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 …