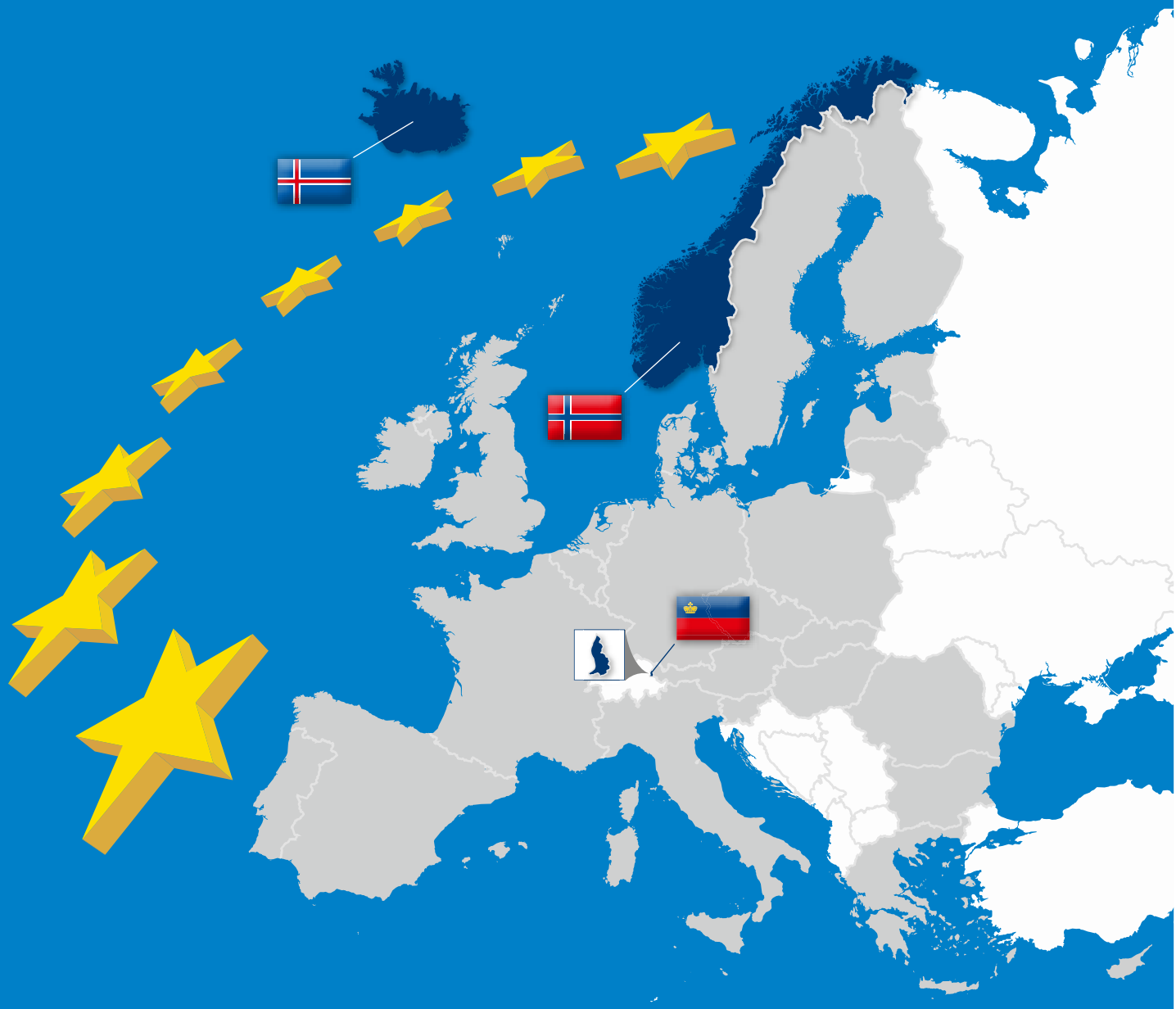
EFTA SURVEILLANCE AUTHORITY

Annual Report 2010



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Foreword

The year 2010 provided hope that the world's economic health is recovering. A shift was seen in the focus of governments, from economic stimuli to exit strategies and austerity measures. Trade between Iceland, Liechtenstein and Norway (the EFTA States) and the EU Member States is extensive. Trade with the European Union accounts for 70-80% of the exports/imports of the EFTA States, and continues to underline the importance of the EEA Agreement and a healthy internal market.

This Annual Report provides an overview of the work of the EFTA Surveillance Authority, in particular the developments in individual cases during 2010. With respect to the financial crisis in particular, the Authority has dealt with a number of cases regarding Iceland. During the year the Authority took important decisions, notably regarding Icesave, the entitlement of creditors to the assets of banks that existed before the economic crisis and, in addition, has opened six formal investigations in relation to state aid issues. A hope for 2011 is to finish as many of these issues as possible so that all parties may adopt a more forward-looking perspective.

The Authority took a major step in enforcing the EEA competition rules. In July the Authority imposed a fine of EUR 12.89 million on Posten Norge AS, having concluded that Posten Norge had infringed Article 54 of the EEA Agreement by abusing its dominant position in Norway between 2000 and 2006. The case is now pending before the EFTA Court.

During 2010, the Authority took important decisions regarding taxation issues in Liechtenstein. It concluded in two cases that the Liechtenstein Government had granted illegal state aid, which must be repaid to the Government. Both decisions have been challenged before the EFTA Court.

The Authority has, in addition, focused its work on pursuing the late implementation of regulations and directives by the EFTA States. The Internal Market Scoreboard to be published in March 2011 shows that the deficit for the late transposition of directives by the EFTA States is at 0.6%, representing the lowest average rate ever. Tribute should be paid to the EFTA States' governments on this achievement.

The number of pending cases before the Authority is currently around 500, as last year. However, the number of complaint cases increased, in particular against Iceland. Over the last years resources have been reallocated from administration to case handling, and contracts have been renegotiated to save money. This, together with the reduced surplus at the end of the year, has made it possible to propose a nominal zero growth for the Authority's 2011 budget. It is the second year in a row this has been achieved.

Ultimately, the successful operation of the EEA Agreement depends on the uniform implementation and application of the common rules in each of the 30 EEA States. A two-pillar system of supervision has been devised: the participating EFTA States are supervised by the EFTA Surveillance Authority, while the European Commission supervises in parallel the EU Member States. Respect for this basic feature of the EEA Agreement when new legislation is incorporated into it will contribute to its sustainability in the future.

Per Sanderud
President

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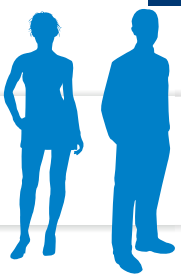

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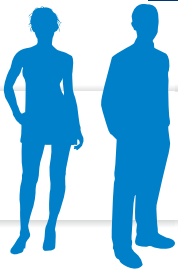

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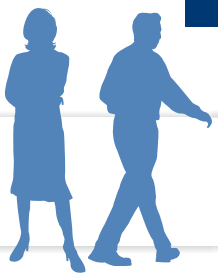
Chapter 1

Introduction



The EFTA Surveillance Authority monitors compliance with European Economic Area rules in Iceland, Liechtenstein and Norway, enabling them to participate in the European Internal Market

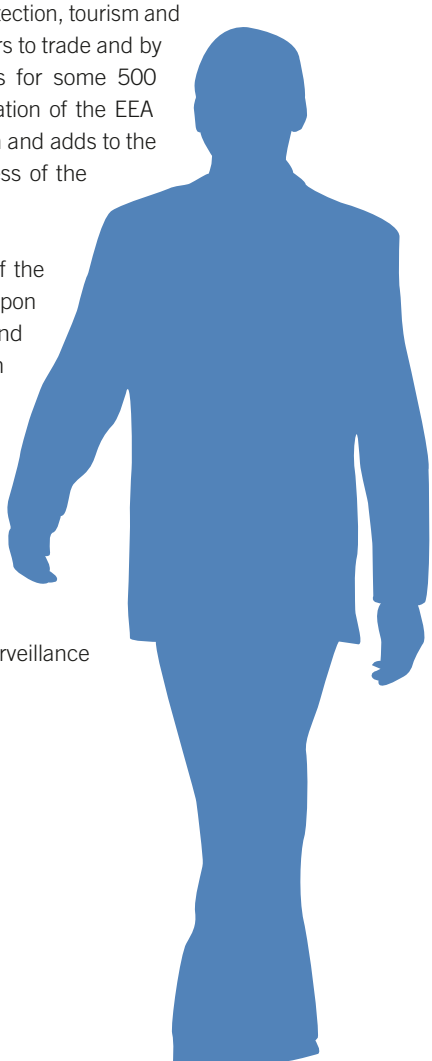
The European Economic Area

The European Economic Area (EEA) consists of the 27 Member States of the European Union (EU) and three European Free Trade Association (EFTA) States: Iceland, Liechtenstein and Norway. It was established by the EEA Agreement, an international agreement which enables the three EFTA states to participate fully in the European Internal (or Single) Market.

The purpose of the EEA Agreement is to guarantee, in all 30 EEA States, the free movement of goods, people, services and capital – "the four freedoms". As a result of the agreement, EC law on the four freedoms, state aid, and competition rules for undertakings, is incorporated into the domestic law of the participating EFTA States. All new relevant EC legislation is also introduced through the EEA Agreement so that it applies throughout the EEA, ensuring a uniform application of laws relating to the Internal Market.

The Agreement seeks to guarantee equal conditions of competition, and equal rights to participate in the Internal Market for citizens and economic operators in the EEA. It also provides for co-operation across the EEA in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture. By removing barriers to trade and by opening new opportunities for some 500 million Europeans, the creation of the EEA stimulates economic growth and adds to the international competitiveness of the EEA States.

The successful operation of the EEA Agreement depends upon uniform implementation and application of the common rules in each of the 30 EEA States. A two-pillar system of supervision has been devised: EU Member States are supervised by the European Commission; while the participating EFTA States are supervised by the EFTA Surveillance Authority.



The role of the EFTA Surveillance Authority – an overview

The EFTA Surveillance Authority ensures that the participating EFTA States (Iceland, Liechtenstein and Norway) respect their obligations under the EEA Agreement.

The Authority seeks to protect the rights of individuals and market participants who find their rights violated by rules or practices of the EFTA States or companies within those states. Such rules or practices may, for example, be discriminatory, impose unnecessary burdens on commercial activity, or constitute unlawful state aid. The Authority may in such cases initiate proceedings against the relevant EFTA State at the EFTA Court, seeking a change in the relevant rules or practices.

The Authority also enforces restrictions on state aid, assessing its compatibility with the functioning of the Internal Market. The Authority has the power to order repayment of unlawful state aid.

The Authority also ensures that companies operating in the EFTA States abide by the rules relating to competition. The Authority can investigate possible infringements of EEA provisions, either on its own initiative or on the basis of complaints. It can impose fines on individual undertakings and assess mergers between undertakings where certain thresholds are met.

In monitoring and enforcing the Agreement, the Authority has powers that correspond to those of the European Commission and there is close contact and co-operation between the Commission and the Authority. The two institutions oversee the application of the same laws in different parts of the EEA.

Organisation of the Authority

College

The Authority operates independently of the EFTA States and is based in Brussels. The Authority is led by a College which consists of three members, each appointed for a period of four years by the three participating EFTA States. Although College members are appointed by the Member States, they undertake their functions independently and free of political direction.

All decisions which formally bind the Authority are taken by the College, which usually meets once a week.

During 2010, the composition of the College was:
- Per Sanderud, President (Norway)
- Kurt Jäger (Liechtenstein), until 14 June
- Sabine Monauni-Tömördy (Liechtenstein), from 15 June
- Sverrir Haukur Gunnlaugsson (Iceland)

The College is served by four departments that form the staff of the Authority: the Internal Market Directorate, the Competition and State Aid Directorate, the Legal and Executive Affairs Department and the Administration.

Budget and accounts

The activities and operating expenses of the Authority are financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%). The Authority's annual budget was almost EUR 12.2 million in 2010, a decrease of 0.04% from 2009. The budget for 2011, adopted in December 2010, is a zero-growth budget.

On 23 June 2010, the Authority submitted its Financial Statement for the preceding financial year (2009), and the accompanying Audit Report by the EFTA Board of Auditors (EBOA), to the EFTA States. The audit certificate stated that:

a) the financial statements give a true and fair view of the financial position as at the end of the period and of the results of the operations for the period;
b) the financial statements were prepared in accordance with the stated accounting principles;
c) the accounting principles were applied on a basis consistent with that of the preceding financial year;
d) transactions were in accordance with the Financial Regulations and Rules of the Authority.

On 8 December 2010, the Authority's Financial Statement for the preceding year (2009) was approved by the EFTA States, and the Authority was discharged of its accounting responsibilities for that period.

The Authority's budgets for the reporting period, 2010, and 2011, adopted in 2010, break down as follows:

Total budget proposal	Budget 2011	Budget 2010
Chapter 1 - Salaries & benefits, allowances	9,318,290	9,311,645
Salaries	6,224,395	6,137,876
Benefits, allowances & turnover costs	3,093,895	3,173,770
Chapter 2 - Travel, Training, Representation	739,000	710,300
Chapter 3 - Office Accommodation	1,142,000	1,107,000
Chapter 4 - Supplies and Services	996,199	1,064,905
Total expenditure	12,195,489	12,193,851
Chapter 5 - Financial income and expenditure	-15,000	-25,000
Chapter 6 - Contributions and other income	-31,000	-19,818
Contributions from the EFTA States	12,149,489	12,149,033

Per Sanderud, President (Norway) – Sabine Monauni-Tömördy (Liechtenstein), from 15 June – Sverrir Haukur Gunnlaugsson (Iceland)

Personnel

In 2010, the Authority consisted of 61 personnel, including College Members and staff employed on fixed-term contracts. In addition there are national experts seconded from the EEA/EFTA States' public administrations, temporary officers and trainees. In 2010, 16 nationalities were represented amongst the staff, but approximately half come from the EFTA States. In accordance with the Authority's staff regulations established by the EFTA States, staff are employed for a three year period, normally renewable only once.

GLOSSARY OF TERMS

EFTA – the European Free Trade Association, an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway and Switzerland.

EEA – the European Economic Area, an area of economic co-operation that consists of the 27 EU Member States and three of the EFTA States: Iceland, Liechtenstein, Norway (Switzerland is not part of the EEA). Inside the EEA, the rights and obligations established by the Internal Market of the European Union are expanded to include the participating EFTA States.

EEA Agreement – The Agreement which creates the European Economic Area.

EEA EFTA States – The three EFTA States that participate in the EEA: Iceland, Liechtenstein and Norway.

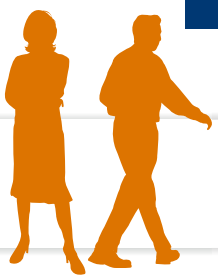
EFTA Surveillance Authority – The organisation which ensures that the three EEA EFTA States fulfil their legal obligations as stated in the EEA Agreement. Referred to as "the Authority" for the purposes of this report.

EFTA Court – The judicial body with jurisdiction with regard to the obligations of the EFTA States and the Authority pursuant to the EEA Agreement. The main functions of the Court consist of judgments in direct actions, in particular infringement cases brought by the Authority against the EFTA States, and advisory opinions in cases referred to it by the national courts of the EFTA States.

EEA Joint Committee – A committee of representatives of EU and EFTA States competent to incorporate legislation into the EEA Agreement.

Chapter 2

Internal Market



Tasks and activities in the field of Internal Market

The role of the EFTA Surveillance Authority's Internal Market Affairs Directorate (IMA) is to monitor the EFTA States in order to ensure that they effectively implement the Internal Market rules into their national legal orders and that they apply those rules correctly. In this context the Authority performs broadly the same tasks as the European Commission, and the two bodies work closely together.

The Internal Market is based on the rules concerning the four freedoms – the free movement of goods, people, services and capital – which have been at the centre of European integration ever since the signing of the Treaty of Rome in 1957. Those rules are further supplemented by a number of "horizontal provisions", covering areas such as health and safety at work, labour law, equal treatment of men and women, consumer protection, environment and company law. The Internal Market rules cover most areas relevant to commercial activities in the EEA.

The EFTA States are required to notify the Authority of the measures they adopt to implement directives and, if requested by the Authority, to inform the Authority of the incorporation of regulations into national law. If an EFTA State does not implement the EEA rules, the Authority will intervene and may initiate infringement proceedings against the EFTA State concerned, which may ultimately be adjudicated by the EFTA Court.

