EUROPEAN
COMMISSION

Brussels, 7.6.2021
COM(2021) 274 final

ANNEX 2

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 the 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

ANNEX 2

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Parliament and of the Council, which have been incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement with effect from 21 December 2020.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:

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:

[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.

(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[*].

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
[…]

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