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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 31 May 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: Proposal for a COUNCIL DECISION on the position to be adopted, on  
behalf of the European Union, within the EEA Joint Committee concerning  
amendments to Annex IX (Financial Services) to the EEA Agreement

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Delegations will find attached document COM(2016) 319 final.

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Encl.: COM(2016) 319 final



Brussels, 31.5.2016  
COM(2016) 319 final

2016/0161 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union,  
within the EEA Joint Committee concerning amendments to Annex IX  
(Financial Services) to the EEA Agreement**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

In order to ensure the requisite legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant EU legislation into the Agreement on European Economic Area (EEA Agreement) as soon as possible after its adoption.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The nine draft Decisions of the EEA Joint Committee (annexed to the proposed Council Decision) aim at amending Annex IX (Financial services) to the EEA Agreement in order to incorporate notably the Regulations on the European Supervisory Authorities (EU ESAs) (Regulations (EU) 1093/2010, 1094/2010 and 1095/2010) into this Agreement, but also a number of other Union acts pertaining to the financial sector. The different acts included in this first package have in common that they all give either decision-taking powers to the EU ESAs or they are linked to acts that contain such provisions. In view of the constitutional impossibility for some of the EEA EFTA States (Norway, Iceland, Liechtenstein) to accept that the EU ESAs take decisions that are binding for their competent authorities and market operators a specific solution had to be found.

The European Supervisory Authorities play a key role in the new supervisory architecture, which was put in place in 2011 as part of the comprehensive reforms in response to the financial crisis.

Incorporation of this legislative package follows the political agreement reached by the EU and EEA EFTA Ministers of Finance and Economy on 14 October 2014 at the margins of the ECOFIN meeting. In accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities and to market operators in the EEA EFTA States. The EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also vis-à-vis EEA EFTA competent authorities. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

To ensure integration of the EU ESAs expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA.

In order to ensure uniform surveillance and application of the legislation in the financial services field, representatives of the national competent authorities in the three EEA EFTA States and the EFTA Surveillance Authority shall participate fully, but without the right to vote, in the Boards of Supervisors of the EU ESAs and their preparatory bodies.

Moreover, the EU ESAs will also be able to participate in the work of the EFTA Surveillance Authority and its preparatory bodies insofar as it relates to their activities.

In case of disagreements between the EU ESAs and the EFTA Surveillance Authority, the matter may be referred to the EEA Joint Committee upon request by one of the Contracting Parties, as provided for in the EEA Agreement. Appropriate procedures for the immediate organisation of meetings of the EEA Joint Committee in urgent situations have been created.

Against this background the decision proposed herewith covers 9 draft EEA Joint Committee decisions intended to incorporate 31 EU legal acts. These 9 draft EEA Joint Committee decisions are displayed in Annexes 1 to 9 to the Council decision proposed and concern the following EU acts:

**Annex 1:**

Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board<sup>1</sup>;

**Annex 2:**

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC<sup>2</sup>, as well as Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013<sup>3</sup>;

**Annex 3:**

Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC<sup>4</sup>;

**Annex 4:**

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>5</sup>

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<sup>1</sup> OJ L 331, 15.12.2010, p. 1.

<sup>2</sup> OJ L 331, 15.12.2010, p. 12.

<sup>3</sup> OJ L 287, 29.10.2013, p. 5.

<sup>4</sup> OJ L 331, 15.12.2010, p. 48.

<sup>5</sup> OJ L 331, 15.12.2010, p. 84.

## **Annex 5:**

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010<sup>6</sup>, as well as the following five Commission acts:

- Commission Delegated Regulation (EU) No 231/2013<sup>7</sup>;
- Commission Delegated Regulation (EU) No 694/2014<sup>8</sup>;
- Commission Delegated Regulation (EU) 2015/514<sup>9</sup>;
- Commission Implementing Regulation (EU) No 447/2013<sup>10</sup>;
- Commission Implementing Regulation (EU) No 448/2013<sup>11</sup>;

## **Annex 6:**

Regulation (EU) No 236/2012 of the European Parliament and the Council of 14 March 2012 on short selling and certain aspects of credit default swaps<sup>12</sup>, as well as the following five Commission acts:

- Commission Delegated Regulation (EU) No 826/2012<sup>13</sup>;
- Commission Implementing Regulation (EU) No 827/2012<sup>14</sup>;

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<sup>6</sup> OJ L 174, 1.7.2011, p. 1.

