FOREWORD

The work of the Authority in its second year of existence has been directed by three main events:

- *The transfer of functions to the European Commission in respect of Austria, Finland and Sweden so as to render their passage from one pillar to another in the EEA without negative consequences for those who had acquired rights under the Agreement prior to the accession of these States to the EU. This operation, which involved the transfer of several thousand case files to the Commission, was successfully completed in June 1995;*

- *The EEA Agreement entering into force for Liechtenstein on 1 May 1995, which required the establishment of a separate work programme in order to facilitate a speedy implementation of the Agreement in that State;*

- *The reorganization of the Authority's staff in order to meet the requirements for the future surveillance of the three remaining EFTA States parties to the EEA. This operation, which entailed a concentration of the Authority's staff at 74 Rue de Trèves with a total manning of 44 persons, was completed in July 1995.*

In respect of Iceland and Norway, where the implementation of the Agreement was well under way in l994, the Authority's activities were directed towards improving the situation as regards the implementation of the significant volume of new legislation which had been added through decisions of the EEA Joint Committee, alongside in-depth conformity assessments of national measures which had been notified earlier.

Despite a certain slow down in the implementation efforts during the first part of the year as compared to the enormous efforts of 1994, steady progress could be monitored during the Autumn. The statistics accompanying this report, which reflect the situation at the end of the year, demonstrate an implementation rate in Iceland and Norway comparable to the Community average as regards the implementation of its Internal Market Programme. Major progress has been achieved with regard to the adjustment of trade monopolies.

As to Liechtenstein, where the statistics reflect the results of only eight months of efforts, progress has been remarkable, particularly if the limited administrative resources of that State are taken into account. A continuation of the implementation programme with the same vigour as hitherto will quickly bring Liechtenstein on par with its EEA partners.

In the areas where the Authority has special competences, progress has been good. The disciplines in the State aid field are established. In public procurement, the tendering procedures are generally being applied and co-operation with the national authorities has developed well. Also with regard to competition rules applicable to undertakings, the general awareness and compliance seem to be increasing.

However, the report also reveals important gaps in the implementation of the Agreement. These imperfections very seldom reflect disagreement between the Authority and the EFTA Governments on matters of interpretation, but are almost exclusively caused by late or only partial legislative action. Another typical feature is that the main flaws are concentrated to a relatively limited number of sectors. A continued efficient co-ordination of the implementation work at national level seems to be a prerequisite for further improvement of the performance.

The past year heralded a new, but permanent feature in the Authority's work, which reflects the fact that the Agreement has been taken into use in the EFTA States and that, consequently, issues related to its application arise. This means that in practice, the number of complaints are on the increase and will in the future become the Authority's most important work, together with such application problems which the Authority will find it necessary to address on its own initiative.

However, given the fact that there is a considerable backlog of Community acts relevant to the Agreement which still has to pass the EEA Joint Committee, implementation control will remain a significant part of the Authority's work also in the present year.

The two-pillar institutional system for surveillance, administration and judicial control of the Agreement confers upon the EFTA States, in co-operation with the EFTA institutions, significant new rights as compared with the institutional system under the Free Trade Agreements.

The administrative autonomy of the EFTA pillar implies that the EFTA States, sometimes together with the Authority, determine when conditions for free movement in the entire EEA are fulfilled, and when a safeguard action may be warranted in order that, inter alia, a dangerous product may be removed from the market.

The independent surveillance and judicial control system of the EFTA side ensures not only uniform implementation and application of the Agreement, but also that conflicts involving States and individuals alike are settled through objective, judicial procedures, rather than by political compromise often brokered in the shadow of possible sanctions.

It is therefore perhaps the most important conclusion which can be drawn from the present report that the two-pillar system has proved efficient and viable even after the reorganization of the EFTA institutions. In particular, co-operation with the Commission has been unaffected by the new political circumstances, and remains excellent in all significant sectors.

Brussels, 20 March 1996

Knut Almestad
President

1. INTRODUCTION

The EFTA Surveillance Authority was established to monitor, together with the European Commission, the fulfilment of obligations under the Agreement on the European Economic Area (EEA).

The Surveillance Authority is, pursuant to Article 21 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, to publish annually a general report on its activities. The present report, covering 1995, is the Authority's second general report. The first one was published in March 1995 and covered the Authority's activities during 1994.

As a background to the substantive parts of the report, some basic information is given in *Section 2* on the Agreement on the European Economic Area (EEA) and the EFTA Surveillance Authority itself. In this part, definitions are also offered on a number of concepts frequently referred to in the report.

Section 3 offers a general overview of the Authority's activities in 1995 to ensure the fulfilment of obligations under the EEA Agreement. With regard to *general surveillance*, the priorities applied and the work carried out by the Authority are broadly outlined, as is the situation at large in the EFTA States with regard to the implementation and application of the Agreement. As for the latter point, figures are given on the rate of directives in respect of which national implementing measures have been notified, and fields are indicated, in which measures still remain to be taken in order to ensure full compliance with the Agreement. Basic statistics are given in respect of formal infringement proceedings initiated by the Authority.

As regards *State aid*, the main developments during the year are outlined, particular mentioning being made of some significant decisions, including a number of decisions resulting from the integration into the Agreement during the year of rules on aid to shipbuilding.

In the field of *competition*, in addition to a general overview of the development during the year, some indications are made as to the priorities applied by the Authority in the handling of cases under Articles 53 and 54 of the Agreement.

Some brief information is finally given on the *transfer to the European Commission of notifications, information and case files*, related to the three former EFTA States, Austria, Finland and Sweden, which on 1 January 1995 acceded to the European Union, as well as on the Authority's *co-operation with the Commission* in order to ensure a uniform surveillance throughout the EEA.

In *Section 4*, a more elaborate account is given, sector by sector, of the status as regards the implementation and application of the EEA Agreement in the EFTA States, as well as of the activities carried out by the Authority in order to ensure the fulfilment of obligations under the Agreement. In general, with regard to each sector, a brief introductory overview is given of the EEA legislation applicable in the sector.

Accordingly, as far as *general surveillance* is concerned, extensive information is given on the status as regards the notification of national measures implementing directives, indications are made on the extent to which the Authority has been able to verify the conformity of such measures with the corresponding EEA rules, deficiencies in the EFTA States regarding the implementation and application of EEA rules are identified, and activities pursued by the Authority to ensure the fulfilment of obligations under the Agreement, including formal infringement proceedings, are indicated. Information is also given on certain procedures administered by, and functions carried out by, the Authority in the application of the Agreement, notably in the veterinary field.

As regards the transposition of directives, the account is supplemented by Annex IV to the report, setting out, in tabular form and in respect of each individual directive, a number of data relative to the implementation in the various EFTA States of all directives referred to in the Annexes to the EEA Agreement.

With regard to *public procurement*, in addition to an account of the situation as regards the implementation in the EFTA States of the EEA rules on public procurement, information is given on cases closed in the course of the year and cases still pending with the Authority, concerning the application of the rules.

In the field of *State aid,* an overview is given of the general policy developments that have taken place in the course of the year, as reflected in amendments made to the Authority's State Aid Guidelines. Information is given on the Authority's activities relative to existing aid, on complaints regarding such aid received by the Authority and on the situation as regards the assessment of plans to grant new aid. Decisions taken by the Authority during the year with regard to notified plans to grant new aid are briefly described.

The situation as regards the exclusive rights in Iceland and Norway relative to trade in alcoholic beverages is outlined in the section on *monopolies.*

With regard to *competition*, the developments in the cases handled by the Authority are outlined, as are the criteria applied by the Authority in dealing with these cases. In addition, information is given on the implementation status as regards the EEA competition rules and on co-operation with the Commission and with national competition authorities.

2. THE EEA AGREEMENT

2.1 THE EUROPEAN ECONOMIC AREA (EEA)

The Agreement on the European Economic Area (EEA Agreement) entered into force on 1 January 1994. The entry into force of the Agreement marked the completion of the undertaking made by Ministers of the EC Member States and the EFTA States, at the first Joint EC-EFTA Ministerial Meeting in Luxembourg on 9 April l984, to establish "a dynamic European Economic Space".

The Contracting Parties to the Agreement were originally the European Economic Community, the European Coal and Steel Community and the then 12 EC Member States, on the one hand, and five EFTA States, Austria, Finland, Iceland, Norway and Sweden, on the other. On 1 January 1995 Austria, Finland and Sweden acceded to the European Union, thus moving to the EC pillar of the EEA and leaving Iceland and Norway as the only remaining EFTA States. The number of EFTA States was subsequently brought to three when, on 1 May 1995, the Agreement entered into force for the Principality of Liechtenstein. Some basic data on the three EFTA States are contained in Annex I to the report.[1]

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

Accordingly, the Agreement contains basic provisions, which are drafted as closely as possible to the corresponding provisions of the EC Treaty, on the free movement of goods, persons, services and capital, on competition and other common rules, such as State aid and public procurement, and on a number of Community policies relevant to the four freedoms, such as social policy, consumer protection and environment. The Agreement further provides for close co-operation in certain fields, not related to the four freedoms.

Secondary Community legislation in areas covered by the Agreement is brought into the EEA by means of direct references in the Agreement to the relevant Community acts. Accordingly, in 22 Annexes and some of the Protocols to the Agreement references are made to presently some 2,000 directives, regulations, decisions and other acts, which are by virtue of the Agreement applicable throughout the EEA, subject only to the necessary technical adaptations.

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

The task of ensuring that new Community legislation is timely extended to the EEA rests in the first place with the EEA Joint Committee, a committee composed of representatives of the Contracting Parties. By decisions of the EEA Joint Committee, more than 600 new Community acts have been integrated into the EEA Agreement since its entry into force on 1 January 1994.

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[1] In this report, the term *EFTA States* is used to refer to these three EFTA States, presently participating in the EEA.

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

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

2.2 THE EFTA SURVEILLANCE AUTHORITY

The Authority is established under the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (*Surveillance and Court Agreement*), containing basic provisions on the Authority's organization and laying down its tasks and competences.

2.2.1 Tasks and competences

A central task of the Authority is to ensure that the EFTA States fulfil their obligations under the EEA Agreement. In general terms, this means that the Authority is to ensure that the provisions of the Agreement, including its Protocols and the acts referred to in the Annexes to the Agreement (the *EEA rules*)[2], are properly implemented in the national legal orders of the EFTA States and that they are correctly applied by their authorities. The carrying out of this task is commonly referred to as *general surveillance*.

If the Authority considers that an EFTA State has failed to fulfil an obligation under the Agreement, it may initiate formal infringement proceedings under Article 31 of the Surveillance and Court Agreement. As a first step in such proceedings, the Authority formally notifies the Government concerned of its opinion that an infringement has taken place and invites the Government to submit its observations on the matter (*letter of formal notice*). If the Authority is not satisfied with the Government's answer to the letter, or if no answer is received, the Authority delivers a *reasoned opinion*, in which it defines its final position on the matter, states the reasons on which that position has been based and requests the Government to take the necessary measures to bring the infringement to an end. Should the Government fail

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2 The notions *Secondary EEA legislation and secondary EEA rules* are in this report used to refer to, respectively, secondary EC legislation and individual provisions of such legislation, integrated into the EEA Agreement. Basic provisions of the main part of the Agreement, corresponding to primary EC legislation, is referred to as *primary EEA legislation/rules*.

to comply with the reasoned opinion, the Authority may bring the matter before the EFTA Court, whose judgement shall be binding on the State concerned.

Formal infringement proceedings are initiated only where the Authority has failed by other means to ensure compliance with the Agreement. In practice, an overwhelming majority of problems identified by the Authority are solved as a result of less formal exchanges of information and discussions between the Authority staff and representatives of the EFTA States. A salient feature in this respect are sectoral meetings in which a whole range of problems in a particular field are discussed and settled *en bloc* with the EFTA State concerned (*package meetings*). Where appropriate, before concluding this informal phase, and although at this stage the Authority itself has not taken a formal position on the matter, the Government concerned is warned in writing that the officials in charge consider that there is an infringement and that formal infringement proceedings should be initiated, should the necessary measures not be taken to rectify the situation (*pre Article 31 letter)*.

In the fields of public procurement, State aid and competition, the Authority has extended competences, supplementing those vested in it with regard to general surveillance and fully reflecting the extended competences of the European Commission in these fields.

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

With regard to *State aid*, the Authority is to keep under constant review all systems of existing aid in the EFTA States and, where relevant, to propose appropriate measures to ensure their compatibility with the Agreement. New aid or alterations to existing aid may not be introduced by the EFTA States, without first having been authorized by the Authority. Where aid has, nevertheless, been granted and paid out without such authorization, the Authority may instruct the Government concerned to recover from the recipient the whole or part of aid paid out.

While in other fields the Authority is to ensure the fulfilment by the EFTA States of their obligations under the Agreement, in the field of *competition*, the tasks of the Authority mainly relate to the practices and behaviour on the market of undertakings. Thus, the Authority is to ensure that the competition rules of the Agreement are complied with, notably the prohibitions on restricted business practices and on the abuse of a dominant market position. In carrying out those tasks, the Authority may, *inter alia*, make on-the-spot inspections, impose fines and periodic penalties and, in the case of an infringement, by a decision order the undertakings concerned to bring the infringement to an end.

In addition to the surveillance functions outlined above, the Authority is entrusted with a wide range of tasks of an administrative character, which within the

Community are performed by the European Commission. Generally speaking, these tasks relate to EEA rules, the proper application of which is not only subject to the general surveillance function, but to a more direct control by the Authority. The tasks often imply that the Authority, under procedures presupposing an exchange of information between the EFTA and EC sides, is to take measures which are to have an effect throughout the entire EEA. Thus, an authorization may sometimes be needed before a product can be lawfully placed on the market and an EFTA State may, under certain circumstances, restrict the free movement of a product in order to protect human health or refuse to recognize a foreign diploma or licence, provided that the measure is notified to and authorized by the Authority. Although this kind of tasks appear in most fields of activity, they are of particular importance in the field of free movement of goods, notably in relation to technical regulations, standards, testing and certification, and to animal and plant health. In the last-mentioned fields, these tasks constitute a considerable part of the Authority's work and include, for instance, the examination and approval of contingency plans with regard to animal diseases and the inspection of, and verification of national approval of, fresh meat, fish processing and other establishments in the EFTA States.

2.2.2 Organization

Following the departure, on 1 January 1995, of Austria, Finland and Sweden from the EFTA pillar of the EEA, the Authority is led by a College of three Members. The Members are appointed by common accord of the Governments of the EFTA States for a period of four years, renewable. A president is appointed in the same manner, for a period of two years.

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

The composition of the College during 1995 has been, from 1 January to 30 April,

Knut Almestad (President)
Björn Friðfinnsson
Pekka Säilä

and from 1 May to 31 December

Knut Almestad (President)
Björn Friðfinnsson
Bernd Hammermann

The division of responsibilities among College Members during 1995 is shown in Annex II.

During a transitional period following the accession of Austria, Finland and Sweden to the European Union, the Authority retained certain competences in respect of these

States. In exercising these competences, the Authority acted in its old composition of five Members, as shown in the Authority's Annual Report for 1994.[3]

The reduction of the number of EFTA States participating in the EEA has in the course of 1995 also entailed a considerable reduction in the number of staff assisting the College Members. Thus, at the beginning of the year the staff, excluding College Members, totalled 92, divided into eight departments. As from 1 July 1995, the number has been reduced to 41 allocated to five departments. An organigramme showing the Authority's organization during the second half of 1995 is at Annex III.

3. OVERVIEW OF WORK IN 1995

3.1 GENERAL SURVEILLANCE

3.1.1 Main developments

Whereas 1994 had been for the Authority a year of initiating surveillance activities and developing working methods in co-operation with all of the then five EFTA States, 1995 started with the Authority performing separate tasks in respect of two categories of States.

Thus, due to the fact that Austria, Finland and Sweden had left the EFTA pillar at the end of 1994, during the first half of 1995, a considerable part of the Authority's time and resources was devoted to winding up business and preparing the documentation and case files relative to these States for being handed over to the European Commission.

As regards Iceland and Norway, the Authority continued its implementation and application control activities. Moreover, following the entry into force of the EEA Agreement for Liechtenstein on 1 May 1995, the Authority's work was extended to that State. The immense task facing the Liechtenstein Government, i.e. that of transposing into its national legal order, all at once, the entire EEA Agreement, including all the acts referred to in its Annexes, called for particular efforts also on the part of the Authority, in the form of giving advice on and assistance in the work thus to be carried out.

At the end of 1994, the EEA Agreement comprised altogether some 1270 binding acts (regulations, decisions and directives). During 1995, a total of 77 new binding acts, some of which amended existing acts, were included in the Agreement by EEA Joint Committee decisions.

As the Authority indicated in its Annual Report '94, when it started monitoring the implementation of directives by the EFTA States, it had to set priorities. This meant that in certain areas, only a preliminary examination could be made. For that reason, a considerable amount of time and resources was still used in 1995 to carry out more

[3] The Members were Knut Almestad, President, Nic Grönvall, Björn Friðfinnsson, Pekka Säilä and Heinz Zourek. As for the division of responsibilities, reference is made to Annex I of the 1994 Annual Report.

thorough controls of the notifications of national measures that had been submitted in 1994 by Iceland and Norway.

As to Liechtenstein, which joined the EEA on 1 May 1995, parameters for the vast implementation and surveillance programme at hand were immediately to be addressed in discussions between its national authorities and the Authority. The objective was to establish legal homogeneity with the rest of the EEA as quickly as possible. A great number of communications relative to the implementation of directives were received by the Authority before the end of the year, indicating that Liechtenstein already after eight months had more than two thirds of the implementation programme in firm hands, albeit in some cases only in the form of timetables for the introduction of new legal acts by Parliament or Government. The Authority considers this a very satisfactory result which augurs well for the continued effort required for catching up with the other partners in the EEA.

Due to the above described circumstances, and partly as a result of slow implementation of some of the new directives included in the EEA Agreement during 1995, there were at the end of the year still a considerable number of directives in respect of which national implementing measures had apparently not yet been taken. Thus, the rate of directives in respect of which implementing measures had been notified were 92,6 per cent for Iceland, 68,4 per cent for Liechtenstein and 93,0 per cent for Norway.

In order to facilitate the EFTA States' task of providing the Authority with detailed information on national implementing measures, the Authority continued its practice of preparing so-called "frames" for tables of correspondence - that is to say, tables which set out opposite to each provision of a directive, the corresponding rule of national law - and sending them to the Governments with a request to have them filled in and submitted to the Authority.

In respect of a number of directives, assessments of the conformity of national implementing measures were carried out either with the help of such filled-in tables of correspondence, or on the basis of other information provided by the EFTA States. In some instances, reports and other material were published, reflecting the status of implementation of the directives.

Regarding situations where EFTA States had failed to fulfil their obligations under the EEA Agreement, the Authority continued its earlier policy of giving preference to informal action, thus resorting to formal infringement proceedings only after less formal means had proved not to ensure the correction of an infringement.

Whereas in 1994, the Authority addressed 10 letters of formal notice to Iceland and 7 to Norway, the total number of such letters in 1995 was 38, including letters addressed to Liechtenstein. While in 1994 only one reasoned opinion was delivered, concerning Norway, the Authority issued in 1995 a total of 6 such opinions. In December 1995, the Authority decided for the first time to refer a case to the EFTA Court.

In 1995, the Authority received a total of 47 complaints, including 15 complaints in the field of public procurement.

The table below (Table 1) shows the number of cases, including those related to monopolies, in which formal proceedings were initiated in 1995. The cases include both those based on complaints and those started on the Authority's own initiative. The table also indicates the number of complaints received by the Authority in the field of general surveillance, including complaints related to monopolies and public procurement.

Table 1 Formal infringements proceedings initiated and complaints received in 1995[4]

Member State	Letters of formal notice	Reasoned opinions	Complaints
Iceland	14	5	9
Liechtenstein	9	0	0
Norway	15	1	38
Total	38	6	47

Annex IV to this report describes in tabular form the implementation situation in the three EFTA States. In principle, the Annex reflects the situation at the end of 1995. However, to the extent that the Authority received more accurate information by 16 February 1996, such information has been taken into account.

It should be noted that, since only a part of the directives listed in the Annex have been subject to a detailed conformity assessment, the statistics might give a somewhat more positive picture of the implementation situation in the three EFTA States than is actually warranted.

3.1.2 Free movement of goods

For ensuring the free movement of goods, the Authority mainly pursued three lines of activity:

(a) monitoring the transposition of secondary EEA legislation, including the assessment of the conformity of national transposing measures with the corresponding EEA rules;

(b) verifying the compliance of national implementing measures with primary EEA rules on the free movement of goods, in particular with the prohibition of measures having equivalent effect to quantitative restrictions, the prohibition of discriminatory taxation and the ban on charges of equivalent effect to custom duties; and

4 When considering these figures in relation to the account given below on the overview of work and the status in the various fields, it should be borne in mind that a letter of formal notice may cover problems related to more than one EEA act.

(c) examining individual cases with regard to the correct application of the EEA rules, e.g. concerning the obligation to notify draft technical regulations and to the requirements for the hygienic conditions in meat and fish processing establishments.

In addition, certain tasks of an administrative nature, such as approving certain plans in the veterinary field were carried out.

In general terms, it could be concluded that, at least in some EFTA States, the transposition of secondary EEA rules on the free movement of goods can still not be regarded as satisfactory. In particular, new acts integrated into the Agreement after its entry into force, through decisions of the EEA Joint Committee, were often not implemented in a timely manner. In a few sectors, acts which should have been implemented during 1994 were still not completely and correctly implemented at the end of the reporting period. In a few cases, transposition of such acts was even still outstanding altogether. Liechtenstein, for which the Agreement was applicable from 1 May 1995, undertook considerable efforts to cope with the immense task of preparing and adopting a large amount of national transposing legislation in a very short time period. However, in a number of fields, this process was not yet finalized by the end of the year.

Shortcomings with regard to transposing measures were normally first dealt with in informal discussions with the EFTA State concerned. Formal steps were taken where the non-compliance was not corrected in a timely manner. At the end of the reporting period, the Authority had opened formal infringement proceedings in most cases where transposition was still outstanding. This was, in general, the case also with regard to legislation for which the adoption of transposing measures had fallen due quite recently, where not even planned measures had been notified. As regards Liechtenstein, for which the Agreement became applicable on 1 May 1995, the progress in transposition was closely monitored, but the initiation of formal proceedings for non-transposition was postponed to 1996.

Despite these shortcomings with regard to transposition which still existed at the end of 1995, there were in the course of the year no complaints on non-compliance with the secondary EEA legislation in the goods area, except for in the field of public procurement.

Individuals and economic operators showed more concern for the correct application of the primary EEA rules on the free movement of goods to certain types of products, in particular alcoholic beverages, video tapes, motor vehicles and radio equipment. A considerable part of the work of the Authority was therefore related to the application of those rules.

When it comes to the application of secondary rules on the free movement of goods, monitoring by the Authority is called for in the veterinary and phytosanitary fields, as well as to a certain extent in the foodstuffs sector. Also with regard to public procurement and pharmaceuticals, the application of the EEA rules by national authorities has called for particular attention on the part of the Authority. Moreover, a

continuous control of the correct application of secondary EEA rules is inherent in a number of information procedures operated by the Authority.

3.1.3 Free movement of persons, services and capital

In the fields of free movement of persons, services and capital, the Authority continued to control the notifications of national implementing measures submitted by the EFTA States, and to assess the conformity of the measures with the corresponding EEA rules. Control of application of the EEA rules was based on complaints received from individuals and economic operators. To the extent possible, informal contacts were used, although formal proceedings were initiated in a number of cases, mostly where notifications of implementing measures had been outstanding for a long time.

As regards free movement of persons, by the end of the reporting period, Norway had submitted notifications indicating full implementation of all but two directives. To the extent conformity assessment was performed, only minor shortcomings were discovered. The situation was somewhat less satisfactory in Iceland, where a number of directives in the field of mutual recognition of diplomas were still only partially implemented. Liechtenstein also had shortcomings in that field. During 1995, the Authority received eight complaints in this field against Norway, one of which related to social security.

Regarding the financial services sector, notifications on implementation of the banking directives had been received in all but two instances. However, some directives were still only partially implemented. Most of these cases related to directives where national measures adopted by Iceland and Norway were subjected to a detailed conformity assessment, and where amendments proposed by the Authority were in the process of being introduced. In the insurance sector, notifications had been received from all States regarding all directives, but also here several communications still indicated only partial implementation. At the same time, regarding several directives the Norwegian and Icelandic national implementing measures were found to ensure full implementation. In the field of stock exchange and securities, the notification situation with regard to Iceland and Norway was relatively good, but somewhat less satisfactory in Liechtenstein. Following a conformity assessment of one major directive in this field, Iceland and Norway are in the process of amending their national measures as proposed by the Authority.

In the field of telecommunications, Norway had notified full implementation of all directives and Iceland most of them, whereas the situation was less satisfactory in Liechtenstein.

With regard to the transport field, the notification situation was satisfactory, with the exception of road transport, where in all three States some acts still remained unimplemented. Even so, however, a number of formal infringement proceedings, initiated in 1994 against Iceland and Norway for failure to notify implementation of regulations in the field of road transport, were closed in 1995.

In the non-harmonized sectors of free movement of services, the Authority received nine complaints, eight of which dealt with the same issue.