Where the Authority has information about national legislation or practices that may not comply with EEA rules, it may decide to initiate an investigation. This may be based on incorrect implementation of EEA rules, or where national rules or practices are incompatible with the rules. Such investigations can be initiated on the basis of the Authority's own surveillance of the EFTA States, or on the basis of a complaint. Anyone may submit a complaint to the Authority against any EFTA State that has failed to comply with its obligations under the EEA Agreement.

Problems can often be resolved through informal exchange of information and discussions between the Authority and the EFTA State concerned without a need to resort to formal infringement proceedings.

TYPES OF CASES HANDLED BY THE IMA DIRECTORATE

COMPLAINTS (COM)

Anyone may submit a complaint against an EFTA State. The Authority examines all complaints falling within its competence and passes on to the European Commission any complaints which fall within the competence of that body.

NON-NOTIFICATION OF IMPLEMENTATION OF DIRECTIVES (NON)

Non-notification cases are opened when an EFTA State has failed to adopt national measures to implement directives by the relevant compliance date.

NON-INCORPORATION OF REGULATIONS (REG)

Non-incorporation cases are opened when an EFTA State has failed to adopt national measures to incorporate regulations into its internal legal order by the relevant compliance date.

CONFORMITY ASSESSMENTS (CON)

Conformity assessment cases are opened on the Authority's own initiative in order to assess the conformity of national measures notified by an EFTA State with an EEA measure.

INCORRECT IMPLEMENTATION OR APPLICATION OF EEA RULES (INC)

Where the Authority has information that national legislation or practice may not be in compliance with EEA rules and decides to examine the issue further, a case is opened at the Authority's own initiative. Examples include incorrect implementation of EEA rules, national rules or practices that are incompatible with EEA rules, or misapplication of EEA rules.

DRAFT TECHNICAL REGULATIONS (DTR)

The Authority examines draft technical regulations which the EFTA States are obliged to notify to the Authority. Such regulations concern products and information society services.

MANAGEMENT TASKS (MTA)

Management tasks include various administrative tasks concerning, for example, assessments relating to food safety, the telecommunications sector, applications from the EFTA States for derogations from transport rules, reports on health and safety, and calculation and publication of thresholds in the field of public procurement. Included in this category of cases are eCom cases, which concern notifications to the Authority of draft regulatory decisions in the telecommunications sector by the national regulatory authorities in the EFTA States.

INSPECTIONS (INS)

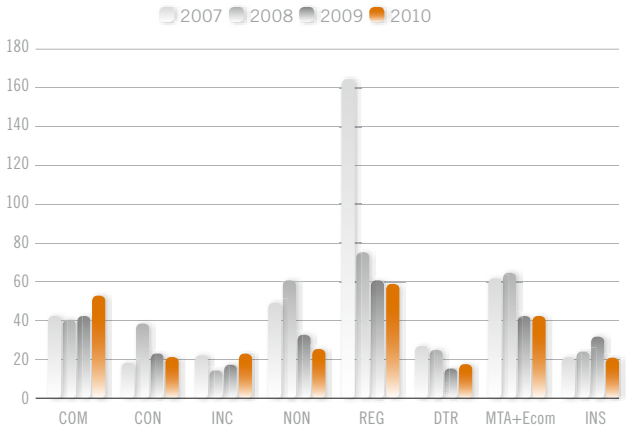
The Authority performs on-the-spot investigations to verify that the EFTA States are complying with their obligations relating to food safety and aviation and maritime security.

Overview of activities in 2010

New cases[1] in 2010

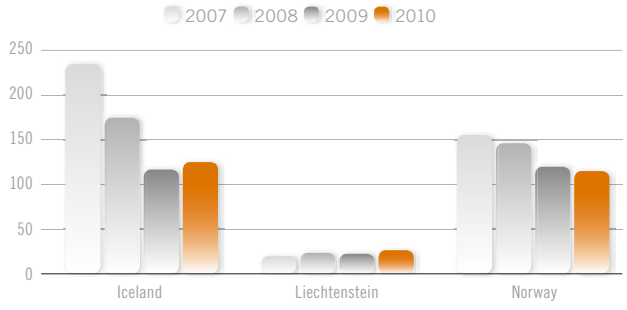
A total of 278 new cases were opened by IMA during 2010. The number of new cases thus remained at the same level as in 2009 (280 new cases).

Figure 1 New cases – case types



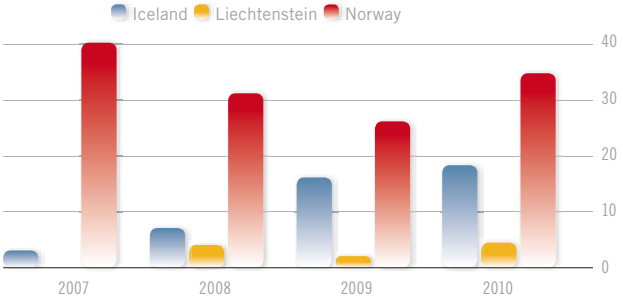
The majority of new cases opened in 2010 concerned Iceland (125) and Norway (116). The corresponding figure for Liechtenstein was 28[2].

Figure 2 New cases – States



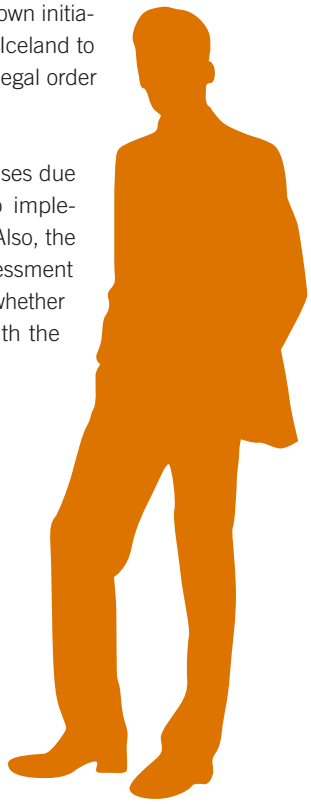
The number of new complaints increased by 10 compared to 2009, from 44 to 54. As in previous years, the majority of the new complaints – 33 or 61% – were directed against Norway; 18 complaints were received against Iceland and three against Liechtenstein.

Figure 3 New cases – complaints by State



The majority of new cases (139) in 2010 were opened on the Authority's own initiative in order to assess compliance of national legislation or practice with Internal Market rules. Such cases are opened by the Authority when it considers that EEA law may have been infringed. However, the cases do not necessarily lead the Authority to initiate formal infringement proceedings, as they might be solved informally or proven unfounded. Furthermore, cases are opened on the Authority's own initiative where Iceland or Norway has failed to incorporate EU regulations into national law. A large portion of the cases opened on the Authority's own initiative in 2010 related to the failure by Iceland to make regulations part of its internal legal order in a timely manner.

In 2010, the Authority opened 26 cases due to the EEA EFTA States' failure to implement directives in a timely manner. Also, the Authority initiated 21 conformity assessment cases during 2010 in order to assess whether national rules were in conformity with the EEA Agreement.



1 "Case" is defined here as an assessment relating to the implementation or application of EEA law, or to other relevant tasks registered during the year for the purpose of fulfilling IMA's objectives. A case does not, therefore, need to be related to an alleged infringement of EEA rules, but can also concern administrative tasks performed by the Authority.

2 The remaining 9 cases concerned either two or all three of the EFTA States or were complaints concerning EU Member States that were forwarded to the European Commission.

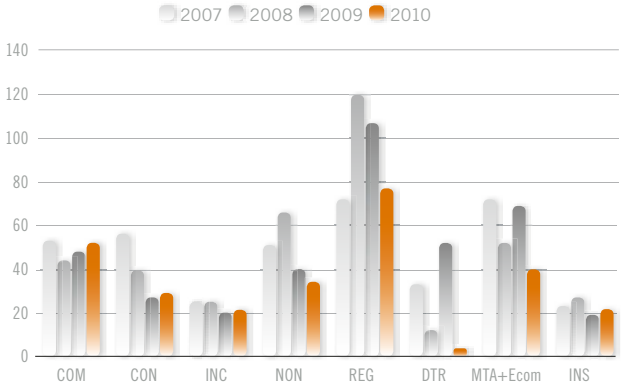
Chapter 2

Internal Market

Closed cases in 2010

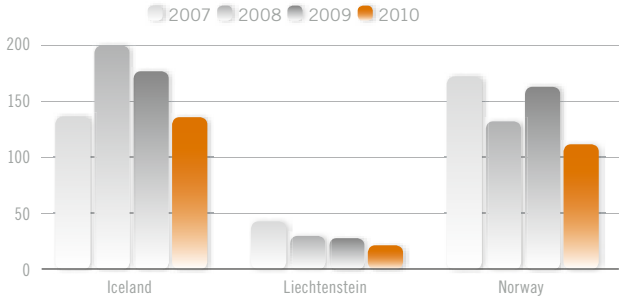
A total of 276 cases were closed during 2010, compared to 382 in 2009.

Figure 4 Closures – case types



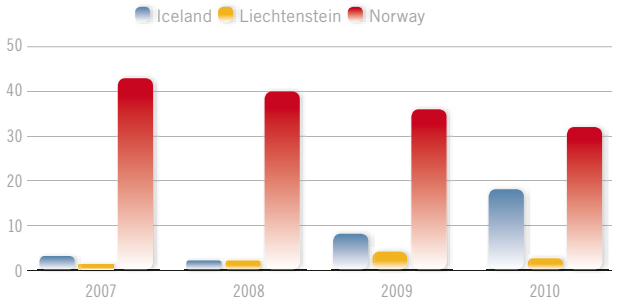
Of the cases that were closed, 131 concerned Iceland, 110 concerned Norway, and 22 concerned Liechtenstein.

Figure 5 Closures – States



A total of 53 complaint cases were closed in 2010.

Figure 6 Closures – complaints by State

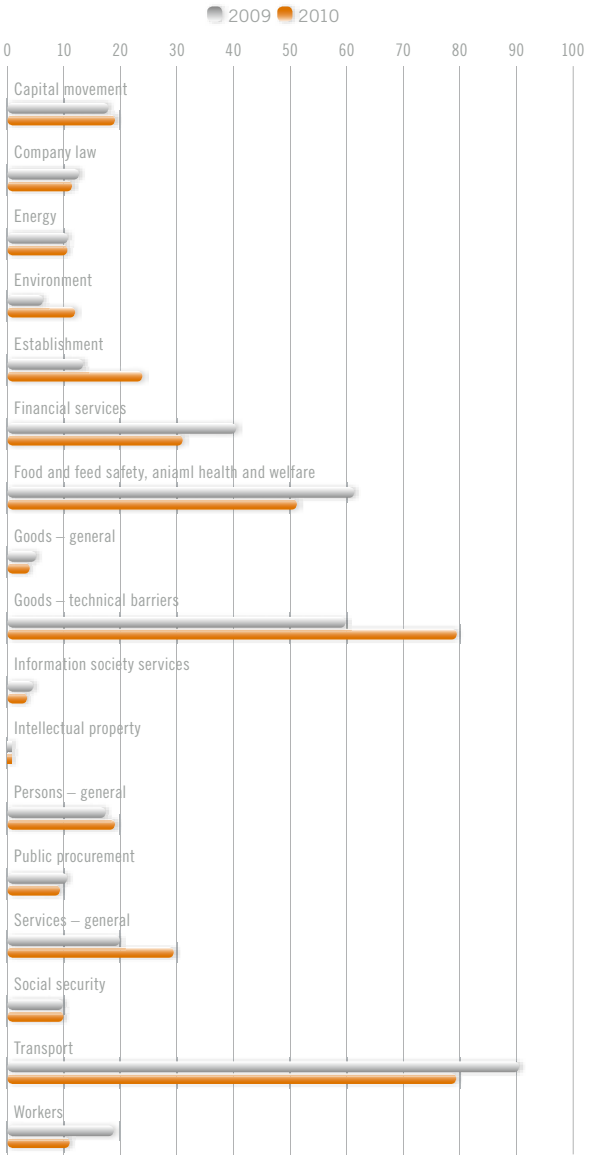


Pending cases

At the end of 2010, IMA had 417 cases under examination, an increase of three cases in comparison to the 414 cases pending at the end of 2009.

Out of the 417 cases pending at the end of 2010, 87 cases were based on complaints. That is one more case than at the end of 2009. The remaining 330 cases were initiated either to carry out tasks entrusted to IMA by EEA legislation (reporting tasks, examination of draft technical regulations, food safety and aviation security inspections), or on the Authority's own initiative to examine compliance by the EFTA States with their EEA obligations.

Figure 7 Pending cases – sectors

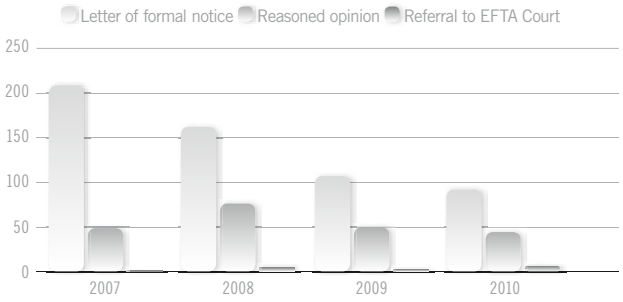


The sectors with the highest number of pending cases included transport (79), goods/technical barriers (79), food safety (52) and financial services (43). The number of pending cases decreased in the sectors of transport (12 cases less than in 2009) and food safety (10 cases less than in 2009), and increased most in the sector of goods/technical barriers (19 more cases).

Formal infringement proceedings

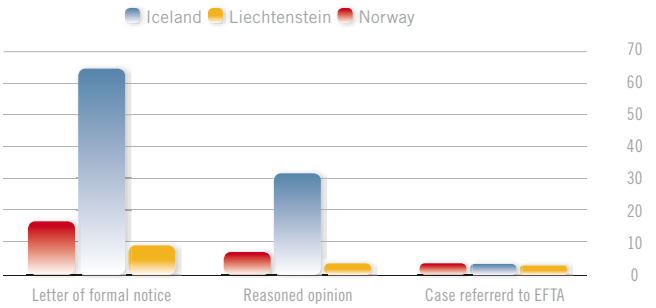
In 2010, there was a decrease of 9% (from 157 to 143) in the number of formal infringement actions (LFN, RDO, EFC) taken by the Authority as compared to 2009. The number of new infringement cases opened (by issuing letters of formal notice) decreased by 14% in 2010, and the number of reasoned opinions decreased by 8%. Eight cases were brought before the EFTA Court in 2010 in comparison to three in 2009.

Figure 8 Infringement actions



Of the new infringement cases initiated in 2010 by sending out letters of formal notice, 72% were directed against Iceland, 18% against Norway and 10% against Liechtenstein.

Figure 9 Cases subject to infringement actions by State in 2010



Failure by the EFTA States to implement EEA directives in a timely manner accounted for 24% of the new infringement proceedings launched by the Authority. That is less than in 2009 where the corresponding number was 30%. Although the number of new infringement proceedings concerning timely incorporation of EEA regulations by Iceland and Norway decreased from 2009 (by four cases), such cases still accounted for more than half of the new infringement proceedings launched by the Authority in 2010. Of the 45 reasoned opinions delivered in 2010, most related to the failure by Iceland to incorporate EEA regulations into national law.

Most infringement actions in 2010 concerned four sectors, namely transport (28), goods-technical barriers to trade (23), food safety (23) and company law (21). Infringement actions increased considerably in the sectors of company law (+18) and persons-general (+7), whereas infringement actions decreased significantly in the sectors of food safety (-23), financial services (-11) and social security (-8).

Selected infringement cases within the Internal Market field are described in individual reports in this chapter.

Delay in transposition of directives and regulations – a priority for the Authority

Implementation of directives

By the end of 2010, the total number of directives incorporated into the EEA Agreement was 1803. Iceland was required to implement 1565 of these directives, Liechtenstein 1514 and Norway 1724. At the end of the year, Iceland had notified full implementation of 98.3% of the directives. For Liechtenstein and Norway, the figures were 99% and 99.1%, respectively.

The Implementation Status Database available on the Authority's website[3] contains information on all the directives referred to in the Annexes to the EEA Agreement in respect of which the deadline for implementation has expired. It indicates the status of implementation (full, partial or no implementation) and the titles of the national implementing measures. The database is updated daily.

Twice a year the Authority publishes, in parallel with the European Commission, the Internal Market Scoreboard*. The Scoreboard indicates how the EFTA States perform with regard to the implementation of directives.

