
GOVERNMENT NOTICES GOEWERMENSKENNISGEWINGS

STATE SECURITY AGENCY STAATSVEILIGHEIDSAGENTSAP

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MINISTRY OF STATE SECURITY

COMMENCEMENT OF THE ELECTRONIC COMMUNICATIONS SECURITY NEEDS ANALYSIS REGULATIONS IN TERMS OF SECTION 6 OF THE NATIONAL STRATEGIC INTELLIGENCE ACT, 1994 (ACT NO. 39 OF 1994), AS AMENDED

The Minister of State Security, Dr. Siyabonga C. Cwele, has, after consultation with the Joint Standing Committee on Intelligence, made regulation in terms of section 6 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

The following regulations in the Schedule, which relate to electronic communications security needs analysis, apply to organs of State and are hereby published in terms of section 101(3) of the Constitution of the Republic of South Africa, 1996, read together with section 6(4) of the National Strategic Intelligence Act, 1994.

SCHEDULE

THE ELECTRONIC COMMUNICATIONS SECURITY NEEDS ANALYSIS REGULATIONS, 2014

PREAMBLE

The objective of the National Strategic Intelligence Act, 1994 (Act 39 of 1994 (NSIA), as amended by the General Intelligence Laws Amendment Act, 2013 (Act 11 of 2013), amongst others, is to identify, protect and secure critical electronic communications and infrastructure of organs of state against unauthorised access or technical, electronic or any other related threats.

Section 2(b) of the NSIA mandates the Minister of State Security, in a prescribed manner and in regard to communications and cryptography, to identify, protect and secure critical electronic communications and infrastructure of organs of state against unauthorised access or technical, electronic or any other related threats.

Section 3(8) of the NSIA obliges the head of an organ of state, at the request of the Agency and in a prescribed manner, to submit to the Agency an analysis of the electronic communications security needs of the organ of state under his or her administration.

These Regulations prescribe the manner in which a head of an organ of state must submit to the Agency, or his or her delegate at its request, an analysis of the electronic communications security needs of the organ of state under his or her administration.

At the instance of the Agency, all heads of organs of state shall submit relevant information regarding the state of their Information Communication Technology Security needs by no later than the date as may be stipulated and in accordance with the prescribed format.

1. DEFINITIONS

'agency' means State Security Agency established in terms of section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002), as amended by the General Intelligence Laws Amendment Act, 2013 (Act 11 of 2013).

'communications' means communication as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002).

'critical electronic communications' means electronic communications held by organs of state which are necessary for the protection of the national security of the Republic.

'critical electronic communications infrastructure' means electronic communications products or systems used to transmit and store or to store critical electronic communications.

'Minister' means the Minister of State Security.

'organ of state' means organ of state as defined in section 239 of the Constitution.

'prescribe' means prescribe by regulation.

'joint standing committee' means the Joint Standing Committee on Intelligence established by section 2 of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994).

2. OBJECTIVES OF THE ELECTRONIC COMMUNICATIONS SECURITY NEEDS ANALYSIS

- 2.1 The main objective of the electronic communications security needs analysis is to ensure that critical electronic communications and infrastructure of organs of State are identified, protected and secured.
- 2.2 To this end, the Agency shall undertake an electronic communications security needs analysis to determine the electronic communication security status and the required protection of critical electronic communication and infrastructure of all organs of the state.
- 2.3 The Agency may procure the services of an external auditing and/or project management professional to assist it with the needs analysis of electronic communications of organs of state, if such assistance will not jeopardise national security and national interest of the Republic.
- 2.4 The electronic communications security needs analysis entails an information gathering exercise whereby a needs analysis in the form of a request for information contained in a questionnaire shall be distributed to all organs of state. This requires organs of state to initially provide a written response to a series of questions contained in the questionnaire. If necessary, the Agency will complement written responses to the questionnaire through on-site or off-site interviews.
- 2.5 Upon receipt of the written responses to the questionnaire and/or on-site interviews or off-site interviews, the Agency shall perform a preliminary electronic communications security needs analysis of each organs of state. Should it so determine, the Agency shall conduct a more detailed assessment of the relevant organs of state's individual electronic security status, including but not limited to-
- 2.5.1 On-site inspection and testing of its current electronic communications infrastructure;

2.5.2 Interviews with relevant officials within a particular organ of state regarding its security policies, procedures and standards, security management structures, and security custodianship, roles and responsibilities;

2.5.3 Any other methodology required for ascertaining the effectiveness of the network perimeter security;

in order to determine the electronic communications security systems, products and services and the functionality and interoperability levels of the products currently used by an organ of state.