3.1.4 Horizontal areas relevant to the four freedoms

Also in the horizontal areas relevant to the four freedoms - health and safety at work, labour law, equal treatment for men and women, consumer protection and environment - control of notifications and assessment of the conformity of national measures continued in 1995.

In the sector of health and safety at work, a review of the notification situation regarding Iceland and Norway was undertaken in the Autumn of 1995, in which context the notifications submitted by Liechtenstein were also examined. The examination revealed that in all three EFTA States more than ten out of the 24 directives of the sector had not at all or only partly been implemented. During 1996, the Authority will pay special attention to having the situation corrected.

Regarding labour law and equal treatment for men and women, although a number of directives had not yet been fully implemented, the notification situation was at the end of the reporting period relatively good in all the three EFTA States. The same can be said about consumer protection.

While notifications on national implementing measures with regard to nearly all the environment directives had been received from all EFTA States, there were in respect of all States a considerable number of directives where national measures only ensured partial implementation, in particular as regards legally binding limit values and other specific rules. On the other hand, it could be assumed that neither environmental conditions nor the functioning of the EEA Agreement were significantly affected, since the rules were largely observed in practice. In addition to shortcomings of the kind indicated, Iceland had not implemented the three directives on genetically modified organisms.

3.2 PUBLIC PROCUREMENT

In 1994, approximately 900 notices originating from Icelandic and Norwegian procuring entities were published in the Official Journal of the European Communities. This number increased to approximately 2450 in 1995. With regard to Liechtenstein, the public procurement directives became applicable only on 1 January 1996.

Generally speaking, the three lines of activity outlined in Section 3.1.2 were pursued also with regard to public procurement. In practice, the examination of complaints regarding failures to apply the EEA rules in a correct manner proved to be the main task. The number of complaints received in this field against Iceland and Norway increased from none and three in 1994 to, respectively, two and thirteen in 1995. The Authority intervened in ten cases, either by sending informal letters, two to Iceland and six to Norway, or by direct contacts with the contracting entities in question. By

the end of the reporting period, the Authority had been able to close seven cases, after satisfactory solutions had been found. Eleven cases were still pending. No formal proceedings under Article 31 of the Surveillance and Court Agreement were initiated in 1995.

3.3 STATE AID AND MONOPOLIES

Following the accession of Austria, Finland and Sweden to the European Union, all pending cases regarding new aid in those States, as well as all information on existing State aid, were transferred to the European Commission.

In the course of the reporting period, the Authority was examining some 15 existing aid schemes in Iceland and Norway. For some of the schemes, no reason has been found to take further action under the review procedure, while for others decisions were pending at the end of the year. During the reporting period, the Authority received 10 notifications of new State aid. The Authority took altogether 15 decisions in the field, covering a variety of different areas. An appreciable increase was recorded in the number of cases based on complaints.

Following the entry into force of the EEA Agreement for Liechtenstein on 1 May 1995, the Authority invited the national authorities to submit information on existing State aid in Liechtenstein. However, according to their reply, there were at the time no measures in force at the central government level falling under the State aid provisions of the Agreement. The Authority continues to examine possible aid measures at the local government level.

In order to ensure effective monitoring of the operation of existing aid schemes, the Authority decided in July 1995 to propose to Iceland and Norway, as appropriate measures, that they submit annual reports on all existing State aid schemes. Both States have agreed to the proposal.

In April 1995, the Authority decided for the first time to open the formal investigation procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement, in relation to a proposed tax exemption for glass packaging from a basic tax in Norway on non-reusable beverage packaging. The case was concluded by a final decision in October, by which the Authority decided not to authorize the proposed aid and required the Norwegian Government not to put the aid into effect.

By decision of the EEA Joint Committee in April 1995, the *Council Directive on Aid to Shipbuilding* (90/684/EEC) was integrated into the EEA Agreement, with effect from 1 May 1995. Several cases dealt with by the Authority in the course of the year concerned this Directive. In July, the Authority decided on the ceiling for operating aid to shipbuilding in 1995. The Authority further assessed and authorized shipbuilding aid schemes in Iceland and Norway. In December, the Authority took a decision authorizing aid in favour of a particular contract to be provided as development assistance to a developing country, pursuant to Article 4(7) of the Directive. The Authority has furthermore been notified of aid in favour of a contract for which there is competition between yards in EFTA States and EU Member States.

The Authority's Procedural and Substantive Rules in the Field of State Aid[5] were amended on two occasions. The amendments concerned rules on aid to the synthetic fibres industry, to employment, to shipbuilding and to the aviation sector and also the procedure in cases where aid has been granted unlawfully.

In the field of state monopolies, the Authority decided in February 1995 to deliver a reasoned opinion to Iceland, for failure to comply with Articles 11 and 16 of the EEA Agreement with regard to the existing alcohol monopoly in Iceland. A corresponding decision had been taken in December 1994 in respect of the Norwegian alcohol monopoly. In the course of 1995, both States enacted amendments of the relevant legislation. The Authority is currently examining these amendments and the manner in which they are being implemented by the responsible authorities.

3.4 COMPETITION

While the Authority's work in the competition field also includes the basic task of ensuring implementation of the relevant rules of the EEA Agreement by the EFTA States, the major part of which was concluded already during 1994, the handling of individual cases involving economic operators was the principal and predominant activity in 1995.

Due to the accession of Austria, Finland and Sweden to the European Union on 1 January 1995, a large number of individual cases relating to these States, which until that date had been dealt with by the Authority, fell under the competence of the European Commission. Consequently, a major task during the first six months of the year was to ensure the smooth transfer of such cases to the Commission. This included not only the preparation and the physical transfer of the files concerned, but also assistance to the Commission with translations and general market information related to the cases transferred. In total 71 cases were transmitted to the Commission.

On 1 January 1995, there were 38 cases pending under Articles 53 and 54 of the EEA Agreement, excluding the cases which were transmitted to the Commission. Of these cases, 35 were based on notifications, submitted by undertakings or associations of undertakings, requesting either a negative clearance to the effect that there were no grounds for the Authority to intervene, or an individual exemption regarding a restrictive arrangement. Two cases were based on complaints and one case had been opened on the Authority's own initiative.

During 1995, the Authority received five notifications and six complaints. During the same period, five cases were closed by administrative means and one case, which was found to have an appreciable effect on trade between EU Member States, was transferred to the Commission. Thus, at the end of the year, a total of 43 cases were pending under Articles 53 and 54 of the EEA Agreement.

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5 Procedural and Substantive Rules in the field of State Aid - Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement (EFTA Surveillance Authority Decision No. 4/94/COL of 19 January l994 - OJ L 231, 3.9.1994 and EEA Supplement to the OJ No. 32,3.9.1994).

In the handling of cases, high priority was given to certain key sectors of the economy in the process of being liberalized, such as pharmaceuticals and telecommunications, where there were indications of substantial restraints on competition. Priority was also given to sectors, such as forestry and insurance, in which case-law as regards the compatibility of prevalent market systems with the competition rules has not yet been fully developed.

As a consequence of the accession of Austria, Finland and Sweden to the European Union, a relatively higher proportion of the Authority's resources was devoted to co-operation cases, that is cases handled by the European Commission, but where the Authority, in accordance with the relevant provisions of the EEA Agreement, may submit comments and participate in hearings and in the Commission's Advisory Committee meetings. The aim of the co-operation is to promote homogeneous implementation, application and interpretation of the EEA competition rules. Where EFTA aspects were deemed to be of particular importance, the Authority also participated actively in the Commission's preparation of such cases. A total of 76 co-operation cases were dealt with by the Authority during the year.

Co-operation with the Commission also covered consultations on issues of a policy nature, as well as participation in the preparation of new legislation and non-binding acts. During the year, the competent Directorate of the Authority was, *inter alia,* actively involved in the discussions relating to possible changes in the field of merger control.

3.5 CONCLUDING WORK RELATED TO THE STATES ACCEDING TO THE EUROPEAN UNION

When the three former EFTA States, Austria, Finland and Sweden, joined the European Union at the beginning of 1995, they had undertaken to ensure that certain notifications and information earlier transmitted to the Authority, as well as certain cases pending before the Authority at the time of accession, be transmitted to the Commission. To fulfil this obligation, the EFTA States concluded among themselves the *Agreement on Transitional Arrangements for a Period after the Accession of Austria, Finland and Sweden to the European Union* (below referred to as the *Transitional Agreement*).

According to this agreement, the Authority was obliged to transmit to the Commission any notification or information which had been received from, or which related to an acceding State, and which, had that State been a Member of the European Union, would have been submitted to the Commission, as well as pending cases which as a result of the accession fell under the Commission's competence.

In view of the considerable amount of material involved, in order to enable the Commission to make full use of the information and files to be transferred, the compilation and transmission of the material had to be elaborately prepared. To this end, the Authority initiated preparations and took up contacts with the Commission's

Secretary-General already in 1994. The modalities for the transmission, including a detailed time table, were agreed upon.

In accordance with this time table, from February 1995 until the end of June, some 3000 files were handed over to the Commission, together with comprehensive information concerning the acceding States, accumulated from the Authority's implementation monitor database and case-handling database. The transmission of the files was supplemented by meetings between the Authority's and the Commission's services concerned, where the situation was discussed, both with regard to the implementation status in general and in respect of pending cases (see also Section 3.4 above and Sections 4.7.3.1, 4.7.4.1 and 4.9.2 below).

According to the *Transitional Agreement*, the Authority was, during a period of three months after accession, competent vis-à-vis the acceding States in cases in which the events giving rise to an action occurred before accession. By virtue of this competence, the Authority delivered reasoned opinions in two cases, one against Finland and one against Sweden. The cases were subsequently closed, the reasons for pursuing them having been removed. Until the end of March, the Authority closed altogether some 20 cases concerning the three acceding States on the basis of its competence under this *Transitional Agreement*.

3.6 CO-OPERATION WITH THE EUROPEAN COMMISSION TO ENSURE A UNIFORM SURVEILLANCE THROUGHOUT THE EEA

A homogeneous EEA requires not only a set of common rules, but also that the implementation and application of these rules are as effectively monitored and enforced throughout the EEA. To this end, Article 109 of the EEA Agreement requires the Authority and the Commission to co-operate, exchange information and consult each other on surveillance policy issues and individual cases, with a view to ensuring a uniform surveillance throughout the EEA. Moreover, Article 108 of the Agreement foresees, and the idea is embodied in the Surveillance and Court Agreement, that the Authority, in carrying out is functions, apply procedures similar to those existing in the Community.

The close and constructive working relations established with the Commission in 1994, were extensively relied upon also in 1995. As in 1994, the various departments of the Authority benefited largely from the close co-operation with the respective services of the Commission, whether in the form of direct contacts in the day-to-day work or regular meetings in which more general issues were discussed. The co-operation contributed significantly to the establishment of a uniform surveillance throughout the EEA.

A proper functioning of the EEA Agreement presupposes not only that a uniform surveillance is applied throughout the EEA, but also that States, economic operators and individuals generally recognize that this is in fact the case. Therefore, the Authority made particular efforts towards the end of the reporting period, and these efforts will continue in 1996, to compare more systematically in the field of general surveillance its policies, priorities and procedures with those of the Commission, with

a view to being able to verify in a more visible manner, wherever possible, that EEA rules are in fact as effectively monitored and enforced throughout the entire EEA. A particular aspect to be considered in this context is the monitoring carried out to ensure that benefits under EC legislation integrated into the EEA Agreement is in fact extended to economic operators and to citizens also of the EFTA States, as provided for in the Agreement.

In the fields of State aid and competition, the co-operation between the Authority and the Commission is subject to more detailed rules than the general provision contained in Article 109 of the Agreement. Some further observations on the co-operation in these fields are given in, respectively, Sections 4.7.2.2 and 4.9.5 below.

4. STATUS IN MAJOR FIELDS

4.1 FREE MOVEMENT OF GOODS

Basic principles and other rules on the free movement of goods are laid down in Articles 8 to 27 of the EEA Agreement. The basic principles comprise, *inter alia*, rules prohibiting various types of barriers to trade, such as customs duties and charges having equivalent effect (Article 10), quantitative restrictions and measures having equivalent effect (Articles 11, 12 and 13), discriminatory taxation of imported goods (Article 14), and discrimination through monopolies of a commercial character (Article 16).

Specific provisions and arrangements are set out in a number of Protocols and in acts referred to in Annexes to the Agreement, and they relate to free movement of industrial goods, processed agricultural products, and fish and marine products. Two Annexes refer to a great number of acts containing detailed provisions concerning technical requirements for industrial goods and veterinary and phytosanitary rules. Three Annexes refer to acts concerning, respectively, product liability, energy and intellectual property.

4.1.1 Examination of the implementation of the basic principles

Following the procedure applied in 1994 with regard to the other EFTA States, Liechtenstein was requested to provide a general description of the legislative and administrative measures considered to ensure compliance with the relevant provisions of the main part of the Agreement and of its Protocols.

In response to this request, Liechtenstein described in general terms the legal technique used for implementing the Agreement and its Protocols, as well as the basic structure of the relevant national legislation. One particular feature to be taken into account in this context is the fact that, according to the EEA Council decision on the entry into force of the EEA Agreement for Liechtenstein, products can be placed on the market of that State if they comply either with the relevant EEA rules or with Swiss technical regulations and standards deriving from its regional union with Switzerland ("parallel marketability").

4.1.1.1 Customs duties and charges having equivalent effect, and discriminatory taxation

According to Article 10 of the EEA Agreement, customs duties on imports and exports, and any charges having equivalent effect are prohibited between the Contracting Parties to the Agreement. This applies also to customs duties of a fiscal nature. Under Article 14 of the Agreement, a Contracting Party shall not impose, directly or indirectly, on the products of other Contracting Parties any internal taxation of any kind in excess of that is imposed directly or indirectly on similar domestic products. Furthermore, no Contracting Party shall impose on the products of other Contracting Parties any internal taxation of such a nature as to afford indirect protection of other products.

During 1995, the Authority received two complaints regarding charges or taxes. Five cases based on complaints received in 1994 were further pursued in 1995. Two of them were closed during the reporting period.

No own-initiative cases were opened in 1995. Three cases initiated in 1994 on the Authority's own initiative were further pursued in 1995, one still being under investigation at the end of the reporting period.

During the reporting period, Norway adjusted its rules on taxation of imported used cars registered in Norway, with a view to ensuring that taxes levied on such cars would not exceed the residual amount of tax included in the prices of domestically traded used cars. As a consequence, the Authority could close cases based on complaints received in 1994.

The Authority also pursued a case based on complaints which were lodged in 1994, concerning the commodity tax in Iceland, which the Authority considered to contain discriminatory elements. As, despite a letter of formal notice and a reasoned opinion, Iceland did not take corrective action, the Authority decided in December 1995 to bring the matter to the EFTA Court. The case was referred to the Court in January 1996.

Another case registered in 1994, the examination of which continued during the reporting period, concerned Norwegian taxes for beverage containers. The case, which had been initiated by the Authority on its own initiative, concerned the possible discriminatory effects of a charge which is levied on non-reusable containers, even where they were fully recycled, but not on reusable containers. A letter of formal notice was sent to Norway. The Norwegian reply, received at the end of 1995, is at present being evaluated by the Authority.

Two complaints on taxation and fiscal duties received in 1995 were still under investigation at the end of the reporting period.

With regard to Liechtenstein, a first assessment of compliance with Articles 10 and 14 of the EEA Agreement was carried out in the same way as it had been done for the

other EFTA States in 1994. The Authority requested information on all charges on imports and exports presently levied by Liechtenstein. Although rules prohibiting charges with an effect equivalent to customs duties had been applied by the EFTA States for several decades, evaluating the compliance of existing charges with the EEA Agreement was considered necessary, due to the fact that, in the context of the EEA Agreement, such rules had to be interpreted in accordance with EC case law. No further measures were envisaged by the Authority.

4.1.1.2 Quantitative restrictions and measures having equivalent effect

Articles 11 and 12 of the EEA Agreement prohibit quantitative restrictions between the Contracting Parties on imports and exports, as well as all measures having equivalent effect to such restrictions.

At the same time, Article 13 of the Agreement stipulates that the rules in the two preceding Articles do not preclude prohibitions or restrictions on imports, exports, or goods in transit, justified on the grounds of public morality, public policy, or public security. The same applies to the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial or commercial property. Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties. Abundant case law interpreting Articles 30 and 36 of the EC Treaty, which correspond to Articles 11 and 13 of the EEA Agreement, has been established by the EC Court of Justice.

During the reporting period, 13 complaints were received regarding quantitative restrictions and measures having equivalent effect, or concerning technical trade barriers prohibited by Article 18 of the EEA Agreement.

Article 18 obliges the Contracting Parties to ensure that the arrangements provided for in Annexes I and II to the EEA Agreement, as well as in Protocols 12 and 47 to the Agreement, as they apply to products other than those covered by Article 8(3) of the Agreement, are not compromised by other technical barriers to trade. It should be noted that Article 18 is not limited to products originating in the EEA.

As regards cases initiated in 1994, the Authority continued the examination of a complaint concerning a licensing system applied by Norway for the distribution and showing of films and video tapes, including requirements of the registration and labelling of videos, the registration of importers, producers and dealers of video tapes and municipal licensing for the distribution of video tapes. Following a letter of formal notice on the matter, the Norwegian authorities agreed to amend the legislation with effect from 1 June 1996. The municipal licensing requirements were amended already during the reporting period.

Among matters studied by the Authority in 1995, with regard to fulfilment of the obligations under Article 11 of the Agreement, were the Icelandic and Norwegian legislation on trade in alcoholic beverages. Discussions with national authorities and

consultations with the European Commission on those issues were still going on at the end of 1995.

Furthermore, acting on the basis of a complaint on the matter, the Authority invited Norway to modify requirements relating to toy walky-talkies, so as to reduce the trade hindering effect and to render the Norwegian rules proportionate to the policy objective pursued.

As in 1994, the information procedure on draft technical regulations, established in *Directive 83/189/EEC,* proved to be an important instrument for ensuring that new national technical regulations were in compliance with Articles 11 and 13 of the Agreement. Thus, and as one example, the introduction of an equivalence clause was requested by the Authority in a number of cases in which the notified draft regulation would otherwise have presented a potential barrier to trade.

In order to assess compliance in Liechtenstein with Articles 11 to 13 of the Agreement, Liechtenstein was requested to submit basic information on:

- the manner in which compliance of existing national provisions with those Articles had been examined;

- the modifications which had been introduced in the national legal order as a result of that examination; and

- the internal proceedings for checking the conformity of new draft national legislation with those Articles.

The same information had been requested from the other EFTA States in 1994.

Liechtenstein was also invited to inform of the extent to which mutual recognition clauses were being used in new technical regulations.

The information and explanations submitted by Liechtenstein in response to those requests were assessed by the Authority. The compliance of national legislation with Articles 11 and 13 of the Agreement will be monitored further.

4.1.2. Secondary legislation relating to free movement of goods

4.1.2.1 Technical regulations, standards and conformity assessment

General

At the end of the reporting period, the total number of binding acts referred to in Annex II to the EEA Agreement concerning technical regulations, standards, testing and certification and in Protocol 47 on the abolition of technical barriers to trade in wine was around 750. Of those 750 acts, some 350 were main acts and 400 amending acts. Altogether 37 new acts were added by decisions of the EEA Joint Committee during 1995, comprising 9 main acts and 28 amending acts. In addition, Annex II and Protocol 47 refer to 87 non-binding acts, three of which have been added during 1995.

By the end of 1995, all EFTA States had notified the Authority of measures taken or planned for the national transposition of those acts referred to in Annex II, which were to be applied by the end of 1994, or earlier. Letters of formal notice were sent where the notified national measures had not yet been adopted or where the transposition was incomplete.

With regard to those acts which entered into force for the EFTA States during 1995, information on national measures adopted or envisaged was received in the majority of the cases. Where national bills were still in Parliament, or were still to be finalized or approved at other levels, the Authority requested full information on the contents of the draft legislative measures, and a time schedule for their adoption. As a rule, letters of formal notice were also addressed to the States concerned, unless available information indicated, that transposition was imminent.

A table on the transposition of the individual directives is to be found at Annex IV.

During 1995, all in all 16 letters of formal notice, covering altogether 116 acts in this sector, were sent where national measures had not been adopted or where the transposition was incomplete.

General appreciation of the transposition of acts referred to in Annex II and Protocol 47 to the EEA Agreement (Technical regulations, standards and conformity assessment)

During the reporting period, the Authority continued its in-depth assessment of the conformity of notified national measures with the acts they were intended to transpose.

National transposing legislation was normally compared in detail, article by article, with the corresponding EEA act, in many cases with the help of tables of correspondence completed by the EFTA States. Where harmonizing legislation contained voluminous technical specifications, conformity assessment was concentrated on the main provisions of the EEA act concerned, without correspondence of all technical details being verified in all cases. There would normally be no reason to expect deviations in that regard and any shortcomings in that

respect would most likely be brought to the Authority's attention by economic operators.

Preliminary findings were generally discussed informally with representatives of the EFTA States in package meetings or in other informal contacts. In several cases, such discussions resulted in corrective action by the State concerned. Details are given below on issues which were not yet settled or clarified at the end of the reporting period, as well as on cases where the Authority initiated formal proceedings. In all other cases, the conformity assessment showed that national transposition of the EEA acts concerned appeared to be satisfactory, no further action of the Authority being called for. It goes without saying that the Authority would revert to those acts if it were brought to its attention, e.g. by a complaint or by other information on the actual situation on the market, that implementation was nevertheless incorrect.

On the basis of information available to, and assessments thus performed by the Authority, it seems that the free movement of goods was ensured by the EFTA States to a very large degree as far as harmonized requirements are concerned, in spite of certain delays in completing transposition. This conclusion is supported by the absence of complaints lodged with the Authority on grounds of insufficient transposition of harmonization directives. Complaints received did rather concern national requirements which were not subject to European harmonization.

Therefore, even if the following description of the implementation status in individual sectors places particular emphasis on potential or actual shortcomings which have been examined by the Authority, this should not be taken to mean that trade would have been significantly impeded in the cases described. Nor should it be read as implying that the Europe wide harmonized protection objectives pursued by product related EEA rules would not, to a considerable extent, have been achieved.

If appropriate, further examination of the experience of economic operators and citizens with the application in practice of the technical regulations set out in Annex II to the Agreement will be undertaken in the future, as a complement to the current examination of national laws and to action taken by the Authority in response to complaints.

Motor vehicles

Technical regulations for motor vehicles are harmonized by, in total, 64 directives. The legislation consists of framework directives stipulating the general requirements for type approval and registration of passenger cars, heavy vehicles and two or three-wheel motor vehicles, complemented by specific directives on detailed requirements.

During 1995, two new *Directives* were integrated into the EEA Agreement, namely on *Mechanical Coupling Devices* (94/20/EEC) and on the *Maximum Design Speed, Maximum Torque and Maximum Net Engine Power of Two or Three-wheel Motor Vehicles* (95/1/EEC). Amendments to the *type approval Directive for Motor Vehicles with Four or More Wheels* (93/81/EEC), and to the *Directives on Windscreen Wipers*

and Washers (94/68/EEC) and on *Wheel Guards of Motor Vehicles* (94/78/EEC) have also become applicable within the EEA.

The motor vehicles directives have been implemented in Norway by the Motor Vehicles Regulation and in Iceland by the Regulation on Motor Vehicles Design and Equipment. At the end of the reporting period, transposition of all acts originally contained in the EEA Agreement or added to the Agreement during 1994 had been notified by Iceland and Norway. However, at the end of 1995, the Authority was still in the process of checking certain issues with regard to the conformity of the notified national legislation.

As to the directives integrated into the EEA Agreement during 1995, Norway and Iceland implemented the amendments to the *Type Approval Directive*. Notifications had not been received on the transposition of the *amending directives on windscreen wipers and washers* and on *wheel guards*. The *Mechanical Coupling Devices Directive* was notified as implemented by Iceland but not by Norway. The compliance date for the EFTA States concerning the *Maximum Design Speed Directive* is 2 August 1996.

Notification of implementing measures in Liechtenstein in the motor vehicles field had not been received by the end of 1995.

Agricultural and forestry tractors

In the field of agricultural and forestry tractors, the Agreement refers to the framework *Directive on Type-approval* (74/150/EEC) and to 22 specific directives. No changes were introduced during 1995.

These directives have been implemented in Norway and Iceland by means of their national motor vehicles regulations.

Liechtenstein had not notified transposition of the acts by the end of the reporting period.

Lifting and mechanical handling appliances

The directives falling under this chapter had been implemented in all three EFTA States at the end of the reporting period, with the exception of the *Directive on Electrically Operated Lifts* (84/529/EEC), which had not been fully transposed in Norway. The matter was discussed at various occasions with the Norwegian authorities, but the final implementation remained outstanding, which prompted the Authority to deliver a reasoned opinion on the matter in December 1995.

Household appliances

The EEA Agreement originally comprised three directives relating to household appliances, one of them being the framework *Directive on Labelling of the Energy Consumption of Household Appliances* (79/530/EEC). This Directive was replaced already in 1994 by a *new framework Directive* (92/75/EEC). Of the other directives, one is implementing the *Labelling of the Energy Consumption Framework Directive as far as Electric Ovens are concerned* (79/531/EEC) and one deals with *Airborne Noise Emitted by Household Appliances* (86/594/EEC). There were no new acts integrated into the Agreement in this sector during 1995.

