

DECISION OF THE EEA JOINT COMMITTEE
No 385/2021

of 10 December 2021

amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012¹ is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2019/463 of 30 January 2019 amending Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to the list of exempted entities² is to be incorporated into the EEA Agreement.
- (3) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. Point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council) is amended as follows:
 - (i) The following indent is added:

‘ - **32015 R 2365**: Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 (OJ L 337, 23.12.2015, p. 1).’
 - (ii) The text of adaptation (zd) is replaced by the following:

‘In Article 81(3), as regards the EFTA States:

 - (i) in point (h), 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 (k), 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”.’
2. The following is inserted after point 31bgca (Commission Delegated Regulation (EU) 2018/480):

¹ OJ L 337, 23.12.2015, p. 1.

² OJ L 80, 22.3.2019, p. 16.

‘31bh. **32015 R 2365**: Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1), as amended by:

- **32019 R 0463**: Commission Delegated Regulation (EU) 2019/463 of 30 January 2019 (OJ L 80, 22.3.2019, p. 16).

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) References to the powers of the European Securities and Markets Authority (ESMA) under Regulation (EU) No 648/2012 of the European Parliament and of the Council in the Regulation shall be understood as referring, in the cases provided for in and in accordance with this Agreement, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
- (c) Unless otherwise provided for in this Agreement, 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.
- (d) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 5(6), 7(1) and 10 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) References to members of the ESCB shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States.
- (f) In Article 5:
 - (i) in paragraph 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”;
 - (ii) in paragraph 5, 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”;
 - (iii) in paragraph 6, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (g) In Article 6, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (h) In Article 7, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.

- (i) In Article 8:
- (i) in paragraph 1, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “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.”.
- (j) In Article 9, the words “or the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (k) In Article 10:
- (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”.
- (l) In Article 11(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 2.
The amounts collected by the EFTA Surveillance Authority in accordance with this paragraph shall be passed on to ESMA without undue delay.”.
- (m) In Article 18, the words “the EFTA Surveillance Authority,” shall be inserted after the words “EIOPA,”.
- (n) In Article 21(2), the words “and to the Standing Committee of the EFTA States” shall be inserted after the word “Council”.
- (o) In Article 22, as regards the EFTA States:
- (i) in paragraph 6, the words “before 13 January 2018” shall read “within two years of the entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021”;
 - (ii) in paragraph 7, the words “13 July 2017” shall read “six months after the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021”.
- (p) In Article 26(5), in the third sentence, the words “and to the EFTA Surveillance Authority” shall be inserted after the words “only to competent authorities”.

- (q) In Article 33, as regards the EFTA States, the second paragraph shall read as follows:

“This Regulation shall apply from the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021, with the exception of:

- (a) Article 4(1), which shall apply:
- (i) 6 months after the date of entry into force of the Decision of the EEA Joint Committee containing Commission Delegated Regulation (EU) 2019/356 for financial counterparties referred to in points (3)(a) and (b) of Article 3 and third-country entities referred to in point (3)(i) of Article 3 which would require authorisation or registration in accordance with the legislation referred to in points (3)(a) and (b) of Article 3 if they were established in the EEA;
 - (ii) 12 months after the date of entry into force of the Decision of the EEA Joint Committee containing Commission Delegated Regulation (EU) 2019/356 for financial counterparties referred to in points (3)(g) and (h) of Article 3 and third-country entities referred to in point (3)(i) of Article 3 which would require authorisation or registration in accordance with the legislation referred to in points (3)(g) and (h) of Article 3 if they were established in the EEA;
 - (iii) 15 months after the date of entry into force of the Decision of the EEA Joint Committee containing Commission Delegated Regulation (EU) 2019/356 for financial counterparties referred to in points (3)(c) to (f) of Article 3 and third-country entities referred to point (3)(i) of Article 3 which would require authorisation or registration in accordance with the legislation referred to in points (3)(c) to (f) of Article 3 if they were established in the Union; and
 - (iv) 15 months after the date of entry into force of the Decision of the EEA Joint Committee containing Commission Delegated Regulation (EU) 2019/356 for non-financial counterparties;
- (b) Article 13, which shall apply from one year after the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021;
- (c) Article 14, which shall apply from 18 months after the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021 in the case of collective investment undertakings subject to Directive 2009/65/EC or Directive 2011/61/EU that are constituted before the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021;

- (d) Article 15, which shall apply from six months after the date of entry into force of Decision of the EEA Joint Committee No 385/2021 of 10 December 2021, including for collateral arrangements existing on that date.”.’

Article 2

The texts of Regulation (EU) 2015/2365 and Delegated Regulation (EU) 2019/463 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 11 December 2021, provided that all the notifications under Article 103(1) of the EEA Agreement have been made*.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 10 December 2021.

*For the EEA Joint Committee
The President*

Rolf Einar Fife

*The Secretaries
To the EEA Joint Committee*

Hege M. Hoff

Mikołaj Karłowski

* Constitutional requirements indicated.