At the time of the Scoreboard, published in September 2010, the average implementation deficit of the EFTA States was 0.7%. Liechtenstein and Norway were below the interim target of 1.0% set by the European Council, whereas Iceland was slightly above it:

- Iceland 1.3%
- Liechtenstein 0.5%
- Norway 0.4%

* The latest Internal Market Scoreboard for the EFTA States was published in September 2010, showing the implementation status of directives as of 10 May 2010. The EFTA Scoreboard can be found at http://www.eftasurv.int/press--publications/scoreboards/internal-market-scoreboards/

The statistics on implementation do not reflect the quality of the implementing measures notified by the EFTA States, or how the measures are applied in practice. An assessment by the Authority can reveal problems concerning the conformity of notified measures with the EEA rules they are intended to implement. Approximately one third of the notified national implementing acts have been subject to a full conformity assessment by the Authority.

3 The Implementation Status Database is available at http://www.eftasurv.int/internal-market-affairs/implementation-status-/

Incorporation of regulations

Within the EU, regulations differ from directives in that the former automatically become part of the internal legal orders of the EU Member States and do not need to be incorporated into national law. That is not the case for regulations incorporated into the EEA Agreement, which must be incorporated into the internal legal orders of the EFTA States (Article 7 of the EEA Agreement). In Liechtenstein, under constitutional law, regulations automatically become part of the national legal order as soon as they are incorporated in the EEA Agreement. In Iceland and Norway, on the other hand, legal measures must be adopted in order to incorporate regulations "as such" into their internal legal orders. The Authority requests both countries to notify the national measures taken to incorporate regulations.

The situation regarding incorporation of regulations has been particularly problematic in Iceland due to translation backlog and delays in publication. During the past few years, both Iceland and Norway have demonstrated a significant improvement in their performance in incorporating regulations. By the end of 2010[4], Iceland had brought the number of unincorporated regulations down to 38 from 61 at the end of 2009, whereas the number of unincorporated regulations in Norway increased from 28 at the end of 2009 to 34 at the end of 2010[5].

Cases relating to delays in incorporation of regulations still represent a majority of all infringement proceedings initiated by the Authority. In 2010, 54% of new infringement proceedings concerned non-timely incorporation of regulations by Iceland. Similarly, most of the reasoned opinions sent in 2010 related to Iceland's failure to incorporate regulations into national law (27 out of a total of 45).

4 By the end of 2010, the total number of regulations incorporated into the EEA Agreement was 1062. Iceland was required to incorporate 967 of these regulations and Norway 1054.

5 These figures exclude regulations in the field of statistics.

Financial services

Complaints relating to the financial crisis

In October 2008, Iceland adopted several measures as a response to the financial crisis. The Authority has throughout 2010 dealt with a number of complaints about the steps taken by Iceland.

The Icelandic legislation was amended so that depositors would get priority over other general creditors in the case of the winding-up of a bank. Icelandic authorities were also empowered, under certain circumstances, to take over banks. Soon thereafter, the Icelandic authorities took control over the three major Icelandic banks Kaupthing, Glitnir and Landsbanki, which were all on the brink of bankruptcy. The banks were split into old and new state-owned entities. Domestic depositors were transferred to the new banks together with some of the assets. Non-domestic depositors and other general creditors were left in the old insolvent banks. In 2008 and 2009, the Authority received several complaints concerning these two groups of creditors. The Icelandic Government also adopted currency restrictions which resulted in two complaints from individuals.

Iceland obliged to pay Icesave depositors

The Icelandic bank Landsbanki had branches in the UK and the Netherlands taking deposits. When the bank collapsed, the Icelandic Deposit Guarantee Scheme never paid compensation to the depositors at these branches because of lack of funds. Instead the UK and the Dutch governments arranged for compensation to most of the depositors of the branches. On 26 May 2010, the Authority sent a letter of formal notice to Iceland for failure to comply with the Deposit Guarantee Directive (94/19/EC) and the general ban in Article 4 EEA on discrimination based on nationality.

The Icelandic Deposit Guarantee Scheme was never in a position to pay out EUR 20,000 to all the depositors at the Icelandic banks. This was the minimum amount under the Deposit Guarantee Directive in October 2008. In its letter of formal notice, the Authority pointed out that the Deposit Guarantee Directive imposes obligations of result on the EEA States to ensure that a deposit guarantee scheme is set up that is capable of guaranteeing deposits up to the minimum amount of the Deposit Guarantee Directive and that duly verified claims are paid within the deadline of the Directive. The differentiation in treatment of domestic and non-domestic depositors

protected by the Deposit Guarantee Directive constituted indirect discrimination based on nationality prohibited by Article 4 EEA.

After long negotiations, the Icelandic, UK and Dutch governments reached an agreement in December 2010 on how Iceland should compensate the UK and the Netherlands for payments made to the depositors at the branches. The agreement needs approval from the Icelandic Parliament. If a solution is reached, the Authority will consider whether or not to take further action.

Complaints from banks (general creditors)

The complaining banks lost a considerable sum of money as a result of the collapse of the Icelandic banks. They claimed that the prioritisation of the depositors and the splits into old and new banks were in breach of the free movement of capital and other rules of EEA law.

The complainants argued that depositors should be treated like any other unsecured creditors. In their view, the splits constituted, inter alia, unjustified discrimination and restrictions on the free movement of capital. The complaints also concerned lack of information and creditor involvement in the winding-up of the old banks.

On 15 December 2010, the Authority decided to close the complaint cases. The Authority found that depositors are in a particular situation not comparable to the one of general unsecured creditors. In the view of the Authority, the Icelandic measures did not restrict the free movement of capital. Because of compensation instruments from the new banks to the old banks, the Authority could not see that the general creditors suffered any loss as a result of the splits. However, the Authority would look further into the winding-up proceedings of the old banks to assess whether the creditors' rights to information and involvement have been respected.

Free movement of capital

Currency restrictions in Iceland

The Authority has closed two complaint cases against Iceland concerning the currency restrictions Iceland introduced in 2008.

The EEA Agreement lays down the general principle of free movement of capital. The EEA Agreement, however, provides that the EEA States may, under certain circumstances, take protective measures that restrict the free movement of capital. Such protective measures must be notified to the EEA Joint Committee. Iceland has notified its currency restrictions to the EEA Joint Committee.

In November 2010, the Authority closed two cases based on complaints received in 2009 since it had not been presented with any information that might suggest that the conditions for Iceland to apply the protective measures were not fulfilled.

Exit taxation in Norway in breach of EEA rules

The immediate taxation on companies, or shareholders of companies, that transfer their seat or assets and liabilities from Norway to another EEA State, is in breach of EEA rules. Capital gains on assets or shares of similar domestic transactions are not taxable until they are realised.

Under Norwegian law, when a company transfers its residence to another EEA State in order to relocate its activities, unrealised capital gains on its assets must be included in the taxable base of that financial year. Furthermore, a tax on unrealised capital gains on the company's shares must be paid by its shareholders. In contrast, capital gains on assets or shares of similar domestic transactions are not taxable until they are realised.

The Authority considers that such immediate, and potentially also higher, taxation penalises those companies that wish to leave Norway. It results in less favourable treatment compared to companies which relocate or merge within Norway. The same applies to shareholders of these companies. The rules in question are, therefore, likely to dissuade companies from exercising their right to freedom of establishment and, in certain circumstances, they also hinder the free movement of capital. As a result, these rules constitute unlawful restrictions according to EEA law.

In March 2010, the Authority issued a letter of formal notice to Norway in this case.

Ownership restrictions in stock exchanges

In December 2010, the Authority delivered a reasoned opinion to Norway for maintaining in force restrictions on ownership and voting rights in financial services infrastructure institutions.

Norwegian law provides for a general ban of ownership above 20% of the shares in stock exchanges and securities depositories.

There are three possibilities to exceed the 20% limitation. Those possibilities are, however, either limited to special circumstances and time-limited or only applicable to specific types of companies. Furthermore, Norwegian law restricts voting rights to 20% of the total votes or 30% of the votes represented at a shareholders' meeting.

In the Authority's view, these rules restrict the possibility of free investment in the stated types of undertakings and the possibilities to participate effectively in the management of a company or in its control. Therefore, the rules are incompatible with the EEA rules on free movement of capital and the freedom of establishment.

Deductibility of donations to charitable organisations

Both Liechtenstein and Norway have informed the Authority that from January 2011 donations to charitable organisations will be deductible regardless of where within the EEA the organisation is established.

In 2002, the Authority carried out an examination of the tax legislation in both Liechtenstein and Norway. One of the issues identified was that both States were limiting the tax deductibility of donations to domestic charitable organisations. In 2009, the Authority sent a reasoned opinion to Liechtenstein and Norway for making the deductibility of donations depend on residency requirements.

In 2010, both Liechtenstein and Norway decided to amend their legislation, which now no longer include the residency requirements.

Taxation of exchange fluctuations in Iceland

The Authority is assessing the merits of two complaints concerning the taxation of foreign exchange gain in Iceland.

The Authority received the complaints in April and June 2010. Under Icelandic law, increases in the value of foreign denominated assets within the tax year are subject to taxation irrespective of whether those gains have been realised by the taxpayer. In comparison, assets denominated in ISK are not subject to any comparable taxation. This is alleged to be incompatible with the EEA rules on free movement of capital.

The Authority is currently assessing the merits of the complaints.

Equal treatment

Survivor's pension; follow-up

The Authority has decided to take Norway to the EFTA Court due to its failure to comply with the judgment of the EFTA Court in the survivor's pension case.

In taking its decision, the Authority took account of the fact that three years have passed since the EFTA Court rendered its judgment in the case, and more than one year since the Authority delivered its reasoned opinion. The Authority takes the view that Norway has had more than sufficient time to take all the measures necessary to comply with the judgment.

In Case E-2/07 EFTA Surveillance Authority v Norway, the EFTA Court concluded that certain provisions relating to survivor's pension in the Public Service Pension Act breached EEA rules on equal treatment for men and women. In principle, this was due to the fact that survivor pension of a widower was subject to a reduction in relation to his other income. However, a widow in the same situation received her survivor's pension without such a reduction.

According to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA States are required to take the necessary measures to comply with the judgments of the EFTA Court. Although the Agreement does not lay down a period within which the measures to comply with a judgment must be taken, action must be commenced immediately and must be completed as soon as possible.

Due to the delay by the Norwegian authorities to make the necessary changes to the Public Service Pension Act, the Authority decided to open infringement procedures against Norway. A letter of formal notice was issued in November 2008, followed by a reasoned opinion in October 2009.

In January 2010, Norway finally adopted the amendments to the Public Service Pension Act. However, based on information from the Norwegian authorities the process of recalculating and paying out the correct pensions under the Act as amended will not be finalised until the end of 2011.

Therefore, notwithstanding the fact that Norway has adopted the necessary amendments to the Act, the Authority decided in December 2010, to bring the matter concerning Norway's failure to comply with the judgment to the EFTA Court.

Labour law

Labour clauses in public procurement

Public procurement authorities in Norway impose labour standards on foreign services which do not seem to comply with the Posting of Workers Directive.

Regulation No. 112/2008 on pay and working conditions in public contracts requires contracting authorities to include a clause in their contracts requiring that employees of contractors and possible sub-contractors who contribute directly to fulfilling the contract, receive wages and working conditions which are no worse than that provided by the relevant nationwide collective agreement, or what is otherwise normal for the relevant place and profession.

In July 2009, a letter of formal notice was issued in the case. The Authority takes the view that this requirement does not comply with the Posting of Workers Directive (96/71/EC) and the provision of the EEA Agreement relating to the freedom to provide services as interpreted by the Court of Justice of the European Union in Case C-346/06 Rüffert.

The Directive sets out the methods which EEA States may use should they chose to impose terms and conditions of employment within the meaning of the Directive on undertakings established in another EEA State providing services on their territory. This must either be done by fixing in law a general minimum wage or by making collective agreements generally binding to all undertakings in the relevant sector or geographical area.

In February 2010, the Norwegian Government presented a draft of proposed amendments to the Regulation. If amended, the Regulation would refer to pay and working conditions laid down in a collective agreement for construction sites in Norway which has been made generally binding under the General Application Act. Under this Act, provisions on pay and working conditions in collective agreements can be made generally binding.

In addition, the Regulation would include a reference to pay and working conditions in certain service sectors, such as the health and care sector. However, collective agreements in the relevant service sectors have not been made generally binding in the manner prescribed by the General Application Act. Instead, Regulation No. 112/2008 would refer to nationwide collective agreements without further specification. These proposals were the subject of a public hearing until 30 September 2010.

Depending on the outcome of the legislative process in Norway, the Authority will consider further steps.

Icelandic Posting Act

The Authority has decided to bring a case against Iceland before the EFTA Court for breach of its obligations arising from the Posting of Workers Directive and Article 36 of the EEA Agreement.

The Authority considers that the decision by Iceland to extend its legislation concerning the right of workers to receive wages during sick leave and the obligation imposed on employers to insure their workers against accidents at work, breaches the Posting of Workers Directive (96/71) and Article 36 EEA. The Directive pre-supposes that posted workers are in respect of these issues protected under their home state legislation.

The Authority was also of the opinion that certain administrative requirements imposed on the foreign firms were disproportionate and thus in breach of the principle of freedom to provide services under Article 36 EEA.

A bill amending the administrative requirements of the Posting Act was adopted by Parliament in June 2010. As a result of the changes to the administrative requirements of the Act, the Authority decided not to pursue this part of the case further.

The Authority submitted its application in the case to the EFTA Court in August 2010. It is expected that the Court will render its judgment in the case in 2011.

Icelandic law on transfer of undertakings amended

The Icelandic Parliament decided to amend the Act on the legal rights of employees in the event of transfer of undertakings following comments made by the Authority. The amendment aims to rectify an interpretation of the Act by the Supreme Court of Iceland, in respect of the liability for unpaid wages following a transfer of an undertaking.

The Directive on the Transfer of Undertakings (2001/23/EC) safeguards the rights of employees when an undertaking is transferred to a new employer. In such circumstances, the Directive provides that obligations owed by the transferred employees, arising from their contracts of employment, shall be transferred from their previous employer to the new employer. The Directive is implemented in Iceland by Act No. 72/2002 on the legal rights of employees in the event of transfer of undertakings.

Referring to case law of the Court of Justice of the European Union and of the EFTA Court, the Authority took the view that the Directive must be interpreted as meaning that after the date of transfer, the buyer automatically becomes liable for all obligations arising under employment contracts, including obligations relating to unpaid wages.

However, in a case from 2005 concerning an Icelandic daily newspaper, the Supreme Court of Iceland came to the opposite conclusion, and acquitted a new owner of the newspaper of claims for unpaid wages owed to one of its employees.

According to the Supreme Court's interpretation the liability for unpaid wages shall remain entirely with the transferor, even though it has been established that a transfer of an undertaking in the meaning of the Act has taken place.

This interpretation of the Act does not comply with the principle which the Directive aims to establish, i.e. to provide employees with protection in the event the undertaking employing them is transferred to a new employer. This objective is achieved by providing for the automatic transfer of rights and obligations arising from their contract of employment existing on the date of a transfer, from the transferor to the transferee. This principle applies also to obligations relating to unpaid wages owed by the transferor to his employees.

The Act No. 72/2002 did not explicitly exclude from its scope claims for unpaid wages. Therefore, it could be argued that the Act in fact complied with the Directive. However, due to the incorrect interpretation of the Act by the Supreme Court, a change in the legislation was necessary.

The Authority therefore requested the Icelandic authorities to amend the Act. In December 2009, a letter of formal notice was sent to Iceland, followed by a reasoned opinion in February 2010.

In July 2010, the Icelandic Parliament amended the Act No. 72/2002, based on the Authority's observations.

Social Security

Unlawful restrictions of unemployment benefits in Iceland and Norway

The Icelandic and Norwegian legislations foresee a certain minimum time of work in their territory of a migrant before taking into account periods of insurance or work in other EEA States for the entitlement to unemployment benefits.

These rules, however, are not in line with the Social Security Coordination Regulation 1408/71 in the EEA Agreement, where no specific duration of employment can be required prior to becoming unemployed. Otherwise, the consequence is that a person who has not fulfilled the minimum period and becomes involuntarily unemployed has neither access to benefits in Iceland or Norway nor in any other state of prior employment.

Therefore, the Authority started infringement proceedings against both states in December 2009. It stressed in reply to the Icelandic and Norwegian allegations that these rules are intended to fight social fraud that, according to EEA law, fraud can only be tackled on a case-by-case basis. A general rule that deprives migrants from justified benefits is disproportionate.

Access to health care outside Norway

Norway has changed its legislation to make it easier for patients to get reimbursement for ambulant medical treatment in another EEA State.

