Official Journal of the European Union

L 193

English edition

Legislation

Volume 59

19 July 2016

Contents

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE (EU) 2016/1164

of 12 July 2016

laying down rules against tax avoidance practices that directly affect the functioning of the internal market

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against base erosion and profit shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). The European Council has welcomed this work in its conclusions of 13-14 March 2013 and 19-20 December 2013. In response to the need for fairer taxation, the Commission, in its communication of 17 June 2015 sets out an action plan for fair and efficient corporate taxation in the European Union.

(2) The final reports on the 15 OECD Action Items against BEPS were released to the public on 5 October 2015. This output was welcomed by the Council in its conclusions of 8 December 2015. The Council conclusions stressed the need to find common, yet flexible, solutions at the EU level consistent with OECD BEPS conclusions. In addition, the conclusions supported an effective and swift coordinated implementation of the anti-BEPS measures at the EU level and considered that EU directives should be, where appropriate, the preferred vehicle for implementing OECD BEPS conclusions at the EU level. It is essential for the good functioning of the internal

[1] Not yet published in the Official Journal.
[2] Not yet published in the Official Journal.

market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against BEPS. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law.

(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and leave the implementation to Member States as they are better placed to shape the specific elements of those rules in a way that fits best their corporate tax systems. This objective could be achieved by creating a minimum level of protection for national corporate tax systems against tax avoidance practices across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 OECD Action Items against BEPS with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.

(4) It is necessary to establish rules applicable to all taxpayers that are subject to corporate tax in a Member State. Considering that it would result in the need to cover a broader range of national taxes, it is not desirable to extend the scope of this Directive to types of entities which are not subject to corporate tax in a Member State; that is, in particular, transparent entities. Those rules should also apply to permanent establishments of those corporate taxpayers which may be situated in other Member State(s). Corporate taxpayers may be resident for tax purposes in a Member State or be established under the laws of a Member State. Permanent establishments of entities resident for tax purposes in a third country should also be covered by those rules if they are situated in one or more Member State.

(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a general anti-abuse rule, controlled foreign company rules and rules to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

(6) In an effort to reduce their global tax liability, groups of companies have increasingly engaged in BEPS, through excessive interest payments. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' exceeding borrowing costs. It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's taxable earnings before interest, tax, depreciation and amortisation (EBITDA). Member States could decrease this ratio or place time limits or restrict the amount of unrelieved borrowing costs that can be carried forward or back to ensure a higher level of protection. Given that the aim is to lay down minimum standards, it could be possible for Member States to adopt an alternative measure referring to a taxpayer's earnings before interest and tax (EBIT) and fixed in a way that it is equivalent to the EBITDA-based ratio. Member States could in addition to the interest limitation rule provided by this Directive also use targeted rules against intra-group debt financing, in particular thin capitalisation rules. Tax exempt revenues should not be set off against deductible borrowing costs. This is because only taxable income should be taken into account in determining how much interest may be deducted.

(7) Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group at worldwide level may be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of exceeding borrowing costs. It may also be appropriate to lay down rules for an equity escape provision, where the interest limitation rule does not apply if the company can demonstrate that its equity over total assets ratio is broadly equal to or higher than the equivalent group ratio. The interest limitation rule should apply in relation to a taxpayer's exceeding borrowing costs without distinction of whether the costs originate in

debt taken out nationally, cross-border within the Union or with a third country, or whether they originate from third parties, associated enterprises or intra-group. Where a group includes more than one entity in a Member State, the Member State may consider the overall position of all group entities in the same State, including a separate entity taxation system to allow the transfer of profits or interest capacity between entities within a group, when applying rules that limit the deductibility of interest.

(8) To reduce the administrative and compliance burden of the rules without significantly diminishing their tax effect, it may be appropriate to provide for a safe harbour rule so that net interest is always deductible up to a fixed amount, when this leads to a higher deduction than the EBITDA-based ratio. Member States could reduce the fixed monetary threshold in order to ensure a higher level of protection of their domestic tax base. Since BEPS in principle takes place through excessive interest payments among entities which are associated enterprises, it is appropriate and necessary to allow the possible exclusion of standalone entities from the scope of the interest limitation rule given the limited risks of tax avoidance. In order to facilitate the transition to the new interest limitation rule, Member States could provide for a grandfathering clause that would cover existing loans to the extent that their terms are not subsequently modified, i.e. in case of a subsequent modification, the grandfathering would not apply to any increase in the amount or duration of the loan but would be limited to the original terms of the loan. Without prejudice to State aid rules, Member States could also exclude exceeding borrowing costs incurred on loans used to fund long-term public infrastructure projects considering that such financing arrangements present little or no BEPS risks. In this context, Member States should properly demonstrate that financing arrangements for public infrastructure projects present special features which justify such treatment vis-à-vis other financing arrangements subject to the restrictive rule.

(9) Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors and Member States should therefore be able to exclude them from the scope of interest limitation rules.

(10) Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even though that gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets. It is also helpful to clarify that transfers of assets, including cash, between a parent company and its subsidiaries fall outside the scope of the envisaged rule on exit taxation. In order to compute the amounts, it is critical to fix a market value for the transferred assets at the time of exit of the assets based on the arm's length principle. In order to ensure the compatibility of the rule with the use of the credit method, it is desirable to allow Member States to refer to the moment when the right to tax the transferred assets is lost. The right to tax should be defined at national level. It is also necessary to allow the receiving State to dispute the value of the transferred assets established by the exit State when it does not reflect such a market value. Member States could resort to this effect to existing dispute resolution mechanisms. Within the Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax by paying it in instalments over a certain number of years, possibly together with interest and a guarantee.

Member States could request, for this purpose, the taxpayers concerned to include the necessary information in a declaration. Exit tax should not be charged when the transfer of assets is of a temporary nature and the assets are set to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral.

(11) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which

should not affect the applicability of specific anti-abuse rules. Within the Union, GAARs should be applied to arrangements that are not genuine; otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ. Member States should not be prevented from applying penalties where the GAAR is applicable. When evaluating whether an arrangement should be regarded as non-genuine, it could be possible for Member States to consider all valid economic reasons, including financial activities.

(12) Controlled foreign company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable on this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary, specific categories of income or be limited to income which has artificially been diverted to the subsidiary. In particular, in order to ensure that CFC rules are a proportionate response to BEPS concerns, it is critical that Member States that limit their CFC rules to income which has been artificially diverted to the subsidiary precisely target situations where most of the decision-making functions which generated diverted income at the level of the controlled subsidiary are carried out in the Member State of the taxpayer. With a view to limiting the administrative burden and compliance costs, it should also be acceptable that those Member States exempt certain entities with low profits or a low profit margin that give rise to lower risks of tax avoidance. Accordingly, it is necessary that the CFC rules extend to the profits of permanent establishments where those profits are not subject to tax or are tax exempt in the Member State of the taxpayer. However, there is no need to tax, under the CFC rules, the profits of permanent establishments which are denied the tax exemption under national rules because these permanent establishments are treated as though they were controlled foreign companies. In order to ensure a higher level of protection, Member States could reduce the control threshold, or employ a higher threshold in comparing the actual corporate tax paid with the corporate tax that would have been charged in the Member State of the taxpayer. Member States could, in transposing CFC rules into their national law, use a sufficiently high tax rate fractional threshold.

It is desirable to address situations both in third countries and within the Union. To comply with the fundamental freedoms, the income categories should be combined with a substance carve-out aimed to limit, within the Union, the impact of the rules to cases where the CFC does not carry on a substantive economic activity. It is important that tax administrations and taxpayers cooperate to gather the relevant facts and circumstances to determine whether the carve-out rule is to apply. It should be acceptable that, in transposing CFC rules into their national law, Member States use white, grey or black lists of third countries, which are compiled on the basis of certain criteria set out in this Directive and may include the corporate tax rate level, or use white lists of Member States compiled on that basis.

(13) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To neutralise the effects of hybrid mismatch arrangements, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should deny the deduction of a payment leading to such an outcome. In this context, it is useful to clarify that measures aimed to tackle hybrid mismatches in this Directive are aimed to tackle mismatch situations attributable to differences in the legal characterisation of a financial instrument or entity and are not intended to affect the general features of the tax system of a Member State. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities and hybrid permanent establishments within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules. It is critical that further work is undertaken on hybrid mismatches between Member States and third countries, as well as on other hybrid mismatches such as those involving permanent establishments.

(14) It is necessary to clarify that the implementation of the rules against tax avoidance provided in this Directive should not affect the taxpayers' obligation to comply with the arm's length principle or the Member State's right to adjust a tax liability upwards in accordance with the arm's length principle, where applicable.

(15) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council [1]. The right to protection of personal data according to Article 8 of the Charter of Fundamental Rights of the European Union as well as Directive 95/46/EC of the European Parliament and of the Council [2] applies to the processing of personal data carried out within the framework of this Directive.

(16) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives.

(17) The Commission should evaluate the implementation of this Directive four years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

This Directive applies to all taxpayers that are subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance as defined in national law, including, without being limited to, payments under profit participating loans, imputed interest on instruments such as convertible bonds and zero coupon bonds, amounts under alternative financing arrangements, such as Islamic finance, the finance cost element of finance lease payments, capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules where applicable, notional interest amounts under derivative instruments or hedging arrangements related to an

[1] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

[2] Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

(2) 'exceeding borrowing costs' means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives according to national law;

(3) 'tax period' means a tax year, calendar year or any other appropriate period for tax purposes;

(4) 'associated enterprise' means:

(a) an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25 percent or more or is entitled to receive 25 percent or more of the profits of that entity;

(b) an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 25 percent or more or is entitled to receive 25 percent or more of the profits of the taxpayer;

If an individual or entity holds directly or indirectly a participation of 25 percent or more in a taxpayer and one or more entities, all the entities concerned, including the taxpayer, shall also be regarded as associated enterprises.

For the purposes of Article 9 and where the mismatch involves a hybrid entity, this definition is modified so that the 25 percent requirement is replaced by a 50 percent requirement.

(5) 'financial undertaking' means any of the following entities:

(a) a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council ([1]) or an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ([2]) or an undertaking for collective investment in transferable securities (UCITS) management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council ([3]);

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ([4]);

(c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(d) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council ([5]), unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of that Directive;

(e) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council ([6]) and Regulation (EC) No 987/2009 of the European Parliament and of the Council ([7]) as well as any legal entity set up for the purpose of investment of such schemes;

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

([2]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([3]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([4]) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

([5]) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

([6]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

([7]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

(f) an alternative investment fund (AIF) managed by an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU or an AIF supervised under the applicable national law;

(g) UCITS in the meaning of Article 1(2) of Directive 2009/65/EC;

(h) a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([1]);

(i) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council ([2]).

(6) 'transfer of assets' means an operation whereby a Member State loses the right to tax the transferred assets, whilst the assets remain under the legal or economic ownership of the same taxpayer;

(7) 'transfer of tax residence' means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country;

(8) 'transfer of a business carried on by a permanent establishment' means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country;

(9) 'hybrid mismatch' means a situation between a taxpayer in one Member State and an associated enterprise in another Member State or a structured arrangement between parties in Member States where the following outcome is attributable to differences in the legal characterisation of a financial instrument or entity:

(a) a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State ('double deduction'); or

(b) there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other Member State ('deduction without inclusion').

Article 3

Minimum level of protection

This Directive shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases.

CHAPTER II

MEASURES AGAINST TAX AVOIDANCE

Article 4

Interest limitation rule

1. Exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA).

([1]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

([2]) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

For the purpose of this Article, Member States may also treat as a taxpayer:

(a) an entity which is permitted or required to apply the rules on behalf of a group, as defined according to national tax law;

(b) an entity in a group, as defined according to national tax law, which does not consolidate the results of its members for tax purposes.

In such circumstances, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members.

2. The EBITDA shall be calculated by adding back to the income subject to corporate tax in the Member State of the taxpayer the tax-adjusted amounts for exceeding borrowing costs as well as the tax-adjusted amounts for depreciation and amortisation. Tax exempt income shall be excluded from the EBITDA of a taxpayer.

3. By derogation from paragraph 1, the taxpayer may be given the right:

(a) to deduct exceeding borrowing costs up to EUR 3 000 000;

(b) to fully deduct exceeding borrowing costs if the taxpayer is a standalone entity.

For the purposes of the second subparagraph of paragraph 1, the amount of EUR 3 000 000 shall be considered for the entire group.

For the purposes of point (b) of the first subparagraph, a standalone entity means a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise or permanent establishment.

4. Member States may exclude from the scope of paragraph 1 exceeding borrowing costs incurred on:

(a) loans which were concluded before 17 June 2016, but the exclusion shall not extend to any subsequent modification of such loans;

(b) loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the Union.

For the purposes of point (b) of the first subparagraph, a long-term public infrastructure project means a project to provide, upgrade, operate and/or maintain a large-scale asset that is considered in the general public interest by a Member State.

Where point (b) of the first subparagraph applies, any income arising from a long-term public infrastructure project shall be excluded from the EBITDA of the taxpayer, and any excluded exceeding borrowing cost shall not be included in the exceeding borrowing costs of the group vis-à-vis third parties referred to in point (b) of paragraph 5.

5. Where the taxpayer is a member of a consolidated group for financial accounting purposes, the taxpayer may be given the right to either:

(a) fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group and subject to the following conditions:

   (i) the ratio of the taxpayer's equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to two percentage points; and

   (ii) all assets and liabilities are valued using the same method as in the consolidated financial statements referred to in paragraph 8;

   or

(b) deduct exceeding borrowing costs at an amount in excess of what it would be entitled to deduct under paragraph 1. This higher limit to the deductibility of exceeding borrowing costs shall refer to the consolidated group for financial accounting purposes in which the taxpayer is a member and be calculated in two steps:

(i) first, the group ratio is determined by dividing the exceeding borrowing costs of the group vis-à-vis third-parties over the EBITDA of the group; and

(ii) second, the group ratio is multiplied by the EBITDA of the taxpayer calculated pursuant to paragraph 2.

6. The Member State of the taxpayer may provide for rules either:

(a) to carry forward, without time limitation, exceeding borrowing costs which cannot be deducted in the current tax period under paragraphs 1 to 5;

(b) to carry forward, without time limitation, and back, for a maximum of three years, exceeding borrowing costs which cannot be deducted in the current tax period under paragraphs 1 to 5; or

(c) to carry forward, without time limitation, exceeding borrowing costs and, for a maximum of five years, unused interest capacity, which cannot be deducted in the current tax period under paragraphs 1 to 5.

7. Member States may exclude financial undertakings from the scope of paragraphs 1 to 6, including where such financial undertakings are part of a consolidated group for financial accounting purposes.

8. For the purpose of this Article, the consolidated group for financial accounting purposes consists of all entities which are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State. The taxpayer may be given the right to use consolidated financial statements prepared under other accounting standards.

Article 5

Exit taxation

1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit of the assets, less their value for tax purposes, in any of the following circumstances:

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country in so far as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer;

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country in so far as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer;

(c) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;

(d) a taxpayer transfers the business carried on by its permanent establishment from a Member State to another Member State or to a third country in so far as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer.

2. A taxpayer shall be given the right to defer the payment of an exit tax referred to in paragraph 1, by paying it in instalments over five years, in any of the following circumstances:

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country that is party to the Agreement on the European Economic Area (EEA Agreement);

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;

(c) a taxpayer transfers its tax residence to another Member State or to a third country that is party to the EEA Agreement;

(d) a taxpayer transfers the business carried on by its permanent establishment to another Member State or a third country that is party to the EEA Agreement.

This paragraph shall apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the Member State of the taxpayer or with the Union on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Council Directive 2010/24/EU [1].

3. If a taxpayer defers the payment in accordance with paragraph 2, interest may be charged in accordance with the legislation of the Member State of the taxpayer or of the permanent establishment, as the case may be.

If there is a demonstrable and actual risk of non-recovery, taxpayers may also be required to provide a guarantee as a condition for deferring the payment in accordance with paragraph 2.

The second subparagraph shall not apply where the legislation in the Member State of the taxpayer or of the permanent establishment provides for the possibility of recovery of the tax debt through another taxpayer which is member of the same group and is resident for tax purposes in that Member State.

4. Where paragraph 2 applies, the deferral of payment shall be immediately discontinued and the tax debt becomes recoverable in the following cases:

(a) the transferred assets or the business carried on by the permanent establishment of the taxpayer are sold or otherwise disposed of;

(b) the transferred assets are subsequently transferred to a third country;

(c) the taxpayer's tax residence or the business carried on by its permanent establishment is subsequently transferred to a third country;

(d) the taxpayer goes bankrupt or is wound up;

(e) the taxpayer fails to honour its obligations in relation to the instalments and does not correct its situation over a reasonable period of time, which shall not exceed 12 months.

Points (b) and (c) shall not apply to third countries that are party to the EEA Agreement if they have concluded an agreement with the Member State of the taxpayer or with the Union on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Directive 2010/24/EU.

5. Where the transfer of assets, tax residence or the business carried on by a permanent establishment is to another Member State, that Member State shall accept the value established by the Member State of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes, unless this does not reflect the market value.

6. For the purposes of paragraphs 1 to 5, 'market value' is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

7. Provided that the assets are set to revert to the Member State of the transferor within a period of 12 months, this Article shall not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management.

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[1] Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

Article 6

General anti-abuse rule

1. For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.

2. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated in accordance with national law.

Article 7

Controlled foreign company rule

1. The Member State of a taxpayer shall treat an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in that Member State, as a controlled foreign company where the following conditions are met:

(a) in the case of an entity, the taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50 percent of the voting rights, or owns directly or indirectly more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity; and

(b) the actual corporate tax paid on its profits by the entity or permanent establishment is lower than the difference between the corporate tax that would have been charged on the entity or permanent establishment under the applicable corporate tax system in the Member State of the taxpayer and the actual corporate tax paid on its profits by the entity or permanent establishment.

For the purposes of point (b) of the first subparagraph, the permanent establishment of a controlled foreign company that is not subject to tax or is exempt from tax in the jurisdiction of the controlled foreign company shall not be taken into account. Furthermore the corporate tax that would have been charged in the Member State of the taxpayer means as computed according to the rules of the Member State of the taxpayer.

2. Where an entity or permanent establishment is treated as a controlled foreign company under paragraph 1, the Member State of the taxpayer shall include in the tax base:

(a) the non-distributed income of the entity or the income of the permanent establishment which is derived from the following categories:

  (i) interest or any other income generated by financial assets;

  (ii) royalties or any other income generated from intellectual property;

  (iii) dividends and income from the disposal of shares;

  (iv) income from financial leasing;

  (v) income from insurance, banking and other financial activities;

  (vi) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value;

This point shall not apply where the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances.