The *Framework Directive* has been notified as implemented by Iceland and Liechtenstein. For the *Electric Ovens Directive*, where it is sufficient to guarantee free movement of goods which fulfil the requirements of the Directive, all three States have communicated satisfactory information to that end. The *Noise Directive* had been notified as implemented by Iceland and Liechtenstein.

A letter of formal notice was issued in respect of Norway for a shortcoming in the implementation of the *Framework Directive*. However, before the end of the reporting period a notification of implementation of that Directive was received by the Authority.

Gas appliances

This chapter consists of two Directives, one relating to the *Placing on the Market and Putting into Service of Appliances Burning Gaseous Fuels* (90/396/EEC) and one regarding *Efficiency Requirements for New Hot-water Boilers Fired with Liquid or Gaseous Fuels* (92/42/EEC). There were no new acts incorporated in the EEA Agreement in 1995.

Directive 90/396/EEC was transposed by Liechtenstein and Norway while it has not been implemented in Iceland. A letter of formal notice was therefore dispatched to Iceland.

The *Hot-water Boiler Directive* (92/42/EEC) was implemented during 1995 by Iceland and Liechtenstein. Non-implementation of that Act by Norway was addressed in a letter of formal notice and, in the follow-up, in a reasoned opinion.

Construction plant and equipment

The implementation in the EFTA States of all directives falling under this chapter seemed to have been satisfactorily undertaken during the reporting period.

Other machines

The chapter on other machines covers only one act, *Directive 84/538/EEC*. This Act was implemented in Iceland and Norway during 1995, but not in Liechtenstein. At the very end of the reporting period, Liechtenstein presented a final draft of national measures, the adoption of which seemed to be imminent.

Pressure vessels

Liechtenstein and Norway implemented the directives falling under this chapter during 1995, with the exception that Norway did not implement the *Directive on Aerosol Dispensers* (94/1/EC). Iceland did not provide proof of implementation of any of the acts, which prompted the Authority to issue a letter of formal notice.

Measuring instruments

This chapter consists of 27 directives, setting requirements for different types of measuring instruments and promoting the free movement of such goods. There were no new acts in this sector integrated into the Agreement during 1995.

At the end of the reporting period, the implementation situation was that all three States had taken measures to fulfil the requirements of the different directives, some of which are of an optional harmonization character which means that national regulations may exist in parallel with European requirements, provided that free movement is ensured for goods fulfilling the requirements of the directives concerned. In general, transposition seemed satisfactory. However, the legal technique used by Norway for the transposition of certain optional directives in the field of measuring instruments is still being examined by the Authority.

Electrical material and telecommunications

The acts under the chapter on electrical material were implemented by the EFTA States, with two exceptions. Thus, Norway informed the Authority that the transposition of the *Directive on Equipment Intended for Use in Potentially Explosive Atmospheres* (94/9/EC), which became applicable on 1 September 1995, was not yet finalized. In the case of the *Directives on Electro-medical Equipment* (84/539/EEC), *Active Implantable Medical Devices* (90/385/EEC) and *Medical Devices* (93/42/EEC), the implementation had not been completed by Liechtenstein. However, at the end of the reporting period, a draft was presented of measures which were to be adopted without further delay.

The acts falling under the chapter on telecommunications seemed to be transposed in a satisfactory manner in Norway and Iceland, except for the fact that the three common technical regulations, *94/796/EC, 94/797/EC* and *94/821/EC*, had not been implemented by Iceland. A letter of formal notice was transmitted with regard to that failure.

Liechtenstein had not yet implemented the *Telecommunications Terminal Equipment Directive* as amended and supplemented by the end of 1995.

Textiles

One directive referred to in this chapter relates to *Textile Names* (71/307/EEC, as supplemented by 75/36/EEC), and two concern *Quantitative Analysis Methods of Binary and Ternary Textile Fibre Mixtures* (72/276/EEC and 73/44/EEC). There were no changes during 1995.

Iceland has notified all these Acts as being implemented. The Authority sent a letter of formal notice to Norway regarding each of the Acts, either for only partial implementation or for non-implementation. Subsequently, the basic legal measures were adopted by the Parliament, whereas Government regulations were still to be issued to ensure full compliance with the acts. No notification on implementing measures had been received from Liechtenstein by the end of the reporting period.

Foodstuffs

In addition to the 68 binding acts originally referred to in the foodstuffs chapter of Annex II and which were to be transposed already in 1994 (amendments originally listed in the Agreement not being counted separately), 13 further acts which had been added by decision of the EEA Joint Committee were to be transposed in 1995.

In 1994, Iceland had fully implemented most of the foodstuffs acts, including the key *Directives on Labelling* (79/112/EEC) on *Official Control of Foodstuffs* (89/397/EEC) and on *Food Additives* (89/107/EEC). However, there were problems in keeping deadlines in transposing the vertical directives, a shortcoming which was addressed in letters of formal notice.

For nine of the acts for which transposition were outstanding at the end of 1994, implementing measures, which seemed satisfactory, were notified by Iceland during 1995. A timetable was presented for the remaining vertical acts (*Directives 93/77, 93/45, 76/118, 79/1067, 87/824* and *73/241*), according to which the directives on fruit juices, infant formula and cocoa were expected to be transposed in early 1996, transposition of the outstanding acts concerning milk and milk products being, however, postponed until spring 1996. *Regulation* 2092/91 as amended, *concerning Organic Production,* which was partly due in 1994 and fully in 1995, was transposed during 1995 in Iceland.

Out of the thirteen acts for which implementation was due in 1995, full implementation measures have been notified by Iceland for all acts, with the exception of the *Directives 94/29/EEC* and *94/30/EEC concerning Maximum Levels for Pesticide Residues*, *Directive 94/54/EEC amending Directive (79/112/EEC) on Labelling of Foodstuffs* and the *Directive concerning Extraction Solvents* (94/52/EEC). With regard to the two last-mentioned acts, letters of formal notice

were issued. It was highly appreciated that in 1995 Iceland supplemented all notifications in the foodstuffs field with tables of correspondence.

As regards Norway, letters of formal notice were issued during 1995 for failure to implement certain acts which Norway was to implement already in 1994, such as the *Directive on Infant Formula* (91/321/EEC), the *Directive on Quick Frozen Foodstuffs* (92/1/EEC), as well as *Regulations on Organic Production* (207/93, 1593/93 and 2092/91). Subsequently, the Authority received notifications from Norway on the transposition of all those acts, with the exception of *Directive 91/321/EEC on Infant Formula,* which had not been fully transposed at the end of the reporting period.

As for the thirteen acts for which notification of transposing measures was due in 1995, a letter of formal notice was submitted to Norway for not implementing *Regulations 3713/92, 688/94, 468/94, 3457/92, 1468/94, 2381/94* and *2580/94*, all amending the *Regulation on Organic Production* (2092/91). Transposition was said to be delayed due to remaining problems concerning a national control label. In addition, at the end of the reporting period, complete implementation measures were still outstanding in Norway with regard to *Directive 93/99/EEC on Additional Measures*, *Directive 93/43/EEC on Hygiene*, *Directive 94/54/EEC on Labelling*, in respect of which a letter of formal notice was issued, *Directives 94/29/EEC* and *94/30/EEC on Maximum Levels of Pesticide Residues* and *Directive 94/52/EEC on Extraction Solvents*.

In respect of several acts in the foodstuffs field, Norway had introduced transitional periods in its national implementation legislation, which allowed the marketing of non-conforming products on the Norwegian market for time periods exceeding those laid down in the corresponding EEA acts. Most of these national transitional periods expired at the end of 1995.

Liechtenstein has been granted a transitional period for the whole chapter on foodstuffs until 1 January 2000. However, Liechtenstein is obliged to do its utmost to comply with the provisions of the acts concerned by 1 January 1997.

With regard to certain products of plant origin, including fruit and vegetables, co-ordinated programmes for official control of foodstuffs and inspections to ensure compliance with maximum levels of pesticide residues were started in 1995, after the Authority had issued recommendations corresponding to those of the European Commission. The programmes will continue and be developed further in the light of experience gained during the first phase.

Medicinal products

The chapter on medicinal products of Annex II to the EEA Agreement refers to 21 main acts. Four amending acts were to be transposed during 1995, i.e. the *Commission Regulations 955/94, 1430/94, 2701/94* and *2703/94*.

In Norway, transposition of the following acts were outstanding at the end of 1994, namely *Regulation 2377/90*, as amended, *on Maximum Residue Limits of Veterinary*

Medicinal Products in Foodstuffs of Animal Origin and the *Directives 92/109* and *93/46 concerning Certain Substances Used in Illicit Manufacture of Narcotic Drugs*. Moreover, the Authority considered further measures necessary in order to ensure full implementation of *Directive 86/609 regarding the Protection of Animals Used for Experimental and Other Scientific Purposes*.

During 1995, the *Regulation on Maximum Residue Limits* (2377/90) was notified as implemented. Furthermore, the Authority was informally informed that the *Directives related to Substances Used in Illicit Manufacture and Placing on the Market of Narcotic Drugs* (92/109 and 93/46) were implemented. However, formal notification was still outstanding at the end of the reporting period. Finally, the Authority received a draft text of the additional measures considered necessary for fully transposing the *Directive on Protection of Animals Used for Experimental and Other Scientific Purposes* (86/609/EEC). The measures were originally expected to be adopted in 1995, but the Authority was later informed that this would be done only in 1996.

With regard to the acts due for implementation in 1995, Norway duly notified transposing measures.

After a thorough conformity assessment of the transposition of key pharmaceuticals acts in Norway, apparent shortcomings identified by the Authority were addressed in two letters of formal notice in 1994 and a pre Article 31 letter in 1995, followed by further discussions with national authorities. The main issues addressed were the need to change administrative routines and guidelines into legally binding acts, the failure to adopt all the necessary measures related to quality requirements, standards, manufacture and advertising of medicinal products, as well as a national requirement obliging foreign holders of marketing authorization for medicinal products to be represented by an authorized agent residing in Norway. A new draft of a Norwegian regulation concerning proprietary medicinal products was received and is foreseen to enter into force in early 1996. That draft contained, *inter alia*, provisions which would repeal the requirement that a foreign holder of marketing authorization for medicinal products within the EEA needs to be represented by an authorized agent residing in Norway.

Iceland embarked upon an extensive project of revising existing and introducing new legislation in the pharmaceuticals field, to be based on the Icelandic Pharmaceuticals Act which had been adopted by Parliament in 1994. By the end of the reporting period, the Icelandic Authorities had notified implementing measures for all the pharmaceuticals acts. However, since the Authority was not satisfied with the measures transposing the *Directives on Good Manufacturing Practice* (91/356/EEC and 91/412/EEC), the *Directive on Wholesale Distribution* (92/25/EEC) and the *Directive on Colouring Matters* (78/25/EEC), the Icelandic authorities undertook to prepare amendments. Moreover, the *Directive on Protection of Animals Used for Experimental and Other Scientific Purposes* (86/609/EEC) had been only partly implemented. These Directives should have been implemented already in 1994. A timetable for completing their transposition was supplied and extends into 1996. The conformity of the most recently notified national legislation has not yet been fully examined.

Liechtenstein envisaged to provide the Authority with information on the implementation technique foreseen for the pharmaceutical acts and with an approximate timetable for the transposition by the end of November 1995. However, by the end of the reporting period, no such information had been received.

Fertilisers

The secondary EEA legislation in the field of fertilisers, i.e. seven directives, remained unchanged during 1995.

As Iceland had not implemented the acts in 1994, the Authority issued a letter of formal notice. In 1995, the Icelandic transposing measures were adopted and notified and, therefore, the case was closed.

Also Liechtenstein notified transposition of all acts in the field of fertilisers. The implementation technique was described and the competent authority indicated. On the basis of the information thus received, the Authority concluded that the provisions of the directives appeared to be fully implemented.

In Norway, transposition of the acts on fertilisers had been finalised already during 1994.

Dangerous substances

Prior to the reporting period, 14 main acts were to be applied in the field of chemicals, mainly concerning classification and labelling of substances and preparations, export and import of chemicals, detergents, good laboratory practice and restrictions on marketing and sale of dangerous products.

The EFTA States had been granted a transitional period for the implementation of the following acts, namely the *Directive on Chemical Substances* (67/548/EEC), as amended, the *Directive on Chemicals Preparations* (88/379/EEC), as amended, and the related *Directive on Risk Assessment of New Chemicals* (93/67/EEC). The transitional period expired 1 July 1995, with the exception of a few provisions fully applicable by 1 January 1999 only. In addition, three main acts, i.e. the *Regulations on Existing Chemicals (793/93), on a Priority List of Existing Chemicals* (2268/95) and *on Risk Assessment of Existing Chemicals* (1488/94) were due to be transposed in l995. Furthermore, four new amending acts, in addition to those amending the two first-mentioned directives (67/548/EEC and 88/379/EEC), were also due to be transposed in l995, i.e. *Regulations 41/94* and *3135/94*, amending Annexes I and II to the *Regulation on Export and Import of Certain Dangerous Chemicals* (2455/92) and *Directives on Aerosol Restrictions* (94/48/EC) and *on CMT Restrictions* (94/60/EC).

At the end of 1994, transposition of the following acts were outstanding in Iceland, namely two *Directives on Good Laboratory Practice* (87/18/EEC and 88/320/EEC) and the *Directive on Restrictions on certain Chemicals* (76/769/EEC). Letters of formal notice had been sent in 1994 for non-implementation of those three Directives.

Furthermore, the relevant national provisions had not been aligned with the *Directive on Fastenings on Preparations* (91/442/EEC).

During the reporting period, Iceland implemented the *Directives on Good Laboratory Practice* (87/18/EEC and 88/320/EEC). However, transposition of the *Directive on Restrictions on certain Chemicals* (76/769/EEC) and of the *Directive on Fastenings on Preparations* (91/442/EEC) was still outstanding at the end of 1995. The matter will be further pursued by the Authority in 1996.

With regard to acts which were due in 1995, letters of formal notice were sent to Iceland for failure to take or to notify implementing measures with regard to *Directives 67/548* and *88/379,* as amended, *Directive 93/67*, as well as *Regulations 793/93, 41/94* and *3135/94*. Transposing measures were subsequently notified with regard to *Regulations 41/94* and *3135/94*.

National implementing measures were also outstanding in Iceland with regard to the *Regulations on Existing Chemicals* (793/93) and *on Related Risk Assessment* (1488/94), as well as to the *Directives on Aerosol Restrictions* (94/48/EC) and *on CMT Restrictions* (94/60/EC).

In Norway, transposition of the *Regulation on Export and Import of certain Dangerous Chemicals* (2455/92) and the *Directive on Fastenings on Preparations* (91/442/EEC) was outstanding at the end of 1994.

By the end of the reporting period, Norway had notified legislation transposing the *Regulation on Export and Import of certain Dangerous Chemicals* (2455/92), along with its Annexes, *Regulations 3135/94* and *41/94*. However, the *Directive on Fastenings on Preparations* (91/442/EEC) was still not fully transposed. The provisions of that Act were expected to be integrated into the legislation envisaged for the transposition of the *Directives on Chemical Substances and Preparations* (67/548/EEC and 88/379/EEC).

Out of the acts due for transposition in 1995, the following Acts had not yet been implemented in Norway by the end of the reporting period: the *Directives on Chemical Substances and Preparations* (67/548/EEC and 88/379/EEC, as amended), and the *Directive on Risk Assessment of new Chemicals* (93/67/EEC), for all of which a letter of formal notice was issued, and also the *Directive on Aerosol Restrictions* (94/48/EEC) and the *Directive on CMT Restrictions* (94/60/EEC).

Liechtenstein notified implementing measures with regard to all acts in the chemicals field, at the same time explaining the implementation technique used. The management tasks set out in some of the acts still seemed to require further national measures, before the directives could be regarded as completely transposed.

Cosmetics

During 1995, the six basic acts applicable in 1994 were complemented with one amendment, i.e. *Directive 94/32/EEC* amending the basic Directive 76/768/EEC.

All acts to be implemented in 1994 had been transposed by Norway by the end of that year. Since Norway also notified its transposing measures for the latest amendment of the basic *Directive 76/768/EEC*, the cosmetics acts can be regarded as fully transposed in Norway.

During 1995, the Authority received from Iceland, in reply to a letter of formal notice which had been issued in 1994, notification of implementing measures for all acts, including the amendment which became applicable in 1995. Hence, Iceland had also transposed all acts in the cosmetics field by the end of the reporting period.

Liechtenstein notified transposition of all the six basic directives and the new amending directive in the field, giving an extensive description of the implementation technique applied. As the measures taken seemed satisfactory, the cosmetics legislation can be considered implemented also in that State.

Environment Protection

The six basic acts in this field had been fully transposed by Norway and Iceland during 1994, except for the *Directive on Sulphur in Fuels* (93/12) which was transposed by Norway in 1995.

Liechtenstein notified national measures implementing all the acts in 1995.

General Product Safety

The purpose of the *Directive* on *General Product Safety* (92/59/EEC) is to ensure that products placed on the market are safe.

This directive had been notified as implemented by Norway. The Norwegian implementing measures are at present being examined by the Authority. Iceland, which had been sent a letter of formal notice for non-implementation earlier in the year, could at the very end of the reporting period inform the Authority that necessary implementing measures had now been adopted by the Parliament.

No notification of national implementing measures was received from Liechtenstein.

When it comes to the *Council Regulation on Checks for Conformity with the Rules of Product Safety in the Case of Products Imported from Third Countries* (339/93) and the *Council Decision Establishing a List of Products Provided for in the Regulation*, these Acts have been made part of the legal order of Norway and Liechtenstein, while in the case of Iceland a letter of formal notice was sent for non-implementation.

Construction products

During 1995, by a Decision of the EEA Joint Committee, the *Construction Products Directive* (89/106/EEC) was, for the purpose of the EEA Agreement, complemented with a *Commission Decision* (94/61/EEC), implementing Article 20 of that Directive.

The *Construction Products Directive* was notified as implemented by Iceland and Liechtenstein, while in the case of Norway, which had not implemented the Directive in spite of a letter of formal notice in April 1995, a reasoned opinion was delivered in December 1995.

The Commission Decision referred to above, has been incorporated into the national legal order in Iceland and Liechtenstein, but not in Norway.

Personal protective equipment

The two acts falling under this chapter had been implemented by all EFTA States by the end of 1995, with the exception that notification of implementation in Norway of the act amending the main act was still outstanding.

Toys

There is one *Directive relating to the Safety of Toys* (88/378/EEC). This Directive has been implemented by Iceland. Norway, which had a transitional period until 1 January 1995, was, towards the end of the reporting period, sent a letter of formal notice for having only partially implemented the Directive. Shortly afterwards, Norway notified the Act as fully transposed. At the very end of the reporting period, Liechtenstein presented draft national measures which were foreseen to be adopted without further delay.

Cultural objects

The chapter on cultural objects contains only one act, the *Directive on Return of Cultural Objects Illegally Removed from the Territory of a Member State* (93/7/EEC). The Act entered into force for Iceland and Norway on 1 January 1995 and for Liechtenstein on 1 May 1995. Norway notified national implementing measures already in 1994, and Iceland and Liechtenstein in 1995. However, the notified measures did not ensure full compliance with the Directive in any of the EFTA States. A letter of formal notice was addressed to Norway in 1995, but before the end of the reporting period measures were adopted in that State to ensure partial compliance with the Act. The apparent lack of complete transposition in Iceland and Liechtenstein will be pursued further in 1996.

Explosives for civil use

Iceland had been sent a letter of formal notice already in 1994 for not implementing the *Directive on Explosives for Civil Use* (93/15/EEC). In 1995, a time table for implementation was provided, which stretches into 1996. The Authority will follow up the matter.

No notification on implementation was received from Liechtenstein.

In Norway, the Directive was implemented, with the exception of the part of the Directive dealing with ammunition. According to information received from the Norwegian Authorities, they planned to bring the missing provisions into place at the very beginning of 1996. The Authority will closely follow the development in this case, too.

Other new directives in Annex II

In addition to the acts belonging to the sectors referred to above, the *Directive on the Labelling of the Materials Used in the Main Components of Footwear* (94/11/EC) and the *Directive relating to Recreational Craft* (94/25/EC) were included into the EEA Agreement. Both directives were to be implemented in the second half of 1995, the first one on 23 September and the second on 16 December. Notifications had not been received by the end of 1995, with the exception that Iceland had notified implementing measures concerning the *Directive on the Labelling of Footwear*. Liechtenstein had presented draft national measures concerning *recreational craft*, the adoption of which was said to be imminent at the end of the reporting period.

4.1.2.2 Operation of certain procedures

Information procedure on draft technical regulations

The *Directive on Information Procedure on Draft Technical Regulations* (83/189/EEC), as adapted for the purpose of the EEA Agreement, introduces a procedure by which the EFTA States notify the Authority of draft technical regulations. Upon notification, a three months' standstill period is triggered during which the Authority and the other EFTA States, as well as the European Commission, may comment on the notified draft regulation. Notifications are examined so as to establish whether they contain provisions which might create barriers to trade, for example, by referring to national standards or national testing bodies, or by requiring exclusively national certificates. The Authority also assesses whether or not the draft national measures conflict with EEA secondary legislation.

In the framework of this information procedure, the Authority received eight notifications from the EFTA States during 1995. In six of these cases the Authority delivered comments, mainly consisting in requests for the introduction of equivalence clauses, allowing the placing on the market of products complying with the requirements of other States, covered by the EEA Agreement, which provide for a

level of protection equivalent to that intended to be guaranteed by the notified draft regulations. The sectors concerned were telecommunications (five cases) and electrical equipment (one case).

In another case, where Norway had put a measure into force before notifying it, the Authority, following the established practice of the European Commission in corresponding cases, closed the notification file and initiated formal proceedings for failure to comply with the notification procedure of the Directive.

During 1995, the Authority received 438 notifications from the EC side, which in three cases led to single co-ordinated communications being transmitted to the European Commission. A further single co-ordinated communication forwarded in 1995 was based on a notification received the previous year.

Information procedures on chemicals

The following three information procedures, which are intended *inter alia* to allow for the evaluation and control of the risks of new and existing chemicals, deserve to be mentioned in particular:

(a) notification of new substances, according to *Council Directive on the Approximation of Laws, Regulations and Administrative Provisions relating to the Classification, Packaging and Labelling of Dangerous Substances* (67/548/EEC), as amended for the 7th time by Council Directive 92/32/EEC;

(b) notification of existing substances, according to *Council Regulation on the Evaluation and Control of the Risks of Existing Substances* (No. 793/93); and

(c) notification according to *Council Regulation concerning Export and Import of certain Dangerous Chemicals* (No. 2455/92).

The extensive technical, scientific and administrative work implied in the operation of those procedures was carried out in close co-operation with the European Commission services (DG XI) and, in 1995, with the European Chemicals Bureau (ECB) in ISPRA, Italy, which has the technical competence and infrastructure required for the work. In 1995, the Authority awarded two service contracts to a consultant, for the carrying out of certain technical tasks in relation to the procedures. Further such contracts are foreseen in the future.

New chemicals

Since 1 January 1994, the new chemicals notification scheme has been run in co-operation between the Authority and DG XI, and later the ECB. The transitional period for the present EFTA States to join the notification scheme expired on 1 July 1995.

As a first task, it is necessary to establish what chemicals, falling within the scope of the scheme, are on the markets of the EFTA States. Since the present EFTA States entered the notification scheme only in 1995, the necessary information was not yet contained in the European Inventory of Existing Commercial Chemical Substances (EINECS). As a consequence, the competent authorities of the EFTA States had to gather a considerable amount of information from manufacturers and importers. This task was completed in Norway during 1995. Iceland and Liechtenstein are still in the process of gathering the information. In 1996, the identified substances are to be notified to the Authority.

While Norway has established its own necessary infrastructure for handling notifications of new chemicals, Iceland and Liechtenstein foresee arrangements with other EEA States for operating the procedures.

Existing chemicals

The *Council Regulation on the Evaluation and Control of the Risks of Existing Substances* (No. 793/93) was integrated into the EEA Agreement by a Joint Committee Decision in September 1994, which entered into force on 1 February 1995. The Regulation was adopted with some technical adaptations, which allow for a single collecting point for information and sets out transitional arrangements aimed at facilitating, for the EFTA States and their industries, to adapt smoothly to the provisions of the Regulation . The first deadline for notification by the EFTA States of certain existing chemicals with high production volume was 4 June 1995. By that date, more than 200 notifications on existing chemicals had been submitted by Norway and Iceland. Notifications on existing chemicals have not yet been received from Liechtenstein.

Export/import of certain dangerous chemicals

During the reporting period, no notification according to *Council Regulation concerning the Export and Import of certain Dangerous Chemicals* (No. 2455/92) was received from the EFTA States. It is expected, however, that notifications of substances will be received in the future, in particular when the Regulation will have been amended so as to cover further substances.

Product Safety

The notification procedure under the *General Product Safety Directive* (92/59/EEC) provides for the continued application of the so-called emergency procedure, which was operated earlier under the *Decision on Rapid Exchange of Information on Dangers Arising from the Use of Consumer Products (RAPEX)*. The Directive also introduces a general safeguard procedure, which applies to cases not covered by the safeguard or notification procedures contained in specific directives.

The Authority received 31 notifications under the emergency procedure during 1995. In the framework of the non-food network, no notifications were presented by the EFTA States, while 15 were received from the EC side. Within the food network, four notifications were transmitted by the EFTA States and 12 were received from the EC side.

In addition, the Authority received one notification from the EC side under the safeguard procedure laid down in Article 7 of the Directive, which related to the non-food sector.