In December 2008, the Authority issued a letter of formal notice to Norway for restricting the access to medical treatment in another EEA State. The background for this letter was recent developments in the case law of the European Court of Justice and the EFTA Court and several complaints that were lodged with the Authority by patients in this respect.

According to these judgments, patients do not need any authorisation when they decide to get ambulant medical treatment in another EEA State, if the treatment is also covered by the Norwegian health care system. In this case they will get reimbursement according to Norwegian tariffs. The legislation did not, however, foresee such a reimbursement mechanism in Norway.

Therefore, new legislation entered into force on 1 January 2011. For hospital treatments abroad certain conditions have still to be fulfilled to get reimbursement. For emergency treatments abroad the European Health Insurance Card already facilitates reimbursements since 2004.

Public Procurement

Norwegian restrictions on public contracts for child care services cleared

Norwegian law allowing only non-profit organisations to tender for public contracts for child care services is not in breach of the EEA rules.

According to EEA law on public procurement, contracts for health care services are subject to the general principles of EEA law.

Based on the Court's case law in Case C-70/95 Sodemare, the Authority concluded in its decision of 21 June 2010 that the reservation of public contracts for child care services to non-profit organisations is not in breach of the EEA rules on public procurement, freedom of establishment and freedom to provide services.

Chapter 2

Internal Market

Freedom to provide services

The implementation of the Services Directive

The mutual evaluation process under the Services Directive is concluded. In January of 2011, the Authority published a summary report of the process.

The Services Directive entered into force in the EEA EFTA States on 1 May 2010. During the whole year, the EFTA States, together with the EU States, the Commission and the Authority have been participating in an innovative process of mutual evaluation. The mutual evaluation was based on the information that was submitted by the EEA States as part of their obligations under the Services Directive. It has given all the EEA States the possibility to evaluate and discuss the legislative and administrative changes that have been introduced following the adoption of the Services Directive. On the whole, the process has been considered very useful and interesting by all parties involved.

Norway and Liechtenstein had implemented the Services Directive by the end of 2010. Iceland, however, has still failed to do so. A letter of formal notice was sent to Iceland concerning this issue on 19 October 2010.

During the autumn of 2010, the Authority summarised the outcomes and held a public consultation on the mutual evaluation process. In January 2011, a summary report was presented by the Authority to the EFTA Standing Committee.

Storage of company accounts in Norway

The Authority is currently evaluating if Norway's revised rules on the storing of accounting information is in compliance with Directive 2006/123/EC on services in the Internal Market.

In March 2008, the Authority issued a reasoned opinion to Norway concerning its failure to allow companies to electronically store accounting information on servers located outside of Norway. In the spring of 2010 Norway amended its rules in order to make it easier for companies to store accounting information in other EEA States, particularly in the Nordic States.

The Authority is currently expecting a written explanation by Norway concerning the effect of the revised rules.

Restrictions on car rental services in Norway

The obligation for Norwegian residents to obtain permission for the temporary use of a foreign-registered rental car in Norway, and the strict time-limitations for such use, restrict the freedom to provide services.

Until recently, persons permanently resident in Norway who wished to temporarily use a foreign-registered rental car in Norway were required to obtain prior permission from the competent authorities. They could in principle only drive the vehicle between the border and their place of residence. In view of the Authority, such regime is in breach of the free movement of services. In March 2010, the Norwegian Government amended the rules, now allowing Norwegian residents to use a foreign-registered rental car tax-free in Norway for maximum 42 days a year.

The new legislation, however, requires that the user sends a notification to the competent authorities prior to the use of the vehicle. The Authority is currently investigating the compliance of that obligation with the rules on the free movement of services, especially in light of the Services Directive.

Liechtenstein restricts the freedom to provide employment services

By requiring undertakings established in other EEA States to provide a deposit that is twice as high as that for domestic undertakings, Liechtenstein is in breach of the EEA Agreement.

On 27 October 2010, the Authority sent a letter of formal notice to Liechtenstein concerning this requirement. The higher deposit requirement discriminates between foreign and domestic employment service providers, and thus goes against the principle of free movement of services.

The Authority is currently awaiting the reply of Liechtenstein to the letter of formal notice.

Electronic communications

Notifications under the Framework Directive for electronic communications

The Authority has scrutinised a number of draft measures notified by the EFTA States under the regulatory framework for electronic communications.

The Authority assessed a total of 10 notifications from the national regulatory authorities (NRAs) of the EFTA States during 2010, covering eight product markets. Of particular note were notifications from Norway and Iceland in the market for voice call termination on individual mobile networks; and from Norway in the market for mobile access and call origination.

Liechtenstein notified draft measures in the wholesale markets for call origination and call termination on the public telephone network at a fixed location.

The Authority issued comments in respect of a number of the proposed measures notified by the NRAs.

Free movement of goods

Ban on use of personal watercraft in breach of the EEA Agreement

By banning the use of personal watercraft, Norway is in breach of the principle of free movement of goods.

The Norwegian ban on the use of personal watercraft is similar to the ban which was previously in place in Sweden, and which was found by the Court of Justice of the European Communities to be in breach of the free movement of goods. A letter of formal notice was sent by the Authority to Norway in July 2009.

Currently the Authority pursues a dialogue with Norway in order to ensure that the Norwegian rules are modified to comply with the EEA Agreement. Norway will submit a proposal to the Authority by February 2011.

Procedure to prevent new technical barriers to trade

The Technical Standards and Regulations Directive (98/34/EC) establishes a notification procedure the aim of which is to provide transparency. This procedure prevents the creation of new, unjustified barriers to trade which can arise from the adoption of restrictive technical regulations.

According to the Directive, the EFTA States shall notify technical regulations in draft form to the Authority. Following the notification, there is a three month standstill period during which the Authority, the European Commission and other EEA States have time to examine the measures and issue comments if it appears that questions exist regarding the draft regulation's compatibility with the EEA Agreement.

In 2010, the Authority received only 19 notifications of draft technical regulations from the EFTA States. The Authority increased its activities in order to raise awareness of the procedure in the national administrations. Of the 19 notifications received in 2010, ten came from Norway eight came from Liechtenstein and one came from Iceland. Five of the notifications prompted the Authority to send comments. The Commission commented on four of the notifications. The deadline for four of the notifications had not expired at the time of writing.

The Authority received 817 notifications from the EU Member States, which were forwarded to it by the Commission.

Year	EFTA notifications	Comments from the Authority	EU notifications	Single coordinated communications
2000	19	3	751	0
2001	22	5	530	1
2002	49	4	508	1
2003	29	5	486	0
2004	37	10	557	1
2005	55	11	733	0
2006	23	6	668	1
2007	28	7	757	0
2008	25	6	601	1
2009	16	9	708	0
2010	19	5	817	0

Environment

Developments in the environmental sector

The Authority has had no high profile cases in the field of the environment this past year. But three issues of relevance illustrate the type of work undertaken.

Implementation of the Water Framework Directive

This past year, the Water Framework Directive has been in the process of being implemented in the EFTA States. In order to ensure a correct and swift implementation, the Authority has been in a constant dialogue with the EFTA States and offered its assistance to facilitate implementation.

Such an approach has proven fruitful and is an important feature of the approach taken by the Authority.

At the same time however, the Authority has carried out infringement proceedings against Iceland and Liechtenstein, as they have not carried out the implementation process in a timely fashion.

Environmental impact assessment

In the past year, the Authority received several complaints from citizens alleging breaches of the rules on environmental impact assessment. As a result, the Authority launched an investigation into the implementation of the Directives in this field, in order to identify potential structural problems.

This has led to the identification of shortcomings, which are being discussed with the three EFTA States. It is hoped that satisfactory solutions will be found in 2011.

Monitoring developments in the revised EU ETS

The EU Emission Trading Scheme (EU ETS), established by the Emission Trading Directive, has been developed as a cap and trade system aiming at reducing greenhouse gas emissions among large emitting companies within the EU. The EFTA States have participated in the EU ETS since 2008.

The EU has now revised the scheme in order to make it more efficient and more harmonised. This revised ETS will apply as of 2013. Moreover, the ETS will be extended to aviation as of 2012. But many key practical issues still need to be agreed upon between the EU Member States and the Commission.

During the past year, the Authority has been actively monitoring the discussions at EU level. The objective is to be ready for any tasks the Authority might be entrusted with under the revised scheme and be in a position to assist the EFTA States in the implementation.

Energy

Internal Market in energy and energy efficiency

The EFTA States are fully part of the Internal Market for energy in Europe. It is thus of key importance that they correctly implement the applicable EEA law in this area.

In the context of its scrutiny of the implementation of EEA energy legislation in the EFTA States, the Authority has focused on the Natural Gas Directive and on the Hydrocarbons Licensing Directive. This has led to infringement proceedings against Norway and Iceland.

Concerning electricity, the Authority has now started a dialogue with Norway, in particular concerning the regime for cross-border interconnectors. It is hoped that this will allow for a clarification of the licensing regime and a system which fully complies with the EEA Agreement.

In parallel, the Authority has carried out a conformity assessment of the implementation of the Directive on energy performance of buildings by Norway, in particular concerning energy certification of buildings. This has allowed the identification of several shortcomings in the implementation of that Directive, leading the Authority to initiate infringement proceedings in July 2010.

Transport

Maritime security inspections

The main objective of the EU maritime security legislation is to introduce and implement measures aimed at enhancing the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats of intentional unlawful acts. By the incorporation of this maritime legislation into the Agreement on the EEA, the legislation is also applicable in the EFTA States, with the exclusion of Liechtenstein which is a land-locked country.

A key component of the acts within the field of maritime security is the organisation of inspections by the European Commission.

For the EFTA States, these inspections are carried out by the EFTA Surveillance Authority.

The Authority started conducting maritime security inspections in early 2008. In total, the Authority has carried out 18 maritime security inspections since 2008. In 2010, the Authority carried out four maritime security inspections in the EFTA States. Since 2008, inspections have been targeted at specific areas of maritime security. Special attention has in 2010 been paid to port and port facility security. Furthermore, the Authority has inspected port state control officers performing their tasks in regards of security on board foreign-flagged ships.

The Authority inspections have identified deficiencies in several areas, some more serious than others. Both for ships and port facilities this relates especially to access control, drills and exercises, as well as general security awareness amongst staff.

Close cooperation between the Authority and the European Maritime Safety Agency (EMSA) has been further developed and EMSA has provided valuable technical assistance to the Authority's inspections.

As in aviation security, there is close cooperation with the European Commission in this field. The Authority's inspectors observe Commission inspections. Similarly, Commission inspectors observe the Authority's inspections. This is to ensure that inspections are carried out in a harmonised manner in all EEA States.

EMSA inspections/visits

The European Maritime Safety Agency (EMSA) is entrusted with several tasks, including inspecting the implementation of maritime safety acts in the EU and EFTA States. These inspections are performed by EMSA on behalf of the European Commission and the Authority. It is reflected in EMSA's work programme each year which fields or subjects will be specifically focused on in the coming year. Iceland and Norway are targeted in the same period as the EU Member States are.

In 2010, EMSA visited Iceland and Norway to assess the overall effectiveness of the system of port reception facilities in accordance with Directive 2000/59. The purpose of this Directive is to reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the EEA. It aims at improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment. The visits resulted in several findings and identification of areas where improvement is desirable. The Authority will follow-up on the findings with the authorities in Norway and Iceland with the view to closing them after measures have been taken to rectify the deficiencies.

Previous inspections conducted by EMSA have been in the field of port state control. In 2009, EMSA inspected both Norway and Iceland. For the coming year, EMSA will focus on recognition of certificates of competency issued to seafarers.

Driving and rest time in road transport

By Decisions of March and June 2010 the Authority authorised Iceland to grant certain exemption from the EEA rules on driving and rest time in road transport.

In 2008 Iceland requested the Authority to authorise the grant of several exemptions from the driving and rest time rules in road transport (Regulation (EC) No 561/2006). The requests concerned long-distance transport of goods, certain bus lines and transport connected to gravel extraction.

Iceland's initial application concerning goods transport was however withdrawn in September 2009, and followed by a modified request in November 2009. After informal consultations with the Authority, Iceland delivered a further modified application in May 2010. The scope of the last application was substantially more limited than the initial, covering transport of perishable foodstuff between Reykjavík and the towns of Neskaupsstaður, Egilsstaðir and Ísafjörður in the winter period 30 October 2010 to 15 April 2011. In its application Iceland referred to the special features and challenges of the above mentioned stretches. The Authority found that the application complied with the conditions set out by Article 14(1), meaning that the transport operations were considered to be carried out under exceptional circumstances, not prejudicing the objectives of the Regulation. By Decision of 21 June 2010 the Authority authorised Iceland to grant the requested exemption.

Iceland's application concerning bus transport and gravel extraction under Article 13(3) of the Act was decided upon on 30 March 2010. According to Article 13(3) the Authority may approve the granting of minor national exemptions applicable to pre-defined areas with a population density of less than five persons per square kilometer.

As regard bus transport, Iceland requested an exemption under Article 13(3) from the break requirements concerning three routes going through very sparsely populated areas. One route fell outside the scope of the Regulation as it did not exceed 50 km. For the other two, the Authority approved the Icelandic request, authorising Iceland to grant the exemption.

The request concerning transports in connection with gravel extractions was rejected by the Authority, as it was not a type of transport operation which could fall under Article 13(3).

The introduction of terminal air navigation charges Norway

According to the EU Regulation on air navigation charges, a charging scheme for air navigation services shall be developed. This shall contribute to greater transparency with respect to determination, imposition and enforcement of charges to airspace users. By the incorporation of this Regulation into the EEA Agreement the legislation is also applicable in the EFTA States with some special adaptations for Iceland and Liechtenstein.

The air navigation charges Regulation stipulates that Member States shall have an air navigation charging scheme that reflects the costs incurred either directly or indirectly in the provision of air navigation services. The cost of terminal services should be financed by means of terminal charges imposed on the users of air navigation services and/or other revenues, including cross–subsidies in accordance with EEA law.

The Regulation allows the EEA States to defer the application of certain provisions in respect of terminal air navigation charges until 1 January 2010. Norway notified to the Authority in 2009 that they had opted for this solution since terminal air navigation charges in Norway at that time was not a separate charge. Because of this, a project was undertaken by Avinor, in cooperation with the Norwegian Government, to assess how the system with a separate terminal air navigation charge should be introduced in Norway.

The Authority has been monitoring the process of the introduction of a separate terminal air navigation charge in Norway and has been in regular, constructive dialogue with the Norwegian Government and Avinor on this issue.

Terminal air navigation charges will be introduced as a separate, collectable charge in Norway as from 1 January 2011.

Veterinary and phytosanitary matters

Food and Feed Safety, Animal Health and Welfare

The Authority is responsible for monitoring the EFTA States' implementation and application of EEA legislation related to the whole food chain. The legislation covers fields such as seeds, feed and food, animal health and welfare, animal by-products, residues of medicines, pesticides and contaminants.

The surveillance by the Authority includes controls on application of the EEA legislation in the EFTA States through on-the-spot inspections of the effectiveness of the national control systems.

The Authority has the legal competence for adopting decisions related to animal disease status, eradication and monitoring programmes, border inspection posts, etc.

Hygiene package

The Hygiene package[6] entered into force in the EFTA States 1 May 2010. Iceland has a transitional period of 18 months for products of animal origin except fishery products.

Illegal use of additives in fishery products

The so-called Food Additives Directive (96/2/EC) allows the use of polyphosphates as food additives in certain fishery products provided certain conditions are met. However, incorrect use can result in water retention and an increase in the weight of the product.

The Authority's services took action again in the autumn of 2010 to ensure that polyphosphates were not being used in the production of salted fish in Norway and Iceland, as polyphosphates should not be used in this type of fishery product. The Authority's services requested information from both Iceland and Norway on the controls carried out to ensure the correct use of polyphosphates following receipt of information indicating that competent authorities in Iceland were not enforcing the ban and that the situation was similar in Norway.

Norway confirmed in writing that official controls had been carried out in accordance with assurances given to the Authority in 2009. The reply from Iceland resulted in the initiation of infringement measures by the Authority, and a letter of formal notice (the first step in infringement proceedings) was sent to Iceland on 1 December 2010. The letter of formal notice indicated that Iceland should reply within ten days and that the Authority may consider applying to the EFTA Court for so-called interim measures. This was the first time the Authority had considered it necessary to make use of this possibility in the EEA Agreement.

The Icelandic Government responded to this letter on 10 December 2010. The Icelandic authorities clarified that they agreed with the interpretation of the Authority and made commitments to remedy the situation and to enforce the ban without delay.