Where the controlled foreign company is resident or situated in a third country that is not party to the EEA Agreement, Member States may decide to refrain from applying the preceding subparagraph.

or

(b) the non-distributed income of the entity or permanent establishment arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.

For the purposes of this point, an arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

3. Where, under the rules of a Member State, the tax base of a taxpayer is calculated according to point (a) of paragraph 2, the Member State may opt not to treat an entity or permanent establishment as a controlled foreign company under paragraph 1 if one third or less of the income accruing to the entity or permanent establishment falls within the categories under point (a) of paragraph 2.

Where, under the rules of a Member State, the tax base of a taxpayer is calculated according to point (a) of paragraph 2, the Member State may opt not to treat financial undertakings as controlled foreign companies if one third or less of the entity's income from the categories under point (a) of paragraph 2 comes from transactions with the taxpayer or its associated enterprises.

4. Member States may exclude from the scope of point (b) of paragraph 2 an entity or permanent establishment:

(a) with accounting profits of no more than EUR 750 000, and non-trading income of no more than EUR 75 000; or

(b) of which the accounting profits amount to no more than 10 percent of its operating costs for the tax period.

For the purpose of point (b) of the first subparagraph, the operating costs may not include the cost of goods sold outside the country where the entity is resident, or the permanent establishment is situated, for tax purposes and payments to associated enterprises.

Article 8

Computation of controlled foreign company income

1. Where point (a) of Article 7(2) applies, the income to be included in the tax base of the taxpayer shall be calculated in accordance with the rules of the corporate tax law of the Member State where the taxpayer is resident for tax purposes or situated. Losses of the entity or permanent establishment shall not be included in the tax base but may be carried forward, according to national law, and taken into account in subsequent tax periods.

2. Where point (b) of Article 7(2) applies, the income to be included in the tax base of the taxpayer shall be limited to amounts generated through assets and risks which are linked to significant people functions carried out by the controlling company. The attribution of controlled foreign company income shall be calculated in accordance with the arm's length principle.

3. The income to be included in the tax base shall be calculated in proportion to the taxpayer's participation in the entity as defined in point (a) of Article 7(1).

4. The income shall be included in the tax period of the taxpayer in which the tax year of the entity ends.

5. Where the entity distributes profits to the taxpayer, and those distributed profits are included in the taxable income of the taxpayer, the amounts of income previously included in the tax base pursuant to Article 7 shall be deducted from the tax base when calculating the amount of tax due on the distributed profits, in order to ensure there is no double taxation.

6. Where the taxpayer disposes of its participation in the entity or of the business carried out by the permanent establishment, and any part of the proceeds from the disposal previously has been included in the tax base pursuant to Article 7, that amount shall be deducted from the tax base when calculating the amount of tax due on those proceeds, in order to ensure there is no double taxation.

7. The Member State of the taxpayer shall allow a deduction of the tax paid by the entity or permanent establishment from the tax liability of the taxpayer in its state of tax residence or location. The deduction shall be calculated in accordance with national law.

Article 9

Hybrid mismatches

1. To the extent that a hybrid mismatch results in a double deduction, the deduction shall be given only in the Member State where such payment has its source.

2. To the extent that a hybrid mismatch results in a deduction without inclusion, the Member State of the payer shall deny the deduction of such payment.

CHAPTER III

FINAL PROVISIONS

Article 10

Review

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 4, by 9 August 2020 and report to the Council thereon. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.

2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.

3. Member States referred to in Article 11(6) shall communicate to the Commission before 1 July 2017 all information necessary for evaluating the effectiveness of the national targeted rules for preventing base erosion and profit shifting risks (BEPS).

Article 11

Transposition

1. Member States shall, by 31 December 2018, adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate to the Commission the text of those provisions without delay.

They shall apply those provisions from 1 January 2019.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Where this Directive mentions a monetary amount in euros (EUR), Member States whose currency is not the euro may opt to calculate the corresponding value in the national currency on 12 July 2016.

4. By way of derogation from Article 5(2), Estonia may, for as long as it does not tax undistributed profits, consider a transfer of assets in monetary or non-monetary form, including cash, from a permanent establishment situated in Estonia to a head office or another permanent establishment in another Member State or in a third country that is a party to the EEA Agreement as profit distribution and charge income tax, without giving taxpayers the right to defer the payment of such tax.

5. By way of derogation from paragraph 1, Member States shall, by 31 December 2019, adopt and publish, the laws, regulations and administrative provisions necessary to comply with Article 5. They shall communicate to the Commission the text of those provisions without delay.

They shall apply those provisions from 1 January 2020.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

6. By way of derogation from Article 4, Member States which have national targeted rules for preventing BEPS risks at 8 August 2016, which are equally effective to the interest limitation rule set out in this Directive, may apply these targeted rules until the end of the first full fiscal year following the date of publication of the agreement between the OECD members on the official website on a minimum standard with regard to BEPS Action 4, but at the latest until 1 January 2024.

Article 12

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 12 July 2016.

For the Council
The President
P. KAŽIMÍR

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/1165

of 18 July 2016

amending Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Decision Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP ([1]),

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

(1) Council Regulation (EC) No 1183/2005 ([2]) gives effect to Decision 2010/788/CFSP and provides for certain measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, including a freezing of their assets.

(2) United Nations Security Council Resolution 2293 (2016) of 21 June 2016 amended the criteria for the designation of persons and entities to be subject to the restrictive measures set out in paragraphs 9 and 11 of United Nations Security Council Resolution 1807 (2008) and extended the provisions on the arms embargo. In Council Decision (CFSP) 2016/1173 ([3]) the Council decided to extend the scope of the criteria accordingly.

(3) Regulatory action at the level of the Union is therefore necessary in order to give effect to it, in particular with a view to ensuring its uniform application by economic operators in all Member States.

(4) Regulation (EC) No 1183/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1183/2005 is amended as follows:

(1) The following point is added to Article 1b(1):

'(d) technical assistance, financing or financial assistance or brokering services related to other sales and supply of arms and related materiel, as approved in advance by the Sanctions Committee;';

([1]) OJ L 336, 21.12.2010, p. 30.
([2]) Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ L 193, 23.7.2005, p. 1).
([3]) Council Decision (CFSP) 2016/1173 of 18 July 2016 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (see page 108 of this Official Journal).

(2) Article 2a(1) is amended as follows:

(a) point (e) is replaced by the following:

'(e) planning, directing, or committing acts in the DRC that constitute human rights violations or abuses or violations of international humanitarian law, as applicable, including those acts involving the targeting of civilians, including killing and maiming, rape and other sexual violence, abduction, forced displacement, and attacks on schools and hospitals;';

(b) point (g) is replaced by the following:

'(g) supporting individuals or entities, including armed groups or criminal networks, involved in destabilizing activities in the DRC through the illicit exploitation or trade of natural resources, including gold or wildlife as well as wildlife products;'.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 July 2016.

For the Council
The President
F. MOGHERINI

COMMISSION DELEGATED REGULATION (EU) 2016/1166

of 17 May 2016

amending Annex X to Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards purchase terms for beet in the sugar sector as from 1 October 2017

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [1], and in particular Article 125(4)(b) thereof,

Whereas:

(1) In accordance with Article 125 of Regulation (EU) No 1308/2013, sugar beet growers and sugar undertakings are to conclude written agreements within the trade. Annex XI to that Regulation sets out certain purchase terms for beet until the end of the 2016/2017 marketing year, while Annex X to that Regulation sets out those terms as from 1 October 2017, when the quota system will have ended.

(2) In order to take account of the specific characteristics of the sugar sector and the expected development of the sector in the period following the end of the quota system, the purchase terms for beet referred to in Annex X should be amended.

(3) As from 1 October 2017 the beet sugar sector will need to adapt to the end of the quota system, including the end of the minimum beet price and regulation of domestic production quantities. Therefore, the sector needs a clear legal framework in this transition from a highly regulated sector to a more liberalised one. Growers and sugar undertakings have requested further legal certainty as regards the applicable rules for value sharing mechanisms, including market bonuses and losses based on relevant market prices.

(4) The Union beet sugar supply chain is characterised by many mostly small sugar beet growers and a limited number of mostly large sugar undertakings. Given the need for the beet suppliers to plan and organise their beet supplies to sugar factories during beet harvesting periods, there is an interest for growers to negotiate certain terms relating to value sharing clauses for the purchase of beet by the concerned undertakings. This is an inherent feature of the sugar supply chain, which continues to exist independently of whether there is a quota system in place or not. The value sharing clauses referred to in Point XI of Annex XI to Regulation (EU) No 1308/2013 currently enable beet growers and sugar undertakings to secure their supplies on pre-defined purchase terms with certainty of sharing the profits and costs generated by the supply chain to the benefit of the beet growers. The benefit of value sharing also transmits the price signals in the market directly to the growers.

(5) The expected development of the sector in the period following the end of the quota system in combination with the relatively low sugar prices recently observed, are unlikely to lead to new beet sugar processors entering the market, because the investments necessary for creating a sugar processing facility would require a higher sugar price than the market price foreseen in the next marketing years to be profitable. The Commission's medium-term outlook foresees prices adjusting rather to the downside after the end of the quota system. Thus, the current structure of the EU sugar industry, including the relationship between beet growers and sugar undertakings, is expected to persist in the marketing years following the abolition of the quota system since it is foreseeable that few new undertakings will enter the market.

(6) In the absence of the preservation of the value sharing clauses, the position of beet growers in the food chain could be compromised. When losing the possibility of negotiating value sharing clauses, and especially in a situation of low prices, beet growers could be in a clear economic disadvantage.

[1] OJ L 347, 20.12.2013, p. 671.

(7) Therefore, the rationale for amending Annex X to Regulation (EU) No 1308/2013 to allow the negotiation of value sharing clauses remains valid. Consequently, the possibility of negotiating such clauses would continue to be necessary after 1 October 2017.

(8) In order to facilitate the negotiation of the value sharing clauses, it is appropriate that such negotiations are only possible between one undertaking and its current or potential suppliers.

(9) In order to ensure a flexible negotiation process, the introduction of a value sharing clause should be optional.

(10) Annex X to Regulation (EU) No 1308/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Point XI of Annex X to Regulation (EU) No 1308/2013, the following point 5 is added:

'5. A sugar undertaking and the beet sellers concerned may agree on value sharing clauses, including market bonuses and losses, determining how any evolution of relevant market prices of sugar or other commodity markets is to be allocated between them.'

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1167

of 18 July 2016

amending Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China, as extended to imports of steel ropes and cables consigned from, inter alia, the Republic of Korea, whether declared as originating in the Republic of Korea or not

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic Regulation'), and in particular Articles 11(4) and 13(4) thereof,

Whereas:

A. MEASURES IN FORCE

(1) By Council Regulation (EC) No 1796/1999 ([2]), the Council imposed a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China. Following two expiry reviews under Article 11(2) of the basic Regulation, the anti-dumping measures were maintained by Council Regulation (EC) No 1858/2005 ([3]) and Council Implementing Regulation (EU) No 102/2012 ([4]).

(2) By Council Implementing Regulation (EU) No 400/2010 ([5]), the Council extended the anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of the same product consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an anti-circumvention investigation under Article 13 of the basic Regulation. By the same Regulation, certain Korean exporting producers were exempted from these extended measures.

(3) The measures currently in force are an anti-dumping duty imposed by Implementing Regulation (EU) No 102/2012 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China as extended, inter alia, to imports of steel ropes and cables consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not, as last amended by Commission Implementing Regulation (EU) 2016/90 ([6]) ('the measures in force'). Imports into the Union of the product under review consigned from the Republic of Korea are subject to a duty of 60,4 %, with the exception of the product manufactured by companies which were exempted.

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Council Regulation (EC) No 1796/1999 of 12 August 1999 imposing a definitive anti-dumping duty, and collecting definitively the provisional duty imposed, on imports of steel ropes and cables originating in the People's Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine and terminating the anti-dumping proceeding in respect of imports originating in the Republic of Korea (OJ L 217, 17.8.1999, p. 1).

([3]) Council Regulation (EC) No 1858/2005 of 8 November 2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, South Africa and Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ L 299, 16.11.2005, p. 1).

([4]) Implementing Regulation of the Council (EU) No 102/2012 of 27 January 2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China and Ukraine as extended to imports of steel ropes and cables consigned from Morocco, Moldova and the Republic of Korea, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of steel ropes and cables originating in South Africa pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 36, 9.2.2012, p. 1).

([5]) Implementing Regulation of the Council (EU) No 400/2010 of 26 April 2010 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1858/2005 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia (OJ L 117, 11.5.2010, p. 1).

([6]) Commission Implementing Regulation (EU) 2016/90 of 26 January 2016 amending Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, *inter alia*, in Ukraine following a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 (OJ L 19, 27.1.2016, p. 22).

B. **PROCEDURE**

1. **Initiation**

(4) The European Commission ('the Commission') received a request for an exemption from the anti-dumping measures applicable to imports of steel ropes and cables originating in the People's Republic of China, as extended to imports consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, under Articles 11(4) and 13(4) and of the basic Regulation.

(5) The request was lodged on 7 September 2015 by Daechang Steel Co. Ltd ('the applicant'), an exporting producer of steel ropes and cables in the Republic of Korea ('the country concerned') and it was limited to the applicant.

(6) The applicant provided prima facie evidence that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures (1 July 2008 to 30 June 2009), that it is not related to any of the exporting producers of the product under review which are subject to the anti-dumping duties in force, that it has not circumvented the measures applicable to steel ropes and cables of Chinese origin and that it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

(7) Having examined the evidence submitted by the applicant and following consultation of the Member States, and after the Union industry was given the opportunity to comment, the Commission initiated the investigation on 26 November 2015 by Implementing Regulation (EU) 2015/2179 ([1]). Furthermore, pursuant to Article 3 of that Regulation, the Commission directed customs authorities to take the appropriate steps to register imports of the product under review consigned from the Republic of Korea and produced and sold for export to the Union by the applicant, in accordance with Article 14(5) of the basic Regulation.

2. **Product under review**

(8) The product subject to the review is steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not ('the product under review'), currently falling within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98 (TARIC codes 7312 10 81 13, 7312 10 83 13, 7312 10 85 13, 7312 10 89 13 and 7312 10 98 13).

3. **Reporting period**

(9) The reporting period covered the period from 1 October 2014 to 30 September 2015. Data was collected from 2008 until the end of the reporting period ('the investigation period').

4. **Investigation**

(10) The Commission officially advised the applicant and the representatives of the Republic of Korea of the initiation of the review. Interested parties were invited to make their views known and were informed of the possibility to request a hearing. No requests were received.

(11) The Commission sent a questionnaire to the applicant and received a reply within the given deadline. The Commission sought and verified on the spot all the information deemed necessary for the purposes of the review. A verification visit was carried out at the premises of the applicant.

([1]) Commission Implementing Regulation (EU) 2015/2179 of 25 November 2015 initiating a review of Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China, as extended to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, for the purposes of determining the possibility of granting an exemption from those measures to one Korean exporter, repealing the anti-dumping duty with regard to imports from that exporter and making imports from that exporter subject to registration (OJ L 309, 26.11.2015, p. 3).

(12) The Commission examined whether the conditions for granting an exemption under Article 11(4) and 13(4) were fulfilled, namely whether:

— The applicant did not export the product under review during the investigation period used in the investigation that led to the extended measures, namely the period from 1 July 2008 to 30 June 2009.

— The applicant began exporting the product under review after the end of the investigation period of the anti-circumvention investigation.

— The applicant is not related to any of the exporting producers of the product under review which are subject to the anti-dumping duties in force, and that it has not circumvented the measures applicable to steel ropes and cables of Chinese origin.

C. **FINDINGS**

(13) The investigation confirmed that the applicant had not exported the product under review to the Union during the investigation period of the anti-circumvention investigation that led to the extended measures, that is 1 July 2008 to 30 June 2009. The applicant's first exports of the product under review occurred subsequent to the extension of measures to the Republic of Korea, more precisely in the second half of 2015.

(14) Next, the investigation confirmed that the applicant was not related to any Chinese exporters or producers subject to the anti-dumping measures imposed by Implementing Regulation (EU) No 102/2012.

(15) Furthermore, the investigation confirmed that the applicant is a genuine producer of the product under review not engaged in circumvention practices. The applicant purchases domestically produced steel wire rod and sub-materials (such as zinc and lead) but also imports steel wire rod from the People's Republic of China, which is subsequently pickled, drawn, galvanised, drawn a second time, stranded and closed at its manufacturing facilities in the Republic of Korea. The finished product is sold domestically and also exported to the United States, Asia and the Union.

(16) The production activities can be considered as an assembly or completion operation. Article 13(2) of the basic Regulation lays down the conditions under which an assembly operation will be considered to be circumventing the measures. Under point (b) of that Article, one condition is that the parts in question constitute more than 60 % of the total value of the parts of the assembled product. During the investigation it was established that the proportion of Chinese raw materials used by the applicant was significantly below the threshold of 60 % required under Article 13(2)(b) of the basic Regulation. The percentage of Chinese parts (namely raw materials) used was 38 %. Where that threshold is exceeded, Article 13(2)(b) requires that it is established whether the 25 % threshold of value added was reached (the 'value-added test'). The 60 % threshold of the total value of the parts was not exceeded. Hence, on the basis of the actual costs incurred during the reporting period, it was not necessary to establish whether the 25 % threshold of value added was reached within the meaning of Article 13(2)(b) of the basic Regulation.

(17) The applicant started with the production of the product under review mid-2015. Due to the exceptional manufacturing costs incurred during the start-up production phase, another calculation was performed on the basis of standard costs of manufacturing (excluding start-up costs and anticipating a high production capacity utilisation rate). It was established that the proportion of Chinese-origin raw materials then constituted more than the 60 % of the total value of the parts of the final product (69 %). For that reason the value-added test under Article 13(2) of the basic Regulation was carried out. That test demonstrated that the value added to the parts brought in from the People's Republic of China was significantly above the 25 % of the manufacturing costs threshold as stipulated in Article 13(2)(b) of the basic Regulation. Therefore, the applicant's production activities are not considered to constitute circumvention in the sense of Article 13(2) of the basic Regulation.

(18) Last, the investigation confirmed that the applicant was not purchasing the finished product under review from the People's Republic of China in order to resell or tranship to the Union and that the company could justify all its exports during the reporting period.

(19) In light of the findings described in recitals 13 to 18, the Commission concludes that the applicant fulfils the conditions for an exemption under Articles 11(4) and 13(4) of the basic Regulation.

(20) The findings above were disclosed to the applicant and the Union industry, which were given the opportunity to provide comments. The applicant submitted that it agreed to the Commission's findings. No further comments were submitted.