<sup>7</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision, OJ L 83, 22.3.2013, p. 1.

<sup>8</sup> Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers, OJ L 183, 24.6.2014, p. 18.

<sup>9</sup> Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council OJ L 82, 27.3.2015, p. 5..

<sup>10</sup> Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council, OJ L 132, 16.5.2013, p. 1.

<sup>11</sup> Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council, OJ L 132, 16.5.2013, p. 3.

<sup>12</sup> OJ L 86, 24.3.2012, p. 1.

<sup>13</sup> Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares, OJ L 251, 18.9.2012, p. 1.

<sup>14</sup> Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps' OJ L 251, 18.9.2012, p. 11.

- Commission Delegated Regulation (EU) No 918/2012<sup>15</sup>;
- Commission Delegated Regulation (EU) No 919/2012<sup>16</sup>;
- Commission Delegated Regulation (EU) 2015/97<sup>17</sup>;

Annex 7:

Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>18</sup>;

### **Annex 8:**

Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies<sup>19</sup>, as well as Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies<sup>20</sup>;

### **Annex 9:**

The draft Joint Committee decision in this annex covers the following Commission acts, pertaining to credit rating agencies:

- Commission Delegated Regulation (EU) No 272/2012<sup>21</sup>;
- Commission Delegated Regulation (EU) No 446/2012<sup>22</sup>;
- Commission Delegated Regulation (EU) No 447/2012<sup>23</sup>;

<sup>15</sup> Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events, OJ L 274, 9.10.2012, p. 1.

<sup>16</sup> Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments, OJ L 274, 9.10.2012, p. 16.

<sup>17</sup> Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 correcting Delegated Regulation (EU) No 918/2012 as regards the notification of significant net short positions in sovereign debt, OJ L 16, 23.1.2015, p. 22.

<sup>18</sup> OJ L 201, 27.7.2012, p. 1.

<sup>19</sup> OJ L 145, 31.5.2011, p. 30.

<sup>20</sup> OJ L 146, 31.5.2013, p. 1.

<sup>21</sup> Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies, OJ L 90, 28.3.2012, p. 6.

<sup>22</sup> Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies, OJ L 140, 30.5.2012, p. 2.

<sup>23</sup> Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies OJ L 140, 30.5.2012, p. 14.

- Commission Delegated Regulation (EU) No 448/2012<sup>24</sup>;
- Commission Delegated Regulation (EU) No 449/2012<sup>25</sup>;
- Commission Delegated Regulation (EU) No 946/2012<sup>26</sup>;
- Commission Implementing Decision 2014/245/EU<sup>27</sup>;
- Commission Implementing Decision 2014/246/EU<sup>28</sup>;
- Commission Implementing Decision 2014/247/EU<sup>29</sup>;
- Commission Implementing Decision 2014/248/EU<sup>30</sup>;
- Commission Implementing Decision 2014/249/EU<sup>31</sup>.

There are some further 150 EU legal acts, not covered by the above mentioned draft decisions and not yet incorporated into the EEA Agreement. Such incorporation is though essential to ensuring a level playing field and effective and homogeneous application of common rules and supervision throughout the EEA. It is expected that for these acts the adjustments to be made will be merely technical which would, in accordance with Council Regulation (EC) No

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<sup>24</sup> Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority, OJ L 140, 30.5.2012, p. 17.

<sup>25</sup> Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies, OJ L 140, 30.5.2012, p. 32.

<sup>26</sup> Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is to be incorporated, OJ L 282, 16.10.2012, p. 23.

<sup>27</sup> Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 65.

<sup>28</sup> Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 68.

<sup>29</sup> Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 71.

<sup>30</sup> Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 73.

<sup>31</sup> Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 76.

2894/94, allow the Commission to define the EU's positions in the EEA Joint Committee. Work will proceed as quickly as possible also on these EU legal acts.

