

## ANNEX IX

### FINANCIAL SERVICES

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#### List provided for in Article 36(2)

#### INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as:

- preambles;
- the addressees of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

#### SECTORAL ADAPTATIONS

Regarding exchange of information between the competent authorities of EC Member States envisaged in the acts included in this Annex, paragraph 7 of Protocol 1 shall apply for the purposes of this Agreement.

#### ACTS REFERRED TO

##### I. Insurance

*(i) Non-life and life insurance. <sup>{1}</sup>*

1. <sup>{2}</sup> **32009 L 0138**: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (OJ L 335, 17.12.2009, p. 1), as corrected by OJ L 219, 25.7.2014, p. 66, as amended by:

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<sup>{1}</sup> Text of heading “(i) Non-life insurance” renamed by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012.

<sup>{2}</sup> Text of new point 1 inserted by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Corrigendum to EU act taken note of by the EEA Joint Committee on 24.10.2014.

- <sup>{3}</sup> **32012 L 0023**: Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 (OJ L 249, 14.9.2012, p. 1),
- <sup>{4}</sup> **32013 L 0058**: Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 (OJ L 341, 18.12.2013, p. 1),
- <sup>{5}</sup> **32013 L 0023**: Council Directive 2013/23/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 362).

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

- (a) The following shall be added in Article 8:
- “(5) in Iceland, Viðlagatrygging Íslands.”
- (b) Articles 57 to 63 regarding the prudential assessment of a proposed acquirer shall not apply where the proposed acquirer, as defined in the Directive, is situated or regulated outside the territory of the Contracting Parties.
- (c) In Article 157(2), the words “and under Regulation (EC) No 593/2008” shall be deleted.
- (d) Article 171 shall not apply. The following provision shall be applicable:
- Each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in Articles 162 to 170 of the Directive on the condition that its policy holders and insured persons are given adequate and equivalent protection. The Contracting Parties shall inform and consult each other prior to concluding such agreements. The Contracting Parties shall not apply to branches of insurance undertakings having their head of office outside the territory of the Contracting Parties provisions which result in more favourable treatment than that accorded to branches of insurance undertakings having their head of office within the territory of the Contracting Parties.
- (e) Whenever the European Union negotiates with one or more third countries on the basis of Article 175, it shall endeavour to obtain equal treatment for the insurance and reinsurance undertakings of the EFTA States.
- (f) As regards third-country treatment of insurance and reinsurance undertakings as described in Article 177, the following shall apply:
- With a view to achieving a maximum degree of convergence in the application of a third-country regime for insurance and reinsurance undertakings, the Contracting Parties shall exchange information as described in Article 177(1) and consultations shall be held regarding matters referred to in Article 177(2) within the framework of the EEA Joint Committee and according to specific procedures to be agreed by the Contracting Parties.
- (g) The text of Article 178 shall be replaced by the following:
- “1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in the territory of a Contracting Party, and to all other insurance contracts covering risks situated inside the territory of the Contracting Parties. It shall not apply to reinsurance contracts.
2. An insurance contract covering a large risk as defined in Article 13(27) shall be governed by the law chosen by the parties.

<sup>{3}</sup> Indent and words “as amended by” added by Decision No 82/2013 (OJ L 291, 31.10.2013, p. 43 and EEA Supplement No 61, 31.10.2013, p. 49), e.i.f. 4.5.2013.

<sup>{4}</sup> Indent added by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{5}</sup> Indent added by Decision No 159/2014 (OJ L 15, 22.1.2015, p. 87 and EEA Supplement No 5, 22.1.2015, p. 10), e.i.f. pending; it shall apply from 9.7.2014.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. The law governing a contract shall be chosen by the parties in accordance with the following provisions:

- (a) The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.
- (b) The parties may at any time agree to subject the contract to a law other than that which previously governed it. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity or adversely affect the rights of third parties.
- (c) Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.
- (d) Where all other elements relevant to the situation at the time of the choice are located in one or more Contracting Parties, the parties' choice of applicable law other than that of a Contracting Party shall not prejudice the application of provisions of EEA law, where appropriate as implemented in the Contracting Party of the forum, which cannot be derogated from by agreement.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the following provisions:

- (a) The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Article if the contract or term were valid.

Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in subparagraph 1 of this letter.

- (b) A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under the law of this Article or of the law of the country where it is concluded.

A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Article, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Article, or of the law of the country where the act

was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.

Notwithstanding subparagraphs 1 to 3 of this letter, a contract the subject matter of which is a right in rem in immovable property or a tenancy of immovable property shall be subject to the requirements of form of the law of the country where the property is situated if by that law:

- (i) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and
  - (ii) those requirements cannot be derogated from by agreement.
- (c) In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.
5. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with paragraph 3:
- (a) the law of any Contracting Party where the risk is situated at the time of conclusion of the contract;
  - (b) the law of the country where the policy holder has his habitual residence;
  - (c) in the case of life assurance, the law of the Contracting Party of which the policy holder is a national;
  - (d) for insurance contracts covering risks limited to events occurring in one Contracting Party other than the Contracting Party where the risk is situated, the law of that Contracting Party;
  - (e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Contracting Parties, the law of any of the Contracting Parties concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e) of this paragraph, the Contracting Party referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Contracting Party in which the risk is situated at the time of conclusion of the contract.

6. The following additional rules shall apply to insurance contracts covering the risk for which a Contracting Party imposes an obligation to take out insurance:
- (a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Contracting Party that imposes the obligation. Where the law of the Contracting Party in which the risk is situated and the law of the Contracting Party imposing the obligation to take out insurance contradict each other, the latter shall prevail;

(b) by way of derogation from paragraphs 2 and 4, a Contracting Party may lay down that the insurance contract shall be governed by the law of the Contracting Party that imposes the obligation to take out insurance.

7. For the purposes of paragraph 4, third subparagraph, and paragraph 5, where the contract covers risks situated in more than one Contracting Party, the contract shall be considered as constituting several contracts each relating to only one Contracting Party.

8. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 13(13) and, in the case of life insurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 13(14).”

(h) The following shall be added in Annex III(A):

“(29) in the case of the Republic of Iceland: ‘Hlutfélag’;

(30) in the case of the Principality of Liechtenstein: ‘Aktiengesellschaft’, ‘Europäische Gesellschaft (SE)’, ‘Genossenschaft’, ‘Europäische Genossenschaft (SCE)’;

(31) in the case of the Kingdom of Norway: ‘Aksjeselskaper’, ‘Gjensidige selskaper’.”

(i) The following shall be added in Annex III(B):

“(29) in the case of the Republic of Iceland: ‘Hlutfélag’;

(30) in the case of the Principality of Liechtenstein: ‘Aktiengesellschaft’, ‘Europäische Gesellschaft (SE)’, ‘Genossenschaft’, ‘Europäische Genossenschaft (SCE)’;

(31) in the case of the Kingdom of Norway: ‘Aksjeselskaper’, ‘Gjensidige selskaper’.”

(j) The following shall be added in Annex III(C):

“(29) in the case of the Republic of Iceland: ‘Hlutfélög’;

(30) in the case of the Principality of Liechtenstein: ‘Aktiengesellschaft’, ‘Europäische Gesellschaft (SE)’, ‘Genossenschaft’, ‘Europäische Genossenschaft (SCE)’;

(31) in the case of the Kingdom of Norway: ‘Aksjeselskaper’, ‘Allmennaksjeselskaper’, ‘Gjensidige selskaper’.

1.a [ ] {<sup>6</sup>}

1aa. {<sup>7</sup>} **32015 D 1602**: Commission Delegated Decision (EU) 2015/1602 of 5 June 2015 on the equivalence of the solvency and prudential regime for insurance and reinsurance undertakings in force in Switzerland based on Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC of the European Parliament and of the Council (OJ L 248, 24.9.2015, p. 95).

<sup>{6}</sup> Text of point 1 renamed to 1a by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012, deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 1a reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{7}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- 1ab. <sup>{8}</sup> **32015 D 2290**: Commission Delegated Decision (EU) 2015/2290 of 12 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (OJ L 323, 9.12.2015, p. 22), as corrected by OJ L 328, 12.12.2015, p. 126, as amended by:
- **32016 D 0309**: Commission Delegated Decision (EU) 2016/309 of 26 November 2015 (OJ L 58, 4.3.2016, p. 50).
- 1ac. <sup>{9}</sup> **32016 D 0309**: Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290 (OJ L 58, 4.3.2016, p. 50).
- 1ad. <sup>{10}</sup> **32016 D 0310**: Commission Delegated Decision (EU) 2016/310 of 26 November 2015 on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council (OJ L 58, 4.3.2016, p. 55).
- 1b. <sup>{11}</sup> **32015 R 0035**: Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1), as corrected by OJ L 307, 25.11.2015, p. 31, as amended by:
- **32016 R 0467**: Commission Delegated Regulation (EU) 2016/467 of 30 September 2015 (OJ L 85, 1.4.2016, p. 6),
  - **32016 R 2283**: Commission Delegated Regulation (EU) 2016/2283 of 22 August 2016 (OJ L 346, 20.12.2016, p. 11),
  - **32017 R 0669**: Commission Delegated Regulation (EU) 2017/669 of 16 December 2016 (OJ L 97, 8.4.2017, p. 3).

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

- (a) In Article 85, as regards the EFTA States, the following paragraph shall be added:
- “The supervisory authority may determine that other regional governments and local authorities, for which a credit assessment by a nominated ECAI is not available, shall be treated as exposures with a credit quality step one step higher than the credit quality step assigned from the rating of the central government of the jurisdiction in which they are established.”
- (b) In Article 192(4), as regards the EFTA States, the following subparagraph shall be added:
- “The supervisory authority may set a higher value than zero as a floor for the loss-given-default in order to ensure an overall capital charge for the mortgage loan exposure in line with the capital charge for such exposures held by credit institutions in accordance with Regulation (EU) No 575/2013.”
- (c) In Article 288, the following paragraphs shall be added:
- “In the case of the EFTA States, where the factors and criteria under this Article are being assessed, the EFTA Surveillance Authority shall, without undue delay, pass on to EIOPA all information necessary for it to prepare a draft for the EFTA Surveillance Authority.”

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<sup>{8}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{9}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{10}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{11}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- 1c. {<sup>12</sup>} **2015 R 0460:** Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 76, 20.3.2015, p. 13).
- 1d. {<sup>13</sup>} **2015 R 0461:** Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 76, 20.3.2015, p. 19).
- 1e. {<sup>14</sup>} **2015 R 0462:** Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the cooperation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 76, 20.3.2015, p. 23).
- 1f. {<sup>15</sup>} **2015 R 0498:** Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 79, 25.3.2015, p. 8).
- 1g. {<sup>16</sup>} **2015 R 0499:** Commission Implementing Regulation (EU) 2015/499 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 79, 25.3.2015, p. 12).
- 1h. {<sup>17</sup>} **2015 R 0500:** Commission Implementing Regulation (EU) 2015/500 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 79, 25.3.2015, p. 18).
- 1i. {<sup>18</sup>} **2015 R 2011:** Commission Implementing Regulation (EU) 2015/2011 of 11 November 2015 laying down implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with Directive 2009/138 of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 3).
- 1j. {<sup>19</sup>} **2015 R 2012:** Commission Implementing Regulation (EU) 2015/2012 of 11 November 2015 laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 5).
- 1k. {<sup>20</sup>} **2015 R 2013:** Commission Implementing Regulation (EU) 2015/2013 of 11 November 2015 laying down implementing technical standards with regard to standard deviations in relation to health risk equalisation systems in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 9).
- 1l. {<sup>21</sup>} **2015 R 2014:** Commission Implementing Regulation (EU) 2015/2014 of 11 November 2015 laying down implementing technical standards with regard to the procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 11).

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{<sup>12</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>13</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>14</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>15</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>16</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>17</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>18</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>19</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>20</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>21</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- 1m. {<sup>22</sup>} **32015 R 2015**: Commission Implementing Regulation (EU) 2015/2015 of 11 November 2015 laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 16).
- 1n. {<sup>23</sup>} **32015 R 2016**: Commission Implementing Regulation (EU) 2015/2016 of 11 November 2015 laying down the implementing technical standards with regard to the equity index for the symmetric adjustment of the standard equity capital charge in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 18).
- 1o. {<sup>24</sup>} **32015 R 2017**: Commission Implementing Regulation (EU) 2015/2017 of 11 November 2015 laying down implementing technical standards with regard to the adjusted factors to calculate the capital requirement for currency risk for currencies pegged to the euro in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 295, 12.11.2015, p. 21).
- 1p. {<sup>25</sup>} **32015 R 2450**: Commission Implementing Regulation (EU) 2015/2450 of 2 December 2015 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council (OJ L 347, 31.12.2015, p. 1), as amended by:
- **32016 R 1868**: Commission Implementing Regulation (EU) 2016/1868 of 20 October 2016 (OJ L 286, 21.10.2016, p. 35).
- 1q. {<sup>26</sup>} **32015 R 2451**: Commission Implementing Regulation (EU) 2015/2451 of 2 December 2015 laying down implementing technical standards with regard to the templates and structure of the disclosure of specific information by supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 347, 31.12.2015, p. 1224).
- The provisions of the Implementing Regulation shall, for the purposes of this Agreement, be read with the following adaptation:
- In Article 1, as regards the EFTA States:
- (i) point (a) shall not apply;
- (ii) in point (b), the words “Union law” shall be replaced by “the EEA Agreement”.
- 1r. {<sup>27</sup>} **32015 R 2452**: Commission Implementing Regulation (EU) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 347, 31.12.2015, p. 1285).
- 1s. {<sup>28</sup>} **32016 R 0165**: Commission Implementing Regulation (EU) 2016/165 of 5 February 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 1 January until 30 March 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council (Solvency II) (OJ L 32, 9.2.2016, p. 31).
- 1t. {<sup>29</sup>} **32016 R 0869**: Commission Implementing Regulation (EU) 2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 147, 3.6.2016, p. 1).

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{<sup>22</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>23</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>24</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>25</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>26</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>27</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>28</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>29</sup>} Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- 1u. <sup>{30}</sup> **2016 R 1376**: Commission Implementing Regulation (EU) 2016/1376 of 8 August 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 224, 18.8.2016, p. 1).
- 1v. <sup>{31}</sup> **2016 R 1630**: Commission Implementing Regulation (EU) 2016/1630 of 9 September 2016 laying down implementing technical standards with regard to the procedures for the application of the transitional measure for the equity risk sub-module in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 243, 10.9.2016, p. 1).
- 1w. <sup>{32}</sup> **2016 R 1800**: Commission Implementing Regulation (EU) 2016/1800 of 11 October 2016 laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 275, 12.10.2016, p. 19).
- 1x. <sup>{33}</sup> **2016 R 1976**: Commission Implementing Regulation (EU) 2016/1976 of 10 November 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 309, 16.11.2016, p. 1).
2.        [] <sup>{34}</sup>
3.        [] <sup>{35}</sup>
4.        [] <sup>{36}</sup>
5.        [] <sup>{37}</sup>
6.        [] <sup>{38}</sup>
7.        [] <sup>{39}</sup>
- 7a.       [] <sup>{40}</sup>

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<sup>{30}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{31}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{32}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{33}</sup> Point inserted by Decision No 62/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{34}</sup> Text of point 2 (First Council Directive 73/239/EEC) deleted by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012, with effect from 1 November 2012. Text of point 2 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{35}</sup> Text of point 3 (Council Directive 73/240/EEC) deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 3 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{36}</sup> Text of point 4 (Council Directive 78/473/EEC) deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 4 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014, deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{37}</sup> Text of point 5 (Council Directive 84/641/EEC) deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 5 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{38}</sup> Text of point 6 (Council Directive 87/344/EEC) shall be deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 6 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014, deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{39}</sup> Text of point 7 (Second Council Directive 88/357/EEC) shall be deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 7 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014, deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

7b. [ ] {<sup>41</sup>}

(ii) *Motor insurance*

8. {<sup>42</sup>} **32009 L 0103**: Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version) (OJ L 263, 7.10.2009, p. 11).

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

Article 21(6) shall read as follows:

“The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be regarded as an establishment within the meaning of Article 2(c) of Directive 88/357/EEC.

8a. {<sup>43</sup>} **32003 D 0564**: Commission Decision 2003/564/EC of 28 July 2003 on the application of Council Directive 72/166/EEC relating to checks on insurance against civil liability in respect of the use of motor vehicles (OJ L 192, 31.7.2003, p. 23).

8b. {<sup>44</sup>} **32004 D 0332**: Commission Decision 2004/332/EC of 2 April 2004 on the application of Council Directive 72/166/EEC with regard to checks on insurance against civil liability in respect of the use of motor vehicles (OJ L 105, 14.4.2004, p. 39).

8c. {<sup>45</sup>} **32005 D 0849**: Commission Decision 2005/849/EC of 29 November 2005 on the application of Council Directive 72/166/EC with regard to checks on insurance against civil liability in respect of the use of motor vehicles (OJ L 315, 1.12.2005, p. 16).

8d. {<sup>46</sup>} **32007 D 0482**: Commission Decision 2007/482/EC of 9 July 2007 on the application of Council Directive 72/166/EEC with regard to checks on insurance against civil liability in respect of the use of motor vehicles (OJ L 180, 10.7.2007, p. 42).

8e. {<sup>47</sup>} **32011 D 0754**: Commission Implementing Decision 2011/754/EU of 22 November 2011 on the application of Directive 2009/103/EC of the European Parliament and of the Council with regard to checks on insurance against civil liability in respect of the use of motor vehicles (OJ L 310, 25.11.2011, p. 17).

