

Directive – 2022/2557

Information Note from the Department of Defence

1. Directive Title

Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC

2. Transposition Deadline

17/10/2024

3. Anticipated Transposition date

17/10/2024

Include information on any specific administrative, policy or legislative changes required before the Directive may be transposed.

Departments with responsibility for policy areas for each sector under the remit of the Directive will be requested to nominate an appropriate competent authority for that sector. It is planned that this authority will be designated by the Minister of Defence via statutory instrument. A memorandum for government will be brought to cabinet in Q1 2024 outlining policy choices, nominated competent authorities and draft SI for approval.

4. COM number of original Commission proposal

COM/2020/829

5. Department with primary responsibility

Department of Defence

6. Other Departments involved

This is a cross-cutting Directive that will have impact on a number of sectors as outlined in it including, inter alia, the following Departments who have lead or other responsibilities in the sectors concerned:

Department of Agriculture, Food and Marine

Department of Enterprise, Trade and Employment

Department of Environment, Climate and Communications

Department of Finance

Department of Health

Department of Housing, Local Government and Heritage

Department of Justice

Department of Public Expenditure and Reform

Department of Transport

In addition, the Public Administration sector under the directive focuses on central government, which may bring all government departments into scope for potential designation as Critical Entities under this directive.

7. Background to, short summary and aim of the directive

The Critical Entities Resilience Directive aims to enhance the resilience of critical entities that provide services essential for vital societal functions or economic activities in the

internal market. This Directive creates a framework to support Member States in ensuring that critical entities are able to prevent, resist, absorb and recover from disruptive incidents, whether they are caused by natural hazards, accidents, terrorism, insider threats, or public health emergencies.

The Directive encompasses the following 11 sectors: energy; transport; banking; financial market infrastructure; health; drinking water; waste water; digital infrastructure; public administration; space; and the large-scale production, processing and distribution of food

Key elements of this directive include that Ireland needs to adopt a national resilience strategy and carry out risk assessments to identify entities that are considered critical or vital for the society and the economy. On their part, critical entities once identified will need to carry out risk assessments of their own and take technical, security and organisational measures to enhance their resilience and notify incidents.

The Department of Defence coordinated with relevant departments and sector specific experts during the negotiation of the Directive and will continue to coordinate as we prepare to transpose it into Irish law. This coordination is being facilitated through the Government Task Force on Emergency Planning, which is chaired by the Tánaiste. A subgroup of the Task Force focused on resilience has been formed to aid in this coordination. This subgroup draws its membership from senior representation across government and is chaired by an official from the Department of Defence.

Following initial legal advice, it is planned that the Directive will be transposed via a statutory instrument under the European Communities Act 1972. It is not proposed for the transposition to include policy choices outside the scope of the directive.

The Department of Defence is also represented on the Critical Entities Resilience Group (CERG), which is a Brussels-based subject matters expert group with representatives from every EU Member State and which is chaired by the European Commission. The CERG group provides support to Member States and critical entities by developing, *inter alia*, an EU-level overview of cross-border and cross-sectoral risks, best practices, guidance material, methodologies, cross-border training activities and exercises to test the resilience of critical entities.

Also to note, the revised Network and Information Systems Directive (NIS2), which aims to ensure robust cyber resilience on the part of a large number of entities, is being developed in tandem with the CER Directive. In order to ensure alignment between these two Directives, the Department of Defence has been coordinating with the Department of the Environment, Climate and Communications, who are responsible for NIS2. It is envisaged that critical entities identified under the CER directive will be subject to cyber resilience obligations under NIS2.

8. Legal basis of the Directive

This directive is based on Article 114 of the Treaty on the Functioning of the European Union, which involves the approximation of laws for the improvement of the internal market

9. Category of Directive

Little/Some/major significance. Please also indicate if the Directive is new/codifying/amending?

Major significance, this is a new directive and repeals the 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. Ireland did not transpose this earlier directive as, due to the limited sectors it focused on and the criteria it contained, critical infrastructure in Ireland was outside of its scope.

The new Critical Entities Resilience Directive is a cross-cutting piece of legislation that will have impact on a number of sectors of both national and European significance.

10. Implications for Ireland (including details of regulatory impact assessments carried out in Ireland, if required)

The Department of Defence is in the process of completing a regulatory impact assessment and it is likely to have this fully complete by Q1 2024.

