Annual Report

2001

EFTA Surveillance Authority

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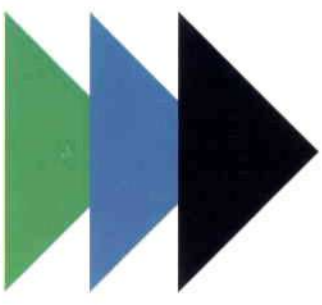

2001

EFTA Surveillance Authority

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Foreword

A well functioning and credible EFTA pillar for surveillance and judicial control is for the EFTA States a prerequisite in order that their individuals and business operators may enjoy equal rights in the EEA market. The EFTA Surveillance Authority has remained a small organization seen in relation to the multitude of tasks it has to perform, in particular when one takes into account that it is required to perform on par with the European Commission with regard to policies and priorities, and to maintain a high professional level. Despite certain pressures, the two-pillar system is holding up. I feel convinced that this will continue to be the case provided that the EFTA States are willing to grant the resources required, and perhaps even more importantly, underpin the competencies and authority of the organizations of the EFTA pillar.

As to the development of the EEA market, significant progress has been made during the eight years of existence of the Agreement. To the extent the good functioning of the market can be measured in rates of implementation of directives, remarkable improvements have taken place throughout the EEA. For the EFTA States, initial rapid progress was followed by stagnation. Presently, however, the implementation rates on the EFTA side are for the first time better than in the Community.

The major future challenge for the EEA side seems to be problems emerging in the application of the established Agreement in sectors where the market is still developing. The Authority has repeatedly warned against tendencies of EFTA States to plead in their defence arguments which reduce the scope of the Agreement or even deny its dynamic character.

The completion of the EEA market will require further dismantling of national restrictions affecting cross-border co-operation, particularly as regards the provision of services, movement of persons and capital, and establishment. This will not mean that the pursuit of particular national policy objectives serving the general good will be rendered impossible. What will be required, however, is that national policies are based on objective criteria and are thus transparent and predictable, and that the restrictions are apt to achieve the set policy objectives and not go beyond what is necessary in this respect.

The overall balance which is drawn up in the preceding is a positive one. However, in the EFTA States there sometimes emerge perceptions regarding the Authority's activity level which are incorrect. Recent statistics in infringement cases give no support to such allegations.

It is therefore an important task for both the Authority and the authorities of the EFTA States to convey correct, comparable information on the surveillance work throughout the EEA.

Brussels, December 2001

Knut Almestad

President

Contents

Contents

Contents

Contents

SUMMARY 2001

The task of the EFTA Surveillance Authority is to ensure, together with the European Commission, the fulfilment of the obligations set out in the Agreement on the European Economic Area (EEA Agreement). The Agreement contains both basic provisions and secondary Community legislation (EEA acts). New EEA acts are included in the Agreement through decisions of the EEA Joint Committee. By the end of 2001, there was a total of 2656 binding acts (directives, regulations and decisions) applicable under the Agreement. The number of directives with a compliance date, the date by which the EFTA States[1] have to comply with the directive, unless a transitional period has been granted or no implementing measures are necessary, on or before 31 December 2001, was 1419.

In respect of *general surveillance*, the Authority continued in 2001 to apply an implementation policy according to which formal infringement proceedings are initiated automatically (by sending a letter of formal notice) against the EFTA State concerned if the Authority has received no acceptable notification on national implementing measures within *two* months from the date when the Directive in question should have been transposed. As regards directives, which have been only partially implemented, the need to initiate formal proceedings is considered at regular intervals.

In its statistics on the *transposition rate* of directives, the Authority makes a distinction between directives which have been notified as *fully* implemented and those where only *partial* implementation has taken place.

When account is taken of directives where *full* implementation has been notified, the rate of transposition by the end of 2001 was as follows: **Iceland** 97.9%, **Liechtenstein** 97.6% and **Norway** 97.8%.

These figures show a considerable improvement for Iceland when compared with 2000. Liechtenstein and Norway also improved their implementation record slightly compared to the previous year. It should be noted, however, that the fact that a directive has been notified as fully implemented does not say anything about the actual *quality* of the national measures notified as implementing it. For a quality evaluation, the conformity of the measures with the provisions of a directive has to be assessed. By the end of 2001, the Authority's services had concluded that full implementation had actually taken place with respect to 37% of the directives being applicable under the EEA Agreement.

When the areas of free movement of *goods, persons, services and capital movements, horizontal areas* and *public procurement* are taken together, during the five years period 1997 - 2001, the Authority registered altogether 664 cases, of which 478 were own-initiative cases and 186 complaints. By the end of the reporting year, the Authority had, for the five years period, closed in total 593 own-initiative cases and 139 complaint cases. This left the total number of open cases in the field of general surveillance at 259.

In the area of *free movement of goods*, 10 new complaints were received during the year and the Authority opened 38 own-initiative cases mainly concerning the implementation of acts. Furthermore, a number of preliminary examinations and cases related to management tasks were initiated during the year. The implementation situation in the EFTA States in the sector of *feedingstuffs* has improved. With regard to the *veterinary legislation, conformity assessment* and *application control* continued throughout the year. The same applies to the correct application of the EEA rules with regard to a number of cases under the *information procedures*, which are further explained in paragraph 4.7.3.

[1] In this report, the term EFTA States is used to refer to the three EFTA States presently participating in the EEA, that is Iceland, Liechtenstein and Norway.

With regard to public procurement, the application of the EEA rules by national authorities and utilities continued to call for particular attention of the Authority. During the year, 15 new cases were formally registered on the basis of complaints. In addition, the Authority considered it necessary to open one own initiative case for the possible infringement of the public procurement rules. The Authority, furthermore, initiated 28 preliminary examinations, *inter alia* to check that national measures intended to transpose the EEA procurement rules were in conformity with those rules.

In the sectors related to the *free movement of persons*, the Authority received 13 new complaints during the year. In area of free movement of workers, examination was continued on 12 complaints received in previous years, of which six were closed during the year.

In the field of mutual recognition of professional qualifications, Norway communicated three new diplomas in Architecture to the Authority with the aim to have them recognised throughout the EEA. In August 2001, the Authority approved the diplomas and they were published in December 2001.

In the area of freedom of establishment, the EFTA Court gave a judgment, in a case where a Liechtenstein court asked for advisory opinion, concluding that the single practice rule, which requires doctors and dentists to have only one establishment, was contrary to the EEA Agreement. In 2000, the Authority had sent a reasoned opinion concerning the matter. Liechtenstein has informed the Authority that the rules will be changed and has been invited to submit further details on the issue.

In the area of freedom of establishment, the Authority sent a reasoned opinion to Norway concerning rules giving priority to local ownership when allocating licenses within the aquaculture sector. Those rules were also considered to infringe the rules on free movement of capital.

In the field of social security, the Authority has received four complaints relating to Norway's refusal to export certain type of Childcare benefit, which resulted in a letter of formal notice being sent to Norway for breach of EEA rules. In this area a long lasting dispute regarding access to the Norwegian social security system for non-Norwegian EEA nationals who work on the state's continental shelf came to an end, as Norway amended its legislation.

In the sector of *free provision of services*, the Authority registered 13 new own-initiative cases and two complaints. Full implementation of directives in the financial services sector continued to require the Authority's attention and during the year, the Authority initiated a review of the Norwegian financial legislation. The aim is, in due course, to do the same regarding the other EFTA States. In particular, the Authority sent a reasoned opinion to Norway concerning restrictions in national law on ownership of financial institutions. In December, the EFTA Court confirmed that Liechtenstein had infringed the EEA Agreement by its failure to ensure full compliance with the *Legal Expenses Insurance Directive*, in a case referred to the Court by the Authority.

Regarding audio-visual services, the Authority sent a reasoned opinion to Iceland for failure to fully implement Directive on *Standards of Television Signals*.

In the field of data protection and information society services, the Authority sent a letter of formal notice to Liechtenstein for implementation failure with regard the *Electronic Signature Directive*, and a letter of formal notice and reasoned opinion due to incomplete transposition of the *Data Protection Directive*.

In the transport sector, the Authority initiated infringement proceedings against Norway regarding discriminatory coast charges, which distinguish between domestic services and services to and from other EEA States. A long-standing dispute between the Authority and Norway on air transport taxes moved towards a solution when Norway decided to abolish the tax as of 1 April 2002.

In the area of non-harmonised services, the Authority has received five complaints relating to Norwegian tax rules, which restrict the use of foreign registered vehicles. In one case, the Authority sent a letter of formal notice in the year 2000. On the access to angling in Norway, the Authority sent a letter of formal notice concluding that rules restricting the access according to residence and nationality requirements are contrary to the free provision of services and to the general prohibition against discrimination.

In the sector of free movement of capital, the Authority initiated infringement proceedings against Iceland regarding rules restricting the acquisition of land. A letter of formal notice was sent to Norway concerning restrictive rules relating to the acquisition of concessions in waterfalls. The national rules were, in both cases, also considered to infringe the rules on freedom of establishment.

In the horizontal areas, 15 new own-initiative cases and three complaints were registered. In the field of labour law, the Authority sent letters of formal notice to Norway for failure to fully implement the *Working Time Directive* and the *Protection of Young people Directive*. Letters of formal notice were sent to all the

EFTA States for non-implementation of the *Part-Time Work Directive*.

In the field of equal treatment of men and women, the Authority sent a reasoned opinion to Norway concluding that rules, which reserve a number of scholarly positions for women only, were contrary to the EEA Agreement, as they automatically and unconditionally give priority to women and as applications from men are not even considered.

In the area of consumer protection, the Authority sent three letters of formal notice and four reasoned opinions to the EFTA States for failure to fully comply with certain directives. Furthermore, a report on the *Directive on unfair terms in consumer contracts* was adopted.

In the environment field, the Authority examined six complaints relating to the *Environmental Impact Assessment Directive*, of which four were closed during the year. The Authority addressed comprehensive reporting tasks in the water, air and waste sectors by the EFTA States.

Concerning company law, Iceland and Norway have notified full implementation of the basic company law and accounting directives. The Authority has been assessing the conformity of the implementation and sent four letters of formal notice to Norway on the basic company law directives.

In the field of *competition*, 38 cases were pending with the Authority at the beginning of 2001. Six of these cases related to Article 59 of the EEA Agreement (State measures) in combination with Articles 53 and/or 54 of the EEA Agreement. In the course of the year, 10 new cases were opened, six of which were based on complaints, the others being opened *ex officio*. In total 22 cases were closed by administrative means during the same period. Thus, by the end of 2001, 26 cases were pending: these cases were based on 11 complaints (two of which raised Article 59 issues), 11 notifications and four cases were initiated *ex officio*.

The Competition and State Aid Directorate continued to follow market developments in the telecommunications sector. It pursued its inquiry in the territory of the EFTA States regarding certain aspects of the telecommunications sector, as well as pending cases, two of which were closed during the reporting period.

In the course of the year, the Authority closed four cases relating to the Norwegian markets for the wholesale and retail supply of *pharmaceuticals and healthcare products*. These cases were dealt with as a matter of priority both in 2000 and 2001.

The Authority's investigation showed that positive effects brought about by the agreements in question were likely to outweigh possible negative effects on competition, and that a sufficient level of competition would be maintained in both the wholesale and retail markets, thus ensuring that the economic benefits would be passed on to consumers. The Authority closed three cases related to *joint purchases of medicines* by Norwegian county hospitals.

The rules concerning the allocation of cases between the Authority and the European Commission have been applied and in 2001 resulted in the formal transfer of a case from the Commission to the Authority.

In terms of cases handled by the European Commission which were subject to the co-operation rules under the EEA Agreement, their number continued to increase and merger cases now account for over half of such cases. Such merger cases included the offer by the *Finnish insurance undertaking Sampo to acquire sole control of the Norwegian insurer Storebrand and the proposed merger between the Norwegian company Aker Maritime and the Anglo-Norwegian company, Kvaerner*. The Authority was involved in several other cases handled by the Commission, including the Commission's proceedings against the joint sale of Norwegian gas carried out through the *Gas Negotiation Committee (Gassforhandlingsutvalget - GFU)*. In addition, the Authority carried out an inspection in Norway at the request of the Commission: the case in question will be handled by the Commission as an EEA co-operation case.

The Authority adopted a *notice on vertical restraints* and *guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements* in 2001.

Resources were also devoted to work related to the on-going project within the European Union to *modernise the rules of competition* and to considering other projects for the review of EC/EEA competition regime.

In the field of *State Aid*, 39 cases were under examination by the Authority at the beginning of 2001. 20 new cases were opened in the course of the year and 26 cases were closed. Consequently, 33 cases were pending at the end of the year.

The Authority closed its own initiative investigation as well as a complaint lodged against possible aid granted to *Iceland Telecom Ltd*. This decision was possible after the Icelandic Government adopted the necessary measures to retroactively abolish the aid.

A formal investigation procedure with regard to regional aid in Iceland was closed when the Authority approved a proposal from the Icelandic authorities, on the system of such aid. The new map of assisted areas was authorised until the end of 2006. The assisted area in Iceland covers 33,2% of the total population. The population density of the regional aid area is 0.92 inhabitants per square kilometre.

A formal investigation regarding *taxation of international trading companies* (ITCs) in Iceland was opened in 2001. The case was still pending at the end of the year.

The Authority closed the case regarding *three training aid schemes ("Vocational Training Fund", "Employment Opportunities for Women" and "Vocational Rehabilitation Centres")* notified by Iceland after having found that they did not constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

The Authority closed an own initiative State aid investigation regarding certain *exemptions from the air passenger tax* in Norway. Since it was decided by the Norwegian Parliament to abolish the air passenger tax as a whole as from 1 April 2002, the pending investigation became void of its purpose.

The Authority decided not to raise objections to regional investment aid and R&D aid granted to four Norwegian shipyards. The Authority was satisfied that the notified aid measures were in accordance with provisions of the "*Shipbuilding Regulation*" (Council Regulation (EC) No. 1540/98), in combination with the Authority's State Aid Guidelines on National regional aid and Aid for Research and Development.

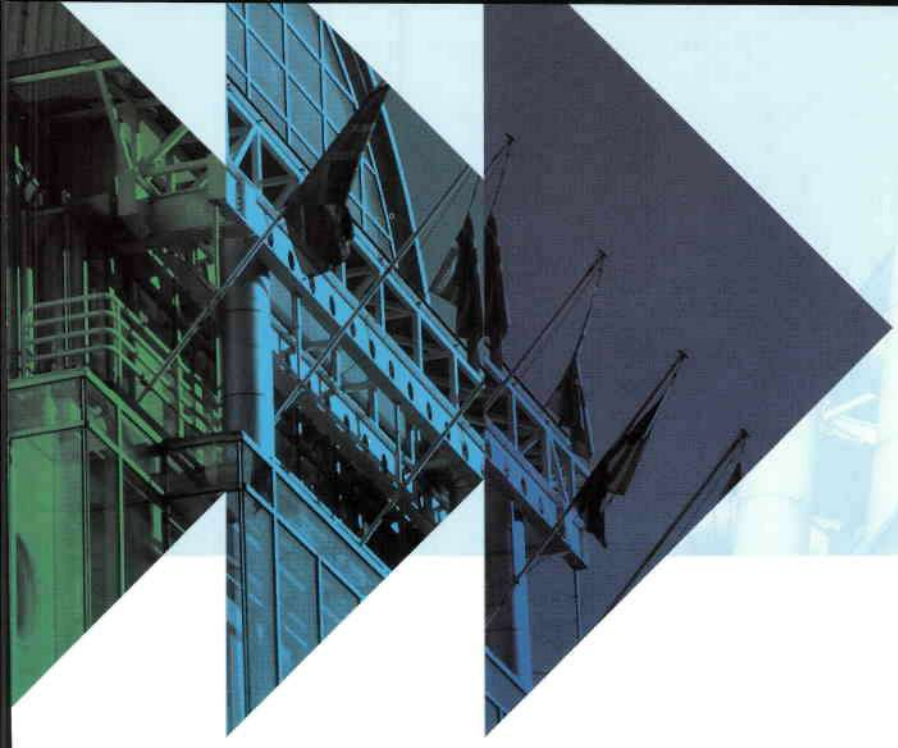
Nor were objections raised to a notification from Norway of a new aid scheme: Research and Development (R&D) projects in enterprises *("Forsknings- og utviklings (FoU) prosjekter i næringslivets regi (FUNN-ordningen)")*. The Authority decided not to raise objections to a notification from Norway of a *Regional Direct Transport Aid Scheme ("Regional Transportstøtte")*.

An agreement to operate the coastal transport route between Bergen and Kirkenes in Norway ("*Hurtigruten*") was entered into between the Norwegian State and two maritime companies. The agreement, which was notified to the Authority, entails an annual compensation of NOK 170 million (approximately € 21 million) to the companies. The Authority decided not to raise objections to this agreement based on Article 59 (2) of the EEA Agreement. The Authority approved aid granted *as compensation for air transport services on certain routes* in Norway considered to be in the public interest.

In the aftermath of the terrorist attacks in New York and Washington on 11 September 2001, insurance companies reduced, with effect from 24 September 2001, insurance cover previously offered to airline companies and airports for damage due to acts of war and terrorism ('war insurance'). Like other states within the EEA, the Icelandic and Norwegian states decided to provide temporary insurance that was not covered by the market. The Authority approved aid granted in this context to cover the first month after 24 September. It will finalise its assessment of the measures for the subsequent period in early 2002.

The *State Aid Guidelines* were amended six times during 2001. New guidelines were introduced in the field of *environment* and in relation to *risk capital*. Minor amendments were made to the guidelines on short-term export credit insurance. The validity of the Multisectoral Framework on regional aid for large investment projects, the rules on State aid to the synthetic fibres industry and the rules on State aid to the motor vehicle industry were prolonged.

The Authority's staff consisted at the end of the reporting period of 50 persons, of twelve nationalities.



INTRODUCTION

2

The EFTA Surveillance Authority was established to ensure, together with the European Commission, the fulfilment of obligations under the EEA Agreement.

Pursuant to Article 21 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement), the Authority is to publish annually a general report on its activities. This is the Authority's eight Annual Report.

In Chapter 3 of the Report, basic information is provided on the EEA Agreement and the Authority itself. A number of concepts frequently referred to in the Report are also explained, and a short account of the Authority's information policy and homepage is given.

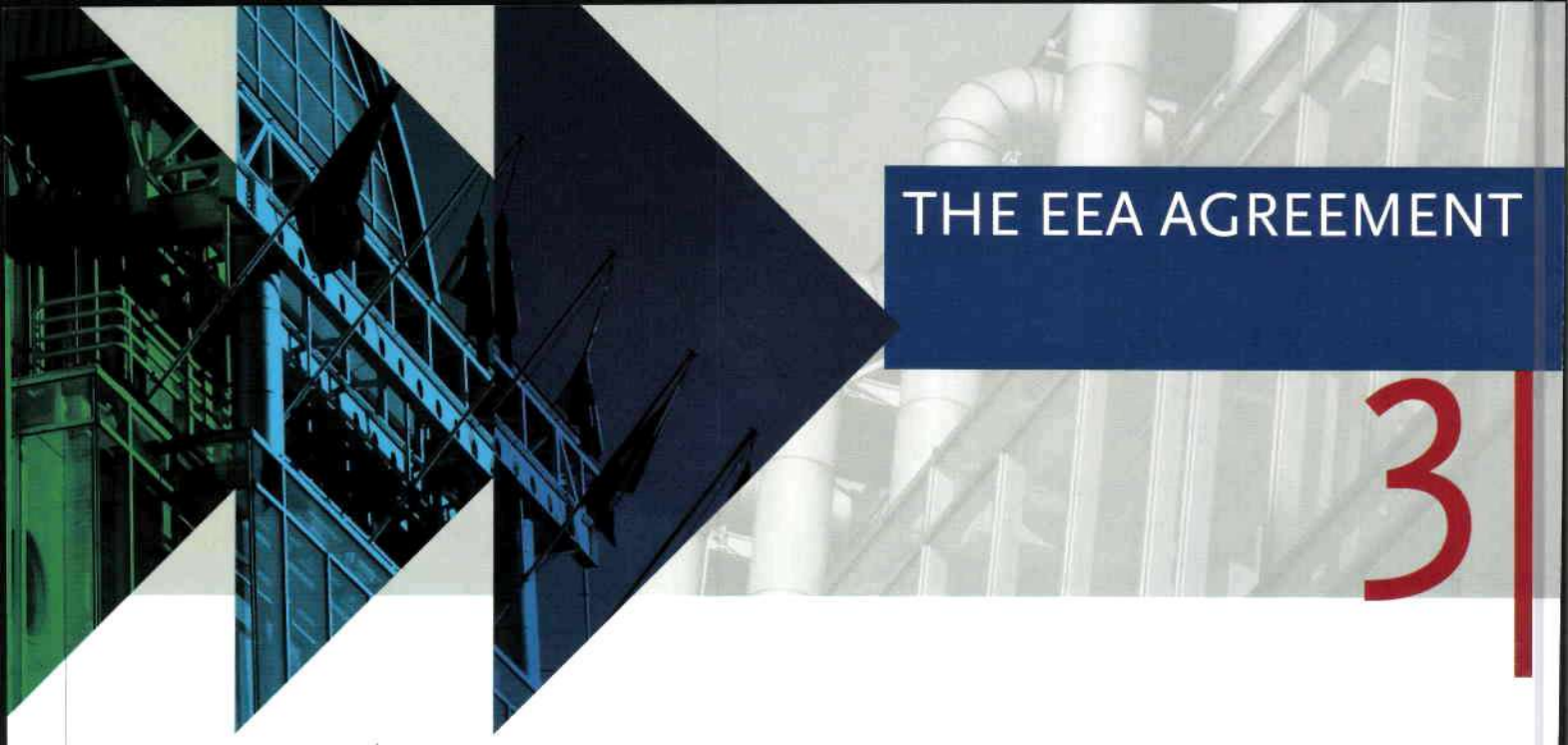
Chapter 4 provides reports on the Authority's general surveillance work with respect to the free movement of goods, persons, services and capital. The first part gives statistical information on general surveillance during the five years period 1997 - 2001, including the implementation status of directives, case handling, infringement cases, closures and the Authority's workload at the end of the reporting period. In the following parts, a more detailed account is given, sector by sector, of the implementation and application of the EEA Agreement in the EFTA States, and of the activities carried out by the Authority in ensuring the fulfilment of obligations under the Agreement and for the management thereof. With regard to some sectors, a brief introductory overview is also given of the applicable EEA legislation.

Accordingly, as regards free movement of goods, persons, services and capital, and the so-called horizontal areas, extensive information is given on the Authority's work in controlling the implementation of EEA acts, in particular the transposition of directives, and in dealing with complaints lodged by individuals and economic operators. References are made to the work carried out by the Authority's services to verify the conformity of national implementing measures with the corresponding EEA rules, and to identify deficiencies regarding the implementation and application of the rules by the EFTA States. Furthermore, the Authority's action to ensure the fulfilment of obligations under the Agreement, including formal infringement proceedings, is described. Information is also given on certain procedures administered, and functions carried out, by the Authority in the application of the Agreement

In addition to an account of the situation as regards the implementation by the EFTA States of the EEA rules on public procurement, information is given on cases pursued by the Authority concerning the application of the rules.

Chapters 5 and 6 set out the main principles and rules in the fields of competition and State aid respectively, together with an outline of the powers of the Authority. Also provided are overviews of cases handled in 2001 and of non-binding acts issued in the form of amendments to the Authority's State Aid Guidelines and as notices in the field of competition respectively. Co-operation with the European Commission and national authorities is mentioned.

In Chapter 7, the appearance of the Authority before the EFTA Court and the European Court of Justice is described.



THE EEA AGREEMENT

3

3.1 THE EUROPEAN ECONOMIC AREA

The EEA Agreement entered into force on 1 January 1994. Following the accession of Austria, Finland and Sweden to the European Union a year later, Iceland and Norway remained for a while the only EFTA States parties to the Agreement. The number of EFTA States was subsequently brought to three when on 1 May 1995, the Agreement entered into force for Liechtenstein.

The objective of the Agreement is to establish a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition. To this end, the fundamental four freedoms of the internal market of the European Community, as well as a wide range of accompanying Community rules and policies, are extended to the participating EFTA States.

Accordingly, the Agreement contains basic provisions - which are drafted as closely as possible to the corresponding provisions of the EC Treaty - on the free movement of goods, persons, services and capital, on competition and other common rules, such as those relating to State aid and public procurement. The Agreement also contains provisions on a number of Community policies relevant to the four freedoms referred to in this Annual Report as horizontal areas - such as labour law, health and safety at work, environment, consumer protection and company law. The Agreement further provides for close co-operation in certain fields not related to the four freedoms.

Secondary Community legislation in areas covered by the Agreement is brought into the EEA by means of direct references in the Agreement to the relevant Community acts. The Agreement thus implies that two separate legal systems are applied in parallel within the EEA: the EEA Agreement to relations between the EFTA and Community sides, as well as between the EFTA States themselves, and Community law to the relations between the EU Member States. This being the case, for the EEA to be homogeneous the two legal systems must develop in parallel and be applied and enforced in a uniform manner. To this end, the Agreement provides for decision-making procedures for the integration into the EEA of new secondary Community legislation and for a surveillance mechanism to ensure the fulfilment of obligations under the Agreement and a uniform interpretation and application of its provisions.

The task of ensuring that new Community legislation is extended to the EEA in a timely manner rests in the first place with the EEA Joint Committee, a committee composed of representatives of the Contracting Parties.

While the introduction of new rules within the EEA is thus entrusted to a joint body, the surveillance mechanism is arranged in the form of a two-pillar structure, with two independent bodies. The implementation and application of the EEA Agreement within the Community is monitored by the European Commission, whereas the EFTA Surveillance Authority carries out the same task within the EFTA pillar. In order to ensure a uniform surveillance throughout the EEA, the two bodies co-operate, exchange information and consult each other on surveillance policy issues and individual cases.

The two-pillar structure also applies to the judicial control mechanism. The EFTA Court exercises competences similar to those of the European Court of Justice and the Court of First Instance with regard to, *inter alia*, the surveillance procedure regarding the EFTA States and appeals concerning decisions taken by the Authority.

3.2 THE EFTA SURVEILLANCE AUTHORITY

The Authority was established under the Surveillance and Court Agreement, which contains basic provisions on the Authority's organisation and lays down its tasks and competences.

3.2.1 Tasks and competences

A central task of the Authority is to ensure that the EFTA States fulfil their obligations under the EEA Agreement. In general terms this means that the Authority is to ensure that the provisions of the Agreement, including its Protocols and the acts referred to in the Annexes to the Agreement (the EEA rules), are properly implemented in the national legal orders of the EFTA States and correctly applied by their authorities. This task is commonly referred to as general surveillance. The general surveillance cases are either initiated by the Authority itself (own initiative cases) or on the basis of a complaint.

When the Authority receives a complaint, it sends the complainant, usually within a month, a letter of acknowledgement of receipt together with information explaining the proceedings for non-compliance with EEA law. The information referred to may be found on the Authority's homepage (see paragraph 3.2.3).

If the Authority considers that an EFTA State has failed to fulfil an obligation under the Agreement, it may initiate formal infringement proceedings under Article 31 of the Surveillance and Court Agreement. However, before infringement proceedings are initiated the Authority tries to ensure compliance with the Agreement by other means. In practice the overwhelming majority of problems identified by the Authority are solved as a result of less formal exchanges of information and discussions between the Authority's staff and representatives of the EFTA States.

A salient feature in this respect is the holding of package meetings in which whole ranges of problems in particular fields are discussed. Where appropriate, before concluding this informal phase, and although at this stage the Authority itself has not taken a formal position on the matter, the Directorate concerned may decide to send an informal letter to the EFTA State concerned (Pre-Article 31 letter) inviting it to adopt the measures necessary to comply with the EEA rule concerned or to provide the Authority with information on the actual status of implementation. If formal infringement proceedings are initiated, as a first step the Authority notifies the Government concerned, in a letter of formal notice, of its opinion that an infringement has taken place and invites the Government to submit its observations on the matter. If the Authority is not satisfied with the Government's answer to the letter, or if no answer is received, the Authority delivers a reasoned opinion, in which it defines its final position on the matter, states the reasons on which that position has been based, and requests that the Government take the necessary measures to bring the infringement to an end. Should the Government fail to comply with the reasoned opinion, the Authority may bring the matter before the EFTA Court, whose judgement shall be binding on the State concerned.

The Authority has extended competences in three fields. They supplement the competences vested in the Authority with regard to general surveillance and fully reflect the extended competences of the European Commission within the Community in these fields.

Thus, with respect to public procurement the Authority is to ensure that utilities and central, regional and local authorities in the EFTA States carry out their procurements in accordance with the relevant EEA rules. To this end, and as an alternative to initiating formal infringement proceedings, if the Authority considers that a clear and manifest infringement has been committed in the award procedure prior to a contract being concluded, it may directly request that the EFTA State concerned correct the infringement.

In the competition field, the tasks of the Authority are directed towards the surveillance of practices and behaviour of market players. Thus, the Authority's role is to ensure that the competition rules of the EEA Agreement, notably the prohibitions of restrictive business practices and of the abuse of a dominant market position, are complied with. In carrying out these tasks, the Authority is entrusted with wide powers of investigation, including powers to make on-the-spot inspections. A leniency programme is also in place to encourage cartel members to come forward with relevant information about a particular cartel. In the case of an infringement, the Authority may order the undertakings concerned to bring the infringement to an end. In such cases, the Authority initiates formal proceedings by issuing a statement of objections, which the parties have the opportunity to comment on - in writing and by way of a hearing. If the Authority remains of the opinion that there is an infringement after the parties have been heard, a final decision is adopted ordering the infringement to be brought to an end. In addition, the Authority may impose fines and periodic penalty payments for breaches of the EEA competition rules.

With regard to State aid, the Authority is to keep under constant review all systems of existing aid in the EFTA States and, where relevant, to propose to the EFTA States appropriate measures to ensure their

College:
In front from left to right:
Hannes Hafstein,
President Knut Almestad,
Bernd Hammermann
Behind from left to right:
Isabel Tribler,
Christina Sand.

compatibility with the Agreement. New aid or alterations to existing aid shall be notified to the Authority. The Authority may decide not to raise any objections to notified measures. Otherwise, it will decide to start an investigation procedure. If the Authority, as a result of its investigation, comes to the conclusion that an aid measure is not in conformity with the Agreement, it will decide that the EFTA State concerned shall abolish or alter the measure. If this does not take place, the Authority may bring the matter before the EFTA Court. Where aid has been granted and paid out without authorisation, the Authority may instruct the government concerned to recover from the recipient the whole or part of the aid paid out.

To ensure a uniform application of the competition and State aid rules, the EEA Agreement provides for co-operation between the Authority and the European Commission in handling individual cases in these fields, including merger cases. The Agreement also provides for consultations related to proposals for new Community acts in the same areas.

In addition to handling individual competition and State aid cases, the Authority is entrusted with the competence and has the obligation to issue guidelines, notices, or other communications which, without being legally binding, provide guidance for the interpretation and application of the competition and State aid rules. These various acts, adjusted for EEA purposes, replicate acts issued by the Commission.

Along with the surveillance functions outlined above, the Authority has a wide range of tasks of an administrative character, which match those performed by the European Commission within the Community. Generally speaking, these tasks relate to EEA rules whose proper application is not only subject to the general surveillance function, but to a more direct control by the Authority. The tasks often imply that the Authority, under procedures presupposing an exchange of information between the EFTA and Community sides, is to take measures that are to have an effect throughout the entire EEA.

Thus, an authorisation may sometimes be needed before a product can be lawfully placed on the market and an EFTA State may, under certain circumstances, restrict the free movement of a product in order to protect human health, or the State may in the course of the recognition of a foreign diploma or license introduce a derogation as regards the person's right to choose between an aptitude or an adaptation period, provided that the restrictive measure is notified to, and authorised by, the Authority. Although these kinds of tasks appear in most fields of activity, they are of particular importance in the sector of free movement of goods, notably in relation to technical regulations, standards, testing and certification, and to animal health. These tasks constitute a considerable part of the Authority's work and include, for instance, an assessment of the application of the provisions laid down in the acts relating to Border Inspection posts (BIP), fresh meat and meat products and fish. This assessment requires inspections by the Authority to the EFTA States concerned, by which the performance of the State's competent authorities is evaluated and a representative number of approved BIPs, fresh meat and fish processing establishments are visited.

3.2.2 Organisation

3.2.2.1 College

The Authority is led by a College, which is made up of three Members. The Members are appointed by common accord of the Governments of the EFTA States for a period of four years, which is renewable. A President is appointed from among the Members in the same manner for a period of two years.

The Members are to be completely independent in the performance of their duties. They are not to seek or take instructions from any Government or other body, and shall refrain from any action incompatible with their duties. Decisions of the College are taken unanimously by a majority vote by its Members.

During 2001 the composition of the College was:

Knut Almestad	***President***
Hannes Hafstein	
Bernd Hammermann	

The division of responsibilities among College Members is shown at Annex 1.

As of 1 January 2002, Knut Almestad was succeeded by Einar M. Bull as President of the EFTA Surveillance Authority.

3.2.2.2 Staff and recruitment

The Authority's staff consisted at the end of the reporting period of 50 persons, of 12 nationalities. The manning remained unchanged during the year except for a turnover of eight persons.

The distribution of functions between Directorates is shown at Annex 2.

Staff members are employed on fixed-term contracts normally of three years duration. According to the policy followed by the Authority, contracts, if it is in the interest of the Authority, may be renewed but normally only once.

This leads to an employment horizon of six years and some rotation of personnel every year. As a number of staff chooses to end their contracts prematurely, the average period of employment is though clearly lower than six years. The rotation principle entails a certain loss of work capacity equivalent to the time it takes to train new staff members.

The Authority has as in previous years engaged temporary staff to enhance its resources and expertise.

3.2.2.3 Medium Term Plan of the Authority

Spring 2001, the Authority established its fourth Medium Term Plan, covering the period 2001 - 2003.

The Medium Term Plan is an attempt to make a thorough assessment of the Authority's future tasks, including the present workload and backlog situation.

The main conclusion of the fourth Medium Term Plan is that the Authority's workload remains very high and is expected to continue to do so.

Conformity assessment in the fields of general surveillance, the sectors related to free movement of goods, persons, financial services, transport and mutual recognition are having a larger backlog than the other sectors.

The workload in the fields of competitions and State aid is foreseen to continue to put a heavy strain on the Authority's resources as a result, *inter alia*, of the modernisation of the competition rules, the inquiry into the telecommunications sector, the high merger activity, the increased focus on State aid in the context of taxation, environmental aid, energy and transportation.

3.2.3 Information Activities

The information policy of the Authority is to provide adequate information on the Authority's activities and on the implementation and application of the EEA Agreement.

In May 2001, the Authority published the Single Market Scoreboard - EFTA States No. 8 and in November the Single Market Scoreboard - EFTA States No. 9 was published. The reports are issued concurrently with the European Commission's Internal Market Scoreboard. The EFTA State's Scoreboard deals with the effectiveness of the Single Market rules in the three EFTA States, i.e. the implementation by Iceland, Liechtenstein and Norway of the Single Market Directives that are part of the EEA Agreement. The Scoreboard likewise deals with the Authority's infringement proceedings against these States with respect to failures to comply with the relevant Single Market rules.

During the reporting period, the Authority continued to add information directed towards the public on its *homepage*. The homepage contains separate sections for the three EFTA bodies: the EFTA Secretariat, the EFTA Court and the EFTA Surveillance Authority. The homepage is at: www.efta.int; Annex 3 shows an overview of what may be found here.

Available on the homepage is information extracted from the Authority's Acquis Implementation Database (AIDA). The aim is to provide an up-to-date general overview on the implementation by each of the three

Administration. :
Behind from left to right:
Jurg Malm Jacobsen,
Torbjørn Strand Rødvik,
Director Dag Harald Johannessen,
Thomas Langeland
In front from left to right:
Jenny Davidsdóttir,
Anne Günther,
Anne Valkvae

EFTA States of all the EEA directives, included in the EEA Agreement. Thus, information is provided on whether a given EEA act has been notified as implemented or not, whether the notified measures are considered to ensure full, or only partial, implementation of the act, and whether the EFTA State has submitted the texts of such measures to the Authority. The full titles of notified measures are also recorded in AIDA. The results of any assessment by the Authority or its services of the conformity of measures with the provisions of a given EEA act are reflected in AIDA. Finally, where appropriate, the database records the latest action taken by the Authority with regard to an identified non-compliance by an EFTA State. The information on the homepage from AIDA is normally updated once a month.
Previous Annual Reports had as Annex 4, a table with the implementation status of directives in various sectors. This year, that table only appears on the Authority's homepage.

The Authority's homepage also contains general information on the Authority's organisation and its organisational chart, together with a guide to the Authority in English, German, Icelandic and Norwegian. Furthermore, vacancy announcements are placed on the homepage. There is a section for the Authority's publications, including its Annual Reports, the Single Market Scoreboards for the EFTA States, and the Press Releases from 1994 and onwards.

The Authority's Rules of Procedure, Information Guidelines, and a description of the Authority's infringement procedures can all be found on the homepage. The homepage is updated regularly, and the Authority is examining ways of expanding the information on the homepage.

A major upgrade of the Authority's homepage is planned to take place in the second quarter of 2002.

Important parts of the Authority's information activities are *seminars and lectures for visitor groups* on the Authority's activities and other EEA law issues. During 2001, on average two-three visitor groups visited the Authority's premises each month. These groups comprise students, representatives from various organisations in the EFTA States as well as officials from governmental bodies and municipalities. The Authority's Legal and Executive Affairs is responsible for the organisation of these events.

The Authority has established a set of rules for the handling of requests for *access to documents*, the Information Guidelines, which may be obtained from the Authority or found on the Authority's homepage. Requests for access to documents may be put forward in writing, or even orally. A reply to a request should be provided at the latest within two weeks. In cases where the Authority needs to seek permission from an EFTA State for granting access to a document, a final reply may be expected following the answer from

the EFTA State concerned. Such an approval is required in order for the Authority to disclose information relating to formal infringement proceedings against an EFTA State, such as letters of formal notice or reasoned opinions. In practice the EFTA States have been positive towards the Authority's granting access to such documents.

The Authority's Contact Person with the media will assist those seeking access to documents kept by the Authority and will transmit the requests to the respective College Member or Director, who will decide on the matter. In view of provisions on business and professional secrecy, or for reasons of protecting certain legitimate public and private interests in, for example, competition cases, certain information cannot be disclosed. It may be noted, however, that nothing prevents a party, whose interests are protected, from making public such documents or information. If access is granted, the document is made available either as a paper copy, or for consultation on the premises of the Authority. In the case of a refusal of access to a document, the person requesting the document may ask in writing for a review by the Authority. The Authority shall decide on the matter within one month and shall state the reasons for its decision.

The Authority informs the public, by means of a press release, of all reasoned opinions and, in exceptional cases, also of letters of formal notice issued by the Authority.

The Authority's Contact Person with the media, Ms. Bjarnveig Eiríksdóttir, may be reached during working hours on tel. +32 - 2 - 286.18.33 or +32 - 2 - 286.18.11 for requests for access to documents and for questions concerning the Authority's activities. Her e-mail address is bjarnveig.eiriksdottir@surv.efta.be.

FREE MOVEMENT OF GOODS, PERSONS, SERVICES AND CAPITAL

4

4.1 STATISTICS ON IMPLEMENTATION OF DIRECTIVES AND CASE HANDLING

4.1.1 Implementation control

The objective of the EEA Agreement is to establish a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition. To achieve this it is essential that EEA rules are properly and timely implemented in the national legal order of the EFTA States and, in addition, correctly applied by their authorities.

Throughout the year, the Authority continued to apply an *implementation policy* implying that formal infringement proceedings are initiated in accordance with Article 31 of the Surveillance and Court Agreement and the Authority sends an EFTA State a letter of formal notice if that State has not notified implementation of an EEA act within two months from the date by which it should have complied with it. As regards EEA acts that have only been partially implemented, the Authority considers, at regular intervals, whether to initiate formal infringement proceedings against the EFTA State concerned, taking into account the extent to which the act has been implemented and the length of time which the EFTA State has indicated it needs to achieve full compliance with the Act.

An important aspect of the implementation policy is that non-implementation cases will be pursued vigorously so that if national measures are still not adopted and notified within two months from the receipt by the respective EFTA State of the Authority's reasoned opinion, the case will be referred to the EFTA Court without delay, so that the Authority's decision to refer the case could be taken within *one year* following the initiation of the formal proceedings.

During 2001, the EEA Joint Committee took decisions on the inclusion of 391 new acts in the EEA Agreement. By the end of the year, the total number of binding acts (directives, regulations and decisions) applicable under the Agreement amounted to *2656*. This is the first year in which the total number of binding acts goes down, but by the end of last year it amounted to 2904. The reason for this is partly due to a revision of Annex I to the EEA Agreement, under which several decisions were repealed from the Agreement due to a new simplified procedure. Another reason is the inclusion into the Agreement of consolidated version of Directives that has taken place during the reporting year.

4.1.2 Information relative to implementation

The Authority published the *EFTA States' Single Market Scoreboard* in May and November 2001. The Scoreboard deals with the effectiveness of the Single Market rules in the three EFTA States and contains information about the implementation by the EFTA States of the Single Market directives that are part of the EEA Agreement.

The Authority intends to continue publishing the EFTA States' Single Market Scoreboard, thus up-dating the information given in the Annual Report.

Furthermore, up-dated information from the Aquis Implementation Database, AIDA, is to be found on the Authority's homepage (www.efta.int).

4.1.3 Implementation status of directives

4.1.3.1 All directives

By the end of 2001, the total number of directives with a *compliance date* - the date by which the EFTA States

4.1 Implementation status of directives with compliance date on or before 31 December 2001

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of directives	1419	1419	1419
Directives with effective transition periods	124	148	2
Directives where no measures are necessary	82	131	75
Applicable directives	1213	1140	1342
Status			
Full implementation notified	1187	1113	1313
Partial implementation	5	11	9
Non-implementation	21	16	20
IN PERCENTAGES:	**Iceland**	**Liechtenstein**	**Norway**
Full implementation notified	97,9%	97,6%	97,8%
Full or partial implementation notified	98,3%	98,6%	98,5%

have to comply with the directive unless a transitional period has been granted or no implementing measures are necessary - on or before 31 December 2001, was 1419. The figure 4.1 sets out details on the implementation status of these directives on that date.

The Authority would underline that there is a difference between the respective statistics on the implementation status of directives depending on whether account was only taken of the directives regarding which *full* implementation had been notified, or whether *all* the directives regarding which an acceptable notification had been received were considered. In the latter case, both the directives which had been notified as *fully* implemented and those where implementation was only *partial* were included in the statistics.