9. [ ] {<sup>48</sup>}

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{<sup>40</sup>} Point inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994. Text of point 7a (Council Directive 92/49/EEC) shall be deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 7a reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

{<sup>41</sup>} Point inserted by Decision No 59/2006 (OJ L 245, 7.9.2006, p. 5 and EEA Supplement No 44, 7.9.2006, p. 5), e.i.f. 1.6.2007. Text of point 7b (Directive 2005/68/EC) deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 7b reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

{<sup>42</sup>} Text of point 8 (Council Directive 72/166/EEC) replaced by Decision No 117/2011 (OJ L 341, 22.12.2011, p. 81 and EEA Supplement No 70, 22.12.2011, p. 17), e.i.f. 1.11.2011.

{<sup>43</sup>} Point inserted by Decision No 8/2004 (OJ L 116, 22.4.2004, p. 54 and EEA Supplement No 20, 22.4.2004, p. 11), e.i.f. 7.2.2004.

{<sup>44</sup>} Point inserted by Decision No 170/2004 (OJ L 133, 26.5.2005, p. 19 and EEA Supplement No 26, 26.5.2005, p. 15), e.i.f. 4.12.2004.

{<sup>45</sup>} Point inserted by Decision No 60/2006 (OJ L 245, 7.9.2006, p. 7 and EEA Supplement No 44, 7.9.2006, p. 6), e.i.f. 3.6.2006.

{<sup>46</sup>} Point inserted by Decision No 160/2007 (OJ L 124, 8.5.2008, p. 26 and EEA Supplement No 26, 8.5.2008, p. 21), e.i.f. 8.12.2007.

{<sup>47</sup>} Point inserted by Decision No 148/2012 (OJ L 309, 8.11.2012, p. 33 and EEA Supplement No 63, 8.11.2012, p. 38), e.i.f. 14.7.2012.

{<sup>48</sup>} Text of point 9 (Second Council Directive 84/5/EEC) deleted by Decision No 117/2011 (OJ L 341, 22.12.2011, p. 81 and EEA Supplement No 70, 22.12.2011, p. 17), e.i.f. 1.11.2011.

10. [ ] {<sup>49</sup>}
- [ ] {<sup>50</sup>}
- 10a. [ ] {<sup>51</sup>}
11. [ ] {<sup>52</sup>}
12. [ ] {<sup>53</sup>}
- 12a. [ ] {<sup>54</sup>}

*(iii) Supervision and accounts* {<sup>55</sup>}

- 12b. **391 L 0674:** Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ No L 374, 31.12.1991, p. 7), as amended by:

-{<sup>56</sup>} **32003 L 0051:** Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 (OJ L 178, 17.7.2003, p. 16),

-{<sup>57</sup>} **32006 L 0046:** Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 (OJ L 224, 16.8.2006, p. 1).

The provisions of the Directive shall, for the purpose of the present Agreement, be read with the following adaptations:

- (a) in Article 2(1), "Article 58 of the Treaty" shall read "Article 34 of the EEA Agreement";
- (b) Norway {<sup>58</sup>} shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1995;
- (c) in Article 46(3) "the date of the notification of this Directive" shall read "the date of the decision by the EEA Joint Committee to include this Directive in the EEA Agreement", and the reference to "the date referred to in Article 70(1)" shall be understood to be to the date by

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{<sup>49</sup>} Text of point 10 (Third Council Directive 90/232/EEC) deleted by Decision No 117/2011 (OJ L 341, 22.12.2011, p. 81 and EEA Supplement No 70, 22.12.2011, p. 17), e.i.f. 1.11.2011.

{<sup>50</sup>} Text of heading "(iia) Life assurance" inserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014. Text of heading "(iia) Life assurance" deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

{<sup>51</sup>} Text of point 10a (Directive 2000/26/EC) inserted by Decision No 4/2001 (OJ L 66, 8.3.2001, p. 46 and EEA Supplement No 12, 8.3.2001, p. 4), e.i.f. 1.9.2001 and subsequently deleted by Decision No 117/2011 (OJ L 341, 22.12.2011, p. 81 and EEA Supplement No 70, 22.12.2011, p. 17), e.i.f. 1.11.2011.

{<sup>52</sup>} Text of point 11 (Council Directive 79/267/EEC) replaced by Decision No 60/2004 (OJ L 277, 26.8.2004, p. 172 and EEA Supplement No 43, 26.8.2004, p. 156), e.i.f. 27.4.2004. Text of point 11 (Directive 2002/83/EC) and heading deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 11 reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

{<sup>53</sup>} Text of point 12 (Council Directive 90/619/EEC) deleted by Decision No 60/2004 (OJ L 277, 26.8.2004, p. 172 and EEA Supplement No 43, 26.8.2004, p. 156), e.i.f. 27.4.2004.

{<sup>54</sup>} Point inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994, and subsequently (Council Directive 92/96/EEC) deleted by Decision No 60/2004 (OJ L 277, 26.8.2004, p. 172 and EEA Supplement No 43, 26.8.2004, p. 156), e.i.f. 27.4.2004.

{<sup>55</sup>} Heading and point 12b inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994. Heading renumbered to "(iii) Supervision and accounts" with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012.

{<sup>56</sup>} Indent and words "as amended by:" above, added by Decision No 176/2003 (OJ L 88, 25.03.2004, p. 53 and EEA Supplement No 15, 25.03.2004, p.14), e.i.f. 1.8.2004.

{<sup>57</sup>} Indent added by Decision No 20/2007 (OJ L 209, 9.8.2007, p. 36 and EEA Supplement No 38, 9.8.2007, p. 25), e.i.f. 1.8.2010.

{<sup>58</sup>} Words 'and Sweden' deleted by Decision 43/2005 (OJ L 198, 28.7.2005, p. 45 and EEA Supplement No 38, 28.7.2005, p. 26), e.i.f. 12.3.2005.

which the respective EFTA State must adopt the laws, regulations and administrative provisions necessary for it to comply with this Directive,

- (d)<sup>{59}</sup> Liechtenstein shall adopt the laws, regulations and administrative provisions necessary for it to comply with this Directive before 1 January 1997.

12c. [ ]<sup>{60}</sup>

(iv) *Other issues* <sup>{61}</sup>

13. [ ]<sup>{62}</sup>

13a. [ ]<sup>{63}</sup>

13b.<sup>{64}</sup> **32002 L 0092**: Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

13c. [ ]<sup>{65}</sup>

13d.<sup>{66}</sup> **32004 D 0009**: Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34).

Modalities for the association of the EFTA States in accordance with Article 101 of the Agreement:

Each EFTA State may, in accordance with Article 3 of Commission Decision 2004/9/EC, appoint persons to participate as observers in the meetings of the European Insurance and Occupational Pensions Committee.

The EC Commission shall, in due time, inform the participants of the dates of the meetings of the Committee and transmit to them the relevant documentation.

## II. Banks and other credit institutions

(i) *Coordination of legislation on establishment and freedom to provide services*

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<sup>{59}</sup> Adaptation added by EEA Council Decision No 1/95.

<sup>{60}</sup> Point inserted by Decision No 95/1999 (OJ L 296, 23.11.2000, p. 61 and EEA Supplement No 55, 23.11.2000, p. 160), e.i.f. 1.7.2000. Text of point 12c (Directive 98/78/EC) deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 12c reinserted by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{61}</sup> This heading, inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994, replaces former heading "(iv) Other issues". Heading renumbered to "(iv) Other issues" with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012.

<sup>{62}</sup> Point 13 (Council Directive 77/92 EEC) deleted by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{63}</sup> Point inserted by Decision No 166/2002 (OJ L 38, 13.2.2003, p. 26 and EEA Supplement No 9, 13.2.2003, p. 19), e.i.f. 1.8.2003. Text of point 13a (Directive 2001/17/EC) shall be deleted with effect from 1 November 2012 by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012. Text of point 13a reinserted by Decision 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014; deleted with effect from 1.1.2016 by Decision No 128/2014 (OJ L 342, 27.11.2014, p. 27 and EEA Supplement No 71, 27.11.2014, p. 26), e.i.f. 28.6.2014.

<sup>{64}</sup> Point inserted by Decision No 115/2003 (OJ L 331, 18.12.2003, p. 34 and EEA Supplement No 64, 18.12.2003, p. 21), e.i.f. 1.5.2004.

<sup>{65}</sup> Point 13c (Commission Decision 2004/6/EC) inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008 subsequently deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

<sup>{66}</sup> Point inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

- 14.<sup>{67}</sup> **32006 L 0048**: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1), as amended by:
- <sup>{68}</sup> **32007 L 0018**: Commission Directive 2007/18/EC of 27 March 2007 (OJ L 87, 28.3.2007, p. 9),
  - <sup>{69}</sup> **32007 L 0044**: Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 (OJ L 247, 21.9.2007, p. 1),
  - <sup>{70}</sup> **32007 L 0064**: Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ L 319, 5.12.2007, p. 1),
  - <sup>{71}</sup> **32009 L 0111**: Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 302, 17.11.2009, p. 97),
  - <sup>{72}</sup> **32009 L 0083**: Commission Directive 2009/83/EC of 27 July 2009 (OJ L 196, 28.7.2009, p. 14),
  - <sup>{73}</sup> **32009 L 0110**: Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 267, 10.10.2009, p. 7),
  - <sup>{74}</sup> **32010 L 0016**: Commission Directive 2010/16/EU of 9 March 2010 (OJ L 60, 10.3.2010, p. 15),
  - <sup>{75}</sup> **32010 L 0076**: Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 329, 14.12.2010, p. 3),
  - <sup>{76}</sup> **1 2012 J003**: Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, adopted on 9 December 2011 (OJ L 112, 24.4.2012, p. 21),
  - <sup>{77}</sup> **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 transitional arrangements set out in the Annexes to the Act of Accession of 16 April 2003 for Cyprus (Annex VII, Chapter 2), Hungary (Annex X, Chapter 2, Point 2), Poland (Annex XII, Chapter 3, Point 2) and Slovenia (Annex XIII, Chapter 3, Point 4) concerning Directive 2000/12/EC shall apply *mutatis mutandis*.

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<sup>{67}</sup> Text of point 14 replaced by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p.8), e.i.f. 1.10.2001, and consequently replaced by Decision No 65/2008 (OJ L 257, 25.9.2008, p. 27 and EEA Supplement No 58, 25.9.2008, p. 9), e.i.f. 1.11.2010.

<sup>{68}</sup> Indent and words “, as amended by:” above, added by Decision No 66/2008 (OJ L 257, 25.9.2008, p. 29 and EEA Supplement No 58, 25.9.2008, p. 11), e.i.f. 1.11.2010.

<sup>{69}</sup> Indent added by Decision No 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

<sup>{70}</sup> Indent added by Decision No 114/2008 (OJ L 339, 18.12.2008, p. 103 and EEA Supplement No 79, 18.12.2008, p.11), e.i.f. 1.11.2011.

<sup>{71}</sup> Indent added by Decision No 85/2010 (OJ L 277, 21.10.2010, p. 39 and EEA Supplement No 59, 21.10.2010, p. 7), e.i.f. 1.1.2012.

<sup>{72}</sup> Indent added by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{73}</sup> Indent added by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{74}</sup> Indent added by Decision No 77/2011 (OJ L 262, 6.10.2011, p. 44 and EEA Supplement No 54, 6.10.2011, p. 56), e.i.f. 2.7.2011.

<sup>{75}</sup> Indent added by Decision No 19/2012 (OJ L 161, 21.6.2012, p. 25 and EEA Supplement No 34, 21.6.2012, p. 30), e.i.f. 1.11.2012.

<sup>{76}</sup> Indent added by the 2014 EEA Enlargement Agreement (OJ L 170, 11.6.2014, p. 5 and EEA Supplement No 58, 9.10.2014, p. 1), provisionally applicable as of 12.4.2014, e.i.f. pending.

<sup>{77}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

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

- (a) the following shall be added to Article 2:
    - “- in Iceland ‘Byggingarsjóðir ríkisins’.”;
  - (b) Article 10(2) shall read:
 

“A Contracting Party may decide that credit institutions already in existence on 1 January 1994, the own funds of which do not attain the levels prescribed for initial capital in paragraphs (1) and (2) of Article 9, may continue to carry on their activities. In that event, their own funds may not fall below the highest level reached with effect from 2 May 1992.”;
  - (c){<sup>78</sup>} Articles 19, 19a, 19b, 20 and 21(3) regarding the prudential assessment of a proposed acquirer shall not apply where the proposed acquirer, as defined in the Directive, is situated or regulated outside the territory of the Contracting Parties.
  - (d){<sup>79</sup>} Articles 38(2) and 38(3) shall not apply;
  - (e){<sup>80</sup>} Whenever a Contracting Party has decided to initiate negotiations as referred to in Article 39 of the Directive, it shall inform the EEA Joint Committee thereof. The Contracting Parties shall consult within the framework of the EEA Joint Committee on what course to take, whenever this is of mutual interest.
  - (f){<sup>81</sup>} 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”.
- 15.{<sup>82</sup>} **32009 L 0110**: Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).
- 15a. [ ] {<sup>83</sup>}
16. [ ] {<sup>84</sup>}

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{<sup>78</sup>} Adaptation text inserted by Decision No 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

{<sup>79</sup>} Adaptation text renumbered by Decision No 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

{<sup>80</sup>} Adaptation text renumbered by Decision No 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

{<sup>81</sup>} Adaptations (f), (g) and (h) added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>82</sup>} New point 15 inserted by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

{<sup>83</sup>} Initial text of point 15 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001 and replaced by new point 15 by Decision No 45/2001 (OJ L 158, 14.6.2001, p. 59 and EEA Supplement No 30, 14.6.2001, p. 41), e.i.f. 1.10.2001 and subsequently renumbered to 15a (Directive 2000/46/EC) by Decision 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012. Text of point 15a deleted with effect from 30 April 2011 by Decision 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

{<sup>84</sup>} Text of point 16 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p.8), e.i.f. 1.3.2001.

- 16a. [ ]<sup>{85}</sup>
- 16b.<sup>{86}</sup> **398 L 0026**: Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45), as amended by:
- <sup>{87}</sup> **32009 L 0044**: Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 146, 10.6.2009, p. 37),
  - <sup>{88}</sup> **32012 R 0648**: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 (OJ L 201, 27.7.2012, p. 1),
  - <sup>{89}</sup> **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.
- 16c.<sup>{90}</sup> **32001 L 0024**: Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).
- 16d.<sup>{91}</sup> **32004 D 0010**: Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee (OJ L 3, 7.1.2004, p. 36).
- Modalities for the association of the EFTA States in accordance with Article 101 of the Agreement:
- Each EFTA State may, in accordance with Article 3 of Commission Decision 2004/10/EC, appoint persons to participate as observers in the meetings of the European Banking Committee.
- The EC Commission shall, in due time, inform the participants of the dates of the meetings of the Committee and transmit to them the relevant documentation.
- 16e.<sup>{92}</sup> **32007 L 0064**: Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1), as corrected by OJ L 187, 18.7.2009, p. 5, as amended by,
- <sup>{93}</sup> **32009 L 0111**: Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 302, 17.11.2009, p. 97).

(ii) *Prudential requirements and regulations*

17.<sup>{94}</sup>

18.<sup>{95}</sup><sup>{96}</sup>

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<sup>{85}</sup> Point inserted by Decision No 1/98 (OJ L 272, 8.10.1998, p. 1 and EEA Supplement No 42, 8.10.1998, p. 1), e.i.f. 1.2.2000, to be deleted with effect from 1.11.2009 by Decision No 114/2008 (OJ L 339, 18.12.2008, p. 103 and EEA Supplement No 79, 18.12.2008, p.11), e.i.f. 1.11.2011.

<sup>{86}</sup> Point inserted by Decision No 53/1999 (OJ L 284, 9.11.2000, p. 12 and EEA Supplement No 50, 9.11.2000, p. 99), e.i.f. 1.2.2000.

<sup>{87}</sup> Indent and words, “as amended by” added by Decision No 50/2010 (OJ L 181, 15.7.2010, p. 18 and EEA Supplement No 37, 15.7.2010, p. 23), e.i.f. 1.2.2012.

<sup>{88}</sup> Indent added by Decision No 206/2016 (OJ L 46, 23.2.2017, p. 53 and EEA Supplement No 13, 23.2.2017, p. 63), e.i.f. 1.7.2017.

<sup>{89}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{90}</sup> Point inserted by Decision No 167/2002 (OJ L 38, 13.2.2003, p. 28 and EEA Supplement No 9, 13.2.2003, p. 20), e.i.f. 1.8.2003.

<sup>{91}</sup> Point inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

<sup>{92}</sup> Point inserted by Decision No 114/2008 (OJ L 339, 18.12.2008, p. 103 and EEA Supplement No 79, 18.12.2008, p.11), e.i.f. 1.11.2011, text of the Act subsequently corrected by Corrigendum noted in the EEA Joint Committee Meeting on the 25.9.2009.

<sup>{93}</sup> Indent and words “, as amended by” added by Decision No 85/2010 (OJ L 277, 21.10.2010, p. 39 and EEA Supplement No 59, 21.10.2010, p. 7), e.i.f. 1.1.2012.

<sup>{94}</sup> Text of point 17 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001.

19.{<sup>97</sup>}

19a.{<sup>98</sup>} **394 L 0019:** Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ No L 135, 31.5.1994, p. 5), as amended by:

-{<sup>99</sup>} **32005 L 0001:** Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 (OJ L 79, 24.3.2005, p. 9).

{<sup>100</sup>}The transitional arrangements set out in the Annexes to the Act of Accession of 16 April 2003 for Estonia (Annex VI, Chapter 2, Point 1), Latvia (Annex VIII, Chapter 2, Point 1), Lithuania (Annex IX, Chapter 3, Point 1) and Slovenia (Annex XIII, Chapter 3, Point 2) shall apply.

(iii) *Supervision and accounts*

20.{<sup>101</sup>}{<sup>102</sup>}

21. **386 L 0635:** Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ No L 372, 31.12.1986, p. 1), as amended by:

-{<sup>103</sup>} **32001 L 0065:** Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 (OJ L 283, 27.10.2001, p. 28),

-{<sup>104</sup>} **32003 L 0051:** Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 (OJ L 178, 17.7.2003, p. 16),

-{<sup>105</sup>} **32006 L 0046:** Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 (OJ L 224, 16.8.2006, p. 1).

