Annual Report 2014

EFTA SURVEILLANCE AUTHORITY

Foreword

In 2014, as in 2013, the EFTA Surveillance Authority has been chasing a high number of non-implementation cases where the EFTA States have been slow or reluctant to implement the common rules of the Internal Market within the timelines agreed by the contracting parties.

The work required in the EFTA States to transpose new Internal Market directives, and to incorporate regulations into the national legal order of those States, starts too late and the procedures take too long to complete. During 2014, the Authority opened a large number of cases concerning late implementation of Internal Market directives and regulations, and the Authority has not hesitated to bring such matters before the EFTA Court.

For Iceland, there appears to be a particular problem in respect of late implementation of legislation in the veterinary field. Both Iceland and Norway have large export industries enjoying the advantages of a common set of technical rules for food and feed. This system allows companies to avoid extensive procedures at the border when exporting fish and fishery products to other EEA countries. It is disappointing that Iceland has not dedicated sufficient administrative resources to ensure a swift implementation.

Control and guidance in the field of state aid is another important task for the Authority. One form of illegal state aid concerns public entities, often at a local level, which offer services in a market on more favourable terms than competing private undertakings because of "cross-subsidisation". This concerns many sectors and most of the cases concern Norway. In this field, there is still a lot to be done.

Just like the European Commission, the Authority has put a great deal of effort into implementing the recent state aid modernisation reform. Although new guidelines for state aid control are mostly in place, some issues are still on the table of the EFTA States and must be resolved before the reforms can be fully implemented.

These reforms will allow the Authority to use more resources on the cases with the greatest impact on the Internal Market – a change which is also in the interest of the EFTA States.

Oda Helen Sletnes,
President
EFTA Surveillance Authority

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Introduction

The EFTA Surveillance Authority monitors compliance with European Economic Area rules in Iceland, Liechtenstein and Norway, enabling those States 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.

The purpose of the EEA Agreement is to guarantee, in all 31 EEA States, the free movement of goods, people, services and capital – "the four freedoms". As a result of the agreement, EU law on the four freedoms, state aid, and competition rules for undertakings, is incorporated into the domestic law of the participating EFTA States. All new relevant EU legislation is also introduced through the EEA Agreement so that it applies throughout the EEA, ensuring a uniform application of laws relating to the Internal Market.

The Agreement 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.

The success of the EEA Agreement depends upon uniform implementation and application of the common rules in each of the 31 EEA States. The Agreement provides for a system of supervision where EU Member States are supervised by the European Commission, while the participating EFTA States are supervised by the EFTA Surveillance Authority. The two institutions co-operate closely on policy as well as individual cases.

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 operates independently of the EFTA States and is based in Brussels.

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 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 is led by a College which consists of three members. Although appointed by the EFTA States, the College members undertake their functions independently and free of political direction.

For the period from 1 January 2014 to 31 December 2017, the composition of the College is:

» Oda Helen Sletnes (Norway), President
» Frank Büchel (Liechtenstein)
» Helga Jónsdóttir (Iceland)

Oda Helen Sletnes has been President of the Authority since 1 July 2011.

The College is assisted by four departments:

» Internal Market Directorate
» Competition and State Aid Directorate
» Legal and Executive Affairs Department
» Administration Department

Staff and employment

In 2014, the Authority had a staff of 72, including the three College members, staff employed on fixed-term contracts, temporary staff and trainees.

Fifteen nationalities were represented amongst the staff, and approximately half (35) of the fixed-term and temporary staff members were EFTA nationals.

Of all staff members 45% were men and 55% 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, various measures have been put in place during 2014 leading to a stronger employer branding. The Authority has been present at careers fairs for law students in some of the EFTA States, with good results, and has increased its presence across social media for vacancy announcements.

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 2014 was EUR 13.3 million.

More details on the budget and accounts can be found in the last chapter of this report.

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. Referred to as "the EFTA States" for the purposes of this report.

EFTA Surveillance Authority – The organisation which ensures that the three 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.

Internal Market

The Authority is responsible for monitoring the EFTA States in order to ensure the effective and timely implementation of the Internal Market rules into their national legal orders. The Authority is also responsible for ensuring that EEA law is applied correctly in the EFTA States.

In this context, the Authority performs broadly the same tasks as the European Commission. The two institutions work closely together.

The Internal Market is based on the rules concerning "the four freedoms" – the free movement of goods, persons, services and capital, which have been at the core of European integration since the signing of the Treaty of Rome in 1957. These provisions are supplemented by a number of horizontal provisions, covering areas such as health and safety at work, labour law, equal treatment of men and women, consumer protection, environment and company law. The Authority may take action if an EFTA State fails to incorporate these rules into its national law in a timely manner or is suspected of breaching EEA law.

Concerned with the broader picture

When the Authority becomes aware of potential systemic problems within an EFTA State, it will investigate the underlying problem in a more general review, rather than by pursuing individual cases.

Hospital treatment in other EEA States

Since 2012, the Authority has received several complaints concerning the rules and practice in Norway for the authorisation of medical treatment in hospitals abroad. A letter of formal notice was issued in May 2014 and relates to two main issues.

First, patients cannot turn directly to foreign hospitals for treatment, even when it has been established that the treatment cannot be provided within the deadline set in the Norwegian system. The second issue concerns the requirement for authorisation of treatment abroad for patients where allegedly no treatment exists in Norway. There, the availability of "adequate treatment" is considered by the Norwegian authorities to satisfy the condition of "equally effective treatment" available in Norway. This is however a lower threshold than intended by EEA law.

The Authority is currently engaged in dialogue with Norway regarding a possible amendment of these rules, and will be considering the way forward in light of progress made in these ongoing discussions.

Restrictions of the rights to family reunification

In December 2014, the Authority issued a letter of formal notice where it concluded that Norway does not ensure that Norwegian nationals who return to Norway after having lived in other EEA States can bring their third country national family members along. Moreover, Norway limits the rights of family members of EEA nationals coming to live in Norway.

The letter of formal notice is the result of the scrutiny undertaken by the Authority after having received a high number of complaints in 2013 and 2014 regarding the rights of family members under EEA law.

Hydropower and geothermal energy in Iceland

The conditions for the granting and renewal of authorisations for the utilisation of hydropower and geothermal energy in Iceland do not appear compatible with the principles of transparency and impartiality.

The Authority has opened an own initiative case regarding the conditions for the granting and renewal of authorisations for the use of hydropower and geothermal energy. It has also invited Iceland to provide clarification on various points of the applicable legal framework.

The Icelandic Government indicated that a reform of the rules applicable to hydropower and geothermal licenses was ongoing. At this stage, however, it does not appear that a bill has been adopted by Parliament.

In 2012, the Authority sent a letter of formal notice indicating that the Icelandic legislation currently applicable to the award and renewal of hydropower and geothermal licenses is in breach of EEA law.

More specifically, the Authority considered that the Icelandic legislation is contrary to the Services Directive 2006/123 EC and Article 31 EEA.

Following the failure from the Icelandic authorities to remedy these issues, the Authority is considering whether to send a reasoned opinion.

Procedure to launch a lottery in Norway

Following the intervention of the Authority, Norway has decided to revise its legislation concerning the issuance of licenses for lotteries.

Since the authorisation procedure for private operators to set up a lottery in Norway was considered not to be in line with EEA law, the Authority sent a letter of formal notice to Norway.

The Authority did not challenge the requirement of a prior authorisation, but took the view that the procedure had to be conducted in accordance with EEA law requirements and relevant case law.

The Authority stated that the conditions set by the Norwegian authorities to obtain an authorisation to launch a lottery amount to a restriction of the freedom to provide services and the freedom of establishment.

Following the letter of formal notice, Norway has decided to modify its legislation. A draft regulation has been drafted which is currently going through a consultation procedure in Norway.

The proposed legislation seems to take into account all the elements raised in the letter of formal notice. Indeed, the new regulation would ensure that any procedure for issuing lottery licences is designed to ensure transparency and legal certainty as well as to avoid conflict of interests.

Transposing directives and regulations in the EFTA States

An important part of the Authority's monitoring work involves ensuring the timely implementation of EEA law through its infringement proceedings process.

In late 2014, a very high number of such cases (185) were open against the EFTA States. This correlates with the disappointing results in the most recent Internal Market Scoreboards.

Internal Market Scoreboard

The bi-annual Internal Market Scoreboard monitors how Iceland, Liechtenstein and Norway comply with their transposition obligations under the EEA Agreement. 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 for which transposition should have been notified by the foreseen deadline.

The average transposition deficit decreased slightly from 2% in November 2013 to 1.9% in May 2014. Liechtenstein was the only EFTA State to comply with the 1% deficit target. Both Iceland and Norway again had the highest deficits in the whole EEA. For Iceland, the all-time EEA high of a 3.2% deficit of November 2013 was reduced to 3.1% in May 2014. After having doubled its transposition deficit to a disappointing 1.8% in November 2013, Norway still increased to 1.9% in May 2014.

In absolute terms, the average 1.9% deficit indicates that the EFTA States were late in their notification of national transposing measures for a total of 63 directives. This constitutes a decrease of six directives since the previous Scoreboard. Liechtenstein was late in notifying the national transposing measures for eight directives, Norway for 21 and Iceland for 34.

Failure by Iceland to comply with EEA law on road safety

In July 2014, the Authority delivered two reasoned opinions to Iceland concerning the failure to comply with EEA law on road safety. The Authority concluded that Iceland needs to change its legislation regarding the use of safety belts in cars and that technical roadside inspections carried out by the Icelandic authorities need to be improved.

The first reasoned opinion concerns the failure of Iceland to comply with certain provisions of Directive 91/671/EEC relating to the compulsory use of safety belts in cars and light vehicles. The relevant provisions set out specific minimum requirements for when children can sit in the front seat of a car and when they are allowed to use adult safety belts only. Iceland's national provisions do not meet the minimum safety requirements of the Directive.

The second reasoned opinion concerns the failure by Iceland to comply with Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of motor vehicles. Technical roadside inspections are technical inspections of commercial vehicles which are not announced by the authorities and carried out on the public highway by the authorities, or under their supervision. Iceland does not carry out regular technical inspections on the road as required by the Directive and the obligation to hand out to drivers an inspection report based on a standardised form is not met either. Furthermore, when inspecting, Iceland does not fulfil the requirement that roadside inspectors have to take into account recent roadworthiness certificates or technical roadside inspection reports.

In both cases, Iceland has acknowledged the shortcomings identified by the Authority. However, the Authority has received no information from the Icelandic Government indicating that the necessary amendments to the national legislation have been adopted.

Pursuing breaches of EEA law

Bringing a case to the EFTA Court is the last step in a formal infringement procedure against an EFTA State not complying with EEA law.

