

DECISION OF THE EEA JOINT COMMITTEE

No 204/2016

of 30 September 2016

amending Annex IX (Financial services) to the EEA Agreement [2017/281]

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 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps⁽¹⁾ is to be incorporated into the EEA Agreement.
2. Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares⁽²⁾ is to be incorporated into the EEA Agreement.
3. Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps⁽³⁾ is to be incorporated into the EEA Agreement.
4. Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events⁽⁴⁾ is to be incorporated into the EEA Agreement.
5. Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments⁽⁵⁾ is to be incorporated into the EEA Agreement.
6. Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 correcting Delegated Regulation (EU) No 918/2012 as regards the notification of significant net short positions in sovereign debt⁽⁶⁾ is to be incorporated into the EEA Agreement.
7. The EU and EEA EFTA Ministers of Finance and Economy, in their conclusions⁽⁷⁾ of 14 October 2014 regarding the incorporation of the EU ESAs Regulations into the EEA Agreement, underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to EEA EFTA competent authorities or market operators in the EEA EFTA States, respectively. The EU ESAs will be competent to perform actions of a non-binding nature also vis-à-vis EEA EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or exchange of information between the EU ESAs and the EFTA Surveillance Authority.

⁽¹⁾ OJ L 86, 24.3.2012, p. 1.

⁽²⁾ OJ L 251, 18.9.2012, p. 1.

⁽³⁾ OJ L 251, 18.9.2012, p. 11.

⁽⁴⁾ OJ L 274, 9.10.2012, p. 1.

⁽⁵⁾ OJ L 274, 9.10.2012, p. 16.

⁽⁶⁾ OJ L 16, 23.1.2015, p. 22.

⁽⁷⁾ Council conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV1.

8. Regulation (EU) No 236/2012 specifies cases in which the 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 1095/2010 of the European Parliament and of the Council⁽¹⁾. 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 point 31i of Annex IX to the EEA Agreement and under the conditions prescribed therein. To ensure integration of ESMA's expertise in the process and consistency between the two pillars of the EEA, such decisions of the EFTA Surveillance Authority will be adopted on the basis of drafts prepared by ESMA. This will preserve key advantages of supervision by a single authority. The Contracting Parties share the understanding that this Decision implements the agreement that was reflected in the conclusions of 14 October 2014.
9. Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 29e (Commission Regulation (EC) No 1569/2007) of Annex IX to the EEA Agreement:

- '29f. **32012 R 0236:** Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, 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.
- (b) Unless otherwise provided for in this Agreement, the European Securities and Markets Authority (ESMA) and the EFTA Surveillance Authority shall cooperate, exchange information and consult each other for the purposes of the Regulation, in particular prior to taking any action.
- (c) In the third subparagraph of Article 23(4), the words "or the EFTA Surveillance Authority, as the case may be," shall be inserted after the word "ESMA".
- (d) In Article 28:
 - (i) in the first subparagraph of paragraph 1, the words "or, as regards the EFTA States, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";
 - (ii) in the second subparagraph of paragraph 1, in paragraphs 2, 3, 5, 6, 8, 10 and 11, and in point (b) of paragraph 7, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";
 - (iii) in paragraph 3, the words "without issuing the opinion" shall be replaced by the words "without ESMA issuing the opinion";
 - (iv) in paragraph 4, the following subparagraph shall be added:

"In cases regarding the EFTA States, before preparing a draft in accordance with Article 9(5) of Regulation (EU) No 1095/2010 in view of a decision on the part of the EFTA Surveillance Authority under paragraph 1, ESMA shall consult the ESRB and, where appropriate, other relevant authorities. It shall transmit the observations received to the EFTA Surveillance Authority.";
 - (v) in paragraph 7, the words "any decision" shall read "each of its decisions";
 - (vi) in paragraph 7, the words ". The EFTA Surveillance Authority shall publish on its website notice of each of its own decisions to impose or renew any measure referred to in paragraph 1. A reference to the publication of the notice by the EFTA Surveillance Authority shall be posted on ESMA's website" shall be inserted after the words "paragraph 1";

⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

- (vii) in paragraph 9, the words “or, as regards measures taken by the EFTA Surveillance Authority, when the notice is published on the website of the EFTA Surveillance Authority,” shall be inserted after the words “ESMA website”.
- (e) In Article 31, the words “, the Standing Committee of the EFTA States” shall be inserted after the word “authorities”.
- (f) In Article 32, as regards the EFTA States, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (g) In Article 36, as regards the EFTA States, the words “and the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (h) In Article 37(3), the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “required by ESMA”.
- (i) In Article 46, as regards the EFTA States:
- (i) paragraph 1 shall not apply;
- (ii) in paragraph 2, the words “25 March 2012” shall read “the date of entry into force of Decision of the EEA Joint Committee No 204/2016 of 30 September 2016”.
- 29fa. **32012 R 0826:** Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares (OJ L 251, 18.9.2012, p. 1).
- 29fb. **32012 R 0827:** Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (OJ L 251, 18.9.2012, p. 11).
- 29fc. **32012 R 0918:** Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (OJ L 274, 9.10.2012, p. 1), as amended by:
- **32015 R 0097:** Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 (OJ L 16, 23.1.2015, p. 22).
- 29fd. **32012 R 0919:** Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments (OJ L 274, 9.10.2012, p. 16).’

Article 2

The texts of Regulation (EU) No 236/2012 and Delegated Regulations (EU) No 826/2012, (EU) No 918/2012, (EU) No 919/2012 and (EU) 2015/97 and Implementing Regulation (EU) No 827/2012 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 3

This Decision shall enter into force on 1 October 2016, 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 201/2016 of 30 September 2016 ⁽¹⁾, whichever is the later.

Article 4

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 Brussels, 30 September 2016.

For the EEA Joint Committee

The President

Bergdís ELLERTSDÓTTIR

(*) Constitutional requirements indicated.

(¹) See page 22 of this Official Journal.