# Annual Report 2013

EFTA SURVEILLANCE AUTHORITY

## Safeguarding the EEA Agreement

In the course of the last 20 years, the EEA Agreement has made a strong contribution to securing jobs and prosperity in Iceland, Liechtenstein and Norway. It has done so by engendering a form of co-operation which is broad in scope, which has in turn led to a detailed set of rules becoming part of day-to-day life in ministries, municipalities and enterprises alike. However, the EEA is a fragile construction.

The common rules found in the EEA are intended, among other things, to ensure that companies have access to the Internal Market without discrimination, and free from the restrictions imposed by arbitrary barriers to trade. For this to work, all new common rules must be introduced simultaneously and be applied equally in each EEA State. Unfortunately, for the time being, that is not always the situation in the EFTA States.

During the last two years, the EFTA Surveillance Authority has brought a record number of cases before the EFTA Court on the basis that Iceland and Norway have failed to incorporate new rules in a timely manner, or to correctly apply such rules. In the same period the Authority has opened hundreds of formal infringement procedures. Fortunately, in most of these cases a solution can be found. However, the deadlines for incorporation may be breached by as much as one year or more. On top of this, the Authority notes that there is a backlog of about 500 legal acts that have not yet been incorporated into the EEA Agreement, even though they are already in force in the EU.

While the EU Member States continue to improve their ability to implement new, common rules into their national legislations, the situation in the EFTA States is more critical. EU Member States are made subject to fines if they are found to be in breach of their deadlines for implementation. The EEA, on the other hand, is based on trust: trust that agreements are binding and trust that these agreements will be followed up by action. Unfortunately, experience shows that this is not always sufficient.

The solution is to be found neither in fine words, nor in short bursts of effort followed by long periods of inactivity. The EEA requires a high and enduring level of attention over the long term on the part of politicians and administrators alike.

The institutional framework of the EEA has proven to be surprisingly robust, but building trust takes time, and tearing it down can happen quickly. The EEA Agreement risks rapidly losing both its value and its relevance if those who have undertaken commitments are no longer committed, and the rights developed no longer give rights to those who require them.

A heavy responsibility rests upon Iceland, Liechtenstein and Norway if the EEA Agreement is to endure into its third decade.

Oda Helen Sletnes,
President
EFTA Surveillance Authority

# Contents

**Foreword** 2

**Contents** 3

**Introduction** 5
The European Economic Area 6
The role of the EFTA Surveillance Authority 6
Organisation of the Authority 7
College 7
Budget and accounts 7

**Internal Market** 8
Capital Movements 9
Norway abolishes restrictions on ownership in the fish farming industry 9
Currency indexation of loans in Iceland 9
Notional interest deduction in Liechtenstein 10
Ownership restrictions in Norwegian stock exchanges and securities depositories 10
Iceland repealed discriminatory rules on acquisition of real estate 11
Exit taxation in Norway 11
Free Movement of Persons 12
Free movement of EEA nationals and their family members within the EEA 12
Family benefits 12
Financial assistance to studies 13
Services and Establishment 13
Financial assistance to online studies 13
Liechtenstein Trade Act and the Services Directive 14
Refusal of establishment as lawyer in Liechtenstein 14
Norway has changed its rules on access to customs credit 15
Environment 15
Air pollution – levels in Norway are still too high 15
Water Framework Directive – complaint against Norway 16
Environmental Impact Assessment Directive 16
Telecoms and Audiovisual Services 16
FIFA challenges decision on Norwegian list of major events 16
Complaints concerning Swiss mobile provider in Liechtenstein 17
Other cases 17
Complaints against Iceland concerning rules on alcohol 17
Tax on the temporary import of foreign-registered rental cars 18
Food Safety 19
Veterinary inspections 19
Ban on fresh meat import in Iceland 19
Traditional food production methods 20
Handling of animal by-products in Iceland 20
Approval of stallions used for breeding in Norway 21
Import of dogs from Romania to Norway 21
Removal of specified risk material from slaughtered cattle in Iceland 21
Implementation of the total feed ban and revision of the annual monitoring programme for mad cow disease in Norway 21
Transport 22
Ban on frequent flyer points in Norway lifted 22
Aviation security inspections 22
Maritime security inspections 23
The airport bus in Iceland 24
Complaints regarding tunnels in Norway 24
Complaints on road tolls in Norway 25
Internal Market Scoreboard 25

**State Aid** 26
Main activities in 2013 27
Priorities for 2014 27
The financial crisis 27
Restructuring aid to Sjóvá Insurance Company, Iceland 27
Restructuring aid for two small Icelandic savings banks 28
Alleged state aid to Landsbankinn 28
Sale of land and other property 29
Sale of Narvik municipality's entitlement to concession power to Narvik Energi AS 29
Sale of Norwegian defence property 29
State aid in the transport sector 29
In-depth investigation of Scandinavian Airlines' New Revolving Credit Facility 29
Bus transport services in Aust-Agder 30
Public transport in Oslo 30
State aid for environmental protection 31
Aid under the ETS Guidelines in Norway 31
Additional aid from Innovation Norway to Finnfjord AS 31
Aid to Norcem for the construction of a carbon capture research facility 32
State aid for the promotion of broadband, data centres and telecom sector 32

# Content


State aid to a municipal broadband network in Iceland ... 32
Broadband to rural areas in Iceland ... 32
Amendments to the VAT legislation in Iceland ... 33
Regional aid ... 33
Amendments to the Investment Incentive Scheme in Iceland ... 33
Charter Fund Northern Norway ... 33
Prolongation of regional aid maps in Iceland and Norway and of expiring regional aid schemes in Norway ... 34
Aid to the media ... 34
The financing of the Icelandic National Broadcasting Service ... 34
Aid for promotion of Research and Innovation and Risk Capital ... 35
National Seed Capital Scheme ... 35
Aid to NCE Maritime and NCE Systems Engineering innovation clusters ... 35
Aid in support of sports and culture ... 35
The financing of Harpa in Reykjavík ... 35
Alleged cross-subsidies in public services ... 36
Alleged cross-subsidies in the public financing of Bergen Church Council ... 36
Municipal waste collection in Norway ... 36
Possible aid to the Nasjonal digital læringsarena (NDLA) ... 36
Alleged state aid to Redningsselskapet ... 37
The financing of safety training courses by municipal schools ... 37
Potential aid provided under exemptions from Norwegian income tax ... 38
Cross-subsidies in the Norwegian public dental health care service ... 38
Public hospital pharmacies in Norway ... 38
Financing of the Analysis Centre Trondheim ... 39
The financing of the fitness centre at Kippermoen Leisure Centre ... 39
Aid to lessors of premises to public schools ... 39
State guarantees ... 40
State guarantees in favour of Landsvirkjun and Orkuveita Reykjavíkur ... 40
Other cases ... 40
Export Credit Norway ... 40
Guidelines ... 40
Guidelines on short-term export-credit insurance ... 40
New broadband guidelines ... 41
New guidelines on regional aid for 2014-2020 ... 41
2013 Banking Guidelines ... 41
General monitoring ... 42
State Aid Scoreboard: Towards better-targeted state aid expenditure ... 42

**Competition** ... 44
Main activities in 2013 ... 45
Outlook for 2014 ... 45
Telenor investigation ... 46
Inspection at Statoil ... 46
Exploration and production of crude oil and natural gas on the Norwegian continental shelf ... 47
New guidelines on settlements ... 47
Co-operation with national competition authorities ... 48
Co-operation with the European Commission ... 48
Merger cases ... 48
Antitrust cases ... 49

**Statistics & Budget** ... 55
Case handling by the Authority ... 56
Pending cases ... 56
Cases opened and closed by the Authority ... 56
Complaints in 2013 ... 57
Budget ... 58

# 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 28 Member States of the European Union (EU) and three of the four European Free Trade Association (EFTA) States: Iceland, Liechtenstein and Norway (Switzerland is not part of the EEA). It was established by the EEA Agreement, which came into force in 1994, an international agreement which enables the three EFTA States to participate fully in the European Internal (or Single) Market.

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The Agreement ensures equal rights to participate in the Internal Market for citizens and economic operators in the EEA, and equal conditions of competition. It also provides for co-operation across the EEA in 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 Internal Market of the EEA creates jobs and growth and adds to the international competitiveness of the EEA States.

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## The role of the EFTA Surveillance Authority

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

The Authority protects 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 initiate proceedings against the relevant EFTA State at the EFTA Court, seeking a change in the relevant rules or practices unless the State concerned decides to take appropriate action in response to the Authority's request.

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.

During 2013, the composition of the College was:
- Oda Helen Sletnes, (Norway) President
- Sabine Monauni-Tömördy (Liechtenstein)
- Sverrir Haukur Gunnlaugsson (Iceland)

The College is assisted by four departments:
- Internal Market Directorate
- Competition and State Aid Directorate
- Legal and Executive Affairs Department
- Administration Department

### 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 for 2013 was EUR 12.7 million.

More details on the budget and accounts can be found in the chapter on statistics.

### Staff and employment

In 2013, the Authority had a staff of 72, including the three College members, staff employed on fixed-term contracts, temporary staff and trainees. In 2013, 13 nationalities were represented amongst the staff, and approximately half of the fixed-term and temporary staff members were EFTA nationals. Of all staff members 43% were men and 57% women, with 36% of management (College members, Directors and Deputy Directors) being female.

In accordance with the Authority's staff regulations established by the EFTA States, all fixed term staff are employed for a three year period, normally renewable only once. As a consequence, the turnover of staff is high and there are, on a more or less permanent basis, employment opportunities for highly qualified candidates within the fields of activity of the Authority. It is an important goal to maintain competitive employment conditions and high awareness of the Authority as an attractive work place. To reach this goal, efforts have been put into renewing the recruitment strategy of the Authority and, in particular, using new and more efficient channels for providing information about the Authority as a place to work and all vacant positions.

## GLOSSARY OF TERMS

**EFTA** – European Free Trade Association. An inter-governmental 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** – European Economic Area. An area of economic co-operation that consists of the 28 EU Member States and three of the four EFTA States: Iceland, Liechtenstein and 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.

**The Court of Justice of the European Union ("Court of Justice")** - The Court of Justice interprets EU law to make sure it is applied in the same manner in all EU countries. The EFTA Surveillance Authority can lodge observations in cases before the Court of Justice.

# Internal Market

## Capital Movements

### Norway abolishes restrictions on ownership in the fish farming industry

**Norway repeals certain ownership restrictions in its fish farming industry following the Authority's handling of a complaint concerning the matter.**

In the summer of 2012, the Authority issued a letter of formal notice to Norway for maintaining in force ownership restrictions in the fish farming industry. According to the contested Norwegian law, acquisitions leading to majority control over more than 15% of the total number of salmon and trout farming concessions were subject to prior authorisation, while acquisitions leading to majority ownership of more than 25% of the concessions were entirely prohibited. The Authority's position was that the rules constituted a restriction to the freedom of establishment.

The Authority found that the objectives of the Norwegian fish farming rules could be reached by other less restrictive means. In this context, the Authority observed that Norway could, for instance, introduce a prior authorisation scheme for concessions above certain limits. However, since authorisation schemes are, by their very nature, restrictive to the exercise of fundamental freedoms, such an authorisation scheme would have to be transparent and objective, so that they would not be used arbitrarily.

The case was discussed in various meetings between the Authority and the Norwegian Government. In December 2012, the Norwegian Government informed the Authority that it was in the process of amending the Fish Farming Regulation and establishing new, clear and predictable terms and conditions.

In July 2013, Norway removed the contested rules on ownership restrictions in the fish farming industry by adopting a new regulation on the distribution and control of production capacity in permits for salmon, trout and rainbow trout marine fishing.

After having examined the new and much less restrictive regulation, in November 2013, the Authority decided to close the case.

### Currency indexation of loans in Iceland

**The total prohibition of loans in Icelandic krona that are indexed to the value of other currencies is in breach of the principle of free movement of capital. Iceland has indicated that it intends to revise the ban.**

According to Icelandic law, it is prohibited to grant loans in Icelandic krona that are indexed to the value of other currencies. In May 2013, the Authority sent a reasoned opinion to Iceland concluding that such a ban constitutes a breach of the principle of free movement of capital.

The free movement of capital is protected under the EEA Agreement and the EEA States are, as a general rule, not permitted to restrict cross-border capital movements.

It is the Authority's opinion that the granting of exchange rate indexed loans is, in most cases, necessarily closely linked to underlying cross-border transactions utilised by the banks to finance these loans. Thus, the ban may potentially dissuade Icelandic financial institutions from financing their loans in currencies other than the national currency and may therefore restrict the free movement of capital.

The Authority acknowledges that loan agreements with exchange rate indexation may involve risk for consumers. Consumers usually receive their income in the national currency and are therefore less well prepared to react in the face of fluctuation in the value of other currencies. Furthermore, consumers may not have the ability to assess the risk involved in such loan agreements.

Therefore, the Authority believes that it may, in certain circumstances, be lawful to restrict the granting of such high-risk financial products to consumers. However, the Authority is of the opinion

that Iceland could introduce other, less restrictive measures in order to protect consumers.

A total ban on granting such loans to individuals and companies surpasses the scope of what can be considered necessary in order to protect consumers, in the Authority's opinion.

The same does not apply to companies. Contrary to the situation relating to consumers, legal persons generally have the necessary means and resources to be able to adequately assess any risks involved when considering contracting a loan incorporating an exchange rate indexation.

Iceland has replied to the reasoned opinion, which is the final step in the infringement procedure prior to EFTA Court referral, and maintains that the Icelandic ban on the granting of exchange rate indexed loans does not restrict the free movement of capital. However, Iceland has recently committed to revise the ban and has established a working group in order to carry out this work. The main focus of this work shall be centred on consumers and municipalities. Iceland stated that a proposal for legislative amendments would be submitted to its parliament no later than March 2014.

In light of these forthcoming new developments, the Authority will consider its next steps.

## Notional interest deduction in Liechtenstein

**Liechtenstein has put in place tax rules on notional interest deduction which result in a reduction in the amount of tax that companies need to pay in Liechtenstein. The Authority considers that the system as drafted restricts the EEA rules on freedom of establishment and free movement of capital.**

Companies subject to Liechtenstein tax can deduct from their taxable income a notional interest calculated on the basis of their adjusted shareholder's equity. However, when calculating the deduction, only the net assets in real estate or permanent establishments in Liechtenstein is taken into account. Real estate or permanent establishments located in EEA States other than Liechtenstein are excluded. The Authority believes that this amounts to discrimination as it discourages Liechtenstein companies from setting up permanent establishments in countries other than Liechtenstein and it also discourages residents in Liechtenstein from investing in other EEA States. The Authority therefore sent a reasoned opinion to Liechtenstein in November 2013 for violation of Articles 31 and 40 of the EEA Agreement.

The Liechtenstein rules on notional interest deduction show strong similarities with the Belgian rules on notional interest deduction which has been examined by the Court of Justice of the European Union. The Court delivered its judgment in July 2013 and found that the Belgian rules were incompatible with the EU rules on freedom of establishment. The Authority is currently considering its next steps after a close scrutiny of the case decided by the Court.

## Ownership restrictions in Norwegian stock exchanges and securities depositories

**Norway proposes new rules on ownership of stock exchanges following a reasoned opinion from the Authority.**

In the EFTA Court's judgment of 16 July 2012, in the so-called "Stock Exchanges Case", the Court agreed with the Authority that Norwegian law, which provides for a general ban on ownership above 20% of the shares in stock exchanges and securities depositories, with very limited exceptions, was in breach of the right of establishment and free movement of capital.

The Authority opened a case following the judgment, reminding Norway of its obligation to comply with the EFTA Court's judgment.

In October 2012, Norway informed the Authority that it had begun preparing new ownership rules on ownership in stock exchanges and securities depositories. However, after having received no information from Norway indicating that these rules had entered into force, the Authority concluded that

measures to comply with the judgment had not been taken. As a result, and in order to put further pressure on the Norwegian Government to comply with EEA law, the Authority decided in June 2013 to issue a reasoned opinion to Norway.

In August 2013, the Norwegian Government informed the Authority that a public hearing had been launched on a draft proposal for new rules on ownership in stock exchanges and securities depositories. Once the new rules have entered into force, the Authority aims to examine their content in order to decide whether they are in accordance with EEA law.

## Iceland repealed discriminatory rules on acquisition of real estate

In April 2013, the Icelandic Government adopted amendments to Regulation 702/2002, on the rights of foreigners covered by the EEA Agreement to acquire ownership or use of real estate. The amended rules introduced a system of prior authorisation for the acquisition of real estate for EEA residents (domiciled/established outside of Iceland).

After the introduction of these rules, the Authority communicated to Iceland that the right to acquire real estate is a right protected under the free movement of capital in Article 40 of the EEA Agreement. It was further observed that the Icelandic rules on prior authorisation seemed directly discriminatory since they do not apply to Icelandic citizens.

In July 2013, Iceland repealed the contested rules.

## Exit taxation in Norway

**Following a complaint about Norway's exit taxation system, the Authority indicated that the system is incompatible with the freedom of establishment.**

The Authority received a complaint against Norway concerning its exit taxation system. Following the receipt and the consideration of the merits of the complaint, the Authority sent a letter to Norway in which it indicated that the current exit taxation system in Norway is not compatible with the freedom of establishment enshrined in Article 31 of the EEA Agreement. The Authority's letter addressed two issues: (i) the requirement for a bank guarantee for the payment of tax on unrealised capital gains in all situations where tangible assets, financial assets and obligations are moved out of the Norwegian fiscal jurisdiction; and (ii) the immediate taxation of intangible assets and inventories that are moved out of Norway.