In late 2014, the Authority referred Norway to the EFTA Court for its failure to amend rules regarding approval procedures at local level in the building sector which are in breach of the Services Directive. Following a constructive dialogue, Norway accepted in 2012 to change the rules. This would entail a considerable amount of work at national level, and in light of this co-operation, the Authority decided to put off a possible referral to the EFTA Court. However, once it became apparent that Norway would not be able to fulfil its commitments within the agreed timeframe for the third time, the Authority had no option but to bring the case to Court.

Timely compliance with EEA law obligations is all the more important when it relates to a breach that has been confirmed by a judgment of the EFTA Court. In such cases, the EFTA States must ensure compliance as soon as possible. Therefore, following a judgment by the EFTA Court of July 2012, Norway was required to take immediate action in accordance with well established case law to bring its legislation on ownership of stock exchanges in compliance with EEA law. Two years after the judgment, and following two warnings to Norway in February 2013 and June 2013, the Authority concluded in June 2014 that Norway had fallen short of what was required of it and decided to refer the case to the EFTA Court for a second time.

Air quality in Norway

Air quality across the EEA has seen significant improvements over the past decades. However, air pollution remains a widespread problem across the EEA, particularly in big cities, where emissions from diesel vehicles are a major contributor to poor air quality.

EEA legislation, in particular the Ambient Air Quality Directive, has established legally binding limits for certain pollutants present in the air, such as particulate matter (PM 10), sulphur dioxide (SO_2) and nitrogen dioxide (NO2), which may pose a serious threat to public health. Where these limits are exceeded, public authorities are required to develop firm plans setting out how air quality can be improved. In Norway, this responsibility is placed at the municipal level.

In 2013, the Authority began infringement proceedings against Norway following a complaint from the Norwegian Asthma and Allergy Association. In Norway, it is the larger cities in particular that are struggling to reduce air pollution and the reported levels of pollution in a number of areas across the country are too high.

Although there has been some action in Norway to address air pollution, EEA requirements are not being fulfilled within a reasonable timeframe. Consequently, the Authority has decided to refer the case to the EFTA Court. The Commission is currently pursuing similar infringement proceedings against several EU Member States.

Liechtenstein must ease its controls of service providers

Any company which provides cross-border services or which wants to establish itself in Liechtenstein is subject to prior controls and authorisations which lead to additional hurdles, delays and costs. The Authority considers that this runs counter to Internal Market principles and constitutes a breach of the Services Directive.

The Internal Market is based on the principle that, except under special circumstances, companies can freely provide services. Liechtenstein is entitled to require controls to be performed on companies providing services on its territory, but only once the company has entered or established itself in the country.

Consumer protection can be achieved in a different manner and alternative options for achieving the same result could be considered.

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

After sending a letter of formal notice in July 2013 and a reasoned opinion in April 2014, the Authority is now considering whether to refer the case to the EFTA Court.

Ensuring food safety and animal welfare

The EEA legislation on food safety is based on the principle "from farm to fork". This entails that food safety shall be ensured at all stages of food production, from the farmer to the final consumer.

The food producers are responsible for the safety of the food they produce. They must ensure that their production practices are hygienic and safe, that control measures are in place to minimise or eliminate risk factors and that both the raw material and the final products are traceable.

The national authorities in all EEA States should ensure that food producers comply with their obligations under EEA law. As food products circulate freely in the Internal Market, it is important to ensure that the States take a uniform and harmonised approach to food safety control measures. The Authority and the Commission carry out onthespot inspections in their respective States to verify that this is done. To ensure a harmonised approach, inspectors from the Authority participate regularly as observers in inspections carried out by the Commission, and vice versa.

The "hygiene package"

The "hygiene package" comprises a number of regulations which set out general and specific principles in food and feed law. The package entered into force in the EFTA States in May 2010. However, for products of animal origin other than fishery products, Iceland was granted an additional 18 month transitional period.

Following the expiry of this transitional period in November 2011, the Authority initiated a significant number of infringement cases against Iceland for late incorporation of legislation. The Authority is pleased to see that, at the end of 2014, only a few of these infringement cases remain open.

In addition to delays in incorporating EEA legislation, findings during a number of recent audits in Iceland have revealed concerns with the correct application of food and feed legislation. These shortcomings were more serious in those fields where new legislation had been introduced, in particular with regard to products of animal origin other than fish. While there are signs that the system for official controls is improving, a number of issues are outstanding, in particular requirements linked to the consistency and verification of official controls. Similar problems have also been observed in Norway. One of the Authority's priorities for 2015 in this field is to follow up those areas of non-compliance which were flagged during the audit process.

Restrictions on fresh meat imports in Iceland

In October 2014, the Authority moved to the next step in the case concerning the Icelandic ban on imports of fresh meat; the delivery of a reasoned opinion. The Authority is not convinced by the arguments presented by the Icelandic Government that the import restrictions are necessary.

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

The Authority is of the opinion that the restrictions on the importation of fresh meat into Iceland are in breach of EEA law. In reply to the Authority's letter of formal notice of October 2013, the Icelandic Government contended that the restrictions are necessary for the protection of animal and public health and submitted two scientific reports. The Authority considers that the extensive EEA legislation in this field addresses the concerns raised by the Icelandic Government. Furthermore, the scientific reports submitted by Iceland show, in the Authority's opinion, that the Icelandic import restrictions do not target the concerns brought forward by the Icelandic Government.

Implementation of the Drinking Water Directive in Norway

The Authority's services initiated preliminary infringement proceedings against Norway in September 2014 concerning the incorrect implementation of the Drinking Water Directive (98/83/EC).

A veterinary inspection in Norway in March 2013 revealed a number of issues regarding the implementation and application of the Directive to which the Norwegian Government did not provide satisfactory corrective actions. The issues concern, in particular, the establishment of proper monitoring programmes for water supply systems and the failure to monitor relevant chemical parameters at the correct frequencies as set out in the Directive.

In light of the role of effective and efficient monitoring in ensuring the control of water for human consumption, and the high level of health protection the Directive seeks to ensure, the Authority's services consider the above findings to be serious.

Veterinary inspections

The Authority's services carried out seven out of eight planned inspections to the EFTA States in 2014 in the veterinary, food and feed field. Due to delayed incorporation of relevant legislation into the EEA Agreement, the Authority's services chose to postpone an inspection to Norway on animal by-products not intended for human consumption.

Where the Authority's services identify shortcomings in the control systems set up by the national authorities, the Authority will issue recommendations aimed at rectifying the situation. The EFTA States are invited to comment on the draft reports, as well as provide corrective actions in line with recommendations set forward by the Authority's services before the reports are published on the Authority's website.

VETERINARY INSPECTIONS IN 2014

Iceland
- Primary production of food of non-animal origin
- Protection of animals at the time of killing
- Hygiene of processed casings
- Identification of bovine animals and labelling of beef

Norway
- Residues and veterinary medicinal products
- Hygiene of poultry meat
- Protection of animals at the time of killing

The Authority does not carry out veterinary inspections in Liechtenstein.

State Aid

State aid is economic assistance provided by public bodies to undertakings active in a market. Such assistance can consist of public support measures in numerous forms.

The EEA Agreement contains a general prohibition on state aid in order to prevent distortions of competition and negative effects on intra-EEA trade. The rules seek to ensure equal opportunities for companies across Europe, and to prevent government assistance from being used as a form of protectionism in the absence of trade barriers.

The prohibition is, however, subject to numerous exceptions, recognising that government intervention can be necessary to correct market failure and for other purposes.

Main activities in 2014

In 2014 the Authority opened 56 cases in the field of state aid, and closed 64. By the end of the year, 31 state aid decisions had been adopted, and some 40 cases were pending.

Nine decisions concerned Icelandic aid measures, while 21 decisions concerned Norwegian aid measures and one decision was adopted regarding state aid measures in Liechtenstein.

The state aid modernisation (SAM) programme, which came into force on 1 July 2014, already had an impact on the Authority's activities in the field of state aid in 2014. In that regard, firstly, the Authority adopted nine new state aid guidelines, mostly in the first half of the year.

Secondly, the Authority was also called upon to assess notifications of new aid schemes aimed at compatibility under the modernised state aid guidelines.

Thirdly, from the entry into force on 1 July 2014 of the new General Block Exemption Regulation (GBER) - a cornerstone of the state aid reform - until the end of the year, the Authority received summary information sheets from the EFTA States on some 50 aid measures that the States concerned consider to qualify under the GBER.

The Authority's services are now increasingly engaged in the monitoring of such measures as well as informal guidance to national authorities regarding the application of the new GBER.

Priorities for 2015

The Authority will continue to give priority to notifications of new aid measures, as such decisions are normally subject to tight and legally binding deadlines. At the end of 2014, two notification cases were open that are subject to binding deadlines, in addition to a further three cases where the Authority has already granted temporary approval. Furthermore, at the pre-notification stage, 11 cases were open at the end of 2014.

Formal investigations are opened where the Authority has doubts as to the compatibility of aid measures. From the substantive point of view, such cases are frequently complex in nature. Additionally, the procedure is particularly time-consuming as it involves not only inviting the EFTA State seeking to implement the proposal to submit further information, but also consultation with any interested party by means of a publication of information on the aid measure in the Official Journal of the European Union and the EEA Supplement thereto. This in turn requires translation into all EEA languages. Subsequent information requests may need to follow. The Authority, nevertheless, endeavours to conclude formal investigations within the shortest time limits feasible; as far as possible within 12 months, and at any rate within 18 months from the opening of the procedure.

In 2014, the Authority continued its endeavours to reduce the number of pending complaint cases. At the end of 2014, 12 complaints were pending with the Authority, down from almost 30 at the end of 2013. Four own-initiative and recovery cases were also pending at the end of 2014. In its Best Practice Guidelines on state aid control procedures, the Authority underlines its aim to ensure efficient and transparent handling of complaints brought before it.

The Authority will continue its efforts in this regard, including to use its best endeavours to investigate a complaint within an indicative time frame of 12 months from its receipt.

The state aid reform is gradually leading to major changes in policy and to a broader decentralisation of state aid control within the EEA. The new GBER involves a significant increase in the possibilities for the EFTA States to grant aid without prior notification to the Authority. The idea is that only the larger and more complex cases will remain subject to prior notification. This is to be balanced with a greater emphasis on monitoring, evaluation and transparency. Thus, the new provisions give more responsibility to national authorities in exchange for higher standards on transparency and accountability of state aid. This needs to be underpinned by a stronger partnership between the EFTA States and the Authority. The work of the Authority's services in 2015 will continue to be affected by the above policy developments.

Training on the modernised state aid rules has already been prepared and offered and is expected to continue more widely in 2015.

In addition to the general monitoring function, other new tasks for the Authority linked to the reform are, firstly, the evaluation of major aid schemes after implementation, where the Authority expects to be engaged. Secondly, according to the publication and transparency requirements of the new guidelines, the EFTA States shall ensure, as from 1 July 2016, the publication, at national or regional level, of all aid measures on a comprehensive state aid website meeting a certain minimum standard of transparency. The Authority is required to publish on its website links to the websites of the EFTA States as well as the summary information sheets regarding GBER aid. The Authority's services have suggested collaboration with the EFTA States in this regard. Preparatory work is expected to take place in 2015.