2.6 Each organ of state will be individually assessed based on its compliance with certain electronic communications security requirements. Once the analysis is completed, the Agency will submit its recommendations to the relevant organ of state in the form of a report with findings and recommendations.

3. NATURE OF THE REQUEST

The request comprises the following documents ('the request documents')-

3.1. A covering letter addressed to all heads of organs of state;

3.2. A questionnaire compiled by the Agency; and

3.3. These regulations, which set out the procedure and format of the response.

4. PROCEDURE FOR THE DISTRIBUTION OF THE REQUEST- DOCUMENTS

4.1. The Director General of the State Security Agency shall provide each organ of state with the request-documents soon after the publication of these regulations and thereafter every two years in accordance with the electronic

communications security needs analysis plan for organs of state as approved by the Director-General from time to time.

- 4.2. The request documents shall be available in any format as may be prescribed by the Director-General of the Agency for distribution thereof within the relevant organ of state under the supervision of the head of organ of state.
- 4.3 The request documents will be addressed to the head of the relevant organ of state who shall be responsible for ensuring that all information required for purposes of this electronic communications security needs analysis is kept strictly confidential.

5. **PROCEDURE FOR THE COMPLETION OF THE REQUEST- DOCUMENTS**

- 5.1. The head of each organ of state shall upon receipt of the request-documents identify the persons (including third party vendors) responsible for providing the relevant organ of state with electronic communication security products and/or maintenance and repair services. The person who shall assist the organ of state in the completion of the questionnaire shall have the required security clearance.
- 5.2. The head of the organ of state shall ensure that the questionnaire shall be made available only to those persons within the relevant organ of state responsible for the provision of electronic communication security services and who have the required security clearance certificate.
- 5.3 Should the Agency approve the list of persons responsible for providing the services and/or products (after having obtained a security clearance certificate issued by the State Security Agency) in accordance with the National Strategic Intelligence Act, 1994 (Act 39 of 1994), it will promptly communicate this to the head of an organs of state, who will in turn instruct the relevant person to commence answering the section(s) of the questionnaire to which their specialisation pertains.
- 5.4. Should the Agency decline any or all of the persons contained on the list referred to in 5.1 (after failing to have obtained a security clearance certificate

issued by the State Security Agency) in accordance with the National Strategic Intelligence Act, 1994 (Act 39 of 1994), it will communicate this to the relevant head of the organ of state and proceed with arranging a tele-survey or an on-site or off-site interview in the manner set out in paragraph 8.

- 5.5 The head of the organ of state shall ensure that the request-documents shall be made available only to those persons within the relevant organ of state responsible for the provision of electronic communication security products and/or maintenance and repair services forming the subject of this security needs analysis who have a security clearance certificate issued by the Agency.
- 5.6 Where no person within a particular organ of state is specifically designated to provide services, and/or products, the head of the organ of state shall without delay inform the Director-General of State Security Agency of same, and who will proceed to make arrangements with the relevant organ of state to conduct either a tele-survey or an on-site or off-site interview in the manner prescribed in paragraph 6.
- 5.7. The persons responsible for completing the questionnaire (or any part thereof) shall ensure that they provide the Agency with such written or electronic information so as to allow the Agency to adequately assess the security status of the relevant organ of state.
- 5.8. The Agency may establish a helpdesk to address telephonic queries from organs of state on the questionnaire in case of unclear or ambiguous sections or questions. To the extent that a particular section or question in the questionnaire is unclear or ambiguous, the head of the relevant organ of state or a person duly authorised by him or her, shall either address to the Director-General, or the relevant official in the Agency in writing and in sufficient detail the particular query raised by the questionnaire or call the helpdesk for assistance.
- 5.9. Should the Agency take longer than a period of 3 (three) days to resolve a particular query, the submission date shall be extended by such period taken

by the Agency to resolve the query, commencing the date of receipt of the query by the Agency and terminating the date of communication of a resolution of the query to the relevant organ of state ('the extension period).