The Authority considers that, while there may be public interest objectives (such as the prevention of tax evasion or avoidance) in requiring a guarantee in certain cases, a blanket requirement does not comply with the principle of proportionality, since it will not be justified in every case. Such a guarantee can only be required if there is a genuine and serious risk of non-recovery of the tax claim. As a result, the circumstances of each case must be assessed individually.

In its letter, the Authority also drew Norway's attention to the recent judgment of the Court of Justice of the European Union in case C-261/11 Commission v. Denmark, which was handed down on 18 July 2013. The judgment specifically addressed the question of the treatment of assets such as intangible assets, and came to the conclusion that immediate recovery of tax is in violation of EU law.

In October 2013, Norway proposed an amendment to the Tax Act, to the effect that security will only be required in cases where the Directorate of Taxes adjudges that there is a genuine risk for non-recovery of the tax claim. With regard to the matter of immediate taxation of intangible assets and inventories, Norway has not proposed any amendments as of yet. The Authority will continue its assessment of the issues and observe Norway's actions in relation to the exit tax rules closely.

## Free Movement of Persons

### Free movement of EEA nationals and their family members within the EEA

**The Liechtenstein Government has recently committed to amending its rules to ensure compliance with EEA law on the free movement of EEA nationals and their families across the EEA.**

The *Free Movement Directive* (2004/38/EC) aims to ensure that EEA nationals can fully enjoy their rights to freely travel, live and work anywhere in the EEA. The Directive should have been fully transposed by the EEA States in their national rules by March 2009. Following bilateral discussions with Liechtenstein, the Authority successfully resolved most of the outstanding issues in the national implementation, but certain obstacles remain. Therefore, in September 2013, the Authority sent a letter of formal notice to Liechtenstein. The Authority holds the view that while EEA law allows Liechtenstein to maintain a quota system for residence permits for workers, the State cannot use this system as an excuse for limiting the rights of EEA nationals to reside and work in any EEA state by their own choice. The Authority is currently examining Liechtenstein's response to the letter of formal notice and whether that solves the outstanding issues.

The Authority is continuing to closely monitor the implementation and application of the Free Movement Directive in the other EEA States.

### Family benefits

**The Norwegian rules on the payment of family benefits are not in line with the provisions of the social security co-ordination system under the EEA Agreement.**

In September 2013, the EFTA Court delivered its judgment in case E-6/12 concerning the payment of family benefits.

According to Norwegian law, a person working in Norway is entitled to family benefits only when the child lives with him or her. In cross-border cases, however, the Norwegian authorities do not examine whether the child living abroad is actually dependent on the parent who lives in Norway when the parents are separated. This is in breach of EEA law, which provides the right to receive benefits if the child is actually dependent on that parent, regardless of whether or not they are living together.

In its application, the Authority asked the Court to declare that the administrative practice of the Norwegian administration is in breach of Article1(f)(i) of the Social Security Regulation No 1408/71. This Article provides that the relevant national legislation shall determine the necessary criteria for deciding which persons can fall under the definition of a "member of the family". It also specifically states that if "the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the employed person, this condition shall be considered satisfied if the person in question is mainly dependent on that person".

The key issue of the case therefore concerned the interpretation and application by the Norwegian authorities of the criterion of "living permanently together" under the Norwegian *Child Benefits Act*, and the fact that in cross-border cases they do not take into consideration whether a child, living with one parent in another EEA state, can be considered to be mainly dependent on the parent that is working in Norway. The EFTA Court concluded that the Norwegian practice is in breach of the EEA Agreement.

The case did not address any obligation on behalf of Norway to pay family benefits in individual cases.

The Authority is currently looking into the implementation of the judgment in Norway, where so far no official statement has been given by the Norwegian Government.

## Financial assistance to studies

**The Authority launched infringement proceedings against Norway and Iceland concerning the national rules on financial assistance to studies discriminating against workers from other EEA States and their families.**

In November 2013, the Authority sent Norway and Iceland letters of formal notice inviting those States to fulfil their obligations under EEA law as regards financial assistance to studies.

Norwegian legislation imposes a residence requirement, together with the requirement of proficiency in the Norwegian language, for financial assistance to studies abroad, which puts migrant and frontier workers and their families at a disadvantage compared to nationals.

Moreover, both Norway and Iceland grant financial assistance to migrant and frontier workers only on condition that the studies pursued are linked to their professional activities in those States. However, they do not provide for such a requirement with respect to their nationals.

The Authority considers that these requirements are contrary to EEA law on free movement, which says that workers from other EEA States should enjoy the same social advantages as nationals. Study financing awarded to students is a social advantage which should be granted without discrimination.

Both States are expected to reply to the letters by the beginning of spring 2014.

# Services and Establishment

## Financial assistance to online studies

**Students wishing to access e-learning in another EEA state should be treated equally with students pursuing such education in Norway.**

The Authority received a complaint against Norway regarding the ineligibility for financial assistance from the Norwegian State Educational Loan Fund for students wishing to pursue higher education by way of e-learning abroad, i.e. desiring to utilise service providers (universities) established outside Norway. In contrast, financial assistance is granted to students wishing to pursue higher education with certain institutions providing courses abroad, which are not provided via e-learning.

After examining the complaint, the Authority considered that the national rule is an unjustifiable restriction on both the students residing in Norway and EU universities providing online courses. EEA States may not impose on recipients, namely the students, requirements which restrict the use of a service supplied by a provider which is established in another EEA state. Therefore, a student entitled to financial assistance from the Norwegian State Educational Loan Fund wishing to access e-learning in another EEA state has the right to be treated on the same basis as a student wishing to pursue such education in Norway, at least as concerns the financial assistance for tuition fees, since any difference in treatment would amount to a disruption of the internal market.

As a consequence, in respect to e-learning, providers established outside Norway will be less attractive to potential recipients. Indeed, students will have an incentive to opt for a Norwegian provider because they know that tuition fees will be eligible for financial assistance.

Following the receipt of a letter of formal notice from the Authority, the Norwegian Government replied by indicating that Norway is currently reviewing the legislation regarding student loans and will take into account the elements raised by the Authority.

## Liechtenstein Trade Act and the Services Directive

**In July 2013, after several exchanges of information, the Authority sent a letter of formal notice raising several issues and considering that the Liechtenstein legislation is not in conformity with the Services Directive and the EEA Agreement.**

In the view of the Authority, the procedures established by the Trade Act, both for establishment and cross-border service provision, have to be considered as prior authorisation schemes, with tacit acceptance. According to the Services Directive (2006/123/EC), EEA States must avoid these types of measures, except if they can justify them. The Authority failed to see the justification brought by Liechtenstein, namely the protection of consumers. In addition, other less restrictive measures could have been taken in order to achieve similar objectives. Liechtenstein's reply is currently being assessed.

The Services Directive establishes general provisions in accordance with the principles developed in the case law of the Court of Justice of the European Union and the EFTA Court, facilitating the exercise of the freedom of establishment for service providers and the free movement of service within the EEA. The Directive has been applicable in the EEA since 1 May 2010.

## Refusal of establishment as lawyer in Liechtenstein

**Liechtenstein's legislation lays down additional conditions that the Authority considers to be too strict.**

In February 2011, the Authority received a complaint against Liechtenstein regarding the refusal to grant a foreign lawyer the authorisation of establishment in Liechtenstein under the Liechtenstein title of Rechtsanwalt according to Article 10 of Directive 98/5/EC. This provision essentially foresees that, in cases where a foreign lawyer has effectively and regularly pursued for a period of at least three years an activity in the host state in the law of that state, he shall be exempted from an aptitude test in order to be allowed to pursue the profession under the title of the host state.

The complainant's application was rejected by Liechtenstein arguing that the applicant was not sufficiently "effectively and regularly" involved in Liechtenstein law to fulfil the conditions under Article 10 of the Directive. The complainant appealed against this decision, but was rejected by the Liechtenstein Government and the Liechtenstein Administrative Court. Finally, after having refused an application by the complainant for a referral to the EFTA Court, the Liechtenstein Constitutional Court rejected the appeal of the complainant against the judgment of the Administrative Court.

In July 2012, the Authority sent a letter of formal notice stating that national legislation implementing Article 10(1) of the Directive imposes stricter conditions to start an activity in Liechtenstein than the Directive. The Directive sets three conditions. First, the activity pursued shall be regular and effective for a period of at least three years. Second, the activity shall be pursued in the host state. Third, the activity shall concern the law of the host state including EEA law.

However, the Liechtenstein legislation lays down additional conditions. First, it requires that the activity be the "main activity", meaning that the lawyer be physically present more than 50% of his working time in Liechtenstein. Second, when assessing an application, the Liechtenstein authorities shall only consider cases handled by the lawyer which exclusively deal with Liechtenstein legislation. Third, the Liechtenstein authorities require that an applicant lawyer shall have had the sole or at least the responsible mandate to handle a given case in order to be taken into account.

The Authority considers that these additional conditions are contrary to the Directive and the relevant case law of the Court of Justice.

In November 2013, Liechtenstein replied that it will amend national legislation in order to ensure conformity with EEA law.

## Norway has changed its rules on access to customs credit

**A letter of formal notice from the Authority has led Norway to amend its legislation and guidelines concerning non-resident companies' access to customs credit.**

The Authority received two complaints against Norway in the course of 2012/2013 concerning non-resident companies' access to customs credit. The complaints alleged that under Norwegian law and administrative practice, customs credit is only granted to foreign companies, including those resident within the EEA, conditionally upon a bank guarantee requirement, whereas Norwegian companies are required to provide bank guarantees only when it is considered appropriate in specific circumstances and following a creditworthiness evaluation.

After having examined these cases, the Authority initiated infringement proceedings and sent a letter of formal notice to Norway in March 2013. The letter concluded that by maintaining the rules and administrative practice to require security in the form of a bank guarantee from non-resident EEA companies that apply for customs credit in Norway, and only requiring companies resident in Norway to do so in specific circumstances, Norway had failed to fulfil its obligation arising from Article 11 of the EEA Agreement.

Following this notice, Norway agreed to change its legislation and relevant guidelines to address the concerns raised by the Authority. The new legislation and guidelines entered into force in November 2013, and the Authority is currently examining the precise content and implications thereof.

# Environment

## Air pollution – levels in Norway are still too high

**In November 2013, the Authority sent a letter of formal notice to Norway regarding high levels of pollutants in big cities.**

Although there have been significant reductions in several air pollutants over the past decades, poor air quality remains one of the biggest challenges to public health across the EEA. Air pollution is now recognised as one of the world's 10 greatest killers. In addition to bringing about premature death through heart and respiratory disease and lung cancers, it damages the environment, agriculture and buildings, with measurable losses to our economies.

In the EEA, a variety of legal instruments designed to improve air quality have been introduced. These include the creation of limits and targets for ambient concentrations of air pollution. The aim is to bring concentrations of dangerous emissions to levels below the limit values across Europe.

In 2011, the Authority received a complaint against Norway for alleged breaches of air quality legislation. While Norway has introduced a number of measures to tackle the problem, including the introduction of traffic curbs in the most congested areas, the complainant claims that adequate action plans setting out concrete measures to address pollution are missing.

Having investigated the situation in Norway, the Authority found that in many cases, particularly in big cities, citizens are exposed to pollutants at levels which are still too high. As a result, a letter of formal notice was sent in November 2013. The Authority is considering Norway's reply before deciding on the next steps.

### Water Framework Directive – complaint against Norway

**The Authority is examining concerns raised in a complaint related to Norway's hydropower licensing legislation.**

Rivers, lakes and coastal waters are vital natural resources as well as an important resource for industry and recreation across the EEA. The *Water Framework Directive* is a water management tool that was introduced into the EEA in 2009. It is intended to bring about a simpler approach and better environmental protection for all water courses across Europe, in particular those that are damaged or under threat.

One of the biggest challenges for the EFTA States concerns the application of the Directive to rivers harnessed for hydropower production. It is essential they can promote hydropower as well as continue to improve water status. The Authority received a complaint against Norway about the interaction between the national hydropower licensing legislation and the requirements under the Directive to set environmental objectives for rivers that can be achieved in the timeframes set out in the legislation. The Authority is working closely with the Norwegian Government to examine the concerns raised in the complaint.

### Environmental Impact Assessment Directive

**The Authority has identified problems in the national legislation in Norway, Iceland and Liechtenstein.**

An Environmental Impact Assessment is a means of drawing together, in a systematic way, an assessment of the likely significant environmental effects arising from a proposed development. It is intended to ensure that the environmental implications of planning decisions are taken into account before decisions are made. A key feature of the legislation is public consultation, which is intended to ensure that those people who will be most affected by a proposed development can have their say. By ensuring public participation in decision-making, it is hoped to strengthen the quality of decisions taken.

At the EEA level, there are a number of laws in place to ensure that environmental assessments are integrated into the preparation of development projects, plans and programmes. The Authority has been investigating the way in which this legislation is implemented and applied in all three EFTA States. One of the main problems identified is the existence of purely size-based thresholds as a tool to decide which projects are to be subject to an impact assessment. By screening projects simply on the basis of their size, there is a risk that smaller projects, which may still adversely affect the environment due to their nature or location, are overlooked.

In July 2013, the Authority sent letters of formal notice to Norway, Iceland and Liechtenstein setting out the problems that had been identified in the national legislation. The Authority is currently considering the responses before deciding on the next steps.

## Telecoms and Audiovisual Services

### FIFA challenges decision on Norwegian list of major events

**After the Authority accepted Norway's list of events to be reserved for free-to-air TV, the International Federation of Association Football (FIFA) brought the Authority's decision before the EFTA Court.**

In July 2013, following a lengthy pre-notification process with the Norwegian Ministry of Culture, the Authority adopted a decision accepting the Norwegian list of major events as being compatible with EEA law. The purpose of the list is to ensure that broadcasters under Norwegian jurisdiction do not broadcast, on an exclusive basis, events which are perceived as being of major importance for Norwegian society in such a way as to deprive a substantial proportion of the public of the possibility of viewing such events.

A number of the EEA States have adopted similar lists. Norway included in its list the following events: Summer and Winter Olympics, Men's World Football (FIFA) and Men's European Football (UEFA) Championships, including qualifying games with Norwegian participation, Women's World Handball and Women's European Handball Championships, Men's Football Cup Final, Nordic World Ski Championships, Alpine World Ski Championships, and Holmenkollen FIS World Cup Nordic and Biathlon World Championships.

This means that Norwegian citizens will now be able to watch all of the above events on free-to-air TV. FIFA has challenged the decision and the case is now pending at the EFTA Court.

### Complaints concerning Swiss mobile provider in Liechtenstein

**The Authority is assessing two complaints submitted against Liechtenstein regarding the lack of regulation of the Swiss provider Swisscom CH under the relevant regulatory framework in Liechtenstein.**

The complainants asserted that Swisscom CH provides its mobile termination services over its Swiss mobile number (+41 79) to its Liechtenstein subscribers in the territory of Liechtenstein just as any other operator licensed in Liechtenstein. According to the complainants, this service constitutes a substantial market share of the whole market for wholesale voice call termination on individual mobile networks and an economically significant input to the retail Liechtenstein mobile market.

However, Swisscom CH is not subject to any regulation in Liechtenstein as is the case for its Liechtenstein competitors.

The Authority has made several requests to the Government of Liechtenstein and to the national telecoms regulator, Amt für Kommunikation, for further clarification.

Currently both complaints are being analysed and a decision by the Authority is foreseen for the first quarter of 2014.

## Other cases

### Complaints against Iceland concerning rules on alcohol

**In 2012 and 2013, the Authority received three complaints against Iceland concerning the rules and practices of ÁTVR (the State Alcohol and Tobacco Company). In several of these cases, Iceland has agreed to change its legislation to ensure that it is in line with EEA law.**

The complaints all concern the rules according to which ÁTVR purchases alcoholic beverages and determines its product selection.

One complaint concerned ÁTVR's methods of purchasing alcohol from suppliers in so-called "local zones". The complaint alleged that Icelandic law at the time, which contained special provisions on "local zones", discriminated against foreign producers and importers of alcoholic beverages and gave priority to domestically produced beverages, in violation of Article 16 of the EEA Agreement. Following a letter sent by the Authority, Iceland acknowledged that these rules could be incompatible with Article 16 of the EEA Agreement. Iceland thus repealed the contested rules, and the Authority closed the complaint case in January 2013.

A second complaint concerned rules enabling ÁTVR to reject the sale of alcoholic beverages that are lawfully produced and marketed in another EEA state on the grounds that the labelling of the products contains loaded or unrelated information. The rules were also the subject of an EFTA Court judgment (Case E-2/12 HOB-vín) which was handed down by the EFTA Court just before the end of 2012. Following correspondence and meetings with the Authority, Iceland is currently in the process of amending its rules to bring them in line with EEA law.

A third complaint (which is assessed in parallel with the second complaint mentioned above), concerns the refusal by ÁTVR to let a specific product into the trial sale stage, on the basis of some of the same rules which the EFTA Court dealt with in the HOB-vín case, and which Iceland is now in the process of amending.

Just before the end of 2013, Iceland formally notified amending legislation under Directive 98/34 on draft technical regulations and Directive 2000/13 on labelling, aimed at addressing the issues raised in the HOB-vín case. The standstill period for these measures will expire in March 2014.

## Norwegian ban on water scooters lifted

**Norway has made rules concerning the use of water scooters less restrictive, and the Authority has closed its case.**

Following a notification received under the information procedure for draft technical regulations established under Directive 98/34, Norway adopted legislation which banned the use of water scooters in Norway, with possibilities for only very limited exemptions. During the information procedure, the Authority expressed its concerns regarding the compatibility of these rules with the EEA Agreement and its provisions on the free movement of goods, but only minor aspects of these concerns were taken into account by Norway prior to adopting the final text.

