



## **Multilateral Memorandum of Understanding on cooperation, information exchange and consultation**

This Multilateral Memorandum of Understanding (MMoU) has been reached

**BETWEEN**

the EFTA Surveillance Authority, with its seat in Brussels, Belgium

**AND**

the European Banking Authority (the EBA), with its seat in London, UK;

the European Insurance and Occupational Pensions Authority (EIOPA), with its seat in Frankfurt am Main, Germany; and

the European Securities and Markets Authority (ESMA), with its seat in Paris, France;

**WHEREAS:**

- (1) The EU and EEA-EFTA Ministers of Finance and Economy stipulated in their conclusions<sup>1</sup> of 14 October 2014 the principles for incorporation of the EU Regulations establishing the EBA, EIOPA and ESMA (hereinafter collectively referred to as the 'EU ESAs') into the Agreement on the European Economic Area (EEA Agreement)<sup>2</sup> in the area of financial services.
- (2) In their conclusions, the EU and EEA-EFTA Ministers of Finance and Economy underlined that, in accordance with the two-pillar structure of the EEA Agreement, the EFTA Surveillance Authority will take decisions addressed to competent authorities or market operators in the EEA-EFTA States whereas the EU ESAs will be competent to perform actions of a non-binding nature, such as adoption of recommendations and non-binding mediation, also towards EFTA competent authorities and market operators. Action on either side will be preceded by, as appropriate, consultation, coordination, or information exchange between the EU ESAs and the EFTA Surveillance Authority.
- (3) The EU and EEA-EFTA Ministers of Finance and Economy further agreed that in order to ensure integration of the EU ESAs' expertise in the process and consistency in consideration of the two pillars structure of the EEA Agreement, individual decisions and formal opinions of the EFTA Surveillance Authority addressed to EFTA competent authorities or market operators will be adopted on the basis of drafts prepared by the relevant EU ESA. This will preserve key advantages of supervision by a single authority.

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<sup>1</sup> Council conclusions as approved by the EU and EEA-EFTA Ministers of Finance and Economy on 14 October 2014, 14178/1/14 REV 1.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3.



- (4) The EU and EEA-EFTA States have implemented the political agreement by incorporating into the EEA Agreement the abovementioned EU Regulations and related legal acts by the adoption of EEA Joint Committee Decisions No 198 to 206/2016, adapting the EU framework to the two-pillar structure of the EEA Agreement. Expected amendments to the EEA Agreement in the area of EU financial services may trigger the need to amend this MMoU.

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

**Chapter I**  
**Introductory provisions**  
**Article 1**  
**Definitions**

For the purpose of this MMoU:

- (a) "Authorities" means the signatories to this MMoU or their successor authorities;
- (b) "CRA Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;
- (c) "Credit Rating Agency" means an entity as defined in Article 3 No 1 b) of the CRA Regulation;
- (d) "EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
- (e) "EBA Regulation" means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;
- (f) "EIOPA Regulation" means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;
- (g) "ESMA Regulation" means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;
- (h) "EU ESA Regulations" means Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010;
- (i) "EBA Rules of procedure" means any rules of procedure adopted by the bodies of the EBA in order to provide practical arrangements for the functioning of the EBA's internal bodies, committees, panels or other working structures;



- (j) "EIOPA Rules of procedure" means any internal rules and procedures regulating EIOPA's bodies, committees, panels or other working structures, as well as the implementation of EIOPA's tasks and the exercise of EIOPA's powers;
- (k) "ESMA Rules of procedure" means the internal rules regulating the composition of, participation in, and procedures of ESMA and any internal bodies, such as committees, panels and other working structures created by ESMA.
- (l) "EEA-EFTA States" means Iceland, the Principality of Liechtenstein and the Kingdom of Norway;
- (m) "EEA Agreement" means the Agreement on the European Economic Area;
- (n) "EEA law" means the main text of the EEA Agreement as well as secondary legislation incorporated into the EEA Agreement at any particular time, in particular Annex IX, as interpreted by the EFTA Court and the Court of Justice of the European Union.
- (o) "Trade Repository" means an entity as defined in Article 2(2) of EMIR.

## **Article 2 Purpose and legal character**

1. The purpose of this MMoU is to set out the Authorities' common understanding of the Decisions adopted by the EEA Joint Committee incorporating the EU ESA Regulations and the legal acts referred to in Article 1(2) of the EU ESA Regulations into the EEA Agreement, taking into account Article 7 and Protocol 35 of the EEA Agreement.
2. This MMoU is a statement of intent to cooperate in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities.
3. This MMoU is not intended to, and does not: (a) constitute in any way a binding or legal agreement, (b) impose any legal obligation or duty on the EU ESAs, the EU, the EFTA Surveillance Authority or EEA-EFTA States, (c) confer any rights, or (d) supersede applicable laws. This MMoU is without prejudice to any ongoing process under the EU enlargement and/or neighbourhood policy.
4. This MMoU does not prejudice or affect in any way the competences of any institutions or authorities in the States of the European Economic Area.

