

**DECISION No MB/2021/10
OF THE MANAGEMENT BOARD OF
THE EUROPEAN UNION AGENCY FOR CYBERSECURITY (ENISA)**

**Establishing a Co-operation Agreement with
European Telecommunications Standards Institute (ETSI)**

THE MANAGEMENT BOARD OF ENISA,

Having regard to Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act), hereinafter referred to as the Regulation, and in particular Article 8 (1) (a), Article 8 (5), Article 8 (6), Article 54 (1) (c), Recital 53, 69 and 71, and Article 19 (2) Directive (EU) 2016/1148.

Whereas

- (1) The European Union Agency for Cybersecurity, hereinafter referred to as “ENISA” or “the Agency” shall support and promote the development and implementation of Union Policy on cybersecurity certification of ICT products, ICT services and ICT processes as established under Title III of the Regulation (EU) 2019/881 (Cybersecurity Act);
- (2) The promotion and support of Union Policy on cybersecurity certification by the Agency should relate to monitoring developments, on an ongoing basis, in related areas of standardisation and recommending appropriate technical specifications for use in the development of European cybersecurity certification schemes pursuant to point (c) of Article 54 (1) Cybersecurity Act where standards are not available;
- (3) The Agency facilitates the establishment and take-up of European and international standards for risk management and for the security of ICT products, ICT services and ICT processes, as stated under Article 8 (5) Cybersecurity Act;
- (4) In collaboration with Member States and industry the Agency, in line with Article 8 (6) Cybersecurity Act, will provide advice and develop guidelines regarding the technical areas related to the security requirements of operators of essential services and digital service providers, as well as regarding already existing standards, including Member States’ national standards, pursuant to article 19 (2) of Directive (EU) 2016/1148;
- (5) The European cybersecurity schemes should, according to Recital 69 and 71 Cybersecurity Act, be built on what already exists at international and national level using open, European or international standards as appropriate to fulfil the Union’s legitimate objectives and if necessary build on technical specifications from forums and consortia, learning from strong points and assessing and correcting weaknesses.



- (6) To do so, the Agency should regularly consult standardisation organisations, in particular with European Standardisation Organisations (ESO's), when preparing candidate schemes. ETSI is one of the European Standardisation Organisations (Recital 53 Cybersecurity Act);
- (7) As the current Memorandum of Understanding with ETSI has expired and both parties indicate that a more structured co-operation in this respect is needed to allow the European Union Agency for Cybersecurity (ENISA) to fulfil its task described under Article 8 (1) (a) Cybersecurity Act, this Co-operation Agreement is drafted by both parties and endorsed by the ENISA Management Team in its meeting of 13 April 2021;

HAS DECIDED TO ADOPT THE FOLLOWING DECISION:

Article 1
Structured Cooperation

1. The Co-operation Agreement between ETSI and the European Union Agency for Cybersecurity on structured cooperation as annexed to this Decision, is endorsed.
2. The Co-operation Agreement will have a duration of five years and can be prolonged by the parties upon written, explicit consent. The prolongation will likewise need the endorsement of the Management Board by Decision.

Article 2
Entry into force

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

Done by written procedure on 16 June 2021.

On behalf of the Management Board,

[signed]

Chairperson of the Management Board of ENISA
Jean Baptiste Demaison

Co-operation Agreement between ETSI and ENISA

The signatories:

ETSI provides members with an open and inclusive environment to support the timely development, ratification and testing of globally applicable standards for ICT-enabled systems, applications and services across all sectors of industry and society. ETSI is a non-profit organisation with more than 800 member organizations worldwide, drawn from over 60 countries and five continents. Members comprise a diversified pool of large and small private companies, research entities, academia, government and public organizations.

ETSI is one of only three bodies officially recognized by the EU as a European Standards Organization (ESO).

The European Union Agency for Cybersecurity (ENISA)¹, is the Union's Agency dedicated to achieving a high common level of cybersecurity across Europe. Established in 2004 and strengthened by the EU Cybersecurity Act (Regulation (EU) 881/2019), the European Union Agency for Cybersecurity contributes to EU cyber policy, enhances the trustworthiness of ICT products, services and processes with cybersecurity certification schemes, cooperates with Member States and EU bodies, and helps Europe prepare for the cyber challenges of tomorrow. Through knowledge sharing, capacity building and awareness raising, the Agency works together with its key stakeholders to strengthen trust in the connected economy, to boost resilience of the Union's infrastructure, and, ultimately, to keep Europe's society and citizens digitally secure.