In light of this, the Authority issued a letter of formal notice in October 2012, concluding that the enacted extensive restrictions on the use of water scooters in Norway were in breach of Article 11 of the EEA Agreement. Firstly, because the rules failed to establish a credible system to designate in a timely manner the areas where personal watercraft can be used and, secondly, because the zones where such exemptions could be allowed were extremely limited.

The Authority acknowledged that there are areas where a high level of environmental protection is necessary and highlighted that it did not oppose the restrictions on the use of personal watercraft in such areas. The exclusion zones, however, covered considerable parts of the coast, including areas in which the restrictive measures did not seem to be necessary on the basis of the protection of environment or safety. In addition, the then applicable Norwegian rules did not seem to be consistent, as water scooters were banned in areas where private motor boats were allowed.

Subsequently, Norway notified a new draft technical regulation under the information procedure. The Authority commented on it, and Norway consequently informed the Authority that it had taken the majority of its comments into account before adopting the final text.

The Authority noted, however, that some of its concerns as regards, among other things, the proportionality and the consistency of the measures, as raised in its letter of formal notice of October 2012, remained. Nevertheless, in light of the positive steps taken by Norway in making the rules less restrictive, the Authority decided not to pursue the case further for the time being, and closed the case in October 2013.

## Tax on the temporary import of foreign-registered rental cars

**The Authority has decided to bring Norway to the EFTA Court over national tax rules on leased cars. Thus the infringement procedure launched by the Authority following an individual complaint reaches its final stage.**

Under current Norwegian legislation, all motor vehicles used in Norway must, in principle, be registered in Norway and a registration tax must be paid. Certain provisions contain exemptions in connection with the importation and temporary use of foreign-registered motor vehicles. However, these exemptions do not apply to motor vehicles with a sales option, i.e. leased motor vehicles. Therefore, foreign-registered leased cars temporarily imported to Norway by Norwegian residents remain, in principle, subject to the full registration tax from the moment they are used in Norway, regardless of their intended or actual use.

The Authority takes the view that this constitutes a breach of the freedom to provide and receive cross-border services in the EEA. According to EEA law, an EEA state may impose a registration tax on a motor vehicle registered in another EEA state if that vehicle is intended to be used mainly on its territory on a permanent basis. However, the amount of tax has to be proportionate to the actual duration of the use. In the Authority's view, the national tax rules in question do not comply with these requirements. The Authority,

therefore, sent a letter of formal notice to Norway in March 2012 and a reasoned opinion in November 2012 for violation of Article 36 of the EEA Agreement.

Norway does not contest the Authority's conclusion. However, it has failed to adopt the necessary measures to amend its national legislation accordingly after receiving the Authority's reasoned opinion.

## Food Safety

### Veterinary inspections

**In 2013, 11 inspections were carried out – six in Norway and five in Iceland. Two of these were so-called general follow-up inspections where open recommendations were addressed.**

#### VETERINARY INSPECTIONS 2013

**Norway**

1. Import/transit control systems and border inspection posts.
2. Quality of water used and produced by the food industry.
3. Bovine Spongiform Encephalopathy (BSE or "mad cow disease") epidemio-surveillance.
4. Pure bred bovine animals and intra-community trade with semen and embryos of bovines.
5. Primary production – food of non-animal origin.
6. General follow-up inspection.

**Iceland**

1. Quality of water used and produced by the food industry.
1. Aquaculture – fish health.
1. Hygiene of food of animal origin, poultry meat and products thereof.
1. Animal by-products not intended for human consumption.
1. General follow-up inspection.

*As long as the application of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products is extended to Liechtenstein, the Authority does not carry out veterinary inspections to Liechtenstein.*

A general follow-up inspection is considered complementary to sector specific inspections and other follow-up actions by the Authority. A particular emphasis is put on repeated recommendations that address horizontal issues, such as co-ordination and co-operation between and within competent authorities, enforcement in case of non-compliances, verification of official controls, crisis management and designation of official and national reference laboratories.

In both Norway and Iceland progress in implementing corrective actions is evident, although in Iceland there is still room for improvement as the number of open recommendations not satisfactorily addressed are relatively high. It should be noted that the number of open recommendations does not represent by itself a measurement of the degree of responsiveness or of the seriousness of non-compliances identified. Some recommendations may be related to minor technical aspects while others may refer to more problematic, systemic issues.

A country profile for each state will be published in April 2014 including an overview on recommendations issued by the Authority, corrective actions notified by Iceland and Norway and the Authority's assessment of progress in relation to the individual recommendations.

### Ban on fresh meat import in Iceland

**The Icelandic legislation currently applicable to the importation of fresh meat, meat preparations and other meat products from other EEA States is in breach of EEA law.**

Under Icelandic law, the importation of fresh meat, processed or unprocessed, chilled or frozen, as well as meat preparations and other meat products (such as sausages or dried and smoked meat) is subject to an import authorisation procedure. Importers must apply for a permit and submit documentation, such as certificates confirming that the products have been frozen or confirming that the products are free of salmonella, to the Icelandic Food and Veterinary Office.

In a letter of formal notice sent to Iceland in October 2013, the Authority considered that this authorisation

procedure is in breach of the Directive concerning veterinary checks in EEA trade and that the Icelandic measures cannot be justified on grounds of protection of health and life of humans or animals.

At the end of 2011, the provisions of the so-called "hygiene package" concerning meat and milk became applicable to Iceland. At the same time, the Authority started examining the compatibility of the Icelandic legislation applicable to the importation of fresh meat and other meat products from other EEA States with these new rules.

Careful review of the Icelandic measures revealed that restrictions on the importation of fresh meat into Iceland were in breach of EEA law. In October 2013, the Authority sent a letter of formal notice to Iceland, giving the Icelandic authorities two months to express their views on the content of the letter. By letter of 13 December 2013, the Authority granted Iceland an extension to submit its observations until 28 February 2014.

## Traditional food production methods

**The "hygiene package" lays down a number of requirements to be followed by food producers to ensure the hygiene of their products.**

During veterinary inspections in Norway it was discovered that certain food production methods used in Norway were not in full compliance with the hygiene package. The methods include the drying of fish outdoors ("stockfish") and the use of wood in the drying of fish and in the maturation of certain cheeses.

However, the hygiene package provides for exemptions from the standard hygiene requirements for production methods that are considered to be traditional. For reasons of transparency, such exemptions must be notified to the Authority and to the other EEA States.

Norway notified in December 2013 the use of traditional methods with regard to the production of stockfish. The national provisions concerning such production methods entered into force in February 2014. With regard to the use of wood, the Norwegian Food Safety Authority is, in co-operation with the industries concerned, developing industry standards that will allow the Food Safety Authorities to assess in each case whether the use of wood in specific food production can be considered hygienically acceptable. This work should be finalised in the first half of 2014.

## Handling of animal by-products in Iceland

**Animal by-products are bodies or parts of animals or products thereof not intended for human consumption. To avoid such material spreading disease to humans or animals, strict rules are in place concerning the handling, processing and disposal of these products.**

During an inspection in Iceland, it was discovered that adequate arrangements were not in place to ensure that all animal by-products were correctly handled, processed and disposed of.

Although the relevant EEA legislation has been made part of the Icelandic internal legal order, certain animal by-products are in Iceland considered as waste and therefore fall outside the scope of the national legislation on animal by-products. Subsequently, the division of responsibilities between the different Icelandic Authorities responsible for controls of food production and waste handling (Matvælastofnun, Umhverfisstofnun and Heilbrigðiseftirlit sveitarfélaga) was found to be unclear. Furthermore, it was observed that not all animal by-products were disposed of in an acceptable manner. It was amongst other things observed that slaughter waste was disposed of directly in open landfills, which can run a serious risk of spreading disease.

The Authority sent a letter to Iceland immediately following the inspection requesting that this issue be rectified and informing Iceland that the Authority will consider initiating infringement proceedings if this is not done.

## Approval of stallions used for breeding in Norway

In Norway, it is required that stallions undergo an assessment and approval procedure in order to be used for breeding. This requirement is independent of whether or not the stallion has undergone an assessment by an officially recognised breed organisation in another EEA state. For owners of stallions that have already been approved for breeding by such an organisation, the requirement that the stallion is also assessed in Norway may cause significant extra costs.

The Authority considers the Norwegian requirement to be contrary to secondary EEA legislation, in particular in light of a judgment from the Court of Justice of the European Union which held that Swedish rules similar to those in force in Norway were not compatible with the directive in question.

A letter of formal notice was sent to Norway in July 2013 and the case was further discussed with Norway in the autumn of 2013 without reaching a resolution.

## Import of dogs from Romania to Norway

After amendments to the EEA legislation on the movement of pet animals, an increasing number of dogs have arrived in Norway, in particular from Romania. Following examinations by the Norwegian Veterinary Institute, concerns with regard to the health conditions of these dogs, notably as regards rabies protection, prompted Norway to adopt safeguard measures under the procedure provided for by Annex I to the EEA Agreement.

The Authority's role with regard to such measures is limited. However, the Authority was invited to accompany a Norwegian delegation which visited the Romanian Veterinary Authorities in October 2013 and is being kept informed on the progress of the case by Norway.

## Removal of specified risk material from slaughtered cattle in Iceland

Regulation (EC) No 999/2001 sets out rules aimed at the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) of which Bovine Spongiform Encephalopathy (BSE or "mad cow disease") is one. One of the measures implemented by the Regulation to minimise the risk of humans being exposed to this disease through consumption of beef meat, is that certain tissues ("specified risk material") are removed from the carcass at slaughter. The tissues comprise, among other things, the head and spinal column of the animal, as well as the intestines. These tissues are considered the highest risk of containing the transmissible elements in diseased animals that may cause disease in humans if consumed.

Iceland had unilaterally exempted these provisions of the Regulation from application on the basis that mad cow disease has never been detected in Iceland. However, after receiving a reasoned opinion from the Authority and following several meetings and discussions, Iceland agreed in December 2013 to amend its legislation. The slaughterhouses in Iceland are given until 1 September 2014 to comply with the requirements.

## Implementation of the total feed ban and revision of the annual monitoring programme for mad cow disease in Norway

As part of the process to eradicate, among other things, Bovine Spongiform Encephalopathy (BSE or "mad cow disease") and scrapie, the use of animal proteins in feed for ruminants is prohibited. Since 2005, this feed ban also comprises fish meal. Norway initially opposed the introduction of these rules, however, after receiving a reasoned opinion on this matter from the Authority, Norway implemented the rules in 2010.

However, inspections carried out by the Authority have, on several occasions, shown that Norway still does not fully comply with the total feed ban, as Norway allows production of ruminant feed in facilities not physically separate from facilities producing feed containing fish meal for

non-ruminant species (e.g. swine and poultry), which is contrary to EEA legislation.

In December 2011, Norway applied for a revision of its BSE monitoring programme. One of the conditions in Regulation (EC) No 999/2001 for granting such revision is that the total feed ban has been implemented and enforced for at least six years. It follows from the above that this is not the case in Norway.

The Authority sought scientific assistance from the European Food Safety Authority (EFSA) on this matter. EFSA also recommended that Norway ensure a physical separation of feed production lines used for production of feed with and without fish meal.

On this basis, in December 2013 the Authority rejected the Norwegian application for revision of the BSE monitoring programme. Furthermore, the Authority has delivered a reasoned opinion to Norway concluding that Norway must change its practice with regard to the production of animal feed with and without fish meal on the same production lines.

## Transport

### Ban on frequent flyer points in Norway lifted

**After a final warning from the Authority, Norway has abolished its ban on the collection of frequent flyer points on domestic air routes.**

In May 2013, the Norwegian Government announced that the ban on the collection of frequent flyer points on domestic routes had been abolished. The ban had then been in effect in Norway since 1 May 2007, effectively banning all air operators providing air services on domestic routes in Norway to offer collection of frequent flyer points on those routes.

Having received a complaint on the matter in 2010, the Authority sent a letter of formal notice to Norway in July 2012 in which the Authority took the preliminary view that the national prohibition to offer the collection of frequent flyer points on domestic air routes in Norway was not in line with the *Unfair Commercial Practices Directive* (2005/29/EC). Alternatively, the Authority's view was that the ban constituted an unjustified restriction of both the freedom to provide air services within the EEA, and of the freedom of establishment of air carriers in Norway.

Despite a proposal in February 2012 by the Norwegian Competition Authority to the Ministry of Government Administration, Reform and Church Affairs to abolish the ban on the three largest domestic air routes, the Government of Norway announced in October 2012 that it would maintain the ban in its current form.

In March 2013, the Authority delivered a reasoned opinion to the Norwegian Government in which it fully maintained the conclusions set out in its letter of formal notice of July 2012. The reasoned opinion constituted a final warning to the Norwegian Government.

As the Norwegian Government lifted the ban the case has now been closed.

### Aviation security inspections

The main objective of the EU's regulatory framework on aviation security is to establish and implement appropriate measures in order to safeguard passengers, crew, ground personnel and the general public against acts of unlawful interference perpetrated on flights or within the confines of an airport.

Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of aviation security forms the basis for the regulatory framework. Multiple regulations supplementing and implementing the common rules have since then been adopted in the field of aviation security.

By the incorporation of this regulatory framework into the EEA Agreement, the legislation is also applicable in the EFTA States.

As regards practical implementation in 2013, the main focuses in the EU Member States, as well as

in the EFTA States, have been on the deployment of a new cargo security scheme and on the implementation of regulations regarding screening of liquids at airports.

One of the key components of the framework on aviation security is the organisation of inspections by the European Commission. For the EFTA States, these inspections are carried out by the Authority. The Authority has been carrying out security inspections since 2005.

The Authority inspections have identified deficiencies in several areas, mainly related to newer security requirements. However, monitoring activities indicate general improvement of aviation security in the EFTA States.

The Authority co-operates with the appropriate authorities in the EFTA States and the Commission to work towards the common goal of increasing aviation security within the EEA.

The Authority has not initiated any infringement proceedings linked to findings made on inspections, since the EFTA States have addressed the findings made during these inspections in a satisfactory manner.

## 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 EEA Agreement, the legislation is also applicable in the EFTA States, with the exclusion of Liechtenstein.

In 2013, the Authority has focused on the enforcement of security obligations at a national level, inspecting both the Norwegian and the Icelandic Maritime Administrations, while at the same time, inspecting other relevant regional entities.

The Authority has also continued to target the implementation of the *Port Security Directive* in Norway and Iceland. The extent and seriousness of the findings appear to vary throughout the EEA EFTA States, finding in both states both serious deficiencies and best practices, which means that uniformity needs to be further improved.

The close ties with both the European Maritime Safety Agency (EMSA) and the European Commission continue to be strengthened by means of participation in both common workshops and inspections. This co-operation is one of the most important means of ensuring the harmonisation of inspections in all EEA States.

### *Assistance provided by EMSA*

The European Maritime Safety Agency (EMSA) has, since it was established in 2002, actively assisted the European Commission and the EFTA Surveillance Authority in verifying implementation of maritime safety legislation in the EEA States.

There are several reasons for verifying how the legislation is implemented in practice, among other things to ensure correct implementation and to ensure a harmonised approach across the EEA and improve the efficiency and effectiveness of the measures in place.

Since 2009 EMSA has carried out eight visits in Norway and Iceland on behalf of the Authority to verify the implementation of:

- Directive 95/21/EC on port state control;
- Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues;
- Directive 2008/126/EC on minimum level of training for seafarers; and
- Directive 2002/59/EC on vessel traffic monitoring.

Overall, the visits have provided a valuable overview of the implementation of the respective directive into the national legal order of the state visited. The follow-up of any findings or observations resulting from the final report of each visit is carried out by the Authority in co-operation with EMSA to ensure measures are taken to rectify any shortcomings.

## The airport bus in Iceland

In December 2012, the association of municipalities in Suðurnes tendered out transport services by bus on the route between the airport in Keflavík, Flugstöð Leifs Eiríkssonar (FLE) and Reykjavík, a route which has been called *"flugrútan"*. The entity to be awarded the route would hold an exclusive right for operations on the route.

In 2013, the Authority invited the Icelandic Government to clarify if it agreed with the conclusions of the Icelandic Competition Authority (ICA) of June 2013, which addressed the restrictions of competition on the bus route concerned, FLE – Reykjavík. The Authority furthermore invited the Icelandic Government to provide its view on whether the introduction of an exclusive right on the FLE – Reykjavík route was in conformity with the right of establishment.

The Icelandic Government replied to this letter by stating that there still was an active competition on the FLE – Reykjavík route, and that it intended to abandon all plans regarding exclusive right on the route.

In light of this, the Icelandic Government has been invited to inform the Authority of the completion of the described process of abandoning the plans for exclusive right, and furthermore to provide information on how it is foreseen that the FLE – Reykjavík route will be operated in the future.

## Complaints regarding tunnels in Norway

**In 2013, the Authority received two complaints regarding the construction of new road tunnels in Norway. One of these cases is still under investigation.**

The complainants argued that the tunnel projects do not respect certain minimum safety requirements that are laid down in the *Tunnel Directive* (2004/54/EC). The Directive lays down a set of harmonised minimum safety standards dealing with the organisational, structural, technical and operational aspects of road tunnels.

- All tunnels that are longer than 500 metres, whether in operation, under construction or at the design stage, and that form part of the trans-European road network (TERN), have to comply with these harmonised safety requirements.
- The TERN is a EEA-wide defined network that comprises all major European roads which play an important role in long-distance traffic, or bypass the main urban centres on the routes identified by the network, or provide interconnection with other modes of transport or which link landlocked and peripheral regions to central regions of the EEA.

The first complaint concerned the construction of the Ryfast project which comprises two consecutive subsea road tunnels in Western Norway. The complainant submitted that the road tunnel project is in conflict with the minimum safety requirement that longitudinal gradients above 5% shall not be permitted in new tunnels, unless no other solution is geographically possible. Although the longitudinal gradient of the two tunnels, as currently planned, exceeds this limit at certain points, the Authority concluded that Norway did not infringe EEA law, as the tunnel road is not part of the TERN and the Tunnel Directive therefore does not apply to this project.