STATE AID PROCEDURES

State aid procedures are laid down in Protocol 3 to the Surveillance and Court Agreement. Plans to grant state aid must be notified to the Authority prior to implementation. The Authority must then assess whether such a plan constitutes state aid and, if it does, examine whether it is eligible for exemption. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision. If the standstill obligation is not respected, the aid is unlawfully granted.

The Authority will undertake a preliminary investigation of an aid proposal and will either decide not to raise objections (concluding that there is no state aid involved at all or that the proposed aid is compatible with the functioning of the EEA Agreement), or open a formal investigation.

As part of such a formal investigation, the Authority will invite comments from the EFTA State seeking to implement the proposals as well as any other interested parties (which may include the proposed aid recipient(s) or its/their competitors). The final decision of the Authority will either be positive (approving the measure either as no aid or as compatible aid), negative (prohibiting the aid), or conditional (approving the aid subject to conditions).

Where negative decisions are taken in cases of unlawful aid, the Authority normally decides that the EFTA State concerned shall take all necessary measures to recover the aid from the beneficiary.

State Aid Scoreboard

In February 2014, the Authority published its annual State Aid Scoreboard, covering aid awards in 2012. The scoreboard is a benchmarking tool for measuring trends in state aid expenditure across the EFTA States over time.

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-sector purposes continued with an increase in aid for research and development and for regional development.

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. Cross-sector 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 (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.

Decision highlights

Aid for regional development

Aid to support regional development is important in both Norway and Iceland and allowed under the EEA Agreement on certain conditions.

Regional aid maps for 2014–2020 approved for Norway and Iceland

In February 2014, the Authority approved the new map of areas eligible for regional investment aid in Norway as proposed by the Norwegian Government.

The map is defined with reference to the new State Aid Guidelines on regional state aid 2014–2020. The map was authorised for the period of 1 July 2014 to 31 December 2020.

The areas in Norway that qualify for regional investment aid cover 25.48% of the total population. Aid can be granted up to 15% of investment costs for large enterprises, with possible top-ups of 10% for medium-sized enterprises and 20% for small enterprises.

Similarly, the Authority approved in April 2014 a new map of areas eligible for regional investment aid in Iceland as proposed by the Icelandic Government. The areas in Iceland that qualify for regional investment aid cover 35.9% of the total population.

Aid can be granted up to a ceiling of 15% of eligible investment costs for large enterprises. This can be supplemented by an increase of 20% for small enterprises or 10% for medium-sized enterprises.

Norway authorised to renew a regional aid scheme in the form of differentiated social security contributions

In June 2014, the Authority approved the system of regionally differentiated social security contributions in Norway, renewing this comprehensive aid scheme for a further seven years.

The Authority considered the aid to be appropriate and necessary for the common objective of reducing depopulation in very sparsely populated areas. The scheme was assessed under the new guidelines on national regional aid, adopted in 2013.

The system of differentiated social security contributions is the most extensive aid scheme in Norway. The total annual reduction in social security contributions for undertakings benefitting from the aid scheme is estimated to be more than EUR 900 million. The new state aid rules require that such aid schemes will be thoroughly evaluated.

The tax reductions at issue represent operating aid to the beneficiaries as they reduce the aid recipients current expenditures.

The Norwegian authorities have expanded the scheme geographically to include 31 new municipalities. At the same time, the cross-sector scope of the new rules is tighter than before, as certain sectors will no longer receive aid by means of a reduced social security contribution.

Aid approved for harbour infrastructure in Húsavík, Iceland, in connection with Bakki industrial site

In February 2014, the Authority decided to approve the plans of the Icelandic authorities to expand and improve the Húsavik harbour.

The Icelandic authorities had provided the Authority with a notification on 11 June 2013. This involved the expansion of the pier Bökubakki, as well as some dredging activities, aiming to help the development of the industrial site at Bakki and facilitate the overall regional development.

The Authority considered that the notified plans could not be realised without public financing and that such financing is kept to the minimum necessary and does not pose any problems to competition and trade.

Regional investment aid approved for a silicon metal plant in Bakki, near Húsavík, Iceland

In March 2014, the Authority approved regional investment aid for the planned construction of a silicon metal plant at a greenfield site in Bakki in the northeast part of Iceland. The new plant will provide 120 direct jobs.

The Icelandic Treasury and the local municipality will grant the German-based company PCC aid in the form of a direct cash grant and tax exemptions. The aid will be granted up to the maximum aid intensity of 8.7% of the eligible investment costs. The tax exemptions will be granted for a maximum of 10 years and will be terminated by 2027 at the latest. The estimated aid amount is EUR 23.3 million. The Authority found the aid compatible with is guidelines on national regional aid.

Electricity agreements for PCC's silicon metal plant in Iceland may entail state aid

In December 2014, the Authority opened an in-depth investigation into the power purchase agreement between the German-based company PCC and Landsvirkjun, the national power company of Iceland, as well as PCC's transmission agreement with Landsnet, the operator responsible for transmission of electricity in Iceland.

The Authority has doubts as to whether Landsvirkjun's expected revenues from the power contract will be sufficient to render profitable the planned construction of a geothermal power plant at Þeistareykir in Iceland. The power plant is planned to be constructed in 45 MW steps, and Landsvirkjun will sell the power from the first step exclusively to PCC.

The Authority also has doubts as to whether the EUR 32 million investment needed in the transmission grid to connect the planned silicon metal plant is in line with the statutory rules in Iceland and might entail an advantage in favour of PCC financed by extra costs of existing users.

Iceland to recover incompatible aid granted under certain agreements based on the Investment Incentives Scheme

In October 2014, the Authority concluded that Iceland's investment agreements with five companies: Becromal, Verne, Kísilfélagið, Thorsil and GMR Endurvinnslan, involved state aid not in line with the EEA Agreement.

In particular, the Authority considered that the aid granted to Becromal and Verne did not provide an incentive to invest in the region, as required by the state aid rules, because the companies had taken their business decisions and started their projects regardless of the aid.

The Authority also found that the investment agreements with Kísilfélagið, Thorsil and GMR Endurvinnslan entailed operating aid rather than investment aid.

Any aid granted under these agreements was therefore held not to be in line with EEA state aid rules. As a result, the Authority ordered the Icelandic State to recover any aid that was granted under these agreements.

Cross-subsidisation within public entities

A continuing concern is public entities that, as a result of "cross-subsidisation" between public and private sector activities, operate on more favourable terms than competing private undertakings, when offering services in a market.

Norway agrees to change the financing of the public dental health care services

In May 2014, the Authority closed its case concerning the financing of Norwegian public dental health care services. The closure of the case comes after Norway agreed to change the financing so as to comply with the state aid rules of the EEA Agreement.

Having received two complaints about cross-subsidies in the Norwegian dental health care services, in March 2014 the Authority proposed to the Norwegian authorities to amend the system of financing.

Having accepted the proposal, the Norwegian authorities are now legally bound to clearly identify the sparsely populated regions where subsidies are needed to make dental health care affordable. They must also introduce a system of account separation to ensure that public funds are not used to provide the public dental health care service with a competition-distorting advantage.

Measures and schemes with various other objectives

Production grant scheme for news and current affairs media in Norway approved

In March 2014, the Authority decided not to raise objections to a new production grant scheme for news and current affairs media in Norway.

The new scheme opens up the possibility for certain news media published in electronic form to be eligible for production grants. It replaces the former aid scheme for newspapers. Transitional rules apply for media that will no longer be eligible for support under the new scheme.

In its decision, the Authority considered that plurality in the media market is an objective of common interest that can justify the granting of state aid. Given the developments in the media market the system of production grants remain an appropriate way of supporting the news media sector in Norway.

Under the scheme, different grant levels apply depending on the size and the competitive position of news media in their respective markets. Furthermore, there are safeguards in place to ensure that grants are limited and will actually be used for the production of news media. The Authority concluded that the new production grant scheme is compatible with the state aid rules of the EEA Agreement.

Aid to Balzers district heating in Liechtenstein approved

In April 2014, the Authority approved the Liechtenstein authorities' plans to grant aid to the citizens' co-operative Balzers, for the construction of district heating fuelled by renewable energy in the Liechtenstein municipality Balzers, located in southern Liechtenstein.

The plant will produce 14.5 GWh of district heating annually. Some 1.65 million litres of oil is needed to produce the same amount of heat per year. The district heating plant is thus capable of reducing CO_2 emissions by up to 4,000 tonnes annually.

The plant will generate district heating from renewable sources, such as wood chips, and replace existing combustion of oil and gas. The positive environmental effects outweigh the limited effect of the aid on competition and, in light of this, the Authority concluded that the state aid is compatible with the EEA Agreement.

Iceland to recover incompatible aid in the form of VAT exemptions to customers of data centres

In May 2014, the Authority, after an in-depth investigation, concluded that certain amendments to the value added tax (VAT) legislation in Iceland, applicable to customers of Icelandic data centres, involved unlawful state aid.

According to the Icelandic authorities, the objective of the amendments was twofold. *Firstly*, to enhance the competitiveness of Icelandic data centres and make sure that the business environment of data centres in Iceland, in terms of VAT treatment, was comparable with their competitors operating in EU Member States. Secondly, the goal was to promote the use of Iceland's energy resources for the needs of the data centre industry.

Shortly after the Authority opened its investigation, the Icelandic authorities decided to change the VAT Act in order to repeal the problematic provisions.

After finding that the amendments entailed incompatible state aid, the Authority nevertheless ordered the Icelandic State to recover any aid that was granted before the provisions were repealed.

Green-light for broadband roll out scheme in Norway

In June 2014, the Authority approved a nationwide state aid scheme to roll out broadband infrastructure in Norway. The scheme aims to ensure that all Norwegian citizens receive basic broadband services of good quality, as well as to increase offers of Next Generation Access (NGA) services, mainly in rural and scarcely populated areas.

The total budget of the scheme is up to NOK 2 billion or NOK 500 million annually, and its duration covers the period of 2014 to 2017.

The Authority has assessed the scheme in light of its Broadband Guidelines and found that it fulfils all the conditions of compatibility set out therein.

The Authority accepts Iceland's changes to the Housing Financing Fund

In July 2014, the Authority decided to close its investigation into the financing of the Icelandic Housing Financing Fund (HFF). This followed commitments by Iceland to change the rules governing the HFF to comply with previous recommendations by the Authority.

Following the measures adopted by Iceland, the HFF's activities will be limited by certain conditions. In particular, the introduction of a maximum allowed loan amount and a minimum loan-to-value ratio for the general residential loan scheme results in a maximum value cap for dwellings of ISK 40 million, above which dwellings are no longer eligible for HFF loans. These limitations are subject to a yearly review. Social requirements have also been introduced for rental companies to be eligible for HFF loans.