D. **MODIFICATION OF THE LIST OF COMPANIES BENEFITTING FROM AN EXEMPTION TO THE MEASURES IN FORCE**

(21) In accordance with the above findings, the applicant should be added to the list of companies that are exempted from the anti-dumping duty imposed by Implementing Regulation (EU) No 102/2012.

(22) As laid down in Article 1(2) of Regulation (EU) No 400/2010, the application of the exemption is to be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to that Regulation. If no such an invoice is presented, the anti-dumping duty continues to apply.

(23) In addition, the exemption from the extended measures granted to imports of steel ropes and cables produced by the applicant, in accordance with Article 13(4) of the basic Regulation, remains valid on condition that the facts as finally ascertained justify the exemption. Should new prima facie evidence indicate otherwise, an investigation may be initiated by the Commission to establish whether withdrawal of the exemption is warranted.

(24) The exemption from the extended measures granted to imports of steel ropes and cables produced by the applicant is made on the basis of the findings of the present review. This exemption is thus exclusively applicable to imports of steel ropes and cables consigned from the Republic of Korea and produced by the abovementioned specific legal entity. Imported steel ropes and cables produced by any company not specifically mentioned in Article 1(4) of Implementing Regulation (EU) No 102/2012 with its name, including entities related to those specifically mentioned, should not benefit from the exemption and should be subject to the residual duty rate as imposed by that Regulation.

(25) Implementing Regulation (EU) No 102/2012, as last amended by Implementing Regulation (EU) 2016/90, should be amended to include Daechang Steel Co. Ltd in the table set out in its Article 1(4).

(26) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

The table set out in Article 1(4) of Implementing Regulation (EU) No 102/2012 as last amended by Implementing Regulation (EU) 2016/90, is replaced by the following table:

Country	Company	TARIC additional code
The Republic of Korea	Bosung Wire Rope Co., Ltd, 568,Yongdeok-ri, Hallim-myeon, Gimae-si, Gyeongsangnam-do, 621-872	A969
	Chung Woo Rope Co., Ltd, 1682-4, Songjung-Dong, Gangseo-Gu, Busan	A969

Country	Company	TARIC additional code
	CS Co., Ltd, 287-6 Soju-Dong Yangsan-City, Kyoungnam	A969
	Cosmo Wire Ltd, 4-10, Koyeon-Ri, Woong Chon-Myon Ulju-Kun, Ulsan	A969
	Dae Heung Industrial Co., Ltd, 185 Pyunglim — Ri, Daesan-Myun, Haman — Gun, Gyungnam	A969
	Daechang Steel Co., Ltd, 1213, Aam-daero, Namdong-gu, Incheon	C057
	DSR Wire Corp., 291, Seonpyong-Ri, Seo-Myon, Suncheon-City, Jeonnam	A969
	Goodwire MFG. Co. Ltd, 984-23, Maegok-Dong, Yangsan-City, Kyungnam	B955
	Kiswire Ltd, 20th Fl. Jangkyo Bldg, 1, Jangkyo-Dong, Chung-Ku, Seoul	A969
	Manho Rope & Wire Ltd, Dongho Bldg, 85-2 4 Street Joongang-Dong, Jong-gu, Busan	A969
	Line Metal Co. Ltd, 1259 Boncho-ri, Daeji-Myeon, Changnyeong-gun, Gyeongnam	B926
	Seil Wire and Cable, 47-4, Soju-Dong, Yangsan-Si, Kyungsangnamdo	A994
	Shin Han Rope Co., Ltd, 715-8, Gojan-Dong, Namdong-gu, Incheon	A969
	Ssang Yong Cable Mfg. Co., Ltd, 1559-4 Song-Jeong Dong, Gang-Seo Gu, Busan	A969
	Young Heung Iron & Steel Co., Ltd, 71-1 Sin-Chon Dong, Changwon City, Gyungnam	A969

Article 2

The customs authorities are directed to cease the registration of imports carried out pursuant to Article 3 of Implementing Regulation (EU) 2015/2179. No anti-dumping duty shall be collected on the imports thus registered.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1168

of 18 July 2016

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]),

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 July 2016.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	176,8
	ZZ	176,8
0709 93 10	TR	136,8
	ZZ	136,8
0805 50 10	AR	173,5
	BO	223,6
	CL	210,7
	UY	201,7
	ZA	175,8
	ZZ	197,1
0808 10 80	AR	191,0
	BR	90,8
	CL	135,5
	NZ	145,5
	US	117,0
	UY	72,1
	ZA	115,9
	ZZ	124,0
0808 30 90	AR	183,1
	CL	125,1
	NZ	155,4
	ZA	127,8
	ZZ	147,9
0809 10 00	TR	193,6
	ZZ	193,6
0809 29 00	TR	280,5
	ZZ	280,5

(1) Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1169

of 18 July 2016

fixing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 July 2016 under the tariff quotas opened by Regulation (EC) No 341/2007 for garlic

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [1], and in particular Article 188(1) and (3) thereof,

Whereas:

(1) Commission Regulation (EC) No 341/2007 [2] opened annual tariff quotas for imports of garlic.

(2) The quantities covered by the applications for 'A' import licences lodged in the first seven calendar days of July 2016, for the subperiod from 1 September 2016 to 30 November 2016, for certain quotas, exceed those available. The extent to which 'A' import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 [3].

(3) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities covered by the applications for 'A' import licences lodged under Regulation (EC) No 341/2007 for the subperiod from 1 September 2016 to 30 November 2016 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 July 2016.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

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[1] OJ L 347, 20.12.2013, p. 671.
[2] Commission Regulation (EC) No 341/2007 of 29 March 2007 opening and providing for the administration of tariff quotas and introducing a system of import licences and certificates of origin for garlic and certain other agricultural products imported from third countries (OJ L 90, 30.3.2007, p. 12).
[3] Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

ANNEX

Origin	Reference number	Allocation coefficient — applications lodged for the subperiod from 1 September 2016 to 30 November 2016 (%)
China		
— Traditional importers	09.4105	99,306141
— New importers	09.4100	0,465017
Other third countries		
— Traditional importers	09.4106	—
— New importers	09.4102	—

DECISIONS

COUNCIL DECISION (EU) 2016/1170

of 12 July 2016

on the position to be adopted, on behalf of the European Union, within the Joint Committee established by the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, on the other part, in relation to the adoption of the rules of procedure of the Joint Committee, and the setting up of specialised working groups

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 207 and 209 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part [1] (the 'Agreement') entered into force on 1 May 2014.

(2) In accordance with Article 41 of the Agreement, a Joint Committee was established in order to ensure, inter alia, the proper functioning and implementation of the Agreement (the 'Joint Committee').

(3) In order to contribute to the effective implementation of the Agreement, the rules of procedure of the Joint Committee should be adopted.

(4) Pursuant to Article 41 of the Agreement, the Joint Committee may set up specialised working groups in order to assist it in the performance of its tasks.

(5) Therefore, the position of the Union within the Joint Committee as regards the adoption of the rules of procedure of the Joint Committee and the setting up of specialised working groups should be based on the attached draft Decisions of the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on behalf of the Union within the Joint Committee set up under Article 41 of the Agreement in relation to:

(a) the adoption of the rules of procedure of the Joint Committee; and

(b) the setting up of specialised working groups,

shall be based on the draft Decisions of the Joint Committee attached to this Decision.

2. Minor changes to the draft Decisions may be agreed by the representatives of the Union in the Joint Committee without referring back to the Council.

[1] Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part (OJ L 125, 26.4.2014, p. 17).

Article 2

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

Done at Brussels, 12 July 2016.

For the Council
The President
P. KAŽIMÍR

DRAFT

DECISION No 1/2016 OF THE EU-INDONESIA JOINT COMMITTEE

of …

adopting its Rules of Procedure

THE EU-INDONESIA JOINT COMMITTEE,

Having regard to the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part [1] (the 'Agreement'), and in particular Article 41 thereof,

Whereas:

(1) The Agreement entered into force on 1 May 2014.

(2) In order to contribute to the effective implementation of the Agreement, the Joint Committee should be established as soon as possible.

(3) Pursuant to Article 41(5) of the Agreement, the Joint Committee should adopt its own rules of procedure for the application of the Agreement,

HAS ADOPTED THIS DECISION:

Sole article

The rules of procedure of the Joint Committee, as set out in the Annex, are hereby adopted.

Done at …,

For the EU-Indonesia Joint Committee
The Chair

[1] OJ L 125, 26.4.2014, p. 17.

ANNEX

Rules of Procedure of the Joint Committee

Article 1

Composition and Chair

1. The Joint Committee, established in accordance with Article 41 of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part (the 'Agreement') shall perform its tasks as provided for in Article 41 of the Agreement.

2. The Joint Committee shall be composed of representatives of both sides at the highest possible level.

3. The Joint Committee shall be chaired alternately by the Minister of Foreign Affairs of the Republic of Indonesia and the High Representative of the Union for Foreign Affairs and Security Policy. They may delegate their authority to preside over all or part of the Joint Committee meetings to a senior official.

Article 2

Representation

1. The Parties shall notify each other of the list of their representatives in the Joint Committee (the 'Members'). The list shall be administered by the Secretariat of the Joint Committee.

2. A Member wishing to be represented by an alternate representative shall notify the Chair in writing of the name of his or her alternate representative before that meeting takes place. The alternate representative of a Member shall exercise all the rights of that Member.

Article 3

Delegations

1. The Members of the Joint Committee may be accompanied by other officials. Before each meeting, the Parties shall be informed, through the Secretariat, of the intended composition of the delegations attending the meeting.

2. When appropriate and by mutual agreement of the Parties, experts or representatives of other bodies may be invited to attend the meetings of the Joint Committee as observers or in order to provide information on a particular subject.

Article 4

Meetings

1. The Joint Committee shall normally meet not less than every two years, or as otherwise agreed by both Parties. The meetings of the Joint Committee shall be convened by the Chair and shall be held in Indonesia and Brussels alternately, on a date fixed by mutual agreement. Extraordinary meetings of Joint Committee may also be convened by agreement between the Parties.

2. By way of exception and if both Parties agree, the meetings of the Joint Committee may also be held through technical means, for example by video- or teleconferencing.

3. The Joint Committee shall meet at the highest possible level, as agreed by the Parties. The two Parties shall endeavour to ensure ministerial level participation whenever feasible.

4. Meetings of the Joint Committee chaired at ministerial level shall be prepared by a prior meeting at senior official level.

Article 5

Publicity

1. Unless otherwise decided by the Parties, the meetings of the Joint Committee shall not be public. When a Party submits information designated as confidential to the Joint Committee, the other Party shall treat that information as such.

2. The Joint Committee may issue statements to the public as it deems appropriate.

Article 6

Secretariat

A representative of the European External Action Service and a representative of the Government of the Republic of Indonesia shall act jointly as Secretaries of the Joint Committee. All communications to and from the Chair of the Joint Committee shall be forwarded to the Secretaries. Correspondence to and from the Chair of the Joint Committee may be by any written means, including electronic mail.

Article 7

Agendas for meetings

1. The Chair shall draw up a provisional agenda for each meeting. It shall be forwarded, together with the relevant documents, to the other Party, normally not later than 15 days before the beginning of the meeting.

2. The Chair may propose that experts attend the meetings of the Joint Committee in order to provide information on any particular agenda item.

3. The agenda shall be adopted by the Joint Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the two Parties so agree.

4. In special circumstances and in agreement with the two Parties, the Chair may shorten the time limits referred to in paragraph 1 in order to take account of the requirements of a particular case.

Article 8

Agreed minutes

1. The outcome of the meeting of the Joint Committee shall be in the form of agreed minutes.

2. A draft of the agreed minutes of each meeting shall be drawn up jointly by the two Secretaries upon submission by the host, normally within 30 calendar days from the date of the meeting. The draft of the agreed minutes shall be based on a summing-up by the Chair of the conclusions arrived at by the Joint Committee.

3. The agreed minutes shall be approved by both Parties within 45 calendar days of the date of the meeting or by any other date agreed by the Parties. Once there is an agreement on the minutes, two original copies shall be signed by the Parties. Each Party shall receive one original copy.

Article 9

Decisions and Recommendations

1. For the purpose of implementing the tasks of the Joint Committee as provided for in Article 41 of the Agreement, the Joint Committee may agree to adopt a Decision and/or Recommendation. Such Decision and/or Recommendation shall have a serial number, the date of their adoption and a description of the subject matter.

2. Where circumstances so require, the Joint Committee may adopt its Decisions or Recommendations by written procedure.

3. Notwithstanding Article 5, each Party may decide on the publication of the Decisions and Recommendations of the Joint Committee in its respective official publication.

Article 10

Correspondence

1. Correspondence addressed to the Joint Committee shall be directed to the Secretary of either Party, who will in turn inform the other Secretary.

2. The Secretariat shall ensure that correspondence addressed to the Joint Committee is forwarded to the Chair and circulated, where appropriate, as documents referred to in Article 11.

3. Correspondence from the Chair shall be sent to the Parties by the Secretariat and circulated, where appropriate, as documents referred to in Article 11.

Article 11

Documents

1. Where the deliberations of the Joint Committee are based on written supporting documents, such documents shall be numbered and circulated by the Secretariat to the Members.

2. Each Secretary shall be responsible for circulating the documents to the appropriate Members of his or her side in the Joint Committee and systematically copying the other Secretary.

Article 12

Expenses

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the Joint Committee, both with regard to staff, travel and subsistence expenditure, and to postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and the reproduction of documents shall be borne by the Party hosting the meeting.

Article 13

Amendment of the Rules of Procedure

Either Party may request in writing any revision of the Rules of Procedure, which may be amended by common agreement of the Parties, in accordance with Article 9.

Article 14

Specialised working groups and other mechanisms

1. The Joint Committee may set up specialised working groups or other mechanisms in order to assist it in the performance of its tasks. The specialised working groups and other mechanisms shall report to the Joint Committee.

2. The Joint Committee may decide to abolish any existing specialised working groups or other mechanisms or set up further specialised working groups or other mechanisms to assist it in carrying out its duties.

3. The specialised working groups and other mechanisms shall make detailed reports of their activities to the Joint Committee at each of its meetings.

4. The specialised working groups shall only have the power to make recommendations to the Joint Committee.

DRAFT

DECISION No 2/2016 OF THE EU-INDONESIA JOINT COMMITTEE

of …

on the establishment of specialised working groups and other mechanisms

THE EU-INDONESIA JOINT COMMITTEE,

Having regard to the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part [1] (the 'Agreement'), and in particular Article 41 thereof, and to Article 14 of the Rules of Procedure of the Joint Committee,

Whereas:

(1) The Agreement entered into force on 1 May 2014.

(2) In order to contribute to the effective implementation of the Agreement, its institutional framework should be established as soon as possible.

(3) Pursuant to Article 41(3) of the Agreement and Article 14 of the Rules of Procedure of the Joint Committee, the Joint Committee may set up specialised working groups and other mechanisms in order to assist it in the performance of its tasks.

(4) In order to allow for expert-level discussions on the key areas falling within the scope of the Agreement, specialised working groups or other mechanisms may be established. The Parties may further agree to amend the list of specialised working groups or other mechanisms and/or their scope.

(5) Pursuant to Article 9 of its rules of procedure, the Joint Committee may also take decisions by written procedure.

(6) This Decision should be adopted in order for the specialised working groups or mechanisms to become operational in a timely manner,

HAS ADOPTED THIS DECISION:

Sole Article

The specialised working groups and other mechanisms listed in the Annex to this Decision are hereby established.

Done at …,

For the EU- Indonesia Joint Committee
The Chair

[1] OJ L 125, 26.4.2014, p. 17.

ANNEX

EU-Indonesia Joint Committee

Specialised working groups and other mechanisms

(1) Specialised working group on development cooperation

(2) Specialised working group on trade and investment

(3) Human Rights dialogue

(4) Political dialogue

(5) Security dialogue

COUNCIL DECISION (EU) 2016/1171

of 12 July 2016

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning amendments to Annex IX (Financial Services) to the EEA Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and 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 Area ([1]), and in particular point (a) of Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area ([2]) ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 and, in particular, Article 102 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IX to the EEA Agreement which contains provisions on financial services.

(3) The following acts concern financial services and are to be incorporated into the EEA Agreement:

— Regulation (EU) No 1092/2010 of the European Parliament and of the Council ([3]),

— Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([4]),

— Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([5]),

— Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([6]),

— Regulation (EU) No 1022/2013 of the European Parliament and of the Council ([7]),

— Directive 2011/61/EU of the European Parliament and of the Council ([8]),

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).
([4]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).
([5]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).
([6]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).
([7]) Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (OJ L 287, 29.10.2013, p. 5).
([8]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

— Commission Delegated Regulation (EU) No 231/2013 ([1]),

— Commission Implementing Regulation (EU) No 447/2013 ([2]),

— Commission Implementing Regulation (EU) No 448/2013 ([3]),

— Commission Delegated Regulation (EU) No 694/2014 ([4]),

— Commission Delegated Regulation (EU) 2015/514 ([5]),

— Regulation (EU) No 236/2012 of the European Parliament and of the Council ([6]),

— Commission Delegated Regulation (EU) No 826/2012 ([7]),

— Commission Implementing Regulation (EU) No 827/2012 ([8]),

— Commission Delegated Regulation (EU) No 918/2012 ([9]),

— Commission Delegated Regulation (EU) No 919/2012 ([10]),

— Commission Delegated Regulation (EU) 2015/97 ([11]),

— Regulation (EU) No 648/2012 of the European Parliament and of the Council ([12]),

— Regulation (EU) No 513/2011 of the European Parliament and of the Council ([13]),

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([1]) Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

([2]) Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 1).

([3]) Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 3).

([4]) Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers (OJ L 183, 24.6.2014, p. 18).

([5]) Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council (OJ L 82, 27.3.2015, p. 5).

([6]) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

([7]) Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares (OJ L 251, 18.9.2012, p. 1).

([8]) Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (OJ L 251, 18.9.2012, p. 11).

([9]) Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (OJ L 274, 9.10.2012, p. 1).

([10]) Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments (OJ L 274, 9.10.2012, p. 16).

([11]) Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 correcting Delegated Regulation (EU) No 918/2012 as regards the notification of significant net short positions in sovereign debt (OJ L 16, 23.1.2015, p. 22).

([12]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

([13]) Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 145, 31.5.2011, p. 30).

— Regulation (EU) No 462/2013 of the European Parliament and of the Council ([1]),

— Commission Delegated Regulation (EU) No 272/2012 ([2]),

— Commission Delegated Regulation (EU) No 446/2012 ([3]),

— Commission Delegated Regulation (EU) No 447/2012 ([4]),

— Commission Delegated Regulation (EU) No 448/2012 ([5]),

— Commission Delegated Regulation (EU) No 449/2012 ([6]),

— Commission Delegated Regulation (EU) No 946/2012 ([7]),

— Commission Implementing Decision 2014/245/EU ([8]),

— Commission Implementing Decision 2014/246/EU ([9]),

— Commission Implementing Decision 2014/247/EU ([10]),

— Commission Implementing Decision 2014/248/EU ([11]), and

— Commission Implementing Decision 2014/249/EU ([12]).