- 5.10 Organs of state are encouraged to provide with their response any documentation (written or electronic) that might supplement and/or clarify such response.

6. **FORMAT FOR COMPLETING REQUEST DOCUMENTS**

- 6.1 The head of an organ of state shall ensure that he or she submits to the Agency a completed questionnaire ('the response'), not later than three (3) months from the date of receipt of the questionnaire provided unless approval for an extended period is granted by the Agency.
- 6.2 To the extent that an organ of state provides the Agency with a written response to the request-documents, such response shall be delivered to the Agency. Electronic documents shall only be permitted provided they are delivered by hand to the Agency on an electronic device or storage.
- 6.3 The response must be contained in a new document and must clearly indicate the specific question number contained in the questionnaire to which it pertains.
- 6.4 Organs of state are required to complete every question contained in the questionnaire, and must not state in its response that a question contained in the questionnaire is "not applicable". Rather, organs of state must provide a written explanation as to why a particular question does not relate to them specifically.
- 6.5 Organs of state are encouraged to provide with their response any documentation (written or electronic) that might supplement or clarify such response.

7. PROCEDURE FOR THE SUBMISSION OF THE REQUEST-DOCUMENTS

- 7.1. The head of the organ of state must ensure that the response together with any supporting documentation (written or electronic) are returned to the Agency by the submission date and are completed in the prescribed format.
- 7.2. Organs of state shall be entitled to request in writing from the Agency an extended submission date, provided they motivate in detail the reasons for such extension, and provided further that they request such extended submission date no later than 1 (one) month prior to the initial submission date. The Agency shall ensure that it adjudicates such requests fairly and shall process and communicate its decision to the relevant organ of state timely.
- 7.3. Subject to any obligations under national legislation, the Agency acknowledges the sensitivity of the information contained in the response and any supporting documentation received from an organ of state and accordingly undertakes to ensure that these documents are kept strictly confidential and shall not be disclosed to any third party, without the Agency having entered into the necessary confidentiality agreements with such party.
- 7.4. All the responses must be delivered in the manner prescribed by the Director - General of the Agency.
- 7.5. The respondents will be notified of any changes in the delivery address should this occur.

8. THE PROCEDURE FOR ON-SITE AND OFF-SITE INTERVIEWS

- 8.1. Where necessary, the Agency shall conduct either an on-site or off-site interview of the organ of state. This shall be arranged with the head of the organ of state at a time convenient to both parties.
- 8.2. An organ of state shall provide the Agency with reasonable access to their premises as well as all relevant records, data, and other such supporting documents necessary for purposes of the electronic communications security

needs_analysis. Similarly, the Agency shall take all reasonable measures not to disturb or unduly interfere with the day-to-day operations of the relevant organ of state in conducting any on-site interview or inspection.

- 8.3 If after a preliminary needs analysis, the Agency decides to conduct any of the methodologies referred to in 2.5, the provisions of 8.1 and 8.2 shall apply mutatis mutandis to such methodology.

9. DEPARTURE

- 9.1 The Agency may as far as it is reasonable and in the interest of national security and national interests, depart or condone non-compliance with the procedures outlined in these regulations whenever, in its opinion, it is appropriate to do so.

10. INQUIRIES

- 10.1. Any written queries regarding the request documents or other inquiries must be addressed in writing to-

The DIRECTOR – GENERAL

State Security Agency

Private Bag X87

PRETORIA

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- 11.1 The Agency reserves the right to report any person who fails to comply with the provisions of these Regulations to the Auditor General.

12. DATE OF COMMENCEMENT

- 12.1 These regulations shall be called “Electronic Communications Security Needs Analysis Regulations” and come into operation on 29 January 2014.
- 12.2 These Regulations hereby repeal the “COMSEC Security Audit Regulations” published on the 20th of October 2004 in the Government Gazette under notice No: 26914 volume 472 .