## **Chapter II Cooperation, information exchange and consultation Article 3 Key principles and contact persons**

1. The Authorities recognise the importance of close and continuous cooperation, information exchange and consultation for the fulfilment of their tasks as stipulated by Union law and the EEA Agreement. The

- Authorities commit their best effort to follow the spirit of this MMoU when carrying out these tasks and in developing their cooperation in relation thereto.
2. For the purpose of implementing this MMoU:
    - (a) the EBA's contact point will be the Head of Policy Analysis and Coordination Unit;
    - (b) EIOPA's contact point will be the Head of Corporate Affairs Department;
    - (c) ESMA's contact point will be the Head of Corporate Affairs;
    - (d) the EFTA Surveillance Authority's contact point will be the Officer in charge of the financial services portfolio.
  3. The Authorities will notify each other of any changes to this list by an exchange of letters between the Chairpersons of the EU ESAs and the EFTA Surveillance Authority's President.

#### **Article 4**

##### **Cooperation arrangements and information exchange**

1. The Authorities agree to cooperate closely throughout the entire process in relation to the EFTA Surveillance Authority's adoption of binding decisions under Articles 9(5), 17, 18 and 19 of the EU ESA Regulations and formal opinions under Article 17 of the EU ESA Regulations, as incorporated into the EEA Agreement, and addressed to competent authorities and/or financial market participants/financial institutions in the EEA-EFTA States.
  2. For the purposes of paragraph 1, the EU ESAs will prepare drafts in accordance with the applicable provisions of Union law and the EEA Agreement for the EFTA Surveillance Authority.
  3. Binding decisions or formal opinions by the EFTA Surveillance Authority will, without undue delay, be adopted on the basis of the drafts prepared by the EU ESAs.
  4. The EU ESA will in due time inform the EFTA Surveillance Authority of the drafts on which basis the EFTA Surveillance Authority adopts binding decisions or formal opinions. Once these drafts are adopted by the EU ESA, it will immediately submit the drafts to the EFTA Surveillance Authority.
  5. Should the EFTA Surveillance Authority request the preparation of a draft from an EU ESA, it will provide the EU ESA with all relevant/necessary information.
  6. The EFTA Surveillance Authority will inform an EU ESA of any decision or formal opinion based on a draft prepared by that EU ESA before formal adoption of the relevant decision or formal opinion.
  7. The staff members of the EU ESAs will make their best efforts to cooperate closely before the relevant EU ESA submits to the EFTA
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- Surveillance Authority a draft on which basis the EFTA Surveillance Authority adopts binding decisions or formal opinions.
8. All drafts will be approved by the EU ESA and submitted to the EFTA Surveillance Authority in English.
  9. Specific provisions on cooperation between ESMA and the EFTA Surveillance Authority in relation to the supervisory and enforcement activities under the CRA Regulation and EMIR, as incorporated into the EEA Agreement, are set out in an Annex to this MMoU.

### **Article 5** **Actions under Article 9(5) of the EU ESA Regulations as incorporated into the EEA Agreement**

It is the EFTA Surveillance Authority that has the power to adopt binding decisions under Article 9(5) of the EU ESA Regulations with regard to competent authorities and/or financial market participants/financial institutions in the EEA-EFTA States. Such decisions will be based on a draft prepared by the EU ESAs in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) of the EU ESA Regulations to the extent that these acts have been incorporated into the EEA Agreement and in accordance with the applicable EBA, EIOPA and ESMA Rules of procedure, or in the case of an emergency situation in accordance with and under the conditions laid down in Article 18 of the EU ESA Regulations as incorporated into the EEA Agreement. The EFTA Surveillance Authority's and the EU ESAs' specific powers under Article 18 of the ESA Regulations, as incorporated into the EEA Agreement (action in emergency situations), are set out in Article 7 below.

### **Article 6** **Breach of EEA law** **(Actions under Article 17 of the EU ESA Regulations as incorporated into the EEA Agreement)**

1. The following competences are vested with the EU ESAs:
  - (a) investigate alleged breaches or non-application of EEA law, by a competent authority in the EEA-EFTA States in accordance with Article 17(2) of the EU ESA Regulations;
  - (b) address a recommendation to the competent authority concerned in the EEA-EFTA States setting out actions necessary to comply with EEA law, in accordance with Article 17(3) of the EU ESA Regulations.
2. The following competences are vested in the EFTA Surveillance Authority as regards the EFTA pillar of the EEA Agreement:
  - (a) issue formal opinions to competent authorities in the EEA-EFTA States, after having been informed by an EU ESA in accordance with Article 17(4) of the EU ESA Regulations, or on its own initiative;
  - (b) adopt binding decisions to financial market participants/financial institutions in the EEA-EFTA States subject to the conditions

incorporating Article 17(6) of the EU ESA Regulations into the EEA Agreement.

