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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 March 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 83 final
Subject:	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 XXII (Company Law) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement

Delegations will find attached document COM(2018) 83 final.

Encl.: COM(2018) 83 final



EUROPEAN
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Brussels, 2.3.2018
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2018/0039 (NLE)

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 XXII
(Company Law) and Protocol 37 (containing the list provided for
in Article 101) to the EEA Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex XXII (Company law) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement in order to incorporate Regulation (EU) No 537/2014 on specific requirements regarding statutory audit of public-interest entities¹ and Directive 2014/56/EU on statutory audits of annual accounts and consolidated accounts².

The adaptations appearing in the draft of the annexed Decision of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

- **Consistency with existing policy provisions in the policy area**

The annexed draft EEA Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

- **Consistency with other Union policies**

The extension of the EU acquis to the EEA EFTA States, through their incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legislation to be incorporated into the EEA Agreement is based on Article 50 and 114 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94³ concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

¹ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, OJ L 158, 27.5.2014, p. 77.

² Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, OJ L 158, 27.5.2014, p. 196.

³ OJ L 305, 30.11.1994, p. 6–8

The EEAS in cooperation with the Commission submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The EEAS would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the subsidiarity principle for the following reason.

The objective of this proposal, namely to ensure the homogeneity of the Internal Market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

The process of incorporation of the EU acquis into the EEA Agreement is conducted in conformity with the Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area which confirms the approach taken.

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Not applicable

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

Not applicable

4. BUDGETARY IMPLICATIONS

There are no budgetary implications expected as a result of the incorporation of Regulation (EU) No 537/2014 on specific requirements regarding statutory audit of public-interest entities and Directive 2014/56/EU on statutory audits of annual accounts and consolidated accounts into the EEA Agreement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

References to ‘Union legislation’ contained in Regulation (EU) No 537/2014

In line with Article 7 EEA, only acts that have been incorporated into the EEA Agreement are binding upon the EEA EFTA States. Therefore, adaptation (a) to Regulation (EU) No 537/2014 ensures that provisions reserving applicable Union legislation reflect that, in an EEA context, the legal framework of reference is the EEA Agreement and the acts incorporated therein.

Articles 41 and 44 of Regulation (EU) No 537/2014

Article 41 of the Regulation introduces transitional periods regarding the entry into force of the obligation to rotate statutory auditors and audit firms and to organise selection procedures for the choice of such auditors. As mentioned in the preamble to the Regulation, this transitional period is important “in order to ensure legal certainty and the smooth transition to the regime introduced by” the Regulation. These considerations apply equally to the EFTA States. However, since the Regulation will be incorporated into the EEA Agreement later than its entry into force in the EU, these transitional periods must be adjusted so as to ensure that undertakings established in the EFTA States benefit from the same adjustment period. Adaptation (b) therefore adjusts the dates in Article 41 to relate to the entry into force of the Joint Committee Decision incorporating the Regulation into the EEA Agreement.

Article 44 of the Regulation delays by one year the entry into force of the prohibition of clauses restricting the choice of auditor by shareholders. For the reasons exposed above, mutatis mutandis, adaptation (c) therefore adjusts this date to relate to the entry into force of the present Joint Committee Decision.

Article 30c(3) of Directive 2006/43/EC

In line with Article 7 EEA, only acts that have been incorporated into the EEA Agreement are binding upon the EEA EFTA States. The Charter of Fundamental Rights of the European Union is an instrument of the EU's primary law which is not binding upon non-Member States and is not relevant in an EEA context. Therefore, adaptation (a) to Directive 2014/56/EU disapplies the reference to the Charter contained in Article 30c(3).

However, the obligation made upon competent authorities that the publication of sanctions respects fundamental rights, and in particular the right to respect for private and family life and the right to the protection of personal data, remains as such applicable in the EEA.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 and 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 Area⁴, and in particular Article 1(3) thereof

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁵ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, amend Annex XXII (Company law) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement.
- (3) Regulation (EU) No 537/2014 of the European Parliament and of the Council⁶ is to be incorporated into the EEA Agreement.
- (4) Directive 2014/56/EU of the European Parliament and of the Council⁷ is to be incorporated into the EEA Agreement.
- (5) For the EEA Agreement to function well, Protocol 37 to the EEA Agreement is to be extended to include the Committee of European Auditing Oversight Bodies (CEAOB) set up by Regulation (EU) No 537/2014, and Annex XXII to the EEA Agreement is to be amended in order to specify the procedures for association with this Committee.

⁴ OJ L 305, 30.11.1994, p. 6.

⁵ OJ L 1, 3.1.1994, p. 3.

⁶ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, OJ L 158, 27.5.2014, p. 77.

⁷ Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, OJ L 158, 27.5.2014, p. 196.

- (6) Annex XXII and Protocol 37 to the EEA Agreement should therefore be amended accordingly.
- (7) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex XXII (Company law) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels,

*For the Council
The President*