The Authority welcomed the decision by the Icelandic authorities that the HFF will not engage in any economic activities other than those entrusted to it as services of general economic interest. Moreover, the Icelandic authorities confirmed that the HFF does not discriminate against citizens from other EEA States.

A Revolving Credit Facility granted to SAS found to be free of aid

In July 2014, the Authority closed a formal investigation regarding a Revolving Credit Facility (RCF) granted to Scandinavian Airlines (SAS) in 2012.

SAS enjoyed in recent years an RCF provided by several banks, which was to expire in June 2013. The banks refused to renew this RCF without a substantial participation from the main shareholders of SAS, namely Sweden (21.4%), Denmark (14.3%), Norway (14.3%) and the Knut and Alice Wallenberg Foundation (KAW) (7.6%). In December 2012, the three States decided to finance half of a new RCF of SEK 3.5 billion (around EUR 400 million), together with KAW and the majority of the banks that participated in the old RCF. The measure is linked to the implementation of SAS's new business plan.

After having received a complaint the Authority opened a formal investigation to assess the conformity of the measure with EEA state aid rules. Given the particular situation involving these three States, of which two are EU members, the Authority and the European Commission conducted parallel investigations in close co-operation with each other. The Authority has now concluded that Norway's participation in the RCF does not constitute state aid.

The Authority considered that the new RCF was concluded on terms that a private investor operating under market conditions would have accepted. It therefore procured no undue economic advantage to SAS and did not entail state aid.

Formal investigation into alleged aid in favour of online travel guide services by Innovation Norway

In July 2014, the Authority opened a formal state aid investigation regarding IT services provided by Innovation Norway, through the Norwegian online travel guide visitnorway.com. The case originated in a complaint.

After a preliminary assessment of the case, the Authority had doubts as to whether Innovation Norway's entry in this market was fully in line with the EEA Agreement.

As a consequence, the Authority decided to open the formal investigation procedure, granting interested parties the opportunity to present their comments on the alleged aid measures.

The decision was published in the Official Journal of the European Union on 26 October 2014. Both the Norwegian authorities and the complainant have submitted their comments on the opening decision. It is expected that the Authority will adopt a final decision on the case in 2015.

Formal investigation into alleged aid from Sandefjord municipality to Sandefjord Fotball AS

In October 2014, the Authority opened a formal investigation into potential state aid to Sandefjord Fotball AS, a professional football club based in Sandefjord, Norway. The case was initiated following a number of complaints.

In 2006, the municipality of Sandefjord transferred two plots of land free of charge to subsidiaries of Sandefjord Fotball AS. In return, the football club was obliged to build a new stadium. This transfer of land was never notified to the Authority. In order to help finance the new construction, the football club sold part of the land provided by the municipality to private investors for NOK 40 million. The new stadium was completed in July 2007 at a total cost of NOK 100 million. Sandefjord Fotball AS has since sold the stadium.

Based on the available information, the Authority was not convinced that the transfer of land took place on market terms, and had doubts as to the market value of the plots of land at issue. Furthermore, the Norwegian authorities did not provide any arguments concerning the compatibility of the aid.

As a result, the Authority opened a formal investigation procedure and called for further comments from the Norwegian authorities and third parties with an interest in the case. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority.

Competition

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

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

Main activities in 2014

Substantial resources continued to be devoted to reviewing the data collected following the unannounced inspections carried out in Norway at the premises of Telenor in December 2012 and at the premises of the airline company Widerøe in June 2014, as well as to the investigation of potential new cases.

The Authority adopted a new notice on agreements of minor importance which do not appreciably restrict competition (*De Minimis notice).* The new *De Minimis* notice follows the European Commission's adoption of a similar notice in 2014.

Following the Authority's decision in December 2011 to fine the Norwegian ferry company Color Line for an infringement of the EEA competition rules, a competitor, Bastø Fosen, has brought an action for damages against Color Line. For the first time, the Authority submitted written observations (*amicus curiae)* in a case before a national court, Norway's Borgarting Court of Appeal. The Authority's observations focused in particular on the interpretation of national limitation periods for follow-on actions for damages.

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

Outlook for 2015

In 2015, the Authority's main focus will be on the continued investigations in the Telenor and Widerøe cases, following the inspections carried out in December 2012 and June 2014 respectively.

New guidelines for the assessment of technology transfer agreements under the EEA competition rules will be proposed if the new EU Technology Transfer Block Exemption Regulation is incorporated into the EEA Agreement.

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.

Formal antitrust proceedings against Telenor

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 EEA competition rules in relation to Telenor's provision of mobile telephony services. A significant amount of data was collected.

Following an initial examination of data obtained at the inspection, in March 2014 the Authority adopted a decision to initiate proceedings concerning possible infringements by Telenor of Articles 53 and/or 54 EEA.

The decision to initiate proceedings is a procedural step signalling the Authority's intention to proceed with an in-depth investigation. It does not prejudge in any way the existence of a competition law infringement.

The Authority is currently examining whether Telenor charges prices that result in a margin squeeze on its competitors in respect of the provision of retail mobile data services and of bundles of retail mobile telecommunications services

The Authority is also examining whether clauses in Telenor's retail agreements concluded with customers for the supply of mobile telecommunications services give rise to market foreclosure concerns.

Inspections in the aviation sector in Norway

In June 2014, the Authority carried out unannounced inspections at the premises of the airline company Widerøe's Flyveselskap in Norway, in respect of possible breaches of the EEA competition rules in relation to Widerøe's activities in the aviation sector in Norway. A significant amount of data was collected by the Authority. The inspection was continued at the Authority's premises in Brussels in August 2014 following the seizure of certain electronic data that could not, due to time constraints, be reviewed at Widerøe's premises.

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

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.
www.eftasurv.int/competition/competition-rules-in-the-eea

New De Minimis Notice

In October 2014, the Authority adopted revised "safe harbour" rules.
The Authority has issued revised rules for assessing when minor agreements between companies do not fall foul of the general prohibition against anti-competitive practices under EEA competition law. The revision facilitates the assessment of compliance with the EEA competition rules for companies, in particular small and medium-sized enterprises. It also allows the Authority to concentrate its resources on agreements which pose a higher risk to competition in the EEA.

According to the EEA competition rules, agreements that are aimed at, or result in, appreciable restrictions of competition are prohibited. The revised rules, in line with their predecessors, create a "safe harbour" for companies whose market shares do not exceed 10% for agreements between competitors, and 15% for agreements between non-competitors.

The main change to the rules involves a clarification, following the Expedia judgment of the European Court of Justice, that agreements that have an anti-competitive object ("restrictions by object", such as price-fixing and market-sharing) cannot be considered as agreements of minor importance, but always constitute an appreciable restriction of competition. Such agreements can therefore never benefit from the "safe harbour".

Amicus curiae before national courts

In July 2014, the Authority submitted amicus curiae observations to the Borgarting Court of Appeal in Norway.
The Authority, acting on its own initiative, may submit written observations ("*amicus curiae*" observations) to courts in the EFTA States where the coherent application of Articles 53 and 54 EEA so requires.

In July 2014, the Authority submitted *amicus curiae* observations for the first time, in a case before the Borgarting Court of Appeal in Norway.

The case involved a claim for damages by Bastø Fosen against Color Line following the Authority's decision in December 2011 fining Color Line for an infringement of the EEA competition rules.

The Authority's observations focused on the interpretation of the national limitation period for follow-on actions for damages before the Norwegian courts. In particular, the Authority emphasised that it is difficult for private parties to obtain the evidence necessary to support an action for damages if they are unable to base their claim on a final infringement decision of a competition authority. The starting point for national limitation periods for follow-on actions for damages, or their length, should thus be such that potential victims can bring actions for damages after an infringement decision by the Authority becomes final. That position reflects the position taken in the new EU Directive on antitrust actions for damages.

Co-operation with national competition authorities

In 2014, the Authority was informed about five new investigations by the EFTA competition authorities and reviewed five draft decisions.
National competition authorities and courts in the EFTA States apply Articles 53 and 54 EEA 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 nevertheless participates in the EFTA network alongside the competition authorities of Iceland and Norway.

When acting under Articles 53 or 54 EEA, the members of the network inform each other about new investigations. The national authorities reported five such investigations to the Authority in 2014.

Before adopting decisions applying Articles 53 or 54 EEA, the competition authorities in 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 EEA are applied in a consistent manner throughout the EEA. In 2014, the Authority reviewed five 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 2014, no court in the EFTA States availed itself of this possibility.

Co-operation with the European Commission

The Authority continued to co-operate closely with the European Commission's Directorate General for Competition in the enforcement of the EEA competition rules.

Rules on co-operation between the 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.

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 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.