It should be recalled that the fact that an EFTA State has notified a directive as fully implemented, does not necessarily mean that this is the case in practice. It is only after a detailed assessment of the *conformity* of the notified national measures has been carried out that conclusions can be drawn as to the *quality* of the transposition.

By the end of 2001, the Authority is able to conclude with respect to 37% of the directives, which were part of the EEA Agreement, that the notified national measures were actually in conformity with the relevant provisions of the directive and that full implementation had thus taken place. The corresponding figure for 2000 was 34%.

4.2 Implementation status of directives to be implemented during 2001

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of directives	82	82	82
Directives with effective transition periods	8	9	1
Directives where no measures are necessary	7	5	7
Applicable directives	67	68	74
Status			
Full implementation notified	50	57	52
Partial implementation	1	2	3
Non-implementation	16	9	19
IN PERCENTAGES:	**Iceland**	**Liechtenstein**	**Norway**
Full implementation notified	74,6%	83,8%	70,3%
Full or partial implementation notified	76,1%	86,8%	74,3%

4.1.3.2 Directives to be complied with in 2001

Altogether, *82* directives had a compliance date *during 2001*. Excluding the directives regarding which a transitional period was granted and those where no implementing measures are necessary, **Iceland** was to transpose by the end of the year 67 of these directives, **Liechtenstein** 68, and **Norway** 74.

The implementation status at the end of the year was as presented in figure 4.2.

As can be seen from figure 4.3 all the EFTA States have continued to improve their performance, **Iceland** considerably, especially if compared to the 1999 figures.

In its decisions taken in 2001, the EEA Joint Committee decided that the decision would enter into force during the year with regard to 60 directives. The notification situation with regard to directives becoming applicable during the year should be seen in relation to the fact that the Joint Committee decisions, which incorporate directives into the EEA Agreement, in practice often give the EFTA States either no time, or very little, to take implementing measures on the national level, as the compliance date for the Directives is normally the day after the Joint Committee decision.

4.1.4 Case handling

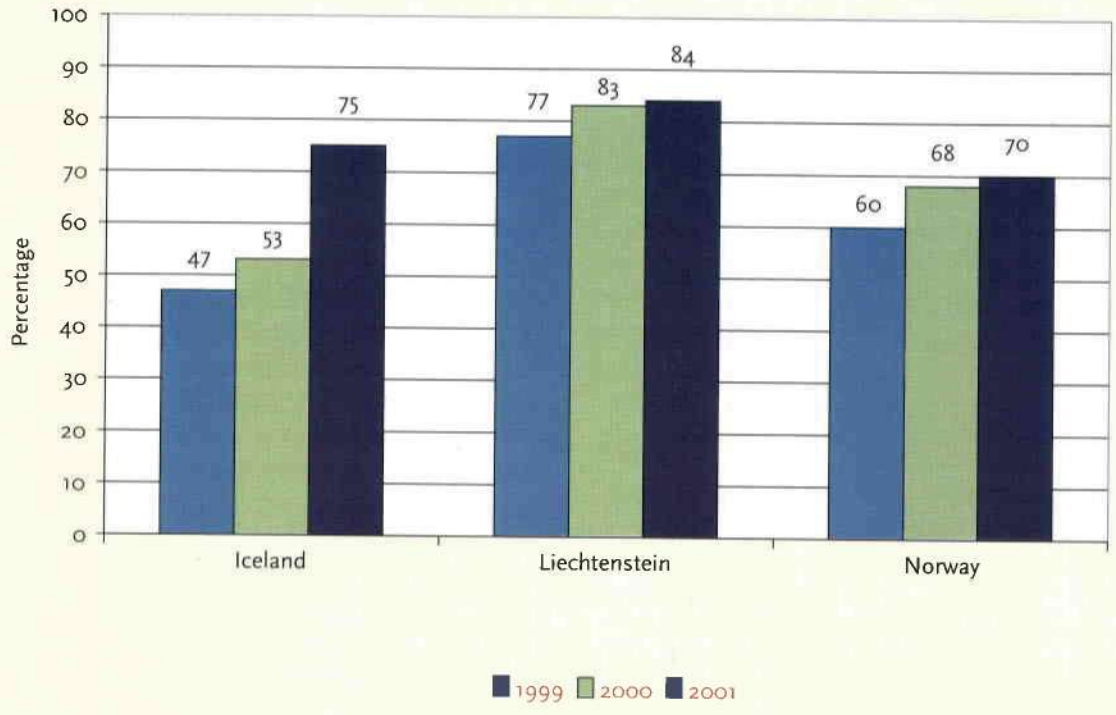
An important part of the Authority's work is the handling of individual cases. Such cases may be opened at the Authority's own initiative, or can be based on complaints. Furthermore, cases may be based on obligations in various EEA acts.

Whenever one of the Authority's general surveillance Directorates decides to make an EFTA State's possible non-compliance with EEA rules subject to a closer examination, an *own-initiative* case is registered in the *Authority's General Case Handling Database (GENDA)*.

The Authority also receives complaints from individuals and economic operators reporting measures or practices of the EFTA States which are alleged not to be in conformity with the EEA rules. The respective Directorates then register these cases as *complaints* in GENDA.

It is also possible to open a case in GENDA for *preliminary examination*. A typical situation where a case is opened for this purpose is when a conformity assessment project is initiated, during which the national measures notified by an EFTA State as implementing a directive are considered in detail as

4.3 Full implementation notified within the year, 1999 - 2001



explained above. If a preliminary examination reveals that there is a reason to suspect a breach, an own-initiative case is opened. In the opposite situation, an entry is made indicating that the examination has been completed.

In accordance with relevant provisions in certain EEA acts, the Authority carries out so-called *management tasks*, notably in the operation of certain procedures (e.g. information procedures on draft technical regulations and notification procedures relative to product safety), and in veterinary matters, and in the sector of the free provision of services. Some of these tasks are also registered in GENDA. Similarly, the Authority draws up reports on the EFTA States' implementation or application of certain EEA acts, when such reports are called for in acts in question.

Figures 4.4 and 4.5 illustrate the total number of own-initiative cases and complaints registered in GENDA during the years 1997 to 2001 in the main sectors covered by the EEA Agreement[2]. For further descriptions of the various sectors referred to in the figures, please consult paragraphs 4.7 to 4.12. These figures indicate that the total number of new cases lies between 120 and 150 per year.

For most sectors, 2001 saw a drop in *own-initiative cases* as compared to 2000. All in all, the number of own-initiative cases registered was 37,5% lower compared to the year before. The goods sector still has the most cases registered (38), whereas the free movement of persons sector saw an increase in number of cases registered (12). The drop in the number of cases indicates that the Authority has concentrated on more difficult and challenging cases than the years before, and that the number of pure non-transposition cases has dropped. Figure 4.4 illustrates how the own-initiative cases opened during the last five years are divided between the various sectors.

As for complaints, the number of cases opened in 2001 increased by 27% from the previous year, with the sharpest increase seen in the goods sector, whereas the highest number of complaints was still in the free movement of persons and public procurement sectors (13 each). Figure 4.5 shows the initiation of new complaints cases over the last five years.

[2] The figures in the following figures represent the situation in GENDA as per 31 December of each reporting year. As it is possible to make changes also after this date, in some cases the figures do not correspond exactly with those given in earlier years.

4.4 Own-initiative cases registered in 1997 - 2001

Sector	1997	1998	1999	2000	2001	1997 - 2001
FREE MOVEMENT OF GOODS	24	54	25	54	38	195
FREE MOVEMENT OF PERSONS	0	2	2	0	12	16
FREE PROVISION OF SERVICES	26	19	31	30	13	119
FREE MOVEMENT OF CAPITAL	0	2	3	0	1	6
HORIZONTAL AREAS	16	11	37	38	15	117
PUBLIC PROCUREMENT	8	5	4	6	1	24
OTHER SECTORS	0	0	1	0	0	1
Total	**74**	**93**	**103**	**128**	**80**	**478**

4.5 Complaints registered in 1997 - 2001:

Sector	1997	1998	1999	2000	2001	1997 - 2001
FREE MOVEMENT OF GOODS	16	5	7	3	10	41
FREE MOVEMENT OF PERSONS	11	15	9	10	13	58
FREE PROVISION OF SERVICES	1	8	10	7	2	28
FREE MOVEMENT OF CAPITAL	0	0	0	1	1	2
HORIZONTAL AREAS	2	4	5	2	3	16
PUBLIC PROCUREMENT	2	8	8	10	13	41
OTHER SECTORS	0	0	0	0	0	0
Total	**32**	**40**	**39**	**33**	**42**	**186**

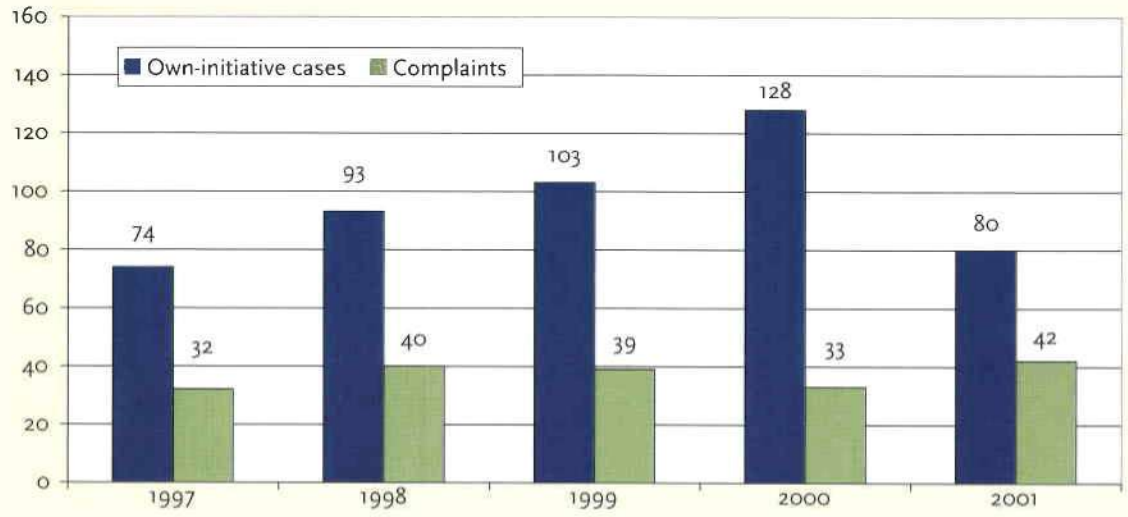
All in all, 34% of the cases opened in 2001 were complaints, which is the highest percentage since the beginning of the Authority, see figure 4.6 for the years 1997 to 2001. There is still a marked difference between the sectors when it comes to percentage of cases that were based on complaints, as illustrated by figure 4.7.

The increase in complaints may indicate an increased awareness among the public about their rights under the EEA agreement, and the possibility to complain if these rights are not reflected in the legislation of the three EFTA States.

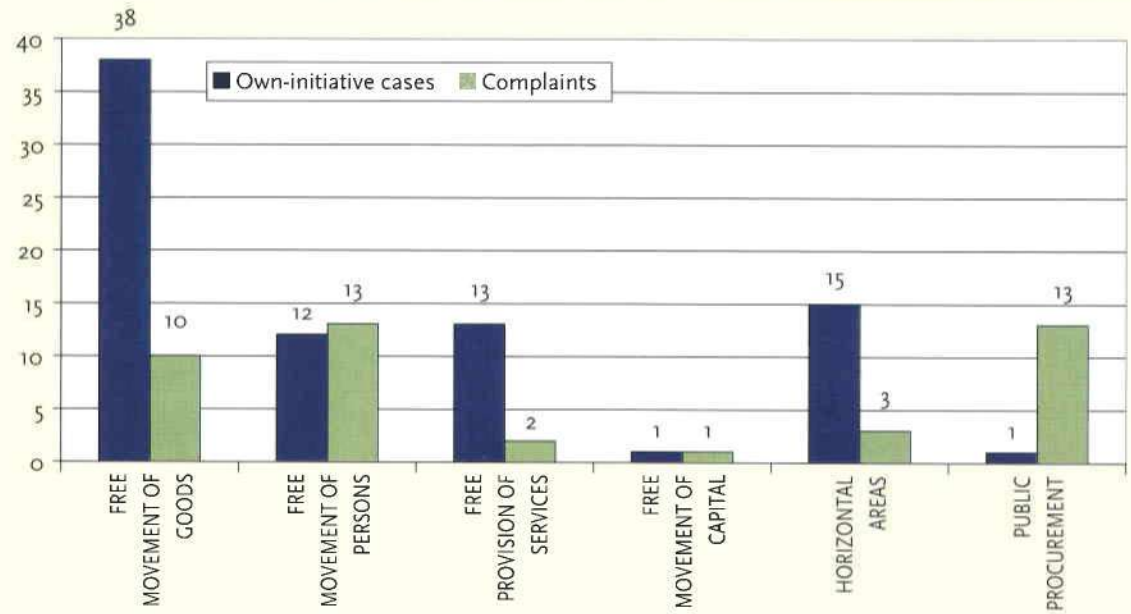
For the distribution between sectors of the total number of opened own-initiative and complaints cases from 1997 to 2001, please see figures 4.8. and 4.9.

Most of the cases registered in 2001 concerned Norway. Figures 4.10 and 4.11 show the distribution of own-initiative cases and complaints from 2001 between the three EFTA States. It is worth noting that 97% of the complaints received by the Authority in 2001 concerned Norway. The number of complaints against Norway rose by 77% from 22 in 2000 to 39 in 2001. Figures 4.12 and 4.13 illustrate that, over a five-year perspective, the number of own-initiative cases opened are distributed more equally between the countries, whereas the vast majority of complaints concern Norway.

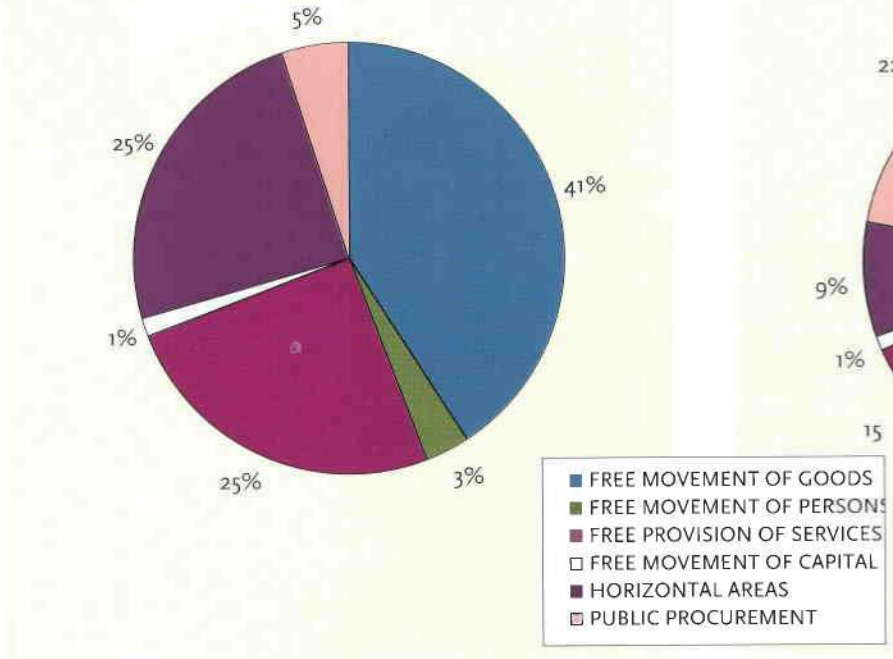
4.6 Own-initiative cases versus complaints 1997 - 2001



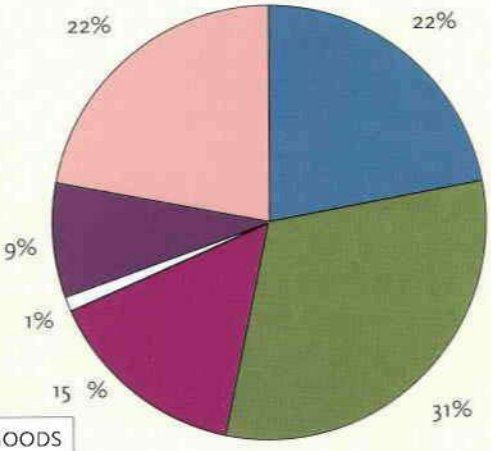
4.7 Own-initiative cases versus complaints 2001, by sector



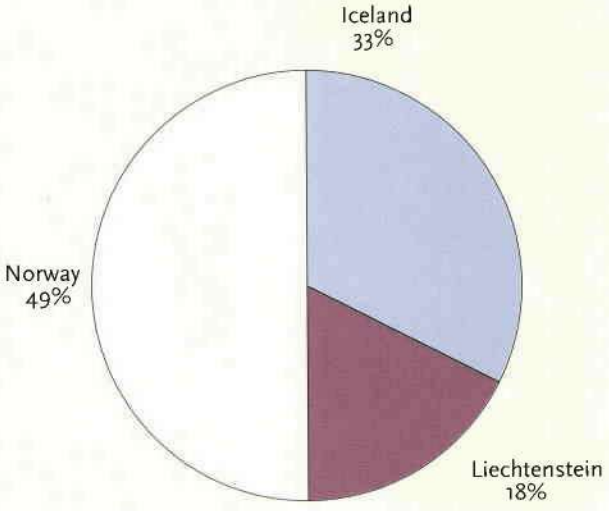
4.8 Own-iniative cases 1997 - 2001, by sector



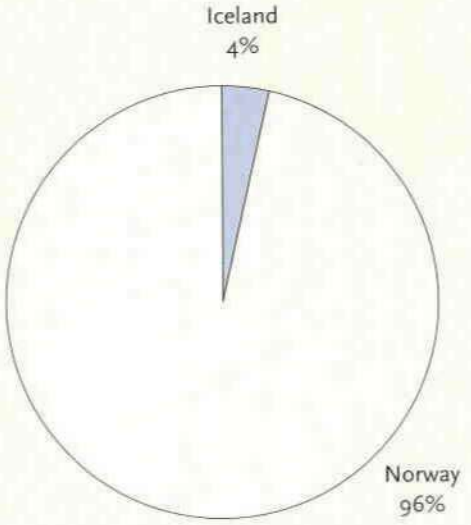
4.9 Complaints 1997 - 2001, by sector



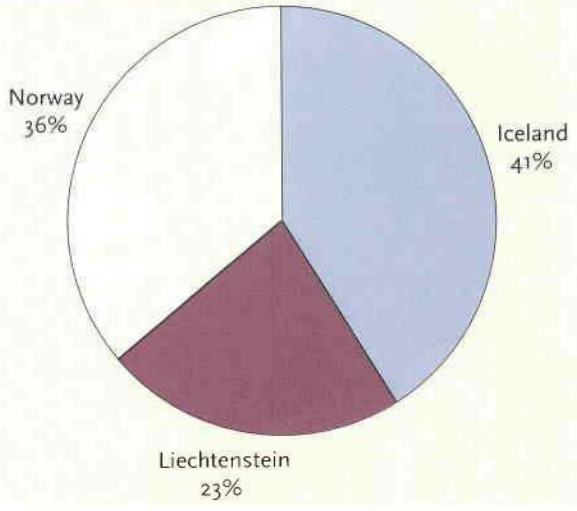
4.10 Own-initiative cases 2001, by country



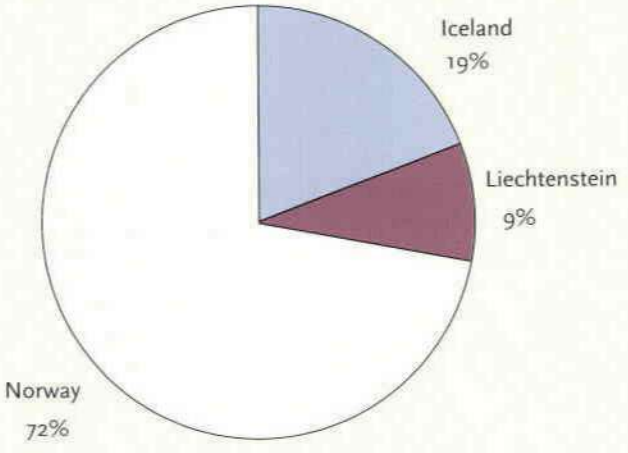
4.11 Complaints cases 2001, by country



4.12 Own-initiative cases 1997 - 2001, by country



4.13 Complaints 1997 - 2001, by country

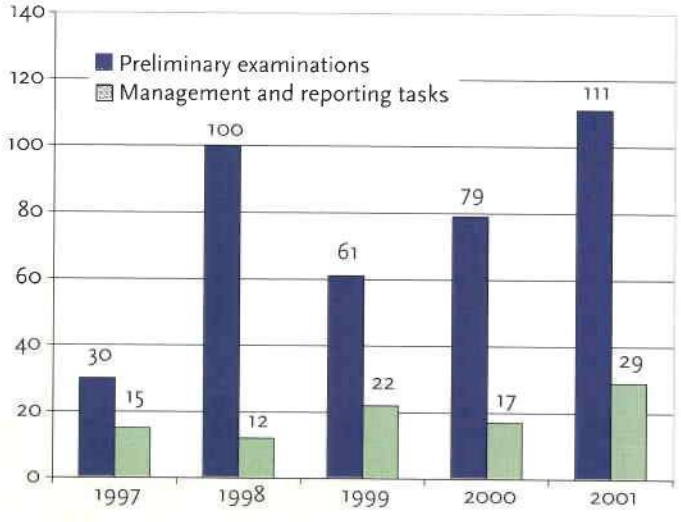


As mentioned earlier, a case can also be opened for preliminary examination, and 111 such cases were opened during the reporting year. As can be seen from figure 4.14, there was a marked increase in such cases in 2001.

The bulk of the *management tasks* consists of handling notifications according to the information procedure on draft technical regulations. In 2001 the Authority received 22 EFTA notifications and 530 EC notifications. In 2001 notifications under the emergency procedure on product safety amounted to 56 from the EFTA States and 708 from the EC (see paragraphs 4.2.3.1 and 4.2.3.6 below).

Other management and reporting tasks concern a variety of fields and are registered in GENDA.

4.14 Preliminary examinations and management/reporting tasks 1997 - 2001



In 2001, 29 such tasks were registered. The figures for the last five years are shown in figure 4.14.

4.1.5 Infringement cases

When the Authority takes a decision to initiate formal infringement proceedings and *a letter of formal notice* is sent to the EFTA State concerned, the relevant own-initiative or complaint case, becomes an *infringement case*.

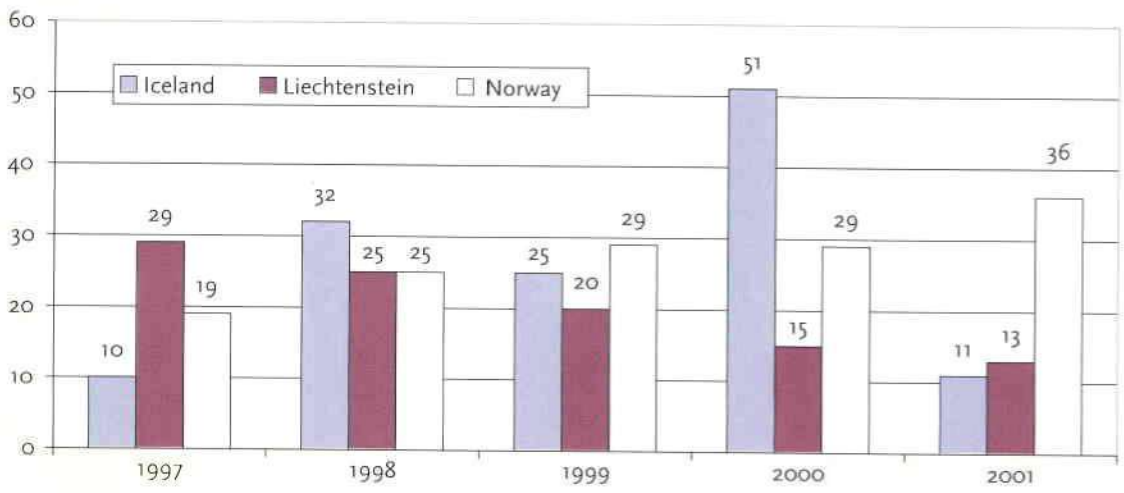
Figure 4.15 shows the development in the number of letters of formal notice the Authority has sent to the EFTA States over the last five years. These are all the letters of formal notice sent, concerning *inter alia* non-transposition of directives, complaints and breaches of the provisions of the EEA Agreement itself.

The number of letters of formal notice decreased considerably in 2001, down 40% from 2000. This is mainly due to the fact that 2000 saw an exceptionally high number of letters of formal notice in non-transposition cases. The highest proportion of letters of formal notice in 2001 were sent to Norway, as illustrated by figure 4.16.

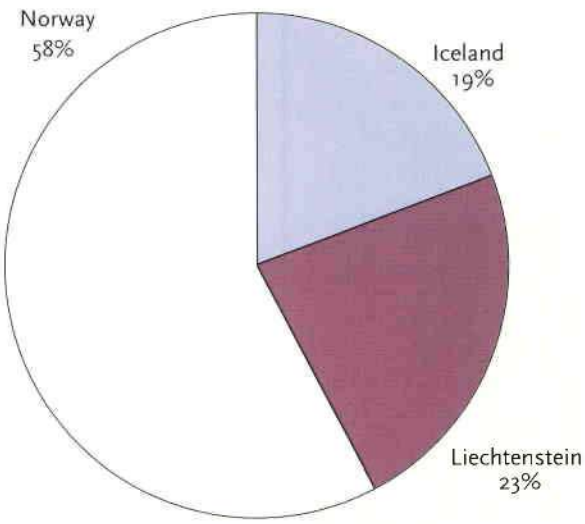
If the Authority, having provided the EFTA State with the possibility of presenting its observations by replying to the letter of formal notice, continues to be of the view that the State is in breach of the EEA Agreement, it shall deliver a *reasoned opinion*. The development regarding this step is set out below.

The number of reasoned opinions reached 35 for the year, an increase of 75% as compared to 2000. Of these, Iceland received 18 and Norway 10, as illustrated by figure 4.18 which also shows the reasoned opinions sent the last five years.

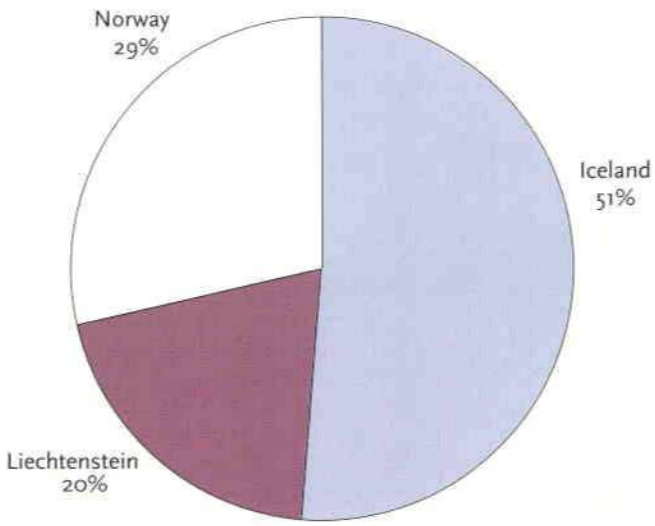
4.15 Letters of formal notice 1997 - 2001



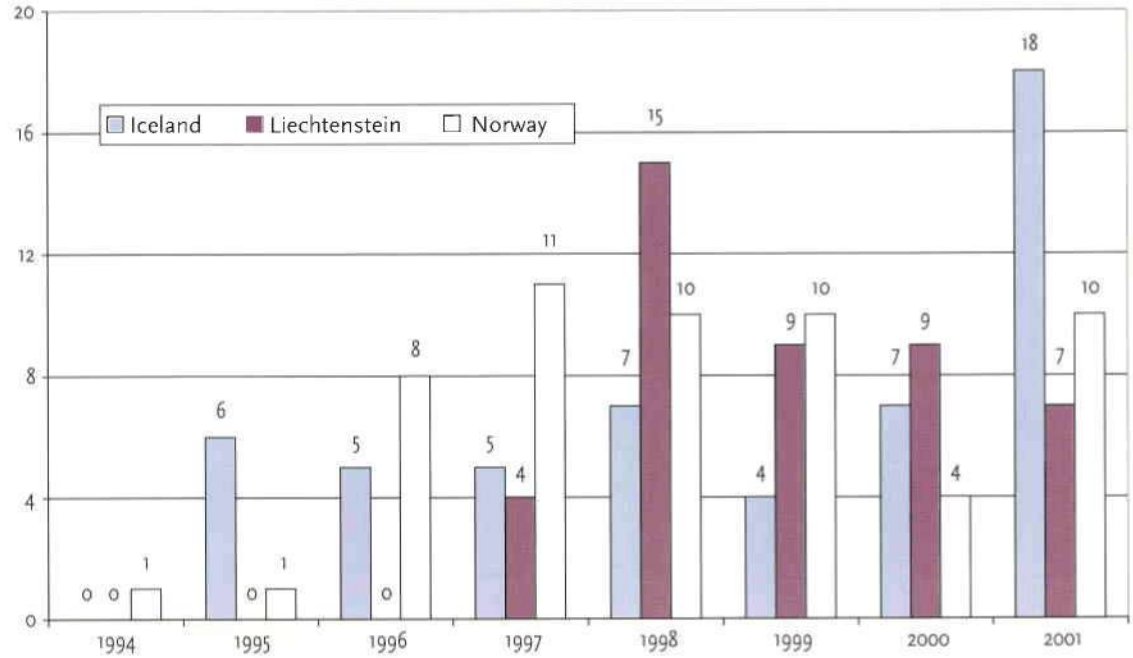
4.16 Letters of formal notice 2001, by country



4.17 Reasoned opinions 2001, by country



4.18 Reasoned opinions 1997-2001



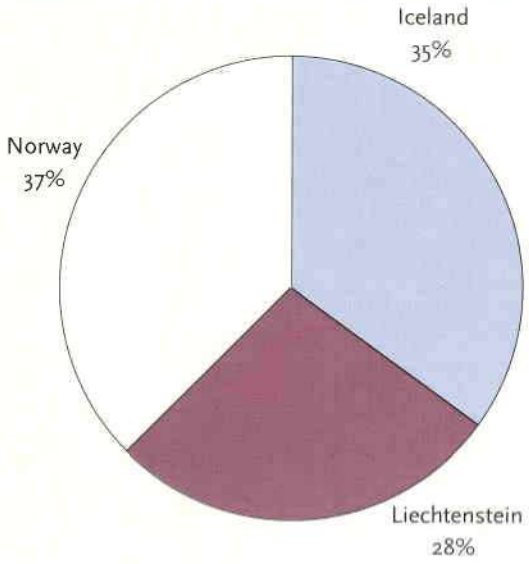
Over the last five years, both letters of formal notice and reasoned opinions have been fairly evenly distributed between the three EFTA States, as illustrated in figures 4.19 and 4.20.

Figures 4.21 and 4.22 show how the letters of formal notice and reasoned opinions are distributed between the various sectors for 2001. Most of the infringement proceedings concerned the free movement of goods.

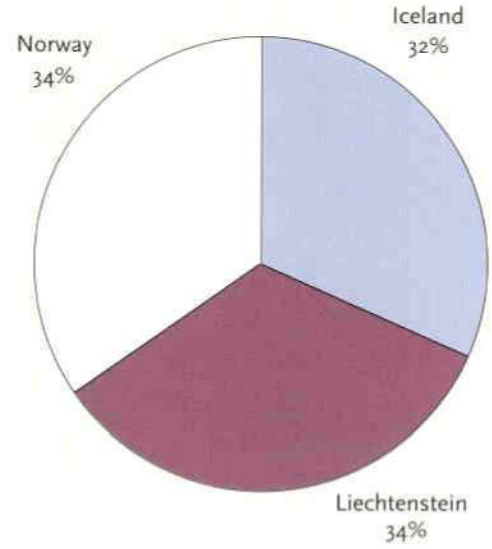
If the State fails to comply with the reasoned opinion within the period laid down in it, the Authority may refer the matter to the *EFTA Court*.

One case was referred by the Authority to the EFTA Court in 2001. This was the first case referred by the Authority against Liechtenstein, and concerned insurance services. Figure 4.23 shows the cases referred from 1997 to 2001.

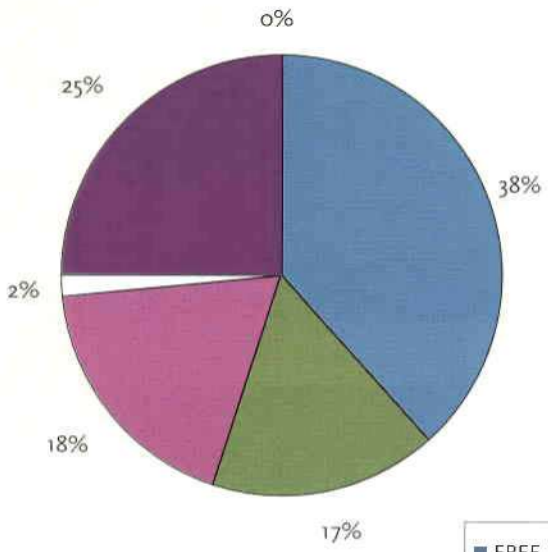
4.19 Letters of formal notice 1997 - 2001, by country



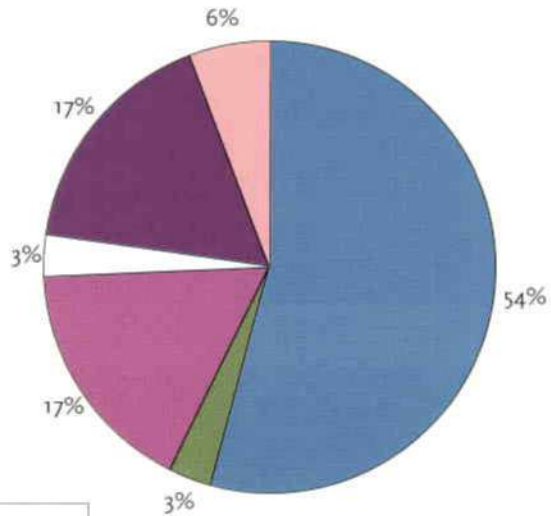
4.20 Reasoned opinions 1997 - 2001, by country



4.21 Letters of formal notice 2001, by sector



4.22 Reasoned opinions 2001, by sector



- FREE MOVEMENT OF GOODS
- FREE MOVEMENT OF PERSONS
- FREE PROVISION OF SERVICES
- FREE MOVEMENT OF CAPITAL
- HORIZONTAL AREAS
- PUBLIC PROCUREMENT

4.23 EFTA Court referrals 1997 - 2001

Year	Case	Country
1997	Non-implementation of the Surface and Underground Mineral-Extracting Industries Directive (92/104/EEC)	Norway
1997	Non-implementation of the Vinyl Chloride Monomer Directive (78/610/EEC)	Norway
1999	Partial implementation of the Second General System Directive (92/51/EEC)	Norway
2000	Different treatment of alcoholic beverages with similar percentages	Norway
2000	Prohibition of import, production and marketing of fortified corn flakes in Norway	Norway
2001	Partial implementation of the Legal Expenses insurance Directive (87/344/EEC)	Liechtenstein

4.1.6 Closures and open cases

The objective of the Authority's informal and formal action is to ensure that the EFTA States fulfil their obligations under the EEA Agreement. As soon as that objective has been reached, the case can be *closed*.

Figure 4.24 illustrates that the number of closures of cases opened at the Authority's *own initiative* rose considerably during the year, from 104 in 2000 to 169 in 2001 (59%). Half of these concerned the goods area.

Figure 4.25 shows that the number of closures of *complaint* cases in 2001 increased by 85% over the previous year. Most of these closures concerned the free movement of persons sector (17).

The Authority keeps separate records on cases which have been closed due to the fact that the EFTA State concerned has complied with the Authority's request to *adopt the measures necessary* to remedy the breach in question, and cases which have been closed for *other reasons* (e.g. because the complaint was found

4.24 Own-initiative cases closed in 1997 - 2001

Sector	1997	1998	1999	2000	2001	1997 - 2001
FREE MOVEMENT OF GOODS	28	49	32	33	82	224
FREE MOVEMENT OF PERSONS	28	1	7	5	5	46
FREE PROVISION OF SERVICES	40	20	21	32	29	142
FREE MOVEMENT OF CAPITAL	1	0	0	1	0	2
HORIZONTAL AREAS	23	40	12	32	45	152
PUBLIC PROCUREMENT	2	2	12	3	7	26
OTHER SECTORS	0	0	0	0	1	1
Total	**122**	**112**	**84**	**106**	**169**	**593**

4.25 Complaint cases closed in 1997 - 2001

Sector	1997	1998	1999	2000	2001	1997 - 2001
FREE MOVEMENT OF GOODS	10	4	8	11	4	37
FREE MOVEMENT OF PERSONS	5	6	5	0	17	33
FREE PROVISION OF SERVICES	2	3	0	1	8	14
FREE MOVEMENT OF CAPITAL	0	0	0	0	0	0
HORIZONTAL AREAS	0	1	3	1	4	9
PUBLIC PROCUREMENT	11	7	9	9	9	45
OTHER SECTORS	0	0	0	1	0	1
Total	**28**	**21**	**25**	**23**	**42**	**139**

not to be justified, or because the explanation provided by the EFTA State in an own-initiative case satisfied the Authority that there was actually no breach). Figure 4.26 shows the development in the closures of *own-initiative* and *complaint* cases during the last five years, as well as in the total number of open cases at the end of each year. The two types of closures are presented separately.

As can be seen, closures of the first category, i.e. cases where the EFTA State concerned has taken the necessary measures, are last year even more in majority than before. In 2001, 85% of the closures took place as a result of the EFTA State concerned having taken the relevant measures, as compared with 81% in 2000.

The figure further shows that the total number of open cases has gone from 349 in 2000 to 259 in 2001, a decrease of 26%. This may be attributed mainly to the high number of non-transposition cases opened in 2000 that were closed the following year.

However, this does not show the Authority's aggregate case-handling workload in general surveillance as the cases in general have been more complex and labour requiring than in previous years. In addition, it has to be taken into account that some *preliminary examination* cases have to be added, this being cases which have neither been completed, nor resulted in an own-initiative case. Furthermore, management and reporting tasks have to be kept in mind.

4.2 FREE MOVEMENT OF GOODS

4.2.1 Basic provisions

Rules on the free movement of goods are laid down in Articles 8 to 27 of the EEA Agreement. The basic principles comprise, inter alia, rules prohibiting various types of barriers to trade, such as customs duties and charges having equivalent effect (Article 10), quantitative restrictions and measures having equivalent effect (Articles 11, 12 and 13) and discriminatory taxation of imported goods (Article 14).

Specific provisions and arrangements on the free movement of goods are set out in a number of protocols to the Agreement and in the acts referred to in the annexes to the Agreement relating to the free movement of industrial goods, processed agricultural products, and fish and marine products. Two annexes refer to a large number of acts which contain detailed provisions concerning technical requirements for industrial goods, as well as veterinary and phytosanitary rules. Three annexes refer to acts concerning product liability, energy and intellectual property.

4.2.1.1 Customs duties and charges having equivalent effect and discriminatory taxation

The Authority has received a complaint during the reporting period with regard to Norway's alleged breach of Article 14 of the Agreement on prohibition of discriminatory taxation. The complainant is a company that mainly imports dental products to Norway and sells to the dental health care. According to the complainant, recent changes in the Norwegian value added tax (VAT) legislation will make him, and similar economic actors that are not producing their 'own' products subject to VAT, while Norwegian producers of similar products are exempted from the tax. The disputed provision, Article 5(1)(b) of the Norwegian VAT legislation, states that dental technicians' own production of dental products that

4.26 Open own-initiative and complaint cases in 1997 - 2001

Sector	1997	1998	1999	2000	2001
Own-initiative cases	74	93	103	128	80
Complaint cases	32	40	39	33	42
Closures - Measures taken	122	119	95	105	180
Closures - Other reasons	28	14	14	24	32
Open cases at the end of preceding year	328	284	284	317	349
Open cases at the end of the year	**284**	**284**	**317**	**349**	**259**

Goods Directorate:

Behind from left to right:
Ingela Söderlund, Sólveig Georgsdóttir, Ketil Rykhus, Erik Jønsson Eidem, Director Lilja Vidarsdóttir, Daniel Vidarsson, Adinda Batsleer, Thomas Langeland, Nicola Holsten

In front from left to right:
Gunnar Thór Pétursson, Jón Gíslason, Lars-Åke Erikson, Brynjulf Melhuus

Not present:
Inger-Lise Thorkildsen

are put into circulation in order to be used by the dental and health care in Norway is exempted from the scope of the VAT legislation. The Authority had correspondence with Norway concerning the case during the reporting period and will revert to the matter in 2002.

4.2.1.2 Quantitative restrictions and measures having equivalent effect and other technical barriers to trade

With regard to quantitative restrictions and measures having equivalent effect and other technical barriers to trade, a number of complaint cases were outstanding from previous years.

One of these complaints against Norway concerned a ban on the import, production and marketing of fortified corn flakes. The Authority issued a reasoned opinion on this matter in 1999. During the last reporting period the case was referred to the EFTA Court as the Authority considered that the Norwegian provisions were in breach of Article 11 of the EEA Agreement. During the reporting period the EFTA Court ruled upon the case and upheld the Authority's view (see further Chapter 7).

Since the EEA Agreement entered into force, the Surveillance Authority has received various complaints concerning different aspects of alcohol legislation in Norway.

The application of two methods of sale at the retail level, according to which beer with an alcohol content between 2,5% and 4,75% by volume may be sold outside the outlets of the State monopoly, while other beverages with the same alcohol content may only be sold through the State monopoly leads, in the view of the Authority, to discrimination contrary to Article 16 of the EEA Agreement. Furthermore, the Authority considers that the application of more restrictive measures regarding licences to serve certain products, the majority of which are imported, compared with other products containing a similar percentage of alcohol by volume, constitutes a measure having equivalent effect to quantitative restrictions on imports within the meaning of Article 11 of the EEA Agreement. In late 2000 this case was referred to the EFTA Court and the Authority awaits the Court's decision.

The Authority considers that the Norwegian requirements to obtain and maintain licences to import, wholesale and serve alcoholic beverages impose substantial additional costs on the importation of alcoholic beverages and are thus contrary to Article 11 of the EEA Agreement. Moreover, the Authority finds that the requirement of double authorisation for restaurants wishing to import alcoholic beverages has an effect equivalent to quantitative restrictions on imports within the meaning of Article 11 of the EEA Agreement. At the end of the last reporting period the Authority received information about the lowering of the annual fees. During this reporting period the Authority has had further correspondence with the Norwegian Authorities regarding further amendments in the Norwegian legislation. The Authority will revert to the matter in 2002.