(4) Annex IX to the EEA Agreement should therefore be amended accordingly.

([1]) Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 146, 31.5.2013, p. 1).

([2]) Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (OJ L 90, 28.3.2012, p. 6).

([3]) Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies (OJ L 140, 30.5.2012, p. 2).

([4]) Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies (OJ L 140, 30.5.2012, p. 14).

([5]) Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority (OJ L 140, 30.5.2012, p. 17).

([6]) Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies (OJ L 140, 30.5.2012, p. 32).

([7]) Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions (OJ L 282, 16.10.2012, p. 23).

([8]) Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 65).

([9]) Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 68).

([10]) Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 71).

([11]) Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 73).

([12]) Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 76).

(5) 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 amendments 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, 12 July 2016.

For the Council
The President
P. KAŽIMÍR

DRAFT

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 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board [1] is to be incorporated into the EEA Agreement.

(2) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31ed (Commission Decision 2010/C-326/07) of Annex IX to the EEA Agreement:

'31f. **32010 R 1092**: Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

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

(a) The relevant authorities of the EFTA States shall participate in the work of the European Systemic Risk Board (ESRB);

(b) Notwithstanding the provisions of Protocol 1 to this Agreement, the terms 'Member State(s)', 'competent authorities', and 'supervisory authorities' shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities and supervisory authorities, respectively. This shall not apply as regards Articles 5(2), 9(5) and 11(1)(c);

(c) The following shall be added in Article 6(2):

'(c) the Governors of the national central banks of the EFTA States, or, as regards Liechtenstein, a high-level representative of the Ministry of Finance;

(d) a College Member of the EFTA Surveillance Authority, whenever relevant to its tasks.

The members of the General Board without voting rights referred to in points (c) and (d) shall not participate in the work of the General Board where the situation of individual EU financial institutions or EU Member States may be discussed.';

(d) The following point shall be added in Article 13(1):

'(i) one representative of each national central bank of the EFTA States or, as regards Liechtenstein, of the Ministry of Finance. These representatives shall not participate in the work of the Advisory Technical Committee where the situation of individual EU financial institutions or EU Member States may be discussed.';

[1] OJ L 331, 15.12.2010, p. 1.

(e) The following subparagraph shall be added in Article 15(2):

'The EFTA Surveillance Authority, the national central banks, the national supervisory authorities and national statistics authorities of the EFTA States shall cooperate closely with the ESRB and, shall provide it with all the information necessary for the fulfilment of its tasks in accordance with the EEA Agreement.';

(f) In Article 16(3), the words ', and in case an EFTA State or one or more of its national supervisory authorities is an addressee, the Standing Committee of the EFTA States' shall be added after the words 'the Commission' and the words 'and the EFTA Surveillance Authority' shall be added after the word 'ESAs';

(g) In Article 17(1) and (2) and in Article 18(1), the words 'and, in case an EFTA State or one or more of its national supervisory authorities is an addressee, the Standing Committee of the EFTA States' shall be added after the word 'Council';

(h) Article 17(3) shall not apply with respect to decisions regarding recommendations addressed to one or more EFTA States;

(i) In Article 18(4) the words ', the EFTA Surveillance Authority and the Standing Committee of the EFTA States' shall be added after the word 'ESAs'.'.

Article 2

The texts of Regulation (EU) No 1092/2010 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…, or on the day following the last notification under Article 103(1) of the EEA Agreement, whichever is the later (*).

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*

(*) Constitutional requirements indicated.

Joint Declaration by the Contracting Parties

to Decision No …/… incorporating Regulation (EU) No 1092/2010 into the EEA Agreement

The Contracting Parties observe that Regulation (EU) No 1092/2010 only allows for a certain level of participation in the European Systemic Risk Board by States that are not EU Member States. In the context of possible future revisions of Regulation (EU) No 1092/2010, the EU will assess whether a right of participation corresponding to the participation of the EEA EFTA States in the three European Supervisory Authorities provided for in Decisions of the EEA Joint Committee No …/…, No …/… and No …/… could be granted to the EEA EFTA States.

DRAFT

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 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([1]) is to be incorporated into the EEA Agreement.

(2) Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 ([2]) is to be incorporated into the EEA Agreement.

(3) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions ([3]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.

(4) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(5) To ensure integration of the EU ESAs' expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority.

(6) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.

(7) Annex IX to the EEA Agreement should therefore be amended accordingly,

([1]) OJ L 331, 15.12.2010, p. 12.
([2]) OJ L 287, 29.10.2013, p. 5.
([3]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31f (Regulation (EU) No 1092/2010 of the European Parliament and of the Council) to Annex IX to the EEA Agreement:

'31g. **32010 R 1093**: Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12), as amended by:

— **32013 R 1022**: Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 (OJ L 287, 29.10.2013, p. 5).

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

(a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Banking Authority), hereinafter referred to as 'the Authority', its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other's work as provided for in this Agreement;

(b) 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;

(c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial institutions. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial institutions;

(d) Unless otherwise provided for in this Agreement, the Authority 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;

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement;

(e) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement.

(f) As regards the EFTA States, Article 1(4) shall read as follows:

'The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.';

(g) In Article 9(5):

(i) as regards the EFTA States, in the first subparagraph, the words 'The Authority' shall read 'The EFTA Surveillance Authority';

(ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a 3-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(h) In Article 16(4), the words ', the Standing Committee of the EFTA States and the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(i) In Article 17:

(i) the words 'Union law' shall read 'the EEA Agreement';

(ii) in paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'the Authority';

(iii) in paragraph 2, the words ', the Standing Committee of the EFTA States, the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(iv) the following subparagraph shall be added in paragraph 2:

'Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.';

(v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

'The competent authority shall, within 10 working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.';

(vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

'4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority's recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority's formal opinion shall take into account the Authority's recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within 10 working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.';

(vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', and the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(ix) as regards the EFTA States, paragraph 8 shall read as follows:

'8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial institutions in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.';

(j) In Article 18:

(i) as regards the EFTA States, in paragraphs 3 and 4, the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the following subparagraph shall be added in paragraphs 3 and 4:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iii) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice';

(k) In Article 19:

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

(ii) in paragraph 3, the words 'in the EU Member States' shall be inserted after the words 'with binding effects for the competent authorities concerned';

(iii) the following subparagraphs shall be added in paragraph 3:

'Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', the words 'the Authority' shall read 'the EFTA Surveillance Authority' and the words 'Union law' shall read 'the EEA Agreement';

(v) in paragraph 4, the following subparagraph shall be added:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.'.

(l) The following subparagraphs shall be added in Article 20:

'Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and/or the European Supervisory Authority (European Securities and Markets Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.';

(m) In Article 21(4), the words ', or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'The Authority';

(n) In Articles 22(1a) and 31(d), the words 'as well as the EFTA Surveillance Authority and the Standing Committee of the EFTA States' shall be inserted after the words 'the Commission';

(o) In Articles 22(4) and 34(1), the words ', the EFTA Surveillance Authority or the Standing Committee of the EFTA States,' shall be inserted after the words 'the European Parliament, the Council or the Commission';

(p) In Article 32(3a), as regards the EFTA States:

(i) the words 'It may request' shall read 'The EFTA Surveillance Authority may request';

(ii) the words 'the Authority and the EFTA Surveillance Authority' shall be inserted before the words 'may participate';

(iii) the following subparagraph shall be added:

'Requests by the EFTA Surveillance Authority under this paragraph shall, without undue delay, be made on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(q) In Article 35(5), the words ', to the national central bank' shall not apply to Liechtenstein.

(r) In Article 36(5), the words 'and the EFTA Surveillance Authority' shall be inserted after the words 'the Commission'.

(s) In Article 38, as regards the EFTA States:

(i) the words 'the Authority', 'the Authority and the Commission', 'the Authority, the Commission' and 'the Commission and the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the words 'the Council' shall read 'the Standing Committee of the EFTA States';

(iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(vi) the following paragraph shall be added:

'6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(t) In Article 39:

(i) the following subparagraph shall be added in paragraph 1:

'When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.';

(ii) the following subparagraphs shall be added in paragraph 4:

'Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.';

(iii) as regards the EFTA States, in paragraph 5 the words 'or the EFTA Surveillance Authority, as the case may be' shall be inserted after the words 'the Authority';

(u) In Article 40(1):

(i) in point (b), the following shall be inserted after the words 'Member State':

'and, without the right to vote, the head of the national public authority competent for the supervision of credit institutions in each EFTA State,';

(ii) in point (f), the words 'and of the EFTA Surveillance Authority' shall be inserted after the word 'Authorities';

(v) In Article 43:

(i) in paragraph 2, the words ', prepare drafts for the EFTA Surveillance Authority,' shall be inserted after the word 'decisions';

(ii) in paragraphs 4 and 6, the words ', the EFTA Surveillance Authority, the Standing Committee of the EFTA States,' shall be inserted after the words 'the Council';

(w) In Article 44:

(i) the following subparagraph shall be added in paragraph 1:

'The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.';

(ii) in paragraph 4, the words 'as well as the representative of the EFTA Surveillance Authority' shall be inserted after the words 'the Executive Director';

(iii) the following subparagraph shall be added in paragraph 4:

'EFTA States' members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial institutions.';

(x) In Article 57(2), the following words shall be inserted after the words 'Member State':

'as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.';

(y) The following subparagraph shall be added in Article 60(4):

'If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20 as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.';

(z) The following subparagraphs shall be added in Article 62(1)(a):

'The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial institutions under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7';

(za) The following shall be added in Article 67:

'The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.';

(zb) The following paragraph shall be added in Article 68:

'5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.';

(zc) The following paragraph shall be added in Article 72:

'4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.'.'.

Article 2

The texts of Regulations (EU) No 1093/2010 and (EU) No 1022/2013 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

The Contracting Parties shall review the framework established pursuant to this Decision and Decisions [No …/… [ESRB],]No …/… [EIOPA] and No …/… [ESMA] at the latest by the end of the year [five years after entry into force of this Decision] to ensure that it will continue to ensure the effective and homogeneous application of common rules and supervision throughout the EEA.

Article 4

This Decision shall enter into force on… [insert the day following its adoption], or on the day following the last notification under Article 103(1) of the EEA Agreement, whichever is the later (*).

Article 5

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*

(*) Constitutional requirements indicated.

Joint Declaration by the Contracting Parties

to Decision No […] incorporating Regulation (EU) No 1093/2010 into the EEA Agreement

[for adoption with the Decision and for publication in the OJ]

According to Article 1(5) of Regulation (EU) No 1093/2010, as amended by Regulation (EU) No 1022/2013, the European Supervisory Authority (European Banking Authority), hereinafter referred to as 'the Authority', will act independently, objectively and in a non-discriminatory manner, in the interests of the Union alone. Following the incorporation of Regulation (EU) No 1093/2010 into the EEA Agreement, the competent authorities of the EFTA States will, but for the right to vote, have the same rights as competent authorities of EU Member States in the work of the Authority.

Therefore, and in full respect of the Authority's independence, the Contracting Parties to the EEA Agreement share the understanding that, when it acts pursuant to the provisions of the EEA Agreement, the Authority will act in the common interest of all the Contracting Parties to the EEA Agreement.

DRAFT

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 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC [1] is to be incorporated into the EEA Agreement.

(2) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions [2] of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.

(3) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(4) To ensure integration of the EU ESAs' expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority.

(5) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.

(6) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31g (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) to Annex IX to the EEA Agreement:

'31h. **32010 R 1094**: Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

[1] OJ L 331, 15.12.2010, p. 48.
[2] Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

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

(a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Insurance and Occupational Pensions Authority), hereinafter referred to as 'the Authority', its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other's work as provided for in this Agreement;

(b) 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;

(c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial institutions. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial institutions;

(d) Unless otherwise provided for in this Agreement, the Authority 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.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement;

(e) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement;

(f) In Article 1, as regards the EFTA States:

(i) in paragraph 4, the words 'or the EFTA Surveillance Authority, as the case may be' shall be inserted after the words 'the Authority';

(ii) paragraph 5 shall read as follows:

'The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.';

(g) In Article 9(5):

(i) as regards the EFTA States, in the first subparagraph, the words 'The Authority' shall read 'The EFTA Surveillance Authority';

(ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(h) In Article 16(4), the words ', the Standing Committee of the EFTA States and the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(i) In Article 17:

(i) the words 'Union law' shall read 'the EEA Agreement';

(ii) in paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'the Authority';

(iii) in paragraph 2, the words ', the Standing Committee of the EFTA States, the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(iv) the following subparagraph shall be added in paragraph 2:

'Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.';

(v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

'The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.';

(vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

'4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority's recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority's formal opinion shall take into account the Authority's recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.';

(vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', and the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(ix) as regards the EFTA States, paragraph 8 shall read as follows:

'8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial institutions in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.';

(j) In Article 18:

(i) as regards the EFTA States, in paragraphs 3 and 4, the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the following subparagraph shall be added in paragraphs 3 and 4:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iii) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice';

(k) In Article 19:

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

(ii) in paragraph 3, the words 'in the EU Member States' shall be inserted after the words 'with binding effects for the competent authorities concerned';

(iii) the following subparagraphs shall be added in paragraph 3:

'Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', the words 'the Authority' shall read 'the EFTA Surveillance Authority' and the words 'Union law' shall read 'the EEA Agreement';

(v) in paragraph 4, the following subparagraph shall be added:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(l) The following subparagraphs shall be added in Article 20:

'Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Banking Authority) and/or the European Supervisory Authority (European Securities and Markets Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.';

(m) In Article 21(4), the words ', or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'The Authority';

(n) In Articles 22(4) and 34(1), the words ', the EFTA Surveillance Authority or the Standing Committee of the EFTA States,' shall be inserted after the words 'the European Parliament, the Council or the Commission';

(o) In Article 35(5), the words ', to the national central bank' shall not apply to Liechtenstein;

(p) In Article 38, as regards the EFTA States:

(i) the words 'the Authority', 'the Authority and the Commission', 'the Authority, the Commission' and 'the Commission and the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the words 'the Council' shall read 'the Standing Committee of the EFTA States';

(iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(vi) the following paragraph shall be added:

'6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(q) In Article 39:

(i) the following subparagraph shall be added in paragraph 1:

'When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.';

(ii) the following subparagraphs shall be added in paragraph 4:

'Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.';

(iii) as regards the EFTA States, in paragraph 5 the words 'or the EFTA Surveillance Authority, as the case may be' shall be inserted after the words 'the Authority';

(r) In Article 40(1):

(i) in point (b), the following shall be inserted after the words 'Member State':

'and, without the right to vote, the head of the national public authority competent for the supervision of financial institutions in each EFTA State,';

(ii) in point (e), the words 'and of the EFTA Surveillance Authority' shall be inserted after the word 'Authorities';

(s) In Article 43:

(i) in paragraph 2, the words ', prepare drafts for the EFTA Surveillance Authority,' shall be inserted after the word 'decisions';

(ii) in paragraphs 4 and 6, the words ', the EFTA Surveillance Authority, the Standing Committee of the EFTA States' shall be inserted after the words 'the Council';

(t) In Article 44:

(i) the following subparagraph shall be added in paragraph 1:

'The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.';

(ii) in paragraph 4, the words 'as well as the representative of the EFTA Surveillance Authority' shall be inserted after the words 'the Executive Director';

(iii) the following subparagraph shall be added in paragraph 4:

'EFTA States' members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial institutions.';

(u) In Article 57(2), the following words shall be inserted after the words 'Member State':

'as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.';

(v) The following subparagraph shall be added in Article 60(4):

'If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20 as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.';

(w) The following subparagraphs shall be added in Article 62(1)(a):

'The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial institutions under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7';

(x) The following shall be added in Article 67:

'The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.';

(y) The following paragraph shall be added in Article 68:

'5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.';

(z) The following paragraph shall be added in Article 72:

'4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.'.'.

Article 2

The texts of Regulation (EU) No 1094/2010 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

The Contracting Parties shall review the framework established pursuant to this Decision and Decisions No …/… [ESRB], No …/… [EBA] and No …/… [ESMA] at the latest by the end of the year [five years after entry into force of this Decision] to ensure that it will continue to ensure the effective and homogeneous application of common rules and supervision throughout the EEA.

Article 4

This Decision shall enter into force on…, or on the day following the last notification under Article 103(1) of the EEA Agreement, whichever is the later (*).

(*) [Constitutional requirements indicated.]

Article 5

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*

Joint Declaration by the Contracting Parties

to Decision No […] incorporating Regulation (EU) No 1094/2010 into the EEA Agreement

[for adoption with the Decision and for publication in the OJ]

According to Article 1(6) of Regulation (EU) No 1094/2010, the European Supervisory Authority (European Insurance and Occupational Pensions Authority), hereinafter referred to as 'the Authority', will act independently and objectively and in the interests of the Union alone. Following the incorporation of this Regulation into the EEA Agreement, the competent authorities of the EFTA States will, but for the right to vote, have the same rights as competent authorities of EU Member States in the work of the Authority.

Therefore, and in full respect of the Authority's independence, the Contracting Parties to the EEA Agreement share the understanding that, when it acts pursuant to the provisions of the EEA Agreement, the Authority will act in the common interest of all the Contracting Parties to the EEA Agreement.

DRAFT

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 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([1]) is to be incorporated into the EEA Agreement.

(2) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions ([2]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.

(3) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(4) To ensure integration of the EU ESAs' expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority.

(5) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.

