



EUROPEAN COMMISSION

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Dear Ms President,

Thank you for your letter of 23 December 2008 enclosing comments from the Senate of the States-General on the proposal for a Council decision establishing a Critical Infrastructure Warning Information Network (CIWIN) {COM(2008)0676}.

In line with the Commission's decision to encourage national parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments which are instrumental to the proceedings of the Commission. I enclose the Commission's reply. I hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

Yours sincerely

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EUROPEAN COMMISSION

Brussels, April 2009

COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE SENATE OF THE STATES-GENERAL OF THE KINGDOM OF THE NETHERLANDS

COM(2008)676 - PROPOSAL FOR A COUNCIL DECISION ESTABLISHING A CRITICAL INFRASTRUCTURE WARNING INFORMATION NETWORK (CIWIN)

The Commission thanks the Dutch Senate for its opinion, which questions the subsidiarity of the Commission's proposal, in particular Article 308 of the Treaty establishing the European Community as the proper legal basis for the proposal. The opinion questions the necessity of introducing such measure rather than its intention to attain the objectives of the Community.

Initially, it is important to stress that the creation of CIWIN does not extend the scope of the European Programme for Critical Infrastructure Protection (EPCIP). The set-up of a system for the exchange of critical infrastructure protection (CIP) related information needs to be viewed and understood only as part of EPCIP, and as one of its implementing steps – i.e. bringing into operation activities that have already been agreed upon.

The Article 1 of the proposal provides that the network would have "the aim of assisting Member States to exchange information on shared threats, vulnerabilities and appropriate measures and strategies to mitigate risks related to" critical infrastructure protection. The adoption of "measures in the sphere of...civil protection" is amongst the "activities of the Community", set forth by Article 3(1), subparagraph (u) TEC, this proposal would pursue an objective of the European Community.

Furthermore, the EU's right to act in the field of EPCIP and CIWIN has been acknowledged by the Council, which requested the Commission to develop a programme to improve CIP in Europe, and asked the Commission to address the exchange of information. The following documents refer to CIWIN:

- on 22 October 2004, the Commission presented its Communication "Critical Infrastructure Protection in the fight against terrorism"; CIWIN was described as a network stimulating an exchange of information (document 13979/04, p. 7);
- on 2 December 2004, the JHA Council agreed in its "prevention, preparedness and response to terrorist attacks" conclusions that the main purpose of a CIWIN network should be to exchange information on threats and vulnerabilities of trans-boundary critical infrastructures (document 15232/04, p. 8);
- on 2 December 2004, the JHA Council adopted the "EU Solidarity Programme on consequences of terrorist treats and attacks" which stipulated that a CIWIN network should mainly stimulate an exchange of information on threats and vulnerabilities (document 15480/04, p. 13);
- on 16/17 December 2004, the European Council concluded that a European Programme for critical infrastructure protection should be established before the end of 2005 (document 16238/1/04 Rev 1, p. 11);
- on 15 December 2006, the Commission presented its Communication on a European Programme for Critical Infrastructure Protection; CIWIN should provide a platform for exchange of information and could provide an optional platform for a Rapid Alert System (document 16932/06, p. 5);
- on 8-9 December 2008, the Council adopted the EPCIP Directive that in recital (2) stated "*.....the Commission adopted a Green Paper on a European Programme for Critical Infrastructure Protection which provided policy options on the establishment of the programme and the Critical Infrastructure Warning Information Network*".

It can therefore be concluded that the JHA Council has previously agreed on the necessity of CIWIN as an exchange forum, and acknowledged the EU's right to act in this field.

Since there is no other specific and horizontal legal basis for adoption of measures in the area of civil protection, Article 308 as a subsidiary legal basis can be used for a proposal that is considered to contribute to the achievement of the objectives of the Community.

It is not however enough that Community action based on Article 308 pursue Community objectives, it must also be "*necessary...in the course of the operation of the common market*". The voluntary aspect of CIWIN as put forward by the Commission proposal was the final result of several informal discussions held with Member States representatives within the framework of the CIP Contact Points meetings. As the Commission's initial intent has been to propose an obligatory information exchange approach and a voluntary Rapid Alert System, the voluntary approach to the entire system has been a step towards the wishes of the main end users of the system. Nevertheless, it is necessary to stress that the information available on CIWIN will be accessible to every single EU Member State and will thus ensure a level playing field within the EU. The Commission however acknowledges that the last point might not be sufficiently defined by Article 3 of the initial proposal, and will certainly take the Senate's comments into account during the discussions on CIWIN within the Council working groups.

The Commission strongly believes that the availability of all relevant information is a necessity for more efficient CIP in the EU. Several arguments point towards this conclusion:

- Member States already requested the Commission to put forward CIWIN as a forum for the exchange of information;

- a growing number of Member States are preparing their own approaches to CIP. Offering them a tool to exchange information on good practices, methodologies and approaches would certainly decrease the possibilities of duplication of efforts. Additional costs of developing methodologies and practices that might already exist in one Member State / or sector would be decreased by sharing information on existing measures;
- it is particularly urgent to better explore the interdependencies between different sectors, such as for example the ICT, energy and transport sector. CIWIN offers an easy to use tool to do so, interconnect experts from different sectors and make existing knowledge available to all EU Member States;
- some of the work concerning the details of how to better protect critical infrastructure in Europe (especially on issues such as the identification of interdependencies) can reasonably be expected to take a long time. Therefore, a gradual approach towards establishing a CIP community at EU level and fostering co-operation and exchange of information within this community is needed. CIWIN represents one of the steps of this gradual approach.

