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JOINT PARLIAMENTARY COMMITTEE

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REPORT
ON
FINANCIAL SERVICES IN THE EEA

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The draft report has been based on the briefing elaborated by the European Parliament's Directorate-General for Research on the European Economic Area (EEA) and the Financial Services Action Plan (FSAP)

I Introduction

1. The objective of the Agreement on the European Economic Area (*EEA Agreement*)¹, based on common rules and equal conditions of competition, is to establish a dynamic and homogeneous European Economic Area between the EU Member States and the EFTA States, which are parties to the Agreement (*Iceland, Liechtenstein and Norway*). To this end, the four fundamental freedoms of the internal market of the European Community have been extended to the EEA EFTA States together with a wide range of accompanying Community rules and policies. This includes the free movement of financial services (banking, insurance, and securities) on the basis of a "single licence" and "home country control". Freedom of establishment for both businesses and professionals also applies throughout the EEA. Exchange controls and other obstacles to the free movement of capital were prohibited by the EEA Agreement, subject to certain derogations in the fields of fisheries investment, fishing vessels and real estate.²

2. Although the single market for financial services has been under construction since 1973, these markets have remained segmented. With the entry into force of the EU Treaty (1 November 1993), the principle of full freedom of capital movement was incorporated into the Treaty.

3. In 1998, the Cardiff European Council acknowledged that considerable scope for boosting financial market integration still remained. Already prior to the Cardiff Council, the Commission had laid the groundwork for a Risk Capital Action Plan to build a stronger venture capital base. This Plan includes initiatives to be taken at the Community and/or Member State level by reducing institutional, regulatory and tax barriers, and fostering high-tech small and medium-sized enterprises and human capital. The Cardiff Council made financial market issues a top political priority, stipulating that financial market integration is a requisite for greater efficiency, not only in the financial sector itself but also for the economy as a whole. Thus, it asked the Commission to take initiatives towards accelerating the process of financial market integration. This resulted in the Financial Services Action Plan (FSAP), containing a large number of concrete steps to reduce or remove obstacles. The Councils in Lisbon, Feira, Stockholm and Barcelona endorsed this plan.

4. The FSAP involves a series of regulatory and non-legislative measures designed to achieve, among other things, a single wholesale European financial market, open and secure retail markets and state-of-the art prudential rules and supervision. In all, the plan called for 42 separate legislative and non-legislative measures in banking, insurance and securities, as well as company law and taxation.

5. The 2000 Lisbon Council subsequently made financial market integration one of the "pillars" of the economic and social agenda, together with macroeconomic, employment and social policy. A deadline of 2003 was set for the implementation of the Risk Capital Action Plan and for those elements of the Financial Services Action Plan relating to securities markets. The Financial Services Action Plan has an ambitious timetable with an overall

¹ <http://secretariat.efta.int/library/legal/eea>

² European Parliament, DG IV, **Fact Sheet**, EEA, 6.3.2, 1/12/2000

completion goal of year-end 2005. During 2000, anxiety about the slow progress of the Financial Services Action Plan resulted in the establishment of a Committee of Wise Men on the Regulation of European Securities Markets under the chairmanship of Alexander Lamfalussy. The role of the "wise men" was to assess how the mechanism for regulating securities markets could best respond to developments. The Committee was also asked to propose scenarios for adapting current practices to ensure greater convergence and co-operation in day-to-day implementation, in order to eliminate barriers. The Lamfalussy Committee published its final report in February 2001 underscoring the need to rapidly adopt the measures in the Financial Services Action Plan, especially the establishment of a Securities Committee. It also recommended specific changes to the process for approving financial market legislation at Community level³. In February 2002, the European Parliament and the Commission reached agreement on making the legislative procedures of the complex FSAP speedier and more flexible under the Lamfalussy procedure.

