

DECISION OF THE EEA JOINT COMMITTEE
No 188/2023

of 5 July 2023

amending Annex XIV (Competition) 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) Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices¹ is to be incorporated into the EEA Agreement.
- (2) Commission Regulation (EU) No 330/2010², which has been incorporated into the EEA Agreement, expired on 31 May 2022 and is therefore to be repealed under the Agreement.
- (3) Annex XIV to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The text of point 2 (Commission Regulation (EU) No 330/2010) of Annex XIV to the EEA Agreement is replaced by the following:

‘**32022 R 0720**: Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022, p. 4).

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

- (a) In Article 6(1) the following words “or the corresponding provision in Article 29(1) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice” shall be inserted after the words “pursuant to Article 29(1) of Regulation (EC) No 1/2003”.
- (b) In Article 6(2) the following words “or the corresponding provision in Article 29(2) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice” shall be inserted after the words “Article 29(2) of Regulation (EC) No 1/2003”.
- (c) The following shall be added at the end of Article 7:

¹ OJ L 134, 11.5.2022, p. 4.

² OJ L 102, 23.4.2010, p. 1.

“Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar vertical agreements cover more than 50% of a relevant market in the EFTA States, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance by the EFTA State not responding in time.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other on the application of this provision.

Where parallel networks of similar vertical agreements cover more than 50% of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EC Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising the relevant market in question.”’

Article 2

The text of Regulation (EU) 2022/720 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 July 2023, provided that all the notifications under Article 103(1) of the EEA Agreement have been made*. This Decision shall apply from 1 June 2022.

* No 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 July 2023.

*For the EEA Joint Committee
The President*

Pascal Schafhauser

*The Secretaries
To the EEA Joint Committee*

Siri Veseth Meling Matúš Minárik

Not yet published