3. If an EU ESA decides in accordance with its Rules of procedure to initiate an investigation of an alleged breach or non-application of EEA law by a competent authority of an EEA-EFTA State, it will inform the EFTA Surveillance Authority of the scope and purpose of the investigation and provide it regularly thereafter with updated information, which is necessary for the EFTA Surveillance Authority to appropriately perform its tasks under Article 17(4) and (6) of the ESA Regulations as incorporated into the EEA Agreement.
4. If a competent authority of an EEA-EFTA State has not complied with EEA law within 1 month from receipt of the EU ESA's recommendation, the EU ESA's recommendation to the competent authority will be considered by the EFTA Surveillance Authority as the draft for the formal opinion to be issued under Article 17(4) of the EU ESA Regulations, unless the preparation of a separate draft is required due to new developments.
5. In instances where the activities of an EU ESA under this MMoU give rise to any specific EEA law issues, the EU ESA may request the EFTA Surveillance Authority's assistance.

**Article 7**  
**Emergency situations**  
**(Actions under Article 18 of the EU ESA Regulations as incorporated**  
**into the EEA Agreement)**

1. The EU ESAs' facilitating and coordinating powers in accordance with Article 18(1) of the EU ESA Regulations also apply to competent authorities in the EEA-EFTA States. If an EU ESA considers exercising these powers, it will inform the EFTA Surveillance Authority thereof.
2. The following competences are vested with the EFTA Surveillance Authority:
  - (a) adopt binding individual decisions addressed to competent authorities in the EEA-EFTA States subject to the conditions incorporating Article 18(3) of the EU ESA Regulations into the EEA Agreement;
  - (b) adopt binding individual decisions addressed to financial market participants/financial institutions in the EEA-EFTA States subject to the conditions incorporating Article 18(4) of the EU ESA Regulations into the EEA Agreement.
3. When the Council has received a request from one of the ESAs in accordance with Article 18(2) of the EU ESA Regulations to determine the existence of an emergency situation which may require the adoption of decisions by the EFTA Surveillance Authority, the requesting EU ESA will without undue delay inform the EFTA Surveillance Authority about the content of the request.



4. The EU ESAs will immediately inform the EFTA Surveillance Authority about confidential recommendations they have issued in accordance with Article 18(2) of the EU ESA Regulations, if those recommendation may require the adoption of binding decisions by the EFTA Surveillance Authority towards a national competent authority or a financial market participant/financial institution in the EEA-EFTA States.

**Article 8**  
**Settlement of disagreements/Mediation**  
**(Actions under Articles 19, 21(4) and 31(c) of the EU ESA Regulations**  
**as incorporated into the EEA Agreement)**

1. Where competent authorities of one or more EU Member States and one or more EEA-EFTA States are concerned, the EU ESA may participate in the settlement of disagreements between such competent authorities in accordance with Articles 19(1) and (2), 21(4) or 31(c) of the EU ESA Regulations. If an EU ESA decides to initiate a settlement of disagreements between competent authorities in accordance with its Rules of procedure, it will inform the EFTA Surveillance Authority thereof.
2. The following competences are vested with the EFTA Surveillance Authority if the competent authorities fail to reach an agreement:
  - (a) adopt binding individual decisions addressed to competent authorities in the EEA-EFTA States in accordance with the conditions incorporating Article 19(3) of the EU ESA Regulations into the EEA Agreement;
  - (b) adopt binding individual decisions addressed to financial market participants/financial institutions in the EEA-EFTA States in accordance with the conditions incorporating Article 19(4) of the EU ESA Regulations into the EEA Agreement.
3. The Authorities recognise that where exclusively competent authorities of the EEA-EFTA States are concerned in accordance with the conditions incorporating Articles 19(3) and (4) of the EU ESA Regulations into the EEA Agreement, only the EFTA Surveillance Authority may adopt a binding decision.
4. Where competent authorities of one or more EU Member States and one or more EEA-EFTA States are concerned within the meaning of Articles 19(3) and (4) of the EU ESA Regulations as incorporated into the EEA Agreement, the EU ESAs and the EFTA Surveillance Authority may independently adopt binding decisions addressed to those competent authorities. The decisions will be adopted, in parallel, by the EU ESA and the EFTA Surveillance Authority, as appropriate.
5. The binding individual decisions to be adopted by the EFTA Surveillance Authority will be based on a draft prepared by the EU ESA in accordance with its Rules of procedure.



