DECISIONS

COUNCIL DECISION (EU) 2019/483

of 19 March 2019

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment of Annex IX (Financial services) to the EEA Agreement (Capital Requirements Regulation (EU) No 575/2013 (CRR) and Directive 2013/36/EU (CRD IV))

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 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 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 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IX to that Agreement, which contains provisions on financial services.

(3) Regulation (EU) No 575/2013 of the European Parliament and of the Council ([3]) and Directive 2013/36/EU of the European Parliament and of the Council ([4]) are to be incorporated into the EEA Agreement.

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

(5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment of Annex IX (Financial services) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([4]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Article 2

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

Done at Brussels, 19 March 2019.

For the Council
The President
G. CIAMBA

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No …/2019

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 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([1]), as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, is to be incorporated into the EEA Agreement.

(2) Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State ([2]), is to be incorporated into the EEA Agreement.

(3) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ([3]), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1, is to be incorporated into the EEA Agreement.

(4) Regulation (EU) No 575/2013 and Directive 2013/36/EU refer to 'EU parent institutions', 'EU parent financial holding companies' and 'EU parent mixed financial holding companies', which in the context of the EEA Agreement are understood as referring to entities fulfilling the relevant definitions set out in the Regulation that are established in an EEA Contracting Party and which are not subsidiaries of any other institution set up in any other EEA Contracting Party.

(5) Directive 2013/36/EU repeals Directives 2006/48/EC ([4]) and 2006/49/EC ([5]) of the European Parliament and of the Council, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.

(6) The potential for unwarranted reductions in own funds requirements from the use of internal models has, inter alia, been limited by national legislation implementing Article 152 of Directive 2006/48/EC, which, by the end of 2017 was replaced by Article 500 of Regulation (EU) 575/2013. There are, however, still several other provisions in Regulation (EU) 575/2013 and Directive 2013/36/EU which allow competent authorities to address the same issue, including the possibility for measures to counterbalance unwarranted reductions in the riskweighted exposure amounts, see for instance Article 104 of Directive 2013/36/EU, and to impose prudent margins of conservatism in the calibration of internal models, see for instance Article 144 of Regulation (EU) 575/2013 and Article 101 of Directive 2013/36/EU.

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

([1]) OJ L 176, 27.6.2013, p. 1.
([2]) OJ L 345, 27.12.2017, p. 27.
([3]) OJ L 176, 27.6.2013, p. 338.
([4]) OJ L 177, 30.6.2006, p. 1.
([5]) OJ L 177, 30.6.2006, p. 201.

HAS ADOPTED THIS DECISION:

Article 1

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

1. The text of point 14 (Directive 2006/48/EC of the European Parliament and of the Council) is replaced by the following:

'**32013 L 0036**: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, 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) References to "ESCB central banks" or to "central banks" shall be understood to include, in addition to their meaning in the Directive, the national central banks of the EFTA States.

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

(d) References to the powers of EBA under Article 19 of Regulation (EU) No 1093/2010 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 31g of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.

(e) In Article 2(5), the following point shall be inserted:

"(11a) In Iceland, the "Byggðastofnun", the "Íbúðalánasjóður" and the "Lánasjóður sveitarfélaga ohf.";"

(f) In Article 6, the following subparagraph is added to point (a):

"The competent authorities of the EFTA States cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and the parties to the ESFS and with the EFTA Surveillance Authority. Competent authorities of the EU Member States shall cooperate with the competent authorities of the EFTA States in the same manner."

(g) Article 47(3) shall not apply as regards the EFTA States. An EFTA State may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office in a third country identical treatment on the territory of that EFTA State.

The Contracting Parties shall inform and consult each other prior to concluding agreements with third countries on the basis of Article 47(3) or the first paragraph of this point, as the case may be.

Whenever the European Union negotiates with one or more third countries towards the conclusion of an agreement on the basis of Article 47(3), and such an agreement pertains to obtain national treatment or effective market access for branches of credit institutions having their head office in a Member State of the European Union in the third countries concerned, the European Union shall endeavour to obtain equal treatment for branches of credit institutions having their head office in an EFTA State.

(h) Article 48 shall not apply. Where an EFTA State concludes an agreement with one or more third countries regarding the means of exercising supervision on a consolidated basis over institutions the parent undertakings of which have their head offices in a third country and institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in that EFTA State, that agreement shall seek to ensure that EBA is able to obtain from the competent authority of that EFTA State the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

(i) In Article 53(2), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted before the words "in accordance with this Directive".

(j) In Article 58(1)(d), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(k) In Article 89(5), the words "future Union legislative acts for disclosure obligations" shall be replaced by the words "future legislative acts applicable pursuant to the EEA Agreement provide for disclosure obligations that".

(l) In Article 114(1), as regards Liechtenstein, the words "an ESCB central bank" shall be replaced by the words "the competent authority".

(m) In the second subparagraph of Article 117(1), the words "or the EFTA Surveillance Authority, as the case may be," shall be inserted after the word "EBA".

(n) In Article 133(14) and (15), the words "or, as regards the EFTA States, the Standing Committee of the EFTA States" shall be inserted after the words "the Commission".

(o) In Article 151(1), as regards the EFTA States, the words "a decision of the EEA Joint Committee containing" shall be inserted after the words "in accordance with".'

2. The following is inserted after point 14 (Directive 2013/36/EU of the European Parliament and of the Council):

'14a. **32013 R 0575**: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1), as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, as amended by:

— **32017 R 2395:** Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 (OJ L 345, 27.12.2017, p. 27).

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

(a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms "Member State(s)" and "competent authorities" shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities, respectively.