6 This includes, amongst others, Regulation 178/2002, Regulation 882/2004, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004.

Veterinary inspections

The Authority carried out 11 planned inspections in the EFTA States in 2010. The topics inspected were poultry meat, feed safety, fish health, import controls, live bivalve molluscs, animal by-products not intended for human consumption, hygiene conditions for milk and meat production, a joint inspection with the Food and Veterinary Office of the European Commission (FVO) on the approval of new border inspection posts and fishery products.

Several issues were brought to the attention of the national authorities on hygiene conditions in establishments and official controls.

The inspection programme and the final reports from the missions carried out in 2010 are available on the Authority's website[7]. The Authority issued press releases when publishing the reports and some of the topics were reflected in the national press in Iceland and Norway.

In order to harmonise and coordinate the inspections by the Authority and by the FVO, the Authority participated as observer in a number of inspections by the FVO. Likewise, the FVO participated in inspections by the Authority in the EFTA States. The good co-operation of the two institutions is a key element in ensuring the functioning of the EEA Agreement in the field of food and feed safety, animal health and welfare.

Country profile for Norway

A country profile for Norway was published on the Authority's website. The profile compiles information on the different controls systems in place in Norway. In addition the profile gives an overview of conclusions and recommendations by the Authority's Services to the government of the EFTA State inspected. The country profile will be updated on a regular basis.

Complaints

The Authority received two complaints from Iceland in 2010 in the field of food safety. The first one concerns the ban on caffeine in food products other than beverages and the second one is related to the use of polyphosphates in salted fish.

Medicine and pesticide residues in food

Food-producing animals, such as cattle, pigs, poultry and fish, may, during their lifetime, have to be treated with medicines to prevent or cure diseases. This may lead to residues of these substances remaining in the food products derived from these animals (for example meat, milk and eggs). EEA legislation requires the toxicity of potential residues to be evaluated before medicines can be used for food-producing animals. If considered necessary, maximum residue limits are established and in some cases use of the substance is prohibited.

Residues of pesticides may also remain in food products, as a result of their use in protecting crops, before and after harvest, from pests and diseases. Therefore, to protect consumers, maximum residue levels are set in EEA legislation for pesticides in food and animal feed.

Under the EEA Agreement, Norway is required to prepare each year a national residues monitoring plan. Medicine and pesticide residues are included in the plan, with live animals and animal products (such as meat, milk and honey) being checked. The Authority made a number of comments on the Norwegian 2010 monitoring plan, which Norway subsequently amended.

Seeds

EEA legislation only permits cereal seed to be marketed if it complies with certain minimum germination requirements. There are occasions, however, when the quantity of seed which satisfies these requirements is insufficient for the EEA. In such a situation the legislation allows for an agreed amount of seed which does not satisfy these requirements to be marketed for a limited period of time. During 2010, Norway was permitted to market oat seed which did not comply with the minimum germination requirements set out in the legislation. The conditions under which the marketing of such seed is authorised, including the quantities allowed and time period permitted, are published on the Authority's website as well as on the European Commission's website.

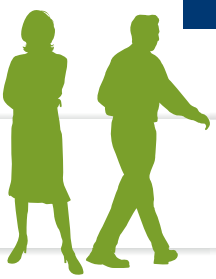
Animal nutrition

Norway changed its legislation, following a reasoned opinion delivered by the Authority to Norway for failure to fully incorporate Regulation (EC) No 1292/2005 amending Annex IV to Regulation (EC) No 999/2001. The Regulation dictates the rules for the use of processed animal proteins in feed. To protect public and animal health, feeding ruminants with feed containing processed animal proteins, including fishmeal, is prohibited. The Norwegian legislation was changed so that now it is prohibited to feed cattle, goats and sheep with fishmeal as in the EU Member States.

7 www.eftasurv.int

Chapter 3

State Aid



Highlights of 2010 and forward view

During 2010 the Authority opened formal investigations into a number of complex and important state interventions, most notably concerning efforts to alleviate the effects of the financial crisis in Iceland. The Authority also ordered recovery of substantial amounts of aid from certain companies who had benefited from tax exemptions under the Liechtenstein Tax Act. 2011 will see the Authority continue and conclude its financial crisis related investigations, assess a newly established tax system in Liechtenstein and consider Norwegian measures relating to the environment and innovative proposals for state guarantees for energy intensive industries that enter into long-term power contracts.

THE STATE AID RULES

State aid is assistance provided by public bodies to entities engaged in economic activities. The most obvious form of state aid is, for example, governments giving grants to businesses to facilitate capital investment, or providing aid to rescue and restructure ailing companies. State aid can, however, consist of public support measures in numerous forms, such as tax exemptions, loans on preferential terms, and state guarantees and investments in share capital made by public authorities on terms that would not be acceptable to a private investor. State aid is present when assistance is provided:

- by an EFTA State or through state resources;
- that confers an advantage to a recipient(s);
- that favours certain economic undertakings or the production of certain goods;
- that distorts or has the potential to distort competition; and
- that affects trade across the EEA.

The EEA Agreement contains a general prohibition on state aid in order to prevent distortions of competition and negative effects on intra-EEA trade. The rules seek to ensure a level playing field for companies across Europe, and to prevent government assistance being used as a form of protectionism in the absence of trade barriers. The prohibition is, however, subject to exceptions, recognising that government intervention can be necessary to correct market failure and for other purposes.

THE ROLE OF THE AUTHORITY

The prohibition on state aid that applies in Iceland, Liechtenstein and Norway is enforced by the Authority. It is also the Authority's role to decide how the exceptions to the prohibition are to apply. In its enforcement of the rules, the Authority has equivalent powers and similar functions to those of the Commission.

Plans to grant state aid must be notified to the Authority prior to implementation. The Authority must then assess whether such a plan constitutes state aid and, if it does, examine whether it is eligible for exemption.

Decisions taken by the Authority in the field of state aid are published on the Authority's website and in the Official Journal of the European Union.

Overview of state aid activities in 2010

In 2010, the Authority adopted 38 decisions in the state aid field. A significant effort was devoted to the handling of cases related to the financial crisis in Iceland. The Authority opened the formal investigation procedure for the swap of mortgage loans of Icelandic financial institutions for loans of the state-owned Housing Financing Fund. The Authority also opened the formal investigation into the Icelandic state's intervention following the collapse of the three main Icelandic banks (Glitnir, Islandsbanki and Kaupthing) and the establishment of three new banks (Arion, Landbankinn and NBI) as well as regarding the insurance company Sjóvá. Further, the formal investigation was initiated into the purchase by the three newly created banks of bonds owned by investment funds operated by fund management companies linked to the three collapsed Icelandic banks. The Authority has in addition temporarily approved a state aid scheme which entails recapitalisation measures aimed at enabling Icelandic savings banks to continue operating on the financial market. The Icelandic authorities will notify in 2011 viability (or restructuring) plans for the banks that have benefited from this scheme.

The Authority has assessed other measures of state intervention in the Icelandic economy beyond the financial sector. In particular, it opened the formal investigation procedure into a proposal to grant regional aid to the Verne Data Centre and approved a regional aid scheme (under the Incentive Investment Act) which provides for a range of tax and fee concessions for investments outside the capital.

Concerning Liechtenstein, the Authority completed its investigation into tax exemptions in favour of captive insurance companies and investment undertakings, concluding that they constituted incompatible state aid. Following the Authority's review of various tax provisions, the Liechtenstein authorities have reformed the tax system and notified the provisions applicable to a newly created investments structure as well as some transitional provisions regarding previously applicable tax exemptions. The Authority is currently reviewing the proposals and will adopt a decision in the course of 2011.

During 2010 Norway notified the granting of environmental aid to eight projects subject to individual assessment. The Authority has approved six and is currently in the preliminary investigation phase regarding the other two. Meanwhile, one of the main instruments of state intervention in the area of environment in Norway, the Energy Fund Scheme, was prolonged while a proposal for a new scheme is currently being reviewed by the Authority.

Pre-notifications and faster procedures

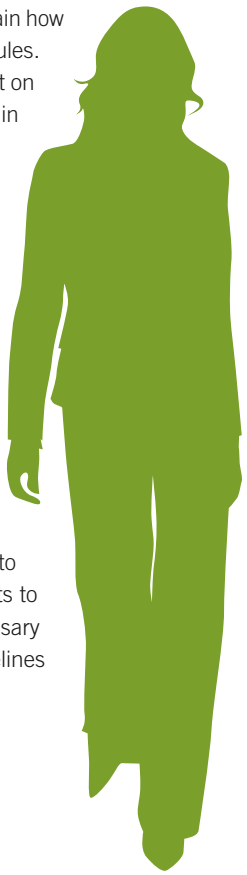
In 2009 the Authority adopted new guidelines on a simplified notification procedure for the treatment of certain types of state aid and a Best Practices Code. Both have the purpose of improving the effectiveness of procedures thereby enhancing co-operation with national authorities. These guidelines have been effective since 1 January 2010 and have formalised the possibility for the Authority and the EFTA States to discuss proposals for the granting of new state aid before they are officially notified – something which happened frequently during the year.

The Authority has also been able to significantly expedite formal investigations relating to the financial crisis by prioritising the translations required before summaries of cases are published in the Official Journal of the European Union. It is anticipated that a number of the formal investigations opened during 2010 will be completed sooner than has been the case in the past.

The Norwegian authorities were this year the first to use a newly established notification procedure which enables faster handling of straightforward cases for an Aid scheme for rail sidings and freight terminals. The procedure involves a new (brief) consultation with any interested parties but otherwise expedited decision-making.

The revision of the state aid guidelines

The Authority adopts guidelines to explain how it interprets and applies the state aid rules. They are consolidated into a document on Procedural and Substantive Guidelines in the field of state aid. These State Aid Guidelines are regularly amended and supplemented. In 2010, the Authority adopted guidelines laying down the criteria for an in-depth assessment of regional aid for large investment projects. With a view to commencing the exit process for state intervention due to the financial crisis, the Authority also amended the Guidelines covered under the Temporary Framework adopted in 2009 to facilitate state action to restore financial stability and ensure continued lending to the real economy. Finally, amendments to the risk capital guidelines were necessary and the short term export credit guidelines were prolonged.



The Financial Crisis

Restructuring of the main Icelandic commercial banks

In December 2010, the Authority opened formal investigations into the restructuring of the three main Icelandic banks. Aid granted to the newly formed Icelandic banks in 2008 and 2009 was notified after it had been granted and formal investigations were required in view of ongoing delays in submitting detailed restructuring plans for the banks.

In October 2008 the Icelandic Government formed three new banks (later named Islandsbanki, Arion Bank and NBI) wholly owned by the state, to which certain domestic assets and liabilities for deposits of the three failed Icelandic banks were transferred. The new banks were provided with a small amount of initial capital and, following negotiations with the creditors of the old banks on the value of assets transferred, were later capitalised fully in the second half of 2009. In two of the cases (Islandsbanki and Arion Bank) majority ownership of the new banks now rests with the creditors of the corresponding old banks.

Measures applicable to the banks were as follows:

- In October 2008 the state provided ISK 775 million (EUR c.5 million) to each bank in cash as initial capital and committed to capitalise the banks in full.
- In summer 2009, the state capitalised Islandsbanki and Arion Bank with ISK 65 billion and ISK 72 billion respectively of Tier I capital in the form of government bonds.
- Following an agreement on 15 October 2009 on settlements concerning assets and deposit liabilities transferred from (old) Glitnir to Islandsbanki, (old) Glitnir's Resolution Committee exercised an option to take 95% of the share capital in Islandsbanki, with the remaining 5% being retained by the state.
- Following an agreement on 1 December 2009 on settlements concerning assets and deposit liabilities transferred from (old) Kaupthing to Arion Bank, (old) Kaupthing's Resolution Committee acquired 87% of the share capital in Arion Bank, with the remaining 13% being retained by the state.
- The state also granted Tier II capital to Islandsbanki and Arion Bank in the form of a subordinated loan, denominated in foreign currency, corresponding to ISK 25 billion in the case of the former and ISK 29.5 billion in the case of the latter. The two banks also benefitted from a special liquidity facility agreement providing for the loan of government bonds which can be used as collateral for short-term loans from the Central Bank of Iceland.
- Islandsbanki and Arion also received state guarantees in respect of assets payable to the bank in return for it accepting liability for the deposits of the failed Straumur-Burdaras Investment Bank (Straumur) and Reykjavík Savings Bank (SPRON) respectively.
- Final agreement on the capitalisation of NBI was reached on 15 December 2009 when it was agreed that the bank would be capitalised to the sum of ISK 150 billion, of which the state provided ISK 121,225 billion. (Old) Landsbanki holds a contingent stake of 18.67% of the bank as compensation for net assets transferred from the old bank to the new bank. This will be returned to the state (in full or in part) in the event of full payment of compensation through a bond agreed between the parties.
- Each bank also benefitted from the Icelandic Government's statement guaranteeing domestic deposits in all Icelandic commercial and savings banks in full.

The formal investigation has been commenced and will be expedited in anticipation of the submission of restructuring plans for the banks in March 2011. The aid will be assessed primarily under the Authority's Guidelines on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the state aid rules.

Under the Guidelines, restructuring plans for the banks must be comprehensive, detailed and based on a coherent concept demonstrating how the banks will restore long-term viability without state aid as soon as possible.

Long-term viability is achieved when a bank is able to cover all its costs including depreciation and financial charges and provide an appropriate return on equity, taking into account the risk profile of the bank. Restructured banks should be able to compete in the market place for capital on their own merits in compliance with relevant regulatory requirements. The expected results of the planned restructuring need to be demonstrated under a base case scenario as well as under "stress" scenarios.

Investigation into Mortgages Loan Scheme

On 10 March 2010, the Authority decided to open a formal investigation into a Mortgage Loan Scheme operated by the Icelandic Housing Financing Fund.

As a result of turmoil in the global financial markets, Icelandic financial institutions have been faced with shortage of credit. In response to this situation, the Icelandic authorities adopted amongst other measures a scheme authorising the Housing Financing Fund (HFF) to purchase mortgage loans from financial undertakings.

The Mortgage Loan Scheme takes the form of a permanent asset swap, according to which the financial institution receives HFF's bonds in exchange for mortgage loans which are transferred to the HFF.

In its opening decision, the Authority took the preliminary view that the asset swap scheme involves state aid to the financial institutions. Given the situation of the markets following the financial crisis the Authority doubts that a private market investor would engage in a similar asset swap on similar terms.

The Authority also expressed doubts as to whether the aid can be considered to be compatible under the Authority's Guidelines on the treatment of impaired assets. The doubts concern in particular asset valuation, the adequacy of the remuneration for the state and the limitation of the scheme in scope and time.

The investigation is ongoing.

Purchase of assets held by investment funds in Iceland

In September 2010 the Authority opened a formal investigation into potential unlawful state aid in transactions amounting to EUR c.460 million when the three newly formed Icelandic banks purchased bonds owned by investment funds[8] operated by fund management companies linked to the three collapsed banks.

Acting following the receipt of a complaint from Icelandic competitors of the management companies, the Authority is in the process of investigating whether the assets were purchased on commercial terms by the three new banks Islandsbanki (New Glitnir), Arion (New Kaupthing) and (New) Landsbankinn. The assets were all purchased in October 2008 at a time when Icelandic financial markets were in turmoil. The transactions amounted to:

- ISK 63 billion (Landsbankinn)
- ISK 12.9 billion (Islandsbanki)
- ISK 7.7 billion (Arion)

The Authority's preliminary view is that the Icelandic authorities have not demonstrated that the banks acted independently of the state and on a commercial basis. The decisions to acquire the assets were made by temporary boards of the newly created and state-owned banks within days of their appointments by the Icelandic Government, and each bank has since faced substantial losses on the transactions following write- downs of the value of the assets purchased.

Further comments have been received by the Authority as part of the formal investigation, which should be concluded by the spring of 2011.

8 Funds regulated under the Icelandic "UCITS" (Undertakings for Collective Investment in Transferable Securities) Act.

Chapter 3

State Aid

Aid scheme for small savings banks in Iceland

On 21 June 2010, the Authority approved for a period of six months a state aid scheme for small savings banks in Iceland: Norðfjörður Savings Bank, Vestmannaeyjar Savings Bank, Svarfdælir Savings Bank, Bolungarvík Savings Bank and Þórshöfn Savings Bank.

The scheme entailed recapitalisation measures aimed at enabling Icelandic savings banks to continue operating on the financial market. The measures concerned the treatment of public claims on the savings banks that came into the possession of the Central Bank of Iceland as a result of the collapse of Sparisjóðabanki Íslands hf.