## **Article 9** **Inquiries, opinions, collecting information**

The EU ESA will notify in advance the EFTA Surveillance Authority of its intention to:

- (a) conduct a topical inquiry, which concerns a competent authority or financial market participant(s)/financial institution(s) in an EEA-EFTA State in accordance with Article 22(4) of the EU ESA Regulations, or
- (b) issue an opinion, which concerns a competent authority or financial market participant(s)/financial institution(s) in an EEA-EFTA State in accordance with Articles 34(1) and (2) of the EU ESA Regulations, or
- (c) request information from a competent authority, other authorities or financial market participant(s)/financial institution(s) in an EEA-EFTA State in accordance with Article 35 of the EU ESA Regulations as incorporated into the EEA Agreement.

## **Article 10** **Joint positions and common acts**

The need to prepare a draft of joint positions or common acts in accordance with Article 56 of the ESA Regulations as a basis for the adoption of decisions by the EFTA Surveillance Authority will be determined by the Joint Committee of the EU ESAs.

## **Article 11** **Safeguards**

1. If an EEA-EFTA State notifies the EFTA Surveillance Authority that a decision taken by the Authority impinges on its fiscal responsibilities, the EFTA Surveillance Authority will forward such notification without undue delay to the EU ESA concerned. If such notification is directly sent to the EU ESA, it will forward that notification without undue delay to the EFTA Surveillance Authority. Any subsequent decision in this context by the EFTA Surveillance Authority will be adopted on the basis of a draft from the EU ESA concerned, either at its own initiative or at the request of the EFTA Surveillance Authority.
2. Where an EU ESA intends to revoke or amend a decision that concerns a case falling under Article 19(3) of the ESA Regulations as incorporated into the EEA Agreement and involving a competent authority in an EEA-EFTA State, it will inform the EFTA Surveillance Authority thereof and will without undue delay prepare a draft for the EFTA Surveillance Authority.

## **Article 12** **Decision-making procedure and appeals**

1. The Authorities agree that the right to be heard of any named addressee of a decision must be ensured and respected. When the EU ESAs prepare a



draft for a decision to be adopted by the EFTA Surveillance Authority, they set a time limit within which the EFTA Surveillance Authority allows any addressee to express its views on the matter to the EU ESA. This time limit will reflect the urgency, complexity and potential consequences of the matter in question.

2. In relation to decisions on supervisory measures and fines to be adopted under the CRA Regulation and EMIR, the right to be heard is exercised in accordance with the provisions of applicable delegated regulations, to the extent they have been incorporated into the EEA Agreement, as further detailed in the Annex to this MMoU.
3. If a decision of an EU ESA, which is adopted under Article 19 of the EU ESA Regulations and involves the competent authority or a financial market participant/financial institution in an EEA-EFTA State, is remitted by the Board of Appeal to the competent body of the EU ESA in compliance with Article 60(5) of the EU ESA Regulations, that EU ESA will inform the EFTA Surveillance Authority thereof. The EU ESA will also keep the EFTA Surveillance Authority informed of its future assessment of the case and present a draft decision in due course to the EFTA Surveillance Authority if it intends to adopt a new or modified decision as a result of the remittance.

### **Article 13 Participation**

1. The Authorities will take the necessary measures to give effect to their reciprocal right to participation in each other's decision-making and preparatory bodies, including internal committees and panels without the right to vote.
2. In participating in the work of the EU ESAs' Board of Supervisors and preparatory bodies of EU ESAs, including internal committees and panels, the EFTA Surveillance Authority will comply with the EBA Rules of Procedure, EIOPA Rules of procedure and ESMA Rules of Procedure respectively.
3. The EU ESAs have a reciprocal right to participate in the work of the EFTA Surveillance Authority when the College takes binding decisions addressed to competent authorities or financial market operators in the EEA-EFTA States. If the EFTA Surveillance Authority establishes its own preparatory bodies, the EU ESAs will be granted a reciprocal right of participation in them.
4. The Authorities will invite each other in due time to meetings of preparatory bodies and decision-making bodies, and will inform each other regularly and proactively about the creation of new bodies that might be of interest to the Authorities.

## **Article 14 Information exchange**

1. The Authorities will exchange information necessary for them to fulfil their tasks to the fullest extent possible.
2. Upon request from the EFTA Surveillance Authority, the EU ESAs will, subject to their confidentiality regime, forward information collected or received from competent authorities or financial market participants/financial institutions in the EEA-EFTA States. The EU ESAs have a reciprocal right to request the EFTA Surveillance Authority to provide information collected or received from such competent authorities or financial market participants/financial institutions.
3. The Authorities will establish secure channels for information exchange, taking into account the need to protect the confidentiality of such information and the need for effective exchange of views between the Authorities.
4. The Authorities will ensure that their decisions are publicly available, adequately reflecting any confidentiality concerns and limitations as provided for by applicable Union law and the EEA Agreement.
5. The EBA, EIOPA and ESMA process any personal data in accordance with applicable EU data protection legislation and under this MMoU may only transfer personal data to the EFTA SA to the extent that such transfer complies with the requirements set out in that legislation.

