Identification and designation of European critical infrastructures and assessment of the need to improve their protection

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OPINION OF THE EUROPEAN CENTRAL BANK

The European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the Council on the identification and designation of European Critical Infrastructures and the assessment of the need to improve their protection. It supports the proposed directive. In particular, the ECB considers it important to ensure that consistent and coordinated actions are taken in different sectors to properly respond to these threats.

The provisions of the proposed directive such as reporting the summary of risks for each sector to the Commission, must respect existing national and EU authorities' competencies. In particular, it will be necessary to ensure that the national provisions implementing the proposed directive will be fully compatible with central banks' oversight powers or obligations with respect to payment, securities clearing and settlement systems and infrastructures, clearing houses and central counterparties. In this respect it is understood that the framework provided by this proposed directive will not prejudice central banks' powers and independence. A recital should be introduced in the proposed directive to reflect these considerations.

Moreover, the ECB stresses that the Eurosystem and/or national central banks have already established measures ensuring business continuity in euro area payment systems, and the ECB considers that this work should be recognised with a view to avoiding duplication and ensuring consistency in the work done by several authorities.

The ECB also made the following comments :

1. the financial sector identified in the proposed directive is sub-divided into (1) payment and securities clearing and settlement infrastructure and systems; and (2) regulated markets. The ECB proposes broader wording to cover trading, payment, clearing and settlement systems and infrastructures for financial instruments;
2. the definition of ‘critical infrastructure’ expressly recognises cross-sector dependencies since the effectiveness of implementing measures for any one sector could be severely undermined by failure to properly address sectoral interdependencies. However, it is noted that this definition does not expressly refer only to assets located solely within the EU. Therefore, it is not clear how assets located partly outside the EU, whose disruption or destruction would affect European critical infrastructures, would be treated under the proposed directive. The ECB would welcome further clarification of this issue;
3. the ‘severity test’ relevant to the identification of European critical infrastructures is quite broad and should be enhanced with clearer indications to ensure consistency of designation across countries and sectors. It would be helpful to further clarify this concept when establishing cross-cutting and sectoral criteria through the comitology procedure under the proposed directive. It is noted that the proposed directive is likely to bring additional administrative requirements which are likely to have associated costs for infrastructures and relevant authorities. Depending on the establishment of such thresholds, infrastructures not currently overseen may be caught and subject to additional costs;

4. a separate Community act may be needed to establish procedures to identify and designate ECIs owned or operated by Community institutions, bodies or agencies. While under the proposed directive the Commission may propose a list of critical infrastructures to be designated as ECIs on the basis both of notifications made by Member States and ‘of any other information at the Commission's disposal’, it might not be practical for ECIs operated by Community bodies and having a pan-European dimension to be part of a system that would be administered by the Member States;
5. the list of critical infrastructures designated as ECIs is required to be adopted in accordance with the comitology procedure established by the proposed directive. The list of all ECIs would be adopted before the establishment and putting into operation of the OSPs containing relevant security solutions for the protection of the listed ECIs, since operators have a year following designation to draw up an OSP. In this context, publicity is undesirable for payment and securities clearing and settlement infrastructures and systems. In particular, as the purpose of the Directive includes the preparation for threats affecting financial markets, it would be unsound to publicly disclose the list of critical infrastructures materially relevant for the smooth functioning of financial markets. Today, no country in the world would publicly disclose such a list on the basis of similar considerations. **The ECB therefore strongly recommends keeping the list of ECIs confidential;**
6. lastly, the ECB strongly recommends giving adequate consideration to existing measures in defining implementing measures and focusing on those areas where no specific measures have been so far identified. The ECB would prefer no specific legally binding measures to be adopted. Should the Commission decide to adopt implementing measures, the ECB will have to be formally consulted under the Treaty on any such measures relating to payment and securities clearing and settlement infrastructures and systems, and other matters falling within the ECB's fields of competence

Where the above advice would lead to changes in the proposed directive, the ECB has set out drafting proposals.

In particular, it proposes:

- to include a **new recital 17a** aiming to take account of the work and regular assessments conducted by the central banks within their fields of competence;

- to make a slight change to Annex 1 on the list of critical infrastructure sectors (VII Financial). The ECB suggests changing the title to “Trading, payment clearing and settlement infrastructures and systems for financial instruments”. The reference to “regulated markets” has been deleted.