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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Draft DECISION OF THE EEA JOINT COMMITTEE amending Annex IX
(Financial services) to the EEA Agreement

DRAFT

DECISION No .../...
OF THE EEA JOINT COMMITTEE

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) Commission Delegated Regulation (EU) 2022/804 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying rules of procedure for measures applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators¹ is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2022/805 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying fees applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators² is to be incorporated into the EEA Agreement.
- (3) Commission Delegated Regulation (EU) 2024/1705 of 11 March 2024 amending Delegated Regulation (EU) 2022/805 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to certain benchmark administrators³ is to be incorporated into the EEA Agreement.
- (4) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

¹ OJ L 145, 24.5.2022, p. 7.

² OJ L 145, 24.5.2022, p. 14.

³ OJ L, 2024/1705, 18.6.2024, ELI: http://data.europa.eu/eli/reg_del/2024/1705/oj.

Article 1

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

1. The following is inserted after point 311zb (Commission Implementing Regulation (EU) 2021/1848):

‘311zc. **32022 R 0804**: Commission Delegated Regulation (EU) 2022/804 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying rules of procedure for measures applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators (OJ L 145, 24.5.2022, p. 7).

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

- (a) In Article 2(1), the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (b) In Article 3:
 - (i) in paragraphs 1 and 6, the words “and, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;

(ii) in paragraph 2, the following subparagraph shall be inserted:

“As regards the EFTA States, when a file is incomplete, ESMA shall inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall make a reasoned request for additional documents to the investigation officer.”;

(iii) in paragraph 3, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the word “it”;

(iv) in paragraph 4, the following subparagraph shall be inserted:

“As regards the EFTA States, where ESMA does not agree with the findings of the investigation officer, it shall inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall submit a new statement of findings to the person subject to investigation. That statement of findings shall set a time limit of at least four weeks within which the person subject to investigation may make written submissions. ESMA, before preparing a draft for the EFTA Surveillance Authority, or the EFTA Surveillance Authority shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Articles 48e and 48f of Regulation (EU) 2016/1011.”;

(v) in paragraph 5, the following subparagraph shall be inserted:

“As regards the EFTA States, where ESMA agrees with all or some of the findings of the investigation officer, it shall inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall inform the person subject to investigation accordingly. Such communication shall set a time limit of at least two weeks in case ESMA agrees with all of the findings, and at least four weeks in case ESMA does not agree with all of the findings, within which period the person subject to investigation may make written submissions. ESMA, before preparing a draft for the EFTA Surveillance Authority, or the EFTA Surveillance Authority shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Articles 48e and 48f of Regulation (EU) 2016/1011.”;

(vi) in paragraph 7, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

(c) In Article 4:

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

(ii) in paragraph 4, the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

(d) In Article 5:

- (i) in paragraph 1, paragraph 2, first and second subparagraphs, paragraph 3, first subparagraph, and in paragraph 4, the words “or, as the case may be, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
- (ii) in paragraph 2, third and fourth subparagraph, the words “and, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (iii) in paragraph 3, the following subparagraph shall be inserted after the second subparagraph:

“As regards the EFTA States, where ESMA considers, after having heard the person subject to the interim decision, that an infringement of the provisions referred to in Article 38g(1) of Regulation (EU) No 600/2014 has been committed by the person subject to the interim decision, it shall inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall adopt a confirmatory decision imposing one or more supervisory measures laid down in Article 48e of Regulation (EU) 2016/1011. The EFTA Surveillance Authority shall immediately notify that decision to the persons subject to the interim decision.”.

- (e) In Article 6:
- (i) the words “and, as the case may be, the EFTA Surveillance Authority” shall be inserted after the first use of the word “ESMA”;
 - (ii) the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the second use of the word “ESMA”.
- (f) In Article 7:
- (i) in paragraph 3, the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the first use of the word “ESMA”;
 - (ii) in paragraph 3, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the second use of the word “ESMA”;
 - (iii) in paragraph 5, the following subparagraph is inserted:

“The limitation period for imposing fines and periodic penalty payments shall be suspended for as long as the decision of the EFTA Surveillance Authority is subject to proceedings pending before the EFTA Court, in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.

- (g) In Article 8, as regards the EFTA States:
- (i) in paragraphs 1 and 3, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
 - (ii) in paragraph 5(b), the words “or, as regards the EFTA States, a review by the EFTA Court in accordance with Article 35 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice” shall be inserted after the words “Regulation (EU) 2016/1011”.’.

2. The following is inserted after point 311zc (Commission Delegated Regulation (EU) 2022/804):

- ‘311zd. **32022 R 0805**: Commission Delegated Regulation (EU) 2022/805 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying fees applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators (OJ L 145, 24.5.2022, p. 14), as amended by:
- **32024 R 1705**: Commission Delegated Regulation (EU) 2024/1705 of 11 March 2024 (OJ L, 2024/1705, 18.6.2024).

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

- (a) In Article 1, Article 2a, point (b), and Articles 4(3), 5, 8(2), 9 and 10, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (b) In Article 3(3), the words “or, as the case may be, the EFTA Surveillance Authority’s debit note” shall be inserted after the words “ESMA’s debit note”.
- (c) In Article 5, the words “or, as the case may be, the EFTA Surveillance Authority’s relevant debit note” shall be inserted after the words “ESMA’s relevant debit note”.
- (d) In Article 7:
 - (i) in paragraph 2, the words “or, as regards the EFTA States, the default interest outlined in paragraphs 3 to 6 of this Article” shall be inserted after the words “the Council”;
 - (ii) the following paragraphs shall be inserted after paragraph 2:
 - “3. Without prejudice to any specific provisions deriving from the application of specific regulations, any amount receivable not repaid on the deadline shall bear interest in accordance with paragraphs 4 and 5 of this Article.

4. The interest rate for amounts receivable not repaid on the deadline shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:
 - (a) eight percentage points where the obligating event is a supply contract or a service contract;
 - (b) three and a half percentage points in all other cases.
 5. Interest shall be calculated from the calendar day following the deadline up to the calendar day on which the debt is repaid in full.

The recovery order corresponding to the amount of the default interest shall be issued when that interest is actually received.
 6. In cases where the overall interest rate would be negative it shall be set at zero percent.”.
- (e) In Article 8, the words “or, as regards the EFTA States, the invoice from the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s invoice”.

(f) In Article 10(2), the following subparagraph shall be inserted:

“When, as regards administrators of critical benchmarks established in the EFTA States, the EFTA Surveillance Authority is to reimburse a national competent authority, ESMA shall without delay make available the amounts to be reimbursed to the EFTA Surveillance Authority for that purpose.”.

Article 2

The texts of Delegated Regulations (EU) 2022/804, (EU) 2022/805 and (EU) 2024/1705 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 [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made*, or on the day of the entry into force of Decision of the EEA Joint Committee No .../... of [...]⁴ [incorporating {Regulation (EU) 2019/2175} into the EEA Agreement], whichever is the later.

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

⁴ OJ L, ..., ELI: ...

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 ..., ...

For the EEA Joint Committee

The President

The Secretaries

To the EEA Joint Committee