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ANNEX

ANNEX

to the

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

(European Green Bonds)

ANNEX

DRAFT DECISION OF THE EEA JOINT COMMITTEE

No […]

of […]

amending Annex IX (Financial services) 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) Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds[1] is to be incorporated into the EEA Agreement.

(2) Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point[2] is to be incorporated into the EEA Agreement.

(3) The EFTA States are to, when defining what countries shall be on the list of non-cooperative jurisdictions in their national legislation, take utmost account of the EU list of non-cooperative jurisdictions for tax purposes.

(4) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 29bdc (Commission Delegated Regulation (EU) 2021/528) of Annex IX to the EEA Agreement:

'29be. **32023 R 2631**: Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023), as amended by:

- **32023 R 2869**: Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 (OJ L, 2023/2869, 20.12.2023).'

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

(a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms Member State(s) and

[1] OJ L, 2023/2631, 30.11.2023.

[2] OJ L, 2023/2869, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2869/oj

competent authorities shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities, respectively.

(b) Unless otherwise provided for in this Agreement, ESMA and the EFTA Surveillance Authority shall cooperate, exchange information and consult each other for the purposes of the Regulation, in particular prior to taking any action.

(c) References to the powers of ESMA under Article 19 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council in the Regulation shall be understood as referring, in the cases provided for in and in accordance with point 31i of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.

(d) In Article 9, as regards the EFTA States, the words "jurisdiction listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes" shall read as "non-cooperative jurisdiction identified by the national legislation of the EFTA State concerned".

(e) Decisions, interim decisions, notifications, simple requests, revocations of decisions and other measures of the EFTA Surveillance Authority under Articles 22(1), 23(2), 24(1), 34(2), 43(1), 54-56 and 59-61, shall, without undue delay, be adopted on the basis of drafts prepared by ESMA at its own initiative or at the request of the EFTA Surveillance Authority.

(f) In Articles 15a(1), the words "Union law" shall be replaced by the words "the EEA Agreement".

(g) In Article 22:

(i) in paragraph 1, the words "or, in the case of external reviewers for European Green Bonds established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraph 2, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(h) In Articles 23(2)-(5), 24(1), 32(1), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(i) In Article 33:

(i) in paragraph 1, the words "or, in the case of external reviewers established in an EFTA State, the EFTA Surveillance Authority's" shall be inserted after the word "ESMA's";

(ii) in paragraphs 3 and 5, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(j) In Article 34:

(i) in paragraph 2, the words "or, as regards external reviewers established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraph 3, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(k) In Article 37, the words ", the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(l) In Article 43:

(i) in the first sentence of paragraph 1, the words "or, in the case of external reviewers established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the words "apply to ESMA";

(ii) in point (a) of paragraph 1 and paragraphs 2-8, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(m) References to Union law in Articles 33(6), 47(2) and 49(4) shall be understood as referring to the EEA Agreement.

(n) In Article 54:

(i) in paragraph 1, the words "or, in case of persons established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraphs 2, 3 and 5, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iii) point (g) of paragraph 3 shall, as regards the EFTA States, read as follows:

"indicate the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.";

(iv) in paragraph 5, the following subparagraph shall be added:

"The EFTA Surveillance Authority shall without undue delay forward the information received under this Article to ESMA.".

(o) In Article 55:

(i) in paragraph 1, the words "or, in case a person subject to investigation is established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraph 1, the following subparagraph shall be added:

"Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in investigations upon ESMA's request.";

(iii) in paragraphs 2, 3, 4 and 5, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iv) the second sentence of paragraph 3 shall, as regards the EFTA States, read as follows:

"The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 61, the legal remedies available under Regulation (EU) No 1095/2010, as incorporated into the EEA Agreement, and the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the

Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.";

(v) paragraph 6, as regards the EFTA States, shall read as follows:

"Where an authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall verify that the decision of the EFTA Surveillance Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its verification of the proportionality of coercive measures, the national judicial authority may ask the EFTA Surveillance Authority for detailed explanations, in particular relating to the grounds the EFTA Surveillance Authority has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on the file of ESMA or the EFTA Surveillance Authority. The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice."

(p) In Article 56:

(i) in paragraph 1, the words "or, in case of legal persons established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraph 1, the following subparagraph shall be added:

"The EFTA Surveillance Authority shall without undue delay forward the information obtained under this Article to ESMA.";

(iii) in paragraphs 2 to 8, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iv) in paragraph 2, the following subparagraph shall be added:

"Officials of and other persons authorised by ESMA shall be entitled to assist the EFTA Surveillance Authority in the carrying out of its duties under this Article and have the right to participate in on-site inspections.";

(v) the second sentence of paragraph 4 shall, as regards the EFTA States, read as follows:

"The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 61 as well as the right to have the decision reviewed by the EFTA Court in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.";

(vi) paragraph 9, as regards the EFTA States, shall read as follows:

"Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall verify that EFTA Surveillance

Authority's decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its verification of the proportionality of the coercive measures, the national judicial authority may ask the EFTA Surveillance Authority for detailed explanations, in particular relating to the grounds the EFTA Surveillance Authority has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subject to the coercive measures. However, the national judicial authority shall not review the necessity of the investigation or demand that it be provided with the information on the file of ESMA or the EFTA Surveillance Authority. The lawfulness of the EFTA Surveillance Authority's decision shall be subject to review only by the EFTA Court in accordance with the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice."

(q) In Article 57:

(i) the words ", the EFTA Surveillance Authority" shall be inserted after the first use of the word "ESMA";

(ii) the words "or the EFTA Surveillance Authority" shall be inserted after the second use of the word "ESMA".