(6) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31h (Regulation (EU) No 1094/2010 of the European Parliament and of the Council) of Annex IX to the EEA Agreement:

'31i. **32010 R 1095**: Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

([1]) OJ L 331, 15.12.2010, p. 84.
([2]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

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

(a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Securities and Markets Authority), hereinafter referred to as 'the Authority', its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other's work as provided for in this Agreement;

(b) 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;

(c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial market participants. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial market participants;

(d) Unless otherwise provided for in this Agreement, the Authority 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.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement;

(e) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement;

(f) As regards the EFTA States, Article 1(4) shall read as follows:

'The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.';

(g) In Article 9(5):

(i) as regards the EFTA States, in the first subparagraph, the words 'The Authority' shall read 'The EFTA Surveillance Authority';

(ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(h) In Article 16(4), the words ', the Standing Committee of the EFTA States and the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(i) In Article 17:

(i) the words 'Union law' shall read 'the EEA Agreement';

(ii) in paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'the Authority';

(iii) in paragraph 2, the words ', the Standing Committee of the EFTA States, the EFTA Surveillance Authority' shall be inserted after the words 'the Commission';

(iv) the following subparagraph shall be added in paragraph 2:

'Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.';

(v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

'The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.';

(vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

'4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority's recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority's formal opinion shall take into account the Authority's recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.';

(vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', and the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(ix) as regards the EFTA States, paragraph 8 shall read as follows:

'8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial market participants in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.';

(j) In Article 18:

(i) as regards the EFTA States, in paragraphs 3 and 4, the words 'the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the following subparagraph shall be added in paragraphs 3 and 4:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iii) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice';

(k) In Article 19:

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

(ii) in paragraph 3, the words 'in the EU Member States' shall be inserted after the words 'with binding effects for the competent authorities concerned';

(iii) the following subparagraphs shall be added in paragraph 3:

'Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) as regards the EFTA States, in paragraph 4, the words 'Without prejudice to the powers of the Commission under Article 258 TFEU' shall read 'Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', the words 'the Authority' shall read 'the EFTA Surveillance Authority' and the words 'Union law' shall read 'the EEA Agreement';

(v) in paragraph 4, the following subparagraph shall be added:

'Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(l) The following subparagraphs shall be added in Article 20:

'Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Banking Authority) and/or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.';

(m) In Article 21(4), the words ', or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'The Authority';

(n) In Articles 22(4) and 34(1), the words ', the EFTA Surveillance Authority or the Standing Committee of the EFTA States,' shall be inserted after the words 'the European Parliament, the Council or the Commission';

(o) In Article 35(5), the words ', to the national central bank' shall not apply to Liechtenstein;

(p) In Article 38, as regards the EFTA States:

(i) the words 'the Authority', 'the Authority and the Commission', 'the Authority, the Commission' and 'the Commission and the Authority' shall read 'the EFTA Surveillance Authority';

(ii) the words 'the Council' shall read 'the Standing Committee of the EFTA States';

(iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.';

(iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

'The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.';

(vi) the following paragraph shall be added:

'6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.';

(q) In Article 39:

(i) the following subparagraph shall be added in paragraph 1:

'When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken, to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.';

(ii) the following subparagraphs shall be added in paragraph 4:

'Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.';

(iii) as regards the EFTA States, in paragraph 5, the words 'or the EFTA Surveillance Authority, as the case may be' shall be inserted after the words 'the Authority';

(r) In Article 40(1):

(i) in point (b), the following shall be inserted after the words 'Member State':

'and, without the right to vote, the head of the national public authority competent for the supervision of financial market participants in each EFTA State,';

(ii) in point (e), the words 'and of the EFTA Surveillance Authority' shall be inserted after the word 'Authorities';

(s) In Article 43:

(i) in paragraph 2, the words ', prepare drafts for the EFTA Surveillance Authority,' shall be inserted after the word 'decisions';

(ii) in paragraphs 4 and 6, the words ', the EFTA Surveillance Authority, the Standing Committee of the EFTA States,' shall be inserted after the words 'the Council';

(t) In Article 44:

(i) the following subparagraph shall be added in paragraph 1:

'The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.';

(ii) in paragraph 4, the words 'as well as the representative of the EFTA Surveillance Authority' shall be inserted after the words 'the Executive Director';

(iii) the following subparagraph shall be added in paragraph 4:

'EFTA States' members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial market participants.';

(u) In Article 57(2), the following words shall be inserted after the words 'Member State':

'as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.';

(v) The following subparagraph shall be added in Article 60(4):

'If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20, as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.';

(w) The following subparagraphs shall be added in Article 62(1)(a):

'The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial market participants under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7';

(x) The following shall be added in Article 67:

'The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.';

(y) The following paragraph shall be added in Article 68:

'5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.';

(z) The following paragraph shall be added in Article 72:

'4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.'.'.

Article 2

The texts of Regulation (EU) No 1095/2010 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

The Contracting Parties shall review the framework established pursuant to this Decision and Decisions No …/… [ESRB], No …/… [EBA] and No …/… [EIOPA] at the latest by the end of the year [five years after entry into force of this Decision] to ensure that it will continue to ensure the effective and homogeneous application of common rules and supervision throughout the EEA.

Article 4

This Decision shall enter into force on…, or on the day following the last notification under Article 103(1) of the EEA Agreement, whichever is the later (*).

Article 5

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 Regulation (EU) No 1095/2010 into the EEA Agreement

[for adoption with the Decision and for publication in the OJ]

According to Article 1(5) of Regulation (EU) No 1095/2010, the European Supervisory Authority (European Securities and Markets Authority), hereinafter referred to as 'the Authority', will act independently and objectively and in the interests of the Union alone. Following the incorporation of this Regulation into the EEA Agreement, the competent authorities of the EFTA States will, but for the right to vote, have the same rights as competent authorities of EU Member States in the work of the Authority.

Therefore, and in full respect of the Authority's independence, the Contracting Parties to the EEA Agreement share the understanding that, when it acts pursuant to the provisions of the EEA Agreement, the Authority will act in the common interest of all the Contracting Parties to the EEA Agreement.

DRAFT

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) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ([1]) is to be incorporated into the EEA Agreement.

(2) Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision ([2]) is to be incorporated into the EEA Agreement.

(3) Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers ([3]) is to be incorporated into the EEA Agreement.

(4) Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council ([4]) is to be incorporated into the EEA Agreement.

(5) Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council ([5]) is to be incorporated into the EEA Agreement.

(6) Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council ([6]) is to be incorporated into the EEA Agreement.

(7) The EU and EEA EFTA Ministers of Finance and Economy underlined, in their conclusions ([7]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

([1]) OJ L 174, 1.7.2011, p. 1.
([2]) OJ L 83, 22.3.2013, p. 1.
([3]) OJ L 183, 24.6.2014, p. 18.
([4]) OJ L 82, 27.3.2015, p. 5.
([5]) OJ L 132, 16.5.2013, p. 1.
([6]) OJ L 132, 16.5.2013, p. 3.
([7]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

(8) Directive 2011/61/EU specifies cases in which the 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 1095/2010 of the European Parliament and of the Council [1]. 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 point 31i of Annex IX to the EEA Agreement and under the conditions prescribed therein. To ensure integration of ESMA's expertise 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 ESMA. 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 conclusions of 14 October 2014.

(9) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31bac (Commission Regulation (EC) No 1287/2006) of Annex IX to the EEA Agreement:

'31bb. **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 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) Unless otherwise provided for in this Agreement, the European Securities and Markets Authority (ESMA) and the EFTA Surveillance Authority shall cooperate, exchange information and consult each other for the purposes of the Directive, in particular prior to taking any action;

(c) References to other acts in the Directive shall apply to the extent and in the form that those acts are incorporated into this Agreement;

(d) 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 Directive 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;

(e) As regards the EFTA States, Article 4(1)(an) shall read as follows:

"securitisation special purpose entities' means entities whose sole purpose is to carry on a securitisation or securitisations within the meaning defined below, and other activities which are appropriate to accomplish that purpose.

For the purposes of this Directive, 'securitisation' means a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place:

(a) an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme, either by the transfer of legal title or beneficial interest of those assets from the originator or through sub-participation;

[1] OJ L 331, 15.12.2010, p. 84.

(b) the credit risk of an asset or pool of assets, or part thereof, is transferred through the use of credit derivatives, guarantees or any similar mechanism to the investors in the financing instruments issued by an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme;

(c) insurance risks are transferred from an insurance or reinsurance undertaking to a separate entity that is created for or serves the purpose of the transaction or scheme, whereby the entity fully funds its exposure to such risks through the issuance of financing instruments, and the repayment rights of the investors in those financing instruments are subordinated to the reinsurance obligations of the entity;

Where such financing instruments are issued, they do not represent the payment obligations of the originator, or insurance or reinsurance undertaking;';

(f) In Article 7(5), the following subparagraph shall be added:

'ESMA shall include in the central public register referred to in the second subparagraph, under the same conditions, information on AIFMs authorised by the competent authorities of an EFTA State under this Directive, AIFs managed and/or marketed in the EEA by such AIFMs and the competent authority for each such AIFM.';

(g) In Article 9(6) and in Article 21(6)(b), (7) and (17)(b), the words 'Union law' shall be replaced by the words 'the EEA Agreement';

(h) In Article 21(3)(c), as regards the EFTA States, the words '21 July 2011' shall read 'the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(i) In Article 43:

(i) in paragraph 1, the words 'of Union law' shall read 'applicable pursuant to the EEA Agreement';

(ii) in paragraph 2, as regards the EFTA States, the words 'by 22 July 2014' shall read 'within eighteen months of the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(j) In Article 47:

(i) in the second subparagraph of paragraph 1 and in paragraphs 2, 8 and 10, the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in paragraph 3, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(iii) as regards the EFTA States, in paragraphs 4, 5 and 9, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iv) in paragraph 7, the following subparagraph shall be added:

'In cases regarding the EFTA States, before preparing a draft in accordance with Article 9(5) of Regulation (EU) No 1095/2010 in view of a decision on the part of the EFTA Surveillance Authority under paragraph 4, ESMA shall consult, where appropriate, the ESRB and other relevant authorities. It shall transmit the observations received to the EFTA Surveillance Authority.';

(k) In Article 50, as regards the EFTA States:

(i) in paragraph 1, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in the first subparagraph of paragraph 4, the words ', the EFTA Surveillance Authority' shall be inserted after the words 'one another';

(l) In Article 61, as regards the EFTA States, the words '22 July 2013' and '22 July 2017' shall read 'eighteen months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]'.

31bba. **32013 R 0231**: Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

The provisions of the Delegated 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, references to 'EU' or 'Union' Member States and competent authorities shall be understood to include, in addition to their meaning in the Delegated Regulation, the EFTA States and their competent authorities, respectively;

(b) In Articles 15, 84, 86 and 99, the words 'Union law' shall be replaced by the words 'the EEA Agreement';

(c) In Article 55, as regards the EFTA States, the words '1 January 2011' shall read 'the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]' and the words '31 December 2014' shall read '12 months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(d) In Article 114(3), the words 'Union legislation' shall be replaced by the words 'legislation applicable pursuant to the EEA Agreement'.

31bbb. **32013 R 0447**: Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 1).

31bbc. **32013 R 0448**: Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 3).

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

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 Implementing Regulation, the EFTA States and their competent authorities, respectively.

31bbd. **32014 R 0694**: Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers (OJ L 183, 24.6.2014, p. 18).

31bbe. **32015 R 0514**: Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council (OJ L 82, 27.3.2015, p. 5).

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

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 Delegated Regulation, the EFTA States and their competent authorities, respectively.'.

Article 2

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

1. The following is added in points 30 (Directive 2009/65/EC of the European Parliament and of the Council), 31eb (Regulation (EC) No 1060/2009 of the European Parliament and of the Council) and 31i (Regulation (EU) No 1095/2010 of the European Parliament and of the Council):

   ', as amended by:

   — **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1).'.

2. The following indent is added in point 31d (Directive 2003/41/EC of the European Parliament and of the Council):

   '— **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1).'.

Article 3

The texts of Directive 2011/61/EU and Delegated Regulations (EU) No 231/2013, (EU) No 694/2014 and (EU) 2015/514 and Implementing Regulations (EU) No 447/2013 and (EU) No 448/2013 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 4

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 … ([1]) [incorporating the ESMA Regulation (EU) No 1095/2010], whichever is the later.

Article 5

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.]
([1]) OJ L …

DRAFT

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 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps ([1]) is to be incorporated into the EEA Agreement.

(2) Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares ([2]) is to be incorporated into the EEA Agreement.

(3) Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps ([3]) is to be incorporated into the EEA Agreement.

(4) Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events ([4]) is to be incorporated into the EEA Agreement.

(5) Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments ([5]) is to be incorporated into the EEA Agreement.

(6) Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 correcting Delegated Regulation (EU) No 918/2012 as regards the notification of significant net short positions in sovereign debt ([6]) is to be incorporated into the EEA Agreement.

(7) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions ([7]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, underlined that, in accordance with the

([1]) OJ L 86, 24.3.2012, p. 1.
([2]) OJ L 251, 18.9.2012, p. 1.
([3]) OJ L 251, 18.9.2012, p. 11.
([4]) OJ L 274, 9.10.2012, p. 1.
([5]) OJ L 274, 9.10.2012, p. 16.
([6]) OJ L 16, 23.1.2015, p. 22.
([7]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(8) Regulation (EU) No 236/2012 specifies cases in which the 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 1095/2010 of the European Parliament and of the Council [1]. 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 point 31i of Annex IX to the EEA Agreement and under the conditions prescribed therein. To ensure integration of ESMA's expertise 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 ESMA. 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 conclusions of 14 October 2014.

(9) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 29e (Commission Regulation (EC) No 1569/2007) of Annex IX to the EEA Agreement:

'29f. **32012 R 0236**: Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, 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) Unless otherwise provided for in this Agreement, the European Securities and Markets Authority (ESMA) 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;

(c) In the third subparagraph of Article 23(4), the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(d) In Article 28:

(i) in the first subparagraph of paragraph 1, the words 'or, as regards the EFTA States, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in the second subparagraph of paragraph 1, in paragraphs 2, 3, 5, 6, 8, 10 and 11, and in point (b) of paragraph 7, the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

[1] OJ L 331, 15.12.2010, p. 84.

(iii) in paragraph 3, the words 'without issuing the opinion' shall be replaced by the words 'without ESMA issuing the opinion';

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

'In cases regarding the EFTA States, before preparing a draft in accordance with Article 9(5) of Regulation (EU) No 1095/2010 in view of a decision on the part of the EFTA Surveillance Authority under paragraph 1, ESMA shall consult the ESRB and, where appropriate, other relevant authorities. It shall transmit the observations received to the EFTA Surveillance Authority.';

(v) in paragraph 7, the words 'any decision' shall read 'each of its decisions';

(vi) in paragraph 7, 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. 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';

(vii) in paragraph 9, the words '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 'ESMA website';

(e) In Article 31, the words ', the Standing Committee of the EFTA States' shall be inserted after the word 'authorities';

(f) In Article 32, as regards the EFTA States, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(g) In Article 36, as regards the EFTA States, the words 'and the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(h) In Article 37(3), the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'required by ESMA';

(i) In Article 46, as regards the EFTA States:

(i) paragraph 1 shall not apply;

(ii) in paragraph 2, the words '25 March 2012' shall read 'the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]'.

29fa. **32012 R 0826**: Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares (OJ L 251, 18.9.2012, p. 1).

29fb. **32012 R 0827**: Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (OJ L 251, 18.9.2012, p. 11).

29fc. **32012 R 0918**: Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (OJ L 274, 9.10.2012, p. 1), as amended by:

— **32015 R 0097**: Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 (OJ L 16, 23.1.2015, p. 22).

29fd. **32012 R 0919**: Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments (OJ L 274, 9.10.2012, p. 16).'.

Article 2

The texts of Regulation (EU) No 236/2012 and Delegated Regulations (EU) No 826/2012, (EU) No 918/2012, (EU) No 919/2012 and (EU) 2015/97 and Implementing Regulation (EU) No 827/2012 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 … ([1]) [incorporating the ESMA Regulation (EU) No 1095/2010], whichever is the later.

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.]
([1]) OJ L …

DRAFT

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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]) is to be incorporated into the EEA Agreement.

(2) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions ([2]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.

(3) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States. The EU ESAs will be competent to perform actions of a non-binding nature, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(4) To ensure integration of the EU ESAs' expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority. These principles will apply in particular to direct supervision by ESMA of trade repositories.

(5) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.

(6) 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 indent is added in point 16b (Directive 98/26/EC of the European Parliament and of the Council):

'— **32012 R 0648**: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 (OJ L 201, 27.7.2012, p. 1).'.

([1]) OJ L 201, 27.7.2012, p. 1.
([2]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

2. The following point is inserted after point 31bb (Directive 2011/61/EU of the European Parliament and of the Council):

'31bc. **32012 R 0648**: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, 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 term '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) Unless otherwise provided for in this Agreement, the European Securities and Markets Authority (ESMA) 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. This includes, in particular the duty to pass to each other, without undue delay, the information needed for each body to carry out its duties under this Regulation, such as the preparation of drafts by ESMA as set out in point (d). This extends to, amongst others, information received by either body as a result of applications for registration or replies to requests for information submitted to market operators, or obtained by either body during investigations or on-site inspections.

Without prejudice to Article 109 of this Agreement, ESMA and the EFTA Surveillance Authority shall pass to the other body any application, information, complaint or request which fall within the competence of that body.

In case of disagreement between ESMA and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of ESMA and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of ESMA or the College of the EFTA Surveillance Authority may request that the Contracting Parties refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement;

(c) References to 'members of the ESCB' or to 'central banks' shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States, except as regards Liechtenstein for which such references shall not apply;

(d) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 56(2), 58(1), 61(1), 62(3), 63(4), 64(5), 65(1), 66(1), 71 and 73(1) shall, without undue delay, be adopted on the basis of drafts prepared by ESMA at its own initiative or at the request of the EFTA Surveillance Authority;

(e) In Articles 4(2)(a) and 7(5) and in Article 11(6) and (10), the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(f) In Article 6(2)(c), the words 'in the Union and, where it differs, in the EFTA States' shall be inserted after the words 'takes effect';

(g) In Articles 9(1) and 11(3), as regards the EFTA States, the words '16 August 2012' shall read 'the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(h) In Article 12(2), as regards the EFTA States, the words 'By 17 February 2013' shall read 'Within sixth months of the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(i) In Article 17:

(i) in paragraph 4 and in the first subparagraph of paragraph 5, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(ii) in paragraph 5, the words 'Union law' shall be replaced by the words 'the EEA Agreement';

(j) In Articles 18 and 25, the words 'Union currencies' shall be replaced by the words 'official currencies of Contracting Parties to the EEA Agreement';

(k) In Article 55(1), the words 'or, in the case of a trade repository established in an EFTA State, with the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(l) In Article 56:

(i) in paragraph 1, the words 'or, in the case of a trade repository established in an EFTA State, to the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) in paragraph 2, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(m) In Article 57, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(n) In Article 58, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(o) In Article 59:

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

(ii) paragraph 2 shall be replaced by the following:

'ESMA and the EFTA Surveillance Authority shall communicate to each other and to the Commission any decision taken in accordance with paragraph 1.'.

