

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

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## **PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN CYBERSECURITY INDUSTRIAL, TECHNOLOGY AND RESEARCH COMPETENCE CENTRE AND THE NETWORK OF NATIONAL COORDINATION CENTRES**

Submitted by DCMS on 02/10/2018

### **SUBJECT MATTER**

1. The European Commission has proposed a Regulation for a European Cybersecurity Industrial, Technology and Research Competence Centre and a network of National Coordination Centres.
2. These proposals stem from the EU Cybersecurity Strategy published in September 2017 which recognised a need to retain and develop technological capacity in cybersecurity to secure the Digital Single Market, protect networks and information systems and provide services. This sits alongside a number of other new EU policy priorities and instruments in cyber security including: the NIS directive, the EU Regulation on ENISA and Cybersecurity Certification and the EU Cybersecurity Blueprint. This is a scaling up of the 2016 European contractual Public Private Partnership on cybersecurity ('cPPP') and it is intended that in time these proposals will incorporate this.
3. The Commission sets out an argument for the benefits of pooling resources and expertise in order to increase the competitiveness of the EU cybersecurity industry, in particular by better deploying EU cybersecurity products and solutions, stimulating innovation and closing the skills gap.
4. The proposed Regulation would set up a European Cybersecurity Industrial, Technology and Research Competence Centre, which would be the body primarily responsible for implementing the cyber security aspects of the Digital Europe and Horizon Europe Programmes. It would also be tasked with driving the cybersecurity technology agenda, facilitating access to expertise and collaboration between the defence and civilian dimensions of cybersecurity and providing advice on skills development. The Centre would complement the efforts of the digital innovation hubs, by supporting the deployment of innovative cybersecurity products and solutions.
5. The Centre would have a Governing Board, whose permanent members would be comprised only of Member States, Commission representatives and ENISA as an observer. The Commission may invite other Union representatives to meetings as observers as appropriate. While all Member States are invited to take part, only those who contribute financially would have voting rights. The draft Regulation sets out the organisational structure including roles of the Governing Board, Chairperson and Executive Director. It also proposes an Industrial and Scientific

Advisory Board. The Commission representatives would hold 50% of the voting rights and those Member States with voting rights would each hold one vote.

6. The draft Regulation sets out that each Member State shall nominate a 'National Coordination Centre', which would form a network of national coordination centres supported by the European Competence Centre. National centres would need to possess or have access to technological expertise and would act as the national contact point. They would help the Competence Centre to deliver its tasks by carrying out activities at a national and regional level. National Coordination Centres may receive funding and pass on financial support.
7. The Centre would also coordinate activities of the "cyber security competence community", which is intended to be an open and diverse network of industry, academic and non-profit research organisations and associations accredited by Member States within the Union. The "Community" would in turn input into the work of the Centre.
8. The Regulation proposes that financial contributions are through a joint investment by the Union, Member States and industry.
9. The Centre is to be established for the period January 2021 to December 2029.

## **SCRUTINY HISTORY**

- 10.12183/17: Proposal for a Regulation of the European Parliament and of the Council to provide the "EU Cybersecurity Agency" with a strengthened and permanent mandate and to set up an EU Cybersecurity Certification Framework. An EM was submitted on 18/10/2017.
- 11.10167/18: Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021-2027. An EM was submitted on 4/7/2018.
- 12.11013/16: Commission communication which set out a series of proposals designed to achieve greater pan-European co-operation in order to tackle the threat of cyber attacks and to support the growth of the cyber security industry, including the review of the mandate of ENISA.
- 13.6342/13: Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union. This EM covered the proposal for a Directive which aimed to put measures in place in order to ensure a high level of network and information security across the EU in order to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures in Member States. A supplementary EM was submitted on 13/03/16. This EM provided an overview and analysis of the informal agreement reached by the Council and Parliament on the Network and Information Security (NIS) Directive in December 2015.
- 14.8104/16: Commission Communication on ICT Standardisation Priorities for the Digital Single Market. This EM covered proposed Commission activity on

standardisation related to Information and Communication Technology (ICT) in the context of the Digital Single Market (DSM). This is part of a package of measures relating to digitising industry and DSM.

## **MINISTERIAL RESPONSIBILITY**

15. This proposal falls within the responsibility of the Secretary of State for Digital, Culture, Media and Sport. The Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, the Foreign Secretary and the Secretaries of State for Business, Energy and Industrial Strategy, and for International Trade also have an interest.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

16. Telecommunications is a reserved matter under the UK's devolution settlements. The devolved administrations have therefore not been consulted in the preparation of this EM. The devolved administrations have been sighted on this EM for information.