(r) In Article 58, the words "the EFTA Surveillance Authority," shall be inserted after the word "ESMA,".

(s) In Article 59:

(i) in paragraph 1, the words "or, in case of persons established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraphs 2 and 3, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iii) in paragraph 4, the following subparagraphs shall be added:

"Without undue delay, the EFTA Surveillance Authority shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the EEA States and to the Commission. ESMA shall publicly disclose any such decision on its website within 10 working days of the date when the decision as referred to in paragraph 1 was adopted. The EFTA Surveillance Authority shall also publicly disclose any of its own decisions on its website within 10 working days of the date when they were adopted.

The disclosure to the public referred to in the third subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to have the decision reviewed by the EFTA Court;

(b) where relevant, a statement affirming that proceeding referred to in point (a) have been instituted and specifying that actions brought before the EFTA Court do not have suspensory effect;

(c) a statement asserting that it is possible for the EFTA Court to suspend the application of the contested decision in accordance with Article 40 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.".

(t) In Article 60:

(i) in paragraph 1, the words "or, in the case of an external reviewer or any of the persons referred to in Article 54(1) established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in paragraphs 2 and 4, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(u) In Article 61:

(i) in paragraph 1, the words "or, in case of persons established in an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(ii) in the first sentence of paragraph 4, the words "or, as the case may be, the EFTA Surveillance Authority's decision" shall be inserted after the words "ESMA's decision";

(iii) in the second sentence of paragraph 4, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(v) In Article 62:

(i) in paragraph 1, the following subparagraph shall be added:

"The EFTA Surveillance Authority shall also disclose to the public every fine and periodic penalty that it has imposed pursuant to Articles 60 and 61, subject to the conditions laid down in this paragraph as regards the disclosure of fines and periodic penalties by ESMA.";

(ii) in paragraph 4, the following subparagraph shall be added:

"The Standing Committee of the EFTA States shall determine the allocation of the amounts of the fines and periodic penalty payments collected by the EFTA Surveillance Authority.";

(iii) in paragraph 5, the following subparagraph shall be added:

"Where the EFTA Surveillance Authority decides to impose no fine or penalty payment upon closing an investigation, it shall inform ESMA, the Standing Committee of the EFTA States and the competent authorities of the Member States concerned accordingly and shall set out the reasons for its decision.".

(w) In Article 63:

(i) in paragraph 1, the following subparagraph shall be added:

"Where, in carrying out its duties under this Regulation, the EFTA Surveillance Authority finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 60(1), the EFTA Surveillance Authority shall appoint an independent investigating officer within the EFTA Surveillance Authority to investigate the matter following consultation with ESMA. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the external reviewer concerned and shall perform his or her functions independently from the College of the EFTA Surveillance Authority and ESMA's Board of Supervisors.";

(ii) in paragraph 2, 5 and 7, as regards the EFTA States, the words "and the EFTA Surveillance Authority" shall be inserted after the words "ESMA's Board of Supervisors";

(iii) in paragraph 4, as regards the EFTA States, the words "and the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iv) in paragraph 8, as regards the EFTA States, the following subparagraphs shall be added:

"On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 64, the EFTA Surveillance Authority shall decide if one or more of the infringements listed in Article 60(1) has been committed by the persons subject to an investigation, and in such a case, shall take a supervisory measure in accordance with Article 59 and impose a fine in accordance with Article 60.

The EFTA Surveillance Authority shall provide ESMA with all information and files necessary for the performance of its obligation under this paragraph.";

(v) in paragraph 9, the words "or the EFTA Surveillance Authority" shall be inserted after the words "ESMA's Board of Supervisors";

(vi) in paragraph 11, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".

(x) In Article 64:

(i) in paragraph 1, the following subparagraphs shall be added:

"Before preparing any draft for the EFTA Surveillance Authority under Articles 59, 60 and 61, ESMA shall give the persons subject to such a decision the opportunity to be heard on ESMA's findings. ESMA shall base its draft only on findings on which those persons have had the opportunity to comment.;

The EFTA Surveillance Authority shall base its decisions under Articles 59, 60 and 61 only on findings on which the persons subject to such decisions have had the opportunity to comment.";

(ii) in paragraph 2 and 3, the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA";

(iii) in paragraph 3, as regards the EFTA States, the words "ESMA's file" shall be replaced with the words "the file of ESMA and the EFTA Surveillance Authority".

(y) In Article 66(1), the following subparagraph shall be added:

"As regards external reviewers established in an EFTA State, fees shall be charged by the EFTA Surveillance Authority in accordance with this Regulation and with the Commission delegated act referred to in paragraph 3.";

(z) In Article 67(2), the words "or, as the case may be, the EFTA Surveillance Authority" shall be inserted after the word "ESMA".'

Article 2

The text of Regulation (EU) 2023/2631 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 […], 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, […].

For the EEA Joint Committee

The President

[…]

The Secretaries
To the EEA Joint Committee
[…]

[3] [*] [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Declaration by the EFTA States

to Decision No …/… incorporating Regulations (EU) No 2023/2631 into the Agreement

Regulation (EU) No 2023/2631, notably regulates the use services of third-country external reviewers and lays down a third-country regime for external reviewers on the basis of an equivalence assessment, recognition or endorsement under which third-country external reviewers may provide external review services. The incorporation of this Regulation into the EEA Agreement is without prejudice to the scope of the EEA Agreement as regards third country relations.