In September 2013, the Authority received another complaint against Norway concerning the construction of a new road tunnel in Western Norway (E39 Eiganestunnelen). The complainant argues that the construction of this tunnel is in conflict with a minimum safety requirement in the Tunnel Directive.

The Tunnel Directive foresees that the same number of lanes shall be maintained inside and outside of tunnels (with the exception of the emergency lane) and that any change in the number of lanes shall occur at a sufficient distance in front of the tunnel portal. The complainant argues that the tunnel project does not respect these safety requirements, as a two-level junction is planned in close distance to the tunnel, with acceleration lanes ending just twenty metres in front of the portal. The Authority is still investigating the case.

## Complaints on road tolls in Norway

**As in previous years, the Authority received complaints in 2013 regarding road tolls in Norway, alleging that the levy of road tolls in different places is in breach of the EEA rules.**

In several cases, the complainants argued that the toll revenues are used for financing projects other than the infrastructure for which the toll is collected.

The Eurovignette Directive (1999/62/EC) as amended by Directive 2006/103 is the primary EEA legislation on roads tolls in the EFTA States. It applies to heavy goods vehicles only. The Directive shall eliminate distortions of competition between transport undertakings in the EEA by harmonising the levy systems and the establishment of fair mechanisms for charging infrastructure costs to hauliers.

The *Eurovignette Directive* requires that there shall be a link between tolls collected and costs related to the development, construction and maintenance of the infrastructure concerned. Thus, where it is demonstrated that the revenues from the tolls levied are used to cover the costs for construction, financing and toll collection in relation to the road projects, the general requirements set out by the Directive are met.

On this basis, the Authority has rejected a complaint against a new toll road in the Gudbrandsdalen region. The Authority is still investigating another complaint concerning a similar toll road case.

## Internal Market Scoreboard

The biannual Internal Market Scoreboard contains, amongst others, the transposition deficit of the EEA EFTA States. The transposition deficit shows the percentage of Single Market directives not yet communicated to the EFTA Surveillance Authority as having been transposed, in relation to the total number of Single Market directives which should have been notified by the deadline.

The average transposition deficit increased from 1.2% in May to 2.0% in November. Liechtenstein was the only EEA EFTA state not to exceed the 1% deficit target. Both Iceland and Norway have the highest deficits in ten years. For Iceland, an all-time EEA high 3.2% deficit was observed. Norway doubled its transposition deficit to a disappointing 1.8%.

In absolute terms, the average 2.0% deficit indicates that the EEA EFTA States were late in their notification of national transposing measures for a total of 69 directives. This constitutes an increase of 25 directives since the last Scoreboard. Liechtenstein was late in notifying the national transposing measures for 11 directives, Norway for 21 and Iceland for 37.

See the Internal Market Scoreboard at
**www.eftasurv.int/scoreboard/internal-market**

# State Aid

## Main activities in 2013

The EFTA Surveillance Authority opened 53 state aid cases and closed 58 cases in 2013. By the end of the year, 43 state aid decisions had been adopted, and 52 cases were pending.

Thirteen decisions concerned Icelandic aid measures, while 26 decisions concerned Norwegian aid measures.

As for litigation, the EFTA Court in case E-9/12 upheld the Authority´s decision in the Icelandic Verne case (Decision No 261/12/COL).

## Priorities for 2014

The Authority will give priority to notifications as they are subject to strict deadlines. At the end of 2013, 13 notification cases were open and nine cases were open at the pre-notification stage. The Authority will also give priority to complaint cases, in particular to ensure that complaints are handled within the deadlines stipulated in the relevant manuals and guidelines. At the end of 2013, almost 30 state aid complaints and own-initiative cases were pending.

The Authority's work is expected to be further affected in 2014 by the state aid modernisation program initiated by the European Commission in 2012. In the near future, this will consist of, firstly, continued consultation on and the adoption of revised guidelines in most areas. Secondly, it can be expected that following the adoption of new guidelines the Authority will receive in 2014 a number of notifications from the EFTA States of new or revised aid schemes.

In the medium and longer term, we might see changes to the Authority's enforcement of the state aid provisions of the EEA Agreement. The introduction of the new General Block-Exemption Regulation will involve a significant increase in the possibilities to grant aid without prior notification to the Authority. The purpose is that only the larger and more complex cases will remain subject to prior notification.

For block-exempted aid, the Authority will be tasked to monitor that block-exemptions are respected and correctly interpreted by the EFTA States. Given the likely increase in the weight of block-exempted aid, this will require much more work by the Authority with monitoring and a closer co-operation and partnership with the EFTA States.

## The financial crisis

### Restructuring aid to Sjóvá Insurance Company, Iceland

**In July 2013, the Authority approved restructuring aid to the Icelandic insurance company Sjóvá.**

Sjóvá encountered difficulties during the financial crisis due to risky investment activities. Together with Sjóvá's main creditor, Glitnir, the Icelandic State took part in its recapitalisation, thereby acquiring a majority stake in the company.

The transaction was not notified to the Authority. Following an enquiry into the recapitalisation and the opening by the Authority of a formal investigation in 2010, the Icelandic authorities submitted a restructuring plan for Sjóvá.

The restructuring plan provides, in particular, for Sjóvá's return to viability as well as improved corporate governance and risk management. It also foresees measures to limit distortions of competition, such as a pricing commitment in relation to certain corporate customers and an acquisition ban that will stay in place until the end of 2014. As the previous owners of Sjóvá lost their entire share capital and its main creditors participated in the recapitalisation, the plan provides for sufficient burden sharing. Finally, Iceland will also review its legislation on insurance contracts with a view to facilitating customer switching and increasing competition in the market. On this basis,

the Authority concluded that the restructuring plan met the conditions of its State Aid Guidelines and thus declared the aid compatible.

## Restructuring aid for two small Icelandic savings banks

**In December 2013, the Authority approved restructuring aid to two small savings banks in Iceland, Vestmannaeyjar Savings Bank and Nordfjordur Savings Bank.**

The aid was granted and temporarily approved in June 2010 and April 2011 as part of a rescue aid scheme in support of five savings banks. However, the finalisation of the restructuring plans has been delayed.

Icelandic savings banks were hit hard by the financial crisis and faced major difficulties in their operations. Most savings banks owned shares in the main commercial banks, including in Sparisjodabanki Islands (SPB), which was founded by the savings banks and served an important role by providing them with access to international sources of finance as well as to foreign and domestic settlement systems.

Following the collapse of Iceland's three major commercial banks in October 2008, SPB was later submitted to public administration. The Central Bank of Iceland was made responsible for the savings banks' deposits in SPB. As compensation, the Central Bank received SPB's claims on the savings banks. The Central Bank thus became a major creditor to the savings banks.

The aid measures taken to restructure the banks involve:

- The settlement of the Central Bank's claims on the savings banks. This includes the writing down of claims and their conversion into guarantee capital, subordinated debt and general loans.
- The responsibility taken by the Central Bank for the banks' deposit previsously held by SPB.
- Additional state backing of deposits in commercial and savings banks.

The aid measures were supplemented by broader financial restructuring, including agreements with other creditors, write-down of the guarantee capital of existing owners and infusion of new capital by new investors.

The Authority assessed the measures and the restructuring plans under, among other things, its financial crisis Restructuring Guidelines. It took the view that the measures are likely to lead to the restoration of the banks' long-term viability, ensuring that the banks will comply with the minimum regulatory capital requirements as set by the Icelandic Financial Supervisory Authority.

## Alleged state aid to Landsbankinn

**No state aid involved in forgoing of a normal return on public funds.**

In May 2011, Landsbankinn adopted certain debt relief measures by granting its household customers who had honoured their obligations towards the bank, in the period December 2008 to April 2011, a 20% refund of their interest payments during this period. A competitor of Landsbankinn alleged that state aid was involved in this measure, in essence because the Icelandic State, as majority owner of Landsbankinn, allowed for a debt relief measure that went beyond what a privately owned bank would have done on the basis of pure commercial considerations.

However, the Authority concluded that the measure was not imputable to the Icelandic State. It also noted that the beneficiaries of the interest refund are individuals and households, not undertakings. The measure appears to have been adopted by the bank on the basis of commercial considerations, in particular as a measure to maintain customer loyalty, and that there was no interference or instructions given by the Icelandic authorities. The Authority has in that regard assessed the Icelandic State's applicable policy and arrangement on public ownership of financial undertakings as well as the available evidence on the adoption of the decision by Landsbankinn.

The Authority therefore concluded that there were insufficient grounds to question the commercial nature of Landsbankinn's measure and that there was no evidence to indicate that the Icelandic State had waived any expected return on its investments in the bank in relation to the measure. Accordingly, it was found that the measure did not involve state aid.

## Sale of land and other property

### Sale of Narvik municipality's entitlement to concession power to Narvik Energi AS

**In July 2013, the Authority closed a formal investigation into a contract between Narvik Municipality and Narvik Energi AS, concluding that it did not involve state aid.**

In the contract that Narvik Municipality and Narvik Energi AS entered into in October 2000, Narvik municipality transferred its annual right to approximately 126 GwH of concession power to Narvik Energi AS for 50.5 years for a fixed price paid to the municipality up front.

It is highly unusual to sell electricity for such a long period of time without including price adjustment clauses in the contract, as even small changes in the price of power or other key variables could have a significant impact on the net present value of such rights. Upon receiving a complaint, the Authority opened a formal investigation as it had doubts as to whether Narvik Energi AS received state aid through the contract.

The Norwegian authorities argued that the sale of concession power for a period of 50.5 years could be compared with the sale of a hydro power plant. Moreover, they argued that the municipality based its sale on similar value assessments and expectations concerning future power prices, as a number of hydro power plant owners had done when they sold their plants.

The Authority carried out a thorough comparison of the sale of the concession power to the sale of hydro power plants that were sold in the same period. The Authority also considered the special circumstances that led Narvik Municipality to sell the right to the concession power for such a long period of time. The Authority concluded that the contract did not involve state aid.

### Sale of Norwegian defence property

Following media reports, the Authority became aware that Forsvarsbygg, wholly or partly through Skifte Eiendom, had in recent years sold a significant number of properties. According to the same source, there are several examples where buyers of publicly owned land have resold the same properties shortly after purchase for a considerable profit.

On this background, the Authority has requested the Norwegian authorities to provide relevant details of the sales procedure and explanations of how certain sales were conducted.

## State aid in the transport sector

### In-depth investigation of Scandinavian Airlines' New Revolving Credit Facility

**In June 2013, the Authority decided to open a formal investigation regarding the participation of Norway in the new Revolving Credit Facility (RCF) in favour of Scandinavian Airlines (SAS).**

This case started following a complaint submitted by the European Low Fares Airline Association against the participation of Norway, Sweden and Denmark in the RCF. The participation of Sweden and Denmark is being investigated by the European Commission, which has adopted a parallel decision.

In 2012, SAS prepared a business plan with the aim of becoming profitable again. In this context an RCF, which was granted by a number of banks to SAS in the past, was replaced by a new RCF of SEK 3.5 billion (around EUR 400 million). Half of the new RCF is provided by Sweden, Denmark and Norway in proportion to their shareholding in SAS, and the remaining half is provided by the Wallenberg Foundation, together with most of the banks that participated in the previous RCF.

The Authority has doubts as to whether the new RCF was carried out in market conditions, as the Authority cannot exclude that the banks' participation was influenced by their involvement with SAS under the previous RCF, as well as by the States' participation in the new RCF. Furthermore, the Authority has doubts regarding the reliability of the business plan, on the basis of which the States decided to participate in the new RCF.

SAS is the major air carrier in Scandinavia. Its four biggest shareholders are Sweden (21.4%), Denmark (14.3%), Norway (14.3%) and the Knut and Alice Wallenberg Foundation (7.6%). SAS's financial position has been weak for several years and its financial performance has deteriorated significantly since 2008.

## Bus transport services in Aust-Agder

**In February 2013, the Authority decided to open a formal investigation into the financing of local scheduled and school bus transport services in the county of Aust-Agder, Norway, in the period since 1994.**

This step followed the examination of a complaint in which it was alleged that numerous bus operators have benefitted from excessive compensation that enabled them to cross-subsidise other transport services.

Aust-Agder has directly awarded concessions to a number of bus operators for the provision of scheduled bus transport services, as well as school bus transport, in the relevant time period. Aust-Agder also paid annual compensation for unprofitable routes to cover the costs not covered by ticket revenue.

In order to clarify whether the compensation constitutes state aid and, if so, whether it is compatible with the relevant state aid rules, the Authority has decided to initiate the formal investigation procedure. In the course of that procedure the Authority will also assess whether the compensation has been made on the basis of an existing aid scheme predating the EEA Agreement or whether it should be considered as new aid. Aid granted on the basis of an existing aid scheme cannot be recovered from the beneficiaries even if it constitutes incompatible aid.

In addition, the Authority opened a formal investigation into additional financing to Nettbuss Sør AS, which has received annual direct grants of around NOK 1 million since 2004 (NOK 2 million since 2010) on the basis of an inter-municipal transport project that aims to maintain improved transport services in the areas concerned. This selective measure appears to provide an economic advantage that Nettbuss Sør AS is unlikely to have obtained under normal market conditions.

## Public transport in Oslo

**In May 2013, the Authority closed the investigation concerning public transport in Oslo. The decision has been brought before the EFTA Court.**

In 2011, the Authority had received a complaint from Konkurrenten.no AS alleging that municipal resources financing the activities of Kollektivtransportproduksjon AS (KTP) and its predecessor AS Oslo Sporveier, as well as Oslo T-banedrift AS (metro) and Oslotrikken AS (tram), have subsidised the commercial activities of local scheduled bus and tour bus operator Unibuss AS. This is known as cross-subsidising.

The complaint was directed towards guarantees and loans given by Oslo Municipality to KTP for the financing of metro and tram infrastructure, rolling stock and short term liquidity loans. The complainant also alleged that cross-subsidies were involved in the award of bus transport contracts from the metro and tram companies to Unibuss AS in cases where the metro and tram services had been interrupted. The complainant also claimed that KTP was overcompensated for the development of a payment and ticketing system used for public transport in Oslo.

After a preliminary examination, the Authority has concluded that no state aid is involved in the short-term liquidity loans from Oslo Municipality to KTP and the bus contracts awarded to Unibuss AS, as they have been conducted on market terms.

The Authority has, furthermore, concluded that the guarantees and loans for the financing of metro and tram infrastructure and rolling stock, and the aid for the development of the ticketing system, have been granted on the basis of a system of existing aid. The Authority has also concluded that the aid has not involved any overcompensation.

The case is now pending before the EFTA Court, following an application made by Konkurrenten.no AS.

## State aid for environmental protection

### Aid under the ETS Guidelines in Norway

**In September 2013, the Authority approved a Norwegian aid scheme for the compensation of indirect emission costs.**

The EEA States have committed to combating climate change. One of the cornerstones of this policy decision is the EU Emissions Trading System (ETS). The EU ETS is the first and most extensive international system for trading greenhouse gas emission allowances.

The EU ETS works on a "cap and trade" principle. A cap, or limit, is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions fall. Within the cap, companies receive or buy emission allowances which can be traded. Launched in 2005, the EU ETS is now in its third phase, running from 2013 to 2020.

The purpose of the Norwegian scheme is to prevent "carbon leakage" resulting from companies moving their production outside the EEA to avoid indirect emission costs resulting from the EU ETS. "Carbon leakage" describes the prospect of an increase in global greenhouse gas emissions when companies move production outside the EEA because the cost increases resulting from the EU ETS make them less competitive. The scheme is therefore designed to compensate certain energy-intensive industries for increases in electricity prices as a result of the ETS.

Norway will grant aid for the period starting on 1 July 2013 and ending on 31 December 2020. Funds will be administered by the Norwegian Environment Agency.

The Authority found that the scheme complies with the Authority's State Aid Guidelines on aid in the context of the greenhouse gas emission allowance trading scheme.

### Additional aid from Innovation Norway to Finnfjord AS

**In November 2013, the Authority opened a formal investigation into aid from Innovation Norway to the ferrosilicon producer Finnfjord AS.**

The aid of NOK 16 million is intended to cover costs related to the replacement of a cooling system with an energy recovery unit at Finnfjord's plant in Finnsnes in the north of Norway. For the financing of that project, Finnfjord has already received NOK 175 million in state aid from Enova SF. The aid from Enova was approved by the Authority on 9 February 2011.

The energy saving project turned out to be more expensive than Finnfjord had anticipated who therefore decided to apply for additional aid from Enova. Enova rejected the application on the grounds that the aid would not provide Finnfjord with an incentive to do more for the environment than it would have without the aid. Finnfjord thereafter applied for additional aid from Innovation Norway, who decided to award the aid now being assessed by the Authority.

The Authority opened a formal investigation as it had doubts whether the aid provided Finnfjord with an incentive to fully complete the project without delays, and whether the aid actually contributes to changing the behaviour of the beneficiary so the level of environmental protection is increased.

Furthermore, the Authority was faced with doubts as it notes that Innovation Norway and Enova, both acting on behalf of Norway, have presented seemingly conflicting views. These views concern whether the additional aid to Finnfjord provides the company with an incentive to change its behaviour, and thereby

achieve a greater level of environmental protection than it would have without the aid.

### Aid to Norcem for the construction of a carbon capture research facility

**In February 2013 the Authority approved aid of approximately NOK 70 million from Norway to Norcem for the construction of carbon capture research facilities at Norcem's cement plant in Brevik.**

Cement production involves the calcinations of limestone, which is responsible for high direct $CO_2$ emissions. The ultimate objective of the project is to test $CO_2$ capture technologies for the cement industry in order to promote the use of carbon capture and storage (CCS) in this industry.

