



Brussels, 12.10.2018
COM(2018) 682 final

2018/0351 (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
Annex IX (Financial Services) to the EEA Agreement**

(Omnibus II)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex IX (Financial Services) to the EEA Agreement in order to incorporate Directive 2014/51/EU in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)¹.

The adaptations appearing in the draft of the annexed Decision of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

- **Consistency with existing policy provisions in the policy area**

The annexed draft EEA Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

- **Consistency with other Union policies**

The extension of the EU acquis to the EEA EFTA States, through their incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legislation to be incorporated into the EEA Agreement is based on Articles 50, 53, 62, and 114 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94² 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.

The EEAS with the Commission services submit the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The EEAS would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

- **Subsidiarity (for non-exclusive competence)**

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

¹ Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), OJ L 153, 22.5.2014, p. 1.

² OJ L 305, 30.11.1994, p. 6–8

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

The process of incorporation of the EU acquis into the EEA Agreement is conducted in conformity with the Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area which confirms the approach taken.

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **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 the EEA Agreement.

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

Not applicable

4. BUDGETARY IMPLICATIONS

There are no budgetary implications expected as a result of incorporation of the above mentioned act into the EEA Agreement.

5. OTHER ELEMENTS

Not applicable

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(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 Articles 50, 53, 62, and 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 Area³, and in particular Article 1(3) thereof

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁴ ('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, amend Annex IX to the EEA Agreement, which contains provisions on financial services.
- (3) Directive 2014/51/EU of the European Parliament and of the Council⁵ is 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,

³ OJ L 305, 30.11.1994, p. 6.

⁴ OJ L 1, 3.1.1994, p. 3.

⁵ Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), OJ L 153, 22.5.2014, p. 1.

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 to Annex IX (Financial Services) to the EEA Agreement, 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*