The Authority has received a complaint from a producer in one of the Member States of the European Union regarding smoke emission requirements in Norway on wood fired stoves. The requirements on emissions of particulates are included in a regulation, which refers to a Norwegian standard. As, in the opinion of the Authority, in the absence of a mutual recognition clause, the requirements constitute a quantitative restriction or measures having equivalent effect within the meaning of Article 11 of the EEA Agreement, a letter of formal notice was sent to Norway in 1999. Norway did, at the end of 2001, inform the Authority that it has introduced a mutual recognition clause in its regulation. Therefore, the Authority will not pursue the case further and it can be closed.

During the reporting period the Authority did also deal with a complaint regarding activities of a Norwegian notified body. The complainant alleged that a Norwegian notified body refused to recognise test results of a Dutch notified body based on the fact that the Dutch notified body is not a party to the CENELEC Certification Agreement (CCA). In addition it was alleged that notified bodies affiliated to the CCA (including the Norwegian notified body) were using their own mark of approval, in addition to the obligatory CE marking, and that would create technical barriers to trade, contrary to Article 11 of the EEA Agreement. The Authority's examinations revealed that the marking at stake was the so-called N-mark which is given by the Norwegian notified body as a certificate for product's compliance with other terms than those laid down in the EEA-relevant directives and that the N-marking is fully based on a private testing and certification scheme. Furthermore, the Norwegian Government does not require N-marking for any products before allowing them to enter into the Norwegian market. The Authority acknowledges that additional markings and marks which fulfil a different function from that of the CE-marking, and which signify conformity with objectives that are different from those to which the CE-marking relates, exist on the EEA market. The affixing of such markings and marks additional to the CE-marking are not contrary to EC and EEA law to the extent that such markings or marks do not create confusion with the CE-marking. As the Authority's examination lead to the conclusion that the activities of the Norwegian notified body, which were subject of the complaint, fell outside its responsibilities as an official Norwegian notified body, and were not to be regarded as a breach of the CE-marking directives. Furthermore, as the Norwegian notified body was, in the present case, acting in its capacity as a private entity, its measures did not fall within the scope of Article 11 of the EEA Agreement.

4.2.2 Secondary legislation with regard to technical regulations, standards, testing and certification

Acts with regard to technical regulations, standards, testing and certification are referred to in Annex II to the EEA Agreement, which includes 32 chapters dealing with various subject areas. The situation in the different areas, is as follows:

4.2.2.1 Motor vehicles

During the reporting period, six new directives were incorporated into the Agreement in this field.

Full implementation has been notified by all the EFTA States for all the acts in the field, apart from the *Directive amending Article 2 of Commission Directive 93/91/EEC adapting to technical progress Council Directive 78/316/EEC on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (Identification of controls, tell-tales and indicators)* (94/53/EC), for which Iceland and Norway have not notified implementing measures. The Directive was to be complied with at the end of the reporting period.

4.2.2.2 Agricultural and forestry tractors

In this area four new directives were to be complied with within the reporting period.

Full implementation has been notified concerning all these acts, but Norway had received a letter of formal notice with regard to the *Directive adapting to technical progress Directive 76/763/EEC on the approximation of the laws of the Member States relating to passenger seats for wheeled agricultural or forestry tractors* (1999/86/EC) and Iceland had received a letter of formal notice with regard to the *Directive on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Council Directive 74/150/EEC* (2000/25/EC).

4.2.2.3 Household appliances

A letter of formal notice was sent to Iceland due to non-implementation of the *Directive on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof* (96/57/EC). Implementation measures were subsequently notified and the case could be closed.

4.2.2.4 Pressure vessels

Norway and Liechtenstein notified the *Directive 1999/36/EC of 29 April 1999 on transportable pressure equipment*, *Directive 2001/2/EC of 4 January 2001 adapting to technical progress Directive 1999/36/EC* and *Commission Decision 2001/107/EC of 25 January 2001 deferring for certain transportable pressure equipment the date of implementation of Council Directive 1999/36/EC*, whereas Iceland still had *Commission Decision 2001/107/EC* outstanding at the end of the reporting period.

4.2.2.5 Measuring instruments

The conformity assessment of the implementation of Directive 75/106/EEC by Iceland, initiated in 1998, was finalised and no further measures were necessary. In the case of Directive 77/313/EEC, the Icelandic national measures were further addressed in the second part of the reporting period through correspondence. This matter will need more attention in 2002.

4.2.2.6 Electrical material

A reasoned opinion was sent to Iceland with regard to the *Directive adapting to technical progress Directive 82/130/EEC concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp* (98/65/EC). A notification by Iceland enabled the closing of the case in the first part of the reporting period.

4.2.2.7 Foodstuffs

In this Chapter 26 acts were incorporated into the EEA Agreement in the reporting period and only Liechtenstein transposed all acts that were to be complied with.

Several acts on food additives were to be complied with in 2001 and at the end of the reporting period Norway had not notified implementing measures for the *Directive on specific purity criteria for sweeteners* (2000/51/EC) and the *Directive on purity criteria for miscellaneous additives* (2000/63/EC). For Norway the obligation on implementing two directives on *sweeteners* (94/35/EC and 96/83/EC) is only partial because of a specific adaptation given to Norway for implementing provisions on cyclamate. In addition, Norway has not implemented specific labelling provisions for sweeteners in Directive 94/35/EC. Iceland did not notify implementing measures for the *Directive amending Directive 95/2/EC on food additives other than colours and sweeteners* (98/72/EC). In the reporting period the Authority did not finalise conformity assessment of the notified measures on food additives.

Of the seven directives on pesticide residues that were to be transposed in the reporting period, Norway and Iceland did not notify implementing measures for directives 2000/57/EC, 2000/58/EC, 2000/81/EC and 2000/82/EC. In addition, Norway did not notify implementing measures for Directive 2000/42/EC. For that Directive and directives 2000/24/EC and 2000/48/EC the Authority sent letters to Iceland for non-conformity with some provisions of these acts.

Norway notified implementing measures for the *Regulation on organic production* (1804/1999/EC), which should have been transposed in 2000 and therefore had been the subject of formal proceedings for non-notification. Iceland has not notified implementing measures for this Regulation or the three regulations on organic production incorporated into the EEA Agreement in the reporting period (1073/2000/EC, 1437/2000/EC and 2020/2000/EC). In addition, Iceland has not notified implementing measures for two other regulations on organic production (525/95/EC and 1202/95/EC). Finally, the Authority sent a letter to Iceland for non-conformity with some provisions of the *Regulation on organic production* (1900/98/EC), which was notified to the Authority at the beginning of the reporting period. However, at the very end of the reporting period, the Authority was informed that a revised and updated Regulation on organic production had been adopted in Iceland. This new Regulation is intended to implement the above-mentioned regulations.

Iceland and Norway notified full implementation of the *Directive on plastic materials and articles* (1999/91/EC), which had been the subject of formal proceedings for non-notification. After having received letters of formal notice Norway also notified full implementation of the following directives: *Directive on foods for particular nutritional purposes* (96/84/EC), *Directive on infant formulae* (96/4/EC), *Directive on food irradiation* (1999/2/EC), *Directive on the list of irradiated foods and food ingredients* (1999/3/EC) and the *Directive on foods for special medical purposes* (1999/21/EC). However, no information was received from Norway on the necessary measures taken to comply with the *Decision imposing special conditions on the import of peanuts and specific peanut products from Egypt* (2000/49/EC).

The EFTA States are obliged to report their monitoring plans and/or results from official control and monitoring of pesticides and certain contaminants to the Authority. The European Commission also recommends annually to the EC Member States a coordinated control programme for the official control of foodstuffs and a coordinated monitoring programme

to ensure compliance with maximum levels of pesticide residues in and on foodstuffs. The Authority recommends corresponding programmes to the EFTA States.

Under the *Directive on the Official Control of Foodstuffs* (89/397/EEC) all EFTA States reported data on the national programmes laying down the nature and frequency of inspections carried out in 2000. However, only Liechtenstein reported data on the coordinated control programme for 2000 based on the Authority's recommendation.

The EFTA States reported the results of national monitoring of pesticide residues in 2000 based on two directives on pesticide residues (86/362/EEC and 90/642/EEC) and the Authority's recommendation on a coordinated monitoring programme for pesticides in 2000. The monitoring results were forwarded to the European Commission for inclusion in a report on the monitoring of pesticide residues in the EEA. This is the first time that all EFTA States will be represented in this report.

At the end of 2001 the Authority received the plans on the national pesticide monitoring programme for 2002 from Iceland and Norway. A letter was sent to Liechtenstein asking the Government to send the monitoring plan to the Authority before the end of January 2002.

The EFTA States also reported on the monitoring of the levels of nitrate in lettuce and spinach in 2000 in compliance with the provisions of the *Regulation setting maximum levels for Contaminants in Foodstuffs* (194/97/EC). These results were forwarded to the Commission for inclusion in a report on nitrate monitoring. In the Community, Regulation 194/97/EC has been replaced by Regulation 466/2001/EC, which has not yet been incorporated into the EEA Agreement.

4.2.2.8 Medicinal products

In this field, three new acts were to be complied with during the reporting period.

Iceland and Norway have not notified implementing measures with regard to the *Regulation on orphan medicinal product* (141/2000/EC) and the *Regulation laying down the provisions for implementation of the criteria for designation of a medicinal product as an orphan medicinal product and definitions of the concepts 'similar medicinal product' and 'clinical superiority'* (847/2000).

Furthermore, Norway has not notified implementing measures with regard to the *Directive amending Chapter Va (Pharmacovigilance) of Council Directive 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products* (2000/38/EC), which was to be complied with at the very end of the reporting period.

During the reporting period the Authority continued its correspondence with Norway regarding the *Directive relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems* (89/105/EEC), concerning which a reasoned opinion was sent in 1999. The Authority will examine the case further in 2002. A related complaint will also be further examined should this prove necessary.

With regard to *veterinary medicinal products* eight acts were incorporated into the EEA Agreement in 2001. The EFTA States have transposed the acts that were to be complied with, except for the *Directive on pharmacovigilance amending Directive 81/851/EEC* (2000/37/EC), which was incorporated into the Agreement at the end of the reporting period.

Iceland notified a revised and updated Regulation on residues of veterinary medicinal products, transposing several acts that were outstanding in 1998 to 2000. It also notified the regulations that were to be complied with in 2001 (1286/2000/EC, 1295/2000/EC, 1960/2000/EC, 2338/2000/EC, 2391/2000/EC and 2535/2000/EC). In addition, Iceland at the same time implemented three regulations that had not been incorporated into the Agreement in 2001 (2908/2000/EC, 749/2001/EC and 750/2001/EC).

4.2.2.9 Dangerous substances

Both Iceland and Norway notified implementing measures for the *Regulation on Testing Requirements for Chemicals* (2161/1999), which should have been transposed in 2000. Norway also notified full implementation of the *Substance Directive* (2000/21/EC), which had been the subject of formal proceedings in 2001.

At the end of 2000, directives on technical adaptations to the *Substance Directive* (67/548/EEC) were incorporated into the EEA Agreement. For one of these directives, *the 22nd technical adaptation* (96/54/EC), Iceland has only notified partial implementation. For the *23rd technical adaptation* (97/69/EC) a letter of formal notice was sent to Norway for failure to notify implementing measures. However, the Authority was informed at the end of 2001 that Norway had adopted new legislation on classification and labelling of dangerous substances, including implementing measures for the Directive.

Two directives on Good Laboratory Practice (GLP) were incorporated into the EEA Agreement in 2000,

the *Directive on GLP* (1999/11/EC) and the *Directive on Inspection of GLP* (1999/12/EC). Norway notified incomplete implementing measures for these directives in 2000 and 2001. At the end of the reporting period the implementation was still not complete.

In the reporting period, the *Regulation concerning the fourth list of priority substances as foreseen under Council Regulation (EEC) No 793/93* (2364/2000/EC) was incorporated into the Agreement. Iceland has not notified implementing measures for the Regulation.

The progress with respect to the notification of dangerous substances and risk assessment of existing chemicals (793/93/EEC) is described in paragraph 4.2.3.3 on the notification procedures on chemicals.

4.2.2.10 Cosmetics

In this Chapter the EFTA States have transposed the acts that were to be complied with in the reporting period. The acts are the *25th technical adaptation to Directive 76/768/EEC on cosmetic products* (2000/11/EC) and the *Directive postponing the prohibition of animal tests for ingredients of cosmetic products* (2000/41/EC). Iceland notified in addition implementing measures for the *24th technical adaptation to Directive 76/768/EEC on cosmetic products* (2000/6/EC), which has not yet been incorporated into the EEA Agreement.

In the reporting period, Norway also notified amendments of the Norwegian Regulation on cosmetic products, restricting the use of certain ingredients in cosmetics. Further information on this legislation is in the text on cosmetics in paragraph 4.2.3.4 on the notification on cosmetics.

4.2.2.11 Environment protection

In this field three new acts were to be complied with during the reporting period. All the EFTA States have notified full implementation of all the acts.

During the reporting period, the Authority had further working contacts with Iceland with regard to the assessment of the national measures implementing the *Directive on Packaging and packaging waste* (94/62/EC). The Authority will revert to the matter in 2002.

4.2.2.12 Construction products

Norway notified three conformity assessment bodies pursuant to Article 10 of the *Directive on construction products* (89/106/EEC). Four Commission Decisions, three of which related to the procedure for attesting the conformity of construction products pursuant to Article 20 of the Directive, were integrated into the EEA Agreement during the reporting period.

4.2.2.13 Machinery

Implementation of the *Directive relating to machinery* (98/37/EC) in Iceland was notified towards the end of the reporting period. This Act was to have been complied with and notified during the last quarter of the year 1999.

In the first part of the reporting period, a letter of formal notice was sent to Iceland for failure to notify implementation of the *Directive of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery* (97/68/EEC). Notification was received during the second half of the reporting period and the case was closed.

4.2.2.14 Cultural goods

Iceland implemented the *Directive on the return of cultural objects unlawfully removed from the territory of a Member State* (93/7/EEC) in the second half of the reporting period. A letter of formal notice had been sent in 1999. *Directive 96/100/EC* amending *Directive 93/7/EEC* was notified as fully implemented by Iceland and Norway during the latter part of reporting period after a letter of formal notice had been sent to Iceland in the first half of 2001 and a reminder letter to Norway.

4.2.2.15 Medical devices

The *Directive on in vitro diagnostic medical devices* (98/79/EC) was integrated into the EEA Agreement in 1999 and was to be complied with during 2000. During the first half of the reporting period letters of formal notice were sent to Norway and Iceland for failure to notify implementation of the act. Norway was sent a reasoned opinion during the second half of the year. Both cases could be closed before the end of the year 2001.

Finally, to complete recording of the chapters of Annex II to the EEA Agreement, notifications of implementation have been received from all EFTA States regarding the directives in the areas of lifting and mechanical appliances, gas appliances, construction plant and equipment, other machines, textiles, fertilisers, information technology, general provisions in the field of technical barriers to trade, personal protective equipment, toys, tobacco, explosives for civil use and recreational craft.

4.2.3 Operation of certain procedures

4.2.3.1 Information procedure on draft technical regulations

The *Directive on an Information Procedure on Draft Technical Regulations* (98/34/EC), as adapted for the purpose of the EEA Agreement introduces a procedure by which the EFTA States shall notify the Authority of draft technical regulations. Upon notification, a three month standstill period is triggered during which the Authority and the other EFTA States, as well as the European Commission, may comment on the notified draft regulation. Notifications are examined to establish whether they contain provisions which might create barriers to trade, for example by referring to national standards or national testing bodies, or by requiring exclusively national certificates. The Authority also assesses whether or not the draft national measures are in conflict with EEA secondary legislation.

Within the framework of this information procedure, the Authority received 22 notifications from the EFTA States during 2001; 16 notifications from Norway and six from Iceland.

The notifications concerned *inter alia* chemicals, foodstuffs, weighing instruments, electrical equipments, fertilizers, maritime electrical installations, radio equipments, electronic signatures and electronic commerce. Five of Iceland's notifications concerned import restrictions on *meat* from cattle, sheep, goats and swine. The notification procedure covers all industrially manufactured products and all *agricultural* products, including fish products. However, as the application of Articles 11 and 13 of the EEA Agreement is, by means of Article 8(3) of the Agreement, limited to products falling within Chapters 25 to 97 of the Harmonised Commodity Description and Coding System (industrial products) and to products specified in Protocol 3 to the EEA Agreement, the Authority did not comment on the substance of these Icelandic notifications.

In five cases, the Authority made comments on notifications of the EFTA States and two of them concerned notifications from 2000 with a standstill period ending in 2001.

The European Commission made 18 comments which the Authority forwarded to the respective EFTA state. Furthermore, the Commission made six comments concerning notifications from 2000 with a standstill period ending in 2001.

In 2001, the Authority received 530 notifications from the EU side. One of these notifications led the Authority to forward to the European Commission the comments of the EFTA States in the form of a single co-ordinated communication.

During the reporting period, the Authority discovered, in the case of Norway, a technical regulation (regarding import prohibition on Spanish olive residue oil) which had not been notified in its draft form. The Authority has initiated infringement proceedings, and will pursue the matter in 2002. Furthermore, the Authority closed one such case initiated against Iceland in 2000, as the state repealed the non-notified regulation.

In March 2001, the *Directive 98/48/EC* amending Directive 98/34/EC became applicable for the EFTA States under the EEA Agreement. The Directive widens the notification obligation to draft rules on Information Society Services. It has been in force in the EU since August 1998. Iceland and Norway notified transposition of Directive 98/48 in May and April respectively. In August, the Authority sent a letter of formal notice to Liechtenstein for non-transposition of the Directive. Liechtenstein subsequently notified

Draft technical regulations

	EFTA notifications	Comments from the Authority	EC notifications	Single Coordinated Communications
1994	61	30	389	4
1995	8	6	438	3
1996	30	5	522	3
1997	12	6	900	3
1998	37	13	604	3
1999	18	4	591	2*)
2000	19	3	751	0
2001	22	5	530	1

*) transmitted in 2000

transposition in October. The Authority is at present assessing the transposition measures notified by Liechtenstein and Norway.

During the reporting period, the EFTA States notified three draft technical regulations falling within the field of Information Society Services.

4.2.3.2 National measures derogating from the principle of free movement of goods

The Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods (3052/95/EC), came into force under the EEA Agreement in 1998. The Act provides that the EFTA States must notify the Authority of any national measure impeding the free movement of goods, when the person responsible for the product invokes its compliance with the regulation in force in another EEA State where it is lawfully produced or marketed. During 2001 the Authority received 76 notifications from EU Member States. The notifications were forwarded to the EFTA States. No notifications were received from the EFTA States.

4.2.3.3 Notification procedures on chemicals

The notification procedures on chemicals are divided into the following schemes:

notification of new chemicals according to the *Directive on Substances* (92/32/EEC), the *Directive on Preparations* (88/379/EEC) and the *Directive on Risk Assessment of New Chemicals* (93/67/EEC);

notification of existing substances according to the *Regulation on Existing Substances* (793/93/EEC) and the supplementing *Regulation on Risk Assessment* (1488/94/EC);

notification according to the *Export/Import Regulation* (2455/92/EEC).

These procedures entail technical, scientific and administrative work for the Authority and the EFTA States in collaboration with the European Chemicals Bureau (ECB) and the EU Member States. The scientific and technical tasks in relation to the procedures are carried out by ECB.

Iceland has formally informed the Authority that it aims at completing the notification of new chemicals in 2002. This task concerns notification of new chemicals (92/32/EEC) on the Icelandic market, which are not found in the European Inventory of Existing Commercial Chemical Substances (EINECS). Norway has notified a total of 22 substances and completed this task in 2000. Liechtenstein has informed the Authority that there are no Non-EINECS substances on the market produced by Liechtenstein producers. No information has been received from Liechtenstein on imported chemicals or chemical products.

The fourth priority list on existing substances (2364/2000/EC) was incorporated into the EEA Agreement in 2001. However, the programme on data collection, priority setting and risk assessment, based on the *Regulation on Existing Substances* (793/93/EEC), started already in 1993. Rapporteurs have completed the first draft Risk Assessment Reports on 88 out of a total of 141 priority substances listed on the first four priority lists. These substances appear on the priority lists because of their potential effect on man and the environment. Norway is the rapporteur for the whole European Economic Area for risk assessment of several of these substances.

4.2.3.4 Notification on cosmetics

In 2001, Norway informed the Authority that it was proposing a ban on the use of two glycol ethers and their acetates in cosmetic products. The measures were proposed with reference to the safeguard clause in Article 12 of the *Directive on cosmetics* (76/768/EEC). The Authority sent the documents received from Norway to the other EFTA States for comments and also to the European Commission with reference to Protocol 1 to the EEA Agreement. The Authority received no comments. The measures proposed by Norway were adopted in August 2001 by amending the Norwegian Regulation on cosmetic products. According to the documents received from Norway the adopted measures are temporary until the Scientific Committee on Cosmetics and Non-Food Products has evaluated the mentioned substances.

4.2.3.5 Foodstuffs

In the reporting period, the EFTA States did not notify any specific measures to the Authority under the procedures laid down in the *Regulation on Contaminants* (315/93/EEC) and the directives on the *Hygiene of Foodstuffs* (93/43/EEC) and on *Labelling of Foodstuffs* (79/112/EEC). The procedures allow the EEA States to introduce national provisions that are more specific than those laid down by these acts, provided that they are notified. At the end of 2001 Directive 79/112/EEC was replaced by a new *Directive on the Labelling of Foodstuffs* (2000/13/EC), which is a consolidated version of Directive 79/112/EEC, with amendments.

4.2.3.6 Product safety

The notification procedure laid down by Article 8 of the *General Product Safety Directive* (92/59/EEC) provides for the application of an emergency procedure regarding the rapid exchange of information in cases of serious and immediate risk to the health and safety of consumers. Article 7 of the Directive also introduces a general safeguard procedure, which is applicable insofar as there are no specific provisions in rules of Community law governing all the safety aspects of products. This procedure has to date exclusively been used for non-food products.

In 2001, the Authority received 35 alert and 21 non-alert notifications from the EFTA States under the Article 8 emergency procedure. Under the non-food Rapid Alert System, some 77 notifications were received, two of which came from EFTA States.

The Authority received a total of 302 alert notifications from the European Commission in the framework of the foodstuffs network. Additionally, some 406 non-alerts were processed in the foodstuffs network making up to a total of 708 notifications in the food area, follow-ups and addenda not included. The EFTA States participated actively in the procedure by presenting some 32 reactions to the notifications received.

The European Commission has developed an extranet tool, CIRCA (Communication and Information Resource Centre Administrator), where all notifications under the foodstuffs network are uploaded. The Authority initiated a trial period for the National Contact Points of the EFTA States during 2000 to enable a smooth transfer from an e-mail based notification system to the CIRCA system. Instead of receiving the notifications by electronic mail, the members having access to CIRCA, including the EFTA States, now download them directly from this web site and the CIRCA system has replaced earlier communication methods.

EFTA State representatives attended CIRCA training seminars at the EFTA Surveillance Authority and the European Commission during the first half of the reporting period. This facilitated the switch over to using the CIRCA system.

Under certain circumstances, decisions may be adopted under Article 9 of Directive 92/59/EEC requiring EFTA States to take temporary measures to prevent or restrict the placing on the market of a product or submit it to particular conditions. Decisions may also require market withdrawal, if the product represents a serious and immediate risk to the health and safety of consumers. The Decision *concerning measures prohibiting the placing on the market of toys and childcare articles intended to be placed in the mouth by children under three years of age made of soft PVC containing certain phthalates* (1999/815/EC) was adopted in December 1999. The Decision was prolonged four times in 2000 and another four times during 2001.

4.2.3.7 Safeguard measures with regard to unsafe products in accordance with specific Directives

The Authority has in 2001 received notification from Norway of safeguard measures on the basis of Article 7 of the *Machinery Directive* (98/37/EC). During the reporting period the Authority has had correspondence with Norway and will revert to the matter in 2002.

The Authority received thirteen notifications of safeguard measures taken under Article 9 of the *Low Voltage Directive* (73/23/EEC) from Iceland, and two from Norway, compared to just two notifications from Iceland and none from Norway during the preceding

The Emergency Procedure

	EFTA notifications			EC notifications		
	Food	Non food	Total	Food	Non food	Total
1994	2	2	4	9	6	15
1995	4	0	4	12	15	27
1996	1	0	1	15	53	68
1997	2	2	4	67	52	119
1998	0	0	0	74	47	121
1999	6	3	9	91	100	191
2000	18	4	22	115	91	206
2001	35	2	37	302	75	377

period. Some 246 notifications were received from EU Member States under the same Directive, almost double the amount compared to the last reporting period. Furthermore, seven information communications on unsafe products were received from Iceland and one from an EU Member State. The Authority received five notifications from the European Commission under the *Directive concerning products which, appearing to be other than they are, endanger the health or safety of consumers* (87/357/EEC), which are distributed within the General Product Safety network. No notifications were received from EFTA States.

4.2.3.8 Notification of conformity assessment bodies

All new approach directives and some of the old approach directives provide for the involvement of notified bodies as third parties in conformity assessments of products or production. Such bodies may be testing laboratories, inspection bodies, certification bodies or approval bodies. They are notified by the EEA States as being competent to carry out conformity assessments of specific products or families of products, as set out in the relevant Directives. These notifications are forwarded to the European Commission, which publishes them, together with the notifications received from the EU Member States, in the Official Journal of the European Communities. In 2001, the Authority received two notifications concerning such conformity assessment bodies from Norway.

4.2.4 Other rules in fields related to the free movement of goods

4.2.4.1 Energy

The Authority carried out a first conformity assessment of the *Internal Market for Electricity Directive* (96/92), following Norway's notification of the national measures intended to implement the Directive in the autumn of 2000. It did draw the Norwegian Government's attention to what appeared to be shortcomings in those measures, and, in the autumn of 2001, was informed that Norway accepted the Authority's comments and would adopt new measures to be applied from 2002. The Authority will assess the conformity of those measures in 2002.

Iceland and Liechtenstein have a transitional period up until 1 July 2002 to implement the Directive.

4.2.4.2 Product liability

The *Directive amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products* (1999/34/EC) was to be complied with during the reporting period. All the EFTA States have notified full implementation of the Directive.

4.2.4.3 Intellectual property

The *Directive on the legal protection of designs* (98/71/EC), was to be complied with during the last quarter of the reporting period. Norway and Liechtenstein have not notified implementing measures for the Directive.

4.2.5 Veterinary and phytosanitary matters

Throughout 2001 a particular emphasis was put on implementation control. During the year the Authority also received three complaints in the veterinary field, all against Norway.

Inspections related to the legislation regulating the production of poultry meat, game meat and milk in addition to minced meat and meat preparations were carried out in Norway. Furthermore, border inspection posts in both Iceland and Norway were inspected during the latter half of the year. Some of these posts were new and therefore visited together with an inspector from the Food and Veterinary Office of the European Commission in order to initiate the process for adding these to the list of border inspection posts agreed for veterinary checks on animals and animal products from third countries.

4.2.5.1 Legislation

The revised Annex I, which is divided into three Chapters, contains some one thousand acts, out of which around three hundred are Directives, some with transitional periods. The acts in the veterinary field (Chapter I) not related to fishery products do not apply to Iceland. Liechtenstein had a transitional period until 31 December 2001 with regard to all the acts in that Chapter.

4.2.5.2 National transposition

The conformity assessment of the national measures concerning veterinary issues under Annex I continued throughout the year. In September the Authority delivered reasoned opinions to Iceland and Norway for failing to take the necessary measures to comply with the *Directive regulating the financing of health inspections and controls* (85/73/EEC). Responding to the reasoned opinions both Iceland and Norway notified the Authority in October of the national

measures considered to ensure full compliance with the Directive.

For two of the three acts incorporated into the Agreement during 2001 and containing notification requirements, letters of formal notice were sent to Norway for failure to comply with the obligations to notify the Authority of the national measures taken to ensure compliance with these acts. In October the Authority was notified of full implementation of one of the acts, the *Directive amending the Directive on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultrymeat* (1999/89/EC). Further, the Authority was informed that the national measures implementing the *Directive amending the Directive on animal health conditions governing intra-Community trade in and imports from third countries of poultry and hatching eggs* (1999/90/EC) would be notified before the end of January 2002.

In February two letters of formal notice were sent to Norway for failure to notify the Authority of the measures taken to comply with the *Directive on the certification of animals and animal products* (96/93/EC) and the *Directive laying down the rules applicable to minced meat, meat preparations and certain other products of animal origin* (97/76). Norway notified the measures considered to ensure full compliance with the directives in April and July respectively.

Following the Authority's assessment in 2000 of the directives *regulating production and marketing of fresh meat* (64/433/EEC) and *veterinary checks on products imported from third countries* (97/78/EC) Norway notified in the latter half of 2001 the amendments of the national measures to ensure compliance with these acts.

Following the reasoned opinion sent to Norway in 2001 for non implementation of the *Directive on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 86/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC* (96/23/EC), Norway notified the Authority in October of the measures taken to ensure full compliance with the Directive.

In 1999, Iceland applied for the Authority's approval of national control programmes for five different fish diseases covered by the *Directive concerning the animal health conditions governing the placing on the market of aquaculture animals and products* (91/67/EEC). As part of the Authority's processing of the application, Iceland was late 2001 invited to submit to the Authority a table of correspondence of the Icelandic measures implementing the Directive. Furthermore, for some of the diseases the process is still awaiting the outcome of an evaluation by the European Commission of the general policy for granting additional guarantees for animal diseases within the European Union. Finally, the transitional period for Iceland was, for part of the act, in 2001 prolonged until 30 June 2002. A possible approval of the control programs would be closely linked to the termination of the transitional period.

Norway and Liechtenstein notified implementation of all the acts in the feedingstuffs sectors. Reasoned opinions were sent to Iceland in the first part of the reporting period for failure to implement Directives 95/55/EC, 96/7/EC, 96/24/EC, 95/69/EC, 96/51/EC, 96/66/EC, 97/6/EC, 97/72/EC, 97/40/EC, 96/25/EC, 95/53/EC and 97/47/EC in the feedingstuffs sector, but all cases were closed later that year after Iceland notified implementation of the acts. At the end of the reporting period, Iceland had failed to notify 14 acts in the field, five for which reminder letters had been sent.

In the Chapter on feedingstuffs, the measures notified by Liechtenstein for implementing some 99 acts in the field were found to be in conformity with the provisions of the said acts.

4.2.5.3 Application of the Agreement

Products processed by establishments handling fresh meat, meat products, poultry meat, farmed game meat, wild game meat, eggs, milk and fish, as well as on factory vessels are, under the EEA Agreement, subject to strict veterinary rules motivated by objectives of public health and consumer protection. If the establishments or vessels have been approved by the national competent authority in an EEA State, in accordance with the relevant EEA Act, the products could be placed on the entire EEA market without any further veterinary checks.

Paragraph 4 of the introductory part of Chapter I of Annex I to the EEA Agreement lays down the principles to be applied by the Authority in carrying out on-the-spot inspections in the veterinary field. This implies, *inter alia*, that such inspections shall be carried out in accordance with programmes equivalent to those of the Community, that the same criteria shall apply to inspections, that information concerning inspections shall be exchanged between the European Commission and the Authority and that the follow-up of the inspections shall be coordinated between the Commission and the Authority. Therefore, the Authority's inspectors participated as observers in several missions performed by the Commission and its inspectors participated likewise in the Authority's missions to the EFTA States.

In September, the EEA Joint Committee amended the Introductory Part of Annex I, *inter alia*, the point relating to border inspection posts. Routine missions continue to be conducted in close co-operation with the European Commission, but according to Point 4(B)(3) of the revised Introductory Part the Authority and the Commission shall arrange joint inspection visits in the EFTA States in order to establish a common recommendation when the EFTA States propose new border inspection posts to be added to the list of approved border inspection posts. The new procedures were applied when proposed new border inspection posts were visited in Iceland and Norway during the autumn. At the end of the reporting period, the Authority was in the process of preparing a Decision listing new border inspection posts in Iceland and Norway and adapting to new procedures by the Commission, procedures, which include listing of both border inspections posts and inspection centres agreed for veterinary checks on animals and animal products from third countries.

The Authority inspected Norway for the first time with regard to the application of the Directives relating to *milk and milk based products, poultry and poultry meat products, minced meat preparations and wild game meat.* Following these visits it was *inter alia* recommended that the co-operation between the competent authorities on different levels should be improved. The Authority's reports to the EFTA States and their reactions to them can be found under "Veterinary Issues – Control Matters" under the heading "Publications" on the Authority's homepage www.efta.int/structure/surv/efta-srv.cfm.

During 2001, three cases concerning veterinary issues, all against Norway, were formally registered on the basis of complaints. One complaint regards the Norwegian Competent Authority's alleged breach of the EEA rules regulating trade in live sheep. In November Norway replied to a letter from the Authority and the examination of the information received will continue during 2002.

Another complaint regards the Norwegian Competent Authority's alleged breach of the EEA rules regulating trade in fishery products. Finally, the Authority received a complaint with regard to the application of the EEA rules regulating registration of pure breed breeding animals in herd books. The Authority will continue its examination of these cases during 2002.

It follows from several of the acts on Veterinary issues, that the States are obliged to submit to the Authority information on a regular basis or within certain time limits. Although some improvements were seen during 2001, the Authority did still not receive all the information that Iceland and Norway are obliged to submit on a regular basis or within the time limits set out in the respective acts.

4.3 PUBLIC PROCUREMENT

4.3.1 General overview

The main objective of the provisions in the EEA Agreement on public procurement is to oblige contracting authorities and entities within the EEA to apply certain procedures when procuring supplies, services and works with a value exceeding given thresholds. This is in order to secure equal treatment of all suppliers, service providers and contractors established within the EEA. As a general rule, notices on contracts to be awarded shall be published in the Official Journal of the European Communities and in the database Tender Electronic Daily (TED). In addition, public procurement complaint bodies must be established at a national level.

In the field of public procurement, work related to the monitoring of the application of the procurement rules continued to be the main task of the Authority in 2001. However, the Authority spent substantial extra time and resources in carrying out conformity assessment of the national measures intended to implement the public procurement directives, as both Norway and Iceland, in the course of 2001, adopted new laws in the field of public procurement. The Authority was also able to assess cases initiated in the previous years, thereby closing a number of cases where satisfactory solutions had been found. In addition, preliminary examinations were initiated at the Authority's own initiative in a number of cases to check that derogation from the main rules, where these were invoked, were justified. With a view to safeguarding the interests of potential suppliers and service providers, the Authority continued its practice of ensuring the correction of non-compliance with the procurement legislation through immediate contacts with national authorities before contracts had been concluded.

Providing information and guidance for the understanding of the EEA procurement rules, both to the contracting entities and to suppliers, proved to be an important part of the Authority's work in the procurement field. The European Commission's services have been consulted on a number of topics related to the interpretation of the EEA procurement rules. The Authority also continued to take part in the meetings of the EU Advisory Committee on Public Procurement.

4.3.2 National implementing measures and conformity assessment

In June 2001, the Authority issued a reasoned opinion in respect of Iceland arising from the failure by that State to adopt, or to notify the Authority of the measures necessary to implement the amending *Public Procurement Directive (GPA)* (97/52/EC) and the amending *Utilities Procurement Directive (GPA)* (98/4/EC), which should have been incorporated into national legislation by 1 July 2000. In October 2001, the Icelandic Government notified the Authority of the national measures considered by Iceland to ensure full implementation of these Acts, and the Authority subsequently closed the case.

Both Iceland and Norway adopted comprehensive new national legislation in the field of public procurement in 2001 and, consequently, submitted new notifications of national measures intended to ensure the implementation, not only of the two abovementioned directives, but also of the *Supply, Service, Works, and Utilities Procurement Directives* (93/36/EC, 92/50/EEC, 93/37/EC, 93/38/EC), as well as the corresponding *Remedies Directives* (89/665/EEC, 92/13/EEC) for the public and utilities sectors, respectively.

Conformity assessment of the notified measures were consequently initiated for Iceland and Norway. In all, 16 new cases were initiated relating to the conformity assessment for these states. Regarding Liechtenstein, the conformity assessment of the measures notified to the Authority in 2000 were pursued and the Authority dispatched letters to the Liechtenstein Government, drawing its attention to certain shortcomings in the national measures intended to ensure the implementation of the Directives. In addition, a further three cases were opened in respect of Liechtenstein for the conformity assessment of the amending *Public Procurement Directive (GPA)* (97/52/EC), the amending *Utilities Procurement Directive (GPA)* (98/4/EC), and the *Utilities Remedies Directive* (92/13/EEC).

4.3.3 Application of the rules on public procurement

In the course of 2001, the Authority examined a total of 71 cases including preliminary examinations relating to the application of the EEA procurement rules. Of these, 22 cases were closed, either because it was concluded that infringement had not taken place or, because the EFTA State concerned took corrective measures. At the end of 2001 the Authority had 49 open cases in the field of public procurement. By comparison, the number of open cases at the end of 2000 was 25.

During the year, 15 new cases were formally registered on the basis of complaints. In addition, the Authority initiated 28 preliminary examinations, including the conformity assessment cases referred to in the section above, and two own initiative cases. Twelve complaints were filed against Norway, and one against Iceland. One of the complaints against Norway was subsequently withdrawn by the complainant, and was thus not pursued by the Authority. Another two complaints were transferred to the European Commission as they concerned award procedure carried out in the Netherlands and the UK.

Of the complaints that were received and brought to the attention of national authorities in Norway and Iceland, one complaint against Norway concerned the award of a contract for a ticketing system in the utilities sector. The complainant claimed that the contracting entity had infringed the *Utilities Procurement Directive* (93/38/EC) by not engaging in negotiations with one of the candidates that had been invited to submit a tender. The Authority received all relevant documentation on the award procedure, but did not complete its examination of the case during the reporting period.

Another complainant claimed that a Norwegian contracting authority had infringed the *Service Directive* (92/50/EEC) by awarding a contract for travel agency services without a public call for tender. The Authority examined the case and concluded that the service in question was not, in fact, listed among the services that are subject to the main provisions of the *Service Directive* (92/50/EEC), *inter alia*, the obligation to publish a call for tender. The complainant was informed thereof and the case subsequently closed.

One complainant claimed that a Norwegian municipality had not applied the provisions of the *Works Directive* (93/37/EC) to the award of a contract for the construction of a school building. After examination of the case, the Authority concluded that the value of the contract was below the threshold value referred to in the Directive, and that the Directive, therefore, did not apply to the contested award procedure.

Another complainant claimed that a Norwegian municipality had infringed the EEA provisions on public procurement by rejecting all bids in an award procedure but, nevertheless, subsequently entered into negotiations with one of the participants for the award of the same

contract. The Authority did not finalise its examination of the case in the reporting period.

One complainant claimed that a Norwegian public authority had infringed the *Remedies Directive* (89/665/EEC) by not stating the reasons for rejecting a bid, and thus making it impossible to effectively review the decision to award contract. The Authority will continue its examination of the case in 2002.

Another complainant claimed that two Norwegian municipalities involved in a joint procedure for the award of a refuse collection contract had infringed the *Service Directive* (92/50/EEC) by applying award criteria that had not been listed in the invitation to tender and by giving favourable treatment to a tenderer who pledged to establish offices in one of the municipalities. The Authority had not, by the end of the reporting period, yet received the documentation from the relevant municipalities necessary to assess the case.

In another case, a complainant claimed that a Norwegian municipality had infringed the provisions of the *Service Directive* (92/50/EEC) by stating, as a condition for the award of a contract for snow clearing services, that the potential service provider must demonstrate that it had executed services for the same municipality prior to the contested award procedure, effectively barring any potential new service providers from being awarded the contract.

Another complaint concerned a design contest organised by a local authority. The complainant claims that the contest was cancelled, but that the local authority, all the same, subsequently entered into contract negotiations with some of the participants without any prior call for competition. The Authority did not complete its examination of the case during the reporting period.

One complainant claimed that a Norwegian contracting authority, in relation to a works contract, had chosen an award procedure, which in various ways was contrary to the provisions of the *Works Directive* (93/37/EEC). Firstly, the procedures did not state in a transparent manner, the award criteria to be used. Secondly, that contracts have been awarded based on interviews with the candidates contrary to the principle of legal certainty. Finally, criteria related to qualitative selection of candidates have been used as award criteria. The Authority will continue its examination of the case during 2002.

In another case the complainant alleged that the Norwegian Government failed to respect the provisions of the *Supply Directive* (93/36/EEC), in relation to a supplies contract, as the award procedure chosen was not in compliance with the procedures prescribed in the Directive, e.g. non publication of an invitation to tender in the Official Journal of the European Communities. Secondly, the complainant alleged that criteria for qualitative selection of suppliers have been used as award criteria. Thirdly, that the invitation to tender did not contain any reference to the quantity of supplies to be procured and the technical specification therein were not sufficiently accurate to secure legal certainty. Finally, that the time lapsing between the complainant receiving information on the decision to award the contract and the signing of the contract was not sufficient to make use of the legal remedies available to him. The Authority will continue its examination of the case during 2002.

Finally, another complainant claimed, *inter alia*, that a series of framework contracts awarded by the Norwegian Government were not contracts within the meaning of the procurement Directives and that the award procedure was not, therefore, in compliance with the procurement Directives. The contested contracts were also subject to a complaint from another complainant at the end of 2000. The Authority did not finalise its examination of the case in the reporting period.

In the course of 2001 the Authority opened two own initiative cases against Norway, one concerning a works contract and the other concerning a services contract.

One related to a works contract for a nursing home for which the contracting authority had made a decision to award a contract without publishing an invitation to tender in accordance with the provisions of the *Works Directive* (93/37/EEC). After having examined the case the Authority concluded that the procedure chosen by the contracting authority would entail a breach of that Directive. Norway then informed the Authority that the award procedure had been cancelled and that a new procedure would be initiated in accordance with the provisions of the Directive.

The other own-initiative case related to a services contract for transport services for which the contracting authority applied the negotiated procedure with publication. Furthermore, the contracting authority had used award criteria, which seems to be a mixture of technical requirements, contract performance requirements, selection criteria and award criteria in a way that would not be in conformity with the provisions of the *Service Directive* (92/50/EEC). The Authority did not complete its examination of the case in the reporting period.

The single complaint received against Iceland concerned the award of a series of contracts in the

field of civil aviation. The complainant claimed that the contracting authority had infringed the EEA Agreement by not applying its provisions on public procurement by, *inter alia*, not organising a public call for tender. The Authority received the complaint in December 2001 and will continue its examination of the case during 2002.

4.3.4 Management tasks

During the reporting year, the Authority recalculated the threshold values, applicable as from 1 January 2002, as required every second year, and sent them for publication in the Official Journal of the European Communities and in its EEA Supplement.

4.4 FREE MOVEMENT OF PERSONS

4.4.1 Free Movement of workers

Freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the EEA States as regards employment, remuneration and other conditions of work and employment. This includes the right to accept offers of employment actually made, to move freely within the territory of an EEA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State, and to remain on the territory of an EEA State after having been employed there.