6. By the end of June 2002 the Financial Services Action Plan (FSAP) was halfway through its ambitious timetable for implementation. The FSAP timetable for 2002 includes the Directives on market abuse, collateral, distance marketing of financial services, insurance intermediaries, prospectuses, financial conglomerates and pension funds, and the Regulation on International Accounting Standards.

7. A further significant milestone is the greater awareness and acceptance of the major benefits that financial integration can bring. A study commissioned by the European Financial Services Round Table (2002) estimated that integration could add 0.5 – 0.7 per cent annually to EU GDP, equivalent to 43 billion Euro on an annual basis.⁴

II The Financial Services Action Plan and the EEA EFTA States⁵

8. In the Mid-Term Review of the Financial Services Action Plan (FSAP) the need for further rapid progress was stressed if the Action Plan is to be completed on target in 2005. More than half of the planned actions have been finalized. There are still many outstanding issues such as measures aimed specifically at putting in place an integrated securities and risk capital market. Political agreement on the proposed Directives on Financial Conglomerates, Prospectuses and Pension Funds must be reached, with a view to final adoption by December 2002. The Commission would therefore in the coming months further intensify its work on issues such as auditor independence and standards; corporate governance; clearing and settlement; financial stability; reinsurance; more advanced insurance solvency rules; money laundering; the integrity of the financial sector and the development of an integrated market for retail financial services. The Commission is about to present the remaining proposals under the Action Plan, including Takeover Bids, a revision of the Investment Services Directive and a number of company law related Directives.

9. Most legislative acts under the FSAP are **EEA relevant** and have been, or will be, incorporated into the EEA Agreement. Therefore intensified work by the Commission in that

³ OECD, Economic Surveys, **Euro Area**, Economics, July 2002; European Commission, Financial Services Progress Reports.

⁴ European Commission, COM(2002)267 final, 3.6.2002, **Sixth Report Financial Services**"An improving climate, but quite some way to go".

⁵ **EEA Joint Committee**, Annual Report of the Joint Committee for the year 2001 on the functioning of the EEA Agreement, **19 April 2002**

area will also mean intensified work for the EEA EFTA States. In 2001, the EEA EFTA States prepared an Action Plan as a follow-up to the Lisbon strategy. The Standing Committee of the EFTA States adopted this plan on 18 January 2002. It commits the EEA EFTA States to pursue priorities of the Lisbon Strategy, including the legislative programme for financial services. The plan serves as a basis for continued co-ordination and setting of priorities in order to ensure that the EEA EFTA States contribute to the Lisbon Process, and to the benefit and good functioning of the Internal Market.

10. In 2001, EEA EFTA experts continued to participate in a number of expert groups assisting the Commission in preparing new legislative proposals, and they attended the meetings of the Banking Advisory Committee and the Insurance Committee as observers. They also took part in the meetings of two new committees set up by the Commission in line with the recommendations of the Lamfalussy report on the regulation of the securities market, the European Securities Committee and the Committee of European Securities Supervisors. EEA EFTA experts also participated in some peer review teams set up by the Commission to examine the supervision and regulation of the financial services sectors in the Accession Countries.⁶

11. Reports on specific points of the implementation of the Financial Services legislation in the EEA EFTA States have been published by the EFTA Surveillance Authority⁷. These documents deal with :

- The application of the investor's compensation schemes Directive 97/9/EC in Iceland, Liechtenstein and Norway.
- The Operation of Certain Articles in the Deposit-Guarantee Schemes Directive (94/19/EC).
- The Operation of Certain Articles in the Investment Services Directive (93/22/EC).
- The implementation of the Money Laundering Directive (91/308/EEC).

III Factual overview of achievements in financial services legislation by the EEA EFTA States

12. In 2001, the EEA Joint Committee reported that for financial services six new legislative acts were integrated into Annex IX (Financial services)⁸. Of the 45 financial services directives listed in the May 2002 EFTA Scoreboard Report, only two had not been transposed (in Liechtenstein).

a) Banking

13. In 1999, according to the EFTA Surveillance Authority's assessment, measures implementing several provisions of the **Directive on Deposit-Guarantee Schemes (94/19/EC)** were lacking in all three EEA EFTA States. Consequently, the Authority sent

⁶ EEA Joint Committee, Annual Report of the Joint Committee for the year 2001, 19 April 2002.