Overall objectives:

ETSI and **ENISA** have noted the necessity of structuring and strengthening their relationship and fostering a closer co-operation.

ETSI and **ENISA** have the common objective to collaborate, contribute to and promote, directly or indirectly, regional and international standardization with the aim of contributing to the establishment of a global information infrastructure.

ETSI and **ENISA** have a reciprocal interest in avoiding duplication of technical work and would both benefit from adopting an aligned and complementary approach to the standardization process in the domains of mutual interest.

Specific objectives :

- 1 **ETSI** and **ENISA** co-operate to allow ENISA when applicable, to fulfil its legal obligations in the Cybersecurity Act related to:
 - regular consult with ETSI when preparing European cybersecurity certification schemes (Recital 53 CSA);
 - to monitor developments on an ongoing basis in related areas of standardisation and recommending appropriate technical specifications for use in the development of European cybersecurity certification pursuant to point (c) of Article 54 (1) CSA where standards are not available (Article 8 (1) (a) CSA;
 - facilitate the establishment and take-up of European and international standards for risk management and for the security of ICT products, ICT services and ICT processes (Article 8 (5) CSA);

¹ OJ L 151/16 7.6.2019

- drawing up of advice and guidelines regarding the technical areas related to the security requirements for operators of essential services and digital service providers as well as already existing standards, including Member States national standards, pursuant to Article 19 (2) of Directive (EU) 2016/1148 (Article 8 (6) CSA).
- 2 **ETSI** and **ENISA** may exchange from time to time as they may agree, free of charge, information on programmes of work in areas of mutual interest.
 - 3 **ETSI** and **ENISA** shall make their best efforts to take part in and/or organise jointly meetings, conferences and workshops promoting issues of mutual interest and their Partnership.
 - 4 Should **ENISA** through its activities identify needs for standards, **ENISA** will use its best endeavour to channel these needs to **ETSI** as appropriate on a non-exclusive basis. **ETSI** and **ENISA** will firstly evaluate whether **ETSI** is the appropriate forum to address such requirements and consider alternatives if needed.

Working areas:

- 5 **ETSI** and **ENISA** have identified the agreed work areas specified in the Annex "*Mapping of Areas of Mutual Interest between ETSI and ENISA*" attached to this Co-operation Agreement (as such Annex may from time to time be amended by the duly authorized representatives of the Parties to the present co-operation agreement). Within these working areas, copies of working documents and drafts from either Party shall be made available royalty-free and in accordance with the IPR policy of the Parties to the other on request by mutual consent.

The dissemination by one Party of the documents received from the other Party will be strictly limited to the members of **ENISA** and members of ETSI and Industry Specification Groups (ISGs) (including non-members that signed a Participant Agreement) of **ETSI**, and solely for the purpose of technical and/or promotional activities relating to the Party's work programme. Stakeholders of **ENISA** include amongst others members of staff, members of Management Board, members of the European Cybersecurity Certification Group, the Advisory Group, the European Commission, members of the Stakeholder Cybersecurity Certification Group and members, participants and observers of Ad Hoc Working Groups, if applicable, as well as any other Party that has formally been admitted by the **ENISA** Executive Director to receive such documentation.

ETSI and **ENISA** undertake to make every endeavour to use electronic document handling in their exchange of documents.

Intellectual Property:

- 6 For all purposes, all copyright, trade secret, patent and other intellectual and industrial rights embodied in documents that are subject to the present Co-operation Agreement, or any of the Supplement agreements under this Co-operation Agreement, and any copies thereof, remains with the Party originating them and extends to all media in which the information may be embodied. It is the duty and liability of each Party to clearly inform the other Party without undue delay of the conditions of use of the technical materials to be exchanged if such materials should be used for other purpose than pure information.

Each Party shall promptly notify the other of any changes to the Party's IPR Policy. Each of the Parties agrees to re-assess the compatibility of their respective IPR Policies in light of such changes, and to assess whether the Co-operation Agreement can be continued or terminated including any related Supplement in accordance with clause 17 third section of this Co-operation Agreement.

A Party will indemnify, hold harmless and defend the other Party from and against any and all claims, demands, actions, costs, expenses (including reasonable attorneys' fees), liabilities, judgments, causes of action, proceedings, suits, losses and damages of any nature arising from an assertion by an unrelated third party alleging that the use of any information provided by a Party to the other Party infringes that third party's intellectual property rights. This clause applies for the Co-operation Agreement, as well as the underlying Supplements.

