

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 1121621

31 May 2013

### EEA EFTA COMMENT ON THE FOLLOW-UP TO THE SINGLE MARKET ACT I AND SINGLE MARKET ACT II

#### 1. GENERAL REMARKS

1. The 20<sup>th</sup> anniversary of the Single Market and 19 years of the European Economic Area (EEA) have provided an occasion for EEA citizens to discuss the opportunities offered by the Single Market. The EEA EFTA States, Iceland, Liechtenstein and Norway have organised several debates with citizens and businesses in order to discuss the Single Market and to raise awareness of it. Since our submission of comments on the Single Market Act I in February 2011, the European Commission has tabled a number of proposals. The EEA EFTA States have played an active role in analysing and evaluating these proposals and have presented our views to the relevant EU services through EEA EFTA Comments. Our views on some key issues are set out below.
2. As equal partners through the EEA Agreement, we welcome the Commission's initiative to further develop the Single Market with a second set of priority actions. We will continue to assess these initiatives and provide comments in the respective areas as new proposals are presented.

#### 2. SPECIFIC ISSUES

##### *Better governance of the Single Market*

3. Better governance of the Single Market requires shared responsibility and close administrative cooperation. The extension of the **Internal Market Information System (IMI)** is one element in this regard. We welcome the Commission's proposal and intention of improving the governance of the Internal Market through greater cross-border exchange of information. In this respect, broadening and developing the IMI is a step in the right direction. We support the establishment of a common set of rules for the IMI to govern its operation and future development, and the flexible and decentralised approach to cross-border administrative cooperation. Here we believe

that the potential of the Single Market may be unleashed to a greater extent through better enforcement across the EEA<sup>1</sup>.

4. As to the development of **SOLVIT** it is important to clarify its mandate, set out clear service targets and a minimum of procedural rules, define the role of the Commission (the EFTA Surveillance Authority (ESA) in the case of the EEA EFTA States) in SOLVIT and regulate data protection issues in line with the IMI Regulation. SOLVIT centres should be obliged to take on structural cases, and to keep it optional is in our view not satisfactory. We are aware of the fact that such cases might be difficult to solve and in most cases demand a lot of work from the SOLVIT centres, but we find that this must be viewed in light of the effect of solving such cases. A solution which results in a repeal or amendment of (a) national rule(s) will not only benefit the one client in question, but also any potential client that sooner or later could meet the same obstacle<sup>2</sup>.

### *Digital Single Market*

5. In order to achieve a true Digital Single Market we have emphasised that cross-border systems for the mutual recognition of **electronic identification** was one of the crucial elements needed. The proposed regulation on electronic identification and trust services for electronic transactions in the Internal Market (COM(2012) 238), will be an important tool for strengthening public electronic services and the European Digital Single Market. While ensuring mutual recognition and the acceptance of electronic identification and electronic trust services across borders is welcomed, the EEA EFTA States are concerned about the complexity of the proposed regulation which would undermine legal certainty and clarity and also increase administrative burden. In our opinion, regulation should lay down requirements for security assurance levels of eID schemes, i.e. based on the STORK classifications. Further, we think that providers of qualified trust services should be audited biennially instead of yearly (art. 16), and that it needs to be a balance between the need for secure services on the one hand, and the need for supervision and revision on the other. This must also be seen in conjunction with the other requirements in Chapter III, Section 2 of the proposal, i.e. that allows for the supervisory bodies to perform their own audits at any time.<sup>3</sup>
6. New digital technologies are opening up great opportunities for creators, consumers and businesses. Increased demand for online access to cultural content (e.g. music, films and books) does not recognise borders or national restrictions, nor do the online services used to access them. In order to facilitate an internal market for copyright protected work, in particular for online music, the Commission presented a directive on **collective management of copyright**, including **licensing rights related to online music across borders**. The EEA EFTA States support the goals put forward in the proposal, namely to secure transparency, accountability and good governance.

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<sup>1</sup> [EEA EFTA Comment on the proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System \("IMI"\)](#), 12 March 2012, (ref. 1112318).

<sup>2</sup> [EEA EFTA Comment on the elements for a new SOLVIT recommendation](#), 4 March 2013, (ref. 1121400).

<sup>3</sup> [EEA EFTA Comment on the proposal for a regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the Internal Market \(COM\(2012\) 238\)](#) Submitted to the Commission on 19 March 2013, (ref. 1121181).