4.4.1.1 Implementation control

By virtue of Protocol 15 to the EEA Agreement on transitional periods on the free movement of persons, Liechtenstein had the right to maintain in force until 1 January 1998 national provisions submitting entry, residence and employment to prior authorisation. In 1997, Liechtenstein started negotiations with the European Commission on further transitional measures from 1 January 1998 onwards. The negotiations were completed in 1999 and in December 1999 the EEA Joint Committee, by Decision No. 191/1999, added new special adaptations to Annex V (free movement of workers) and Annex VIII (right of establishment) to the EEA Agreement applicable to Liechtenstein until 31 December 2006. The decision entered into force in June 2000. Liechtenstein applied safeguard measures pursuant to Article 112 and 113 of the EEA Agreement in the interim period. The Authority continued its implementation control by assessing the conformity of the notified Liechtenstein legislation with the Acts referred to in Annex V and VIII, as adapted. As a result, a Pre-Article 31 letter was sent to Liechtenstein as regards a number of national provisions. In September 2001, the Authority received information on the amended national legislation, which was formally notified in January 2002. The Authority will continue in 2002 its implementation control which has been extended to the practice of using and allocating quota permits. In December 2001, the Authority initiated also reporting tasks to this end.

4.4.1.2 Complaints

In the reporting period, the Authority continued with the examination of cases based on complaints lodged with the Authority in 2000 or earlier. The Authority received one new complaint in 2001.

With regard to a complaint from 1997 against Norway on taxation rules discriminating against EEA nationals working in Norway and commuting to their families residing in another EEA State the Norwegian Government notified legislative measures adopted in 1999. The assessment of the new legislation, which took effect as of the income year 1998 and the monitoring of its application was finalised in the reporting period and the case closed in May 2001.

Related hereto, the Authority continued the assessment of another complaint against Norway which had been lodged with the Authority in October 2000 alleging a breach of Article 7 of the *Regulation on Free Movement of Workers* (1612/68/EEC) by application of the mentioned discriminatory taxation rules to the income year 1997. In June 2001, the Norwegian tax authorities decided the complainant's and other pending applications in conformity with the EEA law. Subsequently the case was closed in November 2001.

A complaint against Norway, registered in 1998, concerning the refusal to grant a British citizen an unlimited certificate as "*Dekksoffiser klasse 1*" which would allow him to be employed as master of a Norwegian fishing vessel, was solved in 1999 on an individual basis. The Authority continued to monitor the case in the reporting period and finally closed it in March 2001. The same applies to a similar complaint lodged against Norway in 1998 by a Swedish captain who had been refused employment as a captain of a Norwegian ship on nationality grounds. The Norwegian Ministry informed the Authority in 1999 that an exemption had been granted to the nationality restrictions enabling the employment of the complainant. The examination of the complaint came to an end in March 2001.

In 1999, a complaint was lodged with the Authority against Norway alleging that the Norwegian rules on

Persons, Services and Capital Movements Directorate:

Behind from left to right: Tor Arne Solberg-Johansen, Vincent Kronenberger, Ragnhild Behringer, Anne-Louise Resberg, Director Jónas Fr. Jónsson, Jóhannes Sigurdsson - In front from left to right: Kari Elisabeth Fagernæs, Linda Bruås, Outi Saarialho, Andrea Weiß - Not present: Ásta Magnúsdóttir, Charlotte Schaldemose

residence were hindering the free movement of persons and the right to take up residence in another EEA State. Following extensive correspondence with the complainant and the Norwegian authorities in 2001, the Authority discovered that the complaint was merely hypothetical and could not be assessed properly. Therefore, the Authority decided to close the case.

In 1998, the Authority received a complaint against Iceland from a Spanish national, formerly employed as lecturer at the University of Iceland. He alleged that he had been subject to discrimination on grounds of nationality regarding his dismissal and his application for a new post at the university. The examination was finalised in the reporting period and the case closed in April 2001.

In 1998, a complaint against Liechtenstein was lodged with the Authority where a Dutch national alleged discriminatory restrictions on the access to housing in Liechtenstein and rules on the grant of permanent residence permits which favour Austrian nationals as compared to other EEA nationals. As regards the first question at issue, after expiry of the transitional period on 1 January 1999, Liechtenstein notified to the Authority full implementation of its obligations under Article 40 of the EEA Agreement on the free movement of capital. The examination of the case will continue, however, in 2002, as regards the more favourable treatment of Austrian nationals.

A complaint against Liechtenstein lodged in 1998 concerning alleged discriminatory requirements regarding access to a traineeship at the Liechtenstein courts, still is subject to examination by the Authority which awaits the notification from Liechtenstein of national measures in 2002.

Another complaint was brought against Liechtenstein in 1999 for alleged discrimination on grounds of nationality regarding right of residence, right of establishment, social security, and labour law. The examination of the case was finalised during the reporting period and the case closed in October 2001.

A complaint, which had been lodged with the Authority in 1999 against Iceland from a French hospital nurse with regard to alleged discrimination as to remuneration and other working conditions, was further examined during the reporting period and finally closed in September 2001.

In 1999, the Authority received a complaint against Norway for alleged breach of Article 3 of the *Directive on Public Policy, Public Security or Public Health* (64/221/EEC). The complainant had been expelled from Norway after having been sentenced to imprisonment for importation of prohibited drugs. In February 2001, the Authority received another complaint against Norway concerning exactly the same issue. During the reporting period, the Authority requested further information from Norway, and the

rules concerning expulsion were subject to discussions between the Authority and the competent Norwegian authorities. The Authority aims at concluding its examination of the two cases in 2002.

Also in 1999, the Authority registered a complaint against Norway concerning expulsion. An Austrian national was refused a residence permit and expelled from Norway on the alleged grounds that his travel document had expired. In 2001, the Authority requested and received further information from Norway. The Authority will aim at finalising its examination in 2002.

In 2000, the Authority registered a complaint against Norway concerning an Icelandic flight controller who was allegedly refused employment in Norway on grounds of nationality. In the course of the examination, the Authority found that the ranking system applied by the Norwegian Air Traffic and Airport Management appeared to discriminate against EFTA and EU nationals with professional experience in other EEA States. In order to guarantee a non-discriminatory practice in accordance with Article 28 of the EEA Agreement, the Norwegian Government has confirmed that it intends to have the necessary adjustments in place by April 2002. The examination of the case will continue in 2002.

4.4.1.3 Own-initiative cases

In 2001, the Authority opened three own-initiative cases in this field.

Based on information received on national rules on study finance in the EFTA States, the Authority started a systematic conformity assessment of these rules in Iceland, Liechtenstein and Norway. The examination of the Liechtenstein legislative measures was at its final stage during the reporting period.

In June 2001, the Authority opened an own-initiative case against Iceland as it appeared that the Icelandic rules on the grant of student loan were not in conformity with the EEA Agreement and Council Regulation (EEC) No 1612/68 *on freedom of movement for workers within the Community* in respect of migrant workers, self-employed persons and their families. Under the Icelandic legislation only those workers who had been residents in Iceland for one year and who had completed an employment period of five years in the EEA prior to the settlement in Iceland were entitled to student loans. Furthermore, only those children of migrant workers who either were under the age of 21 years or were supported by the workers in Iceland were entitled to student loans. The Authority has requested further information from Iceland, and the examination of the case will continue in 2002.

In July 2001, the Authority opened an own-initiative case against Norway. It appeared that the Norwegian rules were not in conformity with the EEA Agreement as part-time workers and their children were excluded from financial support from the State Education Loan Fund (*"Statens lånekasse for utdanning"*). Furthermore, only those children of migrant workers who either were under the age of 21 years or were supported by the workers were able to profit from the rules on study grants. At the end of the reporting period, the Authority was informed by the Norwegian Government that the draft regulations for the study year 2002 - 2003 were amended in conformity with the EEA Agreement. The regulations are expected to be in force in February 2002.

In June 2001, the Authority opened an own-initiative case against Iceland concerning the rules governing the importation of foreign-registered motor vehicles by workers as part of household goods. The examination will continue in 2002.

4.4.2 Mutual recognition of professional qualifications

Under Article 30 of the EEA Agreement, the Contracting Parties shall take the necessary measures concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as the taking up and pursuit of activities by workers and self-employed persons. To that end, the directives in Annex VII to the Agreement lay down provisions on mutual recognition of professional qualifications and thus facilitate the right of establishment and the provision of services.

4.4.2.1 Implementation control

Formal infringement proceedings by the Authority with regard to the general implementation of the *Second General System Directive* (92/51/EEC) by Liechtenstein were, in principle, terminated in October 2000. However, examination regarding the profession of auditors and trustees falling within the scope of the Directive continued during the reporting period and will be finalised in 2002.

In October 1999, the Authority sent a letter of formal notice to Iceland for not complying with the *Various Activities Directive* (75/368/EEC) regarding the profession of librarian. In June 2001, Iceland notified the amended legislation and subsequently the case was closed.

In 1998, Liechtenstein notified national measures implementing a number of directives regarding the

medical professions, namely the *Doctors Directive* (93/16/EEC), the *Dentists Directive* (78/686/EEC), the *Nurses Directive* (77/452/EEC), the *Pharmacists Directive* (85/433/EEC) and the *Acquired Rights in Medical Professions Directive* (81/1057/EEC). Following examination, the Authority concluded that the measures notified did not ensure full implementation of the directives and requested Liechtenstein to adopt further measures. As regards the *Dentists Directive* (78/686/EEC) and the *Pharmacists Directive* (85/433/EEC) Liechtenstein notified national measures to ensure full implementation in July 2001. The cases were subsequently closed. Conformity assessments of the notified legislation were initiated and completed during the reporting period. With regard to the *Nurses Directive* (77/452/EEC) the Authority received a notification at the end of the reporting period and closed the case.

For the other directives, Liechtenstein informed the Authority about further delays in the adoption of the transposing national legislative measures. This is also valid for the implementation of *Directives* 97/50/EC, 98/21/EC, 98/63/EC and 1999/46 amending the *Doctors Directive* (93/16/EEC). In November 2001, the Authority sent letters of formal notice to Liechtenstein as regards the *Doctors Directive* (93/16/EEC) and all cited directives amending it. Notification of national measures is awaited in 2002.

The Authority continued its conformity assessment that started in 1999 regarding the implementation measures in Liechtenstein of the *Midwives Directive* (80/154/EEC) and the *Architects Directive* (85/384/EEC). With regard to the *Midwives Directive* (80/154/EEC) Liechtenstein notified national measures ensuring full implementation in October 2001. The case was subsequently closed and a conformity assessment initiated which will continue in 2002. As regards the *Architects Directive* (85/384/EEC) Liechtenstein informed the Authority about further delays in legislative amendments necessary to fully implement the Directive.

In October 2001, the Authority initiated examination of Liechtenstein's failure to implement *Directive* 2000/5/EC amending the *Second General System Directive* (92/51/EEC). Notification is awaited in the first half of 2002.

During the reporting period the Authority initiated systematic implementation controls for Iceland, Liechtenstein and Norway concerning the national transposition of the general systems. Conformity assessments for the *First General System Directive* (89/48/EEC) and the *Second General System Directive* (92/51/EEC) were started in March 2001. Those for the *Third General System Directive* (1999/42/EC) were initiated in November 2001. The examination of all cases will continue in 2002.

4.4.2.2 Complaints

In January 2000, the Authority received a complaint against Iceland concerning the alleged refusal of a nursing licence by the Icelandic Ministry of Health and Social Security to a foreign citizen who is a psychiatric nurse. The refusal was on the ground that the complainant has not completed general nursing studies. The Authority continued to examine and monitor the case in 2001. At the end of the reporting period, the examination was at its final stage.

In June 2000, the Authority received a complaint against Norway from an Icelandic national with an Icelandic qualification as carpenter and housebuilder alleging a refusal by the Norwegian authorities of a licence as a carpenter. The Authority finalised its examination during the reporting period and closed the case in April 2001.

In November 2000, a British national with American qualification in nursing lodged a complaint against Norway for the breach of the rules on the recognition of third country diplomas. In August 2001, the Authority was informed that the complaint had been solved on an individual basis. The Authority continued its general examination which was at its final stage at the end of the reporting period.

In December 2000, a complaint against Norway on an alleged non-recognition of the British title "Bachelor of Science" as equivalent to the Norwegian academic title "*sivilingeniør*" was lodged with the Authority. The Authority continued to examine the case in 2001. The examination was at its final stage at the end of the reporting period.

4.4.2.3 Management tasks

The Authority is expected to carry out several management tasks in the field of mutual recognition. One such task is provided for in the *Architects Directive* (85/384/EEC). A diploma falling under the *Architects Directive* (85/384/EEC) shall be automatically recognised by other EEA States if it fulfils certain qualitative and quantitative criteria and has been published according to the Directive. A new diploma from an EFTA State must be communicated simultaneously to the EFTA Surveillance Authority and to all EEA States. The Authority and the individual States have the opportunity of raising doubts as to whether the communicated diploma meets the criteria of the Directive. If doubts are raised, the EFTA

Surveillance Authority will convene an EFTA advisory committee to give its opinion on the diploma.

In 1999, Liechtenstein communicated a new diploma in architecture to the Authority. Following examination of the new diploma and a favourable opinion by the EFTA advisory committee the Authority decided in November 2000 to publish the diploma according to the Directive (OJ C 42, 8.2.2001, p.14). The Authority completed its management task in August 2001.

In April 2001, Norway communicated three diplomas in architecture to the Authority. Following examination of the diplomas, in August 2001, the Authority adopted in all three cases a decision in favour of their publication. The diplomas were published in December 2001 (OJ C 344, 6.12.2001, p.11) and the Authority's management task was completed subsequently .

4.4.3 Right of establishment

4.4.3.1 Implementation control

By virtue of Protocol 15 to the EEA Agreement on transitional periods on the free movement of persons, Liechtenstein had the right to maintain in force until 1 January 1998 national provisions submitting entry, residence and employment to prior authorisation. In 1997, Liechtenstein started negotiations with the European Commission on further transitional measures from 1 January 1998 onwards. The negotiations were completed in 1999 and in December 1999 the EEA Joint Committee, by Decision No. 191/1999, added new special adaptations to Annex V (free movement of workers) and Annex VIII (right of establishment) to the EEA Agreement applicable to Liechtenstein until 31 December 2006. The decision entered into force in June 2000. Liechtenstein applied safeguard measures pursuant to Article 112 and 113 of the EEA Agreement in the interim period. The Authority continued its implementation control by assessing the conformity of the notified Liechtenstein legislation with the Acts referred to in Annex V and VIII, as adapted. As a result, a Pre-Article 31 letter was sent to Liechtenstein regarding a number of national provisions. In September 2001, the Authority received information on the amended national legislation, which was formally notified in January 2002. In 2002, the Authority will continue its implementation control, which has been extended to the practice of using and allocating quota permits. In December 2001, the Authority also initiated reporting tasks to this end.

4.4.3.2 Complaints

In the reporting period the Authority continued to examine cases which were registered in 2000 or earlier. The Authority received four new complaints in 2001.

In 1998, the Authority initiated formal infringement proceedings against Liechtenstein on the basis of two complaints regarding the single practice rule for doctors and dentists. The single practice rule implies that a doctor or dentist, once established in a particular EEA State, would only be able to enjoy the freedom of establishment under the EEA Agreement in Liechtenstein by abandoning the establishment he already has. In July 2000, the Authority proceeded by sending a reasoned opinion. As reported last year, the Authority was informed in July 2000 that the Liechtenstein Administrative Court (*Verwaltungsbeschwerdeinstanz*), before which similar cases were pending, had asked the EFTA Court for an advisory opinion on the interpretation of Article 31 of the EEA Agreement as regards the single practice rule. The Authority decided to let the complaint case rest until the EFTA Court had delivered its opinion. In June 2001, the EFTA Court concluded, that "a national provision of a Contracting Party to the EEA Agreement which provides that a physician may not operate more than one practice, regardless of location, is incompatible with Article 31 EEA" (Single Practice Rule EFTA Court, cases E-4/00, E-5/00 and E-6/00, to be found at http://www.efta.int/structure/court/efta-crt.asp). In September 2001, the Liechtenstein Administrative Court delivered its judgments and concluded that the single practice rule was not in conformity with the EEA Agreement. The Liechtenstein Government informed the Authority in November 2001 that it would propose to abolish the single practice rule and introduce a new system of payment regarding practitioners' services. Then, the Authority invited the Government to submit information on national measures ensuring the right of establishment in this field and on measures ensuring compensation of individuals who suffered damage by application of the rule. The case will be further pursued in 2002.

In 1998, the Authority received two complaints against Liechtenstein concerning a residence requirement for EEA nationals who wanted to establish a business in that State. The law applicable at the time required that a self-employed person who wants to establish a business or set up agencies, branches, or subsidiaries in Liechtenstein must reside in that State or employ a manager residing in that State in order to obtain a trading license. A third case, registered in 1998, concerned a similar provision of Liechtenstein law, which requires that in order to register a company in Liechtenstein the owner must reside in the State or appoint a representative residing there. In 1999, the Authority sent a letter of formal notice to Liechtenstein for failure to comply with Article 31 of the EEA

Agreement in all three cases. In May 2001, the Authority received from Liechtenstein information on interim measures, which have been adopted for the period until the new legislation will enter into force. Hereby one of the complaints was solved individually and the case was closed in October 2001. The second complaint was still open at the end of the reporting period due to the fact that the complainant had not succeeded in having the representative of his company deleted from the Trade Register although such a representative is no longer required. At the end of the reporting period, the Authority had not been notified of national measures deleting the residence requirement under the Trade Act, and therefore, the third case also remained open.

Related hereto are formal infringement proceedings against Liechtenstein, which the Authority started in 1999. They concerned a provision in Liechtenstein's law, which required that an architect residing in another EEA State who wishes to set up a business in Liechtenstein must appoint a manager residing in that State. At the end of the reporting period Liechtenstein informed the Authority that the law in question had been amended. In January 2001, the Authority received the notification of the amended national legislation and subsequently closed the case.

In 1998, the Authority received two complaints against Liechtenstein alleging discriminatory restrictions on the freedom of establishment for doctors and dentists. The complainants had been refused to establish themselves in Liechtenstein with reference to Liechtenstein's legislation requiring a balanced proportion between Liechtenstein nationals and foreigners in the profession concerned. Liechtenstein argued that the provision referred to is in accordance with its obligations under the EEA Agreement taking into account Article 112 of the EEA Agreement and Protocol 15 thereto. In February 2000, the Authority sent, in both cases, a letter of formal notice to Liechtenstein for failure to comply with Article 31 of the EEA Agreement. The Liechtenstein Government explained that in December 1999, the competent body for granting licences, "*Sanitätskommission*", had refused to grant concessions to the complainants on the basis of the single practice rule (see above, second paragraph under this point), and not on the basis of the Ordinance in question, "*Verordnung über den Personenverkehr im EWR*" which is therefore no longer relevant for the decision of the pending cases. At the end of the reporting period, the complainants' problems have not yet been solved, and the cases will be further pursued in 2002.

A complaint against Norway was registered in 1998, concerning the refusal by the Norwegian authorities to permit an increase in the number of beds in a private hospital. The Authority finalised its examination in the reporting period and closed the case in April 2001.

In 1999, a complaint was lodged against Norway for alleged discriminatory legislation and practice as regards allocation of licenses within the sector of aquaculture business. In October 2000, the Authority sent a letter of formal notice to Norway, concluding that rules giving priority to local ownership were contrary to Article 31 of the EEA Agreement. In June 2001, this was supplemented by a second letter of formal notice concluding that such rules were also in breach of Article 40 of the EEA Agreement. In its reasoned opinion of November 2001, the Authority requested Norway to take the necessary measures to rectify the infringement of Articles 31 and 40 of the EEA Agreement. At the end of the reporting period, the Authority had not received an answer from the Norwegian Government.

In a complaint, lodged with the Authority in February 2000, a German dentist claims restrictions to his right of establishment in Liechtenstein. He was made subject to the single practice rule and refused the right of residence in Liechtenstein. The complainant who was granted the status of frontier worker claimed, *inter alia*, a breach of Liechtenstein's standstill obligation under the EEA Agreement by amending the provisions on priority categories of persons eligible for a residence permit, which placed him in a less favourable group of priority. At the end of the reporting period, the case was still open, and the examination continues in 2002.

In January 2001, the Authority received a complaint by a Danish company concerning the production monopoly of strong alcoholic beverages in Norway. Following discussions between the Authority and the Norwegian authorities, Norway informed the Authority that this State monopoly would be repealed as from 1 January 2002. At the end of the reporting period, the Authority had, however, not received any formal notification of the abolition of these exclusive rights.

In March 2001, the Authority received a complaint against Norway concerning the introduction of the Regular General Practitioner Scheme. The complainant alleged that the new scheme would prevent doctors from other EFTA or EU States from establishing a practice in Norway. The Authority will aim at finalising its examination in 2002.

In June 2001, the Authority received another complaint against Norway within the field of health services. The

complainant alleged that the regime on funding contracts ("*driftstilskudd*") restricts the freedom of establishment for physiotherapists in Norway. Furthermore, only patients who have been treated by physiotherapists with funding contracts are entitled to reimbursement from the National Social Insurance Scheme so physiotherapists without funding contracts will have to charge the patients more. According to the complainant, this system is preventing physiotherapists from establishing themselves in Norway. The Authority aims at concluding its examination in 2002.

In June 2001, the Authority received a complaint against Norway concerning the deductibility of standby costs in Norwegian source income of the permanent establishments of vessels. Although the tax rules themselves do not treat resident companies and permanent establishment differently in respect of these expenses, the complainant alleged that the current practice discriminates against permanent establishments by prohibiting them from deducting any part of their expenses incurred during the standby periods, while allowing resident companies to deduct all such expenses. In the Norwegian Government's opinion, there is no discrimination as the deductibility is depending on whether or not the expenses relate to the permanent establishment. The examination of the case will continue in 2002.

In June 2001, the Authority sent a letter of formal notice to Norway concerning restrictions to the acquisition of concessions on waterfalls for the production of energy, contained in certain provisions of the Act on Industrial Concessions. This case is discussed in the Chapter concerning free movement of capital.

4.4.4 Social security

Article 29 of the EEA Agreement obliges the EEA States to secure for workers and self-employed persons and their dependants, as provided for in Annex VI to the Agreement, in particular the aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of several countries, and the payment of benefits to persons resident in the territories of those States.

The EEA Joint Committee Decision No.80/99 of 25 June 1999, by which the *Supplementary Pension Rights Directive* (98/49/EC) was added to the EEA Agreement, entered into force on 1 March 2001 and with the compliance date of 25 July 2001. Already in April 2001, the Icelandic Government informed the Authority that there was no need for Iceland to implement the Directive because the only pension funds that would fall under the scope of the Directive were already covered by the *Social Security Regulation* 1408/71 and therefore exempted from the Directive. As the Government maintained its view, the Authority informed the Government in November 2001 that it does not agree with the Government's conclusion. The case will be further pursued in 2002. In December 2001, Liechtenstein notified the Directive as fully implemented, however, the Authority has not received all the relevant legal texts. In August 2001, Norway informed the Authority that the Directive would be transposed into national legislation through a new Act. The Act was adopted in December 2001 and subsequently, Norway notified the Directive as fully implemented. The act will enter into force in March 2002.

In 1995, 1997 and 1999, the Authority registered three complaints against Norway concerning the question whether an EEA national working on the Norwegian continental shelf and residing in another EEA State should be covered by the co-ordination system of the *Regulation on Social Security of Migrant Workers* (EEC) No 1408/71. As reported last year, the Authority was informed that Norway undertook to amend its legislation and a Bill was to be presented to the Norwegian Parliament before the end of the year. The amendments, through which the legislation was brought in conformity with the EEA Agreement, were adopted in March 2001. The amendments also provided for the repayment of the benefits concerned for the complainants. The Authority closed the three cases in October 2001.

In 1999, the Authority registered a complaint against Norway concerning a special supplement, "*Finnmarkstillegget*", to family allowances. The complaint, which was forwarded by the European Commission, concerned a frontier worker who worked in the Norwegian region of Finnmark and who was granted family allowances from Norway. As the competent Norwegian authorities refused to grant the special supplement because the children concerned did not live in the region of Finnmark, the Authority initiated infringement proceedings against Norway in October 2000 for failure to comply with Regulation 1408/71. In its reply, the Norwegian Government indicated that it did not agree with the Authority's assessment, and the case will be further pursued in 2002.

In 1999, the Authority received a complaint against Iceland concerning reimbursement of medical costs

for treatment abroad. The complainant wanted to have hospital treatment in another EEA State, and therefore, he had requested the Icelandic authorities to cover the costs. As the Authority could not establish any breach of the EEA Agreement, the case was closed in August 2001.

In 2000, the Authority had received two complaints against Norway, concerning the refusal by Norway to pay Norwegian Child Care Benefit ("*Kontantstøtten*") due to the fact that the complainants and their children did not reside in Norway. In August 2001, the Authority received another two complaints concerning exactly the same issue. The Norwegian Government made a proposal concerning the entry of the Child Care Benefit into Annex IIa to Regulation 1408/71. The special non-contributory benefits that are listed in this Annex are excluded from export. In May 2001, the European Commission confirmed that the Norwegian proposal could not be accepted. Nevertheless, the Government informed the Authority that it maintained its refusal to export the benefit since a case concerning a similar Finnish benefit is pending before the Court of Justice of the European Communities.

The Government has informed the Authority that it recognises the cash benefit as family benefits under Regulation 1408/71. According to this Regulation, workers and self-employed persons insured under the Norwegian Social Insurance Scheme are entitled to family benefits from Norway in respect of their family members who reside in another EFTA or EU State, as they were residing in Norway. The purpose of this rule is to overrule the residence requirement in national schemes. Therefore, the Authority initiated infringement proceedings against Norway in December 2001 for failure to comply with Regulation 1408/71.

In April 2001, the Authority received a complaint against Norway alleging that the Norwegian rules concerning the scope of application of persons entitled to benefits under the National Insurance Act are in conflict with Regulation 1408/71. The Authority will finalise its examination of the case in 2002.

In September 2001, the Authority received a complaint against Norway regarding social security contributions for pensioners. The complainant alleges that the Norwegian rules providing for deductions from pensions in respect of contributions for sickness are in conflict with Regulation 1408/71. The case will be examined in 2002.

4.5 FREEDOM TO PROVIDE SERVICES

4.5.1 Financial Services

4.5.1.1 Banking

In October 2001, the Authority issued a reasoned opinion to Norway, concerning lack of implementation of Article 11 of the *Second Banking Directive* (89/646/EEC) and restrictions in national law on ownership of financial institutions. Article 11 of the Directive provides, *inter alia*, that EEA States shall require any natural or legal person who proposes to acquire a qualifying holding in a credit institution to inform the competent authorities of the size of the intended holding. Where the influence exercised by such persons is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. The Norwegian Law on Financial Activity and Financial Institutions states, as a main rule, that no one can own more than 10% of the share capital of a Norwegian financial institution. Norway maintains that, because of this rule, there is no need for explicit implementation of Article 11 of the *Second Banking Directive* into the Norwegian legal order. The Authority maintains that such limitation of ownership in a financial institution is contrary to the free movement of capital (Article 40 of the EEA Agreement) and that Norway cannot justify the lack of explicit implementation of Article 11 of the *Second Banking Directive* by referring to such a rule.

In December 2001, the Authority sent a reasoned opinion to Liechtenstein concerning restrictions on the establishment of and the investment in financial institutions. The Liechtenstein Banking Act provides that banks, over which a dominant foreign influence is exercised, are not allowed to refer in their name to a Liechtenstein character or to pretend to have such a character. It is the Authority's assessment that this rule can hinder the establishment in Liechtenstein of credit institutions and financial institutions subject to foreign ownership or other dominant foreign influence. It is, further, the Authority's assessment that this rule may hinder foreign EEA nationals and economic operators from investing in Liechtenstein credit institutions and financial institutions. The Authority maintains that Liechtenstein has, therefore, failed to fulfil its obligations under Articles 31, 34 of the EEA Agreement on the freedom of establishment and Article 40 of the EEA Agreement on the free movement of capital, as well as its obligations under the *Capital Movements Directive* (88/361/EEC).

In 1999, the Authority assessed the conformity of the national measures, notified by Iceland, Liechtenstein and Norway, implementing the *Deposit-Guarantee Schemes Directive* (94/19/EC). Based on this assessment, the Authority concluded that measures implementing several provisions of the Directive were lacking as regards all three States. Consequently, the Authority sent letters of formal notice to Iceland, Liechtenstein and Norway in 1999. In March 2000, Iceland notified further implementing measures and the case was subsequently closed. The Authority sent a reasoned opinion concerning the Directive to Norway in March 2000. Norway indicated that further implementing measures would be adopted in 2001. In October 2001, Norway notified the Authority of additional national measures adopted to fully implement the Directive. Consequently, the Authority closed the case in December 2001. A reasoned opinion concerning the Directive was also sent to Liechtenstein in October 2000. At the end of 2000, the Authority received a notification from Liechtenstein of amendments to the existing legislation ensuring full implementation of the Directive. Consequently, the Authority closed the case in November 2001.

The time limit for the EFTA States to adopt necessary measures to comply with the *Cross-border Credit Transfers Directive* (97/5/EC) expired on 1 February 2000. The Authority has received notifications from all three States of the full implementation of the Directive; from Norway in October 1999, from Liechtenstein in March 2000 and from Iceland in October 2000. The Authority initiated a conformity assessment project on the implementation of the Directive in all three States in 2001. The assessment was finalised in 2001 for Iceland and Norway without formal action. The assessment for Liechtenstein is foreseen in 2002.

The time limit for the EFTA States to take the necessary measures to comply with the *Settlement Finality Directive* (98/26/EC) expired on 1 February 2000. Iceland notified full implementation of the Directive in December 1999. In 2001 the Authority assessed the conformity of the notified measures with the Directive. The assessment was finalised in July 2001 without any formal action. Norway notified a partial implementation of the Directive in May 2000 and a full implementation in October 2001. Since Liechtenstein had not notified national measures to implement the Directive, the Authority issued a letter of formal notice to Liechtenstein in April 2001. Liechtenstein has informed that national measures to implement the Directive are expected to enter into force in the fourth quarter of 2002.

Liechtenstein notified full implementation of the *Money Laundering Directive* (91/308/EEC) in 1999. In April and July 2000, the Authority sent Pre-Article 31 letters to Liechtenstein requesting information on the implementation and application of several provisions of the Directive. In October 2000, Liechtenstein informed the Authority that several legal measures had been adopted by Parliament which would ensure stricter due diligence requirements with respect to money laundering. The Authority examined the adopted measures and decided to close the case in December 2001.

In 1999, the Authority received notification from Liechtenstein of partial implementation of the *Banking Accounts Directive* (86/635/EEC). During the same year, the Authority sent a reasoned opinion to Liechtenstein due to the delay in fully implementing the Directive. At the end of 2000, the Authority received notification of amendments to the existing company legislation ensuring full implementation of the Directive. In December 2001, the Authority decided to close the case.

In June 2000, the Authority initiated a preliminary examination of the implementation by the EFTA states of the *Directive Amending Solvency Ratio for Credit Institutions as regards mortgages* (98/32/EC) and *Directive Amending Solvency and CAD Provisions* (98/33/EC). After the assessment of the implementing measures by Norway, Liechtenstein and Iceland, the preliminary examination cases were closed in June 2001 without further actions.

The time limit for the EFTA States to adopt necessary measures to comply with the *Consolidated Banking Directive* (2000/12/EC) expired on 1 March 2001. The Authority received notifications from all three States of the full implementation of the Directive: from Norway in July 2001, from Liechtenstein in April 2001 and from Iceland in June 2001.

In the fall 2001, the Authority decided to initiate a review of Norway's legislation in the financial sector and check its conformity with EEA law in relevant areas. The review covers amongst other things banking, insurance, pension, securities and currency legislation in Norway. Several issues, which the Authority considers appropriate to investigate further, have been identified. The Authority sent four Pre Article 31 letters to Norway in October and November 2001 asking for information on various issues. The project will continue in 2002.

4.5.1.2 Insurance

In March 2001, the Authority referred a case to the EFTA Court regarding Liechtenstein's failure to ensure

full compliance with the *Legal Expenses Insurance Directive* (87/344/EEC). The EFTA Court gave a judgment on the merits of the case in December 2001 whereby the infringement was confirmed. Liechtenstein has notified national measures, considered to fully implement the Directive, which entered into force on 1 January 2002.

The time limit for **Iceland**, **Liechtenstein** and **Norway** to take the necessary measures to comply with the *Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group* (98/78/EC) expired on 1 July 2000. By that time, the Authority had not received any notifications of implementing measures from the three States. Consequently, the Authority sent a letter of formal notice to all three States in October 2000. In the beginning of 2001, Iceland notified partial implementation of the Directive and expected full implementation to take place by the end of 2001. Since notification of full implementation has not been received, the Authority will consider whether to pursue the case further in 2002. Norway notified full implementation in October 2001 and the case was closed in the same month. Liechtenstein has not notified implementation of the Directive and in December 2001 the Authority issued a reasoned opinion due to the delay of implementation.

In December 2000, the Authority sent two reasoned opinions to **Norway** for failure to comply with the amended Article 18(1) of the *First Non-life Insurance Directive* (73/239/EEC) and the amended Article 21(1) of the *First Life Assurance Directive* (79/267/EEC). These provisions stipulate that EEA States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions. The Norwegian Law on Insurance Activity provided that an insurance company could not own or by voting represent more than 15% of the shares or parts of a company which conducted activities that could not be conducted by an insurance company. It was the Authority's assessment that the national rule was incompatible with the provisions of the insurance directives referred to above. Both cases were closed in December 2001 since Norway had adopted necessary national measures to comply with the Directive.

In 1998, the Authority received a notification from **Liechtenstein** of partial implementation of the *Second Life Assurance Directive* (90/619/EEC). The Authority sent a reasoned opinion to Liechtenstein in July 1999 due to a delay of full transposition of the Directive. In its observations to the reasoned opinion, the Liechtenstein Government indicated that the necessary implementing measures would be adopted in 2000. In July 2001, the Authority received a notification of full implementation of the Directive from Liechtenstein. In 2002, the Authority will assess whether the measures taken are sufficient.

In 1997, the Authority received notifications from **Liechtenstein** of partial implementation of the *Insurance Accounts Directive* (91/674/EEC). In 1999, the Authority sent a reasoned opinion to Liechtenstein due to the delay of full transposition of the Directive. In the end of 2000, the Authority received a notification of amendments to the existing company legislation ensuring full implementation of the Directive. The Authority decided to close the case in December 2001.

In December 2000, the Authority sent a Pre-Article 31 letter to **Norway** requesting information on the interpretation of Norwegian rules providing that costs, which are accrued when a life assurance contract is entered into, are not to be included in the cost element for the establishment of the premium tariff but to be charged and paid by the policyholder separately and at no point later than the first premium payment. This rule is, *inter alia*, applicable to branches of insurance undertakings authorised in other EEA States. In 2001, the Authority examined the conformity of these rules with the framework provided for in the Life Assurance Directives, in particular the provisions of the *Third Life Assurance Directive* (92/96/EEC) concerning the scope of insurance supervision by the home State competent authorities and the competence of host State supervisory authorities as regards branches of life assurance undertakings authorised in other EEA States. The examination will continue in 2002.

In 1998, the Authority received a complaint against **Iceland** alleging an infringement of the EEA Agreement through the provisions of the Icelandic pension fund legislation. The complainant maintained that the national provisions were discriminatory and restricted the free movement of services by requiring that insurance companies have their place of business in Iceland in order to be permitted to offer agreements on supplementary insurance benefits and individual pension savings. The complainant further maintained that limitations as to the investment policy of pension funds were discriminatory and restricted the free movement of capital. In the course of the examination of the complaint, the Authority sent two letters to Iceland requesting information on the pension fund legislation. In 2000, the Icelandic Pension Fund Act was amended in such a way that pension funds are now allowed to invest up to 10% of their net assets in unlisted securities which are issued by parties within the OECD. In December 2000, the Icelandic Government informed the Authority that further

amendments to the Pension Fund Act had been proposed in order to ensure full compliance with EEA rules on capital movements. The Authority did not receive additional notification in 2001 and will, therefore, examine the case further in 2002.

In October 2000, the Authority received a complaint against Norway alleging an infringement of EEA rules concerning insurance and consumer protection. The complainant maintains that Norwegian rules restricting the conversion of a paid-up-policy into a unit trust are incompatible with the EEA Agreement. The Authority is examining the complaint.

As mentioned under paragraph 4.10.1.1 Banking, the Authority started a review of Norway's legislation in the financial sector. The investigation covered insurance legislation in Norway.

4.5.1.3 Stock exchange and securities

In 2000, the Authority started a conformity assessment of the implementation of the *Investor Compensation Scheme Directive* (97/9/EC). In October 2000, the Authority sent a letter of formal notice to Liechtenstein for failure to fully implement the directive. By the end of 2000, the Authority received from Liechtenstein the notification of adopted national measures intended to ensure full implementation of the *Investor Compensation Scheme Directive* (97/9/EC). Consequently, in June 2001, the Authority decided to close the case.

In December 2001, the Authority sent a letter of formal notice to Norway concerning the failure to fully and correctly implement the *Investor Compensation Scheme Directive* (97/9/EC). A reply from Norway is expected in early 2002.

In 1999, the Authority received a complaint against Norway, where it was alleged that the system of investor compensation created an entrance barrier to the Norwegian market in the field of investment services. The complaint has been examined in connection to the conformity assessment of the *Investor Compensation Scheme Directive* (97/9/EC) in Norway.

In October 2001, the Authority adopted a report on the application of the *Investor Compensation Scheme Directive* (97/9/EC) in the EFTA States, in accordance with Article 14 of the Directive. The Authority's report gives detailed qualitative and quantitative information on the functioning of the Investor-Compensation Schemes established in the EFTA States. The Authority's report focuses particularly on the application of the so-called "top-up clause", as provided by Article 7, paragraphs 1 and 2 of the Directive. The report is available on the Authority's homepage.

In October 2001, the Authority sent a letter to Iceland after having assessed the notified national transposition measures aiming at implementing *the Investor Compensation Scheme* (97/9/EC). Following this letter, Iceland informed the Authority that the legislation would be amended according to the Authority's remarks. The Authority also initiated the assessment of the national transposition measures aiming at implementing *the Insider Dealing Directive (89/592/EC)* in Iceland. A reply to the Authority's request for additional information is expected from Iceland in early 2002.

In November 2001, the Authority initiated an assessment of the national transposition measures aiming at implementing *the Prospectus Directive* (89/298/EC) in Norway. After the initial assessment, the Authority asked Norway for additional information. A reply from Norway is expected in early 2002.

In September 1996, the Authority sent Liechtenstein a Pre Article 31 letter requesting information on the implementation of *Capital Adequacy Directive* (93/6/EEC). A follow-up letter was sent to Liechtenstein in October 1997. In January 1999, the Authority received a notification from Liechtenstein of partial implementation of the Directive and in May the same year Liechtenstein notified full implementation of the Directive. The Authority decided to close the case in June 2001.

Finally, in October 2001, the Authority initiated a review of the financial legislation in Norway, including, national rules relating to the stock exchange and securities. The Authority will continue its assessment during 2002.

4.5.2 Audio-visual services

The year 2001 saw the incorporation into the EEA Agreement of the *Conditional Access Directive* (98/84/EC), aimed at preventing the abuse of conditional access systems for television. The date by which the EFTA States were to implement the Directive was 1 October 2001. Iceland notified the Directive as fully implemented in July 2001, and Norway in September 2001. A notification of implementation by Liechtenstein is still awaited.

The *revised Television Without Frontiers Directive* (97/36/EC) was notified as fully implemented by Norway in October 2001. Notification of full implementation is still awaited from Liechtenstein.

No EFTA State has, hitherto, notified the Authority of a wish to make use of their right under the Directive to ensure that broadcast of certain events of national importance is open to broadcasters with a minimum national coverage.

As regards the *Standards for Television Signals Directive* (95/47/EC), the Authority sent a reasoned opinion to Iceland in July, due to that country's failure to fully implement the Directive. Iceland subsequently notified the Authority of its implementation of the outstanding provisions of the Directive. Hence the Authority closed the case in December.

4.5.3 Postal services, telecommunication services, information society services and data protection

4.5.3.1 Postal services

The only directive in the postal sector, the *Postal Services Directive* (97/67/EC), has been notified as implemented by all EFTA States.

The examination of a complaint received in 1999 concerning the implementation by Norway of the *Postal Services Directive* (97/67/EC) is presently awaiting the outcome of a case before Norwegian courts concerning similar issues.

4.5.3.2 Telecommunications services

In March 2001, the *Unbundling Regulation* (2887/2000/EC) was taken into the EEA Agreement. The Regulation entered into force in October, following fulfilment of constitutional requirements by Iceland and Liechtenstein. The Authority is at present examining the regulation's incorporation into Icelandic law.

One case against Iceland, concerning implementation of the *Cable Separation Directive* (1999/64/EC), was closed in May after that country had notified the Directive as fully implemented.

In February, the Authority sent a letter of formal notice to Liechtenstein, due to the failure to notify implementation of the *Directive on Data Protection and Privacy in the Telecom Sector* (97/66/EC). A notification of full implementation was received in July, and the case subsequently closed in September.

During 2001, two complaints lodged with the Authority were closed.

A case against Norway was based on a complaint submitted by the company Teletopia in 1996 and concerned the separation of regulatory and ownership functions in the Norwegian Ministry of Transport and Communications. The case was closed after Norway transferred the ownership functions of Telenor to the Ministry of Trade and Industry.

The other case, also against Norway, arose following a complaint lodged by the cable operator UPC Norge (Janco Multicom at the time of the complaint). The case concerned, *inter alia*, possible discrimination as regards rights of way for telecommunications operators and the powers of the Norwegian Post and Telecommunications Authority to take decisions in interconnection disputes before the end of a three-month mediation period. This case was closed after Norway amended its legislation both as regards rights of way for telecommunications operators and the decision-making powers of its telecommunications regulator in interconnection disputes.

The Authority received in 1999 a complaint against Norway concerning the provision of directory data. According to the complainant, Norway had not fulfilled its obligation under the *ONP Voice Telephony Directive* (98/10/EC) to ensure that directory data may be acquired from the telecommunications operators on non-discriminatory terms. The Authority is presently examining whether changes to the Norwegian legislation, as well as changes to the operating licences of one of the telecommunications operators, will solve the problems raised in the complaint.

Throughout the year, the Authority has been in contact with operators as well as with regulatory authorities in all the EFTA States in order to discuss matters of general interest as well as specific cases. The Authority has also been co-operating with the European Commission on general and specific matters and participated as an observer in the ONP-Committee and the High Level Committee of Regulators.

