

16 March 2010

EFTA Surveillance Authority
Rue Belliard 35 B-1040
Brussels,
Belgium
Internal Market Affairs Directorate
Attention: Mr. Hallgrímur Ásgeirsson: Director.

Dear Mr. Ásgeirsson,

I write on behalf of the Committee of Inspection (**CoI**) overseeing the liquidation of Kaupthing Singer and Friedlander (Isle of Man) Limited (in liquidation) (**KSFIOM**).

Over 2000 savers, the great proportion of them either citizens and/or residents of the European Union or EFTA nations, have lost their savings following the collapse of the Icelandic banking system in October 2008. This resulted in KSFIOM, the Isle of Man subsidiary of Kaupthing Hf (its Icelandic parent bank) (**KHF**) being put into liquidation.

Certain of our members have been in contact with Mr Risto Artjoki and Mr Franz Cermak, of the EU Enlargement Commission, who recommended contacting your offices with regard to the legislation approved by the Icelandic authorities in November 2008 to reconstitute its banking sector.

We have also been in communication with Mr Eirik Ihlen, of your organization, who informed us that several complaints had been made with regard to these issues.

We believe that our complaint has merit and, importantly, falls within the scope of the EFTA Surveillance Authority remit.

EFTA Surveillance Authority Remit

Our complaint concentrates on the discriminatory behaviour of the Icelandic Government in respect of:

1. The use of KHF funds to guarantee the deposits of all domestic Icelandic savers but not their non-Icelandic savers.
2. Failure to accept responsibility for the Parent Bank Guarantee (PCG), provided by KHF, to its subsidiary, KSFIOM. This PCG guaranteed to depositors that KHF would discharge the liabilities of KSFIOM if KSFIOM was unable to do so from its own assets.

While we understand that Isle of Man matters fall outside the scope of Community law, our complaint concerns the behaviour of the Icelandic Government and an Icelandic bank and we believe that the nature of the banking structures firmly brings our complaint within your remit for consideration. Specifically the following reasons support this assertion:

- a. The PCG was signed by an Icelandic citizen who was an official of an Icelandic Bank and is subject to Icelandic law.
- b. The vast majority of depositors intended to be covered by this guarantee are EU or EEA citizens.
- c. Funds that were deposited in KSFIOM were typically upstreamed to Iceland via a KHF subsidiary in the UK making KSFIOM effectively an extension of these EU/EFTA banks.
- d. November 2008 legislation, enacted by the Icelandic Government, has resulted in assets being transferred out of KHF and used to protect Icelandic domestic deposits in preference to non-Icelandic creditors. These assets would otherwise have been available to creditors of KHF.
- e. The products of KSFIOM were marketed extensively in the EU and in particular in the UK, with major emphasis on the benefit of the PCG as evidence for the strength of KHF and its group.
- f. UK citizens, resident overseas, are forced to bank off-shore outside the UK due to the widespread application by banks and financial institution of anti-money laundering policies which prevent UK citizens overseas from opening accounts in the UK. Accordingly, a significant number of depositors in KSFIOM were expatriate UK citizens, although the depositor base comprised other EU and EEA residents.

These facts argue strongly in favour of the fact that our complaint falls within the remit of the EFTA Surveillance Authority.

Our complaint

- The KSFIOM CoI believes that the Icelandic authorities acted in a manner contrary to the applicable laws of the EU when it implemented the Emergency legislation which has resulted in discriminatory treatment in favour of domestic savers in KHF versus those international savers who placed deposits in KHF subsidiaries. This is contrary to Articles 40 and 42 of the EEA Agreement, and the protective measures implemented by the Icelandic government operated to the exclusion of non-Icelandic depositors.
- Icelandic domestic savers have been allowed free access to and 100% recovery of their savings whilst the creditors of KSFIOM, who fall outside or beyond the scope of the Isle of Man Depositors Compensation Scheme, have to date received only 40% of their money, this having been paid by the joint liquidators of the bank, and have not been repaid in any form by Kaupthing Hf. The anticipated timeframe for recovery of the available assets is currently estimated at 7 years from the date of this letter.
- The KSFIOM CoI accordingly requests that the EFTA Surveillance Authority review the legality of the Icelandic Government's actions in relation to its failed banks. During the collapse of the Icelandic banks in 2008, powers granted by the Icelandic Parliament, in October 2008, with reference to Article

100 of Act No 161/2002, and amended by Act No. 44/2009 enacted on 22 April 2009, have effectively implemented an unfair and discriminatory two-tier status in relation to the creditors of the banks, along with such other articles and provisions as the EFTA Surveillance Authority may deem applicable.

The actions of the Icelandic government clearly constitute highly discriminatory behaviour against individuals; is apparently contrary to EEA/EU consumer law and also appears to contravene EU Human Rights Legislation, Article 13 of Protocol 11, which clearly states 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity'.

We submit that the review should include the fact that the savers of KSFIOM believe that they should be rated *pari passu* with domestic Icelandic savers – i.e. that they should have returned 100% of their deposits – both in regard to non discrimination of savers and also due to the Parent Company Guarantee issued by KHF to KSFIOM.

We understand that there are a number of submissions with regard to the above actions of the Icelandic Authorities and we would appreciate it if you could advise us the status and if possible, further claimants so that we can align our efforts, if possible, to speed up the review process.

We would be happy to visit you at a mutually convenient time to discuss this complaint in more detail.

Yours sincerely,
For and on behalf of
The Committee of Inspection of
Kaupthing Singer and Friedlander (Isle of Man) Limited (in liquidation)

GAVIN BRAKE