The Authority has already approved state aid to Norwegian CCS projects in Kårstø and Mongstad, but the Norcem decision was the first in Europe to approve state aid to a CCS project outside the energy sector.

Norcem will subcontract suitable technology suppliers, which will test their technologies at the Brevik site. The project will focus solely on the testing of a range of capture technologies and will not involve the transport and storage of CO2. While intellectual property rights from the testing will remain with the respective technology suppliers, the general know-how gained in the course of the project will be made available to other European cement providers.

The first of three research facilities is now in the process of being constructed at the plant in Brevik.

## State aid for the promotion of broadband, data centres and telecom sector

### State aid to a municipal broadband network in Iceland

**In November 2013, the Authority approved a project to construct a Next Generation Access broadband network in the municipality of Skeiða- and Gnúpverjahreppur, in the south of Iceland.**

The Authority began looking at the matter after receiving a complaint from a local internet service provider in late 2012. The project was financed by the municipality and the network was operated by Fjarskiptafélag Skeiða- og Gnúpverjahrepps, a municipality owned company. The construction part of the project had been tendered out and interested operators were granted wholesale access to the network on equal terms.

After having assessed the project, the Authority found that it would contribute towards offsetting a geographic and commercial disadvantage in this rural area which would not otherwise be addressed via market-based solutions in the near future. The measure was also aimed at promoting the competitive supply of innovative and high-quality Next Generation Access broadband services across the municipality. Furthermore, the set-up of the project and the possibilities for effective wholesale access ensure that any distortion of competition caused by the state intervention is kept to the minimum possible.

## Broadband to rural areas in Iceland

**In July 2013, the Authority started investigating potential state aid to Síminn (Iceland Telecom) for the construction of a broadband network in rural areas of Iceland.**

The examination followed a complaint from one of Síminn's competitors in 2011.

In 2008, the Icelandic authorities published a tender for the roll-out of broadband services to 1,118 buildings that neither had, nor would receive, broadband services on market terms in the near future. Síminn was chosen as the supplier. After the construction phase, Síminn was to allow for wholesale access to other internet service providers (ISPs). The scope of the project was later expanded to include 670 additional buildings. Due to the expansion the compensation was increased and the construction period prolonged. Furthermore, the payments were indexed on the basis of the exchange rate with a foreign currency instead of the general consumer price index, as was originally intended.

Having assessed the tender documents and the agreement with Síminn, the Authority was not convinced that wholesale access for other ISPs was sufficiently guaranteed. Furthermore, the reasons behind the indexation of the payments have, in the view of the Authority, not been adequately explained. Therefore, the Authority decided to open an investigation into the agreement with Síminn. This matter will be further investigated in 2014.

## Amendments to the VAT legislation in Iceland

**In January 2013, the Authority opened an investigation into amendments to the value added tax (VAT) legislation in Iceland applicable to customers of Icelandic data centres.**

By the time the amendments were notified to the Authority, in late 2011, they had already entered into force. The following changes were made to the Icelandic VAT Act:

- Non-imposition of VAT on transactions involving services supplied electronically to non-residents;
- Non-imposition of VAT on transactions involving supply of mixed services by data centres to non-residents;
- VAT exemption for the import of servers and similar equipment by non-residents for use in data centres.

With regard to the first measure, the Authority has concluded that it does not constitute state aid since it is in line with the export principle in the Icelandic VAT legislation, according to which VAT is not levied on goods and services provided abroad.

However, the Authority has preliminarily concluded that the two other measures may constitute state aid. Moreover, the Authority has doubts as to whether such aid may be considered justified under the EEA Agreement. The Authority is currently going over the comments it received after opening the investigation and will conclude this matter in 2014.

## Regional aid

### Amendments to the Investment Incentive Scheme in Iceland

**In April 2013, the Authority opened a formal investigation into a scheme providing investment aid to companies who establish themselves in regions eligible for regional aid.**

The scheme allowed various tax exemptions to the companies for up to 10 years. It had been approved by the Authority in 2010, with the expiry date of 31 December 2013. Following a notification received from the Icelandic authorities in December 2012, regarding certain amendments to the scheme, the Authority became aware of previous amendments made to the scheme which had not been notified to the Authority.

In its decision of 2013, the Authority expressed doubts as to the compatibility of the whole scheme, as amended. The Authority also doubts that certain elements of individual investment agreements, which the Icelandic authorities had entered into with companies on the basis of the scheme as amended, are compatible with the EEA Agreement.

From the time the investigation was initiated, the Icelandic authorities have not been authorised to apply the scheme.

The Scheme expired on 31 December 2013. However, as doubts remain whether all elements in the investment agreements are compatible with the EEA Agreement, the Authority continues to investigate the case. The Authority expects to take a final decision on these issues in the first half of 2014.

### Charter Fund Northern Norway

**In July 2013, and following a formal investigation procedure, the Authority decided to approve a Charter Fund scheme for Northern Norway.**

The objective of the Charter Fund is to increase the use of airports in Northern Norway and thereby to contribute to economic development in the regions. The three northern counties of Norway (Nordland, Troms and Finnmark) will establish a fund which will cover parts of the costs for tour operators flying charter flights to Northern Norway. The Charter Fund will cover up to a quarter of the charter costs for aircraft which are 60% to 80% full. The aid measure is intended to reduce the economic risk involved in operating air charters to Northern Norway.

Northern Norway is one of Europe's least populated areas and it suffers from depopulation. The three northern counties fall within the definition of "least populated regions" as set out in the Authority's Regional Aid Guidelines. In order to prevent depopulation and encourage employment in the region, the Norwegian Government focuses in particular on tourism in its policy for Northern Norway.

The Charter Fund is intended to increase tourism in the low season, thereby contributing to more year-round jobs in Northern Norway. After a thorough investigation and having taken into account comments from third parties, the Authority decided to approve the establishment of a Charter Fund for Northern Norway.

The Authority only approved the scheme for three years and asked Norwegian authorities to undertake an evaluation of the effects on the development of tourism, the prevention of depopulation and the effects on competition.

### Prolongation of regional aid maps in Iceland and Norway and of expiring regional aid schemes in Norway

In October 2013, the duration of the Authority's Guidelines on National Regional Aid 2007–2013 was extended by six months, until the entry into force on 1 July 2014 of the new guidelines on regional aid 2014–2020. The EFTA States wishing to grant regional aid are required to notify maps identifying the territories eligible for regional aid in accordance with the rules set out in the guidelines. In keeping with this, the Icelandic and Norwegian authorities notified the prolongation of their regional aid maps for the six month period that the guidelines were extended for. In December, the Authority approved the six month extension of those maps. Additionally, the Authority approved a six month prolongation of the following four Norwegian regional aid schemes that had previously been approved until the end of 2013:

- Scheme for regionally differentiated social security contributions;
- Scheme for the application of the depreciation rules of the petroleum tax act at Liquefied Natural Gas (LNG) facilities;
- Regional transport aid scheme;
- Regional risk-loan scheme.

No changes were made to the regional aid maps or the four Norwegian schemes apart from the extension of the duration.

## Aid to the media

### The financing of the Icelandic National Broadcasting Service

**In September 2013, the Authority decided to close the case concerning the financing of the Icelandic National Broadcaster (Ríkisútvarpið; RÚV). The closure came after the Icelandic authorities adopted changes to the legislative and regulatory framework of RÚV.**

In 2011, the Authority proposed to the Icelandic authorities that they changed the financing regime of RÚV. The aim of the proposed changes was to provide for greater transparency of public funding of RÚV and to minimise possible distortions of competition on the markets on which RÚV is present. In practical terms, this meant bringing the financing regime in line with the Authority's guidelines on state aid to public service broadcasting.

The Icelandic authorities agreed to the Authority's proposal and assured the Authority of full implementation. In 2013, the Icelandic authorities adopted a new Act on RÚV and amended the public service contract with RÚV, thereby complying with all of the measures proposed by the Authority.

## Aid for promotion of Research and Innovation and Risk Capital

### National Seed Capital Scheme

**In March 2013, the Authority cleared a new national seed capital aid scheme notified by Norway.**

The scheme is aimed at improving the supply of risk capital to small and medium-sized enterprises in Norway in order to promote innovative businesses.

In line with the Authority's Guidelines on State Aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises, Norway will co-operate with investors acting on a commercial basis to create up to six funds with an investment volume of a maximum of NOK 500 million each. Norway will contribute up to 50% of the funds'

capital, with a maximum total participation of NOK 1.5 billion (about EUR 205 million). In order to attract investor interest, 15% of the state's capital contribution will be allocated to the commercial co-investors, increasing their shareholding in the funds. The seed capital funds will be managed by professional fund managers chosen by way of an open, transparent and non-discriminatory tender procedure.

Following a detailed assessment, the Authority approved the aid.

### Aid to NCE Maritime and NCE Systems Engineering innovation clusters

**In September 2013, the Authority approved individual aid to two Norwegian innovation clusters under the Norwegian Centres of Expertise Programme (NCE).**

The two clusters regroup private and public entities and consist of NCE Maritime (based in Møre) and NCE Systems Engineering (based in Kongsberg). NCE Maritime specialise in the design, construction, equipment and operation of vessels for the global oil and gas industry. NCE Systems Engineering specialise in the supply of complex systems to the subsea, maritime, automotive, aircraft, defence and aerospace industries.

The clusters had been established under the innovation cluster aid scheme Norwegian Centres of Expertise (NCE), which the Authority had authorised in 2011. However, both clusters require state aid above a total of EUR 5 million, exceeding the notification threshold under the Authority's Guidelines on Aid for Research and Development and Innovation. Norway was therefore required to individually notify the measures.

Following a detailed assessment of the positive and negative effects of the aid, the Authority concluded that the measure was in line with the State Aid Guidelines and approved the aid.

## Aid in support of sports and culture

### The financing of Harpa in Reykjavík

**In December 2013, the Authority approved the public financing of the activities taking place in Harpa Concert Hall and Conference Centre in Reykjavík.**

Harpa is fully owned by the Icelandic State and the City of Reykjavík, and its considerable annual deficit has been covered over the state and municipality budgets.

The Authority started examining this matter in late 2011, following a complaint by a competitor of Harpa in the conference market. In March 2013, the Authority preliminarily concluded that state aid was involved in the financing of Harpa. It was considered that the public financing, given its cultural purpose, the construction and operation of a facility for a symphony orchestra and an opera, could qualify as aid to promote culture. However, in order not to distort competition in the market for hosting conferences and other commercial events, safeguards needed to be put in place to ensure that there was no cross-subsidisation from the subsidised cultural activities to commercial activities.

Following the Authority's decision, the owners of Harpa, the Icelandic State and the City of Reykjavík, introduced separate accounts and a new cost- and income allocation methodology. Special accounts are now kept for all cultural activities and tenants, as well as the conference operations, thereby ensuring that internal accounts corresponding to different activities are kept. Moreover, the Icelandic authorities have ensured that a certain part of Harpa's fixed and common costs are allocated to each individual division of the operations, based on actual usage and commercial activity. In addition, the conference department will be charged market rent for office space and other facilities.

By the amendments introduced it is ensured that the financial contributions to the cultural aspects of Harpa's operation will have no spillover effects on commercial activities. In its decision in December 2013, the Authority therefore concluded that the public financing of Harpa is compatible with the state aid rules of the EEA Agreement.

## Alleged cross-subsidies in public services

### Alleged cross-subsidies in the public financing of Bergen Church Council

**In April 2013, the Authority closed a case that had been opened after the Authority had received several complaints about cross-subsidies of commercial activities in Bergen Church Council.**

Bergen Church Council (BCC) represents the church parishes of the municipality of Bergen in Norway and is responsible for, among other things, the ownership, construction, operation and maintenance of churches and cemeteries in the municipality. Since 1 January 2013, these tasks have been carried out by BCC's new department, Akasia. BCC is mainly financed by grants from the Municipality of Bergen. However, BCC/Akasia also generates income through the offering of services on the market, such as tree care, landscaping and accounting.

The Authority considers the services offered in the market to constitute economic activities, covered by the EEA Agreement. This calls for a separation of the accounts of the public services and those of the economic activities.

After having examined the accounting principles of BCC/Akasia, the Authority has concluded that a proper account separation has been implemented, and that no cross-subsidisation is taking place between BCC's public assignment and the commercial services.

### Municipal waste collection in Norway

**Norway has agreed to make changes in the financing of waste collection services**

In February 2013, the Authority found that the current system of financing the municipal waste collectors in Norway could lead to cross-subsidisation of economic activities. This was because some municipal waste collectors also engage in economic activities, such as bidding for household waste contracts in public tenders or providing other services in the market. In addition, some municipal waste collectors were exempted from income tax.

The Authority therefore proposed that the Norwegian authorities implemented certain changes to ensure that the financing of waste collection services in Norway complied with the state aid rules in the EEA Agreement.

The Norwegian authorities have agreed to the Authority's proposal. They have also submitted draft amendments to the Waste Regulation as well as draft tax amendments. The Authority continues to monitor the implementation of new rules until fully implemented before 1 June 2014 as agreed with Norway.

## Possible aid to the Nasjonal digital læringsarena (NDLA)

**Following a judgment of the EFTA Court in December 2012, the Authority decided to open a formal investigation into the compensation granted to the NDLA.**

In 2006, the Norwegian authorities decided in the course of the "Knowledge Promotion Initiative" (Kunnskapsløftet) that all Norwegian schools were to emphasise the ability to learn a given subject by using information and communication technology. The Norwegian Education Act was therefore amended to oblige the county municipalities to provide the pupils with the necessary printed and digital learning materials free of charge. As a result of this, 18 of the 19 county municipalities decided to set up a joint initiative, which resulted in the NDLA being created.

In May 2006, the Norwegian government made NOK 50 million available for the development and use of such digital learning resources. The participating county municipalities then submitted an application for the funds to the Ministry of Education, which granted NOK 30.5 million for the project subject to certain conditions. These conditions were (i) that the responsible legal entity would take care of the counties' obligation under the initiative, (ii) that the entity did not engage in economic activity and (iii) that the purchase of digital learning materials and development services were performed in accordance with the regulations for public procurement. Subsequently, the county municipalities allocated funds directly to the project, such funds originating partly from regular municipal school funding and partly from the Ministry of Education funding mentioned above.

In October 2011, the Authority adopted a decision finding that the measure did not constitute state aid within the meaning of the EEA Agreement, which the EFTA Court annulled in December 2012. Following the judgment, the Authority decided to open a formal investigation in March 2013 and requested further details regarding the establishment, decision-making, purchasing activities and funding of NDLA as an inter-county co-operation body.

The Authority will now review the further information and comments it has received with a view to adopting a final decision in 2014.

## Alleged state aid to Redningsselskapet

**In May 2013, the Authority concluded that the financing of Redningsselskapet's provision of ambulance transport services by maritime vessels in Norway does not involve state aid.**

In a complaint to the Authority it was asserted that Redningsselskapet uses the public funds granted to it by the Norwegian State to finance parts of its commercial activities through so-called cross-subsidisation. It was also alleged that the VAT exemption to Redningsselskapet for purchasing maritime vessels constitutes illegal state aid.

The Authority found that Redningsselskapet keeps separate accounts for the tasks performed on behalf of the Norwegian State and for its commercial activities. Furthermore, the fixed and variable costs are allocated to the relevant activities to prevent any cross-subsidisation. The financing of Redningsselskapet is thus not in violation of the EEA state aid rules.

The Authority also concluded that the exemption from payment of VAT does not amount to state aid to Redningsselskapet as such an exemption is also open to other companies.

## The financing of safety training courses by municipal schools

**The Norwegian authorities have accepted the Authority's suggestions for measures to bring the financing of safety training courses in line with the state aid provisions.**

In June 2013, the Authority proposed that the Norwegian authorities take appropriate measures in order to bring the financing of safety training courses by county schools in line with the state aid provisions of the EEA Agreement.

The Authority found that the current system of financing of safety training courses by county schools in Norway does not prevent the use of state resources in the schools' commercial activities. This is because some county schools that are funded by the state to fulfil their national education obligation also engage in economic activities. In particular, the county schools in question offer safety and emergency training courses not only to students as part of their vocational programme in upper secondary school but also on the market, for example to employees of the oil and maritime industries.

To remedy this for the future, the Authority proposed that county schools should be required to either incorporate their commercial activities into separate legal entities that pay market prices for the use of the publicly financed school infrastructure and work force, or keep separate accounts distinguishing between their publicly financed education activities and their commercial activities and ensure that the commercial activities carry a proportionate share of common costs.

The Norwegian authorities have accepted the Authority's suggestions and intend to initiate a legal process aimed at adopting new accounting regulations which will oblige county schools that engage in commercial activities to keep separate accounts. The Norwegian authorities confirmed that the measures would be fully implemented by 1 January 2015.

## Potential aid provided under exemptions from Norwegian income tax

**The Authority is investigating on its own initiative part of the Norwegian Tax Act.**

In line with the European Commission's recent assessment of a tax exemption regime for public undertakings in the Netherlands, the Authority has taken the initiative to look closer at elements of the Norwegian Tax Act, which exempts the state (including government institutions, organisations and funds), counties and municipalities as well as hospitals from income tax.

The Authority has assessed the compatibility of certain individual income tax exemptions with EEA state aid rules in a number of cases in the course of the last few years. Examples of these cases are the Municipal Waste Collectors case and the case regarding the financing of the Analysis Centre Trondheim. The exemptions raised concerns because the entities at stake benefitted from tax exemptions not only when they engaged in public, non-economic tasks but also when they carried out economic activities in the market.

So far, the Authority has sent a request for information and is working in close co-operation with the Norwegian authorities to address this matter.

