

DECISION OF THE EEA JOINT COMMITTEE
No 50/2021

of 5 February 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) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories¹ is to be incorporated into the EEA Agreement.
- (2) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council) of Annex IX to the EEA Agreement shall be amended as follows:

1. The following indent is added:
 - ‘- **32019 R 0834**: Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 (OJ L 141, 28.5.2019, p. 42).’
2. The following adaptation is inserted after adaptation (e):
 - ‘(ea) In Articles 4a(2) and 10(2), as regards the EFTA States, the words “17 June 2019” shall read “the date of entry into force of Decision of the EEA Joint Committee No 50/2021 of 5 February 2021”.’
3. The following adaptations are inserted after adaptation (f):
 - ‘(fa) In Article 6a:
 - (i) in paragraphs 1 and 2, the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (ii) in paragraph 4, the following subparagraphs shall be added:

“As regards the EFTA States, the EFTA Surveillance Authority shall, without undue delay after receipt of the request referred to in paragraph

¹ OJ L 141, 28.5.2019, p. 42.

1, on the basis of the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific classes of OTC derivatives or for the specific type of counterparty referred to in paragraph 1 by way of a decision, or reject the requested suspension. Where the EFTA Surveillance Authority rejects the requested suspension, it shall provide reasons therefore in writing to ESMA. The EFTA Surveillance Authority shall immediately inform the Standing Committee of the EFTA States thereof and forward it the reasons provided by ESMA. Such information shall not be made public.

The Commission and the EFTA Surveillance Authority shall cooperate with a view to agreeing on identical positions as regards the suspension of the clearing obligation and, where applicable, the trading obligation and as regards the extension of the suspension pursuant to paragraph 8.”.

- (iii) in the first subparagraph of paragraph 8, as regards the EFTA States, the words “the Commission may, by way of an implementing act,” shall read “the EFTA Surveillance Authority may, by way of a decision,”.
 - (iv) in the third subparagraph of paragraph 8, the words “and to the Standing Committee of the EFTA States” shall be inserted after the word “Council”.
 - (v) in the fourth subparagraph of paragraph 8, as regards the EFTA States, the words “implementing act” shall read “decision of the EFTA Surveillance Authority”.
- (fb) In Article 9(1), as regards the EFTA States, the words “12 February 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No 206/2016 of 30 September 2016”.
4. The text of adaptation (g) is replaced by the following:
‘In Article 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”.’
5. The text of adaptation (r)(iii) is replaced by the following:
‘as regards the EFTA States, in paragraphs 2, 3, 4, 5 and the first and second sentences of paragraph 6, the word “ESMA” shall read “the EFTA Surveillance Authority”;
6. The text of adaptation (s)(iii) is replaced by the following:
‘as regards the EFTA States, in paragraphs 2 to 8 and the first, second and third sentences of paragraph 9, the word “ESMA” shall read “the EFTA Surveillance Authority”;
7. The text of adaptation (t)(v) is replaced by the following:
‘in paragraphs 4 and 6, the words “or the EFTA Surveillance Authority’s” shall be inserted after the words “ESMA’s”;
8. Adaptations (t)(iv) and (t)(v) are renumbered as adaptations (t)(v) and (t)(iv), respectively.
9. The text of adaptation (w)(i) is replaced by the following:

‘in paragraph 1, the following subparagraphs shall be added after the second subparagraph:

“Before preparing any draft for the EFTA Surveillance Authority under Article 73(1) and on a periodic payment under Article 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 Article 73(1) and on a periodic payment under Article 66 only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The third and fourth subparagraphs of this paragraph shall not apply to the decisions referred to in points (a), (c) and (d) of Article 73(1) if urgent action is needed in order to prevent significant and imminent damage to the financial system or to prevent significant and imminent damage to the integrity, transparency, efficiency and orderly functioning of financial markets, including to the stability or the correctness of data reported to a trade repository. In such a case, ESMA may prepare a draft and the EFTA Surveillance Authority may adopt an interim decision. ESMA shall give the persons concerned the opportunity to be heard as soon as possible after preparing such a draft.”;

10. Adaptation (zd)(iii) is deleted.

11. The text of adaptation (zh)(i) is replaced by the following:

‘in paragraph 1, the following subparagraphs shall be added after the first subparagraph:

“For two years after the entry into force of Decision of the EEA Joint Committee No 50/2021 of 5 February 2021, the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks that directly relate to the financial solvency of pension scheme arrangements that are established in an EFTA State, and to entities established in an EFTA State to provide compensation to members of such arrangements in case of default .

The clearing obligation set out in Article 4 shall not apply to OTC derivative contracts as referred to in the second subparagraph of this paragraph entered into by pension scheme arrangements from 2 July 2020 until the day preceding the entry into force of Decision of the EEA Joint Committee No 50/2021 of 5 February 2021.”;

Article 2

The text of Regulation (EU) 2019/834 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 6 February 2021, provided that all the notifications under Article 103(1) of the EEA Agreement have been made*.

* Constitutional requirements indicated.

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, 5 February 2021.

*For the EEA Joint Committee
The President*

Clara Ganslandt

*The Secretaries
To the EEA Joint Committee*

Hege M. Hoff Mikołaj Karłowski

Not yet published