## **Chapter III Final provisions Article 15**

### **Cooperation in relation to proceedings before the EFTA Court**

If a decision adopted by the EFTA Surveillance Authority (or by an investigating officer within the EFTA Surveillance Authority under the CRA Regulation or EMIR as incorporated into the EEA Agreement) on the basis of a draft by an EU ESA is challenged before the EFTA Court, the EFTA Surveillance Authority will without delay inform the EU ESA which provided a draft for the challenged decision and request the EU ESA to provide all necessary assistance in the defence of its decision.

## **Article 16 Confidentiality**

1. The EU ESAs and the EFTA Surveillance Authority will keep information shared under this MMoU, requests made under this MMoU, the contents of such requests, and any other matters arising thereunder confidential to the extent permitted by Union law and the EEA Agreement.
  2. Subject to the provisions of Article 70 of the EU ESA Regulations as incorporated into the EEA Agreement, the Authorities may share
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information obtained under this MMoU, for the purposes of their tasks, with the Members of the European System of Financial Supervision, the central banks of the European System of Central Banks and of the EEA-EFTA States or other bodies with a similar function in their capacity as monetary authorities, or other public authorities responsible for overseeing payment systems.

3. Except as provided for in the previous paragraph, or otherwise in this MMoU, the disclosure of non-public information received under this MMoU to any non-signatory of the MMoU will be subject to the prior consent of the Authority where the information originates, as applicable.
4. The terms of this MMoU are not confidential.

### **Article 17 Successor authorities**

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of this MMoU will apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities will be considered a signatory or signatories to this MMoU without the need for any further amendment to this MMoU, and notice will be provided to the other Authorities.

### **Article 18 Revision and Amendments**

1. This MMoU will be revised whenever changes to the EEA Agreement affect its two-pillar structure and the arrangements set out in this MMoU.
2. This MMoU may only be amended with the written consent of the Authorities.

### **Article 19 Execution**

This MMoU will enter into force on the date it is signed by all Authorities.

### **Article 20 Termination**

This MMoU will remain operative for an unlimited period of time. If an Authority wishes to terminate this MMoU, it will provide thirty (30) calendar days' prior written notice to the other Authorities. Following an Authority's withdrawal from this MMoU, all parties to this MMoU will continue to apply the confidentiality protections set out in this Memorandum.



London/Frankfurt am Main/Paris/Brussels

Date: 26/3/10

Andreas B...  
(For the EBA)

[Signature]  
(For EIOPA)

[Signature]  
(For ESMA)

[Signature]  
(For the EFTA Surveillance Authority)

## **Annex**

### **Specific provisions on cooperation, information exchange and consultation in relation to the supervisory and enforcement activities under the CRA Regulation and EMIR as incorporated into the EEA Agreement**

Signatories to this Annex are ESMA and the EFTA Surveillance Authority

- (1) Supervisory and enforcement activities in relation to Credit Rating Agencies and Trade Repositories established in an EEA-EFTA State will be carried out in accordance with the CRA Regulation and EMIR as incorporated into the EEA Agreement and any applicable Commission Delegated and Implementing Regulations based on those acts to the extent that such Commission Delegated and Implementing Regulations have been incorporated into the EEA Agreement.
- (2) The EFTA Surveillance Authority and ESMA share the understanding that, pending the incorporation of a relevant Commission Delegated and Implementing Regulation into the EEA Agreement and to the extent possible, supervisory (including registration) and enforcement activities in relation to Credit Rating Agencies and Trade Repositories established in an EEA-EFTA State will be carried out, with the aim of reaching a homogenous outcome, taking inspiration from the provisions of such Commission Delegated and Implementing Regulation.
- (3) In cases where equivalent Commission Delegated and Implementing Regulations have already been incorporated into the EEA Agreement, the EFTA Surveillance Authority and ESMA share the understanding that supervisory (including registration) and enforcement activities will furthermore be carried out, with the aim of reaching a homogenous outcome, taking inspiration from the provisions of such Commission Delegated and Implementing Regulation as incorporated into the EEA Agreement in order to take account of the specificities deriving from the two pillars structure of the EEA Agreement.

### **Supervision of Credit Rating Agencies and Trade Repositories**

#### **Article 1**

#### **General**

1. Credit Rating Agencies and Trade Repositories established in an EEA-EFTA State will be required to register with and will be subject to supervision by the EFTA Surveillance Authority as the competent authority. Taking into account that these responsibilities of the EFTA Surveillance Authority will in practice be based on the day-to-day activity of ESMA and its staff, the Authorities agree that close cooperation between the EFTA Surveillance Authority and ESMA is particularly important in this context.