⁷ <http://www.efta.int/docs/surv/Publications/Other%20Reports/default%20reports.htm>

⁸ These six Acts deal with : insurance motor vehicles adopted in January 2001, disclosure of information on financial instruments adopted in January 2001, business of credit institutions adopted in February 2001, credit institutions adopted in March 2001, electronic money institutions adopted in March 2001 and exchange of information adopted in June 2001.

letters of formal notice to all three States in 1999. The case was closed with **Iceland** in March 2000 after notification of further implementing measures.

14. After receiving a reasoned opinion concerning the **Directive on Deposit-Guarantee Schemes (94/19/EC)** in March 2000, **Norway** notified the Authority of additional national measures adopted to fully implement the Directive. Consequently, the Authority closed the case in December 2001. **Liechtenstein** also received a reasoned opinion concerning the Directive. In November 2001 the case was closed after Liechtenstein notified the Authority of amendments to the existing legislation ensuring full implementation of the Directive.

15.. In September 2000, **Iceland, Liechtenstein** and **Norway** implemented the **Contractual-netting Directive (96/10/EC)**.

16. The time limit for the EEA EFTA States to adopt necessary measures to comply with the **Cross-border Credit Transfers Directive (97/5/EC)** expired on 1 February 2000. The Authority has received notifications from all three States of the full implementation of the Directive; from **Norway** in October 1999, from **Liechtenstein** in March 2000 and from **Iceland** in October 2000.

17. In 2001 the Authority initiated a conformity assessment project on the implementation of the Directive on **Cross-border Credit Transfers (97/5/EC)**. The assessment was finalised in 2001 for **Iceland** and **Norway** without formal action. The assessment for **Liechtenstein** is foreseen in 2002. Liechtenstein implemented the Directive by enacting the “Act on the Execution of Credit Transfers”. A respective ordinance about the settlement of disputes concerning cross border transfers will enter into force in December 2002.

18. **Iceland** notified full implementation of the **Settlement Finality Directive (98/26/EC)** in December 1999. In 2001 the Authority assessed the conformity of the notified measures with the Directive. The assessment was finalised in July 2001 without any formal action. **Norway** notified a partial implementation of the Directive in May 2000 and a full implementation in October 2001.

19. Concerning **Liechtenstein** an important measure was taken: the full implementation of the **Banking Accounts Directive (80/635/EEC)**.

20 The **First Money Laundering Directive (91/308/EEC)** deals with the obligation to identify a client, the rules of the duty of enhanced diligence, the provision of evidence and internal control, the obligation to notify the authorities, and the penalties for breaches of anti-money laundering legislation. In general, the Surveillance Authority considers the implementation of the Directive to be very satisfactory in all three EFTA States.

21 In **Iceland**, money laundering is criminalized in the *General Penal Code* of 1940. Most of the provisions of the Directive were transposed in the 1993 Act on measures against money laundering. There were no significant problems with the implementation of the **Money Laundering Directive (91/308/EEC)**.

22. In **Liechtenstein**, money laundering is criminalized in the Penal Code- (*Strafgesetzbuch*). The Act was amended in 1996 in order to implement the Money Laundering Directive. The main national measures transposing the provisions concerning

credit and financial institutions are to be found in the *Due Diligence Act (Sorgfaltspflichtgesetz)*. Identification requirements have been introduced.

23. To comply with the **First Money Laundering Directive**, the **Norwegian Penal Code** of 1902 was amended in 1993 in order to make money laundering a criminal offence. Other basic provisions transposing the Directive are laid down in the *1988 Act on Financial Activity*, as amended in 1996. In Norway, the rules on money laundering included in the Act on Financial Activity and those of the Identification Control Regulation apply to all financial institutions including insurance companies.

b) Insurance

24 In 2000, **Liechtenstein** had totally adopted the **Insurance Accounts Directive (91/674/EEC)** and **Norway** had adopted necessary national measures to comply with the **First Life Insurance Directive (79/267/EEC)**.

