

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Beschwerdekommision der Finanzmarktaufsicht dated 28 May 2020 in the case of Pintail AG v Finanzmarktaufsicht

(Case E-6/20)

A request has been made to the EFTA Court dated 28 May 2020 from Beschwerdekommision der Finanzmarktaufsicht (Financial Market Authority), which was received at the Court Registry on 2 June 2020, for an Advisory Opinion in the case of Pintail AG v Finanzmarktaufsicht on the following questions:

- 1. Must the terms “activity” and “business activity”, as they are used in Directives 2009/110/EC and 2007/64/EC (respectively (EU) 2015/2366), be understood as synonyms; if not, what is the difference?**
- 2. Must “activity” or “business activity” of an authorised electronic money institution within the meaning of Directive 2009/110/EC be understood as meaning the issuance of electronic money, offering to issue electronic money or at least the activities of an electronic money institution that are subject to authorisation (strict interpretation) or does a sufficiently tangible business action also already suffice, for example, the conduct of other business activities, as is provided for in Article 6(1)(e) of Directive 2009/110/EC, to the extent that this action is directed, in accordance with objective criteria and genuinely, towards the issuance of electronic money and not completely trivial (broad interpretation)? Should a broad interpretation be required: What is the difference between a business action of that kind and purely preparatory actions?**
- 3. Using which criteria must the term of ceasing to engage in business, as is provided for in Article 12(1)(a) of Directive 2007/64/EC (respectively, Article 13(1)(a) of Directive (EU) 2015/2366), be interpreted?**
- 4. Does it make a difference in the interpretation whether the Member State has implemented Article 12(1)(a) of Directive 2007/64/EC (respectively, Article 13(1)(a) of Directive (EU) 2015/2366) in such a way that following 6 months of inactivity the authorisation is**

withdrawn by active conduct on the part of the authorities or in a such a way that the lapse arises by operation of law (ex lege) and the authority merely determines this afterwards?