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Opinion

Title **Impact Assessment on: Policy initiative on Critical Information Infrastructure (CII) Protection**

(draft version of 25 November 2008)

Lead DG **INFSO**

1) Impact Assessment Board Opinion

(A) Context

The present IA report accompanies a Commission Communication on Critical Information Infrastructure (CII) Protection. It aims to ensure an adequate and consistent level of protective security.

In June 2004 the European Council asked the Commission and the Member States to prepare an overall strategy on Critical Infrastructure Protection. In response to this request, the Commission issued, in November 2005, a Green Paper on a European Programme for Critical Infrastructure Protection (EPCIP). It was followed, in December 2006, by a Proposal for a Directive of the Council on the identification and designation of European Critical Infrastructure (not adopted yet). In parallel, the Commission policy on network and information security was in 2006 renewed with the Communication on a Strategy for a Secure Information Society which defines, inter alia, actions to strengthen the role of the European Network and Information Security Agency (ENISA). In addition, the Commission proposal to reform the regulatory framework for electronic communications networks and services, which contains new provisions on security and integrity, is currently being discussed by the European Parliament and the Council.

Article 95 of the EC Treaty (internal market) would be the legal base for the adoption of binding measures.

(B) Positive aspects

Substantial preparatory work has been carried out and a good use of summary tables and boxes is made.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments will be transmitted directly to the author DG.

General recommendation: The IA report requires significant further work on a number of key aspects. Most importantly the report should demonstrate clearly the value added of further EU Action by providing a fully developed baseline scenario, including a synthetic description of all existing measures at national, EU and international level. Secondly, the report should further highlight the international dimension of the threats being considered and explain more clearly the expected outcome of international cooperation. Finally, the report should further substantiate why the non-binding measures are the best choice to achieve the set objectives.

In its written exchange with the Board, DG INFSO accepted most of these recommendations, including the points on value added and on the baseline.

(1) Outline the general policy context, work out a more developed baseline scenario, and demonstrate the value added of further EU action. The report should present the policy context up-front in the problem definition and should clarify whether the present initiative is part of the EPCIP. The baseline description should include all related EU level initiatives (e.g. other actions under EPCIP, Commission policy on Network and Information Security and the actions conducted by the ENISA) as well as policy proposals already put forward by the Commission, but not yet adopted (e.g. Directive on the identification and designation of European Critical Infrastructure and proposal to reform the Regulatory Framework for electronic communications networks and services). The problem definition should present more convincingly the negative effects of the status quo by illustrating clearly the gap between existing measures and the objective of ensuring security and resilience of CII. The options should be compared against this reinforced baseline to demonstrate the EU value added of the initiative over and above the existing measures.

(2) Elaborate more on the international risks. Given that many problems appear to originate outside the EU, the problem definition should further emphasise the international dimension of the threats being considered. The report should better explain the different aspects of international cooperation and outline explicitly the expected outcomes (e.g. consolidating EU position in international arena and developing international principles for Internet security).

(3) Further substantiate the conclusion that non-binding measures would be in all respect more effective than binding measures. Given that the achievement of the objectives will depend on full cooperation/compliance by all Member States, the report should better substantiate how a non-binding framework would be more effective than a binding framework. In this respect the report should clarify the feasibility of an option which in mid- or long-term perspective combines binding and non-binding measures. Alternatively, the report should provide a roadmap for the further actions and clarify the timeframe and ambition of this initiative in its wider policy context.

(4) Compare the policy options against the baseline. When comparing the impacts of the different policy options the report should assess these as net changes relative to the baseline and all ratings of the baseline should be set at '0'. The dynamics of the baseline

should be clarified in the description of Option 1 (business as usual).

(D) Procedure and presentation

The Board is of the view that 19 annexes and approximately 350 pages is excessive and that a greater effort is needed to present key information in a more succinct and accessible form. The readability of the report as a stand alone document should be improved by presenting the essential information in the annexes in the main part of the report.

2) IAB scrutiny process

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External expertise used	No
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