Council Decision (EU) 2019/389 of 4 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 (Markets in Financial Instruments Regulation (MiFIR) and Directive MiFID II) (Text with EEA relevance)

COUNCIL DECISION (EU) 2019/389

of 4 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 (Markets in Financial Instruments Regulation (MiFIR) and Directive MiFID II)

(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 600/2014 of the European Parliament and of the Council[(3)] and Directive 2014/65/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) 2019/389. (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, 4 March 2019.

For the Council

The President

A. ANTON

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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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(5)], as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54, is to be incorporated into the EEA Agreement.

(2) Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories[(6)] is to be incorporated into the EEA Agreement.

(3) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[(7)], as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116, is to be incorporated into the EEA Agreement.

(4) Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016 amending Directive 2014/65/EU on markets in financial instruments[(8)] is to be incorporated into the EEA Agreement.

(5) Directive 2014/65/EU repeals Directive 2004/39/EC of the European Parliament and of the Council[(9)], which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.

(6) Regulation (EU) No 600/2014 specifies cases in which the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) may temporarily prohibit or restrict certain financial activities, and lays down conditions thereto, in accordance with Article 9(5) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(10)] and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(11)], respectively. For the purposes of the EEA Agreement, these powers are to be exercised by the EFTA Surveillance Authority as regards the EFTA States, in accordance with points 31g and 31i of Annex IX to the EEA Agreement. To ensure integration of the expertise of EBA and ESMA in the process and consistency between the two pillars of the EEA, such decisions of the EFTA Surveillance Authority

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/389. (See end of Document for details)*

will be adopted on the basis of drafts prepared by EBA or ESMA, as the case may be. This will preserve key advantages of supervision by a single authority.

(7) The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in the conclusions[12] of the EU and EEA EFTA Ministers of Finance and Economy of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement.

(8) 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 following is added in point 13b (Directive 2002/92/EC of the European Parliament and of the Council):

, as amended by:

— **32014 L 0065**: Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (OJ L 173, 12.6.2014, p. 349), as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116.

2. The text of point 31ba (Directive 2004/39/EC of the European Parliament and of the Council) is replaced by the following:

32014 L 0065: Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), as corrected by OJ L 188, 13.7.2016, p. 28, OJ L 273, 8.10.2016, p. 35 and OJ L 64, 10.3.2017, p. 116, as amended by:

— **32016 L 1034**: Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016 (OJ L 175, 30.6.2016, p. 8).

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 members of the ESCB 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 be considered relevant to the extent and in the form that those acts are incorporated into the Agreement.

(d) In Article 3(2), as regards the EFTA States, the words “2 July 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this Decision]” and the words “3 July 2019” shall read “five years thereafter”.

(e) In Article 16(11), as regards the EFTA States, the words "2 July 2014" shall read "the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this Decision]".

(f) In Article 41(2), the word "Union" shall be replaced by the word "EEA".

(g) In Article 57:

(i) in the second subparagraph of paragraph 5, the words "it shall take action" shall be replaced by the words "ESMA or, as the case may be, the EFTA Surveillance Authority shall take action";

(ii) in paragraph 6, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(h) In points (f) and (g) of Article 70(6), as regards the EFTA States, the words "2 July 2014" shall read "the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this Decision]".

(i) In Article 79:

(i) in the second subparagraph of paragraph 1, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in the fifth subparagraph of paragraph 1, the words, "the EFTA Surveillance Authority" shall be inserted after the words "the Commission, ESMA".

(j) In Articles 81(5), 82(2) and 87(1), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(k) In Article 86, the words "ESMA, which" shall be replaced by the words "ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority".

(l) In Article 95(1), as regards the EFTA States, the words "3 January 2018" shall read "the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this Decision]."

3. The text of point 31baa (deleted) is replaced by the following:

32014 R 0600: Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84), as corrected by OJ L 270, 15.10.2015, p. 4, OJ L 187, 12.7.2016, p. 30 and OJ L 278, 27.10.2017, p. 54, as amended by:

— **32016 R 1033**: Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 (OJ L 175, 30.6.2016, p. 1).

The provisions of the Regulation 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 Regulation, the EFTA States and their competent authorities, respectively.