4.5.3.3 Data protection and information society services

The *Directive on the Protection of Personal Data* (95/46/EC) was incorporated into the EEA Agreement in 2000. Having examined the notification of partial implementation submitted by Liechtenstein in September 2000, the Authority found that a number of the main provisions of the Directive had not been implemented. The Authority thus initiated infringement proceedings against Liechtenstein with a letter of formal notice in April 2001. The letter of formal notice was followed by a reasoned opinion in November, as substantial parts of the Directive were still not implemented correctly.

In November 2000, the Authority received a complaint from the Euro Citizen Action Service, relating to the law on a Healthcare Database in Iceland. According to the complaint, certain aspects of the database illustrate that Iceland has not complied with its obligations under the *Directive on the Protection of Personal Data* (95/46/EC). The Authority has been examining the complaint throughout 2001 and will continue to discuss the matter with Icelandic Authorities in order to establish whether there are any aspects of the Icelandic legislation or the database itself that constitutes a breach of the Directive.

In July, the *Electronic Signatures Directive* (1999/93/EC) entered into force. The primary objectives of the Directive are to facilitate the use of electronic signatures and to contribute to their legal recognition. Iceland and Norway notified compliance with the Directive in July 2001. As regards Liechtenstein, the Authority opened up infringement proceedings in October, following that country's failure to notify transposition of the Directive.

4.5.4 Transport

Traditionally, the transport field has been governed by national considerations. However, different transport conditions in the various EEA countries would negatively affect the free movement of goods, persons and other services. Common rules on free access to the transport market, equal access to the profession and rules on technical harmonisation are, therefore, an important prerequisite for a well functioning EEA area. In 2001, 18 new transport acts were added to the EEA Agreement.

4.5.4.1 Road, inland and railway transport

4.5.4.1.1 Road transport

In the field of road transport nine new acts were adopted. Two of these were included in both Annex XIII (transport) and Annex II (technical regulations, standards, testing and certification) to the EEA Agreement, namely the *2001 Commission Directive adapting to technical progress Council Directive* (1999/36/EC) *on transportable pressure equipment* (2001/2/EC) and the *2001 Commission Decision deferring for certain transportable pressure equipment the date of implementation of Council Directive* 1999/36/EC (2001/107/EC).

These, as well as the following Directives, were all to be implemented in the course of 2001: the *2000 amending Directive amending Council Directive* (1994/55/EC) *on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road* (2000/61/EC), the *2001 Commission Directive adapting to technical progress Council Directive* 94/55/EC *on the Transport of Dangerous Goods by Road* (2001/7/EC) and finally the *Second 2000 Amendment to the Ecopoint Regulation* (2012/2000/EC).

The *2001 first amendment to the Roadworthiness Tests for motor vehicles and their trailers Directive* (2001/9/EC) and the *Directive on Infrastructure Charging for heavy goods vehicles* (1999/62/EC) are to be implemented in 2002. The *2000 second amendment to the Roadworthiness Tests for road vehicles and their trailers Directive* (2001/11/EC) and the *2000-amending Directive to the Driving Licences Directive* (2000/56/EC), shall only be implemented in 2003.

No new non-notification cases related to road transport were opened in 2001. By the end of the reporting period Iceland had not yet notified implementing measures concerning the *2001 amendment to the Transport of Dangerous Goods by Road Directive* (2001/7/EC). However, since the deadline for notification was at the very end of 2001, no infringement procedure was opened during the year. Notification of the *1999 amendment to the Transport of Dangerous Goods by Road Directive* (1999/47/EC) was finally received from Iceland and the infringement case, opened the previous year, was subsequently closed. Liechtenstein, however, had still not notified any implementation measures on the *1996 amendment to the Driving Licences Directive* (96/47/EC) by the end of the reporting year, even though the transitional period granted to that country expired by the end of 1999.

A case based on a complaint from 1997, concerning the refusal by Norway to exchange a foreign driving licence for a Norwegian one, was resolved in 2001. The right to have a driving licence from one EEA State exchanged for an equivalent licence in another EEA State is recognised by the *Driving Licence Directive* (91/439/EEC). The dispute giving rise to the complaint concerned a case where a licence holder had moved to Norway before the entry into force of the Directive. A solution was found when Norway agreed to exchange the licence in question for a Norwegian one.

In 2001, the Authority received a complaint concerning the bidding for a licence to operate a ferry service in Norway. According to the complainant Norwegian authorities did not respect the fair and equal treatment of candidates in the tender process. The complaint will be further assessed in the beginning of 2002.

In January 2001, on the basis of a letter from the European Commission, the Authority sent a letter to Liechtenstein requesting it to provide all available

information concerning the introduction of a new Heavy Vehicle Fee in the State as of 1 January 2001. According to the Commission, there were concerns that the fee might be in contravention with *Council Directive 93/89/EEC on Taxes on Vehicles for Road Transport of Goods*. The Authority received information from Liechtenstein and the matter was discussed at the package meeting in Vaduz in March 2001 during which Liechtenstein was requested to provide some further documentation. Liechtenstein finally informed the Authority in June 2001 that a solution was about to be agreed with the Commission on the *amending Directive 1999/62/EC on Taxes on Vehicles for Road Transport of Goods*. According to Liechtenstein, the solution foreseen would also solve problems arising from the existing Directive 93/89/EEC. After having studied the proposal, the Authority, therefore, agreed to await agreement on the matter in the EEA Joint Committee. Agreement was finally reached and a text adopted in December 2001 (*JC Decision No 157/2001* – text adopted *ad referendum* with the date of 18 January 2002, finally adopted 1 February 2002 as *JC Decision No 5/2002*,).

Based on an examination of the transposition of the *Regulation on the Harmonization of Social legislation in Road Transport* (3820/85/EC) in Iceland, the Authority had sent a letter of formal notice to Iceland on that matter in October 2000. The Authority raised the possibility that Iceland, instead of applying the permitted higher minima or lower maxima rules for driving and rest periods laid down in the Regulation, in certain cases applied lower minima or higher maxima rules. Having received a reply to the letter in December 2000 in which the Icelandic authorities made clear that the legislation had been amended in conformity with the Regulation, the case was subsequently closed in 2001.

In the autumn 2000, the Authority received a complaint concerning a proposed amendment to the *Motor Vehicle Regulation* in Norway. The Authority is still examining whether the proposed amendment would impede free circulation of services within the EEA.

In December 2000, the Authority received a complaint concerning the duties imposed by Norway on vehicles with total weight larger than 12 tons. The Authority received a written explanation from the Norwegian authorities in 2001. The case is still under assessment.

With regard to the *Regulation on Carriage of Passengers by Coach and Bus* (2121/98/EC), the *Regulation on Recording Equipment in Road Transport* (2135/98/EC), the *Regulation on International Carriage of Passengers by Coach and Bus* (11/98/EC), the *Regulation on Passenger Transport by Non-resident Carriers (cabotage)* (12/98/EC) and the *Regulations on Ecopoints* (3298/94/EC, 1524/96/EC and 609/2000EC), no information on transposition measures had been received by the end of the reporting period from Iceland.

4.5.4.1.2 *Inland transport*

One new act was added to the Agreement in the field of inland transport, namely Council Resolution of 14 February 2000 on the promotion of intermodality and intermodal freight transport in the European Union (2000/C 56/01). An infringement procedure against Iceland for non-notification of the Directive on Safety Advisers for Dangerous Goods (96/35/EC) was closed after the Authority received a formal notification with implementing measures from that country.

4.5.4.1.2 *Rail transport*

In the field of rail transport, altogether six new acts were added to the Agreement during 2001. Three of these concerned the railway package including the *2001 Directive amending the 1991 Directive on the development of the railways* (2001/12/EC), the *2001 Directive amending the 1995 Directive on Licensing of Railway undertakings* (2001/13/EC) and the *2001 Directive on the allocation of Railway Infrastructure capacity and the levying of charges for its use* (2001/14/EC)). These Directives, which open market access to international rail freight, are to be implemented before March 2003. Two other railway directives concerned transport of dangerous goods, the *2000 amendment to the 1996 Directive on transport of Dangerous Goods by Rail* (2000/62/EC) and the *2001 amendment to the 1996 Directive on the transport of Dangerous Goods by Rail* (2001/6/EC)). Also a *High-speed Rail Decision on "ERTMS" characteristic* (basic parameters of the command-control and signaling subsystem of the trans-European high-speed rail system) (2001/260/EC) was added.

4.5.4.2 Inland waterway transport

One new act was added to the EEA Agreement in the field of inland waterway transport in 2001 (the *2001 Regulation amending the 1999 Regulation on the promotion of Community fleet capacity to promote inland waterways (997/2001/EC)*). Since there are no inland waterways coming under EEA rules in any of the three EFTA States, they are not, for the time being, under an obligation to implement measures in this sector.

4.5.4.3 Maritime transport

In the field of maritime transport two new acts were added to the EEA Agreement in 2001, that is *Council Resolution* 2000/C 56/02 *on the Promotion of Short Sea Shipping* and the *Directive on Port Reception Facilities*

for Ship-generated Waste and Cargo Residues (2000/59/EC).

No new cases of non-implementation were opened during the reporting period in the maritime field. However, a number of ongoing infringement cases against Iceland were closed after receipt of the notifications of implementing measures on the following directives: *Safety on Board Passenger Ships Directive* (98/18/EC), the *1998 Directive amending the Marine Equipment Directive* (98/85/EC), the *1998 Directive amending the Directive on the Minimum Level of Training of Seafarers* (98/35/EC) and finally the *Marine Equipment Directive* (96/98/EC).

In November 2001, a letter of formal notice was sent to Norway concerning possible discriminatory coast charges in that country. According to Norwegian legislation, vessels of 200 tonnes gross weight or more shall, on entry or exit from Norwegian internal waters, pay a general coast charge unless otherwise exempted. Such exemption is made i.a. for vessels "travelling from one Norwegian harbour to another". Norway, therefore, seems to levy a general coast charge which distinguishes between domestic services and services to and from other EEA States, thereby securing a special advantage for the domestic market in contravention of the principle of free provision of services. As no reply was received from Norway by the end of the reporting period, the case will be further assessed during 2002.

Discussions with Norway on the *Port State Control Directive* (95/21/EC) and the *Vessels Carrying Dangerous Goods Directive* (93/75/EC), which, according to the Authority's assessment, had only been partially implemented, were finalised in 2001. According to new information received from Norway the remaining provisions of these two Directives could now be considered as fully transposed in the Norwegian legislation.

According to the *Port State Control Directive* (95/21/EC), each Member State shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships which entered its ports during a representative calendar year. According to the 1999 annual report of the Paris MoU on Port State control, Norway's performance during that year only amounted to approximately 20%. A letter was, therefore, sent to Norway in March 2001 requesting an explanation. As the inspection numbers in 2000 improved slightly, no further formal action was, however, taken. The matter will be further assessed in light of the total inspection numbers for 2001.

According to the *Directive 98/41/EC on Registration of Persons on board Passenger Ships*, Member States can exempt passenger ships from the obligation to communicate the number of persons on board to the shore-based services of its owner. The ships must then be operating regular services of less than one hour between port calls, exclusively in protected sea areas. In such cases the Authority shall be informed and assess the exemption granted by the EFTA State. In case the Authority is not in agreement with the decision made by the national authorities, a Committee procedure is launched according to the Directive in order to have a final decision on the matter. In February 2001, the Authority was informed that Norway had granted such exemption for certain maritime routes in Norway. The Authority had no objections to these exemptions which were consequently endorsed. In October 2001, Norway informed the Authority that it had exempted some further routes from this rule. These exemptions are still being assessed by the Authority and a final decision could be foreseen only in the beginning of 2002.

No information on transposition measures had been received from Iceland by the end of the reporting period concerning *Regulation 179/98 on Safety Management of ro-ro Ferries.*

4.5.4.4 Civil aviation

In the civil aviation sector two new acts were added to the EEA Agreement in 2001. These were the *2000 Regulation adopting Eurocontrol standards and amending Directive 93/65/EC on the definition and use of Aviation-Procurement of ATM Equipment* (2082/2000/EC) and the *2000 Regulation adapting the 1991 Aviation-Technical Harmonization Regulation to technical progress* (2871/2000).

Liechtenstein had a transition period on civil aviation which expired on 31 December 2001. Since there is no airport for regular air services in Liechtenstein (only a heliport), no specific implementing measures are deemed necessary for the majority of the aviation acts. However, as concern the *Directive on Investigation of Civil Aviation Accidents* (94/56/EC) and the *Directive on Mutual Acceptance of Licences* (91/670/EEC), Liechtenstein has informed the Authority that legislative measures are being prepared. At the end of the reporting period no notifications were yet received by the Authority.

As no information concerning implementing measures on the *Ground-handling Directive* (96/67/EC) was received from Iceland, a letter of formal notice was sent to that country in November 2001.

During 1999, letters of formal notice had been sent

both to Iceland (for non-implementation) and Norway (for partial implementation) of the *Directive on Chapter II Aeroplanes (92/14/EEC)*. As both countries had notified full implementation, these cases were finally closed in 2001.

By the end of the reporting period, Iceland had not reported on implementing measures concerning the 1999 *amending Regulation on a Code of Conduct for CRS* (computer reservation systems) (323/1999/EC), the *Regulation on Air Carrier Liability* (2027/97/EC), the *Regulation on Hush kits for Aircraft* (925/1999/EC), and *the second* and *third adaptations to scientific and technical progress of the 1991 Technical Harmonization Regulation in Aviation* (1069/1999/EC and 2871/2000/EC). With regard to the *Regulation on Procurement of ATM Equipment* (2882/2000/EC), information on transposition measures was still missing from Norway at the end of the reporting period.

In 1999, the Authority had sent reasoned opinions to Iceland and Norway raising the possibility that these countries, by charging air transport taxes which discriminate between domestic flights and flights to other States of the EEA, had secured a special advantage for the domestic market and the internal air transport services in Iceland and Norway. This is in contravention of the principle of free provision of services enshrined in the EEA Agreement. Iceland has now informed the Authority that it intends to amend the tax to a kilometre-tax. The Authority will, therefore, assess this case further in 2002. The Norwegian Government has informed the Authority that the tax will be abolished from 1 April 2002.

4.5.4.5 Other transport acquis

The *Ninth Directive on summer-time arrangements* (2000/84/EC) was added to the EEA Agreement in July 2001. Cut-off date for notifying implementing measures was 31 December 2001. Liechtenstein notified its implementing measures in September while no notification had been received from Norway at the end of the reporting period. The Directive does not apply to Iceland.

4.5.5 Non-harmonised service sectors

4.5.5.1 Complaints

As reported last year, the Authority has registered two complaints against Norway concerning the Norwegian rules on the import of motor vehicles to Norway. The first complaint, registered in 1998, concerned an EU national who was refused permission to use his foreign-registered car when providing services in Norway on the grounds that his family resided in Norway. According to the Norwegian legislation, an EEA national whose spouse and children reside in Norway is considered to have permanent residence in that State if that person visits them regularly, at least once per month. Save for specific exemptions, in such a case the person will not be permitted to use a foreign-registered car in Norway unless the person pays import duties and taxes to Norway. In July 2000, the Authority sent a letter of formal notice to Norway concluding that the rules were contrary to the EEA Agreement regarding the free movement of workers and the freedom to provide services.

The second complaint against Norway was received in November 2000. A Norwegian national who worked and resided in the Netherlands while his family resided in Norway claimed restrictions hindering the use of foreign-registered cars which he rented for travelling to Norway. According to the complainant, he must return the car to the nearest branch of the rental company upon his entry to Norway. Neither was he allowed to take the car back to the Netherlands.

In July and August 2001, the Authority received another three complaints against Norway in the same field.

The first complaint concerned the use of leased cars in Norway. The complainant took up employment in Sweden and then moved his residence to Sweden whereas his spouse and child under 18 years of age stayed in Norway for reasons of employment and schooling. The complainant claimed to be hindered from leasing a car in Sweden since the leasing contract provided for the registration of the car in Sweden for a certain period. If he chose to lease a car in Norway, he could not meet the terms of the (Norwegian) leasing contract, because as a resident of Sweden he was obliged to register his car in Sweden after a certain period of time.

The second complaint against Norway concerned an EU national who moved back to Norway in 1993 after seven years of residence in Sweden. According to the complainant, he imported his motorbike, which was duty and tax free upon the condition that the vehicle must not be sold within 2 years (June 1995). Having again moved to Sweden for professional reasons in the autumn of 1994, the complainant wanted to sell his motorbike in the summer of 1995 after the expiration of the two-year period. To this end, he contacted a motorbike dealer, where his bike was confiscated by the Norwegian customs without any notice for breach of the two-year non-sale-rule. The rules on the importation of motor vehicles as removal good, as applicable after the entry into force of the EEA Agreement, still impose on the owner a prohibition

on sale of the imported vehicle within a two-year period after the importation.

The third complaint against Norway concerned a German national who took up employment and moved to Norway in January 2001. The complainant alleged that the amount of duties and taxes imposed was unreasonable since it was more than the real value of the car, and therefore, the rules restricted the free movement of persons. The complainant was granted 50% reduction since he could prove that he had not been residing in Norway for more than two years. Despite the fact, that the complainant could prove that he lived outside Norway for the last five years, he was denied duty and tax free import of the car as part of the his household, since he was registered with the Norwegian population register until 1997 in connection with studies in Norway during less than two years from the autumn 1991. When he left Norway, he did not request removal from the registry, but he has been registered with the German population register throughout the whole period from January 1996 until January 2001. The Norwegian authorities claim that the condition that an applicant for duty and tax free import must not be registered in the Norwegian population register is a formal and absolute criterion.

During the reporting period, all the five cases have been subject to discussions between the Authority and the Norwegian Government. The examination of the cases will continue in 2002.

In 1998, the Authority received a complaint against Norway alleging discriminatory restrictions on freedom to provide services as regards aerial photography services. Following a letter of formal notice in 1999, the Norwegian Government informed the Authority that it intended to amend its legislation and practice in order to make similar rules apply to both Norwegians and other EEA nationals. In November 1999, the Government stated that it expected the necessary amendments to be adopted by September 2000. However, according to another letter from the Government of December 2000, the said amendments were delayed and were expected to enter into force during the first quarter of 2001. By the end of 2001, the necessary measures had not been taken.

In 1998 and 1999, the Authority received two complaints alleging discriminatory restrictions regarding access to angling in Norway. The issues concern residence and nationality requirements to angle in inland State-owned rivers in Norway. In June 2001, the Authority sent a letter of formal notice. The Authority considers that Norwegian legislation is incompatible with Articles 4 and 36 of the EEA Agreement. Norway disputes the Authority's analysis. At the end of the reporting period, the Authority was assessing Norway's reply.

In 1999, a complaint against Norway was lodged with the Authority in which the complainant alleged that Norwegian regulations and administrative practice on tax exemptions for welfare trips were discriminatory. Following the Authority's intervention, Norway decided to modify its regulations and practice. The Authority therefore closed the case in April 2001.

In March 2000, the Authority received a complaint against Norway in the fields of public procurement and the free movement of services. As regards services, the complainant alleged that a difference in treatment between municipalities' and private entities with respect to the Norwegian VAT compensation scheme in relation to certain building cleaning services restricts the free movement of services according to Article 36 of the EEA Agreement. In July 2000, the Authority sent a letter to Norway requesting information on the relevant legal framework. The Authority received a reply to its letter in September 2000. The Authority found no ground for further action in the case and decided to close it in May 2001.

In January 2001, a complaint against Norway was lodged with the Authority concerning a ban to exhibit dogs, which had been tailed-docked, legally imported into Norway after 1 January 2000 from another EEA State. Giving, in particular, Norway's obligations under the Council of Europe's Convention for the protection of pet animals (No. 125 of 13 November 1997), the Authority found no infringement of the freedoms guaranteed by the EEA Agreement and decided to close the case.

A complaint was lodged against Iceland in 1999, alleging that the Act No. 139/1998 on a Health Sector Database was not in compliance with the EEA rules on the free provision of services. The Authority has been examining the case throughout the year, including the observations presented by the Icelandic Government, and expects to decide on any further action in the year 2002.

In June, the Authority closed a case opened in 1995 and based on a complaint against Norway. The complaint concerned the refusal of access to port in Norway for an Icelandic fishing vessel, and the right of the Icelandic vessel, under Article 36 of the EEA Agreement, to receive services. The issue was related to a dispute between Iceland and Norway regarding fishing rights in the Barents Sea. The case was closed as the Authority concluded that the underlying conflict was one in which it had no competence.

A parallel case against **Iceland** was opened in 1996. This case, concerning provisions in Icelandic legislation aimed at restricting access to port for foreign fishing vessels under certain circumstances, was also closed in June, as the said provisions had been amended.

In 1995, several complaints were filed with the Authority concerning restrictions which the **Norwegian** Lottery Act introduced on operating gaming machines with pay-outs, insofar as the pursuit of these activities was being reserved for charitable organisations only. In 1999, the European Court of Justice gave judgments in two cases concerning gaming legislation in Finland and Italy. The complaints were still under examination by the end of the reporting period in the light of the judgments.

4.5.5.2 Own-initiative cases

In 2000, the Authority sent a letter of formal notice to **Norway** concerning discriminatory income tax exemption of lottery prizes won in Norwegian national lottery by persons residing in Norway as compared to similar prizes won in other EEA States by these persons, which are considered as taxable income. The Authority considers this situation to be contrary to Article 36 of the EEA Agreement. Norway disputes the Authority's analysis. At the end of the reporting period, the Authority was considering whether to pursue the case further.

The Authority also requested **Iceland** to provide additional information concerning its national legislation on taxation of lottery prizes. At the end of the reporting period, the Authority was assessing whether to pursue the case further.

In March 2001, the Authority sent a letter of formal notice to **Norway** in respect of discriminatory tax exemption for professional seminars organised in Norway as compared to those organised in other EEA States. On the basis of the *Vestergaard* case (C-55/98), the Authority found that such national rules were incompatible with Article 36 of the EEA Agreement. In June 2001, Norway adopted an act repealing the discriminatory treatment as from 1 January 2001. The Authority therefore closed the case.

In 1999, the Authority sent a letter of formal notice to **Norway** concerning access to justice. This matter arose from the fact that plaintiffs residing outside Norway can be requested to furnish security for costs of legal proceedings while no such requirement can be imposed on plaintiffs residing in Norway. The situation in Norway was regarded as contrary to Articles 3 and 4 of the EEA Agreement. Norway amended its legislation in June 2001 so as to comply with its EEA obligations. The Authority therefore decided to close the case.

In 2000, the Authority sent a letter of formal notice to **Liechtenstein** concerning national provisions requiring non-resident plaintiffs to provide security for costs in court proceedings. In July 2001, the Authority sent a reasoned opinion. Liechtenstein agreed to modify its legislation in conformity with the Authority's analysis. A bill is expected in early 2002.

4.6 FREE MOVEMENT OF CAPITAL

Article 40 of the EEA Agreement lays down the principle of free movement of capital. More specific provisions for the implementation of that principle are included in the *Capital Movements Directive* (88/361/EEC), referred to in point 1 of Annex XII to the Agreement.

In 2001, the Authority sent three letters of formal notice and issued two reasoned opinions in the field of capital movements. The Authority also received one complaint. In addition, the Authority started to assess new cases, in particular, in respect of the financial sector in **Norway** and concerning the acquisition of land in Norway and **Liechtenstein**.

In June 2001, the Authority sent a letter of formal notice to **Norway** concerning restrictions, contained in certain provisions of the Act on Industrial Concessions, on the acquisition of concessions in waterfalls used for the production of energy. According to that Act, only certain Norwegian public-owned companies are granted unlimited concessions for the management of waterfalls. Other companies are only granted concessions for a maximum of 60 years. After that time or when the remaining time of the concession has elapsed, the waterfalls shall be returned to the State without compensation. The Authority considers this rule to be discriminatory and contrary to both the freedom of establishment and the free movement of capital. Norway disputes the Authority's assessment.

In October 2001 the Authority issued a reasoned opinion concerning ownership restrictions in the banking sector in **Norway** which are considered incompatible with the free movement of capital (so-called 10% rule). This case is discussed in the Chapter on banking.

In January 2001, the Authority received a complaint against **Norway** alleging that provisions of the Norwegian Tax Act would discriminate between tax valuation of non-listed shares in foreign companies

for the calculation of corporate tax and tax valuation of similar shares in Norwegian companies. The complainant alleged that such a different treatment would be contrary to the free movement of capital. Following discussions with the Norwegian authorities on this matter, the Authority was informed that the difference in treatment would be repealed. However, at the end of the reporting period, the Authority had not received notification to this effect.

In 2000, the Authority sent a letter of formal notice to Norway concerning the authorisation procedure provided in the Act on acquisition of business undertakings. The Authority considered this procedure to infringe the freedom of establishment and the free movement of capital. In December 2001, Norway informed the Authority of a proposal to abolish the whole Act. The Authority expects this proposal to be adopted in 2002.

In 1999, a complaint was lodged against Norway for alleged discriminatory legislation and practices as regards allocation of licences within the sector of aquaculture business. The Authority started formal infringement procedures as regards the breach of the rules on establishment in October 2000. In June 2001, the Authority sent a supplementary letter of formal notice to Norway, concluding that rules giving priority to companies with local shareholders restrict direct investment by foreign companies in the Norwegian aquaculture sector contrary to the rules on free movement of capital. In its reasoned opinion of November 2001, the Authority required Norway to take the necessary measures to rectify the infringement of Articles 31 and 40 of the EEA Agreement. At the end of the reporting period, the Authority had not received an answer from the Norwegian Government.

In 1999, a reasoned opinion was sent to Iceland concerning a provision in the Law on Income and Net Worth Tax. This law authorises taxable persons to deduct their properties in certain domestic financial instruments from their total assets and, by doing so, to lower the basis for net worth tax. In December 2001, Iceland notified the Authority of an amendment to the legislation intended to allow an identical deduction for similar financial instruments issued in or by other Contracting Parties to the EEA Agreement. Consequently, the Authority decided to close the case.

Following a complaint against Iceland alleging that provisions in the Icelandic Act on Land concerning pre-emptive rights were contrary to the EEA Agreement, the Authority sent a letter of formal notice to Iceland in July 2001 concerning restrictions on the acquisition of land. According to the Icelandic Act on Land, acquisition of land is subject to two prior authorisation procedures by Icelandic authorities. Moreover, a person willing to acquire land for agricultural purposes must have practised agriculture in Iceland for the two years prior to the acquisition. According to the Authority's letter of formal notice, these rules are contrary to the free movement of capital and to the freedom of establishment. In December 2001, Iceland communicated to the Authority a proposal aiming at a complete revision of the Act on Land. At the end of the reporting period, the Authority had not yet assessed the proposal.

In October 2001, the Authority sent letters to Norway and Liechtenstein requesting information regarding their respective national legislation relating to the acquisition of land. Norway replied in December 2001 and Liechtenstein in early January 2002. According to the Norwegian Land Acquisition Act, any acquisition of land is subject to authorisation from the national authorities unless otherwise provided for by the Act. A similar requirement follows from the Act relating to Land Sale Transactions in Liechtenstein. The Authority will assess the national legislation in those EFTA States in early 2002.

Finally, it should be noted that the Authority has also opened several cases concerning the financial legislation in Norway that will be further investigated during 2002.

4.7 HORIZONTAL AREAS RELEVANT TO THE FOUR FREEDOMS

Part V of the EEA Agreement contains horizontal provisions relevant to the four freedoms in the areas of health and safety at work, labour law, equal treatment for men and women, consumer protection, and environment.

4.7.1 Health and safety at work

In Articles 66 and 67 (1) of the EEA Agreement, the parties to the Agreement have agreed on the need to promote improved working conditions and an improved standard of living for workers. They have committed themselves to paying particular attention to encouraging improvements in health and safety aspects of the working environment. Minimum requirements shall be applied to gradual implementation, but this shall not prevent any State from maintaining or introducing more stringent

measures for the protection of working conditions compatible with the EEA Agreement.

Annex XVIII to the EEA Agreement refers to several directives laying down such minimum requirements. The areas covered by these directives include the work place environment, protection against physical, biological and chemical agents and dangerous substances, protective and work equipment, protection of and facilities for pregnant and breastfeeding or nursing workers, mineral extracting industries, temporary construction sites, medical treatment on board ships and work on board fishing vessels.

In 2001, two new acts were added to the Annex. Directive 2000/39/EC establishes *a first list of indicative occupational exposure limit values in implementation of Council Directive* 98/24/EC *on the protection of health and safety of workers from the risks related to chemical agents at work*. Directive 2000/54/EC replaces Directives 90/679/EEC and 93/88/EEC *on the protection of workers from risks related to exposure to biological agents at work (seventh individual directive within the meaning of Article 16(11) of Directive* 89/391/EEC).

In 2001, further progress was achieved by the EFTA States in reducing the number of non- or partially implemented directives in the sector of health and safety at work.

Upon **Iceland**'s notification, in October 2001, of national measures implementing the *Chemical Agents Directive* (98/24/EC) and the *Biological Agents Directive* (2000/54/EC), the Authority initiated conformity assessments which will continue in 2002.

In 1997, the Authority initiated a conformity assessment regarding the implementation by **Iceland** of the *Framework Directive on Improvement of Safety and Health at Work* (89/391/EEC). In 1998, a letter of formal notice was sent to Iceland regarding partial non-implementation concerning land based activities. In September 2000, the Authority received an implementation plan from Iceland, which indicated that transposition would be further delayed until spring 2001. Later implementation was projected for the end of 2001. Since the adoption of national measures ensuring the transposition has been delayed again, the Authority will consider further steps in 2002.

In 1998, a reasoned opinion was sent to **Norway** concerning partial implementation of the *Medical Treatment on Board Vessels Directive* (92/29/EEC). In March 2001, Norway notified national measures ensuring full implementation of the Directive and following the receipt of a table of correspondence in December 2001, the case was subsequently closed.

With regard to the *Indicative Limit Values Directive* (91/322/EEC) and the *Second Indicative Limit Values Directive* (96/94/EC) **Norway** had notified partial implementation in 1998 indicating further measures in 1999. In October 2000, Norway informed the Authority that measures had been taken to rectify the situation. In April 2001, the Authority finalised its examination of those measures and closed the cases. At the same time the Authority completed its conformity assessment of the *Second Indicative Limit Values Directive* (93/94/EEC).

As regards the partial non-implementation of the *Temporary or Mobile Construction Sites Directive* (92/57/EEC) in **Liechtenstein**, the Authority started its examination in 1999 and sent a letter of formal notice in January 2001. Since implementation has been further delayed, the Authority sent a reasoned opinion to Liechtenstein in December 2001.

In 1999, the Authority started examination of measures notified by **Norway**. The Authority concluded that it had not received notification of full implementation from Norway in the maritime sector of the *Work Equipment Directive* (89/655/EEC) as amended by Directive (95/63/EC), the *Carcinogens at Work Directive* (90/394/EEC) and the *Biological Agents Directive* (90/679/EEC) as amended by Directive (93/88/EC), Directive (95/30/EC), Directive (97/59) and Directive (97/65/EC). With regard to the *Work Equipment Directive* (89/655/EEC) as amended by Directive (95/63/EC) the Authority received notification of full implementation in August 2000 and subsequently closed the cases. In February 2001, the Authority received notifications of national measures considered to ensure full implementation of the Directives in the maritime sector. Save for the implementation in the maritime sector of the *Carcinogens at Work Directive* (90/394/EEC), which is still subject to examinations, all other cases were closed at the end of the reporting period. As regards the implementation by Norway of the *Biological Agents Directive* (90/679/EEC) and the directives amending it in the petroleum sector, the Authority received a notification at the end of the reporting period.

In 1999, the Authority initiated its implementation control on measures notified by **Iceland**. Following examination of notified measures, the Authority concluded that the received notifications did not ensure full implementation in the maritime sector of the *Work Equipment Directive* (89/655/EEC) as amended by Directive (95/63/EC), the *Protective Equipment Directive* (89/656/EEC), the *Manual Handling of Loads Directive* (90/269/EEC), the *Short-term Employment Directive* (91/383/EEC), the *Pregnant and Breastfeeding Workers*

Directive (92/85/EEC), the *Carcinogens at Work Directive* (90/394/EEC) and the *Biological Agents Directive* (90/679/EEC) as amended by Directive (93/88/EC), Directive (95/30/EC), Directive (97/59) and Directive (97/65/EC). In September 2001, Iceland notified the amended national legislation considered to ensure full implementation of these acts. All cases were closed in November 2001.

In 1999, the Authority initiated examination on Iceland's failure to implement the *Pregnant and Breastfeeding Workers Directive* (92/85/EEC) in the land-based sector. At the same time, the Authority received a complaint to this end. Following examination of the measures notified by Iceland in March 2001, both cases were closed in April 2001.

The conformity assessment as regards the implementation by Iceland and Norway of the *Surface and Underground Mineral-Extracting Industries Directive* (92/104/EEC) which the Authority initiated in 1998, continued in the reporting period. The national measures will be further examined in 2002.

In 1997, the Authority invited all three EFTA States to comply with their reporting duties under the *Improvement of Safety and Health at Work Directive* (89/391/EEC), the *Safety and Health Requirements for the Workplace Directive* (89/654/EEC), the *Work Equipment Directive* (89/655/EEC), the *Protective Equipment Directive* (89/656/EEC), the *Manual Handling of Loads Directive* (90/269/EEC), the *Work with Display Screen Equipment* (90/270/EEC), the *Short-term Employment Directive* (91/383/EEC), the *Medical Treatment on Board Vessels Directive* (92/29/EEC) and the *Temporary or Mobile Construction Sites Directive* (92/57/EEC). In the reporting period the reporting task continued as regards Iceland and Norway. Following examination of the reports submitted by Iceland the Authority concluded that Iceland had not submitted a report concerning the *Improvement of Safety and Health at Work Directive* (89/391/EEC) and failed to report on the practical implementation of all directives in the maritime sector. At the end of the reporting period, the Authority received a report on the application of Directive (89/391/EEC) for the land-based sector while all other reports have not been received. As regards Norway, the Authority completed the reporting task on all directives during the reporting year, having received the last outstanding reports in October and December 2001.

The Authority invited all three EFTA States to submit reports on the practical implementation, in 1998, of the *Pregnant and Breastfeeding Workers Directive* (92/85/EEC), and, in 1999, of the *Safety and Health Signs at Work Directive* (92/58/EEC), the *Surface and Underground Mineral-Extracting Industries Directive* (92/104/EEC), the *Mineral-Extracting Industries (Drilling) Directive* (92/91/EEC) and the *Work on Board Fishing Vessels Directive* (93/103/EEC). Whereas the reporting duty was fulfilled by Liechtenstein and Norway in 2001, examination of the reports received from Iceland showed, that it did not encompass the practical implementation of all directives in the maritime sector. At the end of the reporting period the reports had not been submitted by Iceland.

4.7.2 Labour law

Article 68 of the EEA Agreement obliges the EEA States to introduce, in the field of Labour law, measures necessary to ensure the good functioning of the EEA Agreement. In that respect, Annex XVIII refers to directives which deal with the approximation of the laws relating to collective redundancies (dismissals), safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, protection of employees in the event of insolvency of their employer, the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, the establishment of a European Works Council, the organisation of working time, the protection of young people at work, parental leave and the posting of workers in the framework of the provision of services.

In the reporting period, two new acts were added to Annex XVIII. Directive 2000/79/EC concerns *the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)*. Directive 2001/23/EC replaces Directive 77/187/EEC as amended by Directive 98/50/EC *on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.*

In 1999, the Authority initiated a conformity assessment project regarding the implementation by all three EFTA States of the *Working Time Directive* (93/104/EC) and the *Protection of Young People Directive* (94/33/EC). The project continued in 2001. The conformity assessment showed that Liechtenstein had not adequately implemented the *Working Time Directive*. A letter of formal notice was therefore sent to Liechtenstein in November 2000. Liechtenstein's reply thereto, in March 2001, is still subject to

examination. The assessment also showed that there were some shortcomings in the way Norway and Iceland had implemented the Directive. A letter of formal notice was sent to Norway in July 2001. Further implementation measures are expected to be notified by Norway in 2002. Iceland informed the Authority in October 2001 about further delays in adopting legislative measures ensuring full implementation of the Directive. The Authority will consider whether to start formal infringement proceedings against Iceland in 2002.

In 1997, a complaint was lodged with the Authority against Iceland alleging that Iceland failed to implement the *Working Time Directive* (93/104/EC). The Authority continued to monitor the complaint in 2001 and finalised its examination at the end of the reporting period.

The conformity assessment regarding the *Protection of Young People Directive* showed that Liechtenstein had not implemented the Directive adequately. Thus, a letter of formal notice was sent to Liechtenstein in November 2000. The examination of the case continued in 2001 and was not finalised at the end of the reporting period. As regards Norway, the Authority concluded that the Directive was not fully implemented. To this end, in July 2001, the Authority sent a letter of formal notice to Norway. Further implementation measures are expected to be notified by Norway in 2002. In July 2001, Iceland informed the Authority of delay in the implementation process. A notification by Iceland is expected at the beginning of 2002.

In January 2000, the Authority initiated preliminary examinations as regards the non-implementation by all three EFTA States of the *Part-Time Work Directive* (97/81/EC). In January 2001, the extended implementation period for the social partners to implement the Directive by collective agreement expired. In April 2001, the Authority started formal infringement proceedings against all three EFTA States by sending a letter of formal notice for non-implementation of the Directive to each of them. In September 2001, Norway notified national measures considered as ensuring full implementation of the Directive. The examination of the notification received was not finalised at the end of the reporting period. Liechtenstein and Iceland informed the Authority about further delays in implementing the Directive. Further measures are expected to be notified by these States in the first half of 2002.

In September 2001, the Authority initiated an examination on the non-implementation of the *Fixed Term Work Directive* (1999/70/EC) by Iceland. The Authority was informed that the social partners did not reach an agreement for implementing the Directive by collective agreements. Therefore, implementation will be effected by a Parliamentary Act, the notification of which is expected at the beginning of 2002.

In December 2000, the Authority started a conformity assessment regarding the implementation of the *European Works Council Directive* (94/45EC) by the three EFTA States. This task was completed by the Authority in January 2001.

The EFTA States were to transpose the Directive (97/74/EC) extending the *European Works Councils Directive* to the United Kingdom of Great Britain and Northern Ireland by 15 December 1999. All three EFTA States have notified national measures implementing the Directive during 2000. Whereas the examination of the notification by Liechtenstein and Norway was completed in 2000, the examination as regards Iceland was completed in January 2001.

In April 2000, the Authority started formal infringement proceedings against Iceland for partial non-implementation of the *Posting of Workers Directive* (96/71/EC) by sending a letter of formal notice. Iceland notified the national measures ensuring full implementation in August 2001. The case was subsequently closed.

Liechtenstein had a transitional period for implementing the *Parental Leave Directive* (96/34/EC). This period expired on 1 July 2001. At the end of the reporting period the Authority had not received a notification of national measures implementing the Directive. The Authority will continue its implementation control in 2002.

In November 2001, the Authority initiated examinations on the non-implementation by all three EFTA States of the *Directive* 98/50/EC amending the *Transfer of Undertakings Directive* (77/187/EEC). In December 2001, Norway notified national measures considered to ensure full implementation. The case was subsequently closed. In December 2001, Liechtenstein and Iceland informed the Authority about delays in implementing the Directive. Notifications from both States are expected in the first half of 2002.

In 2001, the Persons, Services and Capital Movements Directorate assisted the Competition Directorate in the assessment of a complaint concerning the transfer of an undertaking in Liechtenstein. Furthermore, it conducted its own examination of the application of the *Transfer of Undertakings Directive* (77/187/EEC), which was completed in July 2001.

4.7.3 Equal treatment for men and women

In Article 69(1) of the EEA Agreement, the EEA States undertake to ensure and maintain the application of the principle that men and women should receive equal pay for equal work. Annex XVIII to the Agreement refers *inter alia* to three directives dealing with equal treatment at work, and three directives that are concerned with equal treatment in matters of social security and occupational social security schemes.

The EEA Joint Committee Decision No.43/99 of 26 March 1999, by which the *Burden of Proof Directive* (97/80/EC) was added to the EEA Agreement, entered into force on 1 February 2000 and with the compliance date of 1 January 2001. Already in December 2000, Liechtenstein notified the Directive as fully implemented. In March 2001, the Authority received notifications from Iceland and Norway of full implementation of the Directive.

In August 2000, the Authority initiated a case on the basis of a complaint raised against Norway, alleging that by reserving a number of scholarly positions at the University of Oslo for women only, Norway was in breach of Council Directive 76/207/EEC *on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions*. The University of Oslo has officially reserved 20 postdoctoral positions for women only, in order to favour the recruitment of women to permanent scholarly positions. According to the University's Plan for Equal Treatment 2000-04 another 10 postdoctoral positions and 12 permanent scholarly positions are to be reserved for women. Having finalised its examination of the case, the Authority initiated infringement proceedings in June 2001.

Although positive action measures for women in fields where women are underrepresented are, to a certain extent, in accordance with EEA law, the Norwegian measures which automatically and unconditionally give priority to women and where applications from men consequently are not even considered, appear to go beyond the limits for the exception permitted by the Directive. Therefore, the Authority sent a reasoned opinion to Norway in November 2001 for failure to comply with Article 70 of the EEA Agreement and the *Equal Access to Work Directive* (76/207/EEC).

In June 2001, the Authority received a complaint against Norway regarding pension rights. The complainant alleged that the rules for means testing under the Norwegian Public Service Fund were discriminatory as they were not applicable to widows of men who became members of the Fund prior to 1 October 1976, but only to widowers of women who were otherwise in the same situation. The case was still under examination at the end of the reporting period.

4.7.4 Consumer protection

Annex XIX to the EEA Agreement refers to 11 directives concerning consumer protection. During 2001 no new acts with implementation deadline in 2001 were added to the EEA Agreement. However, the EFTA States were required to implement the *Directive on injunctions for the protection of consumers' interests* (98/27/EC), incorporated into the EEA Agreement in September 1999, no later than 1 January 2001.

During the reporting period the Authority sent three letters of formal notice and four reasoned opinions to the EFTA States in the field of consumer protection. In March 2001, the Authority sent a letter of formal notice to Iceland, Liechtenstein and Norway respectively for failure to implement the *Directive on injunctions for the protection of consumers' interests* (98/27/EC). In the absence of the adoption of the measures necessary to comply with that Directive, the Authority, in October 2001, sent a reasoned opinion to each of the EFTA States. At the end of the reporting period, only Iceland had notified full implementation of the Directive. In December 2001, the Authority also issued a reasoned opinion in respect of Liechtenstein for failure to fully implement the *Directive on the protection of consumers in respect of distance contracts* (97/7/EC).

During 2001, the Authority decided to close two own-initiative cases relating to Norway pursuant to the adoption by that country of the national measures necessary to comply with the *Directive on the protection of consumers in respect of distance contracts* (97/7/EC) and the *Directive concerning misleading advertising so as to include comparative advertising* (97/55/EC).

