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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Draft DECISION OF THE EEA JOINT COMMITTEE 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

DRAFT

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) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009[1] is to be incorporated into the EEA Agreement.

(2) For the EEA Agreement to function well, Protocol 37 containing the list provided for in Article 101 ('Protocol 37') to the EEA Agreement is to be extended to include the Body of European Regulators for Electronic Communications (BEREC) established by Regulation (EU) 2018/1971.

[1] OJ L 321, 17.12.2018, p. 1.

(3) To ensure consistent implementation of the regulatory framework for electronic communications within the scope of the EEA Agreement, the national regulatory authorities of the EFTA States will participate fully in the work of the Board of Regulators of BEREC, the working groups of BEREC and the Management Board of the BEREC Office, except for the right to vote. The positions of the national regulatory authorities of the EFTA States will be recorded separately when BEREC issues an opinion. The EFTA Surveillance Authority will take the utmost account of opinions adopted by BEREC.

(4) Annex XI and Protocol 37 to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex XI to the EEA Agreement shall be amended as follows:

1. The following is inserted after point 5czp (Commission Implementing Decision (EU) 2019/784):

‘5czq. **32018 R 1971**: Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1).

Modalities for the association of the EFTA States in accordance with Article 101 of this Agreement:

The national regulatory authorities of the EFTA States with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services shall participate fully in the work of the Board of Regulators of BEREC, the working groups of BEREC and the Management Board of the BEREC Office.

They shall be represented at an appropriate level in accordance with the provisions of the BEREC Regulation.

To that effect, the national regulatory authorities of the EFTA States shall have the same rights and obligations as the national regulatory authorities of the EU Member States, except for the right to vote. Members from the EFTA States shall not be eligible for the Chairmanship of the Board of Regulators and of the Management Board.

BEREC and the BEREC Office shall, as and when appropriate, assist the EFTA Surveillance Authority and the national regulatory authorities of the EFTA States, as the case may be, in the performance of their respective tasks.

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

(a) In Article 4:

(i) in paragraph 1 point (a), the words ", the EFTA Surveillance Authority" shall be inserted before the words "and the Commission";

(ii) in paragraph 1 point (e), the words ", the EFTA Surveillance Authority" shall be inserted before the words "or the Commission";

(iii) the following paragraph shall be inserted:

"1a. The positions of the national regulatory authorities of the EFTA States shall be recorded separately by BEREC when issuing opinions in accordance with paragraph 1 point (c)(i) and (ii).";

(iv) in paragraph 4, as regards the EFTA States, the words "relevant Union law" shall read "the EEA Agreement";

(v) in paragraph 4, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the words "and the Commission".

(b) In Article 7(4), the words "and the EFTA Surveillance Authority" shall be inserted after the words "The Commission".

(c) In Article 13(3):

(i) the words ", the EFTA Surveillance Authority" shall be inserted after the word "BEREC";

(ii) the words "and the EFTA Surveillance Authority" shall be inserted after the words "from the Commission".

(d) In Article 15:

(i) in paragraph 1, the following sentence shall be added at the end of the first subparagraph: “A representative of the EFTA Surveillance Authority shall participate in the Management Board without the right to vote.”;

(ii) in paragraph 2, the words “and of the EFTA Surveillance Authority” shall be inserted after the words “of the Commission”.

(e) The following paragraph shall be added in Article 25:

“5. The EFTA States shall participate in the contribution from the Union referred to in paragraph 3 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*.”.

(f) In Article 30, the following subparagraphs shall be added:

“By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the recruitment authority of the Agency.

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 Office, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.".

(g) The following shall be added in Article 34:

"The EFTA States shall grant privileges and immunities to the BEREC Office equivalent to those contained in the Protocol on Privileges and Immunities of the European Union.".

(h) The following paragraph shall be added in Article 36:

"4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the national regulatory authorities of the EFTA States in regard to documents prepared by BEREC or the BEREC Office.".

(i) In Article 40(2):

(i) the words ", the EFTA Surveillance Authority" shall be inserted after the words "the Commission";

(ii) as regards the EFTA States, the words "Union and national law" shall read "the EEA Agreement and national law".