(p) In Article 60, the words 'or the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(q) In Article 61:

(i) in paragraph 1, the words 'or, in the case of trade repositories or related third parties to whom the trade repositories have outsourced operational functions or activities that are established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) in paragraph 2, 3 and 5, as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) as regards the EFTA States, point (g) of paragraph 3 shall read as follows:

'indicate the right to have the decision reviewed by 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.';

(iv) in paragraph 5, the following subparagraph shall be added:

'The EFTA Surveillance Authority shall without undue delay forward the information received under this Article to ESMA.';

(r) In Article 62:

(i) in paragraph 1, the words 'or, in the case a person subject to investigation is established in an EFTA State, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in paragraph 1, the following subparagraph shall be added:

'Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in investigations upon ESMA's request.';

(iii) as regards the EFTA States, in paragraphs 2, 3, 4 and the first and second sentences of paragraph 6, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iv) as regards the EFTA States, the second sentence of paragraph 3 shall read as follows:

'The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 66 and the right to have the decision reviewed by 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.';

(v) as regards the EFTA States, in the third sentence of paragraph 6 the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(vi) as regards the EFTA States, the fourth sentence of paragraph 6 shall read as follows:

'The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(s) In Article 63:

(i) in paragraph 1, the words 'or, in the case of legal persons established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) in paragraph 1, the following subparagraph shall be added:

'The EFTA Surveillance Authority shall without undue delay forward the information obtained under this Article to ESMA.';

(iii) as regards the EFTA States, in paragraphs 2 to 7 and the first, second and third sentences of paragraph 9, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iv) in paragraph 2, the following subparagraph shall be added:

'Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in on-site inspections.';

(v) as regards the EFTA States, the second sentence of paragraph 4 shall read as follows:

'The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 66 as well as the right to have the decision reviewed by 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.';

(vi) as regards the EFTA States, in the fourth sentence of paragraph 9 the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(vii) as regards the EFTA States, the fifth sentence of paragraph 9 shall read as follows:

'The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(t) In Article 64:

(i) as regards the EFTA States, in paragraph 1, first sentence, the words 'ESMA shall appoint an independent investigating officer within ESMA to investigate the matter' shall read 'the EFTA Surveillance Authority shall appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter following consultations with ESMA.';

(ii) in paragraph 1, the following subparagraph shall be added:

'The investigating officer appointed by the EFTA Surveillance Authority shall not be involved or have been directly or indirectly involved in the supervision or registration process of the trade repository concerned and shall perform his functions independently from the College of the EFTA Surveillance Authority and ESMA's Board of Supervisors.';

(iii) as regards the EFTA States, in paragraphs 2, 3 and 4, the words 'and the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(iv) as regards the EFTA States, in paragraph 5, after the words 'Article 67,', the remainder of the sentence shall read as follows:

'the EFTA Surveillance Authority shall decide if one or more of the infringements listed in Annex I has been committed by the persons who have been subject to investigation, and in such a case, shall take a supervisory measure in accordance with Article 73 and impose a fine in accordance with Article 65.

The EFTA Surveillance Authority shall provide ESMA with all information and files necessary for the performance of its obligation under this paragraph.';

(v) in paragraph 6, the words 'or the EFTA Surveillance Authority's' shall be inserted after the words 'ESMA's';

(vi) in paragraph 8, as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(u) In Article 65:

(i) in paragraph 1, the words 'or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) as regards the EFTA States, in paragraph 2, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(v) In Article 66:

(i) in paragraph 1, the words 'or, in the case the trade repository or person concerned is established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the words 'ESMA';

(ii) in paragraph 4, as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(w) In Article 67:

(i) in paragraph 1, the following subparagraphs shall be added:

'Before preparing any draft for the EFTA Surveillance Authority under Articles 65 and 66, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Articles 65 and 66 only on findings on which the persons subject to the proceedings have had the opportunity to comment.';

(ii) as regards the EFTA States, in paragraph 2, the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(iii) as regards the EFTA States, in paragraph 2, the words 'ESMA's internal preparatory documents' shall read 'internal preparatory documents of ESMA and the EFTA Surveillance Authority';

(x) In Article 68:

(i) in paragraph 1, the following shall be added:

'The EFTA Surveillance Authority shall also disclose to the public every fine and periodic penalty that it has imposed pursuant to Articles 65 and 66, subject to the conditions laid down in this paragraph as regards the disclosure of fines and periodic penalties by ESMA';

(ii) as regards the EFTA States, in paragraphs 3 and 4, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) as regards the EFTA States, in paragraph 3, the words 'the European Parliament, the Council' shall read 'ESMA and the Standing Committee of the EFTA States';

(iv) as regards the EFTA States, in paragraph 4, the words 'the Court of Justice' shall read 'the EFTA Court';

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

'The Standing Committee of the EFTA States shall determine the allocation of the amounts of the fines and periodic penalty payments collected by the EFTA Surveillance Authority.';

(y) In Article 71:

(i) in paragraph 1, the words 'or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) as regards the EFTA States, in paragraph 2, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) in the second sentence of paragraph 3, the words 'or, in the case of a trade repository established in an EFTA State, not to prepare a draft for the EFTA Surveillance Authority to that effect,' shall be inserted after the word 'concerned';

(z) In Article 72(1), the following subparagraphs shall be added:

'As regards trade repositories established in an EFTA State, fees shall be charged by the EFTA Surveillance Authority on the same basis as fees charged to other trade repositories in accordance with this Regulation and with the delegated acts referred to in paragraph 3.

The amounts collected by the EFTA Surveillance Authority in accordance with this paragraph shall be passed on to ESMA without undue delay.';

(za) In Article 73:

(i) in paragraph 1, the words 'or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) as regards the EFTA States, in paragraph 2, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) in paragraph 3, the following subparagraphs shall be added:

'Without undue delay, the EFTA Surveillance Authority shall notify any decision adopted pursuant to paragraph 1 to the trade repository concerned, and shall communicate it to the competent authorities and to the Commission. ESMA shall make public any such decision on its website within 10 working days from the date when it was adopted. The EFTA Surveillance Authority shall also make public any of its own decisions on its website within 10 working days from the date when it was adopted.

When making public a decision of the EFTA Surveillance Authority as referred to in the third subparagraph, ESMA and the EFTA Surveillance Authority shall also make public the right for the trade repository concerned to have the decision reviewed by the EFTA Court, the fact, where relevant, that such proceedings have been instituted, specifying that actions brought before the EFTA Court do not have suspensory effect, and the fact that it is possible for the EFTA Court to suspend the application of the contested decision in accordance with Article 40 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(zb) In Article 74:

(i) in paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted before the words 'may delegate specific supervisory tasks';

(ii) in paragraphs 2 to 5, the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(iii) the following paragraph shall be added:

'6. Prior to delegation of a task, the EFTA Surveillance Authority and ESMA shall consult each other.';

(zc) Articles 75(2) and (3) and 76 shall not apply;

(zd) In Article 81(3), as regards the EFTA States:

(i) in point (f), the words 'the Union as referred to in Article 75' shall read 'its EFTA State of establishment granting mutual access to, and exchange of information on, derivative contracts held in trade repositories';

(ii) in point (i), the words 'ESMA as referred to in Article 76' shall read 'its EFTA State of establishment granting access to information on derivative contracts held in trade repositories established in that EFTA State';

(iii) the text of point (j) shall read as follows:

'the Agency for the Cooperation of Energy Regulators, subject to the content and entry into force of a decision of the EEA Joint Committee incorporating Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of the Energy Regulators.';

(zf) In Article 83, the words 'or the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zg) In Article 84, the words', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zh) In Article 87(2), as regards the EFTA States, the words 'by 17 August 2014' shall read 'within one year of the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]';

(zi) In Article 89:

(i) in paragraph 1, the following subparagraph shall be added after the first subparagraph:

'For three years after the entry into force of Decision of the EEA Joint Committee No …/… of … [this decision], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10) that are established in an EFTA State. The transitional period shall also apply to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.';

(ii) in paragraphs 3, 5, 6 and 8, as regards the EFTA States, the words 'are adopted by the Commission' shall read 'adopted by the Commission apply in the EEA';

(iii) in paragraph 3, as regards the EFTA States, the words 'decisions of the EEA Joint Committee containing' shall be inserted after the words 'entry into force of all the';

(iv) in paragraphs 5 and 6, as regards the EFTA States, the words 'the decisions of the EEA Joint Committee containing' shall be inserted after the words 'entry into force of';

(zj) In points (a) and (c) of Part IV of Annex I and in point (g) of Part I and in point (c) of Part II of Annex II, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA'.'.

Article 2

The texts of Regulation (EU) No 648/2012 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 … [1] [incorporating the ESMA Regulation (EU) No 1095/2010], whichever is the later.

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.]
[1] OJ L …

DRAFT

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 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies ([1]) is to be incorporated into the EEA Agreement.

(2) Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies ([2]) is to be incorporated into the EEA Agreement.

(3) The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions ([3]) of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, welcomed the balanced solution found between the Contracting Parties, taking into account the structure and objectives of the EU ESAs Regulations and of the EEA Agreement, as well as the legal and political constraints of the EU and the EEA EFTA States.

(4) The EU and EEA EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to market operators in the EEA EFTA States. The EU ESAs will be competent to perform actions of a non-binding nature, also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

(5) To ensure integration of the EU ESAs' expertise in the process and consistency between the two pillars, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to one or more individual EEA EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority. These principles will apply in particular to direct supervision by ESMA of credit rating agencies.

(6) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in these conclusions, and should therefore be interpreted in line with the principles that they embody.

(7) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is added in point 31eb (Regulation (EC) No 1060/2009 of the European Parliament and of the Council) of Annex IX to the EEA Agreement:

'— **32011 R 0513**: Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 (OJ L 145, 31.5.2011, p. 30),

([1]) OJ L 145, 31.5.2011, p. 30.
([2]) OJ L 146, 31.5.2013, p. 1.
([3]) Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV 1.

— **32013 R 0462**: Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 (OJ L 146, 31.5.2013, 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)', 'competent authorities' and 'sectoral competent authorities' shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities and sectoral competent authorities, respectively;

(b) Unless otherwise provided for in this Agreement, the European Securities and Markets Authority (ESMA) 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. This includes in particular the duty to pass to each other, without undue delay, the information needed for each body to carry out its duties under this Regulation, such as the preparation of drafts by ESMA as set out in point (d). This extends to, amongst others, information received by either body as a result of applications for registration or replies to requests for information submitted to market operators, or obtained by either body during investigations or on-site inspections.

Without prejudice to Article 109 of this Agreement, ESMA and the EFTA Surveillance Authority shall pass to the other body any application, information, complaint or request which fall within the competence of that body.

In case of disagreement between ESMA and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of ESMA and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of ESMA or the College of the EFTA Surveillance Authority may request that the Contracting Parties refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement;

(c) All references to national central banks under the Regulation shall not apply to Liechtenstein;

(d) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 6(3), 15(4), 16(2), 16(3), 17(2), 17(3), 20, 23b(1), 23c(3), 23d(4), 23e(5), 24(1), 24(4), 25(1), 36a(1) and 36b(1), shall, without undue delay, be adopted on the basis of drafts prepared by ESMA at its own initiative or at the request of the EFTA Surveillance Authority;

(e) In Article 3(1)(g), the words 'Union law' shall be replaced by the words 'the EEA Agreement';

(f) In Article 6(3):

(i) the words 'or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) the following subparagraphs shall be added:

'In the case of a group of credit rating agencies consisting of at least one credit rating agency established in an EFTA State and at least one credit rating agency which has its registered office in an EU Member State, ESMA and the EFTA Surveillance Authority shall jointly ensure that at least one of the credit rating agencies in the group is not exempted from complying with the requirements of points 2, 5, and 6 of Section A of Annex I and Article 7(4).

The EFTA Surveillance Authority and ESMA shall inform each other of any developments that are relevant to the adoption of acts under this paragraph.';

(g) In Article 8b(2), the words 'Union law' shall be replaced by the words 'the EEA Agreement';

(h) In Articles 8d(2) and 18(3), the following shall be added:

'ESMA shall include on that list registered credit rating agencies established in an EFTA State.';

(i) In Article 9, the words 'or the EFTA Surveillance Authority with regard to EFTA States' shall be inserted after the word 'ESMA';

(j) In Article 10(6) and in point 52 of Part I of Annex III, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(k) In Articles 11(2) and 11a(2), the following subparagraph shall be added:

'ESMA shall publish information submitted by credit rating agencies established in an EFTA State under this Article.';

(l) In Article 14:

(i) in paragraphs 2 and 5, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(ii) in paragraph 4, the words 'or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(m) In Article 15:

(i) in paragraph 1, the words 'or, in the case of a credit rating agency established in an EFTA State, to the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in paragraph 2, the words 'or, where they mandate a credit rating agency established in an EFTA State, to the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(iii) in paragraph 4, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(n) In Article 16, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(o) In Article 17:

(i) in paragraphs 1, 2 and 4, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(ii) in paragraph 3, the words 'and, as regards each credit rating agency established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(p) In Article 18:

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

(ii) paragraph 2 shall be replaced by the following:

'ESMA and the EFTA Surveillance Authority shall communicate to each other, the Commission, EBA, EIOPA, the competent authorities and the sectoral competent authorities, any decision under Article 16, 17 or 20.';

(q) In Article 19(1), the following subparagraphs shall be added:

'As regards credit rating agencies established in an EFTA State, fees shall be charged by the EFTA Surveillance Authority on the same basis as fees charged to other credit rating agencies in accordance with this Regulation and with the Commission regulation referred to in paragraph 2.

The amounts collected by the EFTA Surveillance Authority in accordance with this paragraph shall be passed on to ESMA without undue delay.';

(r) In Article 20:

(i) in paragraph 1, the words 'or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in the second sentence of paragraph 2, the words 'or, in the case of a credit rating agency established in an EFTA State, not to prepare a draft for the EFTA Surveillance Authority to that effect,' shall be inserted after the word 'concerned';

(s) In Article 21:

(i) in paragraph 1, the words 'or the EFTA Surveillance Authority in the case of credit rating agencies established in an EFTA State,' shall be inserted after the word 'ESMA';

(ii) in paragraph 5, the following shall be added:

'That report shall also include the EFTA credit rating agencies registered under this Regulation pursuant to a decision of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall inform ESMA of all information necessary for the performance of its obligation under this paragraph.';

(iii) as regards the EFTA States, paragraph 6 shall read as follows:

'The EFTA Surveillance Authority shall present annually to the Standing Committee of the EFTA States a report on supervisory measures taken and penalties imposed by the EFTA Surveillance Authority under this Regulation, including fines and periodic penalty payments.';

(t) In Article 23, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA'

(u) In Article 23a, the words 'or the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(v) In Article 23b:

(i) in paragraph 1, the words 'or, in the case of a credit rating agency or persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to credit rating agencies or credit rating activities, established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) as regards the EFTA States, in paragraphs 2, 3 and 5, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) as regards the EFTA States, point (g) of paragraph 3 shall read as follows:

'indicate the right to have the decision reviewed by 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.';

(iv) in paragraph 5, the following subparagraph shall be added:

'The EFTA Surveillance Authority shall without undue delay forward the information received under this Article to ESMA.';

(w) In Article 23c:

(i) in paragraph 1, the words 'or, in the case a person subject to investigation is established in an EFTA State, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) in paragraph 1, the following subparagraph shall be added:

'Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in investigations upon ESMA's request.';

(iii) as regards the EFTA States, in paragraphs 2, 3, 4 and the first and second sentences of paragraph 6, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iv) as regards the EFTA States, the second sentence of paragraph 3 shall read as follows:

'The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 36b and the right to have the decision reviewed by 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.';

(v) as regards the EFTA States, in the third sentence of paragraph 6, the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(vi) as regards the EFTA States, the fourth sentence of paragraph 6 shall read as follows:

'The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(x) In Article 23d:

(i) in paragraph 1, the words 'or, in the case of legal persons established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the word 'ESMA';

(ii) in paragraph 1, the following subparagraph shall be added:

'The EFTA Surveillance Authority shall without undue delay forward the information obtained under this Article to ESMA.';

(iii) as regards the EFTA States, in paragraphs 2 to 7 and the first and second sentences of paragraph 9, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iv) in paragraph 2, the following subparagraph shall be added:

'Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in on-site inspections upon ESMA's request.';

(v) as regards the EFTA States, the second sentence of paragraph 4 shall read as follows:

'The decision shall specify the subject matter and purpose of the investigation, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 36b as well as the right to have the decision reviewed by 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.';

(vi) as regards the EFTA States, in the third sentence of paragraph 9, the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(vii) as regards the EFTA States, the fourth sentence of paragraph 9 shall read as follows:

'The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(y) In Article 23e:

(i) as regards the EFTA States, in paragraph 1, first sentence, the words 'ESMA shall appoint an independent investigating officer within ESMA to investigate the matter' shall read 'the EFTA Surveillance Authority shall appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter following consultations with ESMA.'

(ii) in paragraph 1, the following subparagraph shall be added:

'The investigating officer appointed by the EFTA Surveillance Authority shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from the College of the EFTA Surveillance Authority and ESMA's Board of Supervisors.';

(iii) as regards the EFTA States, in paragraphs 2, 3 and 4, the words 'and the EFTA Surveillance Authority' shall be inserted after the word 'ESMA's Board of Supervisors';

(iv) in the third subparagraph of paragraph 2, the words 'and the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(v) as regards the EFTA States, in paragraph 5, after the words 'and 36c,', the remainder of the sentence shall read as follows:

'the EFTA Surveillance Authority shall decide if one or more of the infringements listed in Annex III has been committed by the persons who have been subject to investigation, and in such case, will take a supervisory measure in accordance with Article 24 and impose a fine in accordance with Article 36a.

The EFTA Surveillance Authority shall provide ESMA with all information and files necessary for the performance of its obligation under this paragraph.';

(vi) in paragraph 6, the words 'or the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(vii) as regards the EFTA States, in paragraph 8, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(z) In Article 24:

(i) in paragraph 1, the words 'or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the words 'ESMA's Board of Supervisors';

(ii) as regards the EFTA States, in paragraphs 2 and 4, the words 'ESMA's Board of Supervisors' shall read 'the EFTA Surveillance Authority';

(iii) in paragraph 4, the words 'ESMA's decision' shall be replaced by the words 'the decision of ESMA or the EFTA Surveillance Authority, as the case may be,';

(iv) in paragraph 5, the following subparagraphs shall be added:

'Without undue delay, the EFTA Surveillance Authority shall notify any decision adopted pursuant to paragraph 1 to the credit rating agency established in an EFTA State concerned and shall communicate any such decision to the competent authorities and the sectoral competent authorities, the Commission, ESMA, EBA and EIOPA. ESMA shall make public any such decision on its website within 10 working days from the date when it was adopted. The EFTA Surveillance Authority shall also make public any of its own decisions on its website within 10 working days from the date when it was adopted.

