



Council of the
European Union

Brussels, 15 December 2022
(OR. en)

Interinstitutional File:
2022/0429(NLE)

16142/22
ADD 1

AELE 49
EEE 45
N 75
ISL 39
FL 35
MI 957
JUR 801
CYBER 411
TELECOM 530
COPEN 452
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JAI 1699

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 742 final
Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement (Cybersecurity Act)

Delegations will find attached document COM(2022) 742 final.

Encl.: COM(2022) 742 final



EUROPEAN
COMMISSION

Brussels, 15.12.2022
COM(2022) 742 final

ANNEX

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to the

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement

(Cybersecurity Act)

ANNEX

DECISION OF THE EEA JOINT COMMITTEE

No [...]

of [...]

amending Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act)¹ is to be incorporated into the EEA Agreement.
- (2) Regulation (EU) 2019/881 repeals Regulation (EU) No 526/2013 of the European Parliament and of the Council², which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (3) Annex XI and Protocol 37 to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The text of point 5cp (Regulation (EU) No 526/2013 of the European Parliament and of the Council) of Annex XI to the EEA Agreement is replaced by the following:

‘32019 R 0881: Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15).

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Unless otherwise stipulated below, and notwithstanding the provisions of Protocol 1 to the Agreement, the term ‘Member State(s)’ and other terms referring to their authorities contained in the Regulation shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their authorities.

¹ OJ L 151, 7.6.2019, p. 15.

² OJ L 165, 18.6.2013, p. 41.

- (b) As regards the EFTA States, the Agency shall, as and when appropriate, assist the EFTA Surveillance Authority or the Standing Committee, as the case may be, in the performance of their respective tasks.
- (c) As regards the EFTA States, references to Union law shall be understood as references to the EEA Agreement.
- (d) The following paragraph shall be added in Article 14:
 “5. The EFTA States shall participate fully in the Management Board and shall within it have the same rights and obligations as EU Member States, except for the right to vote.”
- (e) The following paragraph shall be added in Article 28:
 “4. Regulation (EC) No 1049/2001 shall, for the application of this Regulation, apply to any documents of the Agency regarding the EFTA States as well.”
- (f) The following paragraph shall be added in Article 30:
 “3. The EFTA States shall participate in the contribution from the Union referred to in paragraph 1 point (a). For this purpose, the procedures laid down in Article 82(1)(a) of and Protocol 32 to the EEA Agreement shall apply *mutatis mutandis*.”
- (g) The following paragraph shall be added in Article 34:
 “By way of derogation from Article 12(2)(a) and 82(3)(a) of the Conditions of employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.”
- (h) The following paragraph shall be added in Article 35:
 “The EFTA States shall grant privileges and immunities to the Agency and its staff equivalent to those contained in the Protocol on Privileges and Immunities of the European Union.”
- (i) The following paragraph shall be added in Article 40:
 “3. By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants of the European Union, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Agency, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”
- (j) The following paragraph shall be added in Article 62:
 “6. The EFTA States shall participate fully in the European Cybersecurity Certification Group, except for the right to vote.”

Article 2

The following point is added in Protocol 37 to the EEA Agreement:

- ‘43. European Cybersecurity Certification Group (Regulation (EU) 2019/881 of the European Parliament and of the Council).’

Article 3

The text of Regulation (EU) 2019/881 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 4

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made*, or on the day of the entry into force of Decision of the EEA Joint Committee No .../... of [...]³ [incorporating { Directive (EU) 2016/1148 (NIS Directive)} into the EEA Agreement], whichever is the later.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, [...].

For the EEA Joint Committee

The President

[...]

The Secretaries

To the EEA Joint Committee

[...]

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]
³ OJ L ...

Joint Declaration by the Contracting Parties
to Decision No .../... incorporating Regulation (EU) 2019/881 of the European
Parliament and of the Council into the Agreement

The parties acknowledge that the incorporation of this act is without prejudice to the direct application of Protocol 7 on the privileges and immunities of the European Union to the nationals of EFTA states in the territory of each Member State of the European Union, pursuant to Article 11 of that Protocol.