{<sup>106</sup>}The transitional arrangements set out in the Annexes to the Act of Accession of 16 April 2003 for Slovenia (Annex XIII, Chapter 3, Point 1) shall apply.

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

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{<sup>95</sup>} This point, including the indents, introduced by Decision No 109/98 (OJ L 277, 28.10.1999, p. 44 and EEA Supplement No 46, 28.10.1999, p. 110), e.i.f. 2.12.1998, replaces former point 18.

{<sup>96</sup>} Text of point 18 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001.

{<sup>97</sup>} Text of point 19 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001.

{<sup>98</sup>} Point inserted by Decision No 18/94 (OJ L 325, 17.12.1994, p. 70 and EEA Supplement No 50, 17.12.1994, p. 52), e.i.f. 1.7.1995.

{<sup>99</sup>} Indent and words “, as amended by:” above, added by Decision No 119/2005 (OJ L 339, 22.12.2005, p. 24 and EEA Supplement No 66, 22.12.2005, p. 14), e.i.f. 1.4.2006.

{<sup>100</sup>} Text added by the 2004 EEA Enlargement Agreement (OJ L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), e.i.f. 1.5.2004.

{<sup>101</sup>} This point, introduced by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994, replaces former point 20.

{<sup>102</sup>} Text of point 20 deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001.

{<sup>103</sup>} Indent and words “, as amended by:” above, added by Decision No 86/2002 (OJ L 266, 3.10.2002, p. 52 and EEA Supplement No 49, 3.10.2002, p. 40), e.i.f. 1.2.2003.

{<sup>104</sup>} Indent added by Decision No 176/2003 (OJ L 88, 25.3.2004, p. 53 and EEA Supplement No 15, 25.3.2004, p. 14), e.i.f. 1.8.2004.

{<sup>105</sup>} Indent added by Decision No 20/2007 (OJ L 209, 9.8.2007, p. 36 and EEA Supplement No 38, 9.8.2007, p. 25), e.i.f. 1.8.2010.

{<sup>106</sup>} Text added by the 2004 EEA Enlargement Agreement (OJ L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), e.i.f. 1.5.2004.

{<sup>107</sup>} Norway shall implement the provisions of the Directive by 1 January 1995, and Liechtenstein [ ]{<sup>108</sup>} by 1 January 1997{<sup>109</sup>}. During the transition periods, there shall be mutual recognition of the annual accounts published by the credit institutions of the Contracting Parties relative to branches.

22. **389 L 0117:** Council Directive 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (OJ No L 44, 16.2.1989, p. 40).

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

Article 3 shall not apply.

23. [ ]{<sup>110</sup>}

- 23a. [ ]{<sup>111</sup>}{<sup>112</sup>}

- 23b.{<sup>113</sup>} **32005 L 0060:** Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15), as amended by:

-{<sup>114</sup>} **32007 L 0064:** Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ L 319, 5.12.2007, p. 1),

-{<sup>115</sup>} **32009 L 0110:** Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 267, 10.10.2009, p. 7),

-{<sup>116</sup>} **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:

Article 3(5)(d) shall be replaced with the following:

“fraud, at least serious, affecting the European Communities’ financial interests shall consist of:

- (a) in respect of expenditure, any intentional act or omission relating to:
- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

{<sup>107</sup>} Words ‘Austria’ and ‘and Sweden’ deleted by Decision 43/2005 (OJ L 198, 28.7.2005, p. 45 and EEA Supplement No 38, 28.7.2005, p. 26), e.i.f. 12.3.2005.

{<sup>108</sup>} Words "and Switzerland" deleted by the Adjusting Protocol.

{<sup>109</sup>} This date, introduced by EEA Council Decision No 1/95, replaces former date.

{<sup>110</sup>} Point 23 (Council Directive 91/308/EEC) deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

{<sup>111</sup>} Point inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994.

{<sup>112</sup>} Text of point 23a (Council Directive 92/121/EEC) deleted by Decision No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8), e.i.f. 1.3.2001.

{<sup>113</sup>} Point inserted by Decision No 87/2006 (OJ L 289, 19.10.2006, p. 23 and EEA Supplement No 52, 19.10.2006, p. 19), e.i.f. 1.4.2007.

{<sup>114</sup>} Indent and words “, as amended by:” above, added by Decision No 114/2008 (OJ L 339, 18.12.2008, p. 103 and EEA Supplement No 79, 18.12.2008, p.11), e.i.f. 1.11.2011.

{<sup>115</sup>} Indent added by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

{<sup>116</sup>} Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- non-disclosure of information in violation of a specific obligation, with the same effect,
  - the misapplication of such funds for purposes other than those for which they were originally granted;
- (b) in respect of revenue as defined in Council Decision of 29 September 2000 on the system of the European Communities' own resources (\*) any intentional act or omission relating to:
- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
  - non-disclosure of information in violation of a specific obligation, with the same effect,
  - misapplication of a legally obtained benefit, with the same effect.

Serious fraud shall be considered to be fraud involving a minimum amount not to be set at a sum exceeding Euro 50 000.”

(\*) OJ L 253, 7.10.2000, p. 42.

23ba.{<sup>117</sup>} **32006 L 0070**: Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29).

23c.{<sup>118</sup>} **32008 D 0961**: Commission Decision 2008/961/EC of 12 December 2008 on the use by third countries’ issuers of securities of certain third country’s national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements (OJ L 340, 19.12.2008, p. 112), as amended by:

-{<sup>119</sup>} **32012 D 0194**: Commission Implementing Decision 2012/194/EU of 11 April 2012 (OJ L 103, 13.4.2012, p. 49),

-{<sup>120</sup>} **32015 D 1612**: Commission Implementing Decision (EU) 2015/1612 of 23 September 2015 (OJ L 249, 25.9.2015, p. 26).

23d.{<sup>121</sup>} **32006 R 1781**: Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345, 8.12.2006, p. 1).

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

With regard to the EFTA States the second sentence of Article 9(1) shall read as follows:

“In any event, the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing, in particular Directive 2005/60/EC and any national implementing measures.”

{<sup>117</sup>} Point inserted by Decision No 152/2006 (OJ L 89, 29.3.2007, p. 24 and EEA Supplement No 15, 29.3.2007, p. 19), e.i.f. 1.5.2009.

{<sup>118</sup>} Point inserted by Decision No 50/2007 (OJ L 266, 11.10.2007, p. 8 and EEA Supplement No 48, 11.10.2007, p. 6), e.i.f. 1.3.2008 and subsequently text of point 23c (Commission Decision 2008/891/EC) replaced by Decision No 10/2010 (OJ L 101, 22.4.2010, p. 19 and EEA Supplement No 19, 22.4.2010, p. 19 ), e.i.f. 1.11.2011.

{<sup>119</sup>} Indent and words “as amended by” added by Decision No 16/2013 (OJ L 144, 30.5.2013, p. 21 and EEA Supplement No 31, 30.5.2013, p. 25), e.i.f. 2.2.2013.

{<sup>120</sup>} Indent added by Decision No 151/2016 (OJ L 73, 15.3.2018, p. 26 and EEA Supplement No 16, 15.3.2018, p. 30), e.i.f. 9.7.2016.

{<sup>121</sup>} Point inserted by Decision No 87/2007 (OJ L 328, 13.12.2007, p.32 and EEA Supplement No 60, 13.12.2007, p.23), e.i.f. 1.5.2009.

23e. [ ] {<sup>122</sup>}

### III. Stock exchange and securities

#### (i) Stock exchange listing and transactions

24. {<sup>123</sup>} **32001 L 0034**: Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1), as amended by:

- {<sup>124</sup>} **32003 L 0071**: Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 (OJ L 345, 31.12.2003, p. 64),

- {<sup>125</sup>} **32005 L 0001**: Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 (OJ L 79, 24.3.2005, p. 9),

- {<sup>126</sup>} **32004 L 0109**: Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (OJ L 390, 31.12.2004, p. 38).

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

- (a) Article 41 of the Directive shall not apply.
- (b) With regard to the EFTA States, the dates referred to in Article 90 of the Directive shall be the following:

Iceland: 1 January 1994,

Liechtenstein: 1 January 1997,

Norway: 1 January 1994.

25. [ ] {<sup>127</sup>}

26. [ ] {<sup>128</sup>}

27. [ ] {<sup>129</sup>}

28. [ ] {<sup>130</sup>}

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{<sup>122</sup>} Point 23e (Commission Decision 2004/5/EC) inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008 and subsequently deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

{<sup>123</sup>} Text of point 24 (Council Directive 79/279/EEC) replaced by Decision No 37/2002 (OJ L 154, 13.6.2002, p. 22 and EEA Supplement 29, 13.6.2002, p. 16), e.i.f. 20.4.2002.

{<sup>124</sup>} Indent and words “, as amended by:” above, added by Decision No 73/2004 (OJ L 349, 25.11.2004, p. 30 and EEA Supplement No 59, 25.11.2004, p. 7), e.i.f. 1.6.2005.

{<sup>125</sup>} Indent added by Decision No 119/2005 (OJ L 339, 22.12.2005, p. 24 and EEA Supplement No 66, 22.12.2005, p. 14), e.i.f. 1.4.2006.

{<sup>126</sup>} Indent added by Decision No 120/2005 (OJ L 339, 22.12.2005, p. 26 and EEA Supplement No 66, 22.12.2005, p. 15), e.i.f. 1.6.2007.

{<sup>127</sup>} Text of point 25 (Council Directive 80/390/EEC) deleted by Decision No 37/2002 (OJ L 154, 13.6.2002, p. 22 and EEA Supplement No 29, 13.6.2003, p. 16), e.i.f. 20.4.2002.

{<sup>128</sup>} Text of point 26 (Council Directive 82/121/EEC) deleted by Decision No 37/2002 (OJ L 154, 13.6.2002, p. 22 and EEA Supplement No 29, 13.6.2003, p. 16), e.i.f. 20.4.2002.

{<sup>129</sup>} Text of point 27 (Council Directive 88/627/EEC) deleted by Decision No 37/2002 (OJ L 154, 13.6.2002, p. 22 and EEA Supplement No 29, 13.6.2003, p. 16), e.i.f. 20.4.2002.

29. [ ]<sup>{131}</sup>

29a.<sup>{132}</sup> **32003 L 0006:** Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16), as amended by:

-<sup>{133}</sup> **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.

<sup>{134}</sup>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”.

29aa.<sup>{135}</sup> **32003 R 2273:** Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33).

29ab.<sup>{136}</sup> **32003 L 0124:** Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ L 339, 24.12.2003, p. 70).

29ac.<sup>{137}</sup> **32003 L 0125:** Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ L 339, 24.12.2003, p. 73).

29b.<sup>{138}</sup> **32003 L 0071:** Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64), as amended by:

<sup>{130}</sup> Text of point 28 (Council Directive 89/298/EEC) deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

<sup>{131}</sup> Text of point 29 (Council Directive 89/592/EEC) deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

<sup>{132}</sup> Point inserted by Decision No 38/2004 (OJ L 277, 26.8.2004, p. 7 and EEA Supplement No 43, 26.8.2004, p. 6), e.i.f. 1.6.2005.

<sup>{133}</sup> Indent and words “as amended by” added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{134}</sup> Adaptation text added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{135}</sup> Point inserted by Decision No 103/2004 (OJ L 376, 23.12.2004, p. 31 and EEA Supplement No 65, 23.12.2004, p. 22), e.i.f. 1.6.2005 and subsequently renumbered 29aa by Decision No 64/2005 (OJ L 239, 15.9.2005, p. 48 and EEA Supplement No 46, 15.9.2005, p. 30), e.i.f. 1.1.2007.

<sup>{136}</sup> Point inserted by Decision No 103/2004 (OJ L 376, 23.12.2004, p. 31 and EEA Supplement No 65, 23.12.2004, p. 22), e.i.f. 1.6.2005 and subsequently renumbered 29ab by Decision No 64/2005 (OJ L 239, 15.9.2005, p. 48 and EEA Supplement No 46, 15.9.2005, p. 30), e.i.f. 1.1.2007..

<sup>{137}</sup> Point inserted by Decision No 103/2004 (OJ L 376, 23.12.2004, p. 31 and EEA Supplement No 65, 23.12.2004, p. 22), e.i.f. 1.6.2005 and subsequently renumbered 29ac by Decision No 64/2005 (OJ L 239, 15.9.2005, p. 48 and EEA Supplement No 46, 15.9.2005, p. 30), e.i.f. 1.1.2007..

<sup>{138}</sup> Point inserted by Decision No 73/2004 (OJ L 349, 25.11.2004, p. 30 and EEA Supplement No 59, 25.11.2004, p. 7), e.i.f. 1.6.2005.

- <sup>{139}</sup> **32010 L 0073**: Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 327, 11.12.2010, p. 1),
- <sup>{140}</sup> **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.

<sup>{141}</sup>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”.

29ba.<sup>{142}</sup> **32004 R 0809**: Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1), as corrected by OJ L 215, 16.6.2004, p. 3, as amended by:

- <sup>{143}</sup> **32006 R 1787**: Commission Regulation (EC) No 1787/2006 of 4 December 2006 (OJ L 337, 5.12.2006, p. 17),
- <sup>{144}</sup> **32007 R 0211**: Commission Regulation (EC) No 211/2007 of 27 February 2007 (OJ L 61, 28.2.2007, p. 24),
- <sup>{145}</sup> **32008 R 1289**: Commission Regulation (EC) No 1289/2008 of 12 December 2008 (OJ L 340, 19.12.2008, p. 17),
- <sup>{146}</sup> **32012 R 0311**: Commission Delegated Regulation (EU) No 311/2012 of 21 December 2011 (OJ L 103, 13.4.2012, p. 13),
- <sup>{147}</sup> **32012 R 0486**: Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 (OJ L 150, 9.6.2012, p. 1),
- <sup>{148}</sup> **32012 R 0862**: Commission Delegated Regulation (EU) No 862/2012 of 4 June 2012 (OJ L 256, 22.9.2012, p. 4),
- <sup>{149}</sup> **32013 R 0759**: Commission Delegated Regulation (EU) No 759/2013 of 30 April 2013 (OJ L 213, 8.8.2013, p. 1).

<sup>{139}</sup> Indent and words “as amended by” added by Decision No 167/2012 (OJ L 341, 13.12.2012, p. 18 and EEA Supplement No 70, 13.12.2012, p. 22), e.i.f. 1.5.2013.

<sup>{140}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{141}</sup> Adaptation text added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{142}</sup> Point inserted by Decision No 64/2005 (OJ L 239, 15.9.2005, p. 48 and EEA Supplement No 46, 15.9.2005, p. 30), e.i.f. 1.1.2007.

<sup>{143}</sup> Indent and words “, as amended by:” above, added by Decision No 51/2007 (OJ L 266, 11.10.2007, p. 9 and EEA Supplement No 48, 11.10.2007, p. 7), e.i.f. 9.6.2007.

<sup>{144}</sup> Indent added by Decision No 113/2007 (OJ L 47, 21.2.2008, p. 33 and EEA Supplement No 9, 21.2.2008, p. 27), e.i.f. 29.9.2007.

<sup>{145}</sup> Indent added by Decision No 141/2009 (OJ L 62, 11.3.2010, p. 35 and EEA Supplement No 12, 11.3.2010, p. 34), e.i.f. 5.12.2009.

<sup>{146}</sup> Indent added by Decision No 83/2013 (OJ L 291, 31.10.2013, p. 44 and EEA Supplement No 61, 31.10.2013, p. 50), e.i.f. 4.5.2013.

<sup>{147}</sup> Indent added by Decision No 83/2013 (OJ L 291, 31.10.2013, p. 44 and EEA Supplement No 61, 31.10.2013, p. 50), e.i.f. 4.5.2013.

<sup>{148}</sup> Indent added by Decision No 83/2013 (OJ L 291, 31.10.2013, p. 44 and EEA Supplement No 61, 31.10.2013, p. 50), e.i.f. 4.5.2013.

<sup>{149}</sup> Indent added by Decision No 129/2014 (OJ L 342, 27.11.2014, p. 35 and EEA Supplement No 71, 27.11.2014, p. 33), e.i.f. 28.6.2014.

29c.<sup>{150}</sup> **32004 L 0072**: Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (OJ L 162, 30.4.2004, p. 70).

29d.<sup>{151}</sup> **32004 L 0109**: Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 21.12.2004, p. 38), as amended by:

-<sup>{152}</sup> **32010 L 0073**: Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 327, 11.12.2010, p. 1).

-<sup>{153}</sup> **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.

<sup>{154}</sup> 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”.

29da.<sup>{155}</sup> **32007 L 0014**: Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 69, 9.3.2007, p. 27).

29e.<sup>{156}</sup> **32007 R 1569**: Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66), as amended by:

-<sup>{157}</sup> **32012 R 0310**: Commission Delegated Regulation (EU) No 310/2012 of 21 December 2011 (OJ L 103, 13.4.2012, p. 11),

<sup>{150}</sup> Point 29f inserted by Decision No 149/2004 (OJ L 102, 21.4.2005, p. 23 and EEA Supplement No 20, 21.4.2005, p. 15), e.i.f. 1.9.2005 and subsequently renumbered to 29c by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{151}</sup> Point 29g inserted by Decision No 120/2005 (OJ L 339, 22.12.2005, p. 26 and EEA Supplement No 66, 22.12.2005, p. 15), e.i.f. 1.6.2007 and subsequently renumbered to 29d by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{152}</sup> Indent and words “as amended by” added by Decision No 167/2012 (OJ L 341, 13.12.2012, p. 18 and EEA Supplement No 70, 13.12.2012, p. 22), e.i.f. 1.5.2013.