When making public a decision of the EFTA Surveillance Authority as referred to in the third subparagraph, ESMA and the EFTA Surveillance Authority shall also make public the right for the credit rating agency concerned to have the decision reviewed by the EFTA Court, the fact, where relevant, that such proceedings have been instituted, specifying that actions brought before the EFTA Court do not have suspensory effect, and the fact that it is possible for the EFTA Court to suspend the application of the contested decision in accordance with Article 40 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.';

(za) In Article 25:

(i) in paragraph 1, the following subparagraphs shall be added:

'Before preparing any draft for the EFTA Surveillance Authority under Article 24(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the findings. ESMA's Board of Supervisors shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Article 24(1) only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The third and fourth subparagraphs shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case the EFTA Surveillance Authority may adopt an interim decision, and the persons concerned shall be given the opportunity to be heard by ESMA's Board of Supervisors as soon as possible after the decision is taken';

(ii) in paragraph 2, the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(zb) In Articles 26 and 27(1), the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zc) In Article 27(2), the words 'or the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zd) In Article 30:

(i) in paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted before the words 'may delegate specific supervisory tasks';

(ii) in paragraphs 2, 3 and 4 the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA'

(iii) the following paragraph shall be added:

'5. Prior to the delegation of a task, the EFTA Surveillance Authority and ESMA shall consult each other.';

(ze) In Article 31:

(i) in the second subparagraph of paragraph 1, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(ii) in paragraph 2, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'the notifying competent authority may request that ESMA';

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

'If the request from a national competent authority concerns a credit rating agency established in an EFTA State, ESMA shall consult the EFTA Surveillance Authority without undue delay.';

(zf) In Article 32:

(i) in paragraph 1, the words ', the EFTA Surveillance Authority' shall be inserted after the first use of the word 'ESMA';

(ii) in paragraph 1, the words ', for the EFTA Surveillance Authority' shall be inserted after the second use of the word 'ESMA';

(iii) in paragraph 1, the words 'or the EFTA Surveillance Authority' shall be inserted after the third use of the word 'ESMA';

(iv) in paragraph 2, the words ', the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zg) In Article 35a(6), the words 'or the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(zh) In Article 36a:

(i) in paragraph 1, the words 'or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the words 'ESMA's Board of Supervisors' and 'ESMA';

(ii) as regards the EFTA States, in paragraph 2, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(zi) In Article 36b:

(i) in paragraph 1, the words 'or, in the case the credit rating agency or person concerned is established in an EFTA State, the EFTA Surveillance Authority,' shall be inserted after the words 'ESMA's Board of Supervisors';

(ii) in paragraph 4, the words 'or, as the case may be, of the EFTA Surveillance Authority's decision' shall be added after the words 'ESMA's decision';

(zj) In Article 36c:

(i) in paragraph 1, the following subparagraphs shall be added:

'Before preparing any draft for the EFTA Surveillance Authority under Article 36a or points (a) to (d) of Article 36b(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the findings. ESMA's Board of Supervisors shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Article 36a or points (a) to (d) of Article 36b(1) only on findings on which the persons subject to the proceedings have had the opportunity to comment.';

(ii) as regards the EFTA States, in paragraph 2, the words 'ESMA's file' shall read 'the file of ESMA and the EFTA Surveillance Authority';

(zk) In Article 36d:

(i) in paragraph 1, the following shall be added:

'The EFTA Surveillance Authority shall also disclose to the public every fine and periodic penalty that it has imposed pursuant to Articles 36a and 36b, subject to the conditions laid down in this paragraph as regards the disclosure of fines and periodic penalties by ESMA';

(ii) as regards the EFTA States, in paragraph 3, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(iii) as regards the EFTA States, in paragraph 3, the words 'the Court of Justice of the European Union' shall read 'the EFTA Court';

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

'The Standing Committee of the EFTA States shall determine the allocation of the amounts of the fines and periodic penalty payments collected by the EFTA Surveillance Authority.';

(zl) Article 40a shall not apply as regards the EFTA States;

(zm) In point 7 of Part I and point 3 of Part II of Annex IV, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA'.'.

Article 2

The texts of Regulations (EU) No 513/2011 and (EU) No 462/2013 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 … [1] [incorporating Regulation (EU) No 1095/2010], whichever is the later.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]
[1] OJ L …

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*

Declaration by the EFTA States

to Decision No …/… incorporating Regulations (EU) No 513/2011 and (EU) No 462/2013 into the Agreement

Regulation (EC) No 1060/2009, as amended by Regulations (EU) No 513/2011 and (EU) No 462/2013, notably regulates the use for regulatory purposes of credit ratings issued by third country credit rating agencies, lays down the conditions under which the Commission may recognise the legal and supervisory framework of a third country as equivalent to the requirements of the Regulation, and further provides for the possibility for third country undertakings to be certified by ESMA so as to facilitate the use of their credit ratings. The incorporation of this Regulation into the EEA Agreement is without prejudice to the scope of the EEA Agreement as regards third country relations.

DRAFT

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) Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies ([1]) is to be incorporated into the EEA Agreement.

(2) Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies ([2]) is to be incorporated into the EEA Agreement.

(3) Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies ([3]) is to be incorporated into the EEA Agreement.

(4) Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority ([4]) is to be incorporated into the EEA Agreement.

(5) Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies ([5]) is to be incorporated into the EEA Agreement.

(6) Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is to be incorporated ([6]) into the EEA Agreement.

(7) Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies ([7]) is to be incorporated into the EEA Agreement.

([1]) OJ L 90, 28.3.2012, p. 6.
([2]) OJ L 140, 30.5.2012, p. 2.
([3]) OJ L 140, 30.5.2012, p. 14.
([4]) OJ L 140, 30.5.2012, p. 17.
([5]) OJ L 140, 30.5.2012, p. 32.
([6]) OJ L 282, 16.10.2012, p. 23.
([7]) OJ L 132, 3.5.2014, p. 65.

(8) Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies [1] is to be incorporated into the EEA Agreement.

(9) Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies [2] is to be incorporated into the EEA Agreement.

(10) Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies [3] is to be incorporated into the EEA Agreement.

(11) Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies [4] is to be incorporated into the EEA Agreement.

(12) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 31ebd (Commission Implementing Decision 2012/630/EU) of Annex IX to the EEA Agreement:

'31ebe. **32014 D 0245**: Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 65).

31ebf. **32014 D 0246**: Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 68).

31ebg. **32014 D 0247**: Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies(OJ L 132, 3.5.2014, p. 71).

31ebh. **32014 D 0248**: Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 73).

31ebi. **32014 D 0249**: Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 76).

[1] OJ L 132, 3.5.2014, p. 68.
[2] OJ L 132, 3.5.2014, p. 71.
[3] OJ L 132, 3.5.2014, p. 73.
[4] OJ L 132, 3.5.2014, p. 76.

31ebj. **32012 R 0272**: Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (OJ L 90, 28.3.2012, p. 6).

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

(a) In Article 1, as regards the EFTA States, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the words 'the European Securities and Markets Authority (ESMA)';

(b) In Article 2, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(c) In Article 5(3):

(i) in the fourth subparagraph, as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority'

(ii) the following subparagraph shall be added:

'When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to send the invoices for the instalments, ESMA shall inform the EFTA Surveillance Authority of the calculations necessary as regards each credit rating agency sufficiently in advance of the respective payment date.';

(d) In Article 6(7):

(i) as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(ii) the following subparagraph shall be added:

'When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to reimburse part of the registration fee paid, ESMA shall without delay make available the amounts to be reimbursed to a credit rating agency to the EFTA Surveillance Authority for that purpose.';

(e) In Article 9:

(i) in paragraph 1, the words 'Only ESMA' shall be replaced by the words 'Only ESMA or, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority';

(ii) the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA'.

31ebk. **32012 R 0446**: Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies (OJ L 140, 30.5.2012, p. 2).

31ebl. **32012 R 0447**: Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies (OJ L 140, 30.5.2012, p. 14).

31ebm. **32012 R 0448**: Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority (OJ L 140, 30.5.2012, p. 17).

31ebn. **32012 R 0449**: Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies (OJ L 140, 30.5.2012, p. 32).

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

(a) In Article 1, as regards the EFTA States, the words 'or the EFTA Surveillance Authority, as the case may be,' shall be inserted after the word 'ESMA';

(b) In Chapter 2 and in Annexes IV and V, as regards the EFTA States, the word 'ESMA' shall read 'the EFTA Surveillance Authority'.

31ebo. **32012 R 0946**: Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is to be incorporated (OJ L 282, 16.10.2012, p. 23).

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

(a) In Article 1, as regards the EFTA States, the words 'the European Securities and Markets Authority (ESMA)' and 'ESMA' shall read 'the EFTA Surveillance Authority';

(b) In Article 2, as regards the EFTA States, the words 'and the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(c) In Article 3, as regards the EFTA States:

(i) in paragraph 1, the words 'and the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(ii) the words 'inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall, without undue delay,' shall be inserted after the words 'it shall' in paragraphs 2, 4 and 5 and before the words 'take a decision' in paragraph 3;

(iii) in the second subparagraph of paragraph 4 and in the third sentence of the first subparagraph of paragraph 5, the words ', before preparing a draft for the EFTA Surveillance Authority, or the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(iv) in the third subparagraph of paragraph 4 and in the second subparagraph of paragraph 5, the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(v) in paragraph 6, the words 'ESMA's Board of Supervisors' shall read 'the EFTA Surveillance Authority';

(d) In Article 4, as regards the EFTA States:

(i) in the first subparagraph, the words 'Board of Supervisors' and 'Board of Supervisor' shall read 'the EFTA Surveillance Authority'

(ii) in the third subparagraph, the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the words 'ESMA's Board of Supervisors';

(e) In Article 5, as regards the EFTA States:

(i) the words 'or, as the case may be, the EFTA Surveillance Authority' shall be inserted after the word 'ESMA';

(ii) the words 'Board of Supervisors' shall read 'the EFTA Surveillance Authority';

(f) In Article 6, as regards the EFTA States:

(i) in paragraphs 1 and 4, the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(ii) in paragraphs 3 and 5, the words 'or the EFTA Surveillance Authority'shall be inserted after the word 'ESMA';

(iii) in paragraph 5, the words 'the Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (1), and before the Court of Justice of the European Union, in accordance with Article 36e of Regulation (EC) No 1060/2009' shall read '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';

(g) In Article 7, as regards the EFTA States:

(i) the word 'ESMA' shall read 'the EFTA Surveillance Authority';

(ii) in paragraph 5(b), the words 'ESMA Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, and the Court of Justice of the European Union, in accordance with Article 36e of Regulation (EC) No 1060/2009' shall read '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'.'.

Article 2

The texts of Delegated Regulations (EU) No 272/2012, (EU) No 446/2012, (EU) No 447/2012, (EU) No 448/2012, (EU) No 449/2012 and (EU) No 946/2012 and Implementing Decisions 2014/245/EU, 2014/246/EU, 2014/247/EU, 2014/248/EU and 2014/249/EU 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… [1] [incorporating Regulation (EU) No 513/2011], whichever is the later.

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.]
[1] OJ L …

COUNCIL DECISION (CFSP) 2016/1172

of 18 July 2016

amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 16 July 2012, the Council adopted Decision 2012/392/CFSP ([1]) establishing a European Union CSDP mission in Niger to support the capacity building of the Nigerien security actors to fight terrorism and organised crime (EUCAP Sahel Niger).

(2) On 22 July 2014, the Council adopted Decision 2014/482/CFSP ([2]), extending the Mission until 15 July 2016.

(3) On 13 July 2015, the Council adopted Decision (CFSP) 2015/1141 ([3]), providing a financial reference amount until 15 July 2016. On 5 October 2015, the Council adopted Decision (CFSP) 2015/1780 ([4]) revising the financial reference amount in view of further operational planning.

(4) Following the Strategic Review, the Political and Security Committee recommended that the mandate of EUCAP Sahel Niger be adapted and extended by a period of two years, until 15 July 2018, and that a financial reference amount should be provided for the period from 16 July 2016 to 15 July 2017.

(5) By letter dated 19 May 2016, the Government of the Republic of Niger invited the European Union to extend the mandate of EUCAP Sahel Niger for a period of two years.

(6) Decision 2012/392/CFSP should be amended accordingly.

(7) EUCAP Sahel Niger will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty on European Union,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2012/392/CFSP is amended as follows:

(1) Article 2 is replaced by the following:

'Article 2

Objectives

In the context of the implementation of the European Union Strategy for Security and Development in the Sahel, EUCAP Sahel Niger shall aim at enabling the Nigerien authorities to define and implement their own National

([1]) Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger) (OJ L 187, 17.7.2012, p. 48).
([2]) Council Decision 2014/482/CFSP of 22 July 2014 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger) (OJ L 217, 23.7.2014, p. 31).
([3]) Council Decision (CFSP) 2015/1141 of 13 July 2015 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger) (OJ L 185, 14.7.2015, p. 18).
([4]) Council Decision (CFSP) 2015/1780 of 5 October 2015 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger) (OJ L 259, 6.10.2015, p. 21).

Security Strategy. EUCAP Sahel Niger shall also aim at contributing to the development of an integrated, multidisciplinary, coherent, sustainable, and human-rights-based approach among the various Nigerien security actors in the fight against terrorism and organised crime. It shall, in addition, assist the Nigerien central and local authorities and security forces in developing policies, techniques and procedures to better control and fight irregular migration.'.

(2) Article 3 is replaced by the following:

'*Article 3*

Tasks

1. In order to fulfil the objectives set out in Article 2, EUCAP Sahel Niger shall:

(a) reinforce Nigerien command and control, interoperability and planning capacity at strategic level, while supporting the development of a National Security Strategy and related border management strategies in coordination with other relevant actors;

(b) strengthen the technical skills of the relevant security forces that are necessary to fight terrorism and organised crime;

(c) through the engagement at both strategic and operational level, encourage the internal security forces, and if appropriate the armed forces, to strengthen the human resources, logistics and training policies related to the fight against terrorism, irregular migration and organised crime to ensure the sustainability of EUCAP Sahel Niger's actions, including by providing technical support through the projects;

(d) reinforce the coordination at national, regional and international level in the field of counter-terrorism, the fight against irregular migration and organised crime, and explore a possible contribution to regional cooperation, such as the G5 Sahel, as appropriate;

(e) in support of the Union's objectives in the area of migration, assist the Nigerien central and local authorities and security forces in developing policies, procedures and techniques to better control and manage migration flows, to fight against irregular migration and to reduce the level of associated crime.

2. EUCAP Sahel Niger shall focus on the activities referred to in paragraph 1 which contribute to improving the control of the territory of Niger, including in coordination with the Nigerien Armed Forces.

3. EUCAP Sahel Niger shall not carry out any executive function.'.

(3) In Article 13(1), the following subparagraph is added:

'The financial reference amount to cover the expenditure related to EUCAP Sahel Niger for the period from 16 July 2016 to 15 July 2017 shall be EUR 26 300 000.'.

(4) In Article 16, the second paragraph is replaced by the following:

'It shall apply until 15 July 2018.'.

Article 2

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

It shall apply from 16 July 2016.

Done at Brussels, 18 July 2016.

For the Council
The President
F. MOGHERINI

COUNCIL DECISION (CFSP) 2016/1173

of 18 July 2016

amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 20 December 2010, the Council adopted Decision 2010/788/CFSP. ([1])

(2) On 23 June 2016, the United Nations Security Council adopted Resolution 2293 (2016) concerning the Democratic Republic of the Congo (DRC). That Resolution provides for certain amendments to the exemptions to the arms embargo as well as to the criteria for designation with regard to restrictions on travel and the freezing of funds, as imposed by United Nations Security Council Resolution 1807 (2008).

(3) Further Union action is needed in order to implement those amendments,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2010/788/CFSP is amended as follows:

(1) Article 2(1) is amended as follows:

(a) point (c) is replaced by the following:

'(c) the supply, sale or transfer of non-lethal military equipment intended solely for humanitarian or protective use, or the provision of technical assistance and training, related to such non-lethal equipment, as notified in advance to the Sanctions Committee established pursuant to UNSCR 1533 (2004) (Sanctions Committee)';

(b) the following point is added:

'(e) Other sales and/or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Sanctions Committee.';

(2) Article 3 is amended as follows:

(a) point (e) is replaced by the following:

'(e) being involved in planning, directing, or committing acts in the DRC that constitute human rights violations or abuses or violations of international humanitarian law, as applicable, including those acts involving the targeting of civilians, including killing and maiming, rape and other sexual violence, abduction, forced displacement, and attacks on schools and hospitals;';

(b) point (g) is replaced by the following:

'(g) supporting individuals or entities, including armed groups or criminal networks, involved in destabilizing activities in the DRC through the illicit exploitation or trade of natural resources, including gold or wildlife as well as wildlife products;'.

([1]) Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ L 336, 21.12.2010, p. 30).

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 18 July 2016.

For the Council
The President
F. MOGHERINI

COMMISSION IMPLEMENTING DECISION (EU) 2016/1174

of 15 July 2016

on the terms and conditions of the authorisation of a biocidal product containing difenacoum referred by Spain in accordance with Article 36 of Regulation (EU) No 528/2012 of the European Parliament and of the Council

(notified under document C(2016) 4380)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]), and in particular Article 36(3) thereof,

Whereas:

(1) The company Will Kill S.A. ('the applicant') submitted a complete application to France ('the Member State concerned') on 20 December 2013 for the mutual recognition of an authorisation granted by Spain ('the reference Member State') in respect of a rodenticide biocidal product containing the active substance difenacoum as a liquid formulation ('the contested product').

(2) The reference Member State authorised the contested product for use against mice and the rat species *Rattus norvegicus* ('rats') for use indoors and in and around buildings by professional users, and outdoors by trained professional users only. The contested product is supplied in non-reusable bottles together with a roll-on dispenser and a bait station ('the device') in order to avoid primary and secondary poisoning. After use, the whole device is to be disposed of in order to avoid exposure to the user.

(3) Pursuant to Article 35(2) of Regulation (EU) No 528/2012, the Member State concerned referred a number of points of disagreement to the coordination group indicating that the contested product does not meet the conditions laid down in Article 19(1)(b)(i), (iii) and (iv) of that Regulation.

(4) The coordination group secretariat invited the other Member States and the applicant to submit written comments about the referral. Austria, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom and the applicant submitted comments. The identified points of disagreement were discussed by the Member States' competent authorities for biocidal products in the coordination group's meetings of 23 January and 17 March 2015.

(5) Pursuant to Article 36(1) of Regulation (EU) No 528/2012, the reference Member State provided the Commission with a detailed statement of the matters on which Member States were unable to reach agreement and the reasons for their disagreement on 30 June 2015. A copy of that statement was also forwarded to the Member States concerned and the applicant.

(6) The unresolved objections referred to the Commission concerned the efficacy of the contested product against rats and mice, which was insufficiently demonstrated in well-documented field trials; the efficacy in Member States with wet climates, which might be reduced as a result of the target organisms having easier access to water; the efficiency of the device as a risk mitigation measure to avoid leaching; and an unacceptable risk to the health of users during the cleaning of bait stations.