The Authority based its approval on its Guidelines on the application of state aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis and its Guidelines on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition.

Investigation into rescue of Sjóvá

An investigation into a state intervention in Sjóvá Insurance Company was opened in September 2010, following inquiries initiated by the Authority.

The Authority became aware of the state intervention, through media reports in the summer of 2009. Through a series of transactions, the Icelandic government rescued the failing insurance company, Sjóvá, with a capital injection of ISK 12 billion, in return for which the State became a 73% shareholder in the insurance company.

In its opening decision, the Authority has expressed doubts as to whether the intervention was made on market terms. Moreover, the Authority has doubts with regard to whether potential aid is compatible with EEA state aid rules. The Authority has invited the Icelandic authorities to substantiate their view that the measure was necessary and proportionate in order to remedy a serious disturbance in the Icelandic economy.

The Authority has invited interested parties to submit comments on the measure involved and will continue its investigation in 2011.

LEGAL BASIS FOR THE APPROVAL OF AID RELATED TO THE FINANCIAL CRISIS

Article 61(3)(b) of the EEA Agreement provides that aid may be approved to remedy a serious disturbance in the economy of a state. Prior to the financial crisis this provision had only been used in most exceptional circumstances. 5 sets of temporary guidelines based on this provision have now been in place for some time and the European Commission and the Authority will keep them under review during 2011.

Environmental Aid
5 Enova wind energy projects

Aid to five wind power projects in Norway approved

In December 2010, the Authority adopted five decisions approving aid to Norwegian wind power production projects under the Norwegian Energy Fund Scheme.

In July 2008, the Authority introduced new State aid Guidelines on environmental protection replacing the previous Guidelines on environmental protection of 2002. A consequence of the introduction of new Guidelines is that investment aid grants exceeding EUR 7.5 million must be individually notified to the Authority. This applies even if the aid is granted on the basis of a scheme which has already been approved. On this basis the Authority has required the performance of a detailed assessment of the notified cases.

In 2010, the Authority undertook five detailed assessments of cases notified by the Norwegian authorities:

Aid recipient	Aid in mill. NOK
Kvalheim Kraft DA	92.8
Jæren Energi AS	511.6
Nordkraft Vind AS	200.1
Nord-Trøndelag Elektrisitetsverk Energi AS	228.0
Norsk Miljø Energi Sør AS	388.0

According to the Guidelines, state support can be granted to support environmental objectives if the environmental benefits of such support outweigh the potential distortions of competition. In respect of renewable energy production, support may be granted to compensate for higher costs compared with traditional energy generation.

The Authority found that the positive effect of increasing renewable energy production outweighs the limited distortion of competition. The aid is proportional as it is limited to the amount that was necessary to trigger investments in the project. The aid also provides an incentive effect since the projects would not be commercially viable without the aid. Finally, the market share of the aid recipients are in all cases less than 1% and hence the structure of the market for electricity production is unlikely to be altered by the grant of the aid.

In addition, the Authority approved a prolongation of an Energy Fund scheme, operated by Enova, for one year while it assesses a new Energy Fund scheme. The scheme was originally approved for a five year period (2006-2010).

Tax Measures

Tax exemptions in Liechtenstein disallowed by the Authority

In March and November 2010 the Authority took two decisions concluding that exemptions available to certain types of company under the Liechtenstein Tax Act were incompatible with the EEA Agreement. The Authority also ordered that aid granted to captive insurance companies and a particular form of investment company be recovered.

Captive insurance companies

Captive insurance companies are subsidiary companies formed to insure or reinsure the risks of their parent or associated group companies. They are usually formed to provide alternative risk management solutions to the conventional insurance market, and are often located apart from their parent and other group companies in a low tax jurisdiction. The Liechtenstein Tax Act exempts captive insurance companies from payment of corporate income and coupon tax, and provides that they pay only half of the rate of capital tax applicable to other companies.

The Authority concluded that such favourable treatment provided the companies with an advantage that is unavailable to other companies in a similar position.

The Authority, however, also accepted that in light of apparent uncertainty concerning taxation of intra-group activities, beneficiaries in Liechtenstein may have had legitimate expectations that the aid granted through the tax exemptions was lawful when the measures were introduced in January 1998. The Authority concluded, however, that by the time of publication by the European Commission of a decision to open a formal investigation into similar Finnish captive insurance tax measures on 6 November 2001 (at the latest), it should have been clear that the tax exemptions may have involved incompatible state aid. It therefore ordered that all aid paid from that date onwards must be recovered.

Investment undertakings

Liechtenstein law defines investment undertakings as capital raised from the public for the purpose of a collective capital investment. These assets are invested and managed for the collective account of the individual investors. Under Liechtenstein law, the management of these assets can be undertaken by investment funds (Anlagefonds) or investment companies (Anlagegesellschaften). Between 1996 and mid 2006, no income tax was levied for the management activities of investment companies. Capital tax was set at 1‰ instead of the generally applicable 2‰ and reduced further for any capital exceeding CHF 2 million. Further, no coupon tax was levied on the coupons of securities (or documents equal to securities) issued by investment companies. The coupon tax applies to companies the capital of which is divided into shares, as for example companies limited by shares and companies with limited liability.

The Authority concluded that such favourable treatment provided investment companies (Anlagegesellschaften) with an advantage that was unavailable to other companies in a similar position.

The Authority's decisions in both cases have been challenged by Liechtenstein and by certain beneficiaries. Proceedings before the court have been commenced.

Tax benefits as Regional Aid in Iceland

In November 2010, the Authority opened a formal investigation procedure into regional ad hoc aid to Verne Holdings ehf. in the form of tax and fee concessions related to the construction of a new data centre in Iceland.

In early 2008 Verne Holdings bought two warehouses on the former NATO base at the international airport in Keflavík from the Icelandic government. After the financial crisis hit Iceland in October 2008, Verne requested state support for the continuation of the project. One year later, the Icelandic authorities concluded an agreement with the company on certain tax and fee concessions. Iceland notified the aid to the Authority in September 2010, after pre-notification discussions.

In its opening decision, the Authority expressed doubts as to the necessity of the tax concessions since Verne started the project without any commitment from the Icelandic authorities to grant aid. Thus, the Authority has doubts as to whether the aid produces a real incentive to undertake investment that would otherwise not be made in the region concerned.

In the course of the formal investigation the Authority will also examine whether certain other agreements entered into by Verne, such as a power contract with the national power company, involve state aid.

Incentives for Initial Investment in Iceland

In October 2010 the Authority approved a scheme enabling aid to be granted to companies establishing themselves in regions outside the capital.

The scheme provides for a range of tax and fee concessions up to 10 years. In addition it enables the provision of direct grants and the possibility to sell and lease land below market value.

The new scheme applies to a broad range of companies within most sectors. Aid recipients must invest in projects with a minimum annual turnover of ISK 300 million (approximately EUR 2 million) and which create at least 20 direct jobs in the regions eligible.

The scheme will not apply to projects already initiated without an application for state aid. State aid will be granted only on the basis of an assessment by the Invest in Iceland Agency, which must establish that the aid is necessary in order for the investment to take place and that aid will only be granted to the extent necessary.

The scheme has been approved until 31 December 2013.

Tonnage tax

On 27 October 2010, the Authority approved changes to the rules of the Norwegian Tonnage Tax Scheme. The new measures will enter into force as of the financial year 2010 and will also provide for the phasing out of an old tonnage tax scheme.

According to the previous scheme (approved by the Authority in 2008), shipping income is tax exempt and only a tax related to the ship's tonnage is due. In addition to the new Tonnage Tax scheme, the Norwegian authorities also notified transitional measures concerning the change from the previous tonnage tax regime to the new one.

The Norwegian Supreme Court, however, held in a judgment of 12 February 2010 that those transitional rules breached the Norwegian Constitution because they applied a fiscal measure retroactively. The Norwegian authorities therefore adopted new transitional measures to comply with that judgment and notified them to the Authority.

The Authority has taken the view that the notified changes to the transitional rules were compatible with the functioning of the EEA Agreement.

Media and communications

Aid to public service broadcasting sector

The Authority has modified its state aid rules for public service broadcasting and closed an investigation into public financing of the Norwegian public service broadcaster NRK (Norsk Rikskringkasting). An assessment of the funding of the Icelandic National Broadcasting Service RUV (Ríkisútvarpið) is still ongoing.

Public service broadcasters are radio and television companies that are entrusted by the state authorities with a public service mission. In order to fulfil the assigned public service tasks, they are financed from public means, such as for instance yearly allocations based on the licence fee collected from all citizens. This type of funding is often classified as state aid.

Following technological developments and changes in the role of public service broadcasters, the Authority's Guidelines concerning financing of the public service broadcasting sector have been modified with a view to clarifying what could be included in the concept of public service broadcasting and be financed by state aid. The main modifications consist of:

The introduction of control mechanisms before significant new services are launched by public service broadcasters to avoid competition being unduly distorted (balancing the market impact of such new services against their public value);

- The inclusion of pay services in the public service under certain conditions;
- More effective control of over-compensation and supervision of the public service mission on the national level;
- Increased financial flexibility for public service broadcasters.

On the basis of those new rules and following changes in Norwegian broadcasting, the Authority's investigation into the financing regime of the Norwegian public service broadcaster NRK was closed by the Authority in a conditional decision.

Based on this decision, certain pay services relating to the provision of programmes on the Internet can be part of the public service of NRK. Furthermore, any significant amendments of NRK's public service task will be subject to a new entrustment procedure, carried out prior to the inclusion of a new service. The assessment of each proposed new service will be based on verifiable national criteria in the form of an added public value test which will be developed by the Norwegian authorities. The final decision on whether to include a new service will take into account opinions of competent independent national authorities (such as the Media Authority) and other observations in a public consultation. Finally, it has been clarified under which circumstances NRK can retain over-compensation.

The new Norwegian system was put fully in place in May 2010.

The Authority will continue its investigation regarding the Icelandic National Broadcasting Service RUV in close co-operation with the Icelandic authorities.

New Guidelines on state aid to the broadband sector

The new broadband Guidelines explain how public authorities can support the deployment of basic broadband and Next Generation Access (NGA) networks, especially in areas where private operators do not invest.

The Guidelines distinguish between competitive areas (referred to as "black areas"), where state aid is not necessary, and unprofitable or under-served areas ("white areas" and "grey areas"), in which state aid may be justified, if certain conditions are met. This distinction is then adapted to the situation of NGA networks and takes into account not only existing NGA infrastructure but also concrete investment plans by telecom operators to deploy such networks in the near future. A number of crucial safeguards (such as detailed mapping, open tenders, open access obligations or technological neutrality and claw-back mechanisms) are provided for in the Guidelines in order to promote competition and avoid the "crowding out" of private investment.

The Authority has so far not taken any decisions based on those Guidelines.

Aid for training

Romanian training

On 24 February 2010, the Authority approved aid granted by Innovation Norway for the purposes of training Romanian companies SC Promex SA and SC 24 January SA in a number of areas relating to subsea structures and equipment for oil and gas exploitation and production.

The aid is provided in the context of agreements between Norway, the European Union and Romania concerning a co-operation programme for economic growth and sustainable development in Romania.

The Authority considered that the aid was compatible with the EEA Agreement pursuant to the chapter in its State Aid Guidelines on state aid for training. This is the first time the Authority has applied its Guidelines on training aid, which were adopted in November 2009.

The training covers a number of areas, including welding techniques applicable to deep-sea metal structures, project management and health and safety issues, and will lead to recognised diplomas and certificates.

Property

Investigation into sale of land in Oppdal

Sale of land - when a valuation differs from an actual offer for land.

The municipality of Oppdal sold a property to a local undertaking for NOK 850 000, one week after a competing undertaking had made an offer of NOK 3.1 million. The sale's price was based on two expert valuations obtained shortly before the sale.

In November 2010, the Authority opened the formal investigation procedure and will assess the sale under its Guidelines on state aid elements in sales of land and buildings by public authorities. The Guidelines refer to two possible scenarios: the use of a open tender procedure; or the use of independent expert valuation. The Guidelines do not, however, envisage a situation where a binding offer is received after the receipt of an expert valuation but prior to the conclusion of a binding contract on the basis of that valuation. In the present case the offer was nearly four times higher than the price considered to be the market price by the experts.

The Authority considers that in a situation such as this, the submission of such an offer casts doubt on whether the valuations reflect the actual market price of the property. Generally, a credible and binding offer would seem to be a better basis for the determination of market price as it reflects what someone is actually prepared to pay for the property.

Chapter 4

Competition

Overview of activities in 2010

In 2010, the Authority adopted a decision finding an abuse of a dominant position on the part of Posten Norge AS, the Norwegian incumbent postal operator, and imposed a fine of EUR 12.89 million for that infringement.
An oral hearing was conducted in relation to the Authority's proceedings involving the leading Norwegian ferry operator Color Line.
The Authority also adopted new guidelines on the application of the competition rules to vertical agreements.

The Authority devoted a significant part of its resources in the field of competition in 2010 to the two formal proceedings relating to Posten Norge and Color Line respectively. The first proceeding was brought to an end with the adoption of a prohibition decision with fines. In the second investigation the Authority conducted an oral hearing and examined in detail the reply to the Authority's statement of objections. This examination was still on-going at the end of the year.

New rules for the evaluation of vertical supply and distribution agreements were incorporated into the EEA Agreement during the year. On its part, the Authority replaced its guidelines on vertical restraints with a new set of guidelines so as to complete the update of this important field of competition law.

Further, the Authority was involved in national cases in which the EFTA competition authorities envisaged applying Articles 53 and 54 of the EEA Agreement and played a role in cases under the EEA competition rules that fell under the jurisdiction of the European Commission. It also participated in discussions regarding a wide range of issues relating to regulatory developments and competition policy matters, in particular within the framework of the European Competition Network.

Finally, resources were devoted to the Authority's cross-departmental eCOM task force (see report on the activities of the eCOM task force in Chapter 3).

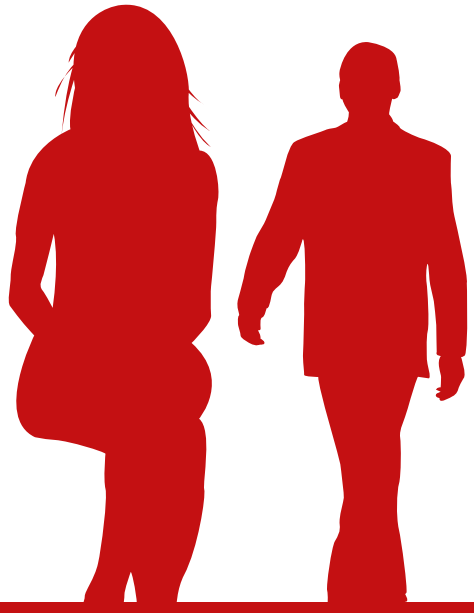
The role of the Authority in the field of competition

The EEA competition rules are enforced across the EEA by the Authority and by the European Commission. Responsibility for handling individual cases is divided between the Authority and the Commission on the basis of rules laid down in the EEA Agreement.

The Authority's main task in the field of competition is to ensure that undertakings active in the EFTA States comply with the EEA competition rules. For this purpose the Authority enjoys wide powers of investigation and may impose fines of up to 10% of global turnover on undertakings that act in violation of the competition rules. It is further incumbent on the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

In addition, the Authority has exclusive jurisdiction to take action against any EFTA State that enacts, or maintains, in force measures concerning public undertakings or undertakings with special or exclusive rights that are contrary to provisions in the EEA Agreement, including the prohibitions on anti-competitive conduct.

More generally, the Authority seeks to develop and maintain uniform surveillance throughout the EEA and to promote uniform implementation, application and interpretation of the EEA competition rules. The Authority co-operates with the European Commission to that effect.



THE COMPETITION RULES OF THE EEA AGREEMENT

The substantive competition rules set out in the EEA Agreement are virtually the same as those in the Treaty on the Functioning of the European Union and can be summarised as follows:

- A prohibition on agreements or practices that distort or restrict competition (Article 53(1) EEA) with the exception of restrictions necessary for improvements which benefit consumers and which do not eliminate competition (Article 53(3) EEA);
- A prohibition on the abuse of a dominant position by market participants (Article 54 EEA);
- The requirement that prior clearance be obtained for certain large mergers and other concentrations of undertakings (Article 57 EEA); and
- A prohibition on State measures in relation to public undertakings or undertakings with special or exclusive rights which are contrary to Articles 53 and/or 54 EEA (Article 59 EEA).