<sup>{153}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{154}</sup> Adaptation text added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{155}</sup> Point 29ga inserted by Decision No 10/2008 (OJ L 154, 12.6.2008, p. 20 and EEA Supplement No 33, 12.6.2008, p. 16), e.i.f. 1.8.2008 and subsequently renumbered to 29da by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{156}</sup> Point 29h inserted by Decision No 80/2008 (OJ L 280, 23.10.2008, p.10 and EEA Supplement No 64, 23.10.2008, p. 3), e.i.f. pending, and subsequently renumbered to 29e by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{157}</sup> Indent and words “as amended by” added by Decision No 17/2013 (OJ L 144, 30.5.2013, p. 22 and EEA Supplement No 31, 30.5.2013, p. 26), e.i.f. 2.2.2013.

-{<sup>158</sup>} **32015 R 1605**: Commission Delegated Regulation (EU) 2015/1605 of 12 June 2015 (OJ L 249, 25.9.2015, p. 3).

29f. {<sup>159</sup>} **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”;
  - (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”.

{<sup>158</sup>} Indent added by Decision No 152/2016 (OJ L 73, 15.3.2018, p. 27 and EEA Supplement No 16, 15.3.2018, p. 31), e.i.f. 9.7.2016.

{<sup>159</sup>} Point and adaptation text inserted by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

- (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.<sup>{160}</sup> **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.<sup>{161}</sup> **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.<sup>{162}</sup> **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:

-<sup>{163}</sup> **32015 R 0097**: Commission Delegated Regulation (EU) 2015/97 of 17 October 2014 (OJ L 16, 23.1.2015, p. 22).

29fd.<sup>{164}</sup> **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).

*(ii) Undertakings for Collective Investment in Transferable Securities (UCITS)*

30. <sup>{165}</sup> **32009 L 0065**: Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32), as amended by:

- <sup>{166}</sup> **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1),

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<sup>{160}</sup> Point inserted by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

<sup>{161}</sup> Point inserted by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

<sup>{162}</sup> Point inserted by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

<sup>{163}</sup> Indent and words “, as amended by;” above added by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

<sup>{164}</sup> Point inserted by Decision No 204/2016 (OJ L 46, 23.2.2017, p. 44 and EEA Supplement No 13, 23.2.2017, p. 53), e.i.f. 1.2.2017.

<sup>{165}</sup> New point 30 inserted by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{166}</sup> Indent and words “, as amended by” above added by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016.

-<sup>{167}</sup> **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.

<sup>{168}</sup> 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”.

30a. [ <sup>{169}</sup>

30b.<sup>{170}</sup> **32007 L 0016**: Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (OJ L 79, 20.3.2007, p. 11).

30c.<sup>{171}</sup> **32010 R 0583**: Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (OJ L 176, 10.7.2010, p. 1).

30d.<sup>{172}</sup> **32010 R 0584**: Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purposes of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p. 16).

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<sup>{167}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{168}</sup> Adaptation text added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{169}</sup> Point 30 (Council Directive 85/611/EEC) renumbered as 30a by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012, subsequently deleted with effect from 1 July 2011.

<sup>{170}</sup> Point 30a inserted by Decision No 114/2007 (OJ L 47, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 and subsequently renumbered as Point 30b by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.

<sup>{171}</sup> Point inserted by Decision No 168/2012 (OJ L 341, 13.12.2012, p. 19 and EEA Supplement No 70, 13.12.2012, p. 23), e.i.f. 1.5.2013.

<sup>{172}</sup> Point inserted by Decision No 168/2012 (OJ L 341, 13.12.2012, p. 19 and EEA Supplement No 70, 13.12.2012, p. 23), e.i.f. 1.5.2013.

- 30e.<sup>{173}</sup> **32010 L 0043**: Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (OJ L 176, 10.7.2010, p. 42).
- 30f.<sup>{174}</sup> **32010 L 0044**: Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure (OJ L 176, 10.7.2010, p. 28), as corrected by OJ L 179, 14.7.2010, p. 16.
- 30g.<sup>{175}</sup> **32016 R 0438**: Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (OJ L 78, 24.3.2016, p. 11).
- The provisions of the Delegated Regulation shall, for the purposes of this Agreement, be read with the following adaptation:
- In the second subparagraph of Article 10(1), as regards the EFTA States, the words “which apply in the EEA” shall be inserted after the words “implementing acts adopted by the Commission pursuant to Article 107(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council”.
- 30h.<sup>{176}</sup> **32016 R 1212**: Commission Implementing Regulation (EU) 2016/1212 of 25 July 2016 laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance with Directive 2009/65/EC of the European Parliament and of the Council (OJ L 199, 26.7.2016, p. 6).

(iii) *Investment services* <sup>{177}</sup>

- 31.<sup>{178}</sup> **32006 L 0049**: Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201) as amended by:
- <sup>{179}</sup> **32009 L 0027**: Commission Directive 2009/27/EC of 7 April 2009 (OJ L 94, 8.4.2009, p. 97),
- <sup>{180}</sup> **32009 L 0111**: Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 302, 17.11.2009, p. 97),
- <sup>{181}</sup> **32010 L 0076**: Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 (OJ L 329, 14.12.2010, p. 3),
- <sup>{182}</sup> **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:

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- <sup>{173}</sup> Point inserted by Decision No 168/2012 (OJ L 341, 13.12.2012, p. 19 and EEA Supplement No 70, 13.12.2012, p. 23), e.i.f. 1.5.2013.
- <sup>{174}</sup> Point inserted by Decision No 168/2012 (OJ L 341, 13.12.2012, p. 19 and EEA Supplement No 70, 13.12.2012, p. 23), e.i.f. 1.5.2013.
- <sup>{175}</sup> Point inserted by Decision No 63/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.
- <sup>{176}</sup> Point inserted by Decision No 63/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.
- <sup>{177}</sup> Heading and points 30a and 30b inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994.
- <sup>{178}</sup> Point 30a renumbered as 31 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009.
- <sup>{179}</sup> Indent and words “as amended by” added by Decision No 106/2009 (OJ L 334, 17.12.2009, p. 3 and EEA Supplement No 68, 17.12.2009, p. 3), e.i.f. 23.10.2009.
- <sup>{180}</sup> Indent added by Decision No 85/2010 (OJ L 277, 21.10.2010, p. 39 and EEA Supplement No 59, 21.10.2010, p. 7), e.i.f. 1.1.2012.
- <sup>{181}</sup> Indent added by Decision No 19/2012 (OJ L 161, 21.6.2012, p. 25 and EEA Supplement No 34, 21.6.2012, p. 30), e.i.f. 1.11.2012.
- <sup>{182}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

In Article 10(1) second sub-paragraph, the words “the date of notification contained in Directive 93/6/EEC” shall read “the date of entry into force of Decision of the EEA Committee No 7/94 incorporating Directive 93/6/EEC into the Agreement”.

31a.<sup>{183}</sup> [ ]

31b.<sup>{184}</sup> **397 L 0009:** Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ No L 84, 26.3.1997, p. 22).

<sup>{185}</sup>The transitional arrangements set out in the Annexes to the Act of Accession of 16 April 2003 for Estonia (Annex VI, Chapter 2, Point 2), Latvia (Annex VIII, Chapter 2, Point 2), Lithuania (Annex IX, Chapter 3, Point 2), Hungary (Annex X, Chapter 2, Point 1), Poland (Annex XII, Chapter 3, Point 1), Slovenia (Annex XIII, Chapter 3, Point 3) and Slovakia (Annex XIV, Chapter 2), shall apply.

<sup>{186}</sup>The transitional arrangements set out in the Annexes to the Act of Accession of 25 April 2005 for Bulgaria (Annex VI, Chapter 2) and Romania (Annex VII, Chapter 2), shall apply.

31ba.<sup>{187}</sup> **32004 L 0039:** Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1), as corrected by OJ L 45, 16.2.2005, p. 18, as amended by:

-<sup>{188}</sup> **32006 L 0031:** Directive 2006/231/EC of the European Parliament and of the Council of 5 April 2006 (OJ L 114, 27.4.2006, p. 62),

-<sup>{189}</sup> **32007 L 0044:** Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 (OJ L 247, 21.9.2007, p. 1),

-<sup>{190}</sup> **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 the present Agreement, be read with the following adaptation:

(a)<sup>{191}</sup> Articles 10, 10a and 10b regarding the prudential assessment of a proposed acquirer shall not apply where the proposed acquirer, as defined in the Directive, is situated or regulated outside the territory of the Contracting Parties.

(b)<sup>{192}</sup> As regards relations with third-country investment firms described in Article 15 of the Directive, the following shall apply:

<sup>{183}</sup> Text of point 30b (Council Directive 93/22/EC) deleted with effect from 30.4.2006 by Decision No 65/2005 (OJ L 239, 15.9.2005, p. 50 and EEA Supplement No 46, 15.9.2005, p. 31), e.i.f. 1.8.2007, and subsequently renumbered as 31a by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009.

<sup>{184}</sup> Point inserted by Decision No 12/98 (OJ 272, 8.10.1998, p. 17 and EEA Supplement No 42, 8.10.1998, p. 72), e.i.f. 1.2.2000, and subsequently renumbered as 31b by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009.

<sup>{185}</sup> Text added by the 2004 EEA Enlargement Agreement (OJ L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), e.i.f. 1.5.2004.

<sup>{186}</sup> Text added by the 2007 EEA Enlargement Agreement (OJ L 221, 25.8.2007 and EEA Supplement No 39, 26.7.2008), provisionally applicable as of 1.8.2007, e.i.f. 9.11.2011, the words “or, as the case may be, to the Protocol of Accession of 25 April 2005” subsequently deleted by the 2014 EEA Enlargement Agreement (OJ L 170, 11.6.2014, p. 5 and EEA Supplement No 58, 9.10.2014, p. 1), provisionally applicable as of 12.4.2014, e.i.f. pending.

<sup>{187}</sup> Point inserted by Decision No 65/2005 (OJ L 239, 15.9.2005, p. 50 and EEA Supplement No 46, 15.9.2005, p. 31), e.i.f. 1.8.2007, and subsequently renumbered as 31ba by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009.

<sup>{188}</sup> Indent and words “, as amended by:” above, added by Decision No 119/2006 (OJ L 333, 30.11.2006, p. 44 and EEA Supplement No 60, 30.11.2006, p. 33), e.i.f. 23.9.2006.

<sup>{189}</sup> Indent added by Decision No 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

<sup>{190}</sup> Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{191}</sup> Adaptation text inserted by Decision no 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

<sup>{192}</sup> Adaptation text renumbered by Decision no 79/2008 (OJ L 280, 23.10.2008, p. 7 and EEA Supplement No 64, 23.10.2008, p. 1), e.i.f. 1.11.2010.

1. with a view to achieving a maximum degree of convergence in the application of a third-country regime for investment firms, the Contracting Parties shall exchange information as described in Articles 15(1) and 15(4) and consultations shall be held regarding matters referred to in Article 15(2) and 15(3), within the framework of the EEA Joint Committee and according to specific procedures to be agreed by the Contracting Parties;
  2. authorizations granted by the competent authorities of a Contracting Party to investment firms being direct or indirect subsidiaries of parent undertakings governed by the laws of a third country shall have validity in accordance with the provisions of this Directive throughout the territory of all Contracting Parties. However,
    - (a) when a third country imposes quantitative restrictions on the establishment of investment firms of an EFTA State or imposes restrictions on such investment firms that it does not impose on Community investment firms, authorizations granted by competent authorities within the Community to investment firms being direct or indirect subsidiaries of parent undertakings governed by the laws of that third country shall have validity only in the Community, except where an EFTA State decides otherwise for its own jurisdiction;
    - (b) where the Community has decided that decisions regarding authorizations of investment firms being direct or indirect subsidiaries of parent undertakings governed by the law of a third country shall be limited or suspended, any authorization granted by a competent authority of an EFTA State to such investment firms shall have validity only in its own jurisdiction, except where another Contracting Party decides otherwise for its own jurisdiction;
    - (c) the limitations or suspensions referred to in subparagraphs (a) and (b) may not apply to investment firms or their subsidiaries already authorized in the territory of a Contracting Party;
  3. whenever the Community negotiates with a third country on the basis of Articles 15(2) and 15(3), in order to obtain national treatment and effective market access for its investment firms, it shall endeavour to obtain equal treatment for the investment firms of the EFTA States.
- (c) <sup>{193}</sup> 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) <sup>{194}</sup> 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”.

31baa.<sup>{195}</sup>[ ]

31bab.<sup>{196}</sup>**32006 L 0073**: Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

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<sup>{193}</sup> Adaptation text inserted by Decision no 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{194}</sup> Adaptation text inserted by Decision no 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{195}</sup> Point (Council Directive 93/22/EEC) inserted by Decision No 119/2006 (OJ L 333, 30.11.2006, p. 44 and EEA Supplement No 60, 30.11.2006, p. 33), e.i.f. 23.9.2006, renumbered 31baa by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009, and subsequently deleted by Decision No 119/2006 with effect from 1.11.2007.

<sup>{196}</sup> Point inserted by Decision No 21/2007 (OJ L 209, 9.8.2007, p. 38 and EEA Supplement No 38, 9.8.2007, p. 26), e.i.f. 1.6.2008, and subsequently renumbered as 31bab by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

31bac.<sup>{197}</sup>**32006 R 1287**: Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

31bb.<sup>{198}</sup>**32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, 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) 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 Directive, in particular prior to taking any action.
- (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 ESMA under Article 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.
- (e) As regards the EFTA States, Article 4(1)(an) shall read as follows:

“‘securitisation special purpose entities’ means entities whose sole purpose is to carry on a securitisation or securitisations within the meaning defined below, and other activities which are appropriate to accomplish that purpose.

For the purposes of this Directive, ‘securitisation’ means a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place:

- (a) an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme, either by the transfer of legal title or beneficial interest of those assets from the originator or through sub-participation;
- (b) the credit risk of an asset or pool of assets, or part thereof, is transferred through the use of credit derivatives, guarantees or any similar mechanism to the investors in the financing instruments issued by an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme;
- (c) insurance risks are transferred from an insurance or reinsurance undertaking to a separate entity that is created for or serves the purpose of the transaction or scheme, whereby the entity fully funds its exposure to such risks through the issuance of financing instruments, and the repayment rights of the investors in those financing instruments are subordinated to the reinsurance obligations of the entity;

Where such financing instruments are issued, they do not represent the payment obligations of the originator, or insurance or reinsurance undertaking;”

<sup>{197}</sup> Point inserted by Decision No 21/2007 (OJ L 209, 9.8.2007, p. 38 and EEA Supplement No 38, 9.8.2007, p. 26), e.i.f. 1.6.2008, and subsequently renumbered as 31bac by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{198}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016

- (f) In Article 7(5), the following subparagraph shall be added:
- “ESMA shall include in the central public register referred to in the second subparagraph, under the same conditions, information on AIFMs authorised by the competent authorities of an EFTA State under this Directive, AIFs managed and/or marketed in the EEA by such AIFMs and the competent authority for each such AIFM.”
- (g) In Article 9(6) and in Article 21(6)(b), (7) and (17)(b), the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (h) In Article 21(3)(c), as regards the EFTA States, the words “21 July 2011” shall read “the date of entry into force of Decision of the EEA Joint Committee No 202/2016 of 30 September 2016”.
- (i) In Article 43:
- (i) in paragraph 1, the words “of Union law” shall read “applicable pursuant to the EEA Agreement”;
- (ii) in paragraph 2, as regards the EFTA States, the words “by 22 July 2014” shall read “within eighteen months of the date of entry into force of Decision of the EEA Joint Committee No 202/2016 of 30 September 2016”.
- (j) In Article 47:
- (i) in the second subparagraph of paragraph 1 and in paragraphs 2, 8 and 10, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (ii) in paragraph 3, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (iii) as regards the EFTA States, in paragraphs 4, 5 and 9, the word “ESMA” shall read “the EFTA Surveillance Authority”;
- (iv) in paragraph 7, 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 4, ESMA shall consult, where appropriate, the ESRB and other relevant authorities. It shall transmit the observations received to the EFTA Surveillance Authority.”.
- (k) In Article 50, as regards the EFTA States:
- (i) in paragraph 1, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (ii) in the first subparagraph of paragraph 4, the words “, the EFTA Surveillance Authority” shall be inserted after the words “one another”.
- (l) In Article 61, as regards the EFTA States, the words “22 July 2013” and “22 July 2017” shall read “eighteen months after the date of entry into force of Decision of the EEA Joint Committee No 202/2016 of 30 September 2016”.

31bba.<sup>{199}</sup>**32013 R 0231**: Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

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<sup>{199}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016

The provisions of the Delegated 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, references to “EU” or “Union” Member States and competent authorities shall be understood to include, in addition to their meaning in the Delegated Regulation, the EFTA States and their competent authorities, respectively.
- (b) In Articles 15, 84, 86 and 99, the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (c) In Article 55, as regards the EFTA States, the words “1 January 2011” shall read “the date of entry into force of Decision of the EEA Joint Committee No No 202/2016 of 30 September 2016” and the words “31 December 2014” shall read “twelve months after the date of entry into force of Decision of the EEA Joint Committee No 202/2016 of 30 September 2016”.
- (d) In Article 114(3), the words “Union legislation” shall be replaced by the words “legislation applicable pursuant to the EEA Agreement”.

31bbb.<sup>{200}</sup>**32013 R 0447**: Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 1).

31bbc.<sup>{201}</sup>**32013 R 0448**: Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council (OJ L 132, 16.5.2013, p. 3).

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

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 Implementing Regulation, the EFTA States and their competent authorities, respectively.

31bbd.<sup>{202}</sup>**32014 R 0694**: Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers (OJ L 183, 24.6.2014, p. 18).

31bbe.<sup>{203}</sup>**32015 R 0514**: Commission Delegated Regulation (EU) 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of Directive 2011/61/EU of the European Parliament and of the Council (OJ L 82, 27.3.2015, p. 5).

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

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 Delegated Regulation, the EFTA States and their competent authorities, respectively.

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<sup>{200}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016

<sup>{201}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016

<sup>{202}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016

<sup>{203}</sup> Point and adaptation text inserted by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016 and subsequently corrected by Corrigendum of 5.5.2017.

