

## **FEEDBACK BY THE MALTA CHAMBER**

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### **Public Consultation regarding the Transposition of the Critical Entities Resilience Directive – EU 2555/2022**

**Presented to :** Ministry for Home Affairs, Security and Employment

**Date :** 18/04/2025

## INTRODUCTION

Following consultations with its members, The Malta Chamber presents a set of recommendations and considerations it deems valuable for the transposition of the Critical Entities Resilience (CER) Directive into national legislation. These include feedback on:

1. Drafting Quality of the Proposed Legislation
2. Definition and Thresholds for Incidents
3. Clarification on Auditors/Risk Assessors
4. National Risk Assessment Methodology
5. Clarity on the Principle of Proportionality
6. Applicability and Clarity of Resilience Measures
7. Implementation of Security Pass Requirements
8. Need for an Appeals Mechanism
9. Potential Challenges and Support for Businesses

## FEEDBACK & RECOMMENDATIONS

### 1. Drafting Quality of the Proposed Legislation

The drafting quality of the proposed legislation poses a few concerns. The version made available for consultation contains several issues, among them missing sections. For instance, Parts IV, V, and VI are referenced throughout the document, however they are not available in the draft proposal. An inconsistent use of strikethroughs, underlining, and coloured text was also noted, without any clear indication of what this formatting could mean.

Additionally, there are instances of misplaced text, formatting inconsistencies, grammatical errors, and inaccurate cross-referencing to Schedules, Annexes, articles, and related legislation.

These issues hinder comprehension of the draft, and it is therefore recommended for everyone's interest that a more refined and clearly presented version of the legislation be published or further public consultation prior to its enactment.

### 2. Definition and Thresholds for Incidents

The definition of what constitutes an "incident" with significant disruptive effects requires further clarification. More precise language is needed to establish what qualifies as a significant incident in the Maltese Context. In line with Article 9(1)(f) of the CER Directive, it is recommended that clearly defined quantitative thresholds be introduced.

Furthermore, when assessing the significance of an incident, consideration should be given to the following factors:

- Presence of Alternative Service Providers
- System Redundancies
- Failover Mechanisms

- Cloud-Based Disaster Recovery Solutions

### **3. Clarification on Auditors/Risk Assessors**

Further clarification is required about the roles of the “auditor” and “risk assessor” as referenced in clause 5 of the proposed draft.

The incongruous use of these terms, particularly the presence of “auditor” in strikethrough, creates uncertainty about which role is truly needed. Neither term is defined in the CER Directive, and there is a lack of specific guidance on their interpretation.

Moreover, while the recognition of valid international or European risk certifications and standards is welcomed, less ambiguity is needed on what indeed constitutes such certification. In this light, it is recommended that guidance documentation or position papers be issued ahead of transposition.

Additional detail is also desired on the eligibility criteria for the appointment of Risk Assessors, including but not limited to whether internal personnel can fulfil this role. While Article 5(4) provides some direction, further elaboration on qualifications and requirements is imperative.

### **4. National Risk Assessment Methodology**

Adequate consultation and timely publication of the national risk assessment methodology are essential. Clear information on the parameters that will determine which entities will fall within the scope of the transposed CER Directive should be made available well in advance of the 2026 implementation deadline to ensure transparency and preparedness.

### **5. Clarity on the Principle of Proportionality**

Although the CER Directive itself is not subject to amendment at this stage, the local transposition, as well as any subsequent regulations or guidelines issued by the Critical

Infrastructure Protection Directorate (CIPD), should aim to provide clearer guidance on how the 'Principle of Proportionality' is to be applied by organisations falling within the scope of the regulation. This will help ensure consistent and appropriate implementation across sectors.

## **6. Applicability and Clarity of Resilience Measures**

The applicability of the resilience measures outlined in Article 14 of the proposed draft remains unclear, particularly concerning the exemptions granted to critical entities in the banking, financial market infrastructure, and digital infrastructure sectors under Article 10.

Additional clarification is needed in how national legal provisions, intended to ensure higher levels of resilience in these exempted sectors, align with or potentially overlap, the objectives of the CER directive. This is especially relevant for the digital infrastructure sector, where overlapping legislation and the absence of supporting guidance documents create further uncertainty.

Additionally, as mentioned in the first point of this feedback document, the references in Article 10 to Parts IV and VI raise concerns, as these sections do not appear to be included in the current version of the draft available for consultation.

## **7. Implementation of Security Pass Requirements**

The proposed implementation of security pass and background check requirements in Article 10 of the draft legislation appears to conflict with the CER Directive.

While the draft makes use of mandatory language ("shall"), Article 14 of the EU Directive uses permissive language, stating that Member States should "specify the conditions under which a critical entity is *permitted*" to request background checks.

The transposition should align with Directive's intentions by allowing flexibility, as opposed to imposing a blanket obligation. In addition, any implemented measure should be structured in a way that allows it to align easily with entities' internal HR policies and self-regulation frameworks, ensuring practical and effective implementation.

## **8. Need for an Appeals Mechanism**

The transposed legislation should include a formal mechanism for entities to appeal their designation as a critical entity. Providing a clear process for review or challenge would enhance transparency and ensure that designations are both fair and subject to due process.

## **9. Potential Challenges and Support for Businesses**

The Malta Chamber is mainly concerned on how the transposition and implementation of this directive impacts the local business community. As is the case with any regulatory reform, the implementation of the CER Directive is likely to present significant challenges for some businesses, especially those falling within the scope of such legislation for the first time.

Firstly, compliance may call for substantial investment in the upgrading of infrastructure, enhanced security measures, and training of staff. Moreover, access to human resources with the necessary expertise will be imperative for the successful rollout of compliance initiatives. Given that many organisations do not have such expertise readily available, and that sufficient time is required to either employ new workers or train existing employees, support from the CIPD and other competent authorities is of outmost importance.

Taking into account the financial burden which comes with audit services, risk assessments, and resilience measures, it is recommended to explore potential funding opportunities, especially for smaller businesses, in order to ease the load faced by effected entities. Apart from financial assistance, smaller businesses could well benefit from workshops and practical

guidance to help firms navigate the compliance process. This last point is especially relevant to businesses who may face overlap with the implementation of the NIS2 Directive.

## CONCLUSION

The effective transposition of the CER Directive presents both an opportunity and a challenge for national critical infrastructure resilience. While the proposed legislation lays an important foundation, several areas require further clarification, refinement, and stakeholder engagement to ensure its successful implementation.

It is essential that the final framework strikes the right balance between robust security obligations and practical, proportional measures that businesses can realistically adopt. Continuous dialogue, clear guidance, and adequate support from the CIPD and relevant authorities are key to achieving these objectives and enhancing national resilience in a meaningful and sustainable manner.





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