25 After the judgement of the EFTA Court, **Liechtenstein** has notified national measures, considered to fully implement the **Legal Expenses Insurance Directive (87/344/EEC)**, which entered into force on 1 January 2002; Liechtenstein should have notified this Directive since May 2000. **Norway** notified full implementation in October 2001 of the **Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group (98/78/EC)** and the case was closed in the same month. This Directive should have been notified since July 2000 by all of the three States, but only **Iceland** had notified a partial implementation in 2001.

c) Securities and Stock Exchange

26 **Liechtenstein** notified the implementation of the **Investor Compensation Scheme Directive (97/9/EC)** after having received a letter of formal notice in 2000. The **Capital Adequacy Directive (93/6/EC)** was completely implemented by **Liechtenstein**. The Authority decided to close the case in June 2001.

IV Application of Financial Services Legislation: open issues⁹

a) Banking

27. Problematic points in this sector concern mainly Liechtenstein. Iceland has no problems in this regard and there is only one conflict point with Norway.

Liechtenstein

28. In December 2001, the Surveillance Authority sent a reasoned opinion to Liechtenstein concerning restrictions on the establishment of and investment in financial institutions. The Liechtenstein Banking Act provides that banks, over which a dominant foreign influence is exercised, are not allowed to refer in their name to a Liechtenstein character or to pretend to have such a character. The Authority maintains that Liechtenstein

⁹ EFTA Surveillance Authority, **Annual Report**, May 2002.

has, therefore, failed to fulfil its obligations under Articles 31, 34 of the EEA Agreement on the freedom of establishment and Article 40 of the EEA Agreement on the free movement of capital as well as its obligations under the **Capital Movements Directive (88/361/EEC)**. The source of this problem is the Liechtenstein Banking Act, which allows for differential treatment between national and foreign banking institutions. Liechtenstein has notified the amendment of the previously criticized Art. 16.3.3 Banking Act in September 2002.

29. Moreover, Liechtenstein has to implement before the end of 2002, the **Cross-Border Credit Transfers Directive (97/5/EC)**. As mentioned above, Liechtenstein implemented the Directive by enacting the “Act on the Execution of Credit Transfers”. A missing ordinance about the settlement of disputes concerning cross border transfers will enter into force in December 2002.

30. Eventually, Liechtenstein should have implemented the **Settlement Finality Directive** before February 2002. Liechtenstein has informed that national measures to implement the Directive are expected to enter into force in the fourth quarter of 2002. The Settlement Finality Directive was implemented by Liechtenstein by enacting the “Finality Act”, which will be published in the Liechtenstein Law Gazette in December 2002.

Norway

31. In October 2001, the Authority issued a Reasoned Opinion to Norway, concerning the lack of implementation of Article 11 of the **Second Banking Directive (89/646/EEC)** and restrictions in national law on ownership of financial institutions. The Norwegian Law on Financial Activity and Financial Institutions states, that no one can own more than 10% of the share capital of a Norwegian financial institution. In a reply to the letter of formal notice, Norway disputed that its legislation infringed the EEA rules on free movement of capital. In any case, Norway argued that the 10% rule would be justified mainly for competition and prudential supervision concerns. In its Reasoned Opinion the Authority maintains its position that the Norwegian legislation is incompatible with the free movement of capital. Norway has not demonstrated that its legislation is proportionate to the aims the country intends to pursue. According to ESA, Norway infringes Article 40 EEA and the Capital Movements Directive 88/361/EEC and should also implement Article 16 of Directive 2000/12/EC. The EFTA Surveillance Authority is now waiting for new legislation to be enacted.¹⁰