## **LEGAL AND PROCEDURAL ISSUES**

### **i. Legal basis**

The Regulation is proposed to have a double legal basis: (1) Article 188 of the Treaty on the Functioning of the European Union (TFEU), which requires the adoption of Article 187 which provides for the setting up of the necessary structures for research and technological development, and (2) Article 173(3) of the TFEU which allows the Union to legislate to support the competitiveness of the industry.

The JHA opt-in does not apply.

### **ii. European Parliament Procedure**

The proposal is subject to the Ordinary Legislative Procedure.

### **iii. Voting procedure**

The proposed Regulation will be subject to Qualified Majority Voting.

### **iv. Impact on United Kingdom Law**

If adopted before the UK leaves the EU, the proposed Regulation would be directly applicable in the UK. If adopted, it would potentially require legislation to be introduced to provide for a national competence centre, however where possible the UK would seek to work within existing legislation.

### **v. Application to Gibraltar**

If adopted before the UK leaves the EU, this regulation would be applicable to Gibraltar.

### **vi. Fundamental rights analysis**

We do not consider that the proposal raises any fundamental rights issues.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

17. The text is not considered relevant to the EEA.

## **SUBSIDIARITY**

18. The Commission believes that the subsidiarity principles are met because the nature and scale of technological challenge require expertise that cannot be provided individually by a Member State and so a pooled effort is required. The Commission cites cyber incidents such as WannaCry and NonPetya as examples of cross-border incidents which require coordination efforts at a larger scale.

19. The UK Government remains of the view that a certain degree of voluntary EU coordination is beneficial in order to manage the cross-border context of cyber security. However, the current draft Regulation does not provide a level of detail sufficient to say whether the proposals would realise this benefit above what is provided by other EU cyber security tools and measures. We will further consider our position on subsidiarity during the negotiation process.

## **POLICY IMPLICATIONS**

20. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

21. This draft Regulation proposes setting up a European Cybersecurity competence centre and would require each Member State to nominate a National Coordination Centre as well as accredit organisations and associations to be part of the cybersecurity competence community.

22. The UK has in place a number of relevant centres, programmes and networks which could fall under the umbrella of this legislation including its National Cyber Security Centre, the UK Cybersecurity Innovation centres and centres of excellence in cyber security research and skills programmes. These would potentially incur a cost in order to undertake the proposed tasks and activities for which a more comprehensive Impact Assessment would be carried out. There are at least eight organisations in the UK that have self-nominated as Digital Innovation Hubs, which would also fall under the umbrella of this legislation.

23. Negotiations on the proposed regulation commenced on the 28<sup>th</sup> September and are therefore unlikely to conclude before the UK leaves the EU on the 29th March 2019. The Governing Board of the Competence Centre is made up of Member States and Union Representatives. The 'competence community' is to be made up of those organisations and associations within Member States. Therefore if the UK is not a Member State at the point at which this legislation comes into force it would not have a role on the Governing Board of the Competence Centre, nor

would it be required to have a National Coordination Centre or be part of the Competence Community.

24. As the Prime Minister made clear in Florence and in subsequent speeches, the UK will want to continue working with the EU in ways that promote the long-term economic development of our continent. We will consider what this means in relation to the proposals set out by this draft Regulation as the negotiations progress.

25. The UK has a national cyber security strategy that sets out how we will ensure that by 2021 the UK is secure and resilient to cyber threats, prosperous and confident in the digital world and how we will develop a world-leading digital economy that works for everyone. We are committed to working with the EU to facilitate the exchange of ideas and research and in pursuit of a free, open and secure cyberspace.

### **CONSULTATION**

26. There is no consultation planned on this Proposal.

### **IMPACT ASSESSMENT**

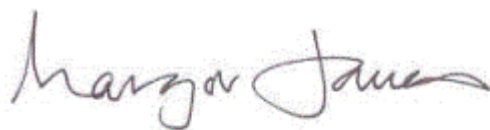
27. An Impact Assessment was carried out as part of the Commission's consultation on this initiative. The analysis led to the conclusion that a Competence network with a Centre that has a dual mandate to support industrial technologies as well as research and innovation would provide the flexibility required to optimise existing structures, drive market activity and would provide the best mechanism for the funding streams under the Digital Europe Programme and Horizon Europe.

### **FINANCIAL IMPLICATIONS**

28. If the legislation comes into force after the UK leaves the EU and the UK is not participating in the work of the Centre there are unlikely to be any financial implications associated with the proposal. Were the UK to contribute to the Centre, there would potentially be a financial implication. Under the proposals, the total contributions of participating Member States are required to match the Union's contribution of approximately 2 Billion Euros.

### **TIMETABLE**

29. Negotiations on this Regulation began on the 28<sup>th</sup> September and the Commission has indicated a preference for these to conclude by Q2 2019, with the preparatory phase taking place between 2019-2020 for implementation in 2021.



**MARGOT JAMES MP**

**MINISTER FOR DIGITAL AND THE CREATIVE INDUSTRIES**