2. In consideration notably of the possible use of credit ratings for regulatory purposes, ESMA or the EFTA Surveillance Authority may at any time request the renegotiation of the provisions of this Annex in the event that a Credit Rating Agency of a critical nature, scale or complexity applies for registration or that a Credit Rating Agency previously registered by the EFTA Surveillance Authority is subsequently considered to be of a critical nature, scale or complexity.

## **Article 2**

### **Measures taken by the EFTA Surveillance Authority under the CRA Regulation and EMIR as incorporated into the EEA Agreement**

1. Only the EFTA Surveillance Authority has the competence to formally adopt legally binding decisions to the extent that they concern entities established in the EEA-EFTA States, *inter alia*:
  - a) decisions to register Credit Rating Agencies and Trade Repositories
  - b) decisions to collect registration or supervisory fees
  - c) decisions to order and conduct investigations and on-site inspections
  - d) appointments of an independent investigating officer
  - e) decisions to take supervisory measures and impose fines and/or periodic penalty payments
2. ESMA will in accordance with ESMA's internal established practice prepare drafts in English for all relevant decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures referred to in the CRA Regulation and EMIR and the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement, when deemed necessary. In this respect, without prejudice to any specific requests from the EFTA Surveillance Authority, ESMA will assess such need notably on the basis of its risk-based supervisory approach.
3. Those decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures will, without undue delay, be adopted on the basis of the drafts prepared by ESMA. Material deviations from the drafts prepared by ESMA will be duly motivated and based on objective grounds and communicated by the EFTA Surveillance Authority immediately, and an agreement with ESMA will be sought. If no agreement is found at staff level, the disagreement will be settled in accordance with Article 1(b), paragraph 3, of the Decisions of the EEA Joint Committee incorporating the CRA Regulation and EMIR into the EEA Agreement.



### **Article 3**

#### **ESMA's tasks with regard to entities established in the EEA-EFTA States**

1. Notwithstanding Article 2, ESMA will undertake the technical work related to the registration process, the daily supervision, including requests for information, general investigations and on-site inspections, as well as supervisory measures and fines in relation to Credit Rating Agencies and Trade Repositories to be adopted by the EFTA Surveillance Authority.
2. Reference to registration process and daily supervision includes the day-to-day contacts with Credit Rating Agencies and Trade Repositories, receipt and analysis of information periodically reported and follow-up on remedial actions and measures requested throughout the supervisory process. ESMA will allocate the required resources to the supervision of the relevant Credit Rating Agencies and Trade Repositories and take or propose to the EFTA Surveillance Authority appropriate supervisory actions in light of ESMA's risk-based supervisory approach.
3. Reference to the supervisory measures and fines includes the day-to-day investigation process, the creation of the file and the drafting of findings to be submitted by the investigating officer in accordance with the CRA Regulation and EMIR as well as with the provisions of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement. ESMA will allocate the resources required to carry out these activities.
4. If ESMA, when conducting the activities referred to in paragraph 1 above, believes that a measure to be adopted by the EFTA Surveillance Authority or the investigating officer appointed within the EFTA Surveillance Authority is required, it will notify the EFTA Surveillance Authority or the investigating officer appointed within the EFTA Surveillance Authority without undue delay and provide the relevant draft.

### **Article 4**

#### **Applications for registration by entities established in an EEA-EFTA State**

1. Applications for registration received by the EFTA Surveillance Authority will immediately be submitted to ESMA along with attached documentation. Where needed, the EFTA Surveillance Authority will provide ESMA with a translation of the application for registration and of any other documents submitted to it during the registration process without undue delay.
  2. ESMA will perform all necessary formal and technical assessments to determine whether the entity is eligible for registration, in line with its internal established practice.
  3. As regards the assessment on completeness of the application (pursuant to Article 15 of the CRA Regulation and Article 56 of EMIR as incorporated into the EEA Agreement), the draft will be sent to the EFTA Surveillance Authority 3 working days before expiry of the relevant time limit.
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4. Following the assessment on the compliance (pursuant to Article 16 of the CRA Regulation and Article 58 of EMIR as incorporated into the EEA Agreement) of the Credit Rating Agencies and Trade Repositories with the requirements of CRA Regulation and EMIR respectively, a draft for a decision to register or to refuse registration will be sent to the EFTA Surveillance Authority 5 working days before expiry of the relevant time limit.
5. The EFTA Surveillance Authority will inform ESMA of the adoption of the decision immediately.
6. The Authorities will appoint responsible desk officers who will cooperate closely with regard to the handling of the application throughout the process.

#### **Article 5 Fees from entities established in an EEA-EFTA State**

1. Registration fees and supervisory fees from Credit Rating Agencies and Trade Repositories will be calculated by the EFTA Surveillance Authority on the basis of a draft prepared by ESMA.
2. Fees collected by the EFTA Surveillance Authority will be passed on to ESMA.

