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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 May 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 245 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 Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (Budget line 02 04 77 03 - Preparatory action for defence research)

Delegations will find attached document COM(2019) 245 final.

Encl.: COM(2019) 245 final

EUROPEAN
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Brussels, 29.5.2019
COM(2019) 245 final

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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 Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(Budget line 02 04 77 03 - Preparatory action for defence research)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The draft Decision of the European Economic Area (EEA) Joint Committee (annexed to the proposed Council Decision) aims to amend Protocol 31 to the EEA Agreement "on cooperation in specific fields outside the four freedoms". This is necessary to allow the EEA EFTA States to continue to participate in the Union's Preparatory Action on Defence Research (henceforth "Preparatory Action") in the financial year 2019.

As Liechtenstein and Iceland did not express their interest in participating in this Preparatory Action, the draft Decision of the EEA Joint Committee therefore concerns only Norway.

• Consistency with existing policy provisions in the policy area

The EEA Agreement foresees in Article 78 that the Contracting Parties shall strengthen and broaden cooperation in the framework of the EU's activities in the fields of research and technological development. The Commission, which currently finances exclusively civilian or dual-use research and development through its Horizon 2020 programme, considers the Preparatory Action as a major instrument for testing the added-value of defence-related research from the EU budget.

Norway already participated in the Preparatory Action in the previous year 2018. In addition, already in 2014 Norway (i) concluded a Cooperation Agreement with the European Defence Agency and (ii) the related Defence and Security Procurement Directive (2009/81/EC) was incorporated into the EEA Agreement.

• Consistency with other Union policies

Cooperative defence research in innovative technologies, products and services is key to safeguarding the long-term competitiveness of the defence sector and, ultimately, Europe's strategic autonomy. The cooperation with Norway therefore positively contributes to the EU's efforts in this field.

The Commission recognises that the Preparatory Action is part of its policies related to the internal market, industry and research. Further deepening of cooperation in this area is therefore in line with objectives of the EEA Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis is Articles 58(2)(b), 110(1) and Article 181 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No

1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012[1], in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union and with Article 1(3) of Council Regulation (EC) 2894/94[2] concerning arrangements for implementing the EEA Agreement providing that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

- **Subsidiarity (for non-exclusive competence)**

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

The objective of this proposal, namely to continue cooperation in the area of defence research with EEA EFTA States through their participation in a Preparatory Action financed by the EU budget, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

- **Proportionality**

In accordance with the principle of proportionality, the proposal does not go beyond what is necessary in order to achieve its objective – to strengthen and broaden cooperation in the framework of the EU's activities in the fields of research and technological development.

- **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

Not applicable.

4. BUDGETARY IMPLICATIONS

Norway shall financially contribute to Budget line 02 04 77 03: "Preparatory action on Defence research". The exact amount shall be determined once this Council decision is adopted.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In line with the EU budgetary policy, any participation in an EU activity can take place only once the corresponding financial contribution is paid. The payment can however take place once this draft Council Decision is adopted and the subsequent EU call for funds established by the European Commission is submitted to the EEA EFTA States.

[1] OJ L 193, 30.07.2018, p.1
[2] OJ L 305, 30.11.1994, p. 6–8

Therefore, in order to bridge the period between January 2019 and the reception of the respective payment, the draft Joint Committee Decision shall be retroactively applicable from January 2019.

The retroactivity does not affect the rights and obligations of persons concerned and respects the principle of the legitimate expectations.

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(Budget line 02 04 77 03 - Preparatory action for defence research)

(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 Article 218(9) thereof,

Having regard to Council Regulation (EC) 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 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union amending Regulations (EU) 1296/2013, (EU) 1301/2013, (EU) 1303/2013, (EU) 1304/2013, (EU) 1309/2013, (EU) No 1316/2013, (EU) 223/2014, (EU) 283/2014, and Decision 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012[4] and in particular Articles 58(2)(b), 110(1) and Article 181 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area[5] ('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*, Protocol 31 to the EEA Agreement.

(3) Protocol 31 to the EEA Agreement contains provisions on cooperation in specific fields outside the four freedoms.

[3] OJ L 305, 30.11.1994, p. 6–8.
[4] OJ L 193, 30.07.2018, p.1
[5] OJ L 1, 3.1.1994, p. 3.

(4) The EFTA States shall continue to participate in Union activities related to budget line 02 04 77 03 (Preparatory action on defence research), entered into the general budget of the European Union for the financial year 2019.

(5) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to continue from 1 January 2019.

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

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the Union's behalf, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, 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