31bc.<sup>{204}</sup> **32012 R 0648**: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, 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 term “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. This includes, in particular the duty to pass to each other, without undue delay, the information needed for each body to carry out its duties under this Regulation, such as the preparation of drafts by ESMA as set out in point (d). This extends to, amongst others, information received by either body as a result of applications for registration or replies to requests for information submitted to market operators, or obtained by either body during investigations or on-site inspections.

Without prejudice to Article 109 of this Agreement, ESMA and the EFTA Surveillance Authority shall pass to the other body any application, information, complaint or request which fall within the competence of that body.

In case of disagreement between ESMA and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of ESMA and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of ESMA or the College of the EFTA Surveillance Authority may request that the Contracting Parties refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

- (c) References to “members of the ESCB” or to “central banks” shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States, except as regards Liechtenstein for which such references shall not apply.
- (d) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 56(2), 58(1), 61(1), 62(3), 63(4), 64(5), 65(1), 66(1), 71 and 73(1) shall, without undue delay, be adopted on the basis of drafts prepared by ESMA at its own initiative or at the request of the EFTA Surveillance Authority.
- (e) In Articles 4(2)(a) and 7(5) and in Article 11(6) and (10), the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (f) In Article 6(2)(c), the words “in the Union and, where it differs, in the EFTA States” shall be inserted after the words “takes effect”.
- (g) In Articles 9(1) and 11(3), as regards the EFTA States, the words “16 August 2012” shall read “the date of entry into force of Decision of the EEA Joint Committee No 206/2016 of 30 September 2016”.
- (h) In Article 12(2), as regards the EFTA States, the words “By 17 February 2013” shall read “Within sixth months of the date of entry into force of Decision of the EEA Joint Committee No 206/2016 of 30 September 2016”.

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<sup>{204}</sup> Point and adaptation text inserted by Decision No 206/2016 (OJ L 46, 23.2.2017, p. 53 and EEA Supplement No 13, 23.2.2017, p. 63), e.i.f. 1.7.2017 and subsequently corrected [before publication] by Corrigendum of 28.10.2016.

- (i) In Article 17:
  - (i) in paragraph 4 and in the first subparagraph of paragraph 5, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 5, the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (j) In Articles 18 and 25, the words “Union currencies” shall be replaced by the words “official currencies of Contracting Parties to the EEA Agreement”.
- (k) In Article 55(1), the words “or, in the case of a trade repository established in an EFTA State, with the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”.
- (l) In Article 56:
  - (i) in paragraph 1, the words “or, in the case of a trade repository established in an EFTA State, to the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 2, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (m) In Article 57, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (n) In Article 58, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (o) In Article 59:
  - (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) paragraph 2 shall be replaced by the following:

“ESMA and the EFTA Surveillance Authority shall communicate to each other and to the Commission any decision taken in accordance with paragraph 1.”.
- (p) In Article 60, the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (q) In Article 61:
  - (i) in paragraph 1, the words “or, in the case of trade repositories or related third parties to whom the trade repositories have outsourced operational functions or activities that are established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 2, 3 and 5, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) as regards the EFTA States, point (g) of paragraph 3 shall read as follows:

“indicate the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
  - (iv) in paragraph 5, the following subparagraph shall be added:

“The EFTA Surveillance Authority shall without undue delay forward the information received under this Article to ESMA.”.
- (r) In Article 62:

- (i) in paragraph 1, the words “or, in the case a person subject to investigation is established in an EFTA State, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 1, the following subparagraph shall be added:

“Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in investigations upon ESMA’s request.”;
  - (iii) as regards the EFTA States, in paragraphs 2, 3, 4 and the first and second sentences of paragraph 6, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iv) as regards the EFTA States, the second sentence of paragraph 3 shall read as follows:

“The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 66 and the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
  - (v) as regards the EFTA States, in the third sentence of paragraph 6 the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”;
  - (vi) as regards the EFTA States, the fourth sentence of paragraph 6 shall read as follows:

“The lawfulness of the EFTA Surveillance Authority’s decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.
- (s) In Article 63:
- (i) in paragraph 1, the words “or, in the case of legal persons established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 1, the following subparagraph shall be added:

“The EFTA Surveillance Authority shall without undue delay forward the information obtained under this Article to ESMA.”;
  - (iii) as regards the EFTA States, in paragraphs 2 to 7 and the first, second and third sentences of paragraph 9, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iv) in paragraph 2, the following subparagraph shall be added:

“Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in on-site inspections.”;
  - (v) as regards the EFTA States, the second sentence of paragraph 4 shall read as follows:

“The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 66 as well as the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
  - (vi) as regards the EFTA States, in the fourth sentence of paragraph 9 the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”;
  - (vii) as regards the EFTA States, the fifth sentence of paragraph 9 shall read as follows:

“The lawfulness of the EFTA Surveillance Authority’s decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.

- (t) In Article 64:
- (i) as regards the EFTA States, in paragraph 1, first sentence, the words “ESMA shall appoint an independent investigating officer within ESMA to investigate the matter” shall read “the EFTA Surveillance Authority shall appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter following consultations with ESMA.”
  - (ii) in paragraph 1, the following subparagraph shall be added:

“The investigating officer appointed by the EFTA Surveillance Authority shall not be involved or have been directly or indirectly involved in the supervision or registration process of the trade repository concerned and shall perform his functions independently from the College of the EFTA Surveillance Authority and ESMA’s Board of Supervisors.”;
  - (iii) as regards the EFTA States, in paragraphs 2, 3 and 4, the words “and the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (iv) as regards the EFTA States, in paragraph 5, after the words “Article 67,”, the remainder of the sentence shall read as follows:

“the EFTA Surveillance Authority shall decide if one or more of the infringements listed in Annex I has been committed by the persons who have been subject to investigation, and in such a case, shall take a supervisory measure in accordance with Article 73 and impose a fine in accordance with Article 65.

The EFTA Surveillance Authority shall provide ESMA with all information and files necessary for the performance of its obligation under this paragraph.”;
  - (v) in paragraph 6, the words “or the EFTA Surveillance Authority’s” shall be inserted after the words “ESMA’s”;
  - (vi) in paragraph 8, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”.
- (u) In Article 65:
- (i) in paragraph 1, the words “or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) as regards the EFTA States, in paragraph 2, the word “ESMA” shall read “the EFTA Surveillance Authority”.
- (v) In Article 66:
- (i) in paragraph 1, the words “or, in the case the trade repository or person concerned is established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the words “ESMA”;
  - (ii) in paragraph 4, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”.
- (w) In Article 67:
- (i) in paragraph 1, the following subparagraphs shall be added:

“Before preparing any draft for the EFTA Surveillance Authority under Articles 65 and 66, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Articles 65 and 66 only on findings on which the persons subject to the proceedings have had the opportunity to comment.”;

- (ii) as regards the EFTA States, in paragraph 2, the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”;
  - (iii) as regards the EFTA States, in paragraph 2, the words “ESMA’s internal preparatory documents” shall read “internal preparatory documents of ESMA and the EFTA Surveillance Authority”.
- (x) In Article 68:
- (i) in paragraph 1, the following shall be added:

“The EFTA Surveillance Authority shall also disclose to the public every fine and periodic penalty that it has imposed pursuant to Articles 65 and 66, subject to the conditions laid down in this paragraph as regards the disclosure of fines and periodic penalties by ESMA”;
  - (ii) as regards the EFTA States, in paragraphs 3 and 4, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) as regards the EFTA States, in paragraph 3, the words “the European Parliament, the Council” shall read “ESMA and the Standing Committee of the EFTA States”;
  - (iv) as regards the EFTA States, in paragraph 4, the words “the Court of Justice” shall read “the EFTA Court”;
  - (v) in paragraph 5, the following subparagraph shall be added:

“The Standing Committee of the EFTA States shall determine the allocation of the amounts of the fines and periodic penalty payments collected by the EFTA Surveillance Authority.”.
- (y) In Article 71:
- (i) in paragraph 1, the words “or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) as regards the EFTA States, in paragraph 2, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) in the second sentence of paragraph 3, the words “or, in the case of a trade repository established in an EFTA State, not to prepare a draft for the EFTA Surveillance Authority to that effect,” shall be inserted after the word “concerned”.
- (z) In Article 72(1), the following subparagraphs shall be added:
- “As regards trade repositories established in an EFTA State, fees shall be charged by the EFTA Surveillance Authority on the same basis as fees charged to other trade repositories in accordance with this Regulation and with the delegated acts referred to in paragraph 3.
- The amounts collected by the EFTA Surveillance Authority in accordance with this paragraph shall be passed on to ESMA without undue delay.”
- (za) In Article 73:

- (i) in paragraph 1, the words “or, in the case of a trade repository established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) as regards the EFTA States, in paragraph 2, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) in paragraph 3, the following subparagraphs shall be added:

“Without undue delay, the EFTA Surveillance Authority shall notify any decision adopted pursuant to paragraph 1 to the trade repository concerned, and shall communicate it to the competent authorities and to the Commission. ESMA shall make public any such decision on its website within 10 working days from the date when it was adopted. The EFTA Surveillance Authority shall also make public any of its own decisions on its website within 10 working days from the date when it was adopted.

When making public a decision of the EFTA Surveillance Authority as referred to in the third subparagraph, ESMA and the EFTA Surveillance Authority shall also make public the right for the trade repository concerned to have the decision reviewed by the EFTA Court, the fact, where relevant, that such proceedings have been instituted, specifying that actions brought before the EFTA Court do not have suspensory effect, and the fact that it is possible for the EFTA Court to suspend the application of the contested decision in accordance with Article 40 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.
- (zb) In Article 74:
- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted before the words “may delegate specific supervisory tasks”;
  - (ii) in paragraphs 2 to 5, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (iii) the following paragraph shall be added:

“6. Prior to delegation of a task, the EFTA Surveillance Authority and ESMA shall consult each other.”.
- (zc) Articles 75(2) and (3) and 76 shall not apply.
- (zd) In Article 81(3), as regards the EFTA States:
- (i) in point (f), the words “the Union as referred to in Article 75” shall read “its EFTA State of establishment granting mutual access to, and exchange of information on, derivative contracts held in trade repositories”;
  - (ii) in point (i), the words “ESMA as referred to in Article 76” shall read “its EFTA State of establishment granting access to information on derivative contracts held in trade repositories established in that EFTA State”;
  - (iii) the text of point (j) shall read as follows:

“the Agency for the Cooperation of Energy Regulators, subject to the content and entry into force of a decision of the EEA Joint Committee incorporating Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of the Energy Regulators.”.
- (ze) In Article 83, the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (zf) In Article 84, the words “the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

- (zg) In Article 87(2), as regards the EFTA States, the words “by 17 August 2014” shall read “within one year of the date of entry into force of Decision of the EEA Joint Committee No 206/2016 of 30 September 2016”.
- (zh) In Article 89:
- (i) in paragraph 1, the following subparagraph shall be added after the first subparagraph:
- “For three years after the entry into force of Decision of the EEA Joint Committee No 206/2016 of 30 September 2016, the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10) that are established in an EFTA State. The transitional period shall also apply to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.”;
- (ii) in paragraphs 3, 5, 6 and 8, as regards the EFTA States, the words “are adopted by the Commission” shall read “adopted by the Commission apply in the EEA”;
- (iii) in paragraph 3, as regards the EFTA States, the words “decisions of the EEA Joint Committee containing” shall be inserted after the words “entry into force of all the”;
- (iv) in paragraphs 5 and 6, as regards the EFTA States, the words “the decisions of the EEA Joint Committee containing” shall be inserted after the words “entry into force of”.
- (zi) In points (a) and (c) of Part IV of Annex I and in point (g) of Part I and in point (c) of Part II of Annex II, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.

31bcaa.<sup>{205}</sup>**32014 D 0752**: Commission Implementing Decision 2014/752/EU of 30 October 2014 on the equivalence of the regulatory framework of Japan for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 311, 31.10.2014, p. 55).

31bcab.<sup>{206}</sup>**32014 D 0753**: Commission Implementing Decision 2014/753/EU of 30 October 2014 on the equivalence of the regulatory framework of Singapore for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 311, 31.10.2014, p. 58).

31bcac.<sup>{207}</sup>**32014 D 0754**: Commission Implementing Decision 2014/754/EU of 30 October 2014 on the equivalence of the regulatory framework of Hong Kong for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 311, 31.10.2014, p. 62).

31bcad.<sup>{208}</sup>**32014 D 0755**: Commission Implementing Decision 2014/755/EU of 30 October 2014 on the equivalence of the regulatory framework of Australia for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 311, 31.10.2014, p. 66).

31bcae.<sup>{209}</sup>**32015 D 2038**: Commission Implementing Decision (EU) 2015/2038 of 13 November 2015 on the equivalence of the regulatory framework of the Republic of Korea for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 25).

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<sup>{205}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{206}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{207}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{208}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{209}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

31bcaf.<sup>{210}</sup>**32015 D 2039**: Commission Implementing Decision (EU) 2015/2039 of 13 November 2015 on the equivalence of the regulatory framework of South Africa for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 29).

31bcag.<sup>{211}</sup>**32015 D 2040**: Commission Implementing Decision (EU) 2015/2040 of 13 November 2015 on the equivalence of the regulatory framework of certain provinces of Canada for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 32).

31bcah.<sup>{212}</sup>**32015 D 2041**: Commission Implementing Decision (EU) 2015/2041 of 13 November 2015 on the equivalence of the regulatory framework of Mexico for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 38).

31bcai.<sup>{213}</sup>**32015 D 2042**: Commission Implementing Decision (EU) 2015/2042 of 13 November 2015 on the equivalence of the regulatory framework of Switzerland for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 42).

31bd.<sup>{214}</sup>**32013 R 0345**: Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, 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) In Articles 22 and 23, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (c) In Article 23(2), the words “Union law” shall be replaced by the words “provisions of the EEA Agreement”.
- (d) In Article 24, the words “ESMA, which” shall be replaced by the words “ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority”.

31bda.<sup>{215}</sup>**32014 R 0593**: Commission Implementing Regulation (EU) No 593/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation (EU) No 345/2013 of the European Parliament and of the Council on European venture capital funds (OJ L 165, 4.6.2014, p. 41).

31be.<sup>{216}</sup>**32013 R 0346**: Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

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

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<sup>{210}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{211}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{212}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{213}</sup> Point inserted by Decision No 35/2017 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. 1.7.2017 and subsequently corrected before publication by Corrigendum of 27.10.2017.

<sup>{214}</sup> Point inserted by Decision No 64/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{215}</sup> Point inserted by Decision No 64/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{216}</sup> Point inserted by Decision No 64/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

- (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) In Articles 23 and 24, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (c) In Article 24(2), the words “Union law” shall be replaced by the words “provisions of the EEA Agreement”.
- (d) In Article 25, the words “ESMA, which” shall be replaced by the words “ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority”.

31bea.<sup>{217}</sup>**32014 R 0594**: Commission Implementing Regulation (EU) No 594/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 17(1) of Regulation (EU) No 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds (OJ L 165, 4.6.2014, p. 44).

(iv) *Other issues*<sup>{218}</sup>

31c. [ ]<sup>{219}</sup>

31ca.<sup>{220}</sup> **32001 D 0528**: Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45), as amended by:

- **32004 D 0008**: Commission Decision 2004/8/EC of 5 November 2003 (OJ L 3, 7.1.2004, p. 33).

Modalities for the association of the EFTA States in accordance with Article 101 of the Agreement:

Each EFTA State may, in accordance with Article 3 of Commission Decision 2001/528/EC, appoint persons to participate as observers in the meetings of the European Securities Committee.

The EC Commission shall, in due time, inform the participants of the dates of the meetings of the Committee and transmit to them the relevant documentation.

#### IV. Occupational Retirement Provisions <sup>{221}</sup>

31d.<sup>{222}</sup> **32003 L 0041**: Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10), as amended by:

- <sup>{223}</sup> **32009 L 0138**: Directive 2009/138/EC of the European Parliament and of the Council (OJ L 335, 17.12.2009, p. 1),

- <sup>{224}</sup> **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1),

<sup>{217}</sup> Point inserted by Decision No 64/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

<sup>{218}</sup> Heading inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

<sup>{219}</sup> Point 31c (Commission Decision 2001/527/EC) inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008 and subsequently deleted by Decision No 118/2013 (OJ L 318, 28.11.2013, p. 20 and EEA Supplement No 67, 28.11.2013, p. 22), e.i.f. 15.6.2013.

<sup>{220}</sup> Point inserted by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

<sup>{221}</sup> Heading and point 30cb inserted by Decision No 88/2006 (OJ L 289, 19.10.2006, p. 26 and EEA Supplement No 52, 19.10.2006, p. 21), e.i.f. 12.4.2007.

<sup>{222}</sup> Point 30cb renumbered as 31bb by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009, and subsequently renumbered 31d by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

<sup>{223}</sup> Indent and words “as amended by” added by Decision No 78/2011 (OJ L 262, 6.10.2011, p. 45 and EEA Supplement No 54, 6.10.2011, p. 57), e.i.f. 1.12.2012.

<sup>{224}</sup> Indent added by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016.

- {<sup>225</sup>} **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.

#### V. Provisions applying to all kinds of financial services {<sup>226</sup>}

- 31e.{<sup>227</sup>} **32002 L 0065**: Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16), as amended by:

- {<sup>228</sup>} **32005 L 0029**: Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 22),

- {<sup>229</sup>} **32007 L 0064**: Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ L 319, 5.12.2007, p. 1).

- 31ea.{<sup>230</sup>} **32002 L 0087**: Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1), as amended by:

- {<sup>231</sup>} **32005 L 0001**: Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 (OJ L 79, 24.3.2005, p. 9),

- {<sup>232</sup>} **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.

{<sup>233</sup>} 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”.

