DECISION OF THE EEA JOINT COMMITTEE

No 59/2014

of 10 April 2014

amending Annex XX (Environment) 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) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011 ([1]) is to be incorporated into the EEA Agreement.

(2) Regulation (EU) No 389/2013 repeals Commission Regulation (EU) No 920/2010 ([2]) and Commission Regulation (EU) No 1193/2011 ([3]), which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.

(3) Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol ([4]) has not been incorporated into the Agreement and therefore the specific reporting requirements foreseen in that Decision do not apply to the EFTA States.

(4) Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 ([5]) has not been incorporated into the Agreement and therefore the reporting requirements as well as emission limits foreseen in that Decision do not apply to the EFTA States.

(5) The EFTA States shall be included in the Union Registry and the European Union Transaction Log (EUTL). The Central Administrator shall perform his tasks with regard to the EFTA States, whereby the EFTA Surveillance Authority shall be the competent body to give the necessary instructions to the Central Administrator in relation to provisions relating to the application of Regulation (EU) No 389/2013 for the EFTA States as appropriate.

(6) The Contracting Parties understand that the specific nature of the EU ETS and the related standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council ([6]), providing for the establishment of a Union Registry, require special rules on data storage and access regarding the Union Registry to ensure that the greenhouse gas emission allowances conform to the functional and technical specifications for data exchange standards for registry systems under the Kyoto Protocol, and that transfers of such allowances are compatible with the obligations resulting from the Kyoto Protocol.

(7) The Union Registry should reflect the extension of the EU ETS to the EFTA States. According to EEA Joint Committee Decision No 152/2012 of 26 July 2012 ([7]), the EU Total Quantity Account, EU Aviation Total Quantity Account, EU Auction Account, EU Allocation Account, EU New Entrant Reserve Account, EU Aviation Auction Account and EU Special Reserve Account encompass the allowances of the EFTA States.

(8) The Contracting Parties acknowledge the distinctive character of the Union Registry and the EUTL and the Commission's responsibilities with regard to the secure operation and the maintenance of the system. Therefore, the Commission should be able to guarantee the immediate suspension of access when needed in accordance with Regulation (EU) No 389/2013, while taking the role of the EFTA Surveillance Authority into account. This solution is without prejudice to future matters related to the two-pillar structure set up under the EEA Agreement.

([1]) OJ L 122, 3.5.2013, p. 1.
([2]) OJ L 270, 14.10.2010, p. 1.
([3]) OJ L 315, 29.11.2011, p. 1.
([4]) OJ L 49, 19.2.2004, p. 1.
([5]) OJ L 140, 5.6.2009, p. 136.
([6]) OJ L 275, 25.10.2003, p. 32.
([7]) OJ L 309, 8.11.2012, p. 38.

(9) The Contracting Parties recognise that it is essential for the law enforcement and tax authorities of a Contracting Party, the European Anti-Fraud Office of the European Commission, the European Court of Auditors, Eurojust as well as competent authorities referred to in Article 11 of Directive 2003/6/EC of the European Parliament and of the Council [1] and in Article 37(1) of Directive 2005/60/EC of the European Parliament and of the Council [2], the competent national supervisory authorities, the national administrators of Contracting Parties and the competent authorities referred to in Article of Directive 2003/87/EC to be granted the right to obtain certain data stored in the Union Registry and in the EUTL in clearly defined cases if this is necessary for the performance of their tasks as set forth in Article 110 of Regulation (EU) No 389/2013.

(10) For the same reason, the Contracting Parties, although recalling that Council Decision 2009/371/JHA [3] is not incorporated in the EEA Agreement, recognise that Europol obtains permanent read-only access to data stored in the Union Registry and in the EUTL.

