

**DECISION OF THE EEA JOINT COMMITTEE**  
**No 92/2018**

**of 27 April 2018**

**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) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)<sup>1</sup>, as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23, is to be incorporated into the EEA Agreement.
- (2) 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. Point 14 (Directive 2006/48/EC of the European Parliament and of the Council) is amended as follows:
  - (i) the following indent is added:
    - ‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.’;
  - (ii) the following adaptations are added:

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<sup>1</sup> OJ L 331, 15.12.2010, p. 120.

- (f) 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.
  - (g) In Article 44(2) and in the second subparagraph of Article 132(1), the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “EBA”.
  - (h) In Article 131a(1), the words “Union law” shall be replaced by “the EEA Agreement” and the words “Union legislation” shall be replaced by “provisions of the EEA Agreement”.
2. The following indent is added in points 16b (Directive 98/26/EC of the European Parliament and of the Council), 23b (Directive 2005/60/EC of the European Parliament and of the Council), 31 (Directive 2006/49/EC of the European Parliament and of the Council) and 31d (Directive 2003/41/EC of the European Parliament and the Council):
- ‘ **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.’
3. The following is added in point 29a (Directive 2003/6/EC of the European Parliament and of the Council):
- ‘, as amended by:
  - **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) In Article 15a(1), the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (b) In Article 16:
  - (i) as regards the EFTA States, in paragraphs 2 and 4, the words “Article 258 of the Treaty on the Functioning of the European Union (TFEU)” and “Article 258 TFEU” shall read “Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”;
  - (ii) in the second sentence of the fourth subparagraph of paragraph 2 and in the second sentence of the fifth subparagraph of paragraph 4, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.

4. The following is added in point 29b (Directive 2003/71/EC of the European Parliament and of the Council):

‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) In Article 21(1a), the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
  - (b) In Article 22:
    - (i) as regards the EFTA States, the words “Article 258 of the Treaty on the Functioning of the European Union (TFEU)” shall read “Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”;
    - (ii) in the second sentence of the third subparagraph of paragraph 2 and in paragraph 3, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
5. The following indent is added in point 30 (Directive 2009/65/EC of the European Parliament and of the Council):

‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) References to the powers of ESMA under Articles 17 and 19 of Regulation (EU) No 1095/2010 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 31i of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
- (b) In Articles 1(6), 7(1) and 50(1), as regards the EFTA States, the words “Community law” shall read “the EEA Agreement”.
- (c) In Article 66(3), as regards the EFTA States, the words “Community law” shall read “provisions of the EEA Agreement”.
- (d) In the first subparagraph of Article 101(2a), the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (e) In Article 102:

- (i) in paragraph 2, as regards the EFTA States, the words “Union legislation” shall read “provisions of the EEA Agreement”;
  - (ii) in paragraph 2, the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (iii) in point (d) of paragraph 5, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
6. The following is added in point 29d (Directive 2004/109/EC of the European Parliament and of the Council):

‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) In the second sentence of paragraph 2a and in paragraphs 2b and 3 of Article 25, the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
  - (b) In Article 25(2a), as regards the EFTA States, the words “Article 258 of the Treaty on the Functioning of the European Union (TFEU)” shall read “Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.
7. Point 31ba (Directive 2004/39/EC of the European Parliament and of the Council) is amended as follows:
- (i) the following indent is added:
    - ‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.’;
  - (ii) the following adaptations are added:
    - ‘(c) References to the powers of ESMA under Articles 17 and 19 of Regulation (EU) No 1095/2010 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 31i of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
    - (d) In Articles 58(5) and 62a(1), the words “and the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
8. The following is added in point 31ea (Directive 2002/87/EC of the European Parliament and of the Council):

- ‘- **32010 L 0078**: Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 331, 15.12.2010, p. 120), as corrected by OJ L 170, 30.6.2011, p. 43 and OJ L 54, 22.2.2014, p. 23.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

‘In Articles 9a and 12a(1), the words “and the EFTA Surveillance Authority, in the cases provided for and in accordance with points 31g, 31h and 31i in Annex IX to the EEA Agreement,” shall be inserted after the words “Joint Committee”.’

#### *Article 2*

The text of Directive 2010/78/EU, as corrected by OJ L 170, 30.6.2011 and OJ L 54, 22.2.2014, p. 23, 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 28 April 2018, provided that all the notifications under Article 103(1) of the EEA Agreement have been made\*.

#### *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, 27 April 2018.

*For the EEA Joint Committee  
The President*

*Claude Maerten*

*The Secretaries  
to the EEA Joint Committee*

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

Provisional text