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{<sup>225</sup>} Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

{<sup>226</sup>} Heading and point 30d inserted by Decision No 47/2003 (OJ L 193, 31.7.2003, p. 18 and EEA Supplement No 39, 31.7.2003, p. 12), e.i.f. 1.5.2004,. Heading subsequently renumbered from IV to V by Decision No 88/2006 (OJ L 289, 19.10.2006, p. 26 and EEA Supplement No 52, 19.10.2006, p. 21), e.i.f. 12.4.2007.

{<sup>227</sup>} Point 30d renumbered as 31c by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 , and subsequently renumbered 31e by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

{<sup>228</sup>} Indent and words “, as amended by:” above, added by Decision No 93/2006 (OJ L 289, 19.10.2006, p. 34 and EEA Supplement No 52, 19.10.2006, p. 27), e.i.f. 1.2.2009.

{<sup>229</sup>} Indent added by Decision No 114/2008 (OJ L 339, 18.12.2008, p. 103 and EEA Supplement No 79, 18.12.2008, p.11), e.i.f. 1.11.2011.

{<sup>230</sup>} Point inserted by Decision No 104/2004 (OJ L 376, 23.12.2004, p. 33 and EEA Supplement No 65, 23.12.2004, p. 24), e.i.f. 1.8.2005, and renumbered as 31d by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 , and subsequently renumbered 31ea by Decision No 81/2008 (OJ L 280, 23.10.2008, p. 12 and EEA Supplement No 64, 23.10.2008, p. 5), e.i.f. 5.7.2008.

{<sup>231</sup>} Indent and words “, as amended by:” above, added by Decision No 119/2005 (OJ L 339, 22.12.2005, p. 24 and EEA Supplement No 66, 22.12.2005, p. 14), e.i.f. 1.4.2006.

{<sup>232</sup>} Indent added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending

{<sup>233</sup>} Adaptation text added by Decision No 92/2018 (OJ L [to be published] and EEA Supplement No [to be published]), e.i.f. pending.

31eb.{<sup>234</sup>} **32009 R 1060**: Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1), as corrected by OJ L 350, 29.12.2009, p. 59, as amended by:

- {<sup>235</sup>} **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1),
- {<sup>236</sup>} **32011 R 0513**: Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 (OJ L 145, 31.5.2011, p. 30),
- {<sup>237</sup>} **32013 R 0462**: Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 (OJ L 146, 31.5.2013, 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)”, “competent authorities” and “sectoral competent authorities” shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities and sectoral 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. This includes in particular the duty to pass to each other, without undue delay, the information needed for each body to carry out its duties under this Regulation, such as the preparation of drafts by ESMA as set out in point (d). This extends to, amongst others, information received by either body as a result of applications for registration or replies to requests for information submitted to market operators, or obtained by either body during investigations or on-site inspections.

Without prejudice to Article 109 of this Agreement, ESMA and the EFTA Surveillance Authority shall pass to the other body any application, information, complaint or request which fall within the competence of that body.

In case of disagreement between ESMA and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of ESMA and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of ESMA or the College of the EFTA Surveillance Authority may request that the Contracting Parties refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

- (c) All references to national central banks under the Regulation shall not apply to Liechtenstein.
- (d) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 6(3), 15(4), 16(2), 16(3), 17(2), 17(3), 20, 23b(1), 23c(3), 23d(4), 23e(5), 24(1), 24(4), 25(1), 36a(1) and 36b(1), shall, without undue delay, be adopted on the basis of drafts prepared by ESMA at its own initiative or at the request of the EFTA Surveillance Authority.

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{<sup>234</sup>} Point inserted by Decision No 20/2012 (OJ L 161, 21.6.2012, p. 26 and EEA Supplement No 34, 21.6.2012, p. 31), e.i.f. 1.8.2014.

{<sup>235</sup>} Indent and words “, as amended by” above added by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016.

{<sup>236</sup>} Indent and adaptation text added by Decision No 203/2016 (OJ L 46, 23.2.2017, p. 35 and EEA Supplement No 13, 23.2.2017, p. 42), e.i.f. 1.10.2016.

{<sup>237</sup>} Indent and adaptation text added by Decision No 203/2016 (OJ L 46, 23.2.2017, p. 35 and EEA Supplement No 13, 23.2.2017, p. 42), e.i.f. 1.10.2016 and subsequently corrected [before publication] by Corrigendum of 28.10.2016.

- (e) In Article 3(1) (g), the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (f) In Article 6(3):
- (i) the words “or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) the following subparagraphs shall be added:

“In the case of a group of credit rating agencies consisting of at least one credit rating agency established in an EFTA State and at least one credit rating agency which has its registered office in an EU Member State, ESMA and the EFTA Surveillance Authority shall jointly ensure that at least one of the credit rating agencies in the group is not exempted from complying with the requirements of points 2, 5, and 6 of Section A of Annex I and Article 7(4).

The EFTA Surveillance Authority and ESMA shall inform each other of any developments that are relevant to the adoption of acts under this paragraph.”
- (g) In Article 8b (2), the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (h) In Articles 8d (2) and 18(3), the following shall be added:
- “ESMA shall include on that list registered credit rating agencies established in an EFTA State.”
- (i) In Article 9, the words “or the EFTA Surveillance Authority with regard to EFTA States” shall be inserted after the word “ESMA”.
- (j) In Article 10(6) and in point 52 of Part I of Annex III, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (k) In Articles 11(2) and 11a (2), the following subparagraph shall be added:
- “ESMA shall publish information submitted by credit rating agencies established in an EFTA State under this Article.”
- (l) In Article 14:
- (i) in paragraphs 2 and 5, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 4, the words “or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”.
- (m) In Article 15:
- (i) in paragraph 1, the words “or, in the case of a credit rating agency established in an EFTA State, to the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 2, the words “or, where they mandate a credit rating agency established in an EFTA State, to the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (iii) in paragraph 4, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”
- (n) In Article 16, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (o) In Article 17:

- (i) in paragraphs 1, 2 and 4, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 3, the words “and, as regards each credit rating agency established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”.
  
- (p) In Article 18:
  - (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) paragraph 2 shall be replaced by the following:

“ESMA and the EFTA Surveillance Authority shall communicate to each other, the Commission, EBA, EIOPA, the competent authorities and the sectoral competent authorities, any decision under Article 16, 17 or 20.”
  
- (q) In Article 19(1), the following subparagraphs shall be added:

“As regards credit rating agencies established in an EFTA State, fees shall be charged by the EFTA Surveillance Authority on the same basis as fees charged to other credit rating agencies in accordance with this Regulation and with the Commission regulation referred to in paragraph 2.

The amounts collected by the EFTA Surveillance Authority in accordance with this paragraph shall be passed on to ESMA without undue delay.”
  
- (r) In Article 20:
  - (i) in paragraph 1, the words “or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) in the second sentence of paragraph 2, the words “or, in the case of a credit rating agency established in an EFTA State, not to prepare a draft for the EFTA Surveillance Authority to that effect,” shall be inserted after the word “concerned”.
  
- (s) In Article 21:
  - (i) in paragraph 1, the words “or the EFTA Surveillance Authority in the case of credit rating agencies established in an EFTA State,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 5, the following shall be added:

“That report shall also include the EFTA credit rating agencies registered under this Regulation pursuant to a decision of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall inform ESMA of all information necessary for the performance of its obligation under this paragraph.”;
  - (iii) as regards the EFTA States, paragraph 6 shall read as follows:

“The EFTA Surveillance Authority shall present annually to the Standing Committee of the EFTA States a report on supervisory measures taken and penalties imposed by the EFTA Surveillance Authority under this Regulation, including fines and periodic penalty payments.”.
  
- (t) In Article 23, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
  
- (u) In Article 23a, the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

- (v) In Article 23b:
- (i) in paragraph 1, the words “or, in the case of a credit rating agency or persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to credit rating agencies or credit rating activities, established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) as regards the EFTA States, in paragraphs 2, 3 and 5, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) as regards the EFTA States, point (g) of paragraph 3 shall read as follows:  
“indicate the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
  - (iv) in paragraph 5, the following subparagraph shall be added:  
“The EFTA Surveillance Authority shall without undue delay forward the information received under this Article to ESMA.”.
- (w) In Article 23c:
- (i) in paragraph 1, the words “or, in the case a person subject to investigation is established in an EFTA State, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 1, the following subparagraph shall be added:  
“Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in investigations upon ESMA’s request.”;
  - (iii) as regards the EFTA States, in paragraphs 2, 3, 4 and the first and second sentences of paragraph 6, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iv) as regards the EFTA States, the second sentence of paragraph 3 shall read as follows:  
“The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 36b and the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
  - (v) as regards the EFTA States, in the third sentence of paragraph 6, the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”;
  - (vi) as regards the EFTA States, the fourth sentence of paragraph 6 shall read as follows:  
“The lawfulness of the EFTA Surveillance Authority’s decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.
- (x) In Article 23d:
- (i) in paragraph 1, the words “or, in the case of legal persons established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 1, the following subparagraph shall be added:  
“The EFTA Surveillance Authority shall without undue delay forward the information obtained under this Article to ESMA.”;
  - (iii) as regards the EFTA States, in paragraphs 2 to 7 and the first and second sentences of paragraph 9, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iv) in paragraph 2, the following subparagraph shall be added:

- “Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in on-site inspections upon ESMA’s request.”;
- (v) as regards the EFTA States, the second sentence of paragraph 4 shall read as follows:
- “The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 36b as well as the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;
- (vi) as regards the EFTA States, in the third sentence of paragraph 9, the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”;
- (vii) as regards the EFTA States, the fourth sentence of paragraph 9 shall read as follows:
- “The lawfulness of the EFTA Surveillance Authority’s decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”.
- (y) In Article 23e:
- (i) as regards the EFTA States, in paragraph 1, first sentence, the words “ESMA shall appoint an independent investigating officer within ESMA to investigate the matter” shall read “the EFTA Surveillance Authority shall appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter following consultations with ESMA.”
- (ii) in paragraph 1, the following subparagraph shall be added:
- “The investigating officer appointed by the EFTA Surveillance Authority shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from the College of the EFTA Surveillance Authority and ESMA’s Board of Supervisors.”;
- (iii) as regards the EFTA States, in paragraphs 2, 3 and 4, the words “and the EFTA Surveillance Authority” shall be inserted after the word “ESMA’s Board of Supervisors”;
- (iv) in the third subparagraph of paragraph 2, the words “and the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (v) as regards the EFTA States, in paragraph 5, after the words “and 36c,”, the remainder of the sentence shall read as follows:
- “the EFTA Surveillance Authority shall decide if one or more of the infringements listed in Annex III has been committed by the persons who have been subject to investigation, and in such case, will take a supervisory measure in accordance with Article 24 and impose a fine in accordance with Article 36a.
- The EFTA Surveillance Authority shall provide ESMA with all information and files necessary for the performance of its obligation under this paragraph.”;
- (vi) in paragraph 6, the words “or the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”;
- (vii) as regards the EFTA States, in paragraph 8, the word “ESMA” shall read “the EFTA Surveillance Authority”.
- (z) In Article 24:
- (i) in paragraph 1, the words “or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the words “ESMA’s Board of Supervisors”;
- (ii) as regards the EFTA States, in paragraphs 2 and 4, the words “ESMA’s Board of Supervisors” shall read “the EFTA Surveillance Authority”;

- (iii) in paragraph 4, the words “ESMA’s decision” shall be replaced by the words “the decision of ESMA or the EFTA Surveillance Authority, as the case may be,”;
- (iv) in paragraph 5, the following subparagraphs shall be added:

“Without undue delay, the EFTA Surveillance Authority shall notify any decision adopted pursuant to paragraph 1 to the credit rating agency established in an EFTA State concerned and shall communicate any such decision to the competent authorities and the sectoral competent authorities, the Commission, ESMA, EBA and EIOPA. ESMA shall make public any such decision on its website within 10 working days from the date when it was adopted. The EFTA Surveillance Authority shall also make public any of its own decisions on its website within 10 working days from the date when it was adopted.

When making public a decision of the EFTA Surveillance Authority as referred to in the third subparagraph, ESMA and the EFTA Surveillance Authority shall also make public the right for the credit rating agency concerned to have the decision reviewed by the EFTA Court, the fact, where relevant, that such proceedings have been instituted, specifying that actions brought before the EFTA Court do not have suspensory effect, and the fact that it is possible for the EFTA Court to suspend the application of the contested decision in accordance with Article 40 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”;

- (za) In Article 25:

- (i) in paragraph 1, the following subparagraphs shall be added:

“Before preparing any draft for the EFTA Surveillance Authority under Article 24(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the findings. ESMA's Board of Supervisors shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Article 24(1) only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The third and fourth subparagraphs shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case the EFTA Surveillance Authority may adopt an interim decision, and the persons concerned shall be given the opportunity to be heard by ESMA's Board of Supervisors as soon as possible after the decision is taken”;

- (ii) in paragraph 2, the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”.

- (zb) In Articles 26 and 27(1), the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

- (zc) In Article 27(2), the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.

- (zd) In Article 30:

- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted before the words “may delegate specific supervisory tasks”;
- (ii) in paragraphs 2, 3 and 4 the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
- (iii) the following paragraph shall be added:

“5. Prior to the delegation of a task, the EFTA Surveillance Authority and ESMA shall consult each other.”.

- (ze) In Article 31:
- (i) in the second subparagraph of paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”;
  - (ii) in paragraph 2, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the notifying competent authority may request that ESMA”;
  - (iii) in paragraph 2, the following subparagraph shall be added:

“If the request from a national competent authority concerns a credit rating agency established in an EFTA State, ESMA shall consult the EFTA Surveillance Authority without undue delay.”.
- (zf) In Article 32:
- (i) in paragraph 1, the words “, the EFTA Surveillance Authority” shall be inserted after the first use of the word “ESMA”;
  - (ii) in paragraph 1, the words “, for the EFTA Surveillance Authority” shall be inserted after the second use of the word “ESMA”;
  - (iii) in paragraph 1, the words “or the EFTA Surveillance Authority” shall be inserted after the third use of the word “ESMA”;
  - (iv) in paragraph 2, the words “, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (zg) In Article 35a(6), the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (zh) In Article 36a:
- (i) in paragraph 1, the words “or, in the case of a credit rating agency established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the words “ESMA’s Board of Supervisors” and “ESMA”;
  - (ii) as regards the EFTA States, in paragraph 2, the word “ESMA” shall read “the EFTA Surveillance Authority”.
- (zi) In Article 36b:
- (i) in paragraph 1, the words “or, in the case the credit rating agency or person concerned is established in an EFTA State, the EFTA Surveillance Authority,” shall be inserted after the words “ESMA’s Board of Supervisors”;
  - (ii) in paragraph 4, the words “or, as the case may be, of the EFTA Surveillance Authority’s decision” shall be added after the words “ESMA’s decision”.
- (zj) In Article 36c:
- (i) in paragraph 1, the following subparagraphs shall be added:

“Before preparing any draft for the EFTA Surveillance Authority under Article 36a or points (a) to (d) of Article 36b(1), ESMA’s Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the findings. ESMA’s Board of Supervisors shall base its drafts only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The EFTA Surveillance Authority shall base its decisions under Article 36a or points (a) to (d) of Article 36b(1) only on findings on which the persons subject to the proceedings have had the opportunity to comment.”;

- (ii) as regards the EFTA States, in paragraph 2, the words “ESMA’s file” shall read “the file of ESMA and the EFTA Surveillance Authority”.
- (zk) In Article 36d:
  - (i) in paragraph 1, the following shall be added:
 

“The EFTA Surveillance Authority shall also disclose to the public every fine and periodic penalty that it has imposed pursuant to Articles 36a and 36b, subject to the conditions laid down in this paragraph as regards the disclosure of fines and periodic penalties by ESMA”;
  - (ii) as regards the EFTA States, in paragraph 3, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (iii) as regards the EFTA States, in paragraph 3, the words “the Court of Justice of the European Union” shall read “the EFTA Court”;
  - (iv) in paragraph 4, the following subparagraph shall be added:
 

“The Standing Committee of the EFTA States shall determine the allocation of the amounts of the fines and periodic penalty payments collected by the EFTA Surveillance Authority.”.
- (zl) Article 40a shall not apply as regards the EFTA States.
- (zm) In point 7 of Part I and point 3 of Part II of Annex IV, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.

31eba.<sup>{238}</sup>**32010 D 0578**: Commission Decision 2010/578/EU of 28 September 2010 on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 254, 29.9.2010, p. 46).

31ebb.<sup>{239}</sup>**32012 D 0627**: Commission Implementing Decision 2012/627/EU of 5 October 2012 on the recognition of the legal and supervisory framework of Australia as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 274, 9.10.2012, p. 30).

31ebc.<sup>{240}</sup>**32012 D 0628**: Commission Implementing Decision 2012/628/EU of 5 October 2012 on the recognition of the legal and supervisory framework of the United States of America as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 274, 9.10.2012, p. 32).

31ebd.<sup>{241}</sup>**32012 D 0630**: Commission Implementing Decision 2012/630/EU of 5 October 2012 on the recognition of the legal and supervisory framework of Canada as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 278, 12.10.2012, p. 17).

31ebe.<sup>{242}</sup>**32014 D 0245**: Commission Implementing Decision 2014/245/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 65).

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<sup>{238}</sup> Point inserted by Decision No 84/2013 (OJ L 291, 31.10.2013, p. 46 and EEA Supplement No 61, 31.10.2013, p. 53), e.i.f. 1.8.2014.

<sup>{239}</sup> Point inserted by Decision No 84/2013 (OJ L 291, 31.10.2013, p. 46 and EEA Supplement No 61, 31.10.2013, p. 53), e.i.f. 1.8.2014.

<sup>{240}</sup> Point inserted by Decision No 84/2013 (OJ L 291, 31.10.2013, p. 46 and EEA Supplement No 61, 31.10.2013, p. 53), e.i.f. 1.8.2014.

<sup>{241}</sup> Point inserted by Decision No 84/2013 (OJ L 291, 31.10.2013, p. 46 and EEA Supplement No 61, 31.10.2013, p. 53), e.i.f. 1.8.2014.

