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Subject: Draft DECISION OF THE EEA JOINT COMMITTEE amending Annex IX
(Financial services), Annex XII (Free movement of capital) and Annex XXII
(Company law) to the EEA Agreement

DRAFT

DECISION OF THE EEA JOINT COMMITTEE

No ...

of ...

**amending Annex IX (Financial services),
Annex XII (Free movement of capital)
and Annex XXII (Company law) 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) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132¹ is to be incorporated into the EEA Agreement.
- (2) Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012², which was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 388/2021 of 10 December 2021³, should also be added to Annex IX to the EEA Agreement, as an amending act to Regulation (EU) No 648/2012 of the European Parliament and of the Council.

¹ OJ L 22, 22.1.2021, p. 1.

² OJ L 49, 12.2.2021, p. 6.

³ OJ L, 2024/695, 14.3.2024, ELI: <http://data.europa.eu/eli/dec/2024/695/oj>.

- (3) Commission Delegated Regulation (EU) 2023/450 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the order in which CCPs are to pay the recompense referred to in Article 20(1) of Regulation (EU) 2021/23, the maximum number of years during which those CCPs are to use a share of their annual profits for such payments to possessors of instruments recognising a claim on their future profits and the maximum share of those profits that is to be used for those payments⁴ is to be incorporated into the EEA Agreement.
- (4) Commission Delegated Regulation (EU) 2023/451 of 25 November 2022 specifying the factors to be taken into consideration by the competent authority and the supervisory college when assessing the recovery plan of central counterparties⁵ is to be incorporated into the EEA Agreement.
- (5) Commission Delegated Regulation (EU) 2023/840 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) of that Regulation⁶ is to be incorporated into the EEA Agreement.

⁴ OJ L 67, 3.3.2023, p. 5.

⁵ OJ L 67, 3.3.2023, p. 7.

⁶ OJ L 107, 21.4.2023, p. 29.

- (6) Annexes IX, XII and XXII 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 points 19b (Directive 2014/59/EU of the European Parliament and of the Council), 31bh (Regulation (EU) 2015/2365 of the European Parliament and of the Council), and 31i (Regulation (EU) No 1095/2010 of the European Parliament and of the Council):
 - ‘- **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (OJ L 22, 22.1.2021, p. 1).’
2. The following indent is added in point 31baa (Regulation (EU) No 600/2014 of the European Parliament and of the Council):
 - ‘- **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (OJ L 22, 22.1.2021, p. 1).’

3. Point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council) is amended as follows:

(i) the following indents are added:

- ‘- **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (OJ L 22, 22.1.2021, p. 1),
- **32021 R 0168**: Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 (OJ L 49, 12.2.2021, p. 6).’;

(ii) the following adaptation is inserted after adaptation (fa):

‘(faa) In Article 6b:

- (i) in the first subparagraph of paragraphs 1, 3 and 10, the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;
- (ii) in the third subparagraph of paragraph 1, the second subparagraph of paragraph 3 and the third and fifth subparagraphs of paragraph 10, the words “and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;

(iii) in paragraph 5, the following subparagraphs shall be added:

“The EFTA Surveillance Authority shall, without undue delay after receipt of the request referred to in paragraph 1, on the basis of the reasons and evidence provided by the authority referred to in paragraph 1, either suspend the clearing obligations for the specific classes of OTC derivatives by way of a decision, or reject the requested suspension.

In adopting the decision referred to in the fifth subparagraph, the EFTA Surveillance Authority shall take into account the opinion issued by ESMA referred to in paragraph 2 of this Article, the resolution objectives referred to in Article 21 of Regulation (EU) 2021/23, the criteria set out in Article 5(4) and (5) of this Regulation regarding those OTC derivative classes and the necessity of the suspension to avoid or address a serious threat to financial stability or the orderly functioning of financial markets in the European Economic Area.

Where the EFTA Surveillance Authority rejects the requested suspension, it shall provide reasons therefor in writing to the requesting authority referred to in the first subparagraph of paragraph 1 and to ESMA. The EFTA Surveillance Authority shall immediately inform the Standing Committee of the EFTA States thereof and forward it the reasons provided to the requesting authority referred to in the first subparagraph of paragraph 1 and to ESMA. Such information shall not be made public.

The Commission and the EFTA Surveillance Authority shall cooperate with a view to agreeing on identical positions as regards the suspension of the clearing obligation and, where applicable, the trading obligation and as regards the extension of the suspension according to paragraph 9.”;

- (iv) in paragraphs 6 and 10, as regards the EFTA States, the words “implementing act” shall read “decision of the EFTA Surveillance Authority”;
- (v) in paragraph 9, as regards the EFTA States, the words “the Commission may, by way of an implementing act,” shall read “the EFTA Surveillance Authority may, by way of a decision,”;
- (vi) in the fifth subparagraph of paragraph 10, the words “and to the Standing Committee of the EFTA States” shall be inserted after the word “Council”.