### **3. MAIN ELEMENTS OF THE DRAFT JOINT COMMITTEE DECISIONS**

As mentioned, the core element of the present exercise is constituted by the incorporation of the EBA (European Banking Authority), EIOPA (European Insurance and Occupational Pensions Authority) and ESMA (European Securities and Markets Authority) Regulations (No 1093/2010, 1094/2010, 1095/2010) into the EEA Agreement. The main elements of the draft Joint Committee Decisions concerning these acts, but also of those concerning the other acts to be incorporated, will be exposed hereafter, in the order underlying the presentation of the annexes.

#### **European Systemic Risk Board (ESRB) Regulation (No 1092/2010)**

As a result of the incorporation of Regulation (EU) No 1092/2010 (the ESRB Regulation) into the EEA Agreement, the competent authorities of the EEA EFTA States will be conferred the right to participate in the work of ESRB with the aim to ensure the necessary coordination of macro-prudential oversight of the internal market for financial services in the EEA. The EFTA Surveillance Authority may participate in the work of the General Board. In this context, the EEA EFTA competent authorities and the EFTA Surveillance Authority will however have no voting rights. They will cooperate closely with the ESRB and provide it with all the information necessary for the fulfilment of its tasks.

#### **EBA, EIOPA and ESMA Regulations (No 1093/2010, 1094/2010, 1095/2010, collectively also referred to as ESAs Regulations)**

The three Regulations on the European Supervisory Authorities (EBA, EIOPA, and ESMA) will provide these authorities with certain powers to take decisions that are binding for EU competent authorities and EU market operators. In view of the constitutional concerns on the part of some of the EEA EFTA States to accept that the EU ESAs take decisions that would be directly binding for their competent authorities and market operators, a specific solution had to be developed for the incorporation of the ESAs Regulations. The political agreement of October 2014 set out the principles for the incorporation, and the three draft Joint Committee decisions contain corresponding adjustments.

As a consequence, the system set-up by the draft- Joint Committee Decisions is based on the two-pillar structure underlying the administration of the EEA Agreement. Therefore, whilst decisions in the EU pillar rest with the European Supervisory Authorities, the competence to adopt decisions in the EEA EFTA pillar will be attributed to the EFTA Surveillance Authority. However, the EFTA Surveillance Authority will adopt these decisions only based on drafts prepared by the EU ESAs.

In order to promote coherence and homogeneity in the EEA, the EEA EFTA competent authorities and the EFTA Surveillance Authority shall participate in the work of the EU ESAs, but shall not have a right to vote. This includes participation in the technical and decision-making bodies of the relevant EU ESAs, such as the Board of Supervisors, but also



internal committees and panels. Conversely, the EU ESAs shall also have the right to participate in the decision-making process of the EFTA Surveillance Authority. All three draft Joint Committee Decisions provide a mechanism to solve disagreements between the EU ESAs and the EFTA Surveillance Authority. The different adjustments to the framework of the ESAs Regulations in the draft EEA Joint Committee decisions are limited to those that are necessary to implement the political agreement and create smooth processes between the EU pillar (in particular the EU ESAs) and the EFTA pillar (in particular the EFTA Surveillance Authority). The EEA EFTA competent authorities shall contribute to the budget of the EU ESAs in the same manner as EU Member States.

### **Directive 2011/61/EU on Alternative Investment Fund Managers and Regulation (EU) No 236/2012 on short selling**

This package also concerns a number of Commission acts in the areas concerned (cf. further below).

Directive 2011/61 (AIFM Directive) and Regulation (EU) No 236/2012 (Short Selling Regulation) both give direct intervention powers to ESMA. For this reason it is necessary to adjust the applicable framework and give, in line with the political agreement, these decision-taking powers to the EFTA Surveillance Authority. However, as is the case under the ESAs Regulations (as well as the CRA Regulation and EMIR, cf. next section), the EFTA Surveillance Authority could only decide on the basis of a draft prepared by the EU ESAs.

The EEA EFTA competent authorities, as well as EEA EFTA States natural or legal persons, are understood to be covered by the scope of the Directive/Regulation on the same terms and under the same conditions as EU competent authorities and EU natural or legal persons.

