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Subject: COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning the amendment of Protocol 31 on cooperation in specific fields outside the four freedoms and Protocol 32 on financial modalities for implementation of Article 82, annexed to the EEA Agreement (InvestEU)

COUNCIL DECISION (EU) 2022/...

of ...

**on the position to be adopted, on behalf of the European Union,
within the EEA Joint Committee concerning the amendment of Protocol 31
on cooperation in specific fields outside the four freedoms and Protocol 32
on financial modalities for implementation of
Article 82, annexed to the EEA Agreement
(InvestEU)**

(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 173 and Article 175, third paragraph, in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area¹, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 305, 30.11.1994, p. 6.

Whereas:

- (1) The Agreement on the European Economic Area¹ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee established by the EEA Agreement (the 'EEA Joint Committee') may decide to amend, inter alia, Protocol 31 on cooperation in specific fields outside the four freedoms ('Protocol 31') and Protocol 32 on financial modalities for implementation of Article 82 ('Protocol 32'), annexed to the EEA Agreement.
- (3) Regulation (EU) 2021/523 of the European Parliament and of the Council² is to be incorporated into the EEA Agreement.
- (4) Protocol 31 and Protocol 32 should therefore be amended accordingly.
- (5) The position of the Union in the EEA Joint Committee should therefore be based on the attached draft Decision of the EEA Joint Committee,

HAS ADOPTED THIS DECISION:

¹ OJ L 1, 3.1.1994, p. 3.

² Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).

Article 1

The position to be adopted on the Union's behalf within the EEA Joint Committee concerning the amendment of Protocol 31 on cooperation in specific fields outside the four freedoms and Protocol 32 on financial modalities for implementation of Article 82, annexed 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

DRAFT

DECISION OF THE EEA JOINT COMMITTEE

No [...]

of [...]

**amending Protocol 31 (cooperation in specific fields outside the four freedoms) and
Protocol 32 (financial modalities for implementation of Article 82) to the EEA Agreement**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017¹.
- (2) Pursuant to Article 5 of Regulation (EU) 2021/523, contributions to the EU guarantee from the EFTA States are allowed, for the purpose of participation in certain financial products under the EU compartment of the InvestEU Fund. The EFTA States' contributions to the provisioning of the EU guarantee may be accompanied by a back-to-back-guarantee covering the respective contingent liability in relation to the EU guarantee. Alternatively, they may also provide the full contribution to the InvestEU Fund in cash.
- (3) The conditions for the participation of EFTA States and their institutions, undertakings, organisations and nationals in programmes of the European Union are set out in the EEA Agreement and in particular in Article 81 thereof.

¹ OJ L 107, 26.3.2021, p. 30.

- (4) Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis¹ allocates additional external assigned revenue to the InvestEU Programme established by Regulation (EU) 2021/523. It is appropriate to clarify in Protocol 32 on financial modalities for the implementation of Article 82 of the EEA Agreement that, for the purpose of calculating the EFTA States' financial contributions to the InvestEU Programme, the basis for calculation should be increased by appropriations corresponding to external assigned revenue under Article 3(1) of Council Regulation (EU) 2020/2094 in relation to their participation in that programme.
- (5) Protocols 31 and 32 to the EEA Agreement should therefore be amended accordingly, in order to allow for this extended cooperation to take place from 1 January 2022,

HAS ADOPTED THIS DECISION:

¹ OJ L 433I, 22.12.2020, p. 23.

Article 1

The following Article shall be added after Article 19 (Reduction of economic and social disparities) of Protocol 31 to the EEA Agreement:

‘Article 20

Improving the competitiveness and socio-economic convergence and cohesion under the InvestEU Programme

1. The EFTA States shall, as from 1 January 2022, participate in the activities which may result from the following Union act:
 - **32021 R 0523**: Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).
2. The EFTA States shall not participate in the InvestEU Advisory Hub.
3. The EFTA States may choose to participate in one or more financial products under the EU compartment of the InvestEU Fund. The contribution of the EFTA States shall be based on the risk profile of the financial products in which they choose to participate.
The contribution from EFTA States shall increase the EU guarantee.

4. For the purpose of calculating the financial contribution of the EFTA States to the InvestEU Fund, the proportionality factor as stipulated in Article 82(1) of the EEA Agreement for budget lines shall not apply. In accordance with Article 8 of Protocol 32, the EFTA States shall enter into contribution agreements with the EU represented by the Commission. The contribution agreements shall establish the amounts of the EFTA States' financial contribution to the EU guarantee, lay down terms and conditions for the use of this contribution, establish the frequency and amounts of the payment of the contribution and establish rules for the reimbursement of unused funds and revenues to the EFTA States.
5. When the EFTA States' contribution to the EU guarantee is not providing provisioning in cash in full, i.e. the provisioning is set at less than 100 %, the EFTA States shall commit to cover the respective contingent liability through an irrevocable, unconditional and on-demand back-to-back-guarantee. The back-to-back guarantee shall be provided concurrently with the signature of a contribution agreement.
6. Liechtenstein shall be exempted from the participation in, and the financial contribution to, this programme.'

Article 2

The text of Article 1(10) of Protocol 32 to the EEA Agreement is replaced by the following:

- ‘10. For the purpose of calculating the operational contribution pursuant to Article 82(a) and (b) of the Agreement, the commitment and payment appropriations entered in the European Union budget definitively adopted for the applicable years for financing the Horizon Europe Programme (established by Regulation (EU) 2021/695 of the European Parliament and of the Council), the InvestEU Programme (established by Regulation (EU) 2021/523 of the European Parliament and of the Council) and the Union Civil Protection Mechanism (governed by Decision No 1313/2013/EU of the European Parliament and of the Council) shall be increased by the appropriations corresponding to external assigned revenue allocated to those activities under Article 3(1) of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis¹.’

¹ OJ L 433I, 22.12.2020, p. 23.

Article 3

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

It shall apply from 1 January 2022.

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.]