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

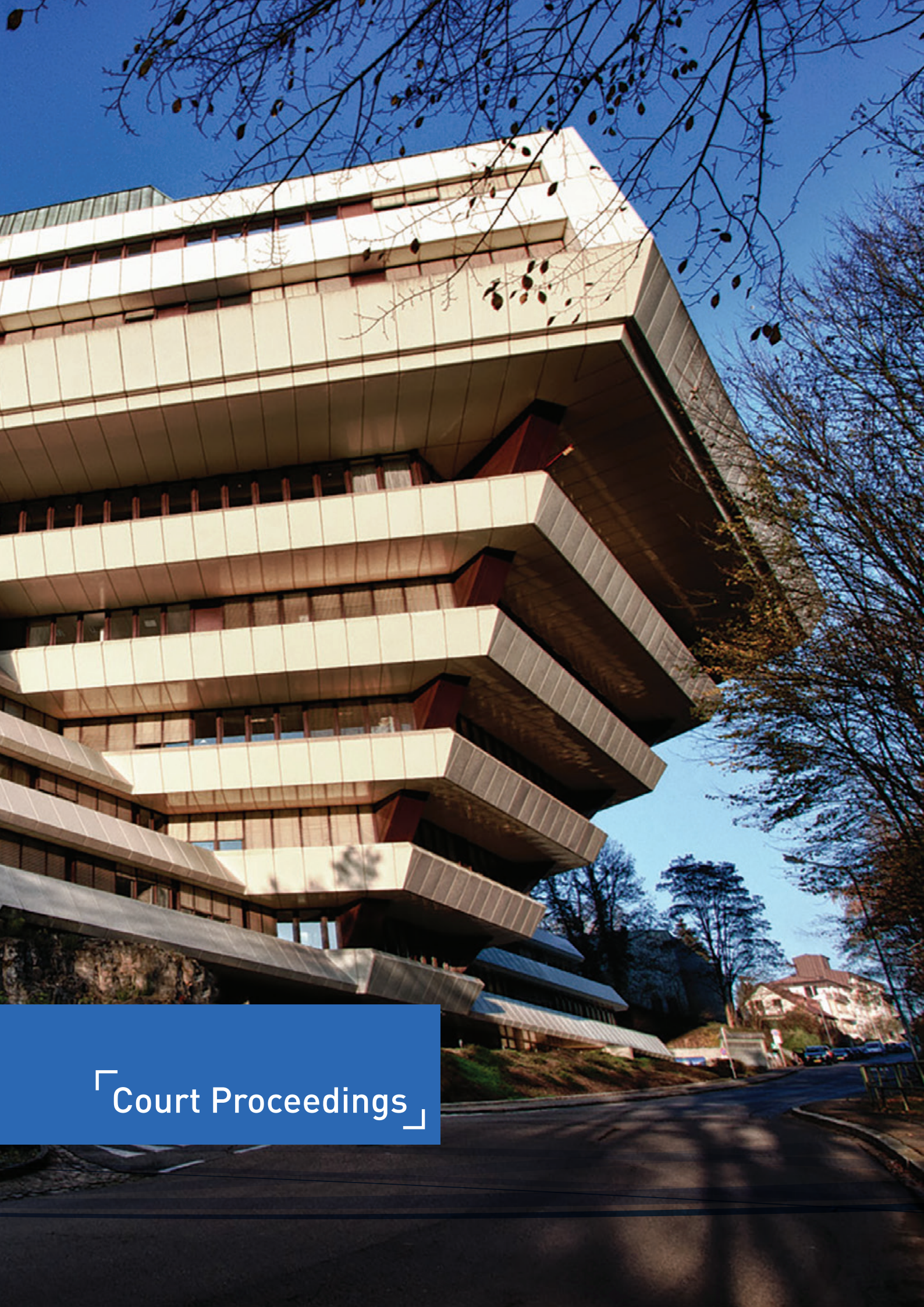
INSPECTIONS IN THE DIGITAL AGE

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. An Explanatory Note on Inspections is available on the Authority's website.



Court Proceedings

THE EFTA COURT

Bringing a case against an EFTA State for failure to live up to its obligations under EEA law is the final step in the Authority's formal surveillance procedure. Upon request, the EFTA Court also advises national courts in the EFTA States on the interpretation of EEA law. Finally, the Court hears appeals brought by companies and persons to review the lawfulness of decisions taken by the Authority which affect them directly.

The Authority participates in all cases in the EFTA Court.

Infringement proceedings against EFTA States

Faced with increasing delays in the implementation of EEA law into the national legal order of the EFTA States, the Authority had no option but to lodge a total of 17 infringement cases with the EFTA Court in 2014. That was a record number.

Thirteen of those cases were against Iceland, three against Norway and one was against Liechtenstein. See the full list of cases further down.

Foreign-registered leased cars in Norway

Case E-7/14 *EFTA Surveillance Authority v Norway* was not a case about implementation but concerned the failure by Norway to adopt the necessary legislative measures to ensure compliance with Article 36 EEA, on the freedom to provide services. Norwegian legislation provides that foreign-registered leased cars which are temporarily imported by Norwegian residents are in principle subject to the full registration tax from the moment they are used in Norway.

The Authority takes the view that the charge of a full registration tax is likely to hinder Norwegian residents from using leased car services offered by companies established in other EEA States and to hinder the latter from offering their services to Norwegian residents. Such fees could only be justified if a permanent resident of Norway would lease a vehicle from a company in another EEA State for the duration of approximately the entire lifespan of the vehicle.

The Authority concludes that this is contrary to the free movement of services and that Norway has failed to fulfil its obligations arising from Article 36 of the EEA Agreement. The EFTA Court, in its judgment of 24 September 2014 agreed with the Authority and held that Norway was indeed in breach of Article 36 of the EEA Agreement.

Self-employment of "Dentisten" in Liechtenstein

Case E-17/14 *EFTA Surveillance Authority v Liechtenstein* concerns legislation prohibiting formerly Austrian-trained "Dentisten" from pursuing their profession on a self-employed basis.

According to the Health Act in Liechtenstein a "Dentist", as opposed to a "Zahnartz" must pursue his profession as an employee, under the direct supervision, instruction and responsibility of a fully qualified dental practitioner. In the view of the Authority, this is a disproportionate restriction on the right of self-establishment article 31 EEA. It does not have a sufficient link to the objective of public health, as has been argued by the Liechtenstein Government. Less restrictive measures can be imposed by Liechtenstein in order to protect the public health, while ensuring the application of internal market freedoms.

Stock exchange ownership in Norway

Two years after the EFTA Court handed down its judgment against Norway in the Stock Exchange case E-9/11, the Authority decided to refer Norway to the Court again, this time for a breach of its duty to comply with the judgment in a timely manner.

In case E-19/14 EFTA Surveillance Authority v Norway, the Authority submits that Norway had an obligation to begin compliance with the judgment immediately and to complete it as soon as possible. Although Norway has

later complied with the judgment by amending the Stock Exchange Act and the Securities Depositories Act, the Authority takes the view that in this case it had taken too long.

This is the second time the Authority has brought an action against Norway for failure to comply with a judgment of the EFTA Court.

Review of Authority decisions

The number of appeals lodged in the EFTA Court against decisions of the Authority has reduced considerably, from seven in 2013 to two in 2014.

One case (E-22/14 *Schenker VI*) concerns public access to documents. In that field the Court, in 2014, fully, or largely rejected three earlier appeals brought by the same companies (E-8/12, E-4/13 and E-5/13). The other case (E-23/14 *Kimek Offshore*) concerns a state aid decision of June 2014 that approved the system of regionally differentiated social security contributions in Norway.

During the course of 2014, The EFTA Court upheld the Authority's decision to approve Norway's choice that all games in the FIFA World Cup must be broadcast on national, free television (E-21/13 *FIFA*); rejected a state aid appeal concerning a Norwegian VAT exemption (E-8/13 *Abelia*), but annulled a state aid decision on the use of an Icelandic optical fibre cable (E-1/13 *Míla*).

The long running litigation in Case E-19/13: *Konkurrenten.no AS v EFTA Surveillance Authority* followed its course. The case is pending and awaiting judgment. The Court in this case decided to examine jointly the admissibility of the action and the merits. The case is an annulment action against two decisions issued by the Authority for alleged state aid in the public transport sector. The first decision concluded the formal investigation and the second decision did not open a formal investigation.

On the merits, the Authority's defence analysed the concept of an "existing aid scheme" and what alterations of aid schemes would result in characterising the aid as "new aid". The Authority argued that it was right in closing the formal investigation as no such alteration of the existing aid scheme in this case had taken place. It further argued that it was correct in closing the case

INFRINGEMENT PROCEEDINGS BROUGHT IN 2014

EFTA Surveillance Authority v Iceland

Case E-1/14
Failure to implement Directive 2006/38/EC on the charging of heavy goods vehicles for the use of certain infrastructures. Judgment of 24 September 2014 finding for the Authority.

Case E-2/14
Failure to implement Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements. Judgment of 10 November 2014 finding for the Authority.

Case E-4/14
Failure to implement Directive 2007/23/EC on the placing on the market of pyrotechnic articles. Judgment of 24 September 2014 finding for the Authority.

Case E-5/14
Failure to implement Directive 2008/98/EC on waste. Judgment of 24 September 2014 finding for the Authority.

Case E-6/14
Failure to implement Directive 2008/43/EC on identification and traceability of explosives for civil uses. Judgment of 10 November 2014 finding for the Authority.

Case E-8/14
Failure to implement Directive 2009/38/EC, on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. Judgment of 10 November 2014 finding for the Authority.

without opening formal investigation as it should not objectively have had doubts that the contested aid measures were covered by the existing aid scheme insofar as they constituted aid in the first place.

Referrals from national courts

The Authority lodges written observations in all cases referred by national courts to the EFTA Court for an advisory opinion on the interpretation of EEA law. In 2014 it lodged observations in 9 cases.

Award of a casino concession in Liechtenstein

A case referred by the State Court of the Principality of Liechtenstein, Case E-24/13 *Casino Admiral AG v Wolfgang Egger*, concerns a tender procedure on behalf of the Liechtenstein Government for the award of a casino concession. Several questions were referred to the EFTA Court but basically the national court sought guidance on how a tender procedure should be conducted in a fair and transparent way.

The Authority submitted that the rules and conditions of a tendering procedure for a service concession must be drawn up in a clear, precise and unequivocal manner. Further, while there is no specific procedural obligation to give prior notice of the relative weighting that will be given to the award criteria when awarding the concession, it must nonetheless be possible for all reasonably informed tenderers exercising ordinary care to understand their exact significance and interpret them in the same way.

The Authority also submitted that it is for the referring court to verify whether the award procedure at issue in the main proceedings has met these conditions. Finally, it is for the domestic legal system to regulate the legal procedures for safeguarding the rights which individuals derive from the obligation of transparency and the principle of legal certainty in such a way that those procedures are no less favourable than similar domestic procedures and do not make the exercise of those rights excessively difficult.

INFRINGEMENT PROCEEDINGS BROUGHT IN 2014 (continued)

In the following seven cases, Iceland did not dispute that it had failed to implement or incorporate the measures in question. Consequently, the Authority agreed to dispense with the oral procedure in the case in order to simplify and speed up the Court proceedings:

Case E-11/14
Failure to implement Directive 2011/7/EU on combating late payments in commercial transactions. Judgment of 28 January 2015 finding for the Authority.

Case E-12/14
Failure to implement Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products. Judgment of 28 January 2015 finding for the Authority.

Case E-13/14
Failure to implement Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Judgment of 28 January 2015 finding for the Authority.

Case E-14/14
Failure to implement Directive 2009/48/EC on the safety of toys. Judgment of 28 January 2015 finding for the Authority.

Case E-15/14
Failure to incorporate Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products. Judgment of 28 January 2015 finding for the Authority.

Case E-20/14
Failure to incorporate Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents. Case pending.

Case E-21/14
Failure to implement Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products. Case pending.

The EFTA Court handed down its judgment on 29 August 2014 and held that the obligation of transparency entails that the relative weighting cannot alter the original award criteria, be of a nature that could have significantly affected the preparation of tenders or be likely to give rise to discrimination against one of the tenderers. It also held that the referring court must ensure that the obligation of transparency and the principle of legal certainty are applied properly.

Indexation of house loans in Iceland

Two important cases were referred by the Reykjavík District Court on whether the index-linking of repayments of loans taken to finance real-estate purchases is compatible with the provisions of Directive 93/13/EEC on unfair terms in consumer contracts. Both cases, Case E-25/13 *Gunnar V. Engilbertsson v Íslandsbanki* and Case E-27/13 *Sævar Jón Gunnarsson v Landsbankinn hf.* asked in particular whether the Directive precludes a clause in a mortgage agreement between a bank and a private individual by which the capital of a loan granted by the bank to finance a real-estate purchase has been linked proportionately to the domestic consumer price-index so that the loan capital to be repaid increases according to inflation.