(iii) the following adaptation is inserted after adaptation (h):

‘(ha) In Article 13a, as regards the EFTA States, the words “13 February 2021” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of [this decision]”.’

4. The following is inserted after point 31ca (Commission Decision 2001/528/EC):

‘31cb. **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

The provisions of the Regulation shall, for the purposes of the 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 States, resolution authorities and competent authorities shall be understood to include, in addition to their meaning in the Regulation, the EFTA States, their resolution authorities and their competent authorities, respectively.
- (b) 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 Regulation 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.

- (c) References to members of the European System of Central Banks (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) References to Union law shall be understood as referring to the EEA Agreement.
- (e) In point (30) of Article 2, the words “Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)” shall be replaced by the words “Article 61(1) of the EEA Agreement”.
- (f) References to the Union State aid framework as defined in point (39) of Article 2 shall be understood as referring to the State aid framework established by Chapter 2 of Part IV of the EEA Agreement, including the relevant Annexes and Protocols to the EEA Agreement and, as regards the EFTA States, the relevant provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
- (g) In point (k) of Article 4(2), the words “Union currencies” shall be replaced by the words “official currencies of the Contracting Parties to the EEA Agreement”.

- (h) In Article 36(1), as regards the EFTA States, the word “Commission” shall read “EFTA Surveillance Authority”.
- (i) In Article 43(2), the word “Union” shall be replaced by “the competition rules of the EEA Agreement”.
- (j) In Article 73:
 - (i) in point (b) of paragraph 1, the words “and the EFTA Surveillance Authority” shall be inserted after the word “EBA”;
 - (ii) in point (b) of paragraph 5, the words “the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”.
- (k) Article 76 shall not apply.
- (l) In Article 77(1), as regards the EFTA States, the words “as referred to in Article 76(1)” shall not apply.
- (m) In Article 79:
 - (i) in paragraph 1, as regards the EFTA States, the words “as referred to in Article 76(1) and “as provided for in Article 76(1)” shall not apply;

(ii) the following subparagraph shall be added in paragraph 2:

“The conclusion of such cooperation arrangements shall not be mandatory for competent authorities and resolution authorities of the EFTA States.”.

5. The following points are inserted after point 31cb (Regulation (EU) 2021/23 of the European Parliament and of the Council):

‘31cba. **32023 R 0450**: Commission Delegated Regulation (EU) 2023/450 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the order in which CCPs are to pay the recompense referred to in Article 20(1) of Regulation (EU) 2021/23, the maximum number of years during which those CCPs are to use a share of their annual profits for such payments to possessors of instruments recognising a claim on their future profits and the maximum share of those profits that is to be used for those payments (OJ L 67, 3.3.2023, p. 5).

31cbb. **32023 R 0451**: Commission Delegated Regulation (EU) 2023/451 of 25 November 2022 specifying the factors to be taken into consideration by the competent authority and the supervisory college when assessing the recovery plan of central counterparties (OJ L 67, 3.3.2023, p. 7).

31cbc. **32023 R 0840**: Commission Delegated Regulation (EU) 2023/840 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) of that Regulation (OJ L 107, 21.4.2023, p. 29).’

Article 2

The following indent is added in point 4 (Directive 2002/47/EC of the European Parliament and of the Council) of Annex XII to the EEA Agreement:

‘- **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (OJ L 22, 22.1.2021, p. 1).’

Article 3

The following indent is added in points 1 (Directive (EU) 2017/1132 of the European Parliament and of the Council), 10d (Directive 2004/25/EC of the European Parliament and of the Council) and 10g (Directive 2007/36/EC of the European Parliament and of the Council) of Annex XXII to the EEA Agreement:

‘- **32021 R 0023**: Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 (OJ L 22, 22.1.2021, p. 1).’

Article 4

The texts of Regulation (EU) 2021/23 and Delegated Regulations (EU) 2023/450, (EU) 2023/451 and (EU) 2023/840 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 5

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 ...⁷ [incorporating {Regulation (EU) 2019/2099} into the EEA Agreement], or on the day of the entry into force of Decision of the EEA Joint Committee No .../... of ...⁸ [incorporating {Directive (EU) 2019/2121} into the EEA Agreement] whichever is the latest.

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

⁷ OJ L ...

⁸ OJ L ...

Article 6

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 ..., ...

For the EEA Joint Committee
The President

The Secretaries
To the EEA Joint Committee