The Authority enjoys the same investigative and enforcement powers as the European Commission. The procedural rules relevant to the application of the EEA competition rules by the Authority are set out in the Surveillance and Court Agreement.

The Authority's website provides further information on the EEA legal framework in the field of competition:
http://www.eftasurv.int/competition/competition-rules-in-the-eea/

Distribution of parcels to Norwegian consumers

Exclusivity agreements

In July 2010, the Authority imposed a fine of EUR 12.89 million on Posten Norge AS for an infringement of the EEA competition rules. Following an indepth investigation, the Authority concluded that Posten Norge has abused its dominant position by preventing competing providers of parcel delivery services access to some of the largest retail groups in Norway.

Posten Norge AS is the Norwegian incumbent postal operator. It provides a range of postal and financial services to businesses and end consumers. The Authority's proceeding concerned the distribution of parcels from mail-order and e-commerce companies to end consumers. This market has been dominated by Posten Norge for a number of years and over-the-counter delivery has been the predominant means of delivery.

From 2000 onwards, Posten Norge restructured its distribution network by replacing post offices with postal units inside retail outlets, so-called Post-in-Shops. In doing so, it concluded framework agreements with several large daily consumer goods retail groups and operating agreements with their outlets. These agreements contained clauses on preferential treatment and exclusivity provisions which denied distributors of parcels access to the retail chains and outlets.

The largest daily consumer goods retail group in Norway which also controls the largest Norwegian kiosk chain, and one of the four leading petrol station chains, were appointed as Posten Norge's preferred partners. They were also made subject to group exclusivity provisions. The group exclusivity implied that all the outlets belonging to these partners were completely closed to competitors of Posten Norge for a period of more than five-and-a-half years. Nevertheless, Posten Norge only used around 22% of the outlets belonging to these partners for its Post-in-Shop concept.

Two other leading daily consumer goods retail groups were covered by outlet exclusivity preventing competitors from accessing all outlets in which a Post-in-Shop had been established. When renegotiating its Post-in-Shop agreements with these groups from 2004, Posten Norge kept the question of preferred partner status open and indicated to them that they could be given the chance to improve their preference status in the future. The outlet exclusivity during the roll-out phase of the Post-in-Shop concept and the renegotiation strategy pursued by Posten Norge from 2004 did in the Authority's view, further impede competitors' access to the leading retail groups in question.

It is of paramount importance for new entrants to the Norwegian market for business-to-consumer parcel distribution to develop a competitive network for over-the-counter delivery of parcels. The contracting practices of Posten Norge between autumn 2000 and spring 2006 had the effect of foreclosing a significant part of the most sought-after retail groups and outlets. Posten Norge thereby placed its emerging rivals at a competitive disadvantage as compared to the situation which would have occurred in absence of these practices. This amounts to an abuse of a dominant position and an infringement of Article 54 of the EEA Agreement.

A non-confidential version of the decision is available at the Authority's website:
http://www.eftasurv.int/competition/competition-cases/

Granting of rebates

Posten Norge has also granted rebates to its largest customers in the business-to-consumer parcel distribution market. Amongst others, the Authority has been concerned that Posten Norge's rebate scheme could produce loyalty-inducing foreclosure effects which would make it more difficult for new entrants to compete in the market. During the Authority's investigation, Posten Norge made a number of amendments to its rebate scheme. The Authority carried out a market investigation of possible negative effects of the rebate scheme of Posten Norge, as amended, which indicated that the risks of adverse effects on competition were limited. In addition, the recent emergence of more viable competitors in the market place was observed. In the light of these findings, the Authority decided to close its investigation of the rebate scheme in 2010 without opening formal proceedings.

CALCULATION OF FINES

The Authority is empowered to impose fines of up to 10% of an undertaking's annual turnover for infringements of Articles 53 and 54 of the EEA Agreement which are committed intentionally or negligently. The purpose of imposing fines is to deter companies from infringing the competition rules.

When calculating fines the Authority follows a two-step methodology. It first determines the basic amount of the fine. This amount is calculated on the basis of the value of the undertaking's sales of the goods or services to which the infringement relates.

The amount is set to a level of up to 30% of the relevant annual sales depending on the degree of gravity of the infringement. This amount is then multiplied by the number of years of participation in the infringement to take sufficient account of its duration.

In the second step, any aggravating and mitigating circumstances, which may result in an increase or decrease in the basic amount, are taken into account. Repeated infringements or obstruction of the Authority's investigation are examples of aggravating circumstances. Termination of infringements as soon as the Authority intervenes, or effective cooperation with the Authority beyond the legal obligations to do so, are among the factors which are classified as mitigating circumstances.

The Authority's guidelines on the setting of fines provide further information on how the Authority calculates fines:
http://www.eftasurv.int/competition/notices-and-guidelines/

Investigation of ferry services between Norway and Sweden

The Authority continued its proceedings against Color Line throughout 2010, a major Norwegian ferry operator. A Statement of Objections was sent to Color Line at the end of 2009 relating to ferry services Color Line has provided between Norway and Sweden. The Authority took the preliminary view that Color Line's agreements with the harbours of Sandefjord in Norway and Strömstad in Sweden had infringed Articles 53 and 54 of the EEA Agreement.

In 2010, Color Line submitted a detailed written reply to the Authority's objections. On Color Line's request, the Authority conducted an oral hearing in the case. At the end of the year, Color Line's reply to the Authority's objections was still under examination.

WHAT IS AN ORAL HEARING?

An oral hearing is an opportunity for the parties to whom the Authority has addressed a Statement of Objections to develop their arguments in defence.

An oral hearing can only be requested by addressees of a Statement of Objections. However, if they do so the Authority may also allow complainants and other interested parties to attend the hearing and to express their views on the case.

The competition authorities of the EFTA States are always invited to take part in an oral hearing. In cases which qualify for co-operation with the European Commission, officials from the Commission and from EU Member States are also invited.

Oral hearings are conducted by an independent Hearing Officer.

Guidelines on vertical restraints

In December 2010, the Authority adopted new Guidelines on the application of the EEA competition rules to vertical agreements.

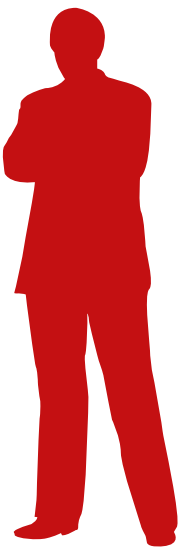
Vertical agreements are supply and distribution agreements concluded between market players at different levels of the distribution chain. Such agreements often contain restraints on the contracting parties' freedom to act. These restraints can be problematic under Article 53 of the EEA Agreement if one or both parties have a sufficient degree of market power. Vertical restraints may, however, also lead to significant economic benefits, for instance by promoting investments. The net effect of such restraints can therefore be difficult to evaluate. For firms with market shares below 30% there exists a Block Exemption Regulation which exempts agreements from the application of the prohibition of Article 53(1) of the EEA Agreement if some basic conditions are fulfilled.

The Guidelines provide guidance on which vertical agreements generally fall outside the scope of Article 53 of the EEA Agreement and on the application of the Block Exemption Regulation. Further, the Guidelines set out a general framework of the analysis of vertical agreements which fall outside the Block Exemption Regulation. They also detail the enforcement policy of the Authority in this field.

The new Guidelines replace the Guidelines on vertical restraints adopted by the Authority in 2001.

THE NEW REGIME FOR VERTICAL RESTRAINTS

- A new Block Exemption Regulation was incorporated into the EEA Agreement with effect from 1 June 2010 (Commission Regulation (EU) No 330/2010).
- The Authority's Guidelines on vertical restraints were adopted in December 2010.
- The regulatory regime for vertical agreements in the EEA, which had been in force for ten years, is for a large part maintained, but is refined and developed on some points.
- An important substantive development is that the 30% market share threshold under the Block Exemption Regulation now applies to both the seller and the buyer. Further, sales over the internet are dealt with in more detail in the new Guidelines.



Chapter 4

Competition

Co-operation with the EFTA competition authorities and courts

Under the current enforcement regime, national competition authorities and courts apply Articles 53 and 54 EEA side-by-side with the equivalent national competition rules.

In the EFTA network of competition authorities, the activities of the Authority in the field of competition are co-ordinated with the activities of the national competition authorities of the EFTA States[9].

The EFTA competition authorities inform each other when they initiate investigations where they envisage that Articles 53 and/or 54 EEA may be applied. The purpose is to allocate cases to the authority that is best placed to act, and to ensure effective enforcement. In 2010, the Authority was informed of nine new cases by the EFTA competition authorities. At the end of the year, 24 pending national investigations were registered with the Authority.

Before they adopt decisions applying Articles 53 and/or 54 EEA, the national EFTA competition authorities are required to submit their draft decisions to the Authority for review. However, within the network of EFTA competition authorities all members are regarded as equal partners, with the common objective of enforcing competition rules to the benefit of consumers. Therefore, there is an informal exchange of views inside the network with a view to contributing to that objective and to ensuring consistent application of competition rules throughout the EEA. In 2010, the Authority made substantive comments on one case that were dealt with by national competition authorities.

National courts in the EFTA States may, where they find it necessary to reach a decision in a particular case, request assistance from the Authority with regard to the EEA competition rules. The Authority also has the possibility to submit written observations to the national court where it considers that the coherent application of Articles 53 and/or 54 so requires.

During 2010, no courts in the EFTA States requested assistance from the Authority regarding the application of the EEA competition rules and the Authority did not submit written observations in any case.

9 Liechtenstein does not have a competition authority that enforces Articles 53 and 54 EEA, but it participates in the network of EFTA competition authorities.

Co-operation with the European Commission

Rules on co-operation between the European Commission and the Authority in the EEA Agreement allow the Authority and the competition authorities of the EFTA States to be involved in discussions on competition policy at EU level, in particular within the framework of the European Competition Network (ECN). Co-operation between the Commission and the Authority is also foreseen in individual cases in which one of the authorities applies the EEA competition rules.

In a significant number of cases the Commission applies the EEA competition rules side-by-side with the EU competition rules. Sometimes cases dealt with by the Commission can have considerable impact on markets and market players in the EFTA States. The EEA rules on co-operation in competition cases ensure that the Authority and the EFTA States can make their voices heard in cases that concern the EFTA territory.

Merger cases in 2010

Mergers are examined at European level if the annual turnover of the companies concerned exceeds specified thresholds in terms of global and European sales. The rules on jurisdiction are such that the Commission, in practice, is the competent authority to assess mergers under the EEA Agreement. The Authority is involved in merger cases by virtue of the EEA co-operation rules.

Only one in-depth investigation carried out by the Commission and which qualified for co-operation under the EEA Agreement was decided in 2010. This case concerned the merger between Oracle Corporation and Sun Microsystems which initially raised competition concerns throughout the EEA on the market for databases. The investigation of this case focused on the importance for effective competition of the open source database MySQL, which had previously been acquired by Sun. Eventually, after a detailed examination of the effects of the merger, the Commission concluded that the transaction could be cleared without conditions or commitments. Amongst others, the investigation showed that sufficiently credible alternatives to MySQL existed on the market.

The Commission may also examine mergers referred to it from the national competition authorities in the EEA either on their own initiative or on the request of the merging parties. When the Commission takes over such cases its review will normally also cover the EFTA States. In 2010, the Authority was involved in 26 cases in which the merging parties requested referral to the Commission.

One case that was referred to the Commission with the consent of the Norwegian Competition Authority concerned the acquisition by Cisco Systems of Tandberg, the Norwegian vendor of video-conferencing products. Without its consent, the Norwegian Competition Authority would have had to review the transaction itself. This case was cleared by the Commission in 2010 after having received commitments from the merging parties in order to ensure interoperability between the products of the merged parties and their competitors.

Antitrust cases in 2010

By virtue of the co-operation rules under the EEA Agreement the Authority is also involved in cases in which the European Commission applies Articles 53 or 54 of the EEA Agreement.

In 2010, the Commission accepted and made legally binding commitments from VISA Europe to cut interbank fees for debit cards. The card payment fees involved are charged between banks but are ultimately paid by consumers in the form of higher prices for goods and services they buy from VISA merchants. The fees concerned are those which are set collectively by Visa Europe member banks. These fees will, as a result of the commitment decision, be reduced to 0.2% of the value of the individual debit card transaction. Iceland is one of the countries which will benefit directly from this reduction. An immediate effect will not be felt in countries in which similar fees are set by local bank associations. This applies amongst others to Norway. The Authority welcomed the commitments, which are binding on VISA Europe for a period of four years.

In 2010, eleven air cargo carriers were fined a total of EUR 799,445,000 by the Commission for price fixing. These worldwide airfreight carriers had during a period of more than six years coordinated the imposition of fuel surcharges and security surcharges. They had also agreed to refuse to pay commission on surcharges to freight forwarders. The cartel involved the Scandinavian airline SAS which is partly owned by the Norwegian State. The fine imposed on SAS was increased by 50% for its previous involvement in a cartel in the airline sector (SAS/Maersk Air) and amounted to more than EUR 70 million. The Authority supported the Commission's enforcement of the EEA competition rules in this case.

Chapter 5

Legal Affairs

The EEA legal world

The EEA legal world is becoming more litigious. As the Authority brings more substantive infringement cases, more cases before the EFTA Court are likely. Likewise, as the Authority investigates more state aid and competition matters, the likelihood of legal challenges to its decisions increases. Meanwhile, important points of EU law which have an impact on the EEA continue to be raised before the EU Court of Justice.

These factors combined mean that the Authority faces an ever more complex legal environment and that complexity is reflected in the increased activity before the Courts in 2010.

The Authority and the EFTA Court

In 2010, the EFTA Court registered 18 cases during the year, the highest number in the Court's history[10]. Of those 18 cases, seven are infringement proceedings brought by the Authority against an EFTA State; five are cases where the Authority's decisions in the field of state aid are being challenged; one is a challenge brought by Norway Post against the Authority's decision to fine the company under the competition rules; one is a case challenging the Authority's decision to close a complaint concerning public procurement; and four are requests for advisory opinions[11]. As has always been its practice, the Authority submitted written observations in the last-mentioned cases.

Of the infringement proceedings brought by the Authority, a significant one is an action brought against Norway (case E-18/10) as it is the first time the Authority has taken an EFTA State to Court for failure to comply with a judgment from the EFTA Court. In October 2007, the EFTA Court handed down a judgment (case E-2/07) concluding that the Public Service Pension Act was in breach of EEA law on equal treatment of men and women. As more than three years later Norway had still not taken all the necessary measures to comply with the judgment, the Authority brought the matter again to the EFTA Court. Another substantial case is an action against Iceland (E-12/10), which raises issues of principle concerning the freedom to provide services and the Posting of Workers Directive.

In case E-1/09, the Authority challenged Liechtenstein legislation requiring the members of the management board and of the executive management of banks established in this country to have a residence that allows them actually and unobjectionably to perform their tasks. A similar obligation was imposed on lawyers, patent lawyers, auditors and trustees. The authority argued

10 All judgments of the EFTA Court as well as information about pending cases may be found at http://www.eftacourt.int/index.php/cases.

11 The substance of the cases involving the Authority is explained in greater detail in the appropriate chapter.

that these residence requirements put nationals of other EEA states at a disadvantage compared to most Liechtenstein nationals and that such a restriction to the free movement of workers or self-employed persons was not justified. In its judgment of 6 January 2010, the EFTA Court upheld the Authority's position.

The remaining cases brought by the Authority to the EFTA Court concern non-implementation of EEA Acts. the Court has already adjudicated on all of them and found in favour of the Authority.

As for the challenges to the Authority's decisions, the action by Norway Post (E-15/10) is noteworthy. The Authority decided to fine the company for a breach of the competition rules of Article 54 EEA. The action brought by Norway Post will probably be the most voluminous case ever dealt with by the Court. The case is still pending.

The Liechtenstein Government and two recipient companies seek the annulment (in Cases E-4, 6-7/10) of the Authority's decision stating that the Liechtenstein Tax Act concerning the taxation of captive insurance companies was incompatible with EEA state rules. In a separate case (E-17/10), the Liechtenstein Government also challenged the Authority's negative decision on the taxation of investment undertakings. In both these decisions the Authority had ordered the recovery of the aid already paid to the recipient companies. The fifth and final challenge to the Authority in the field of state aid (E-14/10) concerns the decision of the Authority to close a case on aid to bus transport in Oslo. The Applicant claims that the Authority was under duty to open formal investigation.

The Authority has also been brought before the EFTA Court for closing a complaint on the rules on public procurement (E-13/10). The Authority claims, in line with established case law from the EU Courts, that such challenges are not admissible.