In Case E-27/13 the referring court also asked whether Directive 87/102/EEC, which aims to bring about a certain degree of approximation of laws, regulations and procedures concerning consumer credit, precluded the method of basing the calculation of the total cost of a credit and of the annual percentage rate of charge in a repayment schedule accompanying a loan agreement on a hypothetical inflation rate of 0% instead of the known rate of inflation on the date when the loan is taken.

The Authority submitted in its written observations that the scope of Directive 93/13/EEC does not extend to contractual terms such as are at issue in the main proceedings insofar as they reflect national rules on the index-linking of instalment repayments of loans taken to finance real-estate purchases.

INFRINGEMENT PROCEEDINGS BROUGHT IN 2014 (continued)

EFTA Surveillance Authority v Norway

Case E-3/14
Failure to implement Directive 2009/12/EC on airport charges. Judgment of 24 September 2014 finding for the Authority.

Case E-7/14
Failure to adopt the necessary legislative measures to ensure compliance with Article 36 EEA, on the freedom to provide services, in a case concerning registration tax on foreign-registered leased cars. Judgment of 24 September 2014 finding for the Authority.

Case E-19/14
Failure to comply with the judgment of the EFTA Court in Case E-9/11 concerning legislation on ownership of stock exchanges. Case pending.

EFTA Surveillance Authority v Liechtenstein

Case E-17/14
Failure to comply with EEA law on the freedom of establishment in a case concerning self-employment opportunities for formerly Austrian-trained "Dentisten". Case pending.

Further information on pending and decided cases can be found at the website of the EFTA Court: www.eftacourt.int/cases

In the alternative, the Authority submitted that Directive 93/13/EEC does not preclude national legislation which authorises the parties to a loan agreement to agree on a price-indexation method which is set out under national legislation, provided that the terms thereof are explicitly described in plain and intelligible language in the contract to enable the consumer to make an informed choice.

Further, that Directive does not create any ground for assessing the factors that may cause changes in the predetermined index and the methods by which these changes are to be measured.

Furthermore, it submitted that it is up to the national court to assess whether a particular contract term is considered to be unfair within the meaning of the Directive. Additionally, the Authority also considers it to be for the relevant national court to establish whether a particular contract term has been negotiated individually and also if a particular price-indexation clause has been explicitly described in the relevant documentation.

Lastly, the Authority submitted that it is in principle incompatible with Directive 87/102/EEC to base a repayment schedule on a hypothetical inflation of 0% with the effect that the total costs of the credit appear to be significantly lower than those calculated on realistic assumptions. It is however for the national court to assess whether information such as that provided by the creditor to the consumer at the time when the contract was signed satisfies the conditions set out in, in particular as regards the total cost of the credit as expressed by the Annual percentage rate. The EFTA Court, in its judgments of 28 August 2014 (Case E-25/13) and 24 November 2014 (Case E-27/13), reached conclusions very similar to the submissions of the Authority.

Taxation of pensioners moving to another EEA State

In Case E-26/13 *Íslenska ríkið v Atli Gunnarsson*, a case referred by the Supreme Court of Iceland, the question was whether it is compatible with Article 28 of the EEA Agreement on the free movement of workers and/or Article 7 of the Residence Directive 2004/38/EC that a State (A) does not give spouses the option of pooling their personal tax credits in connection with the assessment of income tax in circumstances in which both spouses move from State (A) and live in another State (B) in the EEA and one of them receives a pension from State (A) while the other has no income, yet the tax position of the couple would be different if both lived in State (A), including the fact that they would be entitled to pool their personal tax credits.

In its written observations the Authority submitted firstly that the couple in the present case could not be considered as "workers" in the meaning of Article 28 of the EEA Agreement. The Authority submitted that the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration. Moreover, in order to qualify as a 'worker', the person concerned must pursue effective and genuine activities. which are not on such a small scale as to be regarded as purely marginal. In addition, the worker must have engaged in such occupational activity in an EEA State other than their home State. Where these criteria are not fulfilled, Article 28 does not apply.

Furthermore, the Authority submitted that Article 7 of the Residence Directive cannot be invoked against the home State. It submitted that Article 7 was clearly drafted with the host State in mind and that an interpretation of that Article such that it could be invoked also against the home State would indeed be an extensive interpretation, which did not correspond to the case-law of the Court of Justice.

Finally, the Authority submitted that there is no provision corresponding to Article 21 TFEU, on Union citizenship, in the EEA Agreement, neither is there a basis for reading into Article 7 of the Residence Directive qua EEA law obligations that in the EU flow only from Article 21 TFEU directly, and not from the Directive.

The Court did not, in its judgment of 27 June 2014, follow the submissions of the Authority. It held instead that Article 1 of Directive 90/365/EEC and Article 7(1)(b) and (d) of Directive 2004/38/EC require an EEA State to give to spouses who have moved to another EEA State the option of pooling their personal tax credits in connection with the assessment of income tax, whereas they would be entitled to pool their personal tax credits if they lived in the home State.

Reorganisation and winding up of credit institutions

The Reykjavík District Court referred an important case concerning the aftermath of the financial crisis in Iceland. In Case E-28/13 *LBI hf. v Merrill Lynch Int. Ltd.*, the national court asked the EFTA Court three questions regarding the interpretation of Article 30(1) of Directive 2001/24/EC on the reorganisation and winding up of credit institutions. The case essentially raised the issue whether Article 30(1) can be interpreted as meaning that "the voidness, voidability or unenforceability of legal acts" refers to the rules on the rescission of measures taken by a financial undertaking according to rules that are comparable to those that apply to the rescission of measures taken by a bankrupt individual under the Bankruptcy Act. In particular, the case concerned three payments made by old Landsbanki Islands to Merryl Lynch in July, August and September 2008.

The Authority submitted that Article 30(1) of Directive 2001/24/EC, should be interpreted as meaning that "the voidness, voidability or unenforceability of legal acts" also refers to the rules on the rescission of measures taken by a financial undertaking according to rules that are comparable to those that apply to the rescission of measures taken by a bankrupt individual under the Bankruptcy Act.

Furthermore, the Authority also submitted that Article 30(1) should be interpreted as meaning that it is sufficient for the party against whom a demand for rescission is directed, to present proof that rescission of the measure would not be permitted under the law of the Member State applicable to the measure with reference to rules of any type, i.e. both substantive and procedural.

The EFTA Court handed down its judgment on 17 October 2014 which is entirely consonant with the submissions of the Authority.

Employees' rights and transfers of undertakings

The Eidsivating Court of Appeal, Norway, referred three questions to the EFTA Court in Case E-10/14 *Enes Deveci and Others v Scandinavian Airlines System Denmark–Norway–Sweden* regarding the interpretation of Article 3(1), cf. Article 3(3), of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. In essence the case raises the issue whether it is consistent with Article 3(1) of the Directive that the transferee undertaking assigns the individual employees covered by the transfer, a place in a pay table set out in a collective agreement that applies in the transferee undertaking, with effect from a date after the collective agreement that applied in the transferor undertaking has expired, even if this results in a pay reduction for the individual employees. The referring Court furthermore asks whether this depends on whether the collective agreement that applied to the employees of the transferor was still in force when the transferee's collective agreement was made applicable to the employees, and whether the reduction in pay is significant or not.

The EFTA Court handed down its judgment on 18 December 2014 it is consistent with Article 3 of the Directive that the transferee undertaking assigns the individual employees covered by the transfer, a place in a pay table set out in a collective agreement that applies in the transferee undertaking even if that results in a salary reduction.

Recording of criminal convictions against companies

The Princely Court of Justice, Liechtenstein, referred a question in Case E-9/14 *Proceedings concerning Otto Kaufmann AG* regarding whether the provisions on the freedom to provide services and freedom of establishment in the EEA Agreement and/or individual acts of secondary law (for example, the Public Contract Directive 2004/18/EC or the Services Directive 2006/123/EC), require that where national law allows for legal persons to be convicted by a criminal court those convictions must also be clearly recorded, for example, in a criminal record.

The Authority submitted that no provision of EEA law, whether in the Agreement or in any legislation incorporated into its annexes contained mentioned by the referring court any such requirement.

The Authority therefore concluded that the EEA Agreement does not entail specific requirements as to the recording of convictions in situations where national law allows for legal persons to be convicted by a criminal court.

The EFTA Court agreed with the Authority in its judgment of 10 November 2014. The Court disagreed however with the European Commission that had submitted that the questions were inadmissible.

Special Protection Certificates and Patent rights in the pharmaceutical sector

The Oslo District Court referred a complex series of questions on the interpretation of Council Regulation (EEC) no. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (SPC Regulation) in Case E-16/14 *Pharmaq AS v Intervet International BV*. The Defendant and the Plaintiff in the proceedings before the referring court are both pharmaceutical companies that have developed a vaccine against pancreatic disease in salmonid fish (PD), based on two different virus strains causing the disease. The Defendant (Intervet) received the first basic patent, then sold the vaccine in the EEA under special national exemption rules from 2003-2011, before receiving an "ordinary" marketing authorisation in Norway in 2011.

The ordinary marketing authorisation is usually a requirement for a company to be able to sell a medicinal product. In the EEA, a company can get a SPC for medicinal products for a time after the basic patent expires where, like in this case, time has passes from the granting of the basic patent until a marketing authorisation is acquired. The SPC in this case was granted even though the vaccine had already been on the market in the EEA from 2003.

The Authority took the position that the Defendant had already placed its product on the market in the EEA, for all intents and purposes, pursuant to the national exemption rules before the marketing authorisation was granted.

Furthermore, it is a requirement for granting a SPC that the market authorisation on which the certificate is based is the first authorisation to place the product on the market. In this case the SPC was based on the 2011 marketing authorisation which the Authority argues was not the first authorisation to place the product on the market since it had in fact already been on the market from 2003 pursuant to special national exemptions.

Thirdly, the Authority argues that the SPC only covers the specific strains of the virus on which the vaccine is based, provided that the therapeutical effect of the two different subtypes of viruses is not equivalent. The case is pending.

Allocation of airport slots in Iceland

The Authority lodged observations in Case E-18/14 *Wow air ehf. v The Competition Authority, Isavia ohf. And Icelandair*. The case raised the novel question of the independence of coordinators in allocating airport (landing and departure) slots under Regulation 95/93. It was referred to the EFTA Court by the Reykjavík District Court in the context of judicial review of a decision by which the national competition authority addressed certain instructions on slot allocation to ISAVIA, the company operating Keflavík airport in Icleand.

The Authority submitted that as long as the independence of the slot allocator is secured, it is a matter of national law to decide on the status of the allocator, including whether its competences should be established under private or public law.

The complaint procedure described in Article 11 of Regulation 95/93 is without prejudice to remedies available under national law, including competition law. It is for domestic legislation to determine which authorities or courts have jurisdiction to apply such rules. However national competition rules should not be interpreted in a way which compromises the role of the coordinator as set out in the harmonized EEA rules.