Furthermore, in December 2001, the Authority adopted a report on the application of the *Directive on unfair contractual terms* (93/13/EC) within the EFTA States, in accordance with Article 9 of the Directive. The report analyses the implementation and application of the Directive in the legal orders of the EFTA States. The report is available on the Authority's homepage.

4.7.5 Environment

Article 73 of the EEA Agreement provides that the objectives of the EEA States' action relating to the environment shall be to preserve, protect and improve

the quality of the environment, to help protect human health, and to ensure a prudent and rational utilisation of natural resources. The basic principles to be applied in this respect are that preventive action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay.

4.7.5.1 General provisions

Following a conformity assessment of the measures notified by Iceland to comply with the *Directive on environmental impact assessment* (85/337/EEC) as amended by *Directive* 97/11/EC in Iceland, the Authority requested in May 2001 some information on its implementation. Iceland replied by a letter received by the Authority in August 2001. In October 2001, the Authority requested some further information relating to the implementing measures. At the end of the reporting period a reply had not been received from Iceland.

Directive 96/61/EC *on Integrated Pollution Prevention and Control* (IPPC) entered into force in October 1999. In 2000, the Directive had been notified as partially implemented by Norway. In January 2001, the Authority sent a letter to Norway requesting information about the implementation of the Directive. In September 2001, the Authority received a letter from Norway informing it that a new regulation implementing the Directive was in the pipeline and would be notified in January 2002.

4.7.5.2 Air and water

Reports on implementation of directives in the air sector were due 30 September 2000. In December 2000, the Authority sent letters to the EFTA States requesting them to submit before 28 February 2001 reports concerning these Directives:

Directive 80/779/EEC *on air quality limit values and guide values for sulphur dioxide and suspended particulates*

Directive 82/884/EEC *on a limit value of lead in the air*

Directive 84/360/EEC *on the combating of air pollution from industrial plants*

Directive 85/203/EEC *on air quality standards for nitrogen oxide.*

All EFTA States submitted their reports and informed the Authority that limit values in the directives had not been exceeded during the reporting period. The Authority made a short summary report on this issue. The report is available on the Authority's homepage.

The *Directive on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations* (1999/13/EC) was incorporated into the EEA Agreement in 2001. Liechtenstein and Norway notified the implementation of national measures in 2001, but notification from Iceland is awaited.

In 2001, all EFTA Stated notified the implementation of the *Directive relating to a reduction in the sulphur content of certain liquid fuels* (1999/32/EC) amending *Directive* 93/12/EEC, which was incorporated into the EEA Agreement that year.

In July 2001, Norway notified the implementation of the Directive relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars (1999/94/EC). Notification is still awaited from Iceland and Liechtenstein.

In 2001, the *Directive on the quality of water intended for human consumption* (98/83/EC) was incorporated into the EEA Agreement. Iceland notified the implementation of the Directive in July 2001, but notifications from Liechtenstein and Norway are awaited.

In 2001, an external consultant wrote a report on the implementation of directives in the water sector. The report concerns the following Directives:

Directive 75/440/EEC *concerning the quality of surface water intended for the abstraction of drinking water in the Member States*

Directive 76/464/EEC *on pollution caused by certain dangerous substances discharged into the aquatic environment and its daughter directives*

Directive 80/68/EEC *on the protection of groundwater against pollution caused by certain dangerous substances*

Directive 80/778/EEC *relating to the quality of water intended for human consumption as amended.*

A draft of the report was sent to the EFTA States for comments towards the end of the year and the aim is to adopt the report in 2002.

The Authority is still examining the implementation of the *Urban Waste Water Directive* (91/271/EEC) in Norway. The examination focuses on the application of secondary treatment of wastewater in certain agglomerations, in particular in the biggest cities in Norway. Towards the end of the reporting period Norway submitted information requested by the Authority. The results of this examination are expected in 2002.

4.7.5.3 Chemicals, industrial risk and bio-technology

In 2001, the Authority closed the own initiative cases against Liechtenstein and Norway concerning the implementation of *Directive* 90/219/EEC *on the contained use of genetically modified micro-organisms.*

In September 2001, the *Directive on the contained use of genetically modified micro-organisms* (98/81/EC) amending *Directive* 90/219/EEC entered into force in the EEA Area. By the end of the reporting period all EFTA States had notified the implementation of the Directive, Liechtenstein notified full implementation whereas Iceland and Norway notified partial implementation. In all three cases the notifications did not refer to any new legislative measures, but to existing legislation. In November 2001, the Authority sent a letter to Norway requesting information about the implementation of the Directive.

4.7.5.4 Waste

During the year 2001 the Authority prepared a report on the implementation of directives in the waste sector based on information submitted by the EFTA States for the years 1995-1997. The report concerns the following Directives:

- *Directive* 75/442/EEC *on waste as amended by Directive* 91/156/EEC
- *Directive* 75/439EEC *on the disposal of waste oils as amended by Directive* 87/101/EEC
- *Directive* 86/278/EEC *on the protection of the environment, in particular of the soil, when sewage sludge is used in agriculture*

The aim is to adopt the report in the beginning of the year 2002. This report will be followed up with a report on the implementation of the waste directives for the years 1998 - 2000 for the same directives and in addition the following two directives will be covered:

- *Directive* 91/689/EEC *of 12 December 1991 on hazardous waste*
- *Directive* 94/62/EC *on packaging and packaging waste*

4.7.5.5 Complaints

During the year 2001, the Authority handled six complaints regarding the *Directive on Environmental Impact Assessment* (85/337/EEC) as amended by *Directive* 97/11/EC. Four of these cases were closed during the year.

In June 2001, the Authority closed a complaint case against Iceland regarding the intended enlargement of a ferro silicon plant in Grundartangi, Iceland. The Authority had, in July 2000, sent a letter of formal notice to Iceland for failure to apply the Directive correctly. Examination by the Authority revealed that the decision had been taken without applying a screening procedure as obliged for projects listed in Annex II of the Directive. Iceland replied to the letter in November 2000, indicating that it did not disagree with the Authority's opinion. Furthermore, Iceland informed the Authority that similar incidents would not reoccur since a new Act on environmental impact assessment, that entered into force in June 2000, established a clearly defined screening procedure for such projects. The new Act was notified to the Authority in December 2000. Having examined the reply by Iceland the Authority decided to close the case.

During the year 2001, the Authority finalised its examination of a complaint against Norway concerning the construction of the E18 motorway in northern Vestfold. The complainant alleged that the Norwegian legislation on environmental impact assessment was not in compliance with the Directive with respect to when, in the planning of a project, the environmental impact assessment shall be undertaken, and that the assessment of the E18 motorway was not in conformity with the requirements of the Directive. Having examined the case the Authority concluded that since the project had been launched before the entry into force of the Directive, the Directive did not apply. Consequently, the Authority closed the case.

In 1999, the Authority received two complaints regarding the implementation of the Directive concerning the intended construction of hydro power plant in Fljótsdalur north of Vatnajökull in Iceland. During the examination of the case, the plans for the construction of the hydro power plant were altered. In December 2000, Iceland informed the Authority that it was considered unlikely that the project would be launched. In light of this information the Authority closed the case.

In December 2000, the Authority received a complaint regarding the decision of Iceland not to subject intended salmon farming in Mjóifjördur to an environmental impact assessment. The complainant maintains that, based on scientific evidence, the possible generic impact and spread of diseases from farmed salmon to wild salmon fish stocks is likely to adversely affect the latter and this project should have undergone environmental impact assessment to address this issue of concern. In December 2000, the Authority sent a letter to Iceland requesting information about this decision. The Authority received a reply

from Iceland in January 2001 and aims at finalising its examination in 2002.

In January 2001, the Authority received a complaint regarding the decision of Iceland not to subject an intended salmon farming in Berufjördur to an environmental impact assessment. The basis for the complaint is similar to the complaint regarding the project in Mjóifjördur. Towards the end of the reporting period the case was still under examination by the Authority.

4.7.6 Company law

Annex XXII to the EEA Agreement refers to 10 acts in the company law sector. This sector can be divided into two groups. One group deals with *"basic"* company law issues, such as safeguards to protect the interests of certain parties, mergers and division of companies, disclosure requirements, and the so-called European Economic Interest Grouping (EEIG). The other group concerns *accounting* and *auditing* issues. The transition periods granted to Iceland and Norway for the implementation of these acts expired at the beginning of 1996. Liechtenstein had a transitional period until 1 May 1998.

4.7.6.1 Basic company law

In 1996, the Authority initiated conformity assessment projects regarding the implementation by Iceland and Norway of the directives concerning *"basic"* company law issues. Following the notification by Liechtenstein of full implementation of the company law directives, a similar project will be started in 2002 in respect of this country.

The conformity assessment regarding five of the seven company law directives, namely the *First, Second, Third, Sixth* and *Eleventh Company Law Directives* (68/151/EEC, 77/91/EEC, 78/855/EEC, 82/891/EEC and 89/666/EEC), in respect of Iceland was completed in 1998.

Concerning Norway, the conformity assessment of its company law legislation was still in process at the end of the reporting period. In December 1999, a letter of formal notice was sent to Norway due to its failure to comply fully with certain provisions of the *First Company Law Directive*. Following Norway's reply to the letter of formal notice, as well as further discussions, which took place in 2000, Norway informed the Authority of its commitment to amending its legislation so as to comply with the concerns expressed by the Authority. This amendment was to enter into force at the end of the reporting period. In March 2001, the Authority sent letters of formal notice arising from the partial implementation of the *Second* and *Eleventh Company Law Directives*. These letters essentially concern lack of implementation of certain disclosure requirements laid down by those Directives. At the end of the reporting period, Norway still disputes part of the Authority's analysis. The Authority will consider how to proceed further with these cases in 2002. In June 2001, the Authority sent letters of formal notice to Norway arising from its partial implementation of and certain breaches of the *Third* and *Sixth Company Law Directives*. Norway disputes the main part of the Authority's assessment. The Authority is currently considering how to proceed further with these cases.

In December 2000, Liechtenstein notified the Authority of what it considered to be full implementation of the relevant basic company law directives. The Authority, therefore, closed the cases arising from partial implementation of the *First, Second, Third, Eleventh* and *Twelfth Company Law Directives* that it had initiated in respect of Liechtenstein.

In December 2000, the Authority issued a reasoned opinion to Liechtenstein in respect of the *Regulation on the European Economic Interest Grouping* (2137/85/EEC) due to the failure by that State to adopt measures necessary to comply with certain provisions of the Regulation. In November 2001, Liechtenstein notified the Authority of the adoption of the measures necessary to comply with the Regulation. The Authority, therefore, closed the infringement case.

4.7.6.2 Accounting and auditing

As regards the fields of *accounting* and *auditing*, the Authority carried out a conformity assessment concerning the implementation by Iceland and Norway of the *Fourth, Seventh* and *Eighth Company Law Directives* (78/660/EEC, 83/349/EEC and 84/253/EEC) in 2000. Both States have notified the complete implementation of these Directives. Having assessed the notified measures, the Authority concluded that a further examination of the transposition by both States of several provisions of the Directives was needed. In December 2000, the Authority sent two letters of formal notice to Iceland concerning the *Fourth* and the *Eighth Company Law Directives*. The Authority continued its assessment of the implementation of the Directives in 2001 and in February sent a letter of formal notice to Iceland regarding the *Seventh Company Law Directive*. The assessment project on the implementation by Norway of the *Eight Company Law Directive* was completed in July 2001 and the case was closed in that month without further action. The examination of the open cases will continue in 2002.

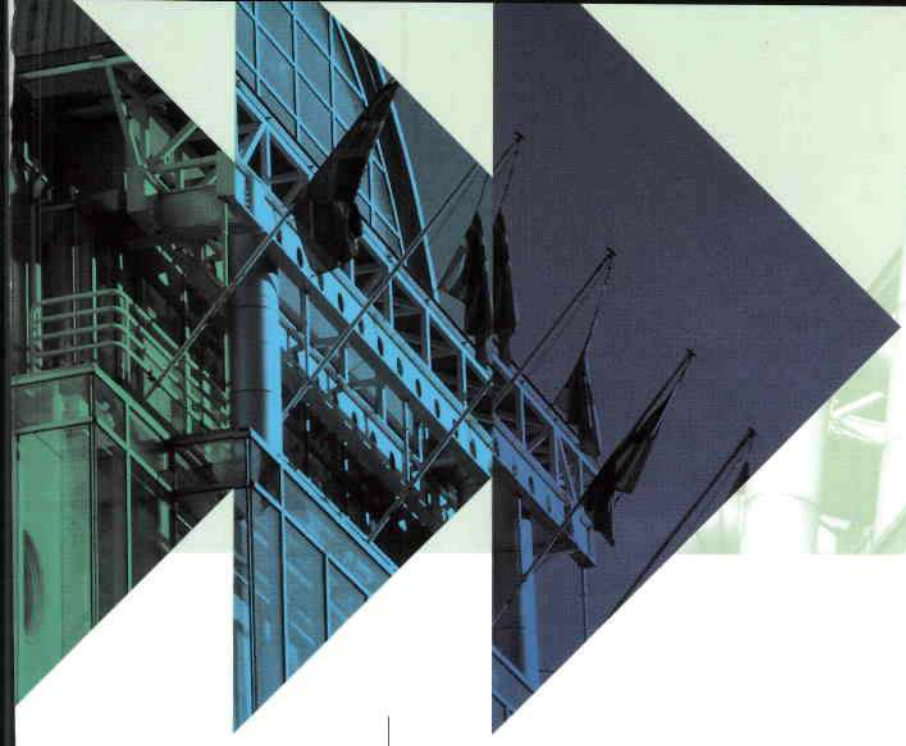
In 1998, Liechtenstein notified partial implementation of the *Fourth, Seventh* and *Eighth Company Law Directives*. The Authority sent three reasoned opinions to Liechtenstein in 1999 due to its delay in fully transposing these Directives. In the beginning of 2001, the Authority received notification of amendments to the existing company legislation ensuring what Liechtenstein considers as full implementation of the three Directives. Consequently, the Authority closed the cases in June 2001. The Authority intends to initiate a conformity assessment project regarding the implementation of these Directives by Liechtenstein in 2002.

4.7.7 Statistics

In Article 76 of the EEA Agreement, the Contracting Parties undertook to ensure the production and dissemination of coherent and comparable statistical information for describing and monitoring all relevant economic, social and environmental aspects of the European Economic Area. To this end, the EEA States shall develop and use harmonised methods, definitions and classifications as well as common programmes and procedures organising statistical work at appropriate administrative levels and duly observing the need for statistical confidentiality. Annex XXI of the EEA Agreement contains specific provisions on statistics. They encompass acts on statistical principles and confidentiality as well as acts concerning statistics on *inter alia* business, transport, tourism, foreign trade, demography, economics, agriculture, fisheries or energy. Some of the Acts referred to in Annex XXI entrust the Authority with management tasks.

Council Regulation 58/97/EC concerning structural business statistics and *Council Regulation* 1165/98/EC concerning short-term statistics provide for the possibility of the EFTA States to derogate from certain provisions during a transitional period. The EFTA State has to apply for such derogations to the EFTA Surveillance Authority. The Authority may accept these derogations in so far as the national statistical systems require major adaptations. In carrying out this task the Authority is assisted by a committee of the EFTA Heads of National Statistical Institutes and shall act in accordance with the latter's opinion.

In June 2001, the Authority received an application from Norway to derogate from certain provisions of the *Annexes of Council Regulations* 58/97/EC and 1165/98/EC. After the committee assisting the Authority in its tasks had been established in December 2001, the Authority initiated the necessary comitology procedure. At the end of the reporting period, the committee had delivered a favourable opinion on the adoption of measures accepting Norway's application for derogation. The Authority will soon complete its management task by adopting the mentioned measures and by publishing the tables of derogation.



COMPETITION

5

5.1 INTRODUCTION

The EEA Agreement aims at the creation of a level playing field, where goods, services, persons and capital can move freely and economic operators can pursue their activities without competition being distorted. The enforcement of EEA antitrust rules is clearly important for undertakings in trade and industry, protecting them from anti-competitive behaviour by other market players. The application of antitrust rules will often also directly benefit consumers, whose free choice of goods and services might otherwise be limited through restrictive practices. Effective competition promotes innovation and the efficient production and supply of goods and services and results in lower prices or better quality, choices or services for consumers.

Artificial impediments to free trade and effective competition may result either from measures taken by States or from restrictive practices by undertakings. The competition rules applicable to undertakings aim at eliminating the latter kind of threats to the four freedoms and to the homogeneity of the European Economic Area.

Thus, whereas most of the Authority's activities relate to the EFTA States, the competition rules contained in Articles 53 to 58 and 60 of the EEA Agreement concern individual economic operators. Only Article 59 of the EEA Agreement extends to measures taken by EEA States for the purpose of applying, *inter alia*, EEA competition rules. These antitrust rules are, in practice, virtually the same in the EEA Agreement as in the EC Treaty.

The following elements are the three corner stones of the EEA competition regime, reflected in Articles 53, 54 and 57 of the EEA Agreement respectively:

- a prohibition on agreements and practices which may distort or restrict competition, e.g. price fixing or market sharing agreements between competing companies,
- a prohibition of the abuse of a dominant market position by undertakings, and
- the control of large mergers and other concentrations of undertakings, which may create or strengthen a dominant position and consequently impede effective competition.

The procedural rules to be followed by the Authority when handling competition cases are laid down in Protocol 4 to the Surveillance and Court Agreement.

In competition cases, one of the roles of the Authority is to ensure that infringements are brought to an end through formal decisions directed at individual undertakings, possibly combined with the imposition of sanctions. This is done either upon the Authority's own initiative (*ex officio* cases) or upon application by interested parties (complaints).

Furthermore, the Authority remains competent to grant exemptions from the prohibition against restrictive agreements contained in Article 53(1) of the EEA Agreement. In order for the Authority to be able to grant such exemptions, the undertakings concerned must notify the agreement in question. However, vertical agreements are now dispensed from the requirement of prior notification and certain types of agreements benefit from block exemptions that clarify their status under the EEA competition rules. Undertakings may also apply for negative clearance, *i.e.* a statement by the Authority certifying that there are no grounds for action under Articles 53(1) or 54 of the EEA Agreement in respect of an agreement, decision or practice. Notified agreements may benefit from immunity from fines in respect of practices taking place during the period from the date of notification until the decision by the Authority to grant or refuse

an individual exemption. The Authority may also deal with cases without taking formal decisions. Most of the Authority's cases are currently concluded in this informal manner.

Cases involving anti-competitive behaviour by a public undertaking, an undertaking to which an EFTA State has granted special or exclusive rights within the meaning of Article 59(1) of the EEA Agreement, or an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly within the meaning of Article 59(2) of the EEA Agreement may also be addressed by the Authority. Where a breach of Article 53 and/or Article 54 of the EEA Agreement follows from measures taken by an EFTA State, the Authority has sole competence to address the State in question under Article 59(3) of the EEA Agreement.

Decisions by the Authority in competition cases may be challenged before the EFTA Court.

The responsibility for handling competition cases under the EEA Agreement is shared between the Authority and the European Commission in accordance with attribution rules contained in Articles 56 and 57 of the EEA Agreement. Cases dealt with by the Authority may concern undertakings located not only in the EFTA States, but also in EC Member States or third countries. Similarly, the Commission may, in certain circumstances, have jurisdiction to address the actions of undertakings located in the EFTA States. This is particularly true in merger cases, where the one stop shop principle of the merger control regime, as transposed into the EEA Agreement, results in the Commission having jurisdiction over all mergers with a Community dimension.[3] The Authority is only competent to deal with applications to approve mergers if an EFTA dimension[4] is established and there is no Community dimension. Jurisdictional issues are the subject of regular consultation between the two surveillance authorities on a case-by-case basis.

Although mergers with an EFTA dimension are unlikely to occur in practice, the Authority regularly deals with a considerable amount of inquiries from companies involved in possible concentrations regarding the assessment of the rules on the division of competence between the Authority, the European Commission and the national competition authorities.

In the field of competition, the focus of the Authority's attention is on the handling of individual cases. Another task is implementation control, *i.e.* ensuring that the relevant provisions are in place in the national legal orders of the EFTA States. Furthermore, the Authority issues notices and guidelines for the interpretation of the competition rules and co-operates with the European Commission in respect of certain individual cases and general policy issues. Most of the Authority's activities also involve close co-operation with national authorities.

In 2001, the Authority's Competition and State Aid Directorate continued to work actively on current cases. The remaining backlog of low-priority older cases was eliminated to a substantial degree in 2001. Furthermore, the level of cases handled by the European Commission which involved the Authority under the EEA co-operation rules (pursuant to Protocols 23 and 24 to the EEA Agreement) remained high. The Authority focused its resources, as regards such EEA co-operation cases, on those cases that had a particular impact on EFTA markets. In 2001, the Authority continued to devote resources to taking part in discussions, at the level of the European Union, concerning the reform of competition rules (both substantive and procedural) and Commission practice.

5.2 NEW ACTS

5.2.1 Legislation

During 2001, the EEA Joint Committee adopted one decision incorporating a new act into the EEA Agreement in the field of competition. The decision concerned an amendment to the existing *block exemption in the air transport sector*.[5] This block exemption was to expire by the end of June 2001. Pending a review of whether the exemption of consultations on passenger tariffs should be maintained, the European Commission extended this

[3] Article 57 of the EEA Agreement provides that the European Commission has sole competence to decide on concentrations with a Community dimension, as defined in Article 1 of Regulation (EEC) No 4064/89 (the EC Merger Regulation, as revised by Regulation (EC) No. 1310/97): this depends on a number of thresholds being met within the EU as regards the turnovers of the parties to the concentration.

[4] An EFTA dimension is established when the turnover thresholds set out in Article 1 of the EC Merger Regulation are met within the EFTA pillar. It should be noted that it is not correct to treat the thresholds as applying in respect of the EEA as a whole: Article 57 of the EEA Agreement only covers situations involving a Community dimension and/or an EFTA dimension.

[5] EEA Joint Committee Decision No 96/2001 of 13.7.2001, inserting a new indent in point 11b of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation (EC) No 1324/2001 of 29.6.2001 amending Commission Regulation (EEC) No 1617/93 of 25.6.1993 as regards consultations on passenger tariffs and slot allocation at airports.

Competition and State Aid Directorate:

Behind from left to right:
Tormod Sverre Johansen,
Åse Gregersen,
Sigrid V. Surlien,
Simen Karlsen,
Eggert B. Ólafsson,
Rolf Egil Tønnessen

In front from left to right:
Director Amund Utne,
Cécile Odello,
Alexandra Antoniadis,
Monica Wroldsen

Not present: Anny Tubbs,
Diane Tanenbaum

part of the block exemption by one year. As the reasons for granting a block exemption for agreements or concerted practices on slot allocation and airport scheduling of air services between airports within the Community remained fully valid, the Commission extended that part of the block exemption by three years. The Decision incorporated these amendments into the EEA Agreement.

5.2.2 Non-binding acts

According to Annex XIV to the EEA Agreement, the Authority shall take due account of the principles and rules contained in the acts listed in points 16 to 25 thereof when applying the EEA competition rules. The acts listed are notices and guidelines issued by the European Commission before the EEA Agreement was adopted concerning the interpretation and application of various parts of Community competition legislation.

Through Article 25 of the Surveillance and Court Agreement, the Authority is given the power and obligation to adopt acts corresponding to the ones listed in Annex XIV. This obligation should be read in the light of Article 5(1)(b) of the Surveillance and Court Agreement, which provides that the Authority shall, in accordance with EEA legislation and in order to ensure the proper functioning of the EEA Agreement, ensure the application of the EEA competition rules.

As concerns non-binding acts adopted by the European Commission after the signing of the EEA Agreement, the Authority is to adopt corresponding acts when EEA relevance is established.

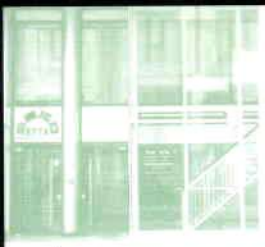
In the field of competition, the Authority adopted its *Guidelines on Vertical Restraints*[6] in July 2001; these correspond to similar guidelines previously issued by the European Commission.[7] The Guidelines complement the block exemption concerning vertical agreements, which took effect as of 1 June 2000 throughout the EEA.[8] Vertical agreements are agreements for the sale or purchase of goods or services between companies operating at different levels of the production or distribution chain. The new rules will increase the freedom to contract, especially for small and medium sized companies, and generally for companies without market power.

In December 2001, the Authority adopted a notice

[6] Guidelines on Vertical Restraints of 25.07.2001 (not yet published) (PR(01)12).

[7] OJ C 291, 13.10.2000, p. 1.

[8] EEA Joint Committee Decision No. 18/2000 of 28.01.2000, inserting new point 2 of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation (EC) No. 2790/1999 of 22.12.1999 on the application of Article 81(3) EC to categories of vertical agreements and concerted practices. EEA Joint Committee Decision No. 44/2000 of 19.05.2000, amending point 3 of Article 3(1) of Protocol 21 to the EEA Agreement, which corresponds to Council Regulation (EC) No. 1216/1999 of 10.06.1999 amending Regulation 17.



entitled *Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements.*[9] These guidelines correspond to similar guidelines issued by the European Commission in 2000.[10] Horizontal cooperation agreements are agreements entered into between two or more companies operating at the same level(s) in the market, *e.g.* at the same level of production or distribution. Horizontal cooperation agreements between competitors are potentially anti-competitive and are liable to fall foul of Article 53 of the EEA Agreement. The guidelines set out the principles and rules which will guide the Authority in assessing horizontal cooperation agreements under Article 53 of the EEA Agreement. The guidelines complement the two new block exemptions concerning research and development (R&D) agreements and specialisation agreements,[11] which took effect throughout the EEA as of 1 January 2001. The guidelines cover a wide range of the most common types of horizontal agreements: R&D, joint production, joint purchasing, joint marketing, standardisation and environmental agreements. The guidelines will help companies to assess with greater certainty whether or not an agreement restricts competition and, if so, whether it would qualify for an exemption. The two new block exemptions and the guidelines represent a shift from a more formalistic approach towards a more economic approach in the assessment of horizontal cooperation agreements; the aim is to allow collaboration between competitors where it contributes to economic welfare without creating a risk for competition.

In 2001 the European Commission adopted a new *notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis).*[12] The notice replaces a previous notice published in 1997. In the new notice the Commission quantifies, with the help of market share thresholds, what does not amount to an appreciable restriction of competition *i.e.* what is *de minimis* and is thus not prohibited by Article 81(1) EC. The same reasoning is relevant in the EEA context and the Authority intends to adopt an equivalent revised notice in 2002: in the interim it will apply the principles enunciated by the Commission.

The European Commission also adopted two notices in the field of concentrations. In March 2001 it published a *notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.*[13] The purpose of the notice is to provide guidance on modifications to concentrations, in particular commitments to modify a concentration. The aim of such modifications is to reduce the merging parties' market power and to restore conditions for effective competition which would otherwise be distorted as a result of the merger creating or strengthening a dominant position. The notice reflects the Commission's experience with the assessment, acceptance and implementation of remedies under the EC Merger Regulation since its entry into force in 1990. In June 2001 the Commission adopted a new *notice on restrictions directly related and necessary to concentrations,*[14] which replaces a previous notice of 1990. The new notice announces an important change of policy in the field of merger control, as the Commission will no longer assess so-called ancillary restraints in its merger decisions. Under the previous regime, restrictions entered into by parties in the context of a merger (such as non-competition clauses or purchase or supply obligations) would automatically benefit from a clearance decision if they were directly related and necessary to the implementation of a concentration. Under the new scheme, the companies will have to assess whether any such restraints can be covered by the merger decision, by a relevant block exemption or whether they might fall under Article 81 EC. The new notice is in line with the ongoing reforms in EC competition policy, based on the principles of simplification and modernisation.

In May 2001, the European Commission adopted a *decision on the terms of reference of hearing officers in certain competition proceedings*[15] in order to enhance the role of the hearing officer in its merger reviews and anti-trust proceedings. The hearing officer plays an important role in safeguarding a party's rights of defence, which is a well-established principle of EC/EEA law. Following the Commission's 2001 decision, the hearing officer will be directly attached to the office

[9] Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements, 06.12.2001 (not yet published) (PR(01)30).

[10] OJ C 3, 06.01.2001, p. 2.

[11] EEA Joint Committee Decision No. 113/2000 of 22.12.2000, which corresponds to Commission Regulation (EC) No. 2658/2000 of 29.11.2000 on the application of Article 81(3) EC to categories of specialization agreements and Commission Regulation (EC) No. 2659/2000 of 29.11.2000 on the application of Article 81(2) EC to categories of research and development agreements.

[12] OJ C 368, 22.12.2001, p. 13.

[13] OJ C 68, 02.03.2001, p. 3.

[14] OJ C 188, 04.07.2001, p. 5.

[15] OJ L 162, 19.06.2001, p. 21.

of the Commissioner in charge of competition policy rather than to the Directorate-General for Competition. The hearing officer's report on the proper observance, throughout given proceedings, of the parties' rights of defence must be communicated to the Member States and to the EFTA Surveillance Authority, be attached to the final Commission decision and published in the Official Journal. The independent role of the hearing officer and transparency of procedures before the Commission are greatly enhanced as a result of this decision. The Authority will in the course of 2002 re-evaluate its own procedural rules to ensure that parties' rights of defence are adequately safeguarded.

The preparation by the Authority of non-binding acts corresponding to those adopted by the European Commission is subject to internal resource allocation. It is anticipated that in 2002 the Authority shall adopt its own notices covering the *de minimis* criteria and a revised version of the leniency notice. Pending the adoption of its own notices, the Authority intends to apply the principles set out in the Commission notices whenever relevant. As explained in paragraph 5.1, it is unlikely that a merger falling under the competence of the Authority will occur. The Authority has thus given lowest priority to the adoption of notices in the field of concentrations.

A comparative list of applicable notices adopted by the European Commission and the Authority in the field of competition is provided at Annex IV of this report.

5.3 CASES

5.3.1 Overview

On 31 December 2000, there were 38 competition cases pending with the Authority. Six of these cases related to Article 59 of the EEA Agreement (*i.e.* involving possible State measures) in combination with Articles 53 and/or 54 of the EEA Agreement, while the other cases related to the application of Articles 53 and/or 54 of the EEA Agreement in respect of the behaviour of market players. In the course of the year, ten new cases were opened, six of which were based on complaints, the other four being opened *ex officio*. In total 22 cases were closed by administrative means during the reporting period. Thus, by the end of 2001, 26 cases were pending: 11 cases were based on complaints (two of which raised Article 59 issues), 11 were notifications and four cases were initiated *ex officio*.

The decline in notifications of standard agreements and an increased emphasis on own-initiative cases is in line with the policy objective of using the Authority's available resources to pursue a more proactive role and concentrate on the most serious anticompetitive practices.

The number of formal and informal complaints received in 2001 indicates a continued awareness among economic operators in the EFTA States of the EEA competition rules and of the way in which infringements of those rules may be addressed through the EEA institutional set-up. The complaints and other more informal contacts by economic operators with the Authority have for the most part dealt with competition issues in sectors which have been liberalised or are in the process of being re-regulated. Examples of such sectors are the telecommunications and broadcasting, postal services and pharmaceuticals sectors.

In order to make efficient use of the Authority's resources in the field of competition, cases have as a rule been prioritised following a preliminary assessment of their importance. The Authority will normally give priority to cases which are of particular significance to the functioning of the EEA Agreement, *e.g.* cases which raise a new point of law, cases concerning the possibilities for firms from other EEA States to access relevant markets in the EFTA States, and cases involving alleged anti-competitive behaviour by public undertakings or undertakings to which an EFTA State has granted special or exclusive rights.

Economic operators or their legal representatives frequently make contact with the Authority, often with a view to establishing whether there are grounds for making a formal complaint to the Authority. The Authority seeks to encourage such operators to undertake a certain amount of preparatory work before formally submitting their views to the Authority in respect of potential competition concerns. It is important that concerns be expressed as clearly as possible and that available supporting materials be provided. This gives the Authority a better opportunity to make an informed preliminary assessment of the arguments presented to it and of the extent to which the case may present a sufficiently strong interest under the EEA Agreement to justify further action by the Authority.

The Authority also seeks to encourage economic operators to examine possible remedies available at national level. National competition authorities may have more detailed and precise knowledge of the markets and businesses concerned, in particular those with highly specific national features. National courts

are able to ensure that competition rules will be respected for the benefit of individuals and to determine civil law effects, including the question of nullity and the right to claim damages, of infringements of the EEA competition rules.

The cases under consideration by the Authority in 2001 have again raised important issues in respect of the application of EEA competition rules. As regards substantive matters, the European Commission and the Authority have sought to maintain a homogeneous approach to competition matters throughout the EEA. Wherever relevant the Authority has therefore co-operated, exchanged information with and consulted the Commission, in accordance with the provisions of the EEA Agreement. The EEA rules on the allocation of jurisdiction between the Authority and the Commission (Articles 56 and 57 of the EEA Agreement) have been scrutinised and resulted in one case being transferred to the Authority in 2001. According to the procedural rules of the EEA Agreement, cases may only be transferred once.

5.3.2 Telecommunications

The Authority continued to follow market developments in the telecommunications sector, through informal meetings with operators and contacts with representatives of the EFTA States and the European Commission. The Authority still had a number of cases concerning the use of telecommunications infrastructure and the provision of telecommunications services under review.

The case involving *alleged infringements of the EEA competition rules by the incumbent telecoms operator* in **Liechtenstein** was closed in September 2001. The complaint alleged that Telecom FL AG, as the legal successor to Telecom PTT, infringed Article 54 of the EEA Agreement insofar as it abused its dominant position on the telephony market in Liechtenstein by influencing subsidiary markets such as the market for Internet services in a manner that distorted competition in favour of its own Internet service provider (ISP). The Authority's Competition and State Aid Directorate considered *prima facie*, on the basis of the information gathered, that the geographic market delimitation for relevant services would have covered an area including both Switzerland and Liechtenstein until 1999. It took the preliminary view that the abuses which were alleged to have taken place in Liechtenstein were *de facto* adequately resolved at an early stage as a result of the interventions of the Swiss Competition Council in 1996 and 1997, such that there was insufficient evidence in the present case to suggest that the infringements had been or were continuing, or that they were continuing to have effects.

In a separate case the Authority continued its consideration of a complaint by a **Norwegian** service provider regarding the Norwegian *incumbent's pricing conditions and conditions for technical access*. The Authority also closed a case concerning *the* Norwegian *incumbent's business practices in connection with third party access to subscriber data*. Based on information gathered the Authority found that further action under Article 54 of the EEA Agreement was not warranted. However, the Authority stated that the case could be reconsidered if factual or legal changes were such as to create the need for a re-evaluation of the case. Furthermore, these conclusions were without prejudice to the Authority's handling of a complaint concerning the insufficient implementation by Norway of the ONP Voice Telephony Directive (98/10/EC).

In parallel with the European Commission, the Authority pursued the assessment of the data gathered through its *telecoms sector inquiry*, as initiated in 1999 by the Authority in respect of the EFTA States, regarding certain aspects of the telecommunications sector (leased lines, mobile roaming services and the unbundling of the local loop). A Status Report setting out the findings of the inquiry and intended next steps was prepared by the Authority for the attention of the Members of the EFTA States' Advisory Committee on Competition: this was issued in June 2001. The Authority's main objective was to account for the work undertaken by providing an overview of the competitive situations in the relevant fields of activity in the EEA as a whole and in the EFTA States in particular: reference was also made to information already disseminated by the Commission in relation to the EEA as a whole. Additional information and comments were provided as required, subject to relevant confidentiality considerations. The Authority also indicated intended follow-up action designed to ensure that the EEA competition rules are applied consistently throughout the EEA. The **Norwegian** authorities expressly welcomed this report.

As regards *leased lines*, the first phase of the inquiry involved the collection and analysis of comparative market data for all the EEA States. At the end of 2000 the initial findings of the inquiry were presented at a public hearing hosted by the European Commission in Brussels. A number of competition concerns were identified. National authorities were seen as best placed to tackle issues other than those with an apparent EEA dimension and cross-border nature. The Authority has since sought to embark on further fact-finding in relation to **Iceland**. It held meetings

in June 2001 with the Icelandic authorities to discuss certain issues identified as a result of the sector inquiry. The Icelandic incumbent was also contacted with a view to obtaining and assessing up-to-date tariff information.

As regards *mobile roaming*, the inquiry launched in January 2000 involved the sending of formal information requests concerning costs, prices and commercial practices related to mobile roaming to mobile network operators, service providers, and national authorities in the EEA. Roaming prices are intransparent to consumers, rigid and set at levels that are unrelated to the cost of carriage. The sector inquiry was launched to investigate this problem by collecting comparative information on prices and cost levels for all EEA mobile operators. Both wholesale and retail markets were found to remain predominantly national, with a near-absence of transnational retail offers. The inquiry highlighted extremely high concentration ratios for the two incumbent operators in most national wholesale roaming markets and an absence of competitive pressure throughout the EEA, particularly at wholesale level. The comparative data gathered highlighted possible excessive wholesale roaming rates (both for international and domestic roamed calls) in a number of countries, including Norway. The Authority supports the use of the EEA competition rules to promote the emergence of pro-competitive incentives and to give guidance on the application of the competition rules in the light of new developments such as preferential roaming and wholesale discounting. In 2001, the Authority was involved, under the EEA co-operation rules, in the European Commission's review of *Vodafone's Eurocall* and the *GSM Association's STIRA/IOT* notifications. Co-ordination will continue to take place with the Commission and with national competition and telecommunications authorities in 2002 to promote pro-competitive action at national level.

In 2001, the EEA Agreement was amended to include a new act requiring *local loop unbundling*.[16] Following the fulfilment of constitutional requirements by two EFTA States, the act entered into force on 1 October 2001. Unbundling the local loop amounts to mandating access on the incumbent's local network to alternative carriers to introduce competition on this segment of the telecom networks. In 2000 the Authority had written, in parallel to the European Commission, to incumbent operators in order to investigate local loop access and the development of broadband services over the incumbents' local loops. This inquiry was pursued with questionnaires to new entrants in July 2001 with a view to assessing the competitive situation on the local loop after the entry into force of the new act, as well as potential abuses of Article 54 of the EEA Agreement by incumbent operators. This second phase should provide the Authority and the Commission, by early 2002, with a comprehensive assessment of the situation of local loop unbundling in the 18 EEA States and of problems encountered by new entrants in obtaining access at fair and competitive conditions.

The Authority will continue to follow closely the implications for the development of the competitive environment of the changes to the regulatory environment in the telecommunications sector in the EFTA pillar.

5.3.3 Broadcasting

The Authority received a formal complaint in July 2001 from the Modern Times Group (MTG) and its Norwegian subsidiary Viasat AS concerning an *agreement between the Norwegian commercial channel TV2 and Canal Digital Norway* (CDN) which allegedly grants CDN an exclusive right to distribute TV2 via satellite to the so-called DTH (direct-to-home) market. MTG/Viasat also allege that Article 59 of the EEA Agreement is infringed by the Norwegian State. The Authority decided to embark on a preliminary assessment of this complaint. The consideration of the case is on-going.

In 2001, the Authority continued its review of a complaint from a broadcasting company against the Norwegian musical rights copyright management society, *Tono*, and *Norwaco*, which manages licensing on behalf of Tono. It is alleged that the societies are in a dominant position and that by their activities they infringe Article 54 of the EEA Agreement. The complainant *inter alia* claimed that the tariffs demanded by Norwaco on behalf of Tono for the *distribution of TV programmes containing music* are discriminatory. Having completed a preliminary assessment of the complaint, the Authority considered this allegation to be founded and urged Norwaco to implement a new tariff structure that would more accurately reflect the difference in music content between different channels. Some progress was made during the reporting period, but as a new tariff structure had not yet been put in place, the case could not be closed.

[16] The act referred to at Point 5ce of Annex XI to the EEA Agreement (Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18.12. 2000 on unbundled access to the local loop, OJ L 336, 30.12.2000, p. 4).

A second case concerning the *tariffs demanded by Norwaco on behalf of Tono* for the distribution of TV programmes containing music raises the question whether the tariffs applied by Norwaco are excessive and therefore in breach of Article 54 of the EEA Agreement. This case, also based on a complaint, was originally dealt with by the European Commission as part of a larger case also concerning the collecting societies in Denmark, Sweden and Finland. The Norwegian part of this case was transferred by way of formal decision to the Authority (as the competent authority to handle this part of the case) in November 2001. The Authority's case remains under review and will be dealt with in parallel to that of the Commission in order to ensure a consistent application of the EEA competition rules.

5.3.4 Pharmaceuticals

The Authority received three complaints and one notification concerning the Norwegian *markets for the wholesale and retail supply of pharmaceuticals and healthcare products* in 2000. These cases arose in the context of the ongoing liberalisation process of the Norwegian pharmacy market, brought about by a new Pharmacy Act which entered into force on 1 March 2001. The pharmaceutical wholesalers Norsk Medisinaldepot ASA (NMD) and Holtung AS complained that co-operation between Apokjeden AS, an association of pharmacy retailers in Norway, Tamro Distribution AS, the third Norwegian pharmaceutical wholesaler, and its Finnish parent company Tamro Oyj, infringed the competition rules of the EEA Agreement. In addition, Apokjeden and Tamro Distribution complained that agreements which NMD had concluded with Norwegian pharmacies were anti-competitive and contrary to the EEA competition rules.

In May 2001, the Authority reached a preliminary position on these complaints. The markets concerned underwent considerable changes from the time the complaints were lodged, as the market players positioned themselves for the new regulatory environment. This led to closer co-operation, and to some extent integration, between market players at the wholesale and retail level. Initially the Authority was concerned that agreements between wholesalers and pharmacies, which imposed purchasing obligations on the pharmacies, would have anti-competitive effects in the wholesale market. Agreements with such clauses had been concluded both by NMD and Apokjeden/Tamro. Upon closer examination, however, and after NMD agreed to certain amendments to its agreements, the conditions for exemption under Article 53(3) of the EEA Agreement appeared to be fulfilled. The Authority's investigation revealed that positive effects brought about by the agreements in question were likely to outweigh possible negative effects on competition. Furthermore, the Authority found that a sufficient level of competition would be maintained in both the wholesale and retail markets, thus ensuring that the economic benefits would be passed on to consumers. After giving the complainants the opportunity to submit additional comments, these three cases were closed.

The notification concerned the agreements between Apokjeden and Tamro that had been complained about by NMD and Holtung. This case was closed by way of a comfort letter in which the Authority took the view that the conditions for granting an exemption under Article 53(3) of the EEA Agreement were fulfilled. In its handling of these cases, the Authority maintained close contact with the Norwegian competition authority.

During the reporting period, the Authority closed the three *Legemiddel Innkjøp Samarbeid* cases (the *LIS* cases), having concluded that the co-operation between 17 Norwegian counties concerning joint purchasing of medicines for use in county hospitals did not contravene Articles 53 or 54 of the EEA Agreement. A comfort letter was issued in respect of the notification made to the Authority and two complaints were informally rejected.