11. Impact on the public

No direct impacts. Indirect impacts in that the overall aim of the Directive is to improve the resilience of essential services delivered to the public which should lead to fewer disruptions, safer working conditions, improved quality of life and health and thereby enhance overall economic stability and also further improve the attractiveness of the EU market to investors.

12. Estimated cost to the Exchequer

Currently estimated at €6 million annually for staffing of competent authority function. This provides for the funding of small teams in the various competent authorities that will be responsible for the 11 sectors covered by the Directive as well as one single point of contact/strategic oversight function in the Department of Defence. It is anticipated that some sectors will utilise a cost recovery mechanism where such practises are already in place by the relevant competent authority.

The critical entities, once identified, will be expected to finance any specific requirement under the directive, through their own means. There will also be a mechanism to provide financial support to critical entities, if necessarily justified by public interest objectives and in line with state aid rules

13. Consequences and possible costs, arising from non-transposition

Ireland could be subject to an infringement procedure as per Article 258 of the Treaty on the Functioning of the European Union (TFEU), which gives the European Commission the power to take legal action against a Member State that is not respecting its obligations under EU law. Fines and costing of non-compliance to be based on a European Court of Justice ruling which may consist of either a lump sum fine or daily charges.

14. Have consultations taken place with stakeholders or are there any plans to do so?

Include information on consultations by the Department with stakeholders and representations from stakeholders to the Department in relation to the transposition of the Directive.

The Department of Defence held a public consultation in July 2021 during negotiations of the Directive. Submissions were received, including from potential critical entities, and these submissions fed into the Irish position during the negotiations of the Directive.

Since adoption of the Directive, the Department of Defence has engaged with all lead policy departments in the sectors covered under the Directive and held an information conference for potential sector authorities on 21 July 2023. This information session was attended by representatives from 8 government departments and 14 agencies. The information session included briefing on impacts to each sector, the proposed transposition method and outstanding policy decisions around its implementation.

The Department of Defence is currently conducting focused discussions with potential sector authorities and lead policy departments, which is estimated will be completed by end October 2023. This will be followed by a conciliation period between these stakeholders and the Department of Defence regarding implementation policy and the draft SI which is expected to be completed by end of January 2024.

All engagement is coordinated by and reported to the Government Task Force on Emergency Management.

15. Are there areas of the Directive where Member States have discretion on implementation?

Include information on how Ireland plans to implement these areas.

Ireland has discretion to include additional sectors but has no plans to do so at this time. The Directive specifically excludes law enforcement, public security, central banks and the Oireachtas from this Directive. To note, as the banking, financial infrastructure and digital infrastructure sectors are already covered under different EU legislation, certain articles of this Directive will not apply to them. This aspect of the Directive is being coordinated with those departments and agencies responsible for those sectors.

For the public administration sector, the Directive defines this as applying to central government. Ireland can define the central government organisations to be covered under the Directive. The Department of Defence is in a consultation process with other government departments on this matter.

16. Does Ireland intend to seek any derogations from the provisions of the Directive?

Ireland will not seek any derogations from the provisions of the Directive.

17. Offences or penalties (if any) to be created by the transposition of the Directive

Offences and penalties will be in line, and limited to, the European Communities Act 1972

18. Competent authorities or market surveillance authorities (if any) to be designated by the transposition of the Directive

Each sector will have a sector competent authority/ies designated. The Department of Defence is awaiting nominations of appropriate sector authorities from lead government departments, which is expected to be completed in Q4 2023.

19. Consequences for national legislation?

All relevant necessary provisions and articles of the directive will be transposed using secondary legislation in the form of a Statutory Instrument.

20. Are there any parts of the Directive which are planned to be transposed by primary legislation, and if so, which parts?

By way of guidance, it may also be useful to indicate the parts of the Directive proposed to be transposed by statutory instrument and parts where transposition may not be necessary.

It is envisioned that the Directive will be transposed using an SI under the European Communities Act 1972.

21. When is it anticipated that the draft statutory instrument(s) transposing this Directive will be available?

The Department of Defence is undergoing the drafting process and should have an initial draft by end of Q4 2023.

22. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Office of Emergency Planning,
Department of Defence

Date 25 September 2023