In order to ensure coherent supervision and homogeneous application of financial services rules throughout the EEA, ESMA and the EFTA Surveillance Authority will cooperate, exchange information and consult each other before adopting any measure that is relevant to their supervisory functions.

In several instances, the AIFM Directive provides that ESMA may act in accordance with its mediation powers under Article 19 of the ESMA Regulation (Regulation (EU) No 1095/2010) to settle disagreements between competent authorities in cross-border situations. However, under the draft Joint Committee Decision incorporating the ESMA Regulation, the power to adopt binding decisions addressed to EEA EFTA competent authorities or financial market participants is conferred on the EFTA Surveillance Authority. Therefore, the draft Joint Committee Decision regarding the AIFM Directive clarifies that the references to such powers of ESMA should be understood as referring to the powers of the EFTA Surveillance Authority.

The draft EEA Joint Committee Decision on the AIFM Directive also incorporates three Delegated Regulations and two Implementing Regulations based on the AIFM Directive and makes the necessary adjustments.

Article 28 of the Short Selling Regulation provides that ESMA may act in accordance with its intervention powers under Article 9(5) of the ESMA Regulation to temporarily prohibit or restrict short sales or similar transactions, or to require notification or public disclosure of net short positions by natural or legal persons. The power to adopt binding decisions addressed to

individual EEA EFTA financial market participants under Article 9(5) of the ESMA Regulation is to be conferred upon the EFTA Surveillance Authority in accordance with the political agreement, (cf. draft Joint Committee decision concerning the ESMA Regulation). As in the case of the ESMA Regulation, the EFTA Surveillance Authority will only be able to decide on the basis of a draft prepared by ESMA.

In order to maintain consistency in the EEA, ESMA's coordination functions under Article 27 of the Short Selling Regulation will be extended to also cover the EEA EFTA competent authorities. This includes the possibility for ESMA to issue an opinion on measures that the EEA EFTA competent authorities intend to impose or renew. Action from the EFTA Surveillance Authority under Article 28 will generally be preceded by such non-binding coordination efforts led by ESMA pursuant to Article 27. As with the AIFM Directive, the binding mediation powers given to ESMA pursuant to Article 23(4) of the Short-Selling Regulation, is as regards the EFTA pillar, conferred upon the EFTA Surveillance Authority.

In addition to incorporating the Short Selling Regulation the relevant draft Joint Committee decision also provides for incorporation of four delegated Regulations and one Implementing Regulation based on the Short Selling Regulation.

**Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) and Regulations amending Regulation (EU) No 1060/2009 on Credit Rating Agencies (Regulation (EU) No 513/2011<sup>32</sup> and Regulation (EU) No 462/2013<sup>33</sup>)**

This package also includes a number of Commission acts in the areas concerned (cf. further below).

Under both EMIR and the Credit Rating Agencies (CRA) Regulation ESMA has been given supervisory powers for trade repositories and credit-rating agencies, including the power to take decisions that apply directly to these entities. For the incorporation of these regulations into the EEA Agreement, and in accordance with the above mentioned political agreement, it is proposed that the principles applicable to the incorporation of the ESAs Regulations also apply in particular to direct supervision by ESMA of Credit Rating Agencies and Trade Repositories. The EFTA Surveillance Authority will, for EEA-EFTA CRA's and Trade repositories adopt decisions on the basis of drafts prepared by ESMA. The adjustments in the draft EEA Joint Committee Decisions follow the general structure also proposed for the ESAs Regulations, in line with the political agreement.

As regards the CRA Regulation, two EEA Joint Committee decisions are envisaged: the first decision for the two legislative texts that have to be incorporated (Regulation (EU) No 513/2011 and Regulation (EU) No 462/2013 and the second decision for a number of Delegated and Implementing Regulations. For EMIR only the legislative act (Regulation (EU) No 648/2012) will be incorporated at this stage and the level 2 acts will follow at a later stage. As at this moment no trade repositories are established in the EEA-EFTA States this does not create any problems in practice.

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<sup>32</sup> OJ L 145, 31.5.2013, p. 30.