(7) Pursuant to paragraph 12 of Annex VI to Regulation (EU) No 528/2012, the reference Member State considered the contested product to be sufficiently effective on the basis of field data generated by using a prototype device and the judgment of its experts. That conclusion was conditional, however, on the submission of field data corroborating those findings.

([1]) OJ L 167, 27.6.2012, p. 1.

(8) The reference Member State concluded that the results of the field trials submitted by the applicant demonstrate an acceptable level of efficacy in accordance with the criteria established in the Union guidance on efficacy evaluation of rodenticides ([1]).

(9) Concerning efficacy in wet climates, the indoor use of the product in areas where abundant food or feed is available to rodents shows no significant difference across Member States. Regarding use in and around buildings and outdoors, the product authorisation already includes a condition to restrict the use of the product to situations where it is difficult to access water. Given that the product was sufficiently effective in field trials in areas with full access to water, the product authorisation should not be subject to any restriction on the grounds of specific weather conditions.

(10) The reference Member State considered the device to be a suitable risk mitigation measure to prevent spillage and avoid primary and secondary poisoning compared to the application of the contested product in open trays. This conclusion was confirmed in the field trials where spillage only occurred twice due to an accident with agriculture machinery or vandalism. In order to limit accidental spillage as much as possible, the product authorisation should include additional instructions for use such as fixing the bait station to the ground and a recommendation that in the event of an accidental spillage, the bait station is to be disposed of as hazardous waste.

(11) The reference Member State assessed the health risk to users of the product by using a model developed for solid bait formulations and by using very conservative parameters under a worst case scenario. As an unacceptable risk to the user was identified, a risk mitigation measure was introduced stating that the device was to be disposed of after use in order to prevent any potential exposure during the cleaning of the bait stations.

(12) The product authorisation has been subject to an agreed change based on a recalculation of the risk to human health as a result of exposure to the contested product based on a product-specific dermal absorption study and new parameters generated by the applicant based on the real use of the contested product (for example the number of splashes to which the user may be exposed as well as the droplet size of the splash).

(13) Given the risk of accidental splash, additional risk mitigation measures should be included in the authorisation. Those measures should include restricting use to trained professional users only and the specification that users wear protective gloves. Taking into account that trained professional users are expected to follow the instructions for use closely, the contested product is expected to be safe for this category of user under the proposed terms and conditions.

(14) In order to avoid unnecessary plastic waste, the current condition of the authorisation to supply the product and the roll-on dispenser together with the bait station as a single device and to dispose of the whole device, including the bait station, after use should be removed from the authorisation.

(15) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to the product identified by the asset number ES-0000196-0000, as provided for by the Register for Biocidal Products.

Article 2

1. The product meets the conditions laid down in Article 19(1)(b)(i) of Regulation (EU) No 528/2012.

([1]) See Technical Notes for Guidance on Product Evaluation. Appendices to Chapter 7. Product Type 14: Efficacy Evaluation of Rodenticidal Biocidal Products, available on the website http://echa.europa.eu/documents/10162/16960215/bpd_guid_revised_appendix_chapter_7_pt14_2009_en.pdf

2. The condition restricting the use of the product to situations where it is difficult to access water shall be removed from the product authorisation.

Article 3

1. The user category in the authorised uses of the product shall be restricted to trained professional users only.

2. The product authorisation shall include the following risk mitigation measure: 'Wear protective chemical resistant gloves during product handling phase (glove material to be specified by the authorisation holder within the product information)'.

3. The condition to supply the product and the roll-on dispenser together with the bait station as a single device and to dispose of the bait station as part of the whole device after use of the product shall be removed from the product authorisation.

4. Under the terms and conditions set out in paragraphs 1, 2 and 3, the product meets the conditions laid down in Article 19(1)(b)(iii) of Regulation (EU) No 528/2012.

Article 4

1. The following instructions for use shall be included in the product authorisation:

— 'Fix the bait station to the ground'.

— 'In case of accidental spillage of the liquid, dispose of the bait station as hazardous waste'.

2. Under the terms and conditions set out in paragraph 1, the product meets the conditions laid down in Article 19(1)(b)(iv) of Regulation (EU) No 528/2012.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 15 July 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/1175

of 15 July 2016

on the terms and conditions of the authorisation of a biocidal product containing spinosad referred by the United Kingdom in accordance with Article 36 of Regulation (EU) No 528/2012 of the European Parliament and of the Council

(notified under document C(2016) 4385)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products [1], and in particular Article 36(3) thereof,

Whereas:

(1) The company Scotts Celaflor GmbH ('the applicant') submitted a complete application to Germany ('the Member State concerned') on 29 June 2015 for the mutual recognition of an authorisation granted by the United Kingdom ('the reference Member State') in respect of an insecticide biocidal product containing the active substance spinosad as a granular solid bait formulation to be applied directly or to be diluted and applied as liquid drench ('the contested product').

(2) The reference Member State authorised the contested product on 23 April 2015 for use by the general public against ants outdoors by means of direct application to ant nests. The authorisation has subsequently been mutually recognised by Ireland.

(3) Pursuant to Article 35(2) of Regulation (EU) No 528/2012, the Member State concerned referred a point of disagreement to the coordination group on 26 October 2015 indicating that the contested product does not meet the conditions laid down in Article 19(1)(b)(iv) of that Regulation.

(4) The Member State concerned considers that the contested product does not fulfil the requirement set out in paragraph 66 of Annex VI to Regulation (EU) No 528/2012 as the PEC/PNEC ratio for the soil compartment is greater than 1 and as a result the contested product poses an unacceptable risk to the environment, albeit in very small areas and for very short periods of time.

(5) The coordination group secretariat invited the other Member States and the applicant to submit written comments about the referral. Belgium, France, the Netherlands, the United Kingdom and the applicant submitted comments. The referral was also discussed by the Member States' competent authorities for biocidal products in the coordination group's meetings of 17 November 2015 and 20 January 2016.

(6) As no agreement was reached by the coordination group, the reference Member State provided the Commission on 5 February 2016 with a detailed statement of the matters on which Member States were unable to reach agreement and the reasons for their disagreement, pursuant to Article 36(1) of Regulation (EU) No 528/2012. A copy of that statement was also forwarded to the Member States concerned and the applicant.

(7) As regards the unresolved objection referred to the Commission, paragraph 66 of Annex VI to Regulation (EU) No 528/2012 sets out that where the PEC/PNEC ratio is greater than 1, the evaluating body is to judge, on a case-by-case basis, the elements or the risk mitigation measures to be considered in order to conclude whether the biocidal product complies with Article 19(1)(b)(iv).

(8) From the discussions within the coordination group, it seems that there is a lack of agreed Union guidance to assist the evaluating body in making such a judgment.

[1] OJ L 167, 27.6.2012, p. 1.

(9) From those discussions it also follows that the unacceptable risk identified is limited because of the use pattern of the product, which is only applied to small areas (for example on ant nests) and is expected to break down in a short period of time so that non-target species can recolonise the treated area after use.

(10) In the absence of agreed Union guidance, the conclusion of the reference Member State was based on the available information and on the judgement of its experts, pursuant to paragraph 12 of Annex VI to Regulation (EU) No 528/2012.

(11) Against this background and until such agreed guidance is formally adopted, the conclusion reached by the reference Member State on the point of disagreement is considered to be valid until the renewal of the product authorisation.

(12) From the discussions within the coordination group it also follows that the current terms and conditions of the product authorisation should better describe the field of use of the contested product and should provide some information on its application. Those terms and conditions should therefore be amended accordingly.

(13) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies to the product identified by the asset number UK-0008829-0000, as provided for by the Register for Biocidal Products.

Article 2

The product meets the conditions laid down in Article 19(1)(b)(iv) of Regulation (EU) No 528/2012.

Article 3

1. The field of use in the product authorisation is amended as follows: 'Outdoor use (only for direct application to ant nests around domestic premises)'.

2. The sentence 'Apply directly to the nest only' listed in the product authorisation as both an instruction for use and as a risk mitigation measure is replaced by the following: 'Apply this biocidal product directly to ant nests only. Do not scatter dry granules or pour liquid onto hard surfaces or bare soil used as ant runways'.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 15 July 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/1176

of 18 July 2016

terminating the partial interim review concerning imports of certain threaded tube or pipe cast fittings of malleable cast iron originating in the People's Republic of China and Thailand

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]), and in particular Article 9(1) thereof,

Whereas:

1. PROCEDURE

(1) By Council Implementing Regulation (EU) No 430/2013 ([2]) anti-dumping measures were imposed on certain threaded tube or pipe cast fittings of malleable cast iron originating in the People's Republic of China ('the PRC') and Thailand following an investigation under Article 5 of Regulation (EC) No 1225/2009 ('the basic Regulation').

(2) On 25 November 2015, the European Commission ('the Commission') initiated a partial interim review with regard to imports into the Union of certain threaded tube or pipe cast fittings of malleable cast iron originating in the PRC and Thailand on the basis of 11(3) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([3]) ('the Notice of Initiation').

(3) The Commission initiated the review concerning the PRC following a request lodged on 2 March 2015 by Metpro Limited ('the applicant'), an importer of certain types of threaded tube or pipe cast fittings of malleable cast iron, with regard to imports from the PRC. The applicant requested the review with the purpose to determine whether electrical conduit fittings (elbows, bends and T-shaped) with a standard metric thread pitch of 1,5 mm according to ISO Metric Form BS3643 ('the product for potential exclusion') should be excluded from the product scope of Implementing Regulation (EU) No 430/2013. As the measures also apply to imports originating in Thailand, the Commission decided on its own initiative to initiate the review for imports from Thailand as well. The request contained sufficient evidence to justify the initiation of the review.

(4) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the review. In addition, the Commission specifically informed the applicant, known Union producers, the known exporting producers in the PRC and Thailand and the Chinese and Thai authorities, known importers, suppliers and users, traders, as well as an association about the initiation of the review and invited them to participate.

(5) Interested parties had an opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. WITHDRAWAL OF THE REQUEST FOR REVIEW AND TERMINATION OF THE PROCEEDING

(6) By letter dated 5 April 2016 addressed to the Commission, the applicant withdrew its request for review.

(7) In accordance with Articles 9(1) and 11(5) of the basic Regulation, when the applicant withdraws its request, the review may be terminated unless such termination would not be in the Union interest.

([1]) OJ L 343, 22.12.2009, p. 51.

([2]) Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ L 129, 14.5.2013, p. 1).

([3]) Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ C 392, 25.11.2015, p. 14) and Corrigendum to the Notice of initiation (OJ C 52, 11.2.2016, p. 27).

(8) The Commission considered that the review should be terminated with regard to the PRC since the investigation had not brought to light any consideration demonstrating that such termination would not be in the Union interest.

(9) With regard to Thailand, none of the contacted known companies or Thai authorities provided any relevant information for the investigation with regard to the product for potential exclusion that would allow for the review to be carried out. None of the contacted known importers reported any imports of the product for potential exclusion from Thailand. The investigation revealed no other relevant information that would be the basis for carrying out a review of a product scope.

(10) Since the applicant withdrew its request with regard to the PRC and since there is no further relevant information with regard to Thailand, the review should be terminated *ex officio* with regard to Thailand in accordance with Articles 9(2) and 11(5) of the basic Regulation.

(11) Interested parties were informed accordingly and were given an opportunity to comment. No comments were received within the prescribed deadline.

(12) The Commission therefore concludes that the partial interim review concerning imports of certain threaded tube or pipe cast fittings of malleable cast iron originating in the PRC and Thailand should be terminated.

(13) This Decision is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The partial interim review concerning imports of certain threaded tube or pipe cast fittings of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) is terminated.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 18 July 2016.

For the Commission

The President

Jean-Claude JUNCKER

CORRIGENDA

Corrigendum to Commission Directive (EU) 2016/844 of 27 May 2016 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships

(Official Journal of the European Union L 141 of 28 May 2016)

On page 55, in Table 5.1(a) in paragraph (2), subparagraph (h) of the Annex, concerning the Annex to Directive 2009/45/EC:

for:

'Table 5.1(a)

Fire integrity of bulkheads separating adjacent spaces

Spaces		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Control stations	(1)	A-0[e]	A-0	60	A-0	A-15	A-60	A-15	A-60	A-60	*	A-60
Corridors	(2)		C[e]	B-0[e]	A-0[e] B-0[e]	B-0[e]	A-60	A-15	A-60	A-15 A-0[d]	*	A-30
Accommodation spaces	(3)			C[e]	A-0[e] B-0[e]	B-0[e]	A-60	A-0	A-0	A-15 A-0[d]	*	A-30 A-0[d]
Stairways	(4)				A-0[e] B-0[e]	A-0[e] B-0[e]	A-60	A-0	A-0	A-15 A-0[d]	*	A-30
Service spaces (low risk)	(5)					C[e]	A-60	A-0	A-0	A-0	*	A-0
Machinery spaces of category A	(6)						*	A-0	A-0	A-60	*	A-60
Other machinery spaces	(7)							A-0[b]	A-0	A-0	*	A-0
Cargo spaces	(8)								*	A-0	*	A-0
Service spaces (high risk)	(9)									A-0[b]	*	A-30
Open decks	(10)											A-0
Special category and Ro-Ro spaces	(11)											A-30'

read:

'Table 5.1(a)

Fire integrity of bulkheads separating adjacent spaces

Spaces		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Control stations	(1)	A-0[c]	A-0	A-60	A-0	A-15	A-60	A-15	A-60	A-60	*	A-60
Corridors	(2)		C[e]	B-0[e]	A-0[a] B-0[e]	B-0[e]	A-60	A-0	A-0	A-15 A-0[d]	*	A-30
Accommodation spaces	(3)			C[e]	A-0[a] B-0[e]	B-0[e]	A-60	A-0	A-0	A-15 A-0[d]	*	A-30 A-0[d]
Stairways	(4)				A-0[a] B-0[e]	A-0[a] B-0[e]	A-60	A-0	A-0	A-15 A-0[d]	*	A-30
Service spaces (low risk)	(5)					C[e]	A-60	A-0	A-0	A-0	*	A-0
Machinery spaces of category A	(6)						*	A-0	A-0	A-60	*	A-60
Other machinery spaces	(7)							A-0[b]	A-0	A-0	*	A-0
Cargo spaces	(8)								*	A-0	*	A-0
Service spaces (high risk)	(9)									A-0[b]	*	A-30
Open decks	(10)											A-0
Special category spaces	(11)											A-30'

on page 56, in Table 5.2(a) in paragraph (2), subparagraph (i) of the Annex, concerning the Annex to Directive 2009/45/EC:

for:

'Table 5.2(a)

Fire integrity of decks separating adjacent spaces

Spaces Below↓	Spaces → Above	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Control stations	(1)	A-0	A-0	A-0	A-0	A-0	A-60	A-0	A-0	A-0	*	A-60
Corridors	(2)	A-0	*	*	A-0	*	A-60	A-0	A-0	A-0	*	A-30

Spaces Below↓	Spaces → Above	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Accommodation spaces	(3)	A-60	A-0	*	A-0	*	A-60	A-0	A-0	A-0	*	A-30 A-0[d]
Stairways	(4)	A-0	A-0	A-0	*	A-0	A-60	A-0	A-0	A-0	*	A-30
Service spaces (low risk)	(5)	A-15	A-0	A-0	A-0	*	A-60	A-0	A-0	A-0	*	A-0
Machinery spaces of category A	(6)	A-60	A-60	A-60	A-60	A-60	*	A-60[f]	A-30	A-60	*	A-60
Other machinery spaces	(7)	A-15	A-0	A-0	A-0	A-0	A-0	*	A-0	A-0	*	A-0
Cargo spaces	(8)	A-60	A-0	A-0	A-0	A-0	A-0	A-0	*	A-0	*	A-0
Service spaces (high risk)	(9)	A-60	A-30 A-0[d]	A-30 A-0[d]	A-30 A-0[d]	A-0	A-60	A-0	A-0	A-0	*	A-30
Open decks	(10)	*	*	*	*	*	*	*	*	*	—	A-0
Special category and Ro-Ro spaces	(11)	A-60	A-30	A-30 A-0[d]	A-30	A-0	A-60	A-0	A-0	A-30	A-0	A-30’

read:

‘Table 5.2(a)

Fire integrity of decks separating adjacent spaces

Space Below↓ Space Above →		*(1)*	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*	*(9)*	*(10)*	*(11)*
Control stations	*(1)*	*A-0*	*A-0*	*A-0*	*A-0*	*A-0*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-60*
Corridors	*(2)*	*A-0*	*	*	*A-0*	*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-30*
Accommodation spaces	*(3)*	*A-60*	*A-0*	*	*A-0*	*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-30* *A-0[d]*
Stairways	*(4)*	*A-0*	*A-0*	*A-0*	*	*A-0*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-30*
Service spaces (low risk)	*(5)*	*A-15*	*A-0*	*A-0*	*A-0*	*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-0*

Space Below↓ Space Above →		*(1)*	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*	*(9)*	*(10)*	*(11)*
Machinery spaces of category A	*(6)*	*A-60*	*A-60*	*A-60*	*A-60*	*A-60*	*	*A-60*[f]	*A-30*	*A-60*	*	*A-60*
Other machinery spaces	*(7)*	*A-15*	*A-0*	*A-0*	*A-0*	*A-0*	*A-0*	*	*A-0*	*A-0*	*	*A-0*
Cargo spaces	*(8)*	*A-60*	*A-0*	*A-0*	*A-0*	*A-0*	*A-0*	*A-0*	*	*A-0*	*	*A-0*
Service spaces (high risk)	*(9)*	*A-60*	*A-30* *A-0*[d]	*A-30* *A-0*[d]	*A-30* *A-0*[d]	*A-0*	*A-60*	*A-0*	*A-0*	*A-0*	*	*A-30*
Open decks	*(10)*	*	*	*	*	*	*	*	*	*	—	*A-0*
Special category spaces	*(11)*	*A-60*	*A-30*	*A-30* *A-0*[d]	*A-30*	*A-0*	*A-60*	*A-0*	*A-0*	*A-30*	*A-0*	*A-30*’

on page 61, in paragraph (2)(l) of the Annex, concerning point 7 of the rule 9a in Annex I to Directive 2009/45/EC:

for: ‘.7 Ventilation systems for laundries in passenger ships carrying more than 36 passengers

Exhaust ducts from laundries and drying rooms of category (13) spaces as defined in Regulation II-2/B//.2.2 shall be fitted with:’,

read: ‘.7 Ventilation systems for laundries in passenger ships carrying more than 36 passengers

Exhaust ducts from laundries and drying rooms of category (13) spaces as defined in Regulation II-2/B/4.2.2 shall be fitted with:’.

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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