



Council of the
European Union

052473/EU XXVI. GP
Eingelangt am 01/02/19

Brussels, 1 February 2019
(OR. en)

Interinstitutional File:
2019/0022(NLE)

6000/19
ADD 1

AELE 12
EEE 5
N 6
ISL 5
FL 5
MI 98
EF 30
ECOFIN 99

PROPOSAL

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

date of receipt: 31 January 2019

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

No. Cion doc.: COM(2019) 32 final - ANNEX 1

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 (Markets in Financial Instruments Regulation (MiFIR)
and Directive MiFID II)

Delegations will find attached document COM(2019) 32 final - ANNEX 1.

Encl.: COM(2019) 32 final - ANNEX 1

Brussels, 31.1.2019
COM(2019) 32 final

ANNEX

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**

(Markets in Financial Instruments Regulation (MiFIR) and Directive MiFID II)

ANNEX

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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012¹, as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54, is to be incorporated into the EEA Agreement.
- (2) Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories² is to be incorporated into the EEA Agreement.
- (3) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU³, as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116, is to be incorporated into the EEA Agreement.
- (4) Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016 amending Directive 2014/65/EU on markets in financial instruments⁴ is to be incorporated into the EEA Agreement.
- (5) Directive 2014/65/EU repeals Directive 2004/39/EC of the European Parliament and of the Council⁵, which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.

¹ OJ L 173, 12.6.2014, p. 84.

² OJ L 175, 30.6.2016, p. 1.

³ OJ L 173, 12.6.2014, p. 349.

⁴ OJ L 175, 30.6.2016, p. 8.

⁵ OJ L 145, 30.4.2004, p. 1.

- (6) Regulation (EU) No 600/2014 of the European Parliament and of the Council specifies cases in which the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) may temporarily prohibit or restrict certain financial activities, and lays down conditions thereto, in accordance with Article 9(5) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁶ and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁷, respectively. For the purposes of the EEA Agreement, these powers are to be exercised by the EFTA Surveillance Authority as regards the EFTA States, in accordance with points 31g and 31i of Annex IX to the EEA Agreement and under the conditions prescribed therein. To ensure integration of the expertise of EBA and ESMA in the process and consistency between the two pillars of the EEA, such decisions of the EFTA Surveillance Authority will be adopted on the basis of drafts prepared by EBA or ESMA, as the case may be. This will preserve key advantages of supervision by a single authority. The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in the conclusions⁸ of the EU and EEA EFTA Ministers of Finance and Economy of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement.
- (7) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. The following is added in point 13b (Directive 2002/92/EC of the European Parliament and of the Council):

‘, as amended by:

- **32014 L 0065:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (OJ L 173, 12.6.2014, p. 349), as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116.’

2. The text of point 31ba (Directive 2004/39/EC of the European Parliament and of the Council) is replaced by the following:

‘**32014 L 0065:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116, as amended by:

- **32016 L 1034:** Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016 (OJ L 175, 30.6.2016, p. 8).

⁶ OJ L 331, 15.12.2010, p. 12.

⁷ OJ L 331, 15.12.2010, p. 84.

⁸ Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

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

- (a) 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 Directive, the EFTA States and their competent authorities, respectively.
- (b) References to “members of the ESCB” shall be understood to include, in addition to their meaning in the Directive, the national central banks of the EFTA States.
- (c) References to other acts in the Directive shall be considered relevant to the extent and in the form that those acts are incorporated into the Agreement.
- (d) In Article 3(2), as regards the EFTA States, the words “2 July 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]” and the words “3 July 2019” shall read “five years thereafter”.
- (e) In Article 16(11), as regards the EFTA States, the words “2 July 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]”.
- (f) In Article 41(2), the word “Union” shall be replaced by the word “EEA”.
- (g) In Article 57:
 - (i) in the second subparagraph of paragraph 5, the words “it shall take action” shall be replaced by the words “ESMA or, as the case may be, the EFTA Surveillance Authority shall take action”;
 - (ii) in paragraph 6, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (h) In points (f) and (g) of Article 70(6), as regards the EFTA States, the words “2 July 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]”.
- (i) In Article 79:
 - (i) in the second subparagraph of paragraph 1, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
 - (ii) in the fifth subparagraph of paragraph 1, the words “, the EFTA Surveillance Authority” shall be inserted after the words “the Commission, ESMA”.
- (j) In Articles 81(5), 82(2) and 87(1), the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

- (k) In Article 86, the words “ESMA, which” shall be replaced by the words “ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority”.
- (l) In Article 95(1), as regards the EFTA States, the words “3 January 2018” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]”.

3. The text of point 31baa (deleted) is replaced by the following:

‘32014 R 0600: Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84), as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54, as amended by:

- **32016 R 1033:** Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 (OJ L 175, 30.6.2016, p. 1).

