



Brussels, 31.1.2019
COM(2019) 33 final

2019/0023 (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) and Annex XIX (Consumer protection) to the EEA Agreement**

(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) and Annex XIX (Consumer protection) to the EEA Agreement in order to incorporate Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

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

The annexed draft 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 their 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 2894/94¹ 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 Commission in cooperation with the EEAS submits the draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it 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.

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.

¹ OJ L 305, 30.11.1994, p. 6–8

- **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 the incorporation of Directive 2014/17/EU into the EEA Agreement.

5. OTHER ELEMENTS

The main adaptations requested by the EFTA side

Justification and proposed solution:

Adaptation to Article 5(3)(b) – adaption (b)

As a consequence of the division of powers between the European Banking Authority (EBA) and the EFTA Surveillance Authority an adaptation to include the EFTA Surveillance Authority in the list of authorities with which national authorities shall cooperate has been introduced.

Adaptation to Articles 12(3) and 27(3) – adaptation (c)

In line with Article 7 EEA, only acts that have been incorporated into the EEA Agreement are binding upon the EEA EFTA States. Certain obligations contained in the Directive may hence only apply as from the date of entry into force of the Joint Committee Decision incorporating it into the EEA Agreement. Adaptation (c) ensures that the relevant date for the application of Articles 12(3) and 27(3) is the date of entry into force of the Directive in the EEA.

Adaptation to Article 14(5) – adaptation (d)

In line with Article 7 EEA, only acts that have been incorporated into the EEA Agreement are binding upon the EEA EFTA States. Certain obligations contained in the Directive may hence only apply as from the date of entry into force of the Joint Committee Decision incorporating it into the EEA Agreement. Adaptation (d) ensures that the transitional periods regarding existing national rules in place prior to the entry into force of the Directive, shall, in an EEA context, be understood to apply in relation to the entry into force of the Directive in the EEA.

Adaptation to Article 26(2) – adaptation (e)

In Liechtenstein, only 50 to 100 real estate transactions take place every year according to the figures from the Liechtenstein tax administration. Much more real estate transactions would be needed for reliable and meaningful statistical results on the residential property market as provided for in Article 26(2) of the Directive.

In the given situation the statistical monitoring would contradict the following Principles of the European Statistics Code of Practice:

- Principle 4: Statistical authorities are committed to quality,

- Principle 7: Sound methodology underpins quality statistics,
- Principle 12: European Statistics accurately and reliably portray reality.

Accordingly, adaptation (e) exempts Liechtenstein from the obligation to ensure an appropriate statistical monitoring of the residential property market on its territory according to Article 26(2) of the Directive.

Adaptation to Articles 34(2) and (4) and 37 – adaptation (f) and (g)

Under the system set-up by point 31g of Annex IX EEA, the competence to adopt decisions binding in the EFTA pillar under Article 19 of the EBA Regulation is vested in the EFTA Surveillance Authority, whereas most of the technical aspects of supervision will be carried out by EBA as regards matters that concern the EFTA States. EBA will also be competent to carry out non-binding mediation pursuant to Art. 19(2) EBA Regulation.

Adaptations (f) and (g) clarify that references to the powers of EBA under Article 19 of the EBA Regulation in Articles 34(2) and (4) and 37 of the Directive, respectively, should be understood as referring, as the case may be, to the powers of the EFTA Surveillance Authority.

Adaptation to Article 43 – adaptation (h)

In line with Article 7 EEA, only acts that have been incorporated into the EEA Agreement are binding upon the EEA EFTA States. Certain obligations contained in the Directive may hence only apply as from the date of entry into force of the Joint Committee Decision incorporating it into the EEA Agreement. Adaptation (h) ensures that the transitional periods set out in Article 43 of the Directive, shall, in an EEA context, be understood to apply in relation to the entry into force of the Directive in the EEA.

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(Text with EEA relevance)

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 Area², and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area³ ('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, Annex IX (Financial services) and Annex XIX (Consumer protection) to the EEA Agreement.
- (3) Directive 2014/17/EU of the European Parliament and of the Council⁴ is to be incorporated into the EEA Agreement.
- (4) Annex IX (Financial services) and Annex XIX (Consumer protection) 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,

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) and Annex XIX (Consumer protection) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

² OJ L 305, 30.11.1994, p. 6.

³ OJ L 1, 3.1.1994, p. 3.

⁴ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, (OJ L 60, 28.2.2014, p. 34).

Article 2

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

Done at Brussels,

*For the Council
The President*