Safeguard measures with regard to unsafe products in accordance with specific directives

During the reporting period, the Authority did not receive any notification from the EFTA States of measures taken against unsafe products falling under the scope of specific directives referred to in Annex II to the Agreement.

Notification of conformity assessment bodies

All new approach directives and some of the traditional directives provide for the involvement of notified bodies as third parties in conformity assessments of products or production. Such bodies may be testing laboratories, inspection bodies, certification bodies or approval bodies. They are notified by the EEA States as being competent for carrying out conformity assessments of specific products or families of products, as set out in the relevant directives. In 1995, 20 notifications concerning conformity assessment bodies acting for the purposes of various acts referred to in Annex II to the EEA Agreement were received by the Authority.

4.1.3 Other rules

4.1.3.1 Product liability

Annex III to the EEA Agreement refers to the *Directive on Product Liability for Defective Products* (85/374/EEC). It deals with the protection of the consumer against defective products and makes the producer liable for damage caused by a defect in his product.

This directive has been notified as implemented by all three EFTA States. At the end of the reporting period, the Authority was still in the process of assessing some details on the implementing measures notified by Liechtenstein and Norway.

4.1.3.2 Energy

Article 24 of the Agreement refers to Annex IV with regard to the specific provisions and arrangements concerning energy. That Annex refers to 12 acts. Three of those

acts are in Annex IV referred to for information purposes only, and they relate mainly to other sectors. These acts, which will not be dealt with under the present heading, are Directive 90/377/EEC, referred to also in Annex XXI on statistics, and Directives 92/42/EEC and 92/75/EEC, referred to also in Annex II under technical regulations, standards, testing and certification. The applicability of the *Council Regulation,* as amended*, introducing Registration for Import of Crude Oil and Petroleum Products* (No. 1893/79), referred to in Annex IV, expired 31 December 1991. The remaining acts originally referred to in the Energy Chapter of the Agreement, aim at savings in crude oil and petroleum products, as well as at facilitating the transit of electricity and gas through national grids. The scope of Annex IV was considerably extended, in particular as far as Norway and its off-shore petroleum and gas activities in the North Sea are concerned, when the *Directive on the Conditions for Granting and Using Authorizations for the Prospection, Exploration and Production of Hydrocarbons* (94/22/EC) became applicable within the EEA on 1 September 1995. The situation at the end of 1995 regarding the transposition of the acts referred to only in Annex IV, can be summarised as follows.

Iceland and Norway had indicated that existing national legislation did not hinder the free movement of petrol and that, as a consequence, specific measures for implementing the *Directive concerning the Restriction of the Use of Petroleum Products in Power Stations* (75/405/EEC) and the *Directive concerning the Use of Substitute Fuel Components in Petrol* (85/536/EEC, as amended) were not necessary. Liechtenstein had notified the Authority of national measures implementing those Acts.

Iceland and Liechtenstein had notified national measures transposing the *Directive on the Performance of Heat Generators for Space Heating and the Production of Hot Water in New or Existing Non-industrial Buildings and on the Insulation of Heat and Domestic Hot Water Distribution in New Non-industrial Buildings* (78/170/EEC, as amended). However, Norway had not implemented that Directive by the end of 1995, in spite of a letter of formal notice being sent in April 1995. A reasoned opinion on the matter was delivered in December 1995.

Iceland considered transposition of the *Directive on the Transit of Electricity through Grids* (90/547/EEC) as being irrelevant, due to the absence of inter-connection of the national transmission grids with those of the other EEA States. Liechtenstein and Norway have notified the Authority of national measures implementing the act.

The *Directive on Transit of Gas* (91/296/EEC) is apparently irrelevant for Iceland and Norway, taking into account the lack of gas transmission grids in those States that would be covered by the Directive. Thus, the list of gas transmission grids covered, contained in Appendix 2 to Annex IV to the EEA Agreement, does not refer to any Icelandic or Norwegian gas grid. Liechtenstein notified the Authority of national measures implementing the Act.

Norway has notified the Authority of the measures implementing the *Directive on the Conditions for Granting and Using Authorizations for the Prospection, Exploration and Productions of Hydrocarbons* (94/22/EC). Iceland and Liechtenstein have

informed the Authority that, due to lack of relevant activities, implementation of the Directive does not seem necessary.

In this context, it should finally be noted that routines have been established between the Authority and the Commission for handling reports on the prices of crude oil and petroleum products, to be forwarded to the Authority in accordance with *Directive 76/491/EEC*. Reports are being received from Iceland and Norway. *Council Regulation No. 1056/72,* as amended, sets out rules for notifying investment projects, above specific capacities, in the petroleum, natural gas and electricity sectors, except for offshore activities. During 1995, no such investment project was reported to the Authority.

4.1.3.3 Intellectual property

Protocol 28 and Annex XVII to the EEA Agreement contain specific provisions and arrangements concerning intellectual, industrial and commercial property. According to Article 65(2) of the Agreement, those provisions and arrangements apply to all products and services, unless otherwise specified.

Annex XVII refers to 18 binding acts (six directives, 11 decisions, and one regulation). The decisions, referred to in Points 2 and 3, concern the extension to natural persons and/or to companies and other legal persons in specified third countries of rights established by the *Directive concerning the Legal Protection of Topographies of Semiconductor Products* (87/54/EEC). The high number of decisions is due to the fact that the validity of most of them was limited in time and that the validity has been repeatedly prolonged by new decisions.

The other acts concern *Trade Mark Law* (89/104/EEC), *Legal Protection of Computer Programs* (the "Software Directive", 91/250/EEC), *Rental Rights and Lending Rights and certain Rights related to Copyright in the Field of Intellectual Property* (92/100/EEC), *Copyrights and Rights related to Copyrights Applicable to Satellite Broadcasting and Cable Re-transmission* (93/83/EEC), and *Duration of Protection of Copyright and Related Rights* (93/98/EEC). The three last-mentioned acts were due for implementation in 1995. Finally, *Council Regulation No 1768/92* concerns the creation of a supplementary protection certificate for medicinal products.

In addition, two non-binding acts are referred to, i.e. *Council Resolution on Increased Protection of Copyrights and Neighbouring Rights* (92/C 138/01) and *Commission Communication on Intellectual Property Rights and Standardization* (COM (92) 445 final).

Norway has notified the Authority of national measures implementing all acts. With regard to the *Directive on Rental, Lending and Copyright* (92/100/EEC), the Norwegian notification was not complete, as Norway informed the Authority that Article 4 had not been implemented. Furthermore, Norway had a transitional period ending on 31 December 1995 regarding the implementation of Article 8(2) of the same Act. A letter of formal notice was sent to Iceland towards the end of 1995, for failure to implement *Directives 92/100/EEC*, *93/83/EEC* and *93/98/EEC*.

Furthermore, the Authority was examining whether measures transposing *Regulation No. 1768/92* were required in Iceland. Liechtenstein informed the Authority that implementation of the six directives, which were all to be applied in Liechtenstein in the course of 1995, was foreseen by the end of 1995. However, since notification of national measures implementing those acts had not been received by the Authority at the end of 1995, the matter will be further pursued in 1996.

At the end of 1995, the Authority contracted independent consultants in Iceland and Norway to examine the conformity of the national measures notified by those two States with the EEA rules concerned.

4.1.4 Veterinary and phytosanitary matters

During 1995, the work within the veterinary and phytosanitary sectors focused on implementation control, inspections and decisions concerning plans to eradicate and to monitor diseases. As regards inspections, in addition to continuing inspections of meat establishments, the necessary preparatory work has been carried out for inspections of fish and poultry establishments, which are due to start in 1996.

4.1.4.1 Legislation

Through decisions of the EEA Joint Committee, 13 new acts, which entered into force during 1995, were integrated into Annex I to the EEA Agreement, two in the veterinary chapter, 10 in the feedingstuffs chapter and one in the phytosanitary chapter. Of the 13 new acts, 10 were amendments to acts already in the Agreement. Accordingly, at the end of the reporting period, Annex I to the EEA Agreement on veterinary and phytosanitary matters referred to 319 legal acts, excluding acts merely amending previous acts. Of these acts, 197 are in the veterinary chapter, 31 deal with feedingstuffs, while 91 concern phytosanitary matters.

The acts on veterinary issues contain provisions on trade with animals, meat and meat products, and provide, *inter alia*, for measures to be taken in case of outbreak of certain contagious animal diseases. The Authority may decide on derogations from some of the provisions, *inter alia*, by granting an EFTA State the right to apply stricter rules on the transport of animals to its territory or part of it, commonly referred to as "additional guarantees".

The acts on marketing of feedingstuffs aim primarily at preventing harm to animals, humans and the environment which might be caused by feedingstuffs, and at ensuring that buyers of feedingstuffs are sufficiently informed about their content.

The acts on phytosanitary matters concern the quality and marketing of seeds.

As regards the acts concerning veterinary issues referred to in Annex I, only 32 apply to Iceland, as that State has been granted derogations for a substantial part of Chapter 1.

From 1 May 1995, the acts in the feedingstuffs and phytosanitary chapters also apply to Liechtenstein. Transitional periods, specific for each of the EFTA States, are applicable with regard to several acts in Annex I and Liechtenstein has a transitional period until 1 January 2000, with regard to all the acts in the veterinary chapter.

4.1.4.2 National transposition

At the end of the reporting period, the implementation situation was as follows:

Veterinary issues

As already noted, Liechtenstein has a derogation until 1 January 2000 to transpose the acts in Chapter I of Annex I to the Agreement. Norway has transposed all acts, with exception of the fact that *Council Directives 90/167/EEC, 92/118/EEC, 88/657/EEC, 81/602/EEC, 85/358/EEC, 88/146/EEC, 86/469/EEC, 88/299/EEC, 90/667/EEC, 92/45/EEC* and *92/110/EEC* were not or not completely implemented. Iceland has transposed all acts in this field applicable to that State, except for *Council Directive 91/492/EEC.*

Feedingstuffs

Iceland and Norway have transposed all the acts, whereas Liechtenstein has not notified the Authority of the national measures implementing any of the acts within the feedingstuffs area.

Seeds

Liechtenstein has transposed all acts, whereas Iceland has transposed all acts except for *Commission Directives 92/19/EEC, 93/2/EEC, 92/9/EEC* and *92/107/EEC.* Norway has transposed all acts except for *Commission Directives 92/9/EEC* and *92/107/EEC.* Iceland has applied for a derogation from the provisions of *Directives 92/9/EEC* and *92/107/EEC.*

Formal proceedings

In 1995, a letter of formal notice was sent to Iceland concerning those acts in the veterinary, feedingstuffs and seeds areas, concerning which no communication had been received. During the reporting period, a letter of formal notice was presented also to Norway with regard to one act in the seeds area on which no information had been received either. These cases as well as other matters of incomplete transposition will be pursued in 1996.

Conformity assessment

The Authority is in the process of assessing the conformity of national measures with all the directives in Annex I to the Agreement.

4.1.4.3 Application of the Agreement

Plans regarding animal health

According to seven directives concerning disease control, contingency plans are to be submitted for approval by the Authority. As these acts do not apply to Iceland and since Liechtenstein has a transitional period, only Norway was obliged to submit such plans. By the end of the reporting period, the Authority had received all the plans thus to be submitted and had approved the contingency plan with regard to foot-and-mouth disease and the plan to monitor salmonella in poultry.

Safeguard consultations

Following an outbreak of Newcastle disease in Sweden, Norway applied safeguard measures. In accordance with the procedure foreseen in paragraph 9 of the introductory part of Chapter I of Annex I to the EEA Agreement, the Authority invited the Commission and Norway to consultations. The safeguard measures were subsequently repealed.

Furthermore, consultations have been held regarding the Community safeguard measures with regard to infectious salmon anaemia (ISA) in Norway. The measures have been modified and regions free of the disease can now export non-eviscerated salmon to the Community. The safeguard measures, as modified, were still in force at the end of the reporting period.

Public health

Introduction

Fresh meat establishments, such as slaughterhouses, cutting plants and cold stores, fish processing establishments, including factory vessels, and milk processing plants are, under the EEA Agreement, subject to strict veterinary rules motivated by objectives of public health and consumer protection. All establishments covered by the EEA rules have to comply with the harmonized requirements, with the exception of certain categories of red meat establishments which are temporarily exempt from the requirements until 31 December 1996, but in the meantime, may produce only for national markets. The approval of all establishments in the public health field is under the responsibility of the competent national authorities of the States concerned.

According to the acts concerned, the Authority is to inspect on-the-spot the relevant establishments located in the EFTA States in order to ensure the uniform application

of the legislation by national authorities, in the same way as experts from the European Commission carry out on-the-spot inspections for ensuring uniform application in the Community.

Principles applicable to inspections

Paragraph 10 of the introductory part of Chapter I of Annex I to the EEA Agreement lays down the principles to be applied by the Authority in carrying out on-the-spot inspections in the veterinary field, implying, *inter alia*, that such inspections shall be carried out in accordance with programmes equivalent to those of the Community, that the same criteria shall apply to inspections, that information concerning inspections shall be exchanged between the Commission and the Authority, and that the follow-up of the inspections shall be co-ordinated between the Commission and the Authority.

In conformity with these principles, a procedure for close co-operation between the inspection services of the Authority and the Commission has been established, with a view to ensuring homogeneity with regard to both the carrying out and the follow-up of inspections.

Starting with fresh meat establishments, inspections by the Commission have been extended to, *inter alia*, fish, poultry and meat processing establishments. The Authority is operating equivalent inspection programmes.

Procedures for inspections in food producing establishments (public health inspections)

In carrying out inspections, the Authority follows the general rules set out below:

- Inspections are carried out according to programmes established after consultation with the Commission inspection service. In the case of fresh meat establishments, it is foreseen that 10 % of the establishments be inspected each year. The establishments are to be selected at random.

- Inspections are carried out by a veterinary expert of the Authority, together with an expert from the competent authority of the EFTA State concerned.

- The main findings of an inspection are normally discussed in a meeting at the end of each inspection. The final results are presented in a report transmitted to the EFTA State concerned as soon as possible after the visit, in particular in the case of a serious problem. An overview of the situation might be given to the other EFTA States at the end of the year.

In case of recurring serious problems, the Authority might, in a letter or a fax message to the EFTA State concerned, point out the seriousness of the situation and recommend certain measures to be taken without undue delay. If, in the case of non-compliance, the EFTA State concerned does not take the measures necessary to

remedy the situation, further action from the Authority may be taken in accordance with the provisions laid down in the relevant acts, depending on the seriousness of the situation.

Following the practice of the European Commission, the Authority has so far tried to achieve the correction of shortcomings without having recourse to the formal infringement proceedings.

With a view to harmonizing inspection practises, the Commission has prepared, in co-operation with the EU Member States, a document which interprets the Annex to the Council Directive on Fresh Meat (64/433, as amended by 91/497). The original version of that interpretative document was issued as *Commission Recommendation 89/214/EEC* and has been integrated into the EEA Agreement. In 1992, a revised version was finalized, but it has not yet been published.

Inspections in the public health area in 1995

In 1995, the Authority continued the inspections of fresh meat establishments which had started in 1994. During the reporting period, the Authority also carried out explorative inspections in the EFTA States of poultry meat and fish establishments. In order to ensure a uniform policy in respect of these inspections, the Authority co-operated closely with the European Union Office for Veterinary and Phytosanitary Inspections (OICVP) and inspectors of the two sides participated in the inspections of one another.

During 1995, the Authority inspected 31 establishments in the EFTA States and participated in 26 inspections carried out by the Commission in EU Member States and third countries. Some basic characteristics of the inspections carried out in the EFTA States are given in Tables 2 to 4 below. The 26 inspections in EU Member States and third countries in which the Authority participated, concerned poultry meat (10), meat product (7) and fish (9) establishments, located in Belgium, Denmark, Faroe Islands, Germany and Ireland.

In addition to the follow-up in the form of discussions and reports, as indicated above, observations of a more general nature made in an EFTA State in connection with an inspection were recorded and brought to the attention of that State. Issues raised in this manner in l995 concerned, *inter alia*, the implementation both in Iceland and Norway of the EEA veterinary acts in the public health field concerning fish, including the national surveillance structures, and the approved poultry meat establishments in Norway.

Table 2 Number of establishments inspected in the EFTA States in 1995

Type of inspections	Fresh meat		Poultry meat		Fish		Total
	Iceland	Norway	Iceland	Norway	Iceland	Norway	
Formal inspections		21					21
Explorative inspections				3	7		10
Total		21		3	7		31

Table 3 Number of inspected fresh meat establishments with regard to approved activity and animal species

Approved activity	Approved animal species				Total
	Only cattle	Only sheep	Cattle, pigs	Cattle, sheep, pigs	
Slaughtering	1	1			2
Cutting				5	5
Slaughtering and cutting	3	3	4	2	12
Cold storage				1	1
Small-scale plants	1				1
Total	5	4	4	8	21

Table 4 Number of inspected fish processing establishments with regard to production

Production	
Frozen fresh fish	3
Shrimps	2
Scallops	1
Salt-fish	1
Total	7

Plans relating to the examination for residues

In accordance with the relevant EEA acts, the EFTA States submitted to the Authority, for approval, their plans for 1996 regarding examination of residues of hormones and other substances, as well as the results of tests carried out in 1994. The plans were examined in co-operation with the Commission and approved by the Authority.

Notification of approval of fresh meat and other food processing establishments

Products processed by establishments handling fresh meat, poultry, farmed game, eggs, milk and fish, as well as on factory vessels, are, if the establishments or vessels have been approved by the national competent authority in accordance with the relevant EEA act, in free circulation within the entire EEA market. The EFTA States submit lists of the approved establishments to the Authority, which transmits the lists to the European Commission for further distribution in the EU Member States.

Seeds

Shortly before the end of 1995, the Authority received five applications from Iceland for derogations from the seed legislation. The applications concern species which are considered not to be able to grow in Iceland. Decisions on the applications are foreseen to be taken during 1996.

4.2 FREE MOVEMENT OF PERSONS

4.2.1 Free movement of workers

Free movement for workers entails, under Article 28 of the EEA Agreement, the abolition of any discrimination based on nationality between workers of the EEA States as regards employment, remuneration and other conditions of work and employment, as well as the right to accept offers of employment actually made, to move freely within the territory of EEA States for this purpose, to stay on the territory of an EEA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State, and to remain on the territory of an EEA State after having been employed there.

4.2.1.1 Notification control

The basic rights to move and work freely are guaranteed by *Regulation No. 1612/68*. Moreover, Annex V to the EEA Agreement refers to two other regulations and four directives, concerning the abolition of restrictions on freedom of movement and residence.

National measures to comply with these EEA acts have been notified by Iceland and Norway. However, as not all of the respective notifications were complete, Norway was requested to provide further information and additional legal texts. By the end of the year, that State had complied with the requests.

In 1994, Iceland had not implemented one Regulation and three Directives in this field. A legal basis for subsequent implementation had been created through an amendment to the Icelandic Foreign Nationals' Supervision Act. However, further rules still needed to be adopted by the Minister of Justice. Two pre Article 31 letters

were sent by the Authority in 1995 and several other informal contacts took place. In December 1995, Iceland adopted and notified the legislation considered to fully implement the acts.

Liechtenstein may, by virtue of Protocol 15 to the Agreement, on transitional periods on the free movement of persons, maintain in force until 1 January 1998 national provisions submitting to prior authorization entry, residence and employment, but shall not, however, introduce any new restrictive measures as of the date of signature of the EEA Agreement, 2 May 1992.

At the end of the transitional period, the transitional measures shall be jointly reviewed by the Contracting Parties, duly taking into account the specific geographical situation of Liechtenstein. Furthermore, a Declaration by the EEA Council provides that an extraordinary increase in the number of nationals from the other EEA States or in the total number of jobs in the economy, both in comparison with the number of the resident population, should be taken into account in the context of the review of the transitional measures.

Liechtenstein notified the Authority of the prevailing restrictive measures, applicable on 2 May 1995. Subsequently, two ordinances were adopted in which more favourable provisions, in comparison with those prevailing on that date, were laid down with respect to the entry and residence of citizens of other EEA States in Liechtenstein.

4.2.1.2 Complaints

Three complaints were lodged in the field of free movement of workers, all of which were against Norway. The first complaint concerned an order by the Norwegian Immigration Office to expel a Community citizen from Norway. While not questioning that the relevant provisions of *Directive 64/221/EEC* had been correctly implemented by Norway, the complainant considered that the application of the national implementing measures was too restrictive and did not take account of the case law of the European Court of Justice. The case was solved through an informal intervention by the Authority and the complainant was provided with a residence permit.

The second complaint concerned an alleged infringement of the principle of the free movement of workers due to allegedly discriminatory provisions in the statute of the Norwegian State Educational Loan Fund. Since an examination revealed that the relevant provisions did not infringe upon the free movement of workers, the Authority took a decision to close the case.

A third complaint was lodged by a Community citizen, regarding an alleged discrimination of foreigners who wished to study at the University at Oslo. In particular, an alleged requirement of an English test, imposed exclusively upon foreigners as a precondition for access to the University, was seen as a discriminatory measure. The complaint is still under examination and a request for information has

been put to Norway, in order to clarify the legal situation and the actual practices concerning access to the University.

4.2.2 Mutual recognition of professional qualifications

Under Article 30 of the EEA Agreement, the Contracting Parties shall take the necessary measures concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as the taking up and pursuit of activities by workers and self-employed persons. To that end, Annex VII to the Agreement refers to 56 directives and one decision, some of the directives laying down provisions on mutual recognition of professional qualifications, others dealing with the right of establishment and the provision of services.

4.2.2.1 Implementation

By the end of the reporting period, Norway had submitted notifications indicating full implementation of all but two directives in this field.

In December 1995, a letter of formal notice for failure to notify national implementing measures was sent to Norway with respect to one of the two directives, the *Second General System Directive* (92/51/EEC), an important EEA act with considerable scope. As concerns the other act not being notified as implemented, *Directive 94/38/EC*, *amending* Annexes C and D to the Second General System Directive, Norway communicated on an informal basis draft implementing measures.

In addition to notification control work, detailed conformity assessments of national implementing measures were carried out with respect to a number of directives.

Thus, it could be concluded that all the relevant provisions of the *Lawyers Directive* (77/249/EEC) had been implemented in Norway through the Regulation concerning the Right of Foreign Lawyers to Provide Legal Aid in Norway and concerning Foreign Qualifications as a Basis for a License to Practise Law in Norway. That Regulation also implements those provisions of the *First General System Directive* (89/48/EEC) that relate to lawyers, as Norway has opted for a "vertical" approach, transposing the *First General System Directive* profession by profession.

On the other hand, the Norwegian measures adopted and notified in order to implement the *Doctors Directive* (93/16/EEC) did not appear to transpose all provisions contained in Title IV of the Directive. Norway was therefore invited to clarify its position in that respect.

Iceland had submitted notifications indicating full implementation of all but two directives, namely the *Transitional Toxic Products Directive* (74/556/EEC) and the *Toxic Products Directive* (74/557/EEC). Those Directives were notified as partly implemented through corresponding provisions in the Icelandic Regulation on the use of Toxic and Hazardous Chemical Substances, which needs to be amended in order fully to comply with the Directives.

Having examined the respective national measures, the Authority concluded that Iceland had not implemented Title IV of the *Doctors Directive* (93/16/EEC). Since informal contacts did not lead to concrete results, formal proceedings were initiated and a letter of formal notice was sent in June 1995. In October, Iceland notified the remaining national measures implementing the Directive, and submitted the relevant legal texts. The notified measures are currently being examined by the Authority.

In the course of the examination of the Icelandic national measures, a number of other directives were identified where implementation still needed to be complemented. Thus, full transposition of five directives in the craftsmen sector requires further national measures, as the system of dispensations and exemptions concerning professional qualifications laid down in the Icelandic Industrial Act does not fully meet the requirements of these Directives. The Directives in question are the *Transitional Manufacturing and Processing Directive* (64/427/EEC), the *Manufacturing and Processing Directive* (64/429/EEC), the *Food Manufacturing and Beverage Directive* (68/365/EEC), the *Transitional Food Manufacturing and Beverage Directive* (68/366/EEC) and the *Hairdressing Directive* (82/489/EEC).

After the Authority had drawn attention to this fact in a letter to the Icelandic Government, the latter indicated that a bill remedying the defects was to be submitted to Parliament in January 1996.

Further conformity assessments of Icelandic measures covered the provisions in Titles I and II of the *Doctors Directive*, the *Nurses Directive* (77/452/EEC), the *Directive on Practitioners of Dentistry* (78/686/EEC), and the *Midwives Directive* (80/154/EEC). It could be concluded that the provisions laid down in these Directives on the mutual recognition of diplomas in medical professions had been properly implemented through Law No. 116/1993 on Amendments to Legal Provisions in the Field of Health and Social Security adopted in the Light of the Accession to the Agreement on the European Economic Area and by a Regulation based on this law.

As regards the *First* and *Second General System Directives*, the transposition by Iceland of the central provisions of the Directives relating to the mutual recognition mechanisms was also examined. The examination revealed that - unlike Norway - Iceland had adopted a "horizontal" law concerning the recognition of all professional qualifications falling within the scope of the two Directives. Thus, the Icelandic Act on Recognition of Education and Certificates gives applicants who fulfil the requirements of either Directive the right to recognition, and correctly puts into place the basic recognition mechanism contained in the Directives. In compliance with the Directives, the competent Minister may adopt provisions on an aptitude test or an adaptation period where such compensatory measures are considered necessary. Use of this option has only been made for the health professions falling within the scope of the Directives.

