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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 October 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2018) 683 final - ANNEX II
Subject:	ANNEX to the Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning an amendment to Annex IX (Financial Services) to the EEA Agreement

Delegations will find attached document COM(2018) 683 final - ANNEX II.

Encl.: COM(2018) 683 final - ANNEX II



Brussels, 12.10.2018
COM(2018) 683 final

ANNEX 2

ANNEX

to the

Proposal for a Council Decision

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

ANNEX 2

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 (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC¹ is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies² is to be incorporated into the EEA Agreement.
- (3) Directive (EU) 2015/849 repeals Directive 2005/60/EC of the European Parliament and of the Council³ and Commission Directive 2006/70/EC⁴, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.
- (4) 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 text of point 23b (Directive 2005/60/EC of the European Parliament and of the Council) is replaced by the following:

¹ OJ L 141, 5.6.2015, p. 73.

² OJ L 254, 20.9.2016, p. 1.

³ OJ L 309, 25.11.2005, p. 15.

⁴ OJ L 214, 4.8.2006, p. 29.

‘32015 L 0849: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

(a) Point (d) of Article 3(4) shall be replaced by the following:

“fraud affecting the Union’s financial interests, where it is at least serious, as defined below:

- (i) in respect of expenditure, any intentional act or omission relating to:
 - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - the misapplication of such funds for purposes other than those for which they were originally granted;
- (ii) in respect of revenue as defined in Council Decision of 29 September 2000 on the system of the European Communities' own resources ⁵ any intentional act or omission relating to:
 - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - misapplication of a legally obtained benefit, with the same effect.

Serious fraud shall be considered to be fraud involving a minimum amount not to be set at a sum exceeding Euro 50 000.”

2. The text of point 23ba (Commission Directive 2006/70/EC) is replaced by the following:

‘32016 R 1675: Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the

⁵ OJ L 253, 7.10.2000, p. 42.

Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).’

3. The following indent is added in point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

‘ - **32015 L 0849**: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (OJ L 141, 5.6.2015, p. 73).’

Article 2

The texts of Directive (EU) 2015/849 and Delegated Regulation (EU) 2016/1675, 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*.

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.]

Declaration of the EFTA States

to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement

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

Directive (EU) 2015/849 contains provisions with references to acts adopted under Title V TFEU. It is recalled that the incorporation of acts with such provisions into the EEA Agreement is without prejudice to the understanding that EU legislation adopted pursuant to Title V TFEU falls outside the scope of the EEA Agreement.

Joint Declaration by the Contracting Parties

to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement

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

The Contracting Parties have agreed to include serious fraud affecting the financial interests of the European Union in the list of predicate offences to money laundering. For practical reasons, the Fourth Money Laundering Directive (Directive (EU) 2015/849) has been incorporated without a reciprocal agreement to protect likewise the financial interests of the EEA EFTA States. Nevertheless, the principles of reciprocity and homogeneity as laid down in the EEA Agreement, particularly in its Recital 4 and Article 1, remain fully applicable also to the mutual protection against criminal activity affecting the financial interests of the Contracting Parties in the meaning of [this Decision].