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

- (a) 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.
- (b) References to members of the ESCB shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States.
- (c) Unless otherwise provided for in this Agreement, the European Banking Authority (EBA) or the European Securities and Markets Authority (ESMA), as the case may be, 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.
- (d) References to other acts in the Regulation shall be considered relevant to the extent and in the form that those acts are incorporated into the Agreement.
- (e) References to the powers of ESMA under Article 19 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council in the Regulation shall be understood as referring, in the cases provided for in and in accordance with point 31i of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
- (f) In point (e) of Article 1(1):
 - (i) as regards the EFTA States, the words “competent authorities, ESMA and EBA” shall read “competent authorities and the EFTA Surveillance Authority”;

- (ii) the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “powers of ESMA”.
- (g) In Article 4:
 - (i) in paragraph 4, the words “and to the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;
 - (ii) in paragraph 7, the words “or, as regards waivers granted by competent authorities of the EFTA States, before the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]” shall be inserted after the words “3 January 2018”.
- (h) In Articles 7(1), 9(2), 11(1) and 19(1), the words “and to the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (i) In Article 36(5):
 - (i) in the first and second sentences, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”;
 - (ii) the words “and shall include in the list all notifications received by the EFTA Surveillance Authority” shall be inserted after the words “ESMA shall publish a list of all notifications that it receives”.
- (j) In Article 37(2):
 - (i) as regards the EFTA States, the words “3 January 2018” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision]”;
 - (ii) the words “Article 101 and 102 TFEU” shall be replaced by the words “Articles 53 and 54 of the EEA Agreement”.
- (k) In Article 40:
 - (i) as regards the EFTA States, in paragraphs 1 to 4, 6 and 7, the word “ESMA” shall read “the EFTA Surveillance Authority”;
 - (ii) as regards the EFTA States, in paragraph 2, the words “Union law” shall read “the EEA Agreement”;
 - (iii) in paragraph 3, the words “after consulting the public bodies” shall be replaced by the words “after consultation by ESMA of the public bodies”;
 - (iv) in paragraph 3, the words “without issuing the opinion” shall be replaced by the words “without ESMA issuing the opinion”;
 - (v) in paragraph 5, the words “any decision to take any action” shall be replaced by the words “each of its decisions to take action”;

- (vi) in paragraph 5, the words “. The EFTA Surveillance Authority shall publish on its website notice of each of its own decisions to take any action under this Article. A reference to the publication of the notice by the EFTA Surveillance Authority shall be posted on ESMA's website” shall be inserted after the words “this Article”.
- (l) In Article 41:
 - (i) as regards the EFTA States, in paragraphs 1 to 4, 6 and 7, the word “EBA” shall read “the EFTA Surveillance Authority”;
 - (ii) as regards the EFTA States, in paragraph 2, the words “Union law” shall read “the EEA Agreement”;
 - (iii) in paragraph 3, the words “without issuing the opinion” shall be replaced by the words “without EBA issuing the opinion”;
 - (iv) in paragraph 5, the words “any decision to take any action” shall be replaced by the words “each of its decisions to take action”;
 - (v) in paragraph 5, the words “. The EFTA Surveillance Authority shall publish on its website notice of each of its own decisions to take any action under this Article. A reference to the publication of the notice by the EFTA Surveillance Authority shall be posted on EBA's website” shall be inserted after the words “this Article”.
 - (m) In Article 45:
 - (i) in the paragraph 1, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
 - (ii) in paragraphs 2, 4, 5, 8 and 9 and in the first subparagraph of paragraph 3, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
 - (iii) in the second and third subparagraphs of paragraph 3, the words “or, as the case may be, preparing drafts for the EFTA Surveillance Authority,” shall be inserted after the words “before taking any measure”;
 - (iv) in paragraph 6, the words “any decision” shall read “each of its decisions”;
 - (v) in paragraph 6, the words “. The EFTA Surveillance Authority shall publish on its website notice of each of its own decisions to impose or renew any measure referred to in paragraph 1(c). A reference to the publication of the notice by the EFTA Surveillance Authority shall be posted on ESMA's website” shall be inserted after the words “paragraph 1(c)”;
 - (vi) in paragraph 7, the words “on the ESMA website or, as regards measures taken by the EFTA Surveillance Authority, when the notice is published

on the website of the EFTA Surveillance Authority,” shall be inserted after the words “when the notice is published”.’

4. The following indent is added in point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

‘ - **32014 R 0600**: Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 (OJ L 173, 12.6.2014, p. 84), as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54.’

Article 2

The texts of Regulations (EU) No 600/2014, as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54, and (EU) 2016/1033 and Directives 2014/65/EU, as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116, and (EU) 2016/1034 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

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

Article 4

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 Directive 2014/65/EU into the EEA Agreement
[for adoption with the Decision and for publication in the OJ]**

The Contracting Parties share the understanding that the incorporation into the EEA Agreement of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU is without prejudice to national rules of general application concerning the screening for security or public order of foreign direct investment.