#### **Article 6 General investigations and on-site inspections concerning entities established in an EEA-EFTA State**

1. Investigations or on-site inspections will be ordered by decision adopted by the EFTA Surveillance Authority on the basis of a draft prepared by ESMA.
2. Investigations or on-site inspections will be conducted on the basis of written authorisation adopted by the EFTA Surveillance Authority.
3. Officials of and other persons authorised by ESMA will be entitled to assist the EFTA Surveillance Authority and will have the right to participate in investigations and on-site inspections.
4. Before the EFTA Surveillance Authority adopts a decision to carry out an investigation or to conduct an on-site inspection, the Authorities will reach a common understanding on the terms of the investigation. The common understanding will in particular cover the respective roles of the participants of each of the Authorities, taking into consideration the need to ensure the particular expertise necessary for the investigation or on-site inspection at hand.

## **Article 7**

### **Process regarding the adoption of supervisory measures and fines to be imposed on entities established in an EEA-EFTA State: investigation phase**

1. When ESMA, in the course of its supervision, finds that there are serious indications of the possible existence of facts liable to constitute one or more infringements listed in Annex III of the CRA Regulation and Annex I of EMIR as incorporated into the EEA Agreement as regards a Credit Rating Agency or Trade Repository established in an EEA-EFTA State, the EFTA Surveillance Authority will, following consultation with ESMA and based on a draft provided by ESMA, appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter.
2. The investigating officer, ESMA officials and other authorised persons will carry out investigations or on-site inspections on the basis of a decision and written authorisation adopted by the investigating officer.
3. ESMA shall inform the investigating officer without undue delay of the identity of the ESMA staff that will investigate the alleged infringements (ESMA staff). The relevant ESMA staff will not be involved or have been involved in the direct or indirect supervision or registration process of the relevant Credit Rating Agency or Trade Repository.
4. The ESMA staff will have access to all documents and information gathered by ESMA and the EFTA Surveillance Authority in ESMA's supervisory activities. ESMA and the EFTA Surveillance Authority will provide such access without undue delay.
5. To the extent required, the investigating officer will authorise the ESMA staff when corresponding for the purposes of the investigation with ESMA, the EFTA Surveillance Authority, the person subject to investigation or any third parties.
6. When deemed necessary, the ESMA staff will prepare drafts for requests for information (by simple requests or decision) or decisions to carry out investigations or on-site inspections to be adopted without undue delay by the investigating officer. Material deviations from the drafts prepared by the ESMA staff will be duly motivated and based on objective grounds and communicated by the investigating officer immediately, and an agreement with the ESMA staff will be sought. If no agreement is found, the disagreement will be settled in accordance with Article 1(b), paragraph 3, of the Decisions of the EEA Joint Committee incorporating EMIR as well as Regulation (EU) No 513/2011 and Regulation (EU) No 462/2013 amending the CRA Regulation into the EEA Agreement.
7. The investigating officer will immediately submit to the ESMA staff any information received in reply to a request for information.
8. Upon completion of the investigation the ESMA staff will inform the investigating officer accordingly, providing the investigating officer with a statement of findings and the corresponding file. On the basis of this statement of findings the investigating officer will give the person subject to investigation the opportunity to be heard on the matters being

- investigated in accordance with the CRA Regulation or EMIR and the provisions of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement.
9. The investigating officer will immediately submit to the ESMA staff any submissions received in reply to the statement of findings.
  10. The ESMA staff will assess any such submissions and, as the case may be, provide the investigating officer with an amended statement of findings to be submitted without undue delay to ESMA's Board of Supervisors and the EFTA Surveillance Authority or prepare other measures to be taken without undue delay by the investigating officer such as additional investigatory measures in accordance with paragraphs 3 to 7 above, or hearings of the person subject to investigation, where deemed necessary, or other persons.
  11. Any hearings will be carried out by the investigating officer. ESMA staff will be entitled to participate.
  12. The ESMA staff will prepare the file that may be accessed by the parties to whom a statement of findings has been sent taking account of the applicable limits to access under the CRA Regulation and EMIR as incorporated into the EEA Agreement. For that purpose, the investigating officer will immediately transmit to the ESMA staff any such request for access received by the investigating officer.

