

DECISION No MB/2023/08
OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR
CYBERSECURITY (ENISA)

on derogating Financial Rules for the provision of the support to Member States to further mitigate the risks of large-scale cybersecurity incidents in the context of the emergency situation due to possible spill-over effect from the Ukraine/Russia conflict

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 526/2011¹ (hereafter “Cybersecurity Act”), in particular Article 15 (1) g) thereof;

Having regard to Decision No MB/2019/8 on the Financial Rules applicable to ENISA in conformity with the Commission Delegated Regulation (EU) No 2019/715 of 18 December 2018 of the European Parliament and of the Council (hereafter “ENISA’s FR”);

Having regard to Decision No MB/2022/8 on the Amending Budget 1/2022 granting ENISA additional budgetary resources of EUR 15 million to “fulfil the request from Member States to scale up the support for ex-post and ex-ante services in the context of the emergency situation due to possible spill-over effect from the Ukraine/Russia conflict” (hereafter “MBD on Amending Budget”);

Whereas:

- (1) In compliance with ENISA’s FR and for the implementation of the MBD Amending Budget for 2022 a total amount of EUR 14 350 000 has been committed in the financial year 2022 through the signature of 27 specific contracts to provide support to Member States to further mitigate the risks of large-scale cybersecurity incidents in the context of the emergency situation due to possible spill-over effect from the Ukraine/Russia conflict;
- (2) The initial requests from Member States made in 2022 to subscribe to ENISA’s offered services have significantly (positively and negatively) changed as from early 2023;
- (3) Current ENISA’s FR prevent to change the recipients in the financial year 2023 under individual commitments made in the financial year 2022;

¹ OJ L 151, 7.6.2019, p. 15–69

- (4) This limitation in the ENISA's FR would therefore have the following consequences:
- a) The re-stated 2023 requests from Member States to subscribe to ENISA's services may not be fully fulfilled;
 - b) The cancellation of the commitments made in 2022 would penalise ENISA's future budget for not meeting its financial target as set by the European Commission²;

Has decided:**Article 1****Derogation**

In derogation of ENISA's FR (in particular Articles 12³ and 74⁴ thereof), to exceptionally allow the change of the recipient under an individual commitment (and underlying payments appropriations) made in the financial year 2022 from the dedicated budget line 3800 as per MBD Amending Budget for 2022 to fully meet the re-stated requests stemming from Member State(s) to subscribe to ENISA's offered services in the financial year 2023.

Article 2**Procedure**

- (1) Concretely, any unused commitment (and underlying payments appropriations) from the financial year 2022 for specific contracts related to the Cybersecurity Support Action may be re-allocated in the financial year 2023 to cover requests from other Member State(s) for services⁵ offered by ENISA exclusively within the scope and in accordance to the Letter of Intent between DG CONNECT and ENISA⁶.
- (2) Any additional services requested in 2023 from the Member State on top of the original request shall be subject to an amendment of the specific contract(s) in force or a subject to a new specific contract in compliance with ENISA's FR, in particular with the applicable procurement rules.
- (3) This Decision shall only be applicable for the financial year 2023.
- (4) ENISA shall register this exception in the ENISA Exceptions registry for 2023.

² DG BUDG has set a target of a budgetary execution of minimum 95%. Not reaching this threshold, DG BUDG reserves the right to decrease by minimum 2% the budget of the EU Agency in year N+2

³ Article 12 of ENISA's FR states "payment appropriations which are needed to cover existing commitments" may be carried over to the following financial year

⁴ Article 74 of ENISA's FR categorizes a commitment as individual "when the recipient and the amount of the expenditure are known"

⁵ Including horizontal services using contracts such as M-OCU-22-C50_EU "EU Supporting ENISA for the provision of cybersecurity services EU Wide" and M-CBU-22-C70 "C70" External Cloud based Training Platform and the provision of associated support services"

⁶ Letter of Intent between DG CONNECT and ENISA on the provision of support to Member States to further mitigate the risk of large scale cybersecurity incidents in the short term – Ares (2022)5946722 as annexed to the MBD on Amending Budget (MB/2022/8)

Article 3

Entry into force

The present decision shall enter into force on the day of its adoption and shall be published on ENISA website.

Done at Athens on 31 July 2023.

On behalf of the Management Board,

[signed]

Chair of the Management Board of ENISA