<sup>{242}</sup> Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

- 31ebf.<sup>{243}</sup>**32014 D 0246**: Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 68).
- 31ebg.<sup>{244}</sup>**32014 D 0247**: Commission Implementing Decision 2014/247/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies(OJ L 132, 3.5.2014, p. 71).
- 31ebh.<sup>{245}</sup>**32014 D 0248**: Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 73).
- 31ebi.<sup>{246}</sup>**32014 D 0249**: Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 76).
- 31ej.<sup>{247}</sup>**32012 R 0272**: Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (OJ L 90, 28.3.2012, p. 6).

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

- (a) In Article 1, as regards the EFTA States, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the European Securities and Markets Authority (ESMA)”.
- (b) In Article 2, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (c) In Article 5(3):
  - (i) in the fourth subparagraph, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (ii) the following subparagraph shall be added:
 

“When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to send the invoices for the instalments, ESMA shall inform the EFTA Surveillance Authority of the calculations necessary as regards each credit rating agency sufficiently in advance of the respective payment date.”.
- (d) In Article 6(7):
  - (i) as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (ii) the following subparagraph shall be added:
 

“When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to reimburse part of the registration fee paid, ESMA shall

<sup>{243}</sup> Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

<sup>{244}</sup> Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

<sup>{245}</sup> Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

<sup>{246}</sup> Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

<sup>{247}</sup> Point and adaptation text inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

without delay make available the amounts to be reimbursed to a credit rating agency to the EFTA Surveillance Authority for that purpose.”

- (e) In Article 9:
- (i) in paragraph 1, the words “Only ESMA” shall be replaced by the words “Only ESMA or, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority”;
  - (ii) the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.

31ebk. {<sup>248</sup>} **32012 R 0446**: Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies (OJ L 140, 30.5.2012, p. 2).

31ebl. {<sup>249</sup>} **32012 R 0447**: Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies (OJ L 140, 30.5.2012, p. 14).

31ebm. {<sup>250</sup>} **32012 R 0448**: Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority (OJ L 140, 30.5.2012, p. 17).

31ebn. {<sup>251</sup>} **32012 R 0449**: Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies (OJ L 140, 30.5.2012, p. 32).

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

- (a) In Article 1, as regards the EFTA States, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (b) In Chapter 2 and in Annexes IV and V, as regards the EFTA States, the word “ESMA” shall read “the EFTA Surveillance Authority”.

31ebo. {<sup>252</sup>} **32012 R 0946**: Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is to be incorporated (OJ L 282, 16.10.2012, p. 23).

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

- (a) In Article 1, as regards the EFTA States, the words “the European Securities and Markets Authority (ESMA)” and “ESMA” shall read “the EFTA Surveillance Authority”.

{<sup>248</sup>} Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

{<sup>249</sup>} Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

{<sup>250</sup>} Point inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

{<sup>251</sup>} Point and adaptation text inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

{<sup>252</sup>} Point and adaptation text inserted by Decision No 205/2016 (OJ L 46, 23.2.2017, p. 48 and EEA Supplement No 13, 23.2.2017, p. 57), e.i.f. 1.10.2016.

- (b) In Article 2, as regards the EFTA States, the words “and the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”.
- (c) In Article 3, as regards the EFTA States:
- (i) in paragraph 1, the words “and the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”;
  - (ii) the words “inform the EFTA Surveillance Authority thereof. The EFTA Surveillance Authority shall, without undue delay,” shall be inserted after the words “it shall” in paragraphs 2, 4 and 5 and before the words “take a decision” in paragraph 3;
  - (iii) in the second subparagraph of paragraph 4 and in the third sentence of the first subparagraph of paragraph 5, the words “, before preparing a draft for the EFTA Surveillance Authority, or the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”;
  - (iv) in the third subparagraph of paragraph 4 and in the second subparagraph of paragraph 5, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”;
  - (v) in paragraph 6, the words “ESMA’s Board of Supervisors” shall read “the EFTA Surveillance Authority”.
- (d) In Article 4, as regards the EFTA States:
- (i) in the first subparagraph, the words “Board of Supervisors” and “Board of Supervisor” shall read “the EFTA Surveillance Authority”;
  - (ii) in the third subparagraph, the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the words “ESMA’s Board of Supervisors”.
- (e) In Article 5, as regards the EFTA States:
- (i) the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (ii) the words “Board of Supervisors” shall read “the EFTA Surveillance Authority”.
- (f) In Article 6, as regards the EFTA States:
- (i) in paragraphs 1 and 4, the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (ii) in paragraphs 3 and 5, the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
  - (iii) in paragraph 5, the words “the Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (1), and before the Court of Justice of the European Union, in accordance with Article 36e of Regulation (EC) No 1060/2009” shall read “the EFTA Court in accordance with Article 35 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.
- (g) In Article 7, as regards the EFTA States:
- (i) the word “ESMA” shall read “the EFTA Surveillance Authority”;
  - (ii) in paragraph 5(b), the words “ESMA Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, and the Court of Justice of the European Union, in accordance with Article 36e of Regulation (EC) No 1060/2009” shall read “the EFTA Court in accordance with Article 35 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.

31ec. [ ] {<sup>253</sup>}

31ed.{<sup>254</sup>} **32010 D 1203(02)**: Commission Decision 2010/C 326/07 of 2 November 2010 setting up the European Multi-Stakeholder Forum on Electronic Invoicing (e-invoicing) (OJ C 326, 3.12.2010, p. 13).

Modalities for association of the EFTA States in accordance with Article 101 of the Agreement:

Each EFTA State may appoint a person to participate as an observer in the meetings of the European Multi-Stakeholder Forum on Electronic Invoicing (e-invoicing).

31f.{<sup>255</sup>} **32010 R 1092**: Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

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

- (a) The relevant authorities of the EFTA States shall participate in the work of the European Systemic Risk Board (ESRB).
- (b) Notwithstanding the provisions of Protocol 1 to this Agreement, the terms “Member State(s)”, “competent authorities”, and “supervisory authorities” shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities and supervisory authorities, respectively. This shall not apply as regards Articles 5(2), 9(5) and 11(1) (c).
- (c) The following shall be added in Article 6(2):
  - “(c) the Governors of the national central banks of the EFTA States, or, as regards Liechtenstein, a high-level representative of the Ministry of Finance;
  - (d) a College Member of the EFTA Surveillance Authority, whenever relevant to its tasks.

The members of the General Board without voting rights referred to in points (c) and (d) shall not participate in the work of the General Board where the situation of individual EU financial institutions or EU Member States may be discussed.”

- (d) The following point shall be added in Article 13(1):
  - “(i) one representative of each national central bank of the EFTA States or, as regards Liechtenstein, of the Ministry of Finance. These representatives shall not participate in the work of the Advisory Technical Committee where the situation of individual EU financial institutions or EU Member States may be discussed.”
- (e) The following subparagraph shall be added in Article 15(2):
 

“The EFTA Surveillance Authority, the national central banks, the national supervisory authorities and national statistics authorities of the EFTA States shall cooperate closely with the ESRB and, shall provide it with all the information necessary for the fulfilment of its tasks in accordance with the EEA Agreement.”
- (f) In Article 16(3), the words “, and in case an EFTA State or one or more of its national supervisory authorities is an addressee, the Standing Committee of the EFTA States” shall be added after the words “the Commission” and the words “and the EFTA Surveillance Authority” shall be added after the word “ESAs”.

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{<sup>253</sup>} Point inserted by Decision No 53/2012 (OJ L 207, 2.8.2012, p. 33 and EEA Supplement No 43, 2.8.2012, p. 40), e.i.f. 1.8.2014, and subsequently deleted by Decision No 84/2013 (OJ L 291, 31.10.2013, p. 46 and EEA Supplement No 61, 31.10.2013, p. 53), e.i.f. 1.8.2014.

{<sup>254</sup>} Point inserted by Decision No 18/2013 (OJ L 144, 30.5.2013, p. 23 and EEA Supplement No 31, 30.5.2013, p. 27), e.i.f. 2.2.2013.

{<sup>255</sup>} Point and adaptation text inserted by Decision No 198/2016 (OJ L 46, 23.2.2017, p. 1 and EEA Supplement No 13, 23.2.2017, p. 1), e.i.f. 1.10.2016.

- (g) In Article 17(1) and (2) and in Article 18(1), the words “and, in case an EFTA State or one or more of its national supervisory authorities is an addressee, the Standing Committee of the EFTA States” shall be added after the word “Council”.
- (h) Article 17(3) shall not apply with respect to decisions regarding recommendations addressed to one or more EFTA States.
- (i) In Article 18(4) the words “, the EFTA Surveillance Authority and the Standing Committee of the EFTA States” shall be added after the word “ESAs”.

31g.<sup>{256}</sup> **32010 R 1093**: Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12), as amended by:

- **32013 R 1022**: Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 (OJ L 287, 29.10.2013, p. 5).

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

- (a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Banking Authority), hereinafter referred to as “the Authority”, its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other’s work as provided for in this Agreement.

- (b) 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.
- (c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial institutions. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial institutions.
- (d) Unless otherwise provided for in this Agreement, the Authority 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.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint

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<sup>{256}</sup> Point and adaptation text inserted by Decision No 199/2016 (OJ L 46, 23.2.2017, p. 4 and EEA Supplement No 13, 23.2.2017, p. 5), e.i.f. 1.10.2016.

Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

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

(f) As regards the EFTA States, Article 1(4) shall read as follows:

“The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.”

(g) In Article 9(5):

(i) as regards the EFTA States, in the first subparagraph, the words “The Authority” shall read “The EFTA Surveillance Authority”;

(ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a 3-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”

(h) In Article 16(4), the words “, the Standing Committee of the EFTA States and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.

(i) In Article 17:

(i) the words “Union law” shall read “the EEA Agreement”;

(ii) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;

(iii) in paragraph 2, the words “, the Standing Committee of the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;

(iv) the following subparagraph shall be added in paragraph 2 :

“Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and

provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.”;

- (v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

“The competent authority shall, within 10 working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.”;

- (vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

“4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority’s recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority’s formal opinion shall take into account the Authority’s recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within 10 working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.”;

- (vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, and the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (ix) as regards the EFTA States, paragraph 8 shall read as follows:

“8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial institutions in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.”.

- (j) In Article 18:

- (i) as regards the EFTA States, in paragraphs 3 and 4, the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (ii) the following subparagraph shall be added in paragraphs 3 and 4:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iii) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.
- (k) In Article 19:
- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;
- (ii) in paragraph 3, the words “in the EU Member States” shall be inserted after the words “with binding effects for the competent authorities concerned”;
- (iii) the following subparagraphs shall be added in paragraph 3:
- “Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.
- Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.
- Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;
- (iv) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, the words “the Authority” shall read “the EFTA Surveillance Authority” and the words “Union law” shall read “the EEA Agreement”;
- (v) in paragraph 4, the following subparagraph shall be added:
- “Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”.
- (l) The following subparagraphs shall be added in Article 20:
- “Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).
- Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).
- Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and/or the European Supervisory Authority (European Securities and Markets Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.”

- (m) In Article 21(4), the words “, or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “The Authority”.
- (n) In Articles 22(1a) and 31(d), the words “as well as the EFTA Surveillance Authority and the Standing Committee of the EFTA States” shall be inserted after the words “the Commission”.
- (o) In Articles 22(4) and 34(1), the words “, the EFTA Surveillance Authority or the Standing Committee of the EFTA States,” shall be inserted after the words “the European Parliament, the Council or the Commission”.
- (p) In Article 32(3a), as regards the EFTA States:
- (i) the words “It may request” shall read “The EFTA Surveillance Authority may request”;
  - (ii) the words “the Authority and the EFTA Surveillance Authority” shall be inserted before the words “may participate”;
  - (iii) the following subparagraph shall be added:  

‘Requests by the EFTA Surveillance Authority under this paragraph shall, without undue delay, be made on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.’
- (q) In Article 35(5), the words “, to the national central bank” shall not apply to Liechtenstein.
- (r) In Article 36(5), the words “and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (s) In Article 38, as regards the EFTA States:
- (i) the words “the Authority”, “the Authority and the Commission”, “the Authority, the Commission” and “the Commission and the Authority” shall read “the EFTA Surveillance Authority”;
  - (ii) the words “the Council” shall read “the Standing Committee of the EFTA States”;
  - (iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:  

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;
  - (iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:  

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;
  - (v) the following subparagraph shall be added after the first subparagraph of paragraph 4:  

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;
  - (vi) the following paragraph shall be added:  

“6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”

- (t) In Article 39:
- (i) the following subparagraph shall be added in paragraph 1:
- “When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.”;
- (ii) the following subparagraphs shall be added in paragraph 4:
- “Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.
- The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.”;
- (iii) as regards the EFTA States, in paragraph 5 the words “or the EFTA Surveillance Authority, as the case may be” shall be inserted after the words “the Authority”.
- (u) In Article 40(1):
- (i) in point (b), the following shall be inserted after the words “Member State”:
- “and, without the right to vote, the head of the national public authority competent for the supervision of credit institutions in each EFTA State.”;
- (ii) in point (f), the words “and of the EFTA Surveillance Authority” shall be inserted after the word “Authorities”.
- (v) In Article 43:
- (i) in paragraph 2, the words “, prepare drafts for the EFTA Surveillance Authority,” shall be inserted after the word “decisions”;
- (ii) in paragraphs 4 and 6, the words “, the EFTA Surveillance Authority, the Standing Committee of the EFTA States,” shall be inserted after the words “the Council”.
- (w) In Article 44:
- (i) the following subparagraph shall be added in paragraph 1:
- “The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.”;
- (ii) in paragraph 4, the words “as well as the representative of the EFTA Surveillance Authority” shall be inserted after the words “the Executive Director”;
- (iii) the following subparagraph shall be added in paragraph 4:
- “EFTA States’ members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial institutions.”.
- (x) In Article 57(2), the following words shall be inserted after the words “Member State”:

“as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.”

- (y) The following subparagraph shall be added in Article 60(4):

“If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20 as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.”

- (z) The following subparagraphs shall be added in Article 62(1) (a):

“The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial institutions under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7”

- (za) The following shall be added in Article 67:

“The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.”

- (zb) The following paragraph shall be added in Article 68:

“5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.”

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”

- (zc) The following paragraph shall be added in Article 72:

“4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.”

31h.<sup>{257}</sup> **32010 R 1094**: Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

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

- (a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Insurance and

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<sup>{257}</sup> Point and adaptation text inserted by Decision No 200/2016 (OJ L 46, 23.2.2017, p. 13 and EEA Supplement No 13, 23.2.2017, p. 16), e.i.f. 1.10.2016.

Occupational Pensions Authority), hereinafter referred to as “the Authority”, its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other’s work as provided for in this Agreement.

- (b) 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.
- (c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial institutions. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial institutions.
- (d) Unless otherwise provided for in this Agreement, the Authority 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.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

- (e) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement.
- (f) In Article 1, as regards the EFTA States:
  - (i) in paragraph 4, the words “or the EFTA Surveillance Authority, as the case may be” shall be inserted after the words “the Authority”;
  - (ii) paragraph 5 shall read as follows:

“The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.”.
- (g) In Article 9(5):
  - (i) as regards the EFTA States, in the first subparagraph, the words “The Authority” shall read “The EFTA Surveillance Authority”;
  - (ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”

- (h) In Article 16(4), the words “, the Standing Committee of the EFTA States and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (i) In Article 17:
  - (i) the words “Union law” shall read “the EEA Agreement”;
  - (ii) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;
  - (iii) in paragraph 2, the words “, the Standing Committee of the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;
  - (iv) the following subparagraph shall be added in paragraph 2 :
 

“Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.”;
  - (v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:
 

“The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.”;
  - (vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:
 

“4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority’s recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority’s formal opinion shall take into account the Authority’s recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.”;

(vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, and the words “the Authority” shall read “the EFTA Surveillance Authority”;

(viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

(ix) as regards the EFTA States, paragraph 8 shall read as follows:

“8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial institutions in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.”.

(j) In Article 18:

(i) as regards the EFTA States, in paragraphs 3 and 4, the words “the Authority” shall read “the EFTA Surveillance Authority”;

(ii) the following subparagraph shall be added in paragraphs 3 and 4:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

(iii) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.

(k) In Article 19:

(i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;

(ii) in paragraph 3, the words “in the EU Member States” shall be inserted after the words “with binding effects for the competent authorities concerned”;

(iii) the following subparagraphs shall be added in paragraph 3:

“Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iv) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, the words “the Authority” shall read “the EFTA Surveillance Authority” and the words “Union law” shall read “the EEA Agreement”;

- (v) in paragraph 4, the following subparagraph shall be added:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”.

- (l) The following subparagraphs shall be added in Article 20:

“Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Banking Authority) and/or the European Supervisory Authority (European Securities and Markets Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.”

- (m) In Article 21(4), the words “, or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “The Authority”.
- (n) In Articles 22(4) and 34(1), the words “, the EFTA Surveillance Authority or the Standing Committee of the EFTA States,” shall be inserted after the words “the European Parliament, the Council or the Commission”.
- (o) In Article 35(5), the words “, to the national central bank” shall not apply to Liechtenstein.
- (p) In Article 38, as regards the EFTA States:
- (i) the words “the Authority”, “the Authority and the Commission”, “the Authority, the Commission” and “the Commission and the Authority” shall read “the EFTA Surveillance Authority”;
- (ii) the words “the Council” shall read “the Standing Committee of the EFTA States”;
- (iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a

decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;

- (v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;

- (vi) the following paragraph shall be added:

“6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”.

- (q) In Article 39:

- (i) the following subparagraph shall be added in paragraph 1:

“When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision to be taken to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.”;

- (ii) the following subparagraphs shall be added in paragraph 4:

“Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.”;

- (iii) as regards the EFTA States, in paragraph 5 the words “or the EFTA Surveillance Authority, as the case may be” shall be inserted after the words “the Authority”.