32. In November 2001, the Economy and Finance Ministers of the EU and EFTA welcomed the **revised Money Laundering Directive (Directive 2001/97/EC of 4 December 2001)**, which is relevant for the EEA. The Ministers agreed to intensify exchange of information on suspicious transactions relating to terrorism, money laundering and financial crime.¹¹

33. At the EEA Joint Committee meeting in September 2002, the question of the integration of the **revised Money Laundering Directive** into the EEA Agreement was raised by the European Commission. For the first time the Commission also launched the procedure

¹⁰ EFTA Surveillance Authority, **Press Release**, "Restrictions in Norwegian Law on Ownership of Financial Institutions Incompatible with EEA Law", 30 October 2001.

¹¹ “EU/ECOFIN”, “**EU and EFTA confirm their joint commitment to combating financing of terrorism**”; Agence Europe, 8 Nov 2001. The press release is also available on the Council website and the EFTA Website.

in Art. 102 of the EEA Agreement to underline the importance of a rapid integration of the Directive. All three EEA/EFTA States recognise the EEA relevance of the Directive. However, **Liechtenstein** has raised some legal/technical questions, which need further clarification.

b) Insurance

Liechtenstein

34. Liechtenstein has to take measures to comply with the **Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group (98/78/EC)**. In December the Authority issued a reasoned opinion due to the delay of implementation. The Directive has been implemented in Liechtenstein by amending the "Act on Insurance Supervision", the amendments will enter into force in December 2002. In July 2001 Liechtenstein notified the full implementation of the **Second Life Assurance Directive (90/619/EEC)** after receiving a reasoned opinion in July 1999. In 2002, the Authority will assess whether the measures taken are sufficient.

Norway

35. In October 2000, the Authority received a complaint against Norway alleging an infringement of EEA rules concerning insurance and consumer protection. The complainant maintains that Norwegian rules restricting the conversion of a paid-up-policy into a unit trust are incompatible with the EEA Agreement. The Authority is examining the complaint. It should be underlined that this is a very specific detailed issue. In the fourth quarter of 2001, the Authority decided to initiate a review of Norway's legislation in the financial sector. Insurance is covered amongst other things.

c) Securities and Stock Exchange

Norway

36. In 1999, the Authority received a complaint against Norway, where it was alleged that the system of investor compensation created an entrance barrier to the Norwegian market in the field of investment services. The complaint has been examined in connection with the conformity assessment of the **Investor Compensation Scheme Directive (97/9/EC)** in Norway.

V Concluding remarks

37. The Financial Services Action Plan is EEA relevant for most of its legislation in financial services, except for the areas, which have fiscal implications, since tax matters are excluded from the EEA Agreement. The EEA EFTA States are committed to pursuing the priorities of the FSAP, as part of the Lisbon strategy to make the EEA "the most competitive and dynamic knowledge-based economy" by 2010.

38. The financial services legislation implementation record of the EEA EFTA States is satisfactory as shown in the latest Scoreboard Reports (EFTA and European Commission) and EFTA Surveillance Authority Report. Of the 45 financial services directives listed in the May

2002 EFTA Scoreboard Report, only two had not been transposed (in Liechtenstein. In the meantime both directives were transposed in FL by the “Finality Act” and the “Act amending the Act on Insurance Supervision”).

39. With the Commission launching the procedure in Art. 102 of the EEA Agreement in relation with the integration of the revised Money Laundering Directive into the EEA Agreement, the parties concerned have 6 months to clarify the legal and technical questions raised by Liechtenstein in order to find a mutually acceptable solution. If a solution is not found, another 6 months period begins, where parties try to resolve problems and integrate the directive. If that is not done within the 6 months period a last resort could be a suspension of the affected part of the agreement. It would then be up to political interpretation to define what the “affective part of the agreement” would mean.

40. The EEA EFTA States follow the ambitious timetable of the FSAP. Nevertheless, the success of meeting the 2005 deadline for completing an internal market for financial services primarily depends on the EU's legislative speed, and the legislative reforms introduced by Lamfalussy Process.