Liechtenstein only notified full implementation of the *Itinerant Activities Directive* (75/369/EEC), the *Commercial Agents Directive* (86/653/EEC), the *Transfer between Holdings Directive* (67/530/EEC), the *Agricultural Leases Directive* (67/531/EEC), the *Access to Co-operatives Directive* (67/532/EEC), the *Access to Credits Directive*

(68/191/EEC), and the *Toxic Products Directive* (74/557/EEC). Four directives in the medical sector did not necessitate implementing measures, whereas the remaining directives relative to mutual recognition of professional qualification were notified either as partly implemented or as not implemented at all. It was indicated, however, that the required implementing measures for the these directives were being drawn up, and a number of drafts were submitted to the Authority.

Following several informal contacts which revealed that comprehensive national legislation still needed to be adopted, formal proceedings were initiated in December 1995 against Liechtenstein for failure to notify the implementation of the *First General System Directive* (89/48/EEC), and the *Second General System Directive* as amended.

The EEA acts included in Annex VII require that the EFTA States provide the Authority with information on competent authorities, information centres, and national diplomas covered by the directives. By the end of the reporting period, Norway and Iceland had submitted most of the relevant information, although it still needed to be complemented in some cases. No information was received from Liechtenstein, obviously due to the fact that the competent bodies are only designated following the adoption of the respective national implementing measures, something which had not been done by the end of the reporting period.

4.2.2.2 Complaints

In 1995, four complaints were received by the Authority in the field of mutual recognition of professional qualifications, all of them against Norway.

Three complaints related to the medical sector, and concerned recognition of professional qualifications in specialized dentistry (orthodontics), specialized medicine (ophthalmology) and in optometry, respectively. The examination of two of the cases is nearly completed, whereas a complaint concerning the recognition of a Community optician will be further pursued. The obstacle to recognition seems to be that Norway has not yet implemented the relevant parts of the *Second General System Directive*.

The fourth complaint concerned alleged non-implementation of rules pertaining to the aptitude test for migrating lawyers. The absence of precise national rules would, according to the complainant, make any recognition virtually impossible. However, an examination of the complaint revealed that precise rules had been adopted by Norway with respect to the aptitude test.

4.2.3 Right of establishment

Article 31(1) of the EEA Agreement prohibits restrictions on the freedom of establishment of nationals of an EEA State in the territory of another EEA State. The prohibition also applies to the setting up of agencies, branches or subsidiaries by EEA

nationals in any EEA State. Six directives referred to in Annex VIII to the Agreement implement this basic principle.

In 1994, Iceland had not implemented the Directives in this field. A legal basis for subsequent implementation had been created through an amendment to the Icelandic Foreign Nationals' Supervision Act. However, further rules still needed to be adopted by the Minister of Justice. Two pre Article 31 letters were sent by the Authority and several other informal contacts took place. In December 1995, Iceland adopted and notified the legislation considered to fully implement the Directives.

Following a request by the Authority for further information, Norway submitted additional national legislation and notified the Directives as completely implemented.

As is the case with respect to the EEA acts relative to free movement of workers, Protocol 15 to the EEA Agreement allows Liechtenstein to maintain in force, until 1 January 1998, national provisions in the field of right of establishment, submitting to prior authorization entry, residence and employment. At the same time, the two ordinances referred to in Section 4.2.1.1 above also apply to the right of establishment.

4.2.4 Social security

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

The main act referred to in Annex VI, the *Regulation concerning Social Security and Migrant Workers* (EEC No 1408/71), deals with the application of social security schemes to employed persons, self-employed persons, and members of their families moving between EEA States. Another *Regulation* (EEC No 574/72) lays down the procedure for the implementation of the first-mentioned Act. At present, Annex VI refers to 22 acts amending and updating these two regulations, including *Decision No. 151 of the Administrative Commission on Social Security*, that became part of the EEA Agreement in July 1995.

Upon becoming a party to the EEA Agreement, Liechtenstein started to apply the EEA social security co-ordination system. However, the list of national schemes and benefits to be submitted according to *Regulation No. 1408/71* has not yet been submitted to the Authority. Both Iceland and Norway have notified as implemented all acts in this sector.

During 1995, one complaint was received in this sector. It concerns the question whether a Norwegian working on the Norwegian continental shelf and residing in another EEA State, should be covered by the co-ordination system of *Regulation 1408/71*. The case is still under examination.

During the first part of the year, several complaints received by the Authority during 1994 were forwarded to the European Commission as they were related to Austria, Finland or Sweden.

4.3 FREEDOM TO PROVIDE SERVICES

Article 36 of the EEA Agreement, establishing the freedom to provide services across borders within the EEA, applies to all services except transport. The relevant secondary legislation concerning the harmonized sectors is referred to in Annex IX (financial services), Annex X (audio-visual services), and Annex XI (telecommunication services) to the Agreement. Transport is regulated in Articles 47 to 52 of, and in Annex XIII to the Agreement.

4.3.1 Financial services

The secondary legislation concerning financial services is contained in the 30 directives originally referred to in Annex IX to the EEA Agreement, and in the 11 directives added to it through subsequent EEA Joint Committee decisions. Their purpose is to create a single financial market within the EEA, based on the principles of *"single licence"* and *"home country control"*.

4.3.1.1 Notification control

Banking

Annex IX refers to eleven directives in the banking sector. Most of them have been notified as fully implemented by the three EFTA States.

Norway had a transitional period until 1 January 1995 for the implementation of the *Banking Annual Accounts and Consolidated Accounts Directive* (86/635/EEC), and notified implementation of it in October 1995. During the same month, a pre Article 31 letter for failure to notify implementation was sent to that State with respect to three other directives, namely the *Banking Consolidated Supervision Directive* (92/30/EEC), the *Large Exposures Directive* (92/121/EEC), and the *Deposit Guarantee Scheme Directive* (94/19/EC).

A pre Article 31 letter regarding the *Deposit Guarantee Scheme Directive* was also sent to Iceland in October 1995, since that Directive had only been notified as partially implemented.

Liechtenstein has a transitional period up to 1 January 1997 for the implementation of the *Banking Annual Accounts and Consolidated Accounts Directive* and the *Banking Consolidated Supervision Directive*. While Liechtenstein notified implementation of the other banking directives in June 1995, it informed the Authority, in response to a pre Article 31 letter dispatched in November 1995, that compliance with the *Money Laundering Directive* (91/308/EEC) would only be achieved through new and amending national measures to that effect, to be adopted by mid-1996.

Insurance

The principles of single licence and home country control were introduced in the insurance sector through the *Third Non-life Insurance Directive* (92/49/EEC) and the *Third Life Assurance Directive* (92/96/EEC). These Directives (Third Insurance Directives), together with the *Insurance Accounts Directive* (91/674/EEC), became part of the EEA Agreement on 1 July 1994 and were, as far as Iceland and Norway are concerned, to be complied with by the same date. Iceland notified the Third Insurance Directives as fully implemented on that date. Norway notified partial implementation later in the Autumn of 1994.

During the reporting period, Norway submitted notifications for a major part of the outstanding national measures. However, notifications were still not entirely complete by the end of 1995, as two Regulations implementing the *Third Non-life Insurance Directive*, and three implementing the *Third Life Assurance Directive*, remained to be adopted by the Ministry of Finance. They are expected to be introduced in early 1996.

In July 1995, Iceland notified the *Insurance Accounts Directive* as partially implemented. Norway, which had a transitional period up to 1 January 1995, notified the Directive as fully implemented in October 1995.

In 1995, one act was added to Annex IX through an EEA Joint Committee decision, namely *Commission Decision 93/43/EEC (Icelandic Vehicles Bordercheck Decision)*. According to the Decision, the EEA States shall refrain from making checks on insurance in respect of vehicles normally based in Iceland. Norway notified implementation of the Act in November 1995, whereas in Liechtenstein the decision is directly applicable.

Liechtenstein notified in August 1995 all insurance directives, except for the *Insurance Accounts Directive*, as partially implemented. Regarding that Directive, Liechtenstein has a transitional period up to 1 January 1997. With regard to the *Third Non-Life Insurance Directive,* Liechtenstein also had a transitional arrangement, according to which Liechtenstein could postpone until 1 January 1996 the application of the Directive to compulsory insurance against accident.

On 6 December 1995, an Insurance Supervisory Act and a Road Traffic Act were adopted by the Liechtenstein Parliament. According to a communication received by the Authority in December 1995, the adoption in March 1996 of two Government Regulations would make implementation of all directives in the insurance sector complete.

Stock exchange and securities

Seven directives referred to in Annex IX to the EEA Agreement with respect to the stock exchange and securities sectors lay down basic rules on the production and accurate presentation of information for the market participants, and on the undertakings for collective investment in transferable securities.

Both Iceland and Norway have notified these directives as fully implemented.

Liechtenstein considers the *Admission Directive* (79/279/EEC), the *Listing Particulars Directive* (80/390/EEC), and the *Disclosure Directive* (82/121/EEC) as not applicable to it, since it has no stock exchange. As to the implementation of the *Major Holdings Directive* (88/627/EEC), the *Prospectus Directive* (89/298/EEC) and the *Insider Dealing Directive* (89/592/EEC), Liechtenstein had a transitional period until 1 January 1996. A notification regarding partial implementation of the *UCITS Directive* (85/611/EEC) was submitted by that State in June 1995. In response to a pre Article 31 letter, Liechtenstein informed the Authority that measures to ensure full compliance were planned to be adopted so as to enter into force as of mid-1996.

In 1995, two new directives became applicable in this sector. Under the *Investment Services Directive* (93/22/EEC), the principles of single licence and home country control, already in force for credit institutions, are being extended to other providers of investment services. The *Capital Adequacy Directive* (93/6/EEC) prescribes the capital requirements covering market risks of both credit institutions and investment firms. Whereas the national measures implementing these directives were to enter into force by 31 December 1995, regarding the *Investment Services Directive* the laws, regulations and administrative provisions transposing it had actually to be adopted already by 1 July 1995. As Iceland and Norway did not submit notifications regarding the adoption of such measures, pre Article 31 letters were dispatched to them in October 1995.

Liechtenstein notified in June 1995 that both Directives were fully implemented.

4.3.1.2 Conformity assessment

During the first half of the reporting period, the Authority's Capital Movements and Financial Services Directorate (as it then was) completed, in the financial services sector, a number of conformity assessment projects that had been initiated in 1994. The projects covered the five States that were parties to the EEA Agreement on the EFTA side during that year. Following the accession of Austria, Finland and Sweden to the European Union, when handing over to the European Commission its files relative to those States, the Authority drew the Commission's attention to its findings in their regard.

During the reporting period, no conformity assessment was carried out in this field as regards Liechtenstein.

Banking

In the banking sector, the first project concerned the national measures implementing the *First Banking Directive* (77/780/EEC) and the *Second Banking Directive* (89/646/EEC). Already in 1994 Iceland and Norway had been invited, through pre

Article 31 letters, to amend their national measures in a number of instances where the Authority considered them not to comply with the provisions of the Directives.

In its reply to the letter, Iceland agreed to introduce all the proposed amendments. To this end, Government regulations were adopted during 1995, whereas bills proposing other necessary amendments were submitted to the Parliament. However, by the end of the reporting period the bills had not yet been passed as laws.

In July 1995, the Authority sent a letter of formal notice to Norway, as it had failed to comply with the provisions regarding which the Authority had proposed amendments. In its reply to the letter, Norway indicated, except for one point, that such amendments would be introduced. By the end of 1995, the Authority had not yet been notified of the adoption of any amending measures.

The second conformity assessment project related to the *Money Laundering Directive* (91/308/EEC).

As regards Iceland, the examination of the national measures showed not only that all relevant provisions of the Directive had been properly implemented, but also that detailed additional provisions had been introduced at national level to ensure effective combating of money laundering. The quality of the Norwegian transposition was also very high, except for the fact that the national measures did not cover all "financial institutions" as defined in the Directive. However, this shortcoming will be remedied following the adoption of the measures proposed by the Norwegian Government in its White Paper to that effect, submitted to the Parliament at the end of December 1995.

Two new conformity assessment projects were initiated in the latter half of 1995. These projects were on the transposition by the three EFTA States of the *Solvency Ratio Directive* (89/647/EEC) and the *Large Exposure Directive* (92/121/EEC).

Insurance

The first conformity assessment project in the insurance sector related to the implementation of the Motor Insurance Directives in the five EFTA States that were parties to the EEA Agreement during 1994. The results of the assessment are recorded in a report entitled *"Transposition of the First, Second and Third Motor Insurance Directives (72/166/EEC - 84/5/EEC - 90/232/EEC) in Austria, Finland, Iceland, Norway and Sweden"*[6] made public in June 1995. Moreover, for the purpose of making the national measures transposing the Directives more easily accessible, five additional documents were issued at the same time, setting forth, with respect to the EFTA State in question, a table of correspondence and the texts of the national measures transposing the Directives in that State.[7]

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6 Doc. No. A-2/95. Copies of the reports and materials mentioned below may be obtained free of charge from the Authority's Directorate for Free Movement of Persons, Services and Capital.

7 Doc. Nos: B-6/95 to B-10/95.

In pre Article 31 letters, both Iceland and Norway were invited to introduce the amendments that the Authority considered necessary for these States to fully comply with the three Directives. By the end of September 1995, Norway had notified the adoption of such measures. With regard to Iceland, the two issues raised by the Authority remained open. However, one of them was solved in early 1996 and in respect of the other, the Authority had been informed of plans to amendments of the legislation to remove also that problem.

Another major project concerned the insurance intermediaries sector and resulted, also in June 1995, in the publication of the report *"National measures on insurance intermediaries in Austria, Finland, Iceland and Sweden"*.[8] In addition, four documents were issued containing tables of correspondence and texts of national measures transposing the *Insurance Intermediaries Directive* (77/92/EEC) in these four States,[9] and three documents with corresponding material on the transposition of the *Insurance Intermediaries Recommendation* (92/48/EEC) in Austria, Finland, and Iceland.[10]

The implementation by Iceland of the *Insurance Intermediaries Directive* was found to be complete, with the exception of one provision that had not been transposed. The Authority invited Iceland to introduce the required measures. At the end of 1995, the measures had not yet been adopted.

At the time of the conformity assessment, Norway did not lay down general commercial or professional requirements for insurance intermediaries. Therefore, the transposition of only a minor part of the Directive was actually necessary. The situation changed entirely, following the adoption of the new Regulation on Insurance Brokers, which Norway notified to the Authority in early December 1995. The Authority could subsequently conclude that the Regulation was in full compliance with the Directive.

In addition to the above described projects, the Authority also examined the national measures implementing certain other directives in the insurance sector. Thus, the respective Norwegian measures were found to fully comply with the relevant provisions of the *Tourist Assistance Directive* (84/641/EEC), the *Legal Expense Insurance Directive* (87/344/EEC), the *Reinsurance Directive* (64/225/EEC), and the *Icelandic Vehicles Bordercheck Decision* (93/43/EEC). Similarly, Iceland was found to have properly implemented the *Reinsurance Directive*.

During the second half of 1995, the Directorate for the Free Movement of Persons, Services and Capital initiated another major conformity assessment project, the examination of the national measures adopted by Iceland and Norway for the transposition of the *First, Second* and *Third Non-life Insurance Directives* (73/239/EEC, 88/357/EEC and 92/49/EEC), as well as the *First, Second* and *Third Life Assurance Directives* (79/267/EEC, 90/619/EEC and 92/96/EEC). The

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8 Doc. No. A-3/95.

9 Doc. Nos: B-11/95 to B-14/95.

10 Doc. Nos: B-15/95 to B-17/95.

examination of the Liechtenstein implementing measures will be started as soon as the remaining national measures will have been adopted and notified to the Authority.

Stock exchange and securities

In the stock exchange and securities sector, a conformity assessment project initiated in 1994 resulted in the publication, in June 1995, of the report *"Transposition of the UCITS Directive (85/611/EEC) in Austria, Finland, Iceland, Norway and Sweden",*[11] as well as of five documents containing tables of correspondence and texts of national measures transposing the Directive in the five States concerned.[12]

Following a pre Article 31 letter and further consultations, Iceland and the Authority reached a common understanding on the amendments that would still be required for that State to comply with the Directive.

The letter of formal notice sent to Norway in July 1995 with respect to the *First* and *Second Banking Directives* (see above, under the heading "Banking") also alleged that Norway had not implemented certain provisions of the *UCITS Directive*. In its reply to the letter, Norway indicated that the provisions would be transposed, but no measures had yet been notified by the end of the year.

4.3.2 Audio-visual services

Annex X to the EEA Agreement only refers to one act, the so-called *Television Without Frontiers Directive* (89/552/EEC). Its objective is to provide for minimum rules relative to the freedom of transmission in television broadcasting, to lay down mandatory requirements for the protection of consumers, as well as to promote a majority proportion of European production in the television programmes in the EEA States.

Iceland and Norway notified the Directive as fully implemented in early 1994, and Liechtenstein in mid-1995.

During 1994, Norway used the option provided for in the Directive to notify its intention to suspend the re-transmission of certain broadcasts, in particular broadcasts by Swedish television channels of pornographic films on Norwegian cable networks. In February 1995, a meeting took place in Brussels between the parties concerned. As no solution was found, the Swedish television channel later filed a suit against Norway. At the end of 1995, the case was pending before the competent court in Oslo.

4.3.3 Telecommunication services

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11 Doc. No. A-1/95.

12 Doc. Nos. B-1/95 to B-5/95. Copies of the above mentioned reports and materials may be obtained free of charge from the Authority's Directorate for Free Movement of Persons, Services and Capital.

Annex XI to the EEA Agreement refers to seven basic acts in the telecommunications sector. Three of them concern the reservation of specific frequency bands for mobile telecommunications, paging and cordless telecommunications. Two deal with the introduction of a harmonized set of rules on open network provision (ONP) conditions for different types of telecommunications services. One directive deals with competition on the markets for telecommunications services, including satellite communications, and a decision introduces a standard international telephone access code.

In addition to this, one Decision is referred to in Article 10(2) of Protocol 31 to the Agreement, concerning civil protection, namely *Council Decision on the Introduction of a single European Emergency Call Number* (91/396/EEC).

Norway introduced the single European emergency call number (-112-) in 1994, and Iceland and Liechtenstein in 1995. The standard international access telephone code (-00-) is presently in use in all EFTA States.

As regards the implementation of the other acts listed in Annex XI, Norway notified all earlier directives as fully implemented in 1994, and the *Competition in Satellite Telecom Services Directive* (94/46/EC) in December 1995. This Directive is the only new act included in Annex XI to the EEA Agreement in 1995, and was to be complied with by the EEA States by the beginning of September of that year. It amends, among other things, the *Teleservices Competition Directive* (90/388/EEC).

Since Iceland had failed to notify implementation of the *Competition in Satellite Telecom Services Directive* and the *ONP Directive* (90/387/EEC), letters of formal notice were dispatched in December 1995.

These two Directives were also the subject of letters of formal notice sent at the same time to Liechtenstein. In addition, it received such letters for failure to notify implementation of the *Teleservices Competition Directive*, the *ONP Leased Lines Directive* (92/44/EEC), the *Frequency Bands for Mobile Communications Directive* (87/372/EEC), the *Frequency Bands for Public Radio Paging Directive* (90/544/EEC), and the *DECT Frequency Bands Directive* (91/287/EEC).

4.3.4 Transport

While Articles 47 to 52 of the EEA Agreement only apply to transport by rail, road and inland waterway, Annex XIII to the Agreement covers all modes of transport, referring to 77 binding acts.

Annex XIII is divided into seven chapters. The chapter on inland transport refers to acts dealing with general issues, infrastructure, competition, state aid, frontier facilitation and combined transport. The acts in the chapter on road transport cover, among other things, social and technical harmonization and safety, access to the market, rates, and admission to the occupation. The acts in the chapter on transport by rail concern notably structural policy and rates. Transport by inland waterway is the

subject matter of the fourth chapter, covering access to the market, structural policy, access to the occupation, and technical harmonization. The fifth and sixth chapters deal with maritime transport and civil aviation, respectively. In 1995, a seventh chapter entitled "Other" was added to house the Directive dealing with summertime arrangements.

4.3.4.1 Inland, road and rail transport

Article 48(1) of the EEA Agreement stipulates that the provisions of an EEA State, relative to the transport sectors now in question and not covered by Annex XIII to the Agreement, shall not be made less favourable in their direct or indirect effect on carriers of other States as compared with carriers registered in that State. Article 50(1) prohibits discrimination in the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links, on grounds of the country of origin or of destination of the goods in question.

By the end of the reporting period, Annex XIII referred to 55 binding acts relative to inland, road or rail transport. Two of them became part of the EEA Agreement during 1995.

In December 1994, the Authority had sent letters of formal notice to Iceland and Norway for failure to implement the *Inland Transport Public Service Obligation Regulation* (EEC No. 1191/69), the *Inland Transport State Aid Regulation* (EEC No. 1107/70), the *Regulation on Elimination of Border Controls in Inland Transport* (EEC No. 4060/89), the *Regulation on Fixing of Rates for Carriage of Goods by Road* (EEC No. 4058/89), and the *Regulation Amending Certain Inland Transport Acts Following German Unification* (EEC No. 3572/90). In addition, Iceland had been sent a letter of formal notice for failure to implement the *Regulation on Abolition of Discrimination in Transport Rates and Conditions* (EEC No. 11/60), and Norway for the failure to implement the *Regulation on the List of Waterway of Maritime Character* (EEC No. 281/71).

In May 1995, Iceland notified the relevant national measures implementing the above mentioned acts, and the cases were subsequently closed. In September 1995, Norway notified implementing measures relative to five regulations regarding which letters of formal notice had been sent, and the respective cases were closed. By contrast, no notification was received before the end of the reporting period concerning the *Regulation on Fixing of Rates for Carriage of Goods by Road*.

By the end of 1995, there remained two other EEA acts that should have been implemented during 1994 but had not been notified by Iceland - namely the *Directive on Mutual Recognition of Diplomas in Road Transport* (77/796/EEC), and the *Decision on the Reporting Form on Standard Checking Procedures in Road Transport* (93/172/EEC). Again, Norway had not followed up on the notification on partial implementation that it had submitted in the Autumn of 1994, with respect to the *Development of Railways Directive* (91/440/EEC).

As regards the EEA acts in these sectors that were part of the EEA Agreement when Liechtenstein became a party thereto, it should be recalled that many of them are Community regulations or decisions and that such acts are directly applicable in Liechtenstein. Nevertheless, four directives had not been notified as fully implemented by the end of 1995. They were the *Combined Transport of Goods Directive* (92/106/EEC) and the *Directive on Training for Dangerous Goods Drivers* (89/684/EEC), regarding which no measures had been notified, and the *Directive on Vehicles Hired Without Drivers* (84/647/EEC) and the *Directive on Standard Checking Procedures in Road Transport* (88/599/EEC), on which notifications on partial implementation had been received.

During 1995, five new acts in these sectors had to be implemented by the EFTA States. Of these, by the end of 1995, Iceland had neither notified implementation of the *Regulation on Road Haulage by Non-resident Carriers* (EEC No 3315/94), nor the *Regulation on Own Account Road Haulage* (EEC No 792/94), nor the Directive 94/23/EEC *amending* the Roadworthiness Test Directive (77/143/EEC).

The same three acts had not been notified as implemented by Norway, which had also failed to notify measures implementing the *Directive on Taxes on Vehicles for Transport of Goods by Road* (93/89/EEC). Implementation of that Directive had also not been notified by Liechtenstein.

4.3.4.2 Inland waterway transport

The EEA Agreement refers to 13 acts in this field, two of which were included in 1995, namely Regulation (EC) No 844/94/EC, *amending* Regulation (EEC) No 1101/89 on Scrapping Schemes, and Regulation (EC) 3039/94, *amending* Regulation (EEC) No 1102/89 on Implementation of Scrapping Schemes.

Protocol 20 to the EEA Agreement provides for arrangements to be elaborated by 1 January 1996, within the international organizations concerned, to ensure reciprocal equal access to inland waterways within the territory of the Contracting Parties, for all Contracting Parties, taking into account the obligations under relevant multilateral Agreements. As regards the EFTA States which did not have, on the entry into force of the EEA Agreement, the right of equal access to Community inland waterways, all relevant *acquis* in inland waterways would apply to them as soon as they obtained such a right.

Following the relevant resolution being taken by the Central Rhine Commission in November 1995, the Commission instructed its President to inform the Governments of Iceland, Liechtenstein and Norway about the intention of the Member States of the Commission to grant, to the fleets registered in the EEA States, free access to the inland waterways referred to in the *Convention for the Navigation of the Rhine*, under the condition that these States comply with the obligations laid down in the Convention.

In these circumstances, in December 1995, the Authority requested the EFTA States to provide information, among other things, on whether they intended to exercise the

right of equal access to Community inland waterways, as provided for in Protocol 20 to the EEA Agreement.

4.3.4.3 Maritime transport

Annex XIII to the EEA Agreement refers to nine binding acts related to maritime transport. Three of them, namely the *Ballast Space Measurement Regulation* (EC) No 2978/94, the *Ship Inspection and Survey Directive* (94/57/EEC), and the *Seafarer Minimum Training Directive* (94/58/EEC), became part of the Agreement in the Summer of 1995, and were to be complied with by the EFTA States by 31 December 1995.

The six earlier acts in this field have been notified as implemented by both Iceland and Norway.