### **Article 8**

#### **Process regarding the adoption of supervisory measures and fines to be imposed on entities established in an EEA-EFTA State: decision-making phase**

1. The assessment of whether the conditions for imposing supervisory measures or fines under the CRA Regulation and EMIR as incorporated into the EEA Agreement are met will be carried out by ESMA on the basis of the file submitted to ESMA's Board of Supervisors and the EFTA Surveillance Authority by the investigating officer and in accordance with ESMA's Rules of procedure and internal established practice.
2. Following the assessment of the statement of findings submitted by the investigating officer, ESMA will, as the case may be, provide the EFTA Surveillance Authority with:
  - a. a reasoned request to be sent to the investigating officer under Article 3(2) of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement; or
  - b. a draft for a decision to be adopted under Article 3(3) of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement; or
  - c. a new statement of findings under Article 3(4) of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement; or

- d. a communication under Article 3(5) of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement.
3. The EFTA Surveillance Authority will immediately transmit to ESMA any reply to a request to the investigating officer or any submissions from the person subject to investigation received before the expiry of the applicable time limit.
4. ESMA will assess such submissions and prepare, where deemed necessary, an invitation for a hearing of the person subject to investigation and/or, as the case may be, provide the EFTA Surveillance Authority subsequently with:
  - a. a draft for a decision to close the case, to be adopted without undue delay; or
  - b. a draft for a decision finding that one or more infringements have been committed.
5. With a view to enabling ESMA to adequately prepare the making public of a decision finding that one or more infringements have been committed within 10 working days from the date when it was adopted by the EFTA Surveillance Authority, the EFTA Surveillance Authority will communicate such a decision to ESMA immediately after its adoption. The EFTA Surveillance Authority will also immediately inform ESMA where proceedings have been instituted against such a decision before the EFTA Court.
6. ESMA will prepare the file that may be accessed by the parties to whom a statement of findings has been sent taking account of the applicable limits to access under the CRA Regulation and EMIR as incorporated into the EEA Agreement. For that purpose, the EFTA Surveillance Authority will immediately transmit to ESMA any such request for access received by the EFTA Surveillance Authority.

#### **Article 8bis**

#### **Periodic penalty payments to be imposed on entities established in an EEA-EFTA State**

1. The assessment of whether the conditions for imposing a periodic penalty payment under the CRA Regulation and EMIR as incorporated into the EEA Agreement are met will be carried out by ESMA.
2. Following its assessment, ESMA will provide the EFTA Surveillance Authority with the statement of findings to be submitted to the person subject to the proceedings in accordance with Article 4 of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement
3. The EFTA Surveillance Authority will immediately transmit to ESMA any submissions from the person concerned received before the expiry of the applicable time limit.

4. ESMA will assess such submissions and prepare, where deemed necessary, an invitation for a hearing of a person subject to investigation and/or, as the case may be provide the EFTA Surveillance Authority subsequently with a draft for a decision imposing a periodic penalty payment.
5. With a view to enabling ESMA to disclose the periodic penalty payment imposed the EFTA Surveillance Authority will communicate such a decision to ESMA immediately after its adoption.

### **Article 9 Right to be heard**

1. The right to be heard of the persons subject to the proceedings established in an EEA-EFTA State will be guaranteed in accordance with the provisions of the applicable delegated regulations to the extent they have been incorporated into the EEA Agreement as further detailed in Articles 7 and 8 of this Annex.
2. As regards Credit Rating Agencies, in case urgent action is needed in order to prevent significant damage to the financial system, ESMA will provide the EFTA Surveillance Authority with a draft for an interim decision and the persons subject to the proceedings will be given the opportunity to be heard after that interim decision has been adopted.

### **Article 10 Notification and suspension requests by competent authorities concerning Credit Rating Agencies established in an EEA-EFTA State**

1. Following notifications and suspension requests from any competent authority in accordance with Article 31 of the CRA Regulation as incorporated into the EEA Agreement, the EFTA Surveillance Authority will possibly adopt a decision taking appropriate action in the EEA-EFTA States, based on the assessment and a draft prepared by ESMA.
2. In accordance with the CRA Regulation as incorporated into the EEA Agreement, notifications and suspension requests from any competent authority in an EEA-EFTA State, shall be addressed directly to ESMA. Any request erroneously submitted to the EFTA Surveillance Authority will be forwarded to ESMA immediately.
3. ESMA will, following immediate consultations with the EFTA Surveillance Authority, evaluate the request and, where necessary, provide a draft on which basis the EFTA Surveillance Authority adopts a binding decision.

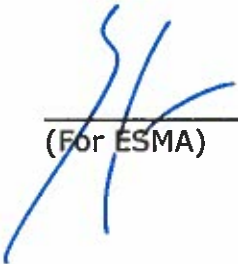


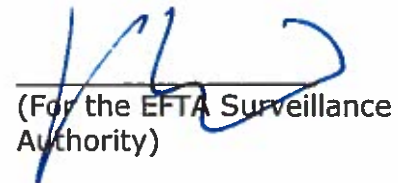
**Article 11**  
**Calculation of fines and periodic penalty payments imposed on entities established in an EEA-EFTA State**

The calculation of fines and periodic penalty payments will be included in the draft on which basis the EFTA Surveillance Authority adopts a binding decision.

Paris/Brussels

Date: 26/3/18

  
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(For ESMA) 12/4/18

  
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(For the EFTA Surveillance Authority)