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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 August 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 369 final
Subject:	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 Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (Budget Line 33.02.03.01 – Company Law)

Delegations will find attached document COM(2020) 369 final.

Encl.: COM(2020) 369 final

EUROPEAN
COMMISSION

Brussels, 13.8.2020
COM(2020) 369 final

2020/0172 (NLE)

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 Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(Budget Line 33.02.03.01 – Company Law)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In order to ensure the requisite of legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant EU legislation into the EEA Agreement as soon as possible after its adoption and also allow for the participation of the EEA EFTA States in EEA relevant EU actions or programmes.

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Protocol 31 to the EEA Agreement on "cooperation in specific fields outside the four freedoms". This is necessary to allow the EEA EFTA States to participate in Union's programmes and actions funded from budget lines of the general budget of the European Union. In the present case, the purpose of this amendment is to allow the EEA EFTA States (Norway, Iceland, and Liechtenstein) to participate in the Union actions related to the Budget line 33 02 03 01: "Company law", entered into the general budget of the European Union for the financial year 2020.

• Consistency with existing policy provisions in the policy area

The annexed draft Joint Committee Decision is fully consistent with the aim of the EEA Agreement to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area.

• Consistency with other Union policies

The Joint Committee Decision is also consistent with other Union policies, particularly through the aim to protect homogeneity of the EU Internal Market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 114 TFEU in conjunction with Article 218(9) thereof. Article 1(3) of Council Regulation (EC) No 2894/94[1] concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

• Subsidiarity (for non-exclusive competence)

The proposal complies with the subsidiarity principle for the following reason:

The objective of this proposal, namely to ensure the homogeneity of the Internal Market cannot be sufficiently achieved by Member States and can therefore, by reason of the effects, be better achieved at the Union level.

• Proportionality

In accordance with the principle of proportionality, the proposal does not go beyond what is necessary in order to achieve its objective – to ensure the homogeneity of the Internal Market.

[1] OJ L 305, 30.11.1994, p. 6–8

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in this Agreement.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Not applicable.

4. BUDGETARY IMPLICATIONS

The EEA EFTA States shall financially contribute to the Budget of the Union, Budget line 33 02 03 01: "Company law". The exact amount will be determined in conformity with the provisions of the EEA Agreement, once this draft Council Decision is adopted.

5. OTHER ELEMENTS

In line with the EU budgetary policy, any participation in an EU activity can take place only once the corresponding financial contribution is paid. However, in line with Protocol 32 to the EEA Agreement the yearly financial contribution from the EEA EFTA States is coming every year by 31 August, following the EU call for funds established by the European Commission and submitted to the EEA EFTA States by 15 August.

Therefore, in order to bridge the period between January and August, the draft Joint Committee Decision shall be retroactively applicable since January. This way the continuity of cooperation, as provided for in EEA Agreement, is ensured throughout the entire calendar year.

The retroactivity does not affect the rights and obligations of persons concerned and respects the principle of the legitimate expectations.

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(Budget Line 33.02.03.01 – Company Law)

(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[2], 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[3] ('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, Protocol 31 to the EEA Agreement.

(3) Protocol 31 to the EEA Agreement contains provisions on cooperation in specific fields outside the four freedoms.

(4) It is appropriate to continue the cooperation of the Contracting Parties to the EEA Agreement in Union actions funded from the general budget of the European Union regarding company law.

(5) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2020.

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

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the behalf of the Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific

[2] OJ L 305, 30.11.1994, p. 6.
[3] OJ L 1, 3.1.1994, p. 3.

fields outside the four freedoms, shall be based on the draft decision 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,

For the Council
The President