## Cross-subsidies in the Norwegian public dental health care service

In 2011 and 2012, the Authority received two complaints regarding alleged cross-subsidies in the Norwegian public dental health care services. The complainants alleged that the services provided by the public dental health care to adult patients for remuneration are cross-subsidised with the public funds intended to finance free or discounted dental care to children, the elderly and certain other groups.

The Authority is currently in dialogue with the Norwegian authorities on how to ensure that the scheme will become compliant with the state aid provisions of the EEA Agreement.

## Public hospital pharmacies in Norway

**Following a complaint from Apokjeden (Apotek 1 Gruppen AS), the Authority decided in November 2013 to propose appropriate measures to Norway concerning the financing of publicly owned hospital pharmacies.**

The appropriate measures aim at bringing the financing of public hospital pharmacies in line with the state aid provisions of the EEA Agreement.

The main purpose of the hospital pharmacies is to provide pharmaceuticals and services to public hospitals. However, in addition to their publicly-funded tasks, the public hospital pharmacies offer pharmaceutical products and non-pharmaceutical products "over the counter" to the general public. The Authority is of the opinion that such retail activities are conducted in competition with private pharmacies. The current financing system does not prevent the transfer of state resources meant for the non-commercial activities of the public hospital pharmacies to their retail activities to the general public. The Authority therefore has proposed several measures in order to avoid cross-subsidising.

The proposed measures include, among other things, that separate accounts shall be kept for the retail activities of the public hospital pharmacies and that all costs shall be correctly assigned or allocated.

The Authority is also concerned about the absence of any requirements to achieve a profit on the public hospital pharmacies' retail activities. Furthermore, the Authority finds that the tax exemption for the public hospital pharmacies, to the extent it covers income from the retail activities, should be abolished.

## Financing of the Analysis Centre Trondheim

**In March 2013, the Authority proposed that the Norwegian authorities take appropriate measures in order to bring the financing of the Analysis Centre Trondheim in line with the state aid provisions of the EEA Agreement.**

The Analysis Centre Trondheim monitors the municipal water supply system of the Municipality of Trondheim and the shellfish production for the Food Safety Authority. It also provides laboratory services to private customers in a market where there are already several private operators.

As a department of the Municipality of Trondheim, the Analysis Centre benefits from grants, has access to premises and collective services (such as accounting, auditing, telecommunications etc) at preferential terms and is exempted from income tax.

Moreover, the Municipality of Trondheim has not separated the non-economic activities of the Analysis Centre from its economic activities.

The Authority proposed that the Norwegian authorities introduce a clear separation of accounts between the economic and the non-economic activities of the Centre, and ensure that the part of the Analysis Centre engaging in economic activities no longer benefits from direct payments by the Municipality but starts paying market prices for the buildings it occupies and the collective services it enjoys. In order to subject the economic activities to regular income tax, the Authority also suggested either to modify the business taxation rules or to incorporate these activities into a separate legal entity.

The Norwegian authorities agreed to the Authority's suggestions and intend to incorporate the economic activities of the Analysis Centre into a separate legal entity, which will have its own accounts, management and statutes and as a legal entity will be subject to regular income tax. The Norwegian authorities confirmed that the measures would be fully implemented by 30 April 2014.

### The financing of the fitness centre at Kippermoen Leisure Centre

**In April 2013, the Authority closed its case concerning the financing of the fitness centre at Kippermoen Leisure Centre.**

The leisure centre is owned by the municipality of Vefsn and is located in the city of Mosjøen in Norway. The Authority considered that the financing of the fitness centre at Kippermoen constituted existing state aid which was incompatible with the functioning of the EEA Agreement. It therefore proposed that the Norwegian authorities implement certain changes in order to ensure that the commercial fitness centre activities would not be subsidised by public resources. The Authority, however, accepted that the Norwegian authorities could continue to provide subsidies to the fitness centre to compensate for rebates on tickets granted to certain groups of individuals.

The Norwegian authorities agreed to the Authority's proposals and assured that they would be fully implemented by the time the leisure centre reopened after extensive renovations. Among the changes introduced by the Norwegian authorities were a clearer separation of accounts and a requirement for the fitness centre to generate a reasonable rate of return.

### Aid to lessors of premises to public schools

**Following a complaint by the trade association Abelia, the Authority investigated alleged state aid to lessors of premises to public schools.**

The complainant alleged that the operation of the Norwegian VAT system (including VAT compensation granted to public bodies) favoured companies letting premises to public schools in comparison to those dealing with private schools.

In April 2013, the Authority closed its investigation, finding that there was no state aid in favour of lessors of premises to public schools. The Authority also noted that, whilst the VAT system favoured public schools over private ones, public schools do not engage in an economic activity and are therefore outside the scope of the state aid rules.

In June 2013, Abelia launched an appeal against the Authority's decision to the EFTA Court. The application is currently pending.

## State guarantees

### State guarantees in favour of Landsvirkjun and Orkuveita Reykjavíkur

In April 2013, the Authority closed a case concerning state guarantees in favour of two publicly-owned electricity utilities in Iceland: Landsvirkjun and Orkuveita Reykjavíkur. The closure came after Iceland changed its rules on state guarantees for publicly owned electricity utilities.

Before these new rules were put in place, both Landsvirkjun and Orkuveita Reykjavíkur enjoyed unlimited state guarantees. The Authority qualified those state guarantees as state aid which was incompatible with EEA law. It requested that the Icelandic authorities change the rules concerning state guarantees. The Icelandic authorities agreed to the Authority's proposal and ensured implementation of the necessary legislative amendments.

According to the new rules neither Landsvirkjun nor Orkuveita Reykjavíkur have unlimited state guarantees. Both companies pay a state guarantee premium which covers the benefits they enjoy due to the state guarantee, and neither company can obtain a guarantee which covers more than 80% of either an outstanding loan or financial obligation. Furthermore, if the companies were to experience financial difficulties they would not be entitled to a state guarantee for their liabilities and new power contracts entered into by either company will not contain a performance guarantee.

## Other cases

### Export Credit Norway

**In March 2013, the Authority found that the new pricing mechanism for loans issued by Export Credit Norway does not result in the granting of state aid.**

Export Credit Norway manages the Norwegian export credit system, which offers loans to the customers of exporters in order to finance the acquisition of goods or services. Following a detailed assessment of the pricing mechanism as notified by Norway, the Authority concluded that it sufficiently ensured that export loans will be market priced. On that basis, the Authority concluded that the proposed changes will not result in the granting of state aid.

## Guidelines

### Guidelines on short-term export-credit insurance

In January 2013, the Authority adopted new guidelines for the assessment of state aid in the context of short-term export-credit insurance. The new guidelines are based on experience gained in applying the previous guidelines on short-term export-credit insurance, in particular during the financial crisis between 2009 and 2011. The rules set out in the new guidelines will help to ensure that state aid does not distort competition among private and public or publicly supported export-credit insurers and to create a "level playing field" among exporters.

The new guidelines give the EEA EFTA States more detailed guidance about the principles on which the Authority intends to base its interpretation of Articles 61 and 62 of the EEA Agreement and their application to short-term export-credit insurance. The Authority's policy in this area should be as transparent as possible and ensure predictability and equal treatment. To that end, the new guidelines lay down a set of conditions that must be fulfilled when state insurers wish to enter the short-term export-credit insurance market for marketable risks.

### New broadband guidelines

In February 2013, the Authority adopted revised guidelines for the assessment of state aid in relation to the rapid deployment of broadband networks. The aim of the revision was to adapt the 2009 Guidelines to the fast moving technology markets as well as to ensure the widespread availability of broadband services for all EEA citizens and the access to higher internet speeds.

The main changes from the previous guidelines concern technological neutrality, ultra-fast broadband networks and transparency. Furthermore, it is emphasised that publicly financed infrastructure must provide a substantial improvement over existing networks and there is a clear obligation to provide open access to the subsidised network. By summarising in the new guidelines the principles of its policy in applying the state aid rules of the EEA Agreement to measures supporting the deployment of broadband networks, the Authority aims to increase the legal certainty and transparency of its decision-making.

### New guidelines on regional aid for 2014-2020

In October 2013, the Authority adopted new guidelines on national regional aid, corresponding to similar guidelines adopted by the European Commission. The new regional aid guidelines will apply from 1 July 2014 until 31 December 2020.

The purpose of regional state aid is to support economic development and employment in less advantaged regions. The guidelines set out the rules under which the states can grant state aid to support investments in new employment opportunities and development in regions threatened by depopulation.

In the context of the entry into force of the new guidelines, the Authority shall also assess regional aid maps drawn up by the EFTA States, designating the geographical areas where companies can receive regional state aid for investments.

For regional investment aid, the guidelines provide that aid may be granted to firms in regions representing up to a maximum of 25.51% of the

population in Norway and 36.6% of the population in Iceland.

Other key features of the new guidelines:

- The possibility to grant operating aid in very sparsely-populated areas is maintained.
- A stricter approach for regional aid to large undertakings has been adopted. This is due to evidence showing that large companies' decisions to invest in a given region are prompted by other factors than state aid. Yet, regional aid may be granted to large undertakings for initial investments that create new economic activities, or for the diversification of existing establishments into new products or new process innovations.
- To promote transparency and accountability, the EFTA States will have to publish on the internet how much regional aid they grant and to whom.

### 2013 Banking Guidelines

In December 2013, the Authority adapted its temporary crisis rules for banks by introducing new rules on the application, from 1 December 2013, of state aid rules to support measures in favour of banks in the context of the financial crisis ("2013 Banking Guidelines").

According to the new guidelines, a bank needs to work out a restructuring plan, including a capital raising plan, demonstrating convincingly how it will become profitable in the long term, before it can receive state aid. If the viability of the bank cannot be restored, an orderly winding down plan needs to be submitted instead. The 2013 Banking Guidelines therefore introduce more discipline to the granting of state aid to banks as temporary rescue aid will in principle no longer be authorised.

## General monitoring

### State Aid Scoreboard: Towards better-targeted state aid expenditure

**The State Aid Scoreboard provides a publicly accessible source of information on overall levels of state aid granted in the EFTA States.**

The scoreboard is a benchmarking tool for measuring the volume and type of aid granted by the EFTA States. It measures the extent to which overall state aid is increased or reduced, as well as the objectives for which aid is granted, such as environmental protection, regional aid or research, development and innovation. The scoreboard is prepared in co-operation with the European Commission, using a similar methodology which should facilitate comparison of aid granted across the EEA.

Overall state aid expenditure by the EFTA States remained broadly stable in 2012 compared to the previous year. The upward trend in horizontal aid for cross-sectoral purposes continued with an increase in aid for research and development and for regional development.

Aid for horizontal objectives of common interest accounted for over 90% of total non-crisis aid in the EFTA States for the past two years, which reflects the Authority's efforts in promoting better-targeted expenditure. Focusing on initiatives which facilitate inclusive and sustainable growth assumes even greater importance in the aftermath of the financial crisis.

**Iceland**'s total state aid expenditure increased from EUR 31 million in 2011 to EUR 107 million in 2012, mainly due to an increase in crisis aid (the Housing Financing Fund). However, crisis aid still remained far below the exceptional levels reached at the height of the financial and economic crisis in Iceland. Sectoral aid was otherwise completely phased out in Iceland in 2012 and Iceland's spending on horizontal objectives, such as research and development and regional development, increased slightly.

**Norway** increased its overall state aid expenditure from EUR 2,787 million in 2011 to EUR 2,925 million in 2012. In particular, Norway increased its spending on regional development and on research and development aid. This outweighed a slight decrease in Norway's aid expenditure for environmental protection and energy-saving purposes which still accounted for a significant proportion of Norway's overall aid expenditure.

**Liechtenstein** continued to grant aid exclusively for cultural objectives. This aid expenditure decreased in CHF values but, due to exchange rate developments, increased in EUR values.

A comparison with the EU Member States shows that Norway's aid expenditure (0.69% of GDP) remained above the EU average in 2012 (0.52% of GDP), although the gap has narrowed since 2011. Iceland's aid expenditure (0.25% of GDP) remained well below the EU average and Liechtenstein's aid expenditure was the lowest of all of the EEA States in 2012 (at 0.03% of GDP). Due to difficulties in comparing the precise burden that crisis-related aid measures have placed on public finances across the EEA, crisis aid is excluded in this comparison.

Progress was also visible in cases involving the recovery of illegal state aid by the EFTA States with the closure of five recovery cases during 2012.

STATE AID EXPENDITURE IN THE EFTA STATES. ALL AMOUNTS IN MILLION EUROS, IN CURRENT PRICES:

| | Iceland | | Norway | | Liechtenstein | |
|---|---|---|---|---|---|---|
| | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 |
| **Total state aid** | 30.54 | 107.06 | 2786.88 | 2924.83 | 1.49 | 1.50 |
| Horizontal Aid | | | | | | |
| Research & development & innovation | 12.25 | 14.85 | 380.86 | 436.90 | – | – |
| Regional development | 6.56 | 7.21 | 915.40 | 991.50 | – | – |
| Environmental protection & energy saving | – | – | 1019.19 | 986.12 | – | – |
| SME | – | – | 18.08 | 19.42 | – | – |
| Employment | 0.87 | 0.43 | 100.30 | 60.51 | – | – |
| Other horizontal objectives | 1.95 | 3.69 | 124.16 | 183.19 | 1.49 | 1.50 |
| Sectoral Aid | | | | | | |
| Crisis aid | 4.15 | 80.88 | – | – | – | – |
| Transport aid | – | – | 228.89 | 247.20 | – | – |
| Other sectoral aid | 4.76 | – | – | – | – | – |

# Competition

## Main activities in 2013

Significant resources were devoted to reviewing the data collected following the unannounced inspections carried out at the premises of Telenor in Norway at the end of 2012 as well as to investigation of potential new cases.

The Authority carried out an unannounced inspection at the premises of Statoil in Norway at the request of the European Commission.

New guidelines on the conduct of settlement procedures in cartel cases were adopted. The guidelines supplement the rules in Protocol 4 of the Surveillance and Court Agreement which allow the Authority to settle cartel cases through a simplified procedure, and mirror the Commission's guidelines on settlement procedures applied in cases under EU law.

The Authority was involved in various national cases in which the EFTA competition authorities envisaged applying Articles 53 and 54 of the EEA Agreement, and in cases under the EEA competition rules that fell under the jurisdiction of the European Commission. It participated in discussions relating to regulatory developments and competition policy matters within the framework of the European Competition Network.

The Authority visited the Norwegian Competition Authority in 2013 and held a seminar on relevant topics in EEA competition law.

## Outlook for 2014

In 2014, the Authority will continue investigating possible anti-competitive conduct on the part of Telenor, following the inspection carried out at Telenor's premises at the end of 2012.

The Authority plans to adopt a new notice on agreements of minor importance which do not appreciably restrict competition under Article 53(1) of the EEA Agreement.

### 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 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.

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.

The Authority enjoys the same investigative and enforcement powers as the European Commission including the power to impose fines of up to 10% of global turnover on undertakings that infringe the competition rules. The procedural rules relevant to the application of the EEA competition rules by the Authority are set out in the Surveillance and Court Agreement.

It is further incumbent upon the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

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

More generally, the Authority will continue to monitor markets in the EFTA States in close liaison with the national competition authorities, with a view to ensuring that undertakings operating in the EFTA States comply with the EEA competition rules.

## Telenor investigation

**The Authority finalised the inspections carried out at the headquarters of Norwegian telecommunications company Telenor ASA and its subsidiary Telenor Norge AS.**

Unannounced inspections were carried out in December 2012 at Telenor's premises in Norway in the context of an investigation into possible breaches of the competition rules of the EEA Agreement in relation to Telenor's provision of mobile telephony services in Norway. A significant amount of data, including electronic data, was collected by the Authority. The inspection was continued at the Authority's premises in Brussels in March 2013 following the seizure of certain electronic data that could not, due to time constraints, be reviewed at Telenor's premises.

The Authority is continuing to examine the information obtained at the inspection with a view to ascertaining whether there is any evidence of infringements of the EEA competition rules.

## Inspection at Statoil

**In May 2013, the Authority carried out an unannounced inspection at the premises of Statoil in Norway at the request of the European Commission.**

The Authority was accompanied by Commission officials and by officials from the Norwegian competition authority.

The Commission was concerned that Statoil may have colluded with other oil companies (including BP and Shell) in reporting prices to a price reporting agency (Platts) with a view to manipulating the published prices for a number of oil and biofuel products.

The prices assessed and published by price reporting agencies serve as benchmarks for trade in the physical and financial derivative markets for a number of commodity products in Europe and globally. Even small distortions of assessed prices may have a significant impact on the prices of crude oil, refined oil products and biofuels, potentially harming final consumers.

The Authority's role in the investigation ended when it handed over the seized material to the Commission. The Commission's investigation is still ongoing.

### INSPECTIONS IN THE DIGITAL AGE

The Authority has the power to conduct unannounced inspections of undertakings and associations of undertakings where necessary in order to carry out the duties assigned to it in the field of competition. Inspections are a preliminary step in antitrust investigations and do not imply that the company inspected is guilty of anti-competitive behaviour.

Inspectors are entitled to examine any books and records related to the business, irrespective of the medium on which they are stored, and to take copies. This includes the examination of electronic information and taking electronic copies.

Given the proliferation of electronic data in recent years, it is the Authority's practice to examine carefully companies' IT systems when carrying out unannounced inspections. Officials review all electronic data using dedicated software. Electronic data is copied and removed by the Authority in electronic form.

During an antitrust investigation, the rights of defence of the companies involved are fully respected.

The suspected behaviour, if confirmed, may be a violation of European antitrust rules that prohibit cartels and restrictive business practices and abuses of a dominant market position (Articles 101 and 102 of the Treaty on the Functioning of the EU and Articles 53 and 54 of the EEA Agreement).