As Liechtenstein has neither ports nor ships-register, these acts are not considered relevant for that State.

4.3.4.4 Civil aviation

Annex XIII to the EEA-Agreement refers to 15 binding acts, comprising 11 regulations, three directives and one decision. These acts include the so-called *"third aviation package"*, which is the most important element in the creation of a single market in civil aviation.

In May 1995, the EEA Joint Committee replaced the *Air Accident Investigations Co-operation Directive (80/1266/EEC)* by the *Civil Aviation Accidents and Incidents Investigation Directive* (94/56/EC). However, that Directive did not become part of the EEA Agreement during 1995, since Iceland had not notified, by the end of the year, fulfilment of the necessary constitutional requirements.

Iceland and Norway notified already during 1994 their respective basic national measures implementing the relevant EEA acts. Subject to a review by the EEA Joint Committee during 1999, Liechtenstein shall only implement these acts as of 1 January 2000.

In response to informal contacts, Iceland has notified, in August 1995, further implementing measures concerning the *Cockpit Personnel Directive* (91/670/EEC).

Under the *Air Carriers Licensing Regulation* (EEC No 2407/92), the EFTA States must consult the Authority before adopting laws, regulations or administrative provisions implementing the act. Moreover, when adopted, these measures shall be communicated to the Authority. Although the primary legislation concerning this act had been notified by the end of 1995, Iceland had yet to notify secondary administrative provisions.

During the reporting period, the Authority assisted Iceland and Norway in publishing, in the Official Journal of the European Communities and the EEA Supplement thereto, information on granted or revoked air carrier licences. The Authority also assisted Norway in the publication of impositions of public service obligations on air routes and invitations to tender.

4.3.4.5 Other

The *Seventh Summertime Arrangements Directive* (94/21/EC) became part of the EEA Agreement as of 1 May 1995, and was to be implemented on the same day. By the end of the reporting period none of the three EFTA States had notified implementing measures.

4.3.5 Non-harmonized sectors

During the Spring of 1995, the Authority received altogether eight complaints concerning the new Norwegian Law on Lotteries. The complaints concerned the restrictions the new law introduces on operating gaming machines with pay-outs, the pursuit of these activities being reserved for charitable organizations only.

In July 1995, the Authority received a complaint against Norway concerning a fishing vessel having been refused access to repair facilities in a Norwegian port. The Norwegian refusal was based on the allegation that the vessel had been fishing in disputed waters, the so-called "loophole".

At the end of the reporting period, the Authority was still investigating these two cases.

4.4 FREE MOVEMENT OF CAPITAL

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

Iceland's right to continue to apply existing domestic legislation to certain short term capital movement operations expired on 1 January 1995, as did Norway's right to do the same with respect to the acquisition of domestic securities and admission of such securities to a foreign capital market, direct investment on national territory and investment in real estate on national territory. During the first months of 1995, both States notified the Authority, together with complete legal texts, of the new national provisions necessary to ensure compliance with the Agreement after the expiry of these transitional periods.

Liechtenstein notified its national legislation in October 1995.

During 1995, Iceland and Liechtenstein were allowed, under the Agreement, to continue to apply existing domestic legislation regulating direct investment on national territory and investments in real estate on national territory. For Iceland, this transitional arrangement expired on 1 January 1996.

At the same time, Annex XII allows Iceland to continue to apply existing restrictions on foreign ownership and/or ownership by non-residents in the sectors of fisheries and fish processing, and Norway to do so in respect of ownership of fishing vessels by non-nationals. The restrictions may not concern indirect engagement in these activities. National authorities have the right to oblige companies which have been wholly or partly acquired by those to whom the restrictions apply to divest themselves of the above-mentioned investments.

During 1995, the Authority received no complaints relating to the capital movements sector.

4.5 HORIZONTAL AREAS RELEVANT TO THE FOUR FREEDOMS

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

4.5.1 Health and safety at work

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

Annex XVIII to the Agreement refers to 24 basic directives laying down such minimum requirements. The areas covered by the directives include environment at the work place, protection against physical, biological and chemical agents and dangerous substances, protective equipment, protection of, and facilities for, pregnant and breastfeeding or nursing workers, mineral extracting industries, temporary construction sites, medical treatment on board ships, and work on board fishing vessels.

Systematic review of the notifications submitted in this sector by the three EFTA States was initiated during the last quarter of 1995. This review resulted in pre Article 31 letters being sent to all of them.

From Norway's reply the Authority concluded that transposition was not yet complete with respect to the following acts: the *Directive on Improvement of Safety and Health*

at Work (89/391/EEC), the *Ban on Certain Agents and Work Activities Directive* (88/364/EEC), the *Mineral Extracting Industries (Drilling) Directive* (92/91/EEC), and the *Medical Treatment on Board Vessels Directive* (92/29/EEC). The same conclusion was drawn from Iceland's answer regarding the *Improvement of Safety and Health at Work Directive*.

Regarding a relatively high number of other directives notified by Iceland and Norway, the Authority had still only received drafts for the legal texts of the national implementing measures. By the end of 1995, final and complete national legal texts were still missing from both Iceland and Norway with regard to the following directives: W*ork Equipment Directive* (89/655/EEC)*, Carcinogens Directive* (90/394/EEC)*, Biological Agents Directive* (90/679/EEC as amended by 93/88/EEC)*, Temporary or Mobile Construction Sites Directive* (92/57/EEC), and *Surface and Underground Mineral Extracting Industries Directive* (92/104/EEC).

Furthermore, as regards Norway the final and complete legal texts of implementing measures for the following directives were still not submitted: *Vinyl Chloride Monomer Directive* (78/610/EEC)*, Metallic Lead Directive* (82/605/EEC) and *Safety and Health Requirements for the Workplace Directive* (89/654/EEC). In addition, the final and complete texts of the Icelandic implementing measures for the following directives still remained outstanding: *Short-term Employment Directive* (91/383/EEC)*, Mineral Extracting Industries (Drilling) Directive, Medical Treatment on Board Vessels Directive* and *Pregnant and Breastfeeding Workers Directive* (92/85/EEC).

Liechtenstein informed the Authority that the main national legislation applicable in this field, the Labour Law of 29 December 1966 was under revision. In addition, specific secondary legislation in the form of ordinances had to be adopted. Accordingly, the following directives would only be transposed during the second half of 1996: *Safety Signs at Work Directive* (77/576/EEC, as amended by 79/640/EEC, and 92/58/EEC)*, Vinyl Chloride Monomer Directive, Physical, Chemical and Biological Agents Directive* (80/1107/EEC)*, Metallic Lead Directive, Asbestos Directive* (83/477/EEC as amended by 91/382/EEC)*, Noise at Work Directive* (86/188/EEC)*, Ban of Certain Agents and Work Activities Directive, Improvement of Safety and Health Directive* (89/391/EEC)*, Manual Handling of Loads Directive* (90/269/EEC)*, Display Screen Equipment Directive* (90/270/EEC)*,* and *Pregnant and Breastfeeding Workers Directive.*

4.5.2 Labour law

Article 68 of the EEA Agreement obliges the EEA States to introduce, in the field of labour law, the measures necessary to ensure the good functioning of the Agreement. In that respect, Annex XVIII refers to four basic directives. These directives deal with the approximation of the laws relating to collective redundancies (dismissals), safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, protection of employees in the event of insolvency of their employer, and the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Both Norway and Iceland notified already in early 1994 the *Collective Redundancies Directive* (75/129/EEC) and the *Transfer of Undertakings Directive* (77/187/EEC) as fully implemented. The implementation of the *amendment* to the first-mentioned Directive (92/56/EEC) was notified by Norway in mid-1994 and by Iceland in early 1995.

In addition, the *Employer's Insolvency Directive* (80/987/EEC) was notified by Iceland in early 1994 as fully implemented. In a pre Article 31 letter regarding the transposition of this Directive, Norway was requested to submit further information relative to some provisions in the Law on State Guarantee for Wage Claims in the Event of Insolvency, the Authority being of the opinion that, in the circumstances outlined in the letter, an employee would not be covered by the wage guarantee. In its reply, Norway indicated that there was a Government proposal to amend the Law to comply with the Directive. The Authority is still awaiting the final legal text of the amendment for a final check.

In a communication submitted in early 1995, Iceland informed the Authority that the *Employer's Information Obligation Directive* (91/533/EEC) - to be complied with by 1 July 1994 - would be implemented through provisions in a collective agreement, as permitted by the Directive. Since, by the end of the reporting period, the Authority had not been informed about the existence of such an agreement, nor that any other measures would have been taken by Iceland to implement the Directive, a letter of formal notice was sent in early 1996. Norway submitted the final legal texts at the end of 1995, making the notification of the *Employer's Information Obligation Directive* complete.

In the Summer of 1995, Liechtenstein submitted notifications concerning the implementation of all four directives in this sector. However, in reply to a pre Article 31 letter, Liechtenstein indicated that full compliance still required amendments in the national legislation, foreseen to enter into force by August 1996.

During the first part of 1995, several cases based on complaints were forwarded to the European Commission as they were related to the States that had joined the European Union as of 1 January 1995.

4.5.3 Equal treatment for men and women

In Article 69(1) of the EEA Agreement, the EEA States undertake to ensure and maintain the application of the principle that men and women should receive equal pay for equal work. Annex XVIII to the Agreement refers to three directives dealing with equal treatment at work, and two directives that are concerned with equal treatment in matters of social security and in occupational social security schemes. No new acts were added to the Annex in 1995.

The *Equal Pay Directive* (75/117/EEC), the *Equal Treatment of Self-employed Directive* (86/613/EEC), and the *Equal Occupational Schemes Directive*

(86/378/EEC) were notified as fully implemented by Iceland and Norway already in early 1994, and by Liechtenstein in mid-1995.

Iceland and Norway also notified in early 1994 that the *Equal Social Security Directive (79/9/EEC)* was fully implemented. According to further information provided by these States, there is no unequal treatment in their respective social security schemes.

Liechtenstein has informed the Authority that it is preparing a major revision of its social security legislation as regards equal treatment for men and women. It will go beyond the minimum requirements of the Directive, realizing the principle of equal treatment throughout the whole social security system. A draft will be presented to Parliament at the latest in December 1996, and adoption and entry into force are therefore not expected before 1997.

As regards the *Equal Access to Work Directive* (76/207/EEC), Norway has been requested to provide further information in order for the Authority to assess the national legislation with respect to collective agreements. Iceland is still to submit to the Authority the texts of the national measures transposing the Directive. Liechtenstein had a transitional period up to 1 January 1996 for the implementation of the Directive.

No complaints were lodged with the Authority in 1995 relative to this sector.

4.5.4. Consumer protection

Annex XIX to the EEA Agreement on consumer protection refers to eight directives dealing with, respectively, the indication of prices of food and non-food products, misleading advertising, contracts negotiated away from business premises, consumer credits, dangerous imitations, package travel, and unfair terms in contracts.

Iceland has notified the directives in this sector as fully implemented.

Norway has notified full implementation of all but two directives. In May 1995, the Authority sent a letter of formal notice to Norway for not having fully transposed the *Consumer Credits Directive* (87/102/EEC). The Norwegian reply to the letter was examined in the Autumn of 1995, and it was concluded that while most of the provisions of the Directive had been implemented, a few national measures transposing the provisions regarding financial services and financial institutions were still outstanding. The Authority will closely monitor Norway's further action in the matter.

As regards the *Package Travel Directive* (90/314/EEC), at the end of 1995 Norway notified to the Authority the adoption of a new and amended Package Tour Act, entering into force on 1 January 1996, as the national measure implementing most of the provisions of the Directive. Some complementing regulations still remain to be put into effect later in 1996.

In June 1995, Liechtenstein submitted notifications on all directives in this field. However, the *Unfair Terms Directive* (93/13/EEC), the *Foodstuff Prices Directive* (79/581/EEC) and the *Non-foodstuff Prices Directive* (88/314/EEC) were not notified as fully implemented. The first-mentioned Directive is planned to be fully transposed by April 1996. As to the two other acts, it was indicated that the necessary amendments to the national legislation would enter into force by August 1996.

4.5.5 Environment

Article 73 of the EEA Agreement provides that the objectives of the EEA States' action relating to environment shall be to preserve, protect and improve the quality of the environment, to help protect human health, and to ensure a prudent and rational utilization of natural resources. The basic principles to be applied in this respect are that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay.

Annex XX to the EEA Agreement presently refers to 62 EEA acts relevant to the environment sector, seven of which were added in 1995 through EEA Joint Committee decisions. In addition to two general directives dealing with the assessment of the environmental impact of major projects and with access to information on the environment, and two regulations on eco-labelling, eco-management and auditing, the major areas covered by the Annex are quality standards and minimum requirements relative to water and air, chemicals, industrial risk and biotechnology, and management and disposal of waste.

4.5.5.1 General provisions

The *Environment Information Directive* (90/313/EEC) was notified as fully implemented by Iceland and Norway already in early 1994. A notification on full implementation was received from Liechtenstein in November 1995.

As regards the *Environmental Impact Assessment Directive* (85/337/EEC), early in 1994, Iceland notified it as fully implemented.

In response to a letter of formal notice in 1994 for partial non-implementation of the Directive, Norway informed the Authority later during the year that, in application of existing legislation, the competent Ministries had been instructed by general guidelines to carry out an environmental impact assessment for all projects listed in Annex I to the Directive. In January 1995, the Authority was informed that a bill necessary to fully implement the Directive had been submitted to the Parliament in late December 1994, and that work on Ministerial regulations containing more detailed provisions was under way. These measures were expected to enter into force at the beginning of 1996.

In mid-1995, Liechtenstein informed the Authority that, in its view, existing legislation and its application ensured that the principles laid down in the Directive

were in fact applied. However, in order to achieve full formal compliance with the Directive, additional measures would be taken during the first half of 1996.

4.5.5.2 Water

Concerning the *Drinking Water Directive* (75/440/EEC), the *Drinking Water Measurement Directive* (79/869/EEC) and the *Consumption Water Directive* (80/778/EEC), both Iceland and Norway communicated during 1995 further implementing measures, so as to make their respective notifications on the implementation of these directives complete.

Moreover, in response to the Authority's pre Article 31 letters, Norway notified in November 1995 national measures filling the gaps that remained in the implementation of the *Discharges Into Aquatic Environment Directive* (76/464/EEC) and its *daughter* directives (82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC and 86/280/EEC), and of the *Ground Water Directive* (80/68/EEC). It also informed the Authority that an additional regulation would be introduced during 1996 to ensure complete formal implementation of the *Urban Waste Water Directive* (91/271/EEC), by which the implementation would be completed in this field.

Responding to a similar letter, Iceland informed the Authority in November 1995 that additional measures were foreseen during 1996 in order to fully implement the *Directive on Protection of Water Against Nitrates* (91/676/EEC). All other directives in this field have been notified as fully implemented by Iceland.

Liechtenstein informed the Authority in November 1995 that a new Water Protection Law was expected by mid-1996, which would ensure complete implementation of the above mentioned water protection directives.

4.5.5.3 Air

Concerning the *Sulphur Dioxide Limit Values Directive* (80/779/EEC), the *Lead Limit Values Directive* (82/884/EEC), the *Standards for Nitrogen Dioxide Directive* (85/203/EEC) and the *Air Pollution from Industrial Plants Directive* (84/360/EEC), Norway informed the Authority that the Government had decided in May 1995 that a new regulation, dealing with limit values for ambient air quality and noise, and imposing stricter limit values than those contained in these Directives, was to be circulated for public comment. The new regulation, which is expected to enter into force in the Spring of 1996, will make the implementation by Norway of these directives complete.

Although Iceland had a transitional period up to 1 January 1995 for the implementation of most of the air quality directives, the Authority received already in 1994 notifications on measures implementing those acts. Liechtenstein forwarded complete notifications on the implementation of the air quality directives in August 1995.

Regarding the *New Municipal Incineration Plants Directive* (89/369/EEC) and the *Existing Municipal Incineration Plants Directive* (89/429/EEC), it could be established in the course of informal contacts that existing Norwegian legislation contained general provisions which only empowered the competent authorities to lay

down in individual permits the conditions required by the Directives. Therefore, since the legislation did not transpose the Directives with the specificity, precision and clarity required in order to satisfy the requirement of legal certainty, a pre Article 31 letter was sent in November 1994, followed by a reminder in May 1995. In reply to these letters, Norway notified in July 1995 the adoption of a Regulation on the Incineration of Municipal Waste, entering into force on 1 June 1995, by which complete implementation of the Directives was ensured.

Iceland had a transitional period up to 1 January 1995 for the implementation of the two Directives, but had nevertheless notified implementing measures during 1994.

Liechtenstein informed the Authority that there were, at present, no municipal incineration plants in Liechtenstein. Should there be an application for authorization of a new plant, the Liechtenstein authorities would apply the limit values and conditions laid down in a 1987 Ordinance based on the Air Pollution Control Law. Furthermore, if necessary, the Liechtenstein authorities would use their discretionary powers, as foreseen in the Air Pollution Control Law, to prescribe more stringent measures than those foreseen in the Ordinance.

All EFTA States have notified implementation of the *Ozone Pollution Directive* (92/72/EEC) and the *Asbestos Pollution Directive* (87/217/EEC).

Regarding the *Large Combustion Plants Directive* (88/609/EEC), at the time of entry into force of the EEA Agreement, Iceland, Liechtenstein and Norway did not have any large combustion plants as defined in the Directive. According to a specific adaptation laid down in Annex XX to the Agreement, these States will comply with the Directive if and when they acquire such plants. The Authority has not been informed of any plants being acquired.

The new *Incineration of Hazardous Waste Directive* (94/67/EC), added to the EEA Agreement in December 1995, shall only be implemented by the end of 1996.

4.5.5.4 Chemicals, industrial risk and biotechnology

With regard to the five directives in this sector, one of them adapting to technical progress an earlier directive, the situation may be summarized as follows.

Norway notified already in 1994 implementation of the *Major Accident Hazards Directive* (82/501/EEC), also known as the "*Seveso Directive*". A subsequent assessment of the respective national measures confirmed that the Directive had been properly implemented.

Following a series of meetings and pre Article 31 letters in 1994 and 1995, Iceland notified in November 1995 two regulations implementing the Directive. Liechtenstein informed the Authority in December 1995 that an Ordinance ensuring complete implementation of the Directive would be adopted by the Government in March 1996, and would enter into force on 1 May 1996.

Norway had a transitional period up to 1 January 1995 for the implementation of the two directives dealing with genetically modified organisms ("GMOs"), that is, the *Contained Use of GMOs Directive* (90/219/EEC) and the *Deliberate Release of GMOs Directive* (90/220/EEC). In February 1995, it submitted a complete notification on measures implementing both Directives.

The same transitional period applied to Iceland. Since no notification had been received by April 1995, a letter of formal notice was sent for failure to implement the Directives. In response to the letter, Iceland informed the Authority in June 1995 that a bill for a law transposing the two Directives had been presented to the Parliament in May 1995. However, since no notification on the adoption of measures had been received, the Authority delivered a reasoned opinion in December 1995, requesting Iceland to take the necessary implementing measures within two months.

Liechtenstein's transitional period for the transposition of the two *GMOs Directives* expires on 1 July 1996.

Regarding the *Disposal of PCB and PCT Directive* (76/403/EEC), for the implementation of which all EFTA States had a transitional period until 1 January 1995, the EEA Joint Committee decided in early 1995 to postpone the deadline until 1 January 1997, for the review concerning the application of this Directive to those States.

4.5.5.5 Waste

Liechtenstein notified in August 1995 the *Waste Framework Directive* (75/442/EEC) as fully implemented.

Norway had a transitional period up to 1 January 1995 for the implementation of the Directive. In November 1995, Norway informed the Authority that the existing Pollution Control Law covered most of the provisions of the Directive. The remaining provisions were covered by a new national regulation that had entered into force in October 1995. Norway also stated that the elaboration of the waste management plan which had to be drawn up pursuant to the Directive was underway, and would be finalized by the end of June 1996.

While Iceland notified implementation of the Directive already in early 1994, it has not yet communicated to the Authority the waste management plan.

As regards the *Sewage Sludge Directive* (86/278/EEC) and the *Waste Oils Directive* (75/439/EEC), Iceland notified implementing measures already in early 1994 and Liechtenstein in August 1995.

Since the national measures Norway had notified in early 1994 did not appear to fully ensure compliance with the *Sewage Sludge Directive*, a pre Article 31 letter was sent in October 1994. In January 1995, the Authority was informed that a complementing regulation had entered into force at the beginning of that year. Regarding the *Waste Oils Directive*, the Authority dispatched pre Article 31 letters both in November 1994

and May 1995. In June 1995, Norway informed the Authority that a regulation on the disposal of waste oils, implementing the rest of the Directive, had entered into force at the beginning of the month.

Iceland and Norway were entitled to a transitional period expiring on 1 January 1995 with respect to the implementation of the *Shipments of Waste Regulation* (EEC No 259/93). While Iceland had notified the Regulation as implemented already in mid-1994, Norway notified implementation as of the beginning of 1995. Liechtenstein had a partial transitional period up to 1 January 1996, after which date the Regulation became directly applicable in full.

The *Hazardous Waste Directive* (91/689/EEC) having been integrated into the EEA Agreement in 1994, an *amendment* to it (94/31/EC) was made part of the Agreement in May 1995. The amendment introduced 27 June 1995 as a new date for compliance with the entire Directive.

Liechtenstein notified in August 1995 the amended Directive as fully implemented.

In November 1995, Norway informed the Authority that the Directive was already implemented through an existing regulation on hazardous waste. However, the transposition of the provisions regarding the waste list, introduced through the amendment, necessitated a change in the regulation. The change was expected to be adopted by the end of June 1996.

Similarly, Iceland informed the Authority in December 1995 that the list of hazardous waste would be included in the revised regulation on pollution control that was due in early 1996.

4.5.5.6 Complaints

No complaints relative to environment were received by the Authority during 1995.

4.6 PUBLIC PROCUREMENT

4.6.1 General overview

Annex XVI to the EEA Agreement contains specific provisions and arrangements concerning public procurement, which according to Article 65(1) of the Agreement apply to all products and to services as specified, unless otherwise provided for.

Annex XVI refers to eight binding acts, namely *Council Directives 71/304/EEC, 89/665/EEC, 92/13/EEC, 92/50/EEC, 93/36/EEC, 93/37/EEC, 93/38/EEC* and *Regulation (EEC/Euratom) No. 1182 of 3 June 1971*. These acts lay down general procedural procurement rules which apply to central, local and regional authorities, as well as specific rules applicable to public and private entities operating in the four sectors of water and energy supply, transport and telecommunications (utilities). The acts concern procurement by authorities and utilities of supplies, services and works

above specified threshold values, and set forth, *inter alia*, the procurement procedures to be applied and legal remedies that are to be available at the national level with regard to procurement.

Norway was, by a transitional period, exempted from the implementation of the directives concerning utilities up to the end of 1994. As from 1 January 1995, the rules governing public procurement in two of the EFTA States, namely Iceland and Norway, have been identical to the rules applicable in the EU Member States. Liechtenstein was granted a derogation from the entire set of secondary legislation on public procurement until the end of 1995.

By virtue of the basic principles of the EEA Agreement, all public procurement must be carried out in a non-discriminatory manner. The main objective of the public procurement directives is to oblige contracting authorities and entities to apply certain procedures when procuring supplies, services and works with a value exceeding certain thresholds, in order to secure equal treatment of all suppliers, service providers and contractors established within the EEA. As a main rule, notices on contracts to be awarded shall be published in the Official Journal of the European Communities. In addition, legal remedies are to be provided for on the national level.

During the reporting period, the Authority continued the examination of the conformity of national transposing acts adopted in Iceland and Norway with the Directives referred to above. However, work related to complaints regarding failures to correctly apply the rules was the main task of the Authority in 1995. With a view to safeguarding the interests of potential suppliers and service providers, the Authority continued its practice to endeavour to correct non-compliance with the procurement legislation by immediate contacts with national authorities, often in the form of pre Article 31 letters, before initiating formal infringement proceedings. The EFTA States showed great willingness to co-operate and to take corrective action in cases of incorrect application of the procurement rules. Accordingly, no formal infringement proceedings were initiated during 1995. However, several cases initiated on the basis of complaints received in 1995 were pending at the end of the reporting period. The main characteristics of the cases handled during the reporting period are outlined in Section 4.6.3 below.

Providing information and guidance for the understanding of EEA procurement rules, both to the procuring and to the supply side, has proved to be an important part of the Authority's work in the procurement field. The Commission's services have been consulted on a number of topics related to the interpretation of the EEA procurement rules.

4.6.2 Notification of national implementing measures and conformity assessment

Iceland has notified the transposition of all public procurement acts. Since the texts of the directives, in the Icelandic language, have been made as such part of the Icelandic legislation, the conformity assessment of the Icelandic transposition seemed to be relatively straight forward. The Authority has, however, pointed to a few

shortcomings in the Icelandic procurement legislation, which have subsequently been corrected. Based on a complaint received on the structure and the functioning of the Icelandic public procurement complaint body, a function which had been entrusted to the Icelandic Ministry of Finance, the Authority issued a pre Article 31 letter. At the end of the reporting period, the Authority was still assessing the Icelandic reply.