(b) References to "ESCB central banks" 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

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

(d) References to the powers of EBA under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council in the Regulation shall be understood as referring, in the cases provided for in and in accordance with point 31g of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.

(e) In point (75) of Article 4(1), the words "Norway and" shall be inserted before the word "Sweden".

(f) In Article 31(1)(b), as regards the EFTA States, the words "the Commission" shall read "the EFTA Surveillance Authority".

(g) In paragraphs 1 and 2 of Article 80, the words "or, in case an EFTA State is concerned, the EFTA Surveillance Authority" shall be inserted after the words "the Commission".

(h) In Articles 329(4), 344(2), 352(6), 358(4) and 416(5), 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".

(i) In Article 395:

(i) in paragraphs 7 and 8, as regards the EFTA States, the words "the Council," shall not apply;

(ii) as regards the EFTA States, the first subparagraph of paragraph 8 shall read as follows:

"The power to adopt a decision to accept or reject the proposed national measure referred to in paragraph 7 is conferred on the Standing Committee of the EFTA States."

(iii) the first sentence of the second subparagraph of paragraph 8 shall be replaced by the following:

"Within one month of receiving the notification referred to in paragraph 7, EBA shall provide its opinion on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned or, where its opinion concerns national measures proposed by an EFTA State, to the Standing Committee of the EFTA States and the EFTA State concerned."

(j) In Article 458:

(i) as regards the EFTA States, the first subparagraph of paragraph 2 shall read as follows:

"Where the authority determined in accordance with paragraph 1 identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific EFTA State and which that authority considers would better be addressed by means of stricter national measures, it shall notify the Standing Committee of the EFTA States, the EFTA Surveillance Authority, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following:"

(ii) as regards the EFTA States, the first subparagraph of paragraph 4 shall read as follows:

"The power to adopt an implementing act to reject the draft national measures referred to in point (d) of paragraph 2 is conferred on the Standing Committee of the EFTA States, acting on a proposal from the EFTA Surveillance Authority.";

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

"Where their opinions concern draft national measures of an EFTA State, the ESRB and EBA shall provide their opinions to the Standing Committee of the EFTA States, the EFTA Surveillance Authority and the EFTA State concerned.";

(iv) as regards the EFTA States, the third to eighth subparagraphs of paragraph 4 shall read as follows:

"Taking utmost account of the opinions referred to in the second subparagraph and if there is robust, strong and detailed evidence that the measure will have a negative impact on the internal market that outweighs the financial stability benefits resulting in a reduction of the macroprudential or systemic risk identified, the EFTA Surveillance Authority may, within one month, propose to the Standing Committee of the EFTA States to reject the draft national measures.

In the absence of an EFTA Surveillance Authority proposal within that period of one month, the EFTA State concerned may immediately adopt the draft national measures for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

The Standing Committee of the EFTA States shall decide on the proposal by the EFTA Surveillance Authority within one month after receipt of the proposal and state its reasons for rejecting or not rejecting the draft national measures.

The Standing Committee of the EFTA States shall only reject the draft national measures if it considers that one or more of the following conditions are not complied with:

(a) the changes in the intensity of macroprudential or systemic risk are of such nature as to pose risk to financial stability at national level;

(b) Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures;

(c) the draft national measures are more suitable to address the identified macroprudential or systemic risk and do not entail disproportionate adverse effects on the whole or parts of the financial system in other Contracting Parties or in the EEA as a whole, thus forming or creating an obstacle to the functioning of the internal market;

(d) the issue concerns only one EFTA State; and

(e) the risks have not already been addressed by other measures in this Regulation or in Directive 2013/36/EU.

The assessment of the Standing Committee of the EFTA States shall take into account the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 2 by the authority determined in accordance with paragraph 1.

In the absence of a decision of the Standing Committee of the EFTA States to reject the draft national measures within one month after receipt of the proposal by the EFTA Surveillance Authority, the EFTA State may adopt the measures and apply them for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner."

(v) as regards the EFTA States, paragraph 6 shall read as follows:

"Where an EFTA State recognises the measures set in accordance with this Article, it shall notify the Standing Committee of the EFTA States, the EFTA Surveillance Authority, EBA, the ESRB and the Contracting Party to the EEA Agreement authorised to apply the measures."

(k) In Article 467(2), as regards the EFTA States, the words "the Commission has adopted a regulation" shall read "the entry into force of a decision of the EEA Joint Committee containing a regulation adopted".

(l) In Article 497, as regards the EFTA States:

(i) in paragraphs 1 and 2, the words "the decisions of the EEA Joint Committee containing" shall be inserted after the words "entry into force of the latest of";

(ii) in paragraph 1, the words "have been adopted" shall read "apply in the EEA".'

3. In point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

(a) the following indent is added:

'— **32013 R 0575:** Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 (OJ L 176, 27.6.2013, p. 1), as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2.'

(b) in adaptation (zh), the following is added:

'(v) in paragraph 5a, 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 the latest of".'

4. The following indent is added in point 31ea (Directive 2002/87/EC of the European Parliament and of the Council):

'— **32013 L 0036**: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (OJ L 176, 27.6.2013, p. 338), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1.'

5. The text of point 31 (Directive 2006/49/EC of the European Parliament and of the Council) is deleted.

Article 2

The texts of Regulations (EU) No 575/2013, as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, and (EU) 2017/2395 and Directive 2013/36/EU, as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1, 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 (*).

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

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*

Joint Declaration by the Contracting Parties to Decision No …/2019 incorporating Directive 2013/36/EU into the EEA Agreement

The Contracting Parties share the understanding that the incorporation into the EEA Agreement of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC is without prejudice to national rules of general application concerning the screening for security or public order of foreign direct investment.