A Party shall promptly notify the other Party of any claim of said third party rights made or threatened against the other Party and/ or if it becomes aware of any infringement or potential infringement of any third party intellectual property rights in the information used. Claims for damages determined by a court or by way of a settlement shall likewise be borne by a Party if the other Party was able to control or had knowledge of the proceedings underlying the claim for damages and a settlement possibly arising there from. The other Party shall, at the expense of a Party, take all measures which can fairly and reasonably be expected of the other Party in connection with the aforementioned proceedings and settlements. This clause applies for the Co-operation Agreement, as well as the underlying Supplements.

Attending meetings as Observer:

- 7 Within the context of this Co-operation Agreement and by mutual consent, a nominated Observer from the **ENISA** members of staff or designated **ENISA** Ad Hoc Working Group members to the relevant **ETSI** Technical Bodies/Industry Specification Groups and vice-versa may be permitted when the agenda contains items of mutual interest. In principle, no more than one Observer may be allowed in a Technical Body/Industry Specification Group or specific (Ad Hoc Working- or Stakeholder) Groups of, or working with ENISA, unless the relevant Chair agrees.

Observers shall, to the extent permitted by the relevant Party's organizational documents, be entitled to participate fully in discussions on relevant work items, and may, to the extent permitted by the relevant Party's organizational documents, submit written contributions for information only, but shall have no voting rights.

In order to avoid duplication of technical or planning activities, Observers should inform in writing the Chair of the **ETSI** Technical Body/Industry Specification Group or the **ENISA** specific (Ad Hoc Working-, or Stakeholder) Groups of, or working with ENISA in which they intend to participate and their intended duration of participation in meetings.

The Partner's Observer status conferred by this Co-operation Agreement, is not a substitute for, and is clearly distinguished from, the status of Full membership, Associate membership or Observer membership of **ETSI or ENISA**.

Use of material:

- 8 **ETSI** and **ENISA** may agree in particular cases, and by a separate written agreement ("Materials Supplement") signed by both Parties, to incorporate text and graphics (hereinafter "Material") from the other Party into a document. The Party adopting Material by incorporating the Material into a document shall be referred to herein as the Adopting Party. The Party originating the Material incorporated by the Adopting Party shall be referred to herein as the Originating Party.

The Materials Supplement shall specify the Originating Party's Material to be incorporated by the Adopting Party ("Specific Material"), and shall further specify the Adopting Party document(s) into which Specific Material may be incorporated. The Originating Party shall, by consenting to incorporation of Specific Material into one or more Adopting Party documents as specified in the Materials Supplement, grant the Adopting Party a non-exclusive, perpetual, worldwide, irrevocable, royalty-free copyright license to reproduce and distribute, without modification,

Specific Material only as incorporated into the Adopting Party document(s) specified in the Materials Supplement.

The Adopting Party shall acknowledge the Originating Party as the source of the Specific Material. The Adopting Party shall include with the Specific Material all notices, legends, and other associated text requested by the Originating Party, including, without limitation, notices and legends related to copyrights, trademarks, trade secrets, and patents.

For more specific clauses related to the incorporation of text or graphics of one Party into the Material of the other Party, we refer to the MATERIALS Supplement Agreement.

Joint Working and Joint Deliverables:

- 9** ETSI and ENISA may also agree in particular cases where joint copyright and/or joint working procedure are envisaged, and by a separate written agreement ("Working Supplement") signed by both Parties, to produce a joint document the details of which shall be included in the "Working Supplement". Any joint documents shall be subject to the principles of the ETSI IPR Policy for the version published by ETSI and the ENISA IPR Policy for the version published by ENISA. Industry Specification Groups are not covered by the scope of this article.

For more specific clauses related to the Working Supplement, we refer to this Supplement Agreement

Adoption of Publicly Available Specifications as ETSI TR or TS:

- 10** ETSI and ENISA hereby agree upon the possibility to define, by a separate written agreement ("PAS Supplement"), the framework and provisions to adopt ENISA's specifications ("Publicly Available Specifications") as ETSI Technical Report or ETSI Technical Specification.

For more specific clauses related to the PAS Supplement, we refer to this Supplement Agreement.