(11) The Contracting Parties recall, however, that the granting of information rights and of permanent read-only access as foreseen in Article 110 of Regulation (EU) No 389/2013 is without prejudice to the understanding that police and judicial cooperation in criminal matters as well as tax administration or enforcement fall outside the scope of the EEA Agreement, and that the Regulation therefore does not confer on the institutions mentioned any other rights than those explicitly foreseen in its Article 110.

(12) Annex XX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex XX to the EEA Agreement shall be amended as follows:

(1) the text of point 21ana (Commission Regulation (EU) No 1193/2011) is replaced by the following:

'**32013 R 0389:** Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

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

(a) The issue, transfer and cancellation of allowances concerning the EFTA States, their operators and the aircraft operators administered by them shall be registered in the European Union Transaction Log (EUTL).

The Central Administrator shall be competent to perform the tasks referred to in paragraphs 1 to 3 of Article 20 of Directive 2003/87/EC when the EFTA States, their operators or the aircraft operators administered by them are concerned.

(b) In Article 8(4), the following sentence shall be added:

"The EFTA Surveillance Authority shall coordinate the implementation of this Regulation with the national administrators of each EFTA State and the Central Administrator."

(c) In Article 34(7), the following sentence shall be added:

"The word 'Commission' shall be replaced by the words 'EFTA Surveillance Authority' when account holders under the jurisdiction of an EFTA State are concerned."

(d) The following subparagraph shall be added in Articles 51(2), 52(2), 54(2) and 55(3):

"Where national allocation tables of the EFTA States are concerned, the Central Administrator shall be instructed by the EFTA Surveillance Authority."

(e) The following subparagraph shall be added in Article 59(2):

"Where international credit entitlements of the EFTA States are concerned, the Central Administrator shall be instructed by the EFTA Surveillance Authority."

[1] OJ L 96, 12.4.2003, p. 16.
[2] OJ L 309, 25.11.2005, p. 15.
[3] OJ L 121, 15.5.2009, p. 37.

(f) The following subparagraphs shall be added in Articles 96(1) and 97(2):

"When accounts under the jurisdiction of an EFTA State are concerned, the Commission shall immediately inform the EFTA Surveillance Authority of the instructions given to the Central Administrator and the reasons for these instructions.

In case the suspension of access is not horizontal and to the extent that it is directed at individual accounts under the jurisdiction of an EFTA State, the EFTA Surveillance Authority shall within three working days adopt a decision on the applicability of the Commission's instructions, based on the explanations given by the Commission. The absence of a decision from the EFTA Surveillance Authority shall have no effect on the validity of the instructions given by the Commission or of the action taken by the Central Administrator."

(g) The following subparagraph shall be added in Article 97(3):

"The word 'Commission' shall be replaced by the words 'EFTA Surveillance Authority' when account holders under the jurisdiction of an EFTA State are concerned."

(h) The following subparagraph shall be added in Article 99(3):

"A national administrator of an EFTA State may request the EFTA Surveillance Authority to reinstate processes suspended in accordance with paragraph 1 if it considers that the outstanding issues that caused suspension have been resolved. If this is the case, the EFTA Surveillance Authority shall, upon consultation with the Commission, instruct the Central Administrator to reinstate those processes. It shall otherwise reject the request within a reasonable period and inform the national administrator without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent request to be accepted."

(i) The following subparagraph shall be added in Article 110(3):

"When account holders under the jurisdiction of an EFTA State are concerned, such data may be provided by the Central Administrator following the prior consent of the EFTA Surveillance Authority."

(j) The following subparagraph shall be added in Article 110(6):

"Europol shall keep the EFTA Surveillance Authority and the Commission informed of the use it makes of the data when account holders under the jurisdiction of an EFTA State are concerned." ';

(2) the text of point 21an (Commission Regulation (EU) No 920/2010) is deleted.

Article 2

The text of Regulation (EU) No 389/2013 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 11 April 2014, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

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, 10 April 2014.

For the EEA Joint Committee
The President
Gianluca GRIPPA

(*) No constitutional requirements indicated.