Council Decision (EU) 2019/483 of 19 March 2019 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment of Annex IX (Financial services) to the EEA Agreement (Capital Requirements Regulation (EU) No 575/2013 (CRR) and Directive 2013/36/EU (CRD IV)) (Text with EEA relevance)

COUNCIL DECISION (EU) 2019/483

of 19 March 2019

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment of Annex IX (Financial services) to the EEA Agreement (Capital Requirements Regulation (EU) No 575/2013 (CRR) and Directive 2013/36/EU (CRD IV))

(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[(1)], 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[(2)] ('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, Annex IX to that Agreement, which contains provisions on financial services.

(3) Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)] and Directive 2013/36/EU of the European Parliament and of the Council[(4)] are 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,

HAS ADOPTED THIS DECISION:

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/483. (See end of Document for details)*

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment of 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, 19 March 2019.

For the Council

The President

G. CIAMBA

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2019/483. (See end of Document for details)*

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No …/2019

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) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[(5)], as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, is to be incorporated into the EEA Agreement.

(2) Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State[(6)], is to be incorporated into the EEA Agreement.

(3) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[(7)], as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1, is to be incorporated into the EEA Agreement.

(4) Regulation (EU) No 575/2013 and Directive 2013/36/EU refer to 'EU parent institutions', 'EU parent financial holding companies' and 'EU parent mixed financial holding companies', which in the context of the EEA Agreement are understood as referring to entities fulfilling the relevant definitions set out in the Regulation that are established in an EEA Contracting Party and which are not subsidiaries of any other institution set up in any other EEA Contracting Party.

(5) Directive 2013/36/EU repeals Directives 2006/48/EC[(8)] and 2006/49/EC[(9)] of the European Parliament and of the Council, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.

(6) The potential for unwarranted reductions in own funds requirements from the use of internal models has, inter alia, been limited by national legislation implementing Article 152 of Directive 2006/48/EC, which, by the end of 2017 was replaced by Article 500 of Regulation (EU) 575/2013. There are, however, still several other provisions in Regulation (EU) 575/2013 and Directive 2013/36/EU which allow

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/483. (See end of Document for details)*

competent authorities to address the same issue, including the possibility for measures to counterbalance unwarranted reductions in the riskweighted exposure amounts, see for instance Article 104 of Directive 2013/36/EU, and to impose prudent margins of conservatism in the calibration of internal models, see for instance Article 144 of Regulation (EU) 575/2013 and Article 101 of Directive 2013/36/EU.

(7) 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 14 (Directive 2006/48/EC of the European Parliament and of the Council) is replaced by the following:

32013 L 0036: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1.

The provisions of the Directive shall, for the purposes of this 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 State(s)" and "competent authorities" shall be understood to include, in addition to their meaning in the Directive, the EFTA States and their competent authorities, respectively.

(b) References to "ESCB central banks" or to "central banks" shall be understood to include, in addition to their meaning in the Directive, the national central banks of the EFTA States.

(c) References to other acts in the Directive shall apply to the extent and in the form that those acts are incorporated into this Agreement.

(d) References to the powers of EBA under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council in the Directive shall be understood as referring, in the cases provided for in and in accordance with point 31g of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.

(e) In Article 2(5), the following point shall be inserted:

(11a) In Iceland, the "Byggðastofnun", the "Íbúðalánasjóður" and the "Lánasjóður sveitarfélaga ohf.";

(f) In Article 6, the following subparagraph is added to point (a):

The competent authorities of the EFTA States cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and the parties to the ESFS and with the EFTA Surveillance Authority. Competent authorities of the EU Member

States shall cooperate with the competent authorities of the EFTA States in the same manner.

(g) Article 47(3) shall not apply as regards the EFTA States. An EFTA State may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office in a third country identical treatment on the territory of that EFTA State.

The Contracting Parties shall inform and consult each other prior to concluding agreements with third countries on the basis of Article 47(3) or the first paragraph of this point, as the case may be.

Whenever the European Union negotiates with one or more third countries towards the conclusion of an agreement on the basis of Article 47(3), and such an agreement pertains to obtain national treatment or effective market access for branches of credit institutions having their head office in a Member State of the European Union in the third countries concerned, the European Union shall endeavour to obtain equal treatment for branches of credit institutions having their head office in an EFTA State.

(h) Article 48 shall not apply. Where an EFTA State concludes an agreement with one or more third countries regarding the means of exercising supervision on a consolidated basis over institutions the parent undertakings of which have their head offices in a third country and institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in that EFTA State, that agreement shall seek to ensure that EBA is able to obtain from the competent authority of that EFTA State the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

(i) In Article 53(2), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted before the words "in accordance with this Directive".

(j) In Article 58(1)(d), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(k) In Article 89(5), the words "future Union legislative acts for disclosure obligations" shall be replaced by the words "future legislative acts applicable pursuant to the EEA Agreement provide for disclosure obligations that".

(l) In Article 114(1), as regards Liechtenstein, the words "an ESCB central bank" shall be replaced by the words "the competent authority".

(m) In the second subparagraph of Article 117(1), the words "or the EFTA Surveillance Authority, as the case may be," shall be inserted after the word "EBA".

(n) In Article 133(14) and (15), the words "or, as regards the EFTA States, the Standing Committee of the EFTA States" shall be inserted after the words "the Commission".