

MICHEL BARNIER

Membre de la Commission européenne

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Dear Minister Johnsen, *(Mr Sigbjørn)*

With reference to your letter of 22 September 2011, for which I thank you, I would first like to reassure you, as I have done in previous correspondence, that the Commission always considers carefully the position of the EEA-EFTA countries while preparing new legislation in a field covered by the EEA Agreement. The Commission services have involved EEA-EFTA countries in the preparation of this proposal, and will keep doing so.

The reinforcement of Deposit Guarantee Schemes (DGS) is a reform which started three years ago. We strengthened depositors' protection from a minimum of EUR 20,000, to a minimum of EUR 50,000 in mid-2009. The level of protection was subsequently raised to a harmonised level of EUR 100,000 throughout the internal market as from 31 December 2010. In July 2010, the Commission adopted a comprehensive recast proposal in order to harmonise the functioning of DGS across the EU, introduce several consumer-friendly solutions such as a short payout deadline for reimbursing depositors after a bank failure and strengthen substantially the financial capacity of the existing schemes.

The crisis showed clearly that divergent levels of coverage can lead depositors to relocate their deposits when fears come up that the banking system is under stress. When the crisis deteriorated in the autumn of 2008, account holders shifted deposits to banks in Member States whose coverage was higher. This led to banks being stripped of liquidity in times of stress, and it aggravated the crisis. Such a situation risks fuelling further bank runs and, in turn, jeopardising financial stability. This is why the EU has legislated on DGS in 2009 to move away from minimum harmonisation and to provide for the same level of protection throughout the internal market. This principle is as valid today as it was 2 or 3 years ago.

Mr Sigbjørn Johnsen  
Minister of Finance  
PO Box 8008 Dep  
0030 Oslo  
NORWAY

Therefore, a permanent exemption from the harmonised coverage level for one or more countries within the EEA would not only run counter to the objective of a maximum harmonisation of the coverage level adopted by the EU, but it could also lead to significant competitive distortion, in particular in the neighbouring countries. In order to avoid competitive distortions, it would require restoring complicated and ineffective mechanisms such as "topping up" and "export ban", but this would represent a step back since the EU decided to abandon them a few years ago. Therefore, in our view, a permanent derogation to the level of coverage would appear difficult to justify as it would be in contradiction with the objectives of the Directive.

Finally, from a legal point of view, the EU acquis is negotiated between the EU institutions pursuant to the applicable procedures and adopted by the Parliament and Council for the EU internal market. EEA-EFTA States participate in the decision making process and feed in their expertise and advice as provided for, in particular, under Article 99 of the EEA Agreement. Certain specificities of the EEA-EFTA States might be taken into account in the context of the negotiations on incorporating EU acts into the EEA Agreement. An EU legal act cannot pre-empt that process.

As has been stressed on previous occasions, the Commission is willing to explore, together with Norway, alternative ways to maintain higher levels of coverage while respecting the main objectives of this reform. Thus, the Commission has proposed that a grandfathering clause combined with a phase-out period be granted to countries that would need it. Without prejudging the final agreement that might be reached by the three institutions during the ongoing triilogue on DGS, other possible options discussed so far may include, for example, non-binding contractual guarantee schemes as provided for in some Member States.

The Commission certainly shares Norway's objective that the protection of depositors should not be weaker as a result of the reform.

I look forward to our continued good cooperation on this important matter.

Yours sincerely, *Michel Barnier*



Michel BARNIER