Norway has also notified the transposition of all public procurement acts. In general, the Norwegian transposition of the procurement acts seems unproblematic, as Norway has chosen to take over, to a large extent, the wording of the procedural directives into separate regulations covering individual directives. Where the wording of the national legislation differs from that of the corresponding EEA acts, those differences were found to be mostly of an editorial nature. During 1994, a detailed assessment of the conformity of the measures notified by Norway had been carried out with regard to the *Directives* concerning *Supply Contracts (authorities)* (93/36/EEC) and *Public Works Contracts (authorities)* (93/37/EEC). This work resulted in a few amendments to the Norwegian regulations transposing those directives. The conformity assessment was continued during the reporting period with regard to the *Directives concerning Service Contracts* (92/50/EEC) and *concerning Utilities* (93/38/EEC).

As regards the national public procurement complaint bodies to be established in accordance with the *Directives concerning Legal Remedies* (89/665/EEC and 92/13/EEC), Norway has chosen the regular court of the district in which an alleged infringement has taken place. Alleged infringements related to oil and gas activities form an exception, as such matters are always to be raised at the Stavanger District Court.

4.6.3 Application of the rules on public procurement

During 1994, a total of 29 obligatory public procurement notices originating from Icelandic procuring entities were published in the Official Journal of the European Communities, while approximately 890 such notices originating from Norway were published during the same period. In 1995, these numbers increased to 83 for Iceland and approximately 2400 for Norway. For more detailed information, see Tables 5 to 7 below.

During the reporting period, the Authority received two complaints against Iceland and 13 against Norway. Fourteen complaints concerned the application of the rules and one complaint addressed the national transposition. Together with three cases regarding Norway, pending from 1994, the Authority thus handled 18 procurement cases during 1995. Two pre Article 31 letters were sent to Iceland, and six to Norway. Seven cases dating from either 1994 or 1995 were formally closed, after satisfactory solutions had been found, and the Authority had almost finished the investigation of three other cases. In two cases concerning Norway, a solution was found after direct contacts with the contracting entity in question, resulting in corrective action. The cases closed, and those where the examination had almost been completed, concerned *inter alia*:

- **Service contract**; a contract concerning services to be carried out prior to works (within the meaning of Directive 93/37/EEC), with a value of less than the threshold of Directive 92/50/EEC, had been published at the regional level only. It was required that the service providers should have an office in the municipality where the works would take place and that the project leader should be available at two hours' notice for meetings in the commune during the planning phase. These requirements were deemed by the Authority to be contrary to the general principles of the EEA Agreement, as they effectively prevented service providers not locally established to compete on equal terms. The requirement concerning the availability of the project leader seemed to be disproportionate, given that the project was only in the planning phase and that the contract period would be 4 to 5 months. The contracting authority undertook, after informal contacts, to amend the requirements.

- **Supply and service contracts**; in two cases a tender notice had not been published, as the contracting authorities in question had estimated that the total value of the planned procurements was below the relevant thresholds. However, both tenders included options, the value of which must be taken into account when calculating the total value. With those options included, the value exceeded the thresholds in both cases. In one of the cases, the award procedure was cancelled, and a tender notice was published in the Official Journal. In the other, in which a contract had already been concluded, the contracting authority confirmed to the Authority that it refrained from using the options.

- **Supply contract**; a contracting authority had invited tenders for road paint from several suppliers. However, at a later stage some of those suppliers were not accepted for the reason that their products had not been approved by the national technological institute, which by that time had tested only paints from national producers, thus limiting the competition to nationally produced paint. The expected contract value was below the relevant threshold. A pre Article 31 letter was sent recalling, *inter alia*, that the general provisions of the EEA Agreement, such as Article 11 prohibiting quantitative restrictions and measures having equivalent effect, apply to any public procurement, even if the estimated value of the contract is below the applicable public procurement thresholds. As a result of the intervention, for its next procurement for road paint, the contracting authority invited all interested suppliers to participate in a pre-qualification procedure, which included a test of paints.

- **Service contract**; a contracting entity required, in an invitation to tender under the restricted procedure, that the service providers indicate in their bids the "Norwegian content". After having been made aware by the Authority that taking "Norwegian content" into consideration when assessing bids would clearly be against the prohibition of discrimination on the basis of nationality, the contracting authority undertook to immediately inform all interested service providers that had been invited to tender, that the contested clause had been deleted.

At the end of the reporting period, in addition to the three cases indicated above, in which the investigation was almost completed, there were eight further cases still pending. These concerned, *inter alia*, the following issues:

- the structure and operation of the Icelandic complaint body, see above;

- the question of what services to take into account for the purpose of calculating the estimated value with regard to the relevant threshold value of the Service Directive when these services are provided in connection with a "work" (within the meaning of the Works Directive);

- the questions whether a contracting authority may require that service providers, which after separate contract award procedures have individually won contracts, all of which relate to the planning of the same works, enter into a group contract with joint responsibility (this condition having been indicated in advance), and whether the contracting authority may, under such circumstances, reject a tender of a group of service providers for the reason that it is made conditional upon the group in question being awarded contracts under all of the individual contract award procedures concerned;

- recalculation of offers received and negotiations initiated with the winning service provider before concluding the contract;

- the extent to which a contracting authority, within the meaning of the relevant directives, may transfer works to another contracting authority, without applying the procedures of the directives.

One complaint, against several contracting authorities in a Member State of the EU, was transferred to the European Commission, concerning a number of publications of tender notices published in the Official Journal, which excluded the participation of EFTA States. Following an intervention from the Commission, the State in question informed the authorities that public procurement must also be open to EFTA States, in accordance with the provisions of the EEA Agreement.

The number of complaints concerning the present EFTA States, 15 in 1995, increased compared to 1994, when only three complaints were received concerning Norway and none concerning Iceland. If any tendencies should be read out of the complaints received during 1995, it could be that more and more complaints seem to relate to services. Service contracts prior to works seem to be a particular source of dispute. Furthermore, the majority of complaints were directed against local and regional authorities, and only two complaints concerned utilities. Finally, the complainants were in all but one case located in the same State as the contracting entity against which the complaint was directed. However, in some cases, the complainant was either himself an importer, or represented importers.

As regards matters handled by the national complaints bodies established under Directives 89/665/EEC and 92/13/EEC/EEC, the Authority was informed that one complaint founded on the EEA procurement rules was dealt with in Iceland during 1995 and none in Norway.

Tables 5-7 EFTA States' notices in the OFFICIAL JOURNAL/TENDERS ELECTRONIC DAILY (TED) in 1994 and 1995[13]

Table 5 Notices according to procedure

Procedure	ICELAND 1994	ICELAND 1995	NORWAY 1994	NORWAY 1995
Pre-information notices	5	5	42	93
Open	23	40	461	1007
Restricted	0	3	130	201
Accelerated restricted	0	1	10	22
Negotiated; authorities	0	0	22	26
Negotiated; utilities	0	0	13	137
Accelerated negotiated	0	0	4	2
Award	1	34	180	827
Qualification system (93/38)	0	0	27	75
Design contest	0	0	1	13
Result design contest	0	0	0	1
Total	29	83	890	2404[14]

Table 6 Notices according to type of contract

Type of contract	ICELAND 1994	ICELAND 1995	NORWAY 1994	NORWAY 1995
Works	2	10	295	864
Supplies	26	65	471	1054
Services	1	8	93	550
Mixed	0	0	15	78
Total	29	83	874	2366[15]

13 Source: TED Archives 1994 and 1995.

14 It is not known why the totals for Norway are not the same in all tables.

15 It is not known why the totals for Norway are not the same in all tables.

Table 7 Notices according to contracting authority/entity

Authority/entity	ICELAND 1994	ICELAND 1995	NORWAY 1994	NORWAY 1995
Central authorities	21	66	351	714
Armed forces	0	0	20	115
Local authorities	8	14	468	943
Utilities	0	3	46[16]	564
Total	29	83	885	2336[17]

4.7 STATE AID

4.7.1 Relevant legislation and competences

The EEA provisions on State aid aim to ensure that conditions of competition for enterprises are equal and that States do not take measures favouring their national industries or individual enterprises, whether private or public. The control of State aid also aims to strike a balance between benefits to aid recipients, on the one hand, and disadvantages to competitors, on the other. Articles 61-63 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement lay down State aid rules, which are identical in substance to Articles 92-93 of the EC Treaty.

Aid granted through State resources that distorts or threatens to distort competition is in principle prohibited according to Article 61 of the EEA Agreement. An EFTA State shall not put into effect a new aid measure before the Authority has approved it. State aid plans must, therefore, be notified to the Authority prior to implementation. The Authority has to assess whether such a plan constitutes State aid and, if it does, examine whether it is eligible for exemption. Decisions by the Authority in State aid cases may be challenged before the EFTA Court.

Apart from deciding on all plans to grant or alter aid, the Authority is also, under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, obliged to keep under constant review all systems of existing aid in the EFTA States. The review procedure is carried out in co-operation with the States concerned. The Authority shall propose appropriate measures either to amend or to abolish aid schemes that are found to be incompatible with the State aid rules.

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

16 The Utilities Directive 93/38 was not in force in Norway during 1994.

17 It is not known why the totals for Norway are not the same in all tables.

4.7.2 General policy developments

4.7.2.1 Non-binding acts; State Aid Guidelines

Points 2 to 37 of Annex XV to the EEA Agreement refer to acts of which the Authority shall take due account when applying the EEA State aid rules. These acts comprise communications, frameworks, guidelines and letters to Member States which the European Commission, at various points of time, has issued for the interpretation and application of Articles 92-93 of the EC Treaty.

In accordance with Article 5(2)(b) and Article 24 of the Surveillance and Court Agreement, the Authority has adopted corresponding acts. All the relevant communications, frameworks, guidelines and notices issued by the Commission have been codified by the Authority in one single document, the State Aid Guidelines.[18] These Guidelines, which the Authority initially issued in January 1994 and have since been regularly updated, take account of about 45 non-binding acts of the Commission and some 130 judgements delivered by the Court of Justice of the European Communities.

The State Aid Guidelines lay down the procedural rules for the assessment of new aid, for the review of existing aid, and for the formal investigation procedure. The rules contribute to increased transparency in the field of State aid and give guidance to national authorities on the notification formalities and other procedural aspects.

The substantive rules of the Guidelines are divided into five main parts. A first part on horizontal aid lays down the assessment criteria for aid to small and medium-sized enterprises, aid for research and development, aid for environmental protection, employment aid, aid for rescuing and restructuring firms in difficulty, as well as aid in the form of State guarantees. In a second part, specific rules are given for aid granted to public enterprises. A third part on sectoral aid deals with aid granted to the textile and clothing industries, the synthetic fibres sector, the motor vehicle industry and the non-ECSC steel industries. The Guidelines also include rules on regional aid and, finally, certain specific rules, concerning for example annual reporting.

The Authority has followed closely the development on new non-binding State aid acts being prepared by the Commission and has contributed to the preparation of such acts. The Authority held three multilateral meetings in the field of State aid in the course of 1995, in which developments mainly concerning new non-binding acts were discussed with experts of the EFTA States. Once such new acts have been discussed with the EFTA States and adopted by the Commission, the acts are adapted for EEA purposes in order subsequently to be included in the State Aid Guidelines.

The Guidelines were amended twice during 1995. In June, the Authority decided to extend until 31 March 1996 the period of validity of the rules on aid to the synthetic fibres industry, which otherwise would have expired on 30 June 1995. This decision was in the form of a proposal for appropriate measures under Article 1(1) of Protocol

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18 See footnote no. 5.

3 to the Surveillance and Court Agreement, which was subsequently agreed to by all EFTA States. In December, the Authority decided on a number of amendments to the State Aid Guidelines, including, *inter alia*, new rules on aid to employment, as well as more stringent requirements in cases involving aid granted unlawfully and interest rates to be applied in such cases.

The new rules on aid to employment clarify under what circumstances measures to promote employment may fall under the State aid provisions of the EEA Agreement. They also provide criteria for assessing whether such measures qualify for exemption from the general prohibition on State aid.

Reaffirming the Authority's sympathetic view towards employment aid in principle, the guidelines seek to impose discipline with regard to such measures, which is necessary in order to prevent the spreading of operating aid likely to distort competition and trade in the European Economic Area.

According to the rules, the Authority will be favourably disposed towards aid aimed at creating new jobs in SMEs and in regions eligible for regional aid. Outside these two categories, it will also look favourably upon aid aimed at encouraging firms to take on certain groups of workers experiencing particular difficulties entering the labour market. On the other hand, the Authority will, as a general rule, be negatively disposed towards aid given only in order to maintain jobs, except when such measures can be justified on social grounds and have limited distorting effects on competition. The Authority will insist that employment aid be temporary.

The Authority will also take into account the aid level and whether new jobs offer permanent contracts to workers. If measures to promote employment are combined with the training of workers, this will contribute to a favourable assessment by the Authority.

By the amendment to the State Aid Guidelines of December 1995, the Authority has also tightened up the procedure in cases where aid has been granted unlawfully. The Guidelines had so far provided that when aid is granted in breach of the obligation to notify in advance, the Authority could, by an interim decision, request the EFTA State concerned to suspend payment of the aid pending the outcome of a full investigation. The Authority considers that in some cases this will not be sufficient to counteract infringements of the procedural rules. Therefore, under the new provisions, the Authority may in appropriate cases, after giving the EFTA State concerned the opportunity to comment on the matter and to consider alternatively the granting of rescue aid, adopt a provisional decision ordering the EFTA State to recover funds disbursed in infringement of the notification requirements, even before the Authority has adopted a final position in substance.

Concerning interest rates to be used when aid granted unlawfully is to be recovered, the Authority has declared, by the same amendment, that in any decision it may adopt, ordering the recovery of aid unlawfully granted, it will apply the reference rate of interest used in the calculation of the net grant equivalent of regional aid measures. This practice aims at securing that the interest rate applied in such cases reflects

prevailing market rates, so that the advantages of unlawful aid for aid recipients are fully neutralized.

By the amendment of December 1995, certain provisions were also introduced in the State Aid Guidelines concerning aid to shipbuilding and to the aviation sector. Regarding shipbuilding aid, detailed criteria were introduced, corresponding to those adopted by the Commission in 1989, to which the EFTA States must adhere when awarding aid to shipbuilding as development assistance under Article 4(7) of the *Shipbuilding Directive* (90/684/EEC). This amendment was considered necessary, following the integration of that Directive into the EEA Agreement in May 1995.

Finally, as concerns aid to the aviation sector, finally, the Commission adopted guidelines for assessing such aid in the Autumn of 1994. The Authority has so far not been notified of any aid by the EFTA States to this sector. The Authority has therefore limited itself to stating in its State Aid Guidelines that, should the occasion arise to asses such aid, the Authority will apply criteria corresponding to those contained in the aforementioned guidelines issued by the Commission.

The Authority's experience shows that having the various guidelines in the form of one single document adds to the transparency required in State aid surveillance. This approach has also received positive reactions from the authorities in the EFTA States, as well as from other interested parties. The Authority intends to continue updating the Guidelines as an integrated version.

4.7.2.2 Co-operation with the European Commission

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

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

4.7.3 Existing aid schemes and complaints relating to State aid

4.7.3.1 Review of existing aid

According to Article 62 of the EEA Agreement and Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the Authority shall, in co-operation with the EFTA States, keep under constant review all systems of aid existing in those States, with a view to ensuring the compatibility of the aid systems with Article 61 of the EEA Agreement. The Authority shall propose any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

Follow-up of review carried out in 1994

In November and December 1994, the Authority proposed appropriate measures to Norway concerning altogether 19 existing aid schemes in order to make them compatible with the EEA Agreement. These measures addressed the need to increase transparency and to facilitate State aid control by establishing more specific guidelines in the granting of aid for R&D activities and for environmental protection purposes. The decisions focused also on the need to establish specific conditions for granting aid to SMEs in order to ensure a homogenous application of the rules on State aid within the EEA. With regard to measures to support banks, the Authority proposed that any decision to grant new aid within the existing legal framework be notified individually.

The proposals were accepted by the Norwegian authorities without reservations by the end of January 1995. Furthermore, the Norwegian authorities have followed up the Authority's proposals by amending the relevant regulations for the affected schemes within the deadline indicated by the Authority. In examining the measures thus taken, the Authority found nothing to indicate that they would not fulfil the requirements laid down by the Authority in its proposals. Therefore, all these review cases were closed in the Spring of 1995.

A preliminary review of all existing aid schemes in Austria, Finland and Sweden had by the end of 1994 produced a considerable amount of information, which would be of relevance for the continued review of these schemes. Following the accession of these States to the European Union, the Authority arranged the information into files with a view to enabling the Commission to effectively continue the constant review of the schemes. These information files, totalling over 300, were transferred to the Commission in the course of the Spring of 1995.

The Authority also took several decisions in the end of 1994 to propose appropriate measures on existing aid with regard to Austria, Finland and Sweden. In all these cases, the respective Governments gave their full acceptance to the proposals by the end of January 1995. Consequently, the respective files were transmitted to the Commission in the Spring of 1995, not as open cases but for information only.

Review cases opened in 1995

In the course of 1995, the Authority was examining some 15 existing aid schemes which led to the initiation of the review procedure on six existing aid schemes in the EFTA States. Some of these cases related to complaints, the examination of which had shown that even if the aid in the individual case referred to by the complainant may have been compatible with Article 61 of the Agreement, this might not be the case as regards the scheme under which the aid was granted.

Discussions were initiated in the Spring of 1995 on the differentiation of social security taxes paid by employers in Iceland and Norway. In Iceland, social security taxes are differentiated between sectors of the economy, while in Norway employers' social security contributions are levied at rates varying according to the region. The Authority's examination aimed at establishing whether these schemes would fall under Article 61(1) and if so, whether they would benefit from any of the exemption clauses in Article 61(3) of the EEA Agreement.

All six cases still remained under review at the end of 1995.

Annual reporting on the application of existing aid schemes

The State Aid Guidelines foresee that the Authority will, as a general rule, request the EFTA States to furnish certain basic data in the form of annual reports on existing aid schemes in order to keep them under constant review. The data will enable the Authority to carry out its monitoring obligations more effectively.

A system for annual reporting is necessary because, apart from the rules existing for certain sectors, such as synthetic fibres, motor vehicles, shipbuilding and steel, scant information is available on the sectoral impact of regional aid, or on the regional impact of sectoral aid. In addition, for the analysis and for the monitoring of aid schemes to be fully effective, more information is needed on any concentration of expenditure on a small number of recipients and on the cumulative effect of all aid schemes on those recipients.

To avoid placing an undue administrative burden on the EFTA States, the Authority requests detailed annual reports only for a very limited number of aid schemes. Simplified annual reports, which need to contain only a limited amount of data, are generally asked for in decisions authorizing a scheme.

The obligation of the EFTA States to submit annual reports does not follow directly from the binding provisions of the EEA Agreement. To give effect to its policy in this matter, as indicated above, the Authority decided on 20 July 1995 to propose, under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that Iceland and Norway submit standardized annual reports on, respectively, 14 and 61 existing aid schemes. The decision concerned schemes in operation, on which the Authority had not yet required the submission of annual reports by earlier decisions. Through this proposal, the system for annual reporting was extended to cover all systems of State aid in operation in the EFTA States which had been reported to the Authority.

According to the proposal, the first report was to be submitted to the Authority by 31 October 1995, covering aid awarded in 1994. As from 1996, the deadline laid down in the State Aid Guidelines, normally 30 June each year, will apply.

A detailed annual report was requested for only five of the 61 aid schemes covered by the decision addressed to Norway, while the decision directed to Iceland requested simplified annual reports on all 14 schemes. The necessity for a closer control on the five schemes concerning Norway was due to, *inter alia*, the budget involved, the links to other schemes, as well as to other qualitative factors that were found to justify a closer scrutiny by the Authority.

The Authority's decisions on annual reporting have been accepted by the Icelandic and Norwegian authorities. All requested reports falling due in 1995 were received by the Authority before the end of the year.

4.7.3.2 Complaints relating to State aid

At the end of 1994, four complaints relating to State aid were pending with the Authority. Two of these were transferred to the Commission in the Spring of 1995, following the accession of Austria, Finland and Sweden to the European Union.

The Authority registered 10 new complaints in the course of 1995 and re-opened one, on alleged aid to the Norwegian salmon industry, that had been closed in 1994. As two cases were closed during the reporting period, a total of 11 complaints remained under examination at the end of 1995.

The two cases closed in 1995, one received in February 1994 on aid to a Norwegian producer of office stationery products and a similar one received in March 1995 regarding aid to the same producer, mainly concerned investment aid and aid for other purposes, notably transport aid, to one of the company's subsidiaries.

As the examination neither led to any findings of individual awards of aid to the producer, nor of the application in the company's favour of aid schemes which could be considered incompatible with the functioning of the EEA Agreement, a decision was taken by the Authority in July 1995 to conclude the examination of the two complaints without proposing any further action.

The case that was re-opened relates to a complaint lodged with the Authority in 1994 by the Scottish Salmon Growers Association, and concerning alleged illegal State aid to the Norwegian salmon industry. Having examined the question of its competence with regard to State aid in the fisheries sector, the Authority decided to close the case due to lack of competence. The Association appealed the decision to the EFTA Court, who in March 1995 delivered a judgement annulling the Authority's decision, considering that the Authority had not given sufficient reasons for finding itself not to be competent in the case. The Authority continued to examine the matter at the end of the reporting period.

4.7.4 Assessment of plans to grant new aid

4.7.4.1 Statistics on cases

At the beginning of the reporting period, 27 cases on new aid were pending with the Authority. As all these cases concerned Austria, Finland or Sweden, they were transmitted to the European Commission in the beginning of the year. The Authority continued to examine the matter at the end of the reporting period

In 1995, the Authority registered a total of 11 cases relating to new aid. Ten of these were notifications by the EFTA States, while one was registered as non-notified aid. Five notifications related to the shipbuilding sector, while each of the remaining aid cases pursued a different objective. Three of the cases related to Iceland and eight to Norway.

Three of the cases were still pending with the Authority at the end of 1995. Seven cases were closed with a decision to raise no objection with regard to the aid proposals concerned, while in one case the Authority opened the formal investigation procedure. This procedure ended in a negative final decision, prohibiting the proposed aid. The cases on which a final decision has thus been taken in 1995 are listed in Annex V to this report.

According to statistics published by the European Commission, the Commission, on average, raises no objections in about 90 percent of notified aid cases. In the rest of the cases, the investigation procedure is initiated. Less than half of these would seem normally to be closed by a negative decision.

The Authority has experience only from a period of two years, during which it has decided on 54 notified aid cases. In only one of these cases did the Authority decide to open the investigation procedure, which then ended in a negative decision. Even though this might give the impression that the Authority is less inclined than the Commission to resort to the investigation procedure, two years of operation is too short a time to allow for any conclusions on this point. One should also take into account that the need to open an investigation procedure depends on the extent to which the notifying State agrees to change its plans in the course of the Authority's initial examination of the proposal, under the notification procedure.

Sections 4.7.4.2 and 4.7.4.3 below provide an account of the decisions by the Authority with regard to the notified aid cases.

4.7.4.2 Aid not covered by specific sectoral rules

Aid to PLM Moss Glassverk A/S

The Norwegian Government notified the Authority in January 1995 of plans to grant a relief for glass packaging from the basic tax ("grunnavgiften") on non-reusable beverage packaging. The Authority found that, although the planned tax exemption

would have applied to domestically produced as well as imported glass containers, the primary objective of the aid was to ensure continued production at PLM Moss Glassverk. As the company is facing competition within the EEA from close substitutes for glass packaging (e.g. PET-bottles), the Authority came to the conclusion that the measure threatened to distort competition and to affect trade within the EEA.

The proposed measure was therefore found to constitute aid, prohibited under Article 61(1) of the EEA Agreement, unless it could be justified under the exemption clauses contained in Articles 61(2) and 61(3) of the Agreement. The financial benefit to PLM Moss Glassverk was estimated at NOK 13 million per annum.

PLM Moss Glassverk is the only Norwegian producer of glass packaging and the main user of glass waste collected and processed for recycling. The owner of the company (PLM Group of Sweden) had initially decided to close down production in Norway due to non-profitability. The Norwegian Government emphasized that alternative utilization of processed waste was very limited and that the Norwegian glass recycling system would be seriously threatened if PLM Moss Glassverk were to close down.

The Norwegian Authorities considered that the aid was justified under the exemption provided for in Article 61(3)(c) of the EEA Agreement, with reference to the importance of maintaining glass production in Norway, and taking into account the related environmental aspects and the effects the eventual closure of the company would have on employment in a region experiencing industrial decline.

The aid was found to primarily improve the financial performance of PLM Moss Glassverk, and/or to allow the company to hold a higher market share in the packaging market. Moreover, the aid would not be linked to initial investment, job creation or any other project limited in time, and would thus constitute operating aid.

The Authority has reservations in principle as to the compatibility of operating aid with the functioning of the EEA Agreement. According to paragraph 15.4.3.(1) of the State Aid Guidelines, the Authority will normally not approve operating aid which relieves firms of costs resulting from the pollution or nuisance they cause. However, the Authority may make an exception to this principle in well defined circumstances. The European Commission has done so in the field of waste management and relief from environmental taxes. Such cases are assessed on their merits and in the light of the strict criteria to be applied in the two fields just mentioned. These criteria are, that the aid must only compensate for extra production costs by comparison with traditional costs, and that the aid should be temporary and in principle degressive, so as to provide an incentive to reduce pollution or to introduce more efficient use of resources more quickly. Also, such aid must not conflict with other provisions of the EEA Agreement, in particular those related to the free movement of goods.[19]

As the Authority could not establish that the proposed aid would meet these criteria, it initiated in April 1995 the formal investigation procedure provided for in the

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19 The basic tax itself is under examination by the Authority in order to determine its compatibility with the EEA provisions on the free movement of goods, notably Article 14 of the Agreement, see Section 4.1.1.1 above.

