



Brussels, 12 October 2018
(OR. en)

13113/18

Interinstitutional File:
2018/0353(NLE)

AELE 54
EEE 43
N 55
ISL 41
FL 41
MI 715
EF 252
ECOFIN 916
DROIPEN 155
CRIMORG 130

PROPOSAL

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

date of receipt: 12 October 2018

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

No. Cion doc.: COM(2018) 683 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 IX (Financial Services) to the EEA Agreement

Delegations will find attached document COM(2018) 683 final.

Encl.: COM(2018) 683 final



Brussels, 12.10.2018
COM(2018) 683 final

2018/0353 (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 IX (Financial Services) to the EEA Agreement**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The two draft Decisions of the EEA Joint Committee (annexed to the proposed Council Decision) aim to amend Annex IX (Financial Services) to the EEA Agreement in order to incorporate the Transfer of Funds Regulation¹ and the Fourth Anti-Money Laundering Directive² including its supplementing Commission Delegated Regulation³.

The adaptations appearing in the drafts of the annexed Decisions 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 Decisions extend 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 114 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94⁴ concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position

¹ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006.

² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

³ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies.

⁴ OJ L 305, 30.11.1994, p. 6–8

to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The EEAS with the Commission services submit the draft Decisions of the EEA Joint Committee for adoption by the Council as the Union's position. The EEAS would hope to be able to present them 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

Not applicable

4. BUDGETARY IMPLICATIONS

There are no budgetary implications expected as a result of incorporation of the above mentioned acts into the EEA Agreement.

5. OTHER ELEMENTS

Not applicable

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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**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular 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 Area⁵, and in particular Article 1(3) thereof

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁶ ('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 IX to the EEA Agreement, which contains provisions on financial services.
- (3) Regulation (EU) 2015/847 of the European Parliament and of the Council⁷ is to be incorporated into the EEA Agreement.
- (4) Directive (EU) 2015/849 of the European Parliament and of the Council⁸ is to be incorporated into the EEA Agreement.

⁵ OJ L 305, 30.11.1994, p. 6.

⁶ OJ L 1, 3.1.1994, p. 3.

⁷ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, OJ L 141, 5.6.2015, p. 1–18.

⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73.

- (5) Commission Delegated Regulation (EU) 2016/1675⁹ is to be incorporated into the EEA Agreement.
- (6) Annex IX 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 decisions,

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 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 date of its adoption.

Done at Brussels,

*For the Council
The President*

⁹ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, OJ L 254, 20.9.2016, p. 1.