<sup>33</sup> OJ L 146, 31.5.2013, p. 1.

The framework to be created by the Joint Committee decisions requires ESMA and the EFTA Surveillance Authority to work closely together to ensure coherent supervision and homogeneous application of financial services rules throughout the EEA. According to the draft EEA Joint Committee decisions, ESMA and the EFTA Surveillance Authority will cooperate, exchange information and consult each other before adopting any measure that is relevant to their supervisory functions. They shall ensure that all necessary information is passed on to each other in a timely manner. Both authorities are required to transmit any application, information, complaint or request that falls within the competences of the other authority. As in the ESAs Regulations, there is a procedure provided for the settlement of disagreements.

Binding measures to be taken by ESMA for EU CRAs and trade repositories will, for CRAs and trade repositories established in the EEA-EFTA States, be taken by the EFTA Surveillance Authority. These measures are, for instance, the decision to register, or to refuse registration, the decision to withdraw registration, requests for information, the decision to subject a person to investigation, the decision to take a supervisory measure, decisions to impose a fine or a periodic penalty payment, and, for CRAs, the decision to extend the period during which credit ratings may still be used for regulatory purposes. Although in legal terms the EFTA Surveillance Authority is the supervisor and will take the binding measures, all the practical work regarding registration and the daily supervision of CRAs and Trade repositories established in the EEA-EFTA States shall be carried out by ESMA. The measures can only be adopted by the EFTA Surveillance Authority on the basis of a draft prepared by ESMA. ESMA can prepare such a draft on its own initiative or on the basis of a request of the EFTA Surveillance Authority. A decision of the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of that draft. As regards the fees to be collected, the EFTA Surveillance Authority shall charge, as the supervisor of EEA EFTA States CRA's and Trade repositories, supervision and registration fees to these entities. However, as all the practical work for the registration process and of the daily supervision of CRAs shall be performed by ESMA the EFTA Surveillance Authority shall without undue delay pass the amounts collected to ESMA. The amounts of the fees shall be calculated on the same basis as corresponding fees charged to CRAs established in the EU.

The second draft Joint Committee decision regarding the CRAs Regulation will incorporate six Commission delegated acts and five Commission implementing acts.

#### **4. PROCEDURE**

Since the draft Joint Committee decisions attached contain changes to the legislation to be extended to the EEA EFTA States which are more than mere technical adjustments, this case is subject to Article 1(3)(a) of Council Regulation (EC) No 2894/94<sup>34</sup>. Accordingly, the Council establishes the position to be adopted on the Union's behalf within the EEA Joint Committee, on a proposal from the Commission. To this end, the Commission submits the present proposal. The Commission would hope to be able to present the EU's position in the EEA Joint Committee at the earliest possible opportunity.

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<sup>34</sup> Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, OJ L 305, 30.11.1994, p. 6.

## **5. OTHER INFORMATION**

Since this first package would, according to Norwegian and Icelandic constitutional law, lead to a transfer of sovereignty to the EFTA Surveillance Authority, it will have to be agreed by the Norwegian Parliament (with a  $\frac{3}{4}$  majority) and the Icelandic Parliament.

Liechtenstein has stated that it has already implemented the relevant EU legislation into its national law and is ready to apply it.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,  
within the EEA Joint Committee concerning amendments to Annex IX  
(Financial Services) to the EEA Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area<sup>35</sup>, and in particular Article 1(3)(a) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area<sup>36</sup> ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 and, in particular, Article 102 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IX to the EEA Agreement which contains provisions on financial services.
- (3) The following acts concern financial services and are to be incorporated into the EEA Agreement:
  - Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>37</sup>,
  - Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>38</sup>,
  - Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>39</sup>,

<sup>35</sup> OJ L 305, 30.11.1994, p. 6.

<sup>36</sup> OJ L 1, 3.1.1994, p. 3.

