



Brussels, 5.12.2018
COM(2018) 786 final

2018/0404 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning an amendment to Annex IX (Financial Services) to the EEA Agreement

(Central Securities Depositories Regulation (CSDR))

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex IX (Financial Services) to the EEA Agreement in order to incorporate the Central Securities Depositories Regulation¹ into the EEA Agreement.

The adaptations appearing in the drafts of the annexed Decisions of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

- **Consistency with existing policy provisions in the policy area**

The annexed draft EEA Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

- **Consistency with other Union policies**

The extension of the EU acquis to the EEA EFTA States, through its incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legislation to be incorporated into the EEA Agreement is based on Article 114 of the Treaty on the Functioning of the European Union.

Article 1(3) of Council Regulation (EC) No 2894/94² concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The EEAS with the Commission services submit the draft Decisions of the EEA Joint Committee for adoption by the Council as the Union's position. The EEAS would hope to be able to present them in the EEA Joint Committee at the earliest possible opportunity.

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the subsidiarity principle for the following reason.

The objective of this proposal, namely to ensure the homogeneity of the Internal Market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

¹ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

² OJ L 305, 30.11.1994, p. 6–8.

The process of incorporation of the EU acquis into the EEA Agreement is conducted in conformity with the Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area which confirms the approach taken.

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

Not applicable

4. **BUDGETARY IMPLICATIONS**

There are no budgetary implications expected as a result of incorporation of the above mentioned Regulation into the EEA Agreement.

5. **OTHER ELEMENTS**

- **Detailed explanation of the specific provisions of the proposal**

Liechtenstein's situation (adaptation 3(c))

Liechtenstein and Switzerland are linked by a dense network of treaties, including notably the Customs Treaty of 1923, and the Currency Treaty of 1980 pursuant to which Liechtenstein (already using the Swiss Franc as its official currency since 1921) is included in the currency area of Switzerland. In the financial services sector, the Currency Treaty provides for the direct applicability of certain Swiss legal and administrative rules (cf. Annexes to the Currency Treaty). As a result, certain financial intermediaries (e.g. banks, investment undertakings) must comply with reporting requirements of the Swiss National Bank (SNB) for the purpose of enabling it to conduct monetary policy. The common economic and currency area has historically led to strong economic ties between the two countries that persisted after Liechtenstein's accession to the EEA Agreement.

For these reasons, the Liechtenstein financial market is fully integrated with and relies extensively on Swiss financial market infrastructures. Any disruption of the current setup may lead to challenges for Liechtenstein financial market participants. Adaptation 3(c) therefore provides that third-country Central Securities Depositories already providing services referred to in Article 25(2) of the CSDR Regulation to financial intermediaries in Liechtenstein or already having set up a branch in Liechtenstein may be allowed to continue to provide the services referred to in Article 25(2) for a period not exceeding 5 years after the date of entry into force of the annexed draft Decision of the EEA Joint Committee.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area³, and in particular Article 1(3) thereof

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁴ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, amend Annex IX to the EEA Agreement, which contains provisions on financial services.
- (3) Regulation (EU) No 909/2014 of the European Parliament and of the Council⁵ is to be incorporated into the EEA Agreement.
- (4) Annex IX to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

³ OJ L 305, 30.11.1994, p. 6.

⁴ OJ L 1, 3.1.1994, p. 3.

⁵ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257, 28.8.2014, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex IX (Financial Services) to the EEA Agreement, shall be based on the draft decisions of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*