AnnexImplementation status of Financial Services Directives in the EEA EFTA Countries.¹²

			ISL	LIE	NOR
BANKING					
consolidates banking directive	Dir.	2000/12			LFN
credit transfers	Dir.	97/5			
settlement finality directive	Dir.	98/26		LFN ¹³	
deposit-guarantee schemes	Dir.	94/19			
annual and consolidated accounts of banks	Dir.	86/635			
publication of annual accounts of bank branches	Dir.	89/117			
money laundering	Dir.	91/308			
INSURANCE					
reinsurance	Dir.	64/225			
first non-life insurance	Dir.	73/239			
abolition of restrictions in non life insurance	Dir.	73/240			
coinsurance	Dir.	78/473			
tourist assistance	Dir.	84/641			
legal expense insurance	Dir.	87/344			
second non-life insurance	Dir.	88/357			
third non-life insurance	Dir.	92/49			
first motor insurance	Dir.	72/166			
second motor insurance	Dir.	84/5			
third motor insurance	Dir.	90/232			
first life insurance	Dir.	79/267			
second life insurance	Dir.	90/619		RDO ¹⁴	
third life insurance	Dir.	92/96			
insurance accounts	Dir.	91/674			
supplementary supervision of insurance undertaking	Dir.	98/78	LFN	RDO ¹⁵	
insurance intermediary	Dir.	77/92			

Meaning of shades

full implementation



partial implementation



non-implementation

**Meaning of abbreviations****LFN**

Letter of formal notice

RDO

Reasoned opinion

NNNNo Measures
Necessary¹² EFTA surveillance Authority, **Annual Report**, May 2002.¹³ FL complied with this directive by enacting the "Finality Act", which will be published in the Liechtenstein Law Gazette in December 2002.¹⁴ Closure of case in March 2002¹⁵ FL complied with this directive by enacting the "Act amending the Act on Insurance Supervision", which will be published in the Liechtenstein Law Gazette in December 2002.

STOCK EXCHANGE AND SECURITIES					
admission of securities to stock exchange listing	Dir.	79/279		NNN	
listing particulars to be published	Dir.	80/390		NNN	
amending LPD	Dir.	94/18		NNN	NNN
disclosure of information by listed companies	Dir.	82/121		NNN	
major holdings in listed companies	Dir.	88/627			
Requirements for prospectuses on public offerings	Dir.	89/298			
insiders dealing	Dir.	89/592			
UCITS	Dir.	85/611			
capital adequacy	Dir.	93/6			
amendment to the capital adequacy directive	Dir.	98/31			
investment services	Dir.	93/22			
investor compensation scheme	Dir.	97/9			

RESOLUTION

On The financial services in the EEA

The Joint Parliamentary Committee of the European Economic Area:

- A. In accordance with its task lay out by the EEA Agreement (Article 95, paragraph 4),
- B. Emphasising that the successful operation of the EEA depends upon uniform implementation and application of the common rules in all EEA States,
- C. Underlining the importance for the EEA EFTA States in the involvement and participation in the process within the EEA Agreement,
- D. Underlining the importance of financial market integration, as a top political priority according to the Cardiff Council in 1998 and as one of the "pillars" of the economic and social agenda of the Lisbon Council in 2000,
- E. Emphasising the importance of the Financial Services Action Plan in the process of financial market integration,
 - 1. Welcomes the Action Plan on the follow-up to the Lisbon strategy adopted by the EEA EFTA States in January 2002;
 - 2. Welcomes the satisfactory implementation of EEA relevant legislation in the FSAP by the EEA EFTA States;
 - 3. Urges the contracting parties to work for a speedy adoption and implementation of all new legislation according to the FSAP;
 - 4. Urges the parties to find a solution on the integration of the revised Money Laundering Directive (2001/97/EC) into the EEA.

RESOLUTION

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 - 4. Urges the parties to find a solution on the integration of the revised Money Laundering Directive (2001/97/EC) into the EEA.