



Brussels, **XXX**
[...] (2024) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

establishing the circumstances, formats and procedures for notifications pursuant to Article 61(5) of Regulation (EU) 2019/881 of the European Parliament and of the Council on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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establishing the circumstances, formats and procedures for notifications pursuant to Article 61(5) of Regulation (EU) 2019/881 of the European Parliament and of the Council on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) 526/2013 (Cybersecurity Act)¹, and in particular Article 61(5) thereof,

Whereas:

- (1) Pursuant to Article 61(1) of the Regulation (EU) 2019/881, the national cybersecurity certification authorities (NCCAs) are responsible for notifying the Commission of conformity assessment bodies that have been accredited and, where applicable, authorised to issue European cybersecurity certificates at specified assurance levels, and should keep the notification up to date. Furthermore, according to Article 61(2) of Regulation (EU) 2019/881, the Commission is required to publish in the *Official Journal of the European Union* a list of the conformity assessment bodies notified under a European cybersecurity certification scheme one year after the scheme enters into force. To ensure a harmonised approach for notifications and ease the notification process for NCCAs, this Regulation should further specify the circumstances, formats and procedures for the notifications. Those aspects are important to be clarified with a view to the application of the first European Common Criteria-based cybersecurity certification scheme (EUCC) laid down by Commission Implementing Regulation (EU) 2024/482².
- (2) This Regulation acknowledges the synergies between Regulation (EU) 2019/881 and relevant Union harmonisation legislation, including Regulation (EU) .../... of the European Parliament and of the Council [the Cyber Resilience Act]³. It is therefore proposed that the NCCAs notify the Commission via the electronic notification tool, developed and managed by the Commission, referred to in Decision No 768/2008/EC

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¹ OJ L 151, 7.6.2019, p. 15-69.

² Commission Implementing Regulation (EU) 2024/482 of 31 January 2024 laying down rules for the application of Regulation (EU) 2019/881 of the European Parliament and of the Council as regards the adoption of the European Common Criteria-based cybersecurity certification scheme (EUCC) (OJ L, 2024/482, 7.2.2024).

³ [Reference to the CRA]

of the European Parliament and of the Council⁴. Without affecting the Commission's obligation to publish the list of notified conformity assessment bodies in the *Official Journal of the European Union*, the list should also be made publicly available on the electronic notification tool developed and managed by the Commission.

- (3) Notification of accredited and, where applicable, authorised conformity assessment bodies means that these bodies can be trusted in performing evaluation and certification activities in accordance with Regulation (EU) 2019/881, contributing to the overall reputation of European cybersecurity certification schemes. It is therefore essential to ensure that conformity assessment bodies that have been notified meet their requirements and fulfil their obligations over time. Article 58(8), point (c), of Regulation (EU) 2019/881 empowers the NCCAs to take appropriate measures, in accordance with national law, to ensure that conformity assessment bodies comply with that Regulation or with a European cybersecurity certification scheme. It is therefore appropriate that where an NCCA has ascertained or has been informed that a notified conformity assessment body no longer meets the requirements, or that it is failing to fulfil its obligations, the notifying NCCA suspends, restricts or withdraws the notification, as appropriate. Restriction of notification should refer to a case where the scope of accreditation or, where applicable, the scope of authorisation, is reduced. The NCCA is required to inform the Commission accordingly without undue delay, as provided for in Article 61(1) of Regulation (EU) 2019/881.
- (4) Furthermore, to ensure that the notified conformity assessment bodies remain competent over time, it is necessary to clarify the action that the Commission may take, in close cooperation with the notifying NCCA, in cases where it has doubts about the competence of a notified conformity assessment body, or its continued fulfilment of the requirements and obligations to which it is subject.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 66 of Regulation (EU) 2019/881,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the circumstances, formats and procedures for notifications of conformity assessment bodies by national cybersecurity certification authorities (NCCAs) pursuant to Article 61(1) of Regulation (EU) 2019/881.

Article 2

Procedure for notification

1. In accordance with Article 61(1) of Regulation (EU) 2019/881, the NCCAs shall notify the Commission of the conformity assessment bodies which have satisfied the requirements laid down in Regulation (EU) 2019/881 and, where applicable, the

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⁴ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82–128).

specific or additional requirements under a European cybersecurity certification scheme.

2. The NCCA shall notify the Commission using the electronic notification tool developed and managed by the Commission, as referred to in Decision 768/2008.
3. The notification shall include the information set out in the Annex to this Regulation.

Article 3

Identification numbers and list of conformity assessment bodies

1. The Commission shall assign an identification number to a notified conformity assessment body. It shall assign a single identification number even where the body is notified under several cybersecurity certification schemes or Union acts.
2. When making the list of the notified conformity assessment bodies available on the electronic notification tool developed and managed by the Commission, the Commission shall include the identification numbers that have been allocated to the notified conformity assessment bodies and the activities for which they have been notified.
3. ENISA shall make the information regarding the notified conformity assessment bodies available on its dedicated website on European cybersecurity certification schemes referred to in Article 50(1) of Regulation (EU) 2019/881.

Article 4

Changes to notifications

1. The NCCAs shall notify the Commission of any subsequent changes to the notification referred to Article 2 via the electronic notification tool developed and managed by the Commission without undue delay, in accordance with Article 61(1) of Regulation (EU) 2019/881.
2. Where a NCCA has ascertained or has been informed that a notified conformity assessment body no longer meets the requirements or obligations to which it is subject, the NCCA shall restrict, suspend or withdraw the notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall inform the Commission accordingly via the electronic notification tool developed and managed by the Commission without undue delay.
3. In the event of restriction, suspension or withdrawal of notification, or where the notified conformity assessment body has ceased its activity, the notifying NCCA shall take appropriate steps to ensure that the files of that conformity assessment body are either processed by another notified conformity assessment body or kept available for the responsible NCCA at their request.

Article 5

Challenge of the competence of notified conformity assessment bodies

1. Where the Commission has doubts, or doubt is brought to its attention regarding the competence of a notified conformity assessment body, or regarding the continued fulfilment by a notified conformity assessment body of the requirements and

obligations to which it is subject, the Commission shall inform the notifying NCCA thereof.

2. The notifying NCCA shall take appropriate actions to verify the doubts in line with its roles under Article 58(7) of Regulation (EU) 2019/881, and, if necessary, carry out an investigation of the notified conformity assessment body.
3. The notifying NCCA shall provide the Commission, on request, with all relevant information regarding the competence of a notified conformity assessment body, or regarding the continued fulfilment by a notified conformity assessment body of the requirements and obligations to which it is subject.
4. The Commission shall ensure that all sensitive information it has obtained is treated confidentially.
5. On the basis of the information received in accordance with paragraph 3, the Commission may request the notifying NCCA to take any appropriate measures, including restriction, suspension or withdrawal of the notification, if necessary, in accordance with Article 4(2) of this Regulation. Where the notifying NCCA decides not to take the requested measure, it shall provide the Commission its reasoning.

Article 6

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*