

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FINANTSINSPEKTSIOON

AND

THE BUNDESAUFSICHTSAMT FÜR DAS KREDITWESEN

**CONCERNING THEIR COOPERATION
IN THE FIELD OF SUPERVISION OF
BANKS AND INVESTMENT FIRMS**

General provisions

1. The Estonian Financial Supervision Authority ("EFSA") and the German Bundesaufsichtsamt für das Kreditwesen („BAK“), both hereinafter referred to jointly as „the Authorities“ express their willingness to cooperate on the basis of mutual trust and understanding and agree to base their cooperation in the field of supervision of banks and investment firms on the principles and procedures outlined in this Memorandum. The Authorities are not bound to provide information or assistance if it is prohibited by law. Within the framework of this memorandum banks and investment firms will be all entrepreneurs who render banking services according to German Banking Act Art. 1 (1)((1))-((12)) and financial services according to German Banking Act Art. 1 (1a) ((1))-((7)).

2. The EFSA is an agency with autonomous competence and a separate budget, which operates at the Bank of Estonia and the directing bodies of which act and submit reports pursuant to the procedure provided in Financial Supervisory Authority Act. The EFSA conducts financial supervision in the name of the state and is independent in the conduct of financial supervision. The EFSA is responsible for the licensing and supervision of banks, investment firms as provided in Estonian law, insurance companies, fund management companies, investment and pension funds, insurance intermediaries and other subjects as stated in the relevant legislation in Estonia

3. As central body in accordance with the German Banking Act (BA) and other special laws, the BAK, which was established in 1962, is entrusted with the supervision of banks in Germany. As (organisationally) independent superior federal authority within the purview of the Ministry of Finance, the BAK forms a part of the direct federal administration. Exercising its sovereign functions, the BAK closely cooperates with the Deutsche Bundesbank which assists in carrying out the supervision of banks and investment firms. The BAK and the Deutsche Bundesbank are hereinafter jointly referred to as "German banking supervisors".

Information regarding institutions

4. The Authorities intend to cooperate in the supervision of cross-border establishments of banks and investment firms incorporated in the respective other country and within their respective jurisdiction. For the purpose of this Memorandum „cross border establishment“ means a branch or a subsidiary of a bank or an investment firm within the Authorities jurisdiction in the respective other country. The scope of cooperation encompasses the licensing (both issuance and revocation) as well as the ongoing supervision of the cross-border establishments, be they branches or subsidiaries. The Authorities advise each other on cross-border establishments in or from the respective other country upon specific request to the extent allowed under the law. The BAK will pass on information received by the EFSA to the Deutsche Bundesbank, with regard of the domestic allocation of responsibility and in accordance with the provisions of this Memorandum, provided that Deutsche Bundesbank will be bound by the obligation to maintain the confidentiality of such information.

Licensing

5. If a bank or investment firm based in one of the two countries applies the Authority of the other country for establishing a branch, the latter has to inform the home-country Authority without delay. If the adequacy of home supervision is a statutory prerequisite which the host-country authority needs to address in the licensing procedure, it would contact the home-country authority to settle any question in this regard.

6. The home-country authority informs the host-country authority of the amount of own funds and the solvency ratio of the parent bank or investment firm, and whether it is fully subject to and complies with the domestic banking and financial regulation, and whether it is expected in the light of its administrative structure and internal control to run the cross-border establishment in an orderly and proper manner. The home-country authority discloses any piece of information available to the host-

country authority which might give rise to doubts as to the fit- and properness of the prospective managers of the cross-border establishment.

Cooperation concerning owner control

7. The Authorities shall consult before granting authorisation to a subsidiary of a bank or investment firm authorised in the other country or assessing any acquisition of a holding in a domestic bank or investment firm through a bank or investment firm within the jurisdiction of the other Authority.

Ongoing supervision; corrective action

8. The EFSA and the German banking supervisors inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of banks or investment firms having cross-border establishments in the respective other country. They also notify each other on administrative penalties which they have imposed or any other action which they have taken on such a cross-border branch establishment as host supervisor or on the parent bank or investment firm as home supervisor if the information in their judgement is possibly important to the Authorities.

9. The EFSA and the German banking supervisors discuss between each other any significant information on banks or investment firms having cross-border establishments in the other country which might be relevant to the other authority. Relevant matters are in particular: concerns about financial soundness of an institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), concerns relating to compliance or control procedures, concerns about the trustworthiness of managers and their conformity with requirements provided for in the legislation, concerns arising from supervisory visits, prudential interviews or reports from and communications with an institution or other regulatory body, concerns arising from

late or inaccurate prudential returns and concerns relating to supervisory arrangements in third countries.

10. Representatives of the EFSA and the German banking supervisors convene for ad-hoc meetings to promote the resolution of supervisory problems concerning a cross-border establishment in the respective other country, whenever either side deems necessary so.

11. For institutions which are not licensed in Estonia and in Germany respectively and which are licensed or apply for a licence with one of the Authorities, the EFSA and the BAK will, as far as they are able, discuss any significant information available to them which might be relevant to the other Authority.