<sup>37</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

<sup>38</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>39</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions

- Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>40</sup>,
- Regulation (EU) No 1022/2013 of the European Parliament and of the Council<sup>41</sup>,
- Directive 2011/61/EU of the European Parliament and of the Council<sup>42</sup>,
- Commission Delegated Regulation (EU) No 231/2013<sup>43</sup>,
- Commission Implementing Regulation (EU) No 447/2013<sup>44</sup>,
- Commission Implementing Regulation (EU) No 448/2013<sup>45</sup>,
- Commission Delegated Regulation (EU) No 694/2014<sup>46</sup>,
- Commission Delegated Regulation (EU) 2015/514<sup>47</sup>,
- Regulation (EU) No 236/2012 of the European Parliament and of the Council<sup>48</sup>,
- Commission Delegated Regulation (EU) No 826/2012<sup>49</sup>,

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Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>40</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>41</sup> Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (OJ L 287, 29.10.2013, p. 5).

<sup>42</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

<sup>43</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

<sup>44</sup> Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 1).

<sup>45</sup> Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 3).

<sup>46</sup> Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers (OJ L 183, 24.6.2014, p. 18).

<sup>47</sup> Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council (OJ L 82, 27.3.2015, p. 5).

<sup>48</sup> Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

<sup>49</sup> Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares (OJ L 251, 18.9.2012, p. 1).

- Commission Implementing Regulation (EU) No 827/2012<sup>50</sup>,
- Commission Delegated Regulation (EU) No 918/2012<sup>51</sup>,
- Commission Delegated Regulation (EU) No 919/2012<sup>52</sup>,
- Commission Delegated Regulation (EU) 2015/97<sup>53</sup>,
- Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>54</sup>,
- Regulation (EU) No 513/2011 of the European Parliament and of the Council<sup>55</sup>,
- Regulation (EU) No 462/2013 of the European Parliament and of the Council<sup>56</sup>,
- Commission Delegated Regulation (EU) No 272/2012<sup>57</sup>,
- Commission Delegated Regulation (EU) No 446/2012<sup>58</sup>,
- Commission Delegated Regulation (EU) No 447/2012<sup>59</sup>,
- Commission Delegated Regulation (EU) No 448/2012<sup>60</sup>,

<sup>50</sup> Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (OJ L 251, 18.9.2012, p. 11).

<sup>51</sup> Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (OJ L 274, 9.10.2012, p. 1).

<sup>52</sup> Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments (OJ L 274, 9.10.2012, p. 16).

<sup>53</sup> Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 correcting Delegated Regulation (EU) No 918/2012 as regards the notification of significant net short positions in sovereign debt (OJ L 16, 23.1.2015, p. 22).

<sup>54</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

<sup>55</sup> Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 145, 31.5.2011, p. 30).

<sup>56</sup> Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 146, 31.5.2013, p. 1).

<sup>57</sup> Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (OJ L 90, 28.3.2012, p. 6).

<sup>58</sup> Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies (OJ L 140, 30.5.2012, p. 2).

<sup>59</sup> Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies (OJ L 140, 30.5.2012, p. 14).

- Commission Delegated Regulation (EU) No 449/2012<sup>61</sup>,
- Commission Delegated Regulation (EU) No 946/2012<sup>62</sup>,
- Commission Implementing Decision 2014/245/EU<sup>63</sup>,
- Commission Implementing Decision 2014/246/EU<sup>64</sup>,
- Commission Implementing Decision 2014/247/EU<sup>65</sup>,
- Commission Implementing Decision 2014/248/EU<sup>66</sup>,
- and Commission Implementing Decision 2014/249/EU<sup>67</sup>.

- (4) Annex IX to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decisions,

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<sup>60</sup> Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority (OJ L 140, 30.5.2012, p. 17).

<sup>61</sup> Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies (OJ L 140, 30.5.2012, p. 32).

<sup>62</sup> Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is to be incorporated (OJ L 282, 16.10.2012, p. 23).

<sup>63</sup> Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 65).

<sup>64</sup> Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 68).

<sup>65</sup> Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 71).

<sup>66</sup> Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 73).

<sup>67</sup> Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 76).



HAS ADOPTED THIS DECISION:

*Article 1*

The position to be adopted on the behalf of the Union within the EEA Joint Committee on the proposed amendments to Annex IX (Financial Services) to the EEA Agreement shall be based on the draft decisions of the EEA Joint Committee attached to this Decision.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*