- (r) In Article 40(1):

- (i) in point (b), the following shall be inserted after the words “Member State”:

“and, without the right to vote, the head of the national public authority competent for the supervision of financial institutions in each EFTA State,”;

- (ii) in point (e), the words “and of the EFTA Surveillance Authority” shall be inserted after the word “Authorities”.

- (s) In Article 43:

- (i) in paragraph 2, the words “, prepare drafts for the EFTA Surveillance Authority,” shall be inserted after the word “decisions”;

- (ii) in paragraphs 4 and 6, the words “, the EFTA Surveillance Authority, the Standing Committee of the EFTA States,” shall be inserted after the words “the Council”.
- (t) In Article 44:
- (i) the following subparagraph shall be added in paragraph 1:
- “The provisions of this paragraph shall apply, *mutatis mutandis*, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.”;
- (ii) in paragraph 4, the words “as well as the representative of the EFTA Surveillance Authority” shall be inserted after the words “the Executive Director”;
- (iii) the following subparagraph shall be added in paragraph 4:
- “EFTA States’ members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial institutions.”.
- (u) In Article 57(2), the following words shall be inserted after the words “Member State”:
- “as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.”
- (v) The following subparagraph shall be added in Article 60(4):
- “If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20 as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.”
- (w) The following subparagraphs shall be added in Article 62(1)(a):
- “The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.
- For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial institutions under this point, the weighting of each EFTA State shall be the following:
- Iceland: 2
- Liechtenstein: 1
- Norway: 7”
- (x) The following shall be added in Article 67:
- “The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.”
- (y) The following paragraph shall be added in Article 68:
- “5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.”
- By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”

(z) The following paragraph shall be added in Article 72:

“4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.”

31i. <sup>{258}</sup> **32010 R 1095**: Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84), as amended by:

-<sup>{259}</sup> **32011 L 0061**: Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011, p. 1).

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

(a) The competent authorities of the EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of EU Member States in the work of the European Supervisory Authority (European Securities and Markets Authority), hereinafter referred to as “the Authority”, its Board of Supervisors, and all preparatory bodies of the Authority, including internal committees and panels, subject to the provisions of this Agreement.

Without prejudice to Articles 108 and 109 of this Agreement, the Authority shall, but for the right to vote, have the right to participate in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Authority as provided for in this Agreement.

The rules of procedure of the Authority and of the EFTA Surveillance Authority shall give full effect to their participation, as well as that of the EFTA States competent authorities, in each other’s work as provided for in this Agreement.

(b) 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.

(c) Unless otherwise provided for in this Agreement, the internal rules of procedure of the Authority shall apply *mutatis mutandis* as regards matters concerning the EFTA competent authorities and financial market participants. In particular, the preparation of drafts for the EFTA Surveillance Authority shall be subject to the same internal procedures as the preparation of decisions adopted regarding similar issues concerning the EU Member States, including their competent authorities and financial market participants.

(d) Unless otherwise provided for in this Agreement, the Authority 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.

In case of disagreement between the Authority and the EFTA Surveillance Authority with regard to the administration of the provisions of the Regulation, the Chairperson of the Authority and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Chairperson of the Authority or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which

<sup>{258}</sup> Point and adaptation text inserted by Decision No 201/2016 (OJ L 46, 23.2.2017, p. 22 and EEA Supplement No 13, 23.2.2017, p. 26), e.i.f. 1.10.2016.

<sup>{259}</sup> Indent and words “, as amended by” above added by Decision No 202/2016 (OJ L 46, 23.2.2017, p. 30 and EEA Supplement No 13, 23.2.2017, p. 36), e.i.f. 1.10.2016.

shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee (OJ L 85, 30.3.1994, p. 60), a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.

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

- (f) As regards the EFTA States, Article 1(4) shall read as follows:

“The provisions of this Regulation are without prejudice to the powers of the EFTA Surveillance Authority, in particular under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, to ensure compliance with the EEA Agreement or that Agreement.”

- (g) In Article 9(5):

- (i) as regards the EFTA States, in the first subparagraph, the words “The Authority” shall read “The EFTA Surveillance Authority”;

- (ii) as regards the EFTA States, the second and third subparagraphs shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider preparing a new draft for the EFTA Surveillance Authority.

Where the Authority amends or revokes any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”

- (h) In Article 16(4), the words “, the Standing Committee of the EFTA States and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.

- (i) In Article 17:

- (i) the words “Union law” shall read “the EEA Agreement”;

- (ii) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;

- (iii) in paragraph 2, the words “, the Standing Committee of the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”;

- (iv) the following subparagraph shall be added in paragraph 2:

“Where the Authority investigates an alleged breach or non-application of the EEA Agreement with regard to a competent authority of an EFTA State, it shall inform

the EFTA Surveillance Authority of the nature and purpose of the investigation and provide it regularly thereafter with the updated information necessary for the EFTA Surveillance Authority to appropriately perform its tasks under paragraphs 4 and 6.”;

- (v) as regards the EFTA States, the second subparagraph of paragraph 3 shall read as follows:

“The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to ensure compliance with the EEA Agreement.”;

- (vi) as regards the EFTA States, paragraphs 4 and 5 shall read as follows:

“4. Where the competent authority has not complied with the EEA Agreement within 1 month from receipt of the Authority’s recommendation, the EFTA Surveillance Authority may issue a formal opinion requiring the competent authority to take the action necessary to comply with the EEA Agreement. The EFTA Surveillance Authority’s formal opinion shall take into account the Authority’s recommendation.

The EFTA Surveillance Authority shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The EFTA Surveillance Authority may extend this period by 1 month.

Formal opinions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The competent authorities shall provide the Authority and the EFTA Surveillance Authority with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Authority and the EFTA Surveillance Authority of the steps it has taken or intends to take to comply with that formal opinion.”;

- (vii) as regards the EFTA States, in the first subparagraph of paragraph 6, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, and the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (viii) as regards the EFTA States, the second subparagraph of paragraph 6 shall read as follows:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (ix) as regards the EFTA States, paragraph 8 shall read as follows:

“8. The EFTA Surveillance Authority shall annually publish information on which competent authorities and financial market participants in the EFTA States have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6.”.

- (j) In Article 18:

- (i) as regards the EFTA States, in paragraphs 3 and 4, the words “the Authority” shall read “the EFTA Surveillance Authority”;

- (ii) the following subparagraph shall be added in paragraphs 3 and 4:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iii) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”.

(k) In Article 19:

- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Authority”;
- (ii) in paragraph 3, the words “in the EU Member States” shall be inserted after the words “with binding effects for the competent authorities concerned”;
- (iii) the following subparagraphs shall be added in paragraph 3:

“Where exclusively competent authorities of the EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the EFTA Surveillance Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned, and where such authorities fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority and the EFTA Surveillance Authority may take a decision requiring the competent authorities of respectively the EU Member States and the EFTA States concerned to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;

- (iv) as regards the EFTA States, in paragraph 4, the words “Without prejudice to the powers of the Commission under Article 258 TFEU” shall read “Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice”, the words “the Authority” shall read “the EFTA Surveillance Authority” and the words “Union law” shall read “the EEA Agreement”;
- (v) in paragraph 4, the following subparagraph shall be added:

“Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”.

(l) The following subparagraphs shall be added in Article 20:

“Where exclusively competent authorities of the EFTA States are concerned, the EFTA Surveillance Authority may take a decision in accordance with Article 19(3) and (4).

Where competent authorities of one or more EU Member States and one or more EFTA States are concerned the Authority respectively the EFTA Surveillance Authority may adopt a decision in accordance with Article 19(3) and (4).

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by, as appropriate, the Authority, the European Supervisory Authority (European Banking Authority) and/or the European Supervisory Authority (European

Insurance and Occupational Pensions Authority) at their own initiative or at the request of the EFTA Surveillance Authority. The Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate, shall reach, in accordance with Article 56, joint positions and shall adopt the decisions and/or drafts in parallel.”

- (m) In Article 21(4), the words “, or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “The Authority”.
- (n) In Articles 22(4) and 34(1), the words “, the EFTA Surveillance Authority or the Standing Committee of the EFTA States,” shall be inserted after the words “the European Parliament, the Council or the Commission”.
- (o) In Article 35(5), the words “, to the national central bank” shall not apply to Liechtenstein.
- (p) In Article 38, as regards the EFTA States:
  - (i) the words “the Authority”, “the Authority and the Commission”, “the Authority, the Commission” and “the Commission and the Authority” shall read “the EFTA Surveillance Authority”;
  - (ii) the words “the Council” shall read “the Standing Committee of the EFTA States”;
  - (iii) the following subparagraph shall be added after the fourth subparagraph of paragraph 2:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State concerned to the Authority and the Commission. The decision of the EFTA Surveillance Authority to maintain, amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.”;
  - (iv) the following subparagraph shall be added after the third subparagraph of paragraph 3:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;
  - (v) the following subparagraph shall be added after the first subparagraph of paragraph 4:

“The EFTA Surveillance Authority shall without undue delay forward the notification of the EFTA State to the Authority, the Commission and the Council.”;
  - (vi) the following paragraph shall be added:

“6. Where, in a case falling under Article 19(3), in combination with Article 20 as the case may be, and concerning a disagreement also involving the competent authorities of one or more EFTA States a decision is suspended, or terminated pursuant to this Article, any parallel decision of the EFTA Surveillance Authority in the case concerned shall be equally suspended or terminated.

Where, in such cases, the Authority amends or revokes its decision, the Authority shall, without undue delay, prepare a draft for the EFTA Surveillance Authority.”.
- (q) In Article 39:
  - (i) the following subparagraph shall be added in paragraph 1:

“When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Authority shall inform the EFTA Surveillance Authority, setting a time limit within which the EFTA Surveillance Authority may allow any natural or legal person, including a competent authority, which is the addressee of the decision

to be taken, to express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.”;

- (ii) the following subparagraphs shall be added in paragraph 4:

“Where the EFTA Surveillance Authority has taken a decision pursuant to Article 18(3) or (4) it shall review that decision at appropriate intervals. The EFTA Surveillance Authority shall inform the Authority of forthcoming revisions, as well as of any developments that are relevant to the review.

The decision of the EFTA Surveillance Authority to amend or to revoke a decision shall be taken on the basis of drafts prepared by the Authority. In due time before any intended revision, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft.”;

- (iii) as regards the EFTA States, in paragraph 5, the words “or the EFTA Surveillance Authority, as the case may be” shall be inserted after the words “the Authority”.

- (r) In Article 40(1):

- (i) in point (b), the following shall be inserted after the words “Member State”:

“and, without the right to vote, the head of the national public authority competent for the supervision of financial market participants in each EFTA State.”;

- (ii) in point (e), the words “and of the EFTA Surveillance Authority” shall be inserted after the word “Authorities”.

- (s) In Article 43:

- (i) in paragraph 2, the words “, prepare drafts for the EFTA Surveillance Authority,” shall be inserted after the word “decisions”;

- (ii) in paragraphs 4 and 6, the words “, the EFTA Surveillance Authority, the Standing Committee of the EFTA States,” shall be inserted after the words “the Council”.

- (t) In Article 44:

- (i) the following subparagraph shall be added in paragraph 1:

“The provisions of this paragraph shall apply, mutatis mutandis, in the case of drafts prepared for the EFTA Surveillance Authority under the respective provisions of this Regulation.”;

- (ii) in paragraph 4, the words “as well as the representative of the EFTA Surveillance Authority” shall be inserted after the words “the Executive Director”;

- (iii) the following subparagraph shall be added in paragraph 4:

“EFTA States’ members of the Board of Supervisors pursuant to Article 40(1)(b) shall be entitled to attend discussions within the Board of Supervisors relating to individual financial market participants.”.

- (u) In Article 57(2), the following words shall be inserted after the words “Member State”:

“as well as one high-level representative of the relevant competent authority from each EFTA State and one representative of the EFTA Surveillance Authority.”

- (v) The following subparagraph shall be added in Article 60(4):

“If the appeal concerns a decision of the Authority adopted under Article 19, in combination with Article 20, as the case may be, in a case where the disagreement also involves the competent authorities of one or more EFTA States, the Board of Appeal shall invite the EFTA competent authority involved to file observations on communications from the parties to the

appeal proceedings, within specified time limits. The EFTA competent authority involved shall be entitled to make oral representations.”

- (w) The following subparagraphs shall be added in Article 62(1)(a):

“The EFTA national public authorities shall contribute financially to the budget of the Authority in accordance with this point.

For the purpose of determining the obligatory contributions from the EFTA national public authorities competent for the supervision of financial market participants under this point, the weighting of each EFTA State shall be the following:

Iceland: 2

Liechtenstein: 1

Norway: 7”

- (x) The following shall be added in Article 67:

“The EFTA States shall apply to the Authority and its staff the Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.”

- (y) The following paragraph shall be added in Article 68:

“5. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Authority.”

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Authority, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”

- (z) The following paragraph shall be added in Article 72:

“4. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of the Regulation, apply to the competent authorities of the EFTA States in regard to documents prepared by the Authority.”

### *ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE*

The Contracting Parties take note of the contents of the following acts:

32.<sup>{260}</sup> **374 X 0165:** Commission Recommendation 74/165/EEC of 6 February 1974 to the Member States concerning the application of the Council Directive of 24 April 1972. (OJ No L 87, 30.3.1974, p. 12).

33.<sup>{261}</sup> **381 X 0076:** Commission Recommendation 81/76/EEC of 8 January 1981 on the accelerated settlement of claims under insurance against civil liability in respect of the use of motor vehicles (OJ No L 57, 4.3.1981, p. 27).

<sup>{260}</sup> Point 31 renumbered as 32 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{261}</sup> Point 32 renumbered as 33 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

- 34.<sup>{262}</sup> **385 X 0612:** Council Recommendation 85/612/EEC of 20 December 1985 concerning the second subparagraph of Article 25(1) of Council Directive 85/611/EEC (OJ No L 375, 31.12.1985, p. 19).
- 35.<sup>{263}</sup> **387 X 0062:** Commission Recommendation 87/62/EEC of 22 December 1986 on monitoring and controlling large exposures of credit institutions (OJ No L 33, 4.2.1987, p.10).
- 36.<sup>{264}</sup> **387 X 0063:** Commission Recommendation 87/63/EEC of 22 December 1986 concerning the introduction of deposit-guarantee schemes in the Community (OJ No L 33, 4.2.1987, p. 16).
- 37.<sup>{265}</sup> **390 X 0109:** Commission Recommendation 90/109/EEC of 14 February 1990 on the transparency of banking conditions relating to cross-border financial transactions in the EEC (OJ No L 67, 15.3.1990, p. 39).
- 38.<sup>{266}</sup> **392 X 0048:** Commission Recommendation 92/48/EEC of 18 December 1991 on insurance intermediaries (OJ No L 19, 28.1.1992, p. 32).
- 39.<sup>{267}</sup> **397 X 0489:** Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder (OJ L 208, 2.8.1997, p. 52).
- 40.<sup>{268}</sup> **32000 X 0408:** Commission Recommendation 2000/408/EC of 23 June 2000 concerning disclosure of information on financial instruments and other items complementing the disclosure required according to Council Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 154, 27.6.2000, p. 36).
- 41.<sup>{269}</sup> **32004 H 0383:** Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (UCITS) (OJ L 144, 30.4.2004, p. 33), as corrected by OJ L 199, 7.6.2004, p. 24.
- 42.<sup>{270}</sup> **32004 H 0384:** Commission Recommendation 2004/384/EC of 27 April 2004 on some contents of the simplified prospectus as provided for in Schedule C of Annex I to Council Directive 85/611/EEC (OJ L 144, 30.4.2004, p. 42), as corrected by OJ L 199, 7.6.2004, p. 30.
- 43.<sup>{271}</sup> **32007 H 0657:** Commission Recommendation 2007/657/EC of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council (OJ L 267, 12.10.2007, p. 16).

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<sup>{262}</sup> Point 33 renumbered as 34 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{263}</sup> Point 34 renumbered as 35 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{264}</sup> Point 35 renumbered as 36 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{265}</sup> Point 36 renumbered as 37 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{266}</sup> Point inserted by Decision No 7/94 (OJ L 160, 28.6.1994, p. 1 and EEA Supplement No 17, 28.6.1994, p. 1), e.i.f. 1.7.1994, and subsequently renumbered as 38 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{267}</sup> Point inserted by Decision No 74/98 (OJ L 172, 8.7.1999, p. 53 and EEA Supplement No 30, 8.7.1999, p. 130), e.i.f. 1.8.1998, and subsequently renumbered as 39 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{268}</sup> Point inserted by Decision No 5/2001 (OJ L 66, 8.3.2001, p. 47 and EEA Supplement No 12, 8.3.2001, p. 5), e.i.f. 1.2.2001, and subsequently renumbered as 40 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{269}</sup> Point inserted by Decision No 12/2005 (OJ L 161, 23.6.2005, p. 29 and EEA Supplement No 32, 23.6.2005, p. 16), e.i.f. 9.2.2005, and subsequently renumbered as 41 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{270}</sup> Point inserted by Decision No 12/2005 (OJ L 161, 23.6.2005, p. 29 and EEA Supplement No 32, 23.6.2005, p. 16), e.i.f. 9.2.2005, and subsequently renumbered as 42 by Decision No 114/2007 (OJ L 047, 21.2.2008, p. 34 and EEA Supplement No 9, 21.2.2008, p. 28), e.i.f. 1.8.2009 .

<sup>{271}</sup> Point inserted by Decision No 51/2008 (OJ L 223, 21.8.2008, p. 49 and EEA Supplement No 52, 21.8.2008, p.22), e.i.f. 26.4.2008.

44.<sup>{272}</sup> **32009 H 0384**: Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

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<sup>{272}</sup> Point inserted by Decision No 120/2010 (OJ L 58, 3.3.2011, p. 77 and EEA Supplement No 12, 3.3.2011, p. 20), e.i.f. 1.11.2012.