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PROPOSAL

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

No. Cion doc.: COM(2016) 319 final - ANNEX 4

Subject: ANNEX to the proposal for a Council Decision on the position to be
adopted, on behalf of the European Union, within the EEA Joint Committee
concerning an amendment to Annex IX (Financial Services) to the EEA
Agreement

Delegations will find attached document COM(2016) 319 final - ANNEX 4.

Encl.: COM(2016) 319 final - ANNEX 4



Brussels, 31.5.2016
COM(2016) 319 final

ANNEX 4

ANNEX

to the

proposal for a Council Decision

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

ANNEX 4

DECISION OF THE EEA JOINT COMMITTEE

No

of

amending Annex IX (Financial Services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Article 98 thereof,

Whereas:

- (1) 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/EC¹ is to be incorporated into the EEA Agreement.
- (2) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions² of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.
- (3) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. 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 and market operators. 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.
- (4) 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. This will preserve key advantages of supervision by a single authority.

¹ OJ L 331, 15.12.2010, p. 84.

² Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

- (5) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.
- (6) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31h (Regulation (EU) No 1094/2010 of the European Parliament and of the Council) of Annex IX to the EEA Agreement:

- ‘31i. **32010 R 1095**: 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).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Securities and Markets Authority), hereinafter referred to as “the Authority”, its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other’s work as provided for in this Agreement.

- (b) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms “Member State(s)” and “competent authorities” shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities, respectively.
- (c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial market participants. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions

adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial market participants.

- (d) Unless otherwise provided for in this Agreement, the Authority and the EFTA Surveillance Authority shall cooperate, exchange information and consult each other for the purposes of the Regulation, in particular prior to taking any action.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

- (e) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement.
- (f) As regards the EFTA States, Article 1(4) shall read as follows:

“The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.”

- (g) In Article 9(5):

- (i) as regards the EFTA States, in the first subparagraph, the words “The Authority” shall read “The EFTA Surveillance Authority”;
- (ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”.

- (h) In Article 16(4), the words “, the Standing Committee of the EFTA States and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (i) In Article 17:
 - (i) the words “Union law” shall read “the EEA Agreement”;
 - (ii) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;
 - (iii) in paragraph 2, the words “, the Standing Committee of the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;
 - (iv) the following subparagraph shall be added in paragraph 2:

“Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.”;
 - (v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

“The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.”;

- (vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

“4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority’s recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority’s formal opinion shall take into account the Authority’s recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.”;

- (vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, and the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (ix) as regards the EFTA States, paragraph 8 shall read as follows:

“8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial market participants in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.”.

- (j) In Article 18:

- (i) as regards the EFTA States, in paragraphs 3 and 4, the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (ii) the following subparagraph shall be added in paragraphs 3 and 4:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iii) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.

- (k) In Article 19:

- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;

- (ii) in paragraph 3, the words “in the EU Member States” shall be inserted after the words “with binding effects for the competent authorities concerned”;

- (iii) the following subparagraphs shall be added in paragraph 3:

“Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iv) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, the words “the Authority” shall read “the EFTA Surveillance Authority” and the words “Union law” shall read “the EEA Agreement”;

(v) in paragraph 4, the following subparagraph shall be added:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”.

(l) The following subparagraphs shall be added in Article 20:

“Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Banking Authority) and/or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.”

(m) In Article 21(4), the words “, or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “The Authority”.

(n) In Articles 22(4) and 34(1), the words “, the EFTA Surveillance Authority or the Standing Committee of the EFTA States,” shall be inserted after the words “the European Parliament, the Council or the Commission”.

(o) In Article 35(5), the words “, to the national central bank” shall not apply to Liechtenstein.

(p) In Article 38, as regards the EFTA States:

(i) the words “the Authority”, “the Authority and the Commission”, “the Authority, the Commission” and “the Commission and the Authority” shall read “the EFTA Surveillance Authority”;

(ii) the words “the Council” shall read “the Standing Committee of the EFTA States”;

(iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the

Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;

- (v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;

- (vi) the following paragraph shall be added:

“6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”.

- (q) In Article 39:

- (i) the following subparagraph shall be added in paragraph 1:

“When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken, to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.”;

- (ii) the following subparagraphs shall be added in paragraph 4:

“Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.”;

- (iii) as regards the EFTA States, in paragraph 5, the words “or the EFTA Surveillance Authority, as the case may be” shall be inserted after the words “the Authority”.
- (r) In Article 40(1):
- (i) in point (b), the following shall be inserted after the words “Member State”:

“and, without the right to vote, the head of the national public authority competent for the supervision of financial market participants in each EFTA State,”;
 - (ii) in point (e), the words “and of the EFTA Surveillance Authority” shall be inserted after the word “Authorities”.
- (s) In Article 43:
- (i) in paragraph 2, the words “, prepare drafts for the EFTA Surveillance Authority,” shall be inserted after the word “decisions”;
 - (ii) in paragraphs 4 and 6, the words “, the EFTA Surveillance Authority, the Standing Committee of the EFTA States,” shall be inserted after the words “the Council”.
- (t) In Article 44:
- (i) the following subparagraph shall be added in paragraph 1:

“The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.”;
 - (ii) in paragraph 4, the words “as well as the representative of the EFTA Surveillance Authority” shall be inserted after the words “the Executive Director”;
 - (iii) the following subparagraph shall be added in paragraph 4:

“EFTA States’ members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial market participants.”.
- (u) In Article 57(2), the following words shall be inserted after the words “Member State”:

“as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.”

- (v) The following subparagraph shall be added in Article 60(4):

“If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20, as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.”

- (w) The following subparagraphs shall be added in Article 62(1)(a):

“The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial market participants under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7”

- (x) The following shall be added in Article 67:

“The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.”

- (y) The following paragraph shall be added in Article 68:

“5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.”

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”

- (z) The following paragraph shall be added in Article 72:

“4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament,

Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.”

Article 2

The texts of Regulation (EU) No 1095/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

The Contracting Parties shall review the framework established pursuant to this Decision and Decisions No .../... [ESRB], No .../... [EBA] and No .../... [EIOPA] at the latest by the end of the year [five years after entry into force of this Decision] to ensure that it will continue to ensure the effective and homogeneous application of common rules and supervision throughout the EEA.

Article 4

This Decision shall enter into force on ..., or on the day following the last notification under Article 103(1) of the EEA Agreement, whichever is the later*.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, .

*For the EEA Joint Committee
The President*

*The Secretaries
to the EEA Joint Committee*

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Joint Declaration by the Contracting Parties
to Decision No [...] incorporating Regulation (EU) No 1095/2010 into the
EEA Agreement

[for adoption with the Decision and for publication in the OJ]

According to Article 1(5) of Regulation (EU) No 1095/2010, the European Supervisory Authority (European Securities and Markets Authority), hereinafter referred to as “the Authority”, will act independently and objectively and in the interests of the Union alone. Following the incorporation of this Regulation into the EEA Agreement, the competent authorities of the EFTA States will, but for the right to vote, have the same rights as competent authorities of EU Member States in the work of the Authority.

Therefore, and in full respect of the Authority’s independence, the Contracting Parties to the EEA Agreement share the understanding that, when it acts pursuant to the provisions of the EEA Agreement, the Authority will act in the common interest of all the Contracting Parties to the EEA Agreement.