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From:	General Secretariat of the Council
To:	Delegations
Subject:	Draft Council Conclusions on the EU and EEA-EFTA - Incorporation of the EU ESAs Regulations into the EEA Agreement

Delegations will find attached the draft Council Conclusions for the EU and EEA-EFTA Ministers of Finance and Economy on 14 October 2014.

Draft Conclusions
EU and EEA-EFTA Ministers of Finance and Economy

on 14 October 2014

Incorporation of the EU ESAs Regulations into the EEA Agreement

- 1)The EU and EEA-EFTA Ministers of Finance and Economy underlined that the European Supervisory Authorities are a cornerstone in the EU's response to the financial crisis. A strong coordinated financial supervision is key to maintaining and deepening the Single Market for financial services.
- 2)The EU and EEA-EFTA Ministers of Finance and Economy therefore welcomed the agreement on the principles for incorporation into the EEA Agreement of the EU Regulations establishing the European Supervisory Authorities in the area of financial services (the EU ESAs).
- 3)The EU and EEA-EFTA Ministers of Finance and Economy noted that a balanced solution has been found, taking into account the structure and objectives of the EU ESAs Regulations and 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. When carrying out these tasks, the EFTA Surveillance Authority shall make use of technical expertise through an advisory committee. 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 at Union level.

- 6) These principles will apply in particular to direct supervision by ESMA of Credit Rating Agencies and Trade Repositories: the EFTA Surveillance Authority will adopt decisions on the basis of drafts prepared by ESMA. A similar regime will apply to the intervention powers of the EU ESAs under Article 28 of the Short Selling Regulation and Articles 40, 41 and 45 of the Markets in Financial Instruments Regulation. The EFTA Surveillance Authority will adopt decisions on the basis of drafts prepared by the relevant EU ESA.
- 7) In case of disagreements between the EU ESAs and the EFTA Surveillance Authority, the matter may be referred to the EEA Joint Committee upon request by one of the Parties, as provided for in the EEA Agreement. Appropriate procedures for the immediate organisation of meetings of the EEA Joint-Committee in urgent situations will be created.
- 8) In order to ensure uniform surveillance and application of the legislation in the financial services field, representatives of the EFTA Surveillance Authority and of the national competent authorities in the three EEA-EFTA States shall participate to the fullest extent possible, without voting rights, in the Boards of Supervisors of the EU ESAs and their preparatory bodies. The EU ESAs shall also participate to the fullest extent possible, without voting rights, in the work of the EFTA Surveillance Authority and its preparatory bodies in so far it is related to their activities.
- 9) The EU and EEA-EFTA Ministers of Finance and Economy acknowledged that the solution is based on the extraordinary background situation and requirements in this particular field, including the exceptional circumstances which make it particularly important to ensure financial stability and the orderly functioning and integrity of financial markets.
- 10) The EU and EEA-EFTA Ministers of Finance and Economy encouraged the Contracting Parties to swiftly conclude the technical work necessary for the incorporation, so as to ensure effective and homogeneous application of common rules and supervision throughout the EEA. It also asked the Contracting Parties to review the agreed framework at the latest after five years of operation to ensure that it will continue to ensure the effective and homogeneous application of common rules and supervision throughout the EEA.
- 11) The EU and EEA-EFTA Ministers of Finance and Economy reiterated the high importance of a swift incorporation and application of the outstanding legislation in the field of financial services in order to ensure a level playing field throughout the EEA in this important economic sector.