Management of the Co-operation Agreement

- 11** All notices under this Agreement and the underlying Supplement Agreements shall be sent in writing to the contact points specified in Annex 2 of the present Co-operation Agreement.
- 12** This Co-operation Agreement shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement of both Parties. Neither Party may assign this Co-operation Agreement or any of its rights, obligations or duties hereunder, without the prior written consent of the other Party.
- 13** This Co-operation Agreement shall last for five (5) years and may be renewed by written (or explicit) mutual consent. In the event that new Rules of Procedure are adopted in either Party, or when particular procedures are adopted at world-wide level by a Party, the other Party may suggest an amendment to this Co-operation Agreement that addresses any concerns raised by such change. If such amendment is not acceptable, then the Party that proposed the amendment may terminate this Co-operation Agreement on thirty (30) day's written notice to the other. This Co-operation Agreement may also be amended upon mutual written consent of both Parties in the light of experience and technical developments.
- 14** No assignment or transfer of this Agreement is permitted, without prior written consent of the other Party to such assignment or transfer. This also applies to the underlying Working Supplement, Materials Supplement and PAS Supplement.

- 15 If for any reason, a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, such provision will be enforced to the maximum extent and the other provisions of this Agreement will remain in full force and effect. This also applies to the underlying Working Supplement, Materials Supplement and PAS Supplement.

Liability :

- 16 Except in case of wilful misconduct or gross negligence, the Party's liability arising in connection with this Agreement for any and all causes of action and claims including breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, will be limited to the direct damages suffered by the other Party. This clause will apply likewise to the Supplement Agreements.

Termination of the Co-operation Agreement:

- 17 Notwithstanding the foregoing, this Co-operation Agreement may be terminated by either Party upon ninety (90) day's written notice to the other.

Either Party may terminate this Co-operation Agreement and its underlying Supplement Agreements in the event of any material breach of this Co-operation Agreement and/or of one or more applicable Supplement Agreements, after the non-breaching or non-defaulting Party has given the other Party notice of such breach, specifically delineating the nature of such breach and the action(s) required to cure it. If the breaching Party does not cure such breach within a period of thirty (30) days from the date of receipt of such notice, the Co-operation Agreement and the underlying Supplement Agreements terminate automatically with reference to applicability of clause 15 of this Co-operation Agreement.

If under reference to clause 5 second section of this Co-operation Agreement, any Party notes incompatibility between the Parties' respective IPR policies in a way that the Co-operation Agreement and its underlying Supplement Agreements is no longer feasible, the Co-operation Agreement and its underlying Supplement Agreements ends 30 days from the moment such incompatibility is notified to the other Party.

Upon any termination or expiration of this Co-operation Agreement, all the rights granted pursuant to this Co-operation Agreement shall cease immediately and the Parties shall cease from distributing any information received pursuant to this Co-operation Agreement.

Notwithstanding anything in this Co-operation Agreement or otherwise to the contrary, the provisions of this Co-operation Agreement related to ownership of rights shall survive any termination or expiration of this Co-operation Agreement.

- 18 Any material that is not included in a deliverable shall, upon request of the owner, be returned to the rightful owner, or be destroyed/deleted, or upon its prior written consent handed over to the receiving Party under the conditions mutually agreed upon.
- 19 Termination of this Co-operation Agreement leads to termination of the underlying Working Supplement, Materials Supplement and PAS Supplement. Parties commit by signing this Co-operation Agreement to take all efforts to carefully manage the consequences of the termination of the Cooperation Agreement and avoid disruption of work under construction, or development under the Co-operation Agreement and the Supplement Agreements that are subject to this Co-operation Agreement.

- 20 Neither Party shall be entitled to any compensation, whether for loss of distribution rights, goodwill or otherwise, as a result of the termination of this Co-operation Agreement and/or the underlying Supplement Agreement(s) in accordance with the applicable terms.

Force Majeure:

- 21 The responsibility of either of the Parties shall be fully discharged if there is a breach or delay in performance of one or several obligations provided for in the present Co-operation Agreement that is due to a case of Force Majeure.

Force Majeure constitutes any event outside the control of a Party, not due to a possible fault or negligence of that Party, which the Party is unable to prevent or predict by exercising reasonable diligence; this notably includes any event that has the characteristics of Force Majeure within the meaning of Article 1218 of the Civil Code and French case law.

If a Force Majeure event occurs, the Party that is subject to the Force Majeure reports this in writing with undue delay to the other Party with clear reasoning of the Force Majeure. If, despite all reasonable efforts of the Party subject to the Force Majeure to look for acceptable and reasonable alternatives, the Force Majeure event lasts for more than 90 (ninety) days, this Agreement will automatically be terminated, and no Party can be held liable for a breach of its obligations under this Agreement, except otherwise agreed by the Parties.