5.3.5 Postal services

The Authority had several cases under review concerning alleged infringements of EEA competition rules in the postal sector.

During the reporting period, the Authority finalised its investigation of a complaint concerning allegations that Norway Post *(Posten Norge)* had, *inter alia, cross-subsidized its activities in the fully competitive parcels market* with revenues from its monopoly activities. The Authority took the preliminary view that there was not sufficient evidence that the alleged cross-subsidization had taken place. The Authority was able to reach this conclusion after a thorough investigation, which included an assessment of Norway Post's internal accounts. In its assessment, the Authority based itself on the same cost concept as was applied by the European Commission in the decision adopted in March 2001 in the *Deutsche Post* case.[17] After giving the complainant the opportunity to submit additional comments, the case was closed.

[17] Case COMP/35.141, OJ L 125, 5.5.2001, p. 1.

Despite closing the above case, the Authority became concerned that the *discount system applied by* Norway *Post in the field of commercial parcel services* might discriminate between customers and thus be contrary to Article 54 of the EEA Agreement. The Authority therefore decided to open a case *ex officio* in order investigate this matter further. After making a preliminary assessment the Authority indicated, in a letter to Norway Post, that it was critical of its discount system as this did not appear to be sufficiently justified by objective criteria. This case was still pending at the end of the reporting period.

5.3.6 Energy

A case concerning the electricity markets in Norway, opened in 1997 following a complaint by the *Norske Energikjøperes Interesseorganisasjon (NEKI)*, was closed in July 2001. The complaint against Statkraft for the abuse of a dominant position covered two issues: Statkraft's alleged ability to control the flow of electricity through the sub-sea cables between Norway and Denmark and so to seriously distort the proper functioning of a Scandinavian electricity market; and NEKI's allegation that the management by Statkraft of the multi-annual water reservoirs may amount to a dominant position susceptible to abuse.

The agreements entered into between Elsam of Denmark and Statkraft concerning the construction and use of sub-sea cables between Norway and Denmark had been notified to the European Commission. Whilst NEKI's complaint appeared to fall under the jurisdiction of the Authority by virtue of Article 56(1)(b) of the EEA Agreement, the Commission was entitled to handle the notification to the extent that the notified agreements had an appreciable effect on trade between EU Member States. The Commission's case was closed after the parties withdrew their notification in March 2001 on the basis that, as of 1 January 2001, the notified agreements were converted from contracts for the physical delivery of electricity to financial contracts.[18] These changes satisfactorily addressed the competition concerns previously identified by the Commission. The Authority considered that by the same token the substance of NEKI's complaint did not warrant further consideration. The Authority informally rejected the remainder of the complaint as the Authority considered that the information available to the Competition and State Aid Directorate did not provide any grounds for the Authority to take action on the matter.

5.3.7 Other cases

Meetings were held in February 2001 between representatives of the Authority and the Norwegian Ministry of Petroleum and Energy (MPE) to discuss possible issues raised under the EEA Agreement by the *proposed changes to the ownership structure of the State-owned company Statoil and the future management of the so-called State Direct Financial Interest (SDFI)* in relation to the offshore sector. The Authority stated its interest in keeping under review the restructuring and ultimate arrangements between Statoil and the SDFI as regards product sales with a view to establishing their compatibility with the competition rules of the EEA Agreement.

In September 2001, the Authority carried out *unannounced inspections* at the premises of Tomra ASA and its subsidiaries in Norway with the assistance of the Norwegian competition authority.[19] The purpose of these inspections was to uncover evidence of suspected practices by Tomra concerning the supply of reverse vending machines and related products and services which could constitute abuses of a dominant position in the sense of Article 82 EC and Article 54 of the EEA Agreement, or evidence of agreements or concerted practices in conflict with Article 81 EC and Article 53 of the EEA Agreement. The Authority may undertake inspections on its own initiative or at the request of the European Commission, depending on the circumstances and on the possible allocation of jurisdiction under the EEA Agreement in each case. In this instance the Authority carried out inspections in Norway at the request of the Commission, the latter being the competent authority under the EEA Agreement to review the evidence gathered in this case. Information obtained in Norway was thus transmitted to the Commission thereafter.

In June 2001, the Authority rejected a complaint made by the *Interessengemeinschaft privater Personentransportunternehmer (IGPT)* relating to the organisation of bus transportation in Liechtenstein. The Competition and State Aid Directorate was of the opinion that, in view of new legislation reorganising public passenger transport in Liechtenstein, the facts set out in the complaint under Article 59 of the EEA Agreement relating to the PTT Agreement and the Swiss PTT did not display a sufficiently strong interest to justify further action by the Authority.

At the same time, the Authority rejected its second complaint against the *Liechtenstein Bus Anstalt (LBA)*

[18] See Commission press release IP/01/30.

[19] EFTA Surveillance Authority press release IP(01)16.

(a first complaint was rejected in 2000). The complaint was brought by the previous co-contractor who objected to not having been awarded the new contract. The Authority considered that the information available to the Competition and State Aid Directorate did not provide any grounds for the Authority to take action on the matter.

However, the Authority opened an *ex officio* case in respect of Liechtenstein to consider whether the *10-year duration of the contract awarded by the LBA* had a significant foreclosure effect. The new case considers the possible issues under EEA competition law raised by the tender procedure initiated in February 2000 by the LBA with regard to the provision of public transport in Liechtenstein under the new legislative framework.

5.4 CO-OPERATION WITH THE EUROPEAN COMMISSION

The EEA Agreement emphasises the need for close and constant co-operation between the Authority and the European Commission in order to develop and maintain a uniform application and enforcement of the EEA competition rules. In order to provide a level playing field for economic operators, not only must the rules themselves be the same, but they must also be applied in such a way that the undertakings' legitimate expectations of legal certainty, efficient case handling forseeability are met throughout the EEA.

Article 109(2) of the EEA Agreement therefore calls for co-operation, the exchange of information and consultations between the two authorities with regard to general policy issues and the handling of individual cases. A special rule on co-operation in the competition field is laid down in Article 58 of the EEA Agreement and detailed co-operation rules are contained in Protocols 23 and 24.

The European Commission and the Authority co-operate in the handling of individual cases which affect both EFTA and Community States (the so-called mixed cases). In these cases, both authorities submit to each other copies of notifications and complaints and inform each other about the opening of *ex officio* procedures. The Authority considered that three of the nine cases opened by the Authority in 2001 potentially affected one or more EC Member States and consequently copies of the relevant documents were forwarded to the Commission for comment. During the same period, the Authority received copies of relevant documents from the Commission under the co-operation rules in respect of 47 mixed cases handled by the Commission.

The EEA rules on co-operation in competition cases provide the authority which is not handling a case with a right to comment formally on the case at various stages (for instance, to comment on a notification and on any statement of objections issued) and with a right to obtain copies of the most important documents lodged with or issued by the competent authority. A specific aspect of the rules on co-operation laid down in Protocols 23 and 24 to the EEA Agreement is the right of both authorities to take part and express views in each other's hearings and Advisory Committee meetings. The EEA co-operation rights are also extended to the States over which each authority has jurisdiction, such that, in mixed cases handled by the European Commission, the Authority will forward copies of documents received to the EFTA States and forward any feedback to the Commission. In all such proceedings, the views of the Authority remain independent from those of the EFTA States.

In terms of co-operation cases falling under the competence of the European Commission, the Authority focused on those cases where the EFTA aspects were considered by it to be of particular importance.

5.4.1 Co-operation in the handling of individual merger cases

Just over half of the 47 new cases in which the Authority was involved under the EEA co-operation rules in 2001 related to notifications under the EC Merger Regulation:

COMP/M.1976 - Shell/Halliburton/Well Dynamics JV
COMP/M.2097 - SCA/Metsä Tissue
COMP/M.2176 - K + S/Solvay/JV
COMP/M.2187 - CVC/Lenzing
COMP/M.2268 - Pernod Ricard/Diageo/Seagram Spirits
COMP/M.2283 - Schneider/Legrand
COMP/M.2315 - The Airline Group/NATS
COMP/M.2333 - De Beers/LVMH
COMP/M.2348 - Outokumpu/Norzink
COMP/M.2363 - BHP/Caemi
COMP/M.2367 - Siemens/E.ON/Shell/SSG
COMP/M.2374 - Telenor/Ergogroup/DNB/Accenture
COMP/M.2416 - Tetra Laval/Sidel
COMP/M.2425 - Coop Norden
COMP/M.2491 - Sampo/Storebrand
COMP/M.2498 - UPM-Kymmene/Haindl
COMP/M.2499 - Norske Skog/Parenco/Walsum
COMP/M.2510 - Cendant/Galileo

COMP/M.2527 - Telenor East/ECO Telecom
COMP/M.2547 - Bayer/Aventis Crop Science
COMP/M.2552 - Norske Skog/Peterson
COMP/M.2603 - ZF Friedrichshafen/ Mannesmann Sachs
COMP/M.2676 - Sampo/Varma Sampo/ If Holding JV
COMP/M.2683 - Aker Maritime/Kvaerner (II)

Nine of these 24 merger cases involved in-depth (Phase II) investigations by the European Commission: four of these resulted in prohibition decisions, whereas one notification was withdrawn. Of the remaining 15 cases that were considered by the Commission, 12 were cleared by the Commission in the initial phase of its investigation, one was authorised subject to commitments offered by the parties, and one was cleared under the simplified procedure. Three cases were still pending at the end of the reporting period.

Thus, the Authority continued to devote significant resources in 2001 to participating in the assessment of these sometimes rather complex concentrations in accordance with the rules on co-operation set out in the EEA Agreement. Besides its contacts with the European Commission and the national authorities of the EFTA States concerned in any given case, the Authority was also approached in certain cases by the parties to the concentration and by other market players who wished to make representations to the Authority in the context of the proceedings.

The following cases were given priority by the Authority on the basis of the significant impact of the proposed concentrations on one or more EFTA States:

In January 2001, the European Commission blocked the *proposed takeover of Finnish tissue paper manufacturer Metsä Tissue by its Swedish competitor SCA Mölnlycke*. The proposed acquisition gave rise to serious concern in the markets for toilet paper and kitchen towels throughout the Nordic region. The Commission's investigation revealed that the proposed concentration would have created or strengthened dominant positions in a total of 26 hygienic tissue products in Sweden, Norway, Denmark and Finland, giving the new entity market shares up to 90% in some markets. Undertakings submitted by the parties, which included the divestment of certain assets, were not considered to sufficiently address the competition issues identified. Furthermore, the proposed divestment package contained insufficient capacity for the buyer to restrain the market power of the proposed new entity.

The Authority was involved in the consideration of *Pernod Ricard's and Diageo's acquisition of the spirits and wine business of the Seagram Company of Canada*. The European Commission, in its six week examination of the transaction, identified competition concerns in two areas, one of them being the impact of the acquisition in Iceland, where the addition of a locally dominant rum brand to the already strong portfolio of Diageo gave rise to competition concerns. To address these concerns, Diageo undertook to separate the distribution of this brand in Iceland from the distribution of other Diageo brands in that market. The transaction was cleared in May 2001.

The offer by the *Finnish insurance undertaking Sampo to acquire sole control of the Norwegian insurer Storebrand* was notified to the European Commission under the EC Merger Regulation in 2001. The Authority indicated to the Commission that it had no objections to the proposed concentration as it was unlikely to raise competition concerns in Norway. The case was cleared by the Commission in July 2001. A separate issue emerged insofar as Norwegian law requires approval by 90% of existing shareholders if the bid for sole control is to be successful and a competing bid for sole control of Storebrand had been made by a Norwegian bank, Den norske Bank. Norwegian Law on financial activity and financial institutions also provides, as a main rule, that no one (besides the State) may own more than 10% of the shares in a financial institution unless it is owned as a wholly-owned subsidiary.[20] Sampo applied for an exemption to this rule on the basis that it had the support of Storebrand shareholders holding 83.5% of the shares in Storebrand. A licence to conduct insurance business in Norway was also required. The offer by Sampo was, however, dropped before the Norwegian authorities had taken a stance on Sampo's application.

The *UPM-Kymmene/Haindl* and *Norske Skog/-Parenco/Walsum* cases concerned a take-over by the Finnish group UPM-Kymmene of the six paper mills of Haindl, a German paper company, and the subsequent sales of two of these mills to the Norwegian undertaking Norske Skog. Upon notification of these proposed transactions the European Commission was initially concerned that the EEA-wide markets for newsprint and wood-containing magazine paper would become conducive to tacit co-ordination by way of collective market dominance. In the newsprint market the number of leading suppliers would be reduced from five to four and in the wood-containing magazine paper from four

20 As part of its general surveillance tasks the Authority had challenged this rule before the Sampo/Storebrand case emerged. Those proceedings are discussed in Chapter 4 above in the sub-chapter on banking.

to three. In particular the Commission was concerned that the leading firms would be able to collude tacitly to limit investments in new capacities and/or to restrict production levels through temporary closure of paper machines and that this would lead to higher prices. On a closer examination the Commission found that there was no risk of such tacit collusion. In reaching this conclusion the Commission referred *inter alia* to the limited stability of market shares, the lack of transparency on capacity expansion projects, the lack of symmetry in cost structures and an insufficient transparency on investments before they become irreversible. The Commission further believed that tacit co-ordination between the leading suppliers would not be easily sustained. The Commission was thus able to clear these cases in November 2001, a decision that was supported by the Authority.

In December 2001, the European Commission was notified a second time of the *proposed merger between the Norwegian company Aker Maritime and the Anglo-Norwegian company, Kvaerner*. Both are active in the oil and gas sector, specifically on the Norwegian continental shelf, and in shipbuilding. The Commission had already considered the case when it was notified for the first time in 2000: there it had opened an in-depth investigation into the transaction, but the notification was withdrawn after Aker indicated its intention to limit its stake in Kvaerner. In December 2001 the Norwegian government formally requested a partial referral of the new case to Norway in accordance with the provisions of Article 6 of Protocol 24 to the EEA Agreement; this request was still under consideration by the Commission at the end of the reporting period. This is the first such referral request under the provisions of the EEA Agreement.

5.4.2 Co-operation in the handling of other Commission cases

23 new cases in which the Authority became involved in 2001 under the EEA co-operation rules concerned the application by the European Commission of Articles 81 and/or 82 EC, together with the corresponding provisions of the EEA Agreement (Articles 53 and/or 54). The Authority devoted resources to cases where the EFTA aspects were considered to be of particular importance.

The Authority has been involved in a number of cases concerning the electricity markets, in particular cases regarding the construction and use of new interconnector capacity between Norway and the rest of the EEA. The Authority's preliminary conclusion is that the European Commission is competent to review such agreements under Article 81 EC and Article 53 of the EEA Agreement by virtue of Article 56(1)(c) of the EEA Agreement where trade between EU Member States is affected to an appreciable extent. A second point of jurisdiction arises when issues may be raised under Article 59 of the EEA Agreement: the Authority is the only authority competent to assess infringements based on State measures from the Norwegian government.

The Authority was thus involved, *inter alia*, in a case concerning a notification made to the European Commission in July 2000 of an agreement for the construction of a new sub-sea cable between Norway and Germany, known as the Viking Cable, for the purpose of electricity transmission. However the case was closed at the end of 2001 after the notification was withdrawn.

During the summer of 2001, the European Commission issued a statement of objections to gas producers active on the Norwegian continental shelf, objecting to the joint sale of Norwegian gas as carried out through the Gas Negotiation Committee (Gassforhandlingsutvalget - GFU). This case was opened in 1996, at which time the Authority carried out inspections in Norway at the request of the Commission. It has since been subject to investigation by the Commission. Although the Norwegian Government announced, shortly before the statement of objections was issued, that the GFU would be discontinued, the Commission proceeded with its case against the companies. Furthermore, the Commission has expressed concerns about the long-term adverse effects of the joint selling system, which it stated must be adequately remedied. In December 2001, a hearing took place, giving the companies concerned and interested third parties such as Norway an opportunity to be heard. In 2002 it remains for the Commission to decide whether to adopt a formal decision holding the companies responsible for infringing Article 53 of the EEA Agreement and Article 81 EC.

In this case the European Commission is, pursuant to Article 56 of the EEA Agreement, the competent authority to apply Article 53 of the EEA Agreement vis-à-vis the companies, insofar as trade between EC Member States is appreciably affected. Possible action against Norway, on the other hand, falls under the competence of the Authority. The Authority did not initiate formal proceedings against Norway regarding the GFU, as it awaited the outcome of the Commission's investigations. This is partly due to the complex nature of the case and because the Commission needed to take position, on the basis of

the information gathered, on the issue of State compulsion (on the part of Norway) before deciding whether to proceed with a case against the companies under the EC/EEA competition rules. The Authority has, however, been and continues to be concerned about the way in which Norwegian gas is marketed within the EEA. The Authority welcomed the abolition of the GFU system as announced by Norway in June 2001 but will review matters during 2002, in consultation with the Commission.

In the field of telecommunications, the Authority continued to be involved in the follow-up to the European Commission's sector inquiry by virtue of the EEA co-operation rules. Finally, the Authority was involved, through the cooperation rules of the EEA Agreement, in a number of high profile cartel cases which the Commission brought to a conclusion in 2001 by imposing heavy fines on the undertakings involved. Among these were the *citric acid case*, the *carbonless paper* case and the *zinc phosphate* case.

As referred to in paragraph 5.3.6 above, the Authority carried out an inspection in Norway at the request of the European Commission. The case in question is to be handled by the Commission as an EEA co-operation case.

5.4.3 Consultations on general policy issues

Protocol 23 to the EEA Agreement provides for the exchange of information and consultations on general policy issues. This typically includes proposals for revised legislation in the competition field as forwarded by the European Commission as well as other policy-related questions, some of the latter being addressed in the meetings of Directors General hosted by the Commission. During the reporting period, the Authority continued to be actively involved in discussions concerning several pending reforms of the EU/EEA competition rules.

During the reporting period, the *European Commission's proposal for a Council Regulation modernising the rules implementing Articles 81 and 82 EC* was subject to discussions in a number of fora, including the European Parliament and the Council of the European Union. An EFTA competition seminar was held in April addressing the modernisation of EC competition policy and the EEA. The seminar featured high level speakers from the Commission, the EFTA Court, the Norwegian competition authority and the EFTA Surveillance Authority. In 2002 the Authority will continue to follow closely the general debate regarding the reform and to assess a number of EEA specific issues that need to be addressed in this context.

The Authority took part in a working group meeting on the *application of the rules of competition to professional sport*. The discussion covered the European Commission's policy when it comes to applying competition rules to sport, taking into account the specificity of the sector and recent developments in cases handled by the Commission and by national authorities.

The Authority attended a meeting of the Advisory Committee on Restrictive Practices and Dominant Positions in maritime transport. The intention behind this meeting was to give EEA States an opportunity to submit their comments on the OECD Secretariat's *Liner Shipping Competition Policy Report* before discussion of the conclusions of the Report at a subsequent OECD Workshop. The report forms part of the OECD's general Regulatory Reform Programme, which has now turned its attention to the liner-shipping sector. The OECD Secretariat will issue a final report on the liner-shipping sector in 2002.

The Authority was involved in preliminary discussions initiated by the European Commission in October 2001 concerning the need for a *review of the technology transfer block exemption mechanism*.[21] The Authority welcomed this initiative as a necessary and important driver of the debate concerning the need for reform of competition policy in the field of intellectual property rights licensing. The Authority agreed with the identified need for a comprehensive reassessment of EC/EEA competition policy in this field. The legalistic and form-based approach of the current block exemption act, its narrow scope and inconsistent approach to certain provisions when compared to the more economic and effects-based approach recently preferred in the field of vertical and horizontal agreements (including research and development and specialisation agreements), suggest that adaptations must be considered before 2006. This will become all the more necessary as the modernisation reforms do away with the notification system. Any changes decided upon will ultimately also find their way into the EEA legal order. The Authority will consider its position in more detail in the light of its experience of the application of the block exemption act to date.

The Authority was also involved in the discussions relating to the *revision of the European Commission's*

[21] Commission Regulation (EC) 240/96 on the application of Article 81(3) of the Treaty to certain categories of technology transfer agreements, incorporated into the EEA Agreement as the Act referred to in Point 5 of Annex XIV to the EEA Agreement.

1996 notice on the non-imposition or reduction of fines in cartel cases. The Commission's notice is relevant to market players located in the EFTA pillar, as these may also be subject to proceedings by the Commission in instances where the Commission has jurisdiction to apply the EEA competition rules by virtue of Article 56 EEA. Furthermore the Authority intends to adopt an equivalent notice to that ultimately adopted by the Commission.

Finally, the Authority continued to take part in discussions concerning the *review of the EC Merger Regulation*, ahead of the proposed publication of a Green Paper setting out proposals for reform on this topic. The Authority submitted comments to the European Commission in July 2001.

5.5 IMPLEMENTATION CONTROL

The Authority is to ensure that the EEA competition rules are implemented into the national legal orders of the EFTA States. This applies not only to the basic rules contained in Articles 53 to 60 of the EEA Agreement, but also to the relevant provisions in Protocols 21 to 25 to the EEA Agreement, the acts referred to in Annex XIV to the EEA Agreement (such as the substantive rules on merger control and on the application of the competition rules in the transport sector, as well as the acts corresponding to the Community block exemption regulations), and the procedural rules in Protocol 4 to the Surveillance and Court Agreement.

According to information received from Norway, the act incorporated into the EEA Agreement by the EEA Joint Committee in 2001 in the field of competition (as referred to in paragraph 5.2.1 above) has been implemented at national level.

Since the previous reporting period Iceland has still to incorporate Commission Regulation (EC) No 1083/1999 as well as Commission Regulation (EC) No. 1324/2001 into national law. Both Regulations amend Commission Regulation (EEC) No. 1617/93 on the application of Article 81(3) of the Treaty (Article 53(3) of the EEA Agreement) to coordination and cooperation, including slot allocation and tariffs agreements, in scheduled air services. Iceland thus remains behind in incorporating new EEA acts in the field of competition. The Authority will continue to monitor developments in 2002.

As regards Liechtenstein, international agreements entered into by the State automatically become a part of the national legal order. It is not necessary to undertake specific implementation measures to the same extent as in Norway and Iceland. The Authority has not found that any specific implementation measures were necessary in Liechtenstein as a consequence of the new act included in the EEA Agreement during 2001.

In October 2001, the Authority reiterated before the ESA Court Committee its longstanding concerns that amendments to the Surveillance and Court Agreement had not been published. Amendments made since 1992 include the procedural rules to be followed by the Authority when handling competition cases (Protocol 4). In addition, the date of entry into force of such amendments, which is to be the date of deposit of instruments of acceptance by the EFTA States with the Government of Norway, is not systematically made public.

The Authority considers the lack of overall improvement on this front to be unacceptable. Neither individuals or EFTA States subject to the rules in question, nor even the EEA institutions entrusted with the task of applying and enforcing these rules, can properly ascertain which rules are applicable at any given time. Without proper publication the principles of transparency and homogeneity within the EEA are seriously undermined. The Authority stated that amendments to the Surveillance and Court Agreement should be published in the Official Journal of the European Communities and the EEA Supplement thereto. The Authority will be forced to consider formal action if steps are not swiftly taken to ensure proper publication.

5.6 LIAISON WITH NATIONAL AUTHORITIES

An important element in the application of EEA competition rules is co-operation between the Authority and the national authorities of the EFTA States. Protocol 4 to the Surveillance and Court Agreement lays down rules which provide for close and constant liaison between the Authority and the competent national authorities. The competent authorities are, in Norway and Iceland, the national competition authorities, and in Liechtenstein the Office for National Economy.

As regards co-operation in the field of individual cases, the national authorities of the EFTA States were invited to give their comments on cases handled by the

Authority. They were also involved in cases falling under the European Commission's competence which were being considered by the Authority in the context of the EEA co-operation procedures outlined above. Comments submitted by the national authorities proved to be valuable contributions, enabling the Authority and the Commission to benefit from the knowledge of national markets which the national authorities have to hand. A number of meetings were held in the context of individual cases.

In the context of general co-operation, the Authority continued during 2001 to liaise with the national competition authorities in order to discuss procedures for dealing with competition cases under the EEA Agreement, so as to maintain a smooth working relationship between the national competition authorities and the Authority. In October 2001, the Authority also invited the representatives of the EFTA States, by way of annual review, to provide the Authority with their views on the functioning and application of the Authority's *notice on co-operation between national competition authorities and the Authority in handling cases falling within the scope of Articles 53 of 54 of the EEA Agreement*, as adopted in 2000.

The Authority was also asked to advise the Norwegian competition authority on some aspects of the EEA merger rules that would have been relevant to the assessment of the merger between the airline companies SAS and Braathens, had the merger been of an EFTA or Community dimension or, as is possible under the Surveillance and Court Agreement, had the merger been referred to the Authority.

Further, the Authority and the EFTA States met to discuss the implications of certain proposed reforms of the EU competition rules on the EFTA pillar as a result of their transposition into the EEA Agreement. Such liaison is a necessary and constructive step towards preserving a homogeneous set of competition rules and procedures throughout the EEA, by identifying and discussing any EEA-specific concerns at an early stage of any proposal.

Finally, in a wider context, in April 2001 the Authority took part in the formation of the European Competition Authorities (ECA), a forum informally bringing together the antitrust enforcement agencies of the EEA to discuss matters of common concern. The Authority hosted a meeting for one of the working groups in Brussels in July 2001.

STATE AID

6

6.1 MAIN RULES OF THE EEA AGREEMENT

The basic substantive provisions on State aid are found in Article 61 of the EEA Agreement. The primary procedural rules are set out in Article 1 of Protocol 3 to the Surveillance and Court Agreement. These provisions are comparable to Articles 87 (previously Article 92) and 88 (previously Article 93) of the EC Treaty. Their aim is to ensure that conditions of competition for enterprises are equal and not distorted by State measures.

The main rule in Article 61 is that aid granted through State resources which distorts or threatens to distort competition and affects trade between the EEA Contracting Parties is incompatible with the EEA Agreement. The second and third paragraphs of Article 61 add certain exception clauses to this main rule.

The concept of State aid is a broad one, embracing not only subsidies in the strict sense of the word, but also public support measures in various other forms. This can be, *inter alia*, tax exemptions, loans on preferential terms, State guarantees and investments in share capital by public authorities on terms not acceptable to a private investor.

An EFTA State shall not put into effect a new aid measure before the Authority has approved it. State aid plans must, therefore, be notified to the Authority prior to implementation. The Authority has to assess whether such a plan constitutes State aid and, if it does, examine whether it is eligible for exemption.

In a first stage of State aid procedures, the Authority can either decide not to raise objections to an aid proposal, or it will open a formal investigation pursuant to Article 1(2) of Protocol 3 of the Surveillance and Court Agreement. The final decision can be positive (approving the aid), negative (prohibiting the aid), or conditional (approving the aid subject to conditions).

If aid is granted in breach of the notification requirements, the Authority may request that the EFTA State suspend payment of the aid pending the outcome of an investigation. If the Authority concludes that such unlawfully granted aid is also incompatible with the EEA Agreement, it orders, as a rule, the EFTA State to reclaim the aid from the recipient.

Apart from deciding on all plans to grant or alter aid, the Authority is also obliged, under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, to keep under constant review all systems of existing aid in the EFTA States. If the Authority finds that existing measures are incompatible with the State aid rules, it shall propose appropriate measures to the EFTA State concerned to amend or to abolish the measures. If such a proposal is declined, the Authority can open the formal investigation procedure mentioned above.

Decisions by the Authority in State aid cases may be challenged before the EFTA Court.

Protocol 26 to the EEA Agreement stipulates that the Authority is entrusted with equivalent powers and similar functions to those of the European Commission in the field of State aid. Provisions to that effect are contained in Articles 5 and 24 of, and Protocol 3 to, the Surveillance and Court Agreement. Furthermore, Protocol 27 to the EEA Agreement lays down the principles according to which the Authority and the Commission shall co-operate in order to ensure a uniform application of the State aid rules.

6.2 DEVELOPMENT OF STATE AID RULES

6.2.1 Legislation

In December 2001, *EC Council Regulation laying down detailed rules for the application of Article 93 of the EC Treaty* ("Procedural Regulation")[22] was incorporated into the EEA Agreement (Protocol 26 thereto) as well as into the Surveillance and Court Agreement (Protocol 3 thereto).[23] Protocol 26 to the EEA Agreement was amended so as to ensure that the EFTA Surveillance Authority be entrusted with equivalent powers and similar functions to those of the European Commission. Protocol 3 to the Surveillance and Court Agreement was amended by including the substantive rules laid down in the "Procedural Regulation". These new procedural rules will enter into force only after all EFTA States have made the necessary notifications in accordance with Article 103 of the EEA Agreement and Article 49 of the Surveillance and Court Agreement. It is to be hoped that the new procedural rules will finally enter into force in 2002.

In January 2001, the *Commission Directive on the transparency of financial relations between Member States and public undertakings* ("Transparency Directive")[24] was incorporated into Annex XV to the EEA Agreement.[25] Pursuant to this Directive, EC Member States and EFTA States are obliged to adopt the necessary measures to ensure, *inter alia*, that companies that enjoy special or exclusive rights or that are entrusted with the provision of services in the general economic interest keep separate accounts, distinguishing between the different activities they are engaged in. These rules will enter into force after all EFTA States have made the necessary notifications in accordance with Article 103 of the EEA Agreement (possibly Spring 2002).

On the basis of the Council Regulation on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid[26], the European Commission adopted, in December 2000, three so-called group exemption regulations declaring certain categories of State aid compatible with the common market. These regulations concern aid in favour of small and medium-sized enterprises, aid for training, as well as *de minimis* aid[27]. Once these regulations are incorporated into the EEA Agreement, EFTA States will be relieved of the notification requirement for those aid measures covered by the group exemptions. A decision to be taken by the EEA Joint Committee can be expected in the first half of 2002.

6.2.2 The Authority's State aid Guidelines

Points 2 to 37 of Annex XV to the EEA Agreement refer to acts, adopted by the European Commission up to 31 July 1991, of which the Authority shall take due account (non-binding acts) when applying the EEA State aid rules. These acts comprise communications, frameworks, guidelines and letters to Member States which the Commission, at various points of time, has issued for the interpretation and application of Articles 87 and 88 (previously Articles 92 and 93) of the EC Treaty.

In accordance with Article 5(2)(b) and Article 24 of the Surveillance and Court Agreement, the Authority has adopted corresponding acts. Relevant communications, frameworks, guidelines and notices issued by the European Commission have been codified by the Authority in one single document, the Procedural and Substantive Rules in the Field of State Aid, also referred to as the State Aid Guidelines. The Authority initially issued these Guidelines in January 1994. They have since been regularly updated. A comparative list of acts adopted by the Commission and the Authority in the field of State aid is provided at Annex V of this report.

The State Aid Guidelines lay down the procedural rules for the assessment of new aid, for the review of existing aid, and for the formal investigation procedure. They also include all substantive State aid guidelines adopted by the Authority. The Guidelines contribute to increased transparency in the field of State aid by providing guidance on substantive and procedural matters to national authorities and interested parties.

The Authority has closely followed the development on new non-binding State aid acts being prepared by the European Commission and has contributed to

[22] OJ L 83, 27.03.1999, p. 1.

[23] Decision of the EEA Joint Committee No 164/2001 of 11 December 2001 as well as Agreement between the EFTA States of 10 December 2001, amending Protocol 3 to the Surveillance and Court Agreement.

[24] Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, published in OJ L 193, 29.07.2000, p. 75.

[25] Decision of the EEA Joint Committee No 6/2001 of 31 January 2001, published in OJ L 66, 8.3.2001, p. 48 and Suppl. No EEA Supplement 12, p. 6.

[26] OJ L 142,14.05.1998.

[27] OJ L 10, 13.01.2001, p. 20-42. Entry into force on the 20th day following its publication in the Official Journal of the European Communities.

the preparation of such acts. In 2001 the Authority held two multilateral meetings in the field of State aid, in which Commission proposals concerning State aid and risk capital, Multisectoral framework on regional aid for large investment projects, Methodology for analysing State aid linked to stranded costs, State aid to public service broadcasting, Short-term export-credit insurance, Temporary defensive mechanism to shipbuilding and Intervention for insurance problems encountered by airline companies following the events of 11 September 2001 were discussed with experts of the EFTA States.

The State Aid Guidelines were amended six times in 2001.

In May 2001, the Authority adopted new *Environmental Guidelines* setting out the conditions under which EFTA States may grant firms aid to promote environmental protection. The new guidelines[28] apply as from the date of adoption (23 May 2001) and will remain valid until the end of 2007. The Guidelines are based on the 'polluter pays' principle, that is to say, the costs of protecting the environment must be borne by the firms causing the pollution. State aid may run counter to that principle in that firms receiving aid will be able to avoid internalising the costs of pollution caused by them. However, in some cases where the aid serves as an incentive or provides a temporary solution, it may be justified. Examples of justified aid are aid designed to give an incentive to firms to do more in terms of environmental protection than is required by common standards or aid that is necessary to promote the use of renewable energy sources. Aid in the form of exemptions or reductions of environmental taxes may, subject to specific conditions, also be found compatible with the EEA Agreement for transitory periods. The Authority proposed as appropriate measures to the EFTA States that existing schemes for environmental protection must be brought in conformity with the new guidelines by 1 January 2002.

In October 2001, the Authority introduced *Guidelines on the applications of the EEA State aid provisions to State aid and risk capital*. These Guidelines are based on the European Commission's Communication on State aid and risk capital[29]. The purpose of these Guidelines is to clarify whether measures designed to provide or promote risk capital constitute State aid. Further the Guidelines provide new criteria under which the Authority may authorise such measures if they constitute aid.

In November 2001, the Authority adopted *amendments to the Guidelines on State aid to short-term export credit insurance.*[30] These amendments follow a corresponding European Commission Communication to the EC Member States. The amendment implied a change in the definition of "marketable risks" to include political risks in addition to commercial risks. "Marketable risks" are those risks which may not be covered by export-credit insurers with support of the State and which are related to exports to the majority of the OECD countries, specifically listed. Furthermore, the duration of the Guidelines was extended until 31 December 2004.

The Authority decided in November to extend the validity of the *Multisectoral Framework on regional aid for large investment projects*, the rules on State aid to the *synthetic fibres industry* and the rules on State aid to the *motor vehicle industry* until 31 December 2002[31].

6.3 CASES

6.3.1 Statistics on cases

At the beginning of the reporting period, 39 State aid cases were under examination by the Authority, including seven notifications of new aid, 10 complaints and 22 own initiative cases. 20 new cases were opened in 2001 and 26 cases were closed, implying that 33 cases were pending with the Authority at the end of the year. Of the 20 new cases registered, nine were notifications of new aid, six were complaints and five were opened on the Authority's own initiative. Two complaints were closed without further action. One decision was taken by the Authority to open a formal State aid investigation in 2001.

6.3.2 Aid for Research and Development (R&D)

In July 2001, the Authority decided not to raise objections to a new Norwegian aid scheme: Research and Development (R&D) projects in enterprises *("Forsknings- og utviklings (FoU) prosjekter i næringslivets regi (FUNN-ordningen)")*. The overall objective of the scheme is to increase R&D and innovation in industry by stimulating co-operation between enterprises and R&D-institutions. FUNN supports projects where

28 Published in OJ L 21, 24.01.2002, and EEA Supplement 6.

29 Published in OJ C 235, 21.08.2001, p. 3.

30 Published in OJ L 30, 31.01.2002, and EEA Supplement 7.

31 Published in OJ C34, 07.02.2002 and EEA Supplement 8.

enterprises buy services from R&D institutions. The aid intensity is 25% of the actual R&D expenditure for the project within the R&D institution. For enterprises in assisted areas in the northern part of Norway (the counties of Nordland, Troms and Finnmark) the maximum aid intensity proposed is 30%. The scope of the grants is limited to NOK 200 million (some EUR 24.1 million) in 2001. The aid intensity foreseen for grants from FUNN is within the maximum limits set by the State Aid Guidelines. The Authority therefore concluded that aid in the form of grants from FUNN qualify for exemption under Article 61(3)(c) of the EEA Agreement.

6.3.3 State guarantees

In April 2001, the Authority requested the Norwegian authorities to submit information regarding the Norwegian Act on State Enterprises. Enterprises organised according to the Act are *inter alia* exempted from the national legislation on bankruptcy and other insolvency procedures. Following correspondence with the Norwegian authorities in 2001, the Authority is awaiting additional information.

6.3.4 Aid measures relating to direct business taxation

In December 2001, the Authority opened a formal investigation regarding *taxation of international trading companies* (ITCs) in Iceland. In 2000, the Authority became aware that Iceland had introduced a bill offering favourable tax treatment for ITCs. The main difference in fiscal treatment of ITCs, compared to other undertakings with limited liability, is that the income tax is 5% instead of the general tax rate of 30% until profits are distributed as dividends. Based on information and argumentation provided for by the Icelandic Government the Authority took the view that such a tax deferral may imply State aid within the meaning of Article 61(1) of the EEA Agreement and therefore opened a formal investigation procedure.

6.3.5 Aid to shipbuilding

In April 2001, the Authority decided not to raise objections to aid granted by Norway to four shipyards for investment aid and R&D aid. The Authority was satisfied that the notified aid measures were in accordance with the "Shipbuilding Regulation" (Council Regulation (EC) No. 1540/98), in combination with the Authority's State Aid Guidelines on National regional aid and Aid for Research and Development.

Two of the notifications concerned *regional investment aid* to the shipyards *Hammerfest Maritime Service AS* and *Harstad Skipsindustri AS*, respectively. In both cases, State support consisted of a grant to the amount of NOK 2 million (approx. € 244 000) for the construction of a slip hall on the shipyards' premises. The aid beneficiaries were located in areas eligible for regional aid and the aid measures were designed to improve productivity of existing installations and remained within the aid ceiling of 12.5% of the eligible investment costs applicable to shipyards in assisted regions.

The other two notifications concerned individual *research and development (R&D) aid* to the shipyards *Umoe Sterkoder AS* and *Ulstein Verft AS*. *Umoe Sterkoder AS* received a grant to the amount of NOK 2.65 million (approx. € 323 000) for the development of a next generation of fishing vessels. *Ulstein Verft AS* received two grants to the total amount of NOK 1 176 000 (approx. € 143 000) for two projects concerning the development of module-based design and early outfitting in ship construction. In both cases, the Authority verified that the aid was granted for pre-competitive development activity, had an incentive effect and remained within the respective aid ceilings as laid down in the Authority's Guidelines.

6.3.6 Aid to training

In June 2001, the Authority closed the case regarding *three training aid schemes* notified by Iceland after having found that they did not constitute aid within the meaning of Article 61 (1) of the EEA Agreement. For all three schemes (i.e. "Vocational Training Fund", "Employment Opportunities for Women" and "Vocational Rehabilitation Centres"), State support was awarded in accordance with the *de minimis* rules as laid down in Chapter 12 of the Authority's State Aid Guidelines.

6.3.7 Aid to transport

In July and September 2001, the Authority approved aid granted *as compensation for air transport services on certain routes* in Norway considered to be in the public interest.

Following the withdrawal of the air carrier previously serving the routes Oslo – Fagernes and Bodø-Røst, the Norwegian authorities concluded interim contracts with *Widerøe's Flyveselskap ASA* regarding the operation of air services on both routes, until a new air carrier is selected under the formal tender procedure as provided for in the EEA Agreement (Council Regulation

(EEC) No. 2408/92 of 23 July 1992 on access for Community carriers to intra-Community routes, incorporated into Annex XIII to the EEA Agreement).

In both cases, the Authority observed that the procedural requirements for awarding a contract to the air carrier, as laid down in Article 4 of Regulation No 2408/92, had not been fully respected. However, the Authority acknowledged that Regulation No 2408/92 did not provide for mechanisms allowing EFTA States the necessary flexibility in cases where, due to unforeseeable circumstances, a certain route is no longer served or will not be served, although the competent authorities have established a need for continued air services on that specific route.

In line with the European Commission's guidelines on State aid in the aviation sector[32], compensation granted under contracts awarded to air carriers without having carried out the tender procedure as required under Regulation No. 2408/92 was regarded as State aid and its compatibility assessed under the basic State aid provisions. Under Article 59 (2) EEA Agreement, the Authority verified in particular that compensation awarded to the air carrier serving the routes in question was both necessary and proportionate. In this last respect, and in particular as regards the effects on trade between the Contracting Parties to the EEA Agreement, the Authority was satisfied that the interim contracts were awarded respecting general principles of an open, transparent and non-discriminatory procedure, that they were strictly limited to the time necessary to fully comply with the requirements under Regulation No 2408/92 and that they did not grant exclusive rights.

In October and November 2001, the Authority approved *war insurance for airline companies and airports* offered by Norway and Iceland. In the aftermath of the terrorist attacks in New York and Washington on 11 September 2001, insurance companies reduced, with effect from 24 September 2001 at midnight, insurance cover previously offered to airline companies and airports for damage due to acts of war and terrorism ('war insurance'). In order to avoid the stoppage of all commercial air traffic as of 24 September 2001 the Norwegian State offered 'war insurance' exceeding insurance cover that was, at that time, available on the commercial insurance market. In the case of Iceland, the Government offered 100% re-insurance (guarantee) for 'war insurance' offered by an insurance company. The insured airline companies and airports had to pay a premium, which was due at the end of the insurance period, i.e. 25 October 2001. In assessing the compatibility of these measures, the Authority applied Article 61 (2)(b) of the EEA Agreement (which allows for the possibility to grant "*aid to make good the damage caused by... exceptional occurrences*"), in accordance with the criteria established by the European Commission in its Communication of 10 October 2001 on "*The repercussions of the terrorist attacks in the United States on the air transport industry*". Against this background, the Authority verified, in particular, that the 'war insurance' was limited to remedy the withdrawal of such insurance cover by the commercial insurance market and did not place air carriers and airports in a position which was more favourable than before the events of 11 September 2001, that the insured paid a reasonable premium and that the 'war insurance' was limited to 30 days. At the end of 2001, the Authority was informed by Norway and Iceland that the 'war insurance' offered by the State was prolonged until 31 December 2001 (in the case of Norway, until 31 January 2002). The Authority will finalise its assessment of these measures in early 2002.

In December 2001, the Authority closed an own initiative investigation regarding certain *exemptions from the air passenger tax* in Norway. Since it was decided by the Norwegian Parliament to abolish the air passenger tax as a whole as from 1 April 2002, the pending investigation became void of purpose.