The Authority emphasised the distinction between, on the one hand, the allocation of slots and, on the other hand, their transfer. The former can solely be conducted by the slot allocator while the latter only requires a notification to the allocator. With regards to allocation, the Regulation does not provide any grounds for instructing the allocator. On the other hand, there is nothing in the Regulation which precludes national authorities from instructing the transfer of an already allocated slot, following a finding of a breach of a specific breach of competition law.

In its judgment of 10 December 2014 the EFTA Court answered the questions referred in the manner suggested by the Authority.

THE COURT OF JUSTICE OF THE EUROPEAN UNION

As the EEA Agreement forms part of the EU legal order the Court of Justice has jurisdiction to interpret it and apply it.. The Authority therefore participates in cases before the EU courts that have a particular impact on EEA law and its future development.

The Authority can participate in the following ways:

» In a preliminary reference where a court of an EU Member State asks the Court of Justice to interpret EU law, the Authority may make written or oral submissions if the subject matter of the proceedings is in an area covered by the EEA Agreement.

» In other cases, the Authority may seek leave to intervene in support of one of the parties under the conditions laid down in Article 40 (3) of the Statute of the Court of Justice.

Interventions in cases before the General Court

German support scheme for renewable energy

The Authority intervened in support of the Commission in two groups of state aid cases pending before the General Court.

In the first group, it supported the Commission in Case T-172/14 *Stahlwerk Bous v European Commission* and eight parallel cases: T-173/14 *WeserWind v Commission*, T-174/14 *Dieckerhoff Guss v Commission*, T-175/14 *Walter Hundhausen v Commission*, T-176/14 *Georgsmarienhütte v Commission*, T-177/14 *Harz Guss Zorge v Commission*, T-178/14 *Friedrich Wilhelms-Hütte Eisenguss v Commission*, T-179/14 *Schniedewerke Gröditz v Commission*, and T-183/14 *Schmiedag v Commission*. Those cases were the first wave of litigation by German industrial consumers of energy against the decision of the Commission to open the formal investigation into alleged state aids in the German support scheme for renewable electricity and reduced EEG surcharge for energy intensive users.

In 2000, Germany introduced a scheme to support the generation of renewable energy which involved the imposition of a surcharge. In 2002 the Commission decided that the support scheme as it stood then did not involve state aid.

A consumer association complained to the Commission in 2011 that Germany amended the scheme but failed to notify the amendments which were to enter into force in 2012. Those amendments, among other things, reduced the surcharge in favour of certain energy intensive users. The Commission then decided to open the formal investigation into alleged state aids resulting from a reduced surcharge for some industrial energy intensive users. The Commission considers, prima facie, that the amendments which have not been notified involve unlawful new aid.

The applicants claim that the Commission has given insufficient reasons for its decision to initiate the formal investigation; that the scheme as amended does not involve state aid; and that in any event, it is compatible with the common market.

The Authority supported the Commission to the effect that the reasons for initiating the formal investigation were clear and adequate and that the Commission was right to have doubts as to the compatibility of the scheme. Furthermore, the Authority pointed out that since the beginning of the litigation the Commission had completed the investigation and concluded that the aid scheme was in part compatible and in part incompatible with the common market. As a consequence, the applicants no longer had a legal interest in pursuing the annulment of the decision opening the formal investigation.

The Authority also lodged requests to intervene in second group of cases brought by other applicants against the same decision of the Commission. That second group of cases has been stayed by the General Court pending the outcome of the first group.

Observations in preliminary reference cases in the Court of Justice

The Authority lodged observations in three preliminary reference cases in the Court of Justice.

Use of bus lanes by taxis in London

It lodged observations in C-518/13 *Eventech*, a case that concerns the definition of State aid, and in particular whether the free use of bus lanes in London by black cabs, to the exclusion of minicabs, constitutes State aid.

The case raised the issue whether making available for free the exclusive use of a bus lane on a public road to a company amounts to the use of "State resources" and whether such measure is liable to affect trade between Member States.

The Authority submitted that making a bus lane on a public road available to black cabs but not minicabs, during the hours of operation of that bus lane, does not involve the use of "State resources" within the meaning of Article 107(1) TFEU, since the State in the current circumstances acts as a regulatory authority rather than an economic operator.

Further, the Authority found that the Bus Lane Policy does not amount to a selective measure for the purposes of Article 107(1) TFEU, since black cabs and minicabs are not in a comparable legal and factual situation.

Finally, the Authority also concluded that the test that is currently applied to assess effect on trade between Member States, is very broad, but it consists of assessing whether the relevant sector to which the aid relates to has, even only potentially, an intra-EU trade dimension.

If this currently applied test were to be relied on in the circumstances of the case, it could be concluded that making a bus lane on a public road available to black cabs but not to minicabs, during the hours of operation of that bus lane, is liable to affect trade in circumstances where the road in question is located in central London, and there is no bar to citizens from any Member State owning or driving either black cabs or minicabs.

The Authority however suggested that the Court of Justice would use the opportunity and revisit its case-law as regards the interpretation of the condition of affectation of trade between Member States in such a way that it is not met by measures which do not by their nature prevent access to the market or impede or lessen the chance of access to the market any more than it impedes or lessens the chance of access for domestic undertakings.

Competition in the Danish postal market

The Authority submitted observations in a case concerning the abuse of a dominant position, C-23/14 *Post Danmark A/S (II)*. That case, referred by a Danish court, concerns abuse of market dominance and the use of exclusionary rebates by a dominant undertaking. It builds in law on, but concerns different behaviour than Case C-209/10 *Post Danmark*, judgment of 27 March 2012. In its new reference, the Danish court asked the Court of Justice to clarify the precise test to be applied under Article 102 TFEU / Article 54 EEA to assess the foreclosure effects of the rebate scheme.

The Authority for its part submitted that Article 102 TFEU and Article 54 EEA must be interpreted as requiring the national courts and authorities to examine all the circumstances of a rebate scheme in order to show that the scheme is capable of restricting competition.

In carrying out that assessment, the national courts and authorities should examine whether the scheme provides a particular and specific inducement to customers to change their behaviour in respect of the dominant undertaking which is not attributable to normal competition.

Where a dominant position stems from a former legal monopoly, as in this case, the national courts and authorities must take account of that fact. The Authority further submitted that a rebate scheme constitutes an abuse of a dominant position if it tends to or is capable of restricting competition to any degree.

However, the national courts and authorities are not required to show that the rebates always result in pricing below cost, provided that other circumstances indicate that the rebates are capable of foreclosing the market.

Minimum price on alcohol

Finally, the Authority submitted observations in C-333/14 *The Scotch Whisky Association*, a case that concerns the compatibility with the free movement of goods (Art. 34 and 36 TFEU) of legislation imposing, on all retail sale of alcoholic drink in Scotland, a minimum price calculated by reference to the number of units of alcohol contained in the product.

The Authority submitted that the measure should be considered a restriction of the free movement of goods, as opposed to a mere selling arrangement.

When assessing proportionality of the measure, the Authority suggests that the alternative measure suggested by the parties in the case, namely a fiscal measure, is different in nature and has to be assessed under Art. 110, not Art. 34 TFEU.

Intervention in the Court of Justice

Lawfulness of competition inspections

The Authority intervened in support of the Commission in the appeal case, C-583/13 P *Deutsche Bahn AG and others v European Commission*, continuing its support of the Commission at first instance in the General Court in Joined Cases T-289/11, T-290/11 and T-521/11 *Deutsche Bahn a.o. v Commission*.

The Authority had intervened in those cases in the Commission's support to defend the lawfulness of the EEA rules on ordering competition inspections. DB had unsuccessfully argued in the General Court that three Commission decisions on the basis of which the Commission had carried out inspections at DB's headquarters and other premises in Germany in summer 2011 should be annulled on grounds of principle (alleged breach of fundamental rights) and thus appealed that judgment to the Court of Justice.

The Authority argues before the Court of Justice that the conformity of competition inspections with fundamental rights requires effective judicial review ex post, but not prior judicial authorisation.

Article 20(4) of Regulation 1/2003 neither requires, nor foresees judicial authorisation to be obtained before an inspection of business premises can be carried out. The Authority also submitted that undertakings subject to unannounced inspections of their business premises only suffer temporary interference of their daily business, which generally did not amount to serious and irreparable harm in violation with the rights under the EU Charter on Fundamental Rights.

The Authority also submitted that according to the Dow Benelux NV case law in the event of "accidental discoveries" in the course of inspections the Commission. The Commission is not required to ignore information that it happens upon "accidentally".

Access to documents

To ensure transparency and enjoy greater legitimacy in its decision-making, documents handled by the Authority are, as a rule, publicly available. Anyone can ask for access to any document, and the applicant is not obliged to state any reason for the request. The Authority can, however, refuse disclosure of certain documents.

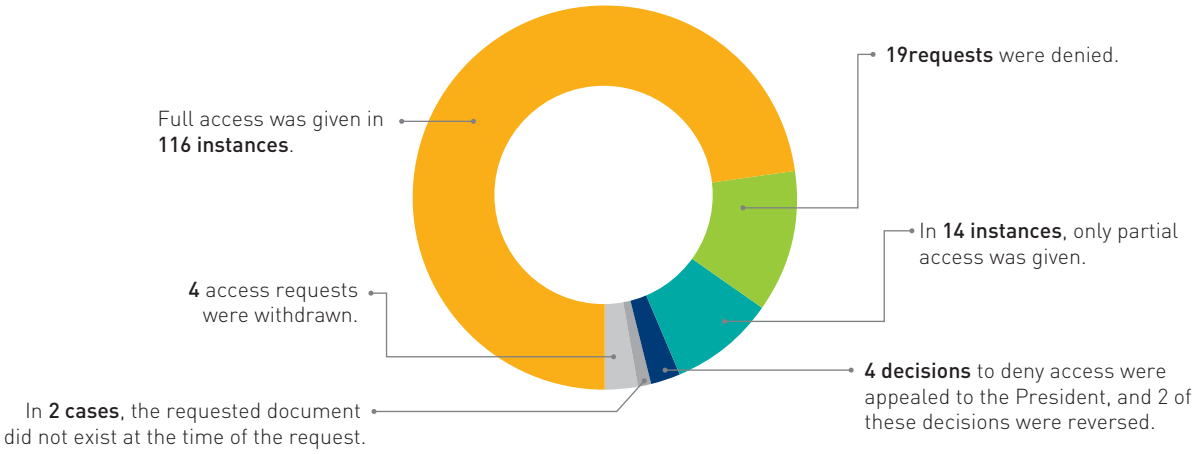
Once a document is disclosed, it is uploaded to the Authority's Public Document Database online, available to anyone.

Also available are the complete minutes of the weekly College meetings, giving public insight to all formal decisions made by the College. A weekly updated document registry, listing all correspondence with the EFTA States as well as other types of documents, is also published online.