We also support the goal of making it easier to clear rights for works in music for the whole or large parts of the Internal Digital Market. However, the EFTA States have argued that the provision of the management of collective management organisations should not be overly detailed as it creates unnecessary administrative burdens for both rightholders and users, as well as generating unnecessary administrative costs. Further, and of high importance for the EFTA States, the Directive should be without prejudice to existing schemes such as Extended Collective Agreement Licences. The EEA EFTA States stress the importance of securing the influence of the rightholders themselves in the operations of the organisations which manage their rights. The EEA EFTA States strongly urge the Commission to broaden the legal basis for the Directive so as to enable it to also have effect on organisations not established by European rightholders, but operating in Europe. This will secure a level playing field for all organisations operating in the market<sup>4</sup>.

### *Developing fully integrated networks in the Single Market*

7. The EEA EFTA States support the need to complete the Single Market as far as energy and transport networks are concerned.
8. In the area of transport, we are currently assessing the **Fourth Railway Package**, in particular the opening of the passenger service market, and the transmission of authority to the European Railway Agency where safety certificates and rolling stock authorisation are concerned. We look forward to the upcoming key actions in the sectors of maritime and air transport.
9. In the field of energy, the EEA EFTA States welcome the Commission's Communication "Making the Internal Energy Market Work"<sup>5</sup> which proposes actions to complete the **Internal Energy Market (IEM)** by 2014. The EEA EFTA States support the idea that citizens and consumers need to be informed of the benefits that the IEM provides, in particular in terms of prices. In order to complete the IEM, several challenges need to be tackled, mainly when it comes to enforcement, the lack of competition and the need to invest in order to modernise the system. The challenge to empower consumers is also important to the EEA EFTA States, in particular where pricing and switching are concerned. We welcome the action plan that accompanies the Commission Communication and are committed to working with the EU institutions and Member States so that the IEM can be completed.

### *Fostering mobility of citizens and businesses across borders*

10. The EEA EFTA States welcome the EU's initiative to strengthen the enforcement of the **Posting of Workers Directive**, and consider it an important step in the right direction. There is a clear need to strengthen compliance with the Directive, especially to ensure that posted workers' wages and working conditions are in accordance with national law in the receiving country. We are however very concerned about Article 9 of the proposal covering national control measures. The current proposal provides an exhaustive list of permissible national control

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<sup>4</sup> [EEA EFTA Comment on the Commission proposal for a directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the Internal Market, \(COM \(2012\) 372\)](#), 21 February 2013, (ref. 1120062).

<sup>5</sup> COM(2012) 663.

mechanisms, which in the EEA EFTA States' opinion is far too restrictive and hampers the purpose of the proposed directive.

11. A proportionally large number of posted workers from other EU countries have been received by some EEA EFTA States. The EEA EFTA States emphasise the importance of ensuring that labour market rules are designed to prevent social dumping and encourage high standards of social protection by applying appropriate measures aimed at protecting domestic and posted workers' rights, and at maintaining high standards in the workplace. As the list of national control measures provided in Article 9 does not cover measures taken by some of the EEA EFTA States, we would be obliged to discontinue our current practice. For the EEA EFTA States, this is considered to be problematic and represents a step backwards, as the current measures taken have proven to be effective.
12. The EEA EFTA States are of the opinion that national control measures should be viewed against the mutual experience of both the EU Member States and EEA EFTA States. A more dynamic approach is needed, whereby the EU and EEA EFTA States are allowed to establish the necessary national rules on control systems, which are designed to meet the specific challenges of vulnerable industries<sup>6</sup>.
13. As to the modernisation and simplification of the **Directive on Recognition of Professional Qualifications (PQD)**, we consider it essential that the PQD sets out clear and simple rules which at the same time ensure high quality services and safety for consumers and welcome the emphasis placed on lifelong learning and validation of professional experience with regard to assessment of the need for compensation measures. We support the introduction of a European Professional Card as a voluntary tool and an alternative to the existing recognition procedure provided in the Directive. The professional card seems very useful for harmonised professions and possible for regulated professions in the home state.<sup>7</sup>
14. The **EURES** network provides information, advice and assistance for the placement and recruitment of workers throughout the EEA. To this end, EURES will be transformed into a more effective tool for intra-EU recruitment, placement and job matching. An important element of this is the Commission's Implementing Decision of 26 November 2012<sup>8</sup>. The EEA EFTA States are currently preparing for the incorporation of this Decision into the EEA Agreement.
15. The proposal for a **Recovery and Resolution Directive** to establish a framework for credit institutions and investment firms that find themselves in financial or commercial difficulty<sup>9</sup>, tabled on 6 June 2012, is welcomed by our side. The EEA EFTA States support in general early intervention and resolution tools. The EEA EFTA States acknowledge that the proposal grants the European Banking Authority (EBA) a major coordination role during the stages of prevention and early

