analyse those risks. To that aim, they should carry out risks assessments, whenever necessary in view of their particular circumstances and the evolution of those risks, yet in any event every four years. The risk assessments by critical entities should be based on the risk assessment carried out by Member States.

Amendment

(20) In order to be able to ensure their resilience, critical entities should have a comprehensive understanding of all relevant risks to which they are exposed and analyse those risks. To that aim, they should carry out risks assessments, whenever necessary in view of their particular circumstances and the evolution of those risks, yet in any event every four years. The risk assessments by critical entities should be based on the risk assessment carried out by Member States. ***They should also be based on common specifications and methodologies for each sector. They should include minimum indicators, in order to avoid further divergences between Member States, and contingency protocols.***

Or. en

Amendment 5

**Proposal for a directive
Recital 23**

Text proposed by the Commission

(23) Regulation (EC) No 300/2008 of the European Parliament and of the

Amendment

(23) Regulation (EC) No 300/2008 of the European Parliament and of the

Council²⁸, Regulation (EC) No 725/2004 of the European Parliament and of the Council²⁹ and Directive 2005/65/EC of the European Parliament and of the Council³⁰ establish requirements applicable to entities in the aviation and maritime transport sectors to prevent incidents caused by unlawful acts and to resist and mitigate the consequences of such incidents. While the measures required in this Directive are broader in terms of risks addressed and types of measures to be taken, critical entities in those sectors should reflect in their resilience plan or equivalent documents the measures taken pursuant to those other Union acts. Moreover, *when implementing* resilience *measures under this Directive*, critical entities *may consider referring to* non-binding guidelines and good practices documents developed under sectorial workstreams, such as the EU Rail Passenger Security Platform³¹.

²⁸ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97/72, 9.4.2008, p. 72).

²⁹ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6.).

³⁰ Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security

Council²⁸, Regulation (EC) No 725/2004 of the European Parliament and of the Council²⁹ and Directive 2005/65/EC of the European Parliament and of the Council³⁰ establish requirements applicable to entities in the aviation and maritime transport sectors to prevent incidents caused by unlawful acts and to resist and mitigate the consequences of such incidents. While the measures required in this Directive are broader in terms of risks addressed and types of measures to be taken, critical entities in those sectors should reflect in their resilience plan or equivalent documents the measures taken pursuant to those other Union acts. Moreover, *Directive 2008/96/EC of the European Parliament and of the Council^{30a} introduces a network-wide road assessment to map the risks of accidents and a targeted road safety inspection to identify hazardous conditions, defects and problems that increase the risk of accidents and injuries, based on a site visit of an existing road or section of road. Ensuring the protection and resilience of critical entities is of the utmost importance for the railway sector and non-binding guidelines and good practices documents have been developed under sectorial workstreams, such as the EU Rail Passenger Security Platform³¹.*

²⁸ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97/72, 9.4.2008, p. 72).

²⁹ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6.).

³⁰ Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security

(OJ L 310, 25.11.2005, p. 28).

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^{30a} Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management (OJ L 319, 29.11.2008, p. 59).

³¹ Commission Decision of 29 June 2018 setting up the EU Rail Passenger Security Platform C/2018/4014.

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Or. en

Justification

Directive (EU) 2019/1936 of the European Parliament and of the Council of 23 October 2019 amending Directive 2008/96/EC on road infrastructure safety management. Such an assessment would facilitate the safety and resilience of road infrastructure, help identify major chokepoints and hazardous roads and enable national authorities tackle the issue in the context of enhancing resilience

Amendment 6

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Competent authorities designated pursuant to Article 8 shall establish a list of essential services in the sectors referred to in the Annex. They shall carry out by [three years after entry into force of this Directive], and subsequently where necessary, and at least every four years, **an** assessment of all relevant risks that may affect the provision of those essential services, with a view to identifying critical entities in accordance with Article 5(1), and assisting those critical entities to take measures pursuant to Article 11.

Amendment

Competent authorities designated pursuant to Article 8 shall establish a list of essential services in the sectors referred to in the Annex. They shall carry out by [three years after entry into force of this Directive], and subsequently where necessary, and at least every four years, **a harmonised** assessment of all relevant risks that may affect the provision of those essential services **by using common specifications or methodologies with detailed indicators depending on the specificities of each sector**, with a view to identifying critical entities in accordance with Article 5(1), and assisting those critical entities to take measures pursuant to Article 11 **in order to ensure minimum levels of service and resilience of the critical infrastructure**.

Or. en

Justification

Harmonised standards of risk assessments and due measures to be undertaken to tackle potential hazards in order to ensure the resilience of critical infrastructure and essential services. Common methodologies would help mitigate risks stemming from cross-sectoral interdependencies and further enhance resilience.

Amendment 7

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

The risk assessment shall account for all relevant risks referred to in Article 4(1) which could lead to the disruption of the provision of essential services. It shall take into account any dependency of other sectors referred to in the Annex on the essential service provided by the critical entity, including in neighbouring Member States and third countries where relevant, and the impact that a disruption of the provision of essential services in one or more of those sectors may have on the essential service provided by the critical entity.

Amendment

The risk assessment shall account for all relevant risks referred to in Article 4(1) which could lead to the disruption of the provision of essential services, ***which would hinder the proper functioning of the internal market***. It shall take into account any dependency of other sectors referred to in the Annex on the essential service provided by the critical entity, including in neighbouring Member States and third countries where relevant, and the impact that a disruption of the provision of essential services in one or more of those sectors may have on the essential service provided by the critical entity.

Or. en

Justification

Transport infrastructure is of particular importance for the smooth functioning of the internal market of the EU, hence an explicit mention is desirable.

Amendment 8

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that critical entities have in place and apply a resilience plan or equivalent document or

Amendment

2. Member States shall ensure that critical entities have in place and apply a resilience plan, ***a guidance document*** or

documents, describing in detail the measures pursuant to paragraph 1. Where critical entities have taken measures pursuant to obligations contained in other acts of Union law that are also relevant for the measures referred to in paragraph 1, they shall also describe those measures in the resilience plan or equivalent document or documents.

equivalent document or documents, describing in detail the measures pursuant to paragraph 1. Where critical entities have taken measures pursuant to obligations contained in other acts of Union law that are also relevant for the measures referred to in paragraph 1, they shall also describe those measures in the resilience plan or equivalent document or documents.

Or. en

Amendment 9

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those provisions from [**two** years after entry into force of this Directive + one day].

Amendment

They shall apply those provisions from [**three** years after entry into force of this Directive + one day].

Or. en

Justification

3 years is a more realistic timeline for entry into force of these provisions.