Council of the European Union

Brussels, 1 February 2019
(OR. en)

5997/19

Interinstitutional File: 2019/0021(NLE)

AELE 9
EEE 2
N 3
ISL 2
FL 2
ECO 16
INST 25
MI 95

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 January 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 31 final
Subject:	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 II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement

Delegations will find attached document COM(2019) 31 final.

Encl.: COM(2019) 31 final

EUROPEAN
COMMISSION

Brussels, 31.1.2019
COM(2019) 31 final

2019/0021 (NLE)

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 II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement in order to incorporate Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services[1].

• Consistency with existing policy provisions in the policy area

The annexed draft Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

• Consistency with other Union policies

The extension of the EU acquis to the EEA EFTA States, through their incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legislation to be incorporated into the EEA Agreement is based on Articles 114, 337 and 43 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94[2] concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The Commission in cooperation with the EEAS submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

• Subsidiarity (for non-exclusive competence)

The proposal complies with the subsidiarity principle for the following reason.

---

1 OJ L 241, 17.9.2015, p. 1-15.

2 OJ L 305, 30.11.1994, p. 6–8

The objective of this proposal, namely to ensure the homogeneity of the Internal Market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

The process of incorporation of the EU acquis into the EEA Agreement is conducted in conformity with the Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area which confirms the approach taken.

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

4. BUDGETARY IMPLICATIONS

There are no budgetary implications expected as a result of the incorporation of Directive (EU) 2015/1535 into the EEA Agreement.

5. OTHER ELEMENTS

The main adaptations requested by the EFTA side

Justification and proposed solution:

Definition of "technical specification", Article 1(1) (c), adaptation (a)

The adaptation ensures that the sentence "agricultural products as referred to in (…) Article 38(1) of the (…) TFEU" is disapplied as part of the definition of a "technical specification", on the grounds that Article 38(1) TFEU refers to the EUs CAP and CFP, both being instruments which are not within the scope of the EEA Agreement. An identical adaptation is already applicable under the EEA Agreement.

Requests for further information, Article 5(1), adaptation (c)

An adaptation has been included to ensure sufficient exchange of information between the EU-pillar and the EFTA-pillar. It should be noted that a similar adaptation is already applicable under the EEA Agreement.

Forwarding of comments, Article 5(2), adaptation (d)

The adaptation clarifies how comments to draft technical regulations shall be communicated between the EU-pillar and the EFTA-pillar. It should be noted that an identical adaptation is already applicable under the EEA Agreement.

Detailed opinions, Article 6(1), (2) and (7), adaptation (e)

For the sake of clarity, this adaptation ensures that detailed opinions can only be issued within the EFTA-pillar, i.e. that detailed opinions cannot be submitted from an EFTA State to an EU Member State or vice versa.

Non-application of Article 6(3) to (6), adaptation (f)

The provisions contained in Article 6(3) to (6) provide for an extended standstill period in situations where the EU institutions are considering legislating in a field covered by a national, draft technical regulation. These provisions fall beyond the scope of the EEA Agreement.

2019/0021 (NLE)

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 II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114, 337 and 43 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area[3], and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area[4] ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement.

(3) Directive (EU) 2015/1535 of the European Parliament and of the Council[5] is to be incorporated into the EEA Agreement.

(4) Annex II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement should therefore be amended accordingly.

---

3 OJ L 305, 30.11.1994, p. 6.

4 OJ L 1, 3.1.1994, p. 3.

5 Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, (OJ L 241, 17.9.2015, p. 1-15).

(5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President