Financial Crime

12. The Authorities will cooperate closely when they identify suspected financial crime activities in supervised institutions. For the purposes of this agreement, financial crimes are in particular: money laundering and all violations of law on financial markets. This also includes unauthorised banking or investment business. The Authorities share information on financial crime concerning the respective institutions which carry out cross-border activities in the other state or which could affect the other state to the extent allowed under their laws. They may pass on this information with prior consent received from the other Authority for regulatory or law enforcement purposes to other such authorities in the national jurisdiction.

Crisis situations

13. The Authorities will inform each other without delay if they learn of an incipient crisis relating to any institution supervised by either which has cross-border establishments in the respective other country.

Customer complaints

14. Complaints made about any institution should be handled by the relevant authorising authority. If as a results any information comes to the attention of either the EFSA or the BAK which is relevant to the other authority the EFSA and the BAK will ensure that this is properly communicated.

15. In Germany the BAK and in Estonia the EFSA is not empowered to intervene as fact-finder, mediator or arbitrator in a civil case as the sole jurisdiction over those matters is allotted to the ordinary judicial authorities. Any complaint against institutions laid with the BAK would only be examined in order to find out whether supervisory measures should be taken on the grounds that the queried activities of the institution showed deficiencies in the fit- and properness of the management or even amounted to harmful tendencies in the banking and financial services industry (cf. Section 6 (2) and (3) BA).

On-site inspections and audits

16. The Authorities agree that cooperation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments. The EFSA will allow the BAK or the auditors commissioned by it, to carry out inspections of branches and subsidiaries of German banks and investment firms in Estonia. In return, the BAK will allow the EFSA to carry out inspections of German branches and subsidiaries of banks and investment firms authorised in Estonia.

17. The Authorities shall notify each other in advance of any inspection, giving details of the names of the examiners, the purpose of the audit and its expected duration. The Authorities will allow each other to accompany any such on-site inspection carried out either by the Authorities themselves or the auditors commissioned by the Authorities. The Authorities will inform each other on the results of the inspections, to the extent reasonable and in a timely manner. If the parent institution has been audited along with its cross-border establishment in the other country, the home-country authority as soon as possible provides the host-country authority with a

summary report on the findings which bear relevance to the cross-border establishment.

Professional secrecy

18. Compliance with the obligation of professional secrecy by all employees who receive confidential information from the other Authority in the course of their activities is a necessary condition for a successful cooperation between the Authorities. The Authorities agree that any confidential information shared through these arrangements will be used only for lawful supervisory purposes. To the extent permitted by law, the Authorities will maintain the confidentiality of all information received through these arrangements from each other and will not disclose any such information unless it is necessary for carrying out their supervisory responsibilities and without first obtaining the prior consent of the other authority. The Authorities will, if it receives any legally enforceable demand for information received from the other authority or acquired in the course of an on-site examination in the other authority's jurisdiction, promptly notify the other authority and will cooperate in seeking to preserve the confidentiality of such information. The BAK will pass on the information received from the EFSA to the Deutsche Bundesbank as to the extent that information is of significance for the performance of the Deutsche Bundesbank as outlined in Section 7 BA, provided that Deutsche Bundesbank will be bound by the obligation to maintain the confidentiality of such information.

Technical arrangements

19. Unless this memorandum or later agreements provide otherwise, the Authorities will correspond with each other in English. As regards meetings and other occasions, the language of use will be decided case by case.

20. Parties agree that all the enquiries and applications within the framework of this memorandum will be submitted in the written form. In cases of exceptional particularity and promptness enquiries and applications can also be submitted orally or in some other way, provided that the application or enquiry will be sent in written form later on.

21. In order to enhance the quality of cooperation, representatives of the EFSA and the German banking supervisors convene regularly to discuss issues concerning banks and investment firms which maintain cross-border establishments within their respective jurisdiction. In these meetings they will also review the effectiveness of these arrangements. The EFSA and the German banking supervisors intend to promote their cooperation by visits for informational purposes and by short exchange of staff for practical internships.

22. The Authorities will ensure that they send each other the relevant lists of licensed and authorised institutions which they have authorised. They advise each other upon request on any aspect of their regulatory systems and notify about any major change in their domestic rules and regulations within their jurisdiction, in particular about those changes which have a significant bearing on the activities of cross-border establishments.

23. Cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance. If either Authority gives such notice, cooperation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested. In the event of termination of this Memorandum, information obtained under this Memorandum of Understanding will continue to be treated confidentially.

24. This Memorandum of Understanding will come into force with its signing.

SIGNED in Bonn, this 18th day of March, 2002.

For the Finantsinspektsioon

A handwritten signature in black ink, appearing to read 'Andres Trink', written over a horizontal line.

(Andres Trink)

Chairman of the
Management Board

For the Bundesaufsichtsamt
für das Kreditwesen of Germany

A handwritten signature in black ink, appearing to read 'Jochen Sanio', written over a horizontal line.

(Jochen Sanio)

President