The Authority submitted observations to the EFTA Court in an advisory opinion Case, E-5/10 Dr Joachim Kottke, concerning the requirement imposed on claimants who reside in another EEA Country to provide security for costs when they bring proceedings before the courts in Liechtenstein. Resident claimants do not face the same obligation. The Authority acknowledged that enforcement of a Liechtenstein court decision abroad may involve costs and complications but concluded that those difficulties do not justify this legislation which provides for objectively different treatment. The EFTA Court gave its judgment in December 2010 and took a different view stating that such legislation could not always be justified.

THE AUTHORITY AND COURT INTERVENTIONS

The Authority has the right to get involved in any case before the EFTA Court.

In cases before the European Court of Justice it can intervene in the following ways:

- in a preliminary reference where a court of an EU Member State asks the ECJ to interpret EU law, the Authority may make written or oral submissions if the subject matter of the proceedings is in an area covered by the EEA Agreement,
- in other cases, the Authority may seek leave to intervene in support of one of the parties under the conditions laid down in Article 40 (3) of the Statute of the Court of Justice.

Activities in the EU Court of Justice

The Court of Justice receives about 300 new preliminary references each year, roughly half of which concern areas covered by the EEA Agreement. During 2010, the Authority made written or oral submissions in 13 preliminary reference cases.

Of particular note is Case C-279/09 DEB. This case concerns a German procedural rule that imposes security for costs on legal persons, which can amount to huge sums, while, at the same time, denying them the right to receive legal aid. In that case, an undertaking claimed it went bankrupt as a consequence of the late implementation of a Directive but was not able to seek the German State's liability in court because it could not afford to lodge the security for costs required. The Authority submitted that a national rule on security for costs could, under certain circumstances, make it impossible or excessively difficult to seek State liability for the breach of EEA Law. This is notably the case where it can be shown that the insolvency of the company is the consequence of the breach and where this insolvency makes it impossible to lodge an action against the State. The Court of Justice handed down its judgment 22 December 2010 which upholds the submissions of the Authority.

Outside of the preliminary reference procedure, the Authority sought leave under Article 40 (3) of the Statute of the Court of Justice for the first time to intervene in support of the European Commission in an infringement case it had brought against a Member State of the EU. The case was Case C-493/09 Commission v Portugal[12]. Unfortunately, the President of the Court of Justice turned down the Authority's request in an Order of 15 July 2010[13]. The President of the Court of Justice interpreted Article 40 (2) of the Statute of the Court of Justice as meaning that only EU Institutions and Member States could intervene in such cases[14].

The President of the Court did, however, allow the Authority to intervene, again for the first time, in an appeal case before the Court of Justice[15] which concerned a general point of state aid law. The President of the Court held in his Order of 2 September 2010 in Case C-124/10 P Commission v EDF that as the case was brought originally by a private party it was thus not in the category of cases mentioned in Article 40 (2) of the Statute of the Court of Justice in which the Authority was barred from intervening.

12 OJ 2010 C 37, p. 21.

13 The Authority had sought to intervene in two other infringement cases, Case C-10/10 Commission v Austria and Case C-38/10 Commission v Portugal but withdrew its applications in the light of the Order of 15 July 2010.

14 The President of the Court also decided by Order of 1 October 2010 in Case C-542/09 Commission v Netherlands that the Kingdom of Norway should be refused leave to intervene in an infringement case.

15 OJ 2010 C 161, p. 16.

INTERVENTIONS BY THE AUTHORITY IN THE EUROPEAN COURT OF JUSTICE

- Joined Cases C-403/08 and C-429/08 FAPL on UK restrictions on the access to pay-TV satellite transmissions of live English Premier League football matches by service providers other than the one designated by the event organizer FAPL for the United Kingdom;
- Case C-515/08 Santos Palhota on Belgian rules on the posting of workers;
- Case C-382/08 Neukirchinger on Austrian legislation requiring the providers of national commercial hot air balloon services to have their residence or company seat in Austria;
- Joined cases C-372/09 and C-373/09 Pennaroja Fa on French rules for enrolment in the register of court experts which does not take into account experience obtained in other Member States;
- Case C-1/09 CELF on the obligation to repay state aid illegally granted by the French state;
- Case C-72/09 Établissements Rimbaud on French tax exemptions not granted to Liechtenstein legal persons;
- Case C-279/09 DEB on effective redress in the national legal order for breaches of EU law committed by national authorities;
- Case C-360/09 Pfleiderer on the scope of access to the German competition authority's file regarding information received under a leniency application as sought by a cartel victim preparing a damages claim against the cartelists;
- Case C-375/09 Tele 2 Polska on whether a national competition authority could find that an undertaking had not breached EU competition law;
- Case C-439/09 Pierre Fabre Dermo-Cosmétique on the compatibility with the EU competition rules of a French selective distribution system restriction which included a ban on internet sales;
- Case C-13/10 Knubben Dak- en Leidekkersbedrijf on Belgian legislation under which only contractors registered in Belgium may apply a reduced VAT rate of 6% for certain construction work services;
- Case C-17/10 Toshiba on the EU law principle of ne bis in idem (double jeopardy) regarding a Czech antitrust investigation;
- Case C-378/10 VALE on Hungarian limitations on the registration in the commercial register of companies incorporated in another EU Member State wishing to convert into a company incorporated under Hungarian law.

Public access to documents

Since the adoption of the new rules on Public Access to documents in June 2008, the Authority has been publishing a document register containing correspondence and decisions weekly on its website. The aim of the new rules was to increase transparency and improve access to information. The statistics from the following years suggest that this is the trend. The first full year in which the rules were applicable, in 2009, the Authority received approximately 50 requests. In the majority of the cases access was given. In 2010 the number of requests had risen to about 125, and access was formally denied only once. The Authority however continued to guide applicants informally on the availability of documents. In six of the access given cases in 2009 only partial access was given. In 2010, this number doubled. The denial of access primarily concerned cases in which an investigation was still pending at the Authority or where requested documents concerned internal evaluations of the Authority or correspondence with EFTA States.

Several of the access requests concerned more than one document and some of them were requests for whole case files. The most voluminous of these was a request for the case file of the Authority's investigation of Norway Post, a case file with hundreds of documents, many from third parties. The request was received in the autumn and was still being processed at the end of the year.

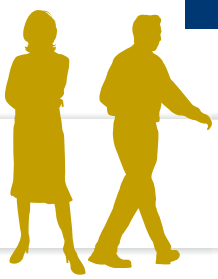
ESA Day in Iceland and public presentations

In June a full ESA Day seminar was held in Reykjavik, where 110 Icelandic government officials from all Ministries and institutions dealing with ESA matters were given an overview of the Authority's activities within its main fields. This one day seminar came about as the result of close cooperation between the Authority and the Icelandic Ministry of Foreign Affairs and was praised by both parties for its informative and bridging outcome, not least because of the high number of new officials dealing with EEA relevant matters.

The Authority continued to receive visitor groups and approximately 1,600 people were given public presentations in Brussels throughout 2010. In addition, the Authority's College and staff members took part in a range of seminars and meetings in EFTA Member States.

Chapter 6

Statistics



Case handling by the Authority

Developments and activities relating to individual cases and sectors in 2010 have been dealt with in the preceding chapters of this annual report. The aim of this chapter is to give a brief overview of the Authority's total case load, categorised by type of case and by country, as well as a calculation of the number of cases that were opened and closed within the Authority's different fields of work during the past year.

"Case" in this section refers to an assessment of the implementation, or application, of EEA law, or to tasks executed for the purpose of fulfilling the Authority's obligations under EEA law, registered during the relevant year. Such cases do not necessarily lead to the initiation of infringement proceedings against one or more EFTA State(s) or undertakings, or the opening of formal investigations.

Pending cases

The Authority's emphasis in recent years on reducing the backlog of pending cases has been successful and has led to a substantial reduction of such cases since this figure peaked in 2007. At the end of 2010, the Authority had 527 pending cases, which is slightly higher than at the start of the year. However, the number of cases commenced at the Authority's own initiative and the amount of complaint cases continued to decrease. The slight increase in pending cases results from a historically high number of new notification cases (75 opened in 2010, compared to 38 in 2009). This was largely caused by a substantial increase in notifications from both Norway and Iceland.

The following figures show the developments in pending cases from 2006 to 2010 (inclusive).

Table/Figure 1 Pending cases, by category

	2006	2007	2008	2009	2010
Complaint	149	145	143	130	122
Notification	82	94	113	50	86
Obligatory Tasks	103	101	91	115	121
Own Initiative	266	325	272	215	198
Total	**600**	**665**	**619**	**510**	**527**

Complaints are cases where the Authority examines information received from economic operators or individuals regarding measures or practices in the EFTA States which are not considered to be in conformity with EEA rules.

Notifications cover state aid measures, draft technical regulations, and telecommunications market notifications that are submitted to the Authority by the EFTA States for examination or approval.

Obligatory Tasks are cases which are opened on the basis of an obligation on the Authority deriving from the EEA Agreement directly, or from secondary legislation, such as inspections in the area of food safety or transport.

Own Initiative cases are those opened by the Authority at its own instigation. Such cases include the non-implementation of directives, and non-incorporation of regulations which have been incorporated into the EEA Agreement by Iceland and Norway[16], and the examination of the implementation (e.g. the verification of the conformity of national laws with EEA legislation) and application of EEA law. The latter covers, for example, examination of individual award procedures for procurement, state aid or concessions where the Authority considers such examination is warranted based on different sources of information.

Table/Figure 2 Pending cases, by country

	2006	2007	2008	2009	2010
ISL	156	252	223	172	189
LIE	95	72	63	57	65
NOR	294	294	303	242	243
EEA/Third countries	65	47	30	39	30
Total	**600**	**665**	**619**	**510**	**527**

Figure 2 shows the number of pending cases by country from 2006 to 2010 (inclusive). The category "EEA/third countries" refers to cases where more than one EFTA State was involved, typically two or all three EFTA States; or cases transferred to, or dealt with in co-operation with, the European Commission as they concerned EU Member States or third countries.

16 In Liechtenstein, regulations are automatically incorporated into the internal legal order through the EEA Joint Committee Decision whereas for Iceland and Norway national implementing measures must be subject to additional domestic procedures.

Cases opened and closed by the Authority

The activities of the Authority can also be illustrated by the number of cases which were opened and closed during the year. A case is closed when the issue at stake has been resolved, or when the Authority finds that no infringement of EEA law has taken place.

After two years where the number of cases closed was higher than the amount opened, the number of closures and openings was almost the same in 2010.

Table/Figure 3 Opened (new) cases, by field of work

	2006	2007	2008	2009	2010
Competition	16	9	19	19	14
Internal Market Affairs	270	421	356	276	278
State aid	53	63	56	50	78
Total	**339**	**493**	**431**	**345**	**370**

Table/Figure 4 Cases closed by the Authority, divided by field of work

	2006	2007	2008	2009	2010
Competition	20	4	36	9	16
Internal Market Affairs	338	385	384	382	276
State aid	45	39	57	72	70
Total	**403**	**428**	**477**	**463**	**362**

Figures 3 and 4 show that the great majority of cases related to internal market affairs, which comprise areas such as the free movement of capital, goods, persons and services, the environment and energy matters as well as public procurement. See Chapter 3 for more detailed information on Internal Market Affairs.

In the area of state aid it should be noted that the number of new cases increased significantly in 2010, while the number of cases closed remained at a historically high level.

Table/Figure 5 Opened (new) cases, by country of origin

	2006	2007	2008	2009	2010
ISL	95	237	181	138	160
LIE	40	21	24	25	32
NOR	163	203	190	144	160
EEA/Third Countries	41	32	36	38	18
Total	**339**	**493**	**431**	**345**	**370**

Table/Figure 6 Closed cases, by country of origin

	2006	2007	2008	2009	2010
ISL	119	141	210	187	148
LIE	45	44	33	31	25
NOR	190	203	181	214	161
EEA/Third countries	49	40	53	31	28
Total	**403**	**428**	**477**	**463**	**362**

Chapter 6

Statistics

Figure 5 shows that the Authority experienced an increase in the number of new cases in 2010, but the figure remained significantly lower than in 2007 and 2008. At the same time the number of closed cases dropped sharply (Figure 6). As a result, and as shown in the section above (Figure 1), the number of pending cases increased slightly in 2010.

The Authority opened the same number of cases related to Norway and Iceland (160), while 32 related to Liechtenstein. In 2010 most closures were of Norwegian and Icelandic cases, while again only a relatively small number related to Liechtenstein.

Complaints in 2010

In order to fulfil its surveillance tasks to ensure compliance with EEA law in the EFTA States, the Authority examines complaints from interested and concerned parties. In principle, anyone is entitled to lodge a complaint with the Authority, which will then examine it to determine whether there is need for an investigation. Following the examination, the Authority may decide to close the case, or to initiate formal infringement proceedings. It must be emphasised that in these circumstances the Authority will pursue a resulting case against one or all EEA EFTA states on its own initiative and not on behalf of the complainant.

In the case of all three EFTA States most new complaints related to internal market affairs, followed by state aid and finally competition cases. Although not apparent from these figures, it is notable that the number of new complaints against Iceland was higher than the previous year and almost three times higher than in 2008, as the Authority continued to register more new complaints relating to the banking sector and/or capital movement in Iceland. The total number of new complaints against Iceland increased by 19% in 2010 despite the fact that at the same time the number of all pending complaints continued to decrease (see Figure 1).

As in previous years, the bulk of the complaints concerned Norway's implementation and application of EEA law: 85 of 122 cases still pending at year-end concerned Norway. Equally, most new complaints (43 out of 71) and closures (56 out of 78) also concerned that state.

Number of complaint cases, by country of origin and field of work:

Table/Figure 7 Pending complaints on 31 December 2010

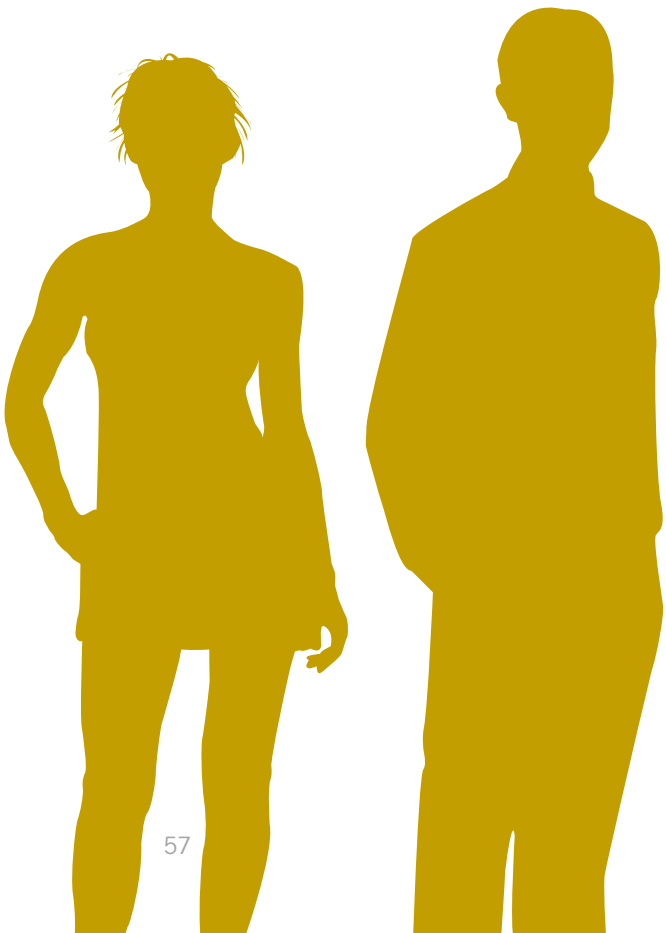
	Competition	Internal market affairs	State aid	Total
Iceland	0	21	12	33
Liechtenstein	1	3	0	4
Norway	2	63	20	85
Total	**3**	**87**	**32**	**122**

Table/Figure 8 New complaints lodged with the Authority in 2010

	Competition	Internal market affairs	State aid	Total
Iceland	1	18	6	25
Liechtenstein	0	3	0	3
Norway	1	33	9	43
Total	**2**	**54**	**15**	**71**

Table/Figure 9 Complaints closed during 2010

	Competition	Internal market affairs	State aid	Total
Iceland	1	18	1	20
Liechtenstein	0	2	0	2
Norway	8	33	15	56
Total	**9**	**53**	**16**	**78**



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EFTA SURVEILLANCE AUTHORITY

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