## Exploration and production of crude oil and natural gas on the Norwegian continental shelf

**In April 2013, the Authority granted an exemption from the procurement rules to activities related to exploration and production of crude oil and natural gas on the Norwegian continental shelf.**

To be exempted from these rules, two requirements must be met. First, the activity must take place in a market to which access is not restricted. Second, the activity must be directly exposed to competition. The intention is to allow for an exemption in a situation where the participants in a market are operating in a competitive environment.

In 2012, Norway applied for such an exemption as regards the exploration and production of crude oil and natural gas on the Norwegian continental shelf. The Authority made a thorough investigation into whether the two criteria set out above were met.

Since Norway has implemented the *Licensing Directive* (94/22/EC) and the *Gas Directive* (2003/55/EC), access to the market is deemed not to be restricted in the territory of Norway, in particular the Norwegian continental shelf.

In particular, the Authority considered whether or not activities in the markets for exploration of crude oil and natural gas, production of oil, and production of natural gas are directly exposed to competition.

Direct exposure to competition is assessed on the basis of a number of competition law criteria, including the characteristics of the products and services concerned and the market shares of the main players in the relevant markets.

The Authority found that the activities at issue are directly exposed to competition.

In April 2013, after having consulted the EFTA Public Procurement Committee, the Authority adopted a decision granting an exemption from the procurement requirements of the Directive to activities within these markets on the Norwegian continental shelf.

## New guidelines on settlements

**In October 2013, the Authority issued a notice setting out the framework for the settlement of cartel cases.**

Under the new settlement procedure, parties, having seen the evidence in the Authority's file, choose to acknowledge their involvement in a cartel and their liability in respect thereof. In return, the Authority may reduce the fine imposed on the parties by 10%. This new procedure mirrors the settlement procedure applied in cases under EU law, and thus brings the Authority's practice into line with that of the European Commission.

Under the new procedure, the parties are informed of the objections against them and the evidence supporting those objections, allowing them to submit their views before formal objections are sent. If the parties decide to introduce a settlement submission acknowledging the objections, the Authority's statement of objections may be much shorter than a statement of objections issued without such co-operation.

The settlement procedure also means that other procedural steps can be simplified, allowing the Authority to proceed swiftly to the adoption of a final decision after consulting the EFTA States. However, until the final decision is adopted, the Authority retains the possibility to revert to the standard procedure. Similarly, if no settlement can be reached, the standard procedure will apply.

## Co-operation with national competition authorities

**In 2013, the Authority was informed about eight new investigations by the EFTA competition authorities and reviewed three draft decisions.**

National competition authorities and courts in the EFTA States apply Articles 53 and 54 of the EEA Agreement side-by-side with the equivalent national competition rules. In order to ensure coherent and efficient application of those provisions, the activities of the Authority in the field of competition are co-ordinated with the activities of the national competition authorities. This is done in the EFTA network of competition authorities. Although Liechtenstein does not have a competition authority that enforces the EEA competition rules, it still participates in the EFTA network alongside the competition authorities of Iceland and Norway.

When acting under Article 53 and 54 of the EEA Agreement, the members of the network inform each other about new investigations. The national authorities reported eight such investigations to the Authority in 2013.

Before adopting decisions applying Articles 53 and/or 54 of the EEA Agreement, the competition authorities of the EFTA States must submit a draft decision to the Authority. A final decision may only be adopted once the Authority has been given the opportunity to comment, with a view to ensuring that Articles 53 and 54 of the EEA Agreement are applied in a consistent manner throughout the EEA.

The Authority reviewed three draft decisions in which an EFTA competition authority envisaged applying the EEA competition rules.

National courts in the EFTA States may, where they find it necessary in order to reach a decision in a particular case, request assistance from the Authority with regard to the application of EEA competition rules. In 2013, no court in the EFTA States availed itself of this possibility.

## 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 alongside the EU competition rules. 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 territory of the EFTA States.

### Merger cases

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 in practice the European Commission 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.

In 2013, more than 30 of the mergers notified to the commission were co-operation cases under the EEA Agreement.

A number of those cases were referred from one or more national competition authorities to the Commission or from the Commission to one or more national competition authorities. One example concerned the acquisition of Germanischer Lloyd SE by Stiftelsen Det Norske Veritas (SDNV), which was referred by the Norwegian competition authority

to the Commission. The case concerned various markets, in particular within the area of ship classification services. The merger was cleared by the Commission in Phase I.

In the merger between Altor Funds and TryghedsGruppen, parts of the transaction were transferred from the Commission to Norway (and Finland) due to the fact that a number of affected markets are local in scope. The merger concerns the combination of the parties' pan-Nordic fitness companies, ELIXIA Holding III AS and Health & Fitness Nordic AB, in Norway, Finland, Denmark, and Sweden. The transaction was cleared by the Commission in Phase I.

The Authority has been involved in several merger cases where a number of the products concerned fell outside the scope of the EEA Agreement. Insofar as this is the case, such mergers fall outside the Commission's jurisdiction under the EEA Agreement and their effects must be assessed under national merger control rules in the EFTA States.

The acquisition of Rieber & Søn by Orkla ASA concerned the production and sale of food products. The part of the case that concerned Norway was referred to Norway due in particular to the fact that certain of the products involved fell outside the product scope of the EEA Agreement (for example, fish-based bread spreads, crispy fried onions, etc). Another such case was the creation of a joint venture between Austevoll Seafood ASA and Kvefi AS (fishmeal and fish oil, etc).

A number of mergers involving Norwegian companies were cleared by the Commission in Phase I without commitments. One example is Telenor ASA's acquisition of Cosmo Bulgaria Mobile. The creation of a joint venture between Norsk Hydro ASA and Orkla ASA's wholly-owned subsidiary Sapa Holding AB was also cleared by the Commission in Phase I, subject to a number of commitments relating to activities in the Netherlands and in Norway. The joint venture will be the world's leading provider of aluminium extrusions. Another case in which the Authority was involved concerned the acquisition of TNT Express N.V. by United Parcel Service Inc (UPS). After carrying out an in-depth investigation of the transaction, the Commission, supported by the Authority, prohibited the merger.

## Antitrust cases

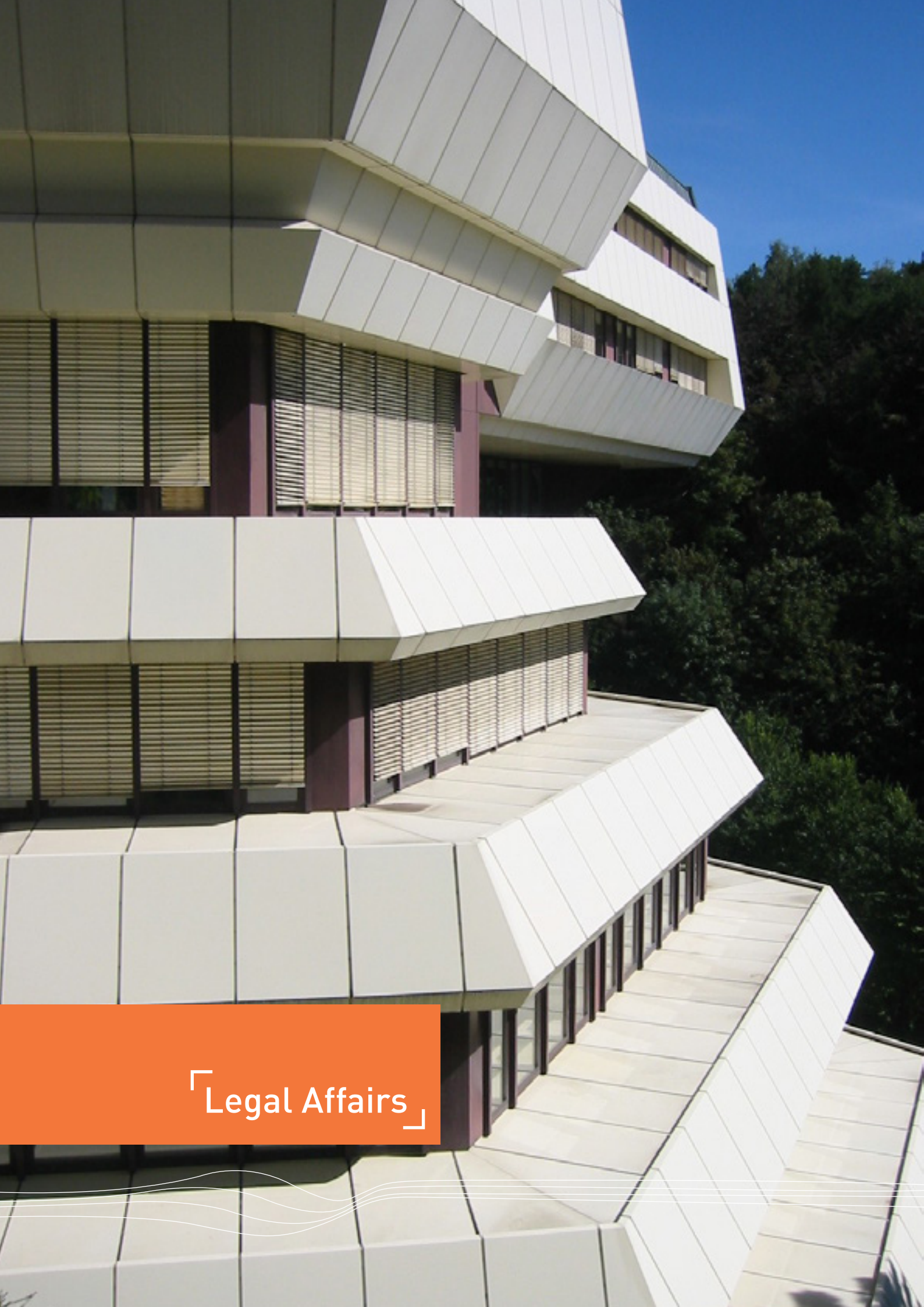
By virtue of the co-operation rules under the EEA Agreement, the Authority is also involved in cases in which the European Commission applies Articles 53 or 54 of the EEA Agreement.

In May 2013, the Authority carried out an unannounced inspection at the premises of Statoil ASA in Norway at the request of the Commission in relation to an investigation of European oil companies.

The Authority was involved in more than 10 co-operation cases in 2013. An important case concerned the Commission's investigation into Lundbeck and other pharmaceutical companies for agreeing to delay the market entry of cheaper generic medicines. The Commission, supported by the Authority, imposed a fine of EUR 93.8 million on Lundbeck, and fines totalling EUR 52.2 million on a number of producers of generic medicines.

Another case concerned the Commission's investigation into 13 companies active in the production and/or distribution of retail food packaging. The Commission has concerns that these companies may have engaged in price-fixing, market-sharing, customer allocation, exchanges of commercially sensitive information and bid-rigging.

The Authority supported the issuing of a Statement of Objections by the Commission to a number of suppliers of smart card chips in relation to suspected agreements or co-ordination designed to keep EEA prices of smart card chips up. Almost everybody uses smart card chips, be it in mobile phone SIM cards, bank cards, identity cards, etc.



# Legal Affairs

## Proceedings in the EFTA Court

**The Authority brought a record number of proceedings – 10 cases – against the States before the EFTA Court during 2013. Eight cases were against Iceland and two cases were against Norway.**

In all ten cases, the Authority obtained judgments in its favour finding that the defendant States had failed to adopt the measures necessary to implement EEA law in the national legal order.

In Case E-9/13, Norway failed to implement Directive 2010/48/EU, adapting to technical progress Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers.

In Case E-10/13, Iceland failed to implement correctly Directive 2006/54/EC, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, within the time-limit.

In Case E-11/13, Iceland had failed to implement correctly Articles 9 and 10 of Directive 2002/92/EC on insurance mediation.

In Case E-12/13 Iceland failed to implement correctly Article 1, paragraphs 15-18, 19(a), 21, 22(a), 23-29, 36-37, 39-42 and Article 2, paragraphs 5, 6 of Directive 2009/111/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management. The 2009 Directive amends Directives 2006/48/EC (relating to the taking up and pursuit of the business of credit institutions), 2006/49/EC (on the capital adequacy of investment firms and credit institutions) and 2007/64/EC (on payment services in the internal market).

In Case E-13/13, Norway failed to implement correctly Directive 2005/60/EC, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

In Case E-14/13, Iceland breached its obligations as regards the freedom of establishment and the free movement of capital under Articles 31 and 40 of the EEA Agreement. Iceland imposed an immediate tax on assets and shares of companies that merge cross-border with companies established in other EEA States and on shareholders of such companies, whereas similar transactions within the Icelandic territory did not attract any immediate tax consequences.

In Case E-15/13 Iceland failed to implement Directive 2009/22/EC on injunctions for the protection of consumers´ interests.

In Case E-16/13, Iceland failed to implement Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

In Case E-17/13 Iceland failed to implement timely Directive 2009/44/EC, amending the Settlement Finality Directive and the Financial Collateral Directive. Finally in Case E-18/13 Iceland failed to implement Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants.

## Applications for annulment of the Authority's decisions

In 2013 seven applications for the annulment of decisions taken by the Authority were lodged by undertakings or associations of undertakings. Two of those cases concern public access to documents: in Case E-4/13 DB Schenker seeks the partial annulment of a letter of 7 February 2013 insofar as the Authority refused to grant public access to certain of the inspection documents in Authority competition Case No 34250 (Norway Post/Privpak) and in Case E-5/13 the Applicant seeks partial annulment of two decisions of the Authority, of 25 January 2013 and 18 February 2013, in so far as these refused public access to a number of internal Authority documents and drafts in Authority cases No 13115 and 14474 (Norway Post – loyalty/discount system).

One case, Case E-2/13 *Bentzen Transport v ESA* concerned the decision by the Authority to close an investigation into an alleged infringement by a State in the field of public procurement. The action was declared inadmissible by the EFTA Court.

Three of the applications for annulment cases were attacked before the EFTA Court and concerned state aid decisions adopted by the Authority:

In Case E-1/13 *Mila v ESA*, an underwater cable operator sought the annulment of the Authority´s Decision No 410/12/COL of 21 November 2012, to close a case without opening the formal investigation procedure as to whether the lease of an optical fibre previously operated on behalf of NATO is to be regarded as state aid. The EFTA Court annulled the Authority's decision.

In Case E-8/13 *Abelia v ESA*, the Applicant, a trade association, seeks the annulment of the Authority´s Decision No 160/13/COL of 24 April 2013 to close a case without opening the formal investigation procedure concluding that the provisions of the Norwegian VAT Act and the VAT Compensation Act did not have the effect of granting state aid within the meaning of Article 61(1) EEA to public schools or the lessors of premises to public schools. The case is still pending.

Finally, in Case E-19/13 *Konkurrenten v ESA* the Applicant, an express bus operator, seeks the annulment of two Authority Decisions: first, Decision no. 519/12/COL of 19 December 2012, closing a formal investigation into potential aid granted by Oslo municipality to AS Oslo Sporveier and AS Sporveisbussene, and second, Decision no. 181/13/COL of 8 May 2013 refusing to open a formal investigation into aid measures not covered by decision 519/12/COL. The Authority has submitted that the action in that case is inadmissible. The case is pending.

In another pending case, the *Fédération Internationale de Football Association* ("FIFA") claims, in Case E-21/13 *FIFA v ESA*, that the Authority's Decision no. 309/13/COL of 16 July 2013 on the compatibility with EEA law of measures to be taken by Norway pursuant to Article 14 of Directive 2010/13/EU (the Audiovisual Media Services Directive) should be annulled in so far as it includes the FIFA World Cup in its entirety in the Norwegian list of events of major importance for society. As a consequence of being included in that list, the event can be broadcast on free to air TV.

## Observations submitted by the Authority

During the course of 2013, the Authority submitted observations in all six cases in which national courts submitted requests to the EFTA Court for an advisory opinion on the interpretation of EEA law.

In Case E-11/12 *Beatrix Koch*, the Fürstliches Landgericht (Liechtenstein) referred a series of questions on the interpretation of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance. The Authority lodged its observations in that case which were largely followed by the EFTA Court in its judgment of 13 June 2013.

In a major case, Case E-15/12 *Wahl v Iceland*, the Hæstiréttur Íslands (The Supreme Court of Iceland) asked whether it was permissible for reasons of public security under Article 27 of Directive 2004/38/EC for the Icelandic authorities to exclude from entry to Iceland a member of the Hell's Angels. The exclusion would be based on the mere fact, by itself, that the law enforcement authorities in Iceland consider, on the basis of a danger assessment, that the organisation to which the individual in question belongs, is connected with organised crime. The assessment is based on the view that where such organisations have managed to establish themselves, increased and organised crime has followed. The Court, concurring with the observations submitted by the Authority, held in its judgment of 22 July 2013 that the Icelandic authorities could indeed exclude an individual from entering their territory in such circumstances.

In Joined Cases E-3/13 and E-20/13 the Norwegian Tax Appeals Board for the Central Tax Office for Large Enterprises (*Skatteklagenemnda ved Sentralskattekontoret for storbedrifter*, Sarpsborg, Norway) and the Oslo tingrett (Oslo District Court) referred a number of questions on whether trusts as a form of establishment fall within the scope of the freedom of establishment provided for in Article 31 EEA and whether the beneficiaries, resident in Norway, of a trust established in Liechtenstein could be subject to income and wealth tax. That case is still pending.

In Case E-6/13 *Metacom v Rechtsanwälte Zipper & Collegen*, the Fürstliches Landgericht (Princely Court of Justice, Liechtenstein) sought the opinion of the EFTA Court on the interpretation of Directive 77/249/EEC (to facilitate the effective exercise by lawyers of freedom to provide services). The case concerned whether a German lawyer who represented himself for parts of the main proceedings in Liechtenstein could claim lawyers' fees in accordance with the scale of fees provided for under Liechtenstein law. Liechtenstein law required that a lawyer notify his intention to provide services with the national authorities; which the defendant had not done while representing himself. The Court agreed, in its judgment of 27 November 2013, with the submissions of the Authority that the prior notification obligations imposed on European lawyers by Article 59(2) and (3)(a) of the Liechtenstein Lawyers Act go beyond what can be requested by the national authority under Directive 77/249.