This Force Majeure clause likewise applies to the Supplement Agreements. If, due to the nature of the Force Majeure the Co-operation Agreement can no longer be met and acceptable and reasonable alternatives do not provide a solution and the Force Majeure event lasts for more than 90 (ninety) days, the Co-operation Agreement will likewise automatically be terminated, with reference to clause 17 section 4 and 5, clause 18-20 of this Co-operation Agreement. No Party can be held liable for a breach of its obligations under this Agreement and its underlying Supplement Agreements, except otherwise agreed by the Parties.

Dispute resolution:

- 22 Any difficulties arising under the Co-operation Agreement, shall be solved wherever possible at the working level between the relevant Technical Body/Industry Specification Group/Group Chair of ETSI and ENISA. Matters which cannot be resolved at working level shall be subject to discussion between the two organizations at the level of the Director-General of **ETSI** and the Executive Director of **ENISA**. This also applies to the underlying Working Supplement, Materials Supplement and PAS Supplement.

- 23 This Co-operation Agreement shall be governed by, and construed in accordance with French law.

- 24 The Parties agree that all disputes related to the Co-operation Agreement and its underlying Supplements which cannot be settled by the Parties as indicated under Clause 22 of this Co-operation Agreement, will be subject to arbitration under the rules of the International Court of Arbitration of the International Chamber of Commerce, by one or more arbitrator appointed under the those Rules.

The place of arbitration shall be fixed by the Court and the proceedings shall be conducted in the English language. The arbitrators are eligible to provide a non-binding decision that parties shall take into due account. According to article 39 (2) Regulation (EU) 2019/881² (hereinafter referred to as Cybersecurity Act: CSA) the Court of Justice of the European Union shall have jurisdiction to give judgement pursuant to this arbitration clause contained in this contract.

² [Regulation \(EU\) 2019/ of the European Parliament and of the Council of 17 April 2019 on ENISA \(the European Union Agency for Cybersecurity\) and on information and communication technology cybersecurity certification and repealing Regulation \(EU\) No 526/2013 \(Cybersecurity Act\) \(europa.eu\)](#)

Nothing in this section will prevent either Party from seeking, either prior to and/or during the arbitration process, an injunction or other equitable relief from a court for the purpose of protecting its Intellectual Property Rights.

Legal effects of the Co-operation Agreement:

- 25** The relationship between **ETSI** and **ENISA** shall be that of independent signatories, and nothing in this Co-operation Agreement shall be construed to constitute either Party as an employee, agent or member of the other Party. Without limiting the foregoing, neither Party shall have authority to act for or to bind the other Party in any way, to make representations or warranties or to execute agreements on behalf of the other Party, or to represent that it is in any way responsible for the acts or omissions of the other Party.
- 26** Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of each Party. This clause likewise applies to the underlying Supplements to this Agreement.
- 27** The formal contacts and decisions for the application of this Co-operation Agreement and the underlying Supplement Agreements will be taken by the Director-General of **ETSI** and the Executive Director of **ENISA**.

Dated:

Dated:

Luis Jorge Romero Saro
ETSI Director-General

Juhan Lepasaar
ENISA Executive Director

**European Telecommunications
Standards Institute (ETSI)**

**European Union Agency for Network and
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Annex 1

Mapping of Areas of Mutual Interest between ETSI and ENISA

ENISA	ETSI Technical Body and/or Industry Specification Group
ENISA Units and Teams	ISG SAI (Securing Artificial Intelligence)
	TC ESI
	TC LI
	TC CYBER

Note 1: This table contains identification of the main links identified between the two organizations and may from time to time be amended by the duly authorized representatives of the Parties upon consultation. The current version of this table is available at the following link:
http://webapp.etsi.org/AgreementView/Mapping_tables/Mapping_ENISA.htm

Note 2: Observership in Industry Specification Groups is subject to the signature of the relevant ISG Participant Agreement, as foreseen in clause 3.4 of the ETSI Technical Working Procedures.

Annex 2

Contact points for the Co-operation Agreement between ETSI and ENISA

For the administration of the present Co-operation Agreement, the following contact points are defined:

- Christian Loyau – Director Legal and Governance – ETSI
christian.loyau@etsi.org
- Renate Verheijen – Legal Officer Cybersecurity Certification – ENISA
renate.verheijen@enisa.europa.eu

For the technical activities in the context of the present Co-operation Agreement, including observership, the following contact points are defined:

- Sonia Compans – Technical Officer TC CYBER – ETSI
sonia.compans@etsi.org
- Slawomir Gorniak – Senior Cybersecurity Expert – ENISA
slawomir.gorniak@enisa.europa.eu