Surveillance and Court Agreement. Norway was reminded that the proposed measure must not be put into effect until the procedure had resulted in a final decision.

The Norwegian Government was invited to submit its comments within a period of one month. Other EFTA States, EU Member States, the European Commission and interested parties were informed by a notice in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto (OJ C 212 of 17 August 1995 and EEA Supplement to the OJ, No. 30, 17 August 1995), inviting them to submit comments within one month from the date of publication.

The comments received, from altogether six interested parties, supported the doubts which the Authority had expressed in its decision to open the investigation procedure.

The Authority concluded, in its final decision of 31 October 1995, that the conditions for allowing operating aid for protection of the environment were not met and that, therefore, the aid could not be exempted under Article 61(3)(c) of the EEA Agreement. The Norwegian Government was informed that it must not put the proposed aid measure into effect. In its decision, the Authority noted, *inter alia*, that the aid in the form proposed would neither be temporary nor degressive. Furthermore, to exempt glass packaging from the basic tax would lead to a different tax burden, as far as the basic tax is concerned, for recyclable glass containers as compared to other recyclable containers, such as containers made of PET or metal. The containers which would continue to be subject to the basic tax, such as aluminium cans, are widely used for non-domestic products, while those products which would be exempt from the basic tax would typically be used for domestic products. Thus, the proposed exemption seemed to lead to imposing a tax burden on certain imported products, in excess of that imposed on similar or competing domestic products. Therefore, it could not be concluded that the proposed tax exemption would result in a tax system compatible with Article 14 of the EEA Agreement.

Aid for audio-visual production

In May 1995, the Authority authorized an aid scheme for supporting the development of the Norwegian audio-visual sector. The specific aim of the aid is to support quality productions by strengthening co-operation between film producers and the broadcasting sector. Priority is given to projects comparable to feature films. Aid may, in exceptional circumstances, be granted also to documentary and short-story productions. The 'Audio-visual Production Foundation' responsible for administering the scheme shall, in addition, provide support to local radio stations. The aid is awarded exclusively in the form of direct grants. The budget appropriation for 1995 was NOK 48 million.

The new Article 92(3)(d) of the EC Treaty, added by the Treaty on European Union, provides a specific exemption for aids to cultural activities and the arts in the Union. Although a corresponding provision has not been made part of the EEA Agreement, the Authority saw no reason to deviate from the established policy of the European Commission in this field. As the aid was directed towards cultural activities in the audio-visual sector, and in considering that the aid award criteria did not involve any

discrimination between EEA nationals, the Authority concluded that the positive effects of the aid outweighed any possible distortions of competition and trade. Therefore, the scheme was found to qualify for an exemption under Article 61(3)(c) of the EEA Agreement, by facilitating the development of certain economic activities.

The 'Restructuring and Initiative Grant' scheme

The Norwegian authorities notified the Authority in September 1994 of certain amendments to the provisions governing their application of the 'Restructuring and Initiative Grant' scheme. In its amended from, this regional aid scheme will allow for regional investment aid and aid for consultancy help and training to large enterprises, up to respectively 35%, 25% and 15% of the eligible costs in target zones A, B and C eligible for regional investment aid. These ceilings are in accordance with the relevant ceilings accepted by the Authority in November 1994 in its decision on the Norwegian map of assisted areas. Apart from this, the scheme may be applied to award "soft" aid to small- and medium-sized enterprises (SMEs) throughout the country up to 50% of the eligible costs. The budget allocation for 1995 was NOK 70.6 million.

The Authority found that the 'Restructuring and Initiative Grant' scheme, as modified, would facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest and, therefore, that it qualified for an exemption under Article 61(3)(c) of the EEA Agreement.

The 'Industrial R&D Contracts' scheme

A modification to an existing Norwegian R&D scheme was authorized in December 1995. The scheme, which is administered by the Norwegian Industrial and Regional Development Fund (SND), covers awards of aid in the form of direct grants for research and development contracts.

The notification concerned a change in the criteria for receiving aid under the scheme. The earlier rules of the scheme restricted its application to SMEs. This requirement was altered to allow also for aid to larger enterprises in special cases. In order to qualify for the maximum levels of support, 60 % for basic industrial research and 35 % for applied research and development, the recipient nevertheless needs to be an SME. For other recipients, the maximum levels of support are 50 % for basic industrial research and 25 % for applied research and development. The budget allocation for 1995 is NOK 39 million. The scheme, which would have expired on 31 December 1996, is no longer of limited duration.

As the scheme was found to meet all the requirements of the Authority's rules on aid for research and development, the Authority decided that the scheme qualified for an exemption under Article 61(3)(c) of the EEA Agreement. The Norwegian Government was obliged to submit a simplified annual report on the application of the scheme.

4.7.4.3 Sectoral aid

Aid to shipbuilding

General developments

Following the integration of the *Council Directive on Aid to Shipbuilding* (90/684/EEC) into the EEA Agreement, which took effect on 1 May 1995, the Authority decided in July on the common maximum ceiling for operating aid to shipbuilding for the period 1 May to 31 December 1995. The ceiling was set at 9% of the contract value before aid. The maximum level of aid permissible for the construction of small ships, of a contract value of less than ECU 10 million, as well as for all ship conversions covered by the Directive, was at the same time fixed at 4.5% for the same period. These limits corresponded to the prevailing ceilings within the European Union, as fixed by the Commission in December 1994.

The Authority's decision was taken in the light of the results of a study, carried out by an independent consultant on behalf of the Commission, of the differences between, on the one hand, the costs of the most competitive shipyards in EU Member States and EFTA States and, on the other hand, the prices charged by their main international competitors. The decision also took account of the prevailing global market conditions immediately before the foreseen entry into force of the *OECD Agreement respecting normal Competitive Conditions in the commercial Shipbuilding and Repair Industry*, which at the time was expected to take place on 1 January 1996.

Iceland

In July 1995, the Authority authorized a new aid scheme in favour of shipbuilding and ship conversion in Iceland. The scheme applies to the construction of vessels of at least 100 GT (Gross Tonnage), whose contract value does not exceed ECU 10 million, as well as to conversions of ships exceeding 1000 GT. The scheme applies to contracts signed not later than 31 December 1995. It has a budget of ISK 40 million.

The vessels and conversions eligible for aid under the scheme correspond to those for which the Authority had fixed a maximum aid ceiling of 4.5%. The scheme respects this ceiling, as it limits the aid to a maximum of 4.5% of the contract value, before aid, both for shipbuilding and ship conversion. In practice, the aid level may typically be below the ceiling, as certain cost categories are not eligible for aid under the scheme and shall be deducted from the contract value before calculating the aid amount.

The Authority also found that the scheme met other relevant criteria of the *Shipbuilding Directive*. It therefore decided not to raise objections to the aid scheme.

Norway

In September 1995, following an examination of State aid in Norway in favour of shipbuilding, the Authority decided not to raise objections to three existing State aid schemes.

The main scheme, "Grants for shipbuilding, new buildings and conversions", applies to the construction for domestic and export deliveries by Norwegian enterprises of vessels with a gross tonnage (GT) of at least 100, as well as to major conversions of vessels of at least 1000 GT. Drilling platforms and certain other vessels specialised for work at sea, as well as barges without a propelling engine, are excluded from the scheme. Ships built for public authorities, as well as normal repair and replacement work, also fall outside the scope of the aid scheme.

The scheme applies to contracts signed until 31 December 1995. It has a budget of NOK 1064 million for 1995. Grants under the scheme amount to 9% of the contract value before aid, but for ships whose contract value is lower than ECU 10 million, as well as for major conversions, the aid intensity is 4.5%. This corresponds to the common maximum ceilings for production aid to shipbuilding in the EFTA States, fixed by the Authority in its above mentioned decision from July 1995. As the Authority found that grants under the scheme also met other relevant criteria of the *Shipbuilding Directive*, it decided not to raise objections to the aid scheme, as notified by the Norwegian authorities.

By the same decision, the Authority decided not to raise objections to the "Guarantee Scheme for Ship Construction", and to the application to the shipbuilding sector of the general guarantee scheme by the Guarantee Institute for Export Credits (GIEK). It was concluded that the terms for both guarantee schemes, as notified by the Norwegian authorities, were within the limits of the OECD Understanding on Export Credits for Ships, and, therefore, could be considered compatible with the functioning of the EEA Agreement.

In December 1995, the Authority authorised a Norwegian proposal to grant shipbuilding aid as development aid to Indonesia. The aid in question is to be awarded in relation to a contract to build a research vessel for the Indonesian Institute of Sciences at a Norwegian shipyard.

The aid will take the form of a financing arrangement on concessional terms, to be provided by the Norwegian Agency for Development Co-operation (NORAD), in favour of the Indonesian Ministry of Finance.

The transaction involves a 100% credit to be repaid in 18 equal annual instalments, the first falling due seven years after the last disbursement. The loan will bear an interest rate of 3.5% per annum. The credit terms are expected to imply an OECD grant equivalent of 45.9% of the total cost of the vessel.

The Authority examined the proposed aid in relation to the criteria laid down for this purpose in its State Aid Guidelines, corresponding to those established by the Commission in its letter of 3.1.1989, and concluded that all relevant requirements were fulfilled.

The project is considered to benefit from Norway's maritime experience, in particular as the Norwegian authorities would also support a training programme related to the research vessel. The technical expertise of the donor would thus be utilized to the advantage of the recipient State. The project was therefore deemed to contribute to the economic development of Indonesia. The Authority consequently decided to authorize the aid.

4.8 MONOPOLIES

The EFTA States parties to the EEA Agreement have committed themselves, under Article 16 of the EEA Agreement, to ensure that any State monopoly of a commercial character be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of States parties to the EEA Agreement.

In 1994, in noting the existence in several EFTA States of legislation providing for exclusive rights to import, export and wholesale trade of alcoholic beverages, and in considering such exclusive rights to be contrary to Articles 11, 13 and 16 of the EEA Agreement, the Authority initiated infringement proceedings under Article 31 of the Surveillance and Court Agreement by sending, in July 1994, letters of formal notice to four EFTA States, including Iceland and Norway.

With regard to exclusive rights on marketing at the retail level, the Authority noted that such exclusive rights could only be maintained if discrimination with regard to the origin of the goods marketed was excluded, and that this implied, *inter alia*, the absence of any institutional link between producers and the retail monopoly.

The Norwegian and Icelandic Governments took the view that their alcohol monopolies met the requirements of the EEA Agreement and, consequently, denied any infringement.

In November 1994, the Icelandic Government informed the Authority that bills amending the alcohol legislation were nevertheless being drafted with the aim of abolishing the exclusive rights to import and wholesale of alcoholic beverages. The bills would shortly be introduced to the Parliament.

In February 1995, the information available to the Authority suggested that the timetable indicated by Iceland for the changes to be made in its alcohol legislation would not be kept. Therefore, in the same month, the Authority delivered a reasoned opinion, requesting the exclusive rights to import and wholesale of alcoholic beverages to be abolished.

Amendments to the alcohol legislation in Iceland were enacted and entered into force on 1 December 1995. The Authority was, at the end of the year, still examining whether the requirements of its reasoned opinion had been met.

In December 1994, the Authority delivered a reasoned opinion to Norway, requesting the exclusive rights to import, export and wholesale of alcoholic beverages to be abolished. Furthermore, the institutional link between the retail monopoly and the production of alcoholic beverages was to be discontinued.

In February 1995, the Norwegian Government informed the Authority that it would submit a proposal to the Storting for statutory amendments to give effect to the requirements stipulated in the Authority's reasoned opinion. The changes were to be made in stages, to be completed by the end of 1995.

Throughout 1995, the Authority has been monitoring developments in the matter. The new alcohol legislation was to enter into force on 1 January 1996. At the end of the reporting period, the Authority was still examining whether the adjustments made were sufficient in order for the Authority to close the case.

The Authority has received several complaints relating to the alcohol beverage markets in Iceland and Norway. At the end of the year, it continued to examine whether these would require action in addition to the cases indicated above.

4.9 COMPETITION

4.9.1. The anti-trust rules and the role of the Authority

The EEA Agreement aims to create a "level playing field", where goods, services, persons and capital can move freely and economic operators can pursue their activities without competition being distorted. Artificial impediments to free trade and effective competition may result either from measures taken by States or from restrictive practices by undertakings. The competition rules applicable to undertakings aim at eliminating the latter kind of threats against the four freedoms and the homogeneous economic area.

Accordingly, whereas most of the Authority's activities relate to actions on non-action by the EFTA States, the competition rules contained in Articles 53 to 58 and 60 of the EEA Agreement concern individual economic operators. Article 59, on public undertakings, on the other hand, relates to measures taken by States.

These provisions, often referred to as anti-trust rules, are virtually identical in substance to the corresponding provisions of the Community Treaties. The corner-stones of the European competition regime, reflected in Articles 53, 54 and 57 of the Agreement, respectively, are three:

- a prohibition of agreements and practices which may distort or restrict competition, e.g. price fixing or market sharing agreements between competing companies,

- a prohibition of the abuse of a dominant market position by undertakings,

- the control of large mergers and other concentrations of undertakings, which may create or strengthen a dominant position and, consequently, impede effective competition.

The responsibility for handling competition cases under the EEA Agreement is shared between the Authority and the European Commission, in accordance with attribution rules contained in Articles 56 and 57 of the Agreement. Cases dealt with by the Authority may concern undertakings located not only in the EFTA States, but also in EU Member States or third countries.

In competition cases, one of the tasks of the Authority is to put an end to infringements through formal decisions directed at individual undertakings. Such decisions, which may include sanctions against the undertaking(s) concerned, may be taken on the Authority's own initiative (ex officio cases) or in response to an application by an interested party (complaints).

Further, the Authority is competent to grant exemptions from the prohibition in Article 53(1) against restrictive agreements. In order to be able to apply for such an exemption, the undertaking concerned must notify the Authority of the agreement in question. Notified agreements also benefit from immunity from fines, in respect of acts taken between the date of notification and the Authority's decision to grant or reject an exemption.

Undertakings may also apply to the Authority for negative clearance, i.e. a statement by the Authority certifying that there are no grounds for action under Articles 53(1) or 54 of the Agreement in respect of an agreement, decision or practice.

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

An effective application of European anti-trust rules will often directly benefit the consumers, whose free choice of goods and services may otherwise be limited through restrictive practices. The enforcement of the rules may be equally important for undertakings in trade and industry, protecting them from anti-competitive behaviour by other actors in the market.

In the field of competition, the focus of the Authority's attention is on the handling of individual cases. Other important tasks include implementation control, i.e. ensuring that the relevant provisions of the Agreement are duly transposed in the national legal orders of the EFTA States, and the issuance of notices and guidelines for the interpretation of the competition rules. Most of these activities involve close co-operation with the European Commission, in individual cases as well as on general policy issues, and with national authorities.

4.9.2. Cases

General remarks

On 31 December 1994, there were 109 cases pending with the Authority. Due to the accession of Austria, Finland and Sweden to the European Union, 71 of these cases were deemed to fall under the competence of the European Commission and, consequently, were transferred to the Commission in accordance with the Transitional Agreement (cf. Section 3.5 above). These cases included the so-called Austrian cartels, the price and market sharing agreements in the Finnish forestry sector and the service station agreements in Austria, which were described in the Authority's Annual Report of 1994. In order to secure a smooth transition, the actual transfers were made gradually during the first six months of the year. During this period, the Authority prepared the files and assisted the Commission with translations and general market information relating to the cases.

Of the remaining 38 cases, 35 were based on notifications, two cases were complaints and one case had been opened on the Authority's own initiative. In the course of 1995, five new notifications and six complaints were received by the Authority. During the same period, five cases were closed by administrative means and one case was found to affect trade between EU Member States and, consequently, transferred to the Commission in accordance with Article 56 of the EEA Agreement. All cases, except one relating to air transport where specific procedural rules apply, were handled under the normal procedures relating to Articles 53 and 54 of the EEA Agreement.

In 1995, there has been a relative increase in the number of both formal and informal complaints received by the Authority. The complaints, and more informal inquiries from economic operators, have for the most part dealt with problems in sectors which have recently been liberalized or are in the process of being deregulated, such as the pharmaceutical, telecommunication and energy sectors. The Authority has followed the developments in these areas closely, although no formal cases were opened in the two latter sectors during the year.

Developments in individual cases

In order to make the most efficient use of the Authority's resources in the competition area, the cases were given different priorities following a preliminary assessment of their importance. The following criteria were applied when setting priorities:

- the general impact of a restrictive practice on the economy of EEA States,
- the nature and severity of an infringement,
- the specific effects for consumers or third parties of a restrictive practice,
- whether the application of the competition rules could be more effectively ensured on the EEA level than on the national level,
- the legitimate interest of notifying parties or complainants to receive a fast indication on the compatibility of a practice with the EEA competition rules.

Following these criteria, particular attention was in 1995 given to cases relating to the pharmaceutical and forestry sectors.

The wholesale monopoly on pharmaceuticals in Norway was abolished in 1994. In 1995, the Authority received a complaint from a Norwegian and a Danish undertaking, regarding a refusal to supply pharmaceutical products. Both undertakings had been refused delivery by a Norwegian pharmaceuticals wholesaler, the refusal allegedly being based on the fact that the goods were to be exported. Since the wholesaler had a substantial market share, it was argued that the refusal constituted an abuse of a dominant position, covered by Article 54 of the EEA Agreement. The complainants requested the Authority to adopt interim measures, a claim which the Authority rejected in a decision on 21 June 1995. The further investigation of the alleged infringements was not yet completed at the end of the reporting period.

Markets for roundwood in the Nordic countries have been characterised by centralized agreements on prices, market sharing or quota systems. The forest industries depending on such markets are of major importance for the economies of these countries. During 1994, the Authority gave priority to cases relating to the situation in Finland in this regard. As these cases were transferred to the Commission in the beginning of 1995, the Authority started to examine more closely the agreements relating to the functioning of the roundwood markets in Norway. As in the case of Finland, it appears that elements of price fixing and market sharing, of the kind explicitly prohibited under Article 53(1) of the EEA Agreement, also exist on these markets. The examination is foreseen to be completed in 1996.

Agreements covering a large part of the Norwegian insurance sector are presently being examined by the Authority. The agreements range from different types of pooling arrangements to common standards. A preliminary examination has indicated that several of these agreements may infringe Article 53(1) of the Agreement and that they may not fulfil the relevant provisions of the block exemption for insurance.[20] The assessment of the possibilities for granting individual exemptions was not yet completed at the end of the reporting period.

In a case involving a non-exclusive distribution agreement between two ferrosilicon producers in Norway, a notice was adopted in October 1995, in which the Authority indicated its intention to take a favourable view on the arrangements and invited comments from interested parties.

4.9.3 Implementation control

The Authority is to ensure that the EEA competition rules are implemented into the national legal orders of the EFTA States. This applies not only to the basic rules contained in Articles 53 to 60 of the Agreement, but also to the relevant provisions in Protocols 21 to 25 to the Agreement, the acts referred to in Annex XIV to the

20 The Act referred to in point 15a of Annex XIV to the EEA Agreement on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (Commission Regulation (EEC) No 3932/92)

Agreement (such as the substantive rules on merger control and on the application of the competition rules in the transport sector, as well as the acts corresponding to the Community block exemption regulations), and the procedural rules of Protocol 4 to the Surveillance and Court Agreement.

As regards Iceland and Norway, the examination completed in 1994 led the Authority to conclude that the EEA rules, in force at the end of that year, had been implemented in a satisfactory manner.

Unlike Iceland and Norway, Liechtenstein follows the monist tradition as regards implementation of international agreements. Accordingly, the EEA competition rules became part of the national legal order with the entry into force for Liechtenstein of the EEA Agreement.

However, there are specific obligations under the EEA Agreement which may require implementation measures also in Liechtenstein. Thus, the EFTA States are obliged to take any required measures to be able to afford the necessary assistance to officials of the Authority in case an undertaking would oppose an on-the-spot investigation by the Authority (cf. Article 10 of Protocol 21 to the Agreement and Article 14(7) of Chapter II of Protocol 4 to the Surveillance and Court Agreement). Liechtenstein has been asked to put into effect measures to this effect, but the issue was still being considered in that State at the end of the reporting period.

4.9.4 Non-binding acts

When applying the EEA competition rules, the Authority shall take due account of the principles and rules contained in the non-binding acts, referred to in points 16 to 25 of Annex XIV to the EEA Agreement. The acts are notices and guidelines issued by the European Commission, concerning the interpretation and application of various parts of the EC competition legislation. In 1994, the Authority adopted corresponding acts, as required under Article 25(2) of the Surveillance and Court Agreement.

In order to maintain homogeneity, when new acts of this kind are adopted by the Commission, the Authority is to adopt corresponding acts, when EEA relevant.

The Commission has adopted several new notices and guidelines, and amendments to existing ones, after the signing of the EEA Agreement. Corresponding acts have been adopted by the Authority as concerns most of them. For an overview of acts adopted before 1995, reference is given to the Authority's Annual Report for 1994.

The non-binding acts adopted by the Commission, which at the end of the reporting period had not yet been issued by the Authority, are the amendment to the *de minimis* notice[21] the four new notices in the merger field concerning the distinction between concentrative and co-operative joint ventures, the notions of, respectively, "a concentration" and "undertakings concerned" and the calculation of turnover under the

21 OJ of 23 December 1994 No. C 368 p.20

Merger Regulation,[22] and the new notice on cross-border credit transfers.[23] The Authority started in 1995 the preparations for adopting corresponding notices in 1996. In order to ensure the homogeneous application of EEA competition rules, the Authority has in practice taken due account of these acts also in cases which are already being dealt with by the Authority.

Towards the end of 1995, the Commission started preparations on proposals for new notices to be issued regarding co-operation between the national competition authorities and the Commission and regarding the non-imposition or the mitigation of fines. The Authority took an active part in the preparations, with a view to issuing corresponding notices, if EEA relevant.

4.9.5 Co-operation with the European Commission

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

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

Co-operation in the handling of individual cases

The Commission and the Authority co-operate in the handling of individual cases which affect markets in both EFTA States and EU Member States, the so-called "mixed cases". In these cases, both authorities submit to each other copies of notifications and complaints and inform each other about the opening of ex officio procedures. The authority which is not competent to deal with the case may at any stage of the proceedings make any observations it considers appropriate.

The Surveillance Authority forwarded copies to the Commission for comments in 10 of the cases received in 1995. During the same time, the Authority received copies of 76 notifications and complaints addressed to the Commission. These cases were analysed by the Authority and, where appropriate, comments or factual information relating to the case in question were submitted to the Commission.

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22 OJ of 31 December 1994 No C 385.

23 OJ of 27 September 1995 No C 251, p. 3.

A specific aspect of the rules on co-operation laid down in Protocol 23 is the right of the two surveillance authorities to take part in each others' hearings and Advisory Committee meetings. The Authority did not conduct any hearings or Advisory Committee meetings during the year. It was, however, represented in the hearings conducted by the Commission in 1995, and in the meetings of the various Community Advisory Committees in competition cases. Representatives of the EFTA States also participated in such meetings.

In cases dealt with by the Commission, where the EFTA aspects are considered to be of particular importance, the Authority participates actively also in the preparatory stages. During the year, such participation took place in, *inter alia*, Volvo/Orkla (IV/M.582), concerning a joint venture in the brewery sector, Nordic Satellite Distribution (IV/M.490), relating to transmission of TV programmes in the Nordic area, and SAS/Lufthansa (IV/35.545), concerning extensive co-operation in the field of air transport.

Consultations on general policy issues

In the context of the ongoing review of the Community merger regulation, the Authority conducted a survey of the situation in the EFTA States as regards their national systems for control of concentrations. The results were forwarded to the Commission, to be used in the review process. With regard to the renewal of the motor vehicle block exemption, the Authority continued to advocate, in principle, the opening up of this market for effective competition, rather than renewing the exemption (cf. the Authority's Annual Report of 1994). While at the end, the Authority's view did not prevail, the final version was, nevertheless, in the Authority's view a step towards liberalization as compared to the initial proposal.

The Authority supported, in principle, other proposals for revised legislation forwarded by the Commission in 1995. During the year, the Authority also participated in discussions with the Commission on more general policy matters, such as the handling of vertical restraints and the strengthening of international co-operation as regards competition policy and rules.

4.9.6 Liaison with national authorities

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

As regards co-operation in individual cases, the national authorities were invited to give their comments on cases handled by the Authority, including cases falling under the Commission's competence which were being considered by the Authority in the context of the co-operation procedure outlined above. Comments submitted by the

national authorities proved to be valuable contributions, enabling the Authority to benefit from the knowledge of national markets which the national authorities have at hand and to have access to their staff specialized in different sectors of the economy. As an illustrative example could be mentioned the assistance given by the Norwegian Competition Authority in obtaining information on the Norwegian market in relation to the set of agreements between SAS and Lufthansa which were dealt with by the Commission and in commenting on the competitive situation and the specific impacts of these agreements on the Norwegian market. Similar input has been given in several of the cases which are being dealt with by the Authority.

The Authority continued its regular meetings with the national authorities with a view to streamlining and increasing the efficiency of the co-operation between them within the framework of Protocol 4 to the Surveillance and Court Agreement.