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<sup>6</sup> [EEA EFTA Comment on the proposal for a directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#), 25 January 2013, (ref. 1118273).

<sup>7</sup> [EEA EFTA Comment on the proposal for a directive amending Directive 2005/36/EC on the recognition of professional qualifications](#), 10 September 2012, (ref. 1115026).

<sup>8</sup> Decision 2012/733/EU.

<sup>9</sup> COM(2012) 280.

intervention (notably resolution planning), as well as the facilitation of joint decision making with respect to cross-border firms undergoing resolution. The participation of the EEA EFTA States in the EBA is currently being discussed between the EFTA and the EU sides.

### *Consumer Confidence in the Single Market*

16. **Product safety and market surveillance** are of major importance to the EEA EFTA States. We welcome the Commission's proposals in the new Product Safety and Market Surveillance Package (COM (2013) 74) which aim at strengthening market surveillance, protecting consumers and tackling unfair trading practices. The EEA EFTA States support the gathering together of market surveillance provisions under one regulation, as well as the strengthening of legislation on general product safety on consumer goods. It is noted that some issues regarding legal certainty and the scope of the proposal remain unclear. The EEA EFTA States will undertake a detailed assessment of the package and closely monitor its progress in partnership with the Commission and the European Parliament. It is foreseen that the EEA EFTA States will submit detailed comments on the package in due course.
  
17. As to facilitating cross-border commerce, the EEA EFTA States are sceptical as to whether the proposed regulation on a **Common European Sales law** is likely to enhance cross-border trade to the benefit of both consumers and businesses and has been put forward on the appropriate legal basis. Any possible European instrument on sales law would need a high level of consumer protection so that the general level of consumer protection in the Member States is not weakened. Only if this requirement is fulfilled could one envisage that consumers would opt to use a European Sales Law. The proposed regulation still requires some clarifications regarding unfair contract terms and the co-existence of national contract law and the European Sales Law. Furthermore, the broad scope of the proposed Regulation will require a thorough assessment of its EEA-relevance<sup>10</sup>
  
18. We welcome the soon-to-be formally adopted legislative initiatives on **Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR)** which will be key for achieving consumer confidence and traders' trust in the Single Market. ADR will ensure that quality out-of-court entities exist to deal with any contractual dispute between a consumer and a businesses and ODR will establish a European electronic platform to resolve a dispute which has arisen from a cross-border e-commerce transaction. We have previously<sup>11</sup> raised concerns that full coverage for all disputes from the sale of goods and provision of services in different market sectors by ADR entities fulfilling all the exact criteria in the Directive is too ambitious, since lack of resources might give constraints to this objective in practice. The Member States should rather be given some leeway in the sense that national established systems not fulfilling all the criteria, but with the same level of quality access to justice should be considered sufficient to comply with the Directive's obligation for full coverage. Moreover, the obligation of Member States to provide access to ADR should be

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<sup>10</sup> [EEA EFTA Comment on the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law \(COM\(2011\) 635\)](#), 27 September 2012 (ref. 1115445).

<sup>11</sup> [EEA EFTA Comment on the Commission's Proposal for a Directive on Alternative Dispute Resolution and the Commission's Proposal for a Regulation on Online Dispute Resolution](#), 24 May 2012 (ref. 1113974).

limited to disputes submitted by the consumer. Another concern for the EEA EFTA States was the 90-day deadline for resolving cases which in our view was too short.

19. The EEA EFTA States welcome the Commission's consultation on "**Bank Accounts**", published on 20 March 2012, which collected stakeholders' views on the transparency and comparability of bank fees, bank account switching and access to basic payment accounts. The EEA EFTA States are looking forward to assessing the Commission's proposal on the matter which was published on 8 May 2013.
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