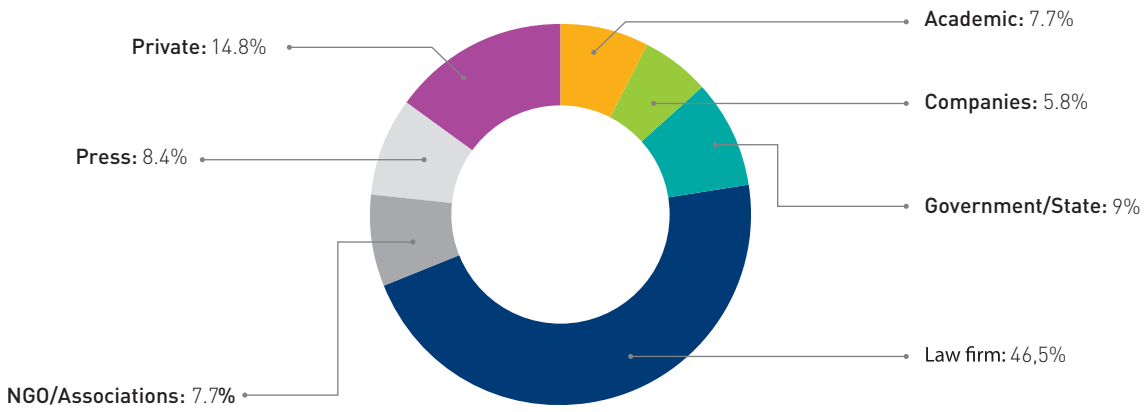
See: **www.eftasurv.int/access**

ACCESS REQUESTS IN 2014

155 requests were received in total, a decrease from 231 requests in 2013.



THE REQUESTS CAME FROM THE FOLLOWING GROUPS:



Statistics and Budget

This chapter presents a picture of the total case load of the Authority, categorised by case type and by country. An overview of the Authority's budget is given at the end of the chapter.

Pending cases

At the end of 2014, the Authority had a total of 518 pending cases. This was a reduction from 559 cases one year earlier.

Figure 1 shows the number of pending own initiative cases being reduced, while the number of pending complaint cases has grown.

Figure 2 shows the number of pending cases by country. It shows a notable reduction in cases concerning Iceland.

Figure 1
Pending cases, by category

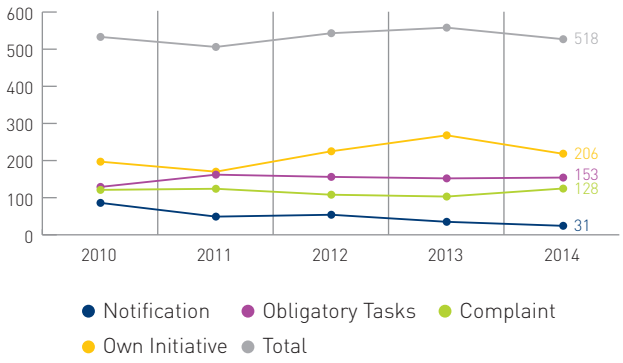
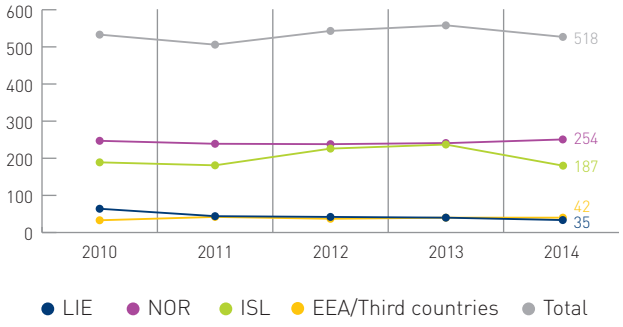


Figure 2
Pending cases, by country of origin



DEFINITIONS

In this section, a "case" 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 2014. 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.

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, and the examination of the implementation and application of EEA law.

Cases opened and closed by the Authority

The number of cases which were opened and closed during 2014 also gives an insight to the activities of the Authority. 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.

The number of new Internal Market cases has increased considerably over the last few years. At the same time, the number of closures has increased even more, leading to the important decrease in pending cases observed in *figure 1*.

Figure 3
New cases, by field of work

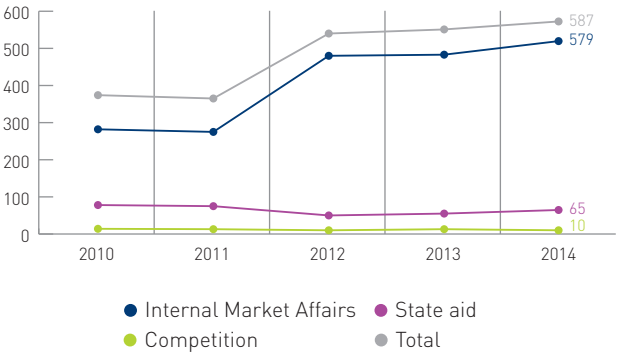


Figure 4
Closed cases, by field of work

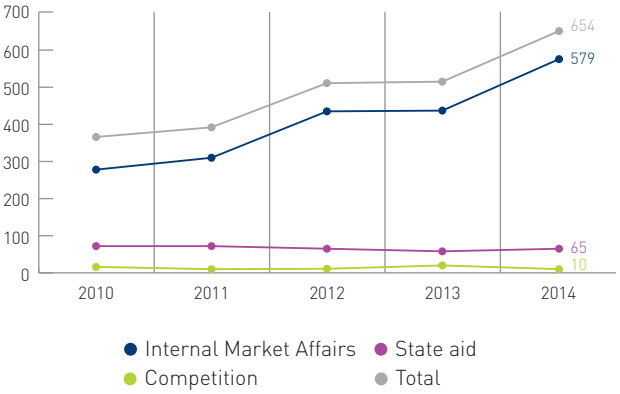


Figure 5
Opened (new) cases, by country of origin

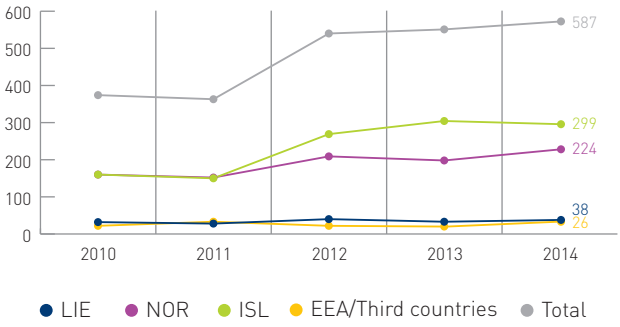
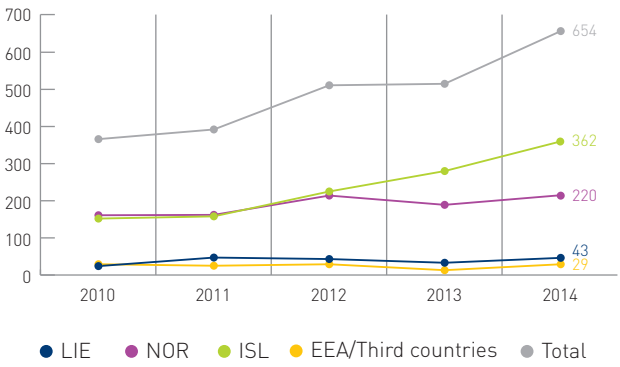


Figure 6
Closed cases, by country of origin



Complaints in 2014

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

The Authority received a total of 71 new complaints in 2014, most of them related to Internal Market affairs. As in previous years, the majority of complaints concerned Norway.

Figure 7
Pending complaints at the end of 2014

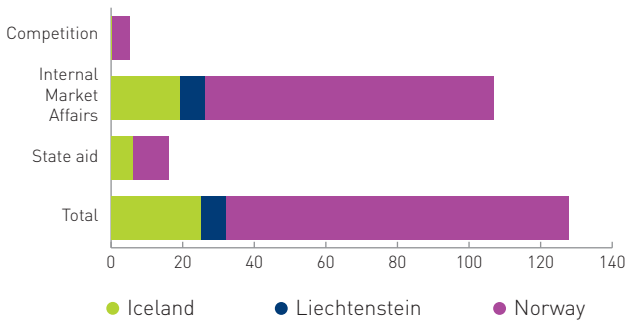


Figure 8
New complaints lodged with the Authority in 2014

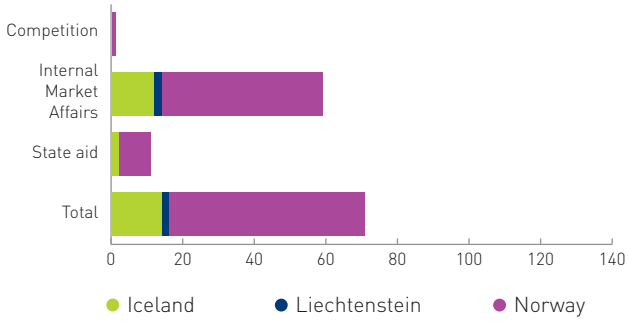
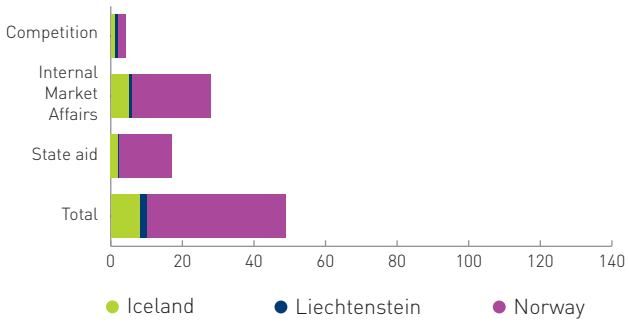


Figure 9
Complaints closed during 2014



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 2014 was EUR 13.3 million, a nominal increase of 4% compared with 2013. This included additional funds, compared to the normal activities of the Authority, to finance the purchase and development of a new case handling and document management system.

On 26 June 2014, the Authority submitted its Financial Statement for the financial year 2013 and the accompanying Audit Report by the EFTA Board of Auditors (EBOA) to the EFTA States. On 12 December 2014, the Financial Statements for 2013 were approved and the Authority was discharged of its accounting responsibilities for that period by the EFTA States.

Total budget proposal (in EUR)	Budget 2013	Budget 2014
Financial income	5,000	5,000
Contributions & Other income	12,743,756	13,259,240
Other income	21,000	17,500
Contributions from the EEA/EFTA States	12,722,756	13,241,740
Total Income	**12,748,756**	**13,264,240**
Salaries, Benefits, Allowances	-9,754,871	-9,894,150
Travel, Training, Representation	-747,500	-823,600
Office Accommodation	-1,091,885	-1,163,400
Supplies and Services	-1,149,500	-1,378,090
Financial costs	-5,000	-5,000
Other Costs	0	0
Total expenditure	-12,748,756	-13,264,240



EFTA Surveillance Authority
Rue Bellliard 35
1040 Brussels
Belgium

Tel: +32 (0) 2 286 18 11
Fax: +32 (0) 2 286 18 00
registry@eftasurv.int
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