In Case E-7/13 *Creditinfo Lánstraust hf. v þjóðskrá Íslands (Registers Iceland) and the Icelandic State*, the Héraðsdómur Reykjavíkur (District Court of Reykjavik) asked the EFTA Court which factors should be taken into account when public bodies charge fees for the re-use of public sector information, in accordance with Article 6 of Directive 2003/98/EC, on the re-use of public sector information. The Court held, following the submissions of the Authority, that Articles 6 and 7 of the Directive require that, when charges are made for the re-use of public sector information, an examination must be undertaken at the time when the charge is fixed. The examination must show that the total income from such charges does not exceed the cost of collection, production, reproduction and dissemination of documents, plus a reasonable return on investment.

## Proceedings in the Court of Justice

The Authority lodged observations in four preliminary ruling cases pending before Court of Justice.

It lodged observations in Case C-507/12 *Saint Prix* on the issue whether a pregnant teacher who is a French national and resident in the United Kingdom who had stopped working 11 weeks before the expected date for the birth on medical advice and resumed work three months after the birth was a worker within the meaning of Directive 2004/38/EC (the Residence Directive) and thus entitled to certain benefits to compensate for her loss of earnings. The case is still pending.

The Authority lodged observations in Case C-617/12 *AstraZeneca*, concerning the EEA validity of Swiss marketing authorisations for pharmaceutical products. Such permits are originally granted by the competent Swiss authority (the Swiss Institute for Medicinal Products) and automatically recognised under Liechtenstein law in application of the customs union between Liechtenstein and Switzerland. The issue arose whether, in such circumstances, the Swiss marketing authorisations qualify as EEA marketing authorisations because of their automatic recognition by Liechtenstein. The Court of Justice, agreeing with the submissions of the Authority, held in its Order of 14 November 2013 that a Swiss marketing authorisation issued in those circumstances was indeed an EEA marketing authorisation.

The Authority also lodged written observations in Case C-48/13 *Nordea Bank*. In that case the issue is whether it is contrary to the right of freedom of establishment under the TFEU and Article 31 of the EEA Agreement to refuse to allow the applicant, Nordea Bank Danmark A/S, a tax deduction for losses incurred on the operation of its branches in Sweden, Finland and Norway in the income years 1996-2000. The case is pending before the Court of Justice.

Finally, in Case C-83/13 *Fonnship A/S* the Authority lodged observations in a Grand Chamber case in which the issue is whether EU/EEA rules on the free movement of services apply when a Norwegian owned ship registered in Panama provides a service between two EEA ports as well as whether and under which circumstances industrial action can be regarded as infringing the EU/EEA rules on freedom of services. The Advocate General's opinion will be delivered on 1st April 2014.

## Searchable document database online

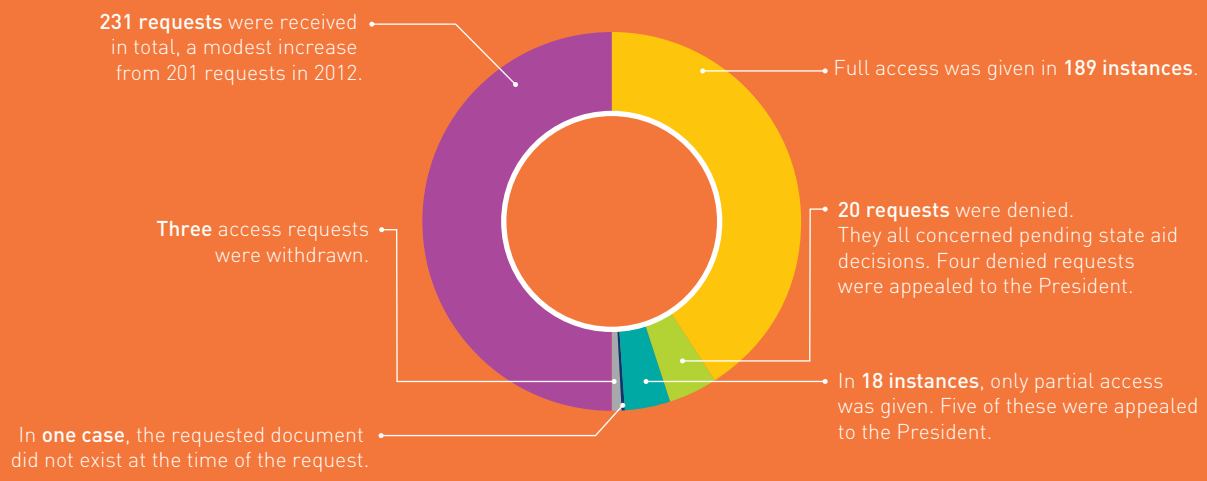
**To enhance accessibility and transparency, the Authority launched its online Public Document Database in April 2013. This tool allows for anyone to quickly and easily find documents which have been made public by the Authority.**

As a main rule, documents handled by the Authority should be publicly available. Anyone can ask for access to any document, and the applicant is not obliged to state any reason for the request. There are, however, some exemptions to the main rule, which gives the Authority a right to refuse disclosure of certain documents.

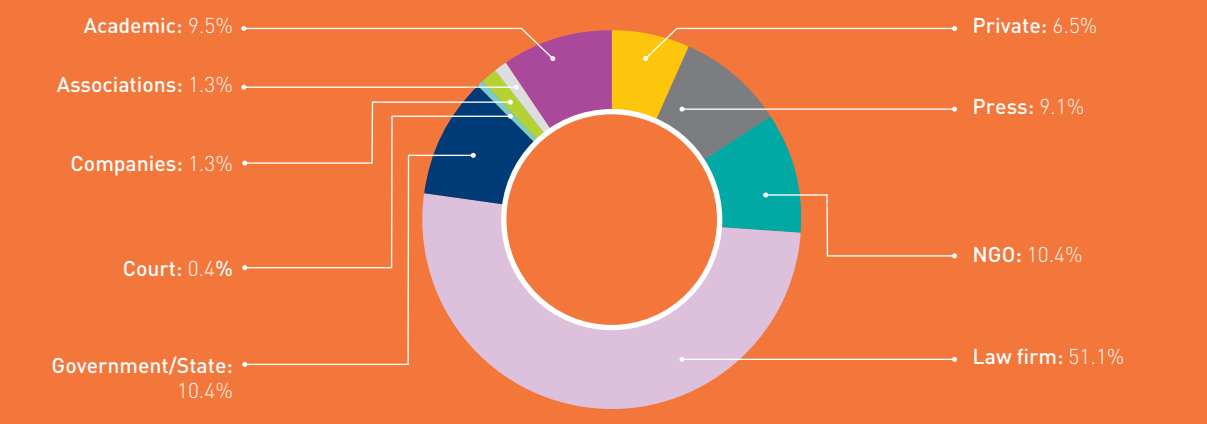
In line with the Authority's rules on public access to documents, the complete minutes of the College meetings are published on the Authority's website, giving public insight to all formal decisions made by College. A weekly updated document registry is also published.

### ACCESS REQUESTS IN 2013

(a modest increase from 2012: 201 requests)




### THE REQUESTS CAME FROM THE FOLLOWING GROUPS:



# Statistics & Budget

## Case handling by the Authority

"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 before and during the year 2013. 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.

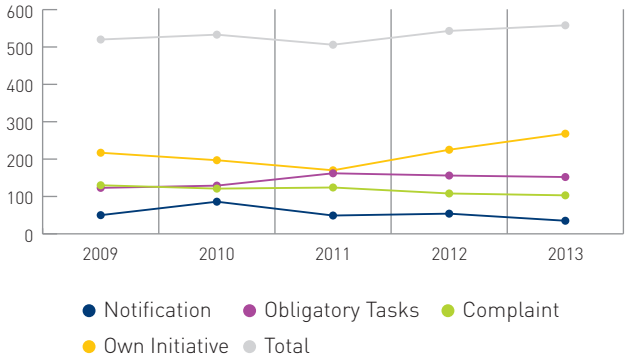
### Pending cases

In recent years, the Authority has worked to reduce the number of pending cases, in particular old cases. However, the number of pending cases has been rising again. At the end of 2013, the Authority had a total of 559 pending cases.

Figure 1 shows the number of notification cases being reduced, as well as the number of own-initiative cases continuing to grow.

**Figure 1**

*Pending cases, by category*




*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.

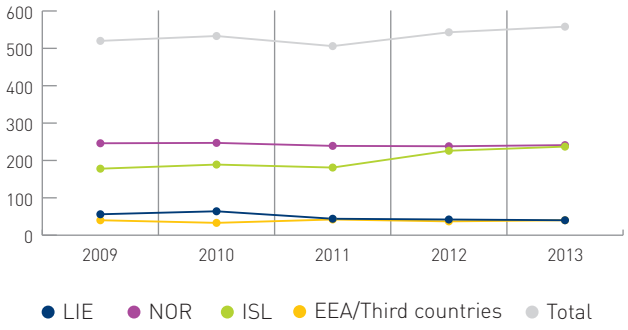
*Obligatory Tasks* are cases which are opened on the basis of an obligation on the Authority deriving from the EEA Agreement directly, or from secondary legislation, such as inspections in the area of food safety or transport.

*Own Initiative* cases are those opened by the Authority at its own instigation. Such cases include the non-implementation of directives, the non-incorporation of regulations, for Iceland and Norway, 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.

*Figure 2* shows the number of cases by country. 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.

**Figure 2**

*Pending cases, by country of origin*




### Cases opened and closed by the Authority

The number of opened and closed cases during 2013 also gives an insight to the activities of the Authority. *Figures 3* and *4* show that the great majority of cases is 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. The difference between internal market closures and openings is the main contributor to the decrease or increase in pending cases observed in figure 1.

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.

**Figure 3**

*Opened (new) cases, by field of work*

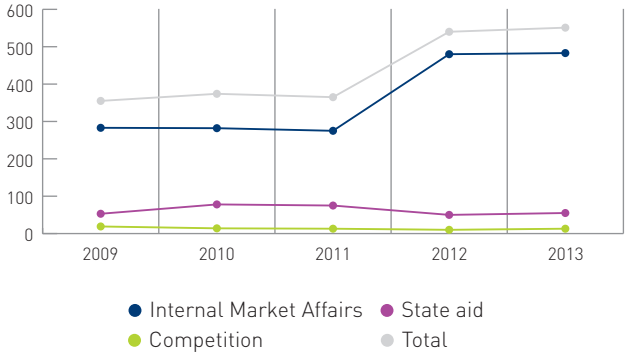
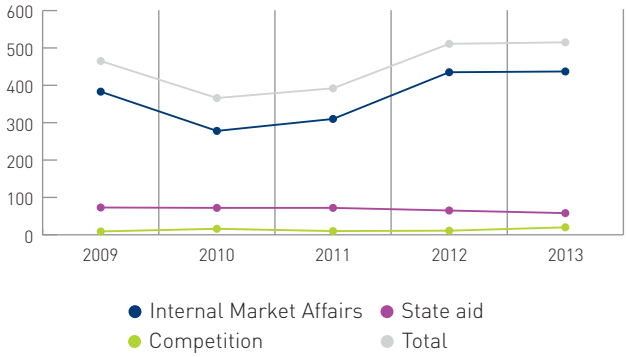



**Figure 4**

*Cases closed by the Authority, by field of work*




It is apparent in figure 5 that the number of cases being opened continues to grow for Icelandic cases.

**Figure 5**

*Opened (new) cases, by country of origin*

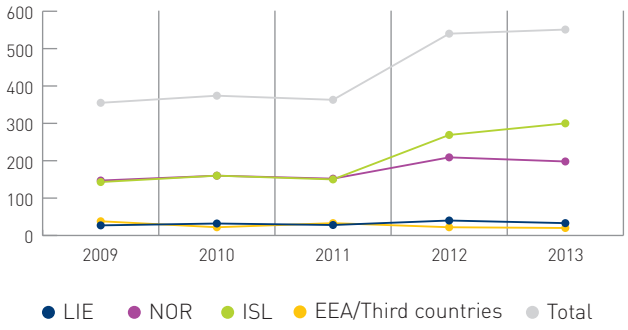
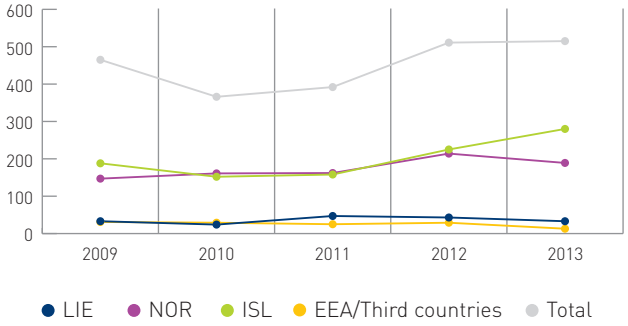



*Figure 6* shows that while the number of cases originating in Iceland is increasing, the number of cases being closed is also increasing.

**Figure 6**

*Closed cases, by country of origin*




## Complaints in 2013

Complaints from interested and concerned parties are an important source of information and contributes to the Authority`s surveillance of the EFTA States` compliance with EEA law.

Most new complaints in 2013 have been related to Internal Market affairs. This is true for all three EFTA States.

The majority of complaints in 2013 concerned the implementation and application of EEA law in Norway. This trend is equivalent to previous years.

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

**Figure 7**

*Pending complaints at the end of 2013*

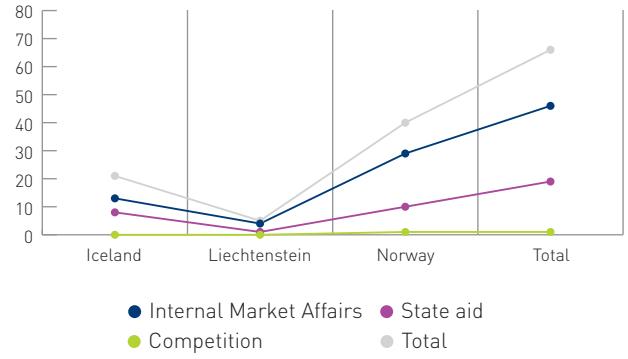


*Figure 8*
*New complaints lodged with the Authority in 2013*

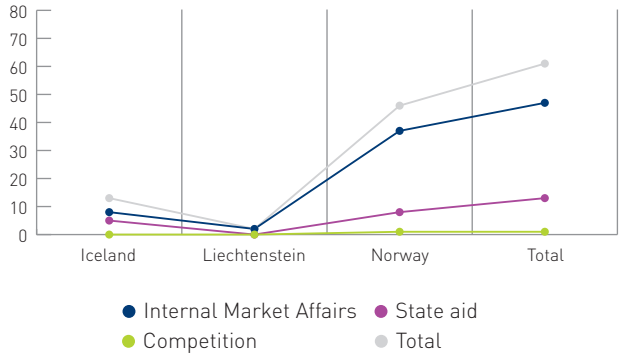
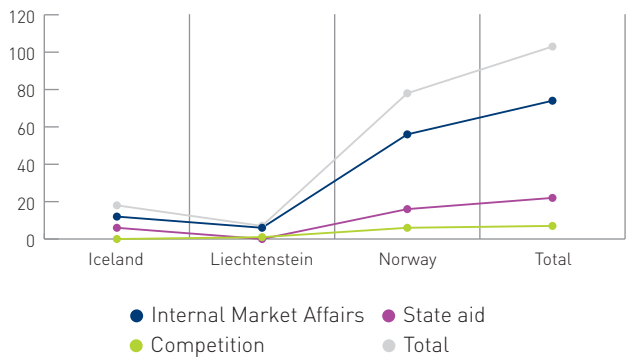



*Figure 9*
*Complaints closed during 2013*




## Budget

The activities and operating budget for the Authority are financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%). The Authority's total budget for 2013 was EUR 12.7 million, a nominal increase of 2.6% compared with 2012.

On 19 June 2013, the Authority submitted its Financial Statement for the preceding financial year (2012), and the accompanying Audit Report by the EFTA Board of Auditors (EBOA), to the EFTA States. The Financial Statements for 2012 were approved by the EFTA States on 12 December 2013, and the Authority was discharged of its accounting responsibilities for that period.

| Total budget proposal (in EUR) | Budget 2012 | Budget 2013 |
|---|---|---|
| **Chapter 4** - Financial income | 5,000 | 5,000 |
| **Chapter 5** - Contributions & Other income | 12,413,354 | 12,743,756 |
| Other income | 32,500 | 21,000 |
| Contributions from the EEA/EFTA States | 12,380,854 | 12,722,756 |
| **Total Income** | 12,428,354 | 12,748,756 |
| **Chapter 6** - Salaries, Benefits, Allowances | -9,509,354 | -9,754,871 |
| *Salaries* | -6,358,151 | -6,299,804 |
| *Benefits, allowances & turnover costs* | -3,151,203 | -3,455,067 |
| **Chapter 7**- Travel, Training, Representation | -729,000 | -747,500 |
| **Chapter 8** - Office Accommodation | -1,065,000 | -1,091,885 |
| **Chapter 9** - Supplies and Services | -1,120,000 | -1,149,500 |
| **Chapter 10** - Financial costs | -5,000 | -5,000 |
| **Chapter 11** - Other Costs | 0 | 0 |
| **Total expenditure** | -12,428,354 | -12,748,756 |

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
Belgium

Tel. +32 2 286 18 11
Fax +32 2 286 18 10
E-mail: registry@eftasurv.int
Internet: http://www.eftasurv.int
Twitter: @eftasurv