In December 2001, the Authority decided not to raise objections *to compensation granted under the new "Hurtigruten* Agreement". Under this Agreement, two maritime companies, *Ofotens og Vesteraalens Dampskibsselskab ASA* and *Troms Fylkes Dampskibsselskap ASA*, are entrusted with the provision of maritime transport services consisting of the combined transport of persons and goods along the coastal line in Norway from Bergen to Kirkenes. In return, the Norwegian State will grant an annual compensation of NOK 170 million (approximately € 21 million), expressed in 1999-prices, to these companies. The agreement will enter into force on 1 January 2002 and will, in principle, have a duration of three years. Any future agreement for the provision of maritime transport services along the coast between Bergen and Kirkenes will be awarded only after having carried out an open, transparent and non-discriminatory procedure. The Authority approved the compensation provided for under the new "*Hurtigruten* Agreement" based on Article 59 (2) of the EEA Agreement. The Authority accepted that the transport service as defined in the "*Hurtigruten* Agreement" could be regarded as a service of general

32 Published in OJ C 350, 10.12.1994.

economic interest. It further verified that the compensation granted under the new "*Hurtigruten* Agreement" was limited to the amount necessary to cover the deficit generated by the provision of maritime transport services as laid down in the "*Hurtigruten* Agreement".

6.3.8 Aid to telecommunications

In July 2001, the Authority decided to close its own initiative investigation as well as a complaint lodged against possible aid granted to *Iceland Telecom Ltd. ("Landssiminn")*. This decision was possible after the Icelandic Government adopted the necessary measures to retroactively abolish the aid, which was granted to Iceland Telecom Ltd. in the form of an undervaluation of assets transferred from the former Post and Telecom Administration to the newly created company Iceland Post and Telecom Ltd. as well as aid granted in the form of an exemption from the stamp duty. Iceland Telecom Ltd. was obliged to repay the aid (increased value of assets estimated to amount to ISK 3.8 billion and stamp duty on the shares issued when the new company was established), plus accrued interest since the date the aid was granted until the aid is fully repaid. As regards a reduction of pension fund obligations, which the complainant had alleged as constituting aid, the Authority verified that the conditions under which Iceland Post and Telecom Ltd. had been partially relieved from its debts were in line with the market economy investor principle. Consequently, the Authority did not consider the partial relief of debt towards the pension fund to constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

6.3.9 State aid elements in sales of land and buildings

In May 2001, the Authority requested the Norwegian authorities to submit information regarding the sale of 1744 apartments from the Municipality of Oslo to a private real estate enterprise. The Norwegian authorities have initiated a new expert evaluation of the buildings and have assured the Authority that further proceedings will be carried out with the purpose of ensuring that Norway's obligations under Article 61 are respected. The Authority awaits a formal notification of the sale.

6.3.10 Regional aid

In August 2001, the Authority approved a proposal from the Icelandic authorities, on the system of regional aid in Iceland. A new map of assisted areas was authorised until the end of 2006. The assisted area in Iceland covers 33,2% of the total population. The population density of the regional aid area is 0.92 inhabitants per square kilometre. The Authority agreed with the Icelandic authorities that the country could be divided into two areas, the capital area surrounding the capital Reykjavík and the rural area, the latter being eligible for regional aid. The Authority also agreed that the population density should be the major criterion for the selection of the eligible areas. The capital area not eligible for regional aid is defined as the capital Reykjavík and the adjoining municipalities of Kópavogsbær, Seltjarnarneskaupstadur, Gardabær, Hafnarfjardarkaupstadur, Bessastadahreppur, Mosfellsbær, Reykjanesbær, Sandgerdisbær, Gerdahreppur and Vatnsleysustrandahreppur. The rest of the municipalities are within the regional aid map. As for aid intensity, the Authority accepted that the general aid ceiling in the assisted area will be 17% of eligible costs, expressed in net terms, and that firms qualifying as Small and Medium-sized Enterprises (SMEs) will be eligible for a top-up of 10% gross. This is within the maximum aid intensities laid down in the regional aid guidelines.

In December 2001, the Authority decided not to raise objections to a notification from Norway of a *Regional Direct Transport Aid Scheme ("Regional Transportstøtte")*. The purpose of the scheme is to partly offset additional transport costs of firms located in the northern-most low population density areas of Norway. Additional transport costs mean the extra costs incurred by movements of goods within the borders of Norway. The scheme covers the counties Finnmark, Troms, Nordland and Nord-Trøndelag (except the municipalities Stjørdal, Frosta and Levanger). The scheme is administered by the counties. The duration of the scheme is from 1 January 2000 until 31 December 2006. The total budget for 2001 is approximately NOK 16 million (approximately EUR 2 million). The Authority concluded that the notified aid qualifies for exemption under Article 61(3)(c) of the EEA Agreement.

6.4 CO-OPERATION WITH THE EUROPEAN COMMISSION

Protocol 27 to the EEA Agreement lays down the various areas in which the European Commission and the Authority are to co-operate in order to ensure a uniform application of the State aid rules. Information and views on general policy issues were exchanged between the two authorities in meetings held at different levels. The practice established in 1994 of holding periodic meetings at Director level was continued. Formal consultations took place on the Commission's new drafts on non-binding State aid acts (State aid guidelines), thus enabling the Authority to submit its comments and those of the EFTA States to the Commission. Cross-representation of both authorities in multilateral meetings with Member States also continued. Furthermore, the Authority and the Commission informed each other of all State aid decisions. With regard to individual cases, further information was also provided on a case-by-case basis upon request by the other authority.

The co-operation between the two surveillance authorities in the field of State aid has worked well in practice. The close contacts and co-operation at different levels contributed to a homogenous application of the State aid rules throughout the EEA.

6.5 OTHER TASKS

As is foreseen in the State Aid Guidelines, it has been the Authority's practice to request the submission of annual reports on new State aid schemes that it has authorised. The information in these reports is particularly focused on the annual aid expenditure under the schemes and its breakdown with regards to the main recipients as well as according to sectors, forms of aid, etc. Furthermore, based on decisions by the Authority in 1995, Iceland and Norway have agreed to submit standardised annual reports on existing aid schemes.

THE AUTHORITY BEFORE THE EFTA COURT AND THE EUROPEAN COURT OF JUSTICE

7

7.1 CASES BEFORE THE EFTA COURT

In 2001, eight cases were registered at the EFTA Court. Of these, seven were requests for advisory opinions lodged by national courts that were confronted with questions of interpretation of EEA law. The remaining case was an action brought by the Authority against the Principality of Liechtenstein due to the failure of that country, in the Authority's view, to fulfil its obligations under EEA law.

Of the seven requests for advisory opinions, three emanated from Iceland, one from Liechtenstein and three from Norway. In accordance with its settled policy, the Authority lodged observations in all seven cases.

The District Court of Reykjavik (*'Héradsdómur Reykjavíkur'*) referred all the Icelandic cases. The first one, Case E-1/01, concerned, in essence, whether national provisions providing for a higher rate of Value Added Tax on books in foreign languages than on books printed in the Icelandic language were compatible with certain provisions of the EEA Agreement, in particular Articles 10 and 14 EEA. The District Court further asked whether the EEA Agreement contained any provisions upon which it could rely to decide which rule to apply in case of a conflict between national law and rules deriving from the EEA Agreement.

The second Icelandic request, Case E-3/01 concerns Council Directive 77/187/EEC on the transfer of undertakings. The Directive is referred to in point 23 of Annex XVIII to the EEA Agreement. The questions raised by the referring Court are, in essence, whether the Directive applies in the event of the transformation of a public organisation into a limited liability company and whether the employees' status as a civil servant is of importance in that respect.

By its third request, the District Court of Reykjavík in Case E-4/01 raised the question whether the provisions of the EEA Agreement, in particular Articles 11 and 16 EEA, required Iceland to abolish the State monopoly on the import and wholesale of alcoholic beverages as of the entry into force of the EEA Agreement on 1 January 1994. The court further wanted to know whether Iceland's breach of the above mentioned provisions, if established, made it liable for compensation to a legal person suffering financial loss caused by the breach and whether conditions for compensation were fulfilled.

The Liechtenstein request to the EFTA Court was brought by the Administrative Court of the Principality of Liechtenstein (*'Verwaltungsbeschwerdeinstanz des Fürstentums Liechtenstein'*). The request, E-2/01, raised, in essence, the question whether the EEA provisions on freedom of establishment are to be interpreted so as to preclude national rules according to which at least one board member of a legal entity must be permanently residing in Liechtenstein.

Of the Norwegian requests, the first one was brought by the City Court of Oslo (*'Oslo byrett'*), Case E-6/01, the second one by Gulating Court of Appeal (*'Gulating Lagmannsrett'*), Case E-7/01 and the third case, E-8/01, came from Borgarting Court of Appeal (*'Borgartings Lagmansrett'*). Case E-6/01 concerned, in essence, the powers of the EEA Joint Committee to adopt the Joint Statement of 26 March 1999 permitting Norway to adopt derogations from the *Substances Directive* (67/548/EEC). The Directive is referred to in point 1 of Chapter XV of Annex II to the EEA Agreement. The case further raised the issue of the EFTA Court's jurisdiction with regard to the powers of the Joint Committee. This is the second time that the Norwegian national court has brought questions to the EFTA Court in the same national proceedings. The previous case was Case E-2/00 referred to the EFTA Court in 2000 in which the EFTA Court was asked to rule on

the scope of, *inter alia*, the above mentioned Joint Statement.

The request in Case E-7/01 from Gulating Court of Appeal concerns an agreement on exclusive delivery rights of motor fuels and lubricants to a petrol station. The agreement also contained a right for the supplier to buy or lease the petrol station in the case of the bankruptcy in the operating company. The case raises issues regarding Article 53 of the EEA Agreement, including application of block exemptions.

The request by Borgarting Court of Appeal in Case E-8/01 raises questions with regard to the application of Article 54 of the EEA Agreement in respect of cooperation agreements concerning the distribution of wine and spirits in Norway.

The direct action brought by the Authority in Case E-5/01, concerned the alleged failure by Liechtenstein to adopt, within the time-limit prescribed, the national provisions necessary to comply with certain provisions of the *Legal Expenses Insurance Directive* (87/344/EEC). The Directive is referred to at point 6 of Annex IX to the EEA Agreement. In its judgment of 5 December 2001, the EFTA Court upheld the Authority's plea. The judgment is available on the EFTA Court's web site http://www.efta.int/docs/Court/Publications/Decision/index.htm.

Finally, on 5 April 2001, the EFTA Court delivered its Judgment in a direct action that the Authority had brought against Norway in April 2000, Case E-3/00. The Authority had brought the action because it considered that, by applying its legislation so as to prohibit the import and marketing in Norway of fortified corn flakes, Norway was in breach of Article 11 EEA. In its judgment the EFTA Court upheld the Authority's plea. The judgment is available at the web site mentioned above.

7.2 CASES BEFORE THE EUROPEAN COURT OF JUSTICE

During the year 2001, the Authority lodged observations in nine cases before the Court of Justice of the European Communities. All nine cases follow requests from national courts asking the Court of Justice to interpret provisions of Community law that are identical in substance to EEA provisions. All nine cases are still pending before the Court of Justice. The nine cases are:

In Case C-373/00 *Adolph Truley*, the referring national court essentially seeks an interpretation by the Court of Justice of what should be considered "management

Legal and Executive Affairs:
Behind from left to right:
Elisabethann Wright,
Per Andreas Bjørgan,
Bjarnveig Eiríksdóttir,
Hanne Camilla Zimmer,
Dóra Sif Tynes
In front from left to right:
Lorraine Deakin,
Director Peter Dyrberg,
Matthildur Steinsdóttir
Not present:
Michael Sanchez Rydelski

supervision" within Article 1(b) of Directive 93/36/EEC (the public procurement supplies Directive).

Case C-422/00 *Caballero* v *Fogasa* concerns interpretation of Directive 80/987/EEC (the insolvency Directive). In essence, the question before the court is whether a claim for remuneration in the event of unfair dismissal is covered by Article 1(1) of the Directive and in particular, whether the Directive calls for a determination of such a claim by a particular judicial or administrative procedure.

C-436/00 *X* and *Y* v *Riksskatteverket* raises, in essence, the question whether it is compatible with the freedom of establishment and the free movement of capital for Swedish tax law to provide that a natural person who transfers shares to a Swedish limited company with no foreign owners can be given a tax credit whereas taxation is immediate if the Swedish company has foreign owners or if the transfer is to a foreign registered company.

In Case C-447/00 *Holto*, the referring national court seeks the view of the Court of Justice as to whether, under Article 43 EC (formerly Article 52 of the EC Treaty), a company is "established" in a Member State if it merely has its seat in that State but does not carry on any business there.

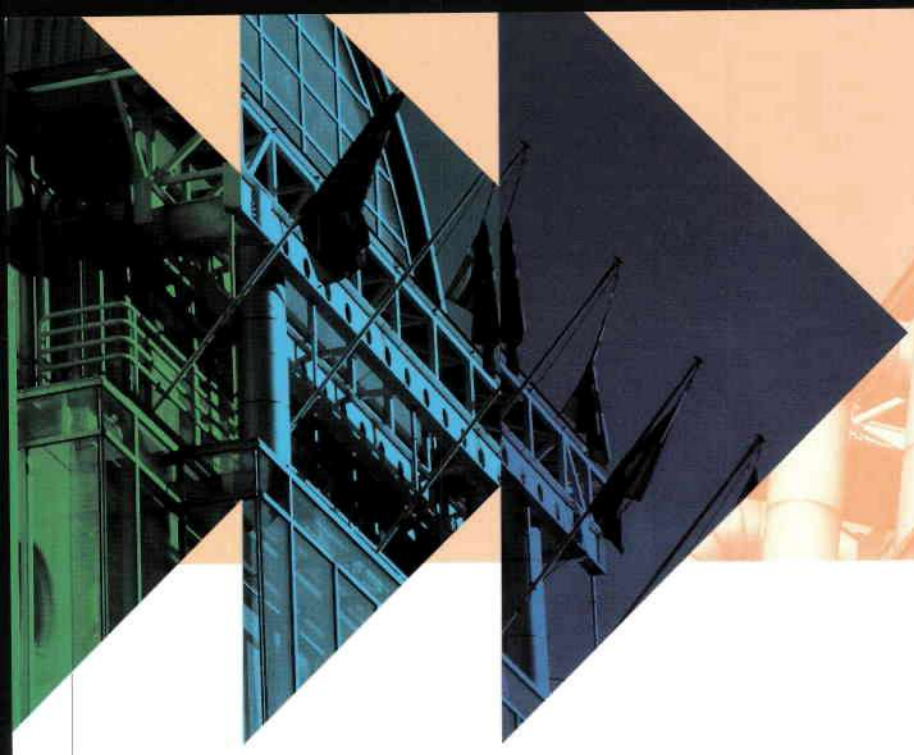
Case C-453/00 *Kühne* raises the question whether the principle of loyalty enshrined in Article 10 EC requires an administrative body to reopen a decision which has become final and which subsequently appears to be wrong in the light of a subsequent ruling from the Court of Justice.

Case C-206/01 *Arsenal Football Club* concerns the question whether it is a valid defence against trade mark infringement that the use complained of is non-trade mark use. The question has arisen in a situation where an independent trader sells Arsenal memorabilia bearing the Arsenal sign, while indicating that the goods do not originate from Arsenal.

In Case C-223/01 *AstraZenica*, the referring national court seeks the view of the Court of Justice as to whether an innovative medicinal product must be on the market in an EEA State when the producers of generic products rely on marketing authorisation for that product in seeking approval for their own products.

Case C-297/01 *Sicilcassa SpA* concerns the interpretation of Article 87 EC (formerly Article 92 of the EC Treaty) in the context of pending insolvency proceedings before the referring national court. In essence, the question before the court is whether "transitional rules", which revoked the Italian Law No 95/1979 ("special insolvency law"), but, at the same time, prolonged its applicability to insolvency cases already initiated, constitutes new State aid.

In Case C-300/01 *Doris Salzmann* the referring court seeks the view of the Court of Justice as to whether a prior authorisation delivered by the national administration to acquire non-built land designated as building land is compatible with the free movement of capital, even where the acquisition has no cross-border character.



Annexes

Annex 1 EFTA Surveillance Authority

Division of responsibilities among College Members*

KNUT ALMESTAD *(PRESIDENT)*	HANNES HAFSTEIN	BERND HAMMERMANN
		Free movement of persons
General policies	Free movement of goods (incl. Technical barriers to trade, other trade matters, veterinary and phytosanitary matters)	Social security
		Mutual recognition of diplomas
Co-ordination		Right of establishment
		Financial services
External relations		Audiovisual, telecommunication and postal services
	Public procurement	
Administration		Transport
		Capital movements
Legal & Executive Affairs	Competition	Social policies
		Consumer protection
State aid and monopolies		Environment
		Company law

* The composition of College and the division of the responsibilities among College Members have changed as of 1 January 2002; please see the EFTA Surveillance Authority's homepage, www.efta.int.

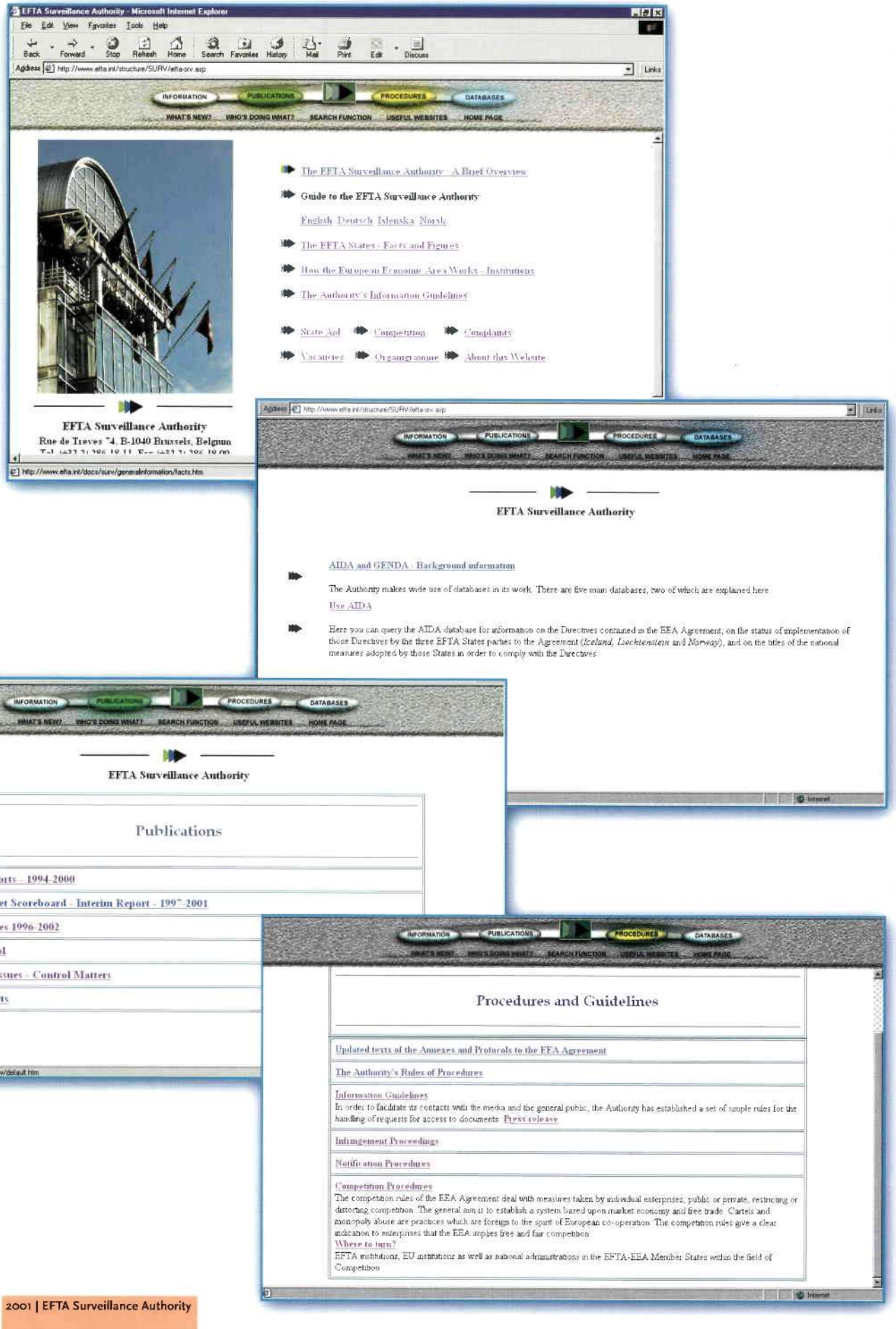
Annex 2 | EFTA Surveillance Authority

Distribution of functions between Directorates

GOODS DIRECTORATE	PERSONS, SERVICES AND CAPITAL MOVEMENTS DIRECTORATE	COMPETITION AND STATE AID DIRECTORATE	LEGAL & EXECUTIVE AFFAIRS	ADMINISTRATION
GENERAL TRADE PROVISIONS, including: • quantitative restrictions and measures having equivalent effect • discriminatory taxaction	FREE MOVEMENT OF PERSONS, including: • free movement of workers • mutual recognition of professional qualifications • right of establishment • social security	COMPETITION RULES APPLICABLE TO ENTERPRISES • prohibition of cartels • prohibition of abuse of dominant position • control of concentrations	REPRESENTING THE AUTHORITY IN COURT PROCEEDINGS	HUMAN RESOURCES
HARMONISING DIRECTIVES, i.a. in the fields of: • motor vehicles • foodstuffs • pharmaceuticals • chemicals • fertilisers • construction products • toys • product safety including information procedures	FREE MOVEMENT OF SERVICES, including: • financial services • banking • securities trading • insurance • audiovisual, tele-communication and postal services • transport	STATE AID • review of existing aid • examination of new aid measures	FORMAL PART OF INFRINGEMENT PROCEEDINGS	BUDGET PLANNING
VETERINARY AND PHYTOSANITARY MATTERS	CAPITAL MOVEMENTS	MONOPOLIES	ADVICE ON LEGAL QUESTIONS	FINANCIAL CONTROL
INTELLECTUAL PROPERTY	SOCIAL POLICIES	RULES ON PUBLIC UNDERTAKINGS	JURIST LINGUIST SERVICES	INFORMATION TECHNOLOGY
ENERGY	CONSUMER PROTECTION		MEETINGS OF THE COLLEGE ORAL, WRITTEN AND DELEGATION PROCEDURES	STAFF SOCIAL SECURITY
PUBLIC PROCUREMENT	ENVIRONMENT		FOLLOW-UP OF COLLEGE DECISIONS	OFFICE FACILITIES
	COMPANY LAW		PUBLICATION	PROCUREMENT
			LIBRARY	REGISTRY
			PRESS AND INFORMATION	
			VISITOR GROUPS	

Annex 3 | EFTA Surveillance Authority

Overview of the EFTA Surveillance Authority's homepage



The list "Implementation status of directives" (previously Annex 4), of which the elements shown here are merely extracts, is available on the Authority's homepage www.efta.int under the headlines "Publications", "Annual Reports - 1994 - 2000", "Annual Report 2001". Paper copies are available upon request.

IMPLEMENTATION STATUS OF DIRECTIVES

Control Matters				ISL	LIE	NOR
Vet. checks - intra Com. internal market	Dir.	89/662	Annex I,I,1,1,1		PWH	
Vet. checks - intra Com. internal market	Dir.	92/67	Annex I,I,1,1,1		PWH	
Vet. and zoo checks -intra Com. trade live animals	Dir.	90/425	Annex I,I,1,1,2		PWH	
Vet. and zoo checks -intra Com. trade live animals	Dir.	92/60	Annex I,I,1,1,2		PWH	
Mutual assistance	Dir.	89/608	Annex I,I,1,1,3	PWH	PWH	
Third country checks	Dir.	97/78	Annex I,I,1,1,4		PWH	
Vet. checks - animals third countries	Dir.	91/496	Annex I,I,1,1,5		PWH	
Vet. checks on animals third countries	Dir.	96/43	Annex I,I,1,1,8		PWH	
Identification/reg. of animals	Dir.	92/102	Annex I,I,1,1,7	PWH	PWH	
Financing of vet. inspections and control	Dir.	85/73	Annex I,I,1,1,8		PWH	
Financing veterinary inspections	Dir.	97/79	Annex I,I,1,1,8		PWH	
Certification of animal products	Dir.	96/93	Annex I,I,1,1,9	PWH	PWH	
BSE	Dir.	1999/881	Annex I,I,1,2,64	PWH	PWH	NNN

Zootechnics				ISL	LIE	NOR
Zootechnics - pure breed bovines	Dir.	77/504	Annex I,I,2,1,1	PWH	PWH	
Zootechnics - pure breed bovines	Dir.	79/268	Annex I,I,2,1,1	PWH	PWH	
Zootechnics - pure breed bovines	Dir.	85/586	Annex I,I,2,1,1	PWH	PWH	
Zootechnics - pure breed bovines	Dir.	94/28	Annex I,I,2,1,1	PWH	PWH	
Zootechnical standards for breeding pigs	Dir.	88/661	Annex I,I,2,1,2	PWH	PWH	
Zootechnics - pure breeding sheep and goats	Dir.	89/361	Annex I,I,2,1,3	PWH	PWH	
Zootechnics - intra Com. trade equidae	Dir.	90/427	Annex I,I,2,1,4	PWH	PWH	
Zootechnics - equine competitions	Dir.	90/428	Annex I,I,2,1,5	PWH	PWH	
Zootechnics - pure breed animals	Dir.	91/174	Annex I,I,2,1,6	PWH	PWH	
Acceptance of pure bred bovines for breeding	Dir.	87/328	Annex I,I,2,2,5	PWH	PWH	
Zootechnics - pure breeding pigs	Dir.	90/118	Annex I,I,2,2,14	PWH	PWH	
Zootechnics - hybrid pigs	Dir.	90/119	Annex I,I,2,2,15	PWH	PWH	

Control measures - notification of disease				ISL	LIE	NOR
Control of foot and mouth disease (FMD)	Dir.	85/511	Annex I,I,3,1,1	PWH	PWH	
Control of foot and mouth disease (FMD)	Dir.	90/423	Annex I,I,3,1,2	PWH	PWH	
Control of classical swine fever (CSF)	Dir.	80/1274	Annex I,I,3,1,3	PWH	PWH	
Control of classical swine fever (CSF)	Dir.	80/217	Annex I,I,3,1,3	PWH	PWH	
Control of classical swine fever (CSF)	Dir.	81/476	Annex I,I,3,1,3	PWH	PWH	
Control of classical swine fever (CSF)	Dir.	84/645	Annex I,I,3,1,3	PWH	PWH	
Control of classical swine fever (CSF)	Dir.	87/486	Annex I,I,3,1,3	PWH	PWH	

Meaning of shades:

No duty to implement

Partial implementation

Full implementation notified*

Non implementation

(*) Does not include Directives which the EFTA States have notified as fully implemented, but which the Authority deems not to have been implemented, or to have been only partially implemented.

Meaning of abbreviations:

NNN: No measures necessary
PRE: Pre Article 31 letter
TRP: Transition period
LFN: Letter of formal notice
PWH: Permanent derogation for the whole act
RDO: Reasoned opinion
EFC: Referral to EFTA Court
SPA: Specific adaptation

(*) Does not include Directives which the EFTA States have notified as fully implemented, but which the Authority deems not to have been implemented, or to have been only partially implemented.

Annex 4 EFTA Surveillance Authority

A comparative list of applicable notices adopted by the European Commission and the Authority in the field of competition

Topic	EFTA Surveillance Authority	European Commission
Vertical agreements	Guidelines on vertical restraints Adopted 25.07.2001 (not yet published)	Guidelines on vertical restraints *OJ C 291, 13.10.2000, p. 1*
Horizontal agreements	Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal co-operation agreements Adopted 06.12.2001 (not yet published)	Guidelines on the applicability of Article 81 to horizontal co-operation agreements *OJ C 3, 6.1.2001, p. 2*
Motor vehicle distribution and servicing agreements	Notice concerning the act referred to in point 4 of Annex XIV to the EEA Agreement (Reg. (EEC) No 123/85) on the application of Article 53(3) of the EEA Agreement to certain categories of motor vehicle distribution and servicing agreements *OJ L 153, 18.6.1994, p. 20 and EEA Supplement to the OJ No 15, 18.6.1994, p. 19*	Notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) to certain categories of motor vehicle distribution and servicing agreements *OJ C 17, 18.1.1985, p. 4*
	Notice clarifying the activities of motor vehicle intermediaries *OJ L 186, 21.7.1994, p. 70 and EEA Supplement to the OJ No 22, 21.7.1994, p. 18*	Notice clarifying the activities of motor vehicle intermediaries *OJ C 329, 18.12.1991, p. 30*
Imports from third countries	Notice concerning imports into the territory covered by the EEA Agreement of third countries' goods falling within the scope of the EEA Agreement *OJ L 153, 18.6.1994, p. 29 and EEA Supplement to the OJ No 15, 18.6.1994, p. 28*	Notice concerning imports into the Community of Japanese goods falling within the scope of the Rome Treaty *OJ C 111, 21.10.1972, p. 13*
Subcontracting agreements	Notice of the EFTA Surveillance Authority concerning its assessment of certain subcontracting agreements in relation to Article 53(1) of the EEA Agreement *OJ L 153, 18.6.1994, p. 30 and EEA Supplement to the OJ No 15, 18.6.1994, p. 29*	Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85(1) of the EEC Treaty *OJ C 1, 3.1.1979, p. 2*
Agreements of minor importance	Not adopted	Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) *OJ C 368, 22.12.2001, p. 13*
Definition of the relevant market	Notice on the definition of the relevant market for the purpose of competition law within the EEA *OJ L 200, 16.7.1998, p. 48 and EEA Supplement to the OJ No 28, 16.7.1998, p. 3*	Notice on the definition of the relevant market for the purposes of Community competition law *OJ C 372, 9.12.1997, p. 5*
Cross-border credit transfers	Notice on the application of the EEA competition rules to cross-border credit transfers *OJ C 301, 2.10.1997, p. 7 and EEA Supplement to the OJ No 41, 2.10.1997, p. 43*	Notice on the application of the EC competition rules to cross-border credit transfers *OJ C 251, 27.9.1995, p. 3*

Topic	EFTA Surveillance Authority	European Commission
Access to the file	Not adopted	Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 *OJ C 23, 23.1.1997, p. 3*
Fines	Notice on the non-imposition or reduction of fines in cartel cases *OJ C 282, 18.9.1997, p. 8 and EEA Supplement to the OJ No 39, 18.9.1997, p. 1*	Notice on the non-imposition or reduction of fines in cartel cases *OJ C 207, 18.7.1996, p. 4*
	Not adopted	Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty *OJ C 9, 14.7.1998, p. 3*
Cooperation with national courts	Notice on cooperation between national courts and the EFTA Surveillance Authority in applying Articles 53 and 54 of the EEA Agreement *OJ C 112, 4.5.1995, p. 7 and EEA Supplement to the OJ No 16, 4.5.1995, p. 1*	Notice on co-operation between national courts and the Commission in applying Articles 85 and 86 of the EEC Treaty *OJ C 39, 13.2.1993, p. 6*
Cooperation with national competition authorities	Notice on cooperation between national competition authorities and the EFTA Surveillance Authority in handling cases falling within the scope of Articles 53 and 54 of the EEA Agreement *OJ C 307, 12.12.2000, p. 6 and EEA Supplement to the OJ No 61, 12.12.2000, p. 5*	Notice on co-operation between national competition authorities and the Commission in handling cases falling within the scope of Articles 85 or 86 of the EC Treaty *OJ C 313, 15.10.1997, p. 3*
Postal sector	Not adopted	Notice on the application of the competition rules to the postal sector and on the assessment of certain state measures relating to postal services *OJ C 39, 6.2.1998, p. 2*
Telecommunications	Guidelines on the application of EEA competition rules in the telecommunications sector *OJ L 153, 18.6.1994, p. 35 and EEA Supplement to the OJ No 15, 18.6.1994, p. 34*	Guidelines on the application of the EEC competition rules in the telecommunications sector *OJ C 233, 6.9.1991, p. 2*
	Not adopted	Notice on the application of the competition rules to access agreements in the telecommunications sector *OJ C 265, 22.8.1998, p. 2*
Aviation	Not adopted	Notice concerning procedures for communications to the Commission pursuant to Articles 4 and 5 of Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of Article 85(3) to certain categories of agreements, decisions and concerted practices concerning joint planning and co-ordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports *OJ C 177, 29.6.1993, p. 4*

Topic	EFTA Surveillance Authority	European Commission
Mergers and joint ventures	Not adopted	Notice on restrictions directly related and necessary to concentrations *OJ C 188, 4.7.2001, p. 5*
	Not adopted	Notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings *OJ C 66, 2.3.1998, p. 1*
	Not adopted	Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentration between undertakings *OJ C 66, 2.3.1998, p. 5*
	Not adopted	Notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings *OJ C 66, 2.3.1998, p. 14*
	Not adopted	Notice on the calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings *OJ C 66, 2.3.1998, p. 25*
	Not adopted	Notice concerning alignment of procedures for processing mergers under the ECSC and EC Treaties *OJ C 66, 2.3.1998, p. 36*
	Not adopted	Information on the assessment of full-function joint ventures pursuant to the competition rules of the European Community *OJ C 66, 2.3.1998, p. 38*
	Not adopted	Notice on simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 *OJ C 217, 29.7.2000, p. 32*
	Not adopted	Notice on remedies acceptable under Council Regulation (EEC) No 4069/89 and under Commission Regulation (EC) No 447/98 *OJ C 68, 2.3.2001, p. 3*

Annex 5 EFTA Surveillance Authority

A comparative list of notices adopted by the European Commission and the Authority in the field of State aid

Topic	EFTA Surveillance Authority	European Commission
Procedures		
General	*OJ L 231, 03.09.1994,* EEA Supplement 32 *Amended 06.12.95 OJ L 124, 23.05.1996,* EEA Supplement 23	Commission Communications and letters listed in points 2-7 and 10 of Annex XV to the EEA Agreement, relevant judgements of the European Court of Justice and the Commissions' practice.
Co-operation between national courts and the EFTA Surveillance Authority in the State aid field	*OJ L 274, 26.10.2000,* EEA Supplement 48	*OJ C 312, 23.11.95*
Rules on Horizontal Aid		
Aid to small and medium-sized enterprises (SMEs)	*OJ L 42, 13.02.1997,* EEA Supplement 7	*OJ C 213, 23.07.1996*
State Aid and Risk Capital	Adopted 30.10.2001 (308/01/COL) Not yet published	*OJ C 235, 21.08.2001*
Criteria for applying the accelerated clearance procedure	*OJ L 231, 03.09.1994,* EEA Supplement 32	*OJ C 213, 19.08.1992*
The de minimis rule and its application	*OJ L 245, 26.09.1996,* EEA Supplement 43	*OJ C 68, 06.03.1996*
Rules applicable to cases of cumulation of aid for different purposes	*OJ L 231, 03.09.1994,* EEA Supplement 32	*OJ C 3, 05.01.1985*
Aid for Research and Development	*OJ L 245, 26.09.1996,* EEA Supplement 43	*OJ C 45, 17.02.1996*
Aid for environmental protection	*OJ L 21, 24.01.2002,* EEA Supplement 6	*OJ C 37, 03.02.2001*
Aid for rescuing and restructuring firms in difficulty	*OJ L 274, 26.10.2000,* EEA Supplement 48	*OJ C 288, 09.10.1999*
State guarantees	*OJ L 274, 26.10.2000,* EEA Supplement 48	*OJ C 71, 11.03.2000*
Short-term export-credit insurance	*OJ L 120, 23.04.1998,* EEA Supplement 16 *OJ L 30, 31.01.2002,* EEA Supplement 7	*OJ C 281, 17.09.1997* *OJ C 217, 02.08.2001*

Topic	EFTA Surveillance Authority	European Commission
Measures related to direct business taxation	*OJ L 137, 08.06.2000,* EEA Supplement 26	*OJ C 384, 10.12.1998*
Aid to employment	*OJ L 124, 23.05.1996,* EEA Supplement 23	*OJ C 334, 12.12.1995*
Aid for training	*OJ L 137, 08.06.2000,* EEA Supplement 26	*OJ C 343, 11.11.1998*
Sale of land and buildings	*OJ L 137, 08.06.2000,* EEA Supplement 26	*OJ C 209, 10.07.1997*
Rules on State Ownership of Enterprises and on Aid to Public Enterprises		
Public authorities' holdings	*OJ L 231, 03.09.1994,* EEA Supplement 32	EC Bulletin 9-1984
Application of State aid provisions to public enterprises in the manufacturing sector	*OJ L 231, 03.09.1994,* EEA Supplement 32	*OJ C 307, 13.11.1993* *OJ L 254 , 12.10.1993*
Rules on Sectoral Aid		
Aid to the synthetic fibres industry	*OJ L 140, 13.06.1996,* EEA Supplement 25 *OJ C 307, 26.10.2000,* EEA Supplement 48 *OJ C 34, 07.02.2002,* EEA Supplement 8 *(prolongation of validity until 31.12.2002)*	*OJ C 94, 30.03.1996* *OJ C 24, 29.01.1999* *OJ C 368, 22.12.2001 (prolongation of validity until 31.12.2002)*
Aid to the motor vehicle industry	*OJ L 112, 11.5.2000,* EEA Supplement 21, Part 1 *OJ C 34, 07.02.2002,* EEA Supplement 8 *(prolongation of validity until 31.12.2002)*	*OJ C 279, 15.09.1997* *OJ C 368, 22.12.2001 (prolongation of validity until 31.12.2002)*
Aid to non-ECSC steel industries	*OJ L 231, 03.09.1994,* EEA Supplement 32	*OJ C 320, 13.12.1988*
Aid to maritime transport	*OJ L 316, 20.11.1997,* EEA Supplement 48	*OJ C 205, 05.07.1997*
Rules on Regional Aid		
National regional aid	*OJ L 111, 29.04.1999, EEA Supplement 18*	*OJ C 74, 10.03.1998*
Multisectoral framework on regional aid for large investment projects	*OJ L 111, 29.04.1999, EEA Supplement 18* *OJ C 34, 07.02.2002, EEA Supplement 8* *(prolongation of validity until 31.12.2002)*	*OJ C 107, 07.04.1998* *OJ C 368, 22.12.2001 (prolongation of validity until 31.12.2002)*

Topic	EFTA Surveillance Authority	European Commission
Specific rules		
General investment aid schemes	*OJ L 231, 03.09.1994, EEA Supplement 32*	Commission letter to the Member States: *SG(79) D/10478, 14.09.1979*
Aid to the aviation sector	*OJ L 124, 23.05.1996, EEA Supplement 23*	*OJ C 350, 10.12.1994*
Aid to shipbuilding granted as development assistance to a development country	*OJ L 135, 08.06.2000, EEA Supplement 26*	Commission letters to the Member States: *SG (89) D/311, 03.01.1989 and SG (97) D/4345, 10.06.1997* *OJ C 218, 18.07.1997*
Standardized annual reporting	*OJ L 231, 03.09.1994, EEA Supplement 32*	*Commission letter to the Member States: SG (95) D 20506, 02.08.1995*
Conversions between national currencies and EURO	*OJ L 231, 03.09.1994, EEA Supplement 32*	
Reference rate of interest	*OJ L 274, 26.10.2000, EEA Supplement 48*	*OJ C 273, 09.09.1997*

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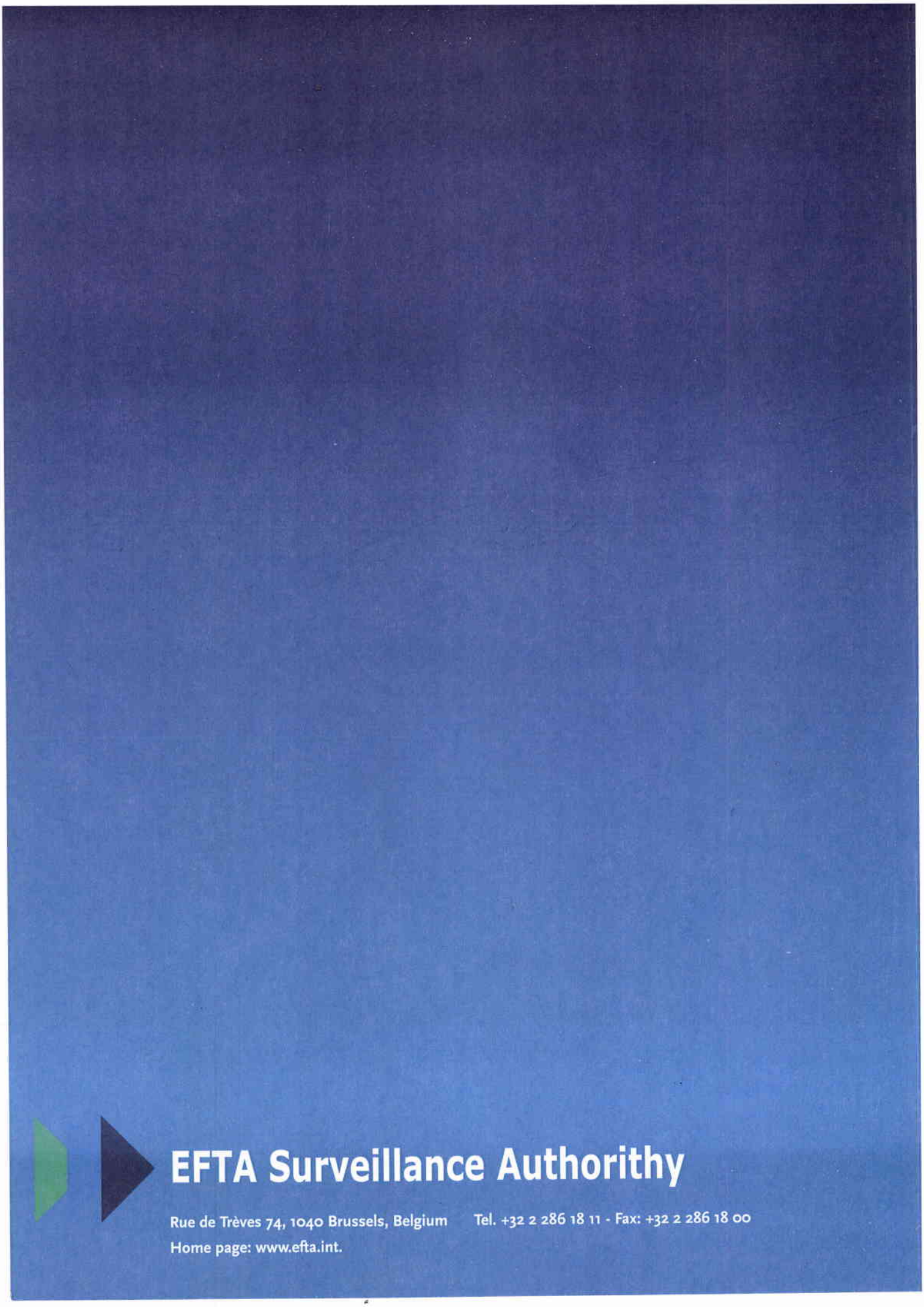

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