(j) In Article 41(1)(a) and (b), the words ", the EFTA Surveillance Authority" shall be inserted after the words "the Commission".'.

2. The following is added in point 5ob (Regulation (EU) 2015/2120 of the European Parliament and of the Council):

', as amended by:

– 32018 R 1971: Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 (OJ L 321, 17.12.2018, p. 1).'.

Article 2

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

‘41. The Body of European Regulators for Electronic Communications (BEREC) (Regulation (EU) 2018/1971 of the European Parliament and of the Council).’.

Article 3

The text of Regulation (EU) 2018/1971 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*.

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]

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 Presiden

The Secretaries
To the EEA Joint Committee

DECISION OF THE EEA JOINT COMMITTEE

No …

of …

amending Annex XI
(Electronic communication, audiovisual services and information society)
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) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)[1], as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36, is to be incorporated into the EEA Agreement.

(2) Directive (EU) 2018/1972 repeals, with effect from 21 December 2020, Directives 2002/19/EC[2], 2002/20/EC[3], 2002/21/EC[4] and 2002/22/EC[5] of the European Parliament and of the Council, which have been incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement with effect from 21 December 2020.

(3) Annex XI to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

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1 OJ L 321, 17.12.2018, p. 36.
2 OJ L 108, 24.4.2002, p. 7.
3 OJ L 108, 24.4.2002, p. 21.
4 OJ L 108, 24.4.2002, p. 33.
5 OJ L 108, 24.4.2002, p. 51.

Article 1

Annex XI to the EEA Agreement shall be amended as follows:

1. The following is inserted after point 5czq (Regulation (EU) 2018/1971 of the European Parliament and of the Council):

‘5czr.**32018 L 1972**: Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) References to Union law, including references to the TFEU and its provisions, shall be understood as references to the EEA Agreement.

(b) In Article 28, the following subparagraph shall be added in paragraph 4:

“After consulting national regulatory authorities, the EFTA Surveillance Authority may, taking the utmost account of the opinion of the RSPG, adopt decisions addressed to the EFTA States concerned.

If either the EFTA Surveillance Authority or the Commission intends to take a decision regarding a problem or dispute which affects both an EFTA State and an EU Member State, they shall cooperate with a view to agreeing on decisions to resolve the cross-border harmful interference. The EFTA Surveillance Authority and the Commission shall thereby take the utmost account of the opinion of RSPG. Article 109 of the EEA Agreement shall apply *mutatis mutandis*.".

(c) In Article 31(2), as regards the EFTA States, the words "Article 267 TFEU" shall read "Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice".

(d) The following subparagraphs shall be added to Article 65(1):

"After consulting national regulatory authorities, the EFTA Surveillance Authority may adopt decisions identifying transnational markets between two or more EFTA States.

If either the EFTA Surveillance Authority or the Commission intends to identify a transnational market which affects both an EFTA State and an EU Member State, they shall cooperate with a view to agreeing on identical decisions identifying this transnational market. Article 109 of the EEA Agreement shall apply *mutatis mutandis*.".

(e) As regards the EFTA States,

(i) in Article 100(1), the words "the Charter of Fundamental Rights of the Union (the 'Charter') and general principles of Union law" shall read "fundamental rights and general principles of the EEA Agreement";

(ii) in Article 100(2), the words "the rights or freedoms recognised by the Charter", the words "Article 52(1) of the Charter" and the words "the Charter" shall read "fundamental rights".'.

2. With effect from 21 December 2020, the following shall be added in point 5cla (Decision No 243/2012/EU of the European Parliament and of the Council):

', as amended by:

– 32018 L 1972: Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 (OJ L 321, 17.12.2018, p. 36).'

3. The texts of points 5cj, 5ck, 5cl and 5cm shall be deleted with effect from 21 December 2020.

Article 2

The text of Directive (EU) 2018/1972, as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36, 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 3

This Decision shall enter into force on …, provided that all the notifications under Article 103(1) of the EEA Agreement have been made*****.

***** [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Article 4

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